SECOND REPORT PURSUANT TO SECTION 202(e) OF THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT PUB L. NO. 111-203 (2010)

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

JULY 2012

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

WASHINGTON, D.C. 20544

SECOND REPORT PURSUANT TO SECTION 202(e) OF THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT PUB. L. NO. 111-203 (2010)

JULY 2012

Table of Contents

I. Introduction

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("the Act") introduced a broad array of regulatory reforms in the financial sector. Among those reforms is Title II of the Act, which provides a process for the identification and orderly liquidation of distressed, systemically important financial institutions. Title II also directs the Administrative Office of the United States Courts (AOUSC) to study the resolution of distressed financial institutions under Title 11 of the United States Code (the Bankruptcy Code). The AOUSC submitted its first report pursuant to section 202(e) of the Act on July 21, 2011 ("First Report"). The AOUSC now submits this second report in compliance with section 202(e)'s instruction that it summarize the results of its study in a report "[n]ot later than 1 year after the date of enactment of th[e] Act [and] in each successive year until the third year."[1]

This report proceeds as follows:

- Part II provides an executive summary of the report's primary findings and analysis with respect to the three issues identified for study in section 202(e) of the Act.
- Part III describes the mandate for AOUSC reports and summarizes the First Report and the scope of the Second Report.
- Part IV sets forth certain key developments relating to Title II of the Act since the First Report, including the regulations proposed to implement Title II and the handling of select distressed financial institutions during that time.
- Part V focuses on a significant component of the resolution of distressed financial institutions—that is, the claims resolution procedure. This part analyzes the claims resolution procedure under the Bankruptcy Code and provides examples from select chapter 11 cases. This part also outlines the claims resolution procedure contemplated by Title II of the Act and, where relevant or useful, compares it to the federal bankruptcy scheme.
- Part VI describes a data set being compiled by the Federal Judicial Center (FJC), at the request of the AOUSC Working Group. The data set will include information about the bankruptcy cases of certain large financial institutions filed between 2000 and 2010. Although the data collection is still in progress, the AOUSC Working Group anticipates that the data set will provide invaluable information for future studies of the resolution of distressed financial institutions.

The report concludes in Part VII by highlighting certain observations based on the narrative in Part V that are of particular relevance to the resolution schemes applicable to large, complex financial institutions.

1. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 202(e)(2), 124 Stat. 1376, 1449 (2010) [hereinafter Dodd-Frank Act]. The AOUSC appointed a Working Group to study the issues identified in section 202(e). A list of terms used in this report is set forth in Appendix A.

II. Executive Summary

Section 202(e) of the Act directs the AOUSC to study three specific issues that primarily focus on the resolution of distressed financial institutions under the Bankruptcy Code: (1) "the effectiveness of chapter 7 or chapter 11 of the Bankruptcy Code in facilitating the orderly liquidation or reorganization of financial companies"; (2) "ways to make the orderly liquidation process under the Bankruptcy Code for financial companies more effective"; and (3) "ways to maximize the efficiency and effectiveness of the Court."[2]

The AOUSC determined that the best way to approach the section 202(e) study was to systematically and objectively evaluate the application of the liquidation and reorganization provisions of the Bankruptcy Code to financial institutions generally as well as to large, complex financial institutions that might qualify as "covered financial companies" under the Act. The First Report provided a broad overview of the resolution schemes potentially applicable to large, complex financial institutions. This report focuses on one particular and very critical component of those resolution schemes—that is, the claims resolution procedure.

As described in the First Report, many distressed financial institution cases involve a going-concern sale or asset liquidation. In such cases, the parties often focus on preserving value for the estates by pursuing claims, causes of action, and other assets on behalf of the estate and scrutinizing claims asserted against the estates. Increasing asset value and reducing the amount of allowed claims work in tandem to maximize returns to creditors. Consequently, an efficient and effective claims resolution procedure is important to both distressed firms and their creditors.

The Bankruptcy Code provides a structured yet flexible claims resolution procedure. The process involves an initial list of claims against the estate by the debtor in its schedules of assets and liabilities. Creditors and other parties in interest are provided an opportunity to file proofs of claim or interest against the estate within 90 days of the meeting of creditors in a chapter 7 case or by the court-established bar date in a chapter 11 case. A creditor's claim that is evidenced by a properly filed proof of claim is deemed allowed under the Bankruptcy Code unless or until the debtor, bankruptcy trustee, or other party in interest objects to the claim.

The basic structure for filing and preserving claims under the Bankruptcy Code provides certainty to parties impacted by a distressed firm. Creditors know the steps they need to take to preserve their claims and place the burden of going forward with the evidence on the debtor-in-possession or bankruptcy trustee. They also know that, to the extent a party files an objection and the dispute cannot be resolved consensually, it will be decided by the court.

Bankruptcy courts and debtors in large, complex bankruptcy cases have streamlined the claims resolution procedure by implementing a variety of special claims processes. These have included alternative dispute resolution procedures, expedited claims objections and settlement procedures, and omnibus objection procedures. As discussed in Part V.A.3, Lehman Brothers is using a combination of court-approved claims resolution pro-

2. *Id.* § 202(e)(1)(B)(i)-(iii), 124 Stat. at 1448–49. Section 202(e)'s reference to "Court" presumably means the United States District Court for the District of Columbia under Title II of the Act but may mean the United States Bankruptcy Court, as discussed in Part V.E of the First Report. Administrative Office of the U.S. Courts, Report Pursuant to Section 202(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (July 2011) [hereinafter First Report].

cedures to resolve approximately 67,000 claims originally filed in the aggregate amount of $1.2 trillion. Likewise, General Motors is using an alternative dispute resolution process to efficiently review and resolve the approximately 68,000 claims filed against its estate. In addition, the bankruptcy claims resolution procedure has been tailored to resolve present and future mass tort and products liability claims in a variety of large, complex chapter 11 cases.

The bankruptcy claims resolution process efficiently and effectively resolves the multitude of various claims asserted in bankruptcy court. While it can take multiple years to resolve the tens of thousands of claims frequently asserted in large, complex bankruptcy cases, the court is involved from the outset to facilitate the resolution process, and the parties understand the structured and clearly established procedures. The debtor also can employ a claims agent to efficiently manage the process. Moreover, the costs of the process are borne by the bankruptcy estate and ultimately the creditors, often providing the incentive to facilitate as timely a resolution as possible.

Notably, the Orderly Liquidation Authority (OLA) claims resolution procedure adopts certain aspects of the bankruptcy claims resolution procedure by, among other things, requiring creditors to file proofs of claim and allowing the Federal Depository Insurance Corporation (FDIC), as receiver, to object to claims. Unlike the bankruptcy claims resolution procedure, however, a creditor's claim is deemed rejected unless the FDIC allows the claim within the 180-day review period, which can be extended by the consent of the parties. Once a creditor receives a notice of allowance or disallowance of claim from the FDIC (or the 180-day review period expires), the creditor may file a lawsuit on the claim in a district court of proper jurisdiction. The ex post judicial review process contemplated by the OLA is contrary to the centralized claims resolution procedure fostered by the Bankruptcy Code.

As discussed in detail in Part V.C, the efficiency of either the bankruptcy or the OLA claims resolution procedure may turn largely on the facts of the particular case and the parties managing the process. Nevertheless, the flexibility and concurrent court supervision inherent in the bankruptcy claims resolution procedure may allow that process to adapt more easily to the variety of distressed firms that require a claims resolution scheme. The information contained in this report and the data being collected by the Federal Judicial Center, described in Part VI, will allow further analysis in future reports of not only the claims resolution procedures, but also the general resolution schemes applicable to large, complex financial institutions.

III. AOUSC Reports Under Title II

The First Report detailed the events preceding the Act, which included the failure or near-failure of several large, complex financial institutions, such as Bear Stearns, Lehman Brothers Holding Inc. (Lehman Brothers), Merrill Lynch, and the American International Group.[3] The Act effects a variety of changes in the regulation of financial institutions, financial products and services, and various market participants. Its stated goals are "[t]o promote the financial stability of the United States by improving accountability and transparency in the financial system, to end 'too big to fail,' to protect the American tax-

3. *See* First Report Part III.

payer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes."[4]

The Act addresses the financial distress of large, complex financial institutions and the related systemic concerns in several different provisions. The provisions most relevant to this report are Title I of the Act, Financial Stability, which creates the Financial Stability Oversight Council (FSOC); and Title II of the Act, OLA, which creates a regulatory process for the FDIC to act as receiver and liquidate certain covered financial companies.[5] The FSOC determines if an entity (e.g., bank holding company, non-bank financial institution) is a covered financial company. If the FDIC is acting as a receiver, the OLA is the exclusive insolvency law applicable to that covered financial company. Accordingly, the Bankruptcy Code would not govern that covered financial company, and any bankruptcy case filed for that company would terminate upon the appointment of the FDIC as receiver.[6]

In light of the new insolvency scheme created for covered financial companies under the Act, Title II mandates various studies to consider the implications of the new scheme and the existing alternatives to that scheme.[7] This report relates to the study mandated by section 202(e) of the Act, "Study of Bankruptcy and Orderly Liquidation Process for Financial Companies."

Section 202(e) requires the AOUSC to study the following three issues:

(i) the effectiveness of chapter 7 or chapter 11 of the Bankruptcy Code in facilitating the orderly liquidation or reorganization of financial companies;

(ii) ways to maximize the efficiency and effectiveness of the Court [Title II defines "Court" to mean "the United States District Court for the District of Columbia, unless the context otherwise requires"];

(iii) ways to make the orderly liquidation process under the Bankruptcy Code for financial companies more effective.

Section 202(e) further requires the AOUSC to submit a report summarizing the results of the study "[n]ot later than 1 year after the date of enactment" of the Act—that is, July 21, 2011.[8] The AOUSC must file two subsequent annual reports in July 2012 and July 2013, and then a report "every fifth year after the date of enactment."[9] This report is the second of the three annual reports required by the Act. This part briefly describes the substance of the First Report and the scope of this second report.

A. Summary of First Report

The core contribution of the First Report is its systematic and thorough analysis of the key provisions of the Bankruptcy Code that likely would affect the reorganization or liquidation of a financial institution. It also summarizes key provisions of Title II of the Act

4. Dodd-Frank Act pmbl., 124 Stat. at 1376.

5. *Id.* §§ 111, 203, 124 Stat. at 1392, 1450. Section 111 creates the Financial Stability Oversight Council, and section 203 states the process by which the FDIC is appointed as receiver to liquidate certain bank holding companies and certain non-bank financial institutions.

6. *Id*. § 208, 124 Stat. at 1459.

7. *Id*. §§ 202(e)–(g), 216, 217, 124 Stat. at 1448–49, 1519–20. A summary of the Title II reports filed by the U.S. Government Accountability Office and the Board of Governors of the Federal Reserve System in July 2011 is included in *infra* Appendix B.

8. *Id*. § 202(e)(2), 124 Stat. at 1449.

9. *Id.*

for purposes of comparison. It then explains the potential advantages and disadvantages of each resolution scheme in the context of large, complex financial institutions.

The First Report does not draw general conclusions about the "effectiveness" of the Bankruptcy Code in facilitating the "orderly" liquidation or reorganization of distressed financial institutions. Rather, it uses a combination of qualitative data (primarily interviews with restructuring professionals and United States judges and clerks of court) and case studies to consider the options available to resolve distressed financial institutions. The First Report also reviews several of the proposals suggested by commentators for better accommodating the resolution of financial institutions under the Bankruptcy Code. These proposals generally focus on mitigating the impact of any large, complex financial institution's bankruptcy filing on the global economy and markets by, among other things, encouraging prebankruptcy planning, enhancing the involvement of the FDIC and other governmental agencies in the bankruptcy case, streamlining certain processes, and/or modifying the treatment of financial contracts in bankruptcy.

The research underlying the First Report suggests that many of the issues preceding the Act emerged not only because of the business attributes of large, complex financial institutions but also because of the dire economic conditions facing the United States and other countries beginning in late 2007. Accordingly, it likely was this confluence of circumstances—and not the Bankruptcy Code or any one particular issue—that created challenges for Lehman Brothers in its chapter 11 case and for the other financial institutions that failed or were resolved under the Bankruptcy Code or the Federal Deposit Insurance Act (FDIA). The First Report concludes that, on a preliminary basis, the Bankruptcy Code generally functions well to address corporate distress, including that of bank holding companies and non-bank financial institutions.

B. Scope of Second Report

Since completing the First Report, the AOUSC Working Group has continued to evaluate issues relevant to the resolution of distressed financial institutions. Specifically, the Working Group has (1) continued to monitor developments relating to Title II and the resolution of distressed financial institutions such as Lehman Brothers, Washington Mutual, and most recently, MF Global Holdings, Inc. (MF Global); (2) reviewed the most recent academic and financial literature on the implementation of Title II and related issues (a sample of these materials is provided in the Bibliography in Appendix F); (3) studied the claims resolution procedures applicable under both the Bankruptcy Code and the OLA; and (4) collected certain preliminary data on financial institutions that filed a case under the Bankruptcy Code between 2000 and 2010. This report summarizes the results or status of these various tasks.

IV. Recent Developments

Although the OLA has not yet been invoked, several relevant events occurred during the last twelve months. For example, the FDIC and other federal agencies have worked to propose and, in some instances, approve the rules implementing Title II of the Act. Two of the financial institutions that filed bankruptcy cases before enactment of the Act—Lehman Brothers and Washington Mutual—confirmed plans of reorganization under chapter 11 of the Bankruptcy Code. These plans, among other things, resolve various disputes surrounding the financial distress of each company and facilitate distributions to

creditors. In addition, MF Global filed a case under chapter 11 of the Bankruptcy Code in October of 2011; notably, the OLA was not invoked to resolve MF Global's financial distress.[10] This part discusses each of these relevant developments.

A. Approved Rules Relating to the OLA

In the past year, the FDIC issued the final rule that established the framework for the claims resolution procedure under Title II of the Act.[11] The rule clarifies that the avoidance powers of the FDIC as receiver are the same as the avoidance powers of a trustee under the Bankruptcy Code. Subpart B of the rule addresses the priorities of claims and provides that administrative expenses of the receivership are afforded first priority. The rule revised the definition of "amounts owed to the United States" to clarify that the obligations entitled to priority are the amounts advanced by the government to mitigate adverse financial effects of the entity's failure.

The Federal Reserve and the FDIC also approved a final rule that requires certain large bank holding companies and non-bank financial companies designated by the FSOC for enhanced supervision by the Federal Reserve to submit a comprehensive plan for rapid and orderly resolution of the company under the Bankruptcy Code in the event of failure.[12] The FSOC clarified that the covered non-bank financial companies are those entities with a 15-to-1 leverage ratio; $3.5 billion in liabilities on derivative contracts; $20 billion of outstanding loans and bonds issued; $30 billion in gross notional credit-default swaps outstanding; or a ten percent ratio of short-term debt to assets.[13] The periodic reports would be required for each bank holding company with assets of $50 billion or more. The first plans were due July 1, 2012.

In addition, the Federal Reserve and FDIC approved a similar rule for insured depository institutions with $50 billion or more in assets.[14] The rule requires the covered institutions to submit an annual resolution plan to the FDIC. However, these institutions are not eligible to file bankruptcy and, as such, the plan must include an analysis outlining how the FDIC would proceed under the OLA process. The goals of the rules are essentially the same—requiring large financial institutions to submit resolution plans for orderly liquidation in the event of failure. Both rules require the institutions to submit non-confidential executive summaries that provide the framework in the event of financial failure, detail material developments to the company or changes from the previously submitted plan, and describe actions taken to improve the plan and to mitigate risks of failure.

---

10. *See, e.g.*, Agustino Fontevecchia, *Client Cash Reportedly Missing at MF Global; Debacle May Underline Case for Volcker Rule*, Forbes, Oct. 31, 2011, http://www.forbes.com/sites/afontevecchia/2011/10/31/mf-global-the-fall-of-corzine-the-volcker-rule-and-too-big-to-fail/ (discussing calls by commentators for the government to invoke the OLA and use MF Global as a test case).

11. Certain Orderly Liquidation Authority Provisions Under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 76 Fed. Reg. 41,626 (July 15, 2011) (codified at 12 C.F.R. pt. 380).

12. Resolution Plans Required, 76 Fed. Reg. 67,323 (Nov. 1, 2011) (codified at 12 C.F.R. pt. 243).

13. Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, 77 Fed. Reg. 21,637, 21,643 (Apr. 11, 2012) (to be codified at 12 C.F.R. pt. 1310).

14. Resolution Plans Required for Insured Depository Institutions with $50 Billion or More in Total Assets, 77 Fed. Reg. 3075 (Jan. 23, 2012) (to be codified at 12 C.F.R. pt. 360).

B. Proposed Rules Relating to the OLA

The FDIC proposed a rule to implement section 210(c)(16) of the OLA provisions that seeks to stabilize a failing financial group during its resolution.[15] This section grants the FDIC, as receiver for a covered financial company (an entity deemed by the FSOC as posing a significant risk to U.S. financial stability), the power to enforce contracts of subsidiaries and affiliates of the covered financial company, notwithstanding the power of a third party to accelerate or terminate the contract. This proposed rule would allow enforcement of all contracts of all subsidiaries and affiliates of the covered financial company (CFC) that are "linked to" or "supported by" the CFC.[16]

The FDIC and the Department of the Treasury also proposed a rule establishing the maximum obligation the FDIC may incur during the resolution of a particular covered financial company under the OLA.[17] In general, the FDIC may not incur obligations that exceed 10% of the total consolidated assets of the entity during the 30 days after appointment of the FDIC as receiver or obligations that exceed 90% of the total consolidated assets that are available for repayment during the 30-day period following the appointment of the FDIC as receiver. One significant difference between the bankruptcy process and the OLA is that in bankruptcy *the owners and creditors bear the losses;* under the OLA, the U.S. government bears the losses in the event that the obligations incurred by the FDIC as receiver go unsatisfied.

C. Bankruptcy Developments in 2011

As regulations continue to shape the OLA process, business bankruptcy filings decreased 17% from calendar year 2010 to calendar year 2011.[18] There were 9,772 chapter 11 business bankruptcy filings in 2011, compared with 11,744 in 2010.[19] The largest of the filings was MF Global with $40.5 billion in assets, making it the eighth-largest bankruptcy filing of all time based on assets. Seventeen public companies with assets of more than $1 billion completed their restructurings in bankruptcy through assets sales or confirmed plans, including Lehman Brothers and Motors Liquidation Company (formerly General Motors).[20] In addition, Washington Mutual confirmed its chapter 11 plan in February

---

15. Enforcement of Subsidiary and Affiliate Contracts by the FDIC as Receiver of a Covered Financial Company, 77 Fed. Reg. 18,127 (Mar. 27, 2012) (to be codified at 12 C.F.R. pt. 380).

16. A contract is "linked to" a covered financial company if it contains a qualified financial condition clause or any provision that grants a counterparty the right to "cause the termination, liquidation or acceleration of such contract based solely on the insolvency, financial condition, or receivership of the covered financial company." The term "supported by" means when a covered financial company supports through guarantee or the undertaking of any similar financial assistance to an affiliate or subsidiary. *Id.* at 18,128.

17. Calculation of Maximum Obligation Limitation, 76 Fed. Reg. 72,645 (Nov. 25, 2011) (to be codified at 31 C.F.R. pt. 149).

18. http://www.uscourts.gov/Statistics/BankruptcyStatistics.aspx. Increasingly, individual debtors are filing under chapter 11 due to the debt limitations of chapter 13 eligibility. These statistics include only chapter 11 cases in which the predominant type of debt was business.

19. *Id*.

20. Charles M. Oellerman & Mark G. Douglas, *The Year in Bankruptcy: 2011*, Jones Day (Jan. 2012), http://www.jonesday.com/newsknowledge/publicationdetail.aspx?publication=f3eb361f-8ef1-49f1-a01d-899bdd18e1d1&RSS=true.

2012. The statuses of the Lehman Brothers, Washington Mutual, and MF Global cases are summarized below.[21]

1. Lehman Brothers

Lehman Brothers and some of its affiliates filed chapter 11 cases in the United States Bankruptcy Court for the Southern District of New York on (or, with respect to certain affiliates, after) September 15, 2008. At the filing of the chapter 11 cases, Lehman Brothers was a holding company that directly or indirectly owned the equity of its debtor and non-debtor affiliates.[22] Some of Lehman Brothers' affiliates also filed bankruptcy or insolvency proceedings in foreign jurisdictions, and the Securities Investor Protection Corporation (SIPC) commenced an action against Lehman Brothers Inc. (LBI) under the Securities Investor Protection Act of 1970 (SIPA).[23] The bankruptcy court approved the sale of LBI's assets to Barclays Capital Inc. five days after the filing of the chapter 11 case and one day after the SIPC commenced a SIPA proceeding against LBI.[24]

The Lehman Brothers cases involved several significant events that culminated in a plan of reorganization that the bankruptcy court confirmed on December 6, 2011.[25] These events included the sale of various financial and real estate assets; negotiations and settlements with the insolvency representatives of Lehman Brothers' foreign affiliates; the negotiation of a collateral disposition agreement with JPMorgan Chase Bank, N.A. (JPMC), which provided banking and clearinghouse services to Lehman Brothers; the review and handling of approximately 1.2 million derivative transactions with approximately 6,500 counterparties; the management of investments in non-debtor domestic banks subject to regulation by the FDIC; and the review and handling of various prepetition transactions, including securitizations.[26]

Under the plan of reorganization, Lehman Brothers and its debtor affiliates emerged as reorganized debtors and retained their existing entity forms.[27] A plan administrator is overseeing the continued liquidation of the reorganized debtors' assets to facilitate distributions under the plan. Lehman Brothers' plan of reorganization became effective on March 6, 2012, and distributions to creditors under the plan commenced on April 17,

---

21. *In re* MF Global Holdings Ltd., No. 1:11-BK-15059 (Bankr. S.D.N.Y. Oct. 31, 2011); *In re* Washington Mut., Inc., No. 1:08-BK-12229 (Bankr. D. Del. Sept. 26, 2008); *In re* Lehman Bros. Holding Inc., No. 1:08-BK-13555 (Bankr. S.D.N.Y. Sept. 15, 2008).

22. *See* Debtors' Disclosure Statement for Third Amended Joint Chapter 11 Plan of Lehman Brothers Holding Inc. & Its Affiliated Debtors Pursuant to Section 1125 of the Bankruptcy Code, *In re* Lehman Bros. Holding Inc., No. 1:08-BK-13555 (Bankr. S.D.N.Y. Sept. 1, 2011) [hereinafter Lehman Brothers Disclosure Statement]. A chart depicting the Lehman Brothers' prepetition corporate structure is provided in Exhibit 19. *Id.* at 19-4.

23. *See id*. at 19–20; *see also* 11 U.S.C. §§ 741–767 (2012).

24. Robert J. Rosenberg et al., *Asset Sale Issues*, Bankr. 2009: Views from the Bench (Am. Bankr. Inst., Alexandria, Va.), Oct. 2, 2009.

25. *In re* Lehman Bros. Holdings Inc., No. 1:08-BK-13555 (Bankr. S.D.N.Y. Dec. 6, 2011).

26. Lehman Brothers Disclosure Statement, *supra* note 22, at 24–42. For an additional discussion of the scope and management of Lehman Brothers' derivative contracts, see First Report, *supra* note 2, at 34–37. In addition, Lehman Brothers and its creditors' committee commenced litigation against JPMorgan regarding certain prepetition transactions. *See* Lehman Brothers Disclosure Statement, *supra* note 22, at 27.

27. *See* Lehman Brothers Disclosure Statement, *supra* note 22, at 97.

2012.[28] Parties filed approximately 67,000 claims against the Lehman Brothers' debtors in an aggregate amount of approximately $1.2 trillion.[29] Early in the cases, Lehman Brothers estimated the actual amount of those filed claims at $740 billion.[30] As of May 2011, Lehman Brothers estimated the actual amount of allowed claims at $362 billion, and creditors are expected to receive approximately $65 billion under the terms of the Lehman Brothers' plan.[31]

2. Washington Mutual

Washington Mutual and its subsidiary WMI Investment Corp. filed chapter 11 cases in the United States Bankruptcy Court for the District of Delaware on September 26, 2008.[32] The day before Washington Mutual commenced its chapter 11 case, the FDIC (acting as receiver) took possession of the assets of Washington Mutual Bank (WMB) and immediately sold those assets to JPMC under the FDIA.[33] WMB was, among other things, a significant originator of residential mortgages and "experienced significant deposit withdrawals of more than $16.7 billion, amounting to more than $2 billion per banking business day, in the ten days immediately prior to" the FDIC receivership.[34] A significant portion of Washington Mutual's chapter 11 cases concerned litigation involving the FDIC or JPMC and the prepetition transfer of WMB's assets to JPMC. A global settlement of these litigation matters and the resolution of certain related issues cleared the path for confirmation of Washington Mutual's plan of reorganization on February 23, 2012.[35]

---

28. *Lehman Brothers Chapter 11 Debtors Emerge from Bankruptcy and Set Initial Distribution Date*, Bus. Wire, Mar. 6, 2012, http://www.businesswire.com/news/home/20120306006303/en/Lehman-Brothers-Chapter-11-Debtors-Emerge-Bankruptcy.

29. Lehman Brothers Disclosure Statement, *supra* note 22, at 6-2 (Exhibit 6). As discussed further in *infra* Part V.A., parties may file a proof of claim against the debtor's estate and that claim is deemed allowed in the amount asserted in the proof of claim unless and until the debtor-in-possession or bankruptcy trustee objects to the claim. As a result, the amount of claims asserted in proofs of claim often differs—sometimes significantly—from the amount actually due and owing from the debtor or allowed by the court through the claims resolution procedure.

30. *Id.*

31. *Id*.; *see also* Michael J. De La Merced, *Lehman Estate Emerges from Bankruptcy*, N.Y Times Dealbook (Mar. 6, 2012, 8:07 PM), http://dealbook nytimes.com/2012/03/06/lehman-estate-emerges-from-bankruptcy/.

32. *See* Disclosure Statement for the Seventh Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code at 1, *In re* Washington Mutual, Inc., No. 1:08-BK-12229 (Bankr. D. Del. Dec. 12, 2011) [hereinafter Washington Mutual Disclosure Statement]. "Prior to the Petition Date, WMI was a multiple savings and loan holding company that owned Washington Mutual Bank ('WMB') and, indirectly, WMB's subsidiaries, including Washington Mutual Bank FSB ('FSB')." *Id.* at 1–2. A corporate structure chart is provided at page 52 of the Washington Mutual Disclosure Statement.

33. *Id*. at 2.

34. *Id*. at 82.

35. *Id*. at 6–18 (discussing the events shaping the debtors' seventh amended plan of reorganization). *See also* Findings of Fact, Conclusions of Law, and Order Confirming the Seventh Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, *In re* Washington Mutual, Inc., No. 08-12229 (Bankr. D. Del. Mar. 19, 2012) [hereinafter Washington Mutual Confirmation Order]; Notice of (A) Entry of Order Confirming the Seventh Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code & (B) Occurrence of the Effective Date, *In re*

Under Washington Mutual's plan of reorganization, reorganized Washington Mutual's primary assets include its equity interests in WMI Investments and certain assets recovered or created through the chapter 11 process.[36] The plan contemplates the liquidation of these assets to facilitate distributions to creditors and shareholders under the plan. Washington Mutual's plan of reorganization became effective on March 19, 2012.[37] Creditors will receive an estimated $7 billion under the plan.[38]

3. MF Global

MF Global and five of its affiliates filed chapter 11 cases in the United States Bankruptcy Court for the Southern District of New York on (or, with respect to certain affiliates, after) October 31, 2011.[39] MF Global was "one of the world's leading brokers in markets for commodities and listed derivatives."[40] In connection with its chapter 11 filing, the company disclosed approximately $41 billion in assets and $39 billion in debt.[41] The company's financial distress reportedly was caused, in part, by the European sovereign-debt crisis.[42] MF Global was not declared a covered financial company subject to the OLA.[43]

Also on October 31, 2011, SIPC commenced a SIPA case against MF Global Inc. (MFGI), MF Global's broker-dealer operating subsidiary, in the United States District Court for the Southern District of New York.[44] The SIPC trustee is liquidating MFGI's

---

Washington Mutual, Inc., No. 08-12229 (Bankr. D. Del. Mar. 19, 2012) [hereinafter Washington Mutual Confirmation Notice].

36. Washington Mutual Disclosure Statement, *supra* note 32, at 20. Reorganized Washington Mutual's "only operating subsidiary . . . is a captive reinsurance company" that is being operated on a run-off basis. *Id.* The plan splits the $140 estimated value of this captive reinsurance company between Washington Mutual's creditors and shareholders. *See* Steven Church, *WaMu Bankruptcy Judge to Approve $7 Billion Reorganization*, Bloomberg Businessweek (Feb. 28, 2012, 8:25 AM), http://www.businessweek.com/news/2012-02-28/wamu-bankruptcy-judge-to-approve-7-billion-reorganization html.

37. *See* Washington Mutual Confirmation Notice, *supra* note 35.

38. *See* Church, *supra* note 36.

39. Michael J. De La Merced & Ben Protess, *MF Global Files for Bankruptcy*, N.Y. Times DealBook (Oct. 31, 2011, 10:21 AM), http://dealbook nytimes.com/2011/10/31/mf-global-files-for-bankruptcy/.

40. Declaration of Bradley I. Abelow Pursuant to Local Bankruptcy Rule 1007-2 & in Support of Chapter 11 Petitions & Various First-Day Applications & Motions at 3, *In re* MF Global Holdings Ltd., No. 1:11-BK-15059 (Bankr. S.D.N.Y. Oct. 31, 2011).

41. *See* Robert Lenzer, *Corzine Had MF Global Leveraged 80 to 1*, Forbes, Oct. 31, 2011, http://www.forbes.com/sites/robertlenzner/2011/10/31/corzine-had-mf-global-leveraged-80-to-1/. Part of this shortfall relates to a dispute between MF Global Inc. (MFGI) and the joint special administrators for MF Global UK Ltd. concerning approximately $700 million of segregated customer funds. *See Update to 30.7 Customers: Trustee Calls for Litigation in the United Kingdom to Recover Approximately $700 Million of Customer Property*, Epiq Debtor Matrix (Apr. 18, 2012), http://dm.epiq11.com/MFG/Project#Section2_26. In addition, the SIPC trustee reportedly is considering litigation against certain former executives of the companies in connection with the funding shortfall. *See* Nick Brown, *MF Global Trustee May Sue Company Employees*, Reuters, Apr. 12, 2012, *available at* http://articles.chicagotribune.com/2012-04-12/news/sns-rt-us-mfglobal-hearingbre83b1g5-20120412_1_trustee-james-giddens-mf-global-customer.

42. *See* sources cited *supra* note 41.

43. *See supra* note 10 and accompanying text.

44. *In re* MF Global Inc., No. 11-2790 (MG) SIPA (Bankr. S.D.N.Y. Oct. 31, 2011).

assets and distributing payments to MFGI's commodities customers on a rolling basis pursuant to a claims resolution procedure approved by the bankruptcy court overseeing the SIPA case.[45] In February 2012, the SIPC trustee disclosed an estimated $1.6 billion funding gap in these payments.[46]

On November 22, 2011, the bankruptcy court appointed a chapter 11 trustee in MF Global's chapter 11 cases. The chapter 11 trustee is in the process of reviewing and administering the estates. The bankruptcy court has denied one motion to convert the chapter 11 cases to SIPA-like proceedings under chapter 7 of the Bankruptcy Code, but certain of MFGI's commodities customers continue to seek similar relief.[47] MF Global's liabilities include approximately $1.17 billion on revolving credit facilities and approximately $1.02 billion on unsecured notes.[48] MF Global's creditors' committee and the chapter 11 trustee are working to identify potential value for MF Global's creditors and have suggested the need for greater cooperation from the SIPC trustee.[49]

V. Resolution of Claims for Financially Distressed Institutions

As illustrated by the preceding status notes on the Lehman Brothers, Washington Mutual, and MF Global chapter 11 cases, the amount and resolution of creditors' claims constitute the core of financial institution cases. This fact remains whether the financial institution is reorganized or liquidated and whether that process occurs under the Bankruptcy Code or the OLA. Accordingly, this part reviews the claims resolution procedures under the Bankruptcy Code and the OLA and provides some observations based on large, complex chapter 11 cases.

A. Claims Resolution Under the Bankruptcy Code

The financial distress of any company, including a financial institution, impacts numerous constituencies such as the company's creditors (customers, suppliers, lenders, and employees) and shareholders. Creditors' claims often are paid at a significant discount, and shareholders' interests typically are eliminated. These results, in turn, can substantially impact the finances of the company's creditors and shareholders. Therefore, the

---

45. *In re* MF Global Inc., No. 11-2790 (MG) SIPA (Bankr. S.D.N.Y. Nov. 22, 2011); *see also* Kelsey Butler, *MF Global Awaits Distribution Decision*, The Deal Pipeline (Apr. 13, 2012, 12:42 PM), http://www.thedeal.com/content/restructuring/mf-global-awaits-distribution-decision.php (noting that SIPC trustee seeking authority to distribute $685 million to commodities customers and that U.S. commodities customers had received approximately 72% of their claims as of March 2012).

46. *See* Ben Protess, *MF Global Trustee Sees $1.6 Billion Customer Shortfall*, N.Y. Times Dealbook (Feb. 10, 2012, 8:01 PM), http://dealbook nytimes.com/2012/02/10/mf-global-trustee-sees-1-6-billion-customer-shortfall/.

47. *See, e.g.*, Nick Brown, *MF Global Customers Seek to Streamline Liquidation*, Reuters, Mar. 16, 2012, http://www.reuters.com/article/2012/03/16/us-mfglobal-chapter-idUSBRE82F1EG20120316; *In re* MF Global Holdings, Ltd., No. 1:11-BK-15059 (Bankr. S.D.N.Y. Apr. 30, 2012).

48. *See Dynegy, Kodak, Rothstein, Madoff, MF Global: Bankruptcy*, Bloomberg Businessweek (Mar. 12, 2012, 12:49 PM), http://news.businessweek.com.

49. *See, e.g.*, First Status Report of Statutory Creditors' Committee Concerning the State of the Estate Pursuant to Bankruptcy Code Section 1102(b)(3) at Exhibit A, *In re* MF Global Holdings, Ltd., No. 1:11-BK-15059 (Bankr. S.D.N.Y. Apr. 5, 2012). For trustee's position, see, e.g., Trustee's Preliminary Report on Status of His Investigation & Interim Status Report on Claims Process & Account Transfers, *In re* MF Global Inc., No. 11-2790 (MG) SIPA (Bankr. S.D.N.Y. Feb. 6, 2012).

procedures governing the assertion and resolution of claims and interests against a distressed company are vitally important to the overall resolution system.

The Bankruptcy Code embodies a centralized process for asserting, adjudicating, and allowing or disallowing claims. The process is systematic and designed to foster fair and efficient resolution of claims and interests.[50] As described below, the Bankruptcy Code provides for the allowance of claims against and interests in the debtor. After the debtor identifies claims and interests in the debtor's schedule of assets and liabilities and creditors file proofs of claims, parties are given a period of time as fixed in the plan to review these claims and file objections to them. There is a defined process for providing notice of, and an opportunity to be heard on, any objections to the claims, which are resolved by the bankruptcy court or a court-approved mechanism, such as mediation. The Federal Rules of Bankruptcy Procedure ("the Bankruptcy Rules") and the local rules of the bankruptcy courts further facilitate this process by allowing omnibus objections to claims and streamlined procedures to resolve the thousands of claims filed in most large, complex bankruptcy cases. Under 28 U.S.C. § 156(c), the court may appoint a claims and noticing agent, payable from the estate and under the supervision of the clerk of court, to assist with the administrative aspects of the claims resolution procedure. This is typically done only in very large cases involving many claims. Such an agent may, among other things, (1) mail notices to the estates, creditors, and parties in interest; (2) provide computerized claims and objection database services; and (3) provide expertise, consultation, and assistance in claims processing and other administrative tasks, including, for example, assisting in preparation of the debtor's schedules and statements of financial affairs and any amendments thereto.[51]

1. The Bankruptcy Claim

The Bankruptcy Code broadly defines a claim as:

> (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
>
> (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.[52]

The broad definition of "claim" was intended to reach all legal obligations, no matter how remote, and deal with them in the bankruptcy case.[53] Bankruptcy only discharges

---

50. Although this part focuses primarily on creditors' claims asserted against a debtor's bankruptcy estate, similar procedures govern the filing of proofs of equity interest and any objections to those equity interests. Fed. R. Bankr. P. 3002 (stating holders of claims and equity security interests must file to substantially comply with the Official Form and Bankruptcy Rule 3001).

51. See Appendix C for a motion and order related to such an appointment.

52. 11 U.S.C. § 101(5) (2012).

53. *See* Ohio v. Kovacs, 469 U.S. 274, 279 (1985) ("[I]t is apparent that Congress desired a broad definition of a 'claim' . . . ." (citing S. Rep. No. 95-989, at 21 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5807–08; H.R. Rep. No. 95-595, at 309 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6266)); *In re* Chateaugay Corp., 944 F.2d 997, 1003 (2d Cir. 1991) ("Congress unquestionably expected this definition [of a claim] to have wide scope.").

"claims," and a narrow definition of "claim" would undercut the "fresh start" policy so important to bankruptcy law.[54]

The starting point of a chapter 11 claims resolution procedure is the debtor's schedules of assets and liabilities. The schedules, which consist of Official Forms, categorize the types of claims against the debtor. For example, Schedule D lists the debtor's secured claims; Schedule E, the unsecured priority claims; and Schedule F, the unsecured claims. The claims listed on the schedules may be categorized as disputed, contingent, or unliquidated.

The schedule of liabilities filed pursuant to section 521(a)(1) of the Bankruptcy Code establishes prima facie evidence of the validity of the claim.[55] It is the creditor's responsibility to verify the accuracy of the claim listed on the schedule. If the debtor's schedules list a claim as undisputed, liquidated, and not contingent—and the creditor agrees with the amount listed—the creditor is not required to file a proof of claim.[56] Otherwise, the creditor must file a proof of claim by the deadline or bar date fixed by the court in order to participate in any distributions in the case.[57] The court, for cause shown, may extend the time within which proofs of claim may be filed[58] and may allow a creditor to file a claim after the deadline based on excusable neglect.[59] A filed claim is deemed allowed unless a party in interest objects.[60]

Pursuant to Bankruptcy Rule 1009(a), the debtor may amend its schedules as a matter of right at any time before the case is closed. However, the debtor is required to give notice of the amendment to any affected party and the bankruptcy trustee. For example, if the schedules previously listed a claim as undisputed, liquidated, and noncontingent—and the debtor seeks to amend the schedules to list the claim as disputed—the debtor must give notice of the amendment to the creditor, since the latter will have to file a proof of claim pursuant to Bankruptcy Rule 3003(c). The creditor is allowed to amend its claim, provided that any new claims asserted in an amendment after the bar date "relate back" to a timely claim.

The allowance of claims facilitated by the filing of the debtor's schedules and creditors' proofs of claim is central to creditors' rights in the bankruptcy case, including their right to vote on any plan of reorganization in a chapter 11 case and to receive distributions under a confirmed plan of reorganization or a court's distribution order.[61] Only holders of allowed claims generally are entitled to vote and receive distributions. The classification and valuation of an allowed claim also determine the amount of any distributions to be received by the creditor on account of such claim.[62]

---

54. *In re* Quigley Co., Inc., 383 B.R. 19, 25 (Bankr. S.D.N.Y. 2008).

55. Fed. R. Bankr. P. 3003(b).

56. 11 U.S.C. § 1111(a) (2012).

57. Fed. R. Bankr. P. 3003(c).

58. *Id*.

59. *See* Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380 (1993).

60. 11 U.S.C. § 502(a) (2012).

61. *Id*. § 1126(a) ("The holder of a claim or interest allowed under section 502 of this title may accept or reject a plan.").

62. In formulating the treatment of claims under a plan of reorganization, the Bankruptcy Code allows the debtor to classify and group claims with other similar claims. Section 1122(a) of the Bankruptcy Code allows classification of a claim only if the claim or interest is substantially similar to other claims or interests in the class. For example, one court held that the classification of bondholders with an indenture trustee

2. Claims Objections and Litigation

The bankruptcy trustee, debtor-in-possession, or any interested party may challenge a claim by filing an objection.[63] Claims litigation may also be initiated when the trustee challenges a claim by objecting to the schedules themselves. Section 502 of the Bankruptcy Code provides the grounds for an objection. For example, a party in interest may object to a claim if the claim is unenforceable under non-bankruptcy law or to a claim for post-petition interest against an insolvent debtor.[64] The creditor bears the ultimate burden of persuasion regarding the validity and amount of a claim. However, if the claim is executed and filed in accordance with the applicable Bankruptcy Rules, it establishes prima facie evidence of the validity and amount of the claim.[65] As a result, the objecting party, generally the trustee, bears the burden of going forward with evidence to show that the claim should be disallowed, that is, expunged.

Bankruptcy Rule 3007 governs the procedure for objecting to a claim. The objection must be in writing and filed with the court, and a copy of the objection must be delivered to the claimant, the debtor or debtor-in-possession, and the trustee, at least 30 days prior to the hearing.[66] The claim objection commences a contested matter governed by Bankruptcy Rule 9014. There is no requirement that the creditor file a response to the objection, because the objection is essentially an answer to the claim. If the objection does not involve a factual dispute or can be determined without the need to hear testimony or examine documentary evidence, such as when the claim was filed after the bar date or is duplicative of another claim, the court will generally adjudicate the objection summarily after the deadline for responding to the objection expires. If, however, the objection involves factual disputes going to its merits, such as when the debtor claims it does not owe the debt asserted in the claim, the claim objection is adjudicated like an ordinary civil lawsuit, subject to most of the rules that govern civil litigation.[67]

Claim objections generally involve a dispute over a single claim as outlined above. However, under Bankruptcy Rule 3007(d), objections to more than one claim (up to 100 claims) can be joined if one or more circumstances are present. The circumstances include

(1) claims that duplicate other claims;
(2) claims that have been filed in the wrong case;
(3) claims that have been amended by subsequently filed proofs of claim;
(4) claims that were not timely filed;
(5) claims that have been satisfied or released during the case in accordance with the [Bankruptcy] Code, applicable rules, or a court order;

---

was not permissible because the trustee claims include post-petition interest, fees, and expenses while the claims of the bondholders are a matter of contract and cannot be altered by the court. *In re* Gillette Assocs., Ltd., 101 B.R. 866, 872–73 (Bankr. N.D. Ohio 1989); *see also In re* 11,111, Inc., 117 B.R. 471 (Bankr. D. Minn. 1990) (holding that claims arising from loans to debtor made in conjunction with stock purchases while creditors served as directors and officers of debtor were appropriately grouped in same class).

63. 11 U.S.C. § 502(a) (2012); Fed. R. Bankr. P. 3007; *see also* 11 U.S.C. § 1107 (2012) (stating that the debtor-in-possession generally has all rights, other than a right to compensation, and duties as a trustee under this chapter).

64. *See* 11 U.S.C. § 502(b)(1) (2012).

65. Fed. R. Bankr. P. 3001(f).

66. *Id.* R. 3007(a).

67. *Id.* R. 9014.

(6) claims that were presented in a form that does not comply with applicable rules, and the objection states that the objector is unable to determine the validity of the claim because of the noncompliance;

(7) claims that are [ownership or shareholder] interests, rather than [creditor] claims; or

(8) claims that assert priority in an amount that exceeds the maximum amount under [section] 507 of the [Bankruptcy] Code.[68]

It is important to note that, unless the court orders otherwise, the Bankruptcy Rules do not permit omnibus claims objections against different entities where the objection is based upon grounds that go to the merits of the underlying claim and would typically be the subject of an independent lawsuit outside of bankruptcy. For example, it is common for the debtor to object to claims because the amounts asserted by the creditors do not comport with the debtor's books and records, or because the debtor has a defense to payment.

Courts are empowered to, and in appropriate circumstances will, extend the permissible grounds to be cited or relied upon in omnibus objections.[69] For example, a large group of employees may assert individual claims for severance pay based on the debtor's severance policy or Worker Adjustment and Retraining Notification (WARN) Act claims based on the closing of the debtor's facility. In those situations, the court will allow an omnibus objection but tailor the procedure to ensure that the creditors are not prejudiced by the use of an omnibus claims objection, especially when individuals are involved. For example, the court may limit each omnibus objection to 20 claims instead of the 100 claims otherwise permitted,[70] or send a one-page "particularized" notice along with the objection to each creditor to inform the creditor that the debtor has objected to the claim and where to locate the objection to his or her claim within the omnibus objection.

The establishment of specialized procedures for filing omnibus objections is generally addressed at the early stages of a case through a case management order.[71] Bankruptcy Rule 3007(e) contains additional requirements in those situations where omnibus objections are permitted. These requirements are designed to ensure that the creditor receiving the objection understands its import and can easily locate the information regarding its claim and the reasons for the objection.[72]

3. Separate Claims Process

The nature or magnitude of the claims may warrant a separate claims resolution procedure. Such a process may include an arbitration or settlement conference component.[73] The Lehman Brothers case provides two examples. First, Lehman Brothers obtained

---

68. *Id.* R. 3007(d).

69. *Id.* R. 3007(c).

70. *Id.* R. 3007(e)(6).

71. An example of a case management order, from *In re* Envirosolutions of N.Y., LLC, No. 1:10-BK-11236 (Bankr. S.D.N.Y. June 11, 2010), is presented in Appendix D.

72. *See* Kenneth M. Misken & Daniel F. Blanks, *Amended Bankruptcy Rule 3007: Omnificent Omnibus Objections or Objectionable Annoyances?*, Am. Bankr. Inst. J., May 2007, at 38, 39.

73. *See generally* Ralph R. Mabey et al., *Expanding the Reach of Alternative Dispute Resolution in Bankruptcy: The Legal and Practical Bases for the Use of Mediation and the Other Forms of ADR*, 46 S.C. L. Rev. 1259 (1995); Jarrod B. Martin, A User's Guide to Bankruptcy Mediation and Settlement Conferences (Oct. 2009), *available at* http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=jarrod_martin.

bankruptcy court approval of a claims hearing and alternative dispute resolution (ADR) process for the approximately 67,000 proofs of claim filed against the bankruptcy estates, which claims were in addition to those scheduled by the debtors.[74] This type of ADR process is common in large chapter 11 cases. For example, a similar ADR procedure was approved in the General Motors chapter 11 cases to resolve over 68,000 claims, 30,000 of which were litigation-based claims.[75] ADR claims processes provide a streamlined process for the parties to negotiate and then mediate any differences over claims against the estate once an objection to the claim is filed.[76] An example of a claims ADR procedures order is presented in Appendix E.

Second, Lehman Brothers developed a specialized settlement framework to resolve claims based on financial contracts (i.e., derivatives).[77] This framework gave the parties broad discretion in determining a final and binding valuation. The framework enabled the settlement of $639 billion in derivatives claims against the Lehman Brothers' bankruptcy estates within 1,268 days.[78] The holders of these resolved, allowed claims received distributions under Lehman Brothers' confirmed plan of reorganization.[79]

Federal bankruptcy law provides the flexibility to implement unique claims processes while preserving the hallmark notice and hearing elements underlying the general claims resolution procedure designed to promote fairness to all parties.[80] For example, it is quite common for a debtor who runs a chain of retail stores to face a substantial number of relatively minor tort claims arising from patrons slipping and falling in one of the debtor's stores. These claims may be pending in numerous courts throughout the nation and would take years to resolve, delaying the completion of the chapter 11 case and the distribution to creditors. Under such circumstances, a bankruptcy court may establish a mandatory mediation program coupled with an optional arbitration program.[81] Once the creditor participates in mediation, he or she may select binding arbitration or return to the tort

---

74. Notice of Debtor's Motion Pursuant to Section 105 of the Bankruptcy Code, Bankruptcy Rule 9014, & General Order M-390 Authorizing the Debtors to Implement Claims Hearing Procedures & Alternative Dispute Resolution Procedures for Claims Against Debtors at 1, *In re* Lehman Bros. Holdings, Inc., No. 1:08-BK-13555 (Bankr. S.D.N.Y. Mar. 15, 2010).

75. Monthly Operating Report for the Month Ended February 28, 2011, *In re* Motors Liquidation Co., No. 1:09-BK-50026, at 12–13 (Bankr. S.D.N.Y. Apr. 7, 2011).

76. Mabey et al., *supra* note 73, at 1273 & n.41 (citing *In re* Child World, Inc., No. 92-B-20887 (Bankr. S.D.N.Y. 1992); *In re* Caretta Trucking Inc., No. 92-29015 (Bankr. D.N.J.); *In re* St. Johnsbury Trucking Co., No. 93-B-43136 (Bankr. S.D.N.Y. 1994); *In re* Woodward & Lothrop Holdings, Inc., No. 94-B-40222 (Bankr. S.D.N.Y.); and others).

77. For details of the settlement framework, see Legacy Asset Mgmt. Co., Derivatives Claims Settlement Framework (May 27, 2011), *available at* http://www.slideshare.net/oluoni/lbhi-may-27-2011-derivatives-claims-settlement-framework.

78. *Lehman Out of Bankruptcy*, Reuters, Mar. 6, 2012, *available at* http://www.thefiscaltimes.com/Articles/2012/03/06/Lehman-Out-of-Bankruptcy.aspx#page1.

79. *Id*.

80. 11 U.S.C. § 105 (2012) (allowing the court to enter into any judgment or order that is necessary or appropriate to carry out the provisions of Title 11).

81. The bankruptcy court cannot adjudicate an objection to a personal injury or wrongful death claim, *see* 28 U.S.C. § 157(b)(2)(O), 157(b)(5) (2012), at least without the creditor's express or implied consent. *See* Stern v. Marshall, 131 S. Ct. 2594, 2606–08 (2011) (ruling that creditor had consented to the trial of his defamation claim in the bankruptcy court). In essence, such tort claimants retain their common law rights, including the right to trial by jury.

system to adjudicate the claim. The bankruptcy court can also estimate tort claims for certain purposes other than distribution, as discussed below.

Other examples include the asbestos and mass tort cases that present especially difficult claims resolution problems. In the case of the former, a typical asbestos debtor may face as many as 200,000 unliquidated personal injury claims.[82] In such cases, the court will usually forgo the requirement of filing claims in the bankruptcy case because of the practical difficulties entailed in handling a large volume of personal injury and wrongful death claims that the court will not be able to liquidate for reasons discussed below.[83] In these circumstances, the claims essentially "pass through" the bankruptcy and are channeled into a funded trust created under the plan of reorganization. The claimant can then submit his or her claim to the trust, which will determine whether and to what extent it should be allowed.[84]

4. Claims Estimation

A key component of bankruptcy claims litigation and special claims resolution procedures is the power of the court to estimate a claim. Section 502(c) of the Bankruptcy Code authorizes a court to estimate a contingent or unliquidated claim, inter alia, where the actual liquidation "would unduly delay the administration of the case."[85] Estimation is especially important when a significant claim, or large number of claims, cannot be fixed within the time period necessary to permit the debtor's reorganization. Estimation can be used for certain purposes even when the court lacks the ability to liquidate the claim, as in the case of personal injury or wrongful death claims. These purposes include determining the amount of the claim for voting purposes[86] and determining whether the plan is feasible.[87]

The Bankruptcy Code and the Bankruptcy Rules guide the court's resolution of claims estimation matters while permitting the court to tailor procedures to the particular claims at issue.[88] Where the estimation is limited to no more than a few claims, the court will often adopt a procedure that includes an abbreviated presentation of evidence and legal argument. If the case involves hundreds or thousands of unliquidated claims, such

82. *See, e.g., In re* Quigley Co., 437 B.R. 102, 112 (Bankr. S.D.N.Y. 2010).

83. *See, e.g., In re* Quigley Co., 383 B.R. 19, 24 (Bankr. S.D.N.Y. 2008). Examples include when claims cannot be fixed within the period necessary to permit reorganization or when the wrongful death claim arises after the plan is confirmed.

84. 11 U.S.C. § 524(g)(1)(B) (2012); *see* Mark D. Plevin et al., *The Future Claims Representative in Prepackaged Asbestos Bankruptcies: Conflicts of Interest, Strange Alliances, and Unfamiliar Duties for Burdened Bankruptcy Courts*, 62 N.Y.U. Ann. Surv. Am. L. 271, 271 (2006) ("Section 524(g) allows the court, in connection with a Chapter 11 plan of reorganization, to enjoin future claimants from proceeding against the company in the tort system. Instead, those future claimants may find recourse for their injuries only by asserting a claim upon a trust established in connection with the bankruptcy, subject to the trust's rules, procedures, and limitations.").

85. 11 U.S.C. § 502(c)(1) (2012).

86. *See* Fed. R. Bankr. P. 3018(a).

87. *See* 11 U.S.C. § 1129(a)(11) (2012).

88. *See, e.g.*, Bittner v. Borne Chem. Co., 691 F.2d 134, 135–36 (3d Cir. 1982); Pension Benefit Guar. Corp. v. Enron Corp. (*In re* Enron), No. 04 Civ. 5499 (HB), 2004 WL 2434928, at *5 (S.D.N.Y. Nov. 1, 2004); *In re* Ralph Lauren Womenswear, Inc., 197 B.R. 771, 775 (Bankr. S.D.N.Y. 1996).

as in asbestos and other mass tort cases, courts may estimate all such claims at $1.00.[89] Alternatively, where more precise information is available regarding the nature and potential amount of the claim, the claim can be estimated based on that information.[90]

5. Timing of Claims Objections

There is no deadline for objecting to claims except as may be fixed in the plan, which provides important flexibility depending on the circumstances of the case. For example, the claims review process may take longer than usual because of the number or complexity of the filed claims, or both. In the Lehman case, a substantial number of claims were based on derivatives contracts and required review by persons with special expertise. In addition, distributions are often contingent on the successful prosecution of pending or future lawsuits. Until then, there may be little if any money to distribute to creditors, and if the litigation is unsuccessful, there will be no meaningful distribution. In those circumstances, it would prove wasteful to review and object to claims until it becomes clear that assets are available for distribution.

B. Claims Resolution Under the OLA

The FDIC finalized a rule that addresses claims allowance, claim priorities, and the avoidance powers of the agency in an OLA proceeding.[91] The rule explicitly states that it seeks to harmonize the claims resolution powers of the FDIC as receiver under certain sections of the Act with the claims resolution process under the Bankruptcy Code. Creditors of a covered financial company thus should receive treatment in the OLA similar to that provided under the Bankruptcy Code.[92] The treatment is not identical, however, and the procedures have yet to be tested. Notably, unlike the bankruptcy court, the FDIC reviews and determines the validity of claims without the consent of the affected creditors or a judicial determination.[93] Any creditor disagreeing with the FDIC's decision is limited to ex post judicial review. This process thus places the burden on the creditor to challenge the FDIC's decision in federal district court, and it may only do so after the FDIC renders its decision.

Subpart C of the rule addresses the claims resolution procedure under the OLA. The FDIC as receiver publishes a notice to advise creditors to file their claims by a bar date fixed no earlier than 90 days following the notice. Although under the Bankruptcy Code

---

89. *E.g.*, *In re* A.H. Robins Co., 880 F.2d 694 (4th Cir. 1989), *cert. denied*, 493 U.S. 959 (1989); Kane v. Johns–Manville Corp (*In re* Johns–Manville Corp.), 843 F.2d 636, 646 (2d Cir.1988).

90. *In re* Quigley Co., 346 B.R. 647, 654–55 (Bankr. S.D.N.Y. 2006) (estimating the amount of each claim in an asbestos bankruptcy based on the value ascribed to the particular claim under the proposed plan's trust distribution procedures); *see also* Leonard P. Goldberger, *Rock the Vote, Asbestos-Style*, Am. Bankr. Inst. J., Dec. 2006/Jan. 2007, at 26.

91. Certain Orderly Liquidation Authority Provisions Under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 76 Fed. Reg. 41,626 (July 15, 2011) (codified at 12 C.F.R. pt. 380).

92. *See, e.g.*, *Continued Oversight of the Implementation of the Wall Street Reform Act: Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs*, 112th Cong. (2011) (statement of Martin J. Gruenberg, Acting Chairman, Federal Deposit Insurance Company), *available at* http://www.fdic.gov/news/news/speeches/chairman/spdec0611.html ("Many aspects of the process are similar to that in bankruptcy—and creditors will be exposed to losses under the statutory priority of claims.").

93. 76 Fed. Reg. at 41,629 (codified at 12 C.F.R. § 380.30).

the debtor may initiate the claims resolution procedure by filing the schedules, the OLA process contemplates the initiation of the process by the creditors.[94] Moreover, once the claims are received, the FDIC has 180 days (or longer if a creditor consents to an extension) to review the claims. The receiver determines whether to allow or disallow any given claim.[95] The FDIC also may estimate the allowed value of contingent claims.[96] The FDIC must provide creditors with notice of the allowance or disallowance of the claim.

Subpart C provides creditors with 60 days from the notice of claims disallowance or the expiration of the 180-day review period, whichever is earlier, to object to the FDIC's determination. However, an objecting creditor may only challenge the FDIC's decision after the fact by filing an action in a federal court of competent jurisdiction.[97] The rule further provides that "unless the claimant has first exhausted its administrative remedies by obtaining a determination from the receiver regarding a claim filed with the receiver, no court shall have jurisdiction over" claims asserted against a covered financial company.[98]

The determination of secured claims under the OLA resembles the treatment of secured claims under the Bankruptcy Code. Nevertheless, the FDIC as receiver, again, is the party deciding in the first instance the value of the secured claim and whether to allow the secured creditor to repossess its collateral. The rule provides that the receiver will consent to a request to repossess collateral "unless [the receiver] decides to use, sell or lease the property, in which case it must provide adequate protection of the claimant's security interest in the property."[99] In addition, the claims resolution procedure set forth in Subpart C does not apply to any claims or obligations transferred by the receiver to a bridge financial company under the OLA.[100]

C. General Observations Regarding Claims Resolution Procedures

As discussed in the First Report, some commentators criticize the bankruptcy process as too slow and inefficient to facilitate a timely resolution of large, complex financial institution cases. As with most generalizations, this critique is not accurate in many cases and represents an incomplete analysis of the process. The bankruptcy claims resolution procedure is a good example of how this critique is flawed.

Large distressed firms, whether in the financial or another industry, typically have tens of thousands of claims asserted against them. Although reviewing and processing each of these claims may delay the firm's resolution, it is necessary to protect adequately the rights of creditors and ultimately preserve value for the estate. Congress developed the Bankruptcy Code to balance the competing interests of the debtor and creditors by providing a framework that facilitates the timely filing of claims, allowing debtors-in-possession or bankruptcy trustees to streamline the objections process, and protecting the

94. *Id*. at 41,644 (codified at 12 C.F.R. § 380.32–.33).

95. *Id*. at 41,645 (codified at 12 C.F.R § 380.36).

96. *Id*. at 41,646 (codified at 12 C.F.R. § 380.39).

97. *Id*. at 41,645–46 (codified at 12 C.F.R. § 380.38) (stating that creditor may file a lawsuit with respect to its claim "in the district or territorial court of the United States for the district within which the principal place of business of the covered financial company is located" or continue a lawsuit filed prior to the commencement of the OLA "in the court in which the action was pending.").

98. *Id*. (codified at 12 C.F.R. § 380.38(d)).

99. *Id*. at 41,629 (codified at 12 C.F.R. § 380.52). *See also* 12 C.F.R. § 380.51.

100. 76 Fed. Reg. at 41,628 (codified at 12 C.F.R. § 380.26).

rights of all parties with concurrent court supervision. This process is firm, yet flexible, fostering certainty without forcing all cases into a myopic approach that may work efficiently in some, but not all, of them.

For example, in the Lehman Brothers case, the period following the September 2008 asset sale to Barclays Capital allowed the debtors to systematically review the 67,000 claims asserted against the estates and implement a controlled liquidation of assets that ultimately increased the value available for distributions to creditors. As explained by Bryan Marsal of Alvarez & Marsal, one of Lehman Brothers' professionals, "[t]he strategy of managing and maximi[z]ing the value of assets rather than liquidating quickly at fire sale values takes time and requires [professionals'] fees . . . but it will yield far greater returns for the creditors than all the costs of personnel and legal and professional services combined."[101] This process enabled Lehman Brothers to capture value in winding down the estate and to reduce significantly the number of allowed claims asserted against its estate to approximately $226 billion, with just $86 billion of claims still disputed as of April 2011.[102] Lehman Brothers also made an initial distribution of $22.5 billion to 12,000 individual claimants, which it believes was "the largest initial distribution ever made by a company emerging from bankruptcy."[103]

Lehman Brothers was able to accomplish such a feat by using the bankruptcy claims resolution procedure and a variety of the special claims processes described above in Part V.A.3. As noted, Lehman Brothers used both an ADR process for ordinary claims and a tailored settlement framework for claims based on financial contracts. At least one commentator has observed that "under the . . . settlement framework, Lehman Brothers' bankruptcy will be resolved in just over three years—a remarkable timeframe given that Enron's resolution took a decade."[104] Lehman Brothers also, among other things, obtained court approval of a modified omnibus claims objection procedure that expanded the types of objections permitted in an omnibus filing and authorized "the Debtors, and other parties in interest, . . . to file Omnibus Claims Objections to no more than 500 Claims at a time on the [p]ermitted [g]rounds . . . ."[105] Notably, in each of these instances, the court authorized a single process that facilitated final resolution of the claims through a consensual settlement or a court determination.

Although the OLA adopts certain features of the bankruptcy claims resolution procedure, its bifurcated procedure and rigid format likely will produce outcomes very differ-

---

101. Telis Demos, *Lehman's US Bankruptcy Costs Top $1bn*, Fin. Times, Nov. 23, 2010, http://www.ft.com/intl/cms/s/0/39d642a0-f699-11df-b434-00144feab49a.html#axzz1wOqlJAZx.

102. Notice Regarding Initial Distributions Pursuant to the Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. & Its Affiliated Debtors at Exhibit B, *In re* Lehman Bros. Holding Inc., No. 1:08-BK-13555 (Bankr. S.D.N.Y. Apr. 11, 2012).

103. Press Release, Lehman Bros. Holdings Inc., Initial Distribution Percentages Announced for Lehman Brothers Holdings Inc. and Its Debtor Affiliates (Apr. 11, 2012), http://www.businesswire.com/news/home/20120411006191/en/initial-distribution-percentages-announced-lehman-brothers-holdings.

104. Kimberly Summe, *Misconceptions About Lehman Brothers' Bankruptcy and the Role Derivatives Played*, 64 Stan. L. Rev. Online 16, 21 (2011), *available at* http://www.stanfordlawreview.org/online/misconceptions-about-lehman-brothers-bankruptcy.

105. Amended Order Pursuant to Section 105(a) of the Bankruptcy Code & Bankruptcy Rules 3007 & 9019(b) for Approval of Claim Objection Procedures at 3, *In re* Lehman Bros. Holding Inc., No. 1:08-BK-13555 (Bankr. S.D.N.Y. Mar. 31, 2010).

ent from those possible under the Bankruptcy Code. The timeline contemplated by the OLA appears efficient, with 90 days to file claims, 180 days to review claims, and 60 days for creditors to object to the FDIC's resolution of claims, and it may prove efficient in proceedings involving small firms, firms with simple capital structures, or transfers of substantially all of the firms' assets and liabilities to bridge financial companies. In other proceedings, however, the timeline likely will not be as clean or as efficient as it first appears.

In an OLA proceeding, the time for filing claims may be extended for certain types of claimants. Likewise, the 180-day review period may be extended with the consent of claimants. However, to the extent that the FDIC does not request or receive an extension of the review period and 180 days proves impractical for reviewing the tens of thousands of claims at issue, claims will automatically be deemed disallowed, placing the burden and cost of preserving claims on the claimants. In addition, those claimants then have the right to file litigation against the FDIC as receiver in potentially multiple district courts across the country. Accordingly, the facial simplicity of the OLA claims resolution procedure may dissipate depending on the circumstances of the proceeding and the capital structure of the covered financial company. In particular, the accelerated timetable may trigger a claims review process and civil litigation before it is apparent that there will be assets to pay those claims.

In sum, the Bankruptcy Code appears to strike an appropriate balance in preserving value and protecting parties' rights, even if the process takes longer than the approximately one-year process contemplated by the OLA. The concurrent involvement of the court in the bankruptcy claims resolution procedure—as opposed to the back-end court involvement contemplated by the OLA claims resolution procedure—can provide flexibility and efficiency in many large, complex bankruptcy cases.

VI. Preliminary Data Concerning Financial Institutions in Bankruptcy

To assist in its study of the resolution schemes applicable to financial institutions, the AOUSC Working Group initiated an empirical data collection and analysis project. The goals of this effort are to develop a database of information to describe how financial institutions have proceeded through the bankruptcy system. This information is critical to understanding the effectiveness of chapter 7 and chapter 11 of the Bankruptcy Code in facilitating the orderly liquidation or reorganization of financial companies and in analyzing any proposed amendments to the Bankruptcy Code. This work is in its preliminary stages.

A. Data Project Methods and Work To Date

The FJC, at the request and with the assistance of the Working Group, is developing a database containing information about bankruptcies of large financial institutions. The data for this project come from a variety of sources. First, to identify the cases involving large financial institutions, FJC staff began compiling a data set of 1,848 large commercial bankruptcies filed between 2000 and 2010 using data from the Bankruptcy Research Database,[106] New Generations Research,[107] and the AOUSC. The Bankruptcy Research

106. UCLA-LoPucki Bankruptcy Research Database (2010), http://lopucki.law.ucla.edu/.

Database includes bankruptcies of publicly traded business debtors with more than $100 million in assets (using 1980s dollars). The New Generations database includes cases meeting similar criteria, but also includes cases involving certain high-profile companies that otherwise would not have been included. The AOUSC data were compiled somewhat differently. AOUSC staff identified all chapter 11 business bankruptcies filed between January 1, 2000, and December 31, 2011. Those cases were then narrowed to cases involving more than $100 million in assets and more than 1,000 creditors, as reported by the debtor on the petition. Some of the remaining cases were related cases being jointly administered, so the cases were further reduced to only lead cases using CM/ECF. The cases derived from the three data sources significantly overlapped.

Starting with these 1,848 business cases, FJC staff looked up each case in the Public Access to Court Electronic Records (PACER) database to determine whether the debtor was a financial institution. The information on the type of business came from the Schedules or the Affidavit Filed in Support of First Day Motions. FJC staff used a broad definition of financial institution, reasoning that it would be easier to exclude cases from an overinclusive list than to add them. Included in the definition of financial institution for this project are the following types of companies:

- bank or bank holding company;
- financial services company;
- mortgage company;
- real estate investment/development/trust;
- mutual fund;
- savings and loan/thrift;
- securities; and
- investment fund/banking.

Using the definition above, FJC staff found 132 bankruptcy cases involving financial institutions from 2000 to 2010, with the observations weighted heavily toward the latter half of the period. In the upcoming year, FJC staff will confirm the initial classification of the 2000–2010 cases as to whether they involved financial institutions or not.[108]

The FJC staff, with input from the AOUSC Working Group, developed an online coding form to document information about each of these 132 cases from PACER. The coding form covers the following topics:

- basic case information;
- jointly administered cases;
- type of business;
- schedules and statements of financial affairs;
- case conversion;
- involvement of chapter 11 trustee and examiner;
- claims, including omnibus objections and claims agents;
- debtor-in-possession financing;

---

107. New Generations Research, The Bankruptcy Yearbook & Almanac (2010), *available at* http://bankruptcydata.com.

108. Many cases filed before 2004 do not have files on PACER.

- use of cash collateral;
- financial or derivative contracts;
- sale of substantially all assets;
- chapter 11 plans of reorganization or liquidation; and
- case resolution and closing.

Bankruptcy cases involving financial institutions are complex cases that proceed in various ways through the bankruptcy system. It therefore was a challenge to develop a coding scheme that was simple enough to be reliably followed and at the same time produce adequate information. The coding form was designed to produce basic statistical information about the cases and document significant bankruptcy events so that subsets of cases can be identified for study of particular issues.

Five law school students coded cases in March and April 2012 under the supervision of FJC researchers. All five students had previously taken and performed well in a bankruptcy course. The FJC researchers and members of the AOUSC Working Group held an afternoon-long training session for the students and required 23% of the initial cases to be coded by more than one student. As of April 30, 2012, the students had coded 97 cases, of which 28 had been doubled-coded.

FJC researchers are using these preliminary data to (1) identify any limitations of the data available through PACER; (2) identify systemic coding errors that need to be eliminated in future coding; (3) make improvements to the coding form; and (4) develop a detailed coding manual. Among other things, this work involves comparing double-coded cases and, with reference to PACER records, reconciling differences between the two records for a given case; following up on feedback from the student coders about problems they encountered; examining basic descriptive statistics to identify patterns suggesting systemic coding errors, data limitations, and problems with the coding form; and verifying, with reference to PACER records, the coding of critical items of information and documenting the steps taken to locate that information in PACER.

B. Next Steps

During the upcoming year, FJC staff will revise the coding form and develop a detailed coding manual, as described above. Final coding of the bankruptcy cases involving financial institutions then will commence. To enhance the reliability of the data, all cases will be double-coded. With assistance from the AOUSC Working Group, FJC staff will reconcile differences between double-coded cases and subject the data to other verification processes, and will conduct substantive statistical analyses.[109] It is anticipated that the data will be used in future reports to foster meaningful dialogue on the relevant issues.

VII. Conclusion

A critical component of any resolution scheme is the process invoked to review and satisfy claims asserted against the distressed financial institution. Uncertainty in this process can cause some parties to withhold credit from financial institutions operating in the zone

109. FJC staff members are also attempting to identify relevant sources of information, beyond PACER, that might prove useful to the Working Group.

of insolvency and others to demand payments or collateral from those financial institutions. Indeed, parties dealing with distressed financial institutions often do so hoping for the best but planning for the worst.

The bankruptcy claims resolution procedure allows creditors to assert their claims against the debtor's estate with some certainty. Creditors know that that their claims will be allowed unless and until a party objects, that any claims objections will be resolved by the court or through a court-approved process, and that the authorization of distributions from the estate must anticipate and reserve funds for disputed claims. In addition, courts can fashion streamlined procedures to handle specific types of claims or facilitate omnibus objections to a multitude of claims.

Although the bankruptcy claims resolution procedure may take longer than the one year contemplated on the face of the OLA claims resolution procedure, the bankruptcy process is designed to preserve value and maximize returns to creditors. Whether an expedited procedure is warranted in any given case and whether speed comes at the sacrifice of firm value or creditors' rights are questions that are beyond the scope of this report but that could be considered by the bankruptcy court based on the circumstances of the case.

Appendices

Appendix A: Terms Used in This Report

Act: Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

ADR: Alternative Dispute Resolution

AOUSC: Administrative Office of the United States Courts

Bankruptcy Code: Title 11 of the United States Code

CFC: Covered Financial Company

CM/ECF: Case Management Electronic Case Filing System

FDIA: Federal Deposit Insurance Act

FDIC: Federal Depository Insurance Corporation

First Report: Report Pursuant to Section 202(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

FJC: Federal Judicial Center

FSOC: Financial Stability Oversight Council

GAO: U.S. Government Accountability Office

JPMC: JPMorgan Chase Bank, N.A.

LBI: Lehman Brothers Inc.

Lehman Brothers: Lehman Brothers Holding Inc.

MFGI: MF Global Inc.

MF Global: MF Global Holdings, Inc.

OLA: Orderly Liquidation Authority

PACER: Public Access to Court Electronic Records

SIPA: Securities Investor Protection Act of 1970

SIPC: Securities Investor Protection Corporation

WMB: Washington Mutual Bank

Appendix B: Summary of Title II Studies by Other Agencies

Board of Governors for the Federal Reserve System Report

The *Study on the Resolution of Financial Companies Under the Bankruptcy Code* submitted by the Board of Governors for the Federal Reserve System highlighted key differences between the Bankruptcy Code and Title II OLA.[1] First, it noted the key difference in the overall purposes of the schemes. The Bankruptcy Code is designed to maximize returns for creditors while rehabilitating the finances of the debtor. In contrast, the OLA allows the FDIC to consider the likely impacts of the financial company on the United States economy and financial markets. It allows the FDIC to consider interests other than those of the debtor and creditor.

The second key difference, one highlighted in section V, is that the Bankruptcy Code is a judicial scheme, relying primarily on judicial interpretation of Title II. However, the OLA process is an administrative scheme not subject to judicial review except as provided by statute. The third key difference, as stated by the study, is the mechanism for funding the process. The chapter 11 process is normally funded by the debtor-in-possession, a private entity whose expenses receive priority over prepetition creditors when the assets are distributed. The administrative process normally requires the acting receiver—in the OLA process, the FDIC—to fund the process.

The study then discussed the advantages and disadvantages of the Bankruptcy Code in an effort to shed light on the effectiveness of the Bankruptcy Code in systemic situations. The advantages listed by the report include the following:

- the Bankruptcy Code provides legal certainty, offering a large body of established jurisprudence that is well articulated in advance and is applied in a predictable manner, particularly with respect to the relatively predictable application of creditor priorities and the "absolute priority rule";
- the Bankruptcy Code's predictability helps ensure that risks are borne by those who contracted to bear them, encourages appropriate risk-taking measures by the would-be debtor and appropriate risk-monitoring measures by creditors, and ensures a reduction of moral hazard and an increase in market discipline;
- the Bankruptcy Code provides the flexibility of permitting negotiations among stakeholders both before and after the filing of a petition;
- the Bankruptcy Code permits judicial review by bankruptcy judges who have expertise in handling insolvency;
- the Bankruptcy Code provides a process for distinguishing between a viable company and a company that has undergone a "fundamental rather than a financial failure," and a "market-based judgment" as to the viability of an insolvent firm;
- the Bankruptcy Code generally leaves in place those who are presumed to have the greatest expertise concerning the debtor's operations and processes: the debtor's management, which incentivizes early resolution of financial problems

1. Bd. of Governors of the Fed. Reserve Sys., Study on the Resolution of Financial Companies Under the Bankruptcy Code (2011), *available at* http://www federalreserve.gov/publications/other-reports/files/bankruptcy-financial-study-201107.pdf.

prior to the filing of a bankruptcy petition, because management retains some certainty that it will not be immediately replaced; and

- the Bankruptcy Code transfers control of the debtor to creditors having a stake in the optimal reorganization of the firm.[2]

In contrast, the following were listed as disadvantages:

- the Bankruptcy Code process takes too long for financial companies that, by their very nature, can suffer rapid and irretrievable loss of confidence and customers as well as rapid dissipation of asset values;
- the Bankruptcy Code has no "bridge" company mechanism as would be available under the OLA;
- the complexities of a systemic financial company, including the complexity of the financial instruments that are likely to be central in the insolvency of such a company, are beyond the general ability of bankruptcy judges to handle;
- filing a petition under the Bankruptcy Code causes rapid runs on short-term financial instruments that systemic financial companies hold in large quantities, leading to "fire sales" of assets precipitously sold en masse in stressed financial markets and causing write-downs of similar assets held by other institutions, potentially creating further insolvencies; and
- the Bankruptcy Code is focused on the interests of creditors, and has neither the goals nor the mechanisms to take into account externalities such as effects on outside parties or the financial system.[3]

The study then discussed amendments to the Bankruptcy Code that could enhance the effectiveness of bankruptcy in systemic situations. These suggestions included establishing a special court of special masters to handle insolvencies of financial companies, authorizing a financial company's primary regulator to take various actions in the bankruptcy proceeding, such as to commence an involuntary proceeding against the financial company, and facilitating the bankruptcy proceeding of a financial company. Finally, the study proposed section 363 amendments relating to the use and sale of real estate outside the normal course of business of the financial company.

Government Accountability Office Report

The Act similarly required the U.S. Government Accountability Office (GAO) to report on the effectiveness of the Bankruptcy Code in resolving failed financial institutions. In July 2011, the GAO released a report that concluded that the Bankruptcy Code's effectiveness in resolving complex financial institutions is unclear and offered some bankruptcy proposals to address some of the challenges but emphasized there is no consensus on the specifics of these proposals.[4]

The GAO report emphasized the predictability and legal certainty of the Bankruptcy Code. The process is considered "predictable because it follows a long-standing legal tra-

2. *Id*. at 6 (footnotes omitted).

3. *Id*. at 7 (footnotes omitted).

4. U.S. Gov't Accountability Office, GAO-11-707, Bankruptcy: Complex Financial Institutions and International Coordination Pose Challenges (2011), *available at* http://www.gao.gov/assets/330/321213.pdf.

dition, transparent because it occurs under judicial review, and equitable because assets are distributed either according to a strict ladder of creditor priorities or through negotiated settlements in which all parties can participate."[5] In addition, the report noted that of the experts interviewed, the general consensus was that the length of the bankruptcy process was not an important criterion for judging bankruptcy's effectiveness. In fact, the report cited Bank of Credit and Commerce International as an example of a lengthy bankruptcy process that resulted in increasing recoveries for the creditors.

The report listed several factors that increase the difficulty in measuring the effectiveness of the Bankruptcy Code during the failure of financial institutions. These factors are the lack of complex financial institutions filing bankruptcy due to alternative resolution requirements, government assistance to failing financial institutions (AIG and Long Term Capital Management), and the inability of insured depository institutions to file bankruptcy. Another limitation is the lack of data in assessing the effectiveness of the Bankruptcy Code even for those financial institutions that do file.

The report highlighted two major difficulties in the bankruptcy of large financial institutions—derivative contracts and these financial institutions' organizational structures and interconnectedness. For example, in the Lehman bankruptcy, many separate entities all filed for bankruptcy. The filings were all consolidated under a single New York bankruptcy judge. The interrelationships were unwound in order to address the claims against the separate Lehman entities. The report noted that in some cases the separate entities can consolidate into one estate, allowing the court to disregard the separate identities of the entities. This process is known as "substantive consolidation" and was used in the chapter 11 reorganization of Drexel Burnham Lambert Group, Inc.

5. *Id*. at 21.

Appendix C: Claims Agent Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
RCN CORPORATION, et al.,	:	Case No. 04-13638
Debtors.	:	(Jointly Administered)

ORDER UNDER 28 U.S.C. § 156(c) AND FED. R. BANKR. P. 2002 AUTHORIZING RETENTION OF BANKRUPTCY SERVICES LLC AS CLAIMS AND NOTICING AGENT FOR THE DEBTORS

Upon the application (the "Application")[1] of the Debtors for entry of an order under 28 U.S.C. § 156(c) and Fed. R. Bankr. P. 2002 authorizing the retention of Bankruptcy Services LLC ("BSI") as Claims and Noticing Agent for the Debtors; and the Court having reviewed the Application and the Jacobs Affidavit, and the Court being satisfied with the representations made therein that BSI represents no interest adverse to the Debtors' estates, that it is a "disinterested person," as that term is defined in Bankruptcy Code section 101(14), as modified by Bankruptcy Code section 1107(b), and that its retention is necessary and is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and it appearing that notice of the Application was

[1]Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Application.

good and sufficient under the particular circumstances and that no other or further notice be given; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED and DECREED that:

1. The Application is GRANTED.

2. Pursuant to 28 U.S.C. § 156(c) and Fed. R. Bankr. P. 2002 the Debtors, as debtors-in-possession, are hereby authorized to retain BSI as Claims and Noticing Agent, effective as of the Petition Date, in accordance with the Application, the BSI Agreement and this order, and BSI is authorized to perform the services described therein.

3. The Debtors are hereby authorized to pay, without further order of this Court, the reasonable fees and expenses of BSI incurred in connection with services rendered to the Debtors as Claims and Noticing Agent, as set forth in the BSI Agreement, upon BSI's submission, on a periodic basis, of reasonably detailed invoices to the Debtors, with a copy to the Office of the United States Trustee, counsel for the agent under the prepetition credit facility, and counsel for any statutory committee appointed in these cases. BSI shall not be required to submit interim or final fee applications.

4. The fees and expenses of BSI incurred in the performance of services in accordance with the BSI Agreement shall be treated as administrative expenses

of the Debtors' chapter 11 estates and be paid by the Debtors in the ordinary course of business. Any dispute between BSI and the Debtors with respect to fees and expenses may be presented to the Court for resolution thereof.

5. In the event these cases are converted to cases under chapter 7 of the Bankruptcy Code, BSI will continue to be paid for its services until the claims filed in the chapter 11 cases have been completely processed, and if claims agent representation is necessary in the converted chapter 7 cases, BSI will continue to be paid in accordance with 28 U.S.C. § 156(c) under the terms set forth herein and in the Application.

6. The requirement of Local Bankr. R. 9013-1(b) that any motion filed shall be accompanied by a separate memorandum of law is satisfied by the Application.

Dated: New York, New York
June 3, 2004

/s/ ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

Appendix D: Case Management Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
EnviroSolutions of New York, LLC, et al.,[1]	:	Case No. 10-11236 (SMB)
Debtors.	:	Jointly Administered

ORDER PURSUANT TO SECTIONS 105(a) AND 502 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 3007(c) ESTABLISHING PROCEDURES FOR OMNIBUS OBJECTIONS TO CERTAIN CLAIMS

Upon consideration of the motion (the "**Motion**") of the debtors and debtors in possession in the above-captioned cases (collectively, the "**Debtors**") for entry of an order, pursuant to sections 105(a) and 502 of title 11 of the United States Code (the "**Bankruptcy Code**") and Rule 3007(c) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), approving and authorizing procedures for omnibus objections to claims; and it appearing that the relief granted hereby is in the best interests of the Debtors, their creditors, their estates and parties in interest; and good and sufficient notice having been provided as set forth in the Motion; and the Court having reviewed the Motion; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings heard before the Court; and after due deliberation and sufficient cause appearing therefor, it is hereby

[1] The last four digits of the taxpayer identification numbers of the Debtors follow in parentheses: (i) 9304 D'Arcy, LLC (9577); (ii) Advanced Enterprises Recycling, Inc. (9105); (iii) Ameriwaste, LLC (6130); (iv) Ashland Investments, LLC (7823); (v) Big Run Coal and Clay Company, Inc. (3540); (vi) BR Landfill, LLC (9154); (vii) BR Property Holdings, Inc. (2700); (viii) Capels Landfill, LLC (8598); (ix) Curtis Creek Recovery Systems, Inc. (9429); (x) Doremus Ave Recycling and Transfer, LLC (3439); (xi) EnviroSolutions Holdings, Inc. (4890); (xii) EnviroSolutions Leasing, LLC (8801); (xiii) EnviroSolutions Logistics, LLC (9595); (xiv) EnviroSolutions of New York, LLC (7737); (xv) EnviroSolutions Real Property Holdings, Inc. (9014); (xvi) EnviroSolutions, Inc. (8726); (xvii) ETW, LLC (0832); (xviii) Furnace Associates, Inc. (3247); (xix) Potomac Disposal Services of Virginia, LLC (9877); (xx) Potomac Disposal Services of Virginia Real Property Holdings, LLC (7998); (xxi) River Cities Disposal, LLC (3920); (xxii) Solid Waste Transfer and Recycling, Inc. (6151); and (xxiii) STI Roll-Off, LLC (7081). The Debtors' executive headquarters' address is 11220 Asset Loop, Suite 201, Manassas, VA, 20109.

ORDERED, ADJUDGED AND DECREED that:

1. The Motion is granted to the extent set forth herein.

2. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

3. The Debtors are authorized to file objections to claims in accordance with the following procedures (the "**Omnibus Objection Procedures**"):

(A) Multiple proofs of claim may be objected to in a single objection (an "**Omnibus Objection**"). Each Omnibus Objection should include an exhibit identifying: (i) each claim subject to the Omnibus Objection; (ii) the name of the claimant asserting the claim; (iii) each claim number from the claims register or other information identifying each claim subject to the Omnibus Objection; (iv) the name of the Debtor entity against which each claim is asserted; (v) the basis of the Omnibus Objection with respect to each claim; and (vi) the Debtors' proposed treatment of each claim, including, if applicable, any related claim that will survive the Omnibus Objection.

(B) Each Omnibus Objection should be sent to the party whose name appears in the address and notice block of each proof of claim (as such addresses may have been supplemented or amended pursuant to Bankruptcy Rule 2002(g)) and any counsel of record for such party and shall be accompanied by specialized notices of objection (the "**Specialized Notices**"), a form of which is annexed hereto as Exhibit A. For claims that have been transferred, a Specialized Notice need be provided only to the person or persons listed as being the owner of such claim on the Debtors' claims register as of the date the Omnibus Objection is filed.

(C) Each Specialized Notice should include a copy of the Omnibus Objection, but need not include any exhibits thereto or a copy of the relevant proof of claim. Each Specialized Notice must: (i) identify the particular claim or claims that are the subject of the Omnibus Objection; (ii) state the basis of the objection with respect to each such claim; (iii) describe the proposed treatment of the claim; (iv) identify the hearing date; (v) identify the response date and response procedures; (vi) inform such claimant and counsel of record (if any) that failure to respond by the Response Deadline (as defined below) or to appear on the return date of the Omnibus Objection may be deemed a waiver by such claimant of all rights to respond to such objection; (vii) describe how proofs of claim, the Debtors' schedules and other pleadings in the Debtors' chapter 11 cases may be obtained from the claims agent or the claims agent's website; and (viii)

provide the contact information for the Debtor representative that the affected claimant may contact to discuss and/or resolve the objection to such claimant's claim that is the subject of such Omnibus Objection in advance of any hearing or other proceeding with respect to the dispute.

(D) Each Omnibus Objection will be set for an initial hearing no less than thirty (30) days after service of the Omnibus Objection. In the sole discretion of the Debtors, and after notice to the affected claimants, the hearing on any Omnibus Objection, or any claim(s) subject to any Omnibus Objection, may be adjourned to a subsequent hearing date.

4. In addition to the grounds provided in Bankruptcy Rule 3007(d), the Debtors may include in Omnibus Objections those claims that the Debtors believe should be disallowed, reduced or reclassified, in whole or in part, because: (a) the claimed amount contradicts the Debtors' books and records; (b) the claim does not include sufficient documentation to ascertain the validity of such claim; (c) the claim incorrectly asserts secured, administrative or priority status; or (d) the claim seeks recovery of amounts for which the Debtors are not liable; provided, however, the Debtors may not object in an Omnibus Objection to any personal injury tort or wrongful death claims on the bases set forth in (a) through (d) of this paragraph.

5. Unless otherwise agreed by the Debtors in their sole discretion, the deadline for filing any response (a "**Response**") to an Omnibus Objection shall be 4:00 p.m. (prevailing Eastern Time) on the date that is twenty (20) calendar days after the date the Omnibus Objection is served, or the next business date thereafter, if such date is not a business day (the "**Response Deadline**"). A Response shall be considered timely only if, prior to the Response Deadline, it is served in accordance with applicable Bankruptcy Rules, the Bankruptcy Code, the Local Bankruptcy Rules for the Southern District of New York, any order of this Court establishing omnibus hearing dates and/or case management and administrative procedures, filed with this Court, together with proof of service, and served so as to be actually received by the following parties: (a) counsel for the Debtors, Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New

York, New York 10019, Attn: John C. Longmire, Esq. and Shaunna D. Jones, Esq.; (b) counsel to the administrative agent for both the Debtors' debtor-in-possession credit facility and the Debtors' prepetition senior secured credit facility, Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, New York 10017, Attn: Morris J. Massel, Esq.; and (c) counsel to the Official Committee of Unsecured Creditors (the "**Committee**"), Squire, Sanders & Dempsey LLP, 221 E. Fourth St., Suite 2900, Cincinnati, Ohio 45202, Attn: Stephen D. Lerner, Esq. and Squire, Sanders & Dempsey LLP, 30 Rockefeller Plaza, New York, New York 10112, Attn: Sandra Mayerson, Esq.

6. ~~No~~ **A** Response ~~shall~~ **may not** be accepted or considered by the Court ~~unless~~ **if** it ~~includes~~ excludes, among other things, the following: **SMB 6/11/10**

(A) an appropriate caption and the title and date of the Omnibus Objection to which the Response is directed;

(B) the name of the claimant and the reference number of the relevant proof of claim;

(C) a concise statement setting forth the reasons why the Court should not sustain the Omnibus Objection with respect to the affected claimant's claim, including, but not limited to, the specific factual and legal bases upon which the claimant relies in opposing the Omnibus Objection;

(D) copies of any documentation and other evidence upon which the claimant will rely in opposing the Omnibus Objection at a hearing or, if the claimant cannot timely provide such documentation and other evidence, a detailed explanation in the Response as to why it was not possible to provide such documentation and other evidence in a timely manner; and

(E) the name, address, telephone number and, if applicable, facsimile number of a person authorized to reconcile, settle or otherwise resolve the claim on the claimant's behalf.

7. If a timely Response to an Omnibus Objection is filed in accordance with the procedures described above and the Debtors determine that discovery is needed to address such Response, the initial hearing may be converted into a status conference (as to the relevant claim)

during which the parties may request that the Court issue a scheduling order to facilitate the resolution of the objection as to such claim.

8. Each claim objection included in any Omnibus Objection as to which the claimant timely and properly files a Response will constitute a separate contested matter, as provided in Bankruptcy Rule 9014. The Debtors may, in their discretion and in accordance with other orders of this Court or the provisions of the Bankruptcy Code and Bankruptcy Rules, seek to settle the priority, amount and validity of such contested claims.

9. ~~If no timely Response is filed and served in response to an objection to a claim that is subject to any Omnibus Objection, the Debtors may submit to the Court, at or prior to the scheduled hearing, a form of order sustaining the Omnibus Objection with respect to such claim. A failure by a claimant to file a proper and timely Response in compliance with the procedures specified herein shall be deemed a waiver by such claimant of all rights to respond to such Omnibus Objection, and consent by such claimant to the relief requested in the Omnibus Objection with respect to such claimant's proof of claim.~~

The failure to file a timely response or appear on the return date may result in the granting of the relief sought in the objection. SMB 6/11/10

10. The Debtors shall be permitted to file a reply to any Response (including by submitting evidence in opposition to such Response and the related proof of claim) no later than two (2) business days before the hearing with respect to the relevant Omnibus Objection.

11. The assertion of a particular ground for objecting to a claim shall not preclude the Debtors from asserting additional appropriate grounds for objecting to such claim, either in the same objection or subsequent objections.

12. The Omnibus Objection Procedures approved herein expressly are subject to any modified claims objection procedures that may be set forth in any confirmed plan or plans of reorganization for the Debtors.

13. Nothing contained in this order shall be construed as modifying or denying the standing of any other party in interest, including, but not limited to, the Committee, to object to any proof of claim or equity interest filed in these chapter 11 cases.

14. This Court shall retain jurisdiction to hear and determine all matters related to this Order and the implementation hereof.

15. The requirements of Rule 9013-1 of the Local Bankruptcy Rules for the Southern District of New York are waived.

Dated: New York, New York
June 11, 2010

/s/ STUART M. BERNSTEIN
HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

Specialized Notice

John C. Longmire
(A Member of the Firm)
Shaunna D. Jones
Jennifer J. Hardy
WILLKIE FARR & GALLAGHER LLP
787 Seventh Avenue
New York, New York 10019
(212) 728-8000

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
	:	
EnviroSolutions of New York, LLC, et al.,[1]	:	Case No. 10-11236 (SMB)
	:	
Debtors.	:	Jointly Administered

NOTICE OF THE DEBTORS' [ ] OMNIBUS OBJECTION TO CLAIMS

YOU ARE RECEIVING THIS NOTICE BECAUSE THE PROOF(S) OF CLAIM LISTED HEREIN THAT YOU FILED AGAINST ONE OF MORE OF THE DEBTORS IN THE ABOVE-CAPTIONED CHAPTER 11 CASES ARE SUBJECT TO THE [__] OMNIBUS OBJECTION. YOUR RIGHTS MAY BE AFFECTED BY THE [__] OMNIBUS OBJECTION. THEREFORE, YOU SHOULD READ THIS NOTICE, INCLUDING THE [__] OMNIBUS OBJECTION AND OTHER ATTACHMENT(S), CAREFULLY AND DISCUSS THEM WITH YOUR ATTORNEY. IF YOU DO NOT HAVE AN ATTORNEY, YOU MAY WISH TO CONSULT ONE.

PLEASE TAKE NOTICE that the debtors and debtors in possession in the above-captioned cases (collectively, the "**Debtors**") have filed the Debtors' [__] Omnibus Objection to Claims (the "**[ ] Omnibus Objection**") with the United Sates Bankruptcy Court

[1] The last four digits of the taxpayer identification numbers of the Debtors follow in parentheses: (i) 9304 D'Arcy, LLC (9577); (ii) Advanced Enterprises Recycling, Inc. (9105); (iii) Ameriwaste, LLC (6130); (iv) Ashland Investments, LLC (7823); (v) Big Run Coal and Clay Company, Inc. (3540); (vi) BR Landfill, LLC (9154); (vii) BR Property Holdings, Inc. (2700); (viii) Capels Landfill, LLC (8598); (ix) Curtis Creek Recovery Systems, Inc. (9429); (x) Doremus Ave Recycling and Transfer, LLC (3439); (xi) EnviroSolutions Holdings, Inc. (4890); (xii) EnviroSolutions Leasing, LLC (8801); (xiii) EnviroSolutions Logistics, LLC (9595); (xiv) EnviroSolutions of New York, LLC (7737); (xv) EnviroSolutions Real Property Holdings, Inc. (9014); (xvi) EnviroSolutions, Inc. (8726); (xvii) ETW, LLC (0832); (xviii) Furnace Associates, Inc. (3247); (xix) Potomac Disposal Services of Virginia, LLC (9877); (xx) Potomac Disposal Services of Virginia Real Property Holdings, LLC (7998); (xxi) River Cities Disposal, LLC (3920); (xxii) Solid Waste Transfer and Recycling, Inc. (6151); and (xxiii) STI Roll-Off, LLC (7081). The Debtors' executive headquarters' address is 11220 Asset Loop, Suite 201, Manassas, VA, 20109.

for the Southern District of New York [Docket No. [__]] (the "**Bankruptcy Court**"). A copy of the [__] Omnibus Objection is annexed hereto as Exhibit A. By the [__] Omnibus Objection, the Debtors are seeking to [disallow and expunge/reduce/reclassify] claims on the grounds that the claims are [_____].

PLEASE TAKE FURTHER NOTICE that a hearing (the "**Hearing**") to consider the [__] Omnibus Objection has been scheduled before the Honorable Stuart M. Bernstein, United States Bankruptcy Judge, in Room 723 of the United States Bankruptcy Court, Alexander Hamilton United States Custom House, One Bowling Green, New York, New York 10004-1408 on **[___] [_], 201[_], at 10:00 a.m.** (prevailing Eastern Time), or as soon thereafter as counsel can be heard.

PLEASE TAKE FURTHER NOTICE that the Hearing, in the Debtors' sole discretion, may be adjourned to a subsequent date. If the Hearing is adjourned, you will receive notice of such adjournment.

PLEASE TAKE FURTHER NOTICE that on June [__], 2010, the Bankruptcy Court entered an Order Pursuant to Sections 105(a) and 502 of the Bankruptcy Code and Bankruptcy Rule 3007(c) Establishing Procedures for Omnibus Objections to Certain Claims [Docket No. [__]], by which the Bankruptcy Court approved procedures for filing Omnibus Objections to claims in connection with the above-captioned chapter 11 cases.

PLEASE TAKE FURTHER NOTICE that by the [___] Omnibus Objection, the Debtors seek to [disallow and expunge/reduce/reclassify] claims, including your claim(s), listed below in the ["Claim to be Disallowed"] row, but [do not seek to alter/allows your claim in the amount] listed in the ["Surviving Claim"] row.

TO:		[Claim Number]	[Claim Amount]	[Reference Objection]
[Claimant Name]	[Claim to be Disallowed]			
[Claimant Address]	[Surviving Claim]			

Critical Information for Claimants Choosing to File a Response to the [ ] Omnibus Objection

Who Needs to File a Response: If you oppose the [disallowance/reduction/reclassification] of your claim(s) listed above and if you are unable to resolve the [__] Omnibus Objection with the Debtors before the Response Deadline (as defined below), then you must file and serve a written response (a "**Response**") to the [__] Omnibus Objection by the Response Deadline. If you do not oppose the [disallowance/reduction/reclassification] of your claim(s) listed above, then you do not need to file a written Response to the [__] Omnibus Objection and you do not need to appear at the hearing.

Contents of Response: Each Response must contain, at a minimum, the following:

1. an appropriate caption and the title and date of the Omnibus Objection to which the Response is directed;
2. the name of the claimant and the reference number of the relevant proof of claim;
3. a concise statement setting forth the reasons why the Court should not sustain the Omnibus Objection with respect to the affected claimant's claim, including, but not limited to, the specific factual and legal bases upon which the claimant relies in opposing the Omnibus Objection;
4. copies of any documentation and other evidence upon which the claimant will rely in opposing the Omnibus Objection at the Hearing or, if the claimant cannot timely provide such documentation and other evidence, a detailed explanation in the Response as to why it was not possible to provide such documentation and other evidence in a timely manner; and
5. the name, address, telephone number and, if applicable, facsimile number of a person authorized to reconcile, settle or otherwise resolve the claim on the claimant's behalf.

Response Deadline: Responses, if any, to the relief requested in the [__] Omnibus Objection must actually be received by the Notice Parties (as defined below) on or before [**_____**] [**__**], [**201_**] (the "**Response Deadline**").

Notice Parties: Your Response will be deemed timely only if a copy of the Response is filed with the Bankruptcy Court, together with proof of service, and is served so as to be actually received on or before the Response Deadline by the following parties (collectively, the "**Notice Parties**"):

1. Counsel for the Debtors:

   Willkie Farr & Gallagher LLP
   787 Seventh Avenue
   New York, New York 10019
   Attn: John C. Longmire, Esq. and
   Shaunna D. Jones, Esq.

2. Counsel to the administrative agent for both the Debtors' debtor-in-possession credit facility and the Debtors' prepetition senior secured credit facility:

   Simpson Thacher & Bartlett LLP
   425 Lexington Avenue
   New York, New York 10017
   Attn: Morris J. Massel, Esq.

3. Counsel to the Official Committee of Unsecured Creditors:

   Squire, Sanders & Dempsey LLP
   221 E. Fourth St., Suite 2900
   Cincinnati, Ohio 45202
   Attn: Stephen D. Lerner, Esq.

   - and -

   Squire, Sanders & Dempsey LLP
   30 Rockefeller Plaza
   New York, New York 10112
   Attn: Sandra Mayerson, Esq.

IF YOU FAIL TO SERVE A TIMELY RESPONSE IN COMPLIANCE WITH THE PROCEDURES SET FORTH ABOVE, THE DEBTORS MAY PRESENT TO THE BANKRUPTCY COURT AN APPROPRIATE ORDER GRANTING THE RELIEF REQUESTED IN THE [__] OMNIBUS OBJECTION WITHOUT FURTHER NOTICE TO YOU, AND THE RELIEF REQUESTED IN THE [_] OMNIBUS OBJECTION MAY BE GRANTED BY THE BANKRUPTCY COURT WITHOUT A HEARING.

THE RESPONDING PARTIES ARE REQUIRED TO ATTEND THE HEARING, AND A FAILURE TO ATTEND IN PERSON MAY RESULT IN RELIEF BEING GRANTED OR DENIED BY DEFAULT.

EACH CLAIM SUBJECT TO THE [__] OMNIBUS OBJECTION AS TO WHICH THE CLAIMANT FILES A TIMELY RESPONSE SHALL CONSTITUTE A SEPARATE CONTESTED MATTER AS CONTEMPLATED BY BANKRUPTCY RULE 9014, AND ANY ORDER ENTERED BY THE BANKRUPTCY COURT WILL BE DEEMED A SEPARATE ORDER WITH RESPECT TO SUCH CLAIM.

Additional Information

Requests for Information: You may obtain copies of the [__] Omnibus Objection using the Bankruptcy Court's Internet Website at http://www.nysb.uscourts.gov. A login and password to the Court's Public Access to Court Electronic Records ("**PACER**") are required to access this information and can be obtained through the PACER Service Center at http://www.pacer.psc.uscourts.gov. Further, additional proofs of claim, copies of the Debtors' schedules and other pleadings in the Debtors' chapter 11 cases may be obtained by accessing the Debtors' website at http://www.kcclcc.net/EnviroSolutions. Such documents may also be obtained by written request (at your cost) to the Debtors' claims agent at the following address and telephone number:

Kurtzman Carson Consultants LLC
2335 Alaska Ave.
El Segundo, CA 90245
(877) 660-6614

Reservation of Rights: Nothing in this Notice or the [__] Omnibus Objection constitutes a waiver of the Debtors' right to assert any claims, counterclaims, rights of offset or recoupment, preference actions, fraudulent-transfer actions or any other claims against you or to estimate your claim or to object to it on any basis other than that set forth in the [__] Omnibus Objection. Unless the Bankruptcy Court allows your claims or specifically orders otherwise, the Debtors have the right to object on any grounds to the claims (or to any other claims or causes of action you may have filed or that have been scheduled by the Debtors) at a later date. In such event, you will receive a separate notice of any such objections.

Remainder of Page Intentionally Left Blank

Contact Information: Should you wish to discuss and/or attempt to resolve your claim(s) subject to the [__] Omnibus Objection in advance of the Hearing or other proceeding with respect to the dispute, please contact:

Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, New York 10019
Attn: Jennifer J. Hardy
(212) 728-8000

Dated: New York, New York
[___] [__], 2010

WILLKIE FARR & GALLAGHER LLP
787 Seventh Avenue
New York, NY 10019
(212) 728-8000

Appendix E: Claims ADR Procedures Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	**09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**

ORDER PURSUANT TO 11 U.S.C. § 105(a) AND GENERAL ORDER M-390 AUTHORIZING IMPLEMENTATION OF ALTERNATIVE DISPUTE PROCEDURES, INCLUDING MANDATORY MEDIATION

Upon the Motion, dated January 11, 2010 (the "**Motion**"),[1] of Motors Liquidation Company (f/k/a General Motors Corporation) and its affiliated debtors, as debtors in possession (collectively, the "**Debtors**"), for an order, pursuant to section 105(a) of title 11, United States Code and General Order M-390, for authorization to implement alternative dispute procedures, including mandatory mediation (the "**ADR Procedures**"), all as more fully set forth in the Motion; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after consideration of the response pleadings filed and after due deliberation and sufficient cause appearing therefor, it is

[1] Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Motion, the Omnibus Reply of the Debtors to Objections to Debtors' Motion for Entry of Order Pursuant to 11 U.S.C. § 105(a) and General Order M-390 Authorizing Implementation of Alternative Dispute Resolution Procedures, Including Mandatory Mediation, and in the ADR Procedures annexed to the Order as **Exhibit "A**."

ORDERED that the Motion is granted as provided herein; and it is further

ORDERED that notwithstanding anything to the contrary in the Motion, the ADR Procedures[2], as set forth in Exhibit A to the Order, are approved as provided herein with respect to (a) personal injury claims, (b) wrongful death claims, (c) tort claims, (d) product liability claims, (e) claims for damages arising from the rejection of an executory contract or unexpired lease with a Debtor under section 365 of the Bankruptcy Code (excluding claims for damages arising from the rejection of executory contracts that relate primarily to environmental matters), (f) indemnity claims (excluding tax indemnity claims relating to leveraged fixed equipment lease transactions and excluding indemnity claims relating to asbestos liability), (g) lemon law claims, to the extent applicable under section 6.15 of the Master Sale and Purchase Agreement by and between the Debtors and NGMCO, Inc., dated as of June 1, 2009, and as amended (the "**MPA**"), (h) warranty claims, to the extent applicable under section 6.15 of the MPA, and (i) class action claims (the "**Initial Subject Claims**"); and it is further

ORDERED that notwithstanding anything to the contrary in the Motion, the Motion with respect to (a) tax claims (including tax indemnity claims relating to leveraged fixed equipment lease transactions), (b) indemnity claims relating to asbestos liability, and (c) all other Unliquidated/Litigation Claims that are *not* Initial Subject Claims (collectively, the "**Adjourned Subject Claims**") shall be adjourned to April 8, 2010 at 9:45 a.m., and the rights of all holders of Adjourned Subject Claims and the Debtors with respect to the Motion are fully preserved; and it is further

[2] A blacklined version of the ADR Procedures reflecting the limitation of applicability of the ADR Procedures to the Initial Subject Claims and certain other modifications to the ADR Procedures filed with the Motion is annexed hereto as **Exhibit "B."**

ORDERED that, notwithstanding anything to the contrary in the Motion or the ADR Procedures, the ADR procedures shall not apply to claims filed by the United States of America or its agencies; *provided*, *however*, nothing shall preclude the Debtors from seeking in the future by separate motion alternative dispute resolutions in connection with any such claims; and it is further

ORDERED that, notwithstanding anything to the contrary in the Motion or the ADR Procedures, the ADR Procedures shall not apply to claims filed by state and tribal governments concerning alleged environmental liabilities; *provided*, *however*, nothing shall preclude the Debtors from seeking in the future by separate motion alternative dispute resolutions in connection with any such claims; and it is further

ORDERED that, notwithstanding anything to the contrary in the Motion or the ADR Procedures, the United States of America, nor any state or tribal government shall be in any way bound by any determination made pursuant to the ADR Procedures as to any other party or claim subject to the ADR Procedures, including any determination with respect to the amount, classification, disallowance, or type of claim; and it is further

ORDERED that, annexed to this Order as **Exhibit "C"** is a revised schedule of mediators (the "**Schedule of Mediators**"). Within ten (10) days from the entry of this Order, the Debtors shall provide counsel to the Ad Hoc Committee with a schedule of caps for each mediator that any Designated Claimant can be surcharged for non-binding mediation in connection with the ADR Procedures (each a "**Sharing Cap**"); and it is further

ORDERED that, the Debtors from time to time may modify the Schedule of Mediators, in consultation with the Ad Hoc Committee, by filing a revised Schedule of

Mediators with this Court and providing counsel to the Ad Hoc Committee with the Sharing Cap for each additional mediator added to the Schedule of Mediators; and it is further

ORDERED that, the Debtors are authorized to waive the obligation to share costs of non-binding mediation in their sole discretion to the extent the Designated Claimant establishes, to the satisfaction of the Debtors, that sharing of such expenses would constitute a substantial hardship upon the Designated Claimant; and it is further

ORDERED that, within thirty (30) days from the date of entry of this Order (the "**Capping Period**"), any holder of an Unliquidated/Litigation Claim that is an Initial Subject Claim filed against any of the Debtors may request the Debtors to initiate the ADR Procedures for such Unliquidated/Litigation Claim by sending a letter (each a "**Capping Proposal Letter**," the form of which is annexed to this Order as **Exhibit "D"**) to the Debtors indicating a willingness to cap its Unliquidated/Litigation Claim at a reduced amount (the "**Claim Amount Cap**"); *provided*, *however*, that with respect to any claim for amounts resulting from the rejection of an executory contract that is rejected pursuant to an order entered after the date of this Order, a Capping Proposal Letter will be deemed timely if it is received within thirty (30) days of the entry of the order authorizing such rejection; and it is further

ORDERED that, upon receiving a Capping Proposal Letter, the Debtors will, if, and only if, the Claim Amount Cap is accepted by the Debtors, initiate the ADR Procedures by designating the Unliquidated/Litigation Claim in accordance with the ADR Procedures and will indicate in the ADR Notice that the Claim Amount Cap has been accepted; and it is further

ORDERED that, if the Claim Amount Cap is accepted by the Debtors, the Claim Amount Cap will become binding on the Designated Claimant, and the ultimate value of his or

her Unliquidated/Litigation Claim will not exceed the Claim Amount Cap. To the extent the Debtors accept the Claim Amount Cap, the Debtors will be responsible for all fees and costs associated with any subsequent mediation. If the Claim Amount Cap is not accepted, the Debtors will notify the Designated Claimant that the Claim Amount Cap has been rejected, and the Claim Amount Cap will not bind any party and shall not be admissible to prove the amount of the Unliquidated/Litigation Claim; and it is further

ORDERED that, within one month after the Capping Period has expired, the Debtors will provide to (i) counsel for the statutory committee of unsecured creditors (the "**Creditors' Committee**"), and (ii) counsel for the United States of America, a privileged and confidential report containing information on the status of the Unliquidated/Litigation Claims (the "**Committee Report**"). The Debtors shall provide both the Creditors' Committee and the United States of America with an updated Committee Report once a month; and it is further

ORDERED that the following notice procedures are hereby approved:

1. Within **three (3) days** of entry of this Order, the Debtors shall cause to be mailed a copy of this Order to all known holders of Initial Subject Claims that are subject to the ADR Procedures.

2. The Debtors shall post a form of the Capping Proposal Letter on the website established by GCG for the Debtors' cases: www.motorsliquidationdocket.com;

and it is further

ORDERED that the Debtors are authorized to take any and all steps that are necessary or appropriate to implement the ADR Procedures with respect to the Initial Subject Claims, including, without limitation, by implementing any arbitration awards or settlements with respect to Designated Claims achieved under the terms of the ADR Procedures; *provided, however*, that nothing in this Order or the ADR Procedures, shall obligate the Debtors to settle or

pursue settlement of any particular Designated Claim; *further provided* that any such settlements may be pursued and agreed upon as the Debtors believe are reasonable and appropriate in their sole discretion, subject to the terms and conditions set forth in the ADR Procedures; and it is further

ORDERED that, if litigation of an Unresolved Designated Claim in a forum other than this Court is required for any of the reasons forth in Section II.E.3 of the ADR Procedures (as determined by this Court), then the Stay shall be modified subject to the terms and conditions set forth in Section II.E.4 of the ADR Procedures. Any such modification of the Stay shall be solely to the extent necessary to permit the liquidation of the amount of such Unresolved Designated Claim in the appropriate forum. If the Debtors fail to file a Notice of Stay Modification or a Stay Motion for any reason with respect to an Unresolved Designated Claim, as set forth in Section II.E.4 of the ADR Procedures, the Stay shall remain in effect with respect to such Unresolved Designated Claim, and the Designated Claimant may seek a determination of this Court regarding whether the Stay must be modified to permit litigation in a non-bankruptcy forum as set forth in Section II.E.3 of the ADR Procedures; and it is further

ORDERED that nothing contained in this Order shall be deemed to preclude any party in interest from objecting to any Designated Claim to the extent such entity has standing to assert an objection in accordance with Bankruptcy Code and applicable law; and it is further

ORDERED that nothing contained in this Order shall alter the Creditors' Committee's rights set forth in this Court's Order Pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 3007 and 9019(b) authorizing the Debtors to (i) File Omnibus Claims Objections and

(ii) Establish Procedures for Settling Certain Claims, entered on October 6, 2006 [Docket No. 4180]; and it is further

ORDERED that nothing in the ADR Procedures, including the ADR Injunction set forth therein, shall preclude the holder of a Designated Claim from commencing or continuing an action against a non-debtor party; and it is further

ORDERED that Rule 408 of the Federal Rules of Evidence shall apply to all aspects of the Capping Proposal Letter, the ADR Procedures, and the Committee Report; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order and the ADR Procedures.

Dated: New York, New York
February ***23***, 2010

s/ Robert E. Gerber
United States Bankruptcy Judge

Exhibit A

The ADR Procedures

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	**09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**

ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

The alternative dispute resolution procedures (the "**ADR Procedures**") adopted in the chapter 11 cases of Motors Liquidation Company (f/k/a General Motors Corporation) ("**MLC**") and its affiliated debtors, as debtors in possession (collectively, the "**Debtors**"), are set forth below:

I. CLAIMS SUBJECT TO THE ADR PROCEDURES AND ADR INJUNCTION

A. Claims Subject to the ADR Procedures

1. The claims subject to the ADR Procedures (collectively, the "**Designated Claims**") include any and all claims (other than an Excluded Claim as defined below) designated by the Debtors under the notice procedures set forth below that assert or involve claims based on one or more of the following theories of recovery, whether or not litigation previously has been commenced by the claimant: (a) personal injury claims, (b) wrongful death claims, (c) tort claims, (d) product liability claims, (e) claims for damages arising from the rejection of an executory contract or unexpired lease with a Debtor under section 365 of the Bankruptcy Code (excluding claims for damages arising from the rejection of executory contracts that relate primarily to environmental matters), (f) indemnity claims (excluding tax indemnity claims

relating to leveraged fixed equipment lease transactions and excluding indemnity claims relating to asbestos liability), (g) lemon law claims, to the extent applicable under section 6.15 of the Master Sale and Purchase Agreement by and between the Debtors and NGMCO, Inc., dated as of June 1, 2009, and as amended (the "**MPA**"), (h) warranty claims, to the extent applicable under section 6.15 of the MPA, and (i) class action claims ("**Class Claims**"). The Debtors may identify as a Designated Claim any proof of claim asserted in these cases, other than Excluded Claims as defined in Section I.B below, if the Debtors believe, in their business judgment and sole discretion, that the ADR Procedures would promote the resolution of such claim and serve the intended objectives of the ADR Procedures.

2. The holders of the Designated Claims are referred to herein as the "**Designated Claimants**."

B. Excluded Claims

The Debtors shall not identify as a Designated Claim any proof of claim within any of the following categories (collectively, the "**Excluded Claims**"): (a) claims for which the automatic stay under section 362 of title 11 of the United States Code (the "**Bankruptcy Code**") was modified by prior order of this Court (the "**Bankruptcy Court**") to allow the litigation of the claim to proceed in another forum; (b) claims asserted in liquidated amounts of $500,000 or less; (c) asbestos-related claims; (d) environmental claims that constitute prepetition unsecured claims (including claims for damages arising from the rejection of executory contracts that relate primarily to environmental matters); and (e) claims subject to a separate order of the Bankruptcy Court providing for arbitration or mediation. Notwithstanding the foregoing, any of the Excluded Claims, any disputed postpetition administrative expenses, and any claims or counterclaims asserted by the Debtors may be submitted to the ADR Procedures by agreement of the applicable Debtor and the applicable claimant or by further order of the Bankruptcy Court.

C. The ADR Injunction

Upon service of the ADR Notice (as defined below) on a Designated Claimant under Section II.A.1 below, such Designated Claimant (and any other person or entity asserting an interest in the relevant Designated Claim) shall be enjoined from commencing or continuing any action or proceeding in any manner or any place, including in the Bankruptcy Court, seeking to establish, liquidate, collect on, or otherwise enforce the Designated Claim(s) identified in the ADR Notice other than (1) through these ADR Procedures, or (2) pursuant to a plan or plans confirmed in the applicable Debtors' chapter 11 cases (collectively, the "**ADR Injunction**"). Notwithstanding the forgoing, the Debtors shall not be precluded from seeking to estimate any Designated Claim not subject to an accepted Claim Amount Cap in connection with confirmation or consummation of a plan or plans confirmed in the applicable Debtors' chapter 11 cases, or preclude the Designated Claimant from seeking estimation of its Designated Claim solely for voting purposes in connection with confirmation of a plan or plans confirmed in the applicable Debtors' chapter 11 cases. The ADR Injunction shall expire with respect to a Designated Claim only when that Designated Claim has been resolved or after the ADR Procedures have been completed as to that Designated Claim. Except as expressly set forth herein or in a separate order of the Bankruptcy Court, the expiration of the ADR Injunction shall not extinguish, limit, or modify the automatic stay established by section 362 of the Bankruptcy Code or any similar injunction that may be imposed upon the confirmation or effectiveness of a plan or plans in the applicable Debtors' chapter 11 cases (a "**Plan Injunction**"), and the automatic stay and the Plan Injunction shall remain in place to the extent then in effect.

II. THE ADR PROCEDURES

A. Offer Exchange Procedures

The first stage of the ADR Procedures will be the following offer exchange procedures, requiring the parties to exchange settlement offers and thereby providing an opportunity to resolve the underlying Designated Claim on a consensual basis without any further proceedings by the parties (the "**Offer Exchange Procedures**"). Rule 408 of the Federal Rules of Evidence shall apply to the ADR Procedures. Except as permitted by Rule 408, no person may rely on, or introduce as evidence in connection with any arbitral, judicial, or other proceeding, any offer, counteroffer, or any other aspect of the ADR Procedures.

1. *Designation of Designated Claims and Settlement Offer by the Debtors*

(a) At any time following the entry of an order approving the ADR Procedures (the "**ADR Order**") and subject to the terms and conditions in Sections I.A and I.B above, the Debtors may designate a Designated Claim for resolution through the ADR Procedures by serving upon the Designated Claimant, at the address listed on the Designated Claimant's most recently filed proof of claim or amended proof of claim, as well as to any counsel of record in these cases for the Designated Claimant, the following materials (collectively, the "**ADR Materials**"): (i) a notice that the Designated Claim has been submitted to the ADR Procedures (an "**ADR Notice**"),[1] (ii) a copy of the ADR Order, and (iii) a copy of these ADR Procedures. For transferred claims, the Debtors also will serve a copy of the ADR Materials on the transferee identified in the notice of transfer of claim.

(b) The ADR Notice will (i) advise the Designated Claimant that his or her Designated Claim has been submitted to the ADR Procedures; (ii) request that the Designated Claimant verify or, as needed, correct, clarify, or supplement, certain information regarding the Designated Claim (including the addresses for notices under the ADR Procedures); and (iii) include an offer by the Debtors to settle the Designated Claim (a "**Settlement Offer**"). The ADR Notice also will require the Designated Claimant to sign and return the ADR Notice along with the Claimant's Response (as defined in Section II.A.2 below) to the Debtors so that it is received by the Debtors no later than twenty-one (21) days[2] after the mailing of the ADR Notice (the "**Settlement Response Deadline**").

---

[1] The form of the ADR Notice is attached hereto as **Annex 1** and incorporated herein by reference. The Debtors anticipate that the ADR Notice will be substantially in the form of Annex 1; however, the Debtors reserve the right to modify the ADR Notice, as necessary or appropriate, consistent with the terms of the ADR Procedures.

[2] Bankruptcy Rule 9006(a) shall apply to all periods calculated in the ADR Procedures.

(c) If the Designated Claimant fails to sign and return the ADR Notice or to include a Claimant's Response (as defined below) with the returned ADR Notice by the Settlement Response Deadline, (i) the Offer Exchange Procedures will be deemed terminated with respect to the Designated Claim and (ii) the Designated Claim will be submitted to nonbinding mediation.

2. *The Claimant's Response*

The only permitted responses to a Settlement Offer (the "**Claimant's Response**") are (i) acceptance of the Settlement Offer, or (ii) rejection of the Settlement Offer coupled with a counteroffer (as further defined below, a "**Counteroffer**"). If the ADR Notice is returned without a response or with a response that is not a permitted response, the Designated Claim shall be treated as set forth in Section II.A.1(c) above.

3. *The Counteroffer*

The Counteroffer shall (i) provide all facts that substantiate the Designated Claim and that are sufficient for the Debtors to evaluate the validity and amount of the Designated Claim; (ii) provide all documents that the Designated Claimant contends support the Designated Claim; (iii) state the dollar amount of the Designated Claim (the "**Proposed Claim Amount**"), which may not (A) improve the priority set forth in the Designated Claimant's most recent timely filed proof of claim or amended proof of claim, or (B) exceed the lesser of the Claim Amount Cap (as defined in the ADR Order), if applicable, or the amount set forth in the Designated Claimant's most recent timely filed proof of claim or amended proof of claim (but may liquidate any unliquidated amounts expressly referenced in a proof of claim), with an explanation of the calculation and basis for the Proposed Claim Amount; and (iv) provide the name and address of counsel representing the Designated Claimant with respect to the Designated Claim, unless the Designated Claimant is a natural person, in which case the

Designated Claimant shall either provide the name of such counsel or state that he or she is appearing without counsel.

The Counteroffer is presumed to offer the allowance of the Designated Claim as a general unsecured claim in the Proposed Claim Amount against the Debtor identified in the applicable proof of claim. If the Debtors accept the Counteroffer, the Designated Claimant shall not seek recovery from the Debtors of any consideration other than the consideration ultimately distributed to holders of other allowed general unsecured claims against the relevant Debtor. A Counteroffer may not be for an unknown, unliquidated, or indefinite amount or priority, or the Designated Claim shall be treated as set forth in Section II.A.1(c) above.

4. *Consent to Subsequent Binding Arbitration*

As described in Sections II.B and II.C below, in the absence of a settlement at the conclusion of the Offer Exchange Procedures, Designated Claims shall proceed to nonbinding mediation and, if such mediation is unsuccessful, upon consent of the parties (including deemed consent based on prior contractual agreements), to binding arbitration. A Designated Claimant is required to notify the Debtors whether it consents to, and thereby seeks to participate in, binding arbitration in the event that its Designated Claim ultimately is not resolved through the Offer Exchange Procedures and the nonbinding mediation. A Designated Claimant shall make an election to either consent or not consent to binding arbitration by checking the appropriate box in the ADR Notice (an "**Opt-In/Opt-Out Election**"). Any Designated Claimant that does not consent to binding arbitration in its response to the ADR Notice may later consent in writing to binding arbitration, subject to the agreement of the Debtors. Consent to binding arbitration, once given, cannot subsequently be withdrawn without consent of the Debtors.

5. *The Debtors' Response to a Counteroffer*

The Debtors must respond to any Counteroffer within fifteen (15) days after their receipt of the Counteroffer (the "**Response Deadline**"), by returning a written response (as further defined below, each a "**Response Statement**"). The Response Statement shall indicate that the Debtors (a) accept the Counteroffer; or (b) reject the Counteroffer, with or without making a revised Settlement Offer (a "**Revised Settlement Offer**").

(a) *Failure to Respond*

If the Debtors fail to respond to the Counteroffer by the Response Deadline, (i) the Counteroffer will be deemed rejected by the Debtors; (ii) the Offer Exchange Procedures will be deemed terminated with respect to the Designated Claim; and (iii) the Designated Claim will be submitted to nonbinding mediation.

(b) *Revised Settlement Offer*

If the Debtors make a Revised Settlement Offer by the Response Deadline, the Designated Claimant may accept the Revised Settlement Offer by providing the Debtors with a written statement of acceptance no later than ten (10) days after the date of service of the Revised Settlement Offer (the "**Revised Settlement Offer Response Deadline**"). If the Designated Claimant does not accept the Revised Settlement Offer by the Revised Settlement Offer Response Deadline, the Revised Settlement Offer will be deemed rejected and the Designated Claim automatically will be submitted to nonbinding mediation.

(c) *Request for Additional Information*

The Debtors may request supplemental or clarification of information supplied in the Designated Claimant's most recently filed proof of claim to assist in a good faith evaluation of any particular Designated Claim. If the Debtors request additional information or documentation by the Response Deadline, the Designated Claimant shall serve additional

information or documentation sufficient to permit the Debtors to evaluate the basis for the Designated Claim (with the exception, in the Designated Claimant's sole discretion, of privileged information or information prepared expressly in contemplation of litigation) so that it is received by the Debtors within fifteen (15) days after such request. If the Designated Claimant timely responds, the Debtors shall have fifteen (15) days to provide an amended Response Statement, which may include a Revised Settlement Offer as a counter to the Counteroffer. If the Debtors do not provide an amended Response Statement within this period, or if the Designated Claimant fails to provide the requested information or documentation within the time allotted, the Designated Claim will be submitted to nonbinding mediation.

6. *Offer Exchange Termination Date*

Upon mutual written consent, the Debtors and a Designated Claimant may exchange additional Revised Settlement Offers and Counteroffers for up to twenty (20) days after the later of (a) the Revised Settlement Offer Response Deadline or (b) the expiration of the applicable timeframes provided for in Section II.A.5(c) above with respect to requesting, receiving, and responding to additional information or documentation. Otherwise, the Offer Exchange Procedures shall conclude and terminate on the earliest of the following (the "**Offer Exchange Termination Date**"): (i) the date upon which the Designated Claim automatically advances to nonbinding mediation under the provisions set forth above; (ii) the date that any settlement offer for a Designated Claim is accepted under the procedures set forth above; (iii) the date upon which a Response Statement was served by the Debtors, if the Debtors notified the Designated Claimant in their Response Statement of the Debtors' intention to proceed directly to nonbinding mediation; or (iv) such earlier date as is agreed upon by the Debtors and the Designated Claimant.

7. *Ability to Settle Claims*

Nothing herein shall limit the ability of a Designated Claimant and the Debtors to settle a Designated Claim by mutual consent at any time. All such settlements shall be subject to the terms of Section II.D.2 below.

B. Nonbinding Mediation ("Mediation")

1. *Mediation Notice*

If the Debtors and the Designated Claimant do not settle the Designated Claim through the Offer Exchange Procedures, the Debtors shall serve a notice of nonbinding mediation, with a copy of the Designated Claimant's applicable proof(s) of claim attached, on the Designated Claimant no later than thirty (30) days after the Offer Exchange Termination Date, or as soon thereafter as is reasonably practicable.[3] The Mediation Notice will provide the Mediation Location (as such term is defined in Section II.B.2 below).

2. *Location and Appointment of the Mediator*

All Mediations shall be conducted in either (i) New York, New York; (ii) Detroit, Michigan; (iii) Dallas, Texas; or (iv) San Francisco, California (collectively, the "**Mediation Locations**"), unless the parties agree to a different location. Within ten (10) days after receiving the Mediation Notice, the Designated Claimant shall choose one of the individuals identified in a list of mediators annexed to the Mediation Notice and corresponding to the applicable Mediation Location to conduct the mediation (the "**Mediator**").

To the maximum extent practicable, the scheduling and location of Mediation sessions shall give due consideration to the convenience of the parties and the proximity of the

[3] The form of the Mediation Notice is attached hereto as **Annex 2** and incorporated herein by reference. The Debtors anticipate that the Mediation Notice will be substantially in the form of Annex 2; however, the Debtors reserve the right to modify the Mediation Notice, as necessary or appropriate, consistent with the terms of the ADR Procedures.

Designated Claimant. Notwithstanding the foregoing, within ten (10) business days after service of the Mediation Notice, the Designated Claimant may file a motion with the Bankruptcy Court, on notice to the Debtors and any previously appointed mediator, for an order directing that the Mediation be conducted in a different location (a "**Hardship Motion**") if the Designated Claimant can demonstrate that traveling to any of the Mediation Locations presents a "substantial hardship;" *provided, however*, that there shall be a rebuttable presumption that, absent other extraordinary facts, there is no "substantial hardship" imposed on a Designated Claimant if the primary representative for a Designated Claimant resides in a location that is less than 750 miles from the Mediation Location or is less than a three-hour plane trip from the Mediation Location (based on typical commercial schedules for the fastest route, excluding any layovers). While a Hardship Motion is pending, all deadlines under these ADR Procedures shall be suspended. If a Hardship Motion is granted, any alternative location shall be determined by the Bankruptcy Court, taking into account the convenience of the parties and any agreements reached by the parties. If the location of the Mediation is changed, (i) any Mediator appointed in the original location may be replaced by a Mediator in the new location (selected by mutual agreement of the parties or order of the Court), and (ii) the Bankruptcy Court may require that that the Debtors and the Designated Claimant share the costs of the Mediation.

3. *Mediation Rules*

The Mediation of Designated Claims shall be governed by the Mediator's regular procedures, except where expressly modified in the ADR Procedures. In the event of any conflict, the ADR Procedures shall control. Any party to a Mediation that fails to participate in good faith, on the terms described herein, may be subject to sanctions under Section II.F below.

(a) *Impartiality and Qualifications of Mediators*

A person appointed as a Mediator must (i) be an impartial, neutral person; (ii) have no financial or personal interest in the proceedings or, except when otherwise agreed by the parties, in any related matter; and (iii) upon appointment, disclose any circumstances likely to create a reasonable inference of bias. In the event a Mediator discloses circumstances likely to create a reasonable inference of bias, such Mediator may be replaced at the written request of either the Debtors or the Designated Claimant prior to the mediation.

(b) *Fees and Costs for Mediation*

For each Mediation conducted under these ADR Procedures, the Mediator selected to preside will be entitled to charge the mediation fees disclosed to, and agreed to by, the Debtors and the Designated Claimant. Unless the parties have expressly agreed otherwise in writing (either prepetition or postpetition) as part of an agreement to submit Designated Claims to Mediation, the Mediator's fees and the costs of any Mediation shall be shared equally by the Debtors and the Designated Claimant subject to the Sharing Cap (as such term is described in the ADR Order. For purposes of clarity, these costs shall not include travel expenses of the parties.

(c) *Pre-Mediation Briefing*

Unless the parties agree otherwise, on or before thirty (30) days prior to the scheduled Mediation, the Designated Claimant shall serve on the Mediator and the Debtors by electronic transmission or facsimile, at a minimum, and no later than by 6:00 p.m. (Eastern

Time), a nonconfidential, pre-Mediation statement (the "**Opening Statement**") not to exceed fifteen (15) pages, excluding any attachments, setting forth all of the Designated Claimant's claims and identifying each and every cause of action or theory the Designated Claimant asserts, including a short and plain statement of the facts and law upon which the Designated Claimant relies for recovery and maintains entitle it to relief. The Designated Claimant shall include, as exhibits or annexes to the Opening Statement, all documents (or summaries of voluminous documents), affidavits, and other evidentiary materials on which the Designated Claimant relies (with the exception, in the Designated Claimant's sole discretion, of privileged information or information prepared expressly in contemplation of litigation). Unless the parties agree otherwise, on or before fifteen (15) days after service of the Opening Statement, the Debtors shall serve on the Mediator and the Designated Claimant, by electronic transmission or facsimile, at a minimum, and no later than by 6:00 p.m. (Eastern Time), a nonconfidential response statement (the "**Mediation Response Statement**") not to exceed fifteen (15) pages, excluding attachments. The Designated Claimant shall receive copies of all exhibits to the Mediation Response Statement (with the exception, in the Debtors' sole discretion, of privileged information or information prepared expressly in contemplation of litigation). The Debtors shall provide copies of the Opening Statement and Mediation Response Statement to counsel to the statutory committee of unsecured creditors (the "**Creditors' Committee**") upon request, on a confidential basis. At the Mediator's discretion and direction, the parties may submit additional, confidential letters or statements to the Mediator, which shall receive "Mediator's-eyes-only" treatment.

(d) *The Mediation Session*

Unless otherwise agreed by the parties or as provided herein, the Mediation session must occur no later than sixty (60) days after the date on which the Mediator is appointed. Unless otherwise agreed by the parties, the Mediation session is open only to the parties and their respective counsel, and insurers (if any).

(e) *Treatment of Mediation Settlement*

If the Mediation results in a settlement of the Designated Claim, such settlement shall be subject to the terms of Section II.D below. If the Mediation of a Designated Claim does not result in a settlement of the Designated Claim, the Designated Claim shall be subject to Section II.C or II.E below.

(f) *Modification of the Mediation Procedures*

The Mediation procedures described herein may be modified upon the mutual written consent of the Debtors and the Designated Claimant.

C. Arbitration

1. *Binding Arbitration*

If the Designated Claimant and the Debtors have consented to binding arbitration under Section II.A.4 above, the Designated Claim will be arbitrated under the terms of this Section II.C if such claim is not resolved in the Offer Exchange Procedures or Mediation. If the Designated Claimant has expressly indicated that it does not consent to binding arbitration in its response to the ADR Notice and has not subsequently opted in to binding arbitration pursuant to Section II.A.4 above, the Designated Claim shall be resolved in the Bankruptcy Court by the Debtors' commencement of proceedings pursuant to the Bankruptcy Code, including without limitation, estimating or objecting to the Designated Claims. Any party to an arbitration that

fails to participate in the arbitration in good faith, on the terms described herein, may be subject to sanctions under Section II.F below.

2. *Arbitration Notice*

To initiate the arbitration process for a Designated Claim, the Debtors shall serve a notice of arbitration (the "**Arbitration Notice**"), with a copy of the Designated Claimant's applicable proof(s) of claim attached, on the Designated Claimant, the Creditors' Committee, and the American Arbitration Association (the "**AAA**").[4]

3. *Arbitration Rules and Procedures*

For Designated Claims that are not designated by the Debtors as Complex Designated Claims (as defined below), the arbitration of all Designated Claims shall be conducted by a single arbitrator selected pursuant to the Commercial Arbitration Rules of the AAA. The arbitrator shall be governed by the commercial arbitration rules of the AAA then in effect (the "**Arbitration Rules**"), except where the Arbitration Rules are expressly modified in the ADR Procedures.[5]

The Debtors may, at their discretion, designate certain Designated Claims as complex designated claims (the "**Complex Designated Claims**"). The arbitration of all Complex Designated Claims shall be conducted by a panel of three arbitrators selected pursuant to the Commercial Arbitration Rules of the AAA. The AAA Procedures for Large, Complex Commercial Disputes, in addition to the Commercial Rules of Arbitration, shall be used for arbitration of all Complex Designated Claims; *provided, however*, unless otherwise agreed by the

[4] The form of the Arbitration Notice is attached hereto as **Annex 3** and incorporated herein by reference. The Debtors anticipate that the Arbitration Notice will be substantially in the form of Annex 3; however, the Debtors reserve the right to modify the Arbitration Notice, as necessary or appropriate, consistent with the terms of the ADR Procedures.

[5] In the event of any conflict between the Arbitration Rules and the ADR Procedures, the ADR Procedures shall control.

parties, (i) the AAA shall appoint a panel of three (3) arbitrators, as provided in this Section and Section II.C.3(g) and (ii) the arbitration hearing on a Complex Designated Claim must be held no later than ninety (90) days after the date of appointment of the arbitrator(s), as provided in Section II.C.3(k). Finally, the AAA Supplementary Rules for Class Arbitrations shall also be used for all Class Claims, including those related to class certification and the Class Determination Award (as defined in Rule 5 of the AAA Supplementary Rules for Class Arbitrations), except that the arbitrator(s) shall not make a Clause Construction Award (as defined in Rule 3 of the AAA Supplementary Rules for Class Arbitrations), or determine that a Class Claim is not arbitrable for failure for each class member to have entered into an arbitration agreement, the Court having specifically found that the ADR Procedures are applicable to Class Claims notwithstanding the absence of a written agreement to arbitrate.[6]

(a) *Governing Law*

The ADR Procedures, as they relate to arbitration proceedings, are governed by the Federal Arbitration Act, 9 U.S.C. §§ 1, *et seq*. (the "**Federal Arbitration Act**"), and the enforceability of an arbitration award is governed by Section 9 of the Federal Arbitration Act, except as modified herein.

(b) *Fees and Costs for Binding Arbitration; Sharing*

Unless the parties expressly have agreed otherwise in writing (either prepetition or postpetition) as part of an agreement to submit claims to binding arbitration, the fees and costs charged by the AAA and the arbitrator(s) shall be shared equally by the Debtors and the Designated Claimant; *provided, however*, that the arbitrator(s), in the arbitrator(s)' sole discretion, may assess fees and costs against any party that the arbitrator(s) finds to be abusing or

[6] In the event of any conflict between the AAA Supplementary Rules for Class Arbitrations and the ADR Procedures, the ADR Procedures shall control.

unduly delaying the arbitration process. The AAA shall submit invoices to the Designated Claimants and the Debtors according to the AAA's ordinary invoicing practices then in effect and subject to the AAA's ordinary payment terms then in effect. For purposes of clarity, these costs shall not include travel expenses of the parties.

(c) *Impartiality and Qualifications of Arbitrators*

In designating the arbitrator in accordance with the procedures described below, the AAA shall review the Arbitration Notice and the applicable Designated Claim. Any person appointed as an arbitrator must: (i) be an impartial, neutral person; (ii) be experienced (either from past arbitrations or former employment) in the law that is the subject of the Designated Claim; (iii) have no financial or personal interest in the proceedings or, except when otherwise agreed by the parties, in any related matter; and (iv) upon appointment, disclose any circumstances likely to create a reasonable inference of bias. In the event that an arbitrator discloses circumstances likely to create a reasonable inference of bias, such arbitrator may be replaced by the AAA at the written request of the Debtors or the Designated Claimant within ten (10) days after such disclosure.

(d) *Time and Location of Arbitration Hearings*

All arbitration hearings shall be conducted in either (i) New York, New York; (ii) Detroit, Michigan; (iii) Dallas, Texas; or (iv) San Francisco, California (collectively, the "**Arbitration Locations**"). To the maximum extent practicable, the scheduling and location of arbitration hearings shall give due consideration to the proximity of the Designated Claimant and to the convenience of the parties to the Arbitration Location. Within ten (10) days of appointment, the arbitrator(s) shall conduct a preliminary hearing pursuant to AAA Commercial Arbitration Rule 20. Notwithstanding anything set forth herein or in the ADR Order to the

contrary, the Creditors' Committee, through its counsel, shall be permitted to participate in the arbitration hearings to the same extent the Creditors' Committee would be permitted to participate in claims litigation in the Bankruptcy Court pursuant to sections 502, 1103, 1109(b), or any other applicable section of the Bankruptcy Code.

(e) *Appeals of Arbitration Awards*

All arbitration awards shall be final and binding. Other than the identities of the applicable Debtors and Designated Claimants, the claims register number(s) assigned to the applicable arbitrated Designated Claims and the priority and dollar amounts of the Designated Claims as awarded in the arbitration awards, and except as otherwise required by law or agreed upon by the parties, all arbitration awards shall be treated as confidential. No party shall have the right to appeal an arbitration award except pursuant to the appeal provisions of the Federal Arbitration Act, in which case any appeal must be to the United States District Court for the Southern District of New York. Any appeal shall be governed by the Federal Arbitration Act. The parties shall have ten (10) days from the date the arbitration award is served to appeal such award. Failure to timely appeal shall result in the loss of any appeal rights. Once any appeal has concluded or appellate rights are waived, the Debtors shall update the claims docket in their chapter 11 cases accordingly and may file any notice of the liquidated amount of the Designated Claim that they deem necessary or appropriate for such purpose.

(f) *Modification of the Arbitration Procedures*

The arbitration procedures described herein may be modified only upon the mutual consent of the Debtors and the Designated Claimant. In addition, the Debtors shall consult with the Creditors' Committee prior to any modification to the arbitration procedures.

(g) *Appointment of the Arbitrator*

Within 5 five days of receiving the applicable Arbitration Notice, the AAA shall commence the following procedures for the appointment of arbitrator(s) (the "**Appointment of Arbitrator(s) Procedures**") by concurrently sending by electronic transmission or facsimile, to the Debtors and the applicable Designated Claimant, an identical list of the names of at least eight (8) arbitrator candidates who meet the qualifications necessary for the matter.[7] The Debtors and the applicable Designated Claimant shall have seven (7) business days from the date this list is served to (i) strike two (2) names from the proposed list, (ii) list the remaining names in order of preference, and (iii) return the list to the AAA. In the event that the Designated Claim is not a Complex Designated Claim, the AAA shall appoint a single arbitrator from the name(s) not stricken, giving consideration first to the preferences of the parties and second to scheduling and the availability of the arbitrator. In the event that the Designated Claim is a Complex Designated Claim, the AAA shall appoint a panel of three (3) arbitrators from the name(s) not stricken, giving consideration first to the preferences of the parties and second to the scheduling and the availability of the arbitrators. The AAA shall appoint the arbitrator(s) in accordance with the Appointment of Arbitrator(s) Procedures within ten (10) business days of its receipt of the applicable Arbitration Notice.

(h) *Pre-Hearing Matters*

Unless otherwise agreed to by the parties, any pre-hearing issues, matters or disputes (other than with respect to merits issues) shall be presented to the arbitrator(s) telephonically (or by such other method agreed to by the arbitrator(s) and the parties) for expeditious, final, and binding resolution. Upon a party's request, the arbitrator(s) may order

[7] If, for any reason, there are more than two parties to an arbitration, AAA shall identify a number of potential arbitrators equal to the number of parties, plus one, and the remaining selection proceedings shall otherwise govern. Affiliated entities are considered a single party for this purpose. The Creditors' Committee shall have no role in the arbitrator selection process.

that a substantive motion, such as a motion for summary judgment, be heard in person rather than telephonically. Any pre-hearing issue, matter, or dispute (other than with respect to merits issues) must be presented to the arbitrator(s) not later than fifteen (15) days prior to the arbitration hearing so as to permit the arbitrator(s) to review and rule upon the requests by telephonic or electronic communication at least five days prior to the arbitration hearing.

(i) *Discovery*

Unless the Designated Claim is a Complex Designated Claim, there shall be no interrogatories. Any requests for production of documents, electronically-stored information and things ("**Document Requests**") shall be made in writing and shall be limited to no more than twenty (20) requests, including discrete subparts. Items requested in the Document Requests must be produced within thirty (30) days after service of the Document Requests. All documents from discovery shall be confidential and shall not be (i) disclosed to any person or party not participating in the arbitration proceeding or (ii) used for any purpose other than in connection with the arbitration proceeding, except as provided herein. Notwithstanding the foregoing, upon request of the Creditors' Committee, the Debtors shall provide to the Creditors' Committee, on a confidential basis, copies of all discovery materials produced pursuant to this Section II.C.3(i) for any particular Designated Claim.

(j) *Pre-Arbitration Statement*

Unless otherwise agreed by the parties, on or before ten (10) days prior to the scheduled arbitration hearing, each party shall submit to the arbitrator(s) and serve on the other party or parties and the Creditors' Committee by overnight mail a pre-arbitration statement not to exceed fifteen (15) pages, excluding any attachments. On or before ten (10) days prior to the scheduled arbitration hearing, the Creditors' Committee may submit a short statement, not to

exceed five (5) pages, to the arbitrator(s) and serve such statement on the parties to the arbitration.

(k) *Arbitration Hearing*

Unless otherwise agreed by the parties and the arbitrator(s) or as provided herein, the arbitration hearing on a Designated Claim must be held no later than ninety (90) days after the date of appointment of the arbitrator(s). The arbitration hearing is open only to the parties and their respective counsel, insurers (if any), and witnesses. In addition, notwithstanding anything else set forth herein or in the ADR Order to the contrary, the Creditors' Committee, through its counsel, shall be permitted to attend and participate in the arbitration hearing to the same extent the Creditors' Committee would be permitted to participate in claims litigation in the Bankruptcy Court, pursuant to sections 502, 1103, 1109(b), and any other applicable section of the Bankruptcy Code. Nonparty witnesses shall be sequestered. No posthearing briefs may be submitted, unless the arbitrator(s) requests briefs, in which case such briefing shall be subject to the issues, timing, and page limitations the arbitrator(s) imposes. There shall be no reply briefs.

(l) *Awards*

The arbitrator(s) shall issue a written, reasoned opinion and award (the "**Arbitration Award**") within fourteen (14) days after the arbitration hearing. The arbitrator(s) shall not be compensated for more than eight hours of deliberations on and preparation of the Arbitration Award for a Designated Claim. Any Arbitration Award shall be an allowed general unsecured nonpriority claim against the Debtor identified in the Arbitration Award (or if no Debtor is identified in the Arbitration Award, the claim shall be deemed to be against the Debtor identified in the Designated Claimant's applicable proof of claim included with the service of the Arbitration Notice, unless otherwise ordered by the Bankruptcy Court). The Arbitration Award

may not award a priority claim or otherwise determine the priority of the claim under the Bankruptcy Code; *provided, however*, that, within thirty (30) days after the issuance of an Arbitration Award, the Designated Claimant may seek relief from the Bankruptcy Court to determine that some or all of the Arbitration Award is subject to treatment as a priority claim if the Designated Claimant's applicable proof of claim filed as of the date of filing of the ADR Order asserted an entitlement to such priority. Further, no portion of a claim resulting from any Arbitration Award shall be allowed to the extent that it consists of (a) punitive damages; (b) interest, attorneys' fees, or other fees and costs, unless permissible under section 506(b) of the Bankruptcy Code; (c) an award under any penalty rate or penalty provision of the type specified in section 365(b)(2)(D) of the Bankruptcy Code; (d) amounts associated with obligations that are subject to disallowance under section 502(b) of the Bankruptcy Code; (e) specific performance, other compulsory injunctive relief, restrictive, restraining, or prohibitive injunctive relief or any other form of equitable remedy; or (f) any relief not among the foregoing but otherwise impermissible under applicable bankruptcy or nonbankruptcy law. The Debtors and the Creditors' Committee shall have the right within thirty (30) days after the issuance of an Arbitration Awards to file a motion seeking relief from the Bankruptcy Court to enforce the preceding sentence and obtain the disallowance of any portion of a claim included in an Arbitration Award in violation of clauses (a) through (f) herein. In all cases, the awarded claim shall be subject to treatment in the Debtors' chapter 11 cases as set forth in any order(s) confirming a chapter 11 plan or plans, or in such other applicable order of the Bankruptcy Court. The entry of an Arbitration Award shall not grant the Designated Claimant any enforcement or collection rights.

D. Settlements of Designated Claims

1. *Settlements Permitted at Any Stage of the ADR Procedures*

Designated Claims may be settled by the Debtors and a Designated Claimant through the Offer Exchange Procedures, Mediation, or by agreement at any point during these ADR Procedures. Nothing herein shall prevent the parties from settling any claim at any time.

2. *Settlement Authority and Approvals*

Nothing herein shall limit, expand, or otherwise modify the Debtors' authority to settle claims pursuant to orders of the Bankruptcy Court then in effect, including without limitation the Order Pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 3007 and 9019(b) authorizing the Debtors to (i) File Omnibus Claims Objections and (ii) Establish Procedures for Settling Certain Claims, entered on October 6, 2006 [Docket No. 4180] (the "**Claims Procedures and Settlement Order**") and any future order(s) confirming a chapter 11 plan or plans in these cases (collectively, the "**Settlement Authority Orders**"). Any settlements of claims pursuant to, or in connection with, the ADR Procedures shall be approved consistent with the terms, conditions, and limitations set forth in the applicable Settlement Authority Orders. The Debtors shall be requested to seek Bankruptcy Court approval of such settlements only to the extent that (a) such approval is required by the terms of the Settlement Authority Orders or (b) the settlement falls outside of the authority granted in the Settlement Authority Orders and otherwise requires Bankruptcy Court approval.

E. Failure to Resolve a Designated Claim Through ADR Procedures

1. *Litigation Generally*

Claims not resolved through the ADR Procedures shall proceed to litigation for resolution. Notwithstanding anything herein, the Debtors may terminate the ADR Procedures at any time prior to serving the Arbitration Notice and proceed to litigation of the Designated Claim as set forth herein.

2. *Litigation in the Bankruptcy Court*

If the Designated Claim is not resolved by the ADR Procedures (an "**Unresolved Designated Claim**"), litigation of such Unresolved Designated Claim shall proceed in the Bankruptcy Court by the commencement by the Debtors of proceedings consistent with the terms, conditions, and limitations set forth in the Claims Procedures Order or other applicable procedures or orders, as soon as reasonably practicable upon completion of the ADR Procedures for the Unresolved Designated Claim, to the extent that (a) the Bankruptcy Court has subject matter jurisdiction over the Unresolved Designated Claim and (b) the Unresolved Designated Claim is not subject to the abstention provisions of 28 U.S.C. § 1334(c). Disputes over the subject matter jurisdiction of the Bankruptcy Court or the application of abstention shall be determined by the Bankruptcy Court.

3. *Litigation in Other Courts*

If the Unresolved Designated Claim cannot be adjudicated in the Bankruptcy Court as a result of abstention or because of lack of or limitations upon subject matter jurisdiction (as determined by the Bankruptcy Court), then, subject to the terms and conditions set forth in Section II.E.4 below, litigation of such Unresolved Designated Claim shall proceed (a) if the Unresolved Designated Claim was pending in a nonbankruptcy forum on the date the Debtors commenced their respective voluntary chapter 11 cases (the "**Commencement Date**"), then (i) in such nonbankruptcy forum, subject to the Debtors' right to seek removal or transfer of venue or (ii) in such other forum as determined by the Bankruptcy Court on request of the Debtors;[8] or (b) if the Unresolved Designated Claim was not pending in any forum on the

[8] The Debtors may elect to file a motion pursuant to 28 U.S.C.§ 157(b)(5) to remove to the United States District Court for the Southern District of New York any Unresolved Designated Claim (along with any other unliquidated and litigation claims asserted against the Debtors) where the underlying claim is a personal injury claim or wrongful death claim.

Commencement Date, then in the United States District Court for the Southern District of New York or such other nonbankruptcy forum that, as applicable, (i) has personal jurisdiction over the parties, (ii) has subject matter jurisdiction over the Unresolved Designated Claim, (iii) has in rem jurisdiction over the property involved in the Unresolved Designated Claim (if applicable) and (iv) is a proper venue. If necessary, any disputes regarding the applicability of this Section II.E.3 shall be determined by the Bankruptcy Court.

4. *Modification of the Automatic Stay*

If litigation of an Unresolved Designated Claim in a forum other than the Bankruptcy Court is required as set forth in Section II.E.3 above, the ADR Order provides that the automatic stay imposed by section 362 of the Bankruptcy Code, or any subsequent Plan Injunction (collectively, the "**Stay**"), shall be modified solely to the extent necessary to permit the liquidation of the amount of such Unresolved Designated Claim in the appropriate forum; *provided, however*, that any such liquidated claim (a) shall be subject to treatment under the applicable chapter 11 plan or plans confirmed in these cases; and (b) shall be treated as a general unsecured nonpriority claim against the Debtor identified in the judgment, unless otherwise determined and ordered by the Bankruptcy Court. No later than forty-five (45) days after the Bankruptcy Court determines that the terms of Section II.E.3 above applies to an Unresolved Designated Claim or at such other time as agreed to by the parties, the Debtors shall either (a) file a notice of such modification of the Stay (a "**Notice of Stay Modification**") with the Bankruptcy Court and serve a copy of such notice on the Designated Claimant and the Creditors' Committee or (b) file a motion seeking an order governing the terms upon which the Stay will be modified (a "**Stay Motion**") and serve such Stay Motion on the Designated Claimant and the Creditors' Committee. The Stay shall be modified solely to the extent set forth above (a) as of the date that is forty-five (45) days after the filing of a Notice of Stay Modification, unless the

Bankruptcy Court orders otherwise or the parties otherwise agree; or (b) as ordered by the Court in connection with a Stay Motion. If the Debtors fail to file a Notice of Stay Modification or a Stay Motion for any reason with respect to an Unresolved Designated Claim, the Stay shall remain in effect with respect to such Unresolved Designated Claim and the Designated Claimant may seek a determination of the Bankruptcy Court regarding whether and on what terms the Stay must be modified to permit litigation in a nonbankruptcy forum as set forth in Section II.E.3 above.

F. Failure to Comply with the ADR Procedures

If a Designated Claimant or the Debtors fail to comply with the ADR Procedures, negotiate in good faith, or cooperate as may be necessary to effectuate the ADR Procedures, the Bankruptcy Court may, after notice and a hearing, find such conduct to be in violation of the ADR Order or, with respect to a Designated Claimant, an abandonment of or failure to prosecute the Designated Claim, or both. Upon such findings, the Bankruptcy Court may, among other things, disallow and expunge the Designated Claim, in whole or part, or grant such other or further remedy deemed just and appropriate under the circumstances, including, without limitation, awarding attorneys' fees, other fees, and costs to the other party.

ANNEX 1

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	**09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**

ALTERNATIVE DISPUTE RESOLUTION NOTICE

Service Date:

Claimant(s):

Claimant(s)' Address:

Designated Claim Number(s):

Amount(s) Stated in Proof(s) of Claim:

Deadline to Respond:

By this notice (the "**ADR Notice**"), Motors Liquidation Company (f/k/a General Motors Corporation) and its affiliated debtors, as debtors in possession (collectively, the "**Debtors**") designate the above-identified claim(s) (the "**Designated Claim(s)**") in the Debtors' chapter 11 cases and submit the Designated Claim(s) to alternative dispute resolution, pursuant to the procedures (the "**ADR Procedures**") established by the Order Pursuant to 11 U.S.C. § 105(a) and General Order M-390 Authorizing Implementation of Alternative Dispute Resolution Procedures, Including Mandatory Mediation (the "**ADR Order**"), entered by the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**") on February 23, 2010. A complete copy of the ADR Procedures is enclosed for your reference.

The Debtors have reviewed your Designated Claim(s) and, pursuant to the ADR Procedures, offer the amounts set forth below for allowance of your Designated Claim(s) as [a] prepetition general unsecured nonpriority claim(s) in full satisfaction of the Designated Claim(s) (the "**Settlement Offer**").

*You are required to return this ADR Notice with a Claimant's Response (as defined below) to the Settlement Offer by no later than the **Deadline to Respond** indicated above.*

In addition, to the extent your most recent proofs) of claim **[does]/[do]** not: (a) state the correct amount of your Designated Claim(s); (b) expressly identify each and every cause of action and legal theory on which you base your Designated Claim(s); (c) include current, correct, and complete contact information of your counsel or other representative; or (d) provide all documents on which you rely in support of your Designated Claim(s), you hereby are requested to provide all such information and documentation with your Claimant's Response.

If you do not return this ADR Notice with the requested information and a Claimant's Response to the Settlement Offer to **[Debtor's Representative]** so that it is received by the Deadline to Respond, your Designated Claims will be subject to mandatory mediation as set forth in Section II.B of the ADR Procedures.

IN ADDITION, YOU ARE REQUIRED TO INDICATE EXPRESSLY WHETHER YOU CONSENT TO **BINDING ARBITRATION** IF YOUR DESIGNATED CLAIM(S) CANNOT BE SETTLED. PLEASE MARK THE BOX BELOW INDICATING WHETHER YOU (i) CONSENT TO **BINDING ARBITRATION** OR (ii) **DO NOT** CONSENT TO (AND SEEK TO **OPT OUT** OF) **BINDING ARBITRATION**. PLEASE NOTE THAT YOUR CONSENT TO **BINDING ARBITRATION** CANNOT SUBSEQUENTLY BE WITHDRAWN. IN ADDITION, ANY ATTEMPT TO OPT OUT OF **BINDING ARBITRATION** IN THE RESPONSE TO THIS ADR NOTICE SHALL BE INEFFECTIVE IF YOU PREVIOUSLY HAVE CONSENTED IN WRITING (EITHER PREPETITION OR POSTPETITION) TO **BINDING ARBITRATION** AS A MEANS TO RESOLVE YOUR CLAIM(S).

Details about the arbitration process, including the sharing of fees, are set forth in Section II.C of the ADR Procedures.

YOU MUST RESPOND TO THE FOLLOWING SETTLEMENT OFFER:

Settlement Offer: The Debtors offer you an allowed general unsecured, nonpriority claim in the amount of $_____ against **[Name of Debtor]** in full satisfaction of your Designated Claim(s), to be satisfied in accordance with any plan or plans of reorganization confirmed and implemented in the Debtors' chapter 11 cases.

The only permitted response (the "**Claimant's Response**") to the Settlement Offer are (a) acceptance of the Settlement Offer or (b) rejection of the Settlement Offer coupled with a counteroffer (a "**Counteroffer**"). Accordingly, please select your Claimant's Response below:

Please indicate below if you accept or reject the Debtors' Settlement Offer by marking the appropriate box. If you reject the Settlement Offer, please make your counteroffer where indicated.

☐ I/we agree to and accept the terms of the Settlement Offer.

or

☐ I/we reject the Settlement Offer. However, I/we will accept, and propose as a Counteroffer, the following allowed claim in full satisfaction of the Designated Claim(s), to be satisfied in accordance with any plan or plans of reorganization confirmed and

implemented in the Debtors' chapter 11 cases:

Debtor: _____
Amount: $_____
Priority: unsecured nonpriority claim (presumed) or ☐ other:*_____

**Note - If you choose a different priority, you must attach an explanation and any relevant documentation.*

Section II.A.3 of the ADR procedures sets forth the restrictions on Counteroffers. Your Counteroffer may not (a) improve the priority set forth in your most recent timely-filed proof of claim or amended proof of claim, or (b) exceed the lesser of the Claim Amount Cap (as defined in the ADR Order) or the amount set forth in your most recent timely-filed proof of claim(s) or amended proof of claim(s). You may not amend your proof of claim solely for the purpose of proposing a Counteroffer of a higher amount or a better priority.

Please indicate below whether you consent to binding arbitration for your Designated Claim(s) by marking the appropriate box.

☐ I/ WE CONSENT TO BINDING ARBITRATION.

or

☐ I/WE DO NOT CONSENT TO BINDING ARBITRATION.

[Signature of the Designated Claimant's Authorized Representative]

By: _____
Printed Name

ANNEX 2

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	**09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**

NOTICE OF NONBINDING MEDIATION

Service Date:

Claimant(s):

Claimant(s)' Address:

Designated Claim Number(s):

Amount(s) Stated in Proof(s) of Claim:

Mediation Location:

By this Mediation Notice, Motors Liquidation Company (f/k/a General Motors Corporation) and its affiliated debtors, as debtors in possession (collectively, the "**Debtors**") submit the above-identified claim(s) (the "**Designated Claim(s)**") in the Debtors' chapter 11 cases to mediation, pursuant to the procedures (the "**ADR Procedures**") established by the Order Pursuant to 11 U.S.C. §105(a) and General Order M-390 Authorizing Implementation of Alternative Dispute Resolution Procedures, Including Mandatory Mediation, entered by the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**") on February 23, 2010. The Debtors have been unable to resolve your Designated Claim(s) on a consensual basis with you through the Offer Exchange Procedures of the ADR Procedures, or the Offer Exchange Procedures otherwise were terminated as to your Designated Claim(s) as provided for in the ADR Procedures.

As provided for in the ADR Procedures, mediation shall be conducted in the Mediation Location set forth above, unless the parties agrees to a different location. As further provided in the ADR Procedures, you have ten (10) days to choose one of the individuals identified on the list of mediators enclosed with this Mediation Notice to conduct the mediation.

A complete copy of the ADR Procedures is enclosed for your reference. Please refer to Section II.C of the ADR Procedures, concerning mediation.

[Signature of the Debtors' Authorized Person]

ANNEX 3

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	**09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**

NOTICE OF BINDING ARBITRATION

Service Date:

Claimant(s):

Claimant(s)' Address:

Designated Claim Number(s):

Amount(s) Stated in Proof(s) of Claim:

Arbitration Location:

By this Arbitration Notice, Motors Liquidation Company (f/k/a General Motors Corporation) and its affiliated debtors, as debtors in possession (collectively, the "**Debtors**") submit the above-identified claim(s) (the "**Designated Claim(s)**") in the Debtors' chapter 11 cases to **binding arbitration**, pursuant to the procedures (the "**ADR Procedures**") established by the Order Pursuant to 11 U.S.C. § 105(a) and General Order M-390 Authorizing Implementation of Alternative Dispute Resolution Procedures, Including Mandatory Mediation, entered by the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**") on February 23, 2010. The Debtors have been unable to resolve your Designated Claim(s) on a consensual basis with you through the Offer Exchange Procedures of the ADR Procedures and or through binding mediation.

PLEASE NOTE THAT YOU HAVE CONSENTED (OR ARE DEEMED TO HAVE CONSENTED) TO BINDING ARBITRATION. THEREFORE, YOUR DESIGNATED CLAIM(S) WILL PROCEED TO BINDING ARBITRATION, PURSUANT TO THE ADR PROCEDURES.

As provided for in the ADR Procedures, an arbitrator will be appointed through the American Arbitration Association ("**AAA**"). The ADR Procedures require you and the

Debtors to share the administrative fees and costs of arbitration charged by the AAA and the arbitrator.

A complete copy of the ADR Procedures is enclosed for your reference. Please refer to Section II.C of the ADR Procedures, concerning binding arbitration.

[Signature of the Debtors' Authorized Person]

Exhibit B

Blackline of ADR Procedures

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	**09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**

ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

The alternative dispute resolution procedures (the "**ADR Procedures**") adopted in the chapter 11 cases of Motors Liquidation Company (f/k/a General Motors Corporation) ("**MLC**") and its affiliated debtors, as debtors in possession (collectively, the "**Debtors**"), are set forth below:

I. CLAIMS SUBJECT TO THE ADR PROCEDURES AND ADR INJUNCTION

A. Claims Subject to the ADR Procedures

1. The claims subject to the ADR Procedures (collectively, the "**Designated Claims**") include any and all claims (other than an Excluded Claim as defined below) designated by the Debtors under the notice procedures set forth below that assert or involve claims based on one or more of the following theories of recovery, whether or not litigation previously has been commenced by the claimant: (a) personal injury claims, (b) wrongful death claims, (c) tort claims, (d) product liability claims, (e) claims for damages arising from the rejection of an executory contract or unexpired lease with a Debtor under section 365 of the Bankruptcy Code~~,~~ ~~(f) indemnity claims~~ (excluding claims for damages arising from the rejection of executory contracts that relate primarily to environmental matters), (f) indemnity claims (excluding tax

indemnity claims relating to leveraged fixed equipment lease transactions and excluding indemnity claims relating to asbestos liability), (g) lemon law claims, to the extent applicable under section 6.15 of the Master Sale and Purchase Agreement by and between the Debtors and NGMCO, Inc., dated as of June 1, 2009, and as amended (the "**MPA**"), (h) warranty claims, to the extent applicable under section 6.15 of the MPA, ~~(i) environmental claims that constitute prepetition unsecured claims, (j) tax claims, and (k~~and (i) class action claims ("**Class Claims**"). The Debtors may identify as a Designated Claim any proof of claim asserted in these cases, other than Excluded Claims as defined in Section I.B below, if the Debtors believe, in their business judgment and sole discretion, that the ADR Procedures would promote the resolution of such claim and serve the intended objectives of the ADR Procedures.

2. The holders of the Designated Claims are referred to herein as the "**Designated Claimants**."

B. Excluded Claims

The Debtors shall not identify as a Designated Claim any proof of claim within any of the following categories (collectively, the "**Excluded Claims**"): (a) claims for which the automatic stay under section 362 of title 11 of the United States Code (the "**Bankruptcy Code**") was modified by prior order of this Court (the "**Bankruptcy Court**") to allow the litigation of the claim to proceed in another forum; (b) claims asserted in liquidated amounts of $500,000 or less; (c) asbestos-related claims ~~(other than indemnity claims); and (d~~; (d) environmental claims that constitute prepetition unsecured claims (including claims for damages arising from the rejection of executory contracts that relate primarily to environmental matters); and (e) claims subject to a separate order of the Bankruptcy Court providing for arbitration or mediation. Notwithstanding the foregoing, any of the Excluded Claims, any disputed postpetition administrative expenses, and any claims or counterclaims asserted by the Debtors may be

submitted to the ADR Procedures by agreement of the applicable Debtor and the applicable claimant or by further order of the Bankruptcy Court.

C. The ADR Injunction

Upon service of the ADR Notice (as defined below) on a Designated Claimant under Section II.A.1 below, such Designated Claimant (and any other person or entity asserting an interest in the relevant Designated Claim) shall be enjoined from commencing or continuing any action or proceeding in any manner or any place, including in the Bankruptcy Court, seeking to establish, liquidate, collect on, or otherwise enforce the Designated Claim(s) identified in the ADR Notice other than (1) through these ADR Procedures, or (2) pursuant to a plan or plans confirmed in the applicable Debtors' chapter 11 cases (collectively, the "**ADR Injunction**"). Notwithstanding the forgoing, the Debtors shall not be precluded from seeking to estimate any Designated Claim not subject to an accepted Claim Amount Cap in connection with confirmation or consummation of a plan or plans confirmed in the applicable Debtors' chapter 11 cases, or preclude the Designated Claimant from seeking estimation of its Designated Claim solely for voting purposes in connection with confirmation of a plan or plans confirmed in the applicable Debtors' chapter 11 cases. The ADR Injunction shall expire with respect to a Designated Claim only when that Designated Claim has been resolved or after the ADR Procedures have been completed as to that Designated Claim. Except as expressly set forth herein or in a separate order of the Bankruptcy Court, the expiration of the ADR Injunction shall not extinguish, limit, or modify the automatic stay established by section 362 of the Bankruptcy Code or any similar injunction that may be imposed upon the confirmation or effectiveness of a plan or plans in the applicable Debtors' chapter 11 cases (a "**Plan Injunction**"), and the automatic stay and the Plan Injunction shall remain in place to the extent then in effect.

II. THE ADR PROCEDURES

A. Offer Exchange Procedures

The first stage of the ADR Procedures will be the following offer exchange procedures, requiring the parties to exchange settlement offers and thereby providing an opportunity to resolve the underlying Designated Claim on a consensual basis without any further proceedings by the parties (the "**Offer Exchange Procedures**"). Rule 408 of the Federal Rules of Evidence shall apply to the ADR Procedures. Except as permitted by Rule 408, no person may rely on, or introduce as evidence in connection with any arbitral, judicial, or other proceeding, any offer, counteroffer, or any other aspect of the ADR Procedures.

1. *Designation of Designated Claims and Settlement Offer by the Debtors*

(a) At any time following the entry of an order approving the ADR Procedures (the "**ADR Order**") and subject to the terms and conditions in Sections I.A and I.B above, the Debtors may designate a Designated Claim for resolution through the ADR Procedures by serving upon the Designated Claimant, at the address listed on the Designated Claimant's most recently filed proof of claim or amended proof of claim, as well as to any counsel of record in these cases for the Designated Claimant, the following materials (collectively, the "**ADR Materials**"): (i) a notice that the Designated Claim has been submitted to the ADR Procedures (an "**ADR Notice**"),[2~~3~~] (ii) a copy of the ADR Order, and (iii) a copy of these ADR Procedures. For transferred claims, the Debtors also will serve a copy of the ADR Materials on the transferee identified in the notice of transfer of claim.

(b) The ADR Notice will (i) advise the Designated Claimant that his or her Designated Claim has been submitted to the ADR Procedures; (ii) request that the Designated Claimant verify or, as needed, correct, clarify, or supplement, certain information regarding the Designated Claim (including the addresses for notices under the ADR Procedures); and (iii) include an offer by the Debtors to settle the Designated Claim (a "**Settlement Offer**"). The ADR Notice also will require the Designated Claimant to sign and return the ADR Notice along with the Claimant's Response (as defined in Section II.A.2 below) to the Debtors so that it is received by the Debtors no later than twenty-one (21) days[3~~4~~] after the mailing of the ADR Notice (the "**Settlement Response Deadline**").

[2~~3~~] The form of the ADR Notice is attached hereto as **Annex 1** and incorporated herein by reference. ~~Although the~~The Debtors anticipate that the ADR Notice will be substantially in the form of Annex ~~1,~~1; however, the Debtors reserve the right to modify the ADR Notice, as necessary or appropriate, consistent with the terms of the ADR Procedures.

[3~~4~~] Bankruptcy Rule 9006(a) shall apply to all periods calculated in the ADR Procedures.

(c) If the Designated Claimant fails to sign and return the ADR Notice or to include a Claimant's Response (as defined below) with the returned ADR Notice by the Settlement Response Deadline, (i) the Offer Exchange Procedures will be deemed terminated with respect to the Designated Claim and (ii) the Designated Claim will be submitted to nonbinding mediation.

2. *The Claimant's Response*

The only permitted responses to a Settlement Offer (the "**Claimant's Response**") are (i) acceptance of the Settlement Offer, or (ii) rejection of the Settlement Offer coupled with a counteroffer (as further defined below, a "**Counteroffer**"). If the ADR Notice is returned without a response or with a response that is not a permitted response, the Designated Claim shall be treated as set forth in Section II.A.1(c) above.

3. *The Counteroffer*

The Counteroffer shall (i) provide all facts that substantiate the Designated Claim and that are sufficient for the Debtors to evaluate the validity and amount of the Designated Claim; (ii) provide all documents that the Designated Claimant contends support the Designated Claim; (iii) state the dollar amount of the Designated Claim (the "**Proposed Claim Amount**"), which may not (A) improve the priority set forth in the Designated Claimant's most recent timely filed proof of claim or amended proof of claim, or (B) exceed the lesser of the Claim Amount Cap (as defined in the ADR Order), if applicable, or the amount set forth in the Designated Claimant's most recent timely filed proof of claim or amended proof of claim (but may liquidate any unliquidated amounts expressly referenced in a proof of claim), with an explanation of the calculation and basis for the Proposed Claim Amount; and (iv) provide the name and address of counsel representing the Designated Claimant with respect to the Designated Claim, unless the Designated Claimant is a natural person, in which case the

Designated Claimant shall either provide the name of such counsel or state that he or she is appearing without counsel.

The Counteroffer is presumed to offer the allowance of the Designated Claim as a general unsecured claim in the Proposed Claim Amount against the Debtor identified in the applicable proof of claim. If the Debtors accept the Counteroffer, the Designated Claimant shall not seek recovery from the Debtors of any consideration other than the consideration ultimately distributed to holders of other allowed general unsecured claims against the relevant Debtor. A Counteroffer may not be for an unknown, unliquidated, or indefinite amount or priority, or the Designated Claim shall be treated as set forth in Section II.A.1(c) above.

4. *Consent to Subsequent Binding Arbitration*

As described in Sections II.B and II.C below, in the absence of a settlement at the conclusion of the Offer Exchange Procedures, Designated Claims shall proceed to nonbinding mediation and, if such mediation is unsuccessful, upon consent of the parties (including deemed consent based on prior contractual agreements), to binding arbitration. A Designated Claimant is required to notify the Debtors whether it consents to, and thereby seeks to participate in, binding arbitration in the event that its Designated Claim ultimately is not resolved through the Offer Exchange Procedures and the nonbinding mediation. A Designated Claimant shall make an election to either consent or not consent to binding arbitration by checking the appropriate box in the ADR Notice (an "**Opt-In/Opt-Out Election**"). Any Designated Claimant that does not consent to binding arbitration in its response to the ADR Notice may later consent in writing to binding arbitration, subject to the agreement of the Debtors. Consent to binding arbitration, once given, cannot subsequently be withdrawn without consent of the Debtors.

5. *The Debtors' Response to a Counteroffer*

The Debtors must respond to any Counteroffer within fifteen (15) days after their receipt of the Counteroffer (the "**Response Deadline**"), by returning a written response (as further defined below, each a "**Response Statement**"). The Response Statement shall indicate that the Debtors (a) accept the Counteroffer; or (b) reject the Counteroffer, with or without making a revised Settlement Offer (a "**Revised Settlement Offer**").

(a) *Failure to Respond*

If the Debtors fail to respond to the Counteroffer by the Response Deadline, (i) the Counteroffer will be deemed rejected by the Debtors; (ii) the Offer Exchange Procedures will be deemed terminated with respect to the Designated Claim; and (iii) the Designated Claim will be submitted to nonbinding mediation.

(b) *Revised Settlement Offer*

If the Debtors make a Revised Settlement Offer by the Response Deadline, the Designated Claimant may accept the Revised Settlement Offer by providing the Debtors with a written statement of acceptance no later than ten (10) days after the date of service of the Revised Settlement Offer (the "**Revised Settlement Offer Response Deadline**"). If the Designated Claimant does not accept the Revised Settlement Offer by the Revised Settlement Offer Response Deadline, the Revised Settlement Offer will be deemed rejected and the Designated Claim automatically will be submitted to nonbinding mediation.

(c) *Request for Additional Information*

The Debtors may request supplemental or clarification of information supplied in the Designated Claimant's most recently filed proof of claim to assist in a good faith evaluation of any particular Designated Claim. If the Debtors request additional information or documentation by the Response Deadline, the Designated Claimant shall serve ~~such~~ additional

information or documentation sufficient to permit the Debtors to evaluate the basis for the Designated Claim (with the exception, in the Designated Claimant's sole discretion, of privileged information or information prepared expressly in contemplation of litigation) so that it is received by the Debtors within fifteen (15) days after such request. If the Designated Claimant timely responds, the Debtors shall have fifteen (15) days to provide an amended Response Statement, which may include a Revised Settlement Offer as a counter to the Counteroffer. If the Debtors do not provide an amended Response Statement within this period, or if the Designated Claimant fails to provide the requested information or documentation within the time allotted, the Designated Claim will be submitted to nonbinding mediation.

6. *Offer Exchange Termination Date*

Upon mutual written consent, the Debtors and a Designated Claimant may exchange additional Revised Settlement Offers and Counteroffers for up to twenty (20) days after the later of (a) the Revised Settlement Offer Response Deadline or (b) the expiration of the applicable timeframes provided for in Section II.A.5(c) above with respect to requesting, receiving, and responding to additional information or documentation. Otherwise, the Offer Exchange Procedures shall conclude and terminate on the earliest of the following (the "**Offer Exchange Termination Date**"): (i) the date upon which the Designated Claim automatically advances to nonbinding mediation under the provisions set forth above; (ii) the date that any settlement offer for a Designated Claim is accepted under the procedures set forth above; (iii) the date upon which a Response Statement was served by the Debtors, if the Debtors notified the Designated Claimant in their Response Statement of the Debtors' intention to proceed directly to nonbinding mediation; or (iv) such earlier date as is agreed upon by the Debtors and the Designated Claimant.

7. *Ability to Settle Claims*

Nothing herein shall limit the ability of a Designated Claimant and the Debtors to settle a Designated Claim by mutual consent at any time. All such settlements shall be subject to the terms of Section II.D.2 below.

B. Nonbinding Mediation ("Mediation")

1. *Mediation Notice*

If the Debtors and the Designated Claimant do not settle the Designated Claim through the Offer Exchange Procedures, the Debtors shall serve a notice of nonbinding mediation, with a copy of the Designated Claimant's applicable proof(s) of claim attached, on the Designated Claimant no later than thirty (30) days after the Offer Exchange Termination Date, or as soon thereafter as is reasonably practicable.[45] The Mediation Notice will provide the Mediation Location (as such term is defined in Section II.B.2 below).

2. *Location and Appointment of the Mediator*

All Mediations shall be conducted in either (i) New York, New York; (ii) Detroit, Michigan; (iii) Dallas, Texas; or (iv) San Francisco, California (collectively, the "**Mediation Locations**"), unless the parties agree to a different location. Within ten (10) days after receiving the Mediation Notice, the Designated Claimant shall choose one of the individuals identified in a list of mediators annexed to the Mediation Notice and corresponding to the applicable Mediation Location to conduct the mediation (the "**Mediator**").

To the maximum extent practicable, the scheduling and location of Mediation sessions shall give due consideration to the convenience of the parties and the proximity of the

[45] The form of the Mediation Notice is attached hereto as **Annex 2** and incorporated herein by reference. The Debtors anticipate that the Mediation Notice will be substantially in the form of Annex 2; however, the Debtors reserve the right to modify the Mediation Notice, as necessary or appropriate, consistent with the terms of the ADR Procedures.

Designated Claimant. Notwithstanding the foregoing, within ten (10) business days after service of the Mediation Notice, the Designated Claimant may file a motion with the Bankruptcy Court, on notice to the Debtors and any previously appointed mediator, for an order directing that the Mediation be conducted in a different location (a "**Hardship Motion**") if the Designated Claimant can demonstrate that traveling to any of the Mediation Locations presents a "substantial hardship;" *provided, however*, that there shall be a rebuttable presumption that, absent other extraordinary facts, there is no "substantial hardship" imposed on a Designated Claimant if the primary representative for a Designated Claimant resides in a location that is less than 750 miles from the Mediation Location or is less than a three-hour plane trip from the Mediation Location (based on typical commercial schedules for the fastest route, excluding any layovers). While a Hardship Motion is pending, all deadlines under these ADR Procedures shall be suspended. If a Hardship Motion is granted, any alternative location shall be determined by the Bankruptcy Court, taking into account the convenience of the parties and any agreements reached by the parties. If the location of the Mediation is changed, (i) any Mediator appointed in the original location may be replaced by a Mediator in the new location (selected by mutual agreement of the parties or order of the Court), and (ii) the Bankruptcy Court may require that that the Debtors and the Designated Claimant share the costs of the Mediation.

3. *Mediation Rules*

The Mediation of Designated Claims shall be governed by the Mediator's regular procedures, except where expressly modified in the ADR Procedures. In the event of any conflict, the ADR Procedures shall control. Any party to a Mediation that fails to participate in good faith, on the terms described herein, may be subject to sanctions under Section II.F below.

(a) *Impartiality and Qualifications of Mediators*

A person appointed as a Mediator must (i) be an impartial, neutral person; (ii) have no financial or personal interest in the proceedings or, except when otherwise agreed by the parties, in any related matter; and (iii) upon appointment, disclose any circumstances likely to create a reasonable inference of bias. In the event a Mediator discloses circumstances likely to create a reasonable inference of bias, such Mediator may be replaced at the written request of either the Debtors or the Designated Claimant prior to the mediation.

(b) *Fees and Costs for Mediation*

For each Mediation conducted under these ADR Procedures, the Mediator selected to preside will be entitled to charge the mediation fees disclosed to, and agreed to by, the Debtors and the Designated Claimant. Unless the parties have expressly agreed otherwise in writing (either prepetition or postpetition) as part of an agreement to submit Designated Claims to Mediation, the Mediator's fees and the costs of any Mediation shall be shared equally by the Debtors and the Designated Claimant subject to the Sharing Cap (as such term is described in the ADR Order. For purposes of clarity, these costs shall not include travel expenses of the parties.

(c) *Pre-Mediation Briefing*

Unless the parties agree otherwise, on or before thirty (30) days prior to the scheduled Mediation, the Designated Claimant shall serve on the Mediator and the Debtors by electronic transmission or facsimile, at a minimum, and no later than by 6:00 p.m. (Eastern

Time), a nonconfidential, pre-Mediation statement (the "**Opening Statement**") not to exceed fifteen (15) pages, excluding any attachments, setting forth all of the Designated Claimant's claims and identifying each and every cause of action or theory the Designated Claimant asserts, including a short and plain statement of the facts and law upon which the Designated Claimant relies for recovery and maintains entitle it to relief. The Designated Claimant shall include, as exhibits or annexes to the Opening Statement, all documents (or summaries of voluminous documents), affidavits, and other evidentiary materials on which the Designated Claimant relies (with the exception, in the Designated Claimant's sole discretion, of privileged information or information prepared expressly in contemplation of litigation). Unless the parties agree otherwise, on or before fifteen (15) days after service of the Opening Statement, the Debtors shall serve on the Mediator and the Designated Claimant, by electronic transmission or facsimile, at a minimum, and no later than by 6:00 p.m. (Eastern Time), a nonconfidential response statement (the "**Mediation Response Statement**") not to exceed fifteen (15) pages, excluding attachments. The Designated Claimant shall receive copies of all exhibits to the Mediation Response Statement (with the exception, in the Debtors' sole discretion, of privileged information or information prepared expressly in contemplation of litigation). The Debtors shall provide copies of the Opening Statement and Mediation Response Statement to counsel to the statutory committee of unsecured creditors (the "**Creditors' Committee**") upon request, on a confidential basis. At the Mediator's discretion and direction, the parties may submit additional, confidential letters or statements to the Mediator, which shall receive "Mediator's-eyes-only" treatment.

(d) *The Mediation Session*

Unless otherwise agreed by the parties or as provided herein, the Mediation session must occur no later than sixty (60) days after the date on which the Mediator is appointed. Unless otherwise agreed by the parties, the Mediation session is open only to the parties and their respective counsel, and insurers (if any).

(e) *Treatment of Mediation Settlement*

If the Mediation results in a settlement of the Designated Claim, such settlement shall be subject to the terms of Section II.D below. If the Mediation of a Designated Claim does not result in a settlement of the Designated Claim, the Designated Claim shall be subject to Section II.C or II.E below.

(f) *Modification of the Mediation Procedures*

The Mediation procedures described herein may be modified upon the mutual written consent of the Debtors and the Designated Claimant.

C. Arbitration

1. *Binding Arbitration*

If the Designated Claimant and the Debtors have consented to binding arbitration under Section II.A.4 above, the Designated Claim will be arbitrated under the terms of this Section II.C if such claim is not resolved in the Offer Exchange Procedures or Mediation. If the Designated Claimant has expressly indicated that it does not consent to binding arbitration in its response to the ADR Notice and has not subsequently opted in to binding arbitration pursuant to Section II.A.4 above, the Designated Claim shall be resolved in the Bankruptcy Court by the Debtors' commencement of proceedings pursuant to the Bankruptcy Code, including without limitation, estimating or objecting to the Designated Claims. Any party to an arbitration that

fails to participate in the arbitration in good faith, on the terms described herein, may be subject to sanctions under Section II.F below.

2. *Arbitration Notice*

To initiate the arbitration process for a Designated Claim, the Debtors shall serve a notice of arbitration (the "**Arbitration Notice**"), with a copy of the Designated Claimant's applicable proof(s) of claim attached, on the Designated Claimant, the Creditors' Committee, and the American Arbitration Association (the "**AAA**").[5][6]

3. *Arbitration Rules and Procedures*

For Designated Claims that are not designated by the Debtors as Complex Designated Claims (as defined below), the arbitration of all Designated Claims shall be conducted by a single arbitrator selected pursuant to the Commercial Arbitration Rules of the AAA. The arbitrator shall be governed by the commercial arbitration rules of the AAA then in effect (the "**Arbitration Rules**"), except where the Arbitration Rules are expressly modified in the ADR Procedures.[6][7]

The Debtors may, at their discretion, designate certain Designated Claims as complex designated claims (the "**Complex Designated Claims**"). The arbitration of all Complex Designated Claims shall be conducted by a panel of three arbitrators selected pursuant to the Commercial Arbitration Rules of the AAA. The AAA Procedures for Large, Complex Commercial Disputes, in addition to the Commercial Rules of Arbitration, shall be used for arbitration of all Complex Designated Claims~~, in addition to the Commercial Rules of~~

[5][6] The form of the Arbitration Notice is attached hereto as **Annex 3** and incorporated herein by reference. The Debtors anticipate that the Arbitration Notice will be substantially in the form of Annex 3; however, the Debtors reserve the right to modify the Arbitration Notice, as necessary or appropriate, consistent with the terms of the ADR Procedures.

[6][7] In the event of any conflict between the Arbitration Rules and the ADR Procedures, the ADR Procedures shall control.

~~Arbitration.~~[7]; *provided, however*, unless otherwise agreed by the parties, (i) the AAA shall appoint a panel of three (3) arbitrators, as provided in this Section and Section II.C.3(g) and (ii) the arbitration hearing on a Complex Designated Claim must be held no later than ninety (90) days after the date of appointment of the arbitrator(s), as provided in Section II.C.3(k). Finally, the AAA Supplementary Rules for Class Arbitrations shall also be used for all Class Claims, including those related to class certification and the Class Determination Award (as defined in Rule 5 of the AAA Supplementary Rules for Class Arbitrations), except that the arbitrator(s) shall not make a Clause Construction Award (as defined in Rule 3 of the AAA Supplementary Rules for Class Arbitrations), or determine that a Class Claim is not arbitrable for failure for each class member to have entered into an arbitration agreement, the Court having specifically found that the ADR Procedures are applicable to Class Claims notwithstanding the absence of a written agreement to arbitrate.[8]

(a) *Governing Law*

The ADR Procedures, as they relate to arbitration proceedings, are governed by the Federal Arbitration Act, 9 U.S.C. §§ 1, *et seq*. (the "**Federal Arbitration Act**"), and the enforceability of an arbitration award is governed by Section 9 of the Federal Arbitration Act, except as modified herein.

(b) *Fees and Costs for Binding Arbitration; Sharing*

Unless the parties expressly have agreed otherwise in writing (either prepetition or postpetition) as part of an agreement to submit claims to binding arbitration, the fees and costs

---

~~[7] In the event of any conflict between the AAA Procedures for Large, Complex Commercial Disputes and the ADR Procedures, the ADR Procedures shall control.~~

[8] In the event of any conflict between the AAA Supplementary Rules for Class Arbitrations and the ADR Procedures, the ADR Procedures shall control.

charged by the AAA and the arbitrator(s) shall be shared equally by the Debtors and the Designated Claimant; *provided, however*, that the arbitrator(s), in the arbitrator(s)' sole discretion, may assess fees and costs against any party that the arbitrator(s) finds to be abusing or unduly delaying the arbitration process. The AAA shall submit invoices to the Designated Claimants and the Debtors according to the AAA's ordinary invoicing practices then in effect and subject to the AAA's ordinary payment terms then in effect. For purposes of clarity, these costs shall not include travel expenses of the parties.

(c) *Impartiality and Qualifications of Arbitrators*

In designating the arbitrator in accordance with the procedures described below, the AAA shall review the Arbitration Notice and the applicable Designated Claim. Any person appointed as an arbitrator must: (i) be an impartial, neutral person; (ii) be experienced (either from past arbitrations or former employment) in the law that is the subject of the Designated Claim; (iii) have no financial or personal interest in the proceedings or, except when otherwise agreed by the parties, in any related matter; and (iv) upon appointment, disclose any circumstances likely to create a reasonable inference of bias. In the event that an arbitrator discloses circumstances likely to create a reasonable inference of bias, such arbitrator may be replaced by the AAA at the written request of the Debtors or the Designated Claimant within ten (10) days after such disclosure.

(d) *Time and Location of Arbitration Hearings*

All arbitration hearings shall be conducted in either (i) New York, New York; (ii) Detroit, Michigan; (iii) Dallas, Texas; or (iv) San Francisco, California (collectively, the "**Arbitration Locations**"). To the maximum extent practicable, the scheduling and location of arbitration hearings shall give due consideration to the proximity of the Designated Claimant and

to the convenience of the parties to the Arbitration Location. Within ten (10) days of appointment, the arbitrator(s) shall conduct a preliminary hearing pursuant to AAA Commercial Arbitration Rule 20. Notwithstanding anything set forth herein or in the ADR Order to the contrary, the Creditors' Committee, through its counsel, shall be permitted to participate in the arbitration hearings to the same extent the Creditors' Committee would be permitted to participate in claims litigation in the Bankruptcy Court pursuant to sections 502, 1103, 1109(b), or any other applicable section of the Bankruptcy Code.

(e) *Appeals of Arbitration Awards*

All arbitration awards shall be final and binding. Other than the identities of the applicable Debtors and Designated Claimants, the claims register number(s) assigned to the applicable arbitrated Designated Claims and the priority and dollar amounts of the Designated Claims as awarded in the arbitration awards, and except as otherwise required by law or agreed upon by the parties, all arbitration awards shall be treated as confidential. No party shall have the right to appeal an arbitration award except pursuant to the appeal provisions of the Federal Arbitration Act, in which case any appeal must be to the United States District Court for the Southern District of New York. Any appeal shall be governed by the Federal Arbitration Act. The parties shall have ten (10) days from the date the arbitration award is served to appeal such award. Failure to timely appeal shall result in the loss of any appeal rights. Once any appeal has concluded or appellate rights are waived, the Debtors shall update the claims docket in their chapter 11 cases accordingly and may file any notice of the liquidated amount of the Designated Claim that they deem necessary or appropriate for such purpose.

(f) *Modification of the Arbitration Procedures*

The arbitration procedures described herein may be modified only upon the mutual consent of the Debtors and the Designated Claimant. In addition, the Debtors shall consult with the Creditors' Committee prior to any modification to the arbitration procedures.

(g) *Appointment of the Arbitrator*

Within 5 five days of receiving the applicable Arbitration Notice, the AAA shall commence the following procedures for the appointment of arbitrator(s) (the "**Appointment of Arbitrator(s) Procedures**") by concurrently sending by electronic transmission or facsimile, to the Debtors and the applicable Designated Claimant, an identical list of the names of at least eight (8) arbitrator candidates who meet the qualifications necessary for the matter.[9] The Debtors and the applicable Designated Claimant shall have seven (7) business days from the date this list is served to (i) strike two (2) names from the proposed list, (ii) list the remaining names in order of preference, and (iii) return the list to the AAA. In the event that the Designated Claim is not a Complex Designated Claim, the AAA shall appoint a single arbitrator from the name(s) not stricken, giving consideration first to the preferences of the parties and second to scheduling and the availability of the arbitrator. In the event that the Designated Claim is a Complex Designated Claim, the AAA shall appoint a panel of three (3) arbitrators from the name(s) not stricken, giving consideration first to the preferences of the parties and second to the scheduling and the availability of the arbitrators. The AAA shall appoint the arbitrator(s) in accordance with the Appointment of Arbitrator(s) Procedures within ten (10) business days of its receipt of the applicable Arbitration Notice.

(h) *Pre-Hearing Matters*

[9] If, for any reason, there are more than two parties to an arbitration, AAA shall identify a number of potential arbitrators equal to the number of parties, plus one, and the remaining selection proceedings shall otherwise govern. Affiliated entities are considered a single party for this purpose. The Creditors' Committee shall have no role in the arbitrator selection process.

Unless otherwise agreed to by the parties, any pre-hearing issues, matters or disputes (other than with respect to merits issues) shall be presented to the arbitrator(s) telephonically (or by such other method agreed to by the arbitrator(s) and the parties) for expeditious, final, and binding resolution. Upon a party's request, the arbitrator(s) may order that a substantive motion, such as a motion for summary judgment, be heard in person rather than telephonically. Any pre-hearing issue, matter, or dispute (other than with respect to merits issues) must be presented to the arbitrator(s) not later than fifteen (15) days prior to the arbitration hearing so as to permit the arbitrator(s) to review and rule upon the requests by telephonic or electronic communication at least five days prior to the arbitration hearing.

(i) *Discovery*

Unless the Designated Claim is a Complex Designated Claim, there shall be no interrogatories. Any requests for production of documents, electronically-stored information and things ("**Document Requests**") shall be made in writing and shall be limited to no more than twenty (20) requests, including discrete subparts. Items requested in the Document Requests must be produced within thirty (30) days after service of the Document Requests. All documents from discovery shall be confidential and shall not be (i) disclosed to any person or party not participating in the arbitration proceeding or (ii) used for any purpose other than in connection with the arbitration proceeding, except as provided herein. Notwithstanding the foregoing, upon request of the Creditors' Committee, the Debtors shall provide to the Creditors' Committee, on a confidential basis, copies of all discovery materials produced pursuant to this Section II.C.3(i) for any particular Designated Claim.

(j) *Pre-Arbitration Statement*

Unless otherwise agreed by the parties, on or before ten (10) days prior to the scheduled arbitration hearing, each party shall submit to the arbitrator(s) and serve on the other party or parties and the Creditors' Committee by overnight mail a pre-arbitration statement not to exceed fifteen (15) pages, excluding any attachments. On or before ten (10) days prior to the scheduled arbitration hearing, the Creditors' Committee may submit a short statement, not to exceed five (5) pages, to the arbitrator(s) and serve such statement on the parties to the arbitration.

(k) *Arbitration Hearing*

Unless otherwise agreed by the parties and the arbitrator(s) or as provided herein, the arbitration hearing on a Designated Claim must be held no later than ninety (90) days after the date of appointment of the arbitrator(s). The arbitration hearing is open only to the parties and their respective counsel, insurers (if any), and witnesses. In addition, notwithstanding anything else set forth herein or in the ADR Order to the contrary, the Creditors' Committee, through its counsel, shall be permitted to attend and participate in the arbitration hearing to the same extent the Creditors' Committee would be permitted to participate in claims litigation in the Bankruptcy Court, pursuant to sections 502, 1103, 1109(b), and any other applicable section of the Bankruptcy Code. Nonparty witnesses shall be sequestered. No posthearing briefs may be submitted, unless the arbitrator(s) requests briefs, in which case such briefing shall be subject to the issues, timing, and page limitations the arbitrator(s) imposes. There shall be no reply briefs.

(l) *Awards*

The arbitrator(s) shall issue a written, reasoned opinion and award (the "**Arbitration Award**") within fourteen (14) days after the arbitration hearing. The arbitrator(s) shall not be compensated for more than eight hours of deliberations on and preparation of the

Arbitration Award for a Designated Claim. Any Arbitration Award shall be an allowed general unsecured nonpriority claim against the Debtor identified in the Arbitration Award (or if no Debtor is identified in the Arbitration Award, the claim shall be deemed to be against the Debtor identified in the Designated Claimant's applicable proof of claim included with the service of the Arbitration Notice, unless otherwise ordered by the Bankruptcy Court). The Arbitration Award may not award a priority claim or otherwise determine the priority of the claim under the Bankruptcy Code; *provided, however*, that, within thirty (30) days after the issuance of an Arbitration Award, the Designated Claimant may seek relief from the Bankruptcy Court to determine that some or all of the Arbitration Award is subject to treatment as a priority claim if the Designated Claimant's applicable proof of claim filed as of the date of filing of the ADR Order asserted an entitlement to such priority. Further, no portion of a claim resulting from any Arbitration Award shall be allowed to the extent that it consists of (a) punitive damages; (b) interest, attorneys' fees, or other fees and costs, unless permissible under section 506(b) of the Bankruptcy Code; (c) an award under any penalty rate or penalty provision of the type specified in section 365(b)(2)(D) of the Bankruptcy Code; (d) amounts associated with obligations that are subject to disallowance under section 502(b) of the Bankruptcy Code; (e) specific performance, other compulsory injunctive relief, restrictive, restraining, or prohibitive injunctive relief or any other form of equitable remedy; or (f) any relief not among the foregoing but otherwise impermissible under applicable bankruptcy or nonbankruptcy law. The Debtors and the Creditors' Committee shall have the right within thirty (30) days after the issuance of an Arbitration Awards to file a motion seeking relief from the Bankruptcy Court to enforce the preceding sentence and obtain the disallowance of any portion of a claim included in an Arbitration Award in violation of clauses (a) through (f) herein. In all cases, the awarded claim

shall be subject to treatment in the Debtors' chapter 11 cases as set forth in any order(s) confirming a chapter 11 plan or plans, or in such other applicable order of the Bankruptcy Court. The entry of an Arbitration Award shall not grant the Designated Claimant any enforcement or collection rights.

D. Settlements of Designated Claims

1. *Settlements Permitted at Any Stage of the ADR Procedures*

Designated Claims may be settled by the Debtors and a Designated Claimant through the Offer Exchange Procedures, Mediation, or by agreement at any point during these ADR Procedures. Nothing herein shall prevent the parties from settling any claim at any time.

2. *Settlement Authority and Approvals*

Nothing herein shall limit, expand, or otherwise modify the Debtors' authority to settle claims pursuant to orders of the Bankruptcy Court then in effect, including without limitation the Order Pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 3007 and 9019(b) authorizing the Debtors to (i) File Omnibus Claims Objections and (ii) Establish Procedures for Settling Certain Claims, entered on October 6, 2006 [Docket No. 4180] (the "**Claims Procedures and Settlement Order**") and any future order(s) confirming a chapter 11 plan or plans in these cases (collectively, the "**Settlement Authority Orders**"). Any settlements of claims pursuant to, or in connection with, the ADR Procedures shall be approved consistent with the terms, conditions, and limitations set forth in the applicable Settlement Authority Orders. The Debtors shall be requested to seek Bankruptcy Court approval of such settlements only to the extent that (a) such approval is required by the terms of the Settlement Authority Orders or (b) the settlement falls outside of the authority granted in the Settlement Authority Orders and otherwise requires Bankruptcy Court approval.

E. Failure to Resolve a Designated Claim Through ADR Procedures

1. *Litigation Generally*

Claims not resolved through the ADR Procedures shall proceed to litigation for resolution. Notwithstanding anything herein, the Debtors may terminate the ADR Procedures at any time prior to serving the Arbitration Notice and proceed to litigation of the Designated Claim as set forth herein.

2. *Litigation in the Bankruptcy Court*

If the Designated Claim is not resolved by the ADR Procedures (an "**Unresolved Designated Claim**"), litigation of such Unresolved Designated Claim shall proceed in the Bankruptcy Court by the commencement by the Debtors of proceedings consistent with the terms, conditions, and limitations set forth in the Claims Procedures Order or other applicable procedures or orders, as soon as reasonably practicable upon completion of the ADR Procedures for the Unresolved Designated Claim, to the extent that (a) the Bankruptcy Court has subject matter jurisdiction over the Unresolved Designated Claim and (b) the Unresolved Designated Claim is not subject to the abstention provisions of 28 U.S.C. § 1334(c). Disputes over the subject matter jurisdiction of the Bankruptcy Court or the application of abstention shall be determined by the Bankruptcy Court.

3. *Litigation in Other Courts*

If the Unresolved Designated Claim cannot be adjudicated in the Bankruptcy Court as a result of abstention or because of lack of or limitations upon subject matter jurisdiction (as determined by the Bankruptcy Court), then, subject to the terms and conditions set forth in Section II.E.4 below, litigation of such Unresolved Designated Claim shall proceed (a) if the Unresolved Designated Claim was pending in a nonbankruptcy forum on the date the Debtors commenced their respective voluntary chapter 11 cases (the "**Commencement Date**"),

then (i) in such nonbankruptcy forum, subject to the Debtors' right to seek removal or transfer of venue or (ii) in such other forum as determined by the Bankruptcy Court on request of the Debtors;[10] or (b) if the Unresolved Designated Claim was not pending in any forum on the Commencement Date, then in the United States District Court for the Southern District of New York or such other nonbankruptcy forum that, as applicable, (i) has personal jurisdiction over the parties, (ii) has subject matter jurisdiction over the Unresolved Designated Claim, (iii) has in rem jurisdiction over the property involved in the Unresolved Designated Claim (if applicable) and (iv) is a proper venue. If necessary, any disputes regarding the applicability of this Section II.E.3 shall be determined by the Bankruptcy Court.

4. *Modification of the Automatic Stay*

If litigation of an Unresolved Designated Claim in a forum other than the Bankruptcy Court is required as set forth in Section II.E.3 above, the ADR Order provides that the automatic stay imposed by section 362 of the Bankruptcy Code, or any subsequent Plan Injunction (collectively, the "**Stay**"), shall be modified solely to the extent necessary to permit the liquidation of the amount of such Unresolved Designated Claim in the appropriate forum; *provided, however*, that any such liquidated claim (a) shall be subject to treatment under the applicable chapter 11 plan or plans confirmed in these cases; and (b) shall be treated as a general unsecured nonpriority claim against the Debtor identified in the judgment, unless otherwise determined and ordered by the Bankruptcy Court. No later than forty-five (45) days after the Bankruptcy Court determines that the terms of Section II.E.3 above applies to an Unresolved Designated Claim or at such other time as agreed to by the parties, the Debtors shall either (a)

[10] The Debtors may elect to file a motion pursuant to 28 U.S.C.§ 157(b)(5) to remove to the United States District Court for the Southern District of New York any Unresolved Designated Claim (along with any other unliquidated and litigation claims asserted against the Debtors) where the underlying claim is a personal injury claim or wrongful death claim.

file a notice of such modification of the Stay (a "**Notice of Stay Modification**") with the Bankruptcy Court and serve a copy of such notice on the Designated Claimant and the Creditors' Committee or (b) file a motion seeking an order governing the terms upon which the Stay will be modified (a "**Stay Motion**") and serve such Stay Motion on the Designated Claimant and the Creditors' Committee. The Stay shall be modified solely to the extent set forth above (a) as of the date that is forty-five (45) days after the filing of a Notice of Stay Modification, unless the Bankruptcy Court orders otherwise or the parties otherwise agree; or (b) as ordered by the Court in connection with a Stay Motion. If the Debtors fail to file a Notice of Stay Modification or a Stay Motion for any reason with respect to an Unresolved Designated Claim, the Stay shall remain in effect with respect to such Unresolved Designated Claim and the Designated Claimant may seek a determination of the Bankruptcy Court regarding whether and on what terms the Stay must be modified to permit litigation in a nonbankruptcy forum as set forth in Section II.E.3 above.

F. Failure to Comply with the ADR Procedures

If a Designated Claimant or the Debtors fail to comply with the ADR Procedures, negotiate in good faith, or cooperate as may be necessary to effectuate the ADR Procedures, the Bankruptcy Court may, after notice and a hearing, find such conduct to be in violation of the ADR Order or, with respect to a Designated Claimant, an abandonment of or failure to prosecute the Designated Claim, or both. Upon such findings, the Bankruptcy Court may, among other things, disallow and expunge the Designated Claim, in whole or part, or grant such other or further remedy deemed just and appropriate under the circumstances, including, without limitation, awarding attorneys' fees, other fees, and costs to the other party.

ANNEX 1

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	**09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**

ALTERNATIVE DISPUTE RESOLUTION NOTICE

Service Date:

Claimant(s):

Claimant(s)' Address:

Designated Claim Number(s):

Amount(s) Stated in Proof(s) of Claim:

Deadline to Respond:

By this notice (the "**ADR Notice**"), Motors Liquidation Company (f/k/a General Motors ~~Coporation~~Corporation) and its affiliated debtors, as debtors in possession (collectively, the "**Debtors**") designate the above-identified claim(s) (the "**Designated Claim(s)**") in the Debtors' chapter 11 cases and submit the Designated Claim(s) to alternative dispute resolution, pursuant to the procedures (the "**ADR Procedures**") established by the Order Pursuant to 11 U.S.C. § 105(a) and General Order M-390 Authorizing Implementation of Alternative Dispute Resolution Procedures, Including Mandatory Mediation (the "**ADR Order**"), entered by the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**") on February ~~__~~23, 2010. A complete copy of the ADR Procedures is enclosed for your reference.

The Debtors have reviewed your Designated Claim(s) and, pursuant to the ADR Procedures, offer the amounts set forth below for allowance of your Designated Claim(s) as [a] prepetition general unsecured nonpriority claim(s) in full satisfaction of the Designated Claim(s) (the "**Settlement Offer**").

*You are required to return this ADR Notice with a Claimant's Response (as defined below) to the Settlement Offer by no later than the **Deadline to Respond** indicated above.*

In addition, to the extent your most recent proofs) of claim **[does]/[do]** not: (a) state the correct amount of your Designated Claim(s); (b) expressly identify each and every cause of action and legal theory on which you base your Designated Claim(s); (c) include current, correct, and complete contact information of your counsel or other representative; or (d) provide all documents on which you rely in support of your Designated Claim(s), you hereby are requested to provide all such information and documentation with your Claimant's Response.

If you do not return this ADR Notice with the requested information and a Claimant's Response to the Settlement Offer to **[Debtor's Representative]** so that it is received by the Deadline to Respond, your Designated Claims will be subject to mandatory mediation as set forth in Section II.B of the ADR Procedures.

IN ADDITION, YOU ARE REQUIRED TO INDICATE EXPRESSLY WHETHER YOU CONSENT TO **BINDING ARBITRATION** IF YOUR DESIGNATED CLAIM(S) CANNOT BE SETTLED. PLEASE MARK THE BOX BELOW INDICATING WHETHER YOU (i) CONSENT TO **BINDING ARBITRATION** OR (ii) **DO NOT** CONSENT TO (AND SEEK TO **OPT OUT** OF) **BINDING ARBITRATION**. PLEASE NOTE THAT YOUR CONSENT TO **BINDING ARBITRATION** CANNOT SUBSEQUENTLY BE WITHDRAWN. IN ADDITION, ANY ATTEMPT TO OPT OUT OF **BINDING ARBITRATION** IN THE RESPONSE TO THIS ADR NOTICE SHALL BE INEFFECTIVE IF YOU PREVIOUSLY HAVE CONSENTED IN WRITING (EITHER PREPETITION OR POSTPETITION) TO **BINDING ARBITRATION** AS A MEANS TO RESOLVE YOUR CLAIM(S).

Details about the arbitration process, including the sharing of fees, are set forth in Section II.C of the ADR Procedures.

YOU MUST RESPOND TO THE FOLLOWING SETTLEMENT OFFER:

Settlement Offer: The Debtors offer you an allowed general unsecured, nonpriority claim in the amount of $_____ against **[Name of Debtor]** in full satisfaction of your Designated Claim(s), to be satisfied in accordance with any plan or plans of reorganization confirmed and implemented in the Debtors' chapter 11 cases.

The only permitted response (the "**Claimant's Response**") to the Settlement Offer are (a) acceptance of the Settlement Offer or (b) rejection of the Settlement Offer coupled with a counteroffer (a "**Counteroffer**"). Accordingly, please select your Claimant's Response below:

Please indicate below if you accept or reject the Debtors' Settlement Offer by marking the appropriate box. If you reject the Settlement Offer, please make your counteroffer where indicated.

☐ I/we agree to and accept the terms of the Settlement Offer.

or

☐ I/we reject the Settlement Offer. However, I/we will accept, and propose as a Counteroffer, the following allowed claim in full satisfaction of the Designated Claim(s), to be satisfied in accordance with any plan or plans of reorganization confirmed and

implemented in the Debtors' chapter 11 cases:

Debtor: _____
Amount: $_____
Priority: unsecured nonpriority claim (presumed) or ☐ other:*_____

**Note - If you choose a different priority, you must attach an explanation and any relevant documentation.*

Section II.A.3 of the ADR procedures sets forth the restrictions on Counteroffers. Your Counteroffer may not (a) improve the priority set forth in your most recent timely-filed proof of claim or amended proof of claim, or (b) exceed the lesser of the Claim Amount Cap (as defined in the ADR Order) or the amount set forth in your most recent timely-filed proof of claim(s) or amended proof of claim(s). You may not amend your proof of claim solely for the purpose of proposing a Counteroffer of a higher amount or a better priority.

Please indicate below whether you consent to binding arbitration for your Designated Claim(s) by marking the appropriate box.

☐ I/ WE CONSENT TO BINDING ARBITRATION.

or

☐ I/WE DO NOT CONSENT TO BINDING ARBITRATION.

[Signature of the Designated Claimant's Authorized Representative]

By: _____
Printed Name

ANNEX 2

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	**09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**

NOTICE OF NONBINDING MEDIATION

Service Date:

Claimant(s):

Claimant(s)' Address:

Designated Claim Number(s):

Amount(s) Stated in Proof(s) of Claim:

Mediation Location:

By this Mediation Notice, Motors Liquidation Company (f/k/a General Motors ~~Coporation~~Corporation) and its affiliated debtors, as debtors in possession (collectively, the "**Debtors**") submit the above-identified claim(s) (the "**Designated Claim(s)**") in the Debtors' chapter 11 cases to mediation, pursuant to the procedures (the "**ADR Procedures**") established by the Order Pursuant to 11 U.S.C. §105(a) and General Order M-390 Authorizing Implementation of Alternative Dispute Resolution Procedures, Including Mandatory Mediation, entered by the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**") on February ~~__~~23, 2010. The Debtors have been unable to resolve your Designated Claim(s) on a consensual basis with you through the Offer Exchange Procedures of the ADR Procedures, or the Offer Exchange Procedures otherwise were terminated as to your Designated Claim(s) as provided for in the ADR Procedures.

As provided for in the ADR Procedures, mediation shall be conducted in the Mediation Location set forth above, unless the parties agrees to a different location. As further provided in the ADR Procedures, you have ten (10) days to choose one of the individuals identified on the list of mediators enclosed with this Mediation Notice to conduct the mediation.

A complete copy of the ADR Procedures is enclosed for your reference. Please refer to Section II.C of the ADR Procedures, concerning mediation.

[Signature of the Debtors' Authorized Person]

ANNEX 3

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	**09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**

NOTICE OF BINDING ARBITRATION

Service Date:

Claimant(s):

Claimant(s)' Address:

Designated Claim Number(s):

Amount(s) Stated in Proof(s) of Claim:

Arbitration Location:

By this Arbitration Notice, Motors Liquidation Company (f/k/a General Motors ~~Coporation~~Corporation) and its affiliated debtors, as debtors in possession (collectively, the "**Debtors**") submit the above-identified claim(s) (the "**Designated Claim(s)**") in the Debtors' chapter 11 cases to **binding arbitration**, pursuant to the procedures (the "**ADR Procedures**") established by the Order Pursuant to 11 U.S.C. § 105(a) and General Order M-390 Authorizing Implementation of Alternative Dispute Resolution Procedures, Including Mandatory Mediation, entered by the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**") on February ~~—~~23, 2010. The Debtors have been unable to resolve your Designated Claim(s) on a consensual basis with you through the Offer Exchange Procedures of the ADR Procedures and or through binding mediation.

PLEASE NOTE THAT YOU HAVE CONSENTED (OR ARE DEEMED TO HAVE CONSENTED) TO BINDING ARBITRATION. THEREFORE, YOUR DESIGNATED CLAIM(S) WILL PROCEED TO BINDING ARBITRATION, PURSUANT TO THE ADR PROCEDURES.

As provided for in the ADR Procedures, an arbitrator will be appointed through the American Arbitration Association ("**AAA**"). The ADR Procedures require you and the

Debtors to share the administrative fees and costs of arbitration charged by the AAA and the arbitrator.

A complete copy of the ADR Procedures is enclosed for your reference. Please refer to Section II.C of the ADR Procedures, concerning binding arbitration.

[Signature of the Debtors' Authorized Person]

Exhibit D

Form of Capping Claim Letter

[Date]

BY E-MAIL AND FIRST CLASS MAIL

Motors Liquidation Company
~~500 Renaissance Center, Suite 1400~~
~~Detroit, Michigan 48243~~
2101 Cedar Springs Road, Suite 1100
Dallas, TX 75201
Attn.: ~~Carrianne Basler~~ADR Claims Team
~~cbasler@alixpartners.com~~
claims@motorsliquidation.com

Re: In re Motors Liquidation Company, *et al.* ("Debtors")
Case No. 09-50026 (REG) – Capping Claim Letter

Dear ~~Ms. Basler~~Motors Liquidation Company,

By this letter, I, the undersigned, am the below-referenced claimant, or an authorized signatory for the below-referenced claimant, and hereby submit my claim to the capping procedures established in the Order Pursuant to 11 U.S.C. § 105(a) and General Order M-390 Authorizing Implementation of Alternative Dispute Procedures, Including Mandatory Mediation (the "**ADR Procedures**") [Docket No. ____] entered by the United States Bankruptcy Court for the Southern District of New York on February ~~__~~23, 2010.

Accordingly, I hereby propose to cap my claim at ~~$[____]~~the amount specified below (the "**Claim Amount Cap**") ~~from the original [$[____]/ or unliquidated amount] claim amount (the "**Claim Amount**")~~.

Claimant's Name	Proof of Claim No.	Original Filed Amount	Claim Amount Cap

I understand and agree that the Claim Amount Cap includes all damages and relief to which I believe I am entitled, including all interest, taxes, attorney's fees, other fees, and costs. ~~To the extent~~If the Claim Amount Cap is accepted by the Debtors, I understand that I am required to submit my claim to the ADR Procedures and acknowledge that my claim may be a "Designated Claim" as such term is used under the ADR Procedures.

Very truly yours,

By _____
Address _____
State _____
~~Proof of Claim No.~~ _____

cc: Pablo Falabella, Esq.
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
pablo.falabella@weil.com

Document comparison by Workshare Professional on Monday, February 22, 2010 11:01:48 PM

Input:	
Document 1 ID	interwovenSite://USDMS/US ACTIVE/43300431/2
Description	#43300431v2<US ACTIVE> - Use for ADR Blackline Original
Document 2 ID	interwovenSite://USDMS/US ACTIVE/43297971/6
Description	#43297971v6<US ACTIVE> - MLC- Proposed Order re ADR Procedures
Rendering set	standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	105
Deletions	57
Moved from	2
Moved to	2
Style change	0
Format changed	0
Total changes	166

Exhibit C

Schedule of Mediators

Schedule of Mediators

Dallas, Texas

Name	Experience
Burdin, Mary	Personal injury, products liability
Damuth, Brenda J.	Personal injury, products liability
Grissom, Jerry	Class actions, personal injury, products liability
Hale, Earl F.	Complex business disputes
Lopez, Hon. Carlos G.	Personal injury, products liability
Martin, Hon. Harlan	Complex business disputes, personal injury, products liability
Nolland, Christopher	Complex business disputes, class actions
Parker, Walter E. "Rip"	Personal injury, products liability, complex disputes
Pryor, Will	Personal injury, products liability, complex business disputes
Rubenstein, Kenneth J.	Personal injury, products liability; complex disputes
Young, James	Class actions, complex business disputes, insurance disputes, personal injury

New York, New York

Name	Experience
Carling, Francis	Products liability, personal injury
Cyganowski, Melanie	Complex business disputes
Ellerin, Hon. Betty	Complex business disputes, products liability, personal injury, class actions
Farber, Eugene I.	Products liability
Feerick, Kevin	Complex business disputes, products liability
Gafni, Abraham J.	Complex business disputes, products liability, personal injury
Holtzman, Eric H.	Products liability
Hyman, Ms. Chris Stern	Insurance disputes
Leber, Bernice K.	Complex business disputes
Levin, Jack P.	Class actions, breach of warranty claims, products liability
McAllister, Michael T.	Personal injury, products liability
McLaughlin, Hon. Joseph T.	Complex business disputes, class actions
Ricchiuti, Joseph F.	Complex business disputes, products liability, personal injury, class actions
Silbermann, Hon. Jacqueline W.	Complex business disputes, products liability, personal injury, class actions
Woodin, Peter H.	Complex business disputes, products liability, personal injury, class actions

Detroit, Michigan

Name	Experience
Connor, Laurence D.	Complex business disputes
Harrison, Michael G.	Personal injury
Kaufman, Richard C.	Personal injury
Muth, Jon R.	Complex business disputes, class actions
Pappas, Edward H.	Complex business disputes, products liability
von Ende, Carl H.	Complex business disputes

San Fancisco, California

Name	Experience
Cahill, Hon. William J.	Complex business disputes, products liability, personal injury, class actions
Cowett, Hon. Patricia Ann Yim	Personal injury
Donnet, Toni-Diane	Consumer litigation, personal injury
Glavis, Greta	Personal injury, complex business disputes
Infante, Hon. Edward A.	Complex business disputes
Komar, Hon. Jack	Products liability class actions, mass torts
Lynch, Hon. Eugene F.	Complex business disputes
McPharlin, Linda Hendrix	Complex business disputes
Schau, Jan Frankel	Personal injury, products liability
Smith, Hon. Fern M.	Complex business disputes, products liability, personal injury, class actions
Spieczny, Nancy J.	Personal injury
Tucker, William J.	Personal injury, complex business disputes
Wied, Colin W.	Complex business disputes, personal injury, products liability
Wulff, Randall W.	Complex business disputes, products liability, class actions

Exhibit D

Form of Capping Claim Letter

[Date]

BY E-MAIL AND FIRST CLASS MAIL

Motors Liquidation Company
2101 Cedar Springs Road, Suite 1100
Dallas, TX 75201
Attn.: ADR Claims Team
claims@motorsliquidation.com

Re: In re Motors Liquidation Company, *et al.* ("Debtors")
Case No. 09-50026 (REG) – Capping Claim Letter

Dear Motors Liquidation Company,

By this letter, I, the undersigned, am the below-referenced claimant, or an authorized signatory for the below-referenced claimant, and hereby submit my claim to the capping procedures established in the Order Pursuant to 11 U.S.C. § 105(a) and General Order M-390 Authorizing Implementation of Alternative Dispute Procedures, Including Mandatory Mediation (the "**ADR Procedures**") [Docket No. ____] entered by the United States Bankruptcy Court for the Southern District of New York on February 23, 2010.

Accordingly, I hereby propose to cap my claim at the amount specified below (the "**Claim Amount Cap**").

Claimant's Name	Proof of Claim No.	Original Filed Amount	Claim Amount Cap

I understand and agree that the Claim Amount Cap includes all damages and relief to which I believe I am entitled, including all interest, taxes, attorney's fees, other fees, and costs. If the Claim Amount Cap is accepted by the Debtors, I understand that I am required to submit my claim to the ADR Procedures and acknowledge that my claim may be a "Designated Claim" as such term is used under the ADR Procedures.

Very truly yours,

By _____
Address _____
State _____

cc: Pablo Falabella, Esq.
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
pablo.falabella@weil.com

Appendix F: Bibliography

Adler, Barry E., "A Reassessment of Bankruptcy Reorganization After Chrysler and General Motors," *NYU Law and Economics Research Paper No. 10-04,* 31 Dec. 2009, http://ssrn.com/abstract=1530011, accessed 3 June 2012.

Administrative Office of the United States Courts, "Report Pursuant to Section 202(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010," Washington DC, July 2011.

Barkhausen, Henry A., "Derivatives in Bankruptcy: Some Lessons from Lehman Brothers," *Journal of Structured Finance,* Winter 2010: 7–10.

Blakeley, John, "Lehman, Chrysler, GM: The Fallout," *Deal Magazine,* 7 Aug. 2009, http://www.thedeal.com/magazine/ID/029091/features/lehman,-chrysler,-gm-the-fallout.php, accessed 3 June 2012.

Board of Governors of the Federal Reserve System, *Study on the Resolution of Financial Companies Under the Bankruptcy Code*, Washington DC, 2011, http://www.federalreserve.gov/publications/other-reports/files/bankruptcy-financial-study-201107.pdf, accessed 4 June 2012.

Brown, Nick, "MF Global Trustee May Sue Company Employees," *Reuters*, Chicago Tribune, 12 Apr. 2012, http://articles.chicagotribune.com/2012-04-12/news/sns-rt-us-mfglobal-hearingbre83b1g5-20120412_1_trustee-james-giddens-mf-global-customer, accessed 4 June 2012.

Brown, Nick, "MF Global Customers Seek to Streamline Liquidation," *Reuters,* 16 Mar. 2012, http://www.reuters.com/article/2012/03/16/us-mfglobal-chapter-idUSBRE82F1EG20120316, accessed 4 June 2012.

Butler, Kelsey, "MF Global Awaits Distribution Decision," *The Deal Pipeline,* 13 Apr. 2012, http://www.thedeal.com/content/restructuring/mf-global-awaits-distribution-decision.php, accessed 4 June 2012.

Church, Steven, "WaMu Bankruptcy Judge to Approve $7 Billion Reorganization," *Bloomberg Businessweek,* 28 Feb. 2012, http://www.businessweek.com/news/2012-02-28/wamu-bankruptcy-judge-to-approve-7-billion-reorganization.html, accessed 4 June 2012.

Cohen, Hollace T., "Orderly Liquidation Authority: A New Insolvency Regime to Address Systemic Risk," *University of Richmond Law Review* 45.4 (2011): 1143–1229.

Colter, Allison Bisbey, "Lehman Drives Nov Spike in Claim Trades," *High Yield Report*, 19 Dec. 2011: 24.

Curley, Sarah Sharer, The Honorable, and Elizabeth Fella, "Where to Hide? How Valuation of Derivatives Haunts the Courts—Even After BAPCPA," *American Bankruptcy Law Journal* 83.2 (2009): 297–323.

De La Merced, Michael J., "Lehman Estate Emerges from Bankruptcy," *Dealbook*, New York Times, 6 Mar. 2012, http://dealbook.nytimes.com/2012/03/06/lehman-estate-emerges-from-bankruptcy/, accessed 4 June 2012.

De La Merced, Michael J., and Ben Protess, "MF Global Files for Bankruptcy," *Dealbook*, New York Times, 31 Oct. 2011, http://dealbook.nytimes.com/2011/10/31/mf-global-files-for-bankruptcy/, accessed 4 June 2012.

Demos, Telis, "Lehman's US Bankruptcy Costs Top $1bn," *Financial Times,* 23 Nov. 2010, http://www.ft.com/intl/cms/s/0/39d642a0-f699-11df-b434-00144feab49a.html#axzz1wOqlJAZx, accessed 4 June 2012.

"Dynegy, Kodak, Rothstein, Madoff, MF Global: Bankruptcy," *Bloomberg Businessweek,* 12 Mar. 2012, http://news.businessweek.com/article.asp?documentKey=1376-M0N2N61A1I4H01-201FTMC2HM74H1MRE5QCO0IFB1, accessed 4 June 2012.

Estrada, Edward J., "The Immediate and Lasting Impacts of the 2008 Economic Collapse—Lehman Brothers, General Motors, and the Secured Credit Markets," *University of Richmond Law Review* 45.4 (2011): 1111–1142.

Fitzpatrick, Thomas J., IV, and James B. Thomson, "How Well Does Bankruptcy Work When Large Financial Firms Fail? Some Lessons from Lehman Brothers," *Economic Commentary* 26 Oct. 2011: 1–6.

Fontevecchia, Agustino, "Client Cash Reportedly Missing at MF Global; Debacle May Underline Case for Volcker Rule," *Forbes,* 31 Oct. 2011, http://www.forbes.com/sites/afontevecchia/2011/10/31/mf-global-the-fall-of-corzine-the-volcker-rule-and-too-big-to-fail/, accessed 4 June 2012.

Friedman, Todd L., "The Unjustified Business Justification Rule: A Reexamination of the *Lionel* Canon in Light of the Bankruptcies of Lehman, Chrysler, and General Motors," *UC Davis Business Law Journal* 11.1 (2010): 181–220.

Goldberger, Leonard P., "Rock the Vote, Asbestos-Style," *American Bankruptcy Institute Journal,* Dec. 2006/Jan. 2007: 26.

Gruenberg, Martin J., "Continued Oversight of the Implementation of the Wall Street Reform Act," Statement, Hearing Before the Senate Committee on Banking, Housing, and Urban Affairs, Washington, D.C., 6 Dec. 2011, http://www.fdic.gov/news/news/speeches/chairman/spdec0611.html, accessed 3 June 2012.

Horton, Brent J., "How Dodd-Frank's Orderly Liquidation Authority for Financial Companies Violates Article III of the United States Constitution," *Journal of Corporation Law* 36.4 (2011): 869–892.

Hynes, Richard M., and Steven D. Walt, "Why Banks Are Not Allowed in Bankruptcy," *Washington and Lee Law Review* 67.3 (2010): 985–1051.

Johnson, Mark Anthony, and Abdullah Mamun, "The Failure of Lehman Brothers and Its Impact on Other Financial Institutions," *Applied Financial Economics* 22.5 (2012): 375–385.

Karmel, Roberta S., "An Orderly Liquidation Authority Is Not the Answer to Too-Big-to-Fail," *Brooklyn Journal of Corporate, Financial, and Commercial Law* 6.1 (2011): 1–46.

Lee, Paul L., "The Dodd-Frank Act Orderly Liquidation Authority: A Preliminary Analysis and Critique—Part I," *Banking Law Journal* 128.9 (2011): 771–814.

Legacy Asset Management Company, "Derivatives Claims Settlement Framework," 27 May 2011, http://bankrupt.com/DI2011/Docs/doc/1315ExB.pdf, accessed 4 June 2012.

"Lehman Brothers Chapter 11 Debtors Emerge from Bankruptcy and Set Initial Distribution Date," *Business Wire,* 6 Mar. 2012, http://www.businesswire.com/news/home/20120306006303/en/Lehman-Brothers-Chapter-11-Debtors-Emerge-Bankruptcy, accessed 4 June 2012.

Lehman Brothers Holdings Inc., "Initial Distribution Percentages Announced for Lehman Brothers Holdings Inc. and Its Debtor Affiliates," Press Release, 11 Apr. 2012.

"Lehman Out of Bankruptcy," *Reuters*, Fiscal Times, 6 Mar. 2012, http://www.thefiscaltimes.com/Articles/2012/03/06/Lehman-Out-of-Bankruptcy.aspx#page1, accessed 4 June 2012.

Lenzer, Robert, "Corzine Had MF Global Leveraged 80 to 1," *Forbes,* 31 Oct. 2011, http://www.forbes.com/sites/robertlenzner/2011/10/31/corzine-had-mf-global-leveraged-80-to-1/, accessed 4 June 2012.

Lubben, Stephen J., "Financial Institutions in Bankruptcy," *Seattle University Law Review* 34.4 (2011): 1259–1278.

Mabey, Ralph R., et al., "Expanding the Reach of Alternative Dispute Resolution in Bankruptcy: The Legal and Practical Bases for the Use of Mediation and the Other Forms of ADR," *South Carolina Law Review* 46.6 (1995): 1259–1328.

Marchetti, Peter, "Lehman Decision Holds That Mutuality Must Exist to Exercise a Right of Set-off," *American Bankruptcy Institute Journal,* July/Aug. 2010: 30.

Martin, Jarrod B., "A User's Guide to Bankruptcy Mediation and Settlement Conferences," University of Miami, Oct. 2009, http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=jarrod_martin, accessed 4 June 2012.

McDermott, Mark A., and David M. Turetsky, "Restructuring Large, Systemically-Important, Financial Companies: An Analysis of the Orderly Liquidation Authority, Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act," *American Bankruptcy Institute Law Review* 19.2 (2011): 401–451.

Miller, Suzanne, "A Tough Call," *The Banker,* 28 May 2010: 52–54.

Misken, Kenneth M., and Daniel F. Blanks, "Amended Bankruptcy Rule 3007: Omnificent Omnibus Objections or Objectionable Annoyances?", *American Bankruptcy Institute Journal,* May 2007: 38.

Morrison, Edward R., "Is the Bankruptcy Code an Adequate Mechanism for Resolving the Distress of Systemically Important Institutions?, *Temple Law Review* 82.2 (2009): 449–463.

New Generations Research, *The Bankruptcy Yearbook & Almanac*, 2010, http://bankruptcydata.com, accessed 4 June 2012.

Oellerman, Charles M., and Mark G. Douglas, "The Year in Bankruptcy: 2011," *Jones Day,* Jan. 2012, http://www.jonesday.com/newsknowledge/publicationdetail.aspx?publication=f3eb361f-8ef1-49f1-a01d-899bdd18e1d1&RSS=true, accessed 4 June 2012.

Pengelly, Mark, "Rocked by Counter Party Risk," *Risk Magazine,* 1 Nov. 2008: 21–24.

Plevin, Mark D., et al., "The Future Claims Representative in Prepackaged Asbestos Bankruptcies: Conflicts of Interest, Strange Alliances, and Unfamiliar Duties for Burdened Bankruptcy Courts," *NYU Annual Survey of American Law* 62.2 (2006): 271–328.

Protess, Ben, "MF Global Trustee Sees $1.6 Billion Customer Shortfall," *Dealbook*, New York Times, 10 Feb. 2012, http://dealbook.nytimes.com/2012/02/10/mf-global-trustee-sees-1-6-billion-customer-shortfall/, accessed 4 June 2012.

Rosenberg, Robert J., et al., "Asset Sale Issues," *Bankruptcy 2009: Views from the Bench,* 2 Oct. 2009: 63–83.

Shulman, Carren, "Claim Estimation: Potential Pitfall for Creditors in Chapter 11 Matters," *Metropolitan Corporate Counsel,* 1 May 2012.

Skeel, David A., Jr., "The New Financial Deal: Understanding the Dodd-Frank Act and Its (Unintended) Consequences," *University of Pennsylvania Law School Institute for Law and Economics Research Paper No. 10-21,* 27 Oct. 2010, http://ssrn.com/abstract=1690979, accessed 3 June 2012.

Summe, Kimberly, "Misconceptions About Lehman Brothers' Bankruptcy and the Role Derivatives Played," *Stanford Law Review Online* 64.4 (2011): 16–21, http://www.stanfordlawreview.org/sites/default/files/online/articles/64-SLRO-16_0.pdf, accessed 4 June 2012.

UCLA-LoPucki Bankruptcy Research Database, 2010, http://lopucki.law.ucla.edu/, accessed 4 June 2012.

United States Government Accountability Office, *Bankruptcy: Complex Financial Institutions and International Coordination Pose Challenges*, Washington D.C., 2011, http://www.gao.gov/assets/330/321213.pdf, accessed 4 June 2012.

"Update to 30.7 Customers: Trustee Calls for Litigation in the United Kingdom to Recover Approximately $700 Million of Customer Property," *Epiq Debtor Matrix,* 18 Apr. 2012, http://dm.epiq11.com/MFG/Project#Section2_26, accessed 4 June 2012.

Warburton, A. Joseph, "Understanding the Bankruptcies of Chrysler and General Motors: A Primer," *Syracuse Law Review* 60.3 (2010): 531–582.

Woo, Sarah P., "Regulatory Bankruptcy: How Bank Regulation Causes Firesales," *Georgetown Law Journal* 99.6 (2011): 1615–1669.


ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS