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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:	:	Chapter 11 Case
MOTORS LIQUIDATION COMPANY, <i>et al.</i> ,	:	Case No. 09-50026 (REG)
Debtors.	:	(Jointly Administered)
OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF MOTORS LIQUIDATION COMPANY f/k/a GENERAL MOTORS CORPORATION,	:	Adversary Proceeding
Plaintiff,	:	Case No. 09-00504 (REG)
vs.	:	
JPMORGAN CHASE BANK, N.A., individually and as Administrative Agent for Various lenders party to the Term Loan Agreement described herein, <i>et al.</i> ,	:	
Defendants.	:	

**RULE 7056-1(b) STATEMENT OF UNDISPUTED MATERIAL
FACTS OF DEFENDANT JPMORGAN CHASE BANK, N.A. IN
SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Bankruptcy Rule 7056-1(b), Defendant JPMorgan Chase Bank, N.A. (“**JPMCB**”) submits this statement of the material facts as to which there is no genuine issue to be tried, in support of its motion for summary judgment in this adversary proceeding.

I. The Synthetic Lease Transaction

1. On October 31, 2001, General Motors Corporation (“**GM**”) entered into a synthetic lease financing arrangement among multiple parties, including JPMCB (the “**Synthetic Lease Transaction**”). (Duker Aff. at ¶ 4.)¹

2. The Synthetic Lease Transaction was set forth in a Participation Agreement (“**Participation Agreement**”) dated October 31, 2001, among GM, as Lessee and Construction Agent, Auto Facilities Real Estate Trust 2001-1, a Delaware business trust, as Lessor, Wilmington Trust Company, as trustee of the Lessor, the Persons named therein as Investors, the Persons named therein as Backup Facility Banks, Relationship Funding Company, LLC, and The Chase Manhattan Bank (now known as JPMCB), as Administrative Agent, as amended, together with all related agreements and documents (collectively, the “**Synthetic Lease Transaction Documents**”). (Duker Aff. at ¶ 5; Exs. A-E.)

3. This transaction provided GM with up to approximately \$300 million of financing from a syndicate of financial institutions for the acquisition of and construction on several real properties. (Duker Aff. at ¶ 4.) This loan was scheduled to mature on October 31, 2008. (*Id.* at ¶ 15.)

4. JPMCB served as one of several backup facility banks as well as the Administrative Agent in the transaction. (Duker Aff. at ¶ 4.)

¹ “**Duker Aff.**” refers to the Richard W. Duker affidavit, dated June 29, 2010, filed herewith in support of JPMCB’s summary judgment motion.

5. JPMCB was represented by the law firm of Simpson Thacher & Bartlett LLP (“**Simpson**”) in all matters relating to the Synthetic Lease Transaction. (Duker Aff. at ¶ 8; Callagy Decl. Ex. 5 (Merjian Tr.) at 9 and 11; Ex. 6 (Duker Tr.) at 17.)² GM was represented by the law firm of Mayer Brown LLP (“**Mayer Brown**”). (Callagy Decl. Ex. 11 at JPMCB-00000077, ¶ 2; Duker Aff. at ¶ 8.)

6. GM’s obligation to repay the financing advanced in the Synthetic Lease Transaction was secured by liens on certain real properties identified in the Synthetic Lease Transaction Documents as the “Properties.” (Duker Aff. at ¶ 6.) Specifically, Annex A to the Participation Agreement defines “Property” or “Properties” as the “Land” more particularly described in the “Memorandum of Lease and Supplement.” (*Id.*, Ex. B at JPMCB-STB-000001205.) “Land,” in turn, is defined as that which is described on Schedule 1 of the Memorandum of Lease and Supplement. (*Id.* at JPMCB-STB-000001195.) “Memorandum of Lease and Supplement” is defined in Section 2.4 of the Synthetic Lease Transaction lease (the “**Lease**”) as being substantially in the form of Exhibit A to the Lease and entitled “Short Form Memorandum of Lease.” (*Id.*, Ex. C at JPMCB-STB-000001220 and 1258-1268.)

7. Twelve Short Form Memorandums of Lease were executed by GM. (Duker Aff. Ex. D.) Those memorandums identified the following “Properties”: (1) SPO Warehouse – Bolingbrook, IL; (2) SPO Warehouse – Reno, NV; (3) SPO Warehouse – Denver, CO; (4) SPO Warehouse – Ontario, CA; (5) Transmission Parts Distribution Center – Indianapolis, IN; (6) Franklin Parking Deck – Detroit, MI; (7) River East Parking Deck – Detroit, MI; (8) Combined Parcels C & 6 – Detroit, MI; (9) SPO Headquarters Building – Grand Blanc, MI; (10) SPO Warehouse – Brandon, MS; (11) SPO Warehouse – Charlotte, NC; and (12)

² “**Callagy Decl.**” refers to the John M. Callagy declaration, dated July 1, 2010, filed herewith in support of JPMCB’s summary judgment motion.

Powertrain L6 Engine Plant – Flint, MI (collectively, the “Properties”). (*Id.*) The twelve Properties are also set forth and identified in Exhibit A to the First Amendment and Agreement to the Participation Agreement dated as of January 6, 2003. (*Id.*, Ex. E at JPMCB-STB-00000918-920.)

8. In order to perfect security interests in the Properties, multiple UCC-1 financing statements were filed in the relevant counties in which such Properties were located. (Duker Aff. at ¶ 7.) UCC-1 financing statements were also filed with the Delaware Secretary of State. (*Id.*, Ex. F.)

II. The Term Loan

9. On November 29, 2006, GM and Saturn Corporation (“**Saturn**”) entered into a seven year senior secured term loan (“**Term Loan**”) facility with a syndicate of financial institutions and JPMCB, acting as Administrative Agent. (Duker Aff. at ¶ 9.) The Term Loan provided GM with approximately \$1.5 billion in financing and was a completely separate transaction from the Synthetic Lease Transaction. (*Id.*)

10. The Term Loan was set forth in a Term Loan Agreement (“**Term Loan Agreement**”), dated as of November 29, 2006, among GM, as the Borrower, Saturn, as a Guarantor, the Several Lenders, Credit Suisse Securities (USA) LLC, as Syndication Agent, Barclays Bank PLC, Citigroup Global Markets Inc., Deutsche Bank Securities Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, and Morgan Stanley Senior Funding, Inc., as Co-Documentation Agents, and JPMCB, as Administrative Agent, as amended together with all related agreements and documents. (Duker Aff. at ¶ 10; Exh. G.)

11. In connection with the Term Loan, GM, Saturn and JPMCB also entered into a Collateral Agreement, dated as of November 29, 2006, which provided the lenders with

security interests in certain assets of GM and Saturn (“**Term Loan Collateral Agreement**”).

(Duker Aff. at ¶ 11; Ex. H.)

12. Specifically, the obligation to repay the Term Loan was secured by:

[A] security interest in, all of the following assets and property now owned or at any time hereafter acquired by [GM or Saturn] or in which [GM or Saturn] now has or at any time in the future may acquire any right, title or interest . . . as collateral security for the prompt and complete payment and performance when due . . . of the [Term Loan]:

- (a) all Equipment and all Fixtures, other than Excluded Equipment and Fixtures;
- (b) all Documents and General Intangibles attributable solely to Equipment or Fixtures, other than Excluded Equipment and Fixtures;
- (c) all books and records pertaining solely to Equipment or Fixtures (or Proceeds or products of Equipment or Fixtures), in each case, other than Excluded Equipment and Fixtures (or Proceeds or products thereof); and
- (d) to the extent not otherwise included in foregoing clauses, all Proceeds and products of any and all of the foregoing. . .

(collectively, the “**Term Loan Collateral**”). (Duker Aff. at ¶ 12; Ex. H at Article II at JPMCB-CSM-0000117-118.) “Excluded Equipment and Fixtures” are defined as “all Equipment and Fixtures, now owned or at any time hereafter acquired . . . which are not located at U.S. Manufacturing Facilities . . .” (*Id.*, Ex. H at JPMCB-CSM-0000116.) “U.S. Manufacturing Facilities,” in turn, is defined as “any plant or facility . . . listed on Schedule 1, including all related or appurtenant land, buildings, Equipment and Fixtures . . .” (*Id.* at JPMCB-CSM-0000117.)

13. Schedule 1 to the Term Loan Collateral Agreement lists the following forty-two facilities throughout the United States in which the Term Loan Collateral was located: (1) GM Assembly Arlington – Arlington, Texas; (2) GM Assembly Bowling Green – Bowling Green, Kentucky; (3) GM Assembly Detroit Hamtramck – Detroit, Michigan; (4) GM Assembly

Fairfax – Kansas City, Kansas; (5) GM Assembly Flint – Flint, Michigan; (6) GM Assembly Fort Wayne – Fort Wayne, Indiana; (7) GM Assembly Janesville – Janesville, Wisconsin; (8) GM Assembly Lansing Delta Township – Lansing, Michigan; (9) GM Assembly Lansing Grand River – Lansing, Michigan; (10) GM Assembly Lordstown – Lordstown, Ohio; (11) GM Assembly Moraine – Dayton, Ohio; (12) GM Assembly Orion – Lake Orion, Michigan; (13) GM Assembly Pontiac East – Pontiac, Michigan; (14) GM Assembly Saturn Wilmington – Wilmington, Delaware; (15) GM Assembly Shreveport – Shreveport, Louisiana; (16) GM Assembly Wentzville – Wentzville, Missouri; (17) GM MFD AMT (SAMCO) – New Hudson, Michigan; (18) GM MFD Flint – Flint, Michigan; (19) GM MFD Flint Tool & Die – Flint, Michigan; (20) GM MFD Grand Blanc – Grand Blanc, Michigan; (21) GM MFD Grand Rapids – Wyoming, Michigan; (22) GM MFD Indianapolis – Indianapolis, Indiana; (23) GM MFD Lansing Regional Stamping – Lansing, Michigan; (24) GM MFD Lordstown – Lordstown, Ohio; (25) GM MFD Mansfield – Mansfield, Ohio; (26) GM MFD Marion – Marion, Indiana; (27) GM MFD Parma – Parma, Ohio; (28) GM MFD Pontiac – Pontiac, Michigan; (29) GM MFD Shreveport – Shreveport, Louisiana; (30) GM Powertrain Allison Baltimore – White Marsh, Maryland; (31) GM Powertrain Bay City – Bay City, Michigan; (32) GM Powertrain Bedford – Bedford, Indiana; (33) GM Powertrain Defiance – Defiance, Ohio; (34) GM Powertrain Flint Engine South – Flint, Michigan; (35) GM Powertrain Livonia – Livonia, Michigan; (36) GM Powertrain Massena – Massena, New York; (37) GM Powertrain Parma – Parma, Ohio; (38) GM Powertrain Romulus Engine – Romulus, Michigan; (39) GM Powertrain Toledo – Toledo, Ohio; (40) GM Powertrain Tonawanda – Buffalo, New York; (41) GM Powertrain Warren Transmission – Warren, Michigan; (42) GM Powertrain Willow Run – Ypsilanti, Michigan. (*Id.* at Schedule 1 at JPMCB-CSM-0000133.)

14. The Term Loan Agreement provided that the security interest in the Term Loan Collateral would be perfected:

When financing statements in appropriate form are filed in the offices specified on Schedule 3.12, the Collateral Agreement will constitute a fully perfected Lien on and security interest in all right, title and interest of the Loan Parties in the Collateral described therein to the extent perfection can be obtained by filing Uniform Commercial Code financing statements, prior to the rights of any other Person

(Duker Aff. Ex. G at § 3.12 at JPMCB-CSM-0000035.) Schedule 3.12, entitled “List of Financing Statements to be Filed,” identified GM and Saturn UCC-1 financing statements to be filed with the office of the Delaware Secretary of State as well as twenty-four UCC-1 financing statements to be filed as fixture filings for each of the identified “Material Facilities” in the corresponding County Clerk’s offices. (*Id.* at JPMCB-CSM-0000073-74.) The Term Loan Agreement defines “Material Facilities” listed on Schedule 3.12 as “any U.S. Manufacturing Facility . . . upon which [Term Loan Collateral] having a net book value . . . of at least \$100,000,000 in the aggregate shall be installed or located.” (*Id.* at JPMCB-CSM-0000017.)

15. Accordingly, after the closing of the Term Loan, JPMCB caused the filing of multiple UCC-1 financing statements to perfect the lenders’ security interests in the Term Loan Collateral. (Duker Aff. at ¶ 13.) Specifically, on November 30, 2006, JPMCB caused the filing of two UCC-1 financing statements with the Delaware Secretary of State listing GM and Saturn, respectively, as the debtor and JPMCB, as Administrative Agent, as the secured party. (Duker Aff. at ¶ 13; Ex. I.) JPMCB also caused the filing of twenty-six state fixture filings in the County Clerk’s offices where the facilities containing Term Loan Collateral were located. (*Id.*, Ex. J.) The twenty-six state fixture filings were filed in counties located in Delaware, Indiana, Kansas, Louisiana, Michigan, New York, Ohio, Texas and Wisconsin. (*Id.*)

16. Under the Term Loan documentation, the lenders' perfected security interest in the Term Loan Collateral could not be eliminated unless the Term Loan was fully paid off or "without the written consent of each Lender." (Duker Aff. Ex. G at § 10.01 at JPMCB-CSM-0000052-53 and Ex. H at § 7.13 at JPMCB-CSM-0000128.)

17. GM and Saturn also covenanted in the Term Loan Collateral Agreement that they would maintain the perfection of the security interests in the Term Loan Collateral:

[GM and/or Saturn] shall maintain the security interest created by [the Term Loan Collateral Agreement] as a perfected security interest having as least the priority described in Section 3.02 and shall defend such security interest against the claims and demands of all Persons whomsoever . . .

(*Id.*, Ex. H at § 4.03 at JPMCB-CSM-0000120.) The Term Loan Collateral Agreement further provided:

None of the terms or provisions of this Agreement [including Section 4.03] may be waived, amended, supplemented or otherwise modified except in writing signed by all parties hereto in accordance with Section 10.01 of the Credit Agreement.

(*Id.* at § 7.01 at JPMCB-CSM-0000125.)

18. At all pertinent times, JPMCB was represented by Cravath, Swaine & Moore LLP ("**Cravath**") or Morgan Lewis & Bockius LLP ("**Morgan Lewis**") in connection with the Term Loan. (Duker Aff. at ¶ 14; Callagy Decl. Ex. 6 (Duker Tr.) at 11 and 28-29.)

19. Simpson did not represent JPMCB in any respect in connection with the Term Loan, and did not have any authority, involvement or responsibilities with respect to the Term Loan. (Duker Aff. at ¶¶ 14 and 21; Callagy Decl. Ex. 5 (Merjian Tr.) at 54-55.)

III. The Termination of the Synthetic Lease Transaction In October 2008

20. In an email dated September 30, 2008, a representative of GM informed its counsel Robert Gordon, a partner at Mayer Brown, that it planned to repay the outstanding amount due under the Synthetic Lease Transaction, which would be accomplished by GM's repurchase of the remaining Properties. (Callagy Decl. Ex. 12 at MB002462.)

21. On October 1, 2008, Arun Sundaram of GM informed Richard W. Duker of JPMCB that GM intended to repay all outstanding amounts under the Synthetic Lease Transaction. (Duker Aff. at ¶ 15; Ex. K.)

22. As of October 1, 2008, the balance of the amount to be repaid on the Synthetic Lease Transaction was approximately \$150 million. (Duker Aff. at ¶ 15.)

23. GM requested that Mayer Brown "prepare the documents necessary for [JPMCB and the other lenders] to be paid off for the obligations on that synthetic lease and to release their interest in those properties." (Callagy Decl. Ex. 4 (Gordon Tr.) at 6.)

24. Mr. Gordon assigned this work to Ryan Green, a Mayer Brown real estate associate. (*Id.* at 12.) Mr. Green was to draft the documents necessary for "the termination and payoff of the synthetic lease." (*Id.*)

25. Mr. Gordon also asked Mr. Green to "put together [a] checklist draft," referring to a checklist of the required documents for the release and transfer of the Synthetic Lease Transaction Properties, including "an initial draft of a brief checklist of required documents for the release and transfer." (Callagy Decl. Ex. 12.)

26. Mr. Gordon, thereafter, did not stay involved in the day-to-day drafting of the closing documents. (Callagy Decl. Ex. 4 (Gordon Tr.) at 58.)

27. The documents prepared by Mr. Green included: (i) a termination agreement; (ii) a closing checklist; (iii) UCC-3 termination statements; and (iv) an escrow letter.

A. The Synthetic Lease Termination Agreement

28. A “Termination Agreement and Release of Operative Agreements” (the “**Synthetic Lease Termination Agreement**”) was initially circulated in draft form by Mr. Green to the parties on October 15, 2008. (Callagy Decl. Ex. 16 at JPMCB-STB-00000186-189.)

29. Among other things, the Synthetic Lease Termination Agreement only provided GM with authority to file UCC-3 termination statements as to existing UCC-1 financing statements filed in connection with Properties that were the subject of the Synthetic Lease Transaction. (Callagy Decl. Ex. 4 (Gordon Tr.) at 22-23.)

30. Specifically, the Synthetic Lease Termination Agreement stated that:

In consideration of ONE Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby confessed and acknowledged, the undersigned, each of which is a party to one or more of the agreements identified as the Operative Agreements, hereby agree that (i) each of such Operative Agreements and any Commitment thereunder is hereby terminated and is discharged and of no further force or effect as of the date hereof, and (ii) the Administrative Agent and Lessor do hereby (x) release all of their Liens and Lessor Liens against the Properties created by the Operative Agreements, (y) acknowledge that such Liens and Lessor Liens are forever released, satisfied and discharged and (x) authorize Lessee to file a termination of any existing Financing Statements relating to the Properties.

(Duker Aff. Ex. L at JPMCB-0002801.)

31. The Synthetic Lease Termination Agreement further stated that “[a]ll capitalized terms not otherwise defined herein shall have the meanings set forth in Annex A to that certain Participation Agreement dated as of October 31, 2001 . . .” (*Id.*)

32. Annex A and the relevant Synthetic Lease Transaction Documents specifically defined Properties to include the following twelve parcels of real estate: (1) SPO

Warehouse – Bolingbrook, IL; (2) SPO Warehouse – Reno, NV; (3) SPO Warehouse – Denver, CO; (4) SPO Warehouse – Ontario, CA; (5) Transmission Parts Distribution Center – Indianapolis, IN; (6) Franklin Parking Deck – Detroit, MI; (7) River East Parking Deck – Detroit, MI; (8) Combined Parcels C & 6 – Detroit, MI; (9) SPO Headquarters Building – Grand Blanc, MI; (10) SPO Warehouse – Brandon, MS; (11) SPO Warehouse – Charlotte, NC; and (12) Powertrain L6 Engine Plant – Flint, MI. (Duker Aff. at ¶ 6; Exs. B, D and E at JPMCB-STB-00000918-920.)

33. The Synthetic Lease Termination Agreement only authorized the filing of UCC-3 termination statements relating to the Properties that served as collateral for the Synthetic Lease Transaction. (Callagy Decl. Ex. 2 (Green Tr.) at 95-96; Ex. 5 (Merjian Tr.) at 56; Ex. 11 at JPMCB-00000078-79; Duker Aff. at ¶ 18; Hoge Aff. at ¶¶ 8-9, and 11.)³

34. The Synthetic Lease Termination Agreement was executed by GM, JPMCB and the other parties to the transaction on or about October 30, 2008, the effective date of the closing of the transaction. (Duker Aff. at ¶ 17; Ex. L; Hoge Aff. at ¶ 7.)

35. The Synthetic Lease Termination Agreement was the only source of GM's and Mayer Brown's authority to file UCC-3 termination statements. (Callagy Decl. Ex. 4 (Gordon Tr.) at 53-54; Ex. 11 at JPMCB-00000078-79; Duker Aff. at ¶ 18; Hoge Aff. at ¶¶ 8-9, and 11.)

B. The Synthetic Lease Closing Checklist

36. Mr. Green, with the assistance of a Mayer Brown real estate paralegal, Stewart Gonshorek, also drafted a closing checklist (the “**Synthetic Lease Closing Checklist**”) in connection with the Synthetic Lease Transaction repayment. (Callagy Decl. Ex. 2 (Green Tr.)

³ “Hoge Aff.” refers to the Debra Homic Hoge affidavit, dated March 18, 2010, filed herewith.

at 10-12.) The Synthetic Lease Closing Checklist referenced the documents Mr. Green believed to be necessary to effectuate the repayment of the Synthetic Lease Transaction. (*Id.* at 7-8, 10-12 and 85-87.)

37. Mr. Green entitled the draft closing checklist:

CLOSING CHECKLIST
General Motors: Release of Properties from JPMorgan Chase Synthetic Lease
CLOSING DATE: October 31, 2008.

(Callagy Decl. Ex. 15.)

38. Mr. Green testified that, in order to determine what types of documents should be included on the Synthetic Lease Closing Checklist, he:

[L]ooked through a copy of the [P]articipation [A]greement. That's the main document for the [Synthetic Lease Transaction] and it contained a description of how to unwind and the relevant documents.

(Callagy Decl. Ex. 2 (Green Tr.) at 8.)

39. Mr. Green's intent in preparing the checklist was "to list the documents which would release security relating to the synthetic lease facility." (Callagy Decl. Ex. 2 (Green Tr.) at 85-87.)

40. The Synthetic Lease Closing Checklist listed several dozen closing documents relating to the Properties, such as the various UCC-1 financing statements that needed to be terminated for each property, including multiple Delaware UCC-1 financing statements filed with the Delaware Secretary of State that needed to be terminated. (Callagy Decl. Ex. 15.)

41. Under section 5 of the Synthetic Lease Closing Checklist, entitled "General Documentation," Mr. Green and Mr. Gonshorek listed filing numbers for three Delaware UCC-1 financing statement to be terminated. (Callagy Decl. Ex. 15 at JPMCB-STB-00000076.) Specifically, subcategory A of the "General Documentation" section set forth:

Termination of UCCs (central, DE filings) Blanket-type financing statements as to real Property and related collateral located in Marion County, Indiana (file number 2092532 5, file date 4/12/02 and file number 2092526 7, file date 4/12/02)) financing statement as to equipment, fixtures and related collateral located at certain U.S. manufacturing facilities (file number 6416808 4, file date 11/30/06).

(Id.)

42. The three UCC-1 filing numbers listed on the Synthetic Lease Closing Checklist were derived from a UCC search Mr. Green had requested that another Mayer Brown paralegal, Michael Perlowski, perform in order to identify UCC-1 financing statements filed against GM and in favor of JPMCB in Delaware. (Callagy Decl. Ex. 1 (Perlowski Tr.) at 10-12; Ex. 2 (Green Tr.) at 9, 21-22; Ex. 7.)

43. Working from the results of a prior Mayer Brown search for UCC-1 financing statements recorded against GM, Mr. Perlowski identified several UCC-1 financing statements in response to Mr. Green's request. (Callagy Decl. Exs. 8-10; Ex. 1 (Perlowski Tr.) at 12.)

44. Mr. Perlowski was not aware of the specific transaction on which Mr. Green was working. (Callagy Decl. Ex. 1 (Perlowski Tr.) at 40.)

45. Mr. Green and Mr. Gonshorek, believed that all of the Delaware UCC-1 financing statements identified by Mr. Perlowski pertained to the Synthetic Lease Transaction, and that UCC-3 termination statements should therefore be prepared for each in connection with the Synthetic Lease Transaction repayment. (Callagy Decl. Ex. 2 (Green Tr.) at 86-89; Ex. 3 (Gonshorek Tr.) at 9-11 and 47-48.)

46. The UCC-1 financing statement filed against GM in favor of JPMCB with the filing number 6416808 4, however, did not relate to the Synthetic Lease Transaction. (Duker

Aff. Ex. I at JPMCB-CSM-0000277-281.) Instead, this UCC-1 financing statement had been filed in Delaware in connection with the Term Loan. (*Id.*)

47. Mr. Green circulated a draft of the Synthetic Lease Closing Checklist to GM as well as to counsel for JPMCB on October 15, 2008. (Callagy Decl. Exs. 13 and 15.)

48. Mr. Green circulated updated, but largely similar, drafts of the Synthetic Lease Closing Checklist to JPMCB's counsel, among others, later on October 15, and again on October 21, 2008. (Callagy Decl. Exs. 16 at JPMCB-STB-00000266-272 and 17 at MB000007-18.)

49. The subject lines for each one of Mr. Green's e-mails attaching the drafts of the Synthetic Lease Closing Checklist stated that the attached related to the "GM/JPMorgan Chase - Synthetic Lease." (Callagy Decl. Exs. 13, 15, 16 and 17.)

50. Mr. Duker of JPMCB also received drafts of the Synthetic Lease Closing Checklist from GM, Mr. Sundaram, and JPMCB's outside counsel, Simpson, on October 15, 2009. (Callagy Decl. Exs. 14, 22 and 23.) In each case, the cover email attaching the draft indicated that the checklist concerned the Synthetic Lease Transaction. (*Id.*) Mr. Duker did not believe that the drafts of the Synthetic Lease Closing Checklist that he received related to anything but the Synthetic Lease Transaction. (Duker Aff. at ¶ 16.)

51. None of the circulated drafts of the Synthetic Lease Checklist referenced the Term Loan. (Callagy Decl. Exs. 13-17 and 22-23.)

52. None of the parties who received a draft of the Synthetic Lease Closing Checklist recognized that the filing number 6416808 4 listed therein was unrelated to the Synthetic Lease Transaction. (Duker Aff. at ¶ 29.)

53. Throughout the closing of the Synthetic Lease Transaction, there were no discussions among JPMCB, Simpson, GM, Mayer Brown or any party to the transaction regarding any of the three Delaware UCC-1 financing statements listed on the Synthetic Lease Closing Checklist, including the UCC-1 financing statement numbered 6416808 4. (Callagy Decl. Ex. 5 (Merjian Tr.) at 18 and 22; Duker Aff. ¶ 16.)

C. The Unrelated Termination Statement

54. On October 15, 2008, Mr. Green also circulated by email to Simpson, GM and Messrs. Gordon and Gonshorek of Mayer Brown, among others, drafts of the documents previously only referenced on the Synthetic Lease Closing Checklist. (Callagy Decl. Ex. 16.)

55. Mr. Green's email attached nearly one hundred pages of draft documents. (Callagy Decl. Ex. 16.) These documents included ten different draft UCC-3 termination statements: seven county filings to be filed in the counties where the Properties were located, and three to release the Delaware UCC-1 financing statements referenced in the Synthetic Lease Closing Checklist. (*Id.* at JPMCB-STB-00000204-206, 221-222, 226-227 and 242-244.)

56. Mr. Green did not attach copies of any of the UCC-1 financing statements that corresponded to the filing numbers referenced on the ten draft UCC-3 termination statements that were circulated. (Callagy Decl. Ex. 16.)

57. Nothing in Mr. Green's e-mail or enclosures referenced the Term Loan. (Callagy Decl. Ex. 16.)

58. The subject line of Mr. Green's e-mail enclosing the draft documents was "GM/JPMorgan Chase – Synthetic Lease (Auto Facilities Real Estate Trust 2001-1)." (Callagy Decl. Ex. 16.)

59. One of the ten draft UCC-3 termination statements circulated among the nearly one hundred pages of draft documents by Mr. Green corresponded to the UCC-1 financing statement numbered 6416808 4 (the “**Unrelated Termination Statement**”). (Callagy Decl. Ex. 16 at JPMCB-STB-00000206.)

60. Mr. Gonshorek, the paralegal tasked with drafting the UCC-3 termination statements, prepared the Unrelated Termination Statement intending to terminate the UCC in connection with the synthetic lease becoming unwound. (Callagy Decl. Ex. 3, Gonshorek Tr. at 20.)

61. Under section 10 of the draft Unrelated Termination Statement, Mr. Gonshorek typed in “Matter No. 00652500.” (Callagy Decl. Ex. 16 at JPMCB-STB-00000206.)

62. “Matter No. 00652500” is an internal Mayer Brown client-matter number and relates exclusively to Mayer Brown’s representation of GM in connection with the Synthetic Lease Transaction and its repayment. (Callagy Decl. Ex. 2 (Green Tr.) at 81-82.)

63. The Unrelated Termination Statement referenced GM as the debtor, JPMCB, as Administrative Agent, as the secured party and the filing number 646808 4. (Callagy Decl. Ex. 16 at JPMCB-STB-00000206.)

64. The draft Unrelated Termination Statement made no reference to the Term Loan. (Callagy Decl. Ex. 16 at JPMCB-STB-00000206.)

D. The Synthetic Lease Escrow Letter

65. As part of the Synthetic Lease Transaction repayment, the parties agreed to use an escrow agent, LandAmerica, who was to hold the executed closing documents in escrow pending receipt of payment from GM. (Callagy Decl. Ex. 18; Ex. 4 (Gordon Tr.) at 20; Ex. 5 (Merjian Tr.) at 33-34.)

66. On October 24, 2008, Mr. Green circulated a draft of the escrow letter (the “**Synthetic Lease Escrow Letter**”) to JPMCB’s counsel and others. (Callagy Decl. Ex. 18.)

67. The subject line of Mr. Green’s cover e-mail attaching the draft of the Synthetic Lease Escrow Letter indicated that it pertained to the Synthetic Lease Transaction: “Re: GM/JPMorgan Chase – Synthetic Lease (Auto Facilities Real Estate Trust 2001-1).” (Callagy Decl. Ex. 18.)

68. The purpose of the Synthetic Lease Escrow Letter was to arrange for the payoff of the Synthetic Lease Transaction. (Callagy Decl. Ex. 4 (Gordon Tr.) at 20.) It was also to have the documents in connection with the Synthetic Lease Transaction placed with one party so that they could be released at the appropriate time to the appropriate parties. (*Id.*, Ex. 5 (Merjian Tr.) at 33-34.) The Synthetic Lease Escrow Letter further provided certain instructions to the escrow agent in connection with its purpose. (*Id.*, Ex. 19.)

69. The subject line of the Synthetic Lease Escrow Letter indicated that it related only to the repayment of the Synthetic Lease Transaction:

Termination of that certain Participation Agreement dates as of October 31, 2001, among General Motors Corporation (“**GM**”), as Lessee and Construction Agent, Auto Facilities Real Estate Trust 2001-1 (“**Trust**”), as Lessor, Wilmington Trust Company (“**Trustee**”), as Trustee, the Persons named therein as Investors, the Persons named therein as Backup Facility Banks, Relationship Funding Company, LLC, and JPMorgan Chase Bank (“**Agent**”), as Administrative Agent, as amended (the “**Participation Agreement**”) and release of all liens related thereto including liens relating to the following properties: (i) the SPO Headquarters Building located in Grand Blanc, Michigan (the “**Grand Blanc Property**”); (ii) the GM Powertrain L6 Engine Plant in Flint, Michigan (the “**Flint Property**”); (iii) the Franklin Deck in Detroit, Michigan (the “**Franklin Deck**”); (iv) the River East Parking Deck in Detroit, Michigan (the “**River East Deck**”); and (v) Parcel 6/C in Detroit, Michigan (“**Parcel 6/C**”) (the Grand Blanc Property, the Flint Property, the Franklin Deck, the River East Deck and Parcel 6/C herein are each a “**Property**” and,

collectively, the “**Properties**”). Capitalized terms used but not defined herein have the respective meanings specified in Annex A to the Participation Agreement.

(Callagy Decl. Ex. 19 at MB000024.)

70. The Synthetic Lease Escrow Letter further stated that upon the closing the parties would each receive sets of the documents listed therein, defined “collectively, [as] the Escrow Documents.” (Callagy Decl. Ex.19 at MB000024.)

71. One of the dozens of Escrow Documents listed in the Synthetic Lease Escrow Letter was “Termination of UCC Financing Statements (File Numbers 2092532 5, 2092526 7, and 6416808 4) (the “**General UCC Terminations**”).” (Callagy Decl. Ex.19 at MB000024.)

72. There was no reference to the Term Loan in the Synthetic Lease Escrow Letter. (Callagy Decl. Ex.19.)

73. The Synthetic Lease Escrow Letter instructed LandAmerica to record a subset of certain of the Escrow Documents (defined therein as “**Recording Documents**”) with the appropriate recording offices in the applicable states following the repayment. (Callagy Decl. Ex. 19 at MB000028-29.)

74. The Recording Documents set forth in the Synthetic Lease Escrow Letter consisted of documents such as releases of Mortgages, releases of Assignments of Leases and Rents, terminations of Short Form Memorandum of Leases and quitclaim Deeds. (Callagy Decl. Ex. 19 at MB000028-29.) The Recording Documents did not include any of the General UCC Terminations. (*Id.*)

75. The Synthetic Lease Escrow Letter instructed the escrow agent to forward the remaining Escrow Documents, including the General UCC Terminations, along with certified copies of the Recording Documents, to GM’s counsel:

Immediately following closing, any extra original documents and copies of all Escrow Documents shall be forwarded to the counsel for GM, except for those documents which have been forwarded to the recorder's office (in which case certified copies of the foregoing shall be found to the counsel for GM).

(Callagy Decl. Ex. 19 at MB000029.)

76. The Synthetic Lease Escrow Letter did not provide any instructions or authority to GM's counsel as to what to do with those documents upon their delivery. (Callagy Decl. Ex. 19.)

77. GM's counsel, who prepared the Synthetic Lease Escrow Letter, testified that:

The [termination] statements that related to the GM/Chase synthetic lease were permitted to be filed by [virtue of] the [Synthetic Lease Termination Agreement], not [the Synthetic Lease Escrow Letter].

(Callagy Decl. Ex. 4 (Gordon Tr.) at 21.)

E. Mayer Brown Has UCC-3 Termination Statements Filed

78. GM repaid the amount due on the Synthetic Lease Transaction on October 30, 2008. (Callagy Decl. Ex. 24; Duker Aff. at ¶ 19.)

79. Thereafter, Mayer Brown caused the filing of UCC-3 termination statements with the Delaware Secretary of State, on October 30, 2008, including the Unrelated Termination Statement. (Callagy Decl. Ex. 21.)

80. The aforementioned UCC-3 termination statements were not signed by JPMCB. (Duker Aff. at ¶ 19.)

IV. GM Continues To Treat JPMCB And The Other Term Loan Lenders As Fully Perfected Secured Parties Under The Term Loan After October 30, 2008

81. Between January and March 2009, GM engaged in negotiations to amend the Term Loan with JPMCB and the other Term Loan lenders. (Duker Aff. at ¶ 22.)

82. In January 2009, GM expected its auditors would include a “going concern” qualification in their opinion for 2008, which would have constituted a default under the Term Loan. (Duker Aff. at ¶ 23.) GM therefore sought, among other things from JPMCB and the other Term Loan lenders, a waiver of the “going concern” requirement, as well as the ability for GM to provide a second lien on the Term Loan Collateral to the U.S. government – albeit junior to the lien of the Term Loan lenders. (Duker Aff. at ¶ 23; Ex. M.) The parties also negotiated an increase to the required ratio of the net book value of the Term Loan Collateral to the outstanding amount of the loan from 2.5 to 1 to 3.25 to 1. (*Id.*)

83. Ultimately, the parties agreed to, among other things, an increase in fees to be paid to the Term Loan lenders, an increase in the Term Loan Collateral ratio and a requirement that GM provide reports (“**Collateral Value Certificates**”) to the Term Loan lenders detailing the value of the Term Loan Collateral on a quarterly basis. (Duker Aff. at ¶ 25.)

84. The First Amendment to the Term Loan was executed on March 4, 2009 (“**First Amendment**”). (Duker Aff. at ¶ 25; Ex. N.)

85. Throughout the negotiations of the First Amendment, no one from GM or anywhere else suggest that the Term Loan lenders’ security interests in the Term Loan Collateral were not fully perfected. (Duker Aff. at ¶ 25.)

86. Subsequent to October 30, 2008, GM continued to provide Collateral Value Certificates to JPMCB as required by Section 5.02 of the Term Loan Agreement and as amended by the First Amendment thereto certifying that the ratio of the net book value of the Term Loan Collateral to the outstanding obligation was at, or above, the contractual requirement. (Duker Aff. at ¶ 26; Exs. G and N.)

87. Specifically, GM sent Collateral Value Certificates on December 2, 2008, March 23, 2009 and on the eve of its bankruptcy filing, May 28, 2009. (Duker Aff. at ¶ 26; Ex. O.)

88. Pursuant to the May 28, 2009 Collateral Value Certificate, the Term Loan Collateral had a net book value of more than \$5.6 billion dollars. (Duker Aff. at ¶ 27; Ex. O at JPMCB-0000059.)

89. At no point in time between October 30, 2008 and June 1, 2009 did anyone from GM or anyone else raise any suggestion or concern regarding the Term Loan lenders' perfected security interest in the Term Loan Collateral. (Duker Aff. at ¶ 28.)

V. JPMCB's Counsel Discovers The Unrelated Termination Statement

90. GM filed for bankruptcy on June 1, 2009. (Complaint at Adversary Proceeding Docket Entry 1 at ¶ 5.)

91. On or about June 15, 2009, JPMCB's counsel in connection with Term Loan and the GM bankruptcy, Morgan Lewis, discovered that Mayer Brown had caused a UCC-3 termination statement to be filed in October 2008 related to the Term Loan. (Callagy Decl. Ex. 20.)

92. On June 19, 2009, promptly after its discovery, Morgan Lewis advised counsel for the estate, the U.S. Treasury and the Committee of this fact and provided each with an affidavit executed by Mr. Gordon of Mayer Brown which stated, in part:

Mayer Brown has never represented GM with respect to the Term Loan Agreement among GM and others and [JPMCB], as Administrative Agent.

GM was not authorized by the [Synthetic Lease] Termination Agreement to terminate any financing statement related to the Term Loan Agreement.

(Callagy Decl. Ex. 11 at JPMCB-00000078-79 at ¶¶ 9-10.)

93. All of the deponents in this adversary proceeding testified that they first learned that the Unrelated Termination Statement that was filed in October 2008 was related to the Term Loan in June 2009, after GM had filed for bankruptcy protection. (Callagy Decl. Ex. 1 (Perlowski Tr.) at 32; Ex. 2 (Green Tr.) at 64; Ex. 3 (Gonshorek Tr.) at 35; Ex. 4 (Gordon Tr.) at 25; Ex. 6 (Duker Tr.) at 22; Duker Aff. at ¶ 29; Hoge Aff. at ¶ 12.)

94. Only one witness could not recall the exact date he learned about this issue, but circumstances and the testimony of all other witnesses make it clear it was after GM filed for bankruptcy protection. (Callagy Decl. Ex. 5 (Merjian Tr.) at 41 and 43.)

95. The first time the Committee or any of its members became aware of the filing of the UCC-3 termination statement related to the Term Loan was after GM filed for bankruptcy. (Callagy Decl. Ex. 25.)

96. On June 25, 2009, this Court entered an order entitled: *Final Order Pursuant to Bankruptcy Code Sections 105(a), 361, 362, 363, 364 and 507 and Bankruptcy Rules 2002, 4001 and 6004(A) Approving a DIP Credit Facility and Authorizing the Debtors to Obtain Post-Petition Financing Pursuant Thereto, (B) Granting Related Liens and Super-Priority Status, (C) Authorizing the Use of Cash Collateral and (D) Granting Adequate Protection to*

Certain Pre-Petition Secured Parties (the “**DIP Order**”), in the GM bankruptcy. (DIP Order at Chapter 11 Case Docket Entry 2529.)

97. The DIP Order, in addition to authorizing Debtors to repay the Term Loan, also released JPMCB and the Term Loan lenders from all claims and causes of action, including avoidance actions, provided that the Committee could challenge:

with respect only to the perfection of first priority liens of the Prepetition Senior Facilities Secured Parties [as defined in the DIP Order].

(DIP Order at Chapter 11 Case Docket Entry 2529 at pg. 25.)

98. The DIP Order further limited the Committee’s potential causes of action against JPMCB by providing that “[JPMCB, as Administrative Agent] shall have no responsibility or liability for amounts paid to any [Term Loan lenders] and such agent[] shall be exculpated for any and all such liabilities, excluding only such funds as are retained by each such agent solely in its respective role as lender.” (DIP Order at Chapter 11 Case Docket Entry 2529 at pg. 26.)

99. Pursuant to the terms of the DIP Order, the Term Loan was repaid on June 30, 2009 out of the proceeds of the \$33 billion DIP Credit Facility financing advanced by the U.S. Treasury. (DIP Order at Chapter 11 Case Docket Entry 2529; Duker Aff. at ¶ 31.)

100. Subsequent to the Term Loan repayment, JPMCB authorized and caused the filing of all UCC-3 termination statements relating to the Term Loan. (Duker Aff. at ¶ 31; Ex. P.)

VI. GM and Mayer Brown Did Not Believe They Had Authority to File A Termination Statement Related To The Term Loan

101. Mayer Brown believed that all the UCC-3 termination statements that it had caused to be filed in October 2008 related to the Synthetic Lease Transaction, and at no point

did Mayer Brown believe it had any authority to file a UCC-3 termination statement related to the Term Loan. (Callagy Decl. Ex. 11 at JPMCB-00000077-79.)

102. Mr. Gordon also testified that he did not believe Mayer Brown had the authority to file the Unrelated Termination Statement:

Q. During the period of time that you were working on this transaction -- this synthetic lease transaction up to the present, has anybody ever told you that JPMorgan authorized the filing of the unrelated termination statement?

A. No.

Q. During the period of time you worked on this matter up to today, did you ever form the belief that Mayer Brown was authorized in filing the unrelated termination statement?

A. No.

(Callagy Decl. Ex. 4 (Gordon Tr.) at 66.)

103. Mr. Green never believed that, in the context of his work on the Synthetic Lease Transaction repayment, he released any security in connection with the Term Loan:

Q. Now, the beginning of your work on this synthetic lease transaction, the unwind. Up until the point you had your conversation with counsel in June of '09, I believe it was, did you ever believe that in the context of your work that you would be releasing any security or filing any UCC 3 that would release any security in connection with assets, backstopping, a term loan arrangement between General Motors on the one hand and JPMorgan on the other?

A. No.

Q. Did you believe during that same point, during that same time frame, that you had any permission from JPMorgan to release any security relating to the term loan between General Motors and JPMorgan?

A. I understood that by closing, assuming closing we were authorized to release security related to the Chase synthetic lease.

Q. And, in fact, during the period of time from beginning of October '08 to June of '09 you were unaware of the existence of any other financing arrangement which we now call the term loan; is that correct, sir?

A. That's correct.

(Callagy Decl. Ex. 2 (Green. Tr.) at 88-89.)

104. Mr. Green understood that all the documents that he drafted in October 2008 related solely to the repayment of the Synthetic Lease Transaction. (Callagy Decl. Ex. 2 (Green Tr.) at 99.)

105. Prior to GM filing for bankruptcy on June 1, 2009, Mr. Green had never heard of the Term Loan. (Callagy Decl. Ex. 2 (Green Tr.) at 84 and 89.)

106. Mr. Green understood that only the "security relating to the [S]ynthetic [L]ease [Transaction] was going to be released." (Callagy Decl. Ex. 2 (Green Tr.) at 83.)

107. Mr. Green further testified:

Q. Did you, Mr. Green, on behalf --in the course of your representation of General Motors in the unwinding of the synthetic lease transaction and up to the point of the closing, did you believe that Mayer Brown had been given any authority by JPMorgan or its counsel to release liens on security relating to the term loan financing arrangement between General Motors and JPMorgan?

* * *

A. No

(Callagy Decl. Ex. 2 (Green Tr.) at 99.)

108. Mr. Gonshorek testified that he believed that all of the paralegal work that he did for Mr. Green in October 2008 related to the repayment of the Synthetic Lease Transaction.

Q. And from the time that you first began to work with Mr. Green on this particular transaction, did all the work that you did with Mr. Green relate to that synthetic lease transaction?

A. Yes.

(Callagy Decl. Ex. 3 (Gonshorek Tr.) at 47.)

109. Mr. Gonshorek further testified that he believed that all of the documents that he prepared in the context of repaying the Synthetic Lease Transaction related only to that transaction:

Q. Now, at all times that you were working on the transaction with Mr. Green –

A. This specific?

Q. -- this specific transaction, this synthetic lease transaction, did you believe that the documents you were preparing were being prepared in the context of winding up the synthetic lease transaction and no other transaction?

A. Yes.

(Callagy Decl. Ex. 3 (Gonshorek Tr.) at 47-48.)

110. Mr. Perlowski, the other Mayer Brown paralegal who worked on the matter, did not have any knowledge of the transaction for which he was asked to search for Delaware state filings:

Q. In connection with this specific memoranda that Mr. Green sent to you at the time that you received this, did you know what the matter was that Mr. Green was working on?

A. No.

Q. And in between the time that you received this and the time you stopped working with Mr. Green in connection with this transaction, did you ever know what transaction Mr. Green was working on?

A. No.

Q. Did you ever have any discussion with Mr. Green about what transaction in connection with GM that Mr. Green was working on?

A. No.

(Callagy Decl. Ex. 1 (Perlowski Tr.) at 40-41.)

111. Debra Homic Hoge, the Director of the Worldwide Real Estate Group at GM, who executed the Synthetic Lease Termination Agreement on behalf of GM, stated in her affidavit that:

Old GM was not authorized by the Synthetic Lease Termination Agreement, nor did old GM believe it had any authority to terminate any UCC-1 financing statement related to the Term Loan. Nor did old GM provide Mayer Brown with any authority to file a termination statement with respect to the UCC-1 financing statement related to the Term Loan.

(Hoge Aff. at ¶ 11.)

112. Mr. Duker of JPMCB stated in his sworn affidavit that JPMCB provided no authority to file the Unrelated Termination Statement:

JPMCB did not authorize GM nor its counsel, Mayer Brown, to file a UCC-3 termination statement relating to the Term Loan in October 2008 or at any time prior to GM's bankruptcy filing on June 1, 2009.

(Duker Aff. at ¶ 20.)

113. Mr. Duker further stated that:

[] Simpson represented JPMCB only with respect to the Synthetic Lease Transaction. Simpson did not have any authority with respect to the Term Loan.

(Duker Aff. at ¶ 21.)

114. JPMCB's counsel, Simpson, has also testified that they gave no authority to file the Unrelated Termination Statement.

Q. In October of 2008 when you were representing JPMorgan in connection with the payoff of the synthetic lease transaction, did you understand or have any understanding that Mayer Brown had any authority to do anything with respect to the security underlying the term loan financing?

A. No. Mayer Brown's authority to do anything in the synthetic lease transaction derives from a very -- one document called the termination agreement which authorizes only the releases of collateral that relate to the synthetic lease.

(Callagy Decl. Ex. 5 (Merjian Tr.) at 56.)

Dated: New York, New York
July 1, 2010

KELLEY DRYE & WARREN LLP

By: /s/ John M. Callagy

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