

August 7, 2018

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**VIA EMAIL, ECF, AND FEDERAL EXPRESS**

The Honorable Martin Glenn  
U.S. Bankruptcy Court  
Southern District of New York  
One Bowling Green, Courtroom 523  
New York, New York 10004-1408

Re: *Motors Liquidation Company Avoidance Action Trust v. JPMorgan Chase Bank, N.A. et al.*, Case No. 09-00504 (MG)

Dear Judge Glenn:

We write in response to Plaintiff's letter of July 31, 2018 (Dkt. 1058) requesting a pre-motion conference. As the Court is likely aware, we (along with our co-counsel at Jones Day) represent a group of Term Lenders holding approximately \$600 million in Term Loan debt. Our clients were not served with Plaintiff's complaint until mid-2015, and did not participate in Phase I of this case. We join fully in the letter submitted today by JPMorgan, but write separately to respond to Plaintiff's assertion that the Second Circuit's 2015 decision means that the Termination Statement is legally effective against the non-JPMorgan Term Lenders, and to explain why this question cannot be resolved by motion for summary adjudication.

This Court has held that while the Second Circuit's 2015 decision is binding as precedent, the non-JPMorgan Term Lenders have a due process right to raise any legal or factual issues that were not presented to the Second Circuit.<sup>1</sup> We intend to present just such an issue: As we explain below, the Second Circuit's decision was predicated on the then-undisputed "fact" that no one at Old GM's counsel (Mayer Brown) "noticed" that anything was amiss about the Termination Statement.<sup>2</sup> This factual assumption was at the basis of every appellate decision rendered in this case,<sup>3</sup> and was essential to the Second Circuit's ultimate conclusion. The actual record, however, shows that this assumption was incorrect.

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<sup>1</sup> Dkt. 643 at 36–37.

<sup>2</sup> *Official Comm. of Unsecured Creditors of Motors Liquidation Co. v. JPMorgan Chase Bank, N.A. (In re Motors Liquidation Co.)* ("Motors II"), 777 F.3d 100, 102 (2d Cir. 2015).

<sup>3</sup> *Official Comm. of Unsecured Creditors of Motors Liquidation Co. v. JPMorgan Chase Bank, N.A. (In re Motors Liquidation Co.)* ("Motors I"), 755 F.3d 78, 80 (2d Cir. 2014) ("Not noticing that one of the UCC-1s was unrelated to the Synthetic Lease, the associate placed all three for termination in the Closing Checklist."); *see also Official Comm. of Unsecured* (footnote continued)

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Under the legal test adopted by the Second Circuit, whether Mayer Brown noticed the error is directly relevant to the legal effectiveness of the Termination Statement. Under that test, the Termination Statement is legally effective *only* if JPMorgan authorized Mayer Brown to file it. Determining whether JPMorgan gave the requisite authorization requires the application of “traditional principles of agency law,” and specifically the Restatement test for actual authority.<sup>4</sup> That test requires an inquiry into *both* the principal’s (here, JPMorgan’s) instructions *and* the agent’s (here, Mayer Brown’s) subjective understanding of those instructions.<sup>5</sup> The inquiry does not and cannot end with the literal words of JPMorgan’s instructions—Mayer Brown’s lack of authority may be “established by showing *either* that the agent did not believe, *or* could not reasonably have believed, that the principal’s grant of actual authority encompassed the act in question.”<sup>6</sup> The Restatement provides an example: “P says to A, ‘Sell my horse for me.’ A knows that what P intends to sell is P’s cow. A has actual authority to sell only the cow.”<sup>7</sup>

This is precisely the situation Mayer Brown faced. But the Second Circuit had no occasion to apply this standard in Phase I because both JPMorgan and Plaintiff affirmatively argued that Mayer Brown *had not noticed* that anything was amiss. In its opening brief, Plaintiff argued “no one realized at the time that the . . . Termination Statement related to the Term Loan. . . .”<sup>8</sup> JPMorgan agreed: “Without dispute, everyone at Mayer Brown . . . believed that all of the Delaware UCC-1 financing statements referenced in the checklist pertained only to the Synthetic Lease Transaction.”<sup>9</sup> Accordingly, the Second Circuit focused exclusively on the literal meaning of JPMorgan’s instructions, and did not address whether Mayer Brown knew or had reason to know those instructions were in error.<sup>10</sup>

The evidence shows that Mayer Brown *did* in fact question whether JPMorgan’s instructions were in error, and that Mayer Brown’s professed belief it was authorized to file the Termination Statement was anything but reasonable. Ryan Green, the Mayer Brown associate

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*Creditors of Motors Liquidation Co. v. JPMorgan Chase Bank, N.A.*, 103 A.3d 1010, 1012 (Del. 2014) (accepting that “no one at . . . Mayer Brown . . . noticed this error”).

<sup>4</sup> *Motors I*, 755 F.3d at 84; *accord Motors II*, 777 F.3d at 105.

<sup>5</sup> *Id.* (citing Restatement (Third) of Agency § 3.01 (Am. Law Inst. 2006).)

<sup>6</sup> Restatement (Third) of Agency § 2.02 cmt. e (emphasis added).

<sup>7</sup> *Id.* § 1.03 cmt. e & illus. 3.

<sup>8</sup> Plaintiff’s Opening Brief at 44–45, Dkt. 32, *Official Comm. of Unsecured Creditors of Motors Liquidation Co. v. JPMorgan Chase Bank, N.A.*, No. 13-2187 (2d Cir. Sept. 17, 2013).

<sup>9</sup> JPMorgan’s Opening Brief at 14, Dkt. 58, *Official Comm. of Unsecured Creditors of Motors Liquidation Co. v. JPMorgan Chase Bank, N.A.*, No. 13-2187 (2d Cir. Dec. 9, 2013).

<sup>10</sup> *See Motors II*, 777 F.3d at 105.

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responsible for the repayment of the Synthetic Lease, admitted at deposition that he had noticed a problem. Before the filing, a paralegal, Stewart Gonshorek, approached Green with a “concern” that a schedule attached to the underlying financing statement (which related to the Term Loan) contained a schedule of properties that was far broader than the properties involved in the Synthetic Lease. The schedule made it obvious that the financing statement related to a different loan: it listed *forty-two* properties spread over a *dozen* states, whereas the Synthetic Lease closing checklist listed just *five* properties, all in a *single* state, Michigan. Moreover, the underlying financing statement stated *on its face* that it related to the Term Loan. And someone at Mayer Brown actually noticed the key language—the reference to the Term Loan is circled by hand on a copy of the financing statement printed from Gonshorek’s computer.<sup>11</sup> Neither Green nor Gonshorek appears to have done anything to resolve this glaring discrepancy, an omission that two experienced UCC experts will testify was wholly inconsistent with industry practice. This evidence, alone, is more than sufficient to create a triable issue of fact about Mayer Brown’s beliefs and the reasonableness thereof.

Plaintiffs’ sole response is to say that this evidence is not new, and that it was included in the record submitted to the Second Circuit. But “new” evidence is not required. The Term Lenders are bound by the ruling only as precedent, and a decision is not “precedent” for issues not in dispute.<sup>12</sup> “Appellate courts ‘are not like pigs, hunting for truffles buried in briefs,’” and are not obligated to “‘wade through the record and make arguments for either party.’”<sup>13</sup> In Phase I, both parties affirmatively argued that Mayer Brown’s claimed subjective beliefs were reasonable, and neither party argued the evidence supported a contrary conclusion. The Second Circuit’s decision simply has nothing to say about a question the court was never asked.

In any event, the Term Lenders will present new evidence, including the testimony of two highly experienced UCC experts who will testify that no lawyer in Green’s position could reasonably have believed that he (or she) was authorized to file the Termination Statement. Moreover, the Term Lenders will offer the 2017 depositions of the Mayer Brown witnesses, all of whom claimed near total amnesia about the key events, testimony that will foreclose any attempt by Plaintiff to offer an explanation (reasonable or otherwise) for Green and Gonshorek’s conduct. In addition, this claimed amnesia about highly significant and highly memorable events will permit a trier of fact to infer that the true facts are unfavorable to Mayer Brown.

We submit that, because of the existence of unresolved factual disputes, this issue requires a trial. The parties have met and conferred, and have agreed to discuss a reasonable trial schedule if Plaintiff’s request for leave to file a motion for summary judgment is denied.

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<sup>11</sup> We attach Green’s testimony and the financing statement as Exhibits A and B hereto.

<sup>12</sup> *E.g.*, *Perkins v. Endicott Johnson Corp.*, 128 F.2d 208, 216 (2d Cir. 1942).

<sup>13</sup> *Hensley v. Price*, 876 F.3d 573, 580 n.5 (4th Cir. 2017) (citations omitted).

MUNGER, TOLLES & OLSON LLP

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Very truly yours,

/s/ Matthew A. Macdonald  
Matthew A. Macdonald

# **Exhibit A**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re ) Chapter 11  
 )  
 MOTORS LIQUIDATION COMPANY, )  
 ct al., ) Case No. 09-50026 (REG)  
 )  
 Debtors. )  
 ) (Jointly Administered)  
 )  
 ----- )  
 OFFICIAL COMMITTEE OF )  
 UNSECURED CREDITORS OF MOTORS )  
 LIQUIDATION COMPANY f/k/a )  
 GENERAL MOTORS CORPORATION, )  
 )  
 Plaintiff, )  
 )  
 -against- )  
 )  
 JPMORGAN CHASE BANK, N.A., )  
 individually and as )  
 Administrator Agent for )  
 various lenders party to the )  
 Term Loan agreement described )  
 herein, et al., )  
 )  
 Defendants. )

STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF COOK )

The deposition of RYAN GREEN taken before  
 Kelly A. Siska, Certified Shorthand Reporter,  
 Certified LiveNote Reporter, and Notary Public, at  
 71 South Wacker Drive, Chicago, Illinois, commencing  
 at 10:00 a.m. on the 27th day of January, A.D., 2010.



1 A. My answer will be based on, you know,  
2 memory. There are capitalized documents, words here  
3 that I think are defined, you know, in the underlying  
4 documents. But generally, you know, based on my  
5 memory, it's an authorization to file terminations of  
6 financing statements related to the properties, you  
7 know, serving as collateral for the Chase synthetic  
8 lease.

9 Q. And in this context who was the lessee,  
10 sir?

11 A. General Motors.

12 Q. And to the extent you drafted -- Strike  
13 that.

14 Did the authorization as reflected here go  
15 beyond filing terminations for any financing  
16 statements other than in connection with the synthetic  
17 lease transaction?

18 A. No. The authorization is limited to the  
19 Chase synthetic lease. Those relating.

20 Q. Thank you. Can you go back to Exhibit 5?

21 A. Okay.

22 Q. Prior to the filing of Exhibit 5, did you  
23 ever have any conversation with anybody as to whether  
24 or not the initial financing statement 6416808 4  
25 should have been released?

1 A. I don't remember all of my conversations,  
2 but I do remember having conversation about a schedule  
3 to the financing statement.

4 Q. When you say a schedule to the financing  
5 statement, what do you mean by that?

6 A. The initial financing statement has an  
7 exhibit that contains a schedule.

8 Q. What do you recall about that schedule or  
9 discussion about that schedule?

10 A. There was a question about whether the  
11 properties identified relate to synthetic lease.

12 Q. And when was that -- when did that  
13 discussion take place?

14 A. I don't remember exactly when. Prior to  
15 closing.

16 Q. Who did you have the discussion with?

17 A. Stewart Gonshorek.

18 Q. And who else? Did you raise -- did you  
19 have that conversation with anybody other than Stewart  
20 Gonshorek?

21 A. No.

22 Q. What did he say to you and what did you say  
23 to him?

24 A. I think Stewart showed me the exhibit and  
25 raised a question about the properties identified.

1 And I didn't have any additional discussions about it.

2 Q. Let me show you a document, take a look at  
3 Plaintiff's Exhibit 3, please. It's an annex 1. The  
4 UCC financing statement, is that what you were  
5 referring to?

6 A. I'm referring to Schedule 1.

7 Q. Schedule 1 which appears at MB002420?

8 A. Yes.

9 Q. And, again, what is it about that schedule  
10 that you discussed with Mr. Gonshorek?

11 A. Just that the cities and states listed is  
12 broader than what the properties in -- say on the  
13 checklist is broader. That was the concern.

14 Q. Did you raise that with Mr. Gonshorek?

15 A. No. He brought it to my attention.

16 Q. What did you conclude with respect to the  
17 issue he raised?

18 MS. BOMCHILL: Objection to the form.

19 BY THE WITNESS:

20 A. I didn't conclude anything.

21 Q. Did you talk about it with Mr. Gordon?

22 A. No.

23 Q. Did you talk about it with anybody from  
24 JPMorgan?

25 A. No.

1 Q. At the time of the closing, sir, which I  
2 believe was in the end of October 2008, did you have  
3 any understanding that any of the documentation that  
4 was prepared in connection with that closing purported  
5 to release security in connection with the term loan  
6 financing between General Motors and JPMorgan?

7 A. No. At the time of closing I understood  
8 that the documents related to the synthetic lease.

9 MR. CALLAGY: Just give us a second or two. We  
10 will come back.

11 (A short break was had.)

12 BY MR. CALLAGY:

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

21 MR. FISHER: Objection.

22 BY THE WITNESS:

23 A. No.

24 MR. CALLAGY: I have no further questions.

25 MR. FISHER: I have just a couple follow-up

# **Exhibit B**

**Gonshorek, Stewart C.**

**From:** Perowski, Michael J.  
**Sent:** Thursday, October 09, 2008 1:37 PM  
**To:** Green, Ryan  
**Cc:** Gonshorek, Stewart C.  
**Subject:** Auto Facilities Real Estate Trust 2001-1 / General Motors Corporation--JPMorgan

**Attachments:** Auto Facilities Real Estate Trust 2001-1.pdf; GM - JPMorgan -- Indiana.pdf; GM - JPMorgan -- equipment -- fixtures.pdf



Ryan --

Attached are copies of the two active financing statements of record in Delaware against General Motors Corporation and in favor of JPMorgan Chase Bank and the results of a search conducted with the Office of the Delaware Secretary of State for financing statements of record against Auto Facilities Real Estate Trust 2001-1.

The filings in favor of JPMorgan Chase Bank, as Administrative Agent, are as follows:

- 1.) blanket-type financing statement as to real property and related collateral located in Marion County, Indiana (file number ~~2007-10295630~~ filed date April 12, 2002); and
- 2.) financing statement as to equipment, fixtures and related collateral located at certain U.S. manufacturing facilities (file number ~~2007-10295630~~ filed date November 30, 2006).

As for Auto Facilities Real Estate Trust 2001-1, the active filings of record are as follows:

- 1.) blanket-type financing statement as to real property and related collateral located in Marion County, Indiana (file number ~~2007-10295630~~ filed date April 12, 2002); and
- 2.) blanket-type financing statement as to real property and related collateral located in Wayne County, Michigan (file number ~~2007-10295630~~ filed date May 21, 2007).

Please let me know if you have any questions or if I can be of any other assistance.

— Mike

EXHIBIT NO. <u>3</u>
<u>Perowski</u>
<u>Kelly A. Siska</u>

**UCC FINANCING STATEMENT AMENDMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE #

6416808 4 on 11.30.06

1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS.

2.  **TERMINATION:** Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3.  **CONTINUATION:** Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4.  **ASSIGNMENT** (all or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.

5. **AMENDMENT (PARTY INFORMATION):** This Amendment affects  Debtor or  Secured Party of record. Check only one of these two boxes.

Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.  
 **CHANGE** name and/or address: Please refer to the detailed instructions in regards to changing the name/address of a party.  
 **DELETE** name: Give record name to be deleted in item 6a or 6b.  
 **ADD** name: Complete item 7a or 7b, and also item 7c; also complete items 7e-7g (if applicable).

6. **CURRENT RECORD INFORMATION:**

6a. ORGANIZATION'S NAME  
**GENERAL MOTORS CORPORATION**

OR

6b. INDIVIDUAL'S LAST NAME

FIRST NAME	MIDDLE NAME	SUFFIX
------------	-------------	--------

7. **CHANGED (NEW) OR ADDED INFORMATION:**

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S LAST NAME

FIRST NAME	MIDDLE NAME	SUFFIX
------------	-------------	--------

7c. **MAILING ADDRESS:**

CITY	STATE	POSTAL CODE	COUNTRY
------	-------	-------------	---------

7d. <b>SEE INSTRUCTIONS</b>	ADDL. INFO RE ORGANIZATION DEBTOR	7e. TYPE OF ORGANIZATION	7f. JURISDICTION OF ORGANIZATION	7g. ORGANIZATIONAL ID #, if any
-----------------------------	-----------------------------------	--------------------------	----------------------------------	---------------------------------

8. **AMENDMENT (COLLATERAL CHANGE):** check only one box.

Describe collateral  deleted or  added, or give an/line  restated collateral description, or describe collateral  assigned.

9. **NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT** (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here  and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME  
**JPMORGAN CHASE BANK, AS ADMINISTRATIVE AGENT**

OR

9b. INDIVIDUAL'S LAST NAME

FIRST NAME	MIDDLE NAME	SUFFIX
------------	-------------	--------

10. **OPTIONAL FILER REFERENCE DATA**

File with DE SOS [Matter No. 00652500] [General] [Doc. No. 1457978]

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

**A. NAME & PHONE OF CONTACT AT FILER (optional)**  
 UCC Filings 800-828-0938

**B. SEND ACKNOWLEDGMENT TO: (Name and Address)**

National Corporate Research  
 41 State Street  
 Suite 600  
 Albany, NY 12207  
 melissa@nationalcorp.com

DELAWARE DEPARTMENT OF STATE  
 U.C.C. FILING SECTION  
 FILED 03:23 PM 11/30/2006  
 INITIAL FILING NUM: 6416908 4  
 AMENDMENT NUMBER: 0000000  
 SRV: 061094538

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

**1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names**

1a. ORGANIZATION'S NAME  
 GENERAL MOTORS CORPORATION

OR 1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
 300 RENAISSANCE CENTER DETROIT MI 48265-3000 USA

1d. SEE INSTRUCTIONS ADDL INFO RE ORGANIZATION DEBTOR 1e. TYPE OF ORGANIZATION Corporation 1f. JURISDICTION OF ORGANIZATION Delaware 1g. ORGANIZATIONAL ID#, if any  NONE

**2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names**

2a. ORGANIZATION'S NAME

OR 2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d. SEE INSTRUCTIONS ADDL INFO RE ORGANIZATION DEBTOR 2e. TYPE OF ORGANIZATION 2f. JURISDICTION OF ORGANIZATION 2g. ORGANIZATIONAL ID#, if any  NONE

**3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE or ASSIGNOR E/F) - insert only one secured party name (3a or 3b)**

3a. ORGANIZATION'S NAME  
 JPMORGAN CHASE BANK, N.A., AS ADMINISTRATIVE AGENT

OR 3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
 P.O. BOX 2558 HOUSTON TX 77252 USA

4. This FINANCING STATEMENT covers the following collateral:

THE ASSETS DESCRIBED ON ANNEX I ATTACHED HERETO AND INCORPORATED BY REFERENCE HEREIN.

5. ALTERNATIVE DESIGNATION (if applicable)	LESSOR/LESSOR	CONSIGNEE/CONSIGNOR	BALEE/BAILOR	SELLER/BUYER	AG. LIEN	NON-UCC FILING
6. THIS FINANCING STATEMENT is to be filed for recording (or recorded) in the PUBLIC RECORDS (Attach Acknowledgment)	7. Check to REQUEST SEARCH REPORT(S) on Debtor(s)		8. ADDITIONAL FEES		All Debtors	Debtor 1 Debtor 2
8. OPTIONAL FILER REFERENCE DATA				P#176913 A#274606		
6701-619 -- DE - Secretary of State						

FILING OFFICE COPY -- UCC FINANCING STATEMENT (FORM UCC1) (REV. 05/22/02)

This Annex I  
consists of 4 pages

ANNEX I  
TO  
UCC-1 FINANCING STATEMENT

Debtor: General Motors Corporation  
300 Renaissance Center  
Detroit, Michigan 48265-3000  
(the "Debtor")

Secured Party: JPMorgan Chase Bank, N.A., as Administrative Agent  
P.O. Box 2558  
Houston, TX 77252  
(the "Agent")

The financing statement to which this Annex I is attached covers all of the following property of the Debtor now owned or at any time hereafter acquired (collectively, the "Collateral"):

- (1) all Equipment and all Fixtures, other than Excluded Equipment and Fixtures;
- (2) all Documents and General Intangibles attributable solely to Equipment or Fixtures, other than Excluded Equipment and Fixtures;
- (3) 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
- (4) to the extent not otherwise included in the foregoing clauses, all Proceeds and products of any and all of the foregoing.

As used herein, the following terms shall have the following meanings:

"Collateral Agreement": the collateral agreement, dated as of November 29, 2006, among the Debtor, Saturn Corporation and JPMorgan Chase Bank, N.A., as administrative agent (as the same may be amended, supplemented or otherwise modified from time to time).

"Credit Agreement": the term loan agreement, dated as of November 29, 2006, among the Debtor, Saturn Corporation, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent (as the same may be amended, supplemented or otherwise modified from time to time).

"Documents": all "Documents" as such term is defined in Section 9-102 of the UCC as in effect on November 29, 2006.

[2660674]

**"Equipment"**: all "Equipment" as such term is defined in Section 9-102 of the UCC as in effect on November 29, 2006.

**"Excluded Equipment and Fixtures"**: all Equipment and Fixtures, now owned or at any time hereafter acquired by the Debtor, which are not located at U.S. Manufacturing Facilities; provided, that no Equipment or Fixtures now owned or at any time hereafter acquired by the Debtor (a) located at a U.S. Manufacturing Facility or (b) transferred to a Non-U.S. Manufacturing Property other than (i) in the ordinary course of business or (ii) for a business purpose of the Debtor and its Subsidiaries (as determined in good faith by the Debtor) and not primarily for the purpose of (1) reducing the security for the Obligations or (2) making such Equipment and Fixtures available to other creditors, shall constitute Excluded Equipment and Fixtures.

**"Fixtures"**: all "Fixtures" as such term is defined in Section 9-102 of the UCC as in effect on November 29, 2006.

**"General Intangible"**: a "General intangible" as such term is defined in Section 9-102 of the UCC as in effect on November 29, 2006.

**"Governmental Authority"**: any nation or government, any state, province, municipality or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory, taxing or administrative functions of government including the European Central Bank.

**"Grantors"**: a collective reference to the Debtor and Saturn Corporation, and each other direct or indirect wholly-owned domestic Subsidiary of the Debtor that at the option of the Debtor becomes a party to the Collateral Agreement, the Credit Agreement and each other relevant Loan Document, in each case by executing a joinder agreement in form and substance reasonably acceptable to the Agent.

**"Lender"**: each Lender party to the Credit Agreement.

**"Lien"**: any mortgage, pledge, lien, security interest, charge, statutory deemed trust, conditional sale or other title retention agreement or other similar encumbrance.

**"Loan"**: a loan made by a Lender to the Debtor pursuant to the Credit Agreement.

**"Loan Documents"**: the Credit Agreement, the Security Documents, the Notes and any amendment, waiver, supplement or other modification to any of the foregoing.

**"Non-U.S. Manufacturing Property"**: any real property of a Grantor that is not part of a U.S. Manufacturing Facility.

**"Note"**: a promissory note, executed and delivered by the Debtor with respect to the Loans, substantially in the form of Exhibit B to the Credit Agreement.

**"Obligations"**: all obligations of any Grantor in respect of any unpaid Loans and any interest thereon (including interest accruing after the maturity of any Loan and interest

[12660674]

accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to any Grantor, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) and all other obligations and liabilities of any Grantor to the Agent or to any Lender, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with the Credit Agreement, any other Loan Document or any other document made, delivered or given in connection therewith, whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses or otherwise.

**"Person"**: an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

**"Proceeds"**: all "Proceeds" as such term is defined in Section 9-102 of the UCC as in effect on November 29, 2006.

**"Secured Parties"**: the collective reference to the Agent, each Lender and each other Person to which any Obligations are owed.

**"Security Documents"**: the Collateral Agreement and all other security documents delivered to the Agent granting or purporting to grant a Lien on any property of any Person to secure the Obligations, including financing statements or financing change statements under the applicable Uniform Commercial Code.

**"Subsidiary"**: as to any Person (the "parent"), any other Person of which at least a majority of the outstanding stock or other equity interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or comparable governing body of such Person (irrespective of whether or not at the time stock or other equity interests of any other class or classes of such Person shall have or might have voting power by reason of the happening of any contingency) is at the time owned by the parent, or by one or more Subsidiaries, or by the parent and one or more Subsidiaries.

**"UCC"**: the Uniform Commercial Code as from time to time in effect in the State of New York; provided, however, that, in the event that, by reason of mandatory provisions of law, any of the attachment, perfection or priority of the Agent's and the Secured Parties' security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of definitions related to such provisions.

**"U.S. Manufacturing Facility"**: (a) any plant or facility of a Grantor listed on Schedule I hereto, including all related or appurtenant land, buildings, Equipment and Fixtures, and (b) any plant or facility of a Grantor, including all related or appurtenant land, buildings, Equipment and Fixtures, acquired or leased by a Grantor after the date hereof which is located within the continental United States of America and at which manufacturing, production, assembly or processing activities are conducted.

[1266674]

Schedule 1  
to Annex 1 to UCC-1 Financing Statement

Num	Facility	City	State
1	GM ASSEMBLY ARLINGTON	ARLINGTON	TX
2	GM ASSEMBLY BOWLING GREEN	BOWLING GREEN	KY
3	GM ASSEMBLY DETROIT HAMTRAMCK	DETROIT	MI
4	GM ASSEMBLY FAIRFAX	KANSAS CITY	KS
5	GM ASSEMBLY FLINT	FLINT	MI
6	GM ASSEMBLY PORT WAYNE	FORT WAYNE	IN
7	GM ASSEMBLY JANESVILLE	JANESVILLE	WI
8	GM ASSEMBLY LANSING DELTA TOWNSHIP	LANSING	MI
9	GM ASSEMBLY LANSING GRAND RIVER	LANSING	MI
10	GM ASSEMBLY LORDSTOWN	LORDSTOWN	OH
11	GM ASSEMBLY MORAINÉ	DAYTON	OH
12	GM ASSEMBLY ORION	LAKE ORION	MI
13	GM ASSEMBLY PONTIAC EAST	PONTIAC	MI
14	GM ASSEMBLY SATURN WILMINGTON	WILMINGTON	DE
15	GM ASSEMBLY SHREVEPORT	SHREVEPORT	LA
16	GM ASSEMBLY WENTZVILLE	WENTZVILLE	MO
17	GM MFD AMT (SAMCO)	NEW HUDSON	MI
18	GM MFD FLINT	FLINT	MI
19	GM MFD FLINT TOOL & DIE	FLINT	MI
20	GM MFD GRAND BLANC	GRAND BLANC	MI
21	GM MFD GRAND RAPIDS	WYOMING	MI
22	GM MFD INDIANAPOLIS	INDIANAPOLIS	IN
23	GM MFD LANSING REGIONAL STAMPING	LANSING	MI
24	GM MFD LORDSTOWN	LORDSTOWN	OH
25	GM MFD MANSFIELD	MANSFIELD	OH
26	GM MFD MARION	MARION	IN
27	GM MFD PARMA	PARMA	OH
28	GM MFD PONTIAC	PONTIAC	MI
29	GM MFD SHREVEPORT	SHREVEPORT	LA
30	GM POWERTRAIN ALLISON BALTIMORE	WHITE MARSH	MD
31	GM POWERTRAIN BAY CITY	BAY CITY	MI
32	GM POWERTRAIN BEDFORD	BEDFORD	IN
33	GM POWERTRAIN DEFIANCE	DEFIANCE	OH
34	GM POWERTRAIN FLINT ENGINE SOUTH	FLINT	MI
35	GM POWERTRAIN LIVONIA	LIVONIA	MI
36	GM POWERTRAIN MASSENA	MASSENA	NY
37	GM POWERTRAIN PARMA	PARMA	OH
38	GM POWERTRAIN ROMULUS ENGINE	ROMULUS	MI
39	GM POWERTRAIN TOLEDO	TOLEDO	OH
40	GM POWERTRAIN TONAWANDA	BUFFALO	NY
41	GM POWERTRAIN WARREN TRANSMISSION	WARREN	MI
42	GM POWERTRAIN WILLOW RUN	YPSILANTI	MI

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