

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

-----X
In re:

MOTORS LIQUIDATION COMPANY, f/k/a
GENERAL MOTORS CORPORATION, *et al.*,

Chapter 11

Case No. 09-50026 (MG)
(Jointly Administered)

Debtors.

-----X
MOTORS LIQUIDATION COMPANY AVOIDANCE
ACTION TRUST, by and through the Wilmington Trust
Company, solely in its capacity as Trust Administrator and
Trustee,

Adversary Proceeding

Plaintiff,

Case No. 09-00504 (MG)

against

JPMORGAN CHASE BANK, N.A., *et al.*,

Defendants.
-----X

**STIPULATION AND [PROPOSED] ORDER REGARDING
FIXTURE CLASSIFICATION AND VALUATION**

WHEREAS, defendants were lenders to General Motors Corporation (“**Old GM**”) under a \$1.5 billion Term Loan Agreement and Collateral Agreement dated November 29, 2006 (as amended thereafter) (the “**Term Loan**”);

WHEREAS, among other disputes, the parties to the above-captioned action (the “**Action**”) dispute the scope and value of the collateral for the Term Loan in which defendants had a perfected security interest (the “**Perfected Security Interest**”);

WHEREAS, between April and June 2017, the Court held a trial in the Action as to the fixture classification and valuation of 40 representative assets selected by the parties (the “**Representative Assets**”), as well as certain additional representative disputes;

WHEREAS, on September 26, 2017, the Court issued a *Memorandum Opinion Regarding Fixture Classification and Valuation* (ECF No. 1015) (as corrected on October 4, 2017) (the “**Memorandum Opinion**”) in the Action deciding: (a) whether each of the Representative Assets was or was not a fixture, (b) the value of certain of the Representative Assets as of the agreed upon valuation date of June 30, 2009 (the “**Valuation Date**”), and (c) the additional representative disputes;

WHEREAS, since the Court issued the Memorandum Opinion, plaintiff and the Defendants’ Steering Committee have engaged in extensive negotiations as to the impact of the Memorandum Opinion on the parties’ pre-trial disputes regarding in which Old GM assets the Term Lenders had a Perfected Security Interest, as well as the value of those assets as of the Valuation Date;

WHEREAS, plaintiff and the undersigned defendants have reached certain agreements as to the impact of the Court’s Memorandum Opinion on the parties’ disputes as to which of the assets listed on GM’s June 2009 fixed asset ledger (produced as NEWGM000005131 and NEWGM000036121) (the “**June 2009 eFAST ledger**”) are or are not collateral for the Term Loan in which defendants had a Perfected Security Interest and, in certain cases, those assets’ value as of the Valuation Date;

WHEREAS, plaintiff and the undersigned defendants continue to dispute whether other assets listed on the June 2009 eFAST ledger are collateral for the Term Loan in which defendants had a Perfected Security Interest;

WHEREAS, for certain assets listed on the June 2009 eFAST ledger that the parties agree are collateral for the Term Loan in which defendants had a Perfected Security Interest, plaintiff and the undersigned defendants dispute the value;

WHEREAS, plaintiff and the undersigned defendants dispute the scope and value of Construction Work In Progress (“**CWIP**”) assets (*i.e.*, assets that do not appear on the June 2009 eFast ledger and which had not yet been put into service, but which defendants argue that GM had installed as of June 2009) that defendants contend are collateral for the Term Loan in which defendants had a Perfected Security Interest;

WHEREAS, plaintiff and the undersigned defendants dispute the scope and value of equipment owned by the Saturn Corporation that is not listed on the June 2009 eFast ledger (“**Saturn Equipment**”), defendants contend the Saturn Equipment is collateral for the Term Loan in which defendants had a Perfected Security Interest, and defendants understand that some or all of the Saturn Equipment was classified by Old GM and/or Saturn Corporation as special tools (“**Saturn Special Tools**”);

WHEREAS, the parties wish to formally stipulate to and finally resolve the disputes on which they have reached agreements, while (a) continuing to negotiate and/or litigate additional disputes before the Court and (b) reserving all rights to challenge the Memorandum Opinion’s rulings on appeal;

IT IS HEREBY STIPULATED AND AGREED, by and among counsel for the undersigned parties, that:

1. Applying the principles underlying the rulings in the Memorandum Opinion without prejudice to any party’s right to challenge those rulings on appeal, each of the assets from the June 2009 eFAST ledger identified as “Collateral” in the “Collateral Classification” column of the spreadsheet that is attached as Exhibit A hereto is an asset of Old GM or Saturn Corporation that is collateral for the Term Loan in which defendants had a Perfected Security Interest.

2. Applying the principles underlying the rulings in the Memorandum Opinion without prejudice to any party's right to challenge those rulings on appeal, each of the assets from the June 2009 eFAST ledger identified as "Not Collateral" in the "Collateral Classification" column of the spreadsheet that is attached as Exhibit A hereto is an asset of Old GM or Saturn Corporation that is not collateral for the Term Loan in which defendants had a Perfected Security Interest.

3. Each of the assets from the June 2009 eFAST ledger identified as "Disputed" in the "Collateral Classification" column of the spreadsheet that is attached as Exhibit A hereto is an asset of Old GM or Saturn Corporation for which the parties dispute how the principles underlying the rulings in the Memorandum Opinion should be applied to determine whether the asset is collateral for the Term Loan in which defendants had a Perfected Security Interest.

4. Applying the principles underlying the rulings in the Memorandum Opinion without prejudice to any party's right to challenge those rulings on appeal, each of the assets from the June 2009 eFAST ledger for which a value is provided in the "Valuation" column of the spreadsheet that is attached as Exhibit A hereto had that value as of the Valuation Date.

5. Each of the assets from the June 2009 eFAST ledger for which "Disputed" appears in the "Valuation" column of the spreadsheet that is attached as Exhibit A hereto is an asset for which the parties dispute how the principles underlying the rulings in the Memorandum Opinion should be applied to determine the value as of the Valuation Date.

6. Defendants represent and agree that all assets potentially constituting collateral for the Term Loan in which defendants had a Perfected Security Interest are one of the following: (a) identified on Exhibit A hereto; (b) CWIP assets; or (c) Saturn Equipment assets. Defendants have identified on Exhibit B hereto the CWIP assets that, based on discovery to date,

they believe represent collateral for the Term Loan in which defendants have a Perfected Security Interest. Defendants have identified on Exhibit C hereto the Saturn Special Tools that, based on discovery to date, they believe represent Saturn Equipment in which defendants have a Perfected Security Interest. Defendants have not to date identified any Saturn Equipment other than the Saturn Special Tools. Defendants reserve the right to supplement Exhibits B and C hereto if, after additional discovery, defendants identify additional CWIP or Saturn Equipment assets that they believe represent collateral for the Term Loan in which defendants have a Perfected Security Interest.

7. All parties reserve all rights to appeal the Memorandum Opinion's rulings.

8. In the event that the Court's rulings in the Memorandum Opinion are reversed in whole or in part in an appellate decision, this stipulation shall be deemed withdrawn and without effect to the extent inconsistent with the appellate opinion.

9. Nothing in this stipulation or Exhibits A-C hereto shall preclude the parties from contesting the collateral classification or valuation of any assets listed as disputed on Exhibits A-C hereto or subsequently identified pursuant to the reservation of rights in paragraph 6 hereof.

10. The parties agree that the agreements as to collateral classification and value on Exhibit A hereto shall not be used as the basis for arguing that another party is taking an inconsistent position as to other, disputed assets or values.

Dated: New York, New York
August 16, 2018

BINDER & SCHWARTZ LLP

By: /s/ Eric B. Fisher
Eric B. Fisher
Neil S. Binder
Lindsay A. Bush
Lauren K. Handelsman
366 Madison Avenue, 6th Floor
New York, New York 10017
Telephone: (212) 510-7008
Facsimile: (212) 510-7299
Email: efisher@binderschwartz.com

*Attorneys for Plaintiff Motors Liquidation
Company Avoidance Action Trust*

New York, New York
August 16, 2018

WACHTELL, LIPTON, ROSEN & KATZ

By: /s/ Marc Wolinsky
Harold S. Novikoff
Marc Wolinsky
Amy R. Wolf
51 West 52nd Street
New York, New York 10019
Telephone: (212) 403-1000
Email: MWolinsky@wlrk.com

KELLEY DRYE & WARREN LLP

By: /s/ John M. Callagy
John M. Callagy
Nicholas J. Panarella
Martin A. Krolewski
101 Park Avenue
New York, New York 10178
Telephone: (212) 808-7800
Email: jcallagy@kelleydrye.com

JONES DAY

By: /s/ C. Lee Wilson
C. Lee Wilson
250 Vesey Street
New York, New York 10281
Telephone: (212) 326-3885
Email: clwilson@jonesday.com

Attorneys for Defendant JPMorgan Chase Bank, N.A.

JONES DAY

By: /s/ Bruce Bennett

Bruce Bennett
Erin L. Burke
555 South Flower Street, 50th Floor
Los Angeles, California 90071
Telephone: (213) 489-3939
Email: bbennett@jonesday.com
Email: eburke@jonesday.com

Gregory M. Shumaker
Christopher J. DiPompeo
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 879-3939
Email: gshumaker@jonesday.com
Email: cdipompeo@jonesday.com

MUNGER, TOLLES & OLSON LLP

By: /s/ John W. Spiegel

John W. Spiegel
Matthew A. Macdonald
Bradley R. Schneider
350 South Grand Avenue, 50th Floor
Los Angeles, California 90071
Telephone: (213) 683-9100
Email: john.spiegel@mto.com
Email: matthew.macdonald@mto.com
Email: bradley.schneider@mto.com

Nicholas D. Fram
560 Mission Street, 27th Floor
San Francisco, California 94105
Telephone: (415) 512-4000
Email: nicholas.fram@mto.com

*Attorneys for the Term Loan Lenders Listed on
Appendix A to Dkt. No. 241*

**KASOWITZ BENSON TORRES & FRIEDMAN
LLP**

By: /s/ Andrew K. Glenn
Andrew K. Glenn
Joshua N. Paul
Michelle G. Bernstein
Isaac S. Sasson
1633 Broadway
New York, New York 10019
(212) 506-1700
Email: aglenn@kasowitz.com
Email: jpaul@kasowitz.com
Email: mgenet@kasowitz.com
Email: isasson@kasowitz.com

*Attorneys for the Ad Hoc Group of Term Lenders
listed in Appendix A to Dkt. No. 670*

HAHN & HESSEN LLP

By: /s/ Mark T. Power
Mark T. Power
Alison M. Ladd
488 Madison Avenue
New York, New York 10022
Telephone: (212) 478-7200
Email: mpower@hahnessen.com
Email: aladd@hahnessen.com

*Attorneys for Certain Term Loan Investor Defendants
identified on Exhibit 1 to Dkt. No. 788*

DAVIS POLK & WARDWELL LLP

By: /s/ Elliot Moskowitz
Elliot Moskowitz
Marc J. Tobak
M. Nick Sage
450 Lexington Avenue
New York, New York 10017
Email: elliot.moskowitz@davispolk.com
Email: marc.tobak@davispolk.com
Email: m.nick.sage@davispolk.com

*Attorneys for Certain Term Loan Lender
Defendants identified on Exhibit 1 to Dkt. No. 788*

SO ORDERED

Dated: New York, New York
_____, 2018

Martin Glenn
United States Bankruptcy Judge

Exhibits A-C

to Stipulation and [Proposed] Order Regarding
Fixture Classification and Valuation

Subject to further order of the Court, Exhibits A-C to the Stipulation — which are voluminous Excel spreadsheets that contain the data contemplated by the Stipulation for over 200,000 assets — have been provided to the Court but not filed due to their voluminous nature.