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Company Avoidance Action Trust*

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

-----X  
In re:

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

Debtors.

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

Plaintiff,

against

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

Defendants.  
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Chapter 11

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

Adversary Proceeding

Case No. 09-00504 (MG)

**PLAINTIFF’S STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF  
PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT ON CERTAIN  
ASSETS LOCATED IN THE SHREVEPORT PLANT**

Pursuant to Local Rule 7056-1(b), plaintiff Motors Liquidation Company Avoidance Action Trust (the “**Avoidance Action Trust**”), through its undersigned counsel, submits this Statement of Undisputed Facts in Support of Its Motion for Partial Summary Judgment on Certain Assets Located in the Shreveport Plant. Pursuant to Local Rule 7056-1(e), each statement of material fact is followed by a citation to evidence that would be admissible at trial.

**I. The Term Loan Agreement and Defendants’ Security Interests in Collateral**

1. Pursuant to a term loan agreement, dated as of November 29, 2006, and amended as of March 4, 2009, among General Motors Corporation (“**Old GM**”) and a syndicate of bank lenders (the “**Term Lenders**”), Old GM borrowed approximately \$1.5 billion (the “**Term Loan**”). Declaration of Eric B. Fisher (“**Fisher Decl.**”), Ex. A (Term Loan Agreement) and Adv. Pro. Dkt. No. 962 (Joint Pretrial Order entered on April 19, 2017 (“**JPTO**”)) ¶ 44.<sup>1</sup>

2. Defendants are among the over 500 Term Lenders that held interests in the Term Loan as of June 1, 2009. Adv. Pro. Dkt. No. 962 (JPTO) ¶ 45.

3. JPMorgan Chase Bank, N.A. (“**JPMorgan**”) was the administrative agent for the Term Loan. Adv. Pro. Dkt. No. 962 (JPTO) ¶ 46.

4. To secure Old GM’s obligations under the Term Loan, pursuant to a November 29, 2006 collateral agreement (the “**Collateral Agreement**”), Old GM granted the Term Lenders “a security interest in, all of the following assets and property now owned or at any time hereafter acquired by [GM] or in which [GM] now has or at any time in the future may acquire any right, title or interest (collectively, the “Collateral”), as collateral security for the prompt and complete payment and performance when due. . . .” Fisher Decl. Ex. B (Collateral Agreement, dated November 29, 2006) at Art. II (a) – (d).

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<sup>1</sup> All references to the Adversary Docket are to *Motors Liquidation Company Avoidance Action Trust v. JPMorgan Chase Bank, N.A.*, Adv. Pro. No. 09-00504. All references to the Bankruptcy Docket are to *In re: Motors Liquidation Co. f/k/a General Motors Corporation*, Case No. 09-50026.

5. The assets and property identified in the Collateral Agreement included “all Equipment and all Fixtures” and associated documents, general intangibles, books and records, and proceeds and products located at the 42 Old GM facilities identified in Schedule 1 to the Collateral Agreement. Fisher Decl. Ex. B (Collateral Agreement, dated November 29, 2006) at Art. II and Schedule 1.

6. As required under the Term Loan Agreement, JPMorgan, as administrative Agent for the Term Lenders, caused a UCC-1 financing statement to be filed with the Secretary of State of Delaware (the “**Main Lien**”). Adv. Pro. Dkt. No. 1015 (Memorandum Opinion Regarding Fixture Classification and Valuation dated September 26, 2017 (the “**Op.**”)) at 7 (citing JPTO ¶ 48).

7. The Main Lien perfected the Term Lenders’ security interest in all the Collateral, as defined in the Collateral Agreement, “now owned or at any time hereafter acquired” by Old GM and its affiliates. Adv. Pro. Dkt. No. 1015 (Op.) at 7 (citing JPTO ¶ 48).

8. JPMorgan also caused fixture filings to be made with respect to 26 of the 42 facilities listed in Schedule 3.12 to the Term Loan Agreement. Adv. Pro. Dkt. No. 1015 (Op.) at 7 (citing JPTO ¶ 50).

9. A UCC financing statement pertaining to the Shreveport Plant was filed on February 16, 2007, with the Clerk of Caddo Parish, Louisiana (the “**Caddo Parish Fixture Filing**”). Fisher Decl. Ex. C (UCC financing statement pertaining to the Shreveport Plant located at 7600 General Motors Boulevard, Shreveport, Caddo Parish, Louisiana) and Ex. D (Louisiana Clerks Remote Access Authority).

10. A copy of the UCC financing statement was also recorded in the Caddo Parish real estate mortgage index. Fisher Decl. Ex. E.

11. On October 30, 2008, JPMorgan and its counsel erroneously authorized the filing of a UCC-3 termination statement that terminated the Main Lien securing the Term Loan (the

“**2008 Termination Statement**”). Adv. Pro. Dkt. No. 1015 (Op.) at 8-9 (citing *In re Motors Liq. Co.*, 46 B.R. 596, 608-14 (Bankr. S.D.N.Y. 2013), *rev'd* 777 F.3d 100 (2d Cir. 2015)).

## **II. Assets at the Shreveport Plant**

12. Old GM used the eFAST database for its fixed asset accounting. Adv. Pro. Dkt. No. 1015 (Op.) at 16.

13. The eFAST database contains asset-specific information about Old GM’s assets, including an in-service date for each asset line item. Adv. Pro. Dkt. No. 1015 (Op.) at 16.

14. The in-service date is the date the asset line item was capitalized by Old GM and put into production. Adv. Pro. Dkt. No. 1015 (Op.) at 16.

15. As of June 1, 2009, the date of Old GM’s voluntary Chapter 11 petition, 7,801 asset line items in the Shreveport Plant located at 7600 General Motors Boulevard, Shreveport, Caddo Parish, Louisiana, had an in-service date prior to November 29, 2006, the date of the Collateral Agreement. Fisher Decl. Ex. F (excerpt of eFAST (June 2009)).

Dated: September 14, 2018  
New York, New York

Respectfully submitted,  
**BINDER & SCHWARTZ LLP**

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