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May 3, 2016

By Hand, Email and ECF

The Honorable Martin Glenn
United States Bankruptcy Court
for the Southern District of New York
One Bowling Green
New York, NY 10004-1408

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

Dear Judge Glenn:

We represent defendant JPMorgan Chase Bank, N.A. ("JPMorgan") in the above-captioned adversary proceeding. As directed at the April 18, 2016 case management conference, we write jointly with the other members of the Defendants Steering Committee (Jones Day, Munger Tolles, Hahn & Hessen, Kasowitz Benson, and Davis Polk) as well as counsel to the

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plaintiff, Motors Liquidation Company Avoidance Action Trust, to submit a proposed amended schedule that will govern proceedings with regard to collateral identification (*e.g.*, fixture/non-
fixture) and valuation for 40 representative assets.

The parties have reached agreement on a proposed amended schedule for these proceedings, with only one remaining issue in dispute: whether the opening preliminary legal briefing that the Court requested at the April 18 Conference should cover only legal principles related to collateral identification (*e.g.*, fixture/non-*fixture*), or whether the briefing should also cover legal principles related to valuation. Each side has set out the basis for its respective position below, and the parties' proposed amended schedule, with alternative provisions governing the scope of the preliminary legal briefs, is attached as Exhibit A hereto.

Plaintiff's Position on Preliminary Legal Briefing

Plaintiff's position is that the preliminary briefs due to the Court on June 15, 2016 should concern the fixture classification issues and not address valuation principles. This position is consistent with the directions provided by the Court at the April 18 conference. *See* April 18, 2016 Transcript at 83:12-20 ("And I would also ask each side to provide the Court with what I would refer to as preliminary briefs on addressing applicable law on fixtures, and we'll leave it to Ohio and Michigan for now. I can sort of get the – I don't want to make a decision based on that, but I'll get the contours of what each side believes that the applicable law is with respect to fixtures in those two states."); *see also id.* at 93:13-16 ("I don't want this to wait. I want I'll call them preliminary briefs, but they're basically preliminary tutorials for me on what you – each of you believe the applicable law on determining the fixture [issue] in Ohio and Michigan."). Pre-

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liminary briefs on general valuation principles, as proposed by defendants, were not requested by the Court. In plaintiff's view, preliminary briefs are unlikely to be helpful at this stage of the case. The Court is already well-versed in general valuation principles and briefing on valuation, including the contested issues raised by Defendants in this letter, are most helpfully addressed in the context of a fully developed factual and expert record that is attentive to the particulars of this case.

Defendants' Position on Preliminary Legal Briefing

As has been increasingly evident over the last several weeks, the parties disagree not only as to which assets constitute the remaining collateral, but also the methodology the Court should use to value them. Defendants believe the parties' preliminary briefing should include a discussion of the legal issues surrounding this core issue of how to value individual assets that were included in a going-concern sale of the debtor's business that was essentially in place at the time Old GM filed its petition. Not only will this briefing frame the legal issues relevant to valuation for the Court, but having the parties lay out their respective views on the legal principles governing *both* collateral identification and valuation issues upfront will assist the parties in focusing ongoing discovery and expert analysis. In addition, if after the Court reviews the parties' preliminary briefing, the Court sees areas of legal disagreement that it believes would be productive to address in advance of trial, the Court will be in a position to address them.

Preliminary briefing on valuation issues is particularly appropriate given that the Court has itself asked questions about such issues at two recent conferences. The Court asked at the April 18 Conference if there is "any case law that supports the use of fresh start accounting

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for valuation.” Preliminary legal briefing would cite the Court to authorities establishing that reliance on a purchaser’s fair value accounting determinations for valuation purposes is well-accepted. *See, e.g., In re Residential Capital LLC*, 501 B.R. 549, 609 (Bankr. S.D.N.Y. 2013). In addition, in response to the Court’s question at the March 22 conference as to the relevant valuation date, plaintiff responded that the petition date is the appropriate valuation date. Preliminary briefing would also refer the Court to authorities establishing that secured creditors are entitled to post-petition increases in the value of collateral. *See, e.g., Dewsnup v. Timm*, 502 U.S. 410, 417 (1992).

Preliminary briefing is also appropriate to correct plaintiff’s erroneous assertion in its April 15, 2016 letter to the Court (Dkt No. 485), that KPMG’s fresh start accounting was based on an allocation of the credit bid purchase price that New GM paid for Old GM assets. KPMG, however, did no such thing. Instead, what KPMG did do as part of its fresh start accounting, and what defendants intend to rely upon, was to calculate the replacement-cost new of each of New GM’s fixed assets and then adjust those values to account for physical deterioration, functional obsolescence and economic obsolescence of the individual assets. While, as defendants have previously noted, KPMG made adjustments that defendants believe were inappropriate for purposes of the current valuation exercise, overall, the result of KPMG’s work was an individualized, contemporaneous fair market valuation of the fixtures acquired by New GM that was then used by New GM in its audited financial statements — precisely the type of purchaser fair value accounting determination relied on in *Residential Capital*.

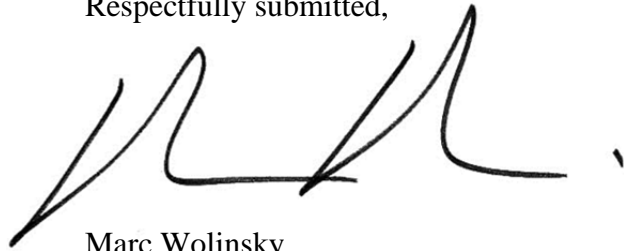
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For these reasons, defendants believe that both the Court and the parties will benefit from a preliminary exploration of the applicable valuation principles, and defendants respectfully request that the Court enter the proposed amended scheduling order with defendants' proposed provision on preliminary legal briefs.

* * *

To the extent the Court believes a conference call or in-person conference would assist it in deciding this issue, the parties are available at the Court's convenience.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Wolinsky', with a horizontal line extending from the end of the signature.

Marc Wolinsky

cc: Eric Fisher, Esq.
Bruce Bennett, Esq.
Andrew Glenn, Esq.
Mark Power, Esq.
John Spiegel, Esq.
Counsel of Record (by email and ECF)

Enclosure

Exhibit A

**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 (MG)
	:	
Debtors.	:	(Jointly Administered)
	:	
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)
	:	
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.	:	
	:	
	:	

**[PROPOSED] ORDER AMENDING THE AUGUST 17, 2015 “ORDER
REGARDING DISCOVERY AND SCHEDULING” TO PROVIDE FOR PROCEEDINGS
CONCERNING CHARACTERIZATION AND VALUATION OF REPRESENTATIVE
ASSETS**

WHEREAS, pursuant to the Court’s instructions at the March 22, 2016 status conference, Plaintiff Motors Liquidation Company Avoidance Action Trust (“Plaintiff”) and Defendant JPMorgan Chase Bank, N.A. (“JPMorgan”) exchanged asset listings on April 6, 2016 that provided each party’s current views as to which assets of General Motors Corporation (“GM”) were collateral for the Term Loan in which the Term Loan Lenders had a perfected security interest as of June 1, 2009 (the “Surviving Collateral”);

WHEREAS, counsel for Plaintiff and counsel for Defendants' Steering Committee (as defined below) met and conferred on April 13, 2016 with respect to (a) which assets constitute Surviving Collateral, including (i) which assets at the 26 plants named in the fixture filings are fixtures; (ii) whether fixtures in nine additional facilities identified by Defendants (the "Additional Facilities")¹ also constitute Surviving Collateral; and (iii) whether fixtures subject to capital leases or sale/leasebacks (the "Leased Assets") constitute Surviving Collateral (collectively, the "Collateral Identification Issues"); and (b) what principles should be applied in valuing the Surviving Collateral, including what date should be used for purposes of valuation (the "Valuation Principles Issue");

WHEREAS, after considering the parties' positions at an April 18, 2016 hearing, the Court has determined to amend the August 17, 2015 Order Regarding Discovery and Scheduling (Docket No. 153) to provide for additional proceedings addressing the Collateral Identification Issues and the Valuation Principles Issue with respect to 40 representative assets selected by the parties (the "Representative Assets"), while otherwise leaving the August 17, 2015 Order in effect;

IT IS HEREBY ORDERED AS FOLLOWS:

1. Amended Discovery Schedule for Certain Issues: The August 17, 2015 Order is amended, with respect only to the Collateral Identification Issues and the Valuation Principles Issue, as follows:

Apr. 15, 2016 Deadline for document discovery (except requests specifically related to the Representative Assets and requests covered by the Amended and Supplemented Scheduling Order dated March 28, 2016, Dkt. No. 442).

¹ The Additional Facilities are: (i) GM MFD Flint; (ii) GM MFD Fairfax; (iii) GM MFD Lansing Regional Stamping; (iv) GM MFD Lordstown; (v) GM Powertrain Engineering Building (Pontiac); (vi) GM Powertrain Engineering Pontiac; (vii) GM Powertrain Headquarters (Pontiac); (viii) GM SPO Pontiac; and (ix) GM Powertrain Moraine Engine.

- May 2016 —
June 10, 2016** Plant inspections of Lansing Delta Township, Warren Transmission, and Powertrain Defiance. On May 5, 2016 by 3:00 p.m., for each of the three plants, the parties will specifically identify and exchange a list of up to 50 assets to be specifically inspected during each plant visit. The parties will confer on these asset lists and thereafter provide the lists of assets to be inspected by the parties on each plant visit to New GM on May 6, 2016.
- June 15, 2016** Preliminary Legal Overview Briefs Due²
- Plaintiff's Proposal:** Parties submit preliminary legal overview briefs to the Court regarding the Collateral Identification Issues under Michigan and Ohio law (and, to the extent each party deems appropriate, noting legal distinctions in other jurisdictions).
- Defendants' Proposal:** Parties submit preliminary legal overview briefs to the Court regarding: (a) the Collateral Identification Issues under Michigan law and Ohio law (and, to the extent each party deems appropriate, noting legal distinctions in other jurisdictions); and (b) the Valuation Principles Issue.
- June 20, 2016** Parties exchange: (1) lists of 20 assets selected from among the assets inspected during the plant inspections that will be the subject of the Court's trial on which of the 40 Representative Assets are Surviving Collateral and their value; and (2) FRCP 26(a)(2)(A) expert disclosures on the Collateral Identification Issues and Valuation Principles Issue with respect to the Representative Assets. Each party's list of Representative Assets will include 1-2 assets in RACER Trust plants; these 1-2 RACER Trust plant assets do not need to be among the assets inspected during the plant inspections.
- June 27, 2016** Parties meet and confer regarding adjustments to the list of 40 Representative Assets.
- July 1, 2016** Parties file list of up to 40 Representative Assets with the Court.
- Aug. 16, 2016** Deadline for fact discovery on the Collateral Identification Issues and the Valuation Principles Issue for the Representative Assets.
- Sept. 23, 2016** Parties serve initial expert reports on the Collateral Identification Issues and the Valuation Principles Issue for the Representative Assets.
- Oct. 14, 2016** Parties serve rebuttal expert reports on the Collateral Identification Issues

² Defendants have requested additional documents from New GM regarding the Leased Assets. If those materials are not produced on or before May 16, 2016, Plaintiff and Defendants will confer and submit a revised schedule to the Court for its approval that contains a later date for submitting a separate preliminary legal overview brief regarding whether the Leased Assets are Surviving Collateral and such assets' value.

and the Valuation Principles Issue for the Representative Assets.

- Nov. 4, 2016** Expert depositions completed/close of discovery on the Collateral Identification Issues and the Valuation Principles Issue for the Representative Assets.
- Nov. 18, 2016** Pre-trial briefs on the Collateral Identification Issues and the Valuation Principles Issue for the Representative Assets.
- Date Set by Court** Pretrial conference on the Collateral Identification Issues and the Valuation Principles Issue for the Representative Assets, including setting a schedule for in limine/*Daubert* motions and any other pretrial submissions requested by the Court.
- Date Set by Court** Trial on the Collateral Identification Issues and the Valuation Principles Issue for the Representative Assets.

2. Limited stay of discovery: Discovery (including plant inspections) will be stayed with regard to the Collateral Identification Issues except as to the Representative Assets and Leased Assets.

3. Defendants Steering Committee: For purposes of the adjudication of the Collateral Identification Issues and the Valuation Principles Issue, counsel for JPMorgan and a Steering Committee of counsel for the other Term Loan Lenders (Jones Day, Munger Tolles, Kasowitz Benson, Davis Polk and Hahn & Hessen) will coordinate regarding any action to be taken by Defendants.

4. Adjustments to the Schedule: Each party reserves its rights to apply to the Court to alter any of the deadlines herein, and each party reserves its right to oppose any such application.

5. August 17, 2015 Order Otherwise Remains in Effect: Except as set out herein, the Court's August 17, 2015 Order Regarding Discovery and Scheduling for this adversary proceeding remains in full force and effect.

DATED: _____
New York, New York

SO ORDERED: _____
Hon. Martin Glenn
UNITED STATES BANKRUPTCY JUDGE