

**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)
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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.	:	

**STIPULATION AND [PROPOSED] ORDER PURSUANT TO
FEDERAL RULE OF EVIDENCE 502**

WHEREAS, certain Defendants listed in Docket No. 222, Appendix A to Docket No. 241, and footnote 2 of Docket No. 334 (collectively, the “Cross-Claimants”) filed cross-claims in this action against JPMorgan Chase Bank, N.A. (“JPMorgan”) on November 16, 2015 and December 18, 2015;

WHEREAS, on January 27, 2016, JPMorgan filed its Answers to the cross-claims of the Cross-Claimants and, as its Third Defense, asserted that, *inter alia*, the Term Loan Agreement entitled JPMorgan to rely on advice and statements of legal counsel;

WHEREAS, prior to filing any cross-claims against JPMorgan, on September 9, 2015, certain Cross-Claimants served upon JPMorgan document requests that requested, *inter alia*, all of JPMorgan's communications with Simpson Thacher & Bartlett LLP concerning either the Term Loan or certain aspects of the Synthetic Lease;

WHEREAS, prior to the filing of the cross-claims against JPMorgan, and in connection with document productions made earlier to the plaintiff, JPMorgan prepared privilege logs of documents it was withholding from those productions based upon the attorney-client privilege, the attorney work product doctrine, and other similar grounds;

WHEREAS, on October 9, 2015, prior to the filing of any cross-claims and prior to JPMorgan's assertion of its Third Defense thereto, JPMorgan served responses and objections to the Cross-Claimants' document requests, objecting, *inter alia*, to the requests to the extent that they sought documents not relevant to the claims that had then been asserted in this action and to the extent they sought privileged documents;

WHEREAS, after filing cross-claims against JPMorgan, on February 18, 2016, certain Cross-Claimants served upon JPMorgan additional document requests that requested, *inter alia*, documents that "support, contradict or otherwise concern" JPMorgan's Third Defense;

WHEREAS, certain Cross-Claimants also have served third party subpoenas on JPMorgan's counsel involved in the underlying events at issue in this action, and intend to take depositions of those counsel, as well as of JPMorgan, with respect to the events in question;

WHEREAS, certain Cross-Claimants and JPMorgan have engaged in discussions concerning the effect of JPMorgan's Third Defense on its ability to assert the attorney-client privilege over matters related to the Third Defense;

WHEREAS, on May 13, 2016, JPMorgan, through its counsel, stated more specifically that it intends to rely upon the legal advice of its outside counsel Simpson Thacher & Bartlett LLP, Cravath, Swaine & Moore LLP, and Morgan, Lewis & Bockius LLP, including communications with attorneys at those firms, regarding (i) the repayment on or about October 30, 2008 of the synthetic lease financing transaction among, *inter alia*, JPMorgan and General Motors Corporation, and (ii) the status of the security interests securing the Term Loan between the time of the errant UCC-3 filing relating to the Term Loan and the date of the GM bankruptcy petition;

WHEREAS, JPMorgan and Cross-Claimants agree that it would serve the interests of efficiency for the parties to attempt to delineate the effect of JPMorgan's assertion of its Third Defense on the discovery and use in this action of information related to the Third Defense and to limit potential discovery disputes;

WHEREAS, the parties have agreed to the following procedures for resolving any disputes over discovery issues raised by JPMorgan's advice of counsel defense, and the Court having found that good cause exists for the issuance of an appropriately tailored order, it is therefore hereby

ORDERED, pursuant to the Federal Rule of Evidence 502, that:

1. Subject to the limitations set forth below, JPMorgan, by asserting its Third Defense based upon the legal advice and statements of counsel, has waived attorney-client privilege and attorney work-product protection with respect to certain discovery, to be agreed upon by counsel for Cross-Claimants and counsel to JPMorgan and, in instances of dispute, to be decided by the Court. All references to attorney work product in this Order are subject to JPMorgan's reservation of the right to contend that documents and communications protected from disclosure under Federal Rule of Civil Procedure 26(b)(3) are not subject to any waiver.
2. Subject to paragraph 3 below, JPMorgan's waiver does not extend to attorney work product or attorney-client communications of or with Kelley, Drye & Warren LLP or Wachtell, Lipton, Rosen & Katz. JPMorgan confirms that any advice, statements, or actions of Kelley, Drye & Warren LLP or Wachtell, Lipton, Rosen & Katz do not form a basis for JPMorgan's Third Defense.
3. Nothing in this Order, including any exceptions or qualifications to the waiver described herein, shall affect any party's rights independently to discover information or materials

that satisfy the exceptions to work-product protection under Federal Rule of Civil Procedure 26(b)(3)(A).

4. Nothing in this Order, including the references to the existing privilege logs and Additional Logged Documents, as defined below, shall in any way limit JPMorgan's continuing obligation, with respect to its ongoing document production and specifically with respect to privileged and work-product documents that have not yet been logged, to continue to evaluate such documents for possible waiver and timely produce those that are subject to the waiver, subject to search and production criteria to be agreed among the parties.
5. The following timeline shall govern the production of certain documents and resolution of certain disputes related to JPMorgan's waiver:
 - By June 3, 2016, JPMorgan will produce to Cross-Claimants materials relating to advice from Simpson Thacher & Bartlett LLP that were included on JPMorgan's existing privilege logs (the "STB Documents") that it considers to be within the scope of its waiver.
 - By June 8, 2016, JPMorgan shall produce revised privilege logs reflecting all responsive STB Documents it has withheld from production on the basis of privilege or work-product protection.

 - By June 10, 2016, JPMorgan will produce to Cross-Claimants any additional materials that were included on JPMorgan's existing privilege logs (the "Additional Logged Documents") that it considers to be within the scope of its waiver, provided that JPMorgan may identify additional documents that it considers to be within the scope of its waiver based on ongoing ESI searches or otherwise.
 - By June 15, 2016, JPMorgan will produce to Cross-Claimants revised privilege logs reflecting all responsive Additional Logged Documents it has withheld from production on the basis of privilege or work-product protection.
 - By June 22, 2016, Cross-Claimants will identify for JPMorgan any materials on the revised privilege log that they contend are subject to JPMorgan's waiver and provide a brief legal explanation for their position.
 - By June 27, 2016, JPMorgan will either (i) produce additional documents identified by Cross-Claimants and create a revised privilege log and/or (ii) provide a brief legal explanation of its position regarding withheld documents.
 - If Cross-Claimants elect to challenge JPMorgan's final designation, they shall, by July 6, 2016, submit a letter brief to the Court identifying additional materials they contend are subject to JPMorgan's waiver. JPMorgan shall make available for *in camera* review any materials in dispute.
 - By July 11, 2016, JPMorgan will submit a letter brief to the Court justifying its designation of any materials in dispute.

- At a date convenient for the Court, the parties will ask the Court to rule upon whether JPMorgan's waiver extends to the disputed materials and to articulate the scope of JPMorgan's privilege and work-product waiver for use in subsequent depositions and subsequent document productions by JPMorgan's counsel and any other relevant third parties. In the event there are no disputes between Cross-Claimants and JPMorgan regarding particular materials subject to the waiver, Cross-Claimants and JPMorgan will try in good faith to negotiate a concise, agreed-upon definition of the scope of JPMorgan's waiver for use in depositions and subsequent document productions by JPMorgan's counsel and any other relevant third parties. In the event such efforts fail, each party reserves its right to ask the Court to provide such a definition, which will enable efficiency in discovery going forward.
6. Cross-Claimants will be entitled to discover, rely upon, and otherwise use any materials produced subject to JPMorgan's waiver, including but not limited to privileged or work product documents withheld from JPMorgan's prior productions; privileged or work product documents called for by outstanding requests to JPMorgan; privileged or work product documents called for by future requests to JPMorgan; and privileged or work product documents sought from third parties, all irrespective of whether JPMorgan continues to assert the aforementioned Third Defense or an equivalent defense.

 7. Subject to Paragraph 2 above, and for avoidance of doubt, Cross-Claimants may seek documents or testimony relating to JPMorgan's waiver from Simpson Thacher & Bartlett LLP, Cravath, Swaine & Moore LLP, and Morgan, Lewis & Bockius LLP. JPMorgan will not assert privilege, attorney work-product protection, or otherwise object on privilege or work-product protection grounds to such third-party discovery to the extent it is within its waiver, nor will it instruct the law firms to do so on its behalf.
 8. Cross-Claimants and JPMorgan may solicit or offer testimony encompassed by JPMorgan's waiver from any witness. JPMorgan will not assert any privilege or work product objections to such questions to the extent they are within the scope of its waiver, nor will it instruct any witnesses or their counsel to do so. To the extent the answers to such questions contain additional privileged information of JPMorgan not within the waiver, such answers shall not constitute a further waiver of privilege, except to the extent JPMorgan subsequently uses and/or relies upon such additional information.
 9. To the extent that JPMorgan produces documents pursuant to its waiver that also contain additional privileged information of JPMorgan not encompassed in the waiver, waiver of privilege with respect to such additional information shall be governed by Federal Rule of Evidence 502(b).
 10. The effect of disclosure made pursuant to this Order in any other proceeding, investigation, or litigation shall be determined in accordance with Federal Rules of Evidence 502(a) and (d), including protections against disclosure in any other federal or state proceeding, and other applicable Federal law as interpreted by the United States Court of Appeals for the Second Circuit.

11. In addition to Cross-Claimants and JPMorgan, this Order shall be binding upon, and shall inure to the benefit of, all parties to this action, including all defendants who have or who will assert cross-claims against JPMorgan and all defendants who assert claims related to the Term Loan or any other subject of this action in another forum, who seek documents and information from JPMorgan.
12. The Court shall retain exclusive jurisdiction over the subject matter of this Order, including, but not limited to, the implementation and interpretation of its terms and conditions, enforcement of the Order, and any modifications of the Order that may be necessary or appropriate in light of developments in discovery or otherwise. All parties reserve their right to claim privilege or work product protection or dispute a claim of privilege or work product protection for any document or communication not explicitly covered by this order.

SO STIPULATED.

DATED: May 25, 2016

WACHTELL, LIPTON, ROSEN & KATZ

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APPROVED AND SO ORDERED.


DATED: _____, 2016

Honorable Martin Glenn
United States Bankruptcy Judge

CERTIFICATE OF SERVICE

I certify that, on May 25, 2016, I caused the foregoing document to be served via the Court's ECF system upon all appearing parties.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 25, 2016 at Los Angeles, California.



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