UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
MOTORS LIQUIDATION COMPANY, et al.,	Case No. 09-50026 (MG) (Jointly Administered)
Debtors.	
MOTORS LIQUIDATION COMPANY AVOIDANCE ACTION TRUST, by and through the Wilmington Trust Company, solely in its capacity as Trust Administrator and Trustee,	Adversary Proceeding No. 09-00504 (MG)
Plaintiff,	
-against-	
JPMORGAN CHASE BANK, N.A. *et al*.,	
Defendants.	

DECLARATION OF ANDREW K. GLENN IN SUPPORT OF THE MOTION OF AD HOC GROUP OF TERM LENDERS FOR LEAVE TO APPEAL PURSUANT TO 28 USC § 158(a) AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 8004

ANDREW K. GLENN, an attorney duly licensed to practice law before the Courts of the State of New York and admitted to practice before the United States Bankruptcy Court for the Southern District of New York and the United States District Court for the Southern District of New York, hereby declares, under penalty of perjury pursuant to 28 U.S.C. § 1746, that:

1. I am a member of the firm Kasowitz, Benson, Torres & Friedman LLP, counsel for defendants the Ad Hoc Group of Term Lenders[1] in the above-captioned Adversary Proceeding.

2. I respectfully submit this declaration in support of the Ad Hoc Group of Term Lenders' Motion for Leave to Appeal Pursuant to 28 U.S.C. § 158(a) and Federal Rule of Bankruptcy Procedure 8004.

3. Attached hereto as **Exhibit A** is a true and correct copy of the *Memorandum Opinion and Order Denying Motions to Dismiss, For Judgment on the Pleadings, and to Vacate Prior Court Orders*, filed June 30, 2016, [Adv. Proc. Docket No. 643] in the above-captioned adversary proceeding (the "**Adversary Proceeding**").

4. Attached hereto as **Exhibit B** is a true and correct copy of the Second Circuit's decision in *Elliott v. General Motors LLC (In re Motors Liquidation Company)*, No. 15-2844, dated July 13, 2016.

5. Attached hereto as **Exhibit C** is a true and correct copy of the *First Amended Adversary Complaint for (1) Avoidance of Unperfected Lien, (2) Avoidance and Recovery of Postpetition Transfers, (3) Avoidance and Recovery of Preferential Payments, and (4) Disallowance of Claims by Defendants*, filed May 20, 2015 in the Adversary Proceeding [Adv. Proc. Docket No. 91].

6. Attached hereto as **Exhibit D** is a true and correct copy of the *Stipulated Scheduling Order*, filed October 6, 2009 in the Adversary Proceeding [Adv. Proc. Docket No. 10].

[1] A complete list of the Ad Hoc Group of Term Lenders is attached hereto as Appendix A.

7. Attached hereto as **Exhibit E** is a true and correct copy of the *Joint Stipulation Requesting Modification of Stipulated Scheduling Order*, filed January 20, 2010 in the Adversary Proceeding [Adv. Proc. Docket No. 17].

8. Attached hereto as **Exhibit F** is a true and correct copy of the *Order Further Extending Time to Serve Summons and Complaint*, filed April 10, 2013 in the Adversary Proceeding [Adv. Proc. Docket No. 82].

9. Attached hereto as **Exhibit G** is a true and correct copy of the *Stipulation and Order*, filed May 19, 2015 in the Adversary Proceeding [Adv. Proc. Docket No. 90].

10. Attached hereto as **Exhibit H** is a true and correct copy of the *Order Further Extending Time to Serve Summons and Amended Complaint*, filed August 13, 2015 in the Adversary Proceeding [Adv. Proc. Docket No. 152].

11. Attached hereto as **Exhibit I** is a true and correct copy of the transcript of the October 6, 2009 Conference held before Hon. Robert E. Gerber in the above-captioned matters [Adv. Proc. Docket No. 13].

12. Attached hereto as **Exhibit J** is a true and correct copy of the *Answer of Cross-Claim Defendant JPMorgan Chase Bank, N.A*, filed January 27, 2016 in the Adversary Proceeding [Adv. Proc. Docket No. 394].

13. Attached hereto as **Exhibit K** is a true and correct copy of the United States Bankruptcy Court for the District of Delaware's decision in *Forman v. Mentor Graphics Corp. (In re Worldspace),* Adv. Proc. No. 10-53286, dated June 5, 2014.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
July 14, 2016

By: /s/ Andrew K. Glenn

Andrew K. Glenn

Appendix A

Fire and Police Employees' Retirement System of the City of Baltimore
BBT Fund, L.P.
SRI Fund, L.P.
BBT Master Fund, L.P. (f/k/a Cap Fund, L.P.)
BlackRock Corporate High Yield Fund, Inc.
BlackRock Debt Strategies Fund, Inc.
BlackRock Floating Rate Income Strategies Fund, Inc.
BlackRock Funds II - High Yield Bond Portfolio
BlackRock Global Investment Series: Income Strategies Portfolio
BlackRock Fixed Income Portable Alpha (Offshore) Fund
BlackRock Senior Income Series II
BlackRock Senior Income Series IV
R3 Capital Partners Master, L.P.
The Galaxite Master Unit Trust
BlackRock High Yield Bond Portfolio, a series of BlackRock Funds II
High Yield Bond Portfolio
California State Teachers' Retirement System
Delaware Diversified Income Fund, a series of Delaware Group Adviser Funds
Delaware Enhanced Global Dividend and Income Fund
Delaware Extended Duration Bond Fund, a series of Delaware Group Income Funds
Delaware Dividend Income Fund, a series of Delaware Group Equity Funds V
Delaware Core Plus Bond Fund, a series of Delaware Group Government Fund
Delaware Corporate Bond Fund, a series of Delaware Group Income Funds
Delaware High-Yield Opportunities Fund, a series of Delaware Group Income Funds
Delaware Investments Dividend and Income Fund, Inc.
The High-Yield Bond Portfolio, a series of Delaware Pooled Trust
Delaware VIP Diversified Income Series, a series of Delaware VIP Trust
Delaware VIP High Yield Series, a series of Delaware VIP Trust
The Core Plus Fixed Income Portfolio, a series of Delaware Pooled Trust
Optimum Fixed Income Fund, a series of Optimum Fund Trust
Drawbridge Special Opportunities Fund Ltd.
Drawbridge Special Opportunities Fund LP
Fortress Credit Investments I Ltd.
Fortress Credit Investments II Ltd.
FOUR CORNERS CLO II, LTD.
FOUR CORNERS CLO III, LTD.
Freescale Semiconductor Inc., 401(k) Retirement Savings Plan
GENESIS CLO 2007-1 LTD.
Guggenheim Portfolio X, LLC
Guggenheim High Yield Fund
Illinois Municipal Retirement Fund
John Hancock Variable Insurance Trust Floating Rate Income Trust
John Hancock Variable Insurance Trust High Yield Trust
John Hancock Funds II Floating Rate Income Fund

John Hancock Funds II High Yield Bond Fund
The Lincoln National Life Insurance Company Separate Account 12
The Lincoln National Life Insurance Company Separate Account 20
LVIP Delaware Bond Fund, a series of Lincoln Variable Insurance Products Trust
LVIP Delaware Foundation® Conservative Allocation Fund, a series of Lincoln Variable Insurance Products Trust (and the successor to LVIP Delaware Managed Fund as of June 15, 2009).
Golden Knight II CLO, Ltd.
Lord Abbett Investment Trust – Lord Abbett High Yield Fund
Lord Abbett Investment Trust – Lord Abbett Floating Rate Fund
Teachers' Retirement System of Oklahoma
Houston Police Officers' Pension System
Mason Capital, L.P.
Mason Capital, Ltd.
The Missouri State Employees' Retirement System
Neuberger Berman High Income Bond Fund
Neuberger Berman High Yield Strategies Fund Inc.
MacKay New York Life Insurance Company (Guaranteed Products)
New York Life Insurance Company Guaranteed Products
New York Life Insurance Company (Guaranteed Products)
New York Life Insurance Company GP - Portable Alpha
MacKay Shields Core Plus Alpha Fund Ltd.
New York Life Insurance Company
North Dakota State Investment Board
Fairway Loan Funding Company
PIMCO Income Strategy Fund
PIMCO Income Strategy Fund II
Red River HYPi, L.P.
PIMCO Cayman Trust: PIMCO Cayman Bank Loan Fund
StocksPLUS, L.P. Fund B
PIMCO Funds: PIMCO Total Return Fund
PIMCO Funds: Private Account Portfolio Series High Yield Portfolio
PIMCO Funds: Global Investors Series plc, Global Investment Grade Credit Fund
Portola CLO, Ltd.
Mayport CLO, Ltd.
Plumbers & Pipefitters National Pension Fund
Putnam 29X-Funds Trust Floating Rate Income Fund
SHIPROCK FINANCE, SPC, on behalf of SF-3 Segregated Portfolio
Russell Investment Company plc on behalf of its sub-fund The Global Strategic Yield Fund, and its successor funds, and Multi-Style, Multi-Manager Fund plc on behalf of its sub-fund, The Global Strategic Yield Fund
Russell Institutional Funds LLC Russell Core Bond Fund
Russell Trust Company Russell Multi-Manager Bond Fund
Russell Investment Company Russell Strategic Bond Fund
Russell Investment Company plc Russell U.S. Bond Fund
Solus Core Opportunities Master Fund Ltd

Sola Ltd
Ultra Master Ltd
Taconic Capital Partners 1.5 L.P.
Taconic Market Dislocation Fund II L.P.
Taconic Market Dislocation Master Fund II L.P.
Taconic Opportunity Fund L.P.
Thrivent Financial for Lutherans
Thrivent High Yield Fund, a series of Thrivent Mutual Funds
Thrivent Income Fund, a series of Thrivent Mutual Funds
Thrivent High Yield Portfolio, a series of Thrivent Series Fund, Inc.
Thrivent Income Portfolio, a series of Thrivent Series Fund, Inc.
Virginia Retirement System

Exhibit A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: MOTORS LIQUIDATION COMPANY, f/k/a GENERAL MOTORS CORPORATION, *et al.*, Debtors.	**FOR PUBLICATION** Chapter 11 Case No. 09-50026 (MG) (Jointly Administered)
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.	Adversary Proceeding Case No. 09-00504 (MG)

MEMORANDUM OPINION AND ORDER DENYING MOTIONS TO DISMISS, FOR JUDGMENT ON THE PLEADINGS, AND TO VACATE PRIOR COURT ORDERS

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MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE

Pending before the Court are the following motions to dismiss (collectively, the "Motions to Dismiss") and motions for judgment on the pleadings (collectively, the "Judgment on the

Pleadings Motions," and together with the Motions to Dismiss, the "Motions") in this adversary proceeding (the "Avoidance Action"):

1. The joint motion of certain Term Loan Investor Defendants[1] to dismiss the Plaintiff's Amended Complaint[2] (the "Term Loan Investors' Motion," ECF Doc. # 226);[3]
2. The motion of Ad Hoc Group of Term Lenders[4] to (1) vacate certain prior orders of the Court; and (2) dismiss the adversary proceeding (the "Ad Hoc Motion," ECF Doc. # 262);
3. The motion of Defendant Continental Casualty Company ("Continental") to dismiss the Plaintiff's Amended Complaint (the "Continental Motion," ECF Doc. # 310, 311)[5];
4. The motion of Term Loan Lenders[6] for judgment on the pleadings (the "TLL Motion," ECF Doc. # 377); and
5. The Moving Term Loan Lenders' Motion for judgment on the pleadings (the "Moving TLL Motion," ECF Doc. # 390).

The Motors Liquidation Company Avoidance Action Trust (the "Trust" or "Plaintiff") filed an omnibus opposition to the Motions (the "Opposition," ECF Doc. # 427). Thereafter, the moving defendants submitted voluminous briefs in further support of the Motions. Other defendants filed joinders to the Motions.

The Avoidance Action was filed on July 31, 2009, in the General Motors Corporation's ("GM" or "General Motors") chapter 11 cases pending before my then-colleague, Judge Robert E. Gerber. The Avoidance Action, naming approximately 500 defendants, seeks to avoid and

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[1] The term "Term Loan Investor Defendants" shall have the meaning prescribed in the Term Loan Investors' Motion.

[2] The "Amended Complaint" shall mean the *First Amended Adversary Complaint for (1) Avoidance of Unperfected Lien, (2) Avoidance and Recovery of Postpetition Transfers, (3) Avoidance and Recovery of Preferential Payments, and (4) Disallowance of Claims by Defendants* (ECF Doc. # 91).

[3] All docket references herein shall refer to the adversary proceeding's docket at 09-00504. The "Main Proceeding" shall refer to the main proceeding's docket at 09-50026.

[4] The term "Ad Hoc Group of Term Lenders" shall have the meaning prescribed in Ad Hoc Motion.

[5] The term "Continental Motion" shall refer to the *Memorandum of Law in Support of Motion to Dismiss Plaintiff's Amended Complaint* (ECF Doc. # 311).

[6] The term "Term Loan Lenders" shall have the meaning prescribed in TLL Motion.

recover transfers of $1.5 billion to the holders (or their transferees) of interests in a $1.5 billion term loan to General Motors. The term loan was originally fully secured, but it later turned out that—after the loan was repaid in full shortly after the General Motors bankruptcy cases were filed—the liens on much of the collateral had mistakenly been released. The Trust now seeks to recover the payments as avoidable preferences or constructively fraudulent transfers.

The Avoidance Action was actively litigated for many years in this Court, on direct appeal from this Court to the Second Circuit, on certification of a question of law from the Second Circuit to the Delaware Supreme Court, and then back to the Second Circuit, which based on the Delaware Supreme Court decision, reversed Judge Gerber's decision dismissing the case. The case was then remanded to this Court for further proceedings.

On January 5, 2016, in anticipation of Judge Gerber's retirement at the end of January 2016, the General Motors (now called "Motors Liquidation Company") chapter 11 cases and the Avoidance Action were transferred to me. The Motions are now fully briefed and ready for decision. The Court heard argument on the Motions on April 18, 2016.

For the reasons explained below, all of the Motions are **DENIED.**

I. GENERAL BACKGROUND

A. Term Loan Agreement and Collateral Agreement

In 2006, GM obtained the $1.5 billion seven-year term loan (the "Term Loan"), evidenced by a note pursuant to the Term Loan Agreement.[7] (Term Loan Investors' Mot. at 3 (citing Am. Compl. ¶¶ 571–72).) JPMC was the administrative agent under the Term Loan Agreement. (Opp'n at 4 (citing Fisher Decl. Ex. B (Term Loan Agreement)).) In addition to

[7] The "Term Loan Agreement" refers to the term loan agreement dated as of November 29, 2006, amended by that certain first amendment dated as of March 4, 2009, between GM, as borrower, JPMorgan Chase Bank, N.A. ("JPMC"), as agent, the Bank Lenders (as defined therein), various institutions as agents and Saturn Corporation ("Saturn") as guarantor, pursuant to which GM obtained the Term Loan.

acting as the administrative agent, JPMC was also a Term Lender. (*Id.*) To secure their obligations under the Term Loan, GM and Saturn granted to JPMC, pursuant to a November 29, 2006 collateral agreement, among GM, Saturn and JPMC, a first priority security interest in certain equipment, fixtures, documents, general intangibles, all books and records and their proceeds. (Term Loan Investors' Mot. at 3 (citing Am. Compl. ¶ 572).) On November 30, 2006, a UCC-1 financing statement (the "Financing Statement") was filed with the Secretary of State of Delaware listing GM as "debtor" and JPMC as "administrative agent and secured party." (Am. Compl. ¶ 581.) The collateral covered by the Financing Statement was comprised of the assets described on Annex 1 to the Financing Statement (the "Collateral"). (*Id.*, Ex. 1.)

The Term Loan was a complex syndicated commercial financing, pursuant to which JPMC, Credit Suisse, Cayman Islands Branch, ABN AMRO Bank N.V., Barclays Bank PLC, The Bank of New York, and National City Bank (collectively, the "Bank Lenders") committed upfront to fund the Term Loan. (Term Loan Investors' Mot. at 3 (citing Term Loan Agreement ¶ 2.01, Ex. 1).) The Bank Lenders then had the right to sell, typically through assignments, interests in the Term Loan and the accompanying note in the secondary market to a variety of investors. (*Id.* (citing Term Loan Agreement ¶ 10.06).) To facilitate trading in the secondary market, the Term Loan and accompanying note were registered and assigned CUSIP No. 37046GAF9. (*Id.* at 4.) The Bank Lenders ultimately assigned some or all of their interests in the Term Loan, and over 500 sophisticated entities became lenders under the Term Loan Agreement (the "Term Lenders"). (*Id.* at 4 (citing Am. Compl. ¶¶ 15–568).)

Prior to entering into the Term Loan Agreement, GM entered into a synthetic lease (the "Synthetic Lease") on October 31, 2001, by which GM obtained up to approximately $300 million in financing from a syndicate of financial institutions. (*Id.* at 5.) The Synthetic Lease

was documented by a Participation Agreement dated as of October 31, 2001, with JPMC acting as administrative agent. (*Id.*) GM's obligation to repay the financing under the Synthetic Lease was secured by liens on certain real properties. (*Id.* at 5–6.)

Outstanding amounts under the Synthetic Lease were paid off and the Synthetic Lease was terminated on October 30, 2008, and the liens on real estate and related assets were released. (*Id.* at 6.) On October 30, 2008, GM's counsel, with respect to the Synthetic Lease, caused the filing of UCC-3 termination statements with the Delaware Secretary of State. (*Id.*) As part of that filing, JPMC and its counsel erroneously authorized the filing of a UCC-3 termination statement (the "Termination Statement") terminating the UCC-1 financing statement securing the Term Loan. (*Id.*) Specifically, the Termination Statement provided that the "[e]ffectiveness of the Financing Statement . . . is terminated with respect to security interest(s) of the Secured Party authorizing [the] Termination Statement."[8] (Am. Compl. ¶ 582, Ex. 2.)

B. GM's Bankruptcy Filing and the DIP Financing Order

On June 1, 2009 (the "Petition Date"), GM and certain of its subsidiaries filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in this Court. As of the Petition Date, the outstanding principal balance under the Term Loan Agreement was in excess of $1.4 billion. (Am. Compl. ¶ 573.)

On June 3, 2009, the Office of the United States Trustee appointed the Official Committee of Unsecured Creditors of Motors Liquidation f/k/a General Motors Corporation (the "Committee") pursuant to section 1102 of the Bankruptcy Code. (*Id.* ¶ 7.)

[8] The Termination Statement did not release the liens securing the Term Loan arising from 26 "fixture filings" that were intended to perfect security interests in "fixtures" located in GM's plants in different states, including Michigan, Ohio and Louisiana. The extent, validity, perfection, and value of liens arising from the fixture filings remain subject to dispute in the Avoidance Action. Nothing in this Opinion addresses those issues.

On the Petition Date, the Debtors also filed the motion for debtor-in-possession financing (the "DIP Motion") seeking authority to obtain interim postpetition financing on a secured and superpriority basis up to a maximum aggregate interim amount of $15 billion and final postpetition financing on a secured and superpriority basis up to a maximum aggregate final amount of $33.3 billion under a DIP facility from the United States Department of Treasury and Export Development Canada to pay, among other things, certain prepetition claims and fund the Debtors' operations and administration costs. (Term Loan Investors' Mot. at 6 (citing Am. Compl. ¶ 574).) The Court approved the DIP facility, first on an interim and then on a final basis. (Interim DIP Order (Main Proceeding ECF Doc. # 292) and the DIP Order (Main Proceeding ECF Doc. # 2529).) Among other things, the DIP Order authorized repayment in full of the Term Loan. (Term Loan Investors' Mot. at 6 (citing Am. Compl. ¶ 578).)

Paragraph 19(d) of the DIP Order provides for full general releases of any and all claims against, among others, the holders of the Term Loan, *except*:

> that such release shall not apply to the Committee with respect only to the perfection of first priority liens of the Prepetition Senior Facilities Secured Parties (it being agreed that if the Prepetition Senior Facilities Secured Parties, after Payment, assert or seek to enforce any right or interest in respect of any junior liens, the Committee shall have the right to contest such right or interest in such junior lien on any grounds, including (without limitation) validity, enforceability, priority, perfection or value) (the 'Reserved Claims').

(Term Loan Investors' Mot. at 7 (citing DIP Order ¶ 19(d)).)

Following entry of the DIP Order, the Debtors paid $1,481,656,507.70 to the Term Lenders in full satisfaction of all claims arising under the Term Loan Agreement. (Am. Compl. ¶ 578.)

JPMC contends that following GM's bankruptcy filing, JPMC provided status updates to the Term Lenders in a variety of ways. Some of these facts are disputed by defendants, but it is unnecessary to resolve these issues to rule on the pending Motions. In June 2009, JPMC set up an *Intralinks* site to communicate with the Term Lenders regarding the loan and the GM bankruptcy proceedings. (Opp'n at 9.) JPMC also asserts that it wrote the Term Lenders on June 25, 2009, explaining that the Committee had reserved the right to investigate the liens. (*Id.*)

C. The Initial Complaint

On July 31, 2009, the Committee filed the *Adversary Complaint for (1) Avoidance of Unperfected Lien, (2) Avoidance and Recovery of Postpetition Transfers, (3) Avoidance and Recovery of Preferential Payments, and (4) Disallowance of Claims by Defendants* (the "Initial Complaint," ECF Doc. # 1). The Initial Complaint challenged the liens securing the Term Loan on the ground that the Termination Statement caused the liens on the Collateral to be unperfected. (Initial Compl. ¶¶ 433, 440, 449.) The Initial Complaint named JPMC, as Administrative Agent and as Term Lender, as well as all other Term Lenders that the Committee was able to identify. However, the Initial Complaint was only served on JPMC.

On July 23, 2009, approximately a week before the Committee filed the Avoidance Action, JPMC contends that it hosted a conference call with over twenty entities, including Term Lenders and the investment managers and affiliates of Term Lenders. (Opp'n at 11 (citing Fisher Decl. Ex. J (JPMCB-3-0001290-1292)).) On August 3, 2009, approximately a week after the Committee commenced the Avoidance Action, JPMC again hosted a conference call, this time with over fifty entities, including Term Lenders and the investment managers and affiliates of Term Lenders. (*Id.*)

Then, on September 18, 2009, JPMC asserts that it wrote to the Term Lenders regarding the Avoidance Action stating that the Committee had filed an adversary complaint on July 31, 2009, naming JPMC:

> individually and as administrative agent, along with dozens of lenders who participated in the Term Loan Agreement as defendants. The Action seeks, in part, to avoid and recover approximately $1.4 billion in post-petition payments made to lenders in connection with the Term Loan Agreement as well as approximately $28 million in pre-petition interest payments made within 90 days of General Motors Corporation's bankruptcy filing of June 1, 2009 (the 'Petition Date') on the grounds that the lenders did not have a perfected security interest in GM's assets that were securing indebtedness under the Term Loan Agreement as of the Petition Date.

(Opp'n at 12 (citing Fisher Decl. Ex. L (JPMCB-3-00000444)).) Moreover, JPMC contends that the letter addressed JPMC's assessment of the merits of the Committee's action and discussed service of process, including JPMC's proposal to the Committee that service be delayed as to the Term Lenders:

> [JPMC] considers the Committee's Action to be meritless. Accordingly, in an effort to efficiently litigate the substance of the Action, [JPMC] has proposed to the Committee that it serve [JPMC] with the complaint but withhold service for a substantial period of time upon the Term Loan Agreement lenders until after it takes discovery regarding the Committee's contention that the security interest related to the Term Loan Agreement was unperfected as of the Petition Date, and after that dispositive motions are heard. On September 17, 2009, the Committee accepted [JPMC]'s proposal.

(*Id.*; *see also* ECF Doc. # 393 ¶ 61 (JPMC averring that it "informed the Term Lenders via *Intralinks* of this agreement, that the Court entered a stipulation in the public record allowing the Committee to withhold service of the complaint on the Term Lenders"), 394 ¶ 62 (same), 391 ¶ 60 (same).)

On July 1, 2010, the Committee filed a motion for partial summary judgment, and JPMC filed a motion for summary judgment.

On March 29, 2011, the Court entered an order (the "Confirmation Order," ECF Doc. # 9941) confirming the *Debtors' Second Amended Joint Chapter 11 Plan* (the "Plan," ECF Doc. # 9836). The Plan provided, among other things, for the creation of the Trust to hold and administer certain assets, including the Avoidance Action. (Am. Compl. ¶ 12.) On or about December 15, 2011, the Debtors transferred the Avoidance Action to the Trust. (*Id.* ¶ 13.)

On March 1, 2013, this Court entered its *Decision on Cross-Motions for Summary Judgment* (ECF Doc. # 71), *Judgment* against the Committee (ECF Doc. # 73), and *Order on Cross Motion for Summary Judgment* (ECF Doc. # 72) (collectively, the "March 1, 2013 Summary Judgment Orders and Judgment"). The March 1, 2013 Summary Judgment Orders and Judgment denied the Committee's prayers for relief set forth in the Initial Complaint, granted summary judgment in favor of JPMC, denied the Committee's motion for partial summary judgment, and concluded that the Termination Statement did not terminate the perfection of the liens in favor of the Term Lenders. (*See* ECF Doc. # 71 at 5–6; 72 at 1; 73 ¶ 2; Am. Compl. ¶ 584.) The Court certified its ruling for a direct appeal to the Second Circuit (ECF Doc. # 74), the Committee appealed to the Second Circuit (ECF Doc. # 76), and the motion for leave to appeal to the Second Circuit was granted (ECF Doc. # 83).

The Second Circuit then considered the appeal and focused on whether a secured lender must review and knowingly approve the filing of a UCC-3 termination statement for it to extinguish a perfected security interest, or whether the secured lender must instead intend to terminate the particular security interest that is listed on a UCC-3 termination statement. *See Official Comm. of Unsecured Creditors of Motors Liquidation Co. v. JP Morgan Chase Bank,*

N.A. (In re Motors Liquidation Co.), 755 F.3d 78, 86 (2d. Cir. 2014), *certified question answered sub nom., Official Comm. of Unsecured Creditors of Motors Liquidation Co. v. JPMorgan Chase Bank, N.A.*, 103 A.3d 1010, 1011 (Del. 2014). On June 17, 2014, the Second Circuit certified the question to the Delaware Supreme Court, noting that "[t]he important and urgent reason for an immediate determination by the Delaware Supreme Court . . . is that the question is one of first instance in the State of Delaware." *Id.* Subsequently, the Delaware Supreme Court answered the certified question, holding that a secured party reviewing and authorizing a UCC-3 filing was enough to extinguish a perfected security interest. *Official Comm.*, 103 A.3d at 1010.

On January 21, 2015, after receiving the decision of the Delaware Supreme Court, the Second Circuit issued a decision ruling that the Term Loan security interest had been terminated upon the filing of the erroneous Termination Statement and remanded the litigation back to this Court for further proceedings. *See generally Official Comm. of Unsecured Creditors of Motors Liquidation Co. v. JP Morgan Chase Bank, N.A. (In re Motors Liquidation Co.)*, 777 F.3d 100 (2d Cir. 2015).

On May 20, 2015, the Trust filed the Amended Complaint. The Trust asserts four claims for relief against the Defendant Term Lenders:

(1) avoidance of the Term Loan's lien as unperfected pursuant to section 544(a) of the Bankruptcy Code;

(2) avoidance and disgorgement of the postpetition Transfers the Defendant Term Lenders allegedly received improperly because the lien was not perfected, pursuant to sections 549 and 550 of the Bankruptcy Code;

(3) avoidance and disgorgement of the Payments the Defendant Term Lenders allegedly received as preferential transfers pursuant to sections 547 and 550 of the Bankruptcy Code; and

(4) disallowance of any claims the Defendant Term Lenders may have against the Debtors pursuant to section 502(d) unless and until they disgorge the avoidable transfers alleged in the second and third claims for relief.

Several groups of Term Loan Defendants (the "Cross Claimants"[9]) filed cross claims against JPMC alleging, among other things, that JPMC recklessly and with gross negligence filed the Termination Statement. (Opp'n at 19.)

D. The Extension Orders

From the time the Avoidance Action was initially filed, the Court faced the question of how the action could most efficiently be litigated in the bankruptcy court. It was clear from the outset that the gating issue was whether the erroneously-filed Termination Statement was effective. If it was ineffective, the loan collateral remained in place and the repayment of the loan was permissible. If the lien release was effective, the avoidance action would proceed against all defendants, with many other issues having to be litigated.

The Court entered the following orders extending the time to serve the summons and complaint:

- On October 6, 2009, the Court entered an order granting the Committee 240 days to complete service on Defendant Term Lenders[10] other than JPMC (the "First Service Extension Order," ECF Doc. # 10).
- On January 20, 2010, the Court so-ordered a stipulation between the Committee and JPMC (the "Second Service Extension Order," ECF Doc. # 17), giving the Committee "until thirty (30) days after the date of entry of the Court's decision on any dispositive motion made under this modified Stipulated Scheduling Order to serve the summons and complaint upon other defendants." (Second Service Extension Order ¶ 4.)
- On April 10, 2013, the Court entered an order (the "Third Service Extension Order," ECF Doc. # 82), extending the Committee's time to serve the summons and complaint on Defendant Term Lenders other than JPMC to thirty (30) days after the date of entry of a final order on the Committee's and JPMC's cross-motions for summary judgment (Third Service Extension Order, at 2).
- On May 19, 2015, the Court entered a stipulation and order (the "Fourth Service Extension Order," ECF Doc. # 90) between the Plaintiff Motors Liquidation

[9] Over 150 Term Lender Defendants have filed cross claims to date. (*See* Opp'n at 19.)

[10] The "Defendant Term Lenders" shall mean the defendants named in the Amended Complaint.

Company Avoidance Action Trust, as successor to the Committee, (the "Plaintiff" or the "Trust") and JPMC, extending the Trust's time to serve a summons and Amended Complaint on Defendant Term Lenders other than JPMC to sixty (60) days following the filing of the Amended Complaint. (Fourth Service Extension Order ¶ 2.)

- On August 13, 2015, on the motion of the Trust, the Court further extended the Trust's time to serve the Amended Complaint on Defendant Term Lenders other than JPMC to September 30, 2015 (the "Fifth Service Extension Order," ECF Doc. # 152 at 2).

The series of extensions of time to serve the summons and complaint on defendants other than JPMC effectively divided the litigation into phases, with the first phase, Phase I, between the Plaintiff and JPMC challenging the effectiveness of the lien release. If, as Judge Gerber initially ruled, the lien release was not effective, the case was at an end, and it was unnecessary for the remaining defendants to be served. While many of the other defendants appear to dispute the knowledge they had about the pending Avoidance Action before they were served with the summons and complaint, many of those defendants certainly knew of the Avoidance Action, and until the Second Circuit reversed Judge Gerber's grant of summary judgment in favor of JPMC, those defendants were no doubt happy to sit by on the sidelines without having to defend the action. The Court concludes it is unnecessary to resolve the issues about what each defendant knew. As explained below, the extensions of time to serve the summons and complaint that were granted by Judge Gerber were all proper.

II. PARTIES' POSITIONS

A. Term Loan Investor Defendants' Position

The Term Loan Investor Defendants move to dismiss the Amended Complaint for insufficient service of process under Fed. R. Civ. P. 12(b)(5) and for failure to state a claim upon which relief can be granted under Fed. R. Civ. P. 12(b)(6), both made applicable under Fed. R.

Bankr. P. 7012(b).[11] (Term Loan Investors' Mot. at 1.) With respect to alleged insufficient service of process, the Term Loan Investor Defendants argue that the insufficient service of process resulted in the Term Loan Investor Defendants' due process rights being violated. (*Id.* at 2.) With respect to alleged failure to state a claim upon which relief can be granted, the Term Loan Investor Defendants argue that the Amended Complaint's third claim for relief—avoidance and recovery of an alleged prepetition preferential payment of $28,241,781 to JPMC for the benefit of the Defendants—fails because the Trust lacks standing to pursue the claim and the alleged transfer is protected by the safe harbor under section 546(e) of the Bankruptcy Code. (*Id.*) Finally, the Term Loan Investor Defendants argue that the Amended Complaint's second claim for relief—avoidance and recovery of the alleged postpetition transfer which constituted payment in full of all amounts due and outstanding under the Term Loan Agreement to JPMC for the benefit of the Defendants—fails because certain Term Loan Investor Defendants were not term lenders at the time the transfers were made or were otherwise acting as a conduit. (*Id.* at 2–3.)

1. Amended Complaint Should be Dismissed for Insufficient Service of Process

First, the Term Loan Investor Defendants argue that the six year delay in service of summons and the Initial Complaint upon them violated their due process rights since they did not receive constitutionally adequate notice of the proceedings and have been prejudiced as a result. (*Id.* at 2.) Additionally, the Term Loan Investor Defendants argue that not only were they not served with the adversary proceeding in a timely manner, they were not even provided notice or the opportunity to be heard on the "*ex parte*" service extension orders, further depriving them of their entitled notice. (*Id.*) The Term Loan Investor Defendants contend that they suffered

[11] Additionally, the Term Loan Investor Defendants assert that they move to dismiss the Amended Complaint pursuant to Rule 12(b)(2), but their briefing contains no mention of personal jurisdiction.

prejudice because (1) in effect, the two-year limitations period has been "unilaterally" extended, and (2) the lack of notice affected their ability to (a) participate in and shape the outcome of the litigation, (b) assert potential cross-claims against parties, (c) obtain documents and information necessary to defend their interests, and (d) establish appropriate reserves or take other steps for protection. (*Id.* at 1–2.) In so arguing, the Term Loan Investor Defendants first argue that the Court has discretion to reconsider and vacate the service extension orders. (*Id.* at 11–13.)

Second, the Term Loan Investor Defendants argue that the service extension orders should be set aside as improper because they were not sound exercises of discretion. (*Id.* at 13.) The Term Loan Investor Defendants argue that inconvenience and expense to a plaintiff who initiates an action does not constitute good cause to extend a service deadline and that the entry of the service extension orders on those grounds was an unsound exercise of discretion. (*Id.* at 15.) The Term Loan Investor Defendants argue the extensions of time for "convenience" under Rule 4(m) render their rights meaningless under Rule 19 and also subvert Rule 23. (*Id.* at 16.) The Term Loan Investor Defendants contend that the Court should reconsider and vacate the service extension orders because they involved unsound exercises of discretion. (*Id.* at 18.)

Third, the Term Loan Investor Defendants argue that the service extension orders violated their due process rights. (*Id.*) The Term Loan Investor Defendants argue that they have been potentially prejudiced by the "*ex parte*" service extension orders. (*Id.* at 20.) They contend that their right to assert cross-claims against third parties is being challenged, that many defendants have destroyed or no longer have access to documents and other information needed to support their defenses, and finally that they were unable to establish back in 2009 the appropriate reserves to protect their investors and beneficiaries from the potential liability. (*Id.*) As an example of this potential prejudice, the Term Loan Investor Defendants point to JPMC's

position that the applicable statutes of limitations under New York law for their claims with respect to the termination of the term loan's security interest may have expired since the Termination Statement was filed in October 2008. (*Id.* (citing *Stipulation and Order Regarding Extension of the Deadline for the Undersigned Defendants to File Cross-Claims Between and Among Themselves*, ECF Doc. # 188 ¶ 3 (stating that "[f]or the avoidance of doubt, each Stipulating Defendant, including [JPMC], reserves any and all rights and arguments it had as of November 16, 2015 to assert that any cross-claim does or does not "relate back" to the filing of the complaint in the above-captioned action and is or is not barred by the statute of limitations or any other legal, equitable, or other defense relating to the passage of time.")).) But resolving the current motion does not require the Court to address the issue of the applicable statutes of limitations for the lenders' claims against JPMC.

2. Amended Complaint's Third Claim for Relief Should be Dismissed Because the Trust Lacks the Necessary Standing

The Term Loan Investor Defendants contend that although the DIP Order gave the Committee (and the Trust, as successor-in-interest) the right to challenge the "perfection of first priority liens" of the Term Loan, it did not give the Committee the right to bring claims seeking disgorgement of prepetition preferential transfer payments under section 547 of the Bankruptcy Code. (*Id.* at 24.) The Term Loan Investor Defendants argue that claims to avoid a lien as unperfected under section 544 of the Bankruptcy Code are wholly distinct from preferential transfer claims brought under section 547 of the Bankruptcy Code. (*Id.*) The Term Loan Investor Defendants contend that the DIP Order is clear that the Committee has standing to bring claims related to the "perfection of first priority liens" of the Term Loan, which textually only encompasses claims under section 544(a), and, by extension, claims under 549 of the Bankruptcy Code, if it is determined that the lien is unperfected. (*Id.* at 26 (citing DIP order ¶ 19(d)).) The

Term Loan Investor Defendants argue that the release provision of the DIP Order is general, but that the exception for Reserved Claims (as defined in the DIP Order) is narrow and limited. (*Id.*) The Term Loan Investor Defendants conclude that the Court should dismiss the Amended Complaint's third claim for relief because (i) the Trust lacks standing, (ii) the claim was released under the express terms of the DIP Order, and (iii) such claim is time-barred. (*Id.* at 27.)

3. Amended Complaint's Third Claim for Relief Should be Dismissed Due to the Safe Harbor under Section 546(e) of the Bankruptcy Code

The Term Loan Investor Defendants argue that the prepetition payments to JPMC for the benefit of the defendants qualify as both a "settlement payment" and as a "transfer made by or to (or for the benefit of)" a financial institution "in connection with a securities contract," and, as such, are exempt from avoidance under either prong of section 546(e) of the Bankruptcy Code. (*Id.* at 28.) The Term Loan Investor Defendants concede that courts in the Second Circuit have yet to formally address the safe harbor protection to "tradeable bank debt." (*Id.*) The Term Loan Investor Defendants argue that the circumstances concerning the interests in the Term Loan and the accompanying note, which were identified in the marketplace by a CUSIP number, were widely held and traded by non-traditional bank investors. (*Id.*) The Term Loan Investor Defendants contend that this wide trading mandates a finding that the interests in the Term Loan acquired by the Term Lenders in the marketplace and the prepetition payments made in connection thereto should qualify for safe harbor treatment. (*Id.*)

4. Amended Complaint's Second Claim for Relief Should be Dismissed Because Certain Term Loan Investor Defendants Were Not Term Lenders at the Time the Transfers Were Made or Were Conduits

The Term Loan Investor Defendants contend that several of the Term Loan Investor Defendants sold their interests in the Term Loan to other Term Loan Lenders prior to the Record Holder Date, but the settlement dates on the sales occurred after the Record Holder Date. (*Id.* at

34.) The Term Loan Investor Defendants contend that since these Term Loan Investor Defendants were still listed as the holder of record as of the Record Holder Date, they are being sued for the full amount of the postpetition transfer even though they did not hold an equitable interest in the Term Loan at the time the postpetition transfers were made. (*Id.*) The Term Loan Investor Defendants contend that in every case, to the extent that they received postpetition transfers, each Seller Conduit Defendant (as defined in the motion) either (i) remitted to its buyer in its entirety or (ii) netted out the postpetition transfers against the amount it was owed from the sale, which satisfied the buyer's obligation, and remitted the balance to its buyer. (*Id.* at 34–45.) In all events, the Term Loan Investor Defendants maintain that the buyer held the equitable interests in the Term Loan and was the ultimate beneficiary of the postpetition transfers. (*Id.* at 35.)

The Seller Conduit Defendants concede that the conduit defense is fact specific and does not lend itself to a motion to dismiss. (*Id.* at 36.) They argue that they should not have to endure discovery. (*Id.*) They request the Court to establish a streamlined procedure for granting dismissal of the Amended Complaint's second claim for relief against any Seller Conduit Defendant that can demonstrate to the Trust or the Court that it sold its interest in the Term Loan prior to the postpetition transfers being made. (*Id.*)

B. Ad Hoc Group of Term Lenders' Position

The Ad Hoc Group of Term Lenders advances the same arguments that the Term Loan Investors make in favor of dismissal of the Amended Complaint, contending that the entire Amended Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(5), made applicable to the adversary proceeding through Fed. R. Bankr. P. 7012(b), due to insufficient service of process. (Ad Hoc Mot. at 1.) Additionally, the Ad Hoc Group of Term Lenders contends, just as

the Term Loan Investor Defendants do, that the preference claim—the Amended Complaint's third claim for relief—should be dismissed. (*Id.* at 27.)

C. Continental Casualty Company's Position

Continental moves to dismiss the Amended Complaint and contends that it should be dismissed for the reasons stated in the Term Loan Investors' Motion and the Ad Hoc Motion. (Continental Mot. at 1–2.)

Unique from the other moving parties, Continental moves to dismiss the Amended Complaint's second claim for relief (avoidance and recovery of postpetition transfers) for failure to state a claim. In short, Continental contends that an essential element of avoidance under section 549(a), avoidance of a transfer that is "not authorized," is lacking in the Amended Complaint.[12] Continental argues that the Court expressly authorized the postpetition transfer to Continental, and thus, the Trust cannot establish that there was an unauthorized transfer. Accordingly, Continental argues that the Amended Complaint must be dismissed pursuant to Fed. R. Civ. P. 12(b)(6). (Continental Mot. at 2.)

Continental argues that the Trust seeks to circumvent this basic infirmity (that avoidance is only permitted if the transfers were unauthorized) by alleging that the postpetition transfers at issue were only "provisionally" authorized. (*Id.* at 4.) Continental concedes the DIP Order authorized the Committee to investigate the liens of any of the Prepetition Senior Facilities Secured Parties (as defined in the DIP Order), and provides the Committee with authority to bring actions based on its investigation no later than July 31, 2009. (*Id.*) However, Continental contends that these provisions do not qualify the authority to make postpetition transfers to Continental and other prepetition Term Lenders; the only reference in the DIP Order to section

[12] Continental also disputes the allegation that the postpetition transfers to the defendants were ever property of the estate. (Continental Mot. at 2.)

549 of the Bankruptcy Code relates to the new DIP lenders' liens, not the Debtors' prepetition lenders. (*Id.* (citing DIP Order ¶ 6).)

Continental argues that the DIP Order does not bind Continental because it was not a party to the DIP Order and because Continental's interests are adverse to the interests of JPMC, the agent for the prepetition term lenders who participated in negotiating the DIP Order. (*Id.* at 5.) Continental also contends that it had no notice of the DIP Order or its terms. (*Id.*)

D. Term Loan Lenders' Position

The Term Loan Lenders move for judgment on the pleadings under Fed R. Civ. P. 12(c) based on untimely service and release. (TLL Mot. at 1.) In doing so, they advance largely the same arguments as the Term Loan Investors that (i) the Amended Complaint should be dismissed for insufficient service of process and (ii) the Trust fails to state a preference claim because the release in the DIP Order does not authorize such a claim. (*See generally id.*) As these claims are already summarized above, they are not summarized here.

E. Moving Term Loan Lenders' Position

The moving term loan lenders (the "Moving Term Loan Lenders") join the TLL Motion for judgment on the pleadings under Fed. R. Civ. P. 12(c) and Fed. R. Bankr. P. 7012(c). (Moving TLL Mot. at 1.) The Moving Term Loan Lenders advance the same arguments as the Term Loan Lenders and, largely, the Term Loan Investor Defendants. (*See generally id.*) As these claims are already summarized above, they are not summarized here.

F. Trust's Opposition

In the Opposition to the Motions, the Trust argues that (i) the extension orders were proper and should not be vacated, (ii) the Trust has proper standing to pursue the action, (iii) the preferential payments are not protected by the safe harbor provision of section 546(e) of the

Bankruptcy Code, and (iv) the conduit defense is not properly considered on a motion to dismiss or a motion for judgment on the pleadings. (*See generally* Opp'n.)

1. The Extension Orders Were Proper and Should Not be Vacated

The Trust contends that JPMC, as administrative agent for the moving defendants under the Term Loan Agreement, sought to litigate this action in two phases and to have service of the complaint on the defendants delayed during the pendency of Phase I, which it litigated on the Term Lenders' behalf pursuant to a grant of authority under the Term Loan Agreement and Collateral Agreement. (Opp'n at 21.) The Trust maintains that the defendants were repeatedly notified about the status of the litigation, including the extension orders, and none of the moving defendants sought to intervene, instead opting to permit their administrative agent to act for them. (*Id.*)

The Trust contends that it timely served process in accordance with the extension orders and that the movants' motions challenging service of process should be dismissed on this ground. (*Id.* at 23.) Further, the Trust contends that the extension orders were proper, as JPMC, the moving defendants' agent, proposed and agreed to the entry of the extension orders. (*Id.* at 24–25.) The Trust argues that JPMC had no conflict of interest and that JPMC vigorously defended the defendants' rights with respect to the collateral during Phase I of the litigation, taking advantage of virtually every procedural avenue and appeal. (*Id.* at 28.) The Trust argues that JPMC acted with apparent authority at all times. When the moving defendants entered into the Term Loan, the Trust was required to accept JPMC's assertion that it was acting as agent for the Term Loan Lenders, evidenced by the Collateral Agreement. (*Id.* at 28–29.) The Collateral Agreement provided that the Trust may in all events rely on JPMC's apparent authority to act on the Term Lenders' behalf. (*Id.* at 29 (citing Fisher Decl. Ex. C (Collateral Agreement § 6.04)

("[JPMC is] conclusively presumed to be acting as agent for the Secured Parties with full and valid authority so to act or refrain from acting," and Old GM and Saturn shall not "be under any obligation, or entitlement, to make any inquiry respecting such authority")).)

Additionally, the Trust argues that the defendants were on notice of the litigation as JPMC established and maintained an *Intralinks* site that it used to communicate with the defendants. (*Id.* at 33.) Further, the Trust argues that the Federal Rules authorized the extension orders, the Court properly extended the Trust's time to serve the defendants, the defendants' due process rights have not been violated, Federal Rules of Civil Procedure 19 and 23 are inapplicable, and the law of the case doctrine dictates that the extension orders should stand.

2. The Trust has Proper Standing

The Trust argues that the DIP Order expressly gives the Committee "automatic standing and authority" to "investigate" and "bring actions based upon" the Term Lenders' "perfection of first priority liens." (Opp'n at 41 (citing Fisher Decl. Ex. G (DIP Order ¶ 19(d))).) The DIP Order further dictates that the Committee's "grant of automatic standing" was "without . . . any requirement that the Committee file a motion seeking standing or authority . . . before prosecuting any such challenge." (*Id.*) The Trust argues that the claims seeking recovery of transfers pursuant to sections 549 and 547 of the Bankruptcy Code are "based upon" the Committee's successful challenge to the "perfection of the first priority lien[]" and, thus, fall squarely within the grant of authority set forth in the DIP Order. (*Id.* at 42.) The Trust argues that the claim to avoid the preference payment under section 547 of the Bankruptcy Code falls squarely within the carve-out of the DIP Order because the claim is *based upon* "the perfection of first priority liens" of the Term Lenders. (*Id.* at 43.) The Trust argues that the Plan provided

for, among other things, the creation of the Trust, to prosecute the Avoidance Action[13] following the dissolution of the Committee. (*Id.* at 45.) Further, the Trust cites to a previous decision of this Court which confirmed the Committee's (and the Trust's) standing. (*Id.* at 46.)

With respect to Continental's argument that the Trust does not have the authority to avoid the postpetition transfers pursuant to section 549(a) of the Bankruptcy Code, the Trust argues that such an argument ignores the plain language of the DIP Order, which authorized the postpetition transfers. The DIP Order stated the Committee had "automatic standing" to investigate and challenge the perfection of the Main Lien (as defined in the DIP Order) and bring actions upon any such challenges to perfection. (*Id.* at 48 (citing Fisher Decl. Ex. G (DIP Order ¶¶ 19(d), 24)).)

3. The Preferential Payments Are Not Subject to the Safe Harbor Provision of Section 546(e) of the Bankruptcy Code

The Trust argues that the safe harbor defense is not a valid basis for dismissal at this stage, as the defendants bear the burden of proving that section 546(e) is applicable to bar the Trust from avoiding a transfer, and there is an issue of fact whether the interest payment of $28,241,781 made on May 27, 2009 was a routine or "mandatory" payment under the Term Loan Agreement. (*Id.* at 50–51.) Next, the Trust argues that the alleged preferential transfers are not protected by the safe harbor under section 546(e) because the transfers do not qualify as "settlement payments" or as transfers made in connection with a "securities contract." (*Id.* at 51–57.)

[13] Defined in the Plan as "any action commenced, or that may be commenced, before or after the Effective Date pursuant to section 544, 545, 547, 548, 549, 50 or 551 of the Bankruptcy Code, except to the extent purchased by New GM under the MSPA or prohibited under the DIP Credit Agreement." (Plan § 1.8.)

4. The Mere Conduit Defense Is Not Properly Considered on a Motion to Dismiss or on a Motion for Judgment on the Pleadings

The Trust argues that the Term Lender Defendants' argument is replete with factual allegations that are not found in the Amended Complaint and that such statements emphasize that a mere conduit defense requires an evidentiary record sufficient to prove that a defendant did not have dominion and control over the transferred funds. (*Id.* at 58–59.) The Trust also takes issue with the Term Lender Defendants' efforts to seek the establishment of a streamlined procedure for granting dismissal and contends that the Term Lender Defendants cite no case law in support and fail to articulate why such a procedure is, among other things, proper. (*Id.* at 59–60.)

G. Term Loan Investor Defendants' Reply

In their reply, the Term Loan Investor Defendants reiterate their arguments and contend that (i) the Trust did not provide actual notice to many of the defendants and that *Intralinks* was not designed to inform them of the litigation, (ii) the prepetition payments are protected by the safe harbor of section 546(e) of the Bankruptcy Code, and (iii) the Trust lacks standing to sue the Seller Conduit Defendants and streamlined procedures should be established for their identification and dismissal.

First, the Term Loan Investor Defendants contend that the Court should vacate the "*ex parte*" service extension orders and the Amended Complaint should be dismissed for the reasons outlined in their original motion (the "Term Loan Investor Reply," ECF Doc. # 450 at 1.) The Term Loan Investor Defendants contend that the Trust fails to demonstrate how any of the 500 defendants actually accessed information on *Intralinks*. (*Id.* at 2.) Additionally, the Term Loan Investor Defendants argue that there is a large category of defendants that could not have received notice via *Intralinks*: defendants who sold their interest in the Term Loan prior to repayment under the DIP Order (the "Preference Only Defendants"). (*Id.*) The Term Loan

Investor Defendants argue that the Preference Only Defendants were denied access to *Intralinks* because the *Intralinks* workspace terms and conditions expressly prohibit access to the site by a party who ceased being a term lender. (*Id.* at 3 (citing Opp'n Fisher Decl. Ex. I).)

Second, the Term Loan Investor Defendants reiterate their previous argument that the prepetition payments are protected by the safe harbor of section 546(e) of the Bankruptcy Code. (*Id.* at 6.) The Term Loan Investor Defendants contend that while the Term Loan itself may not be a security, the *interests* in the Term Loan debt sold to hundreds of investors and traded extensively on the secondary market are "securities" within the scope of section 546(e) of the Bankruptcy Code. (*Id.* 8–11.) Next, the Term Loan Investor Defendants reiterate their previous arguments that the prepetition payments were within the scope of the Bankruptcy Code's definition of a "settlement payment" and made in connection with a securities contract. (*Id.* at 11–14.)

Third, the Term Loan Investor Defendants reiterate their previous argument that the Trust lacks standing to sue the Seller Conduit Defendants and urge that streamlined procedures be established for their identification and dismissal. (*Id.* at 15.)

H. Omnibus Reply

In the omnibus reply (the "Omnibus Reply," ECF Doc. # 467), which the Ad Hoc Group of Term Lenders and the Term Loan Lenders filed together (the "Certain Term Lenders"), the Certain Term Lenders counter the two primary arguments that the Trust makes that (i) JPMC agreed to the service extensions and litigated this case as the Term Lenders' agent, and (ii) knowledge of this litigation is sufficient to bind the Term Lenders to the non-appealable partial judgment that was entered at the end of Phase I. (Omnibus Reply at 1.)

The Certain Term Lenders argue that the agency argument is easily disposed of because JPMC consistently has made clear that it was not acting as a representative agent of the other defendants for purposes of this litigation, as evidenced by JPMC stating in its answer that it was not responding "on behalf of any other defendant named in the Complaint or lender under the Term Loan Agreement." (*Id.* at 1–2.) The Certain Term Lenders maintain that JPMC confirmed this position most recently in its March 30th statement to this Court where it stated it was acting "only as a named defendant, and *not* on behalf of any of the other Term Lenders." (*Id.* at 2 (citing JPMC Statement, ECF Doc. # 448, at 2 (emphasis in original)).)

The Certain Term Lenders argue that the Trust's second statement, that the Term Lenders are bound by the Phase I judgment, contradicts Supreme Court authority holding that, under fundamental principles of due process, only service of process can bind a named party to a judgment, regardless of whether the party knew of the litigation. (*Id.* at 2.) The Certain Term Lenders contend that the extension orders here are inconsistent with this authority. (*Id.*)

The Certain Term Lenders argue that vacatur of the extension of the dismissal of the claims against the Term Lenders is the only appropriate remedy. (*Id.*)

I. Continental Reply

In its reply, Continental clarifies its position in its original motion. ("Continental Reply," ECF Doc. # 446 at 2.) Continental maintains that it does not argue that the Court has not granted the Trust standing; rather, the Amended Complaint fails to establish a cause for the avoidance of the postpetition transfers to Continental, whether brought by the Trust or anyone else acting on behalf of the estate. (*Id.*)

Specifically, Continental stresses that to avoid a postpetition transfer under section 549(a), the Trust must prove that the transfer was "not authorized." (*Id.* at 3.) While the Trust

argues that the postpetition transfer to Continental was provisionally authorized, Continental contends that that word appears nowhere in the DIP Order, which expressly authorized the postpetition transfers to Continental. (*Id.* at 3.) Continental recognizes that at least some of the parties to the DIP Order intended to provide a vehicle for clawing back repayment of the Term Loan Lenders and that if the DIP Order had been worded differently, the case might be different. (*Id.* at 3–4.) But Continental, a stranger to the bankruptcy proceedings, was entitled to accept repayment and then move on, in reliance on the DIP Order, which contained express authorization for such repayment. (*Id.* at 4.)

J. Moving Term Loan Lenders' Reply

In their reply, the Moving Term Loan Lenders reiterate the arguments that they articulated in their motion for judgment on the pleadings. (*See generally* the "Moving Term Loan Lenders' Reply," ECF Doc. # 456.) Moreover, the Moving Term Loan Lenders add that JPMC did not act as their agent during Phase I and point to JPMC's express disclaimer of any such representative role in its answer—"[JPMC] does not Answer this Complaint on behalf of any other defendant named in the Complaint or lender under the Term Loan Agreement." (*Id.* at 5 (citing ECF Doc. # 12 at 2 n.1).) The Moving Term Loan Lenders argue that JPMC maintains this view today. (*Id.* (citing JPMC Statement).)

III. DISCUSSION

A. The Applicable Standard

Rule 12(c) of the Federal Rules of Civil Procedure, made applicable to this adversary proceeding by Bankruptcy Rule 7012, states that: "[a]fter the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings." FED. R. CIV. P. 12(c). In deciding a Rule 12(c) motion for judgment on the pleadings, courts apply the same standard applicable to a motion under Rule 12(b)(6). *See Hayden v. Paterson*, 594 F.3d 150, 160

(2d Cir. 2010); *Lewis v. GMAC, Mortgage Co., LLC (In re Residential Capital, LLC),* Adv. Pro. No. 12-01731 (MG), 2012 WL 5386151, *3 (Bankr. S.D.N.Y. Nov. 1, 2012); *see also* FED. R. CIV. P. 12(h)(2) (stating that "[f]ailure to state a claim upon which relief can be granted . . . may be raised . . . by a motion under Rule 12(c)").

To survive a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure, made applicable here by Rule 7012 of the Federal Rules of Bankruptcy Procedure, a complaint need only allege "enough facts to state a claim for relief that is plausible on its face." *Vaughn v. Air Line Pilots Ass'n, Int'l*, 604 F.3d 703, 709 (2d Cir. 2010) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (emphasis removed)). "Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." *Iqbal*, 556 U.S. at 678 (citation and internal quotation marks omitted). Plausibility "is not akin to a probability requirement," but rather requires "more than a sheer possibility that a defendant has acted unlawfully." *Id.* (citation and internal quotation marks omitted).

Courts use a two-prong approach when considering a motion to dismiss. *Pension Benefit Guar. Corp. v. Morgan Stanley Inv. Mgmt. Inc.*, 712 F.3d 705, 717 (2d Cir. 2013) (stating that motion to dismiss standard "creates a 'two-pronged approach' . . . based on '[t]wo working principles'") (quoting *Iqbal*, 556 U.S. at 678–79); *McHale v. Citibank, N.A. (In re the 1031 Tax Grp., LLC)*, 420 B.R. 178, 189–90 (Bankr. S.D.N.Y. 2009). First, the court must accept all factual allegations in the complaint as true, discounting legal conclusions clothed in factual garb. *See, e.g.*, *Iqbal*, 556 U.S. at 677–78; *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111, 124 (2d Cir. 2010) (stating that a court must "assum[e] all well-pleaded, nonconclusory factual allegations in the complaint to be true") (citing *Iqbal*, 556 U.S. at 678). Second, the court must

determine if these well-pleaded factual allegations state a "plausible claim for relief." *Iqbal*, 556 U.S. at 679 (citation omitted).

Courts do not make plausibility determinations in a vacuum; it is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* (citation omitted). A claim is plausible when the factual allegations permit "the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 678 (citation omitted). A complaint that pleads only facts that are "merely consistent with" a defendant's liability does not meet the plausibility requirement. *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)). "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Id.* (quoting *Twombly*, 550 U.S. at 555) (internal quotation marks omitted). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* (citation omitted). "The pleadings must create the possibility of a right to relief that is more than speculative." *Spool v. World Child Int'l Adoption Agency*, 520 F.3d 178, 183 (2d Cir. 2008) (citation omitted).

On a motion to dismiss, in addition to the complaint, a court may consider written instruments, such as a contract, that are either attached to the complaint or incorporated by reference. *See, e.g.*, FED. R. CIV. P. 10(c) ("A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes."); *The Official Comm. of Unsecured Creditors v. Conseco Fin. Servicing Corp. (In re Lois/USA, Inc.)*, 264 B.R. 69, 89 (Bankr. S.D.N.Y. 2001) ("In addition to the complaint itself, a court may consider, on a motion to dismiss, the contents of any documents attached to the complaint or incorporated by reference . . . ."). Courts may also take judicial notice of settlement agreements in order to determine whether claims are barred by a previous settlement. *See, e.g.*, *Rolon v. Henneman*, 389 F. Supp. 2d 517, 519 (S.D.N.Y. 2005);

see also Johns v. Town of E. Hampton, 942 F. Supp. 99, 104 (E.D.N.Y. 1996) ("[W]hen a [party] fails to introduce a pertinent document as part of his pleading, [the other party] may introduce the exhibit as part of his motion attacking the pleading." (citing CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE: CIVIL 2D §1327, at 762–63 (2d ed. 1990))) (internal quotation marks omitted).

B. The Court's Extension Orders Were Proper and No Cause Exists to Vacate the Extension Orders

Two months after the General Motors chapter 11 cases were filed, the Avoidance Action was filed. Judge Gerber was faced with the challenge of how to best handle the massive Avoidance Action while also dealing with the enormous challenges raised by the chapter 11 cases. It was clear from the outset of the Avoidance Action that the effectiveness of the erroneously-filed Termination Statement was a gating issue. Judge Gerber agreed with the counsel for the Plaintiff and for JPMC that the most efficient way to handle the Avoidance Action was to divide it into phases, with Phase I focusing on the effectiveness of the UCC-3 lien release. When viewed in this context, the series of orders extending Plaintiff's time to serve the summons and complaint on all defendants other than JPMC was a sensible and rational case management decision. What is crystal clear is that these orders did not permit litigation of the Avoidance Action to languish to the detriment of any of the defendants. The moving defendants ask me to second guess the case administration decisions made earlier in the case. Defendants make no persuasive arguments why the Court should do so.

Courts have discretion to reconsider or modify their interlocutory orders. *United States v. Uccio*, 940 F.2d 753, 758 (2d Cir. 1991). An "interlocutory order," as opposed to a final order, does not completely resolve all of the issues pertaining to a discrete claim. *See, e.g., In re Fugazy Exp., Inc.*, 982 F.2d 769, 776 (2d Cir. 1992). The discretion to reconsider or modify an

interlocutory order is informed by the law-of-the-case doctrine, which provides that when a court has ruled on an issue, that decision should generally be adhered to by that court in subsequent stages in the same case. *Uccio*, 940 F.2d at 758. The decision whether or not to apply law-of-the-case is, in turn, informed principally by the concern that disregard of an earlier ruling not be allowed to prejudice the party seeking the benefit of the doctrine. *Id.*; *see also Zdonok v. Glidden Co.*, 327 F.2d 944, 953 (2d Cir. 1964) (Friendly, J.) (stating that the doctrine of the law of the case is addressed to the court's "good sense").

Indeed, courts have held that "[m]otions for reconsideration are disfavored, because '[c]omplete disposition of discrete issues and claims is often essential to effective case management. If a court is forced to revisit earlier interlocutory rulings, much of the advantage in making the early rulings would be lost.'" *Devon Mobile Commc'ns Liquidating Trust v. Adelphia Commc'ns Corp. (In re Adelphia Commc'ns Corp.)*, 324 B.R. 492, 494 (Bankr. S.D.N.Y. 2005) (quoting *In re Best Payphones, Inc.*, No. 01-15472 (SMB), 2003 WL 1089525, at *1 (Bankr. S.D.N.Y. Mar. 10, 2003)). In considering whether to reconsider a prior order, "courts have generally applied criteria that respect the need to grant some measure of finality even to interlocutory orders and which discourage the filing of endless motions for reconsideration." *In re Homesteads Cmty. at Newtown, LLC*, No. 04-30417 (LMW), 2013 WL 932214, at *3 (Bankr. D. Conn. Mar. 11, 2013) (internal quotation marks omitted), *aff'd*, 526 B.R. 1 (D. Conn. 2014), *aff'd sub nom. Nuevo Pueblo, LLC v. Napolitano*, 608 F. App'x 40 (2d Cir. 2015).

Although Rule 60(b) (and, for that matter, Rule 59(e)) does not supply the power or the standard for deciding whether to reconsider an interlocutory order, courts have generally applied criteria that respect the need to grant some measure of finality even to interlocutory orders and

which discourage the filing of endless motions for reconsideration. *In re Homesteads*, 2013 WL 932214, at *3. Specifically, courts may find justification for reconsidering interlocutory orders when there is (1) an intervening change in controlling law; (2) newly discovered evidence; or (3) the need to correct a clear error of law or to prevent a manifest injustice. *Id.*

In this case, no justification exists for reconsidering the extension orders. There has not been an intervening change in the controlling law nor have defendants pointed to newly discovered evidence that warrants reconsideration. For the reasons detailed below, there was no clear error of law, and vacating the extension orders would not prevent a manifest injustice.

1. There Is No Clear of Error of Law

The Federal Rules of Civil Procedure provide a legal basis for the granting of the extension orders. The time for service in an adversary proceeding may be extended under two different rules:

- Fed. R. Civ. P. 4(m): Rule 4(m), made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7004, governs the enlargements of time for a plaintiff to serve the summons and complaint. "If a defendant is not served within 90 days after the complaint is filed, the court . . . shall . . . dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period." FED. R. CIV. P. 4(m). Additionally, Fed. R. Civ. P. 6(b)(1)(A) provides that "[w]hen an act may or must be done within a specified time, the court may, for good cause, extend the time . . . with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires."

- Fed. R. Bankr. P. 9006(b)(1): Rule 9006(b)(1) provides that a court "for cause shown may at any time in its discretion . . . with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order."

Importantly, courts are permitted to extend the time to serve the summons and complaint, *even in the absence of good cause*, and even after the deadline for service has already expired. *See Zapata v. City of New York*, 502 F.3d 192, 196–97 (2d Cir. 2007); *Mejia v. Castle Hotel*,

Inc., 164 F.R.D. 343, 345 (S.D.N.Y. 1996). Here, of course, because Judge Gerber granted multiple applications to extend the time to serve the summons and complaint, there was no failure to serve any defendants within the time expressly authorized by the Court, so there is no issue whether a plaintiff should be permitted to serve a summons and complaint after the time to do so expired. That fact, above all others, distinguishes this case from the cases cited by the moving defendants where the time to serve had already expired when an extension of time was sought. That is why the relief sought by the defendants here would require the Court to vacate orders that the Rules specifically authorized Judge Gerber to grant; here, there is no defect in service to correct. *See, e.g.*, *Savage & Assocs., P.C. v. 1201 Owner Corp. (In re Teligent Inc.)*, 485 B.R. 62, 70–71 (Bankr. S.D.N.Y. 2013).[14] Applications to extend the time to serve a summons and complaint on defendants are, necessarily, *ex parte*, since the other named but unserved defendants are not required by any rule to be served with the application.

The moving defendants contend that they have suffered prejudice because they were not served with the summons and complaint years ago. Their allegations of prejudice are entirely speculative. First, the Plaintiff did not delay prosecuting the Avoidance Action to the detriment of the moving defendants. Rather, Judge Gerber concluded that the most efficient way of handling this enormous litigation was to divide the case into phases, with Phase I focused on the legal and limited factual issues concerning the erroneous UCC-3 filing. Phase I was not resolved until remand from the Second Circuit following the Delaware Supreme Court decision. Whether or not some or all of the unserved defendants were advised of developments in the Phase I litigation is beside the point—JPMC certainly contends that the unserved defendants were kept apprised of developments, a contention some of the defendants contest. The case was being

[14] The Court notes that the moving parties cited no case in which an appellate court concluded that an order extending time to serve, granted before time to serve expire, should be vacated. Further, the Court's research has yielded no such case.

actively prosecuted and defended on issues primarily concerning the Plaintiff and JPMC. The unserved defendants are no worse off than they would be if the Phase I litigation and decisions had been reached in totally unrelated litigation. The law of the Circuit binds this Court to the extent that the previously unserved defendants raise the same legal issues that have already been decided in completely unrelated litigation between different parties. But as explained below, the Court agrees with the moving defendants that the prior judgment against JPMC does not have preclusive effect on the defendants that were not brought into the case until after those court rulings.

Contrary to the Plaintiff's argument, though, the Plaintiff has failed to establish that the previously unserved defendants consented to JPMC defending the Avoidance Action on their behalf. JPMC's pleadings in this case disclaim any intention to defend the case on the other defendants' behalf. The Plaintiff's counsel does not point to any language in the loan or collateral documents expressly authorizing the administrative agent to appear and defend lawsuits on behalf of the lenders. The lenders may be bound by actions of the administrative agent with respect to the collateral, but that does not make the administrative agent the "authorized agent" of the defendants in a lawsuit seeking over $1.5 billion in damages against named but unserved defendants. While those defendants may be bound under the terms of the loan and collateral agreements by actions of JPMC with respect to the collateral, nothing in those agreements authorized JPMC to act for (and bind) the unserved defendants while JPMC defended the litigation to which other defendants had not yet been made parties by service of the summons and complaint. JPMC's pleadings make clear that it was acting only on its own behalf. Whether the unserved defendants have meritorious legal or factual defenses to liability or damages on so far untested theories remains to be seen. Due process protects the ability of those

defendants to assert their defenses in the action after they were made parties by service of the summons and complaint. *See, e.g., Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (noting that "[a]n elementary and fundamental requirement of due process in any proceeding . . . is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections"); *Vazquez-Robles v. CommoLoCo, Inc.*, 757 F.3d 1, 2 (1st Cir. 2014).

2. *Vacating the Extension Orders Would Not Prevent a Manifest Injustice*

In this case, vacating the extension orders would not prevent a manifest injustice. Even if the Term Loan Defendants had been served with the Initial Complaint at the outset of the case and participated in the Phase I litigation, the Court concludes, based on the Second Circuit and Delaware Supreme Court decisions, that the outcome would have been the same, at least on the issues addressed in Phase I. The Term Loan Defendants, at this stage at least, have not identified any legal or factual issues that could have and may still lead to a different result, at least as to them.

On the other hand, if the Court were to vacate the extension orders, the Plaintiff would be unable to refile the Avoidance Action because it would be time barred due to the statute of limitations having run. The deadline specified for filing the action under the DIP Order has also expired. This represents an injustice to the Trust, as the Trust relied on the Court's various extension orders in waiting to effectuate service of process on the other Term Loan Defendants.

3. Rules 19 and 23 are Not Applicable in This Case

Rule 19 is not applicable to parties who are named as original defendants in an action. *See, e.g., Moore v S. N.H. Med. Ctr.*, CIV A 08-11751-NMG, 2009 WL 5214879, at *9 (D. Mass. Aug. 18, 2009) ("Rule 4(k)(1)(B) applies to parties joined under either Rule 14 or 19.

[Defendant] does not meet this criteria as he was named as an original defendant." (emphasis removed)); *Roscoe-Ajax Const. Co. v Columbia Acoustics & Fireproofing Co.*, 39 F.R.D. 608, 610 (S.D.N.Y. 1966) (same). Similarly, "class actions are permissive, not mandatory," and, as such, courts do not second-guess a plaintiff's strategic decision not to proceed under Rule 23. *Zuckman v. Monster Beverage Corp.*, 958 F. Supp. 2d 293, 306 (D.C. Cir. 2013) (quoting *Sprint Commc'ns Co., L.P. v. APCC Servs., Inc.*, 554 U.S. 269, 291 (2008)). Whether class certification in this case would have been possible is not relevant.

C. The Trust Has Standing to Pursue the Preference Action

The DIP Order expressly provides the Committee with "automatic standing and authority" to "investigate" and "bring actions based upon" the Term Lenders' "perfection of first priority liens." (DIP Order ¶ 19(d).) Further, "the grant of automatic standing shall be without any further order of [the] Court or any requirement that the Committee file a motion seeking standing or authority to file a motion seeking standing or authority before prosecuting any such challenge." (*Id.*) The claims seeking recovery of transfers pursuant to sections 549 and 547 of the Bankruptcy Code fall squarely within the carve-out of the DIP Order because those claims are "based upon" the Committee's successful challenge to the "perfection of the first priority lien[]" of the Term Lenders. (*See id.*) Here, the Trust, the successor-in-interest to the Committee, is bringing a preference claim based on *the perfection (or lack thereof)* of the Term Lenders' first priority lien. Through avoidance of the first priority lien of the Term Lenders, the Trust seeks to recover the alleged preference payments.

D. The Trust Has Authority to Avoid Postpetition Transfers

Continental argues that the Trust does not have authority to avoid the postpetition transfers pursuant to section 549(a) of the Bankruptcy Code because such transfers were

authorized by the DIP Order. Section 549(a) mandates—among other things—that a postpetition transfer be "not authorized" for it to be subject to avoidance. In this case, the postpetition transfers were indeed authorized subject to the Committee's (and now the Trust's) right to challenge the perfection of the first lien priority. In this way, the Trust's right to challenge the perfection of the first lien priority effected a provisional authorization of the postpetition transfers. If the Trust is successful in challenging the postpetition transfers, the subject transfers would have been unwarranted and, thus, unauthorized because the transferees would have been unsecured creditors.

E. The Court Cannot Decide on the Motions to Dismiss Whether the Safe Harbor May Apply

The Third Cause of Action of the Amended Complaint seeks to recover interest payments totaling $28,241,781 made to noteholders on May 29, 2009 (within 90 days of the bankruptcy filing) as an avoidable preference under section 547. Defendants' motion to dismiss does not argue that the complaint fails to state a claim; rather, defendants argue that the section 546(e) safe harbor requires dismissal of the claim as a matter of law. The interest payments unquestionably enabled the noteholders, assuming that they were unsecured or under-secured, to receive more than they would have received in a chapter 7 liquidation. Whether the defendants would have a defense to recovery of the interest payments, for example, under section 547(c) as ordinary course payments, is not an issue at this stage of the litigation.

Defendants' counsel acknowledged during argument that no existing case law supports their argument that the section 546(e) safe harbor applies to interest payments on promissory notes. Counsel also acknowledged that their argument rests on facts that are not pleaded in the complaint. These concessions are sufficient at this stage of the case to deny the motion to

dismiss the Third Cause of Action—which the Court so rules. It is useful, however, to discuss the statute and case law that will control further litigation of this claim.

Section 546(e) provides, in relevant part, that a trustee may not avoid a transfer that is either (i) a "settlement payment" made by or to (or for the benefit of) a financial institution or financial participant, or (ii) made by or to (or for the benefit of) a financial institution or financial participant in connection with a "securities contract." 11 U.S.C. § 546(e). Defendants' counsel press both the "settlement payment" and "securities contract" prongs as bases to dismiss the preference claim. Because the defense is based on the statute, analysis must begin with the statutory language. Three sections of the Bankruptcy Code—sections 101, 546 and 741—must be read together in analyzing the issues. Three decisions from the Second Circuit analyze the statutory language and explicate the potential scope of the section 546(e) defense. *See In re Enron Creditors Recovery Corp. v. Alfa, S.A.B. de C.V.*, 651 F.3d 329 (2d Cir. 2011); *Official Comm. of Unsecured Creditors of Quebecor World (USA) Inc. v. Am. United Life Ins. Co. (In re Quebecor World (USA) Inc.)*, 719 F.3d 94 (2d Cir. 2013); and *Picard v. Ida Fishman Rev. Trust (In re Bernard L. Madoff Inv. Sec. LLC)*, 773 F.3d 411 (2d Cir. 2014). Each case will be discussed in turn.

1. The Statutory Language

Section 546(e) provides, in pertinent part, as follows:

> Notwithstanding sections [547 and 548(a)(1)(B)], the trustee may not avoid a transfer that is a . . . settlement payment, as defined in section 101 or 741 of this title, made by or to (or for the benefit of) a . . . financial institution [or] financial participant, . . . , or that is a transfer made by or to (or for the benefit of) a . . . financial institution [or] financial participant . . . in connection with a securities contract, as defined in section 741(7), . . . , that is made before the commencement of the case, except under section 548(a)(1)(A) of this title.

11 U.S.C. § 546(e).

The references in this subsection to sections 101 and 741 are important. Section 101 and 741 contain applicable definitions. For our purposes, the definitions of "security," "settlement payment," and "securities contract" are relevant. Section 101(49)(A)(i) defines a "security" to include a "note." This is obviously important because the Term Loan is evidenced by a note, which is considered a "security" for purposes of the other relevant sections of the Code. *See Enron*, 651 F.3d at 340 ("A 'security' is, in turn, broadly defined under the Bankruptcy Code to include various types of debt such as a note, bond, or debenture. 11 U.S.C. § 101(49)(A).")

"Settlement payment" is defined, in circular terms, in two places—section 101(51A) and section 741(8). Section 101(51A) defines "settlement payment" for purposes of the forward contract provisions of the title as:

> a preliminary settlement payment, a partial settlement payment, an interim settlement payment, a settlement payment on account, a final settlement payment, a net settlement payment, or any other similar payment commonly used in the forward contract trade.

11 U.S.C. § 101(51A). Section 741(8) uses similar language and states that "settlement payment" means:

> a preliminary settlement payment, a partial settlement payment, an interim settlement payment, a settlement payment on account, a final settlement payment, or any other similar payment commonly used in the securities trade . . . .

11 U.S.C. § 741(8).

"Securities contract" is defined in section 741(7), in pertinent part, to mean:

> (i) a contract for the purchase, sale, or loan of a security, . . . , or option on any of the foregoing, including an option to purchase or sell any such security . . . , and including any repurchase or reverse repurchase transaction on any such security . . .;
> . . . .
>
> (vii) any other agreement or transaction that is similar to an agreement or transaction referred to in this subparagraph;

> (viii) any combination of the agreements or transactions referred to in this subparagraph;
>
> (ix) any option to enter into any agreement or transaction referred to in this subparagraph;
>
> (x) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), or (ix), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this subparagraph, except that such master agreement shall be considered to be a securities contract under this subparagraph only with respect to each agreement or transaction under such master agreement that is referred to in clause (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), or (ix); or . . . .

11 U.S.C. § 741(7).

Making sense of these definitions in the context of this case in not easy. The first question is whether the challenged interest payment is a "settlement payment," protected from avoidance by section 546(e). Even if the interest payment is not a "settlement payment," the interest payment may nevertheless be protected from avoidance as a transfer to a financial participant "in connection with a securities contract." As explained below, under Second Circuit case law, the Court concludes that the interest payment is *not* protected from avoidance as a "settlement payment." Whether the interest payment was a transfer to a financial participant "in connection with a securities contract" is less clear—a decision on this question needs to await a full development of the record.

2. The Prepetition Interest Payment Does Not Qualify as a Settlement Payment

The Second Circuit has defined a settlement payment as a "transfer of cash made to complete a securities transaction." *Quebecor*, 719 F.3d at 98 (internal quotation marks omitted) (quoting *Enron*, 651 F.3d at 339); *see also* 11 U.S.C. §§ 101(51A), 741(8) (defining "settlement payment"). While such a transfer must be made by, to, or on behalf of a financial intermediary,

"a transfer may qualify for the section 546(e) safe harbor even if the financial intermediary is merely a conduit." *Id.* at 99 (citations omitted).

The Second Circuit in *Enron* addressed "whether 11 U.S.C. § 546(e), which shields 'settlement payments' from avoidance actions in bankruptcy, extends to an issuer's payments to redeem its commercial paper prior to maturity." 651 F.3d at 330. The bankruptcy court had held that redemption payments were not protected from avoidance by section 546(e). *In re Enron Creditors Recovery Corp.*, 407 B.R. 17, 45 (S.D.N.Y. 2009). The district court reversed, concluding that redemption payments were protected from avoidance by the section 546(e) safe harbor. *In re Enron Creditors Recovery Corp.*, 422 B.R. 423, 439–40 (S.D.N.Y. 2009). The Second Circuit affirmed the district court.

The Second Circuit succinctly stated the operative facts:

> Between October 25, 2001 and November 6, 2001, Enron drew down on its $3 billion revolving lines of credit and paid out more than $1.1 billion to retire certain of its unsecured and uncertificated commercial paper prior to the paper's maturity. Enron redeemed the commercial paper at the accrued par value, calculated as the price originally paid plus accrued interest. This price was considerably higher than the paper's market value.

Enron, 651 F.3d at 331.

The bankruptcy court had concluded that "the transfer of 'ownership' of a security is an integral element in the securities settlement process"; therefore, "settlement payments" include only payments made to buy or sell securities and not payments made to retire debt. *Id.* at 332–33. The circuit court rejected this conclusion:

> Congress enacted § 546(e)'s safe harbor in 1982 as a means of 'minimiz[ing] the displacement caused in the commodities and securities markets in the event of a major bankruptcy affecting those industries.' If a firm is required to repay amounts received in settled securities transactions, it could have insufficient capital or liquidity to meet its current securities trading obligations, placing other market participants and the securities markets themselves at

risk.

Id. at 334 (internal citations omitted).

But the touchstone for application of the "settlement payment" safe harbor is the transfer of cash or securities to *complete* a securities transaction:

> Section 741(8), which § 546(e) incorporates, defines 'settlement payment' rather circularly as 'a preliminary settlement payment, a partial settlement payment, an interim settlement payment, a settlement payment on account, a final settlement payment, or any other similar payment commonly used in the securities trade.' The parties, following our sister circuits, agree that courts should interpret the definition, 'in the context of the securities industry,' as 'the transfer of cash or securities made to complete [a] securities transaction.'

Enron, 651 F.3d at 334 (internal citations omitted); *see also Madoff*, 773 F.3d at 422 ("But we have held that the statutory definition [of 'settlement payments'] should be broadly construed to apply to 'the transfer of cash or securities made to complete [a] securities transaction.'").

In *Enron*, the redemption payment completed a securities transaction—Enron's commercial paper was paid off in full.[15] That is not so here, where the prepetition periodic interest payment on the Term Loan left the notes in place. Protecting from avoidance prepetition interest payments to some unsecured creditors in the ninety days before bankruptcy would violate the fundamental bankruptcy policy of equality of distribution. The Court concludes that prepetition interest payments—that were not part of the purchase, sale, or redemption of an interest in the note—are not protected from avoidance by the "settlement payments" prong of the section 546(e) safe harbor.

[15] The redemption payment was calculated based on accrued par value, "calculated as the price originally paid plus accrued interest." *Enron*, 651 F.3d at 331. The circuit opinion does not suggest that the interest component was separately protected as a settlement payment.

3. The Prepetition Payment May Qualify as a Transfer to a Financial Institution in Connection with a Securities Contract

The Second Circuit's decisions in *Quebecor*, 719 F.3d 94, and *Madoff*, 773 F.3d 411, address the "securities contract" prong of the section 546(e) safe harbor. In *Quebecor*, 719 F.3d at 96, the Second Circuit reviewed a decision of the district court affirming a decision by the bankruptcy court that granted the defendants' motion for summary judgment. The bankruptcy court concluded that payments to noteholders in exchange for private placement notes were protected from avoidance because they were both "settlement payments" and "transfers made . . . in connection with a securities contract," protected by the section 546(e) safe harbor. *Id.* The district court affirmed the bankruptcy court on the basis that the challenged payments were "settlement payments"; the district court did not agree that the transfers were "in connection with a securities contract." *Id.* at 97. The circuit affirmed the decision of the courts below, but concluded that it "need not decide whether the payments fall within the 'settlement payments' safe harbor because they clearly fall within the safe harbor for 'transfers made . . . in connection with a securities contract.'" *Id.* at 96. Although not deciding whether the payments were protected as settlement payments, the circuit decision nevertheless reiterated its holding in *Enron* that "payments made to redeem commercial paper before its maturity date were 'settlement payments,' within the meaning of section 546(e), because they were 'transfer[s] of cash made to complete a securities transaction.'" *Id.* at 97 (quoting *Enron*, 651 F.3d at 339).

The court in *Quebecor* noted "that the Court in *Enron* had no occasion to consider the 'securities contract' safe harbor, which was added after Enron filed for bankruptcy and after the adversary proceeding commenced." *Id.* at 98 n.2. The court's analysis of the "securities contract" issue first examined the statutory definition of a securities contact.

> Section 741(7) of the Code defines a 'securities contract' as 'a contract for the purchase, sale, or loan of a security . . . including

> any repurchase or reverse repurchase transaction on any such security.' 11 U.S.C. § 741(7)(A)(i).

Id. at 98.

Based on the undisputed facts in the case, the *Quebecor* court concluded that the payments fit "squarely within the plain wording of the securities contract exemption, as it was a 'transfer made by or to (or for the benefit of) a . . . financial institution . . . in connection with a securities contract.'" *Id.* The funds were transferred "in the amount [outstanding principal, accrued interest, and make-whole amount] and manner prescribed by the [note purchase agreements] for purchasing the Notes." *Id.* The note purchase agreements "were clearly 'securities contracts' because they provided for both the original purchase and the 'repurchase' of the Notes. Accordingly, this was a transfer made to a financial institution in connection with a securities contract that is exempt from avoidance." *Id.* at 98–99 (citation omitted).

The Term Lenders argue here that the prepetition interest payments were part of a mandatory quarterly interest payment that was a necessary part of the completion of a securities contract. The underlying documents concerning the terms of the note, or the purchase or sale of interests in the note, are not part of the record on the pending motions. But the *Quebecor* court, in discussing the "securities contract," appears to focus on the contract terms for the purchase or sale of the notes, not on the periodic interest payments. The Court is unable to conclude on the record here that *Quebecor* requires that periodic interest payments are protected from avoidance by section 546(e).

In *Madoff*, 773 F.3d 411, the Second Circuit decision turned on "whether the transfers [by BLIMIS] either were 'made in connection with a securities contract' or were 'settlement payment[s].'" *Id.* at 417. Even though BLIMIS never conducted actual trades, the court concluded that the transfers were protected from avoidance because they were made in

connection with a securities contract and were settlement payments. *Id.* The defendants contended and the court agreed that the account opening documents were securities contracts. *Id.* at 418. The court's analysis focused on the statutory definition of a securities contract:

> Thus, the term "securities contract" expansively includes contracts for the purchase or sale of securities, as well as any agreements that are *similar* or *related* to contracts for the purchase or sale of securities. This concept is broadened even farther because § 546(e) also protects a transfer that is "in connection" with a securities contract.

Id. at 418 (emphasis in original) (citation omitted).

The account opening documents were agreements to acquire or dispose of securities on behalf of customers, specifying the terms for BLIMIS to acquire and dispose of securities for customers. *Id.* Because the account opening documents also obligate BLIMIS "to reimburse its customers upon a request for withdrawal, they also fit the definition of 'securities contract' in § 741(7)(A)(xi), which includes, again quite expansively, 'any security agreement or arrangement related to any agreement or transaction referred to in this subparagraph, including any guarantee or reimbursement obligation by or to a stockbroker,'" *id.* at 419, the court concluded that the agreements satisfied the definition of a securities contract. Nothing in the *Madoff* decision addresses whether periodic interest payments pursuant to a note would also be protected from avoidance based on the "securities contract" prong of the section 546(e) safe harbor.

The Term Loan Investor Defendants contend that the tradeable interest in the Term Loan is akin to a publicly traded note or bond issued by a public company. (Term Loan Investors' Mot. at 33.) The Term Loan Investor Defendants argue that the Term Loan and accompanying note were registered and assigned a CUSIP number. (*Id.* at 28.) Further, they argue that the interest in the Term Loan and accompanying note were widely traded and held by hundreds of different investors (*i.e.*, part of a market). (*Id.*) However, while *Madoff* applies an expansive

scope for a protected "securities contract," the current record provides no factual basis to support the defendants' argument. It is premature for the Court to make a determination on this issue at this time.

For the reasons discussed above, the Court concludes that the Motion to Dismiss based on the section 546(e) safe harbor must be denied.

IV. CONCLUSION

For the reasons set forth above, the Motions are **DENIED.**

IT IS SO ORDERED.

Dated: June 30, 2016
New York, New York

Martin Glenn

MARTIN GLENN
United States Bankruptcy Judge

Exhibit B

15-2844-bk(L)
In re Motors Liquidation Co.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term 2015

(Argued: March 15, 2016 Decided: July 13, 2016)

Docket Nos. 15-2844-bk(L), 15-2847-bk(XAP), 15-2848-bk(XAP)

IN THE MATTER OF: MOTORS LIQUIDATION COMPANY,

Debtor.

CELESTINE ELLIOTT, LAWRENCE ELLIOTT, BERENICE SUMMERVILLE,

Creditors-Appellants-Cross-Appellees,

SESAY AND BLEDSOE PLAINTIFFS, IGNITION SWITCH PLAINTIFFS, IGNITION SWITCH PRE-CLOSING ACCIDENT PLAINTIFFS, DORIS POWLEDGE PHILLIPS,

Appellants-Cross-Appellees,

GROMAN PLAINTIFFS,

Appellants,

v.

GENERAL MOTORS LLC,

Appellee-Cross-Appellant,

WILMINGTON TRUST COMPANY,

Trustee-Appellee-Cross-Appellant,

PARTICIPATING UNITHOLDERS,

Creditors-Appellees-Cross-Appellants.[1]

ON APPEAL FROM THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Before:

STRAUB, CHIN, and CARNEY, *Circuit Judges*.

Appeal from a judgment of the United States Bankruptcy Court for the Southern District of New York (Gerber, *J.*), enforcing a "free and clear" provision of a sale order to enjoin claims against a debtor's successor corporation and concluding under the equitable mootness doctrine that assets of the debtor's unsecured creditors' trust would be protected from late-filed claims. On appeal, plaintiffs challenge the bankruptcy court's rulings that: (1) it had jurisdiction, (2) the sale order covered their claims, (3) enforcement of the sale order would not

[1] The Clerk of Court is respectfully directed to amend the official caption to conform to the above.

violate procedural due process, and (4) relief for any late-filed claims would be barred as equitably moot.

AFFIRMED, REVERSED, AND VACATED IN PART, AND REMANDED.

GARY PELLER, Washington, D.C., *for Creditors-Appellants-Cross-Appellees Celestine Elliott, Lawrence Elliott, and Berenice Summerville, and Appellants-Cross-Appellees Sesay and Bledsoe Plaintiffs*.

STEVEN W. BERMAN (Andrew M. Volk, *on the brief*), Hagens Berman Sobol Shapiro LLP, Seattle, Washington, *and* Elizabeth J. Cabraser, Lieff Cabraser Heimann & Bernstein, LLP, San Francisco, California, *and* Rachel J. Geman, Lieff Cabraser Heimann & Bernstein, LLP, New York, New York, *and* Edward S. Weisfelner, David J. Molton, Howard S. Steel, Brown Rudnick LLP, New York, New York, *and* Sandra L. Esserman, Stutzman, Bromberg, Esserman & Plifka, P.C., Dallas Texas, *for Appellants-Cross-Appellees Ignition Switch Plaintiffs*.

WILLIAM P. WEINTRAUB (Gregory W. Fox, *on the brief*), Goodwin Procter LLP, New York, New York, *for Appellants-Cross-Appellees Ignition Switch Pre-Closing Accident Plaintiffs*.

Joshua P. Davis, Josh Davis Law Firm, Houston, Texas, *for Appellant-Cross-Appellee Doris Powledge Phillips*.

ALEXANDER H. SCHMIDT, Wolf Haldenstein Adler Freeman & Herz LLP, New York, New York, *and* Jonathan L. Flaxer, Golenbock Eiseman Assor Bell & Peskoe LLP, New York, New York, *for Appellants Groman Plaintiffs*.

ARTHUR J. STEINBERG (Scott Davidson, *on the brief*), King & Spalding LLP, New York, New York, *and* Merritt E. McAlister, King & Spalding LLP, Atlanta, Georgia, *and* Edward L. Ripley, King & Spalding LLP, Houston, Texas, *and* Richard C. Godfrey, Andrew B. Bloomer, Kirkland & Ellis LLP, Chicago, Illinois, *for Appellee-Cross-Appellant General Motors LLC*.

Adam H. Offenhartz, Aric H. Wu, Lisa H. Rubin, Gabriel K. Gillett, Gibson, Dunn & Crutcher LLP, New York, New York, *for Trustee-Appellee-Cross-Appellant Wilmington Trust Company*.

PRATIK A. SHAH, Akin Gump Strauss Hauer & Feld LLP, Washington, D.C., *and* Daniel H. Golden, Deborah J. Newman, Akin Gump Strauss Hauer & Feld LLP, New York, New York, *for Creditors-Appellees-Cross-Appellants Participating Unitholders*.

CHIN, *Circuit Judge*:

On June 1, 2009, General Motors Corporation ("Old GM"), the nation's largest manufacturer of automobiles and the creator of such iconic American brands as Chevrolet, Cadillac, and Jeep, filed for bankruptcy. During the financial crisis of 2007 and 2008, as access to credit tightened and consumer spending diminished, Old GM posted net losses of $70 billion over the course of a year and a half. The U.S. Department of the Treasury ("Treasury") loaned billions of dollars from the Troubled Asset Relief Program ("TARP") to buy the company time to revamp its business model. When Old GM's private efforts failed, President Barack Obama announced to the nation a solution -- "a quick, surgical bankruptcy."[2] Old GM petitioned for Chapter 11 bankruptcy protection, and only forty days later the new General Motors LLC ("New GM") emerged.

This case involves one of the consequences of the GM bankruptcy. Beginning in February 2014, New GM began recalling cars due to a defect in their ignition switches. The defect was potentially lethal: while in motion, a car's ignition could accidentally turn off, shutting down the engine, disabling power steering and braking, and deactivating the airbags.

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[2] *Remarks on the United States Automobile Industry*, 2009 Daily Comp. Pres. Doc. 2 (June 1, 2009).

Many of the cars in question were built years before the GM bankruptcy, but individuals claiming harm from the ignition switch defect faced a potential barrier created by the bankruptcy process. In bankruptcy, Old GM had used 11 U.S.C. § 363 of the Bankruptcy Code (the "Code") to sell its assets to New GM "free and clear." In plain terms, where individuals might have had claims against Old GM, a "free and clear" provision in the bankruptcy court's sale order (the "Sale Order") barred those same claims from being brought against New GM as the successor corporation.

Various individuals nonetheless initiated class action lawsuits against New GM, asserting "successor liability" claims and seeking damages for losses and injuries arising from the ignition switch defect and other defects. New GM argued that, because of the "free and clear" provision, claims could only be brought against Old GM, and not New GM.

On April 15, 2015, the United States Bankruptcy Court for the Southern District of New York (Gerber, *J.*) agreed and enforced the Sale Order to enjoin many of these claims against New GM. Though the bankruptcy court also determined that these plaintiffs did not have notice of the Sale Order as required by the Due Process Clause of the Fifth Amendment, the bankruptcy court denied

plaintiffs relief from the Sale Order on all but a subset of claims. Finally, the bankruptcy court invoked the doctrine of equitable mootness to bar relief for would-be claims against a trust established in bankruptcy court to pay out unsecured claims against Old GM ("GUC Trust").[3]

The bankruptcy court entered judgment and certified the judgment for direct review by this Court.[4] Four groups of plaintiffs appealed, as did New GM and GUC Trust. We affirm, reverse, and vacate in part the bankruptcy court's decision to enforce the Sale Order against plaintiffs and vacate as advisory its decision on equitable mootness.

BACKGROUND

I. *Bailout*

In the final two quarters of 2007, as the American economy suffered a significant downturn, Old GM posted net losses of approximately $39 billion and $722 million. General Motors Corp., *Annual Report (Form 10-K)* 245 (Mar. 5, 2009). In 2008, it posted quarterly net losses of approximately $3.3 billion, $15.5

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[3] For ease of reference, in the context of this appeal, we also refer to Wilmington Trust Company (the administrator of GUC Trust) and the unitholders of GUC Trust collectively and singularly as "GUC Trust."

[4] *See* 28 U.S.C. § 158(d)(2) (providing jurisdiction for courts of appeals to hear appeals if the bankruptcy court certifies that certain conditions are met).

billion, $2.5 billion, and $9.6 billion. *Id.* In a year and a half, Old GM had managed to hemorrhage over $70 billion.

The possibility of Old GM's collapse alarmed many. Old GM employed roughly 240,000 workers and provided pensions to another 500,000 retirees. *Id.* at 19, 262. The company also purchased parts from over eleven thousand suppliers and marketed through roughly six thousand dealerships. A disorderly collapse of Old GM would have far-reaching consequences.

After Congress declined to bail out Old GM, President George W. Bush announced on December 19, 2008 that the executive branch would provide emergency loans to help automakers "stave off bankruptcy while they develop plans for viability."[5] In Old GM's case, TARP loaned $13.4 billion on the condition that Old GM both submit a business plan for long-term viability to the President no later than February 17, 2009 and undergo any necessary revisions no later than March 31, 2009. If the President found the business plan unsatisfactory, the TARP funds would become due and payable in thirty days, rendering Old GM insolvent and effectively forcing it into bankruptcy.

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[5] *Remarks on the American Auto Industry*, 44 Weekly Comp. Pres. Doc. 1569 (Dec. 19, 2008).

On March 30, 2009, President Obama told the nation that Old GM's business plan was not viable.[6] At the same time, the President provided Old GM with another $6 billion loan and sixty more days to revise its plan along certain parameters. President Obama also reassured the public:

> But just in case there's still nagging doubts, let me say it as plainly as I can: If you buy a car from Chrysler or General Motors, you will be able to get your car serviced and repaired, just like always. Your warranty will be safe. In fact, it will be safer than it's ever been, because starting today, the United States Government will stand behind your warranty.[7]

As the President stood behind the reliability of GM cars, pledging another $600 million to back all warranty coverage, bankruptcy remained a stark possibility.[8]

II. *Bankruptcy*

The federal aid did not succeed in averting bankruptcy. Old GM fared no better in the first quarter of 2009 -- posting on May 8, 2009 a $5.9 billion net loss. General Motors Corp., *Quarterly Report (Form 10-Q)* 57 (May 8, 2009).

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[6] *Remarks on the United States Automobile Industry*, 2009 Daily Comp. Pres. Doc. 2 (Mar. 30, 2009) [hereinafter "March 30, 2009 Presidential Remarks"].

[7] March 30, 2009 Presidential Remarks, *supra* note 6, at 3.

[8] *See* Office of the Press Sec'y, White House, *Obama Administration's New Warrantee Commitment Program* (Mar. 30, 2009); *see also* Office of the Press Sec'y, White House, *Obama Administration New Path to Viability for GM & Chrysler* (Mar. 30, 2009); Steven Rattner, *Overhaul: An Insider's Account of the Obama Administration's Emergency Rescue of the Auto Industry* 299 (2010).

But entering bankruptcy posed a unique set of problems: Old GM sought to restructure and become profitable again, not to shut down; yet if Old GM lingered in bankruptcy too long, operating expenses would accumulate and consumer confidence in the GM brand could deteriorate, leaving Old GM no alternative but to liquidate and close once and for all. On June 1, 2009, with these risks in mind, Old GM petitioned for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the Southern District of New York.

A. ***Mechanics of the § 363 Sale***

The same day, Old GM filed a motion to sell itself to New GM (also dubbed "Vehicle Acquisition Holdings LLC" or "NGMCO, Inc."), complete with a 103-page draft sale agreement and 30-page proposed sale order.

Through this proposed sale, Old GM was attempting not a traditional Chapter 11 reorganization, but a transaction pursuant to 11 U.S.C. § 363 -- a less common way of effecting a bankruptcy. *See, e.g.*, *In re Lionel Corp.*, 722 F.2d 1063, 1066-70 (2d Cir. 1983) (explaining the history of § 363). The usual Chapter 11 reorganization follows set procedures: the company entering bankruptcy (the "debtor") files a reorganization plan disclosing to creditors how they will be treated, asks those creditors to vote to accept the plan, and then

emerges from bankruptcy with its liabilities restructured along certain parameters. *See* 11 U.S.C. §§ 1121-1129.[9] This jostling can take years.[10] In contrast, in a § 363 sale of substantially all assets, the debtor does not truly "reorganize." Instead, it sells its primary assets to a successor corporation, which immediately takes over the business. *See Fla. Dep't of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 37 n.2 (2008). As evidenced by the GM bankruptcy, a § 363 sale can close in a matter of weeks.

The proposed sale was, in effect, a complex transaction made possible by bankruptcy law. GM's sale would proceed in several parts. First, Old GM would become a "debtor-in-possession" under the Code. *See* 11 U.S.C. § 1101. Where a trustee might otherwise be appointed to assert outside control of the debtor, *id.* § 1104, a debtor-in-possession continues operating its business, *id.* §§ 1107, 1108. *See In re Smart World Techs., LLC*, 423 F.3d 166, 174 n.10 (2d Cir.

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[9] *See generally* Evan F. Rosen, Note, *A New Approach to Section 363(f)(3)*, 109 Mich. L. Rev. 1529, 1538-39 (2011) ("However, unlike sales pursuant to the standard Chapter 11 plan confirmation process, 363(f) Sales occur without the benefit of the Chapter 11 Safeguards -- the disclosure, notice, voting, and priority safeguards . . . to protect secured creditors.").

[10] *See* Jacob A. Kling, *Rethinking 363 Sales*, 17 Stan. J.L. Bus. & Fin. 258, 262 (2012) ("A plan of reorganization must be submitted to a vote of creditors and equity holders after furnishing them with a disclosure statement, a process that can take years." (footnote omitted)).

2005) ("In a chapter 11 case, . . . the debtor usually remains in control of the estate as the 'debtor in possession.'"). Still in control, Old GM could seek the bankruptcy court's permission to sell portions of its business. *See* 11 U.S.C. § 363(b)(1).

Second, there would be New GM, a company owned predominantly by Treasury (over sixty percent). As proposed, New GM would acquire from Old GM substantially all of its business -- what one might commonly think of as the automaker "GM." But New GM would not take on all of Old GM's liabilities. The Code allows a § 363 sale "free and clear of any interest in such property." 11 U.S.C. § 363(f). The proposed sale order provided that New GM would acquire Old GM assets "free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever, including rights or claims based on any successor or transferee liability." J. App. 276. Other than a few liabilities that New GM would assume as its own, this "free and clear" provision would act as a liability shield to prevent individuals with claims against Old GM from suing New GM. Once the sale closed, the "bankruptcy" would be done: New GM could immediately begin operating the GM business, free of Old GM's debts.

Third, Old GM would remain. The proposed sale would leave Old GM with some assets, including $1.175 billion in cash, interests in the Saturn brand, and certain real and personal property. Old GM would also receive consideration from New GM, including a promise to repay Treasury and Canadian government loans used to finance the business through bankruptcy and a ten-percent equity stake in New GM. Old GM would retain, however, the bulk of its old liabilities.

Fourth, Old GM would liquidate. Though liquidation is not formally part of a § 363 sale, the sale would result in two GM companies. Old GM would disband: it would rename itself "Motors Liquidation Company" and arrange a plan for liquidation that addressed how its remaining liabilities would be paid. *See* 11 U.S.C. § 1129(a)(11). Thus, while New GM would quickly emerge from bankruptcy to operate the GM business, Old GM would remain in bankruptcy and undergo a traditional, lengthy liquidation process.

B. ***Sale Order***

One day after Old GM filed its motion, on June 2, 2009, the bankruptcy court ordered Old GM to provide notice of the proposed sale order. Old GM was required to send direct mail notice of its proposed sale order to

numerous interested parties, including "all parties who are known to have asserted any lien, claim, encumbrance, or interest in or on [the to-be-sold assets]," and to post publication notice of the same in major publications, including the *Wall Street Journal* and *New York Times*. J. App. 385-86. The sale notice specified that interested parties would have until June 19, 2009 to submit to the bankruptcy court responses and objections to the proposed sale order.

The bankruptcy court proceeded to hear over 850 objections to the proposed sale order over the course of three days, between June 30 and July 2, 2009. On July 5, 2009, after addressing and dismissing the objections, the bankruptcy court approved the § 363 sale. *In re General Motors Corp.* ("*GM*"), 407 B.R. 463 (Bankr. S.D.N.Y. 2009) (Gerber, *J.*). Among those objections were arguments against the imposition of a "free and clear" provision to bar claims against New GM as the successor to Old GM made by consumer organizations, state attorneys general, and accident victims.

Next, the bankruptcy court issued the Sale Order, which entered into effect the final sale agreement between Old GM and New GM (the "Sale Agreement"). In the Sale Agreement, New GM assumed fifteen categories of liabilities. As relevant here, New GM agreed to assume liability for accidents

after the closing date for the § 363 sale and to make repairs pursuant to express warranties issued in connection with the sale of GM cars -- two liability provisions present in the initial draft sale agreement. The Sale Agreement also provided a new provision -- resulting from negotiations among state attorneys general, the GM parties, and Treasury during the course of the sale hearing -- that New GM would assume liability for any Lemon Law claims.[11] With these exceptions, New GM would be "free and clear" of any and all liabilities of Old GM.

On July 10, 2009, the § 363 sale officially closed, and New GM began operating the automaker business. As a matter of public perception, the GM bankruptcy was over -- the company had exited bankruptcy in forty days.[12]

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[11] The Sale Agreement defined "Lemon Laws" as "state statute[s] requiring a vehicle manufacturer to provide a consumer remedy when such manufacturer is unable to conform a vehicle to the express written warranty after a reasonable number of attempts, as defined in the applicable statute." J. App. 1676.

[12] *See, e.g.*, Bill Vlasic, *G.M. Vow to Slim Includes Top Ranks*, N.Y. Times (July 10, 2009) ("General Motors . . . emerged from bankruptcy on Friday . . . ."); John D. Stoll & Neil King Jr., *GM Set to Exit Bankruptcy*, Wall Street Journal (July 10, 2009) ("The new General Motors Co. is poised to exit Chapter 11 protection as soon as Friday morning, and to emerge as a leaner, more focused company after only 40 days in bankruptcy court.").

C. *Liquidation of Old GM*

Meanwhile, Old GM remained in bankruptcy. Over the next several years, the bankruptcy court managed the process of satisfying liabilities that remained with Old GM (*i.e.*, not taken on by New GM).

The bankruptcy court set November 30, 2009 as the "bar date" for any individual or entity to file a proof of claim -- that is, to assert a claim as to Old GM's remaining assets. Old GM filed its first Chapter 11 liquidation plan on August 31, 2010, and amended it on December 8, 2010 and again on March 29, 2011. The proposed plan provided how claims against Old GM would be paid: secured claims, other priority claims, and environmental claims made by the government would be paid in full; unsecured claims (claims without an assurance of payment, such as in the form of a lien on property) would not.

Instead, under the plan, Old GM would establish GUC Trust, which would be administered by the Wilmington Trust Company. Once GUC Trust (and other like trusts) was established, Old GM would dissolve.

GUC Trust would hold certain Old GM assets -- including New GM stock and stock warrants that could be used to purchase shares at fixed prices, along with other financial instruments. Creditors with unsecured claims against

Old GM would receive these New GM securities and "units" of GUC Trust (the value of which would be pegged to the residual value of GUC Trust) on a pro rata basis in satisfaction of their claims. The Sale Agreement also imposed an "accordion feature" to ensure that GUC Trust would remain adequately funded in the event that the amount of unsecured claims grew too large. The accordion feature provided that if "the Bankruptcy Court makes a finding that the estimated aggregate allowed general unsecured claims against [Old GM's] estates exceed $35 [billion], then [New GM] will . . . issue 10,000,000 additional shares of Common Stock . . . to [Old GM]." J. App. 1699.

On March 29, 2011, the bankruptcy court confirmed this liquidation plan. GUC Trust made quarterly distributions of its assets thereafter. The initial distribution released more than seventy-five percent of the New GM securities.

On February 8, 2012, the bankruptcy court ordered that no further claims against Old GM and payable by GUC Trust would be allowed unless the claim amended a prior claim, was filed with GUC Trust's consent, or was deemed timely filed by the bankruptcy court. As of March 31, 2014, GUC Trust had distributed roughly ninety percent of its New GM securities and nearly 32 million units of GUC Trust; the expected value of unsecured claims against Old

GM totaled roughly $32 billion, not enough to trigger the accordion feature and involve New GM in the bankruptcy. The GM bankruptcy that began five years earlier appeared to be approaching its end.

III. *Ignition Switch Defect*

On February 7, 2014, New GM first informed the National Highway Traffic Safety Administration ("NHTSA") that it would be recalling, among other vehicles, the 2005 Chevrolet Cobalt. A defect in the ignition switch could prevent airbags from deploying.

A later congressional staff report, which followed four days of testimony by New GM CEO Mary Barra before committees of the House of Representatives and Senate, described what could happen by referring to an actual tragic accident caused by the defect:[13] In October 2006, three teenagers

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[13] Staff of H. Comm. on Energy & Commerce, 113th Cong., *Report on the GM Ignition Switch Recall: Review of NHTSA* 1 (Sept. 16, 2014); *Examining Accountability and Corporate Culture in Wake of the GM Recalls: Hearing Before the Subcomm. on Consumer Prot., Prod. Safety, & Ins. of the S. Comm. on Commerce, Sci., & Transp.*, 113th Cong. (2014); *The GM Ignition Switch Recall: Investigation Update: Hearing Before the Subcomm. on Oversight & Investigations of the H. Comm. on Energy & Commerce*, 113th Cong. (2014); *Examining the GM Recall and NHTSA's Defect Investigation Process: Hearing Before the Subcomm. on Consumer Prot., Prod. Safety, & Ins. of the S. Comm. on Commerce, Sci., & Transp.*, 113th Cong. (2014) [hereinafter "April 2, 2014 Senate Hearing"]; *The GM Ignition Switch Recall: Why Did It Take So Long?: Hearing Before the Subcomm. on Oversight & Investigations of the H. Comm. on Energy & Commerce*, 113th Cong. (2014).

were riding in a 2005 Chevrolet Cobalt when the driver lost control and the car careened off the side of the road. The vehicle flew into a telephone utility box and several trees. The airbags did not deploy, and two of the teenagers died.

From February until October 2014, New GM would issue over 60 recalls, with the number of affected vehicles in the United States alone surpassing 25 million. New GM hired attorney Anton Valukas of the law firm Jenner & Block to investigate; he did so and prepared an extensive report (the "Valukas Report").[14]

In 1997, Old GM sold three out of ten cars on the road in North America. *See* General Motors Corp., *Annual Report (Form 10-K)* 60 (Mar. 20, 1998). Engineers began developing a new ignition switch that could be used in multiple vehicles across the GM brand, first by setting technical specifications for the switch and then by testing prototypes against those specifications.

Throughout testing, which lasted until 2002, prototypes consistently failed to meet technical specifications. In particular, a low amount of torque

[14] Plaintiffs and New GM each extensively cite and quote to the Valukas Report as an account of the underlying facts regarding the ignition switch defect, and we do as well.

could cause the ignition switch to switch to "accessory" or "off."[15] A low torque threshold on an ignition switch would mean that little force -- perhaps even the bump of a stray knee -- would be needed to rotate the key in the switch from the "on" position to the "accessory" or "off" position.

Near the end of testing, an engineer commented on the ignition switch's lingering problems in an email: he was "tired of the switch from hell." J. App. 9696. Three months later, in May 2002, the ignition switch was approved for production, despite never having passed testing.

In the fall of 2002, Old GM began producing vehicles with the faulty ignition switch. Almost immediately, customers complained of moving stalls, sometimes at highway speeds -- instances where the engine and power steering and braking cut off while the car was in motion, leaving drivers to manually maneuver the vehicle, that is, without assistance of the car's power steering and braking systems.

Despite customer complaints, and grumblings in the press, Old GM classified the moving stall as a "non-safety issue." *Id.* at 9711. As Valukas put it, "on a scale of 1 (most severe) to 4 (least severe) . . . the problem could have been

[15] Torque is a measure of twisting force -- it is generated, for example, when one twists off the cap of a soda bottle or tightens a bolt with a wrench.

designated a severity level 1 safety problem, [but] it was not." *Id.* Instead, the moving stall was assigned a severity level of 3. Old GM personnel considered the problem to be a matter of customer satisfaction, not safety. These personnel apparently also did not then fully realize that when a car shuts off, so does its airbags. But as early as August 2001, at least some Old GM engineers understood that turning off the ignition switch could prevent airbags from deploying.

Complaints about the ignition switch continued. Between 2004 and 2005, NHTSA began asking questions about engine stalls. In 2005, several media outlets also reported on the stalls. *See, e.g.*, Jeff Sabatini, *Making a Case for Keyless Ignitions*, N.Y. Times (June 19, 2005). Senior attorneys studied the stalls, but considered the risk to be "remote[]." J. App. 9734. At the same time, Old GM's product investigations unit recreated the ignition switch's issues by using only a heavy keychain to generate torque. Finally, in December 2005, Old GM issued a bulletin to dealers, but not to customers, warning them that "low ignition key cylinder torque" could cause cars to turn off. *Id.* at 9740. The bulletin did not mention that, as a result, cars could stall on the road.

Then came reports of fatalities. In late 2005 through 2006, news of deaths from airbag non-deployments in crashes where airbags should have

deployed reached the desks of Old GM's legal team. Around April 2006, Old GM engineers decided on a design change of the ignition switch to increase the torque. Old GM engineers did so quietly, without changing the ignition switch's part number, a change that would have signaled that improvements or adjustments had been made.

In February 2007, a Wisconsin state trooper's report made its way into the files of Old GM's legal department: "The two front seat airbags did not deploy. It appears that the ignition switch had somehow been turned from the run position to accessory prior to the collision with the trees." *Id.* at 9764. NHTSA similarly brought to Old GM's attention reported airbag non-deployments. *See* Transportation Research Center, Indiana University, *On-Site Air Bag Non-Deployment Investigation* 7 (Apr. 25, 2007, rev. Mar. 31, 2008). As more incidents with its cars piled up, Old GM finally drafted an updated bulletin to dealers warning them of possible "stalls," but never sent it out.

Old GM internally continued to investigate. By May 2009, staff had figured out that non-deployment of airbags in these crashes was attributable to a sudden loss of power. They believed that one of the two "most likely explanation[s] for the power mode signal change was . . . a problem with the

Ignition Switch." J. App. 9783. By June 2009, Old GM engineers had implemented a change to the ignition key, hoping to fix the problem once and for all. One engineer lamented that "[t]his issue has been around since man first lumbered out of [the] sea and stood on two feet." *Id.* at 9781.

Later, the Valukas Report commented on the general attitude at Old GM. For eleven years, "GM heard over and over from various quarters -- including customers, dealers, the press, and their own employees -- that the car's ignition switch led to moving stalls, group after group and committee after committee within GM that reviewed the issue failed to take action or acted too slowly. Although everyone had responsibility to fix the problem, nobody took responsibility." J. App. 9650.

The Valukas Report recounted aspects of GM's corporate culture. With the "GM salute," employees would attend action meetings and literally cross their arms and point fingers at others to shirk responsibility. With the "GM nod," employees would (again) literally nod in agreement to endorse a proposed plan, understanding that they and others had no intention of following through. Finally, the Report described how GM employees, instead of taking action, would claim the need to keep searching for the "root cause" of the moving stalls

and airbag non-deployments. This "search for root cause became a basis for doing nothing to resolve the problem for years." *Id.* at 9906.

Indeed, New GM would not begin recalling cars for ignition switch defects until February 2014. Soon after New GM's initial recall, individuals filed dozens of class actions lawsuits, claiming that the ignition switch defect caused personal injuries and economic losses, both before and after the § 363 sale closed.[16] New GM sought to enforce the Sale Order, invoking the liability shield to hold New GM "free and clear" of various claims. This meant that when it came to Old GM cars New GM would pay for post-closing personal injuries, make repairs, and follow Lemon Laws, but nothing else. The amount of purportedly barred liabilities was substantial -- an estimated $7 to $10 billion in economic losses, not to mention damages from pre-closing accidents.

IV. *Proceedings Below*

On April 21, 2014, Steven Groman and others (the "Groman Plaintiffs") initiated an adversary proceeding against New GM in the bankruptcy court below, asserting economic losses arising from the ignition switch defect.

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[16] Those class actions are consolidated before a district judge in the United States District Court for the Southern District of New York. *See In re General Motors LLC Ignition Switch Litigation*, No. 14-MD-2543 (S.D.N.Y.) (Furman, *J.*).

The same day, New GM moved to enforce the Sale Order to enjoin those claims, as well as claims in other ignition switch actions then being pursued against New GM.

Other plaintiffs allegedly affected by the Sale Order included classes of individuals who had suffered pre-closing injuries arising from the ignition switch defect ("Pre-Closing Accident Plaintiffs"), economic losses arising from the ignition switch defect in Old GM cars ("Ignition Switch Plaintiffs"), and damages arising from defects other than the ignition switch in Old GM cars ("Non-Ignition Switch Plaintiffs").[17] Included within the Ignition Switch Plaintiffs were individuals who had purchased Old GM cars secondhand after the § 363 sale closed ("Used Car Purchasers").

On appeal, several orders are before us. First, the Non-Ignition Switch Plaintiffs filed a motion, asserting, among other things, that the bankruptcy court lacked jurisdiction to enforce the Sale Order. On August 6, 2014, the bankruptcy court denied that motion. *In re Motors Liquidation Co.* ("*MLC I*"), 514 B.R. 377 (Bankr. S.D.N.Y. 2014) (Gerber, *J.*).

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[17] On August 1, 2014, New GM filed motions to enforce the Sale Order against the Pre-Closing Accident Plaintiffs and Non-Ignition Switch Plaintiffs, who entered the bankruptcy proceedings later.

Second, after receiving further briefing and hearing oral argument on the motion to enforce, on April 15, 2015 the bankruptcy court decided to enforce the Sale Order in part and dismiss any would-be claims against GUC Trust because relief would be equitably moot. *In re Motors Liquidation Co.* ("*MLC II*"), 529 B.R. 510 (Bankr. S.D.N.Y. 2015) (Gerber, *J.*). The bankruptcy court first determined plaintiffs lacked notice consistent with procedural due process. *Id.* at 540-60. In particular, the bankruptcy court found that the ignition switch claims were known to or reasonably ascertainable by Old GM prior to the sale, and thus plaintiffs were entitled to actual notice, as opposed to the mere publication notice that they received. *Id.* at 556-60. The bankruptcy court found, however, that with one exception plaintiffs had not been "prejudiced" by this lack of notice -- the exception being claims stemming from New GM's own wrongful conduct in concealing defects (so-called "independent claims"). *Id.* at 560-74. In other words, the bankruptcy court held that New GM could not be sued -- in bankruptcy court or elsewhere -- for ignition switch claims that otherwise could have been brought against Old GM, unless those claims arose from New GM's own wrongful conduct. *Id.* at 574-83.

In the same decision, the bankruptcy court addressed arguments by GUC Trust that it should not be held as a source for relief either. Applying the factors set out in *In re Chateaugay Corp.* ("*Chateaugay III*"), 10 F.3d 944 (2d Cir. 1993), the bankruptcy court concluded that relief for any late claims against GUC Trust was equitably moot, as the plan had long been substantially consummated. *MLC II*, 529 B.R. at 583-92. Finally, the bankruptcy court outlined the standard for any future fraud on the court claims. *Id.* at 592-97. With these issues resolved, the bankruptcy court certified its decision for appeal to this Court pursuant to 28 U.S.C. § 158. *Id.* at 597-98.

Third, the bankruptcy court issued another decision after the parties disagreed on the form of judgment and other ancillary issues. On May 27, 2015, the bankruptcy court clarified that the Non-Ignition Switch Plaintiffs would be bound by the judgment against the other plaintiffs, but would have seventeen days following entry of judgment to object. *In re Motors Liquidation Co.* ("*MLC III*"), 531 B.R. 354 (Bankr. S.D.N.Y. 2015) (Gerber, *J.*). The bankruptcy court left open the question of whether Old GM knew of other defects.

On June 1, 2015, the bankruptcy court entered judgment against all plaintiffs and issued an order certifying the judgment for direct appeal.

Following briefing by the Non-Ignition Switch Plaintiffs, on July 22, 2015, the bankruptcy court rejected their objections to the judgment.

New GM, GUC Trust, and the four groups of plaintiffs described above -- the Groman Plaintiffs, Ignition Switch Plaintiffs, Non-Ignition Switch Plaintiffs, and Pre-Closing Accident Plaintiffs -- appealed.[18] We turn to these appeals.

DISCUSSION

The Code permits a debtor to sell substantially all of its assets to a successor corporation through a § 363 sale, outside of the normal reorganization process. Here, no party seeks to undo the sale of Old GM's assets to New GM, as executed through the Sale Order.[19] Instead, plaintiffs challenge the extent to which the bankruptcy court may absolve New GM, as a successor corporation, of Old GM's liabilities. *See generally* 3 *Collier on Bankruptcy* ¶ 363.02[2] (Alan N.

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[18] On appeal, the Non-Ignition Switch Plaintiffs are joined by certain ignition switch and pre-closing accident plaintiffs and call themselves the "*Elliot*, *Sesay*, and *Bledsoe* Plaintiffs." That group also represents two other appellants captioned above: Berenice Summerville and Doris Powledge Phillips. For ease of reference, in the context of this appeal, we will continue to call the group the "Non-Ignition Switch Plaintiffs."

[19] Indeed, the bankruptcy court's opinion in *GM*, 407 B.R. 463, which approved the § 363 sale, has been reviewed on appeal has three times: a stay pending appeal was denied in *In re General Motors Corp.*, No. M 47(LAK), 2009 WL 2033079 (S.D.N.Y. July 9, 2009), and the opinion was affirmed in *In re Motors Liquidation Co.*, 428 B.R. 43 (S.D.N.Y. 2010), and in *In re Motors Liquidation Co.*, 430 B.R. 65 (S.D.N.Y. 2010).

Resnick & Harry J. Sommer eds., 16th ed. 2013) [hereinafter "*Collier on Bankruptcy*"] (noting that "use of a section 363 sale probably reached its zenith" with the GM bankruptcy). In particular, they dispute whether New GM may use the Sale Order's "free and clear" provision to shield itself from claims primarily arising out of the ignition switch defect and other defects.

The decisions below generate four issues on appeal: (1) the bankruptcy court's jurisdiction to enforce the Sale Order, (2) the scope of the power to sell assets "free and clear" of all interests, (3) the procedural due process requirements with respect to notice of such a sale, and (4) the bankruptcy court's ruling that would-be claims against GUC Trust are equitably moot.

I. *Jurisdiction*

We first address the bankruptcy court's subject matter jurisdiction. New GM argued below that successor liability claims against it should be enjoined, and the bankruptcy court concluded as a threshold matter that it had jurisdiction to enforce the Sale Order. *See MLC I*, 514 B.R. at 380-83. The Non-Ignition Switch Plaintiffs challenge jurisdiction: (1) as a whole to enjoin claims against New GM, (2) with respect to independent claims, which stem from New GM's own wrongful conduct, and (3) to issue a successive injunction. We review

de novo rulings as to the bankruptcy court's jurisdiction. *See In re Petrie Retail, Inc.*, 304 F.3d 223, 228 (2d Cir. 2002).

First, as to jurisdiction broadly, "[t]he jurisdiction of the bankruptcy courts, like that of other federal courts, is grounded in, and limited by, statute." *Celotex Corp. v. Edwards*, 514 U.S. 300, 307 (1995); *see* 28 U.S.C. § 1334. Bankruptcy courts may exercise jurisdiction, through referral from the district court, over three broad categories of proceedings: those "arising under title 11" of the Code, those "arising in . . . a case under title 11," and those "related to a case under title 11." 28 U.S.C. § 157(a). Proceedings "arising under title 11, or arising in a case under title 11," are deemed "core proceedings." *Stern v. Marshall*, 564 U.S. 462, 476 (2011) (quoting 28 U.S.C. § 157(b)). In those proceedings, bankruptcy courts retain comprehensive power to resolve claims and enter orders or judgments. *See In re Millenium Seacarriers, Inc.*, 419 F.3d 83, 96 (2d Cir. 2005).

"[T]he meaning of the statutory language 'arising in' may not be entirely clear." *Baker v. Simpson*, 613 F.3d 346, 351 (2d Cir. 2010). At a minimum, a bankruptcy court's "arising in" jurisdiction includes claims that "are not based on any right expressly created by [T]itle 11, but nevertheless, would have no

existence outside of the bankruptcy." *Id.* (quoting *In re Wood*, 825 F.2d 90, 97 (5th Cir. 1987)).

A bankruptcy court's decision to interpret and enforce a prior sale order falls under this formulation of "arising in" jurisdiction. An order consummating a debtor's sale of property would not exist but for the Code, *see* 11 U.S.C. § 363(b), and the Code charges the bankruptcy court with carrying out its orders, *see id.* § 105(a) (providing that bankruptcy court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title"). Hence, a bankruptcy court "plainly ha[s] jurisdiction to interpret and enforce its own prior orders." *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009); *see Millenium Seacarriers*, 419 F.3d at 96 ("A bankruptcy court retains post-confirmation jurisdiction to interpret and enforce its own orders, particularly when disputes arise over a bankruptcy plan of reorganization." (quoting *Petrie Retail*, 304 F.3d at 230)). That is what happened here. The bankruptcy court first interpreted the "free and clear" provision that barred successor liability claims -- a provision that was integral to resolving Old GM's bankruptcy -- and then determined whether to enforce that provision.

Second, the Non-Ignition Switch Plaintiffs specify that the bankruptcy court lacked jurisdiction over independent claims. Even though the bankruptcy court ultimately did not enjoin independent claims, we address this argument because it implicates subject matter jurisdiction. In any event, the argument is misguided. The Sale Order, on its face, does not bar independent claims against New GM; instead, it broadly transfers assets to New GM "free and clear of liens, claims, encumbrances, and other interests . . . , including rights or claims . . . based on any successor or transferee liability." J. App. 1621. By making the argument that the bankruptcy court could not enjoin independent claims through the Sale Order, the Non-Ignition Switch Plaintiffs already assume that the bankruptcy court indeed has jurisdiction to interpret the Sale Order to determine whether it covers independent claims and to hear a motion to enforce in the first place.

Third, the Non-Ignition Switch Plaintiffs argue that the bankruptcy court lacked power to issue a so-called successive injunction. In certain parts of the Sale Order, the bankruptcy court had included language that successor liability claims would be "forever prohibited and enjoined." J. App. 1649. But New GM was not seeking an injunction to stop plaintiffs from violating that

prior injunction; New GM wanted the bankruptcy court to confirm that the Sale Order covered *these* plaintiffs. In other words, New GM "did not seek a new injunction but, rather, '[sought] to enforce an injunction already in place.'" *In re Kalikow*, 602 F.3d 82, 93 (2d Cir. 2010) (quoting *In re Texaco Inc.*, 182 B.R. 937, 945 (Bankr. S.D.N.Y. 1995)). In such situations, bankruptcy courts have jurisdiction to decide a "motion s[eeking] enforcement of a pre-existing injunction issued as part of the bankruptcy court's sale order." *Petrie Retail*, 304 F.3d at 230.

Accordingly, we agree that the bankruptcy court had jurisdiction to interpret and enforce the Sale Order. *See MLC I*, 514 B.R. at 380-83.

II. *Scope of "Free and Clear" Provision*

We turn to the scope of the Sale Order. The Sale Order transferred assets from Old GM to New GM "free and clear of liens, claims, encumbrances, and other interests . . . , including rights or claims . . . based on any successor or transferee liability." J. App. 1621. The bankruptcy court did not explicitly address what claims were covered by the Sale Order.[20]

[20] The bankruptcy court mentioned, however, that claims based on New GM's "independently wrongful, and otherwise actionable, conduct" could not be categorized as claims that could be assumed by New GM or retained by Old GM via the Sale Order. *MLC II*, 529 B.R. at 583. But the bankruptcy court did not explicitly address whether it still considered those claims to be covered by the Sale Order.

We address the scope of the Sale Order because it implicates our procedural due process analysis that follows. If the Sale Order covers certain claims, then we would have to consider whether plaintiffs' due process rights are violated by applying the "free and clear" clause to those claims. If the Sale Order did not cover certain claims, however, then those claims could not be enjoined by enforcing the Sale Order and due process concerns would not be implicated. We interpret the Sale Order *de novo* to determine what claims are barred. *See In re Duplan Corp.*, 212 F.3d 144, 151 (2d Cir. 2000); *see also Petrie Retail*, 304 F.3d at 229 (noting instance where enforcement first required interpretation of prior order).

A. ***Applicable Law***

The Code allows the trustee or debtor-in-possession to "use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). A sale pursuant to § 363(b) may be made "free and clear of any interest in such property" if any condition on a list of conditions is met. *Id.* § 363(f). "Yet the Code does not define the concept of 'interest,' of which the property may be sold free and clear," 3 *Collier on Bankruptcy* ¶ 363.06[1], nor does it express the extent to which "claims" fall within the ambit of "interests."

New GM asserts that *In re Chrysler LLC*, 576 F.3d 108, 126 (2d Cir. 2009), resolved that successor liability claims are interests. New GM Br. 75.[21] But *Chrysler* was vacated by the Supreme Court after it became moot during the certiorari process and remanded with instructions to dismiss the appeal as moot. *See Ind. State Police Pension Tr. v. Chrysler LLC*, 558 U.S. 1087 (2009). The Supreme Court vacated *Chrysler* pursuant to *United States v. Munsingwear, Inc.*, 340 U.S. 36, 41 (1950), which "prevent[s] a judgment, unreviewable because of mootness, from spawning any legal consequences." *See Russman v. Bd. of Educ. of Enlarged City Sch. Dist.*, 260 F.3d 114, 121-22 n.2 (2d Cir. 2001) ("[V]acatur eliminates an appellate precedent that would otherwise control decision on a contested question throughout the circuit."). We had not addressed the issue before *Chrysler*, and now that case is no longer controlling precedent.[22] *See* 576 F.3d at 124 ("We have never addressed the scope of the language 'any interest in such property,' and the statute does not define the term.").

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[21] New GM also cites a non-precedential summary order on this issue. *See Douglas v. Stamco*, 363 F. App'x 100 (2d Cir. 2010).

[22] When the bankruptcy court determined that successor liability claims could constitute interests, *Chrysler* had not yet been vacated. *See GM*, 407 B.R. at 505 ("*Chrysler* is not distinguishable in any legally cognizable respect.").

Rather than formulating a single precise definition for "any interest in such property," courts have continued to address the phrase "on a case-by-case basis." *In re PBBPC, Inc.*, 484 B.R. 860, 867 (B.A.P. 1st Cir. 2013). At minimum, the language in § 363(f) permits the sale of property free and clear of *in rem* interests in the property, such as liens that attach to the property. *See In re Trans World Airlines, Inc.*, 322 F.3d 283, 288 (3d Cir. 2003). But courts have permitted a "broader definition that encompasses other obligations that may flow from ownership of the property." 3 *Collier on Bankruptcy* ¶ 363.06[1]. Sister courts have held that § 363(f) may be used to bar a variety of successor liability claims that relate to ownership of property: an "interest" might encompass Coal Act obligations otherwise placed upon a successor purchasing coal assets, *In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 581-82 (4th Cir. 1996), travel vouchers issued to settle an airline's discrimination claims in a sale of airline assets, *Trans World Airlines*, 322 F.3d at 288-90, or a license for future use of intellectual property when that property is sold, *FutureSource LLC v. Reuters Ltd.*, 312 F.3d 281, 285 (7th Cir. 2002). *See generally Precision Indus., Inc. v. Qualitech Steel SBQ, LLC*, 327 F.3d 537, 545 (7th Cir. 2003) ("[T]he term 'interest' is a broad term no doubt selected by Congress to avoid 'rigid and technical definitions drawn from other areas of the

law.'" (quoting *Russello v. United States*, 464 U.S. 16, 21 (1983))). In these instances, courts require "a relationship between the[] right to demand . . . payments from the debtors and the use to which the debtors had put their assets." *Trans World Airlines*, 322 F.3d at 289.

We agree that successor liability claims can be "interests" when they flow from a debtor's ownership of transferred assets. *See* 3 *Collier in Bankruptcy* ¶¶ 363.06[1], [7]; *Trans World Airlines*, 322 F.3d at 289. But successor liability claims must also still qualify as "claims" under Chapter 11. Though § 363(f) does not expressly invoke the Chapter 11 definition of "claims," *see* 11 U.S.C. § 101(5), it makes sense to "harmonize" Chapter 11 reorganizations and § 363 sales "to the extent permitted by the statutory language." *Chrysler*, 576 F.3d at 125; *see Lionel*, 722 F.2d at 1071 ("[S]ome play for the operation of both § 363(b) and Chapter 11 must be allowed for.").[23] Here, the bankruptcy court's power to bar "claims" in a quick § 363 sale is plainly no broader than its power in a traditional Chapter 11 reorganization. *Compare* 11 U.S.C. § 363(f) ("free and clear of any interest in such

[23] Although *Chrysler* was vacated on grounds of mootness, it still "constitute[s] persuasive authority." *Anderson v. Rochester-Genesee Reg'l Transp. Auth.*, 337 F.3d 201, 208 n.5 (2d Cir. 2003). Both our Circuit and the Third Circuit have continued to cite *Chrysler* favorably. *See In re N. New Eng. Tel. Operations LLC*, 795 F.3d 343, 346, (2d Cir. 2015); *In re Jevic Holding Corp.*, 787 F.3d 173, 188-89 (3d Cir. 2015).

property"), *with* § 1141(c) ("free and clear of all claims and interests"). We thus consider what claims may be barred under Chapter 11 generally.

Section 101(5) defines "claim" as any "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. § 101(5). A claim is (1) a right to payment (2) that arose before the filing of the petition. *See Pension Ben. Guar. Corp. v. Oneida Ltd.*, 562 F.3d 154, 157 (2d Cir. 2009). If the right to payment is contingent on future events, the claim must instead "result from pre-petition conduct fairly giving rise to that contingent claim." *In re Chateaugay Corp.* ("*Chateaugay I*"), 944 F.2d 997, 1005 (2d Cir. 1991) (internal quotation marks omitted).

This Court has not decided, however, "the difficult case of pre-petition conduct that has not yet resulted in detectable injury, much less the extreme case of pre-petition conduct that has not yet resulted in any tortious consequence to a victim." *Id.* at 1004. *Chateaugay I* considered a hypothetical bankrupt bridge building company, which could predict that out of the 10,000 bridges it built, one would one day fail, causing deaths and other injuries. *Id.* at

1003. If that bridge did fail, the individuals might have tort claims resulting from pre-petition conduct, namely the building of the bridge.

Recognizing these claims would engender "enormous practical and perhaps constitutional problems." *Id*. Thus, "'claim' cannot be extended to include . . . claimants whom the record indicates were completely unknown and unidentified at the time [the debtor] filed its petition and whose rights depended entirely on the fortuity of future occurrences." *Lemelle v. Universal Mfg. Corp.*, 18 F.3d 1268, 1277 (5th Cir. 1994); *see In re Chateaugay Corp.* ("*Chateaugay IV*"), 53 F.3d 478, 497 (2d Cir. 1995) (stating that, in "common sense," "claim" is "not infinite"). To avoid any practical and constitutional problems, courts require some minimum "contact," *Chateaugay I*, 944 F.2d at 1003-04, or "relationship," *Chateaugay IV*, 53 F.3d at 497, that makes identifiable the individual with whom the claim does or would rest.

To summarize, a bankruptcy court may approve a § 363 sale "free and clear" of successor liability claims if those claims flow from the debtor's ownership of the sold assets. Such a claim must arise from a (1) right to payment (2) that arose before the filing of the petition or resulted from pre-petition conduct fairly giving rise to the claim. Further, there must be some contact or

relationship between the debtor and the claimant such that the claimant is identifiable.

B. ***Application***

We apply these principles to: (1) pre-closing accident claims, (2) economic loss claims arising from the ignition switch defect or other defects, (3) independent claims relating only to New GM's conduct, and (4) Used Car Purchasers' claims. The bankruptcy court assumed that the Sale Order's broad language suggested that all of these claims fell within the scope of the "free and clear" provision. We hold, however, that the first two sets of claims are covered by the Sale Order but that the latter two sets of claims are not.

First, the pre-closing accident claims clearly fall within the scope of the Sale Order. Those claims directly relate to the ownership of the GM automaker's business -- Old GM built cars with ignition switch defects. And those plaintiffs' claims are properly thought of as tort claims that arose before the filing of the petition; indeed, the claims arise from accidents that occurred pre-closing involving Old GM cars.[24]

[24] To the extent that Pre-Closing Accident Plaintiffs assert claims arising after the petition but before the § 363 sale closing, no party on appeal suggests that we treat claims in this timeframe differently. In any event, those claims are contingent on

Second, the economic loss claims arising from the ignition switch defect or other defects present a closer call. Like the claims of Pre-Closing Accident Plaintiffs, these claims flow from the operation of Old GM's automaker business. These individuals also, by virtue of owning Old GM cars, had come into contact with the debtor prior to the bankruptcy petition. Yet the ignition switch defect (and other defects) were only revealed some five years later.

GUC Trust thus asserts that there was no right to payment prior to the petition. We disagree. The economic losses claimed by these individuals were "contingent" claims. 11 U.S.C. § 101(5). That is, the ignition switch defect was there, but was not yet so patent that an individual could, as a practical matter, bring a case in court. The contingency standing in the way was Old GM telling plaintiffs that the ignition switch defect existed. In other words, Old GM's creation of the ignition switch defect fairly gave rise to these claims, even if the claimants did not yet know. *See Chateaugay I*, 944 F.2d at 1005.

Third, however, the independent claims do not meet the Code's limitation on claims. By definition, independent claims are claims based on New GM's own post-closing wrongful conduct. Though the parties do not lay out the

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the accident occurring and "result from pre-petition conduct fairly giving rise to [a] contingent claim." *Chateaugay I*, 944 F.2d at 1005 (internal quotation marks omitted).

whole universe of possible independent claims, we can imagine that some claims involve misrepresentations by New GM as to the safety of Old GM cars. These sorts of claims are based on New GM's *post*-petition conduct, and are not claims that are based on a right to payment that arose before the filing of petition or that are based on pre-petition conduct. Thus, these claims are outside the scope of the Sale Order's "free and clear" provision.

Fourth, the Sale Order likewise does not cover the Used Car Purchasers' claims. The Used Car Purchasers were individuals who purchased Old GM cars *after* the closing, without knowledge of the defect or possible claim against New GM. They had no relation with Old GM prior to bankruptcy. Indeed, as of the bankruptcy petition there were an unknown number of unknown individuals who would one day purchase Old GM vehicles secondhand. There could have been no contact or relationship -- actual or presumed -- between Old GM and these specific plaintiffs, who otherwise had no awareness of the ignition switch defect or putative claims against New GM. We cannot, consistent with bankruptcy law, read the Sale Order to cover their claims. *See Chateaugay I*, 944 F.2d at 1003-04 (calling such a reading "absurd").

New GM argues that "modifying" the Sale Order would "knock the props out of the foundation on which the [Sale Order] was based" or otherwise be unlawful. New GM Br. 77 (internal quotation marks omitted). But we do not *modify* the Sale Order. Instead, we merely interpret the Sale Order in accordance with bankruptcy law. Indeed, by filing a motion to enforce, New GM in effect asked for the courts to interpret the Sale Order. *See Petrie Retail*, 304 F.3d at 229.

In sum, the "free and clear" provision covers pre-closing accident claims and economic loss claims based on the ignition switch and other defects. It does not cover independent claims or Used Car Purchasers' claims. Accordingly, we affirm the bankruptcy court's decision not to enjoin independent claims, *see MLC II*, 529 B.R. at 568-70, and reverse its decision to enjoin the Used Car Purchasers' claims, *see id.* at 570-72.

III. *Procedural Due Process*

The Sale Order covers the pre-closing accident claims and economic loss claims based on the ignition switch and other defects. The Sale Order, if enforced, would thus bar those claims. Plaintiffs contend on appeal that enforcing the Sale Order would violate procedural due process. We address two issues: (1) what notice plaintiffs were entitled to as a matter of procedural due

process, and (2) if they were provided inadequate notice, whether the bankruptcy court erred in denying relief on the basis that most plaintiffs were not "prejudiced."

We review factual findings for clear error and legal conclusions, including interpretations of the Constitution, *de novo*. *In re Barnet*, 737 F.3d 238, 246 (2d Cir. 2013). Our clear error standard is a deferential one, and if the bankruptcy court's "'account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently.'" *Amadeo v. Zant*, 486 U.S. 214, 223 (1988) (quoting *Anderson v. Bessemer City*, 470 U.S. 564, 573-74 (1985)).

A. ***Notice***

The bankruptcy court first concluded that plaintiffs were not provided notice as required by procedural due process. *See MLC II*, 529 B.R. at 555-60. The bankruptcy court held that because Old GM knew or with reasonable diligence should have known of the ignition switch claims, plaintiffs were entitled to actual or direct mail notice, but received only publication notice.

See id. at 557-60. The parties dispute the extent of Old GM's knowledge of the ignition switch problem.

1. ***Applicable Law***

The Due Process Clause provides, "No person shall . . . be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. Certain procedural protections attach when "deprivations trigger due process." *Connecticut v. Doehr*, 501 U.S. 1, 12 (1991). Generally, legal claims are sufficient to constitute property such that a deprivation would trigger due process scrutiny. *See N.Y. State Nat'l Org. for Women v. Pataki*, 261 F.3d 156, 169-70 (2d Cir. 2001).

Once due process is triggered, the question becomes what process is due. *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). Courts ask "whether the state acted reasonably in selecting means likely to inform persons affected, not whether each property owner actually received notice." *Weigner v. City of New York*, 852 F.2d 646, 649 (2d

Cir. 1988). Notice is adequate if "[t]he means employed [are] such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." *Mullane*, 339 U.S. at 315.

This requirement also applies to bankruptcy proceedings. *See Martin v. Wilks*, 490 U.S. 755, 762 n.2 (1989), *superseded by statute on other grounds*, Civil Rights Act of 1991, Pub.L. No. 102–166, 105 Stat. 1071. Indeed, a fundamental purpose of bankruptcy is to discharge, restructure, or impair claims against the debtor in an orderly fashion. *See Lines v. Frederick*, 400 U.S. 18, 19 (1970). "The general rule that emerges . . . is that notice by publication is not enough with respect to a person whose name and address are known or very easily ascertainable and whose legally protected interests are directly affected by the proceedings in question." *Schroeder v. City of New York*, 371 U.S. 208, 212-13 (1962); *accord Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 800 (1983). In other words, adequacy of notice "turns on what the debtor . . . knew about the claim or, with reasonable diligence, should have known." *DPWN Holdings (USA), Inc. v. United Air Lines, Inc.*, 747 F.3d 145, 150 (2d Cir. 2014) (citing *Chemetron Corp. v. Jones*, 72 F.3d 341, 345-46 (3d Cir. 1995)). If the debtor knew or reasonably should have known about the claims, then due process entitles potential claimants to

actual notice of the bankruptcy proceedings, but if the claims were unknown, publication notice suffices. *Chemetron*, 72 F.3d at 345-46.

If a debtor reveals in bankruptcy the claims against it and provides potential claimants notice consistent with due process of law, then the Code affords vast protections. Both § 1141(c) and § 363(f) permit "free and clear" provisions that act as liability shield. These provisions provide enormous incentives for a struggling company to be forthright. But if a debtor does not reveal claims that it is aware of, then bankruptcy law cannot protect it. Courts must "limit[] the opportunity for a completely unencumbered new beginning to the 'honest but unfortunate debtor.'" *Grogan v. Garner*, 498 U.S. 279, 286-87 (1991) (quoting *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934)).

2. *Application*

The parties do not dispute that plaintiffs received only publication notice. The question is whether they were entitled to more. The bankruptcy court found that because Old GM knew or reasonably should have known about the ignition switch defect prior to bankruptcy, it should have provided direct mail notice to vehicle owners. We find no clear error in this factual finding.

As background, federal law requires that automakers keep records of the first owners of their vehicles. 49 U.S.C. § 30117(b)(1) ("A manufacturer of a motor vehicle . . . shall cause to be maintained a record of the name and address of the first purchaser of each vehicle . . . ."). This provision facilitates recalls and other consequences of the consumer-automaker relationship. Thus, to the extent that Old GM knew of defects in its cars, it would also necessarily know the identity of a significant number of affected owners.

The facts paint a picture that Old GM did nothing, even as it knew that the ignition switch defect impacted consumers. From its development in 1997, the ignition switch never passed Old GM's own technical specifications. Old GM knew that the switch was defective, but it approved the switch for millions of cars anyway.

Once the ignition switch was installed, Old GM almost immediately received various complaints. News outlets reported about the faulty ignition switch. NHTSA approached Old GM about moving stalls and airbag non-deployments. A police report, which Old GM's legal team possessed, linked these breakdowns to a faulty ignition switch. Old GM even considered warning dealers (but not consumers) about moving stalls. By May 2009, at the latest, Old

GM personnel had essentially concluded that the ignition switch, moving stalls, and airbag non-deployments were related. Considering the airbag issues, they believed that one of the two "most likely explanation[s] for the power mode signal change was . . . a problem with the Ignition Switch." J. App. 9783.

A bankruptcy court could reasonably read from this record that Old GM knew about the ignition switch defect. Old GM knew that the defect caused stalls and had linked the airbag non-deployments to the defect by May 2009.

Even assuming the bankruptcy court erred in concluding that Old GM *knew*, Old GM -- if reasonably diligent -- surely *should have known* about the defect. Old GM engineers should have followed up when they learned their ignition switch did not initially pass certain technical specifications. Old GM lawyers should have followed up when they heard disturbing reports about airbag non-deployments or moving stalls. Old GM product safety teams should have followed up when they were able to recreate the ignition switch defect with ease after being approached by NHTSA. If any of these leads had been diligently pursued in the seven years between 2002 and 2009, Old GM likely would have learned that the ignition switch defect posed a hazard for vehicle owners.

Such "reckless disregard of the facts [is] sufficient to satisfy the requirement of knowledge." *McGinty v. State*, 193 F.3d 64, 70 (2d Cir. 1999). In the face of all the reports and complaints of faulty ignition switches, moving stalls, airbag non-deployments, and, indeed, serious accidents, and in light of the conclusions of its own personnel, Old GM had an obligation to take steps to "acquire full or exact knowledge of the nature and extent" of the defect. *United States v. Macias*, 786 F.3d 1060, 1062 (7th Cir. 2015). Under these circumstances, Old GM had a duty to identify the cause of the problem and fix it. Instead, the Valukas Report recounts a corporate culture that sought to pin responsibility on others and a Sisyphean search for the "root cause."

Further, even if the precise linkage between the ignition switch defect and moving stalls and airbag non-deployments was unclear, Old GM had enough knowledge. At minimum, Old GM knew about moving stalls and airbag non-deployments in certain models, and should have revealed those facts in bankruptcy. Those defects would still be the basis of "claims," even if the root cause (the ignition switch) was not clear.

New GM argues in response that because plaintiffs' claims were "contingent," those individuals were "unknown" creditors as a matter of law. But

contingent claims are still claims, 11 U.S.C. § 101(5), and claimants are entitled to adequate notice if the debtor knows of the claims. Moreover, as discussed above, the only contingency was Old GM telling owners about the ignition switch defect -- a contingency wholly in Old GM's control and without bearing as to *Old GM's* own knowledge. New GM essentially asks that we reward debtors who conceal claims against potential creditors. We decline to do so. *See Grogan*, 498 U.S. at 286-87.

Finally, we address a theme in this case that the GM bankruptcy was extraordinary because a quick § 363 sale was required to preserve the value of the company and to save it from liquidation. *See* New GM Br. 34 ("Time was of the essence, and costs were a significant factor."). Forty days was indeed quick for bankruptcy and previously unthinkable for one of this scale. While the desire to move through bankruptcy as expeditiously as possible was laudable, Old GM's precarious situation and the need for speed did not obviate basic constitutional principles. Due process applies even in a company's moment of crisis. *Cf. Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 425 (1934) ("The Constitution was adopted in a period of grave emergency.").

We find no clear error in the bankruptcy court's finding that Old GM knew or should have known with reasonable diligence about the defect. *See MLC II*, 529 B.R. at 556-60. Individuals with claims arising out of the ignition switch defect were entitled to notice by direct mail or some equivalent, as required by procedural due process.

B. ***"Prejudice"***

After concluding that Old GM did not provide adequate notice, the bankruptcy court nonetheless enforced the Sale Order. *See id.* at 565-73. The bankruptcy court held that "prejudice" is an "essential element" of procedural due process and that plaintiffs were not prejudiced -- except as to independent claims -- because the bankruptcy court would have approved the Sale Order even if plaintiffs were provided adequate notice. *Id.* at 565. The parties dispute whether "prejudice" is required and, if it is, whether there is prejudice here.

1. ***Applicable Law***

The bankruptcy court held that "prejudice" is a requirement of the Due Process Clause and that even if inadequate notice deprived an individual of property without a meaningful opportunity to be heard, there is no prejudice if in hindsight the outcome would have been the same with adequate notice. *Id.*

Some courts have indeed held that "a party who claims to be aggrieved by a violation of procedural due process must show prejudice." *Perry v. Blum*, 629 F.3d 1, 17 (1st Cir. 2010). Other courts have held otherwise that "a due process violation cannot constitute harmless error." *In re New Concept Hous., Inc.*, 951 F.2d 932, 937 n.7 (8th Cir. 1991); *see Fuentes v. Shevin*, 407 U.S. 67, 87 (1972) ("The right to be heard does not depend upon an advance showing that one will surely prevail at the hearing.").[25] Courts have concluded that a "free and clear" clause was unenforceable because of lack of notice and a hearing in accordance with

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[25] *See, e.g.*, *McNabb v. Comm'r Ala. Dep't of Corr.*, 727 F.3d 1334, 1347 (11th Cir. 2013) ("Our cases have long held that certain procedural due process violations, such as the flat-out denial of the right to be heard on a material issue, can never be harmless."); *Kim v. Hurston*, 182 F.3d 113, 119 (2d Cir. 1999) (commenting that even though the "minimal hearing that procedural due process requires would have done [the plaintiff] little good since she could not have realistically contested the changed reason," that "[n]evertheless, the procedural due process requirement[s] . . . must be observed"); *Lane Hollow Coal Co. v. Dir., Office of Workers' Compensation Programs*, 137 F.3d 799, 806 (4th Cir. 1998) ("[A] just result is not enough."); *In re Boomgarden*, 780 F.2d 657, 661 (7th Cir. 1985) ("In bankruptcy proceedings, both debtors and creditors have a constitutional right to be heard on their claims, and the denial of that right to them is the denial of due process which is never harmless error." (internal quotation marks omitted)); *In re George W. Myers Co.*, 412 F.2d 785, 786 (3d Cir. 1969) (holding that "alleged bankrupt was denied procedural due process by the . . . refusal of its offer to present evidence at the close of the evidence" and that such denial could not be "harmless error"); *Republic Nat'l Bank of Dallas v. Crippen*, 224 F.2d 565, 566 (5th Cir. 1955) ("The right to be heard on their claims was a constitutional right and the denial of that right to them was the denial of due process which is never harmless error."); *Phila. Co. v. SEC*, 175 F.2d 808, 820 (D.C. Cir. 1948) ("Denial of a procedural right guaranteed by the Constitution -- in this instance denial of the type of hearing guaranteed . . . by the due process clause -- is never 'harmless error.'"), *vacated as moot*, 337 U.S. 901 (1949).

procedural due process, without exploring prejudice. *See In re Savage Indus.*, 43 F.3d 714, 721-22 (1st Cir. 1994); *cf. Nolasco v. Holder*, 637 F.3d 159, 164 (2d Cir. 2011) ("There may well be instances in which . . . failure to comply with [a procedural rule] results in a lack of notice or the denial of a meaningful opportunity to be heard such that . . . due process rights are violated.").

The § 363 sale context presents unique challenges for due process analysis. As seen here -- with over 850 objections filed -- objections may often be duplicative. *See GM*, 407 B.R. at 500 (finding successor liability "most debatable" of issues); *cf. Mullane*, 339 U.S. at 319 ("[N]otice reasonably certain to reach most of those interested in objecting is likely to safeguard the interests of all, since any objections sustained would inure to the benefit of all."). Many of the objections, especially those made against a "free and clear" provision, are not likely to be grounded in any legal right to change the terms of the sale, but rather will be grounded in a particular factual context. Section 363 sales are, in essence, private transactions. On one side, the debtor-in-possession "has ample administrative flexibility in the conduct of sales," 3 *Collier on Bankruptcy* ¶ 363.02[2], and on the other side, the purchaser need not take on liabilities unless it wishes to do so, *see id.* ¶ 363.06[7]. A bankruptcy court reviews a proposed § 363 sale's terms only for

some minimal "good business reason." *Lionel*, 722 F.2d at 1071; *see also* 3 *Collier on Bankruptcy* ¶ 363.02[1][e] ("One of the major policy decisions in drafting the Code was to separate the court from the day-to-day administrative activities in bankruptcy cases . . . ."). Many sale objections will thus sound in business reasons to change the proposed sale order, and not by reference to some legal requirement that the order *must* be changed.[26]

Assuming plaintiffs must demonstrate prejudice, the relevant inquiry is whether courts can be confident in the reliability of prior proceedings when there has been a procedural defect. *See Lane Hollow Coal Co. v. Dir., Office of Workers' Compensation Programs*, 137 F.3d 799, 808 (4th Cir. 1998) (considering "fairness of the trial and its reliability as an accurate indicator of guilt"); *see also Rose v. Clark*, 478 U.S. 570, 577-78 (1986) (asking whether adjudication in the criminal context without procedural protections can "reliably serve its function as

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[26] *See* A. Joseph Warburton, *Understanding the Bankruptcies of Chrysler and General Motors: A Primer*, 60 Syracuse L. Rev. 531, 531 (2010) ("Certain creditors, who saw their investments in the companies sharply reduced, vigorously objected to the role of the government in the bankruptcy process. Some charged that in protecting the interests of taxpayers, the Treasury Department negotiated aggressively with creditors but, in protecting the interests of organized labor, it offered the United Autoworkers union special treatment."); *see also GM*, 407 B.R. at 496 ("The objectors' real problem is with the decisions of the Purchaser, not with the Debtor, nor with any violation of the Code or caselaw.").

a vehicle for determination of" a case). In considering reliability, "[t]he entire record must be considered and the probable effect of the error determined in the light of all the evidence." 11 Charles Alan Wright, Arthur R. Miller, et al., *Federal Practice & Procedure* § 2883 (3d ed. 2016) [hereinafter "Wright & Miller"]; *see Matusick v. Erie Cty. Water Auth.*, 757 F.3d 31, 50-51 (2d Cir. 2014). "[I]f [the court] cannot say, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error," then it must find a procedural due process violation. *Kotteakos v. United States*, 328 U.S. 750, 765 (1946).

2. *Application*

We need not decide whether prejudice is an element when there is inadequate notice of a proposed § 363 sale, for even assuming plaintiffs must demonstrate prejudice, they have done so here. After examining the record as a whole, we cannot say with fair assurance that the outcome of the § 363 sale proceedings would have been the same had Old GM disclosed the ignition switch defect and these plaintiffs voiced their objections to the "free and clear" provision. Because we cannot say with any confidence that no accommodation would have been made for them in the Sale Order, we reverse.

At the outset, it is difficult to evaluate in hindsight what the objections would have been had plaintiffs participated in the § 363 sale. Perhaps they would have tried to identify some legal defect in the Sale Order, asked that economic losses or pre-closing accidents arising from the ignition switch defect be exempted from the "free and clear" provision, or requested greater priority in any GUC Trust distribution. But this uncertainty about the content of plaintiffs' objections is the natural result of the lack of any meaningful opportunity to be heard in the § 363 sale proceedings. *Cf. Lane Hollow*, 137 F.3d at 808 ("If there has been no fair day in court, the reliability of the result is irrelevant, because a fair day in court is how we assure the reliability of results."). This lack of certainty in turn influences our degree of confidence in the outcome.

The bankruptcy court instead concluded that it would have reached the same decision -- that it would have entered the Sale Order on the same terms -- even if plaintiffs had been given an opportunity to be heard. The bankruptcy court concluded that these plaintiffs "offer no legally based arguments as to why they would have, or even *could* have, succeeded on the successor liability legal argument when all of the other objectors failed." *MLC II*, 529 B.R. at 567; *see GM*,

407 B.R. at 499-506 (considering objections). The bankruptcy court found that other arguments were too "speculative." *MLC II*, 529 B.R. at 567-68, 573.

We disagree. The bankruptcy court failed to recognize that the terms of this § 363 sale were not within its exclusive control. Instead, the GM sale was a negotiated deal with input from multiple parties -- Old GM, New GM, Treasury, and other stakeholders. The Sale Order and Sale Agreement reflect this polycentric approach: it includes some fifteen sets of liabilities that New GM voluntarily, and without legal compulsion, took on as its own.

The process of how New GM voluntarily assumed liabilities is most apparent with its assumption of Lemon Law claims.[27] Following the proposed sale order, numerous state attorneys general objected that the proposed sale would bar claims based on state Lemon Laws. But their objections were not particularly *legal* in character -- that is, no state attorney general focused on how a liability shield that barred Lemon Law claims would be illegal. Citing no law, the objection was that New GM *should* assume these liabilities "[i]n light of the relationship between [Old GM] and [New GM] . . . , as well as the statements by the United States government promising that all warranty obligations would be

[27] New GM informs the Court that a similar process occurred with respect to New GM accepting responsibility for post-closing accidents.

honored." Bankr. ECF No. 2043, at 39; *accord* Bankr. ECF No. 2076, at 10. In other words, because President Obama had promised to back warranties, the state attorneys general argued that that Lemon Laws should be honored as well.

Following these objections, "Lemon Law claims were added as an assumed liability during the course of the 363 Sale hearing after negotiation with the [state attorneys general]." *MLC II*, 529 B.R. at 534 n.36. The state attorneys general had made a practical, business-minded argument, which brought Old GM, New GM, and Treasury to the negotiating table. At the sale hearing, counsel to the National Association of Attorneys General commented that the state attorneys general "have worked very hard since the beginning of the case with debtors' counsel initially, with Treasury counsel, almost everybody in this room at some point or another." J. App. 2084. The result of these negotiations was an understanding that "lemon laws were covered under the notion of warranty claims" and inclusion in the Sale Agreement of language reflecting this agreement. *Id.* at 2086.

Opportunities to negotiate are difficult if not impossible to recreate. We do not know what would have happened in 2009 if counsel representing plaintiffs with billions of dollars in claims had sat across the table from Old GM,

New GM, and Treasury. Our lack of confidence, however, is not imputed on plaintiffs denied notice but instead bolsters a conclusion that enforcing the Sale Order would violate procedural due process. Indeed, for the following reasons, while we cannot say with any certainty that the outcome would have been different, we can say that the business circumstances at the time were such that plaintiffs could have had some negotiating leverage, and the opportunity to participate in the proceedings would have been meaningful.

First, it is well documented that one of the primary impetuses behind a quick § 363 sale was to "restore consumer confidence." *GM*, 407 B.R. at 480. "The problem is that if the 363 Transaction got off track . . . , the U.S. Government would see that there was no means of early exit for GM; . . . customer confidence would plummet; and . . . the U.S. Treasury would have to keep funding GM." *Id.* at 492. If consumer confidence dissipated, neither Treasury loans nor a § 363 sale could save GM: nobody would buy a GM car.

These concerns were reflected in President Obama's $600 million guarantee of GM and Chrysler warranties. The business of cars is unique, dependent largely on the goodwill of consumers. Cars are owned for years and form the cornerstones of quintessentially American activities: dropping off and

picking up children from school, drive-ins and drive-thrus, family vacations and road trips. "[T]he road and the automobile" are, in American history, "sanctuaries, hidden from the intrusive gaze of the state, [where] individuals live freely." Sarah Seo, *The New Public*, 125 Yale L.J. 1616, 1620 (2016). The safety and reliability of a car are central to these activities. As the head of President Obama's auto task force put it, in relation to Chrysler's bankruptcy: "what consumer would buy another Chrysler if the company didn't honor its warranties?" Rattner, *supra* note 8, at 181. In other words, plaintiffs could have tried to convince the bankruptcy parties that it made good business sense to spend substantial sums to preserve customer goodwill in the GM brand and, in turn, GM's business value.

Second, New GM was not a truly private corporation. Instead, the President and Treasury oversaw its affairs during the bailout and Treasury owned a majority stake following the bankruptcy. While private shareholders expect their investments to be profitable, the government does not necessarily share the same profit motive. Treasury injected hundreds of billions of dollars into the economy during the financial crisis, not on the expectation that it would make a reasonable rate of return but on the understanding that millions of

Americans would be affected if the economy were to collapse. If the ignition switch defect were revealed in the course of bankruptcy, plaintiffs could have petitioned the government, as the majority owner of New GM, to consider how millions of faultless individuals with defective Old GM cars could be affected. Indeed, during the later congressional hearings, Representatives and Senators questioned New GM's CEO on her invocation of the liability shield when the government guided the process. *See supra* note 13. Senator Richard Blumenthal, for instance, indicated that he would have objected in bankruptcy had he known, because he "opposed it at the time, as Attorney General for the state of Connecticut, not [foreseeing] that the material adverse fact being concealed was as gigantic as this one." April 2, 2014 Senate Hearing, *supra* note 13, at 22-23 (statement of Sen. Richard Blumenthal, Member, S. Subcomm. on Consumer Prot., Prod. Safety & Ins.).

Third, we must price in the real cost of disrupting the bankruptcy process. From the middle of 2007 through the first quarter of 2009, Old GM's average net loss exceeded $10 billion per quarter; a day's worth of delay would cost over $125 million, a week almost a billion dollars. We do not know whether the proceedings would have been delayed, but some delay was certainly

possible. For instance, Congress called the GM CEO to testify over the course of four days.[28] Old GM likewise conducted a thorough internal investigation on the ignition switch defect, and the Valukas Report took more than two-and-a-half months to prepare. It seems unlikely that a bankruptcy court would have casually approved a "free and clear" provision while these investigations into the ignition switch defect's precise nature were still ongoing.

Finally, there is the detriment of added litigation -- had the class actions been filed in the midst of bankruptcy, the mere administration of those cases could have taken considerable resources. Had the government also brought criminal charges -- such as the charges now suspended by a deferred prosecution agreement with the U.S. Attorney's Office for the Southern District of New York in which New GM forfeited $900 million -- managing how to juggle bankruptcy with a criminal prosecution could have taken even longer. *United States v. $900,000,000 in U.S. Currency*, No. 15 Civ. 7342 (S.D.N.Y.), ECF No. 1; *see* 11 U.S.C. § 362(b)(1) (exempting from usual automatic stay criminal actions against debtor). The reasonable conclusion is that, with the likelihood and price of disruption to the bankruptcy proceedings being so high, plaintiffs at least had

[28] *See* Rattner, *supra* note 8, at 304 ("The auto rescue succeeded in no small part because we did not have to deal with Congress.").

a basis for making business-minded arguments for why they should receive some accommodation in or carve-out from the Sale Order.

Under these circumstances, we cannot be confident that the Sale Order would have been negotiated and approved exactly as it was if Old GM had revealed the ignition switch defect in bankruptcy. The facts here were peculiar and are no doubt colored by the inadequate notice and plaintiffs' lack of *any* meaningful opportunity to be heard. *See Kotteakos*, 328 U.S. at 765 (directing courts to consider "all that happened without stripping the erroneous action from the whole"). Given the bankruptcy court's focus on consumer confidence, the involvement of Treasury, the financial stakes at the time, and all the business circumstances, there was a reasonable possibility that plaintiffs could have negotiated some relief from the Sale Order.

We address two further concerns. First, the bankruptcy court stated that it "would not have let GM go into the liquidation that would have resulted if [it] denied approval of the 363 Sale." *MLC II*, 529 B.R at 567; *see* J. App. 1623. In other words, the bankruptcy court suggested that it would have approved the § 363 sale anyway, because the alternative was liquidation -- and liquidation would have been catastrophic. While we agree that liquidation would have been

catastrophic, we are confident that Old GM, New GM, Treasury, and the bankruptcy court itself would have endeavored to address the ignition switch claims in the Sale Order if doing so was good for the GM business. The choice was not just between the Sale Order as issued and liquidation; accommodations could have been made.

Second, many of the peculiar facts discussed apply with less force to the Non-Ignition Switch Plaintiffs, who assert claims arising from other defects. The bankruptcy court entered judgment against the Non-Ignition Switch Plaintiffs based on its opinion determining the rights of the other plaintiffs, but left as an open question whether Old GM knew of the Non-Ignition Switch Plaintiffs' claims based in other defects. *See MLC III*, 531 B.R. at 360. Without factual findings relevant to determining knowledge, we have no basis for deciding whether notice was adequate let alone whether enforcement of the Sale Order would violate procedural due process as to these claims.

To conclude, we reverse the bankruptcy court's decision insofar as it enforced the Sale Order to enjoin claims relating to the ignition switch defect.[29] *See MLC II*, 529 B.R. at 566-73. Because enforcing the Sale Order would violate

[29] In reversing, we express no views on the Groman Plaintiffs' request for discovery to prove a procedural due process violation or fraud on the court.

procedural due process in these circumstances, the bankruptcy court erred in granting New GM's motion to enforce and these plaintiffs thus cannot be "bound by the terms of the [Sale] Order[]." *In re Johns-Manville Corp.*, 600 F.3d 135, 158 (2d Cir. 2010). As to claims based in non-ignition switch defects, we vacate the bankruptcy court's decision to enjoin those claims, *see MLC III*, 531 B.R. at 360, and remand for further proceedings consistent with this opinion.

IV. *Equitable Mootness*

Finally, we address the bankruptcy court's decision that relief for any would-be claims against GUC Trust was equitably moot. *MLC II*, 529 B.R. at 583-92. We ordinarily review "dismissal on grounds of equitable mootness for abuse of discretion, under which we examine conclusions of law de novo and findings of fact for clear error." *In re BGI, Inc.*, 772 F.3d 102, 107 (2d Cir. 2014) (citation omitted). There were, however, no claims asserted against Old GM or GUC Trust in bankruptcy court or in the multi-district litigation. Under these circumstances, we exercise our "independent obligation" to ensure that the case "satisfies the 'case-or-controversy' requirement of Article III, Section 2 of the Constitution." *United States v. Williams*, 475 F.3d 468, 478-9 (2d Cir. 2007).

A. ***Applicable Law***

The doctrine of equitable mootness allows appellate courts to dismiss bankruptcy appeals "when, during the pendency of an appeal, events occur" such that "even though effective relief could conceivably be fashioned, implementation of that relief would be inequitable." *In re Chateaugay Corp.* ("*Chateaugay II*"), 988 F.2d 322, 325 (2d Cir. 1993). "[A] bankruptcy appeal is presumed equitably moot when the debtor's reorganization plan has been substantially consummated." *In re BGI*, 772 F.3d at 108. To obtain relief in these circumstances, a claimant must satisfy the so-called "*Chateaugay* factors." *See Chateaugay III*, 10 F.3d at 952-53.

The equitable mootness doctrine has enigmatic origins, and the range of proceedings in which it applies is not well settled. *See In re Continental Airlines*, 91 F.3d 553, 567 (3d Cir. 1996) (*en banc*) (Alito, *J.*, dissenting) (labeling it a "curious doctrine"). Our Circuit has acknowledged that the doctrine draws on "equitable considerations as well as the constitutional requirement that there be a case or controversy." *Chateaugay III*, 10 F.3d at 952. Other courts have focused instead on the doctrine's statutory underpinnings and role in "fill[ing] the interstices of the Code." *In re UNR Indus., Inc.*, 20 F.3d 766, 769 (7th Cir. 1994)

(explaining also difference between "*inability* to alter the outcome (real mootness) and *unwillingness* to alter the outcome ('equitable mootness')"). Indeed, several provisions of the Code prohibit modification of bankruptcy orders unless those orders are stayed pending appeal. *See, e.g.*, 11 U.S.C. §§ 363(m), 364(e).

However broad the doctrine of equitable mootness, Article III requires a case or controversy before relief may be equitably mooted.[30] "[E]quitable mootness bears only upon the proper *remedy*, and does not raise a threshold question of our power to rule." *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 144 (2d Cir. 2005) (emphasis added).

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[30] We do not resolve whether it is appropriate for a bankruptcy court -- as opposed to an appellate court -- to apply equitable mootness, which appears to be a recent phenomenon. *E.g.*, *In re Innovative Clinical Sols., Ltd.*, 302 B.R. 136, 141 (Bankr. D. Del. 2003) (citing *In re Circle K Corp.*, 171 B.R. 666, 669 (Bankr. D. Ariz. 1994), which nominally applied constitutional mootness); *see also* Alan M. Ahart, *The Limited Scope of Implied Powers of a Bankruptcy Judge: A Statutory Court of Bankruptcy, Not A Court of Equity*, 79 Am. Bankr. L.J. 1, 32-33 (2005) ("Since a bankruptcy court is not a court of equity, a bankruptcy judge ought not resort to non-statutory equitable principles, defenses, doctrines or remedies to excuse compliance with or to override provision(s) of the Bankruptcy Code or rules, or nonbankruptcy federal law."(footnotes omitted)). Indeed, this Circuit's equitable mootness cases have all involved an appellate body applying the doctrine in the first instance. *See, e.g.*, *BGI*, 772 F.3d 102; *In re Charter Commc'ns, Inc.*, 691 F.3d 476 (2d Cir. 2012); *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136 (2d Cir. 2005); *In re Burger Boys, Inc.*, 94 F.3d 755 (2d Cir. 1996); *In re Chateaugay Corp.*, 94 F.3d 772 (2d Cir. 1996); *In re Best Prods. Co.*, 68 F.3d 26 (2d Cir. 1995); *Chateaugay III*, 10 F.3d 944; *Chateaugay II*, 988 F.2d 322.

"The oldest and most consistent thread in the federal law of justiciability is that federal courts will not give advisory opinions." 13 Wright & Miller § 3529.1. A controversy that is "appropriate for judicial determination . . . must be definite and concrete, touching the legal relations of parties having adverse legal interests." *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240-41 (1937); *see Flast v. Cohen*, 392 U.S. 83, 95 (1968) ("limit[ing] the business of federal courts to questions presented in an adversary context and in a form historically viewed as capable of resolution through the judicial process"). "[F]ederal courts are without power to decide questions that cannot affect the rights of *litigants in the case before them*." *North Carolina v. Rice*, 404 U.S. 244, 246 (1971) (emphasis added). That is, courts may not give "an opinion advising what the law would be upon a hypothetical state of facts," *Aetna Life Ins.*, 300 U.S. at 241, for instance, where a party did not "seek the adjudication of any adverse legal interests," *S. Jackson & Son, Inc. v. Coffee, Sugar & Cocoa Exch. Inc.*, 24 F.3d 427, 432 (2d Cir. 1994).

These limitations apply to bankruptcy courts. *See Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932, 1945 (2015) ("Bankruptcy courts hear matters solely on a district court's reference [and]possess no free-floating authority to decide claims traditionally heard by Article III courts."). In

bankruptcy, moreover, the adjudication of claims may be subject to other preparatory steps. Bankruptcy courts will generally set a "bar date" that fixes the time to file a proof of claim against the bankruptcy estate. *See* Fed. R. Bankr. P. 3002(c)(3). If the bar date has passed, then the initial step for an individual seeking relief against the estate would be to seek permission to file a late proof of claim: only after permission is granted can that individual claim that she is entitled to relief. *See* Fed. R. Bankr. P. 9006(b)(1); *see also Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd.*, 507 U.S. 380, 394-95 (1993) (setting forth standard for "excusable neglect" for late claims under Rule 9006(b)(1)).

B. ***Application***

Here, the bankruptcy court held that any relief from GUC Trust would be equitably moot. But plaintiffs never sought relief from GUC Trust. The bankruptcy court's ruling on equitable mootness was therefore advisory.

Neither GUC Trust nor Old GM are parties to the multi-district litigation now ongoing in district court. Only one defendant is named: New GM. Likewise, as GUC Trust confirmed at oral argument, plaintiffs have not filed any proofs of claim with GUC Trust, nor have they even asked the

bankruptcy court for permission to file late proofs of claim or to lift the bar date, as would be required before relief could be granted.[31]

Instead, it appears from the record that GUC Trust became involved at *New GM's* behest. New GM noted "well there is a GUC Trust" and suggested that because of the Sale Order's bar on successor liability, any claims remained with Old GM and thus GUC Trust. J. App. 11038. But New GM has not sought to implead and bring cross-claims against GUC Trust in the multi-district litigation under Federal Rule of Civil Procedure 14 or to do the same in the Groman Plaintiffs' adversary proceeding in bankruptcy under Federal Rule of Bankruptcy Procedure 7014.

Moreover, GUC Trust has protested its involvement in the case. At a May 2, 2014 hearing, GUC Trust notified the bankruptcy court that it was "frankly [a] stranger[] to these proceedings." *Id.* at 11093. This was, according to GUC Trust's uncontested representation, because:

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[31] The bankruptcy court lifted the bar date for independent claims as a remedy. *See MLC II*, 529 B.R. at 583. We note, however, that neither the Groman Plaintiffs nor Ignition Switch Plaintiffs requested this as relief. The Ignition Switch Plaintiffs only mentioned in a footnote in their opposition to the motion to enforce that Old GM failed to provide notice of the bar date. The Pre-Closing Accident Plaintiffs stated on behalf of all plaintiffs that "Plaintiffs are not asserting a due process challenge to a bar date order or a discharge injunction issued in favor of a debtor." Bankr. ECF No. 13021, at 48 n.26.

> No claimants, none of the plaintiffs, no claimants or potential claimants had raised this as a possibility. No one has filed a motion to lift the bar date. The only person that has raised it has been New GM, based upon, you know, some statements of fact in some pleadings. But the only person that has actually moved forward with it is New GM, and frankly, you know, it's our view that this is essentially a way to deflect liability away, and you know, the attention away from New GM and put it on a third party.

Id. at 11090. At a July 2, 2014 hearing, GUC Trust continued to push that litigation of the equitable mootness issue was premature, and dependent on whether the Sale Order could be enforced. *Id.* at 8485.[32]

Nonetheless, the bankruptcy court asked the parties (including GUC Trust) to brief initially whether claims against New GM were really claims against Old GM's bankruptcy estate or GUC Trust. As the bankruptcy court stated: "we're going to consider as [a] threshold issue[] . . . the *possibility* that the claims now being asserted *may be* claims against Old GM or the GUC Trust." J. App. 11103 (emphases added). Following a later hearing, the bankruptcy court

[32] The bankruptcy court seemingly agreed momentarily, commenting at the hearing that they could proceed "without now addressing and while maintaining reservations of rights with respect to issues such as . . . equitable [moot]ness." *Id.* at 8491.

added an issue of whether claims, if any, against GUC Trust should be "disallowed/dismissed on grounds of equitable mootness." *Id.* at 5780.

GUC Trust was thus not a "litigant[] in the case before [the bankruptcy court]," *Rice*, 404 U.S. at 246, who "s[ought] the adjudication of any adverse legal interests," *S. Jackson & Son, Inc.*, 24 F.3d at 432. GUC Trust sought *not* to be involved, but the bankruptcy court ordered otherwise. In doing so, the bankruptcy court was concerned with a "hypothetical" scenario, *see Aetna Life Ins.*, 300 U.S. at 241 -- the "possibility" that there "may be" late-filed claims against GUC Trust, J. App. 11103. The bankruptcy court's decision on equitable mootness that followed essentially advised on this hypothetical controversy.

We acknowledge that the parties have expended considerable time arguing about equitable mootness. We are likewise cognizant that plaintiffs at one point sent a letter to GUC Trust suggesting that it should freeze its distributions pending the bankruptcy proceedings. *See MLC II*, 529 B.R. at 537-38. But plaintiffs did not pursue any claims. Ultimately, it is the *parties*, and not the court, that must create the controversy. *See Dep't of Envtl. Prot. & Energy v. Heldor Indus., Inc.*, 989 F.2d 702, 707 (3d Cir. 1993) (rendering advisory "an answer to a question not asked" by the parties).

We thus conclude that the bankruptcy court's decision on equitable mootness was advisory and vacate that decision. *See MLC II*, 529 B.R. at 583-92.

CONCLUSION

For the reasons set forth above, with respect to the bankruptcy court's decisions below, we:

(1) **AFFIRM** the decision not to enforce the Sale Order as to the independent claims;

(2) **REVERSE** the decision to enforce the Sale Order as to the Used Car Purchasers' claims and claims relating to the ignition switch defect, including pre-closing accident claims and economic loss claims;

(3) **VACATE** the decision to enforce the Sale Order as to claims relating to other defects; and

(4) **VACATE** the decision on equitable mootness as advisory.

We **REMAND** the case for further proceedings consistent with this opinion.

United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

ROBERT A. KATZMANN
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

Date: July 13, 2016
Docket #: 15-2844bk
Short Title: In re: Motors Liquidation Comp

DC Docket #: 09-50026
DC Court: SDNY (NEW YORK CITY)
DC Judge: Gerber

BILL OF COSTS INSTRUCTIONS

The requirements for filing a bill of costs are set forth in FRAP 39. A form for filing a bill of costs is on the Court's website.

The bill of costs must:
* be filed within 14 days after the entry of judgment;
* be verified;
* be served on all adversaries;
* not include charges for postage, delivery, service, overtime and the filers edits;
* identify the number of copies which comprise the printer's unit;
* include the printer's bills, which must state the minimum charge per printer's unit for a page, a cover, foot lines by the line, and an index and table of cases by the page;
* state only the number of necessary copies inserted in enclosed form;
* state actual costs at rates not higher than those generally charged for printing services in New York, New York; excessive charges are subject to reduction;
* be filed via CM/ECF or if counsel is exempted with the original and two copies.

United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

ROBERT A. KATZMANN
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

Date: July 13, 2016
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DC Docket #: 09-50026
DC Court: SDNY (NEW YORK CITY)
DC Judge: Gerber

VERIFIED ITEMIZED BILL OF COSTS

Counsel for
_____

respectfully submits, pursuant to FRAP 39 (c) the within bill of costs and requests the Clerk to prepare an itemized statement of costs taxed against the
_____

and in favor of
_____

for insertion in the mandate.

Docketing Fee _____

Costs of printing appendix (necessary copies _____) _____

Costs of printing brief (necessary copies _____ ____) _____

Costs of printing reply brief (necessary copies _____) _____

(VERIFICATION HERE)

_____
Signature

United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

ROBERT A. KATZMANN
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

Date: July 13, 2016
Docket #: 15-2844bk
Short Title: In re: Motors Liquidation Comp

DC Docket #: 09-50026
DC Court: SDNY (NEW YORK CITY)
DC Judge: Gerber

NOTICE OF DECISION

The court has issued a decision in the above-entitled case. It is available on the Court's website http://www.ca2.uscourts.gov.

Judgment was entered on July 13, 2016; and a mandate will later issue in accordance with FRAP 41.

If pursuant to FRAP Rule 39 (c) you are required to file an itemized and verified bill of costs you must do so, with proof of service, within 14 days after entry of judgment. The form, with instructions, is also available on Court's website.

Inquiries regarding this case may be directed to 212-857-8523.

Exhibit C

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Katie L. Weinstein
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New York, New York 10019-6708
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Washington, D.C. 20006
Telephone: (202) 420-3150

Attorneys for Plaintiff

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
MOTORS LIQUIDATION COMPANY, *et al.*,	:	Case No.: 09-50026 (REG)
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 Case No.: 09-00504 (REG)
Plaintiff.	:	
-against-	:	
JPMORGAN CHASE BANK, N.A., individually and as Administrative Agent for various lenders party to the Term Loan Agreement described herein; Advent Global Opportunity Master Fund; Aegon/Transamerica Series Trust MFS Highyield; Alticor Inc.; American International Group, Inc.; APG Fixed Income Credits	:	

Pool; APG Investments US Inc. A/C Stichting :
Pensionfonds ABP; AR Mountain Range LLC; Arch :
Reinsurance Ltd.; Ares IIIR IVR CLO Ltd.; Ares VR :
CLO Ltd.; Ares VIR CLO Ltd.; Ares VIII CLO Ltd.; :
Ares IX CLO Ltd.; Ares XI CLO Ltd.; Ares Enhanced :
Cr Opp Fd Ltd.; Ares Enhanced LN INV III Ltd.; Ares :
Enhanced LN INV IR; Arnhold-Houston Police :
Officers' Pension System; Arrowgrass Master Fund :
Ltd.; Atrium IV; Atrium V; Avenue CLO V, Ltd.; :
Avery Point CLO Ltd.; Ballyrock CLO II Ltd.; :
Ballyrock CLO III Ltd.; Ballyrock CLO 2006-1 Ltd.; :
Ballyrock CLO 2006-2 Ltd.; Baltic Funding LLC; :
Bank of America, N.A.; Barclays Bank PLC; BBT :
Fund LP; Bechtel Trust & Thrift Plan Becon Trust & :
Thrift Plan; Big Sky III Senior Loan Trust; Bismarck :
CBNA Loan Funding LLC; Black Diamond CLO :
2005-1 Ltd.; Black Diamond CLO 2005-2 Ltd.; Black :
Diamond CLO 2006-1 Cayman Ltd.; Black Diamond :
International Funding Ltd.; Black Diamond Offshore :
Ltd.; BlackRock California State Teachers Retirement :
System; BlackRock Corporate High Yield Fund, Inc.; :
BlackRock Corporate High Yield Fund III Inc.; :
BlackRock Corporate High Yield Fund V, Inc.; :
BlackRock Corporate High Yield Fund VI, Inc.; :
BlackRock Debt Strategies Fund, Inc.; BlackRock :
Diversified Income Strategies Fund, Inc.; BlackRock :
Employees' Retirement Fund of the City of Dallas; :
BlackRock Floating Rate Income Strategies Fund Inc.; :
BlackRock Funds II – High Yield Bond Portfolio; :
BlackRock Funds High Yield Bond Portfolio; :
BlackRock Global Investment Series: Income :
Strategies Portfolio; BlackRock GSAM Goldman Core :
Plus Fixed Income Fund; BlackRock High Income :
Fund of Blackrockbond Fund Inc.; BlackRock High :
Income Shares; BlackRock High Yield Trust; :
BlackRock-Lockheed Martin Corp Master Retirement :
Trust; BlackRock Managed Account Series High :
Income Portfolio; BlackRock Met Investors Series :
Trust High Yield Portfolio; BlackRock Multi Strategy :
Sub-Trust C; BlackRock Senior High Income Fund :
Inc.; BlackRock Senior Income Series II; BlackRock :
Senior Income Series IV; BlackRock Strategic Bond :
Trust; BTG Pactual Chile S.A. Administradora :
General De Fondos; CAI Distressed Debt Opportunity :
Master Fund, Ltd.; California State Teachers' :
Retirement System; Canadian Imperial Bank of :

Commerce; Canyon Capital CDO 2002-1 Ltd.; Cap :
Fund LP; Capital Research-American High Income :
Trust; Carbonado LLC; Carlyle High Yield Par IX :
Ltd.; Carlyle High Yield Partners 2008-1, Ltd.; Castle :
Garden Funding; Caterpillar Inc. Master Pension :
Trust; CCP Credit Acquisition Holding; Celfin Capital :
S.A. Adm. General de Fondos para Ultra Fondo de :
Inversion; Chatham Light II CLO Ltd.; Chrysler LLC :
Master Retirement Trust; Citibank, N.A.; Citigroup :
Financial Products Inc.; City of Milwaukee Employees :
Retirement System; City of Milwaukee Retirement :
System; City of Oakland Police & Fire Retirement :
System; Classic Cayman B D Ltd.; CMFG Life :
Insurance Company; Coca Cola Co Ret & MSTR Tr; :
Continental Casualty Company; Credit Suisse Loan :
Funding LLC; Credit Suisse Syndicated Loan Fund; :
Crescent Senior Secured Floating Rate Loan Fund, :
LLC; Cuna Mutual Insurance Society; Cypress Tree :
International Loan Holding Company; DDJ - JC Penny :
Pension Plan Trust; DDJ - Multi-Style, Multi-Manager :
Funds Plc - Global Strategic Yield Fund; DDJ - :
Stichting Pensioenfonds Hoogovens; DDJ Cap - :
Caterpillar Master Retirement Trust; DDJ Cap MGMT :
– Stichting Bewaarder Interpolis Pensioenen; DDJ :
Capital Mgt Group Tr; DDJ High Yield Fund; DE-SEI :
Institutional Investment Trust – High Yield Bond :
Fund; DE-SEI Institutional Managed Trust – High :
Yield Bond Fund; Debello Investors LLC; Delaware :
Delchester Fund; Delaware Diversified Income Fund; :
Delaware Diversified Income Trust; Delaware :
Enhanced Global Dividend & Income Fund; Delaware :
Extended Duration Bond Fund; Delaware Group :
Equity V Inc. Dividend Income Fund; Delaware Group :
Government Fund Core Plus Fund; Delaware Group :
Inc. Fund Inc. Corporate Bond Fund; Delaware Group :
Income Funds - Delaware High Yield Opportunities :
Fund; Delaware Investments Dividend & Income Fund :
Inc.; Delaware Investments Global Dividend & :
Income Fund; Delaware - LVIP Delaware Bond Fund; :
Delaware Optimum Fixed Income Fund; Delaware :
Pooled Trust-Core Plus Fixed Income Portfolio; :
Delaware Pooled Trust - High Yield Bond Portfolio; :
Delaware PSEG Nuclear LLC Master :
Decommissioning Trust; Delaware-SEI Institutional :
Investment Trust-High Yield Bond Fund; Delaware- :
SEI Institutional Managed Trust-High Yield Bond :

Fund; Delaware VIP Trust Diversified Income Series; :
Delaware VIP Trust High Yield Series; Deutsche Bank :
AG; Deutsche Bank AG Cayman Island Branch; :
Diamond Springs Trading LLC; Double Black :
Diamond Offshore Ltd.; Eaton Vance CDO VIII Ltd.; :
Eaton Vance CDO IX Ltd.; Eaton Vance CDO X PLC; :
Eaton Vance Floating Rate Income Trust; Eaton Vance :
Grayson & Co.; Eaton Vance Institutional Senior Loan :
Fund; Eaton Vance International (Cayman Islands) :
Funds Ltd. – Floating-Rate Income Fund; Eaton Vance :
Limited Duration Income Fund; Eaton Vance Loan :
Opportunities Fund, Ltd.; Eaton Vance Medallion :
Floating Rate Income Portfolio; Eaton Vance Senior :
Debt Portfolio; Eaton Vance Senior Floating Rate :
Trust; Eaton Vance Senior Income Trust; Eaton Vance :
Short Duration Diversified Income Fund; Eaton Vance :
Variable Trust Floating Rate Income Fund; Employees :
Retirement Fund of the City of Dallas; Employers :
Insurance Company of WAUSAU; Evergreen Core :
Plus Bond Fund; Evergreen High Income Fund; :
Evergreen High Yield Bond Trust; Evergreen Income :
Advantage Fund; Evergreen Multi Sector Income Fund :
f/k/a Evergreen Managed Income Fund; Evergreen :
Utilities & High Income Fund; Evergreen VA High :
Income Fund; Fairview Funding LLC; Fairway Loan :
Funding Company; Fidelity Advisor Series I– Advisor :
Floating Rate High Income Fund; Fidelity Advisor :
Series I – Advisor High Income Advantage Fund; :
Fidelity Advisor Series I – Fidelity Advisor High :
Income Fund; Fidelity Advisor Series II – Advisor :
Strategic Income Fund; Fidelity American High Yield :
Fund; Fidelity – Arizona State Retirement System; :
Fidelity Ballyrock CLO II; Fidelity Ballyrock CLO III; :
Fidelity Canadian Assett All; Fidelity Cen Inv-Hi Inc :
PF I; Fidelity Central Investment Portfolios LLC :
Fidelity Floating Rate; Fidelity Central Investment :
Portfolios LLC Fidelity High Income Central Fund 2; :
Fidelity Illinois Muni Ret Fd; Fidelity Income Fund - :
Fidelity Total Bond Fund; Fidelity Puritan Trust – :
Puritan Fund; Fidelity School Street Trust-Strategic :
Income Fund; Fidelity Summer Street Trust-Capital & :
Income Fund; Fidelity Summer Street Trust-High :
Income Fund; Fidelity TR-IG Invst Mgmt Ltd.; :
Fidelity Variable Insurance Products V Strategic :
Income Portfolio; Fidelity VIP FD Hi Inc PF; First :
Trust/Four Corners Senior Floating Rate Income Fund; :

First Trust Four Corners Senior Floating Rate Income :
Fund II; Foothill CLO I, Ltd.; Foothill Group Inc.; :
Fortress Credit Investments I Ltd.; Fortress Credit :
Investments II Ltd.; Four Corners CLO II Ltd.; Four :
Corners CLO III Ltd.; General Electric Capital :
Corporation; General Electric Pension Trust; Genesis :
CLO 2007-1 Ltd.; Genesis CLO 2007-2 Ltd.; Global :
Investment Grade Credit Fund; GMAM Investment :
Funds Trust; Golden Knight II CLO, Ltd.; Goldentree :
Loan Opportunities III, Ltd.; Goldentree Loan :
Opportunities IV, Ltd.; Goldman Sachs – ABS Loans :
2007 Ltd.; Goldman Sachs Lending Partners LLC; :
GPC 69 LLC; Gracie Credit Opportunities Master :
Fund LP; Grand Central Asset TR SIL; Grand Central :
Asset Trust Wam Series; Grayson & Co.; Guggenheim :
Portfolio Co X LLC; Gulf Stream Compass CLO :
2003-1 Ltd.; Gulf Stream – Compass CLO 2007 Ltd.; :
Gulf Stream – Sextant CLO 2007-1 Ltd.; Harch CLO :
II Ltd.; Harch CLO III Ltd.; Health Care Foundation :
of Greater Kansas City; Hewett's Island CLO IV; :
Hewett's Island CLO V Ltd.; Hewett's Island CLO VI :
Ltd.; Hewlett-Packard Company; HFR RVA Opal :
Master Trust; High Yield Variable Account; Highland :
Credit Opportunities CDO, Ltd.; Highland Floating :
Rate Fund; Highland – PAC SEL FD FLTG RT LN; :
Himco Fltg RT FD; Illinois Municipal Retirement :
Fund; Indiana University; Iowa Public Employees :
Retirement System; Ivy Fund Inc.-High Income Fund; :
Ivy Funds-Ivy High Income Fund; Janus Adviser :
Floating Rate Hi; Jasper Funding; Jersey Street CLO, :
Ltd.; J.P. Morgan Whitefriars Inc.; JPMCB - :
Secondary Loan & Distressed Credit Trading; Katonah :
2007-1 CLO Ltd.; Katonah III, Ltd.; Katonah IV Ltd.; :
Kraft Foods Global Inc.; Kynikos Opportunity Fund II :
LP; Kynikos Opportunity Fund International Ltd.; :
Kynikos Opportunity Fund LP; L3-Lincoln Variable :
Insurance Products Trust - Managed Fund; Legg :
Mason ClearBridge Capital & Income Fund; Lehman :
Brothers First Trust Income Opportunity Fund; :
Lehman GMAM Investment Funds Trust; Lehman- :
Neuberger Berman-High Income Bond Fund; Lehman :
Principal Investors Fund, Inc. - High Yield Fund; :
Lincoln National Life Insurance Company Separate :
Account 12; Lincoln National Life WSA20; Loan :
Funding XI LLC; Logan – Raytheon MPT – Floating :
Rate; Logan – Raytheon MPT – Mid Grade Portfolio; :

Logan Circle – Alameda Contra Costa Transit :
Retirement System; Logan Circle – Allina Health Sys :
Defined Bnft Master Tr; Logan Circle – Allina Health :
System Trust; Logan Circle – Bechtel Corporation; :
Logan Circle Freddie Mac Foundation Inc.; Logan :
Circle – Liberty Mutual Employee Thrift Incentive :
Plan; Logan Circle Peoples Energy Corporation :
Pension Trust; Logan Circle – Public Service E; Logan :
Circle – Russell Inst Funds LLC – Russell Core Bond :
Fund; Logan Circle – Russell Investment Company :
PLC; Logan Circle – Russell Multi-Managed Bond :
Fund; Logan Circle – Russell Strategic Bond Fund; :
Logan Circle – Sunoco Inc. Master Retirement Trust; :
Logan Circle Wisconsin Public Service Corporation :
Pension Trust; Longlane Master TR IV; Lord Abbett :
& Co-Teachers Re; Lord Abbett Inv Trst-LA Hi Yld; :
Lord Abbett Investment Trust – Lord Abbett Floating :
Rate Fund; Louisiana Carpenters Regional Council :
Pension Trust Fund; MacKay 1028 – Arkansas Public :
Employee Retirement System; MacKay 8067 – Fire & :
Police Employee Retirement System of the City of :
Baltimore; MacKay-Houston Police Officers Pension :
System; MacKay New York Life Insurance Company :
(Guaranteed Products); MacKay Shields Core Plus :
Alpha Fund Ltd.; MacKay Shields Short Duration :
Alpha Fund; Madison Park Funding I Ltd.; Madison :
Park Funding II Ltd.; Madison Park Funding III Ltd.; :
Madison Park Funding IV Ltd.; Madison Park Funding :
V Ltd.; Madison Park Funding VI Ltd.; Marathon :
CLO I Ltd.; Marathon CLO II Ltd.; Marathon :
Financing I B V; Mariner LDC; Marlborough Street :
CLO Ltd.; Mason Capital LP; Mason Capital Ltd.; :
Mayport CLO Ltd.; McDonnell Illinois State Board of :
Investment; Meritage Fund Ltd.; Merrill Lynch Capital :
Services, Inc.; Metropolitan West High Yield Bond :
Fund; MFS Charter Income Trust; MFS-DIF- :
Diversified Income Fund; MFS Diversified Income :
Fund; MFS Diversified Income Fund – Series Trust :
XIII; MFS Floating Rate High Income Fund; MFS :
Floating Rate Income Fund; MFS Global High Yield :
Fund; MFS High Yield Portfolio; MFS – High Yield :
Variable Account; MFS Intermarket Income Trust I; :
MFS Intermediate High Income Fund; MFS :
Multimarket Income Trust; MFS Series Trust III High :
Income Fund; MFS Series Trust III High Yield :
Opportunities Fund; MFS Series Trust VIII Strategic :

Income Fund; MFS Series Trust X Floating Rate High :
Income Fund; MFS Special Value Trust; MFS :
Strategic Income Portfolio; MFS Variable Insurance :
Trust - MFS Strategic Income Series VWG; MFS :
Variable Insurance Trust II High Yield Portfolio; MFS :
Variable Insurance Trust II Strategic Income Portfolio; :
MFS Variable Insurance Trust MFS High Income :
Series; Microsoft Global Finance Ltd.; Missouri State :
Employees Retirement System; Momentum Capital :
Fund Ltd.; Montana Board of Investments; Morgan :
Stanley Senior Funding Inc.; Mt. Wilson CLO Ltd.; :
Mt. Wilson CLO II Ltd.; Muzinich & Company :
Ireland Ltd. for the Account of Extra Yield S Loan :
Fund; Nash Point CLO; National City Bank; :
Neuberger Berman High Yield Strategies Fund; :
Neuberger Berman Income Funds – Neuberger :
Berman High Income Bond Fund; Neuberger Berman :
Income Opportunity Fund, Inc.; New York Life :
Insurance Company Guaranteed Products; New York :
Life Insurance Company (Guaranteed Products); New :
York Life Insurance Company GP - Portable Alpha; :
Oak Hill Cr Opp Fin Ltd.; Oak Hill Credit :
Opportunities Master Fund, Ltd.; Oak Hill Credit :
Partners II Ltd.; Oak Hill Credit Partners III Ltd.; Oak :
Hill Credit Partners IV Ltd.; Oak Hill Credit Partners :
V Ltd.; Oaktree – Bill & Melinda Gates Foundation :
Trust; Oaktree Capital Management - Central States :
SE and SW Area Pens Plan; Oaktree Capital :
Management High Yield Trust; Oaktree- :
DaimlerChrysler Corporation Master Retirement :
Trust; Oaktree – Employees Retirement Fund of the :
City of Dallas; Oaktree – General Board of Pension & :
Health Benefits of the UN Methodist Church Inc.; :
Oaktree – High Yield LP; Oaktree – High Yield Fund :
II, LP; Oaktree – High Yield Plus Fund LP; Oaktree – :
International Paper Co. Commingled Investment :
Group Trust; Oaktree Loan Fund, LP; Oaktree Loan :
Fund 2X (Cayman), LP; Oaktree – Pacific Gas & :
Electric Post Ret Med Trust for Non-Mgt Emp & :
Retirees; Oaktree – San Diego County Employees :
Retirement Association; Oaktree Senior Loan Fund, :
LP; Oaktree – TMCT LCC; OCM – IBM Personal :
Pension Plan; OCM-Pacific Gas & Electric Company :
Retirement Plan Master Trust; OCM-The State :
Teachers Retirement System of Ohio; OCM-WM Pool :
High Yield Fixed Interest Trust; Octagon Investment :

Partners XI Ltd.; Oesterreichische Volksbanken AG; :
OHA Cap Sol Fin Ofshore Ltd.; OHA Cap Sol Fin :
Onshore Ltd.; OHA Park Avenue CLO I Ltd.; Ohio :
Police & Fire Pension Fund; OHSF Financing Ltd.; :
OHSF II Financing Ltd.; ONEX Debt Opportunity FD :
Ltd.; OW Funding Ltd.; Pension Inv Committee of :
GM for GM Employees Domestic Group Pension :
Trust; Phoenix Edge Series Fund Phoenix Multi Sector:
Short Term Bond Series; Phoenix Edge SRS-Multi- :
Sector Fixed Income Series; Pimco 1464 – Freescale :
Semiconductor Inc. Retirement Savings; Pimco 1641 –:
Sierra Pacific Resources Defined Ben Mstr Tr; :
Pimco2244 – Virginia Retirement System; Pimco2496 :
– Fltg Rt Inc FD; Pimco2497 – Fltg Rt Strt FD; :
Pimco2603 – Red River HYPI LP; Pimco3813 – :
Pimco Cayman Bank Loan Fund; Pimco400 – Stocks :
Plus Sub Fund B LLC; Pimco6819 Portola CLO Ltd.; :
Pimco700 – FD TOT RTN FD; Pimco706 – Private :
High Yield Portfolio; Pimco Fairway Loan Funding :
Company; Pimco – St. Luke Episcopal Health System :
Foundation; Plumbers & Pipefitters National Pension :
Fund; PNC Financial Services Group, Inc.; Portola :
CLO Ltd.; Primus CLO I Ltd.; Primus CLO II Ltd.; :
Princeton Rosedale CLO II Ltd.; Putnam 29X-Funds :
Trust Floating Rate Income Fund; Pyramis Floating :
Rate High Income Commingled Pool; Pyramis Hi Yld :
BD Comngl Pool; Pyramis High Yield Fund LLC; R3 :
Capital Partners Master LP; Race Point II CLO; Race :
Point III CLO; Race Point IV CLO Ltd.; Raytheon :
MPT – Logan Floating Rate Portfolio; Raytheon MPT :
– Logan Mid Grade Portfolio; RBC Dexia Investor :
Services Trust as Trustee for GM Canada Foreign :
Trust; Reams – Agility Global Fixed Income Master :
Fund LP; Reams – American President Lines Ltd.; :
Reams – Baltimore County Retirement; Reams – Bill :
& Melinda Gates Foundation; Reams – Bill & Melinda:
Gates Foundation Trust; Reams Board of Fire & Police:
Pension Commissioners of the City of Los Angeles; :
Reams – Board of Pen Presbyterian Church; Reams – :
Building Trades United Pension Trust; Reams – :
Carpenters Pension Fund of Illinois; Reams – :
Carpenters Pension Fund of Illinois Pension Plan; :
Reams Chicago Park District; Reams Children's :
Hospital Fund; Reams – Children's Hospital :
Philadelphia; Reams City of Milwaukee Retirement :
System; Reams City of Montgomery Alabama :

Employee's Retirement System; Reams City of Montgomery Retirement System; Reams City of Oakland Police; Reams – Columbus Extended Market Fund LLC; Reams – Connecticut General Life Insurance Company; Reams - Cummins Inc. & Affiliates Collective Investment Trust; Reams – Duchossois Ind Inc.; Reams – Eight District Electrical Pension Fund; Reams – Emerson Electric; Reams – Emerson Electric Company Retirement Master Trust; Reams – Employes' Retirement System of the City of Milwaukee; Reams – Employees' Retirement System of Baltimore County; Reams – Frontegra Columbus Core Plus Fund; Reams – Goldman Core Plus Fixed; Reams – Halliburton Company; Reams – Halliburton Company Employee Benefit Master Trust; Reams – Health Care Foundation of Greater Kansas City; Reams - ILWU/PMA; Reams – ILWU/PMA Pension Plan; Reams Indiana State Police; Reams Indiana State Police Pension Fund; Reams Indiana State Police Pension Trust; Reams Indiana State Teachers Retirement Fund; Reams – Indiana University; Reams – Inter Local Pension Fund of the Graphic Comm. International Brotherhood of Teamsters; Reams Kraft Foods Global, Inc.; Reams – Kraft Foods Master Retirement Trust; Reams – LA Fire & Police; Reams - Labcorp Cash Balance Retirement Fund; Reams – Laboratory Corp. of America Holdings; Reams Louisiana Carpenters Regional Council Pension Trust Fund; Reams - Master Trust Pursuant to the Retirement Plans of APL Ltd. & Subsidiaries; Reams – Montana Board of Investments; Reams Municipal Employee Retirement System of Michigan; Reams – Parkview Memorial Health; Reams – Prudential Retirement Insurance & Annuity Company; Reams – Reichhold, Inc.; Reams – Retirement Board of the Park Employees Annuity & Benefit Fund; Reams – Rotary International Foundation; Reams – San Diego Foundation; Reams – Santa Barbara County; Reams – Santa Barbara County Employees' Retirement System; Reams – Seattle City Employee's Retirement System; Reams – Sonoma County Employees Retirement Association; Reams – St Indiana Major Moves; Reams – St. Luke Episcopal Health System Foundation; Reams – State of Indiana Major Moves Construction Fund; Reams – The Mather Foundation Core Plus; Reams – The Rotary Foundation; Reams Trustees of :

Indiana University; Reams – Trustees of Purdue :
University; Reams Unconstrained Bond Fund LLC; :
Reams – University of Kentucky; Reams – Ventura :
County Employees' Retirement Association; :
Reichhold; RGA Reinsurance Company; Russell :
Investment Company PLC – The Global Strategic :
Yield Fund; Russell Strategic Bond Fund; Sanford :
Bernstein II Interm DU; Sanford C. Bernstein Fund, :
Inc. - Intermediate Duration Portfolio; Sankaty High :
Yield Partners III LP; Santa Barbara County; Seattle :
City Employees' Retirement System; Secondary Loan :
& Distressed; Security Investors-Security Income :
Fund-High Yield Series; SEI Institutional Managed :
Trust's Core Fixed Income; Senior Income Trust; SF-3 :
Segregated Portfolio; SFR Ltd.; Shinnecock CLO II :
Ltd.; Silverado CLO 2006-1 Ltd.; Solus Core :
Opportunities Master Fund Ltd.; Spiret IV Loan Trust :
2003 B; SRI Fund LP; SSS Funding II, LLC; State of :
Connecticut; State of Indiana Major Moves; Stichting :
Bedrijfstakpensioenfonds Voor De Metalektro; :
Stichting Depositary APG Fixed Income Credits Pool; :
Stichting Pensioenfonds ABP; Stichting Pensioenfonds:
van de Metalektro; Stichting Pensionfonds Me; Stoney :
Lane Funding I Ltd.; Taconic Capital Partners 1 5 LP; :
Taconic Market Dislocation Fund II LP; Taconic :
Market Dislocation Master Fund II LP; Taconic :
Opportunity Fund LP; Talon Total Return Partners LP; :
Talon Total Return QP Partners LP; TCW High :
Income Partners Ltd.; TCW Illinois State Board of :
Investment; TCW-Park Avenue Loan Trust; TCW :
Senior Secured Floating Rate Loan Fund LP; TCW :
Senior Secured Loan Fund LP; TCW Velocity CLO; :
Teachers' Retirement System of the State of Illinois; :
Texas County & District Ret System; The Assets :
Management Committee of the Coca-Cola Company :
Master Retirement Trust; The Children's Hospital :
Foundation; The Duchossois Group Inc.; The Galaxite :
Master Unit Trust; The Hartford Mutual Funds, Inc. - :
The Hartford Floating Rate Fund; The Mather :
Foundation; The Royal Bank of Scotland PLC New :
York Branch; Thrivent Financial for Lutherans; :
Thrivent High Yield Fund; Thrivent High Yield :
Portfolio; Thrivent Income Fund; Thrivent Series :
Fund, Inc. – Income Portfolio; TMCT II LLC; :
Transamerica Series Trust; Trilogy Portfolio Company :
LLC; TRS SVCO LLC; Twin Lake Total Return :

Partners LP; Twin Lake Total Return Partners QP LP; UMC Benefit Board, Inc.; Velocity CLO Ltd.; Virtus Multi Sector Fixed Income Fund; Virtus Multisector Short Term Bond Fund; Virtus Senior Floating Rate Fund; Vitesse CLO Ltd.; Vulcan Ventures Inc.; WAMCO 176 – Virginia Supplemental Retirement System; WAMCO 2357 – Legg Mason Partners Capital & Income Fund; WAMCO 3023 – Virginia Retirement Systems Bank Loan Portfolio; WAMCO 3073 – John Hancock Trust Floating Rate Income Trust; WAMCO 3074 – John Hancock Fund II - Floating Rate Income Fund; WAMCO – 3131 – Raytheon Master Pension Master Trust; WAMCO Mt Wilson CLO Ltd.; WAMCO Western Asset Floating Rate High Income Fund LLC; Wells – 13702900; Wells – 14945000; Wells & Company Master Pension Trust: DBA Wells Capital Management - 12222133; Wells Cap Mgmt – 13923601; Wells Capital Management 16017000; Wells Capital Management 16959700; Wells Capital Management 16959701; Wells Capital Management 18866500; Wells Fargo Advantage Income Funds: Income Plus Fund; Wells Fargo Advantage Income Opportunities Fund; Wells Fargo Advantage Multi-Sector Income Fund; Wells Fargo Advantage Utilities & High Income Fund; Wells – Los Angeles Dept. of Water & Power Employees Retire Disability; West Bend Mutual Insurance Company; Wexford Catalyst Investors; Wexford Spectrum Investors LLC; JOHN DOE NOS. 1-100; and JOHN DOE, INC. NOS. 1-100,

Defendants.

FIRST AMENDED ADVERSARY COMPLAINT FOR (1) AVOIDANCE OF UNPERFECTED LIEN, (2) AVOIDANCE AND RECOVERY OF POSTPETITION TRANSFERS, (3) AVOIDANCE AND RECOVERY OF PREFERENTIAL PAYMENTS, AND (4) DISALLOWANCE OF CLAIMS BY DEFENDANTS

TO: THE HONORABLE ROBERT E. GERBER,
UNITED STATES BANKRUPTCY JUDGE:

The Motors Liquidation Company Avoidance Action Trust ("**Trust**"), by and through Wilmington Trust Company, solely in its capacity as the trust administrator and trustee ("**Trust**

Administrator" or "**Plaintiff**"), through its attorneys Dickstein Shapiro LLP, pursuant to standing and authority granted by Orders of this Court, hereby amends the complaint filed on July 31, 2009 in this action, brings this first amended complaint (the "**Complaint**"), and alleges, upon information and belief, as follows against Defendants (as herein defined):

JURISDICTION AND VENUE

1. This action is brought pursuant to Rule 7001 *et seq*. of the Federal Rules of Bankruptcy Procedure to seek relief in accordance with 11 U.S.C. §§ 105, 502, 544, 545, 547, 549, 550, 551, and 1107 and other applicable law.

2. This adversary proceeding arises out of and relates to the above-captioned Chapter 11 cases.

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter constitutes a "core" proceeding within the meaning of 28 U.S.C. §§ 157(b)(1) and 157(b)(2)(A), (B), and (O).

4. Pursuant to Rule 7008-1 of the Local Bankruptcy Rules for the Southern District of New York, Plaintiff consents to entry of final orders or judgment by the Bankruptcy Court if it is determined that the Bankruptcy Court, absent consent of the parties, cannot enter final orders or judgment consistent with Article III of the United States Constitution.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1409(a), as this adversary proceeding arises under Title 11 or arises under or relates to a case under Title 11 of the United States Code (the "**Bankruptcy Code**") which is pending in this district.

PARTIES

6. Motors Liquidation Company f/k/a General Motors Corporation and certain of its subsidiaries (collectively, the "**Debtors**") filed voluntary petitions for relief under Chapter 11 of

the Bankruptcy Code on June 1, 2009 (the "**Petition Date**"), in the United States Bankruptcy Court for the Southern District of New York.

7. On June 3, 2009, the Office of the United States Trustee for the Southern District of New York appointed the Official Committee of Unsecured Creditors of Motors Liquidation Company f/k/a General Motors Corporation (the "**Committee**"), pursuant to Section 1102 of the Bankruptcy Code.

8. The Committee was granted both standing and authority, pursuant to paragraph 19(d) of the *Final Order Pursuant to Bankruptcy Code Sections 105(a), 361, 362, 363, 364 and 507 and Bankruptcy Rules 2002, 4001 and 6004 (A) Approving a DIP Credit Facility and Authorizing the Debtors to Obtain Post-Petition Financing Pursuant Thereto, (B) Granting Related Liens and Super-Priority Status, (C) Authorizing the Use of Cash Collateral and (D) Granting Adequate Protection to Certain Pre-Petition Secured Parties* dated June 25, 2009 (the "**DIP Order**"), to pursue claims challenging, *inter alia*, the security interest of lenders to a certain term loan agreement, dated as of November 29, 2006, as amended by that certain first amendment dated as of March 4, 2009 (as amended, the "**Term Loan Agreement**").

9. Before filing this action in July 2009, the Committee, in a diligent attempt to properly identify all possible Defendants: (i) asked counsel to JPMorgan Chase Bank, N.A. ("**JPMorgan**"), the administrative agent under the Term Loan Agreement, for a list of all lenders under the Term Loan Agreement or other entities that received payments under the loan, (ii) reviewed the Term Loan Agreement, (iii) reviewed annex B and annex C attached to the *Application of the Debtors Pursuant to 11 U.S.C. §§ 327(a) and 328(a) and Fed. R. Bankr. P. 2014(a) for Authority to Employ Weil, Gotshal & Manges LLP as Attorneys for the Debtors, Nunc Pro Tunc to the Commencement Date*, dated as of June 12, 2009, (iv) reviewed a list of

lenders pursuant to the Term Loan Agreement provided by Debtors' counsel, and (v) performed internet research.

10. Before filing this amended Complaint in May 2015, Plaintiff made further diligent attempts to correctly identify all proper Defendants to this action by: (i) asking counsel to JPMorgan for a list identifying the names and addresses of all entities that received payments under the Term Loan Agreement, (ii) reviewing documents produced in the course of discovery, and (iii) researching publicly available information.

11. In those circumstances where Plaintiff could not corroborate the correct Defendant name, Plaintiff has alleged the identity of the Defendant as best it can given the available information. Plaintiff will continue its efforts, including through discovery, to obtain additional information necessary to correctly identify all Defendants.

12. On March 18, 2011, the Bankruptcy Court entered an order (the "**Confirmation Order**") confirming the *Debtors' Second Amended Joint Chapter 11 Plan* (the "**Plan**"), Bankr. Dkt. No. 9836. The Plan provided, among other things, for the creation of the Trust to hold and administer certain assets, including the above-captioned action (the "**Term Loan Avoidance Action**").

13. On or about December 15, 2011, pursuant to the Plan, the Confirmation Order, and the agreement establishing the Trust (the "**Trust Agreement**"), the Debtors transferred the Term Loan Avoidance Action to the Trust.

14. Pursuant to the Plan, the Confirmation Order and the Trust Agreement, the Trust Administrator has, among other things, the power and authority to prosecute and resolve the Term Loan Avoidance Action.

15. Advent Global Opportunity Master Fund is an entity that received a transfer made under the Term Loan Agreement.

16. Aegon/Transamerica Series Trust MFS Highyield is an entity that received a transfer made under the Term Loan Agreement. Aegon/Transamerica Series Trust MFS Highyield changed its name to Transamerica Series Trust.

17. Alticor Inc. is an entity that received a transfer made under the Term Loan Agreement.

18. American International Group, Inc. is an entity that received a transfer made under the Term Loan Agreement.

19. APG Fixed Income Credits Pool is an entity that received a transfer made under the Term Loan Agreement.

20. APG Investments US Inc. A/C Stichting Pensionfonds ABP is an entity that received a transfer made under the Term Loan Agreement.

21. AR Mountain Range LLC is an entity that received a transfer made under the Term Loan Agreement.

22. Arch Reinsurance Ltd. is an entity that received a transfer made under the Term Loan Agreement.

23. Ares IIIR IVR CLO Ltd. is an entity that received a transfer made under the Term Loan Agreement.

24. Ares VR CLO Ltd. is an entity that received a transfer made under the Term Loan Agreement.

25. Ares VIR CLO Ltd. is an entity that received a transfer made under the Term Loan Agreement.

26. Ares VIII CLO Ltd. is an entity that received a transfer made under the Term Loan Agreement.

27. Ares IX CLO Ltd. is an entity that received a transfer made under the Term Loan Agreement.

28. Ares XI CLO Ltd. is an entity that received a transfer made under the Term Loan Agreement.

29. Ares Enhanced Cr Opp Fd Ltd. is an entity that received a transfer made under the Term Loan Agreement.

30. Ares Enhanced LN INV III Ltd. is an entity that received a transfer made under the Term Loan Agreement.

31. Ares Enhanced LN INV IR is an entity that received a transfer made under the Term Loan Agreement.

32. Arnhold-Houston Police Officers' Pension System is an entity that received a transfer made under the Term Loan Agreement.

33. Arrowgrass Master Fund Ltd. is an entity that received a transfer made under the Term Loan Agreement.

34. Atrium IV is an entity that received a transfer made under the Term Loan Agreement.

35. Atrium V is an entity that received a transfer made under the Term Loan Agreement.

36. Avenue CLO V, Ltd. is an entity that received a transfer made under the Term Loan Agreement.

37. Avery Point CLO Ltd. is an entity that received a transfer made under the Term Loan Agreement.

38. Ballyrock CLO II Ltd. is an entity that received a transfer made under the Term Loan Agreement.

39. Ballyrock CLO III Ltd. is an entity that received a transfer made under the Term Loan Agreement.

40. Ballyrock CLO 2006-1 Ltd. is an entity that received a transfer made under the Term Loan Agreement.

41. Ballyrock CLO 2006-2 Ltd. is an entity that received a transfer made under the Term Loan Agreement.

42. Baltic Funding LLC is an entity that received a transfer made under the Term Loan Agreement.

43. Bank of America, N.A. is an entity that received a transfer made under the Term Loan Agreement.

44. Barclays Bank PLC is an entity that received a transfer made under the Term Loan Agreement.

45. BBT Fund LP is an entity that received a transfer made under the Term Loan Agreement.

46. Bechtel Trust & Thrift Plan Becon Trust & Thrift Plan is an entity that received a transfer made under the Term Loan Agreement.

47. Big Sky III Senior Loan Trust is an entity that received a transfer made under the Term Loan Agreement.

48. Bismarck CBNA Loan Funding LLC is an entity that received a transfer made under the Term Loan Agreement.

49. Black Diamond CLO 2005-1 Ltd. is an entity that received a transfer made under the Term Loan Agreement.

50. Black Diamond CLO 2005-2 Ltd. is an entity that received a transfer made under the Term Loan Agreement.

51. Black Diamond CLO 2006-1 Cayman Ltd. is an entity that received a transfer made under the Term Loan Agreement.

52. Black Diamond International Funding Ltd. is an entity that received a transfer made under the Term Loan Agreement.

53. Black Diamond Offshore Ltd. is an entity that received a transfer made under the Term Loan Agreement.

54. BlackRock California State Teachers Retirement System is an entity that received a transfer made under the Term Loan Agreement.

55. BlackRock Corporate High Yield Fund, Inc. is an entity that received a transfer made under the Term Loan Agreement. BlackRock Corporate High Yield Fund, Inc. was formerly known as BlackRock Corporate High Yield Fund VI, Inc.

56. BlackRock Corporate High Yield Fund III Inc. is an entity that received a transfer made under the Term Loan Agreement. BlackRock Corporate High Yield Fund III Inc. closed and the assets of the fund were transferred to BlackRock Corporate High Yield Fund VI, Inc., which subsequently changed its name to BlackRock Corporate High Yield Fund, Inc.

57. BlackRock Corporate High Yield Fund V, Inc. is an entity that received a transfer made under the Term Loan Agreement. BlackRock Corporate High Yield Fund V Inc. closed

and the assets of the fund were transferred to BlackRock Corporate High Yield Fund VI, Inc., which subsequently changed its name to BlackRock Corporate High Yield Fund, Inc.

58. BlackRock Corporate High Yield Fund VI, Inc. is an entity that held received a transfer made under the Term Loan Agreement. BlackRock Corporate High Yield Fund VI, Inc. changed its name to BlackRock Corporate High Yield Fund, Inc. BlackRock Corporate High Yield Fund VI, Inc. received as transferee the assets of: (1) BlackRock High Yield Trust, (2) BlackRock Corporate High Yield Fund III Inc., and (3) BlackRock Corporate High Yield Fund V, Inc.

59. BlackRock Debt Strategies Fund, Inc. is an entity that received a transfer made under the Term Loan Agreement. BlackRock Debt Strategies Fund, Inc. acquired: (1) BlackRock Senior High Income Fund, Inc. and (2) BlackRock Strategic Bond Trust.

60. BlackRock Diversified Income Strategies Fund, Inc. is an entity that received a transfer made under the Term Loan Agreement.

61. BlackRock Employees' Retirement Fund of the City of Dallas is an entity that received a transfer made under the Term Loan Agreement.

62. BlackRock Floating Rate Income Strategies Fund Inc. is an entity that received a transfer made under the Term Loan Agreement.

63. BlackRock Funds II – High Yield Bond Portfolio is a successor to one or more entities that received a transfer made under the Term Loan Agreement. BlackRock Funds II – High Yield Bond Portfolio acquired: (1) BlackRock Funds High Yield Bond Portfolio, (2) BlackRock High Income Fund of BlackRockbond Fund Inc. and (3) BlackRock Managed Account Series High Income Portfolio.

64. BlackRock Funds High Yield Bond Portfolio is an entity that received a transfer made under the Term Loan Agreement. BlackRock Funds High Yield Bond Portfolio has been acquired by BlackRock Funds II – High Yield Bond Portfolio.

65. BlackRock Global Investment Series: Income Strategies Portfolio is an entity that received a transfer made under the Term Loan Agreement.

66. BlackRock GSAM Goldman Core Plus Fixed Income Fund is an entity that received a transfer made under the Term Loan Agreement.

67. BlackRock High Income Fund of Blackrockbond Fund Inc. is an entity that received a transfer made under the Term Loan Agreement. BlackRock High Income Fund of Blackrockbond Fund Inc. was acquired by BlackRock Funds II – High Yield Bond Portfolio.

68. BlackRock High Income Shares is an entity that received a transfer made under the Term Loan Agreement.

69. BlackRock High Yield Trust is an entity that received a transfer made under the Term Loan Agreement. BlackRock High Yield Trust was closed and transferred its assets into BlackRock Corporate High Yield Fund VI, Inc., which subsequently changed its name to BlackRock Corporate High Yield Fund, Inc.

70. BlackRock-Lockheed Martin Corp Master Retirement Trust is an entity that received a transfer made under the Term Loan Agreement.

71. BlackRock Managed Account Series High Income Portfolio is an entity that received a transfer made under the Term Loan Agreement. BlackRock Managed Account Series High Income Portfolio was acquired by BlackRock Funds II – High Yield Bond Portfolio.

72. BlackRock Met Investors Series Trust High Yield Portfolio is an entity that received a transfer made under the Term Loan Agreement.

73. BlackRock Multi Strategy Sub-Trust C is an entity that received a transfer made under the Term Loan Agreement.

74. BlackRock Senior High Income Fund Inc. is an entity that received a transfer made under the Term Loan Agreement. BlackRock Senior High Income Fund Inc. was acquired by BlackRock Debt Strategies Fund, Inc.

75. BlackRock Senior Income Series II is an entity that received a transfer made under the Term Loan Agreement.

76. BlackRock Senior Income Series IV is an entity that received a transfer made under the Term Loan Agreement.

77. BlackRock Strategic Bond Trust is an entity that received a transfer made under the Term Loan Agreement. BlackRock Strategic Bond Trust was acquired by BlackRock Debt Strategies Fund, Inc.

78. BTG Pactual Chile S.A. Administradora General De Fondos is an entity that received a transfer made under the Term Loan Agreement. BTG Pactual Chile S.A. Administradora General De Fondos was formerly known as Celfin Capital S.A. Administradora General de Fondos para Ultra Fondo de Inversion

79. CAI Distressed Debt Opportunity Master Fund, Ltd. is an entity that received a transfer made under the Term Loan Agreement.

80. California State Teachers' Retirement System is an entity that received a transfer made under the Term Loan Agreement.

81. Canadian Imperial Bank of Commerce is an entity that received a transfer made under the Term Loan Agreement.

82. Canyon Capital CDO 2002-1 Ltd. is an entity that received a transfer made under the Term Loan Agreement.

83. Cap Fund LP is an entity that received a transfer made under the Term Loan Agreement.

84. Capital Research-American High Income Trust is an entity that received a transfer made under the Term Loan Agreement.

85. Carbonado LLC is an entity that held received a transfer made under the Term Loan Agreement.

86. Carlyle High Yield Par IX Ltd. is an entity that held received a transfer made under the Term Loan Agreement.

87. Carlyle High Yield Partners 2008-1, Ltd. is an entity that received a transfer made under the Term Loan Agreement.

88. Castle Garden Funding is an entity that received a transfer made under the Term Loan Agreement.

89. Caterpillar Inc. Master Pension Trust is an entity that received a transfer made under the Term Loan Agreement.

90. CCP Credit Acquisition Holding is an entity that received a transfer made under the Term Loan Agreement.

91. Celfin Capital S.A. Adm. General de Fondos para Ultra Fondo de Inversion is an entity that received a transfer made under the Term Loan Agreement. Celfin Capital S.A. Adm. General de Fondos para Ultra Fondo de Inversion changed its name to BTG Pactual Chile S.A. Administradora General De Fondos.

92. Chatham Light II CLO Ltd. is an entity that received a transfer made under the Term Loan Agreement.

93. Chrysler LLC Master Retirement Trust is an entity that received a transfer made under the Term Loan Agreement. Chrysler LLC Master Retirement Trust was formerly known as DaimlerChrysler Corporation Master Retirement Trust. DaimlerChrysler Corporation Master Retirement Trust may or was known at times as Oaktree- DaimlerChrysler Corporation Master Retirement Trust.

94. Citibank, N.A. is an entity that received a transfer made under the Term Loan Agreement.

95. Citigroup Financial Products Inc. is an entity that received a transfer made under the Term Loan Agreement.

96. City of Milwaukee Employees Retirement System is an entity that received a transfer made under the Term Loan Agreement.

97. City of Milwaukee Retirement System is an entity that received a transfer made under the Term Loan Agreement.

98. City of Oakland Police & Fire Retirement System is an entity that received a transfer made under the Term Loan Agreement.

99. Classic Cayman B D Ltd. is an entity that received a transfer made under the Term Loan Agreement.

100. CMFG Life Insurance Company is an entity that received a transfer made under the Term Loan Agreement. CMFG Life Insurance Company was formerly known as Cuna Mutual Insurance Society.

101. Coca Cola Co Ret & MSTR Tr is an entity that received a transfer made under the Term Loan Agreement.

102. Continental Casualty Company is an entity that received a transfer made under the Term Loan Agreement.

103. Credit Suisse Loan Funding LLC is an entity that received a transfer made under the Term Loan Agreement.

104. Credit Suisse Syndicated Loan Fund is an entity that received a transfer made under the Term Loan Agreement.

105. Crescent Senior Secured Floating Rate Loan Fund, LLC is an entity that received a transfer made under the Term Loan Agreement. Crescent Senior Secured Floating Rate Loan Fund, LLC was formerly known as TCW Senior Secured Floating Rate Loan Fund LP.

106. Cuna Mutual Insurance Society is an entity that received a transfer made under the Term Loan Agreement. Cuna Mutual Insurance Society changed its name to CMFG Life Insurance Company.

107. Cypress Tree International Loan Holding Company is an entity that received a transfer made under the Term Loan Agreement.

108. DDJ - JC Penny Pension Plan Trust is an entity that received a transfer made under the Term Loan Agreement.

109. DDJ - Multi-Style, Multi-Manager Funds Plc - Global Strategic Yield Fund is an entity that received a transfer made under the Term Loan Agreement. Multi-Style, Multi-Manager Funds Plc - Global Strategic Yield Fund was acquired by Russell Investment Company Plc - The Global Strategic Yield Fund.

110. DDJ - Stichting Pensioenfonds Hoogovens is an entity that received a transfer made under the Term Loan Agreement.

111. DDJ Cap - Caterpillar Master Retirement Trust is an entity that received a transfer made under the Term Loan Agreement.

112. DDJ Cap MGMT – Stichting Bewaarder Interpolis Pensioenen is an entity that received a transfer made under the Term Loan Agreement.

113. DDJ Capital Mgt Group Tr is an entity that received a transfer made under the Term Loan Agreement.

114. DDJ High Yield Fund is an entity that received a transfer made under the Term Loan Agreement.

115. DE-SEI Institutional Investment Trust – High Yield Bond Fund is an entity that received a transfer made under the Term Loan Agreement.

116. DE-SEI Institutional Managed Trust – High Yield Bond Fund is an entity that received a transfer made under the Term Loan Agreement.

117. Debello Investors LLC is an entity that received a transfer made under the Term Loan Agreement.

118. Delaware Delchester Fund is an entity that received a transfer made under the Term Loan Agreement.

119. Delaware Diversified Income Fund is an entity that received a transfer made under the Term Loan Agreement.

120. Delaware Diversified Income Trust is an entity that received a transfer made under the Term Loan Agreement.

121. Delaware Enhanced Global Dividend & Income Fund is an entity that received a transfer made under the Term Loan Agreement. Delaware Enhanced Global Dividend & Income Fund acquired Delaware Investments Global Dividend & Income Fund.

122. Delaware Extended Duration Bond Fund is an entity that received a transfer made under the Term Loan Agreement.

123. Delaware Group Equity V Inc. Dividend Income Fund is an entity that received a transfer made under the Term Loan Agreement.

124. Delaware Group Government Fund Core Plus Fund is an entity that received a transfer made under the Term Loan Agreement.

125. Delaware Group Inc. Fund Inc. Corporate Bond Fund is an entity that received a transfer made under the Term Loan Agreement.

126. Delaware Group Income Funds - Delaware High Yield Opportunities Fund is an entity that received a transfer made under the Term Loan Agreement.

127. Delaware Investments Dividend & Income Fund Inc. is an entity that received a transfer made under the Term Loan Agreement.

128. Delaware Investments Global Dividend & Income Fund is an entity that received a transfer made under the Term Loan Agreement. Delaware Investments Global Dividend & Income Fund Inc. was acquired by Delaware Enhanced Global Dividend & Income Fund.

129. Delaware – LVIP Delaware Bond Fund is an entity that received a transfer under the Term Loan Agreement.

130. Delaware Optimum Fixed Income Fund is an entity that received a transfer made under the Term Loan Agreement.

131. Delaware Pooled Trust – Core Plus Fixed Income Portfolio is an entity that received a transfer made under the Term Loan Agreement.

132. Delaware Pooled Trust – High Yield Bond Portfolio is an entity that received a transfer made under the Term Loan Agreement.

133. Delaware PSEG Nuclear LLC Master Decommissioning Trust is an entity that received a transfer made under the Term Loan Agreement.

134. Delaware-SEI Institutional Investment Trust-High Yield Bond Fund is an entity that received a transfer made under the Term Loan Agreement.

135. Delaware-SEI Institutional Managed Trust-High Yield Bond Fund is an entity that received a transfer made under the Term Loan Agreement.

136. Delaware VIP Trust Diversified Income Series is an entity that received a transfer made under the Term Loan Agreement.

137. Delaware VIP Trust High Yield Series is an entity that received a transfer made under the Term Loan Agreement.

138. Deutsche Bank AG is an entity that received a transfer made under the Term Loan Agreement.

139. Deutsche Bank AG Cayman Island Branch is an entity that received a transfer made under the Term Loan Agreement.

140. Diamond Springs Trading LLC is an entity that received a transfer made under the Term Loan Agreement.

141. Double Black Diamond Offshore Ltd. is an entity that received a transfer made under the Term Loan Agreement.

142. Eaton Vance CDO VIII Ltd. is an entity that received a transfer made under the Term Loan Agreement.

143. Eaton Vance CDO IX Ltd. is an entity that received a transfer made under the Term Loan Agreement.

144. Eaton Vance CDO X PLC is an entity that received a transfer made under the Term Loan Agreement.

145. Eaton Vance Floating Rate Income Trust is an entity that received a transfer made under the Term Loan Agreement.

146. Eaton Vance Grayson & Co. is an entity that received a transfer made under the Term Loan Agreement.

147. Eaton Vance Institutional Senior Loan Fund is an entity that received a transfer made under the Term Loan Agreement.

148. Eaton Vance International (Cayman Islands) Funds Ltd. – Floating-Rate Income Fund is an entity that received a transfer made under the Term Loan Agreement. Eaton Vance International (Cayman Islands) Funds Ltd. – Floating-Rate Income Fund was formerly known as Eaton Vance Medallion Floating Rate Income Portfolio.

149. Eaton Vance Limited Duration Income Fund is an entity that received a transfer made under the Term Loan Agreement.

150. Eaton Vance Loan Opportunities Fund, Ltd. is an entity that received a transfer made under the Term Loan Agreement.

151. Eaton Vance Medallion Floating Rate Income Portfolio is an entity that received a transfer made under the Term Loan Agreement. Eaton Vance Medallion Floating Rate Income

Portfolio changed its name to Eaton Vance International (Cayman Islands) Funds Ltd. – Floating-Rate Income Fund.

152. Eaton Vance Senior Debt Portfolio is an entity that received a transfer made under the Term Loan Agreement.

153. Eaton Vance Senior Floating Rate Trust is an entity that received a transfer made under the Term Loan Agreement.

154. Eaton Vance Senior Income Trust is an entity that received a transfer made under the Term Loan Agreement.

155. Eaton Vance Short Duration Diversified Income Fund is an entity that received a transfer made under the Term Loan Agreement.

156. Eaton Vance Variable Trust Floating Rate Income Fund is an entity that received a transfer made under the Term Loan Agreement.

157. Employees Retirement Fund of the City of Dallas is an entity that received a transfer made under the Term Loan Agreement.

158. Employers Insurance Company of WAUSAU is an entity that received a transfer made under the Term Loan Agreement.

159. Evergreen Core Plus Bond Fund is an entity that received a transfer made under the Term Loan Agreement. Evergreen Core Plus Bond Fund was acquired by Wells Fargo Advantage Income Funds: Income Plus Fund.

160. Evergreen High Income Fund is an entity that received a transfer made under the Term Loan Agreement.

161. Evergreen High Yield Bond Trust is an entity that received a transfer made under the Term Loan Agreement.

162. Evergreen Income Advantage Fund is an entity that received a transfer made under the Term Loan Agreement. Evergreen Income Advantage Fund changed its name to Wells Fargo Advantage Income Opportunities Fund.

163. Evergreen Multi Sector Income Fund f/k/a Evergreen Managed Income Fund is an entity that received a transfer made under the Term Loan Agreement. Evergreen Multi Sector Income Fund f/k/a Evergreen Managed Income Fund changed its name to Wells Fargo Advantage Multi-Sector Income Fund.

164. Evergreen Utilities & High Income Fund is an entity that received a transfer made under the Term Loan Agreement. Evergreen Utilities & High Income Fund changed its name to Wells Fargo Advantage Utilities & High Income Fund.

165. Evergreen VA High Income Fund is an entity that received a transfer made under the Term Loan Agreement.

166. Fairview Funding LLC is an entity that received a transfer made under the Term Loan Agreement.

167. Fairway Loan Funding Company is an entity that received a transfer made under the Term Loan Agreement.

168. Fidelity Advisor Series I – Advisor Floating Rate High Income Fund is an entity that received a transfer made under the Term Loan Agreement.

169. Fidelity Advisor Series I – Advisor High Income Advantage Fund is an entity that received a transfer made under the Term Loan Agreement.

170. Fidelity Advisor Series I – Fidelity Advisor High Income Fund is an entity that received a transfer made under the Term Loan Agreement.

171. Fidelity Advisor Series II – Advisor Strategic Income Fund is an entity that received a transfer made under the Term Loan Agreement.

172. Fidelity American High Yield Fund is an entity that received a transfer made under the Term Loan Agreement.

173. Fidelity – Arizona State Retirement System is an entity that received a transfer made under the Term Loan Agreement.

174. Fidelity Ballyrock CLO II is an entity that received a transfer made under the Term Loan Agreement.

175. Fidelity Ballyrock CLO III is an entity that received a transfer made under the Term Loan Agreement.

176. Fidelity Canadian Assett All is an entity that received a transfer made under the Term Loan Agreement.

177. Fidelity Cen Inv-Hi Inc PF I is an entity that received a transfer made under the Term Loan Agreement.

178. Fidelity Central Investment Portfolios LLC Fidelity Floating Rate is an entity that received a transfer made under the Term Loan Agreement.

179. Fidelity Central Investment Portfolios LLC Fidelity High Income Central Fund 2 is an entity that received a transfer made under the Term Loan Agreement.

180. Fidelity Illinois Muni Ret Fd is an entity that received a transfer made under the Term Loan Agreement.

181. Fidelity Income Fund – Fidelity Total Bond Fund is an entity that received a transfer made under the Term Loan Agreement.

182. Fidelity Puritan Trust – Puritan Fund is an entity that received a transfer made under the Term Loan Agreement.

183. Fidelity School Street Trust-Strategic Income Fund is an entity that received a transfer made under the Term Loan Agreement.

184. Fidelity Summer Street Trust-Capital & Income Fund is an entity that received a transfer made under the Term Loan Agreement.

185. Fidelity Summer Street Trust-High Income Fund is an entity that received a transfer made under the Term Loan Agreement.

186. Fidelity TR-IG Invst Mgmt Ltd. is an entity that received a transfer made under the Term Loan Agreement.

187. Fidelity Variable Insurance Products V Strategic Income Portfolio is an entity that received a transfer made under the Term Loan Agreement.

188. Fidelity VIP FD Hi Inc PF is an entity that received a transfer made under the Term Loan Agreement.

189. First Trust/Four Corners Senior Floating Rate Income Fund is an entity that received a transfer made under the Term Loan Agreement.

190. First Trust Four Corners Senior Floating Rate Income Fund II is an entity that received a transfer made under the Term Loan Agreement.

191. Foothill CLO I, Ltd. is an entity that received a transfer made under the Term Loan Agreement.

192. Foothill Group Inc. is an entity that received a transfer made under the Term Loan Agreement.

193. Fortress Credit Investments I Ltd. is an entity that received a transfer made under the Term Loan Agreement.

194. Fortress Credit Investments II Ltd. is an entity that received a transfer made under the Term Loan Agreement.

195. Four Corners CLO II Ltd. is an entity that received a transfer made under the Term Loan Agreement.

196. Four Corners CLO III Ltd. is an entity that received a transfer made under the Term Loan Agreement.

197. General Electric Capital Corporation is an entity that received a transfer made under the Term Loan Agreement.

198. General Electric Pension Trust is an entity that received a transfer made under the Term Loan Agreement.

199. Genesis CLO 2007-1 Ltd. is an entity that received a transfer made under the Term Loan Agreement.

200. Genesis CLO 2007-2 Ltd. is an entity that received a transfer made under the Term Loan Agreement.

201. Global Investment Grade Credit Fund is an entity that received a transfer made under the Term Loan Agreement.

202. GMAM Investment Funds Trust is an entity that received a transfer made under the Term Loan Agreement.

203. Golden Knight II CLO, Ltd. is an entity that received a transfer made under the Term Loan Agreement.

204. Goldentree Loan Opportunities III, Ltd. is an entity that received a transfer made under the Term Loan Agreement.

205. Goldentree Loan Opportunities IV, Ltd. is an entity that received a transfer made under the Term Loan Agreement.

206. Goldman Sachs – ABS Loans 2007 Ltd. is an entity that received a transfer made under the Term Loan Agreement.

207. Goldman Sachs Lending Partners LLC is an entity that received a transfer made under the Term Loan Agreement.

208. GPC 69 LLC is an entity that received a transfer made under the Term Loan Agreement.

209. Gracie Credit Opportunities Master Fund LP is an entity that received a transfer made under the Term Loan Agreement.

210. Grand Central Asset TR SIL is an entity that received a transfer made under the Term Loan Agreement.

211. Grand Central Asset Trust Wam Series is an entity that received a transfer made under the Term Loan Agreement.

212. Grayson & Co. is an entity that received a transfer made under the Term Loan Agreement.

213. Guggenheim Portfolio Co X LLC is an entity that received a transfer made under the Term Loan Agreement.

214. Gulf Stream Compass CLO 2003-1 Ltd. is an entity that received a transfer made under the Term Loan Agreement.

215. Gulf Stream – Compass CLO 2007 Ltd. is an entity that received a transfer made under the Term Loan Agreement.

216. Gulf Stream – Sextant CLO 2007-1 Ltd. is an entity that received a transfer made under the Term Loan Agreement.

217. Harch CLO II Ltd. is an entity that received a transfer made under the Term Loan Agreement.

218. Harch CLO III Ltd. is an entity that received a transfer made under the Term Loan Agreement.

219. Health Care Foundation of Greater Kansas City is an entity that received a transfer made under the Term Loan Agreement.

220. Hewett's Island CLO IV is an entity that received a transfer made under the Term Loan Agreement.

221. Hewett's Island CLO V Ltd. is an entity that received a transfer made under the Term Loan Agreement.

222. Hewett's Island CLO VI Ltd. is an entity that received a transfer made under the Term Loan Agreement.

223. Hewlett-Packard Company is an entity that received a transfer made under the Term Loan Agreement.

224. HFR RVA Opal Master Trust is an entity that received a transfer made under the Term Loan Agreement.

225. High Yield Variable Account is an entity that received a transfer made under the Term Loan Agreement.

226. Highland Credit Opportunities CDO, Ltd. is an entity that received a transfer made under the Term Loan Agreement.

227. Highland Floating Rate Fund is an entity that received a transfer made under the Term Loan Agreement.

228. Highland – PAC SEL FD FLTG RT LN is an entity that received a transfer made under the Term Loan Agreement.

229. Himco Fltg RT FD is an entity that received a transfer made under the Term Loan Agreement.

230. Illinois Municipal Retirement Fund is an entity that received a transfer made under the Term Loan Agreement.

231. Indiana University is an entity that received a transfer made under the Term Loan Agreement.

232. Iowa Public Employees Retirement System is an entity that received a transfer made under the Term Loan Agreement.

233. Ivy Fund Inc.-High Income Fund is an entity that received a transfer made under the Term Loan Agreement. Ivy Fund Inc.-High Income Fund changed its name to Ivy Funds-Ivy High Income Fund.

234. Ivy Funds-Ivy High Income Fund is an entity that received a transfer made under the Term Loan Agreement. Ivy Funds-Ivy High Income Fund was formerly known as Ivy Fund Inc.-High Income Fund.

235. Janus Adviser Floating Rate Hi is an entity that received a transfer made under the Term Loan Agreement.

236. Jasper Funding is an entity that received a transfer made under the Term Loan Agreement.

237. Jersey Street CLO, Ltd. is an entity that received a transfer made under the Term Loan Agreement.

238. J.P. Morgan Whitefriars Inc. is an entity that received a transfer made under the Term Loan Agreement.

239. JPMorgan is an entity that received a transfer made under the Term Loan Agreement.

240. JPMCB - Secondary Loan & Distressed Credit Trading is an entity that received a transfer made under the Term Loan Agreement.

241. Katonah 2007-1 CLO Ltd. is an entity that received a transfer made under the Term Loan Agreement.

242. Katonah III, Ltd. is an entity that received a transfer made under the Term Loan Agreement.

243. Katonah IV Ltd. is an entity that received a transfer made under the Term Loan Agreement.

244. Kraft Foods Global Inc. is an entity that received a transfer made under the Term Loan Agreement.

245. Kynikos Opportunity Fund II LP is an entity that received a transfer made under the Term Loan Agreement.

246. Kynikos Opportunity Fund International Ltd. is an entity that received a transfer made under the Term Loan Agreement.

247. Kynikos Opportunity Fund LP is an entity that received a transfer made under the Term Loan Agreement.

248. L3-Lincoln Variable Insurance Products Trust - Managed Fund is an entity that received a transfer made under the Term Loan Agreement.

249. Legg Mason ClearBridge Capital & Income Fund is an entity that received a transfer made under the Term Loan Agreement. Upon further information and belief, Legg Mason ClearBridge Capital & Income Fund was formerly known as Legg Mason Partners Capital & Income Fund. Legg Mason ClearBridge Capital & Income Fund may or was known at times as WAMCO 2357 – Legg Mason Partners Capital & Income Fund.

250. Lehman Brothers First Trust Income Opportunity Fund is an entity that received a transfer made under the Term Loan Agreement. Lehman Brothers First Trust Income Opportunity Fund changed its name to Neuberger Berman High Yield Strategies Fund.

251. Lehman GMAM Investment Funds Trust is an entity that received a transfer made under the Term Loan Agreement.

252. Lehman-Neuberger Berman-High Income Bond Fund is an entity that received a transfer made under the Term Loan Agreement. Lehman-Neuberger Berman-High Income Bond Fund changed its name to Neuberger Berman Income Funds - Neuberger Berman High Income Bond Fund.

253. Lehman Principal Investors Fund, Inc. - High Yield Fund is an entity that received a transfer made under the Term Loan Agreement.

254. Lincoln National Life Insurance Company Separate Account 12 is an entity that received a transfer made under the Term Loan Agreement.

255. Lincoln National Life WSA20 is an entity that received a transfer made under the Term Loan Agreement.

256. Loan Funding XI LLC is an entity that received a transfer made under the Term Loan Agreement.

257. Logan – Raytheon MPT – Floating Rate is an entity that received a transfer made under the Term Loan Agreement.

258. Logan – Raytheon MPT – Mid Grade Portfolio is an entity that received a transfer made under the Term Loan Agreement.

259. Logan Circle – Alameda Contra Costa Transit Retirement System is an entity that received a transfer made under the Term Loan Agreement.

260. Logan Circle – Allina Health Sys Defined Bnft Master Tr is an entity that received a transfer made under the Term Loan Agreement.

261. Logan Circle – Allina Health System Trust is an entity that received a transfer made under the Term Loan Agreement.

262. Logan Circle – Bechtel Corporation is an entity that received a transfer made under the Term Loan Agreement.

263. Logan Circle Freddie Mac Foundation Inc. is an entity that received a transfer made under the Term Loan Agreement.

264. Logan Circle – Liberty Mutual Employee Thrift Incentive Plan is an entity that received a transfer made under the Term Loan Agreement.

265. Logan Circle Peoples Energy Corporation Pension Trust is an entity that received a transfer made under the Term Loan Agreement.

266. Logan Circle – Public Service E is an entity that received a transfer made under the Term Loan Agreement.

267. Logan Circle – Russell Inst Funds LLC – Russell Core Bond Fund is an entity that received a transfer made under the Term Loan Agreement.

268. Logan Circle – Russell Investment Company PLC is an entity that received a transfer made under the Term Loan Agreement.

269. Logan Circle – Russell Multi-Managed Bond Fund is an entity that received a transfer made under the Term Loan Agreement.

270. Logan Circle – Russell Strategic Bond Fund is an entity that received a transfer made under the Term Loan Agreement.

271. Logan Circle – Sunoco Inc. Master Retirement Trust is an entity that received a transfer made under the Term Loan Agreement.

272. Logan Circle Wisconsin Public Service Corporation Pension Trust is an entity that received a transfer made under the Term Loan Agreement.

273. Longlane Master TR IV is an entity that received a transfer made under the Term Loan Agreement.

274. Lord Abbett & Co-Teachers Re is an entity that received a transfer made under the Term Loan Agreement.

275. Lord Abbett Inv Trst-LA Hi Yld is an entity that received a transfer made under the Term Loan Agreement.

276. Lord Abbett Investment Trust – Lord Abbett Floating Rate Fund is an entity that received a transfer made under the Term Loan Agreement.

277. Louisiana Carpenters Regional Council Pension Trust Fund is an entity that received a transfer made under the Term Loan Agreement.

278. MacKay 1028 – Arkansas Public Employee Retirement System is an entity that received a transfer made under the Term Loan Agreement.

279. MacKay 8067 – Fire & Police Employee Retirement System of the City of Baltimore is an entity that received a transfer made under the Term Loan Agreement.

280. MacKay-Houston Police Officers Pension System is an entity that received a transfer made under the Term Loan Agreement.

281. MacKay New York Life Insurance Company (Guaranteed Products) is an entity that received a transfer made under the Term Loan Agreement.

282. MacKay Shields Core Plus Alpha Fund Ltd. is an entity that received a transfer made under the Term Loan Agreement.

283. MacKay Shields Short Duration Alpha Fund is an entity that received a transfer made under the Term Loan Agreement.

284. Madison Park Funding I Ltd. is an entity that received a transfer made under the Term Loan Agreement.

285. Madison Park Funding II Ltd. is an entity that received a transfer made under the Term Loan Agreement.

286. Madison Park Funding III Ltd. is an entity that received a transfer made under the Term Loan Agreement.

287. Madison Park Funding IV Ltd. is an entity that received a transfer made under the Term Loan Agreement.

288. Madison Park Funding V Ltd. is an entity that received a transfer made under the Term Loan Agreement.

289. Madison Park Funding VI Ltd. is an entity that received a transfer made under the Term Loan Agreement.

290. Marathon CLO I Ltd. is an entity that received a transfer made under the Term Loan Agreement.

291. Marathon CLO II Ltd. is an entity that received a transfer made under the Term Loan Agreement.

292. Marathon Financing I B V is an entity that received a transfer made under the Term Loan Agreement.

293. Mariner LDC is an entity that received a transfer made under the Term Loan Agreement.

294. Marlborough Street CLO Ltd. is an entity that received a transfer made under the Term Loan Agreement.

295. Mason Capital LP is an entity that received a transfer made under the Term Loan Agreement.

296. Mason Capital Ltd. is an entity that received a transfer made under the Term Loan Agreement.

297. Mayport CLO Ltd. is an entity that received a transfer made under the Term Loan Agreement.

298. McDonnell Illinois State Board of Investment is an entity that received a transfer made under the Term Loan Agreement.

299. Meritage Fund Ltd. is an entity that received a transfer made under the Term Loan Agreement.

300. Merrill Lynch Capital Services, Inc. is an entity that received a transfer made under the Term Loan Agreement.

301. Metropolitan West High Yield Bond Fund is an entity that received a transfer made under the Term Loan Agreement.

302. MFS Charter Income Trust is an entity that received a transfer made under the Term Loan Agreement.

303. MFS-DIF-Diversified Income Fund is an entity that received a transfer made under the Term Loan Agreement.

304. MFS Diversified Income Fund is an entity that received a transfer made under the Term Loan Agreement.

305. MFS Diversified Income Fund – Series Trust XIII is an entity that received a transfer made under the Term Loan Agreement.

306. MFS Floating Rate High Income Fund is an entity that received a transfer made under the Term Loan Agreement.

307. MFS Floating Rate Income Fund is an entity that received a transfer made under the Term Loan Agreement.

308. MFS Global High Yield Fund is an entity that received a transfer made under the Term Loan Agreement. MFS Global High Yield Fund was formerly known as MFS Series Trust III High Yield Opportunities Fund.

309. MFS High Yield Portfolio is an entity that received a transfer made under the Term Loan Agreement. MFS High Yield Portfolio acquired MFS Variable Insurance Trust MFS High Income Series.

310. MFS – High Yield Variable Account is an entity that received a transfer made under the Term Loan Agreement.

311. MFS Intermarket Income Trust I is an entity that received a transfer made under the Term Loan Agreement.

312. MFS Intermediate High Income Fund is an entity that received a transfer made under the Term Loan Agreement.

313. MFS Multimarket Income Trust is an entity that received a transfer made under the Term Loan Agreement.

314. MFS Series Trust III High Income Fund is an entity that received a transfer made under the Term Loan Agreement. MFS Series Trust III High Income Fund acquired MFS Series Trust X Floating Rate High Income Fund.

315. MFS Series Trust III High Yield Opportunities Fund is an entity that received a transfer made under the Term Loan Agreement. MFS Series Trust III High Yield Opportunities Fund changed its name to MFS Global High Yield Fund.

316. MFS Series Trust VIII Strategic Income Fund is an entity that received a transfer made under the Term Loan Agreement.

317. MFS Series Trust X Floating Rate High Income Fund is an entity that received a transfer made under the Term Loan Agreement. MFS Series Trust X Floating Rate High Income Fund was reorganized into the MFS Series Trust III High Income Fund.

318. MFS Special Value Trust is an entity that received a transfer made under the Term Loan Agreement.

319. MFS Strategic Income Portfolio is an entity that received a transfer made under the Term Loan Agreement. MFS Strategic Income Portfolio acquired MFS Variable Insurance Trust - MFS Strategic Income Series VWG.

320. MFS Variable Insurance Trust - MFS Strategic Income Series VWG is an entity that received a transfer made under the Term Loan Agreement. MFS Variable Insurance Trust – MFS Strategic Income Series VWG was terminated and the fund's assets and liabilities were transferred to MFS Strategic Income Portfolio.

321. MFS Variable Insurance Trust II High Yield Portfolio is an entity that received a transfer made under the Term Loan Agreement.

322. MFS Variable Insurance Trust II Strategic Income Portfolio is an entity that received a transfer made under the Term Loan Agreement.

323. MFS Variable Insurance Trust MFS High Income Series is an entity that received a transfer made under the Term Loan Agreement. MFS Variable Insurance Trust MFS High Income Series was terminated and the fund's assets and liabilities were transferred to MFS High Yield Portfolio.

324. Microsoft Global Finance Ltd. is an entity that received a transfer made under the Term Loan Agreement.

325. Missouri State Employees Retirement System is an entity that received a transfer made under the Term Loan Agreement.

326. Momentum Capital Fund Ltd. is an entity that received a transfer made under the Term Loan Agreement.

327. Montana Board of Investments is an entity that received a transfer made under the Term Loan Agreement.

328. Morgan Stanley Senior Funding Inc. is an entity that received a transfer made under the Term Loan Agreement.

329. Mt. Wilson CLO Ltd. is an entity that received a transfer made under the Term Loan Agreement.

330. Mt. Wilson CLO II Ltd. is an entity that received a transfer made under the Term Loan Agreement.

331. Muzinich & Company Ireland Ltd. for the Account of Extra Yield S Loan Fund is an entity that received a transfer made under the Term Loan Agreement.

332. Nash Point CLO is an entity that received a transfer made under the Term Loan Agreement.

333. National City Bank is an entity that received a transfer made under the Term Loan Agreement. National City Bank was acquired by PNC Financial Services Group, Inc.

334. Neuberger Berman High Yield Strategies Fund is an entity that received a transfer made under the Term Loan Agreement. Neuberger Berman High Yield Strategies Fund acquired Neuberger Berman Income Opportunity Fund, Inc. Neuberger Berman High Yield Strategies Fund was formerly known as Lehman Brothers First Trust Income Opportunity Fund.

335. Neuberger Berman Income Funds – Neuberger Berman High Income Bond Fund is an entity that received a transfer made under the Term Loan Agreement. Neuberger Berman Income Funds - Neuberger Berman High Income Bond Fund was formerly known as Lehman-Neuberger Berman-High Income Bond Fund.

336. Neuberger Berman Income Opportunity Fund, Inc. is an entity that received a transfer made under the Term Loan Agreement. Neuberger Berman Income Opportunity Fund, Inc. was acquired by Neuberger Berman High Yield Strategies Fund.

337. New York Life Insurance Company Guaranteed Products is an entity that received a transfer made under the Term Loan Agreement.

338. New York Life Insurance Company (Guaranteed Products) is an entity that received a transfer made under the Term Loan Agreement.

339. New York Life Insurance Company GP - Portable Alpha is an entity that received a transfer made under the Term Loan Agreement.

340. Oak Hill Cr Opp Fin Ltd. is an entity that received a transfer made under the Term Loan Agreement.

341. Oak Hill Credit Opportunities Master Fund, Ltd. is an entity that received a transfer made under the Term Loan Agreement.

342. Oak Hill Credit Partners II Ltd. is an entity that received a transfer made under the Term Loan Agreement.

343. Oak Hill Credit Partners III Ltd. is an entity that received a transfer made under the Term Loan Agreement.

344. Oak Hill Credit Partners IV Ltd. is an entity that received a transfer made under the Term Loan Agreement.

345. Oak Hill Credit Partners V Ltd. is an entity that received a transfer made under the Term Loan Agreement.

346. Oaktree – Bill & Melinda Gates Foundation Trust is an entity that received a transfer made under the Term Loan Agreement.

347. Oaktree Capital Management - Central States SE and SW Area Pens Plan is an entity that received a transfer made under the Term Loan Agreement.

348. Oaktree Capital Management High Yield Trust is an entity that received a transfer made under the Term Loan Agreement.

349. Oaktree-DaimlerChrysler Corporation Master Retirement Trust is an entity that received a transfer made under the Term Loan Agreement. DaimlerChrysler Corporation Master Retirement Trust changed its name to Chrysler LLC Master Retirement Trust.

350. Oaktree – Employees Retirement Fund of the City of Dallas is an entity that received a transfer made under the Term Loan Agreement.

351. Oaktree – General Board of Pension & Health Benefits of the UN Methodist Church Inc. is an entity that received a transfer made under the Term Loan Agreement. General Board of Pension & Health Benefits of the UN Methodist Church Inc. merged into UMC Benefit Board, Inc.

352. Oaktree – High Yield LP is an entity that received a transfer made under the Term Loan Agreement.

353. Oaktree – High Yield Fund II, LP is an entity that received a transfer made under the Term Loan Agreement.

354. Oaktree – High Yield Plus Fund LP is an entity that received a transfer made under the Term Loan Agreement.

355. Oaktree – International Paper Co. Commingled Investment Group Trust is an entity that received a transfer made under the Term Loan Agreement.

356. Oaktree Loan Fund, LP is an entity that received a transfer made under the Term Loan Agreement.

357. Oaktree Loan Fund 2X (Cayman), LP is an entity that received a transfer made under the Term Loan Agreement.

358. Oaktree – Pacific Gas & Electric Post Ret Med Trust for Non-Mgt Emp & Retirees is an entity that received a transfer made under the Term Loan Agreement.

359. Oaktree – San Diego County Employees Retirement Association is an entity that received a transfer made under the Term Loan Agreement.

360. Oaktree Senior Loan Fund, LP is an entity that received a transfer made under the Term Loan Agreement.

361. Oaktree – TMCT LCC is an entity that received a transfer made under the Term Loan Agreement.

362. OCM – IBM Personal Pension Plan is an entity that received a transfer made under the Term Loan Agreement.

363. OCM-Pacific Gas & Electric Company Retirement Plan Master Trust is an entity that received a transfer made under the Term Loan Agreement.

364. OCM-The State Teachers Retirement System of Ohio is an entity that received a transfer made under the Term Loan Agreement.

365. OCM-WM Pool High Yield Fixed Interest Trust is an entity that received a transfer made under the Term Loan Agreement.

366. Octagon Investment Partners XI Ltd. is an entity that received a transfer made under the Term Loan Agreement.

367. Oesterreichische Volksbanken AG is an entity that received a transfer made under the Term Loan Agreement.

368. OHA Cap Sol Fin Ofshore Ltd. is an entity that received a transfer made under the Term Loan Agreement.

369. OHA Cap Sol Fin Onshore Ltd. is an entity that received a transfer made under the Term Loan Agreement.

370. OHA Park Avenue CLO I Ltd. is an entity that received a transfer made under the Term Loan Agreement.

371. Ohio Police & Fire Pension Fund is an entity that received a transfer made under the Term Loan Agreement.

372. OHSF Financing Ltd. is an entity that received a transfer made under the Term Loan Agreement.

373. OHSF II Financing Ltd. is an entity that received a transfer made under the Term Loan Agreement.

374. ONEX Debt Opportunity FD Ltd. is an entity that received a transfer made under the Term Loan Agreement.

375. OW Funding Ltd. is an entity that received a transfer made under the Term Loan Agreement.

376. Pension Inv Committee of GM for GM Employees Domestic Group Pension Trust is an entity that received a transfer made under the Term Loan Agreement.

377. Phoenix Edge Series Fund Phoenix Multi Sector Short Term Bond Series is an entity that received a transfer made under the Term Loan Agreement.

378. Phoenix Edge SRS-Multi-Sector Fixed Income Series is an entity that received a transfer made under the Term Loan Agreement.

379. Pimco 1464 – Freescale Semiconductor Inc. Retirement Savings is an entity that received a transfer made under the Term Loan Agreement.

380. Pimco 1641 – Sierra Pacific Resources Defined Ben Mstr Tr is an entity that received a transfer made under the Term Loan Agreement.

381. Pimco2244 – Virginia Retirement System is an entity that received a transfer made under the Term Loan Agreement.

382. Pimco2496 –Fltg Rt Inc FD is an entity that received a transfer made under the Term Loan Agreement.

383. Pimco2497 – Fltg Rt Strt FD is an entity that received a transfer made under the Term Loan Agreement.

384. Pimco2603 – Red River HYPI LP is an entity that received a transfer made under the Term Loan Agreement.

385. Pimco3813 – Pimco Cayman Bank Loan Fund is an entity that received a transfer made under the Term Loan Agreement.

386. Pimco400 – Stocks Plus Sub Fund B LLC is an entity that received a transfer made under the Term Loan Agreement.

387. Pimco6819 Portola CLO Ltd. is an entity that received a transfer made under the Term Loan Agreement.

388. Pimco700 – FD TOT RTN FD is an entity that received a transfer made under the Term Loan Agreement.

389. Pimco706 – Private High Yield Portfolio is an entity that received a transfer made under the Term Loan Agreement.

390. Pimco Fairway Loan Funding Company is an entity that received a transfer made under the Term Loan Agreement.

391. Pimco - St. Luke Episcopal Health System Foundation is an entity that received a transfer made under the Term Loan Agreement.

392. Plumbers & Pipefitters National Pension Fund is an entity that received a transfer made under the Term Loan Agreement.

393. PNC Financial Services Group, Inc. is an entity that received a transfer made under the Term Loan Agreement. PNC Financial Services Group, Inc. acquired National City Bank.

394. Portola CLO Ltd. is an entity that received a transfer made under the Term Loan Agreement.

395. Primus CLO I Ltd. is an entity that received a transfer made under the Term Loan Agreement.

396. Primus CLO II Ltd. is an entity that received a transfer made under the Term Loan Agreement.

397. Princeton Rosedale CLO II Ltd. is an entity that received a transfer made under the Term Loan Agreement.

398. Putnam 29X-Funds Trust Floating Rate Income Fund is an entity that received a transfer made under the Term Loan Agreement.

399. Pyramis Floating Rate High Income Commingled Pool is an entity that received a transfer made under the Term Loan Agreement.

400. Pyramis Hi Yld BD Comngl Pool is an entity that received a transfer made under the Term Loan Agreement.

401. Pyramis High Yield Fund LLC is an entity that received a transfer made under the Term Loan Agreement.

402. R3 Capital Partners Master LP is an entity that received a transfer made under the Term Loan Agreement.

403. Race Point II CLO is an entity that received a transfer made under the Term Loan Agreement.

404. Race Point III CLO is an entity that received a transfer made under the Term Loan Agreement.

405. Race Point IV CLO Ltd. is an entity that received a transfer made under the Term Loan Agreement.

406. Raytheon MPT – Logan Floating Rate Portfolio is an entity that received a transfer made under the Term Loan Agreement.

407. Raytheon MPT – Logan Mid Grade Portfolio is an entity that received a transfer made under the Term Loan Agreement.

408. RBC Dexia Investor Services Trust as Trustee for GM Canada Foreign Trust is an entity that received a transfer made under the Term Loan Agreement.

409. Reams – Agility Global Fixed Income Master Fund LP is an entity that received a transfer made under the Term Loan Agreement.

410. Reams – American President Lines Ltd. is an entity that received a transfer made under the Term Loan Agreement.

411. Reams – Baltimore County Retirement is an entity that received a transfer made under the Term Loan Agreement.

412. Reams – Bill & Melinda Gates Foundation is an entity that received a transfer made under the Term Loan Agreement.

413. Reams – Bill & Melinda Gates Foundation Trust is an entity that received a transfer made under the Term Loan Agreement.

414. Reams Board of Fire & Police Pension Commissioners of the City of Los Angeles is an entity that received a transfer made under the Term Loan Agreement.

415. Reams – Board of Pen Presbyterian Church is an entity that received a transfer made under the Term Loan Agreement.

416. Reams – Building Trades United Pension Trust is an entity that received a transfer made under the Term Loan Agreement.

417. Reams – Carpenters Pension Fund of Illinois is an entity that received a transfer made under the Term Loan Agreement.

418. Reams – Carpenters Pension Fund of Illinois Pension Plan is an entity that received a transfer made under the Term Loan Agreement.

419. Reams Chicago Park District is an entity that received a transfer made under the Term Loan Agreement.

420. Reams Children's Hospital Fund is an entity that received a transfer made under the Term Loan Agreement.

421. Reams – Children's Hospital Philadelphia is an entity that received a transfer made under the Term Loan Agreement.

422. Reams City of Milwaukee Retirement System is an entity that received a transfer made under the Term Loan Agreement.

423. Reams City of Montgomery Alabama Employee's Retirement System is an entity that received a transfer made under the Term Loan Agreement.

424. Reams City of Montgomery Retirement System is an entity that received a transfer made under the Term Loan Agreement.

425. Reams City of Oakland Police is an entity that received a transfer made under the Term Loan Agreement.

426. Reams – Columbus Extended Market Fund LLC is an entity that received a transfer made under the Term Loan Agreement. Reams – Columbus Extended Market Fund LLC changed its name to Reams Unconstrained Bond Fund LLC.

427. Reams – Connecticut General Life Insurance Company is an entity that received a transfer made under the Term Loan Agreement.

428. Reams – Cummins Inc. & Affiliates Collective Investment Trust is an entity that received a transfer made under the Term Loan Agreement.

429. Reams – Duchossois Ind Inc. is an entity that received a transfer made under the Term Loan Agreement.

430. Reams – Eight District Electrical Pension Fund is an entity that received a transfer made under the Term Loan Agreement.

431. Reams – Emerson Electric is an entity that received a transfer made under the Term Loan Agreement.

432. Reams – Emerson Electric Company Retirement Master Trust is an entity that received a transfer made under the Term Loan Agreement.

433. Reams – Employes' Retirement System of the City of Milwaukee is an entity that received a transfer made under the Term Loan Agreement.

434. Reams – Employees' Retirement System of Baltimore County is an entity that received a transfer made under the Term Loan Agreement.

435. Reams – Frontegra Columbus Core Plus Fund is an entity that received a transfer made under the Term Loan Agreement.

436. Reams – Goldman Core Plus Fixed is an entity that received a transfer made under the Term Loan Agreement.

437. Reams – Halliburton Company is an entity that received a transfer made under the Term Loan Agreement.

438. Reams – Halliburton Company Employee Benefit Master Trust is an entity that received a transfer made under the Term Loan Agreement.

439. Reams – Health Care Foundation of Greater Kansas City is an entity that received a transfer made under the Term Loan Agreement.

440. Reams – ILWU/PMA is an entity that received a transfer made under the Term Loan Agreement.

441. Reams – ILWU/PMA Pension Plan is an entity that received a transfer made under the Term Loan Agreement.

442. Reams Indiana State Police is an entity that received a transfer made under the Term Loan Agreement.

443. Reams Indiana State Police Pension Fund is an entity that received a transfer made under the Term Loan Agreement.

444. Reams Indiana State Police Pension Trust is an entity that received a transfer made under the Term Loan Agreement.

445. Reams Indiana State Teachers Retirement Fund is an entity that received a transfer made under the Term Loan Agreement.

446. Reams – Indiana University is an entity that received a transfer made under the Term Loan Agreement.

447. Reams – Inter Local Pension Fund of the Graphic Comm. International Brotherhood of Teamsters is an entity that received a transfer made under the Term Loan Agreement.

448. Reams Kraft Foods Global Inc. is an entity that received a transfer made under the Term Loan Agreement.

449. Reams – Kraft Foods Master Retirement Trust is an entity that received a transfer made under the Term Loan Agreement.

450. Reams – LA Fire & Police is an entity that received a transfer made under the Term Loan Agreement.

451. Reams – LabCorp Cash Balance Retirement Fund is an entity that received a transfer made under the Term Loan Agreement.

452. Reams – Laboratory Corp. of America Holdings is an entity that received a transfer made under the Term Loan Agreement.

453. Reams Louisiana Carpenters Regional Council Pension Trust Fund is an entity that received a transfer made under the Term Loan Agreement.

454. Reams – Master Trust Pursuant to the Retirement Plans of APL Ltd. & Subsidiaries is an entity that received a transfer made under the Term Loan Agreement.

455. Reams – Montana Board of Investments is an entity that received a transfer made under the Term Loan Agreement.

456. Reams Municipal Employee Retirement System of Michigan is an entity that received a transfer made under the Term Loan Agreement.

457. Reams – Parkview Memorial Health is an entity that received a transfer made under the Term Loan Agreement.

458. Reams – Prudential Retirement Insurance & Annuity Company is an entity that received a transfer made under the Term Loan Agreement.

459. Reams – Reichhold, Inc. is an entity that received a transfer made under the Term Loan Agreement.

460. Reams – Retirement Board of the Park Employees Annuity & Benefit Fund is an entity that received a transfer made under the Term Loan Agreement.

461. Reams – Rotary International Foundation is an entity that received a transfer made under the Term Loan Agreement.

462. Reams – San Diego Foundation is an entity that received a transfer made under the Term Loan Agreement.

463. Reams – Santa Barbara County is an entity that received a transfer made under the Term Loan Agreement.

464. Reams – Santa Barbara County Employees' Retirement System is an entity that received a transfer made under the Term Loan Agreement.

465. Reams – Seattle City Employee's Retirement System is an entity that received a transfer made under the Term Loan Agreement.

466. Reams – Sonoma County Employees Retirement Association is an entity that received a transfer made under the Term Loan Agreement.

467. Reams – St Indiana Major Moves is an entity that received a transfer made under the Term Loan Agreement.

468. Reams – St. Luke Episcopal Health System Foundation is an entity that received a transfer made under the Term Loan Agreement.

469. Reams – State of Indiana Major Moves Construction Fund is an entity that received a transfer made under the Term Loan Agreement.

470. Reams – The Mather Foundation Core Plus is an entity that received a transfer made under the Term Loan Agreement.

471. Reams – The Rotary Foundation is an entity that received a transfer made under the Term Loan Agreement.

472. Reams Trustees of Indiana University is an entity that received a transfer made under the Term Loan Agreement.

473. Reams – Trustees of Purdue University is an entity that received a transfer made under the Term Loan Agreement.

474. Reams Unconstrained Bond Fund LLC is an entity that received a transfer made under the Term Loan Agreement. Reams Unconstrained Bond Fund LLC was formerly known as Reams – Columbus Extended Market Fund LLC.

475. Reams – University of Kentucky is an entity that received a transfer made under the Term Loan Agreement.

476. Reams – Ventura County Employees' Retirement Association is an entity that received a transfer made under the Term Loan Agreement.

477. Reichhold is an entity that received a transfer made under the Term Loan Agreement.

478. RGA Reinsurance Company is an entity that received a transfer made under the Term Loan Agreement.

479. Russell Investment Company PLC – The Global Strategic Yield Fund is an entity that received a transfer made under the Term Loan Agreement. Russell Investment Company PLC – The Global Strategic Yield Fund acquired DDJ – Multi-Style, Multi-Manager Funds PLC – Global Strategic Yield Fund.

480. Russell Strategic Bond Fund is an entity that received a transfer made under the Term Loan Agreement.

481. Sanford Bernstein II Interm DU is an entity that received a transfer made under the Term Loan Agreement.

482. Sanford C. Bernstein Fund, Inc. - Intermediate Duration Portfolio is an entity that received a transfer made under the Term Loan Agreement.

483. Sankaty High Yield Partners III LP is an entity that received a transfer made under the Term Loan Agreement.

484. Santa Barbara County is an entity that received a transfer made under the Term Loan Agreement.

485. Seattle City Employees' Retirement System is an entity that received a transfer made under the Term Loan Agreement.

486. Secondary Loan & Distressed is an entity that received a transfer made under the Term Loan Agreement.

487. Security Investors-Security Income Fund-High Yield Series is an entity that received a transfer made under the Term Loan Agreement.

488. SEI Institutional Managed Trust's Core Fixed Income is an entity that received a transfer made under the Term Loan Agreement.

489. Senior Income Trust is an entity that received a transfer made under the Term Loan Agreement.

490. SF-3 Segregated Portfolio is an entity that received a transfer made under the Term Loan Agreement.

491. SFR Ltd. is an entity that received a transfer made under the Term Loan Agreement.

492. Shinnecock CLO II Ltd. is an entity that received a transfer made under the Term Loan Agreement.

493. Silverado CLO 2006-1 Ltd. is an entity that received a transfer made under the Term Loan Agreement.

494. Solus Core Opportunities Master Fund Ltd. is an entity that received a transfer made under the Term Loan Agreement.

495. Spiret IV Loan Trust 2003 B is an entity that received a transfer made under the Term Loan Agreement.

496. SRI Fund LP is an entity that received a transfer made under the Term Loan Agreement.

497. SSS Funding II, LLC is an entity that received a transfer made under the Term Loan Agreement.

498. State of Connecticut is an entity that received a transfer made under the Term Loan Agreement.

499. State of Indiana Major Moves is an entity that received a transfer made under the Term Loan Agreement.

500. Stichting Bedrijfstakpensioenfonds Voor De Metalektro is an entity that received a transfer made under the Term Loan Agreement. Stichting Bedrijfstakpensioenfonds Voor De Metalektro changed its name to belief Stichting Pensioenfonds van de Metalektro.

501. Stichting Depositary APG Fixed Income Credits Pool is an entity that received a transfer made under the Term Loan Agreement.

502. Stichting Pensioenfonds ABP is an entity that received a transfer made under the Term Loan Agreement.

503. Stichting Pensioenfonds van de Metalektro is an entity that received a transfer made under the Term Loan Agreement. Stichting Pensioenfonds van de Metalektro was formerly known as Stichting Bedrijfstakpensioenfonds Voor De Metalektro.

504. Stichting Pensionfonds Me is an entity that received a transfer made under the Term Loan Agreement.

505. Stoney Lane Funding I Ltd. is an entity that received a transfer made under the Term Loan Agreement.

506. Taconic Capital Partners 1 5 LP is an entity that received a transfer made under the Term Loan Agreement.

507. Taconic Market Dislocation Fund II LP is an entity that received a transfer made under the Term Loan Agreement.

508. Taconic Market Dislocation Master Fund II LP is an entity that received a transfer made under the Term Loan Agreement.

509. Taconic Opportunity Fund LP is an entity that received a transfer made under the Term Loan Agreement.

510. Talon Total Return Partners LP is an entity that received a transfer made under the Term Loan Agreement. Talon Total Return Partners LP changed its name to Twin Lake Total Return Partners LP.

511. Talon Total Return QP Partners LP is an entity that received a transfer made under the Term Loan Agreement. Talon Total Return QP Partners LP changed its name to Twin Lake Total Return Partners QP LP.

512. TCW High Income Partners Ltd. is an entity that received a transfer made under the Term Loan Agreement.

513. TCW Illinois State Board of Investment is an entity that received a transfer made under the Term Loan Agreement.

514. TCW-Park Avenue Loan Trust is an entity that received a transfer made under the Term Loan Agreement.

515. TCW Senior Secured Floating Rate Loan Fund LP is an entity that received a transfer made under the Term Loan Agreement. TCW Senior Secured Floating Rate Loan Fund LP is now known as Crescent Senior Secured Floating Rate Loan Fund, LLC.

516. TCW Senior Secured Loan Fund LP is an entity that received a transfer made under the Term Loan Agreement.

517. TCW Velocity CLO is an entity that received a transfer made under the Term Loan Agreement.

518. Teachers' Retirement System of the State of Illinois is an entity that received a transfer made under the Term Loan Agreement.

519. Texas County & District Ret System is an entity that received a transfer made under the Term Loan Agreement.

520. The Assets Management Committee of the Coca-Cola Company Master Retirement Trust is an entity that received a transfer made under the Term Loan Agreement.

521. The Children's Hospital Foundation is an entity that received a transfer made under the Term Loan Agreement.

522. The Duchossois Group Inc. is an entity that received a transfer made under the Term Loan Agreement.

523. The Galaxite Master Unit Trust is an entity that received a transfer made under the Term Loan Agreement.

524. The Hartford Mutual Funds, Inc. - The Hartford Floating Rate Fund is an entity that received a transfer made under the Term Loan Agreement.

525. The Mather Foundation is an entity that received a transfer made under the Term Loan Agreement.

526. The Royal Bank of Scotland PLC New York Branch is an entity that received a transfer made under the Term Loan Agreement.

527. Thrivent Financial for Lutherans is an entity that received a transfer made under the Term Loan Agreement.

528. Thrivent High Yield Fund is an entity that received a transfer made under the Term Loan Agreement.

529. Thrivent High Yield Portfolio is an entity that received a transfer made under the Term Loan Agreement.

530. Thrivent Income Fund is an entity that received a transfer made under the Term Loan Agreement.

531. Thrivent Series Fund, Inc. – Income Portfolio is an entity that received a transfer made under the Term Loan Agreement.

532. TMCT II LLC is an entity that received a transfer made under the Term Loan Agreement.

533. Transamerica Series Trust is an entity that received a transfer made under the Term Loan Agreement. Upon further information and belief, Transamerica Series Trust was formerly known as Aegon/Transamerica Series Trust MFS Highyield.

534. Trilogy Portfolio Company LLC is an entity that received a transfer made under the Term Loan Agreement.

535. TRS SVCO LLC is an entity that received a transfer made under the Term Loan Agreement.

536. Twin Lake Total Return Partners LP is an entity that received a transfer made under the Term Loan Agreement. Twin Lake Total Return Partners LP was formerly known as Talon Total Return Partners LP.

537. Twin Lake Total Return Partners QP LP is an entity that received a transfer made under the Term Loan Agreement. Twin Lake Total Return Partners QP LP was formerly known as Talon Total Return QP Partners LP.

538. UMC Benefit Board, Inc. is an entity that received a transfer made under the Term Loan Agreement. General Board of Pension & Health Benefit of the UN Methodist Church Inc. merged into UMC Benefit Board, Inc. General Board of Pension & Health Benefit

of the UN Methodist Church Inc. may or was known at times as Oaktree - General Board of Pension & Health Benefits of the UN Methodist Church Inc.

539. Velocity CLO Ltd. is an entity that received a transfer made under the Term Loan Agreement.

540. Virtus Multi Sector Fixed Income Fund is an entity that received a transfer made under the Term Loan Agreement.

541. Virtus Multisector Short Term Bond Fund is an entity that received a transfer made under the Term Loan Agreement.

542. Virtus Senior Floating Rate Fund is an entity that received a transfer made under the Term Loan Agreement.

543. Vitesse CLO Ltd. is an entity that received a transfer made under the Term Loan Agreement.

544. Vulcan Ventures Inc. is an entity that received a transfer made under the Term Loan Agreement.

545. WAMCO 176 – Virginia Supplemental Retirement System is an entity that received a transfer made under the Term Loan Agreement.

546. WAMCO 2357 – Legg Mason Partners Capital & Income Fund is an entity that received a transfer made under the Term Loan Agreement. Legg Mason Partners Capital & Income Fund changed its name to Legg Mason ClearBridge Capital & Income Fund.

547. WAMCO 3023 – Virginia Retirement Systems Bank Loan Portfolio is an entity that received a transfer made under the Term Loan Agreement.

548. WAMCO 3073 – John Hancock Trust Floating Rate Income Trust is an entity that received a transfer made under the Term Loan Agreement.

549. WAMCO 3074 – John Hancock Fund II-Floating Rate Income Fund is an entity that received a transfer made under the Term Loan Agreement.

550. WAMCO – 3131 – Raytheon Master Pension Master Trust is an entity that received a transfer made under the Term Loan Agreement.

551. WAMCO Mt Wilson CLO Ltd. is an entity that received a transfer made under the Term Loan Agreement.

552. WAMCO Western Asset Floating Rate High Income Fund LLC is an entity that received a transfer made under the Term Loan Agreement.

553. Wells – 13702900 is an entity that received a transfer made under the Term Loan Agreement.

554. Wells – 14945000 is an entity that received a transfer made under the Term Loan Agreement.

555. Wells & Company Master Pension Trust: DBA Wells Capital Management - 12222133 is an entity that received a transfer made under the Term Loan Agreement.

556. Wells Cap Mgmt – 13923601 is an entity that received a transfer made under the Term Loan Agreement.

557. Wells Capital Management 16017000 is an entity that received a transfer made under the Term Loan Agreement.

558. Wells Capital Management 16959700 is an entity that received a transfer made under the Term Loan Agreement.

559. Wells Capital Management 16959701 is an entity that received a transfer made under the Term Loan Agreement.

560. Wells Capital Management 18866500 is an entity that received a transfer made under the Term Loan Agreement.

561. Wells Fargo Advantage Income Funds: Income Plus Fund is an entity that received a transfer made under the Term Loan Agreement. Wells Fargo Advantage Income Fund: Income Plus Fund acquired Evergreen Core Plus Bond Fund.

562. Wells Fargo Advantage Income Opportunities Fund is an entity that received a transfer made under the Term Loan Agreement. Wells Fargo Advantage Income Opportunities Fund was formerly known as Evergreen Income Advantage Fund.

563. Wells Fargo Advantage Multi-Sector Income Fund is an entity that received a transfer made under the Term Loan Agreement. Wells Fargo Advantage Multi-Sector Income Fund was formerly known as Evergreen Multi Sector Income Fund F/K/A Evergreen Managed Income Fund.

564. Wells Fargo Advantage Utilities & High Income Fund is an entity that received a transfer made under the Term Loan Agreement. Wells Fargo Advantage Utilities & High Income Fund was formerly known as Evergreen Utilities & High Income Fund.

565. Wells – Los Angeles Dept. of Water & Power Employees Retire Disability is an entity that received a transfer made under the Term Loan Agreement.

566. West Bend Mutual Insurance Company is an entity that received a transfer made under the Term Loan Agreement.

567. Wexford Catalyst Investors is an entity that received a transfer made under the Term Loan Agreement.

568. Wexford Spectrum Investors LLC is an entity that received a transfer made under the Term Loan Agreement.

569. The true names, identities and capacities of the Defendants sued herein as John Doe Nos. 1-100; and John Doe, Inc., Nos. 1-100 are unknown to Plaintiff. These fictitiously named Defendants received a transfer made under the Term Loan Agreement. As and when the names, identities, and capacities of these fictitiously named Defendants become known, Plaintiff will amend this Complaint to set forth these Defendants' true names, identities, and capacities and otherwise proceed against them as if they had been named as parties upon the commencement of this adversary proceeding in accordance with Rules 15 and 25 of the Federal Rules of Civil Procedure.

570. The parties identified in paragraphs 15 – 569, above, are collectively referred to herein as the "**Defendants**."

GENERAL ALLEGATIONS

The Term Loan Agreement

571. Among other parties, General Motors Corporation ("**GM**"), Saturn Corporation, and JPMorgan, as administrative agent and lender, were parties to the Term Loan Agreement.

572. Under the Term Loan Agreement, certain lenders (the "**Term Loan Lenders**") advanced $1.5 billion in loan proceeds to certain of the Debtors secured by first-priority liens ("**Lien**") on certain assets of GM. The Defendants to this action are those entities that, pursuant to the Term Loan Agreement, received payments during the ninety days prior to the Petition Date and/or after the Petition Date. The Defendants include entities that are liable with respect to the claims set forth herein as successors, transferees and/or assignees.

573. As of the Petition Date, the outstanding principal balance under the Term Loan Agreement was in excess of $1.4 billion.

The DIP Order

574. On the Petition Date, the Debtors filed a motion (the "**DIP Motion**") seeking authority from the Bankruptcy Court to obtain in excess of $33 billion in postpetition financing (the "**DIP Loans**") from the United States Department of Treasury and Export Development Canada to pay certain prepetition claims and fund the Debtors' operations and administrative costs, among other things.

575. The DIP Motion asked the Bankruptcy Court to authorize the Debtors to use a portion of the proceeds of the DIP Loans to pay in full all claims under the Term Loan Agreement, inasmuch as it was generally assumed that all claims under the Term Loan Agreement were fully-secured, first-priority claims.

576. In connection with the DIP Motion, the Committee negotiated for, *inter alia*, a period of time during which it could investigate the Lien securing the Term Loan Agreement and bring claims challenging the Lien, if the Committee learned that the Lien was unperfected or otherwise subject to challenge.

577. As reflected in the DIP Order, the DIP Loans were finally approved by the Bankruptcy Court on June 25, 2009, and, pursuant to paragraph 19(d) thereof, the Committee was authorized to investigate and pursue any challenges to the Lien.

578. After entry of the DIP Order and in accordance with its terms, the Debtors paid $1,481,656,507.70 to the Term Loan Lenders in full satisfaction of all claims arising under the Term Loan Agreement.

579. Pursuant to paragraph 19(d) of the DIP Order, the Defendants that accepted payment after the Petition Date consented to the jurisdiction of this Court.

The Lien Securing The Term Loan Agreement Was Not Perfected As Of The Petition Date

580. The Committee commenced this action challenging the Lien securing the Term Loan Agreement because the pertinent UCC filings demonstrated that the Lien was not perfected with respect to the Collateral covered by the Financing Statement (as those terms are defined below) as of the Petition Date.

581. On November 30, 2006, a UCC-1 financing statement (the "**Financing Statement**") was filed with the Secretary of State of Delaware listing GM as "debtor" and JPMorgan, as "administrative agent and secured party," and indicating the collateral covered by the Financing Statement as "THE ASSETS DESCRIBED ON ANNEX I ATTACHED HERETO AND INCORPORATED BY REFERENCE HEREIN" (the "**Collateral**"). The Financing Statement is attached hereto as Exhibit 1.

582. On October 30, 2008, however, the Financing Statement was terminated when a UCC-3 financing statement amendment (the "**Termination Statement**") was filed with the Secretary of State of Delaware providing that the "[e]ffectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement," and listing JPMorgan, as administrative agent, as "THE SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT." The Termination Statement is attached hereto as Exhibit 2.

583. As of the Petition Date, the only two records on file with the Secretary of State of Delaware relating to the Collateral were the Financing Statement and the Termination Statement. As such, the Financing Statement had been terminated by the Termination Statement

584. On March 1, 2013, this Court entered its *Decision on Cross Motions for Summary Judgment* [Adv. Pro. Dkt. No.71], a *Judgment* [Adv. Pro. Dkt. No. 73] and an *Order on Cross*

Motions for Summary Judgment [Adv. Pro. Dkt. No. 72], and therein denied the Committee's motion for partial summary judgment, ruling that the filing of the Termination Statement was not effective and that the Lien was therefore perfected as of the Petition Date. On that basis, this Court granted JPMorgan's cross-motion for summary judgment.

585. On January 21, 2015, the United States Court of Appeals for the Second Circuit issued a decision and entered a judgment reversing the Bankruptcy Court's granting of summary judgment in favor of JPMorgan, resolving the Cross-Motions for Summary Judgment in favor of the Trust, and remanding the matter to this Court with instructions to enter partial summary judgment for the Plaintiff as to the termination of the Financing Statement.

First Claim for Relief
(Avoidance of Lien as Unperfected)

586. Plaintiff repeats and realleges the allegations in above paragraphs 1 through 585 inclusive, as though fully set forth herein.

587. Pursuant to 11 U.S.C. § 544(a), a trustee (or a debtor in possession under 11 U.S.C. § 1107) is vested with the rights and status of a hypothetical judicial lien creditor whose lien was perfected at the time of the bankruptcy petition. Such status under Section 544(a) of the Bankruptcy Code allows a trustee (or a debtor in possession under 11 U.S.C. § 1107) to avoid an unperfected security interest in a debtor's assets.

588. As a result of the filing of the Termination Statement, the Lien on the Collateral was unperfected on the Petition Date. Accordingly, the Lien on the Collateral was unenforceable as against the Debtors.

589. Based on the foregoing and pursuant to 11 U.S.C. § 544(a), the Plaintiff may avoid the Lien on the Collateral because the Lien on the Collateral was not perfected on the

Petition Date. Because the Lien on the Collateral is subject to avoidance, it is preserved for the benefit of the estates pursuant to 11 U.S.C. § 551.

Second Claim for Relief
(Avoidance and Recovery of Postpetition Transfers)

590. Plaintiff repeats and realleges the allegations in above paragraphs 1 through 589 inclusive, as though fully set forth herein.

591. Because the Lien on the Collateral is subject to avoidance as set forth in the First Claim for Relief, Defendants were not entitled to the Postpetition Transfers (defined below).

592. Section 549 of the Bankruptcy Code allows a trustee (or a debtor in possession under 11 U.S.C. § 1107) to avoid transfers of property of the estate that occur after the commencement of the case and that are not authorized by the Bankruptcy Code or the bankruptcy court.

593. The DIP Order provisionally authorized the Debtors to apply a portion of the proceeds of the DIP Loans toward payment in full of all amounts due and outstanding under the Term Loan Agreement and provided that the Lien expired upon such payment.

594. The Debtors paid in full, in cash, all amounts due and outstanding under the Term Loan Agreement after the Petition Date (collectively, the "**Postpetition Transfers**").

595. The Postpetition Transfers were made to JPMorgan and then transferred to or for the benefit of the Defendants listed on Exhibit 3 on or about the dates and in the amounts set forth in Exhibit 3.[1]

596. The Postpetition Transfers were provisionally made or allowed on the assumption that the Lien was perfected.

[1] Pursuant to a stipulation and order entered by the Court, Exhibit 3 has been filed under seal. Upon the request of any Defendant appearing in the Term Loan Avoidance Action, Plaintiff will provide that Defendant with the sealed information pertaining to that Defendant.

597. The DIP Order provides that the Lien remained subject to claims challenging the perfection of the Lien.

598. The Financing Statement was terminated on October 30, 2008. Consequently, as of the Petition Date, the Lien on the Collateral was not perfected.

599. Given that the provisional authorization for the Postpetition Transfers under the Term Loan Agreement was contingent on the perfection of the Lien, which contingency cannot be met with respect to the Lien on the Collateral, the Postpetition Transfers were not authorized under the Bankruptcy Code or by the Bankruptcy Court.

600. None of the Postpetition Transfers should have been made to or for the benefit of Defendants and all such Postpetition Transfers are subject to avoidance under 11 U.S.C. § 549.

601. To the extent that some portion of the Collateral was secured and perfected by filings other than the Financing Statement (the "**Surviving Collateral**"), the value of the Surviving Collateral was less than the amount of the Term Loan Lenders' claim under the Term Loan Agreement, and Defendants were not entitled to receive the Postpetition Transfers to the extent that the amount of such transfers exceeded the value of the Surviving Collateral. The Surviving Collateral is of inconsequential value.

602. To the extent that a transfer is avoided under 11 U.S.C. § 549, 11 U.S.C. § 550 allows a trustee (or a debtor in possession under 11 U.S.C. § 1107) to recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property from either (i) an initial transferee of such transfer or the entity for whose benefit such transfer was made or (ii) any immediate or mediate transferee of such initial transferee.

603. Based on the foregoing and pursuant to 11 U.S.C. § 549, Plaintiff is entitled to avoid the Postpetition Transfers and an Order should be entered granting judgment in favor of

Plaintiff: (i) avoiding the Postpetition Transfers pursuant to 11 U.S.C. § 549, and (ii) directing the Defendants to pay the proceeds or an amount equal to the value of the Postpetition Transfers under 11 U.S.C. § 550 plus interest thereon to the date of payment.

Third Claim for Relief
(Avoidance and Recovery of Payments as Preferential Transfers)

604. Plaintiff repeats and realleges the allegations in above paragraphs 1 through 603 inclusive, as though fully set forth herein.

605. Defendants that received, directly or indirectly, payments made by the Debtors under the Term Loan Agreement, including but not limited to that certain payment made by the Debtors to JPMorgan on May 27, 2009 in the amount of $28,241,781 (the "**Payment(s)**") during the ninety days prior to the Petition Date (the "**Preference Period**") are liable for the amount of such Payments.

606. The Payment(s) were made to JPMorgan and then transferred to or for the benefit of the Defendants listed on Exhibit 4, in the amounts set forth on Exhibit 4, on or about the dates set forth in Exhibit 4, during the Preference Period.[2]

607. The Defendants that received the Payment(s) were creditors of the Debtors at the time the Payment(s) were made.

608. The making of the Payment(s) constituted a transfer of an interest of the Debtors' property.

609. The Payment(s) were made to or for the benefit of Defendants, as creditors of the Debtors at the time they were made.

[2] Pursuant to a stipulation and order entered by the Court, Exhibit 4 has been filed under seal. Upon the request of any Defendant appearing in the Term Loan Avoidance Action, Plaintiff will provide that Defendant with the sealed information pertaining to that Defendant.

610. The Payment(s) were made for, or on account of, an antecedent debt owed to the Defendants by the Debtors at the time the Payment(s) were made.

611. The Debtors are presumed to be, and in fact were, insolvent at the time the Payment(s) were made and throughout the Preference Period.

612. As a result, because the Lien on the Collateral was unperfected on the date the Payment(s) were made, the Defendants received more than they would have received if (a) the Debtors' cases were cases under Chapter 7 of the Bankruptcy Code, (b) the Payment(s) had not been made, and (c) the Defendants received payment on their debts under the provisions of the Bankruptcy Code.

613. To the extent that the security interest in the Surviving Collateral was less than the amount of the Term Loan Lenders' claim under the Term Loan Agreement, Defendants were not entitled to receive the Payment(s) to the extent that the amount of such transfers exceeded the value of the Surviving Collateral. The Surviving Collateral is of inconsequential value.

614. To the extent that a transfer is avoided under 11 U.S.C. § 547, 11 U.S.C. § 550 allows a trustee (or a debtor in possession under 11 U.S.C. § 1107) to recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property from either (i) an initial transferee of such transfer or the entity for whose benefit such transfer was made or (ii) any immediate or mediate transferee of such initial transferee.

615. Based on the foregoing and pursuant to 11 U.S.C. § 547, Plaintiff is entitled to avoid the Payment(s) and an Order should be entered granting judgment in favor of Plaintiff: (i) avoiding the Payment(s) pursuant to 11 U.S.C. § 547, and (ii) directing the Defendants to pay an amount equal to such Payment(s) pursuant to 11 U.S.C. § 550 plus interest thereon to the date of payment.

Fourth Claim for Relief
(To Disallow Any Claim of Defendants Until Disgorgement)

616. Plaintiff repeats and realleges the allegations in above paragraphs 1 through 615 inclusive, as though fully set forth herein.

617. As alleged above, the Defendants have received Payment(s) and/or Postpetition Transfers subject to avoidance and/or recovery by the Plaintiff. The Defendants have not returned such Payment(s) and/or Postpetition Transfers.

618. Based on the foregoing and pursuant to 11 U.S.C. § 502(d), any claims that the Defendants may have against any of the Debtors must be disallowed in full unless and until the Defendants disgorge such Payment(s) and/or Postpetition Transfers plus interest thereon to the date of payment.

WHEREFORE, the Plaintiff prays for judgment as follows:

1. For an order avoiding the Lien on the Collateral pursuant to 11 U.S.C. § 544 and preserving the Lien on the Collateral for the benefit of the Trust pursuant to 11 U.S.C. § 551;

2. For an order avoiding the Postpetition Transfers pursuant to 11 U.S.C. § 549 and preserving the Postpetition Transfers for the benefit of the Trust pursuant to 11 U.S.C. § 551;

3. For an order avoiding the Payment(s) pursuant to 11 U.S.C. § 547 and preserving the Payment(s) for the benefit of the Trust pursuant to 11 U.S.C. § 551;

4. For a judgment awarding recovery to Plaintiff for the benefit of the Trust against the Defendants or any mediate or intermediate transferee in the amount of the avoided Payment(s) and/or Postpetition Transfers pursuant to 11 U.S.C. § 550;

5. For a judgment disallowing any claims any Defendant may have against the Debtors until such Defendant has disgorged the amount of the Payment(s) and/or Postpetition Transfers plus interest thereon to the date of payment;

6. For costs of suit incurred herein to the extent permitted by law;

7. For pre-judgment and post-judgment interest on any award, attorneys' fees and costs incurred by the Debtors, the Committee, and/or Plaintiff to the extent allowed by any applicable law, contract, or statute; and

8. For such other and further relief as the Court may deem just and proper.

Dated: New York, New York
May 20, 2015

Respectfully submitted,

DICKSTEIN SHAPIRO LLP

By: /s/ Eric B. Fisher

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Attorneys for Plaintiff

Exhibit 1

[redacted]

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: 6415808 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: 300 RENAISSANCE CENTER | CITY: DETROIT | STATE: MI | POSTAL CODE: 48265-3000 | COUNTRY: USA

1d. SEE INSTRUCTIONS | ADD'L 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 | ADD'L 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 of ASSIGNOR S/P) - 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: P.O. BOX 2558 | CITY: HOUSTON | STATE: TX | POSTAL CODE: 77252 | COUNTRY: 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]: LESSEE/LESSOR | CONSIGNEE/CONSIGNOR | BAILEE/BAILOR | SELLER/BUYER | AG. LIEN | NON-UCC FILING

6. This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum [if applicable] | 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) [ADDITIONAL FEE] [optional] | All Debtors | Debtor 1 | Debtor 2

8. OPTIONAL FILER REFERENCE DATA
6701-619 -- DE - Secretary of State
P#176913
A#274606

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.

"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

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.

Schedule 1
to Annex I 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 FORT 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 MORAINE	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

Exhibit 2

[redacted]

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)

Bryan Kluever
CT
208 South LaSalle Street
Suite 814
Chicago, IL 60604

DELAWARE DEPARTMENT OF STATE
U.C.C. FILING SECTION
FILED 07:22 PM 10/30/2008
INITIAL FILING # 6416808 4
AMENDMENT # 2008 3661491
SRV: 081081602

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. [X] 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 (full 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 regard 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 7d–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. SEE INSTRUCTIONS | ADD'L INFO RE ORGANIZATION DEBTOR | 7e. TYPE OF ORGANIZATION | 7f. JURISDICTION OF ORGANIZATION | 7g. ORGANIZATIONAL ID #, if any [ ] NONE

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

Describe collateral [ ] deleted or [ ] added, or give entire [ ] 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-13] [Doc. No. 1457978] BK 74018 Pg 5 lpg

FILING OFFICE COPY — UCC FINANCING STATEMENT AMENDMENT (FORM UCC3) (REV. 05/22/02)

Exhibit 3

Pursuant to a stipulation and order entered by the Court, Exhibit 3 has been filed under seal. Upon the request of any Defendant appearing in the Term Loan Avoidance Action, Plaintiff will provide that Defendant with the sealed information pertaining to that Defendant.

Exhibit 4

Pursuant to a stipulation and order entered by the Court, Exhibit 4 has been filed under seal. Upon the request of any Defendant appearing in the Term Loan Avoidance Action, Plaintiff will provide that Defendant with the sealed information pertaining to that Defendant.

Exhibit 3

Exhibit 3
Postpetition Transfers

Defendant[1]	Amount	Date
Advent Global Opportunity Master Fund	$0.01	June 30, 2009
Alticor Inc.	$967,705.71	June 30, 2009
American International Group, Inc.	$3,493.02	June 30, 2009
APG Fixed Income Credits Pool	$6,011,716.65	June 30, 2009
APG Investments US Inc. A/C Stichting Pensionfonds ABP	$7,966.06	June 30, 2009
Arch Reinsurance Ltd.	$112,074.06	June 30, 2009
Ares IIIR IVR CLO Ltd.	$11,103.25	June 30, 2009
Ares VR CLO Ltd.	$16,946.67	June 30, 2009
Ares VIR CLO Ltd.	$86,310.39	June 30, 2009
Ares VIII CLO Ltd.	$322,417.78	June 30, 2009
Ares IX CLO Ltd.	$977,328.89	June 30, 2009
Ares XI CLO Ltd.	$644,835.56	June 30, 2009
Ares Enhanced LN INV III Ltd.	$28,375.04	June 30, 2009
Arrowgrass Master Fund Ltd.	$2,004,856.09	June 30, 2009
Atrium IV	$853,637.22	June 30, 2009
Atrium V	$2,430,542.22	June 30, 2009
Avenue CLO V, Ltd.	$3,897,052.11	June 30, 2009
Avery Point CLO Ltd.	$3,424,584.82	June 30, 2009
Ballyrock CLO II Ltd.	$443,149.04	June 30, 2009
Ballyrock CLO III Ltd.	$664,723.52	June 30, 2009
Ballyrock CLO 2006-1 Ltd.	$443,149.04	June 30, 2009
Ballyrock CLO 2006-2 Ltd.	$664,723.52	June 30, 2009
Baltic Funding LLC	$12,279,928.27	June 30, 2009
Bank of America, N.A.	$994,833.91	June 30, 2009
Barclays Bank PLC	$4,963,695.95	June 30, 2009
BBT Fund LP	$5,527,418.94	June 30, 2009
Bechtel Trust & Thrift Plan Becon Trust & Thrift Plan	$760,618.73	June 30, 2009
Big Sky III Senior Loan Trust	$1,780,236.47	June 30, 2009
Black Diamond CLO 2005-1 Ltd.	$10,419,444.18	June 30, 2009
Black Diamond CLO 2005-2 Ltd.	$11,432,100.10	June 30, 2009
Black Diamond CLO 2005-2 Ltd.	$992,328.03	June 30, 2009
Black Diamond CLO 2006-1 Cayman Ltd.	$15,899,915.64	June 30, 2009

[1] In circumstances where, upon information and belief, a Defendant has been acquired, or has merged or changed its name, the Postpetition Transfer amount is listed under the later entity's name. The Trust does not waive its right to pursue collection of the Postpetition Transfer from the prior entity, if such entity still exists.

Exhibit 3: Postpetition Transfers

Black Diamond International Funding Ltd.	$31,177,664.60	June 30, 2009
BlackRock Corporate High Yield Fund, Inc. formerly known as BlackRock Corporate High Yield Fund VI, Inc. as successor to BlackRock Corporate High Yield Fund III Inc.	$570,982.44	June 30, 2009
BlackRock Corporate High Yield Fund, Inc. formerly known as BlackRock Corporate High Yield Fund VI, Inc. as successor to BlackRock Corporate High Yield Fund V, Inc.	$944,989.63	June 30, 2009
BlackRock Corporate High Yield Fund, Inc. formerly known as BlackRock Corporate High Yield Fund VI, Inc. as successor to BlackRock High Yield Trust	$99,735.26	June 30, 2009
BlackRock Corporate High Yield Fund, Inc. formerly known as BlackRock Corporate High Yield Fund VI, Inc.	$1,044,724.86	June 30, 2009
BlackRock Corporate High Yield Fund, Inc.	$521,114.81	June 30, 2009
BlackRock Debt Strategies Fund, Inc. as successor to BlackRock Senior High Income Fund Inc.	$374,007.16	June 30, 2009
BlackRock Debt Strategies Fund, Inc. as successor to BlackRock Strategic Bond Trust	$224,404.30	June 30, 2009
BlackRock Debt Strategies Fund, Inc.	$797,881.95	June 30, 2009
BlackRock Diversified Income Strategies Fund, Inc.	$249,338.12	June 30, 2009
BlackRock Floating Rate Income Strategies Fund Inc.	$423,874.79	June 30, 2009
BlackRock Funds II – High Yield Bond Portfolio as successor to BlackRock Funds High Yield Bond Portfolio	$5,734,776.65	June 30, 2009
BlackRock Funds II – High Yield Bond Portfolio as successor to BlackRock High Income Fund of Blackrockbond Fund Inc.	$2,824,987.99	June 30, 2009
BlackRock Funds II – High Yield Bond Portfolio as successor to BlackRock Managed Account Series High Income Portfolio	$199,470.49	June 30, 2009
BlackRock Global Investment Series: Income Strategies Portfolio	$1,286,835.44	June 30, 2009
BlackRock Global Investment Series: Income Strategies Portfolio	$9,722.76	June 30, 2009
BlackRock GSAM Goldman Core Plus Fixed Income Fund	$609,241.10	June 30, 2009
BlackRock GSAM Goldman Core Plus Fixed Income Fund	$4,603.15	June 30, 2009
BlackRock High Income Shares	$374,007.16	June 30, 2009
BlackRock-Lockheed Martin Corp Master Retirement Trust	$403,022.22	June 30, 2009
BlackRock Met Investors Series Trust High Yield Portfolio	$1,371,359.63	June 30, 2009
BlackRock Multi Strategy Sub-Trust C	$96,010.49	June 30, 2009
BlackRock Senior Income Series IV	$947,330.61	June 30, 2009
BTG Pactual Chile S.A. Administradora General De Fondos formerly known as Celfin Capital S.A. Adm. General de Fondos para Ultra Fondo de Inversion	$324,139.56	June 30, 2009
CAI Distressed Debt Opportunity Master Fund, Ltd.	$3,013,333.33	June 30, 2009
California State Teachers' Retirement System	$2,241,547.83	June 30, 2009
Canyon Capital CDO 2002-1 Ltd.	$21,505.00	June 30, 2009
Cap Fund LP	$2,411,964.63	June 30, 2009
Capital Research-American High Income Trust	$12,851.47	June 30, 2009
Castle Garden Funding	$1,948,656.67	June 30, 2009
Caterpillar Inc. Master Pension Trust	$215,858.19	June 30, 2009
Chatham Light II CLO Ltd.	$2,852,278.78	June 30, 2009
Chrysler LLC Master Retirement Trust on behalf of Oaktree-	$881,076.64	June 30, 2009

Exhibit 3: Postpetition Transfers

DaimlerChrysler Corporation Master Retirement Trust		
Citibank, N.A.	$21,056,528.61	June 30, 2009
Citigroup Financial Products Inc.	$10,024,280.46	June 30, 2009
City of Milwaukee Employees Retirement System	$22,958.23	June 30, 2009
City of Milwaukee Retirement System	$5,336,922.42	June 30, 2009
City of Oakland Police & Fire Retirement System	$833,428.56	June 30, 2009
Classic Cayman B D Ltd.	$9,848,855.56	June 30, 2009
Continental Casualty Company	$30,618,038.68	June 30, 2009
Credit Suisse Loan Funding LLC	$7,405.11	June 30, 2009
Credit Suisse Syndicated Loan Fund	$1,948,656.67	June 30, 2009
Crescent Senior Secured Floating Rate Loan Fund, LLC formerly known as TCW Senior Secured Floating Rate Loan Fund LP	$1,752,580.49	June 30, 2009
Debello Investors LLC	$1,068,599.23	June 30, 2009
Delaware Delchester Fund	$21,449.79	June 30, 2009
Delaware Diversified Income Fund	$999,883.82	June 30, 2009
Delaware Diversified Income Fund	$1,187,892.57	June 30, 2009
Delaware Diversified Income Fund	$18,121,390.52	June 30, 2009
Delaware Diversified Income Trust	$502,109.05	June 30, 2009
Delaware Enhanced Global Dividend & Income Fund as successor to Delaware Investments Global Dividend & Income Fund	$95,394.08	June 30, 2009
Delaware Enhanced Global Dividend & Income Fund	$617,673.84	June 30, 2009
Delaware Extended Duration Bond Fund	$554,155.56	June 30, 2009
Delaware Group Equity V Inc. Dividend Income Fund	$1,836,537.77	June 30, 2009
Delaware Group Government Fund Core Plus Fund	$326,236.62	June 30, 2009
Delaware Group Inc. Fund Inc. Corporate Bond Fund	$1,460,955.56	June 30, 2009
Delaware Group Income Funds - Delaware High Yield Opportunities Fund	$4,201,849.51	June 30, 2009
Delaware Investments Dividend & Income Fund Inc.	$441,859.13	June 30, 2009
Delaware - LVIP Delaware Bond Fund	$42,142.41	June 30, 2009
Delaware Optimum Fixed Income Fund	$1,268,252.98	June 30, 2009
Delaware Optimum Fixed Income Fund	$602,481.00	June 30, 2009
Delaware Pooled Trust – Core Plus Fixed Income Portfolio	$250,607.02	June 30, 2009
Delaware Pooled Trust – High Yield Bond Portfolio	$323,249.94	June 30, 2009
Delaware PSEG Nuclear LLC Master Decommissioning Trust	$3,321.02	June 30, 2009
Delaware-SEI Institutional Investment Trust-High Yield Bond Fund	$3,830,157.70	June 30, 2009
Delaware-SEI Institutional Managed Trust-High Yield Bond Fund	$3,226,949.44	June 30, 2009
Delaware VIP Trust Diversified Income Series	$6,106,308.49	June 30, 2009
Delaware VIP Trust High Yield Series	$6,119,707.61	June 30, 2009
Deutsche Bank AG	$7,620.34	June 30, 2009
Deutsche Bank AG Cayman Island Branch	$4,019,993.88	June 30, 2009
Eaton Vance CDO VIII Ltd.	$3,944,491.42	June 30, 2009
Eaton Vance CDO IX Ltd.	$2,272,660.57	June 30, 2009
Eaton Vance CDO X PLC	$1,969,771.11	June 30, 2009

Exhibit 3: Postpetition Transfers

Eaton Vance Floating Rate Income Trust	$4,063,530.63	June 30, 2009
Eaton Vance Grayson & Co.	$10,381,789.64	June 30, 2009
Eaton Vance Institutional Senior Loan Fund	$11,981,895.52	June 30, 2009
Eaton Vance International (Cayman Islands) Funds Ltd. – Floating-Rate Income Fund formerly known as Eaton Vance Medallion Floating Rate Income Portfolio	$1,472,011.53	June 30, 2009
Eaton Vance Limited Duration Income Fund	$4,376,724.73	June 30, 2009
Eaton Vance Loan Opportunities Fund, Ltd.	$1,984,656.05	June 30, 2009
Eaton Vance Senior Debt Portfolio	$6,258,239.23	June 30, 2009
Eaton Vance Senior Floating Rate Trust	$3,405,272.73	June 30, 2009
Eaton Vance Short Duration Diversified Income Fund	$905,892.60	June 30, 2009
Eaton Vance Variable Trust Floating Rate Income Fund	$5,654,957.18	June 30, 2009
Employees Retirement Fund of the City of Dallas	$448,808.61	June 30, 2009
Employers Insurance Company of WAUSAU	$1,234.22	June 30, 2009
Evergreen High Income Fund	$6,000.53	June 30, 2009
Evergreen VA High Income Fund	$321.57	June 30, 2009
Fairway Loan Funding Company	$1,994,704.93	June 30, 2009
Fidelity Advisor Series I – Advisor Floating Rate High Income Fund	$2,405,763.08	June 30, 2009
Fidelity Advisor Series I – Advisor High Income Advantage Fund	$5,163,753.17	June 30, 2009
Fidelity Advisor Series II – Advisor Strategic Income Fund	$23,873,447.27	June 30, 2009
Fidelity Central Investment Portfolios LLC Fidelity Floating Rate	$31,829,331.35	June 30, 2009
Fidelity Central Investment Portfolios LLC Fidelity High Income Central Fund 2	$1,288,120.04	June 30, 2009
Fidelity School Street Trust-Strategic Income Fund	$19,879,483.86	June 30, 2009
Fidelity Summer Street Trust-Capital & Income Fund	$91,141,915.61	June 30, 2009
Fidelity Summer Street Trust-Capital & Income Fund	$7,854,023.74	June 30, 2009
Fidelity Summer Street Trust-High Income Fund	$12,926,309.67	June 30, 2009
Fidelity Variable Insurance Products V Strategic Income Portfolio	$1,182,585.24	June 30, 2009
First Trust/Four Corners Senior Floating Rate Income Fund	$1,484,770.80	June 30, 2009
First Trust Four Corners Senior Floating Rate Income Fund II	$7,906,158.05	June 30, 2009
Foothill CLO I, Ltd.	$4,924,427.78	June 30, 2009
Foothill Group Inc.	$13,897,679.71	June 30, 2009
Foothill Group Inc.	$3,994,472.56	June 30, 2009
Fortress Credit Investments I Ltd.	$9,454,901.33	June 30, 2009
Fortress Credit Investments II Ltd.	$2,363,725.33	June 30, 2009
Four Corners CLO II Ltd.	$1,984,656.05	June 30, 2009
Four Corners CLO III Ltd.	$1,984,668.61	June 30, 2009
General Electric Capital Corporation	$27,375.93	June 30, 2009
General Electric Pension Trust	$4,874,560.15	June 30, 2009
Genesis CLO 2007-1 Ltd.	$3,098,182.71	June 30, 2009
Genesis CLO 2007-2 Ltd.	$5,953,968.09	June 30, 2009
Global Investment Grade Credit Fund	$1,477,328.33	June 30, 2009
GMAM Investment Funds Trust	$15,573,447.81	June 30, 2009

Exhibit 3: Postpetition Transfers

Golden Knight II CLO, Ltd.	$21,500.42	June 30, 2009
Goldentree Loan Opportunities III, Ltd.	$1,613.96	June 30, 2009
Goldentree Loan Opportunities IV, Ltd.	$1,611.79	June 30, 2009
Goldman Sachs - ABS Loans 2007 Ltd.	$1,954,354.97	June 30, 2009
Goldman Sachs Lending Partners LLC	$14,127,031.28	June 30, 2009
Gracie Credit Opportunities Master Fund LP	$2,004,856.09	June 30, 2009
Grand Central Asset Trust Wam Series	$1,483,371.45	June 30, 2009
Guggenheim Portfolio Co X LLC	$816,842.74	June 30, 2009
Gulf Stream Compass CLO 2003-1 Ltd.	$972,336.09	June 30, 2009
Gulf Stream - Compass CLO 2007 Ltd.	$917,320.00	June 30, 2009
Gulf Stream - Sextant CLO 2007-1 Ltd.	$1,947,323.33	June 30, 2009
Health Care Foundation of Greater Kansas City	$725,936.71	June 30, 2009
Health Care Foundation of Greater Kansas City	$3,927.95	June 30, 2009
Hewett's Island CLO V Ltd.	$436.58	June 30, 2009
High Yield Variable Account	$265,442.42	June 30, 2009
Highland Credit Opportunities CDO, Ltd.	$5,319.80	June 30, 2009
Highland Floating Rate Fund	$0.02	June 30, 2009
Illinois Municipal Retirement Fund	$3,262,152.73	June 30, 2009
Indiana University	$160,618.09	June 30, 2009
Iowa Public Employees Retirement System	$954,052.23	June 30, 2009
Ivy Funds-Ivy High Income Fund formerly known as Ivy Fund Inc.-High Income Fund	$1,499,825.69	June 30, 2009
Jersey Street CLO, Ltd.	$1,055,403.98	June 30, 2009
J.P. Morgan Whitefriars Inc.	$1,234,229.81	June 30, 2009
JPMCB - Secondary Loan & Distressed Credit Trading	$119,460,770.19	June 30, 2009
Katonah 2007-1 CLO Ltd.	$13,077.22	June 30, 2009
Katonah III, Ltd.	$111,646.56	June 30, 2009
Katonah IV Ltd.	$137,916.35	June 30, 2009
Kraft Foods Global Inc.	$1,613,001.34	June 30, 2009
Kynikos Opportunity Fund II LP	$5,265.36	June 30, 2009
Kynikos Opportunity Fund International Ltd.	$3,479.40	June 30, 2009
Kynikos Opportunity Fund LP	$630.87	June 30, 2009
L3-Lincoln Variable Insurance Products Trust - Managed Fund	$3,854.12	June 30, 2009
Legg Mason ClearBridge Capital & Income Fund on behalf of WAMCO 2357 – Legg Mason Partners Capital & Income Fund	$992,328.03	June 30, 2009
Lehman Principal Investors Fund, Inc. - High Yield Fund	$6,824,334.61	June 30, 2009
Lincoln National Life Insurance Company Separate Account 12	$566,824.04	June 30, 2009
Lincoln National Life WSA20	$1,080,413.43	June 30, 2009
Loan Funding XI LLC	$1,363,472.89	June 30, 2009
Logan Circle – Alameda Contra Costa Transit Retirement System	$38,275.76	June 30, 2009
Logan Circle - Allina Health Sys Defined Bnft Master Tr	$24,359.61	June 30, 2009
Logan Circle – Allina Health System Trust	$52,231.85	June 30, 2009

Logan Circle – Bechtel Corporation	$2,355.90	June 30, 2009
Logan Circle Freddie Mac Foundation Inc.	$77,093.92	June 30, 2009
Logan Circle – Liberty Mutual Employee Thrift Incentive Plan	$263,580.95	June 30, 2009
Logan Circle Peoples Energy Corporation Pension Trust	$23,615.37	June 30, 2009
Logan Circle – Russell Inst Funds LLC – Russell Core Bond Fund	$127,793.57	June 30, 2009
Logan Circle – Russell Investment Company PLC	$221,208.07	June 30, 2009
Logan Circle – Russell Multi-Managed Bond Fund	$877,767.29	June 30, 2009
Logan Circle – Sunoco Inc. Master Retirement Trust	$123,077.99	June 30, 2009
Logan Circle Wisconsin Public Service Corporation Pension Trust	$47,245.09	June 30, 2009
Lord Abbett Investment Trust - Lord Abbett Floating Rate Fund	$3,425.19	June 30, 2009
Louisiana Carpenters Regional Council Pension Trust Fund	$119,886.60	June 30, 2009
MacKay 1028 – Arkansas Public Employee Retirement System	$1,773,672.14	June 30, 2009
MacKay 8067 – Fire & Police Employee Retirement System of the City of Baltimore	$1,506,463.15	June 30, 2009
MacKay-Houston Police Officers Pension System	$571,330.15	June 30, 2009
MacKay Shields Core Plus Alpha Fund Ltd.	$749,415.18	June 30, 2009
MacKay Shields Short Duration Alpha Fund	$1,197,328.48	June 30, 2009
Madison Park Funding I Ltd.	$17,377.78	June 30, 2009
Madison Park Funding II Ltd.	$1,194,156.67	June 30, 2009
Madison Park Funding III Ltd.	$1,194,156.67	June 30, 2009
Madison Park Funding IV Ltd.	$1,948,656.67	June 30, 2009
Madison Park Funding V Ltd.	$4,561.67	June 30, 2009
Madison Park Funding VI Ltd.	$1,948,656.67	June 30, 2009
Marathon CLO I Ltd.	$1,663,691.37	June 30, 2009
Marathon CLO II Ltd.	$2,251,166.96	June 30, 2009
Marathon Financing I B V	$22,630,040.42	June 30, 2009
Mariner LDC	$1,567.58	June 30, 2009
Marlborough Street CLO Ltd.	$1,001,724.91	June 30, 2009
Mason Capital LP	$969,280.54	June 30, 2009
Mason Capital LP	$16,247,702.37	June 30, 2009
Mason Capital Ltd.	$70,491,496.37	June 30, 2009
Mayport CLO Ltd.	$997,352.44	June 30, 2009
Merrill Lynch Capital Services, Inc.	$1,572,475.94	June 30, 2009
Metropolitan West High Yield Bond Fund	$3,007,284.13	June 30, 2009
MFS Charter Income Trust	$1,162,016.49	June 30, 2009
MFS Charter Income Trust	$64,918.87	June 30, 2009
MFS Diversified Income Fund	$241,524.91	June 30, 2009
MFS Diversified Income Fund	$17,905.94	June 30, 2009
MFS Diversified Income Fund-Series Trust XIII	$100,905.61	June 30, 2009
MFS Floating Rate Income Fund	$1,543.71	June 30, 2009
MFS Global High Yield Fund formerly known as MFS Series Trust III High Yield Opportunities Fund	$2,909,694.84	June 30, 2009

Exhibit 3: Postpetition Transfers

MFS High Yield Portfolio as successor to MFS Variable Insurance Trust MFS High Income Series	$1,721,064.33	June 30, 2009
MFS Intermarket Income Trust I	$203,022.60	June 30, 2009
MFS Intermediate High Income Fund	$364,770.18	June 30, 2009
MFS Multimarket Income Trust	$720,982.08	June 30, 2009
MFS Series III Trust High Income Fund as successor to MFS Series Trust X Floating Rate High Income Fund	$686,223.23	June 30, 2009
MFS Series Trust III High Income Fund	$5,155,276.28	June 30, 2009
MFS Series Trust VIII Strategic Income Fund	$439,510.35	June 30, 2009
MFS Series Trust VIII Strategic Income Fund	$107,717.95	June 30, 2009
MFS Special Value Trust	$254,117.15	June 30, 2009
MFS Special Value Trust	$13,951.21	June 30, 2009
MFS Strategic Income Portfolio as successor to MFS Variable Insurance Trust - MFS Strategic Income Series VWG	$65,740.35	June 30, 2009
MFS Variable Insurance Trust II High Yield Portfolio	$1,585,854.55	June 30, 2009
MFS Variable Insurance Trust II Strategic Income Portfolio	$117,739.45	June 30, 2009
Microsoft Global Finance Ltd.	$655,913.98	June 30, 2009
Missouri State Employees Retirement System	$481,218.89	June 30, 2009
Momentum Capital Fund Ltd.	$3,132,988.63	June 30, 2009
Montana Board of Investments	$14,923.66	June 30, 2009
Morgan Stanley Senior Funding Inc.	$18,080,171.96	June 30, 2009
Mt. Wilson CLO Ltd.	$989,834.75	June 30, 2009
Mt. Wilson CLO Ltd.	$1,969,771.11	June 30, 2009
Mt. Wilson CLO II Ltd.	$3,944,491.42	June 30, 2009
Muzinich & Company Ireland Ltd. for the Account of Extra Yield S Loan Fund	$2,962,047.99	June 30, 2009
Nash Point CLO	$6,017,698.85	June 30, 2009
Neuberger Berman High Yield Strategies Fund formerly known as Lehman Brothers First Trust Income Opportunity Fund	$3,056,838.20	June 30, 2009
Neuberger Berman High Yield Strategies Fund as successor to Neuberger Berman Income Opportunity Fund, Inc.	$1,695,336.18	June 30, 2009
Neuberger Berman Income Funds – Neuberger Berman High Income Bond Fund formerly known as Lehman-Neuberger Berman-High Income Bond Fund	$5,953,347.76	June 30, 2009
New York Life Insurance Company (Guaranteed Products)	$1,387.55	June 30, 2009
New York Life Insurance Company GP - Portable Alpha	$1,449,359.69	June 30, 2009
New York Life Insurance Company Guaranteed Products	$846,081.41	June 30, 2009
Oak Hill Credit Partners V Ltd.	$0.01	June 30, 2009
Oaktree – Bill & Melinda Gates Foundation Trust	$199,402.18	June 30, 2009
Oaktree Capital Management - Central States SE and SW Area Pens Plan	$455,175.51	June 30, 2009
Oaktree Capital Management High Yield Trust	$1,592,693.57	June 30, 2009
Oaktree – Employees Retirement Fund of the City of Dallas	$283,909.32	June 30, 2009
Oaktree – High Yield LP	$718,916.99	June 30, 2009
Oaktree – High Yield Fund II, LP	$2,534,075.90	June 30, 2009

Exhibit 3: Postpetition Transfers

Oaktree High Yield Plus Fund LP	$19,727,707.63	June 30, 2009
Oaktree – International Paper Co. Commingled Investment Group Trust	$338,276.01	June 30, 2009
Oaktree Loan Fund, LP	$48,537,206.31	June 30, 2009
Oaktree Loan Fund 2X (Cayman), LP	$57,704,876.45	June 30, 2009
Oaktree – Pacific Gas & Electric Post Ret Med Trust for Non-Mgt Emp & Retirees	$29,373.35	June 30, 2009
Oaktree – San Diego County Employees Retirement Association	$185,915.72	June 30, 2009
Oaktree Senior Loan Fund, LP	$1,999,767.63	June 30, 2009
Oaktree – TMCT LCC	$126,649.37	June 30, 2009
OCM - IBM Personal Pension Plan	$134,444.29	June 30, 2009
OCM-Pacific Gas & Electric Company Retirement Plan Master Trust	$411,226.87	June 30, 2009
OCM-The State Teachers Retirement System of Ohio	$540,177.55	June 30, 2009
OCM-WM Pool High Yield Fixed Interest Trust	$666,604.17	June 30, 2009
Octagon Investment Partners XI Ltd.	$421.21	June 30, 2009
Oesterreichische Volksbanken AG	$9,898,347.29	June 30, 2009
Ohio Police & Fire Pension Fund	$3,163,990.24	June 30, 2009
OW Funding Ltd.	$3,989,409.85	June 30, 2009
Pension Inv Committee of GM for GM Employees Domestic Group Pension Trust	$3,894,774.72	June 30, 2009
Phoenix Edge Series Fund Phoenix Multi Sector Short Term Bond Series	$100,366.54	June 30, 2009
Phoenix Edge SRS-Multi-Sector Fixed Income Series	$311,839.96	June 30, 2009
Pimco 1464 – Freescale Semiconductor Inc. Retirement Savings	$1,477,328.33	June 30, 2009
Pimco 1641 –Sierra Pacific Resources Defined Ben Mstr Tr	$984,885.56	June 30, 2009
Pimco2244 – Virginia Retirement System	$3,984,334.25	June 30, 2009
Pimco2603 – Red River HYPI LP	$2,956,165.22	June 30, 2009
Pimco3813 – Pimco Cayman Bank Loan Fund	$1,987,237.72	June 30, 2009
Pimco400 – Stocks Plus Sub Fund B LLC	$0.01	June 30, 2009
Pimco706 – Private High Yield Portfolio	$469,772.78	June 30, 2009
Plumbers & Pipefitters National Pension Fund	$1,534,357.44	June 30, 2009
PNC Financial Service Group, Inc. as successor to National City Bank	$5,071,432.78	June 30, 2009
Portola CLO Ltd.	$987,373.75	June 30, 2009
Portola CLO Ltd.	$7,460.16	June 30, 2009
Primus CLO I Ltd.	$3,939,542.22	June 30, 2009
Primus CLO II Ltd.	$994,833.91	June 30, 2009
Putnam 29X-Funds Trust Floating Rate Income Fund	$932,842.63	June 30, 2009
Putnam 29X-Funds Trust Floating Rate Income Fund	$7,048.14	June 30, 2009
Pyramis Floating Rate High Income Commingled Pool	$561,359.70	June 30, 2009
Pyramis Floating Rate High Income Commingled Pool	$1,043,590.97	June 30, 2009
Pyramis High Yield Fund LLC	$230,558.44	June 30, 2009
R3 Capital Partners Master LP	$1,329.93	June 30, 2009
Race Point II CLO	$766,653.30	June 30, 2009

Race Point II CLO	$2,884,998.23	June 30, 2009
Race Point III CLO	$2,760,547.44	June 30, 2009
Race Point IV CLO Ltd.	$5,444,627.39	June 30, 2009
Raytheon MPT – Logan Floating Rate Portfolio	$2,338,791.51	June 30, 2009
Raytheon MPT – Logan Mid Grade Portfolio	$144,983.15	June 30, 2009
RBC Dexia Investors Services Trust as Trustee for GM Canada Foreign Trust	$3,303,518.28	June 30, 2009
Reams – Agility Global Fixed Income Master Fund LP	$69,726.52	June 30, 2009
Reams – American President Lines Ltd.	$421,252.00	June 30, 2009
Reams – Baltimore County Retirement	$1,627,109.01	June 30, 2009
Reams – Bill & Melinda Gates Foundation	$3,955,089.59	June 30, 2009
Reams – Bill & Melinda Gates Foundation Trust	$1,473,525.83	June 30, 2009
Reams Board of Fire & Police Pension Commissioners of the City of Los Angeles	$3,925,540.26	June 30, 2009
Reams – Board of Pen Presbyterian Church	$7,326,404.68	June 30, 2009
Reams – Building Trades United Pension Trust	$1,571,899.27	June 30, 2009
Reams – Carpenters Pension Fund of Illinois	$1,550,905.50	June 30, 2009
Reams – Carpenters Pension Fund of Illinois Pension Plan	$229,770.14	June 30, 2009
Reams Chicago Park District	$307,176.14	June 30, 2009
Reams – Children's Hospital Philadelphia	$1,360,332.73	June 30, 2009
Reams City of Montgomery Retirement System	$212,615.57	June 30, 2009
Reams City of Montgomery Alabama Employee's Retirement System	$1,163,985.80	June 30, 2009
Reams – Connecticut General Life Insurance Company	$4,517,240.38	June 30, 2009
Reams - Cummins Inc. & Affiliates Collective Investment Trust	$3,739,056.62	June 30, 2009
Reams – Eight District Electrical Pension Fund	$1,100,268.95	June 30, 2009
Reams – Emerson Electric	$4,447,929.23	June 30, 2009
Reams – Emerson Electric Company Retirement Master Trust	$1,120,558.56	June 30, 2009
Reams – Employes' Retirement System of the City of Milwaukee	$1,365,743.67	June 30, 2009
Reams – Employees' Retirement System of Baltimore County	$1,150,862.30	June 30, 2009
Reams – Frontegra Columbus Core Plus Fund	$10,810,707.11	June 30, 2009
Reams – Halliburton Company	$3,063,580.91	June 30, 2009
Reams – Halliburton Company Employee Benefit Master Trust	$776,379.94	June 30, 2009
Reams – ILWU/PMA Pension Plan	$8,886.36	June 30, 2009
Reams – ILWU/PMA	$1,481,060.60	June 30, 2009
Reams – ILWU/PMA	$2,303.87	June 30, 2009
Reams Indiana State Police	$405,966.18	June 30, 2009
Reams Indiana State Police Pension Fund	$249,750.15	June 30, 2009
Reams Indiana State Police Pension Trust	$7,093.62	June 30, 2009
Reams Indiana State Police Pension Trust	$598,561.97	June 30, 2009
Reams Indiana State Teachers Retirement Fund	$14,130,923.76	June 30, 2009
Reams – Inter Local Pension Fund of the Graphic Comm. International Brotherhood of Teamsters	$533.18	June 30, 2009
Reams – Inter Local Pension Fund of the Graphic Comm.	$1,516,832.03	June 30, 2009

International Brotherhood of Teamsters		
Reams – Kraft Foods Master Retirement Trust	$6,462,107.87	June 30, 2009
Reams – LA Fire & Police	$9,802,302.40	June 30, 2009
Reams – LabCorp Cash Balance Retirement Fund	$1,777.27	June 30, 2009
Reams – Laboratory Corp. of America Holdings	$1,945,490.57	June 30, 2009
Reams - Master Trust Pursuant to the Retirement Plans of APL Ltd.& Subsidiaries	$328,952.01	June 30, 2009
Reams – Montana Board of Investments	$2,701,656.33	June 30, 2009
Reams Municipal Employee Retirement System of Michigan	$4,319,334.60	June 30, 2009
Reams – Parkview Memorial Health	$946,930.74	June 30, 2009
Reams – Prudential Retirement Insurance & Annuity Company	$2,716,391.85	June 30, 2009
Reams – Reichhold, Inc.	$288,007.37	June 30, 2009
Reams – Retirement Board of the Park Employees Annuity & Benefit Fund	$1,840.19	June 30, 2009
Reams – Retirement Board of the Park Employees Annuity & Benefit Fund	$652,257.51	June 30, 2009
Reams – Rotary International Foundation	$1,631,028.32	June 30, 2009
Reams – Santa Barbara County Employees' Retirement System	$1,619,395.40	June 30, 2009
Reams – Sonoma County Employees Retirement Association	$1,601,012.42	June 30, 2009
Reams – St Luke Episcopal Health System Foundation	$967,208.74	June 30, 2009
Reams – State of Indiana Major Moves Construction Fund	$1,788,750.65	June 30, 2009
Reams – The Mather Foundation Core Plus	$511,885.71	June 30, 2009
Reams – The Rotary Foundation	$216,071.83	June 30, 2009
Reams – Trustees of Indiana University	$1,371,450.68	June 30, 2009
Reams – Trustees of Purdue University	$1,969,771.11	June 30, 2009
Reams Unconstrained Bond Fund LLC formerly known as Reams – Columbus Extended Market Fund LLC	$51,514.74	June 30, 2009
Reams Unconstrained Bond Fund LLC formerly known as Reams – Columbus Extended Market Fund LLC	$9,280,796.31	June 30, 2009
Reams – University of Kentucky	$1,267,949.62	June 30, 2009
Reams – Ventura County Employees' Retirement Association	$5,796,481.03	June 30, 2009
Reichhold	$1,103,630.60	June 30, 2009
RGA Reinsurance Company	$563,933.80	June 30, 2009
Russell Strategic Bond Fund	$1,966,019.35	June 30, 2009
Sankaty High Yield Partners III LP	$0.01	June 30, 2009
Santa Barbara County	$1,963,751.76	June 30, 2009
Seattle City Employees' Retirement System	$1,341,592.31	June 30, 2009
Security Investors-Security Income Fund-High Yield Series	$988,606.76	June 30, 2009
SEI Institutional Managed Trust's Core Fixed Income	$992,328.03	June 30, 2009
Senior Income Trust	$1,753,127.28	June 30, 2009
SFR Ltd.	$4,437,986.94	June 30, 2009
Shinnecock CLO II Ltd.	$17,595.00	June 30, 2009
Silverado CLO 2006-1 Ltd.	$1,987,161.93	June 30, 2009
Solus Core Opportunities Master Fund Ltd.	$2,009,777.78	June 30, 2009

Exhibit 3: Postpetition Transfers

SRI Fund LP	$2,110,469.05	June 30, 2009
SSS Funding II, LLC	$3,055,475.15	June 30, 2009
State of Connecticut	$415,854.32	June 30, 2009
State of Indiana Major Moves	$7,283,279.55	June 30, 2009
Stichting Depositary APG Fixed Income Credits Pool	$2,997,001.70	June 30, 2009
Stichting Pensioenfonds van de Metalektro formerly known as Stichting Bedrijfstakpensioenfonds Voor De Metalektro	$0.01	June 30, 2009
Stoney Lane Funding I Ltd.	$21,722.22	June 30, 2009
Taconic Capital Partners 1 5 LP	$483,893.33	June 30, 2009
Taconic Market Dislocation Fund II LP	$327,116.16	June 30, 2009
Taconic Market Dislocation Master Fund II LP	$76,083.84	June 30, 2009
Taconic Opportunity Fund LP	$3,144,906.67	June 30, 2009
TCW High Income Partners Ltd.	$999,883.82	June 30, 2009
TCW Illinois State Board of Investment	$1,052,945.75	June 30, 2009
TCW Senior Secured Loan Fund LP	$1,395,736.13	June 30, 2009
Texas County & District Ret System	$768,581.94	June 30, 2009
The Assets Management Committee of the Coca-Cola Company Master Retirement Trust	$436,056.20	June 30, 2009
The Children's Hospital Foundation	$190,947.20	June 30, 2009
The Duchossois Group Inc.	$1,004,985.26	June 30, 2009
The Galaxite Master Unit Trust	$967,854.30	June 30, 2009
The Mather Foundation	$514,396.32	June 30, 2009
The Royal Bank of Scotland PLC New York Branch	$21,095,155.08	June 30, 2009
Thrivent Financial for Lutherans	$2,004,888.89	June 30, 2009
Thrivent High Yield Fund	$2,526,118.68	June 30, 2009
Thrivent High Yield Portfolio	$3,989,663.61	June 30, 2009
Thrivent Income Fund	$1,874,603.56	June 30, 2009
Thrivent Series Fund, Inc. – Income Portfolio	$3,087,548.41	June 30, 2009
TMCT II LLC	$127,366.51	June 30, 2009
Transamerica Series Trust formerly known as Aegon/Transamerica Series Trust MFS Highyield	$2,006,165.08	June 30, 2009
Trilogy Portfolio Company LLC	$1,211.88	June 30, 2009
TRS SVCO LLC	$1.04	June 30, 2009
UMC Benefit Board, Inc. on behalf of Oaktree - General Board of Pension & Health Benefit of the UN Methodist Church Inc.	$371,757.15	June 30, 2009
Velocity CLO Ltd.	$703,141.64	June 30, 2009
Virtus Multi Sector Fixed Income Fund	$243,515.10	June 30, 2009
Virtus Multisector Short Term Bond Fund	$1,688,256.29	June 30, 2009
Virtus Senior Floating Rate Fund	$108,436.91	June 30, 2009
Vitesse CLO Ltd.	$2,791,472.28	June 30, 2009
Vulcan Ventures Inc.	$249,338.12	June 30, 2009
WAMCO 176 – Virginia Supplemental Retirement System	$1,974,747.45	June 30, 2009
WAMCO 176 – Virginia Supplemental Retirement System	$14,920.31	June 30, 2009

Exhibit 3: Postpetition Transfers

WAMCO 3023 – Virginia Retirement Systems Bank Loan Portfolio	$6,725,218.84	June 30, 2009
WAMCO 3073 – John Hancock Trust Floating Rate Income Trust	$4,224,753.58	June 30, 2009
WAMCO 3074 – John Hancock Fund II–Floating Rate Income Fund	$3,222,325.54	June 30, 2009
WAMCO – 3131 – Raytheon Master Pension Master Trust	$2,244,043.05	June 30, 2009
WAMCO Western Asset Floating Rate High Income Fund LLC	$11,435,085.85	June 30, 2009
Wells – 13702900	$1,494,965.74	June 30, 2009
Wells – 14945000	$423,874.79	June 30, 2009
Wells & Company Master Pension Trust: DBA Wells Capital Management - 12222133	$1,719,872.50	June 30, 2009
Wells Cap Mgmt – 13923601	$1,095,201.98	June 30, 2009
Wells Capital Management 16017000	$422,869.90	June 30, 2009
Wells Capital Management 16959700	$6,403,964.26	June 30, 2009
Wells Capital Management 16959701	$6,052,939.18	June 30, 2009
Wells Capital Management 18866500	$347,817.24	June 30, 2009
Wells Fargo Advantage Income Opportunities Fund formerly known as Evergreen Income Advantage Fund	$7,372.50	June 30, 2009
Wells Fargo Advantage Multi-Sector Income Fund formerly known as Evergreen Multi Sector Income Fund formerly known as Evergreen Managed Income Fund	$3,965.37	June 30, 2009
Wells Fargo Advantage Utilities & High Income Fund formerly known as Evergreen Utilities & High Income Fund	$570.20	June 30, 2009
Wells – Los Angeles Dept. of Water & Power Employees Retire Disability	$820,805.98	June 30, 2009
West Bend Mutual Insurance Company	$697,868.06	June 30, 2009
Wexford Catalyst Investors	$1,346,433.09	June 30, 2009
Wexford Spectrum Investors LLC	$3,761,466.23	June 30, 2009

Exhibit 4

Exhibit 4
Payment(s) in the Preference Period

Defendant[1]	Amount	Date
Alticor Inc.	$14,539.66	May 27, 2009
American International Group, Inc.	$18,922.47	May 27, 2009
AR Mountain Range LLC	$89.17	May 27, 2009
Arch Reinsurance Ltd.	$2,142.50	May 27, 2009
Ares IIIR IVR CLO Ltd.	$38,894.12	May 27, 2009
Ares VR CLO Ltd.	$56,483.56	May 27, 2009
Ares VIR CLO Ltd.	$56,224.04	May 27, 2009
Ares VIII CLO Ltd.	$18,993.10	May 27, 2009
Ares IX CLO Ltd.	$52,558.56	May 27, 2009
Ares XI CLO Ltd.	$38,155.77	May 27, 2009
Ares Enhanced Cr Opp Fd Ltd.	$23,223.09	May 27, 2009
Ares Enhanced LN INV III Ltd.	$94,612.33	May 27, 2009
Ares Enhanced LN INV IR	$2,211.57	May 27, 2009
Arnhold–Houston Police Officers' Pension System	$13.75	May 27, 2009
Arrowgrass Master Fund Ltd.	$25,651.12	May 27, 2009
Atrium IV	$75,311.42	May 27, 2009
Atrium V	$75,311.42	May 27, 2009
Avenue CLO V, Ltd.	$74,499.14	May 27, 2009
Avery Point CLO Ltd.	$65,467.08	May 27, 2009
Ballyrock CLO 2006-1 Ltd.	$8,471.59	May 27, 2009
Ballyrock CLO 2006-2 Ltd.	$12,707.38	May 27, 2009
Baltic Funding LLC	$380,182.29	May 27, 2009
Bank of America, N.A.	$19,018.03	May 27, 2009
Barclays Bank PLC	$13,137.26	May 27, 2009
BBT Fund LP	$7,314.63	May 27, 2009
Big Sky III Senior Loan Trust	$34,032.41	May 27, 2009
Bismarck CBNA Loan Funding LLC	$5,436.10	May 27, 2009
Black Diamond CLO 2005-1 Ltd.	$199,186.37	May 27, 2009
Black Diamond CLO 2005-2 Ltd.	$205,393.02	May 27, 2009
Black Diamond CLO 2005-2 Ltd.	$18,970.13	May 27, 2009
Black Diamond CLO 2006-1 Cayman Ltd.	$303,955.41	May 27, 2009
Black Diamond International Funding Ltd.	$330,808.25	May 27, 2009
Black Diamond Offshore Ltd.	$6,848.44	May 27, 2009

[1] In circumstances where, upon information and belief, a Defendant has been acquired, or has merged or changed its name, the Payment(s) amount is listed under the later entity's name. The Trust does not waive its right to pursue collection of the Payment(s) from the prior entity, if such entity still exists.

Exhibit 4: Payment(s) in the Preference Period

BlackRock California State Teachers Retirement System	$47,665.45	May 27, 2009
BlackRock Corporate High Yield Fund, Inc.	$14,776.29	May 27, 2009
BlackRock Corporate High Yield Fund, Inc. formerly known as BlackRock Corporate High Yield Fund VI, Inc.	$24,786.04	May 27, 2009
BlackRock Corporate High Yield Fund, Inc. formerly known as BlackRock Corporate High Yield Fund VI, Inc. as successor to BlackRock Corporate High Yield Fund III Inc.	$15,729.60	May 27, 2009
BlackRock Corporate High Yield Fund, Inc. formerly known as BlackRock Corporate High Yield Fund VI, Inc. as successor to BlackRock Corporate High Yield Fund V, Inc.	$22,879.42	May 27, 2009
BlackRock Corporate High Yield Fund, Inc. formerly known as BlackRock Corporate High Yield Fund VI, Inc. as successor to BlackRock High Yield Trust	$1,906.62	May 27, 2009
BlackRock Debt Strategies Fund, Inc.	$15,252.94	May 27, 2009
BlackRock Debt Strategies Fund, Inc. as successor to BlackRock Senior High Income Fund, Inc.	$7,149.82	May 27, 2009
BlackRock Debt Strategies, Fund Inc. as successor to BlackRock Strategic Bond Trust	$4,289.89	May 27, 2009
BlackRock Diversified Income Strategies Fund, Inc.	$4,766.55	May 27, 2009
BlackRock Employees' Retirement Fund of the City of Dallas	$8,579.78	May 27, 2009
BlackRock Floating Rate Income Strategies Fund Inc.	$8,103.13	May 27, 2009
BlackRock Funds II – High Yield Bond Portfolio as successor to BlackRock Funds High Yield Bond Portfolio	$109,630.54	May 27, 2009
BlackRock Funds II – High Yield Bond Portfolio as successor to BlackRock High Income Fund of Blackrockbond Fund Inc.	$87,704.43	May 27, 2009
BlackRock Funds II – High Yield Bond Portfolio as successor to BlackRock Managed Account Series High Income Portfolio	$3,813.24	May 27, 2009
BlackRock Global Investment Series: Income Strategies Portfolio	$24,786.04	May 27, 2009
BlackRock High Income Shares	$7,149.82	May 27, 2009
BlackRock Met Investors Series Trust High Yield Portfolio	$26,216.00	May 27, 2009
BlackRock Multi Strategy Sub–Trust C	$11,463.90	May 27, 2009
BlackRock Senior Income Series II	$16,872.85	May 27, 2009
BlackRock Senior Income Series IV	$32,926.71	May 27, 2009
BTG Pactual Chile S.A. Administradora General De Fondos formerly known as Celfin Capital S.A. Administradora General de Fondos para Ultra Fondo de Inversion	$6,196.51	May 27, 2009
Canadian Imperial Bank of Commerce	$31,055.69	May 27, 2009
Canyon Capital CDO 2002-1 Ltd.	$56,483.56	May 27, 2009
Cap Fund LP	$3,191.84	May 27, 2009
Capital Research–American High Income Trust	$7,870.23	May 27, 2009
Carbonado LLC	$49,510.91	May 27, 2009
Carlyle High Yield Par IX Ltd.	$15,532.92	May 27, 2009
Carlyle High Yield Partners 2008-1, Ltd.	$36,352.70	May 27, 2009
Castle Garden Funding	$56,483.56	May 27, 2009
Caterpillar Inc. Master Pension Trust	$4,126.52	May 27, 2009
CCP Credit Acquisition Holding	$3,546.51	May 27, 2009
Chatham Light II CLO Ltd.	$54,526.43	May 27, 2009

Exhibit 4: Payment(s) in the Preference Period

Chrysler LLC Master Retirement Trust on behalf of Oaktree–DaimlerChrysler Corporation Master Retirement Trust	$16,843.36	May 27, 2009
Citibank, N.A.	$61,107.98	May 27, 2009
Citigroup Financial Products Inc.	$166,593.55	May 27, 2009
City of Milwaukee Employees Retirement System	$41,204.07	May 27, 2009
Classic Cayman B D Ltd.	$188,278.54	May 27, 2009
CMFG Life Insurance Company formerly known as Cuna Mutual Insurance Society	$10,699.64	May 27, 2009
Coca Cola Co Ret & MSTR Tr	$8,336.00	May 27, 2009
Continental Casualty Company	$585,318.73	May 27, 2009
Credit Suisse Loan Funding LLC	$88.20	May 27, 2009
Credit Suisse Syndicated Loan Fund	$56,483.56	May 27, 2009
Crescent Senior Secured Floating Rate Loan Fund, LLC formerly known as TCW Senior Secured Floating Rate Loan Fund LP	$45,216.36	May 27, 2009
Cypress Tree International Loan Holding Company	$1,333.33	May 27, 2009
DDJ – JC Penny Pension Plan Trust	$21,301.80	May 27, 2009
DDJ – Stichting Pensioenfonds Hoogovens	$8,570.84	May 27, 2009
DDJ Cap – Caterpillar Master Retirement Trust	$12,142.03	May 27, 2009
DDJ Cap MGMT – Stichting Bewaarder Interpolis Pensioenen	$17,617.84	May 27, 2009
DDJ Capital Mgt Group TR	$4,523.50	May 27, 2009
DDJ High Yield Fund	$4,285.42	May 27, 2009
DE–SEI Institutional Investment Trust – High Yield Bond Fund	$21,561.10	May 27, 2009
DE–SEI Institutional Managed Trust – High Yield Bond Fund	$18,558.91	May 27, 2009
Debello Investors LLC	$51,338.33	May 27, 2009
Delaware Delchester Fund	$43,312.45	May 27, 2009
Delaware Diversified Income Fund	$19,114.57	May 27, 2009
Delaware Diversified Income Fund	$177,893.33	May 27, 2009
Delaware Diversified Income Fund	$18,613.15	May 27, 2009
Delaware Diversified Income Trust	$5,578.79	May 27, 2009
Delaware Enhanced Global Dividend & Income Fund	$10,248.94	May 27, 2009
Delaware Enhanced Global Dividend & Income Fund as successor to Delaware Investments Global Dividend & Income Fund	$1,639.78	May 27, 2009
Delaware Extended Duration Bond Fund	$122.22	May 27, 2009
Delaware Group Equity V Inc. Dividend Income Fund	$29,960.98	May 27, 2009
Delaware Group Government Fund Core Plus Fund	$708.28	May 27, 2009
Delaware Group Inc. Fund Inc. Corporate Bond Fund	$322.22	May 27, 2009
Delaware Group Income Funds – Delaware High Yield Opportunities Fund	$39,207.18	May 27, 2009
Delaware Investments Dividend & Income Fund	$7,561.30	May 27, 2009
Delaware – LVIP Delaware Bond Fund	$62,436.31	May 27, 2009
Delaware Optimum Fixed Income Fund	$23,692.97	May 27, 2009
Delaware Optimum Fixed Income Fund	$2,798.08	May 27, 2009
Delaware Pooled Trust – Core Plus Fixed Income Portfolio	$663.27	May 27, 2009
Delaware Pooled Trust – High Yield Bond Portfolio	$6,038.80	May 27, 2009

Exhibit 4: Payment(s) in the Preference Period

Delaware PSEG Nuclear LLC Master Decommissioning Trust	$7,947.72	May 27, 2009
Delaware–SEI Institutional Investment Trust–High Yield Bond Fund	$36,769.64	May 27, 2009
Delaware–SEI Institutional Managed Trust–High Yield Bond Fund	$31,613.15	May 27, 2009
Delaware VIP Trust Diversified Income Series	$68,209.26	May 27, 2009
Delaware VIP Trust High Yield Series	$88,966.87	May 27, 2009
Deutsche Bank AG	$145.68	May 27, 2009
Diamond Springs Trading LLC	$22,430.27	May 27, 2009
Double Black Diamond Offshore Ltd.	$100,171.56	May 27, 2009
Eaton Vance CDO VIII Ltd.	$75,406.03	May 27, 2009
Eaton Vance CDO IX Ltd.	$43,445.98	May 27, 2009
Eaton Vance CDO X PLC	$37,655.71	May 27, 2009
Eaton Vance Floating Rate Income Trust	$102,573.53	May 27, 2009
Eaton Vance Grayson & Co.	$285,842.31	May 27, 2009
Eaton Vance Institutional Senior Loan Fund	$436,064.16	May 27, 2009
Eaton Vance International (Cayman Islands) Funds Ltd. – Floating Rate Income Fund formerly known as Eaton Vance Medallion Floating Rate Income Portfolio	$44,734.71	May 27, 2009
Eaton Vance Limited Duration Income Fund	$83,668.94	May 27, 2009
Eaton Vance Loan Opportunities Fund, Ltd.	$37,940.26	May 27, 2009
Eaton Vance Senior Debt Portfolio	$152,826.60	May 27, 2009
Eaton Vance Senior Floating Rate Trust	$65,097.90	May 27, 2009
Eaton Vance Senior Income Trust	$33,514.17	May 27, 2009
Eaton Vance Short Duration Diversified Income Fund	$25,615.04	May 27, 2009
Eaton Vance Variable Trust Floating Rate Income Fund	$108,104.65	May 27, 2009
Employers Insurance Company of WAUSAU	$23.59	May 27, 2009
Evergreen High Income Fund	$45,029.13	May 27, 2009
Evergreen High Yield Bond Trust	$5,207.96	May 27, 2009
Evergreen VA High Income Fund	$2,576.32	May 27, 2009
Fairview Funding LLC	$113,349.70	May 27, 2009
Fidelity Advisor Series I – Advisor Floating Rate High Income Fund	$39,360.41	May 27, 2009
Fidelity Advisor Series I – Advisor High Income Advantage Fund	$587,625.35	May 27, 2009
Fidelity Advisor Series I – Fidelity Advisor High Income Fund	$13,810.52	May 27, 2009
Fidelity Advisor Series II – Advisor Strategic Income Fund	$390,437.96	May 27, 2009
Fidelity American High Yield Fund	$822.24	May 27, 2009
Fidelity – Arizona State Retirement System	$228.54	May 27, 2009
Fidelity Ballyrock CLO II	$8,471.59	May 27, 2009
Fidelity Ballyrock CLO III	$12,707.38	May 27, 2009
Fidelity Canadian Assett All	$9,036.84	May 27, 2009
Fidelity Cen Inv–Hi Inc PF I	$1,464.28	May 27, 2009
Fidelity Cen Inv–Hi Inc PF I	$5,649.85	May 27, 2009
Fidelity Central Investment Portfolios LLC Fidelity Floating Rate	$608,474.77	May 27, 2009
Fidelity Central Investment Portfolios LLC Fidelity High Income Central Fund 2	$24,624.73	May 27, 2009

Exhibit 4: Payment(s) in the Preference Period

Fidelity Illinois Muni Ret Fd	$52,057.87	May 27, 2009
Fidelity Income Fund – Fidelity Total Bond Fund	$9,236.30	May 27, 2009
Fidelity Income Fund – Fidelity Total Bond Fund	$2,179.08	May 27, 2009
Fidelity Puritan Trust – Puritan Fund	$40,931.93	May 27, 2009
Fidelity School Street Trust–Strategic Income Fund	$325,077.15	May 27, 2009
Fidelity Summer Street Trust–Capital & Income Fund	$150,143.75	May 27, 2009
Fidelity Summer Street Trust–Capital & Income Fund	$1,478,557.97	May 27, 2009
Fidelity Summer Street Trust–High Income Fund	$247,109.60	May 27, 2009
Fidelity TR–IG Invst Mgmt Ltd.	$770.85	May 27, 2009
Fidelity Variable Insurance Products V Strategic Income Portfolio	$22,607.24	May 27, 2009
Fidelity VIP FD Hi Inc PF	$27,545.98	May 27, 2009
First Trust/Four Corners Senior Floating Rate Income Fund	$28,384.06	May 27, 2009
First Trust Four Corners Senior Floating Rate Income Fund II	$151,140.39	May 27, 2009
Foothill CLO I, Ltd.	$94,139.27	May 27, 2009
Foothill Group Inc.	$265,679.08	May 27, 2009
Foothill Group Inc.	$76,361.51	May 27, 2009
Fortress Credit Investments I Ltd.	$180,747.40	May 27, 2009
Fortress Credit Investments II Ltd.	$45,186.85	May 27, 2009
Four Corners CLO II Ltd.	$37,940.26	May 27, 2009
Four Corners CLO III Ltd.	$37,940.50	May 27, 2009
General Electric Capital Corporation	$113,108.69	May 27, 2009
General Electric Pension Trust	$93,185.96	May 27, 2009
Genesis CLO 2007-1 Ltd.	$59,227.32	May 27, 2009
Genesis CLO 2007-2 Ltd.	$113,820.78	May 27, 2009
Global Investment Grade Credit Fund	$28,241.78	May 27, 2009
Golden Knight II CLO, Ltd.	$56,471.53	May 27, 2009
Goldentree Loan Opportunities III, Ltd.	$69,945.48	May 27, 2009
Goldentree Loan Opportunities IV, Ltd.	$69,851.34	May 27, 2009
Goldman Sachs – ABS Loans 2007 Ltd.	$73,568.64	May 27, 2009
Goldman Sachs Lending Partners LLC	$83,628.65	May 27, 2009
GPC 69 LLC	$1,745.75	May 27, 2009
GPC 69 LLC	$20,570.59	May 27, 2009
Gracie Credit Opportunities Master Fund LP	$38,326.42	May 27, 2009
Grand Central Asset TR SIL	$5,527.28	May 27, 2009
Grand Central Asset Trust Wam Series	$36,321.26	May 27, 2009
Grayson & Co.	$11,639.05	May 27, 2009
Guggenheim Portfolio Co X LLC	$882.20	May 27, 2009
Gulf Stream Compass CLO 2003-1 Ltd.	$37,844.93	May 27, 2009
Gulf Stream – Compass CLO 2007 Ltd.	$75,089.19	May 27, 2009
Gulf Stream – Sextant CLO 2007-1 Ltd.	$56,483.56	May 27, 2009
Harch CLO II Ltd.	$3,761.20	May 27, 2009
Harch CLO III Ltd.	$3,737.69	May 27, 2009

Exhibit 4: Payment(s) in the Preference Period

Hewett's Island CLO IV	$5,423.42	May 27, 2009
Hewett's Island CLO V Ltd.	$24,385.20	May 27, 2009
Hewett's Island CLO VI Ltd.	$5,423.42	May 27, 2009
Hewlett-Packard Company	$86,536.49	May 27, 2009
HFR RVA Opal Master Trust	$6,150.09	May 27, 2009
Highland Credit Opportunities CDO, Ltd.	$66,695.46	May 27, 2009
Highland – PAC SEL FD FLTG RT LN	$43,560.76	May 27, 2009
Himco Fltg RT FD	$10,088.16	May 27, 2009
Iowa Public Employees Retirement System	$18,238.42	May 27, 2009
Ivy Funds-Ivy High Income Fund formerly known as Ivy Fund Inc.-High Income Fund	$28,671.86	May 27, 2009
Janus Adviser Floating Rate Hi	$322.62	May 27, 2009
Jasper Funding	$284,161.38	May 27, 2009
Jersey Street CLO, Ltd.	$20,175.94	May 27, 2009
J.P. Morgan Whitefriars Inc.	$65,517.79	May 27, 2009
Katonah 2007-1 CLO Ltd.	$56,673.74	May 27, 2009
Katonah III, Ltd.	$2,134.32	May 27, 2009
Katonah IV Ltd.	$2,636.52	May 27, 2009
Kynikos Opportunity Fund II LP	$19,168.80	May 27, 2009
Kynikos Opportunity Fund International Ltd.	$12,668.63	May 27, 2009
Kynikos Opportunity Fund LP	$2,257.23	May 27, 2009
L3-Lincoln Variable Insurance Products Trust - Managed Fund	$4,089.02	May 27, 2009
Legg Mason ClearBridge Capital & Income Fund on behalf of WAMCO 2357 – Legg Mason Partners Capital & Income Fund	$18,970.13	May 27, 2009
Lehman GMAM Investment Funds Trust	$236,369.88	May 27, 2009
Lehman Principal Investors Fund, Inc. – High Yield Fund	$102,754.22	May 27, 2009
Neuberger Berman Income Funds – Neuberger Berman High Income Bond Fund formerly known as Lehman-Neuberger Berman-High Income Bond Fund	$87,159.55	May 27, 2009
Lincoln National Life Insurance Company Separate Account 12	$3,429.40	May 27, 2009
Lincoln National Life WSA20	$15,465.79	May 27, 2009
Loan Funding XI LLC	$26,065.23	May 27, 2009
Logan – Raytheon MPT – Floating Rate	$44,710.20	May 27, 2009
Logan – Raytheon MPT – Mid Grade Portfolio	$2,771.61	May 27, 2009
Logan Circle – Alameda Contra Costa Transit Retirement System	$1,496.55	May 27, 2009
Logan Circle – Allina Health Sys Defined Bnft Master Tr	$943.70	May 27, 2009
Logan Circle – Allina Health System Trust	$1,858.95	May 27, 2009
Logan Circle – Bechtel Corporation	$14,585.63	May 27, 2009
Logan Circle Freddie Mac Foundation Inc.	$2,812.26	May 27, 2009
Logan Circle – Liberty Mutual Employee Thrift Incentive Plan	$9,819.08	May 27, 2009
Logan Circle Peoples Energy Corporation Pension Trust	$929.48	May 27, 2009
Logan Circle – Public Service E	$10,630.37	May 27, 2009
Logan Circle – Russell Inst Funds LLC – Russell Core Bond Fund	$4,833.13	May 27, 2009

Exhibit 4: Payment(s) in the Preference Period

Logan Circle – Russell Investment Company PLC	$8,244.21	May 27, 2009
Logan Circle – Russell Multi-Managed Bond Fund	$32,746.17	May 27, 2009
Logan Circle – Russell Strategic Bond Fund	$72,766.70	May 27, 2009
Logan Circle – Sunoco Inc. Master Retirement Trust	$4,647.38	May 27, 2009
Logan Circle Wisconsin Public Service Corporation Pension Trust	$1,763.62	May 27, 2009
Longlane Master TR IV	$516.22	May 27, 2009
Lord Abbett & Co – Teachers Re	$2,216.55	May 27, 2009
Lord Abbett Inv Trst – LA Hi Yld	$49,686.51	May 27, 2009
Lord Abbett Investment Trust – Lord Abbett Floating Rate Fund	$8,996.37	May 27, 2009
MacKay 1028 – Arkansas Public Employee Retirement System	$13,470.22	May 27, 2009
MacKay 8067 – Fire & Police Employee Retirement System of the City of Baltimore	$8,312.07	May 27, 2009
MacKay – Houston Police Officers Pension System	$15,948.30	May 27, 2009
MacKay New York Life Insurance Company (Guaranteed Products)	$2,526.87	May 27, 2009
MacKay Shields Core Plus Alpha Fund Ltd.	$11,527.99	May 27, 2009
MacKay Shields Short Duration Alpha Fund	$33,947.19	May 27, 2009
Madison Park Funding I Ltd.	$75,311.42	May 27, 2009
Madison Park Funding II Ltd.	$56,483.56	May 27, 2009
Madison Park Funding III Ltd.	$56,483.56	May 27, 2009
Madison Park Funding IV Ltd.	$56,483.56	May 27, 2009
Madison Park Funding V Ltd.	$56,483.56	May 27, 2009
Madison Park Funding VI Ltd.	$56,483.56	May 27, 2009
Marathon CLO I Ltd.	$31,804.45	May 27, 2009
Marathon CLO II Ltd.	$43,035.09	May 27, 2009
Marathon Financing I B V	$432,613.82	May 27, 2009
Mariner LDC	$25,672.10	May 27, 2009
Marlborough Street CLO Ltd.	$19,149.77	May 27, 2009
Mason Capital LP	$2,779.15	May 27, 2009
Mason Capital LP	$16,100.99	May 27, 2009
Mason Capital Ltd.	$76,600.06	May 27, 2009
Mayport CLO Ltd.	$19,066.18	May 27, 2009
McDonnell Illinois State Board of Investment	$23,491.35	May 27, 2009
Meritage Fund Ltd.	$194,664.88	May 27, 2009
Metropolitan West High Yield Bond Fund	$57,489.63	May 27, 2009
MFS Charter Income Trust	$22,214.03	May 27, 2009
MFS Charter Income Trust	$1,241.04	May 27, 2009
MFS–DIF – Diversified Income Fund	$4,617.18	May 27, 2009
MFS–DIF–Diversified Income Fund	$342.30	May 27, 2009
MFS Diversified Income Fund – Series Trust XIII	$1,928.99	May 27, 2009
MFS Floating Rate High Income Fund	$13,118.39	May 27, 2009
MFS Floating Rate Income Fund	$4,778.64	May 27, 2009
MFS Global High Yield Fund formerly known as MFS Series Trust III	$55,624.04	May 27, 2009

Exhibit 4: Payment(s) in the Preference Period

High Yield Opportunities Fund		
MFS High Yield Portfolio as successor to MFS Variable Insurance Trust MFS High Income Series	$32,901.23	May 27, 2009
MFS – High Yield Variable Account	$5,074.41	May 27, 2009
MFS Intermarket Income Trust I	$3,881.14	May 27, 2009
MFS Intermediate High Income Fund	$6,973.24	May 27, 2009
MFS Multimarket Income Trust	$13,782.87	May 27, 2009
MFS Series Trust III High Income Fund	$98,552.35	May 27, 2009
MFS Series Trust VIII Strategic Income Fund	$8,402.03	May 27, 2009
MFS Series Trust VIII Strategic Income Fund	$2,059.22	May 27, 2009
MFS Special Value Trust	$4,857.91	May 27, 2009
MFS Special Value Trust	$266.70	May 27, 2009
MFS Strategic Income Portfolio as successor to MFS Variable Insurance Trust – MFS Strategic Income Series VWG	$1,256.74	May 27, 2009
MFS Variable Insurance Trust II High Yield Portfolio	$30,316.45	May 27, 2009
MFS Variable Insurance Trust II Strategic Income Portfolio	$2,250.80	May 27, 2009
Microsoft Global Finance Ltd.	$12,538.97	May 27, 2009
Missouri State Employees Retirement System	$18,827.85	May 27, 2009
Momentum Capital Fund Ltd.	$80,830.72	May 27, 2009
Montana Board of Investments	$47,908.03	May 27, 2009
Morgan Stanley Senior Funding Inc.	$190,735.62	May 27, 2009
Mt. Wilson CLO II Ltd.	$75,406.03	May 27, 2009
Muzinich & Company Ireland Ltd. for the Account of Extra Yield S Loan Fund	$56,624.86	May 27, 2009
Nash Point CLO	$115,039.11	May 27, 2009
Neuberger Berman High Yield Strategies Fund formerly known as Lehman Brothers First Trust Income Opportunity Fund	$46,318.67	May 27, 2009
Neuberger Berman High Yield Strategies Fund as successor to Neuberger Berman Income Opportunity Fund, Inc.	$25,811.65	May 27, 2009
New York Life Insurance Company Guaranteed Products	$17,180.89	May 27, 2009
New York Life Insurance Company GP – Portable Alpha	$25,834.51	May 27, 2009
Oak Hill Cr Opp Fin Ltd.	$3,183.49	May 27, 2009
Oak Hill Credit Opportunities Master Fund, Ltd.	$797.91	May 27, 2009
Oak Hill Credit Partners II Ltd.	$11,352.61	May 27, 2009
Oak Hill Credit Partners III Ltd.	$10,850.70	May 27, 2009
Oak Hill Credit Partners IV Ltd.	$12,308.62	May 27, 2009
Oak Hill Credit Partners V Ltd.	$13,754.56	May 27, 2009
Oaktree – Bill & Melinda Gates Foundation Trust	$3,811.93	May 27, 2009
Oaktree Capital Management – Central States SE and SW Area Pens Plan	$8,701.50	May 27, 2009
Oaktree Capital Management High Yield Trust	$30,447.19	May 27, 2009
Oaktree – Employees Retirement Fund of the City of Dallas	$5,427.44	May 27, 2009
Oaktree – High Yield LP	$13,743.39	May 27, 2009
Oaktree – High Yield Fund II, LP	$48,443.41	May 27, 2009
Oaktree – High Yield Plus Fund LP	$92,969.15	May 27, 2009

Exhibit 4: Payment(s) in the Preference Period

Oaktree – International Paper Co. Commingled Investment Group Trust	$6,466.75	May 27, 2009
Oaktree Loan Fund, LP	$927,875.77	May 27, 2009
Oaktree Loan Fund 2X (Cayman), LP	$1,103,132.23	May 27, 2009
Oaktree – Pacific Gas & Electric Post Ret Med Trust for Non–Mgt Emp & Retirees	$561.52	May 27, 2009
Oaktree – San Diego County Employees Retirement Association	$3,554.11	May 27, 2009
Oaktree Senior Loan Fund, LP	$38,229.15	May 27, 2009
Oaktree – TMCT LCC	$2,421.13	May 27, 2009
OCM – IBM Personal Pension Plan	$2,570.14	May 27, 2009
OCM–Pacific Gas & Electric Company Retirement Plan Master Trust	$7,861.34	May 27, 2009
OCM–The State Teachers Retirement System of Ohio	$10,326.46	May 27, 2009
OCM–WM Pool High Yield Fixed Interest Trust	$12,743.33	May 27, 2009
Octagon Investment Partners XI Ltd.	$18,254.42	May 27, 2009
Oesterreichische Volksbanken AG	$189,224.66	May 27, 2009
OHA Cap Sol Fin Ofshore Ltd.	$13,731.14	May 27, 2009
OHA Cap Sol Fin Onshore Ltd.	$7,191.20	May 27, 2009
OHA Park Avenue CLO I Ltd.	$11,065.81	May 27, 2009
Ohio Police & Fire Pension Fund	$47,563.95	May 27, 2009
OHSF Financing Ltd.	$729.45	May 27, 2009
OHSF II Financing Ltd.	$1,690.73	May 27, 2009
ONEX Debt Opportunity FD Ltd.	$5,138.97	May 27, 2009
OW Funding Ltd.	$76,264.73	May 27, 2009
Pension Inv Committee of GM for GM Employees Domestic Group Pension Trust	$74,455.61	May 27, 2009
Phoenix Edge Series Fund Phoenix Multi Sector Short Term Bond Series	$1,918.69	May 27, 2009
Phoenix Edge SRS–Multi–Sector Fixed Income Series	$5,961.38	May 27, 2009
Pimco 1464 – Freescale Semiconductor Inc. Retirement Savings	$28,241.78	May 27, 2009
Pimco 1641–Sierra Pacific Resources Defined Ben Mstr Tr	$18,827.85	May 27, 2009
Pimco2244 – Virginia Retirement System	$76,167.70	May 27, 2009
Pimco2496 – Fltg Rt Inc FD	$8,321.25	May 27, 2009
Pimco2497 – Fltg Rt Strt FD	$43,109.11	May 27, 2009
Pimco2603 – Red River HYPI LP	$162,746.46	May 27, 2009
Pimco3813 – Pimco Cayman Bank Loan Fund	$37,989.61	May 27, 2009
Pimco400 – Stocks Plus Sub Fund B LLC	$60,539.97	May 27, 2009
Pimco6819 Portola CLO Ltd.	$19,018.03	May 27, 2009
Pimco700 – FD TOT RTN FD	$605,581.51	May 27, 2009
Pimco706 – Private High Yield Portfolio	$26,686.23	May 27, 2009
Pimco Fairway Loan Funding Company	$38,132.36	May 27, 2009
Pimco – St. Luke Episcopal Health System Foundation	$18,489.93	May 27, 2009
Plumbers & Pipefitters National Pension Fund	$23,084.66	May 27, 2009
PNC Financial Services Group, Inc. as successor to National City Bank	$283,647.77	May 27, 2009
Primus CLO I Ltd.	$75,311.42	May 27, 2009

Exhibit 4: Payment(s) in the Preference Period

Primus CLO II Ltd.	$19,018.03	May 27, 2009
Princeton Rosedale CLO II Ltd.	$23,507.44	May 27, 2009
Putnam 29X–Funds Trust Floating Rate Income Fund	$17,967.70	May 27, 2009
Pyramis Floating Rate High Income Commingled Pool	$10,731.40	May 27, 2009
Pyramis Floating Rate High Income Commingled Pool	$19,950.11	May 27, 2009
Pyramis Hi Yld BD Comngl Pool	$25,223.18	May 27, 2009
Pyramis High Yield Fund LLC	$4,407.54	May 27, 2009
Race Point II CLO	$14,655.95	May 27, 2009
Race Point II CLO	$55,151.92	May 27, 2009
Race Point III CLO	$52,772.82	May 27, 2009
Race Point IV CLO Ltd.	$104,083.82	May 27, 2009
RBC Dexia Investor Services Trust as Trustee for GM Canada Foreign Trust	$49,162.24	May 27, 2009
Reams – Agility Global Fixed Income Master Fund LP	$1,332.95	May 27, 2009
Reams – American President Lines Ltd.	$13,251.38	May 27, 2009
Reams – Baltimore County Retirement	$12,859.27	May 27, 2009
Reams – Bill & Melinda Gates Foundation	$78,849.46	May 27, 2009
Reams Board of Fire & Police Pension Commissioners of the City of Los Angeles	$9,642.01	May 27, 2009
Reams – Board of Pen Presbyterian Church	$108,478.87	May 27, 2009
Reams – Building Trades United Pension Trust	$25,293.52	May 27, 2009
Reams – Carpenters Pension Fund of Illinois Pension Plan	$28,628.90	May 27, 2009
Reams Children's Hospital Fund	$709.30	May 27, 2009
Reams – Children's Hospital Philadelphia	$24,226.22	May 27, 2009
Reams City of Milwaukee Retirement System	$24,746.49	May 27, 2009
Reams City of Montgomery Alabama Employee's Retirement System	$22,152.72	May 27, 2009
Reams – City of Oakland Police	$15,794.28	May 27, 2009
Reams – Connecticut General Life Insurance Company	$66,461.41	May 27, 2009
Reams – Cummins Inc. & Affiliates Collective Investment Trust	$71,478.77	May 27, 2009
Reams – Duchossois Ind Inc	$8,872.17	May 27, 2009
Reams – Eight District Electrical Pension Fund	$18,438.50	May 27, 2009
Reams – Emerson Electric	$79,944.50	May 27, 2009
Reams – Emerson Electric Company Retirement Master Trust	$4,468.57	May 27, 2009
Reams – Employes' Retirement System of the City of Milwaukee	$34,339.37	May 27, 2009
Reams – Employees' Retirement System of Baltimore County	$28,938.19	May 27, 2009
Reams – Frontegra Columbus Core Plus Fund	$142,286.88	May 27, 2009
Reams – Goldman Core Plus Fixed	$11,639.06	May 27, 2009
Reams – Halliburton Company	$54,923.43	May 27, 2009
Reams – Halliburton Company Employee Benefit Master Trust	$1,276.73	May 27, 2009
Reams – Health Care Foundation of Greater Kansas City	$10,024.48	May 27, 2009
Reams – Health Care Foundation of Greater Kansas City	$1,112.97	May 27, 2009
Reams – ILWU/PMA Pension Plan	$28,527.05	May 27, 2009

Exhibit 4: Payment(s) in the Preference Period

Reams Indiana State Police Pension Trust	$1,341.42	May 27, 2009
Reams Indiana State Police Pension Trust	$17,293.45	May 27, 2009
Reams-Indiana State Teachers Retirement Fund	$270,137.96	May 27, 2009
Reams – Indiana University	$334.70	May 27, 2009
Reams – Inter Local Pension Fund of the Graphic Comm. International Brotherhood of Teamsters	$1,711.62	May 27, 2009
Reams – Inter Local Pension Fund of the Graphic Comm. International Brotherhood of Teamsters	$27,040.39	May 27, 2009
Reams Kraft Foods Global Inc.	$6,432.44	May 27, 2009
Reams – Kraft Foods Master Retirement Trust	$114,474.59	May 27, 2009
Reams – LA Fire & Police	$175,409.99	May 27, 2009
Reams – LabCorp Cash Balance Retirement Fund	$5,705.41	May 27, 2009
Reams – Laboratory Corp. of America Holdings	$25,771.98	May 27, 2009
Reams Louisiana Carpenters Regional Council Pension Trust Fund	$2,061.45	May 27, 2009
Reams Montana Board of Investments	$4,003.01	May 27, 2009
Reams Municipal Employee Retirement System of Michigan	$79,392.82	May 27, 2009
Reams – Parkview Memorial Health	$18,102.28	May 27, 2009
Reams – Prudential Retirement Insurance & Annuity Company	$40,815.43	May 27, 2009
Reams – Reichhold, Inc.	$20,479.33	May 27, 2009
Reams – Retirement Board of the Park Employees Annuity & Benefit Fund	$5,907.40	May 27, 2009
Reams – Retirement Board of the Park Employees Annuity & Benefit Fund	$9,823.15	May 27, 2009
Reams – Rotary International Foundation	$29,016.05	May 27, 2009
Reams – San Diego Foundation	$259.52	May 27, 2009
Reams – Santa Barbara County	$11,820.46	May 27, 2009
Reams – Santa Barbara County Employees' Retirements System	$41,192.35	May 27, 2009
Reams – Seattle City Employee's Retirement System	$21,812.14	May 27, 2009
Reams – Sonoma County Employees Retirement Association	$30,531.81	May 27, 2009
Reams – St Indiana Major Moves	$106,714.32	May 27, 2009
Reams – State of Indiana Major Moves Construction Fund	$26,354.00	May 27, 2009
Reams – The Mather Foundation Core Plus	$16,724.91	May 27, 2009
Reams – The Rotary Foundation	$797.96	May 27, 2009
Reams Trustees of Indiana University	$23,461.97	May 27, 2009
Reams Trustees of Indiana University	$1,000.99	May 27, 2009
Reams – Trustees of Purdue University	$37,655.71	May 27, 2009
Reams Unconstrained Bond Fund LLC formerly known as Reams – Columbus Extended Market Fund LLC	$13,030.98	May 27, 2009
Reams Unconstrained Bond Fund LLC formerly known as Reams – Columbus Extended Market Fund LLC	$165,372.88	May 27, 2009
Reams – University of Kentucky	$24,047.78	May 27, 2009
Reams – Ventura County Employees' Retirement Association	$84,242.72	May 27, 2009
RGA Reinsurance Company	$14,549.42	May 27, 2009
Russell Investment Company PLC The Global Strategic Yield Fund on behalf of DDJ – Multi–Style, Multi–Manager Funds PLC – Global	$6,134.88	May 27, 2009

Exhibit 4: Payment(s) in the Preference Period

Strategic Yield Fund		
Sanford Bernstein II Interm DU	$8,744.64	May 27, 2009
Sanford C. Bernstein Fund, Inc. – Intermediate Duration Portfolio	$14,574.40	May 27, 2009
Secondary Loan & Distressed	$935,825.02	May 27, 2009
Security Investors–Security Income Fund–High Yield Series	$18,898.99	May 27, 2009
SEI Institutional Managed Trust's Core Fixed Income	$18,970.13	May 27, 2009
SF-3 Segregated Portfolio	$46,529.92	May 27, 2009
SFR Ltd.	$84,840.08	May 27, 2009
Shinnecock CLO II Ltd.	$56,483.56	May 27, 2009
Silverado CLO 2006-1 Ltd.	$37,988.17	May 27, 2009
Spiret IV Loan Trust 2003 B	$162,211.88	May 27, 2009
SRI Fund LP	$2,792.86	May 27, 2009
SSS Funding II, LLC	$58,410.89	May 27, 2009
State of Connecticut	$7,949.80	May 27, 2009
Stichting Pensioenfonds ABP	$76,127.67	May 27, 2009
Stichting Pensioenfonds van de Metalektro formerly known as Stichting Bedrijfstakpensioenfonds Voor De Metalektro	$15,322.25	May 27, 2009
Stichting Pensionfonds Me	$12,541.54	May 27, 2009
Stichting Pensionfonds Me	$17,855.92	May 27, 2009
Stoney Lane Funding I Ltd.	$94,139.27	May 27, 2009
TCW High Income Partners Ltd.	$19,114.57	May 27, 2009
TCW Illinois State Board of Investment	$3,674.52	May 27, 2009
TCW–Park Avenue Loan Trust	$4,963.16	May 27, 2009
TCW Senior Secured Loan Fund LP	$36,009.82	May 27, 2009
TCW Velocity CLO	$18,140.97	May 27, 2009
Teachers' Retirement System of the State of Illinois	$34,614.60	May 27, 2009
Texas County & District Ret System	$14,692.82	May 27, 2009
The Galaxite Master Unit Trust	$76,264.73	May 27, 2009
The Hartford Mutual Funds, Inc. – The Hartford Floating Rate Fund	$2,174.79	May 27, 2009
The Royal Bank of Scotland PLC New York Branch	$328,445.32	May 27, 2009
Thrivent High Yield Fund	$29,589.25	May 27, 2009
Thrivent High Yield Portfolio	$50,907.90	May 27, 2009
Thrivent Income Fund	$11,230.71	May 27, 2009
Thrivent Series Fund, Inc. – Income Portfolio	$18,434.34	May 27, 2009
TMCT II LLC	$2,434.84	May 27, 2009
Transamerica Series Trust formerly known as Aegon/Transamerica Series Trust MFS Highyield	$38,351.44	May 27, 2009
Trilogy Portfolio Company LLC	$57,694.12	May 27, 2009
TRS SVCO LLC	$0.02	May 27, 2009
Twin Lake Total Return Partners LP formerly known as Talon Total Return Partners LP	$25,649.01	May 27, 2009
Twin Lake Total Return Partners QP LP formerly known as Talon Total Return QP Partners LP	$92,061.09	May 27, 2009

Exhibit 4: Payment(s) in the Preference Period

UMC Benefit Board, Inc. on behalf of Oaktree – General Board of Pension & Health Benefit of the UN Methodist Church Inc.	$7,106.80	May 27, 2009
Virtus Multi Sector Fixed Income Fund	$4,655.23	May 27, 2009
Virtus Multisector Short Term Bond Fund	$32,274.05	May 27, 2009
Virtus Senior Floating Rate Fund	$2,072.97	May 27, 2009
Vitesse CLO Ltd.	$72,019.64	May 27, 2009
Vulcan Ventures Inc.	$4,766.55	May 27, 2009
WAMCO 176 – Virginia Supplemental Retirement System	$38,036.07	May 27, 2009
WAMCO 3023 – Virginia Retirement Systems Bank Loan Portfolio	$128,564.62	May 27, 2009
WAMCO 3073 – John Hancock Trust Floating Rate Income Trust	$117,692.14	May 27, 2009
WAMCO 3074 – John Hancock Fund II–Floating Rate Income Fund	$98,528.93	May 27, 2009
WAMCO – 3131 – Raytheon Master Pension Master Trust	$42,898.91	May 27, 2009
WAMCO Mt Wilson CLO Ltd.	$37,655.71	May 27, 2009
WAMCO Mt Wilson CLO Ltd.	$18,922.47	May 27, 2009
WAMCO Western Asset Floating Rate High Income Fund LLC	$341,743.65	May 27, 2009
Wells – 13702900	$24,728.40	May 27, 2009
Wells – 14945000	$8,103.13	May 27, 2009
Wells & Company Master Pension Trust: DBA Wells Capital Management – 12222133	$29,027.90	May 27, 2009
Wells Cap Mgmt – 13923601	$20,936.75	May 27, 2009
Wells Capital Management 16017000	$8,083.92	May 27, 2009
Wells Capital Management 16959700	$76,216.70	May 27, 2009
Wells Capital Management 16959701	$73,356.77	May 27, 2009
Wells Capital Management 18866500	$6,649.15	May 27, 2009
Wells Fargo Advantage Income Opportunities Fund formerly known as Evergreen Income Advantage Fund	$99,831.83	May 27, 2009
Wells Fargo Advantage Income Fund: Income Plus Fund as successor to Evergreen Core Plus Bond Fund	$1,886.05	May 27, 2009
Wells Fargo Advantage Multi-Sector Income Fund formerly known as Evergreen Multi Sector Income Fund	$47,970.55	May 27, 2009
Wells Fargo Advantage Utilities & High Income Fund formerly known as Evergreen Utilities & High Income Fund	$7,039.70	May 27, 2009
Wells – Los Angeles Dept. of Water & Power Employees Retire Disability	$15,691.18	May 27, 2009
West Bend Mutual Insurance Company	$18,004.91	May 27, 2009
Wexford Catalyst Investors	$64,350.23	May 27, 2009
Wexford Spectrum Investors LLC	$180,038.79	May 27, 2009

Exhibit D

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11 Case
MOTORS LIQUIDATION COMPANY, *et al.*,	:	Case No. 09-50026 (REG)
Debtors.	:	(Jointly Administered)
OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF MOTORS LIQUIDATION COMPANY f/k/a GENERAL MOTORS CORPORATION,	:	Adversary Proceeding
	:	Case No. 09-00504 (REG)
Plaintiff,	:	
vs.	:	
JPMORGAN CHASE BANK, N.A., individually and as Administrative Agent for Various lenders party to the Term Loan Agreement described herein, *et al.*,	:	
Defendants.	:	

STIPULATED SCHEDULING ORDER

Pursuant to Fed. R. Civ. P. 26 and Fed.R.Bankr.P. 7026, Plaintiff the Official Committee of Unsecured Creditors of Motors Liquidation Company f/k/a General Motors Corporation (the "Committee") and Defendant JPMorgan Chase Bank, N.A. ("JPMCB") have conferred with respect to each of the items listed below. As a result of these discussions, the Committee and JPMCB, through their undersigned counsel, hereby stipulate to and submit the following Stipulated Scheduling Order ("Scheduling Order") for the Court's approval.

IT IS HEREBY ORDERED as follows:

1. Service of Complaint: JPMCB has accepted service of the complaint dated July 31, 2009 (the "Complaint"). The Committee shall have 240 days to complete service on the other defendants, without prejudice to seek an additional extension of time to serve the summons and Complaint upon other defendants, if necessary.

2. Response to Complaint: JPMCB shall serve its response to the Complaint on or before October 7, 2009.

3. Deadline for Initial Disclosures: The Committee and JPMCB shall serve initial disclosures pursuant to Fed.R.Civ.P. 26(a)(1) and Fed.R.Bankr.P. 7026(a)(1) on or before October 7, 2009.

4. Service of Subpoenas: The Committee and JPMCB shall be authorized to serve subpoenas for documents and/or depositions on non-parties and not defendants on or after October 7, 2009.

5. Written Discovery Requests: The Committee and JPMCB shall be authorized to serve discovery requests upon each other on or after October 15, 2009. Written responses to the discovery requests and responsive documents shall be provided thirty (30) days after the service of the discovery requests.

6. Depositions: The Committee and JPMCB shall use their best effort to complete depositions on or before December 31, 2009.

7. Dispositive Motions: The Committee and/or JPMCB shall make dispositive motion(s) on or before February 1, 2010. Oppositions to any dispositive motions made by the Committee and/or JPMCB shall be filed on or before March 1, 2010. Replies to any dispositive motions made by the Committee and/or JPMCB shall be filed on or before March 17, 2010.

8. Confidentiality: If necessary, the Committee and JPMCB will agree upon the terms of a Confidentiality Stipulation and Order with respect to discovery produced in this case and thereafter jointly request that said Confidentiality Stipulation and Order be signed by the Court.

9. Privilege: Inadvertent disclosure of any document which the producing party deems to be protected by the attorney-client privilege or as attorney work product shall not act as a waiver of the applicable privilege and may be recalled by the producing party upon notice to the receiving party. Upon receipt of such notice, the receiving party shall, at the option and direction of the producing party, promptly return or destroy the document(s) in question.

10. No Duplicative Discovery: No party, which is subsequently served with the summons and the Complaint and wishes to participate in discovery, will be permitted to duplicate previous deposition questioning and/or discovery requests.

11. Modification: This schedule may be modified only by order of this Court for good cause shown.

STIPULATED AND AGREED:

Dated: New York, New York
October 6, 2009

BUTZEL LONG

By: */s/ Eric B. Fisher*

Eric B. Fisher (EF 1209)

380 Madison Avenue, 22nd Floor
New York, New York 10017
(212) 818-1110

Attorneys for Defendant
Official Committee of Unsecured Creditors of Motors Liquidation Company f/k/a General Motors Corporation

Dated: New York, New York
October 6, 2009

KELLEY DRYE & WARREN LLP

By: */s/ John M. Callagy*

John M. Callagy (JC 8166)
Nicholas J. Panarella (NP 2890)
Martin A. Krolewski (MK 3352)

101 Park Avenue
New York, New York 10178
(212) 808-7800

Attorneys for Defendant
JPMorgan Chase Bank, N.A.

SO ORDERED:

s/ Robert E. Gerber 10/6/2009
UNITED STATES BANKRUPTCY JUDGE

Exhibit E

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11 Case
MOTORS LIQUIDATION COMPANY, *et al.*,	Case No. 09-50026 (REG)
Debtors.	(Jointly Administered)
OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF MOTORS LIQUIDATION COMPANY f/k/a GENERAL MOTORS CORPORATION,	Adversary Proceeding
Plaintiff,	Case No. 09-00504 (REG)
vs.	
JPMORGAN CHASE BANK, N.A., *et al.*,	
Defendants.	

JOINT STIPULATION REQUESTING MODIFICATION OF STIPULATED SCHEDULING ORDER

Plaintiff the Official Committee of Unsecured Creditors of Motors Liquidation Company f/k/a General Motors Corporation (the "Committee") and Defendant JPMorgan Chase Bank, N.A. ("JPMCB"), by and through their undersigned attorneys, hereby stipulate and jointly request the following modifications to the Stipulated Scheduling Order entered by this Court on October 6, 2009 (the "Order"):

WHEREAS, pursuant to the Court's Order, since October 2009, the Committee and JPMCB have diligently engaged in discovery, including but not limited to the production of thousands of pages of documents;

WHEREAS, the Committee and JPMCB have agreed and scheduled multiple depositions and expect to complete all depositions in February 2010;

WHEREAS, the Committee and JPMCB have conferred and agreed to jointly request that the current deadline for making a dispositive motion be extended;

NOW, therefore, the parties stipulate and agree as follows:

1. The deadline for the Committee and/or JPMCB to make a dispositive motion be extended from February 1, 2010 to March 15, 2010;

2. The deadline for filing opposition to any dispositive motion made by the Committee and/or JPMCB be extended from March 1, 2010 to April 15, 2010;

3 The deadline for filing replies to any dispositive motion made by the Committee and/or JPMCB be extended from March 17, 2010 to April 30, 2010;

4. The Committee shall have until thirty (30) days after the date of entry of the Court's decision on any dispositive motion made under this modified Stipulated Scheduling Order to serve the summons and complaint upon other defendants; and

5. All other provisions of the Order are unchanged.

STIPULATED AND AGREED:

Dated: New York, New York
January 19, 2010

BUTZEL LONG

By: */s/ Eric B. Fisher*

Barry N. Seidel
Eric B. Fisher

380 Madison Avenue, 22nd Floor
New York, New York 10017
(212) 818-1110

Attorneys for Defendant
Official Committee of Unsecured Creditors of Motors Liquidation Company f/k/a General Motors Corporation

Dated: New York, New York
January 19, 2010

KELLEY DRYE & WARREN LLP

By: */s/ John M. Callagy*

John M. Callagy (JC 8166)
Nicholas J. Panarella (NP 2890)
Martin A. Krolewski (MK 3352)

101 Park Avenue
New York, New York 10178
(212) 808-7800

Attorneys for Defendant
JPMorgan Chase Bank, N.A.

SO ORDERED:

s/ Robert E. Gerber 1/20/2009
UNITED STATES BANKRUPTCY JUDGE

Exhibit F

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

In re:

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

Debtors.

Chapter 11

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

----------x

OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF MOTORS LIQUIDATION COMPANY,

Plaintiff,

against

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

Defendants.

Adversary Proceeding

Case No. 09-00504 (REG)

----------x

ORDER FURTHER EXTENDING TIME
TO SERVE SUMMONS AND COMPLAINT

WHEREAS, the Official Committee of Unsecured Creditors of Motors Liquidation Company f/k/a General Motors Corporation ("**Plaintiff**") commenced the above-captioned adversary proceeding on July 31, 2009 by filing a complaint ("**Complaint**") against JPMorgan Chase Bank, N.A. ("**JPMorgan**") and certain other defendants ("**Other Defendants**");

WHEREAS, the Clerk of the Court subsequently issued a summons ("**Summons**");

WHEREAS, the Summons and Complaint was timely served upon JPMorgan;

WHEREAS, the Court, for good cause, has previously entered orders extending Plaintiff's time to serve the Summons and Complaint upon the Other Defendants [Docket Nos. 10 and 17];

WHEREAS, on January 20, 2010, the Court entered a modified order that extended Plaintiff's time to serve the Summons and Complaint on the Other Defendants until thirty (30) days after the date of entry of the Court's decision on any dispositive motion [Docket No. 17];

WHEREAS, Plaintiff and JPMorgan subsequently filed cross-motions for summary judgment ("**Cross-Motions for Summary Judgment**");

WHEREAS, on March 1, 2013, the Court entered the *Decision on Cross Motions for Summary Judgment* [Docket No.71], and issued a *Judgment* [Docket No. 73] and *Order on Cross Motions for Summary Judgment* [Docket No. 72], from which Plaintiff has filed a *Notice of Appeal* [Docket No. 76]; and

WHEREAS, it appearing to the Court that, among other things, the avoidance of substantial expenses by the Plaintiff which ultimately may not have to be incurred constitutes good cause for further extending Plaintiff's time to serve the Summons and Complaint until after the entry of a final, non-appealable order resolving the Cross-Motions for Summary Judgment ("**Final Order**"); it is hereby

ORDERED that, pursuant to Bankruptcy Rule 9006(b), the time by which Plaintiff shall serve the Summons and Complaint upon the Other Defendants is extended to thirty (30) days after the date of entry of a Final Order, without prejudice to the right of Plaintiff to seek additional extensions thereof.

Dated: New York, New York
April ***10,*** 2013

s/ Robert E. Gerber
UNITED STATES BANKRUPTCY JUDGE

Exhibit G

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: MOTORS LIQUIDATION COMPANY, *et al.*, Debtors.	Chapter 11 Case Case No. 09-50026 (REG) (Jointly Administered)
OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF MOTORS LIQUIDATION COMPANY f/k/a GENERAL MOTORS CORPORATION, Plaintiff, vs. JPMORGAN CHASE BANK, N.A., individually and as Administrative Agent for Various lenders party to the Term Loan Agreement described herein, *et al.*, Defendants.	Adversary Proceeding Case No. 09-00504 (REG)

STIPULATION AND ORDER

The Motors Liquidation Company Avoidance Action Trust ("AAT") and JPMorgan Chase Bank, N.A. ("JPMCB") have conferred with respect to each of the items listed below. As a result of these discussions, the AAT and JPMCB, through their undersigned counsel, hereby stipulate to the following and submit this stipulation for the Court's approval.

IT IS HEREBY STIPULATED as follows:

1. Amendment of Complaint: Within five business days after this stipulation is "so ordered" by this Court, the AAT will file an amended complaint in this Action that, among other things, substitutes the AAT as the named plaintiff in the above-captioned action for the Official

Committee of Unsecured Creditors of Motors Liquidation Company f/k/a General Motors Corporation (the "Committee"). JPMCB consents to the filing of the amended complaint in substantially the form transmitted to JPMCB on May 14, 2015, and the AAT agrees that its amendment of the complaint, including its substitution as plaintiff, does not in any way limit JPMCB's rights and defenses under the Final DIP Order entered June 25, 2009 [No. 09-50026 (REG), Dkt. No. 2529], or in any way expand or alter the meaning of Reserved Claims as that defined term is used in the Final DIP Order. Exhibits 3 and 4 to the amended complaint shall be filed under seal without prejudice to any party's right to seek to have those exhibits unsealed after expiration of the period specified in paragraph 2 below.

2. Time for Service: The AAT's deadline to serve the amended complaint on defendants other than JPMCB is extended to 60 days following the filing of the amended complaint.

3. Time to Answer: The deadlines for answers or other responses to the amended complaint shall be determined in a schedule to be submitted to the Court following service of the amended complaint, as set out in paragraph 5 of this Stipulation. The deadline for any defendant, including JPMCB, to answer or otherwise respond to the amended complaint shall be stayed until such a schedule is ordered.

4. Document Discovery: After the filing of the amended complaint, the parties are authorized to serve document requests upon each other and serve subpoenas for documents on non-parties. The AAT and JPMCB agree that such document requests and subpoenas are without prejudice to the other defendants' rights to participate in document discovery, and that the other defendants shall have a full opportunity to take discovery once they are served with the amended complaint, subject to the rights of any party to apply to this Court for entry of an order

to put procedures in place to streamline or expedite discovery. Written responses to any document requests between and among the parties shall be provided thirty (30) days after service of the document requests.

5. Other Discovery: All other discovery in this matter, including depositions, is stayed pending a meet and confer between the AAT and defendants to be held after the time for service set forth in Paragraph 2 hereto has expired. Following that meet and confer, the parties will request a scheduling conference with the Court and propose a schedule for discovery in this matter and raise any other issues that the parties believe the Court should address.

STIPULATED AND AGREED:

Dated: New York, New York
May 18, 2015

By: */s/ Eric B. Fisher*

DICKSTEIN SHAPIRO LLP

Eric B. Fisher
Barry Seidel
1633 Broadway
New York, NY 10019
Tel: (212) 277-6500

Attorneys for Motors Liquidation Company Avoidance Action Trust

Dated: New York, New York
May 18, 2015

By: */s/ Harold S. Novikoff*

WACHTELL, LIPTON, ROSEN & KATZ

Harold S. Novikoff
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KELLEY DRYE & WARREN LLP

John M. Callagy
Nicholas J. Panarella
Martin A. Krolewski
101 Park Avenue
New York, NY 10178
(212) 808-7800

Attorneys for JPMorgan Chase Bank, N.A.

SO ORDERED:

Dated: New York, New York
May 19, 2015

s/ Robert E. Gerber
Honorable Robert E. Gerber
United States Bankruptcy Judge

Exhibit H

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

In re:

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

Debtors.

Chapter 11

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

----------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.

Adversary Proceeding

Case No. 09-00504 (REG)

----------x

ORDER FURTHER EXTENDING TIME
TO SERVE SUMMONS AND AMENDED COMPLAINT

Upon the filing of a motion (the "**Motion**"),[1] dated July 17, 2015, by the Motors Liquidation Company Avoidance Action Trust (the "**Trust**"), by and through Wilmington Trust Company, solely in its capacity as Trust Administrator and Trustee, for an order, pursuant to Rules 7004(a) and 9006(b)(1) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), extending the time for service of a summons and the Amended Complaint in the above-captioned adversary proceeding upon the defendants (the "**Non-JPM Transferees**"), other than JPMorgan Chase Bank, N.A., located within the United States, to and including September 30, 2015; and due and proper notice of the Motion having been provided, and it appearing that no

[1] Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

other or further notice need be provided; and the Court having found and determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, that the Motion is granted in its entirety; and it is further

ORDERED that, pursuant to Rule 9006(b) of the Bankruptcy Rules, the time by which the Trust shall serve a summons and the Amended Complaint upon the Non-JPM Transferees that are located in the United States is extended to and including September 30, 2015 (the "**Service Deadline**"), without prejudice to the right of the Trust to seek additional extensions thereof; and it is further

ORDERED that, the time by which the Trust shall effectuate service of a summons and the Amended Complaint upon the Non-JPM Transferees that are located abroad in accordance with Rule 4(f) of the Federal Rules of Civil Procedure, made applicable to this adversary proceeding by Rule 7004 of the Bankruptcy Rules, is unaffected by the Service Deadline; and it is further

ORDERED that entry of this Order shall not affect or impair (i) any defense based upon the passage of time, including without limitation the statute of limitations, estoppel or laches; or (ii) any defendant's right to move to set aside or otherwise challenge any prior order of this Court extending the time for service of the summons, complaint or amended complaint; and it is further

ORDERED that, the Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: New York, New York
August 13, 2015

s/ Robert E. Gerber
Honorable Robert E. Gerber
United States Bankruptcy Judge

Exhibit I

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 1-09-50026-reg

Adversary Case No. 09-00504-reg

- -x

In the Matter of:

GENERAL MOTORS CORPORATION,

Debtor.

- -x

OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF GENERAL MOTORS CORPORATION,

Plaintiff,

-against-

JPMORGAN CHASE BANK, N.A. individually and as Administrative Agent for various lenders party to the Term Loan Agreement described herein, ABN AMRO Bank N.V. et al.,

Defendants.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

October 6, 2009, 9:55 AM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

HEARING re Chamber Conference (1) Fee Examiner; (2) Case Management Order.

HEARING re Chamber Conference re: Evercore.

HEARING re Application for an Order Pursuant to Section 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rule 2014(a) Authorizing the Employment and Retention of Evercore Group L.L.C. As Investment Banker and Financial Advisor for the Debtors Nunc Pro Tunc to the Petition Date.

HEARING re Motion to Strike Ad Hoc Committee of Asbestos Personal Injury Claimants' Objection to Motion to Extend Stay to Certain Litigation filed by N. Kathleen Strickland on Behalf Remy International, Inc.

HEARING re Motion to Extend Automatic Stay re: Remy International, Inc.

HEARING re Debtors' Third Omnibus Motion Pursuant to 11 U.S.C. Section 365 to Reject Certain Unexpired Leases for Nonresidential Real Property.

HEARING re Debtors' Seventh Omnibus Motion Pursuant to 11 U.S.C. Section 365 to Reject Certain Executory Contracts.

HEARING re Motion of Debtors for Entry of Order Pursuant to 11 U.S.C. Section 105(a) and Fed. R. Bankr. P. 3007 and 9019(b) Authorizing the Debtors to (I) File Omnibus Claims Objections and (II) Establish Procedures for Settling Certain Claims.

HEARING re Motion to Extend Automatic Stay on Behalf of Detroit Diesel Corporation to Cover Certain Litigation.

HEARING re Motion to Dismiss Party Detroit Diesel Corporation (related document(s) 3960) Filed by Gerolyn P. Roussel on Behalf of Jeanette Garnett Pichon.

HEARING re Adversary Proceeding Official Committee of Unsecured Creditors vs. JPMorgan Chase Bank N.A. Pretrial Conference.

Transcribed by: Pnina Eilberg

A P P E A R A N C E S :

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Attorneys for Official Committee of Unsecured Creditors
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BY: ADAM ROGOFF, ESQ.

UNITED STATES DEPARTMENT OF JUSTICE
Attorneys for Office of the United States Attorney
86 Chambers Street
New York, NY 10007

BY: MATTHEW L. SCHWARTZ, AUSA

ROUSSEL & CLEMENT

Attorneys for Janette Garnett Pichot, et al.

1714 Cannes Drive

La Place, LA 70068

BY: PERRY J. ROUSSEL, JR., ESQ.

(TELEPHONICALLY)

ALSO PRESENT TELEPHONICALLY:

RICK GASHLER, Interested Party; Sandell Asset Management

JENNIFER H. SCHILLING, Interested Party;

Capital Management

P R O C E E D I N G S

THE COURT: All right. GM, I'll start with the matters that GM has where it's the movant. Then I will take the status conference on the creditors' committee's adversary against JPMorgan Chase and then I'll take the two motions by the nondebtors vis-a-vis the extension of the stay. Go ahead, please.

MR. LEDERMAN: Good morning, Your Honor. Evan Lederman, Weil, Gotshal & Manges for the debtors.

THE COURT: Good morning, Mr. Lederman.

MR. LEDERMAN: Good morning, Your Honor.

We have three uncontested matters that are on for today. I'm happy to walk the Court through them or if you'd like --

THE COURT: I'll tell you the truth, Mr. Lederman, since there were no objections under my case management order, I hate to make your trip down here so meaningless but I'm of a view to just approve them all.

MR. LEDERMAN: That's certainly fine with us, Your Honor.

THE COURT: Okay. They're approved.

MR. LEDERMAN: Thank you, Your Honor.

THE COURT: Okay. We're now up to the adversary proceeding against JPMorgan Chase?

(Pause)

THE COURT: All right. Let me just get to know you guys. Tell me about your game plan for litigating this thing.

MR. FISHER: Good morning, Your Honor. Eric Fisher from Butzel Long, special counsel to the creditors' committee.

As Your Honor is aware, this is an avoidance action against JPMorgan and hundreds of other financial institution defendants seeking to avoid significant amounts, in excess of 1.5 billion dollars, that was paid out postpetition.

Our game plan, Your Honor, for litigation the case is we've conferred extensively with counsel for JPMorgan and we have a plan to litigate this case quickly and without the involvement of the hundreds of other defendants aside from JPMorgan. JPMorgan served as administrative agent on the loan that's really at issue here, the term loan. And the other defendants are defendants to the extent that they received payments under the loan. But neither side believes that those hundreds of other defendants have meaningful discovery.

And so what we would propose to Your Honor today, and we're prepared to hand up an agreed to scheduling order, is that the creditors' committee's time to serve the summons and complaint be extended out in total to 240 days. And that JPMorgan and the creditors' committee have proposed -- will propose a schedule that allows us to essentially litigate this case from beginning through dispositive motions during that period of time and have dispositive motions briefed to Your

Honor by March 2010.

THE COURT: Uh-huh. I may want to hear more from you, Mr. Fisher. But I'd like to hear from counsel for JPMorgan chase.

MR. CALLAGY: Good morning, Your Honor. John Callagy from Kelley Drye & Warren representing JPMorgan Chase both individually and as administrative agent, we were sued in both capacities.

THE COURT: Your client has some of its own money still in the facility?

MR. CALLAGY: Correct. Well actually the money has been paid, as Your Honor knows. The money has been paid out of the -- from the --

THE COURT: Okay. But it had a piece of the action --

MR. CALLAGY: Yes.

THE COURT: -- in the underlying indebtedness.

MR. CALLAGY: Yes.

THE COURT: It wasn't all, hundred percent, syndicated out.

MR. CALLGY: Correct. So as Mr. Fisher stated, we've been trying to wrestle with the idea of how do we get this thing resolved without bringing in 300 other investors, members of the syndicate. And it seems, even though JPMorgan is of the position -- and we have provided evidence to the creditor's counsel that there was no authority for the inadvertent filing

of the original UCC 3 which was actually filed on the wrong loan at the time it was filed on the wrong loan at the time it was originally filed.

Not being satisfied with that, we have offered to make certain discovery available to them to try to satisfy the creditors' committee that in fact there was no authority for the filing of the UCC 3 on what we refer to as the term loan as opposed to the other loan with a synthetic lease transaction which was properly terminated back in 2006. When the UCC 3 was filed terminating that loan and the UCC 3 was filed terminating the so-called term loan or the collateral on the term loan, the perfected nature of the term loan.

THE COURT: Uh-huh. All right. Here's what I want you to do, folks. I want you to prepare a stip or consent order that lays out what you're going to do. If it's along the lines of what you described to me I'm not going to give you a problem with approving it. I wanted to deal with the participation of the non-Chase parties. What you folks are going to do, how you're going to structure the discovery and your recommendations for teeing up motions.

I do want to do a stop, look and listen as to whether I think summary judgment's going to, which is what I assume you mean by dispositive motions, is going to be productive or not. I'm not saying that I would forbid people from doing summary judgment motions but history has taught me that sometimes a

reality check is constructive.

Is there anybody, other than the two of you, who wants to be heard on this adversary proceeding before I go further?

(No audible response)

THE COURT: I don't see anybody. Okay. Any problem with doing that, Mr. Callagy?

MR. CALLAGY: Your Honor, we actually have prepared, jointly, a stipulated scheduling order. And I believe that it's on a disk pursuant to Your Honor's preference and it is -- we can make that available on short order.

THE COURT: All right. Mr. Fisher, you've reviewed it and you're on board on that as well?

MR. CALLAGY: Yes, we agree with it and we're prepared to hand it up right now.

THE COURT: Well handing it up right now isn't going to accomplish much. But if you take it across the hall to my courtroom deputy and tell her to put it in the pile for stuff for me to see when I can get to it, I'll review it. And if it's the way you described it, I'll approve it.

MR. CALLAGY: Can I have a little more guidance, Your Honor, in terms of stop, look and listen in terms of how and what form would you like us to provide that advice to the Court?

THE COURT: Well I've got to tell you the truth, Mr. Callagy. I triage my matters and I deal with the most urgent

ones and that's both in terms of preparing for hearings and deciding disputes. I'm not up to speed on the underlying issues in this adversary to the same extent I would be if you actually had a motion before me rather than a status conference. And unless I'm missing something, this is the first status conference we've had in this adversary proceeding.

MR. CALLAGY: Yes.

THE COURT: What I normally do, and I see no reason why this would be an exception, is I find out what somebody wants to raise in the way of a dispositive motion and the theory under which he or she or it thinks it should be granted. And I don't look for a mini-briefing or mini-trial but I just try to get the lay of the land and understanding of what is the subject of the motion. Then I have, typically, a conference call, if people are in town sometimes in person. I tell you my views as to whether I would prefer to take a summary judgment motion or whether I just prefer that you give me your direct testimony affidavits and we try it.

MR. CALLAGY: Okay. Thank you. We will do that at the appropriate time, Your Honor. Thank you.

THE COURT: Okay. Have a good day, folks.

MR. FISHER: Thank you, Your Honor.

THE COURT: All right. Now, do I have anything on the calendar other than the Detroit Diesel and Remy motions to extend the stay?

(No audible response)

THE COURT: All right. Are the movants here on that?

UNIDENTIFIED ATTORNEY: Yes, Your Honor.

THE COURT: Come on up, please. I'll hear first from Detroit Diesel. Actually, no I want the movants on both to come up and I also want you to come up, Mr. Esserman.

MR. CONWAY: Good morning, Your Honor. Michael Conway of LeClair Ryan representing Detroit Diesel Corporation.

THE COURT: All right, Mr. Conway.

MR. CONWAY: Your Honor --

THE COURT: No, I'll take introductions and then I have preliminary remarks. I don't want to hear argument yet.

MR. HEINEMAN: Good morning, Your Honor. Geoffrey Heineman from Ropers Majeski Kohn and Bentley for Remy International.

THE COURT: All right.

MR. ESSERMAN: Good morning, Your Honor. Sander L. Esserman for the ad hoc committee.

THE COURT: All right. Gentlemen, the motion to strike the -- yes?

MR. DEATON: Good morning, Your Honor. John Deaton, I was admitted pro hac vice for four Rhode Island cases that are affected by this.

THE COURT: Your last name again?

MR. DEATON: D-E-A-T-O-N, John Deaton.

THE COURT: All right. Gentlemen, the motion to strike the asbestos committee's response on the ground that it was filed thirty-six minutes late is denied. And I don't know how people practice where you came from, but I'm not going to speak at length on what I think of that motion, we're going to deal with the merits.

Now, when it's time for Detroit Diesel and Remy to speak I want you to brief me on the extent, if any, to which a 362 extension motion has ever been granted when the debtor didn't ask for it and when the third party, which was seeking to extend it, was professing to speak what was good for the estate and the debtor and the creditors' committee didn't share its view and didn't join in that kind of a motion.

I also want you to address the prejudice, to me, of an incremental unsecured claim effecting the debtor's ability to reorganize or creating material distraction to a management operating its company and the extent to which impairing the ability of tort litigants to go against a nondebtor is consistent with the public interest. I'll start with you, Mr. Conway.

MR. CONWAY: Thank you, Your Honor. I'll start with your first inquiry with respect to a matter that's been raised of this nature by a nondebtor where the creditors' committee and the debtor did not join. Frankly, I'm not aware of any case like that. I'm also not aware of any case which was

denied -- any motion was denied for those reasons. And I will go so far as to say, Your Honor, that this motion was vetted with the debtor before it was made and there is no concerns raised to me from the debtor. I have no reason to believe that the debtor has an issue with this and I suspect the debtor has to realize that it's in the best interest -- in their best interest not to have the distraction during this case of having Detroit Diesel make claims for defense fees every time they're incurred. We're talking about --

THE COURT: Well, it's a prepetition -- the indemnification obligation, assuming it exists, is a prepetition debt, right?

MR. CONWAY: Your Honor, the prepetition obligation does exist. We have cases that relate to GM and because of GM Detroit Diesel that get filed on a regular basis. Last year there were 150, this year there are sixty-five. I suspect next year there'll be new cases we haven't heard of. And I believe the law is that a claim for indemnification that arises prepetition based on a third party tort allegation gives rise to a postpetition claim.

THE COURT: In anywhere other than the Third Circuit?

MR. CONWAY: Well, Your Honor, no. Most of these asbestos claims seem to end up in the Third Circuit. No, I can't give you --

THE COURT: Because the Third Circuit law in that area

is an aberration, right?

MR. CONWAY: I don't like to think of it that way, Your Honor, since I'm arguing the same position.

THE COURT: Go on.

MR. CONWAY: Your Honor, the -- I think the crux of your various questions was what is the harm to or what is the impact on the GM bankruptcy. Obviously the GM bankruptcy is not indicative of every bankruptcy we've ever seen; it's a little bit larger.

It's difficult for any of us who are not in the day-to-day trenches administering this bankruptcy to know how different it is from others. But if we focus on this not strictly as one of the largest bankruptcies in the history of this country but rather as if it were any other bankruptcy, there's no doubt that having hundreds of claims for indemnification filed on a regular basis and having to do a valuation hearing as to what the possible indemnification claims would be going forward for those cases that haven't been filed yet would be a tremendous burden to the estate. Whether that's material, in light of the billions of dollars at stake, in the GM bankruptcy is another question. But Detroit Diesel Corporation, which was not in existence when any of these claims were -- came to light, should not be held responsible for the fact that it happened to be related to a debtor that's larger than others.

The fact of the matter is, Your Honor, none of these cases relate to claims made after Detroit Diesel came into existence. They all relate to claims from the '60s, the 70s, before Detroit Diesel was ever even considered by GM. I think GM created Detroit Diesel in 1988 in a joint venture with the Penske Corporation. And these -- this concept that these plaintiffs are using to threaten liability here isn't that there's a -- that Detroit Diesel's a joint tortfeaser. It's that Detroit Diesel somehow has successor liability of GM.

GM didn't go out of business in 1988 and none of these assets are related to a wholesale sale of assets of a business. They were specific assets sold to a newly formed corporation. Any claims that could have been made based on problems with asbestos that GM had in the '60s and the '70s relate to GM. That's why GM entered into an agreement that said any costs you incur we'll pick up. Any liability you incur from a judgment we'll pick up.

They had an insurance policy specifically related to these claims, which will be attacked by Detroit Diesel Corporation if there's an unpaid judgment for indemnification or an unpaid claim for indemnification. And what we've got here is an opportunity for these plaintiffs who would otherwise, if these were just strictly claims against GM and they would be standing in the shoes of every other unsecured creditor of GM, it's an opportunity for them to say okay we'll

get a hundred cents on the dollar from Detroit Diesel. Detroit Diesel will then be responsible for going to GM and getting their share of the unsecured creditor's claim. And then going to the insurance carriers who, under both Michigan and New York law, would have to pay a hundred cents on the dollar from those policies that exist to protect GM and are property of the GM estate.

So now what they've done is they've -- one shifted the burden to Detroit Diesel to get paid in full but they've also stepped in front of all those creditors of GM that aren't going to get paid in full. It's simply an end to run around the Bankruptcy Code. It's not a situation here where we have joint tortfeasers the way you have in most cases where there's a request to extend the stay.

You've got debtors that request an extension of the stay to protect their officers and directors. When the officers and directors are clearly joint tortfeasers those motions are granted typically because of the necessity at the outset of a bankruptcy case. They're usually not stays that last throughout the case but the fact of the matter is that's not what A.H. Robbins was contemplating, it's what its become. H. Robbins contemplated what we have here, where you've got an entity which is being sued not because it's a joint tortfeaser but because it was once somehow a part of the debtor who was the tortfeaser.

There's no case that's been cited in any of the briefs that comes close to being an A.H. Robbins case as ours. Our case, unfortunately, is raised in a bankruptcy where it's hard to argue that the millions of dollars at stake, if not hundreds of millions of dollars at stake, are material. Because the GM case has billions of dollars at stake.

But again, as I pointed out Your Honor, I don't think that Detroit Diesel should be penalized because GM's a big case. I think the same principles should apply whether this was a hundred million dollar bankruptcy or a hundred billion dollar bankruptcy.

Now there's been some attack on this theory that Detroit Diesel will be entitled to make a claim against the insurance policies. Well as I point out, Your Honor, there's no question under the bankruptcy law that these policies are property of the estate. But there's also no question --

THE COURT: Don't bankruptcy courts traditionally make a distinction between entitlement to the policies being property of the estate and their proceeds being property of the estate? And aren't we really talking about access to the proceeds in contrast to the policy itself?

MR. CONWAY: Well at the end of the day, Your Honor, nobody cares about the policies; they only care about the proceeds. But I think that's true in every case. I think that --

THE COURT: Yeah. But when does the debtor get the proceeds of a liability policy?

MR. CONWAY: The debtor --

THE COURT: The debtor doesn't turn the proceeds of a liability policy and turn it into a distributable sum for the benefit of its creditors. It uses it to satisfy obligations that it owes to the plaintiffs of America.

MR. CONWAY: Well Your Honor, I think that in this case you're going to find that a number of the creditors out there are going to be creditors with claims that fall under these policies. If those creditors receive a recovery, whether it be ten cents on the dollar or one cent on the dollar, that's a claim that the GM estate has against that insurance policy for reimbursement so that they can then increase the pool for the creditors.

There's no reason why the pool that GM has established for its unsecured creditors should be diminished if there's an insurance policy in effect. The insurance policy proceeds aren't, somehow, cut away from the bankruptcy estate here. They are going to be available -- if there are claims made they're going to be made available to GM if there are claims made against GM that qualify under the policy.

Now I agree with you that Detroit Diesel is interested in the proceeds of the policy but so is GM. And the fact of the matter is, Your Honor, if the debtor was concerned about

having some negative impact of extending the stay, I imagine they probably would have put in papers objecting to the extension of the stay. The fact that they didn't, I think --

THE COURT: Well, could there be a middle course, that the debtor doesn't care? That it doesn't regard -- the effect on the estate is material enough to waste the 5,000 dollars applying something that might cost it?

MR. CONWAY: Your Honor, that's exactly why we're here making the motion and the debtor isn't. Because from the debtor's point of view this case is very complicated. There's an administration that involves issues that prevent it from really focusing on the problems of Detroit Diesel Corporation, of Remy. They don't have the time to do this, but we do. Maybe if they had another couple of years to focus on this they'd get around to it. But the fact is, they don't have the time we do, that's why we're making the motion. And frankly, Your Honor, if the debtor didn't care then -- well Your Honor, that's entire possible, they don't care. But it seems unlikely that they wouldn't take some position either for or against the motion. What they don't care about is incurring the expense of either supporting or objecting to the motion given the fact that there's no harm to the estate. And in fact it's pretty clear from the papers there's a benefit to the estate, however material. There's a benefit to the estate so why should they put in those few dollars, if you want to call it, 5,000 dollars

or whatever. It's something that they're leaving to Detroit Diesel's counsel and Detroit Diesel's pocketbook. And there's nothing wrong with that. There's nothing about that that should imply that it's not acceptable under the code to do it this way. There's nothing -- there's no case that says this is how you do it, if the debtor doesn't bring the motion, relief denied. There's no statute that says if the debtor doesn't do it, relief denied.

What we have here is a situation where, again, we've got a case that's larger than most where the debtor's counsel probably just don't have the time to give it as much consideration as counsel for Detroit Diesel.

I'd like to think I answered your questions, Your Honor, but if I didn't --

THE COURT: Okay. Anything else?

MR. CONWAY: No, Your Honor. I believe the papers answer every other question that might be asked.

THE COURT: Very well. Mr. Heineman?

MR. HEINEMAN: Good morning, Your Honor. Geoffrey Heineman from Ropers Majeski Kohn & Bentley for Remy International.

I don't really have much more to add that my cocounsel hasn't already made. I just want to address, just one or two points, one of which is just to make sure there's an understanding Remy was -- Remy, in 1994, purchased the assets

of the Delco Remy division. All of the litigations, the five litigations that we're involved in all relate to alleged exposure to asbestos prior to 1994. So that all arises out of GM products and GM premises and that's why we believe the expansion of the stay is appropriate. I would note that we did notice the plaintiffs in all five of those actions, none of those plaintiffs have opposed the motion. In addition, none of the members of the ad hoc committee are plaintiffs in any of the cases that Remy is a defendant in.

With respect to the insurance issue, Your Honor, you make very valid points with respect to that. Remy, as a division -- the Remy division of General Motors pre-1994 would in fact be insured under General Motor's policies. These are all occurrence based policies, the policies that are potentially at play in these five litigations are all current space policies that were in effect when the alleged exposure happened, which could be five years, ten years, fifteen years before 1994.

To the extent Remy was a division during that time period, Remy would have been insured and therefore Remy would be entitled to make claim under those policies. Which obviously would impact the estate.

I think the rest of the points have all been made, Your Honor, and I don't want to waste the Court's time reiterating the points that my cocounsel has made.

THE COURT: Very well. Thank you. Mr. Esserman?

(Pause)

MR. ESSERMAN: Your Honor, Sandy Esserman for the ad hoc committee. I just have a couple points I'd like to raise. I think we've addressed most everything in our papers. We do think the form of these motions are inappropriate and they should be brought by adversary proceeding.

I would note that the Remy motion was filed September 16th and there was an objection by one of the claimants that are the subject of the Remy motion filed, they joined in our papers.

Further, there's been some discussion of insurance. We've asked for the insurance policies. The only thing we've heard colloquial in this court is that there's a twenty-five million dollar deductible on these insurance. So I don't know, in fact, that there is any insurance that's realistically available to any claimant. I think that came out during the sale motion. So I don't know that joint insurance is somehow an issue and I don't know that these entities are even covered by it.

Other than that, we've made all the points in our papers. Thank you.

THE COURT: Okay. Anybody else want to weigh in? Yes, sir. Come on up, please.

MR. DEATON: Thank you, Your Honor. Your Honor, John

Deaton, D-E-A-T-O-N, for four individual plaintiffs in the state of Rhode Island.

I'm not going to belabor points but I want to make a few observations. The first observation I would make, and I want to thank the Court for letting my clients be heard and my pro hac vice motion. Counsel for Detroit Diesel not only in their brief but in their oral argument makes averments and they want the court to accept those averments as evidence. There is no evidence, whatsoever, in their brief.

For example, in their oral argument they say none of these claims deal -- they deal with the '50s and the '60s and the '70s. Well I might know my cases because I'm a tort attorney, I'm not a bankruptcy attorney, a little bit better than Detroit Diesel's counsel but that's a factual issue.

The Kroskob case is a forty-four year old living mesothelioma case.

THE COURT: Forgive me, Mr. Deaton, and I know you don't appear in bankruptcy court as often as some of the other folks in the room.

MR. DEATON: Yes, sir.

THE COURT: But I need to focus on the matters of bankruptcy law and I don't think it's either necessary or appropriate for me to delve into the merits of the individual lawsuit or lawsuits that you might be prosecuting. It seems to me that that's an issue for the foreign court to decide if I

allow that lawsuit to continue.

MR. DEATON: Yes, Your Honor. The only point that I was making was that counsel in their oral argument said all of these cases predate the '94 or not even to the '90s and that's not true. The Kroskob case does go into the '90s. So I just wanted to make that factual distinction since they addressed it.

I'm not going to go into the merits or the procedure other than to say that Your Honor just raised an important issue which is the foreign state. Detroit Diesel removed the claims to Rhode Island Federal District Court, got an extension and then we're here today. If this Court does not make some type of findings of fact or conclusions of law related to the bankruptcy matter, then I would be fighting this fight in Rhode Island Federal District Court where the intent will be to put it in the NDL. And so this is the right court to hear the merits, not of the individual cases but of Detroit Diesel's claim, Your Honor. And the only thing I would --

THE COURT: Why should I be doing anything more than dealing with the bankruptcy issues? Why should I be telling an Article III district judge how to manage his docket if he's got the case before him? Or if, for that matter, he wants to remand it that would, at least, seemingly be his business. If he wants to keep it and try it himself, that would at least seemingly be his business. Or if he wants to MDL it for

pretrial purposes before he hears it, I mean that's the way 28 U.S.C. 1407 works, isn't it?

MR. DEATON: Understood, Your Honor. But Detroit Diesel gave me notice and placed my plaintiffs and their claims in peril before this Court. And with all due respect to my fine judges in Rhode Island, they don't have the bankruptcy expertise that this Court has.

And the only comment I want to make, Your Honor, is that when you read the brief by Detroit Diesel it is a pyramid of possibilities and inferences. And the only comment I'll make is that they say they may have a claim for indemnification, they may be able to recover the debtor's insurance. Should they receive a judgment then maybe a judgment in an asbestos case could be used as offensive collateral estopple against the debtor. It's possible that a subsequent suit for indemnification may follow.

And finally, Detroit Diesel might be successful in indemnification action. That's six hypothetical possibilities, Your Honor. And zero plus zero six times equals zero.

Thank you.

MR. HEINEMAN: Your Honor, if I could just add one point?

THE COURT: Yeah. I'll give you a chance to reply but I want to deal with things in an order. Is there anybody who hasn't been heard a first time before I give Mr. Heineman a

chance to be heard a second, that is who hasn't been heard a first time who wants to be heard a first time?

MR. ROUSSEL: Yes, Your Honor.

THE COURT: Wait, was somebody speaking up?

MR. ROUSSEL: Yes.

THE COURT: Is there somebody on the phone?

MR. ROUSSEL: Yes.

THE COURT: Well speak up, sir. Tell me who you are, first.

MR. ROUSSEL: This is Perry Roussel. I'm the attorney for Jeanette Pichon that filed an objection in this case. Can you hear me, Judge?

THE COURT: Not very well, Mr. Roussel, so try to speak up.

MR. ROUSSEL: I just wanted to point out, besides what my -- the other attorneys have stated objecting to this motion, is that the A.H. Robbins case filed by the debtor is completely different than what Detroit Diesel is attempting to do in this case.

I mean, in A.H. Robbins basically the -- a property of the estate was brought in and it was a debtor's estate. And also the employees of the company was covered by the state and we all know that employees of a company aren't the ones that cause the liability, a corporation can only act through its employees.

What A.H., I mean what Detroit Diesel is requesting here is more analogous to having Allstate Insurance Company filing bankruptcy and all of the persons that caused an automobile accident around the country applying for coverage in the bankruptcy stay. Which -- and all of those individuals would be independently liable for their actions and could not fall under the bankruptcy estate.

There's no basis for what Detroit Diesel is attempting to do here in bankruptcy court. And again, we would ask that that motion be denied.

I have nothing further to add except that my brief has been filed.

THE COURT: All right. Mr. Conway, anything further?

MR. CONWAY: Only a quick response to the extent necessary, Your Honor. Again, counsel for Mr. Pichon likens our case to one where there are joint tortfeasers. Nobody's alleged Detroit Diesel Corporation is a joint tortfeaser but rather successor in interest to a joint tortfeaser -- to a tortfeaser.

Similarly, Your Honor, the allegation that there's no evidence here is refuted by our papers which are full of evidence. We've got witness statements and the documents involved. And Mr. Pichon, who's on the phone, has filed in his compliant which identifies the fact that his client was involved in exposure to asbestos during 1955 to 1975, not after

1988.

Thank you, Your Honor.

THE COURT: All right. Mr. Heineman, anything further?

MR. HEINMAN: Just one or two points, Your Honor. In contrast to the issues that I've just heard with regard to Detroit Diesel, there is no dispute that Remy is entitled to absolute indemnity here. There have been nineteen cases commenced since 1994. The debtor has indemnified Remy in each and every one of those cases where defense costs as well as any losses and settlements.

Also, with respect to this motion we're only seeking a stay with respect to Remy. General Motors is a defendant in those five cases. The claims have been stayed as to General Motors. We're seeking a stay only as to Remy not to any other defendants. We're not seeking to have the case transferred to this court; we're not seeking to have the case stayed in its entirety.

Thank you, Your Honor.

THE COURT: All right. Very well. Everybody sit in place for a minute.

(Pause)

THE COURT: All right. Ladies and gentlemen, I am denying each of the motions and the following are my findings of fact and conclusions of law in connection with this

determination.

First, as facts, I find that each of the two movants is not a debtor in this case. Nor has it been suggested or is it the case that either has been deputized by the debtor with the approval of the Court to act on behalf of the estate.

I further find that each of the two movants is a defendant in one or more litigations against it, asserting liability on behalf of the movant to one or more folks who are suing or who might later sue asserting liabilities for injuries associated with exposure to asbestos. Though not strictly relevant to this determination, I emphasize that I am expressing no views and am making no findings of fact with respect to the liability, if any, by any one of the movants to any asbestos litigant.

In the case of one of the two movants, it has been alleged that the debtors have an indemnification obligation to the movant, in the other case that it may have. Ultimately, the extent to which the may turns into a does is irrelevant to my determination because even assuming for the sake of argument that the debtors do have such obligations to indemnify, their unsecured claims, at least in this district and circuit. In fact, so far as I'm aware, in every district and circuit other than the Third. And because they're prepetition claims, we're not talking about administrative expense exposure in either event. So if and to the extent any indemnification obligations

exist, they're garden variety prepetition claims.

There is also been some, but not much, showing that the debtors have insurance, although the amount of the deductible is not established. Once more, I don't need to make findings of fact on that because the briefing confused insurance policies being property of the estate with the proceeds. Insurance policies are always, or almost always, property of the estate. But whether their proceeds are property of the estate depends upon the extent to which there is any realistic expectation that the debtor would have access to the proceeds by which it could get that money in the till and use it for debtor needs and concerns.

There has been no material showing that in these -- that these policies would give rise to a pot of cash that creditors could turn into additional recoveries for themselves, I'm sure creditors wish it were otherwise but that's simply not the case.

I further find as facts that the defense of these asbestos actions would have no material affect on the debtor's reorganization or, for that matter, their liquidation. They would not -- there's been no showing that they would give rise to material distraction of management or impair management doing its job. And while I assume, without deciding, that if the indemnifications were allowed they would result in some incremental dilution of other unsecured creditors' recoveries

since it's at least foreseeable that we're going to have a pot plan here. For the benefit of the unsecured creditor community the incremental affect is not likely to have a material affect on either the estate as a whole or on any of the other creditors' recoveries.

Now as conclusions of law and bases for the exercise of my discretion I state the following. First of all, as a conclusion of law, while a motion to extend the 362 stay is, in the view of most, a contested matter and an effort to grant a supplemental injunction under 105(a) to protect against the assertion of third party claims does, as Mr. Esserman argued, require an adversary proceeding. I say this mainly, however, for the benefit of the bar going forward because there are so many reasons why the relief isn't appropriate here anyway that this observation is not, by itself, dispositive in this case.

In this instance I have to deal with two other major deficiencies, the second deficiency breaking down to three or four separate deficiencies. The first is that as we established in oral argument there is no reported case in which an injunction of the type sought here has ever been granted when sought by somebody other than the debtor, a trustee or at least the estate. I guess there's no case to the contrary either; a request of this character is unprecedented.

The normal circumstance under which either we extend the scope of the 362 stay or grant a 105(a) injunction is to

protect the estate. And when the estate needs protecting, it asks for it. And I don't know how many times cases on my watch have presented exactly this issue but it's because the debtors have asked for it. And here, at the risk of stating the obvious, we don't have that type of situation.

I don't need to say that such a request never could be granted. Perhaps it can be theorized that if a debtor sat on its hands, and didn't do its job and an injunction of this character were necessary to protect the creditors of the estate, just like we sometimes grant STN authority such a request might be considered, but this isn't such a case.

I'm confident that with counsel of the quality that we have here representing the debtors and the creditors' committee, if either of them thought relief of this type was necessary to protect the interest of the estate we would have heard about that.

Getting beyond that, we traditionally look at particular factors to grant relief of this character. To be sure, as some of the papers note, irreparable injury is not required to grant relief of this character but some injury is. There's got to be some reason for granting the relief. It may be it needn't be irreparable but you've got to show something. And here, as I found as a fact, there is no material affect upon the estate or upon its ability to reorganize or upon its ability to liquidate.

The factor of likelihood of success in reorganizing is kind of a head scratcher here because this isn't going to have an effect upon reorganization either way. So while I think it is true that the debtors are going to reorganize, or to put it differently, I think it's true that the debtors are going to be successful in taking the pot of cash they have and giving it to their creditors and then confirming a plan to make that happen, this motion has no effect on that one way or the other.

Another factor is balancing of the harms. Now here we have another head scratcher because the usual way by which we've historically looked at the balance of the harms is to look to the harm to the debtor, which is the one that's normally asking for relief of this character, and the harm to the enjoined party or to the party that's on the receiving end of the broader extension of the stay.

While there is harm to tort litigants in having a delay in the consideration of their claims, now sometimes, probably more often then we'd wish but often we've got to deal with that and it's an unfortunate consequence of the need to reorganize debtors. But here we have no material prejudice to the debtor at all. So that balancing tips dramatically in favor of not granting the injunction and simply allowing tort litigants to have their day in court.

Now why don't we extend that to the means or manner by which this request is unprecedented? It's unprecedented

because this is the first case I've seen in my forty years of -- not forty, thirty-nine, years of doing this stuff where we've ever had a nondebtor asking for this relief as contrasted to a debtor.

There is some, but not much, prejudice to the movants. They have to defend themselves in a court of law like other defendants have to do all the time. There's nothing about this that ties their hands in putting forward their defenses to the tort litigants who are suing them but they're prejudiced in the sense that they're losing the freebee of the benefit by availing themselves of the opportunity to have the Court get in the way of the litigation that they'd otherwise have to defend.

Now are they prejudiced by having to defend themselves and if it ultimately turns out that they did something for which they're liable having to pay in real one hundred cent green dollars of the United States when they recover their indemnification, if at all, in baby bankruptcy dollars? Sure. But that's no different than the prejudice that all of the other creditors of this estate have to suffer. People who have direct claims against the estate, including perhaps the asbestos victims themselves, other tort litigants, bondholders, people who slipped on the ice in front of GM's plant, everybody has to take their recoveries in little baby bankruptcy dollars. And that is not the kind of legally cognizable injury that we weigh in evaluating the balance of harms.

And lastly, there is the public interest. I'm going to say, for the second or third or fourth time, that I express no view on whether, when this case or these cases get litigated, the asbestos plaintiffs are going to win or lose. Frankly folks, that's not my business to decide. I have no ability to decide that nor should I decide that. But there is a public interest in giving them their day in court unless other factors important to the conduct of the bankruptcy case trump that goal. Here there is no such countervailing policy.

For all of the foregoing reasons the two motions are denied. Mr. Esserman, I'm going to look to you to carry the ore for the prevailing parties to settle an order in accordance with the foregoing.

MR. ESSERMAN: I will. Thank you, Your Honor.

THE COURT: All right. Am I correct that we have no other business today?

(No audible response)

THE COURT: Then we're adjourned.

MR. HEINEMAN: Thank you, sir.

MR. ESSERMAN: Thank you, Your Honor.

(Proceedings Concluded at 10:46 a.m.)

I N D E X

RULINGS

C E R T I F I C A T I O N

I, Pnina Eilberg, certify that the foregoing transcript is a true and accurate record of the proceedings.

_____

Pnina Eilberg

AAERT Certified Electronic Transcriber (CET**D-488)

Veritext LLC

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Date: October 7, 2009

Exhibit J

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Attorneys for Cross-Claim Defendant JPMorgan Chase Bank, N.A.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11 Case
MOTORS LIQUIDATION COMPANY, *et al.*,	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
	Case No. 09-00504 (MG)
Plaintiff,	
vs.	
JPMORGAN CHASE BANK, N.A., individually and as Administrative Agent for various lenders party to the Term Loan Agreement described herein, *et al.*,	
Defendants.	

ANSWER OF CROSS-CLAIM DEFENDANT
JPMORGAN CHASE BANK, N.A.

JPMorgan Chase Bank, N.A. ("JPMCB"), in its individual capacity and as administrative agent ("Administrative Agent") under a term loan agreement, dated as of

November 29, 2006 (as amended, restated, supplemented or otherwise revised from time to time, the "Term Loan Agreement"), by its undersigned attorneys, for its Answer to the Cross-Claims dated December 18, 2015 ("Kasowitz Term Lender Cross-Complaint") of a group of Term Loan Lenders (the "Kasowitz Term Lenders"), answers as follows:

1. JPMCB denies the allegations of paragraph 1 of the Kasowitz Term Lender Cross-Complaint.

2. JPMCB denies the allegations of paragraph 2 of the Kasowitz Term Lender Cross-Complaint.

3. JPMCB denies knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of paragraph 3 of the Kasowitz Term Lender Cross-Complaint. JPMCB refers to the Term Loan Agreement and related documents for a complete and accurate statement of JPMCB's role thereunder and otherwise denies the allegations of paragraph 3 of the Kasowitz Term Lender Cross-Complaint.

4. JPMCB admits that Motors Liquidation Company f/k/a General Motors Corporation and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code on June 1, 2009 in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), and otherwise denies the allegations of the first, second, third, fourth and fifth sentences of paragraph 4 of the Kasowitz Term Lender Cross-Complaint. JPMCB admits that after the entry of the DIP Order (as defined in the Kasowitz Term Lender Cross-Complaint) the Debtors transferred $1,477,328,333.33 to JPMCB, as Administrative Agent, refers to the DIP Order for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of the sixth sentence of paragraph 4 of the Kasowitz Term Lender Cross-Complaint. JPMCB refers to the complaint in this adversary

proceeding for a complete and accurate statement of the claims therein, and otherwise denies the allegations of the seventh sentence of paragraph 4 of the Kasowitz Term Lender Cross-Complaint.

5. JPMCB refers to the public record in this case for a complete and accurate account of the filings, orders, and events described in paragraph 5 of the Kasowitz Term Lender Cross-Complaint, refers to its affirmative defenses with respect to the statute of limitations, and otherwise denies the allegations of paragraph 5 of the Kasowitz Term Lender Cross-Complaint.

6. JPMCB denies the allegations of paragraph 6 of the Kasowitz Term Lender Cross-Complaint.

7. JPMCB refers to the Kasowitz Term Lender Cross-Complaint for a complete and accurate statement of the claims therein, and otherwise denies the allegations of paragraph 7 of the Kasowitz Term Lender Cross-Complaint.

8. JPMCB avers that JPMCB is a National Bank formed under the laws of the United States of America, and its headquarters has been located in the State of Ohio since November 13, 2004, as designated in its articles of association on file with the Office of the Comptroller of the Currency.

9. JPMCB denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9 of the Kasowitz Term Lender Cross-Complaint.

10. JPMCB states that the allegations of paragraph 10 of the Kasowitz Term Lender Cross-Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a response is required, JPMCB denies the allegations of paragraph 10 of the Kasowitz Term Lender Cross-Complaint and avers that the Bankruptcy Court lacks subject matter jurisdiction over the cross-claims asserted in the Kasowitz Term Lender Cross-Complaint.

In accordance with Federal Rule of Bankruptcy Procedure 7012(b) and Local Bankruptcy Rule 7012-1, JPMCB denies that any of the claims in the Kasowitz Term Lender Cross-Complaint are "core" under 28 U.S.C. § 157(b), denies that the Bankruptcy Court has authority to enter a final judgment or order consistent with Article III of the United States Constitution, and further states that it does not consent to the entry of final orders or judgment by the Bankruptcy Court.

11. JPMCB states that the allegations of paragraph 11 of the Kasowitz Term Lender Cross-Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a response is required, JPMCB denies the allegations of paragraph 11 of the Kasowitz Term Lender Cross-Complaint.

12. JPMCB admits that the Term Loan provided GM and certain of its subsidiaries with approximately $1.5 billion in financing and was syndicated to various lenders, refers to the Term Loan Agreement and the Collateral Agreement (as defined in the Kasowitz Term Lender Cross-Complaint) for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 12 of the Kasowitz Term Lender Cross-Complaint.

13. JPMCB admits that it was the Administrative Agent under the Term Loan Agreement, refers to the Term Loan Agreement for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 13 of the Kasowitz Term Lender Cross-Complaint.

14. JPMCB admits the allegations of paragraph 14 of the Kasowitz Term Lender Cross-Complaint.

15. JPMCB refers to the Term Loan Agreement and the Collateral Agreement (as defined in the Kasowitz Term Lender Cross-Complaint) for a complete and accurate

statement of the terms thereof, and otherwise denies the allegations of paragraph 15 of the Kasowitz Term Lender Cross-Complaint.

16. JPMCB refers to the Term Loan Agreement and the Collateral Agreement (as defined in the Kasowitz Term Lender Cross-Complaint) for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 16 of the Kasowitz Term Lender Cross-Complaint.

17. JPMCB refers to the Term Loan Agreement for a complete and accurate statement of the terms thereof.

18. JPMCB refers to the UCC-1 Term Loan Financing Statements (as defined in the Kasowitz Term Lender Cross-Complaint) for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 18 of the Kasowitz Term Lender Cross-Complaint.

19. JPMCB refers to the Term Loan Agreement for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 19 of the Kasowitz Term Lender Cross-Complaint.

20. JPMCB refers to the Term Loan Agreement and the UCC-1 Term Loan Financing Statements (as defined in the Kasowitz Term Lender Cross-Complaint) for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 20 of the Kasowitz Term Lender Cross-Complaint.

21. JPMCB refers to the Term Loan Agreement and the various agreements pertaining to the Synthetic Lease for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 21 of the Kasowitz Term Lender Cross-Complaint.

22. JPMCB admits that The Chase Manhattan Bank was named to serve as the Administrative Agent for the Synthetic Lease, and avers that effective December 31, 2000, J.P. Morgan & Co. Incorporated merged with and into The Chase Manhattan Corporation under the name J.P. Morgan Chase & Co., that effective July 1, 2004, Bank One Corporation merged with and into J.P. Morgan Chase & Co. under the name J.P. Morgan Chase & Co., that effective July 20, 2004, the corporation changed its name from J.P. Morgan Chase & Co. to JPMorgan Chase & Co., and that JPMCB, a wholly-owned subsidiary of JPMorgan Chase & Co. and successor by merger to The Chase Manhattan Bank, continued as Administrative Agent under the Synthetic Lease, and acted as Secured Party of Record for the Synthetic Lease.

23. JPMCB refers to the various agreements pertaining to the Synthetic Lease for a complete and accurate statement of the terms thereof.

24. JPMCB refers to the agreements and the UCC-1 financing statements pertaining to the Synthetic Lease for a complete and accurate statement of the terms thereof.

25. JPMCB denies the allegations of paragraph 25 of the Kasowitz Term Lender Cross-Complaint.

26. JPMCB refers to the various agreements pertaining to the Synthetic Lease for a complete and accurate statement of the terms thereof, admits that Mr. Duker was informed that GM intended to repay the outstanding amount due on or about October 1, 2008, and otherwise denies the allegations of paragraph 26 of the Kasowitz Term Lender Cross-Complaint.

27. JPMCB admits that Mayer Brown LLP (“Mayer Brown”) represented General Motors in connection with the repayment of the Synthetic Lease, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27 of the Kasowitz Term Lender Cross-Complaint.

28. JPMCB admits that JPMCB was represented by the law firm of Simpson Thacher & Bartlett LLP ("Simpson Thacher") in matters relating to the Synthetic Lease transaction, and otherwise denies the allegations of paragraph 28 of the Kasowitz Term Lender Cross-Complaint.

29. JPMCB denies the allegations of paragraph 29 of the Kasowitz Term Lender Cross-Complaint.

30. JPMCB refers to the Term Loan Agreement for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 30 of the Kasowitz Term Lender Cross-Complaint.

31. JPMCB denies the allegations of paragraph 31 of the Kasowitz Term Lender Cross-Complaint.

32. JPMCB admits that a Wells Fargo employee and Mr. Duker exchanged emails on October 10, 2008 regarding the Term Loan, refers to those emails for a complete and accurate statement of the contents thereof, and otherwise denies the allegations of paragraph 32 of the Kasowitz Term Lender Cross-Complaint.

33. JPMCB denies the allegations of paragraph 33 of the Kasowitz Term Lender Cross-Complaint.

34. JPMCB denies the allegations of paragraph 34 of the Kasowitz Term Lender Cross-Complaint.

35. JPMCB denies the allegations of the first, second and third sentences of paragraph 35 of the Kasowitz Term Lender Cross-Complaint and avers the draft closing checklist identified a UCC-1 financing statement with a number that corresponded to the Main Term Loan UCC-1 (as defined in the Kasowitz Term Lender Cross-Complaint) and that Mayer

Brown sent draft closing documents and a draft escrow agreement to JPMCB's counsel. JPMCB admits the allegations of the fourth sentence of paragraph 35 of the Kasowitz Term Lender Cross-Complaint. In response to the fifth sentence of paragraph 35 of the Kasowitz Term Lender Cross-Complaint, JPMCB refers to the draft escrow instructions circulated by Mayer Brown for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of the fifth sentence of paragraph 35 of the Kasowitz Term Lender Cross-Complaint.

36. JPMCB denies the allegations of paragraph 36 of the Kasowitz Term Lender Cross-Complaint.

37. JPMCB denies the allegations of paragraph 37 of the Kasowitz Term Lender Cross-Complaint.

38. JPMCB denies the allegations of paragraph 38 of the Kasowitz Term Lender Cross-Complaint.

39. JPMCB admits that GM or Mayer Brown caused a UCC-3 termination statement, which contained a filing number pertaining to a UCC-1 financing statement filed in connection with the Term Loan, to be filed with the Delaware Secretary of State on or about November 1, 2008, and otherwise denies the allegations of paragraph 39 of the Kasowitz Term Lender Cross-Complaint.

40. JPMCB states that the allegations of paragraph 40 of the Kasowitz Term Lender Cross-Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a response is required, JPMCB denies the allegations of paragraph 40 of the Kasowitz Term Lender Cross-Complaint.

41. JPMCB denies the allegations of paragraph 41 of the Kasowitz Term Lender Cross-Complaint.

42. JPMCB denies the allegations of paragraph 42 of the Kasowitz Term Lender Cross-Complaint.

43. JPMCB denies the allegations of paragraph 43 of the Kasowitz Term Lender Cross-Complaint.

44. JPMCB denies the allegations of paragraph 44 of the Kasowitz Term Lender Cross-Complaint.

45. JPMCB admits that Mayer Brown sent an email to Simpson Thacher on October 15, 2008 attaching a draft of a closing checklist and drafts of closing documents and that Simpson Thacher forwarded that email to Mr. Duker, refers to those emails for a complete and accurate statement of the contents thereof, and otherwise denies the allegations of paragraph 45 of the Kasowitz Term Lender Cross-Complaint.

46. JPMCB denies the allegations of paragraph 46 of the Kasowitz Term Lender Cross-Complaint, and avers that, as noted in paragraph 24 of the Kasowitz Term Lender Cross-Complaint, UCC-1 financing statements relating to the Synthetic Lease were filed up to and including 2007.

47. JPMCB denies the allegations of paragraph 47 of the Kasowitz Term Lender Cross-Complaint.

48. JPMCB denies the allegations of paragraph 48 of the Kasowitz Term Lender Cross-Complaint.

49. JPMCB denies the allegations of paragraph 49 of the Kasowitz Term Lender Cross-Complaint.

50. JPMCB denies the allegations of paragraph 50 of the Kasowitz Term Lender Cross-Complaint.

51. JPMCB denies the allegations of paragraph 51 of the Kasowitz Term Lender Cross-Complaint.

52. JPMCB admits that between January and March 2009, the parties to the Term Loan, including representatives of Term Loan Lenders, negotiated an amendment to the Term Loan Agreement and refers to the amendment dated March 4, 2009 for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 52 of the Kasowitz Term Lender Cross-Complaint.

53. JPMCB denies the allegations of paragraph 53 of the Kasowitz Term Lender Cross-Complaint.

54. JPMCB admits the allegations of paragraph 54 of the Kasowitz Term Lender Cross-Complaint.

55. JPMCB admits the allegations of paragraph 55 of the Kasowitz Term Lender Cross-Complaint.

56. JPMCB admits the allegations of paragraph 56 of the Kasowitz Term Lender Cross-Complaint.

57. JPMCB refers to the DIP Motion (as defined in the Kasowitz Term Lender Cross-Complaint) for a complete and accurate statement of the terms set forth therein.

58. JPMCB avers that after the entry of the DIP Order the Debtors transferred $1,477,328,333.33 to JPMCB, as Administrative Agent, and refers to the DIP Order for a complete and accurate account of the terms thereof.

59. JPMCB admits that on or about March 1, 2013, this Court entered a Decision on Motions for Summary Judgment ("Decision") [Adv. Pro. Dkt. No. 71], a Judgment ("Judgment") [Adv. Pro. Dkt. No. 73], and an Order on Cross Motions for Summary Judgment

("Order") [Adv. Pro. Dkt. No. 72] and refers to the Decision, the Judgment, and the Order for a complete and accurate account of the terms set forth therein.

60. JPMCB admits that on or about January 21, 2015, the United States Court of Appeals for the Second Circuit entered a decision (the "Second Circuit Decision") and refers to the Second Circuit Decision for a complete and accurate account of the terms set forth therein.

61. JPMCB refers to the amended complaint and the public record in this case for a complete and accurate account of the pleadings and events referenced in paragraph 61 of the Kasowitz Term Lender Cross-Complaint.

62. JPMCB admits that following the filing of the complaint in 2009, JPMCB and the Committee agreed to request the Court to permit the Committee to withhold service of the complaint on defendants other than JPMCB, and avers that JPMCB informed the Term Lenders via Intralinks of this agreement, that the Court entered a stipulation in the public record allowing the Committee to withhold service of the Complaint on the Term Lenders, and that no Term Lender objected to the Court's stipulation.

63. JPMCB refers to the public record in this case for a complete and accurate account of the hearings, filings, and orders described in paragraph 63 of the Kasowitz Term Lender Cross-Complaint, and otherwise denies the allegations of paragraph 63 of the Kasowitz Term Lender Cross-Complaint.

64. JPMCB denies the allegations of paragraph 64 of the Kasowitz Term Lender Cross-Complaint.

65. JPMCB refers to its affirmative defenses with respect to the statute of limitations, and otherwise denies the allegations of paragraph 65 of the Kasowitz Term Lender Cross-Complaint.

66. JPMCB repeats and re-alleges its responses to paragraphs 1 through 65 of the Kasowitz Term Lender Cross-Complaint with the same force and effect as if fully set forth herein.

67. JPMCB states that the allegations of paragraph 67 of the Kasowitz Term Lender Cross-Complaint constitute legal conclusions to which no responsive pleading is required.

68. JPMCB refers to the Term Loan Agreement for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 68 of the Kasowitz Term Lender Cross-Complaint.

69. JPMCB denies the allegations of paragraph 69 of the Kasowitz Term Lender Cross-Complaint.

70. JPMCB states that the allegations of paragraph 70 of the Kasowitz Term Lender Cross-Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a response is required, JPMCB denies the allegations of paragraph 70 of the Kasowitz Term Lender Cross-Complaint.

71. JPMCB states that the allegations of paragraph 71 of the Kasowitz Term Lender Cross-Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a response is required, JPMCB denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 71 of the Kasowitz Term Lender Cross-Complaint.

72. JPMCB denies the allegations of paragraph 72 of the Kasowitz Term Lender Cross-Complaint.

73. JPMCB denies the allegations of paragraph 73 of the Kasowitz Term Lender Cross-Complaint.

74. JPMCB repeats and re-alleges its responses to paragraphs 1 through 73 of the Kasowitz Term Lender Cross-Complaint with the same force and effect as if fully set forth herein.

75. JPMCB refers to the Term Loan Agreement for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 75 of the Kasowitz Term Lender Cross-Complaint.

76. JPMCB refers to the Term Loan Agreement and UCC-1 Term Loan Financing Statements (as defined in the Kasowitz Term Lender Cross-Complaint) for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 76 of the Kasowitz Term Lender Cross-Complaint.

77. JPMCB states that the allegations of paragraph 77 of the Kasowitz Term Lender Cross-Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a response is required, JPMCB refers to the Term Loan Agreement and the UCC-1 Term Loan Financing Statements (as defined in the Kasowitz Term Lender Cross-Complaint) for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 77 of the Kasowitz Term Lender Cross-Complaint.

78. JPMCB denies the allegations of paragraph 78 of the Kasowitz Term Lender Cross-Complaint.

79. JPMCB states that the allegations of paragraph 79 of the Kasowitz Term Lender Cross-Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a response is required, JPMCB denies knowledge or information

sufficient to form a belief as to the truth of the allegations of paragraph 79 of the Kasowitz Term Lender Cross-Complaint.

80. JPMCB denies the allegations of paragraph 80 of the Kasowitz Term Lender Cross-Complaint.

81. JPMCB denies the allegations of paragraph 81 of the Kasowitz Term Lender Cross-Complaint.

82. JPMCB repeats and re-alleges its responses to paragraphs 1 through 81 of the Kasowitz Term Lender Cross-Complaint with the same force and effect as if fully set forth herein.

83. JPMCB denies the allegations of paragraph 83 of the Kasowitz Term Lender Cross-Complaint.

84. JPMCB states that the allegations of paragraph 84 of the Kasowitz Term Lender Cross-Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a response is required, JPMCB refers to the Term Loan Agreement and the UCC-1 Term Loan Financing Statements (as defined in the Kasowitz Term Lender Cross-Complaint) for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 84 of the Kasowitz Term Lender Cross-Complaint.

85. JPMCB states that the allegations of paragraph 85 of the Kasowitz Term Lender Cross-Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a response is required, JPMCB denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 85 of the Kasowitz Term Lender Cross-Complaint.

86. JPMCB denies the allegations of paragraph 86 of the Kasowitz Term Lender Cross-Complaint.

87. JPMCB denies the allegations of paragraph 87 of the Kasowitz Term Lender Cross-Complaint.

88. JPMCB repeats and re-alleges its responses to paragraphs 1 through 87 of the Kasowitz Term Lender Cross-Complaint with the same force and effect as if fully set forth herein.

89. JPMCB refers to the Term Loan Agreement for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 89 of the Kasowitz Term Lender Cross-Complaint.

90. JPMCB states that the allegations of paragraph 90 of the Kasowitz Term Lender Cross-Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a response is required, JPMCB refers to the Term Loan Agreement and the UCC-1 Term Loan Financing Statements (as defined in the Kasowitz Term Lender Cross-Complaint) for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 90 of the Kasowitz Term Lender Cross-Complaint.

91. JPMCB denies the allegations of paragraph 91 of the Kasowitz Term Lender Cross-Complaint.

92. JPMCB denies the allegations of paragraph 92 of the Kasowitz Term Lender Cross-Complaint.

93. JPMCB denies the allegations of paragraph 93 of the Kasowitz Term Lender Cross-Complaint.

94. JPMCB repeats and re-alleges its responses to paragraphs 1 through 93 of the Kasowitz Term Lender Cross-Complaint with the same force and effect as if fully set forth herein.

95. JPMCB refers to the Term Loan Agreement and the UCC-1 Term Loan Financing Statements (as defined in the Kasowitz Term Lender Cross-Complaint) for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 95 of the Kasowitz Term Lender Cross-Complaint.

96. JPMCB states that the allegations of paragraph 96 of the Kasowitz Term Lender Cross-Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a response is required, JPMCB refers to the Term Loan Agreement for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 96 of the Kasowitz Term Lender Cross-Complaint.

97. JPMCB states that the allegations of paragraph 97 of the Kasowitz Term Lender Cross-Complaint constitute legal conclusions to which no responsive pleading is required.

98. JPMCB denies the allegations of paragraph 98 of the Kasowitz Term Lender Cross-Complaint.

99. JPMCB denies the allegations of paragraph 99 of the Kasowitz Term Lender Cross-Complaint.

100. JPMCB denies the allegations of paragraph 100 of the Kasowitz Term Lender Cross-Complaint.

101. JPMCB denies the allegations of paragraph 101 of the Kasowitz Term Lender Cross-Complaint.

102. JPMCB repeats and re-alleges its responses to paragraphs 1 through 101 of the Kasowitz Term Lender Cross-Complaint with the same force and effect as if fully set forth herein.

103. JPMCB admits that JPMCB was the Administrative Agent pursuant to the Term Loan Agreement, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 103 of the Kasowitz Term Lender Cross-Complaint.

104. JPMCB states that the allegations of paragraph 104 of the Kasowitz Term Lender Cross-Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a response is required, JPMCB denies the allegations of paragraph 104 of the Kasowitz Term Lender Cross-Complaint.

105. JPMCB denies the allegations of paragraph 105 of the Kasowitz Term Lender Cross-Complaint.

106. JPMCB states that the allegations of paragraph 106 of the Kasowitz Term Lender Cross-Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a response is required, JPMCB refers to the Term Loan Agreement and the UCC-1 Term Loan Financing Statements for a complete and accurate statement of the terms thereof, and otherwise denies the allegations of paragraph 106 of the Kasowitz Term Lender Cross-Complaint.

107. JPMCB denies the allegations of paragraph 107 of the Kasowitz Term Lender Cross-Complaint.

ADDITIONAL DEFENSES

JPMCB's assertion of defenses herein is not a concession that JPMCB bears the burden of proof or persuasion on any issue as to which the Kasowitz Term Lenders bear the burden of proof or persuasion. JPMCB reserves the right to supplement, amend, or delete any or all of the following defenses prior to any trial of this action, and to assert any additional cross-claims, counterclaims, and third-party claims as they become known or available.

FIRST DEFENSE

The Kasowitz Term Lender Cross-Complaint fails to state a claim against JPMCB upon which relief may be granted.

SECOND DEFENSE

The Bankruptcy Court lacks subject matter jurisdiction over the claims asserted in the Kasowitz Term Lender Cross-Complaint. The claims asserted in the Kasowitz Term Lender Cross-Complaint are not subject to jurisdiction under 28 U.S.C. § 1334, and the Bankruptcy Court is not empowered to exercise supplemental jurisdiction under 28 U.S.C. § 1367 or otherwise.

THIRD DEFENSE

The claims asserted in the Kasowitz Term Lender Cross-Complaint are barred by provisions of the Term Loan Agreement, including: (a) section 8.04 of the Term Loan Agreement, which provides that JPMCB "shall be entitled to rely, and shall be fully protected in relying" upon "advice and statements of legal counsel (including, without limitation, any counsel to the Borrower)"; (b) section 8.02 of the Term Loan Agreement, which permits JPMCB to execute any of its duties "by or through agents or attorneys-in-fact" and states that JPMCB "shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by

it with reasonable care"; (c) section 8.03 of the Term Loan Agreement, which provides that JPMCB shall not be liable "for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement or any other Loan Document (except for its or such Person's own gross negligence or willful misconduct)"; and (d) section 8.06 of the Term Loan Agreement, which provides that each lender "expressly acknowledges" that JPMCB has not "made any representations or warranties to it," and that each lender "represents that it will, independently and without reliance upon the Agent . . . continue to make its own credit analysis, appraisals and decisions" with respect to the Term Loan.

FOURTH DEFENSE

The claims asserted in the Kasowitz Term Lender Cross-Complaint that are not predicated on express provisions of the Term Loan Agreement are barred because, under section 8.01 of the Term Loan Agreement, "[n]otwithstanding any provision to the contrary elsewhere in this Agreement or in any other Loan Document, the Agent shall not have any duties or responsibilities, except those expressly set forth herein or therein, or any fiduciary relationship with any Lender or any Affiliate of such Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Agent." Among other things, section 4.03 of the Collateral Agreement (as defined in the Kasowitz Term Lender Cross-Complaint) provides that General Motors, not JPMCB, "shall maintain the security interest created by this Agreement." The Term Loan Agreement and related documents do not require JPMCB to maintain the security interest, and no such duty should be implied.

FIFTH DEFENSE

The claims asserted in the Kasowitz Term Lender Cross-Complaint are barred by applicable statutes of limitations.

SIXTH DEFENSE

Any claims asserted in the Kasowitz Term Lender Cross-Complaint by entities that are not defendants in the Avoidance Action are barred for lack of standing.

SEVENTH DEFENSE

Any claims asserted in the Kasowitz Term Lender Cross-Complaint relating to rights or duties under agreements pursuant to which JPMCB sold or purchased Term Loan interests are unripe.

EIGHTH DEFENSE

The Kasowitz Term Lenders' claims for damages are barred because the losses or damages alleged are speculative, uncertain, or otherwise not cognizable.

NINTH DEFENSE

The Kasowitz Term Lenders' claims are barred because JPMCB's conduct was not the cause of any injury, losses, or damages alleged by the Kasowitz Term Lenders, and/or any such injury, loss, or damages were caused by the intervening or superseding acts of third parties.

TENTH DEFENSE

The Kasowitz Term Lenders' claims are barred, in whole or in part, by the doctrines of collateral estoppel, res judicata, and/or law of the case.

ELEVENTH DEFENSE

The Kasowitz Term Lenders' claims sounding in tort are barred because they are duplicative of the Kasowitz Term Lenders' claims for breach of express contractual provisions.

TWELFTH DEFENSE

The Kasowitz Term Lenders' claims for equitable relief are barred because the Kasowitz Term Lenders have an adequate remedy at law if their claims are meritorious, which they are not.

THIRTEENTH DEFENSE

As of the date the Termination Statement was filed, JPMCB did not owe duties to lenders who purchased Term Loan interests after that date.

FOURTEENTH DEFENSE

The Kasowitz Term Lenders' claims are barred, in whole or in part, by the doctrines of laches and equitable estoppel.

FIFTEENTH DEFENSE

The Kasowitz Term Lenders' claims are barred, in whole or in part, by the doctrines of assumption of risk, estoppel and waiver.

WHEREFORE, JPMCB requests judgment as follows: (1) entering judgment in favor of JPMCB against the Kasowitz Term Lenders and dismissing the Kasowitz Term Lender Cross-Complaint with prejudice; (2) awarding JPMCB the costs of defending this action, including attorneys' fees and expenses; and (3) granting such other and further relief as the Court deems just and proper.

Dated: New York, New York
January 27, 2016

Respectfully submitted,

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Exhibit K

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In Re:	)	Chapter 7
	)	
WORLDSPACE, INC., et al.,	)	Case No. 08-12412(PJW)
	)	(Jointly Administered)
Debtors.	)	
_____	)	
	)	
Charles M. Forman, chapter 7 trustee for WorldSpace, Inc., et al.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adv. Proc. No. 10-53286(PJW)
	)	
Mentor Graphics Corporation,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

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Dated: June 5, 2014

WALSH, Judge

This opinion is with respect the Motion to Dismiss of defendant Mentor Graphics Corporation. (Doc. No. 83). This Court rules on three grounds. First, the Court takes issue with the strategic use of motions to extend time to serve process coupled with a lack of proper notice thereof to named defendants. Second, paragraph five of the Stipulation Scheduling Time to Answer/Respond to Amended Complaint and Addressing Related Relief (Doc. No. 69-1) does not salvage the service issues presented. Lastly, this Court does not believe that pursuant to Federal Rule of Civil Procedure 15(c) there is proper grounds for utilization of the relation back doctrine. The Motion to Dismiss is granted.

Procedural Background and Statement of Facts

This adversary proceeding was filed on October 15, 2010 to avoid and recover certain preferential transfers. The named defendant in the original adversary complaint was Mentor Graphics (Ireland) Limited (hereinafter "Mentor Ireland"). At that point in time, the case was a Chapter 11 reorganization, and the debtor WorldSpace, Inc. ("WorldSpace") was the entity prosecuting these claims through various adversary proceedings. WorldSpace filed its Chapter 11 on October 17, 2008 and was subsequently converted to a Chapter 7 on June 12, 2012. Prior to its conversion, WorldSpace filed five motions to extend the time to serve process relating to

the complaints to avoid and recover preferential transfers, including the complaint at issue here. In total, WorldSpace initiated fourteen adversary proceedings, and by and through its five motions extended the service of process deadline on all fourteen adversary proceedings.

Upon conversion to Chapter 7, a Trustee was appointed who subsequently filed four additional motions to extend the time to serve process in those same fourteen adversary proceedings. In total, this Court granted nine motions to extend the time to serve process. Outlined below are the dates of the motions to extend.

1. The First Motion to Extend Time was filed on 02/11/2011
2. The Second Motion to Extend Time was filed on 06/09/2011
3. The Third Motion to Extend Time was filed on 10/07/2011
4. The Fourth Motion to Extend Time was filed on 02/07/2012
5. The Fifth Motion to Extend Time was filed on 05/25/2012
6. The Sixth Motion to Extend Time was filed on 10/04/2012
7. The Seventh Motion to Extend Time was filed on 01/08/2013
8. The Eighth Motion to Extend Time was filed on 06/03/2013
9. The Ninth Motion to Extend Time was filed on 09/23/2013

Below are the details of the service, or lack thereof, of the motions to extend in relation to Mentor Ireland.

1. Mentor Ireland was served with the first motion to extend time, as well as served with the signed Order of this Court granting that motion. Service was sent to an address listed as: Mentor Graphics Ireland Limited, East Park Shannon Free

Zone, County Clare Shannon, Ireland pursuant to an affidavit of service (Doc. No. 8).

2. Mentor Ireland was served with the second motion to extend. Service was sent to an address listed as: Mentor Graphics Ireland Limited, East Park Shannon Free Zone, County Clare Shannon, Ireland pursuant to an affidavit of service (Doc. No. 11) However, Mentor Ireland was not served with the Order of this Court granting the motion.

3. Mentor Ireland was not served with the third motion to extend. An affidavit of service was filed (Doc. No. 18) without listing Mentor Ireland as a recipient of service.

4. Mentor Ireland was not served with the fourth motion to extend. An affidavit of service was filed (Doc. No. 25) without listing Mentor Ireland as a recipient of service.

5. Mentor Ireland was not served with the fifth motion to extend. An affidavit of service was filed (Doc. No. 30) without listing Mentor Ireland as a recipient of service.

6. Mentor Ireland was not served with the sixth motion to extend. The docket does not reflect any affidavit of service of the sixth motion. The docket does reflect an affidavit of service of the signed Order, however Mentor Ireland was not on that service list (Doc. No.42).

7. Mentor Ireland was not served with the seventh motion to extend. The docket does not reflect any affidavit of service of the seventh motion. The docket does reflect an affidavit of service of the signed Order, however Mentor Ireland was not on that service list (Doc. No.48).

8. Mentor Ireland was served with the eighth motion to extend time. Service was sent to an address listed as: Mentor Graphics Ireland Limited, East Park Shannon Free Zone, County Clare Shannon, Ireland pursuant to an affidavit of service (Doc. No. 50).

9. Mentor Ireland was served with the ninth motion to extend time. Service was sent to an address listed as: Mentor Graphics Ireland Limited, East Park Shannon Free Zone, County Clare Shannon, Ireland pursuant to an affidavit of service (Doc. No. 58).

Based on the record, Mentor Ireland was only served with the following: the first motion and corresponding Order, the second motion, the eighth motion, and the ninth motion. Notably, it is unclear whether or not the sixth and seventh motions were served on any interested party, as the docket does not reflect any affidavit of service in connection with those two motions.

On December 12, 2013, the Trustee filed a Summons and Certificate of Service (Doc. No. 63) in order to effectuate the prosecution of the adversary proceeding. The Certificate of Service was mailed to Mentor Graphic Corporation, Attn: Helen Lushenko, 8005 S. W. Boeckman Road, Wilsonville, OR 97070. This appears to be the first time that Mentor Graphics Corporation is mentioned as a (potential) defendant by either WorldSpace or the Trustee. In response to the summons, Mentor Ireland filed a Motion to Quash Service of Process. Subsequently, Trustee filed an amended complaint. (Doc. No. 68). Trustee amended the complaint to substitute the original defendant (Mentor Ireland) with a new defendant, Mentor Graphics Corporation (hereinafter "Mentor Oregon"). Upon that amendment, Mentor Oregon filed the Motion to Dismiss.

Jurisdiction

This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334. This proceeding involves core matters under 28 § 157(b)(2). Venue is proper in this

Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Standard of Review

Defendant brought the Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(5) and 12(b)(6). Both are made applicable to the instant proceeding by Federal Bankruptcy Rule 7012. See Fed. R. Bankr. P. 7012. Federal Rule 12(b)(5) provides that a defendant may move to dismiss a complaint when a plaintiff fails to properly serve the defendant. Fed. R. Civ. P. 12(b)(5). Rule 12(b)(6) governs a motion to dismiss for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6).

When a motion challenging sufficiency of service is filed pursuant to Rule 12(b)(5), "the party asserting the validity of service bears the burden of proof on that issue." Tani v. FPL/Next Era Energy, 811 F. Supp. 2d 1004, 1025 (D. Del. 2011) (citing Grand Entm't Group, Ltd. v. Star Media Sales, Inc., 988 F.2d 476, 488 (3d Cir.1993)). In a bankruptcy context and adversary proceeding, service of process must be made in accordance with Bankruptcy Rule 7004 . Accordingly, in determining the sufficiency of service of process, Federal Rule of Civil Procedure 4 applies to this bankruptcy case pursuant to Bankruptcy Rule 7004. See Fed. R. Bankr. P. 7004. Here, the objection under Rule 12(b)(5) is an argument that the plaintiff failed to comply with the procedural requirements for proper service of the summons and complaint as set

forth in Rule 4, specifically subsection (m).

This Court has broad discretion "[u]pon determining that process has not been properly served on a defendant" to dismiss the complaint in its totality or to instead quash service of process. Umbenhauer v. Woog, 969 F.2d 25, 30 (3d Cir. 1992). Dismissal is not appropriate if it is reasonable and possible to rectify the service deficiency. Id.

In assessing a Rule 12(b)(6) motion to dismiss, this Court must "accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." Eid v. Thompson, 740 F.3d 118, 122 (3d Cir. 2014) (citations omitted). A plaintiff must, to successfully rebuff a motion of this nature, provide factual allegations which "raise a right to relief above the speculative level...." Id. (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, (2007)). As a result, a complaint must state a plausible claim for relief to defeat a motion to dismiss. Id. (citing Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009)).

Discussion

I. Deficiencies in Notice of Motions to Extend Time to Serve Process

The most important aspect of the lack of notice present in this case stems from the lack of notice of the third motion to extend. That specific service oversight is significant. Mentor

Ireland was never made aware of the fact that the second extension motion was granted, nor made aware of any other extension requests thereafter until it was served with the eighth motion to extend, a full two years later. Any notice that Mentor Ireland had at one point concerning the possibility of being named in a lawsuit logically ended when it was never provided with the second signed Order extending service. Once the extension period stemming from the second extension motion ended, and Mentor Ireland was not served in a lawsuit, nor served with another extension motion, it had no reason know that it should take pre-litigation precautions, preserve evidence, consult with employees or take any other measure to ensure that it could defend itself on the merits of a claim. Moreover, during the two year gap period between the service of the second motion to extend and the eighth motion to extend, the statute of limitations on the underlying action expired.

Neither party has cited cases or rules which describe the notice requirements for motions to extend the service period. Due to their very nature, these types of motions can be granted on an *ex parte* basis, thus negating the notion that there exists a hard-and-fast rule that service was required upon Mentor Ireland. However, that does not end this Court's inquiry, and cannot satisfy the equitable issue before the Court.

Instances of service extension motions going forward on an *ex parte* basis do so because service cannot be effectuated by a

plaintiff, due to a defendant evading service, lack of knowledge of a defendant's whereabouts or address, or the like. See e.g. In re Global Crossing, Ltd., 385 B.R. 52, 82 (Bankr. S.D.N.Y. 2008) ("The cause for securing a Rule 4(m) order has historically been difficulties in serving a named defendant with process including such things as difficulties in finding the defendant, or a defendant's ducking service."). That is distinguishable from the case at bar. The address of Mentor Ireland was known (as exemplified by the fact that the first two extension motions were sent to their address) and the new defendant, Mentor Oregon, filed a proof of claim with a contact address in September of 2012.[1]

This Court was never apprised of the fact that service was being delayed without the full knowledge of all named defendants. This Court was under the impression that the strategic use of the extension motions was to facilitate the cases procedurally, with all interested parties aware of the proceedings.

That impression was represented to this Court and garnered from the pleadings. In the second motion to extend, in order to persuade this Court to grant another extension motion, it was pled that the first motion to extend was "served upon interested parties." (Doc. No. 10, ¶ 3). That was a true statement as noted above, Mentor Ireland was served with the first motion to extend. In the third motion to extend, it was pled to this Court

[1] Trustee filed four motions to extend the time to serve process after Mentor Oregon's proof of claim was filed.

that the second motion to extend was "served upon interested parties." (Doc. No. 17, ¶ 4). Again, that was a true statement. In the pleadings requesting a fourth motion to extend, it was represented to this Court that the third motion to extend was "served upon interested parties." (Doc. No. 24, ¶ 5). As it turns out, that is not a true statement. In the Fifth motion to extend, it was represented to this Court that the fourth motion to extend was "served upon interested parties." (Doc. No. 28, ¶ 6). Again, that is not a true statement. The last four motions to extend do not address notice to named defendants.

It bears emphasis that there is nothing inherently improper concerning the use of extension motions in a bankruptcy context to facilitate a reorganization or for some other procedural or equitable endeavor. See e.g. In re Interstate Bakeries Corp., 460 B.R. 222, 230 (B.A.P. 8th Cir. 2011) aff'd, 476 F. App'x 97 (8th Cir. 2012) (discussing that extension of service deadline was proper and discussing further in *dicta* that the debtor "obtained an extended [service] deadline from the court and provided all potential defendants with notice and the opportunity to be heard" and that the interested defendant "was afforded six separate opportunities to object to the extension of time[.]").

Had this Court known that four years after the original complaint was filed, service would be made for the first time, alerting a corporation to the existence of a potential lawsuit for

the first time, this Court would have questioned in a different manner the existence of due diligence in service, due diligence in prosecution, good cause and prejudice when reviewing the nine extension motions. The issues stated above are outcome determinative in this matter as they affect the relation back doctrine, discussed below.

II. Misplaced Reliance on Stipulation Agreement

On behalf of Mentor Ireland and Mentor Oregon their counsel consented to the filing of the amended complaint (Doc. # 68). However, that stipulation provides that "Nothing in this Stipulation shall be deemed a waiver of any defense or argument which Defendant Mentor Graphics Corporation might raise in this adversary proceeding." (Doc. # 69, ¶ 5).

III. There is No Ability to Relate Back Pursuant to Rule 15(c)

Trustee's Rule 15(c) relation back argument is unpersuasive. Federal Rule 15(c) is written in the conjunctive, and as such courts conclude that all of the conditions of this Rule must be met for a successful relation back of an amended complaint that seeks to substitute newly named defendants. Singletary v. Pa. Dep't of Corr., 266 F.3d 186, 194 (3d Cir.2001). The Trustee bears the burden of proof on these requirements. Markhorst v. Ridgid, Inc., 480 F. Supp. 2d 813, 815 (E.D. Pa. 2007). The purpose of the relation back doctrine is to balance the interests of the defendant, which are protected by the statute of limitations, with

the general preference to resolve disputes on the merits and not on mere technicalities. Krupski v. Costa Crociere S. p. A., 560 U.S. 538, 550 (2010). Rule 15(c) provides:

> (c) Relation Back of Amendments.
>
> (1) When an Amendment Relates Back. An amendment to a pleading relates back to the date of the original pleading when:
>
> (A) the law that provides the applicable statute of limitations allows relation back;
> (B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out--or attempted to be set out--in the original pleading; or
> (C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment:
> (i) received such notice of the action that it will not be prejudiced in defending on the merits; and
> (ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.
>
> Civ. P. 15(c).

The original complaint filed on October 15, 2010 named Mentor Ireland as the defendant, but was never served. The amended complaint named Mentor Oregon, and was filed and served on January 29, 2014.

A. Same Transaction or Occurrence in Original Pleading

The first applicable requirement is 15(c)(1)(B)'s mandate that the amended pleading can only relate back as long as it

asserts a claim that arose out of the conduct, transaction or occurrence which was set out or attempted to be set out, in the original pleading. Fed. R. Civ. P. 15(c)(1)(B). This requirement is met in part. The original complaint outlines claims that arose from three preference transactions, totaling approximately $234,390.00. Exhibit A of the original complaint outlined the three transactions in more detail, claiming a payment of $77,908.50 was made on 7/31/2008; a payment of $74,012.00 was made on 8/22/2008 and a payment of 82,469.50 was made on 9/4/2008. No other details nor evidence of the three transactions were provided. The amended complaint asserts the same preference transactions, but it identifies a different transferee.

Rule 15(c) outlines the seemingly complex hurdles that a plaintiff must jump to allow an amended claim to relate back. Relation back allows a plaintiff to evade the otherwise applicable statute of limitations. See Glover v. F.D.I.C., 698 F.3d 139, 145 (3d Cir. 2012) (citing Krupski, 560 U.S. 538). That extraordinary result potentially allowed under Rule 15(c) is premised on fair notice. Fair notice comes into play to balance the rights provided under Rule 15(c) with the protections defendants receive from the statute of limitations. Glover, 698 F.3d at 145-46 ("Though not expressly stated, it is well-established that the touchstone for relation back is fair notice, because Rule 15(c) is premised on the theory that a party who has been notified of litigation concerning

a particular occurrence has been given all the notice that statutes of limitations were intended to provide.") (citations omitted).

B. The Applicable Rule 4(m) Time-Period

Under Rule 15(c)(1)(C), in order to add a new defendant the notice requirements within the rule are tied to the timing requirements of Rule 4(m). See Fed. R. Civ. P. 15. Rule 4(m) requires that a defendant is served within 120 days after the complaint is filed. Fed. R. Civ. P. 4(m). If that deadline expires before service occurs, the court must dismiss the action or order that service be effectuated. Id. However, if good cause exists for the failure to serve, a court can also extend the time to serve. Id. This Court granted the nine extension motions in part pursuant to Rule 4(m).

Thus, in analyzing Rule 15(c), an amendment relates back when, during the above described Rule 4(m) period, a party to be brought in by amendment: (i) received notice of the action and will not be prejudiced defending on the merits and (ii) knew or should have known the action would be brought but for a mistake. See Fed. R. Civ. P. 15. Upon careful review of the facts specific to this case, and the Federal Rules of Civil Procedure, this Court needs to decide exactly what the relevant 4(m) time period is to determine whether Mentor Oregon can be added as a defendant.

Trustee argues that for the purposes of relation back, the relevant Rule 4(m) period extended through January 30, 2014

which includes all nine motions to extend. Mentor Oregon believes that none of the motions to extend should allow the relation back, and the relevant Rule 4(m) period ended 120 days after the filing of the original complaint which expired on February 12, 2011.

This Court is mindful of the fact that in most situations, motions to extend are included in a relation back analysis. See Wright and Miller, 6A Fed. Prac. & Proc. Civ. § 1498.1 (3d ed.) ("[N]otice required under the rule . . . is linked to the federal service period of 120 days or any additional time resulting from a court ordered extension." Even the comments to the Rules themselves seemingly contextualize that this is the appropriate result. See Fed. R. Civ. P. 15, Advisory Committee Notes to 1991 Amendment ("In allowing a name-correcting amendment within the time allowed by Rule 4(m), this rule allows not only the 120 days specified in that rule, but also any additional time resulting from any extension ordered by the court pursuant to that rule, as may be granted . . . ."). Numerous other courts addressing only the issue of the relevant Rule 4(m) period, without the service failures present here, have also come to the same conclusion. See Robinson v. Clipse, 602 F.3d 605, 608 (4th Cir. 2010)("Rule 15(c)'s notice period incorporates any extension of the 120-day period under Rule 4(m)."); Williams v. City of New York, 06-CV-6601 NGG, 2009 WL 3254465 at *5 (E.D.N.Y. Oct. 9, 2009); Sciotti v. Saint-Gobain Containers, Inc., 06-CV-6422 CJS, 2008 WL

2097543 at *5 (W.D.N.Y. May 19, 2008). See also In re Global Link Telecom Corp., 327 B.R. 711, 715 (Bankr. D. Del. 2005) (stating that service was sufficient to survive a 12(b)(5) motion and defendant was bound by the Rule 4(m) extension motion when defendant was served with notice of the motion, did not object, and a hearing was held to address concerns of other defendants who did raise objections).

This Court felt that is was prudent to analyze the Rule 4(m) period in depth, considering the specific facts of this case which detail significant notice failures.

It would, for all intents and purposes, defeat the purpose of the relation back doctrine if it was a stead-fast rule that motions to extend were deemed ineffective as against previously unknown or unnamed defendants or unnamed in all situations. However, this Court cannot ignore the inherent injustice in failing to serve a named defendant with an extension motion, which operates to keep a claim alive years after the statute of limitations would have already expunged the issue. This Court should not allow a motion which was not served on an original, named defendant, to extend the time applicable to sue a new defendant.

As such, the relevant time period for analyzing Rule 15(c) does not include any motion to extend which was not served on

Mentor Ireland. The relevant period ends after the expiration of the second motion to extend on October 10, 2011.

C. Notice to Avoid Prejudice in Defending on the Merits

Notice to avoid prejudice in defending itself can be either actual or imputed. Garvin v. City of Philadelphia, 354 F.3d 215, 222-23 (3d Cir. 2003). The notice must be received such that there is no prejudice to the newly named defendant which would prevent them from maintaining a defense on the merits. Miller v. Hassinger, 173 F. App'x 948, 955 (3d Cir. 2006). Relation back can only occur if on or before October 10, 2011 Mentor Oregon had notice to prevent prejudice. It is clear from the evidence that actual notice was not had.

Without actual notice, there can be instead imputed or constructive notice. In the Third Circuit, imputed notice requires a showing of either a shared attorney or an identity of interest. In re Joey's Steakhouse, LLC, 474 B.R. 167, 179 (Bankr. E.D. Pa. 2012) (citing Garvin, 354 F.3d at 222–223). There is no feasible argument that during the relevant time period, the shared attorney theory of imputed notice provided notice to Mentor Oregon. No evidence was proffered that Mentor Oregon had retained, spoke with or conferred with counsel during all relevant times. Additionally, no evidence was proffered that Mentor Ireland retained counsel during that same time period. Thus, imputed notice fails under this theory. See Singletary, 266 F.3d at 196 ("The 'shared attorney'

method of imputing Rule 15(c)(3) notice is based on the notion that, when an originally named party and the party who is sought to be added are represented by the same attorney, the attorney is likely to have communicated to the latter party that he may very well be joined in the action.").

Notice under identity of interest also fails to provide notice. To meet imputed notice under this theory, "the newly named Defendant and the original Defendants may be so closely intertwined in their business operations or other activities that the filing of suit against one effectively provides notice of the action to the other." Joey's Steakhouse, 474 B.R. at 180. Again, there has been no evidence that these entities are sufficiently intertwined. This inquiry is a fact intensive determination. There has been no evidence presented to the Court that these two entities share service agents, share officers, board members or directors, nor do they share offices or addresses. The sole piece of evidence proffered of the shared identity of the two entities is a document which was printed on 3/10/2014 that states that, pursuant to the website of Mentor Graphics Worldwide, the Irish corporation appears to now be named "Mentor Graphics Corporation." (Doc. No. 77). However, Trustee did not provide this Court with a date or time line of when the name change occurred. It was simply stated that it was "post-petition." (Doc. No. 91). Accordingly, its evidentiary value is negligible.

Moving forward, this notice analysis is inextricably intertwined with a prejudice analysis. Abdell v. City of New York, 759 F. Supp. 2d 450, 454 (S.D.N.Y. 2010) ("Indeed, the linchpin of relation back doctrine is notice within the limitations period, so that the later-named party will not be prejudiced in defending the case on the merits.") (citations omitted). Notice itself is not sufficient, it must be notice such that the defendant is not the victim of an unfair surprise. Without notice, there is inherent prejudice, which makes the actual prejudice Mentor Oregon faces clear. The transaction outlined in the complaint occurred in 2008, the complaint was filed (but never served) against a different entity (Mentor Ireland) in 2010, and the newly added defendant was not aware of the suit until the fall of 2013. The claims are stale and the evidence is lost or eroded. There is no evidence that pre-litigation precautions were taken by Mentor Oregon.

This is a perfect example of winning the battle, only to lose the war. While the relevant time period was extended for WorldSpace and the Trustee to effectuate service, it is that precise time period which undoubtedly harms Mentor Oregon's ability to defend itself. The notice requirement exists so that the new defendant has the ability to "anticipate and therefore prepare for his role as a defendant." In re Integrated Res. Real Estate Ltd. Partnerships Sec. Litig., 815 F. Supp. 620, 648 (S.D.N.Y. 1993) ("A firm or an individual may receive notice that the lawsuit exists

. . . without recognizing itself as the proper defendant and so without knowledge that it would be sued . . . just as a firm or individual may be the proper party without receiving any notice at all. The former is as thoroughly barred by Rule 15(c) as the latter."). Those unserved motions to extend the time to serve did not place Mentor Oregon in a position upon which it knew to initiate any type of preservation of evidence process. There is no evidence that employees of Mentor Oregon involved in the transaction were questioned, nor were files preserved on a litigation hold.

It is inconceivable under these facts that Mentor Oregon could be called upon to defend itself. That is why it would be particularly prudent for a party using Rule 4(m) motions to strategically and tactfully extend the time to serve process to ensure that before years go by without service, that adequate notice is given. See Nelson v. Cnty. of Allegheny, 60 F.3d 1010, 1014-15 (3d Cir. 1995) ("The emphasis of the first prong of this [Rule 15(c)] inquiry is on notice. The 'prejudice' to which the Rule refers is that suffered by one who, for lack of timely notice that a suit has been instituted, must set about assembling evidence and constructing a defense when the case is already stale.")(citations omitted); Bryant v. Vernoski, CIV.A. 11-263, 2012 WL 1132503 at *2 (M.D. Pa. Apr. 4, 2012) ("The second condition, requiring notice in order to avoid prejudice, is the

heart of the relation back analysis.") (citing Schiavone v. Fortune, 477 U.S. 21, 31 (1986)).

D. Mistake Concerning the Proper Party's Identity

This last requirement for adding a new defendant and relating it back to an original complaint is wholly separate from the notice and prejudice element discussed above. Under Rule 15(c)(1)(C)(ii), the change relates back if the new defendant "knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity." Fed. R. Civ. P. 15(c)(1)(C)(ii). Thus, Trustee needs to proffer evidence that Mentor Oregon knew or should have known during the 4(m) period that it should have been the target of the original complaint. The Supreme Court has made it clear that the accurate inquiry is what the party to be added knew or should have known, and should not focus on the plaintiffs knowledge or timeliness in amending the complaint. Krupski, 560 U.S. at 541.

There is no evidence that Mentor Oregon had reason to believe it was incorrectly omitted from the original lawsuit or that but for an error, it should have been the defending party. Both Mentor Ireland and Mentor Oregon signed separate contracts at separate times with WorldSpace. To be clear, Mentor Ireland was never served, and thus never saw the complaint at issue. All it received was two extension motions. Those extension motions did not outline the claims that would be potentially asserted, or specify

the contracts under which avoidance was sought. More importantly, calling into question the potential avoidability of one contract does not impute potential avoidability of a different contract. So Mentor Ireland was never appraised of any fact upon which they knew the wrong transferee was being sued. The same logic applies to Mentor Oregon; it was never appraised of a fact that would alert them that a potential mistake was made.[2]

Other than a similarity in name, Trustee has not provided any evidence that these two separate entities had any reason to believe that a preference action against could possibly be a mistake for a preference against the other. Both corporations have separate and distinct addresses. The post-petition name change of Mentor Ireland, outlined above, again does not satisfy the Trustees burden that these two entities should have known they could be mistaken for each other. The document which outlines an undated change is essentially irrelevant. More importantly, calling into question the payments stemming from one contract with a debtor does not impute a potential preference action of a different contract. See In re 360networks (USA) Inc., 367 B.R. 428, 434 (Bankr. S.D.N.Y. 2007) ("[T]he mere fact that all of these transactions are potentially preferential transfers is of no consequence when

[2] Due to the fact that the original complaint and amended complaint are seeking avoidance on the same set of three payments, had Mentor Ireland been served, it would not have taken long for them to inform all other interested parties that the wrong transferee is being sued. This is the risk taken when waiting years to finally effectuate service.

performing a Rule 15(c)(2) analysis. In the context of preference actions, each potential preferential transfer is a separate and distinct transaction: a preference action based on one transfer does not put defendant on notice of claims with respect to any other unidentified transfers.").

Further, there has been no argument proffered by Trustee that a mistake was made, as opposed to a deliberate choice to sue one entity over the other. Krupski, 560 U.S. at 549 ("making a deliberate choice to sue one party instead of another while fully understanding the factual and legal differences between the two parties is the antithesis of making a mistake concerning the proper party's identity."). Trustee's answering brief did not even address this element. No argument was made that it was a mistake to send notices of the extension motions to an address in Ireland, to recover on claims against a corporation in Oregon. This Court is not convinced that the mistake in naming the wrong defendant was due to a technicality or confusion between the two corporate entities. See Joseph v. Elan Motorsports Technologies Racing Corp., 638 F.3d 555, 560 (7th Cir. 2011) ("A potential defendant who has not been named in a lawsuit by the time the statute of limitations has run is entitled to repose—unless it is or should be apparent to that person that he is the beneficiary of a mere slip of the pen, as it were."). While Mentor Ireland was a subsidiary of Mentor Oregon, they each had independently contractual

relationships with WorldSpace. The alleged preferences arose out of those separately contractual relationships with WorldSpace.

The awareness of both Mentor Ireland and Mentor Oregon does not foreclose the possibility that a mistake still occurred in choosing which entity to sue; and it does not conclusively determine whether Mentor Oregon knew or should have known that there was an error. However, even after the Trustee was appointed, service of the motions to extend continued to be served on Mentor Ireland; underscoring a reasonable perception that it was the transactions between WorldSpace and Mentor Ireland which were being prosecuted. See Krupski, 560 U.S. at 552. ("When the original complaint and the plaintiff's conduct compel the conclusion that the failure to name the prospective defendant in the original complaint was the result of a fully informed decision as opposed to a mistake concerning the proper defendant's identity, the requirements of Rule 15(c)(1)(C)(ii) are not met.").

Conclusion

To summarize. The complaint was filed on October 15, 2010 with respect to transactions that occurred in July, August and September 2008. Plaintiff sought and obtained nine extensions of time to serve the complaint. A number of these extensions were procedurally improper. The last extension order set a cutoff date of January 30, 2014. Summons was served On Mentor Ireland on December 12, 2013. The amended complaint which dropped defendant

Mentor Ireland and substituted Mentor Oregon as the defendant was filed on January 29, 2014, over five years after the relevant transactions took place.

For the reasons stated above, the Motion to Dismiss of Mentor Oregon will be granted.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In Re:	)	Chapter 7
	)	
WORLDSPACE, INC., et al.,	)	Case No. 08-12412(PJW)
	)	(Jointly Administered)
Debtors.	)	
_____	)	
	)	
Charles M. Forman, chapter 7 trustee for WorldSpace, Inc., et al.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adv. Proc. No. 10-53286(PJW)
	)	
Mentor Graphics Corporation,	)	
	)	
Defendant.	)	

ORDER

For the reasons set forth in the Court's memorandum opinion of this date, the motion of Defendant Mentor Graphics Corporation to dismiss (Doc. # 83) is granted.

Peter J. Walsh
United States Bankruptcy Judge

Dated: June 5, 2014