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BY HAND

Honorable Robert E. Gerber
United States Bankruptcy Judge
United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, NY 10004-1408

Re: *Official Committee of Unsecured Creditors of Motors Liquidation Company v. JPMorgan Chase Bank, N.A., et al.*, Adv. Pro. No. 09-00504

Dear Judge Gerber:

We represent the Official Committee of Unsecured Creditors (the "**Committee**") of Motors Liquidation Company f/k/a General Motors Corporation in the above-captioned matter. We write in response to the June 9, 2011 letter filed by JPMorgan Chase Bank, N.A. ("**JPMorgan**"), which enclosed supplemental authority in support of its motion for summary judgment.

The recent decision submitted by JPMorgan does not shed any new light on this case. *See Official Comm. of Unsecured Creditors v. City Nat'l Bank, N.A.*, No. C09-03817 (MMC), 2011 WL 1832963 (N.D.Cal. May 13, 2011). Indeed, the *City National* case only confirms that the key question in this case is whether JPMorgan authorized the filing of the UCC-3 termination statement relating to the term loan.

Although the court in *City National* held that the filing there was unauthorized, that case is easily distinguished on its facts. The termination statements at issue in *City National* were filed "in a form other than that which [the secured creditor] had authorized." *In re A.F. Evans Co.*, No. 09-41727 (EDJ), 2009 WL 2821510, *4 (Bankr. N.D. Cal. July 14, 2009), *aff'd sub nom. Official Comm. of Unsecured Creditors v. City Nat'l Bank, N.A.*, No. C09-03817 (MMC), 2011 WL 1832963 (N.D.Cal. May 13, 2011). Moreover, each of the termination statements in *City National* "had two boxes checked–the termination box plus the release of collateral box" and "[t]hus, the ambiguity [was] patent." *Id*. at *5.

Here, however, applying the same analysis leads to the opposite conclusion: JPMorgan authorized the filing of the UCC-3 termination statement relating to the term loan. Unlike *City National*, the termination statement at issue in this case was filed in the exact same form approved by JPMorgan and its counsel, as set forth in express escrow instructions and e-mail correspondence, among other places. Furthermore, in contrast to *City National*, only the termination box was checked on the UCC-3 termination statement in this case, leaving no room for ambiguity. *See City Nat'l Bank*, 2011 WL 1832963 at *7 (noting that, where "only the 'Termination' box was checked, . . . there was no 'red flag'" to alert potential creditors of a prior encumbrance) (citations omitted).

Further, contrary to JPMorgan's assertion on page two of its letter, *Koehring Co. v. Nolden (In re Pac. Trencher & Equip., Inc.)*, 735 F.2d 362 (9th Cir. 1984), and the subsequent line of cases that rely on it are still good law. *See, e.g., Roswell Capital Partners LLC v. Alternative Constr. Techs.*, No. 08 Civ. 10647 (DLC), 2010 WL 3452378, *7 (S.D.N.Y. Sept. 1, 2010) (relying on the *Pacific Trencher* line of cases in holding that "[t]he termination of a financing statement, *even if mistaken*, releases the secured creditor's lien against the debtor's property") (citations omitted).

Accordingly, for all of the reasons set forth previously in our briefs, the Committee respectfully seeks a ruling that JPMorgan's lien was unperfected as of the petition date and, thus, is avoidable under 11 U.S.C. § 544(a).

Respectfully,

/s/ Eric B. Fisher
Barry N. Seidel
Eric B. Fisher

cc: John M. Callagy, Esq. (via e-mail and First Class Mail)