

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: . Case No. 09-50026-mg
MOTORS LIQUIDATION COMPANY, . Chapter 11
et al., f/k/a GENERAL .
MOTORS CORP., et al, . (Jointly administered)
Debtors.
MOTORS LIQUIDATION COMPANY . Adv. Proc. No. 09-00504-mg
AVOIDANCE ACTION TRUST, by and .
through the Wilmington Trust .
Company, solely in its capacity .
as Trust Administrator and .
Trustee,
Plaintiff,
v.
JPMORGAN CHASE BANK, N.A., .
individually and as .
Administrative Agent for .
Various lenders party to the .
Term Loan Agreement described .
herein, et al., . One Bowling Green
Defendants. . New York, NY 10004
Monday, November 14, 2016
4:32 p.m.

TRANSCRIPT OF TELEPHONE CONFERENCE,
ON THE RECORD, REGARDING DISCOVERY DISPUTE
BEFORE THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY COURT JUDGE

TELEPHONIC APPEARANCES CONTINUED

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1 (Proceedings commence at 4:32 p.m.)

2 THE COURT: So actually on the record in Motors
3 Liquidation Company Avoidance Action Trust v. JPMorgan Chase
4 Bank, N.A. et al. It's adversary proceeding 09-00504. This is
5 a telephone conference regarding a discovery dispute regarding
6 the depositions of Ryan Green, Stewart Gonshorek, Michael
7 Perlowski, and Robert Gordon.

8 Who's going to -- I guess it was Munger Tolles that
9 requested this hearing. Who's going to speak for them?

10 MR. SPIEGEL: This is John Spiegel, Your Honor, good
11 afternoon --

12 THE COURT: Good afternoon.

13 MR. SPIEGEL: -- from Munger, Tolles & Olson,
14 representing a group of about 100 term lenders. Thank you very
15 much for hearing us.

16 THE COURT: All right. Let me just say, who is on
17 the line for the proposed deponents?

18 MR. MILLER: This is Tim Miller at the Novack and
19 Macey firm in Chicago, and I represent Messrs. Green, Gordon,
20 Gonshorek, and Perlowski.

21 THE COURT: Thanks very much, Mr. Miller. Go ahead,
22 Mr. Spiegel.

23 MR. SPIEGEL: Thank you, Your Honor. We are seeking
24 leave of Court to depose these four Mayer Brown witnesses who
25 were involved in the preparation and filing of the erroneous

1 termination statement back in October 2008. We're seeking
2 leave -- originally, we thought we were proceeding by
3 agreement. As of September 22nd, we had an email from Mr.
4 Miller agreeing to accept service and offering to discuss dates
5 in which to set the depositions. In October, Mr. Miller
6 changed that position and asked us to go forward with seeking
7 an order from the Court, which is what we're doing now.

8 The four proposed deponents were deposed in 2010,
9 five years before the term lenders were served in the case, for
10 very brief depositions in which they were questioned by the
11 plaintiff and JPMorgan. The total length of those depositions
12 for four witnesses was about seven hours, so that's less than
13 two hours apiece. I can go through with Your Honor the
14 particular roles of each of those witnesses as to their
15 involvement in the preparation of the documents back in October
16 2008.

17 The -- Ryan Green was the associate responsible for
18 handling the documentation for the termination of the synthetic
19 lease transaction. Robert Gordon was the partner supervising.
20 There were two paralegals, Mr. Gonshorek and Mr. Perlowski, one
21 who caused the termination statement -- erroneous termination
22 statement to be filed, the other whose UCC searches resulted in
23 Mayer Brown including the term loan UCC financing statement in
24 the list of documents to be terminated.

25 Now, under Your Honor's June 30 ruling of this year,

1 we have a due process right to litigate the effectiveness of
2 the erroneous UCC-3, and we're here to pursue our separate
3 defenses to UCC-3 effectiveness, which are different from
4 JPMorgan's, and to seek evidence in support of our cross-claims
5 against JPMorgan. Under Rule 30, Your Honor is required to
6 give leave of Court consistent with Rule 26(b)(1) and (2), the
7 factors stated there, and we believe that under those factors,
8 there's overwhelmingly -- those factors overwhelmingly support
9 leave to take these depositions here.

10 We have over 500 new parties added to the case in
11 2015, the term lenders who were finally served. They are being
12 pursued for over a billion dollars in clawback amounts, and
13 these four witnesses, who were key participants in the
14 transactions at issue, were deposed for, on average, as I said,
15 less than two hours in the prior depositions.

16 Now, the Mayer Brown witness counsel has argued that
17 the term lenders should be limited to areas not covered in the
18 prior deposition. And, of course, we don't have any -- we're
19 not there to repeat testimony already given. If we were, we
20 wouldn't need to take the further depositions. We're there to
21 pursue and follow up on questions that we don't feel were
22 adequately pursued from our perspective of having different
23 defenses and cross-claims, and we're -- we are, of course,
24 going to be covering the same general territory of those events
25 in October of 2008 that led to this colossal blunder, and those

1 were covered briefly in the 2010 depositions. But in our view,
2 there is absolutely no basis for those witnesses to resist
3 further deposition from these new parties who are asserting new
4 claims and based on a large number of additional documents that
5 have now been produced. So --

6 THE COURT: All right. Let me -- Mr. Miller, let me
7 hear, what's your response.

8 MR. MILLER: Yes, sir. So Mr. Gordon -- three of
9 these four people are no longer associated with Mayer Brown.
10 They were deposed fully and completely regarding the relevant
11 events here. While the depositions were not extremely lengthy,
12 the events in question are pretty narrow, and they were deposed
13 at length.

14 I've been speaking to Mr. McDonald. I haven't had
15 any conversations with Mr. Spiegel, but I've been speaking with
16 Mr. McDonald of his firm at length, and he's refused to
17 identify a single question that they need to ask that wasn't
18 asked before. They refuse to identify a single defense or a
19 single question that's relevant to a defense of theirs that
20 wasn't asked before. So in my view, they've entirely failed to
21 satisfy their burden of showing that there's any benefit to
22 these depositions of third-party witnesses who've been deposed
23 at length six years ago, and they refuse to really do so. I
24 believe it's their burden to show that there's something
25 relevant and important, non-cumulative to be gained from these

1 depositions, and they've absolutely not satisfied that burden.

2 THE COURT: All right. Thank you, Mr. Miller.

3 MR. MILLER: They --

4 THE COURT: Anything else?

5 MR. KROLEWSKI: Your Honor, this is Martin Krolewski
6 from Kelley Drye & Warren on behalf of JPMorgan Chase, if I may
7 have a minute to be heard.

8 THE COURT: Well, let me just -- before I -- I will
9 let you be heard.

10 Mr. Miller, is there anything you want to add?

11 MR. MILLER: No. I think that's essentially it,
12 which is that the -- you know, and to add --

13 THE COURT: Don't repeat your arguments, okay? If
14 there's something --

15 MR. MILLER: I think the only one other --

16 THE COURT: Go ahead.

17 MR. MILLER: I would like to add one other thing,
18 which is I think under virtually every case that's addressed
19 this issue, the Court, in the event of second depositions, has
20 required people to inquire into new matters, and --

21 THE COURT: That would be -- you might be on firmer
22 ground if the defendants that Mr. Spiegel represents were
23 parties to the action at the time that the first deposition was
24 taken, but they were not. They had not been served, and I
25 previously ruled that due process means that they're not bound

1 by that decision. So they were -- you know, they were not
2 parties. So your argument would have some force if we were
3 talking about a second deposition in an action between the same
4 parties.

5 Mr. Krolewski, let me hear from you.

6 MR. KROLEWSKI: Yes, thank you, Your Honor. Again,
7 Martin Krolewski, Kelley Drye, for JPMorgan. I just wanted to
8 highlight to the Court that JPMorgan cross-noticed these
9 subpoenas at the same time that originally Mr. Spiegel had
10 served them to preserve our ability to ask questions from our
11 perspective. The original depositions were very narrow in
12 scope. They were limited to the -- as Your Honor knows, to the
13 case dispositive issue of authority at the time, and going
14 forward, JPMorgan only foresees asking questions, limited
15 questions, as to affirmative defenses. They were not raised
16 originally at the depositions.

17 As Your Honor knows, fact discovery was limited in
18 focus on that one issue. Additional substantive discovery has
19 been taken. Additional documents have been produced, a number
20 of which relate to Mayer Brown and outside the time period that
21 may be related to some of the affirmative defenses that have
22 been raised by JPMorgan, as well as other parties. One in
23 particular --

24 THE COURT: Mr. Krolewski, the difference is JPMorgan
25 was a party at the time of the initial depositions, unlike Mr.

1 Spiegel's clients, but let me hear. Is there anybody who
2 wishes to be heard?

3 All right. The Court orders that the depositions of
4 the four deponents go forward. The client, Mr. Spiegel's
5 clients, the defendants other than JPMorgan, were not parties
6 to the action at the time these depositions were originally
7 taken. Those defendants are clearly entitled to take the
8 depositions now. With respect to JPMorgan, to the extent that
9 new matter is covered in the defendants' questioning of the
10 witnesses, I'll permit JPMorgan's counsel to examine them, as
11 well.

12 I am -- Rule 30(d)(1) sets a seven-hour presumptive
13 limit for the length of depositions, and I'm imposing that here
14 unless all parties agree -- unless the deponents' counsel
15 agrees, the deponents -- the depositions -- the questioning is
16 not to exceed seven hours.

17 MR. SPIEGEL: One question, Your Honor. This is John
18 Spiegel.

19 THE COURT: Yes, Mr. Spiegel.

20 MR. SPIEGEL: That seven hours applies to the
21 depositions that we, term lenders, have noticed. It doesn't
22 subsume the -- whatever the two hours that has previously been
23 taken by JPMorgan. Is that correct?

24 THE COURT: No, it does not. You were not party --
25 your clients were not parties then, so I consider this to be

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1 depositions -- in essence, I mean, it's in the same action, but
2 your clients were not parties, so the seven-hour presumptive
3 limit applies to the renewal of this deposition. I would
4 expect that you'll be able to agree on when and where the
5 depositions will take place. If there's a problem about it,
6 you'll let my chambers know, and if necessary, I'll have
7 another telephone hearing.

8 But with that seven-hour presumptive limit, I'm
9 including in that the time of JPMorgan's counsel to examine, as
10 well. So that's as to each deposition, not as to four -- not
11 to all four together. So each of the depositions is not to
12 exceed seven hours of questioning and doesn't count recess
13 times, and the parties -- counsel should endeavor to agree and
14 -- on the time and place where the depositions will occur.

15 I recognize that there are now about 500 defendants
16 that weren't in the case at the start. I expect that the
17 defendants' counsel, and there is a liaison committee, will
18 coordinate so that there will not be repetitive questioning by
19 more than one counsel on the defense side. And the seven hours
20 applies to everybody.

21 Anything else, Mr. Spiegel?

22 MR. SPIEGEL: Your Honor, thank you for clarifying.
23 One matter involving timing. The parties are submitting to
24 Your Honor, I think, either this evening or tomorrow a
25 stipulation continuing the fact discovery deadline beyond the

1 current deadline of the end of November. Of course, that's
2 subject to your court -- to the Court's approval.

3 THE COURT: Yes.

4 MR. SPIEGEL: I understand that fully. So we may
5 have a timing crunch if that extension is not moved, in which
6 case we will work with counsel for the witnesses to accomplish
7 this as conveniently as possible, but these may have to be done
8 in short order depending on where the --

9 THE COURT: What's the new date that you're all
10 seeking, Mr. Spiegel?

11 MR. SPIEGEL: January 31st, Your Honor, for UCC-3
12 effectiveness and March 31st of 2017 for cross-claim fact
13 discovery.

14 THE COURT: And, Mr. Spiegel, did all counsel agree
15 on that schedule?

16 MR. SPIEGEL: Yes. Yes, we have the -- well, it's
17 been a while in working through, but we've now got everybody's
18 agreement as I understand it.

19 THE COURT: All right. The one thing I want to make
20 clear is I think I -- well, I know I scheduled an April 24th
21 trial. That's going to hold. We're not moving that.

22 MR. SPIEGEL: And we set these dates in recognition
23 of that firm trial date, Your Honor.

24 THE COURT: Okay. I will look at the request when it
25 comes in, and whether or not I grant it -- you know, I've been

1 -- I've tried -- you know, there's good counsel in this case
2 that have been -- worked cooperatively. I recognize
3 particularly with third-party depositions, things of that
4 nature, scheduling can be difficult, particularly in the
5 holiday season. So I will -- I'll reserve actually ruling
6 until I see it, but in all likelihood, I'm going to agree on
7 that. And so that will be the deadline for getting these four
8 depositions completed, as well.

9 MR. MILLER: That would -- I'm sorry, this is Tim
10 Miller, and I'm just not as familiar with some of the terms.
11 Would that mean these people are subject to a January 31st or a
12 March 31st deadline?

13 THE COURT: January 31st deadline because it goes to
14 this -- I think, in fairness, goes to the effectiveness of the
15 UCC release. So those four deponents are subject to the
16 January 31st deadline, but Mr. Miller, don't think you're going
17 to boycott and schedule, you know, the four depositions for the
18 last four days of January. Proceed in good faith to get things
19 scheduled.

20 If -- Mr. Spiegel, if there are difficulties in
21 getting them scheduled, contact the Court, we'll have another
22 telephone hearing.

23 MR. MILLER: I will -- I fully intend to cooperate,
24 and I'll just tell the Court and I'll tell Mr. Spiegel that I'm
25 starting a jury trial, it's going to be two to three weeks, on

1 December 2nd. That's why -- the January timeframe is -- should
2 be workable.

3 THE COURT: Okay.

4 MR. MILLER: We'll talk with counsel about it, Your
5 Honor.

6 THE COURT: Well, Mr. Miller, I'm not going to move
7 -- assuming that I approve that January 31 date, I'm not going
8 to move dates. If you need to get one of your colleagues up to
9 speed, you go ahead and do that. It sounds like with your
10 trial schedule, this should still work around having
11 depositions in January, but don't schedule -- I know, you know,
12 I -- what I don't want to hear is they got scheduled for the
13 last four days in January and then some problem popped up and
14 now people want more time. That's not going to happen.

15 MR. MILLER: I understand, Your Honor.

16 THE COURT: Okay. And Mr. Krolewski, is that all you
17 want to raise? Any further --

18 MR. KROLEWSKI: Your Honor, thank you. I just wanted
19 to clarify, we certainly do not want to have any duplicative
20 questions. We meant that constructive cross and other defenses
21 were definitely not raised originally because of the limited
22 scope. But we're -- thank you, Your Honor, for a decision.

23 THE COURT: Okay. All right. Thanks very much,
24 everybody. We're adjourned. I'm not going to -- I'm so
25 ordering the transcript. I'm not iterating a separate written

14

1 order. If there's any problem about that, somebody will let me
2 know or my chambers know. Okay. Thanks very much, everybody.

3 MR. MILLER: Thank you for your time, Your Honor.

4 MR. SPIEGEL: Thank you.

5 (Proceedings concluded at 4:49 p.m.)

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1 **C E R T I F I C A T I O N**

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3 I, Alicia Jarrett, court-approved transcriber, hereby
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