

WACHTELL, LIPTON, ROSEN & KATZ
51 West 52nd Street
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Telephone: (212) 403-1000

**Hearing Date: April 7, 2017
at 10:00 a.m.**

**Responses Due: March 22, 2017
Replies Due: March 31, 2017**

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Attorneys for JPMorgan Chase Bank, N.A.

Additional Counsel Listed on Signature Page

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:	:	
	:	Chapter 11 Case
MOTORS LIQUIDATION COMPANY, <i>et al.</i> ,	:	
	:	Case No. 09-50026 (MG)
Debtors.	:	
	:	(Jointly Administered)
MOTORS LIQUIDATION COMPANY AVOIDANCE ACTION TRUST, by and through the Wilmington Trust Company, solely in its capacity as Trust Administrator and Trustee,	:	Adversary Proceeding
	:	
	:	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, <i>et al.</i> ,	:	
	:	
Defendants.	:	

NOTICE OF THE TERM LENDERS' MOTION IN LIMINE

PLEASE TAKE NOTICE that JPMorgan Chase Bank, N.A. (“JPMorgan”) and the other members of the Defendants Steering Committee (collectively, the “Term Lenders”) respectfully move, pursuant to Rules 26 and 37 of the Federal Rules of Civil Procedure (made applicable to this adversary proceeding by Rules 7026 and 7037 of the Federal Rules of Bankruptcy Procedure) and Rules 402, 403, 702 and 802 of the Federal Rules of Evidence, for an order *in limine* precluding the plaintiff Motors Liquidation Company Avoidance Action Trust (the “Avoidance Trust”) from presenting the following evidence at trial:

1. Testimony from David Goesling opining that: (a) because Old GM could not anticipate what would happen in the future, it did not intend to install fixed assets permanently; (b) because the Term Lenders’ collateral only comprised a portion of Old GM’s assets, the collateral should be valued on a liquidation basis; and (c) the fair market value of the Term Lenders’ collateral would be equal to or lower than an orderly liquidation value of the collateral because the “holding costs” associated with a longer fair market sale process would depress the amount realized;

2. Testimony from Robert Mollhagen opining that a person examining the records maintained by the Register of Deeds for Eaton County, Michigan as a potential purchaser or secured lender to the GM Lansing Delta Township plant would not discover the UCC-1 Fixture Filing recorded on April 26, 2007 at Liber 2113, Page 660, as well as the title search report that he commissioned from First American Title Insurance Company in connection with offering that opinion;

3. Parol evidence regarding the Term Loan Collateral Agreement and the Term Loan Credit Agreement, including the testimony of Richard Duker of JPMorgan and Ram Burshtine of Weil, Gotshal & Manges.

PLEASE TAKE FURTHER NOTICE that responses or objections, if any, to the motion *in limine* must be made in writing, conform to the Bankruptcy Rules and the Local Bankruptcy Rules for the Bankruptcy Court, and be filed with the Bankruptcy Court and served upon the Chambers of the Honorable Martin Glenn, United States Bankruptcy Judge, and on all counsel of record in this adversary proceeding, consistent with the March 8, 2017 Stipulation and Order Permitting the Parties to File Motions in Limine Under Seal (ECF No. 862).

PLEASE TAKE FURTHER NOTICE that this motion has been noticed to be heard at the Pre-Trial Conference scheduled in the above-captioned action for April 7, 2017 at 10:00 a.m. before the Honorable Martin Glenn, at the United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004-1408, Room 523.

PLEASE TAKE FURTHER NOTICE that the Court has set the following schedule for the briefing of this motion:

Moving papers: March 8, 2017

Answering papers: March 22, 2017

Reply papers: March 31, 2017

PLEASE TAKE FURTHER NOTICE that only those responses or objections made as set forth herein will be considered by the Bankruptcy Court. If no objections to this motion *in limine* are timely filed and served in accordance with the procedures set forth herein, the Bankruptcy Court may enter an order granting this motion without further notice.

Dated: New York, New York
March 8, 2017

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Respectfully submitted,

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Appendix A to the Consent Motion to Withdraw
(Dkt. No. 753)*

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*Attorneys for certain Term Loan Investor Defendants
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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:	:	Chapter 11 Case
MOTORS LIQUIDATION COMPANY, <i>et al.</i> ,	:	Case No. 09-50026 (MG)
Debtors.	:	(Jointly Administered)
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MOTORS LIQUIDATION COMPANY AVOIDANCE ACTION TRUST, by and through the Wilmington Trust Company, solely in its capacity as Trust Administrator and Trustee,	:	Adversary Proceeding
Plaintiff,	:	Case No. 09-00504 (MG)
vs.	:	
JPMORGAN CHASE BANK, N.A., individually and as Administrative Agent for Various Lenders Party to the Term Loan Agreement described herein, <i>et al.</i> ,	:	
Defendants.	:	

**[PROPOSED] ORDER GRANTING
TERM LENDERS' MOTION IN LIMINE**

Upon the motion *in limine*, dated March 8, 2017 (the "Motion") of JPMorgan Chase Bank, N.A. ("JPMorgan") and the other members of the Defendants Steering Committee (collectively, the "Term Lenders"), pursuant to Rules 26 and 37 of the Federal Rules of Civil Procedure, made applicable in this adversary proceeding by Rules 7026 and 7037 of the Federal Rules of Bankruptcy Procedure, and Rules 402, 403, 702 and 802 of the Federal Rules of Evidence, and after due deliberation and upon sufficient cause therefor, it is:

ORDERED that the Motion is GRANTED in its entirety; and it is further,

ORDERED that David Goesling is precluded from testifying that: (a) because Old GM could not anticipate what would happen in the future, it did not intend to install fixed assets permanently; (b) because the Term Lenders' collateral only comprised a portion of Old GM's assets, the collateral should be valued on a liquidation basis; and (c) the fair market value of the Term Lenders' collateral would be equal to or lower than an orderly liquidation value of the collateral because the "holding costs" associated with a longer fair market sale process would depress the amount realized;

ORDERED that: (a) Robert Mollhagen is precluded from testifying that a person examining the records maintained by the Register of Deeds for Eaton County, Michigan as a potential purchaser or secured lender to the GM Lansing Delta Township plant would not discover the UCC-1 Fixture Filing recorded on April 26, 2007 at Liber 2113, Page 660; and (b) the title search report obtained by Robert Mollhagen from First American Title Insurance Company is inadmissible and excluded from evidence; and it is further,

ORDERED that parol evidence regarding the Term Loan Collateral Agreement and the Term Loan Credit Agreement, including the testimony of Richard Duker and Ram Burshtine, is inadmissible and excluded from evidence; and it is further,

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation and/or interpretation of this Order.

Dated: _____, 2017
New York, New York

Honorable Martin Glenn
United States Bankruptcy Judge