

WACHTELL, LIPTON, ROSEN & KATZ
51 West 52nd Street
New York, New York 10019
Telephone: (212) 403-1000

Re: Docket Nos. 873, 875

**Pretrial Conference: April 7, 2017
at 10:00 a.m.**

KELLEY DRYE & WARREN LLP
101 Park Avenue
New York, New York 10178
Telephone: (212) 808-7800

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	:	Adversary Proceeding
ACTION TRUST, by and through the Wilmington Trust	:	
Company, solely in its capacity as Trust Administrator and	:	Case No. 09-00504 (MG)
Trustee,	:	
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.	:	

**REPLY DECLARATION OF S. CHRISTOPHER SZCZERBAN
IN FURTHER SUPPORT OF THE TERM LENDERS' MOTION IN LIMINE**

I, S. Christopher Szczerban, declare as follows:

1. I am counsel to the law firm of Wachtell, Lipton, Rosen and Katz, attorneys for defendant JPMorgan Chase Bank, N.A. in the above-captioned action. I respectfully submit this declaration in further support of the Term Lenders' Motion in Limine.

2. Submitted herewith as Exhibit 11 is a true and correct, excerpted copy of the Robert D. Mollhagen Deposition Transcript, dated January 30, 2017.

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

Dated: March 31, 2017
New York, New York

/s/ S. Christopher Szczerban
S. Christopher Szczerban
WACHTELL, LIPTON, ROSEN & KATZ
51 West 52nd Street
New York, New York 10019
(212) 403-1000

Exhibit 11

JANE ROSE REPORTING

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74 FIFTH AVENUE NYC 10011
JANE ROSE REPORTING.COM
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US Bankruptcy Court - New York

**Motors Liquidation Company
Avoidance Action Trust
v.
JPMorgan Chase Bank, NA**

CONFIDENTIAL

***Video Deposition of:
Robert Mollhagen
January 30, 2017***

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1 fact, this fixture filing is indexed in the
2 real estate records for Eaton County,
3 Michigan?
4 A. Yes.
5 Q. Turning to Exhibit A of this
6 fixture filing, are you offering any
7 interpretation as a matter of UCC law as to
8 what the meaning of the description in
9 Exhibit A is?
10 A. No.
11 Q. Are you offering any opinion as to
12 whether or not this fixture filing perfected
13 a security interest in any assets?
14 A. No.
15 Q. Returning to the statement on the
16 first page of your report with respect to the
17 opinion that was requested of you, with
18 respect to Eaton County, you state that --
19 the question is whether a person examining
20 the chain of title would discover the UCC
21 fixture filing in short form.
22 Do you see that?
23 A. Yes.
24 Q. What do you mean by the use of the
25 term "discover" in this context?

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1 A. Whether in performing a search of
2 the chain of title, the person would come
3 across that filing.
4 Q. Are you using any other meaning for
5 the term "discover" as you use it in this
6 report?
7 A. No.
8 Q. And you're not suggesting in any of
9 your opinions to how a Person should
10 interpret the UCC fixture filing, correct?
11 A. Correct.
12 Q. Look at page 2 of your report,
13 please, under the heading "Opinions."
14 Do you see the beginning of the
15 underlined section that says, "Eaton County
16 GM Plants - UCC Fixture Filing"?
17 A. Yes.
18 Q. Is the paragraph that follows that
19 heading your opinion with respect to the
20 Eaton County GM plants?
21 A. Yes.
22 Q. Is this a complete and accurate
23 statement of the opinions that you plan to
24 offer?
25 A. Yes.

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1 Q. Are you planning to offer any
2 opinion with respect to the Eaton County GM
3 plants that's not described in this
4 paragraph?
5 A. Not at this time.
6 Q. Focusing on the first sentence of
7 this paragraph, the sentence that reads, "The
8 person examining the chain of title to Eaton
9 County GM Plants Property in the land records
10 as a prospective purchaser, or
11 mortgage-secured lender to the owner, of the
12 Eaton County GM Plants Property on June 1st,
13 2009, would order and obtain the title search
14 and would rely on a reputable title insurance
15 company to report the results of the title
16 search."
17 Do you see that sentence?
18 A. Yes.
19 Q. Title Search is a capitalized term,
20 correct?
21 A. Yes.
22 Q. And does that have the meaning
23 that's attributed to the words title search
24 on page 5 of your report?
25 A. Yes.

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1 Q. Do you attribute any other meaning
2 to the capitalized term Title Search other
3 than what's described on page 5 of your
4 report?
5 A. No.
6 Q. Title search refers to -- in the
7 definition on page 5 of your report, "A
8 search report for mortgages and liens
9 encumbering Eaton County GM Plants property
10 as of June 1, 2009 (and recorded during the
11 period January 1, 2009 through June 1, 2009)
12 prepared by First American Title Insurance
13 Company."
14 Is that correct?
15 A. January 1, 2000, I believe.
16 Q. I believe it says 2009 in the text
17 of the report. Is that a typo?
18 A. That might be a typo.
19 Q. Is the date range that you intended
20 to write here January 1, 2000 through January
21 1, 2009?
22 A. Yes.
23 Q. Does this definition mean that --
24 MR. FISHER: I think, Chris, you
25 may have misspoke in your last question.

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1 Maybe take a quick look at it. I think
2 you said ending January 1, 2009.
3 MR. SZCZERBAN: Thank you. Let me
4 rephrase that question.
5 BY MR. SZCZERBAN:
6 **Q. Is the date range that should**
7 **appear in your definition of title search the**
8 **period from January 1, 2000 through June 1,**
9 **2009?**
10 A. Yes.
11 **Q. And the reference here to January**
12 **1, 2009 is an error that you would correct?**
13 A. Yes.
14 **Q. Like the other one we talked about**
15 **earlier?**
16 A. Yes.
17 **Q. Did you, at any point in time,**
18 **convey to First American that they should**
19 **start their search as of January 1, 2009?**
20 A. No.
21 **Q. Using the revised date range of**
22 **January 1, 2000 through June 1, 2009, does**
23 **this mean that the title search that you**
24 **requested would include any liens that were**
25 **recorded before January 1, 2000?**

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1 A. It would not.
2 **Q. It would not include liens recorded**
3 **before January 1, 2000?**
4 A. Correct.
5 **Q. Would that date range include --**
6 **would the title search using that date range**
7 **include liens that were recorded after June**
8 **1, 2009?**
9 A. No.
10 **Q. With respect to liens that were**
11 **recorded and then terminated during the**
12 **period between January 1, 2000 and June 1,**
13 **2009, would the title search that you**
14 **requested include those liens?**
15 A. No.
16 **Q. Do you know that for a fact? Let**
17 **me rephrase the question.**
18 **Did you have any communication with**
19 **anyone at First American who told you that**
20 **that was the case?**
21 A. No.
22 **Q. Do you have any knowledge of First**
23 **American practices on which you rely to**
24 **understand that that's the case?**
25 A. No.

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1 **Q. What, if any, basis do you believe**
2 **to support the answer that you gave**
3 **previously, that liens recorded and**
4 **terminated during the period between January**
5 **1, 2000 and June 1, 2009 would be included in**
6 **First American's title search?**
7 A. I lost you there. Could you do
8 that again?
9 **Q. What is the basis for your**
10 **assertion that liens recorded and terminated**
11 **during the period between January 1, 2000 and**
12 **June 1, 2009 would have been reflected on the**
13 **First American title search that you**
14 **received?**
15 A. That's just my assumption.
16 **Q. Did you speak with anyone at First**
17 **American to confirm one way or the other**
18 **whether that assumption was correct?**
19 A. No.
20 **Q. Did you do anything to confirm**
21 **whether that assumption was correct?**
22 A. No.
23 **Q. Do you know on what date the UCC**
24 **fixture filing was recorded?**
25 A. The Exhibit 1?

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1 **Q. Yes. The UCC Fixture Filing as you**
2 **used that capitalized term in your report?**
3 A. The same date that we just talked
4 about.
5 **Q. April 26, 2007?**
6 A. Yes.
7 **Q. Do you know on what date that**
8 **fixture filing was terminated?**
9 A. No.
10 **Q. Do you know if it was within the**
11 **period that you described?**
12 A. I don't think so. I think it was
13 afterwards.
14 **Q. At any point in time, did you**
15 **consider a longer time period than January 1,**
16 **2000 through June 1, 2009 for the title**
17 **search?**
18 A. No.
19 **Q. Is it your testimony that at no**
20 **point in time did you instruct First American**
21 **to use a December 31, 2009 end date for the**
22 **title search?**
23 MR. FISHER: Objection.
24 A. That's the point I can't recall
25 when I got the first report.

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1 BY MR. SZCZERBAN:
2 **Q. Let me see if I can refresh your**
3 **recollection. Could you look at Exhibit 2 at**
4 **Bates page RM 0009?**
5 A. Which page?
6 **Q. RM 9.**
7 **Do you see in the middle of that**
8 **page an e-mail from you to Mr. Wadsworth at**
9 **First American on December 19, 2016?**
10 A. Yes.
11 **Q. Does reading this e-mail refresh**
12 **your recollection about your communication**
13 **with First American concerning the end date?**
14 A. No.
15 **Q. The second sentence in this e-mail**
16 **says, "This search report should reflect a**
17 **search" -- "an ending search date of June 1,**
18 **2009 rather than December 31, 2009."**
19 **Do you see that?**
20 A. Yes.
21 **Q. Did you or someone at your firm**
22 **communicate an initial search and an ending**
23 **search date of December 31, 2009 to First**
24 **American?**
25 A. I am not sure.

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1 **Q. Do you recall why you sent this**
2 **e-mail?**
3 A. Yes.
4 **Q. Why were you revising the search**
5 **date?**
6 A. When I got the report, I saw that
7 it was December 31st, and I am not sure how
8 it ended up at that, but I knew the date
9 should have been June 1. So there was a
10 mistake somewhere. So I was just correcting
11 it.
12 **Q. What specific instructions were**
13 **provided to First American in your title**
14 **search request with respect to the date range**
15 **that was used when that request was initially**
16 **made?**
17 A. I don't recall. I didn't make the
18 request.
19 **Q. If you look at RM 1 on Exhibit 2,**
20 **it's the initial search request e-mail.**
21 **There is no date range provided on that**
22 **e-mail from Ms. Wickland to Mr. Wadsworth,**
23 **correct?**
24 A. Correct.
25 **Q. And you are not aware of any other**

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1 **written communication that provided the date**
2 **range to First American.**
3 A. Correct.
4 **Q. Do you have any understanding at**
5 **all how First American learned what date**
6 **range to use for the initial report that they**
7 **provided you on December 15, 2016?**
8 A. As I previously testified, Skye
9 Wickland made the request by telephone, and I
10 can only assume that there was a
11 misunderstanding in that call.
12 **Q. You don't know what was said to**
13 **First American about the date range to be**
14 **used?**
15 A. No.
16 **Q. Do you have any understanding as to**
17 **whether or not First American's title search**
18 **would have identified a lien recorded between**
19 **January 1, 2000 and June 1, 2009 that was**
20 **terminated after June 1, 2009?**
21 A. The termination wouldn't be
22 relevant to the search.
23 **Q. Do you have an understanding as to**
24 **whether or not First American modifies the**
25 **recordings of UCC or lien filings if they are**

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1 **terminated in their tract index?**
2 MR. FISHER: Objection.
3 A. In their tract index?
4 BY MR. SZCZERBAN:
5 **Q. Yes.**
6 A. Well, they would note a
7 termination, I assume, in their tract index.
8 It's a recorded document.
9 **Q. In searching the tract index, do**
10 **you know whether First American would**
11 **identify a lien that may have been in place**
12 **between January 1, 2000 and June 1, 2009 if**
13 **that lien was subsequently terminated after**
14 **January 1, 2009 but before the date on which**
15 **the title search was requested?**
16 MR. FISHER: Objection.
17 A. I don't know specifically what
18 their process is. I wouldn't expect that
19 they would because a title searcher doing a
20 title search wouldn't do that.
21 BY MR. SZCZERBAN:
22 **Q. But you don't know one way or the**
23 **other?**
24 A. I don't.
25 **Q. And you didn't talk to anyone at**

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1 **First American about that?**
 2 A. Correct. I didn't feel it was
 3 necessary.
 4 **Q. I apologize for this long question**
 5 **again, but I mixed up the dates in that long**
 6 **question I just asked before. So let me try**
 7 **again.**
 8 **Do you have an understanding as to**
 9 **whether or not First American would identify**
 10 **a lien in its tract index that had been in**
 11 **place between January 1, 2000 and June 1,**
 12 **2009 if that lien was subsequently terminated**
 13 **after June 1, 2009 but before the date the**
 14 **title search was requested?**
 15 MR. FISHER: Objection.
 16 A. I would expect that they would not
 17 give any effect to the termination in their
 18 search report that was ordered.
 19 BY MR. SZCZERBAN:
 20 **Q. But you don't know one way or the**
 21 **other?**
 22 A. I can assume that they did the
 23 report correctly.
 24 **Q. What's your basis for asserting**
 25 **that that would be what would be incorrect or**

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1 **correct in this context?**
 2 A. They are a reputable national title
 3 insurance company and this is what they do.
 4 **Q. Has anyone at First American told**
 5 **you one way or the other what that process**
 6 **was with respect to the way they record**
 7 **terminations?**
 8 A. It would be the same for any
 9 document and I'm sure I had numerous
 10 conversations with First American about that
 11 subject. I didn't have one on this matter.
 12 **Q. And you didn't have one with**
 13 **respect to the UCC fixture filing as you**
 14 **define it in your report?**
 15 A. Correct.
 16 MR. SZCZERBAN: I think it's about
 17 noon. Do you want to take a break. We
 18 can keep going if you like.
 19 THE WITNESS: I'm fine having a
 20 break.
 21 MR. FISHER: Let's take a break.
 22 MR. SZCZERBAN: We will go off the
 23 record.
 24 THE VIDEOGRAPHER: We are going off
 25 the record at 12:01 p.m. This marks the

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1 end of media two.
 2 (Recess)
 3 THE VIDEOGRAPHER: We are back on
 4 the record at 12:19 p.m. This marks the
 5 beginning of media three.
 6 BY MR. SZCZERBAN:
 7 **Q. Mr. Mollhagen, will you take out**
 8 **Exhibit 2 and look at page RM 0019?**
 9 A. Got it.
 10 **Q. This is one of the documents that**
 11 **you received from First American in**
 12 **connection with the title search that they**
 13 **conducted for you in connection with this**
 14 **case, correct?**
 15 A. Yes.
 16 **Q. Is this an UCC filing statement**
 17 **that's recorded at liber 1773, page 512 in**
 18 **Eaton County Register of Deeds?**
 19 A. It's a UCC financing statement,
 20 yes. It's recorded that way.
 21 **Q. Do you have any understanding as to**
 22 **whether or not this document has been**
 23 **modified in any way from the version of this**
 24 **document that exists in the official records**
 25 **of the Register of Deeds?**

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1 A. I don't have any understanding
 2 about that, no.
 3 **Q. Keeping this document out, would**
 4 **you open up in Exhibit 3 the Marquardt**
 5 **report. Exhibit 5 to that report, which is**
 6 **the lengthy exhibit at page 356.**
 7 A. Okay. Got it.
 8 **Q. Would you agree with me that in the**
 9 **First American version of this document,**
 10 **there is a header and footer that is not**
 11 **present on the version of this document that**
 12 **is at Marquardt Exhibit 5?**
 13 A. Yes.
 14 **Q. Do you understand those headers and**
 15 **footers to be First American notations?**
 16 A. It could be.
 17 **Q. Do you have any understanding as to**
 18 **what the information in the header which**
 19 **reads "Branch: F2F User FL18. Order: 765097.**
 20 **Title Officer: Comment. Station Id: Y3VQ"**
 21 **means?**
 22 A. No.
 23 **Q. Do you know if this reflects that**
 24 **the document came from First American's tract**
 25 **index as opposed to the recorder of deeds?**