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April 24, 2017

BY ECF

The Honorable Martin Glenn
United States Bankruptcy Court
Southern District of New York
One Bowling Green, Courtroom 523
New York, NY 10004-1408

Re: *Motors Liquidation Company Avoidance Action Trust v. JP Morgan Chase Bank, N.A., et al., Case No. 09-00504 (MG)*

Dear Judge Glenn:

I write to address the questions that Your Honor raised at the pretrial conference on April 7 concerning: (a) the power of General Motors Corporation to grant JPMorgan, as administrative agent under the Term Loan, a security interest in the "Fixtures" subject to the fixture filings that are the subject of this litigation; and (b) whether after-acquired fixtures would be covered by the Collateral Agreement and fixture filings.

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The evidence clearly shows that General Motors Corporation owned the land and buildings associated with Lansing Delta Township and Lansing Regional Stamping (the “Lansing facilities”), Warren Transmission, Defiance Foundry, Mansfield Stamping and Grand Rapids Stamping (along with virtually all of the equipment and fixtures therein). As a result, General Motors Corporation had the power to grant a security interest. And the law is clear that the Collateral Agreement and the existing fixture filings created an enforceable security interest in after-acquired fixtures at those facilities.

As the initial Joint Pretrial Order did not contemplate these issues to be within the scope of the 40 Representative Assets Trial, *see* ECF No. 962 at 47-48, we are addressing these issues in this separate submission, and have proposed to plaintiff that the parties stipulate to General Motors Corporation’s ownership of the land, buildings, and non-leased Representative Assets to avoid burdening the Court with hearing evidence on these issues. But plaintiff has refused to stipulate. As such, we are prepared to present evidence on these matters at trial.

A. Ownership of Land, Buildings, and Representative Assets

At the pretrial conference, the Court sought to understand “who owns the real property,” how GM “reflect[ed] ownership of the representative assets in its books and records,” and whether “ownership of each of the representative assets coincide with the ownership of each of the real properties where the representative assets are located.” *See* Transcript of Pretrial Conference (Apr. 7, 2017) (“Tr.”) at 15-16.¹

¹ The parties acknowledged that they previously had not taken discovery specifically as to these issues, which are not identified as issues to be tried in the Court’s case management orders and heretofore have not been in dispute. *See* Tr. at 20, 32; ECF No. 805 (citing ECF No. 547 regarding Collateral Identification Issues and Valuation Principles Issues to be). Plaintiff has previously alleged in its Amended Complaint and conceded in interrogatory answers that

(footnote continued)

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In response to the Court's inquiries, JPMorgan has obtained certified deeds recorded and maintained by the Register or Recorder of Deeds for each county in which a facility where a Representative Asset is located. These certified deeds show that: (a) General Motors Corporation acquired title to the real property on which the Representative Assets are located before the Representative Assets were installed; (b) aside from a few small conveyances, including for highways, sewers and other purposes, General Motors Corporation never conveyed its title to the real property on which the Representative Assets are located, whether to a subsidiary or third party, before the commencement of its Chapter 11 case on June 1, 2009 (the "Petition Date"); and (c) ultimately, General Motors Corporation itself transferred title to substantially the same land that it initially acquired to its successor entity, General Motors Company, or other purchasers after the Petition Date.²

As Your Honor will recall, plaintiff's counsel stated at the pretrial conference that "if the proof is overwhelming," they would agree to stipulate that General Motors Corporation

(footnote continued)

"Surviving Collateral" was "secured and perfected by filings other than the Financing Statement deemed ineffective by the Second Circuit. *See* ECF No. 91 at ¶ 601 (conceding existence of Surviving Collateral); Plaintiff's Supplemental Responses and Objections to JPMorgan's First Set of Interrogatories (Mar. 28, 2017) at 2, 4-5 (stating that "Remaining Secured Collateral as of June 2009" was contained at the "plants, facilities, buildings and/or other structures" at Defiance, Mansfield, Warren and Grand Rapids). Plaintiff initially conceded the existence of fixtures at the Lansing facilities in its initial interrogatory responses, but amended its responses just three days before the parties finalized the initial proposed Joint Pretrial Order to withdraw that concession, nonetheless reaffirming that 27 GM "plants, facilities, buildings and/or other structures . . . contain[ed] Remaining Secured Collateral as of June 2009." *See id.*

² These certified deeds are self-authenticating, signed and sealed public records that, in many cases, easily qualify as ancient documents and, in all cases, affect an interest in property. As such, these deeds may be received directly into evidence under Fed. R. Evid. 803(14), 803(15), 803(16), 902(1) and 902(4).

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owned the land and buildings where the 40 Representative Assets were located. Tr. at 32. Accordingly, more than a hundred certified deeds have been provided to plaintiff's counsel in an attempt to facilitate a stipulation that would resolve the Court's inquiries without burdening the Court with voluminous evidence. As plaintiff's counsel has not agreed to stipulate, JPMorgan respectfully seeks to offer these certified deeds into evidence to address the issue raised by the Court, along with a supplement to the expert testimony of James Marquardt addressing this subject.

Additionally, although the MFD Pontiac and Powertrain Engineering Pontiac facilities do not contain any Representative Assets, to respond to the Court's inquiries, Mr. Marquardt has reviewed and will address the conveyances between General Motors Corporation, General Motors Acceptance Corporation and GM Facilities Trust No. 2000-1, which the Court identified at the pretrial conference as "suggest[ing] that ownership of GM properties was held in different names at different times." Tr. at 16. Specifically, Mr. Marquardt will explain that even if General Motors Corporation was not the owner of all Pontiac land and buildings at the time the Collateral Agreement was executed on November 29, 2006, General Motors Corporation was in title at the time of the relevant fixture filing and through the Petition Date.

These deeds and related testimony are in addition to the substantial evidence of General Motors Corporation's ownership of the land, buildings and virtually all of the Representative Assets at issue that was cited to the Court in my April 6 letter, and the evidence from GM's eFast ledger that will be presented in the trial testimony of Collen Charles. Together, this evidence plainly demonstrates that GM had the power to grant JPMorgan a security interest in the fixtures that are the subject of this litigation

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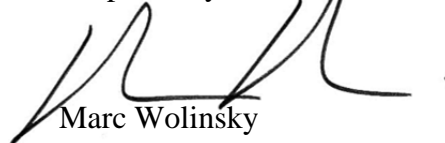
Similarly, UCC § 9-502(b), which sets forth the requirements for sufficiency of a fixture filing, contains no requirement for any reference to after-acquired property. Official Comment 2 to UCC § 9-502 notes that “a financing statement is effective to cover after-acquired property of the type indicated and to perfect with respect to future advances under security agreements, regardless of whether after-acquired property or future advances are mentioned in the financing statement and even if not in the contemplation of the parties at the time the financing statement was authorized to be filed.”

In sum, JPMorgan, as Agent for the Term Lenders, received a valid grant of a security interest in after-acquired fixtures at the relevant facilities pursuant to the Collateral Agreement, and that security interest was validly perfected, regardless of whether any related fixture filings contained a reference to after-acquired property at those facilities or not.

* * *

I will be prepared to address these matters at the Court’s convenience.

Respectfully submitted,



Marc Wolinsky

cc: All counsel of record