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June 2, 2017

VIA ECF AND EMAIL

The Honorable Martin Glenn
United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, New York 10004

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

Dear Judge Glenn:

We, along with our co-counsel at Munger, Tolles & Olson LLP, represent a group of Term Loan Lenders that account for approximately \$600 million of the principal of the Term Loan outstanding on June 30, 2009. We write concerning certain proposed findings of fact in paragraphs 258, 259, and 263 of the Avoidance Trust's post-trial brief. These paragraphs could be read as finding that the UCC-3 termination statement (the "Termination Statement") at issue in this case was legally effective against all term lender defendants, not just JPMorgan.¹ Such an interpretation would be prejudicial to the non-JPMorgan term lenders (whom we refer to as the "Term Lenders") and inconsistent with this Court's prior rulings.

In its June 30, 2016 order on the motions to dismiss filed by certain Term Lenders, this Court ruled that the Second Circuit's decision and the summary judgment ruling on the effectiveness of the Termination Statement "does not have preclusive effect on the defendants that were not brought into the case until after those court rulings" because "[d]ue process protects the ability of those defendants to assert their defenses in the action after they were made parties by service of the summons and complaint." Dkt. No. 643, at 36-37. As our co-counsel explained in a previous filing, *see* Dkt. No. 843, the Term Lenders have strong arguments against

¹ *See* Avoidance Action Trust Post-Trial Br. (Dkt. No. 994), at ¶ 258 ("It was discovered on October 30, 2008, JPMorgan authorized the filing of a UCC-3 termination statement with the Delaware Secretary of State (the '2008 Termination Statement') in connection with the payoff of an unrelated synthetic lease transaction."); *id.* ¶ 259 ("The 2008 Termination Statement terminated the Delaware Umbrella Filing Statement, causing a substantial portion of Defendants' security interest to become unperfected and giving rise to the Avoidance Action."); *id.* ¶ 263 ("The Second Circuit also held that, as a result of the 2008 Termination Statement, the Delaware Umbrella Financing Statement was not effective as of the Petition Date.").

The Honorable Martin Glenn
June 2, 2017
Page 2

the effectiveness of the Termination Statement—arguments that were not considered in, and are therefore not foreclosed by, the Second Circuit’s decision.

The parties have met and conferred, and counsel for the Avoidance Trust has indicated that it did not intend to seek any ruling as to the legal effectiveness of the Termination Statement in the Representative Assets trial. Accordingly, the Term Loan Lenders respectfully request that, to the extent the Court includes any findings of fact concerning the filing of the Termination Statement or the Second Circuit’s decision, the Court include the following language (or language to similar effect):

These findings of fact are without prejudice to the non-JPMorgan defendants’ contention that the Second Circuit’s decision is not binding as to them. *See* Dkt. No. 643, at 36-37.

Sincerely,

/s/ Bruce Bennett

Bruce Bennett