

**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP

101 PARK AVENUE

NEW YORK, NEW YORK 10178

(212) 808-7800

FACSIMILE

(212) 808-7897

www.kelleydrye.com

WASHINGTON, DC

CHICAGO, IL

STAMFORD, CT

PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICES

MUMBAI, INDIA

March 11, 2010

JOHN M. CALLAGY

DIRECT LINE (212) 808-7718

E-MAIL: jcallagy@kelleydrye.com

**BY HAND**

Hon. Robert E. Gerber, U.S.B.J.  
United States Bankruptcy Court  
for the Southern District of New York  
One Bowling Green  
New York, NY 10004

Re: Official Committee of Unsecured Creditors of Motors Liquidation  
Company v. JPMorgan Chase Bank, N.A., et al. Adv. Pro. No. 09-00504

Dear Judge Gerber:

On behalf of Defendant JPMorgan Chase Bank, N.A. ("JPMCB"), I write pursuant to Rule 7056-1(a) of the Local Bankruptcy Rules for the Southern District of New York to inform the Court of the issues to be presented by JPMCB in its forthcoming motion for summary judgment. The Court's scheduling order, as amended, requires such motions to be served on March 22, 2010.

The Complaint

On July 31, 2009, the Official Committee of Unsecured Creditors of Motors Liquidation Company f/k/a General Motors Corp. (the "Committee") brought this adversary proceeding pursuant to the limited standing granted to it by this Court's June 25, 2009 DIP Order *See In re Motors Liquidation Company, et al.*, Case No. 09-50026, Docket No. 2529. Specifically, the DIP Order allows the Committee to investigate and bring actions with respect only to the "perfection" of first priority liens of JPMCB and other secured parties of General Motors Corporation ("GM"). DIP Order at ¶ 19(d).

In its Complaint, the Committee alleges that the first priority secured interests of JPMCB and a syndicate of financial institutions securing the obligation under a \$1.5 billion Term Loan agreement dated November 29, 2006 ("Term Loan") were eliminated when a single UCC-3 termination statement relating to the Term Loan was filed with the Delaware Secretary of State on October 30, 2008. *See* Docket No 1 at ¶¶ 433-437. Accordingly, the Committee seeks to avoid and recover, under, *inter alia*, 11 U.S.C. § 544, the post-petition repayment of over \$1.4 billion made to JPMCB and the Term Loan lenders pursuant to the DIP Order out of the approximately \$33 billion in post-petition financing funded by The United States Department of

Hon. Robert E. Gerber, U.S.B.J.  
March 11, 2010  
Page Two

Treasury, as well as certain pre-petition payments under, *inter alia*, 11 U.S.C. § 547 as alleged preference payments. *Id.* at ¶¶ 438-461.

The Committee's Complaint Should Be Dismissed

Both the law and undisputed evidence require dismissal of the Committee's suit. A UCC-3 termination statement filed without the secured party's authority is ineffective. *See, e.g.*, 6 Del. C. § 9-502 comment 3 (citing 6 Del. Ch. § 9-510). The UCC-3 termination statement that forms the basis for the Committee's adversary proceeding was filed erroneously and without authority by GM's counsel – not by JPMCB – in connection with another totally unrelated transaction, and is therefore ineffective. Indeed GM's counsel had not even known they had filed the unrelated UCC-3. *See, e.g., In re A.F. Evans*, 2009 WL 2821510 (Bankr. N.D. Cal. 2009) (holding that a UCC-3 filed without the secured party's authority is ineffective and distinguishing it from a line of cases cited by the Committee).

Here, it is undisputed that in October 2008, GM paid off a \$150 million outstanding loan to JPMCB and a syndicate of lenders that related to an entirely different real estate financing transaction, called the synthetic lease transaction. In connection with that pay-off, GM's counsel in that transaction – Mayer Brown LLP (“Mayer Brown”) – erroneously filed the UCC-3 termination statement relating to the \$1.5 billion Term Loan which had been put in place five years after the initiation of the synthetic lease transaction. The filing was completely contrary to the limited authority given to GM and its counsel to file termination statements relating only to the pay-off of the synthetic lease deal. For instance:

□ a written Termination Agreement dated October 30, 2008 relating to the pay-off of the synthetic lease transaction, signed by both GM and JPMCB, permitted GM to file UCC-3 termination statements relating to the properties with respect to the synthetic lease transaction – not the Term Loan.

□ Mayer Brown deponents have given consistent, sworn, uncontroverted testimony that they did not know they had filed a termination statement relating to the Term Loan, and certainly did not have – and did not believe they had -- any authority to do so.

□ Mayer Brown has never represented or done any work on behalf of GM in connection with the Term Loan. Indeed, several of the Mayer Brown deponents had not even heard of the Term Loan at the time of the closing of the synthetic lease transaction.

□ JPMCB and its counsel in the synthetic lease transaction did not know that Mayer Brown had filed an unrelated UCC-3, and certainly did not authorize the filing of any termination statement relating to the Term Loan.

KELLEY DRYE & WARREN LLP

Hon. Robert E. Gerber, U.S.B.J.

March 11, 2010

Page Three

□ None of the documents circulated in connection with the pay-off of the synthetic lease transaction referenced the Term Loan at all – including the unrelated UCC-3 termination statement itself. All of the correspondence and documents circulated in connection with the closing of the synthetic lease transaction indicated that such documents only pertained to that transaction. All parties, including Mayer Brown, believed that all such documents related to the pay-off of the synthetic lease transaction.

□ The filing of the unrelated termination statement remained unknown to all parties until after June 1, 2009 (the “Petition Date”) and that no party, including the Committee or the creditors of GM, relied on it to their detriment.

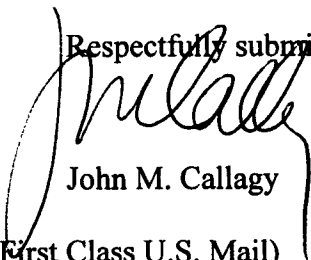
The above, undisputed facts conclusively establish that the filing of the termination statement was not authorized by JPMCB. JPMCB is therefore entitled to summary judgment dismissing this adversary proceeding in its entirety.

In addition, JPMCB's first priority security interests were also perfected by financing statements filed against Saturn Corporation, a signatory to the Term Loan, and twenty-six state fixture filings, filed in the counties where Term Loan collateral was located. The Committee does not -- and cannot -- argue that these financing statements were not perfected as of the Petition Date.

Alternatively, the Committee's adversary proceeding also should be dismissed because JPMCB and the Term Loan lenders are entitled to a constructive trust in the Term Loan collateral as of the Petition Date -- which entitles them to priority over the interests of the estate. To permit recovery in light of the facts here, not the least of which is the fact that The United States Department of Treasury made the cash available for the pay-off of the Term Loan which is sought to be clawed back, would grossly and unjustly enrich the unsecured creditors, and is inconsistent with law.

I look forward to addressing any questions regarding JPMCB's summary judgment motion on March 16, 2010 at 4:00 p.m..

Respectfully submitted,

  
John M. Callagy

cc: Eric B. Fisher, Esq, (via e-mail and First Class U.S. Mail)