

**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 (REG)
Debtors.	:	(Jointly Administered)
OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF MOTORS LIQUIDATION COMPANY f/k/a GENERAL MOTORS CORPORATION,	:	Adversary Proceeding
Plaintiff,	:	Case No. 09-00504 (REG)
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.	:	

**AFFIDAVIT OF RICHARD W. DUKER IN SUPPORT OF DEFENDANT
JPMORGAN CHASE BANK, N.A.'S MOTION FOR SUMMARY JUDGMENT**

STATE OF NEW YORK)
 : ss
COUNTY OF NEW YORK)

RICHARD W. DUKER, being duly sworn, deposes and says:

1. I make this affidavit in support of the motion for summary judgment of Defendant JPMorgan Chase Bank, N.A. (“JPMCB”) pursuant to Rule 56 of the Federal Rules of Civil Procedure and as incorporated by Rule 7056 of the Federal Rules of Bankruptcy Procedure. All facts attested to herein are based on my personal

knowledge or a review of the files and records maintained by JPMCB in the ordinary course of business.

2. I am currently a Managing Director in JPMCB's Credit Risk Management Group. I have held this position since 2002. I have been employed by JPMCB and its predecessors since 1985.

3. As a Managing Director, I am responsible for a portfolio of client relationships as to which I manage JPMCB's potential credit risk. One of the client credit relationships for which I was responsible was General Motors Corporation ("GM"). I have covered the GM credit relationship since 1999.

The Synthetic Lease Transaction

4. My responsibilities with respect to GM included a synthetic lease financing transaction, which closed in October 2001 ("Synthetic Lease Transaction"). Specifically, on October 31, 2001, GM entered into the Synthetic Lease Transaction among multiple parties, including JPMCB. This transaction provided GM with up to approximately \$300 million in financing from a syndicate of financial institutions for the acquisition of and construction on several real properties. JPMCB served as one of several backup facility banks as well as the Administrative Agent in the transaction.

5. The Synthetic Lease Transaction was set forth in a Participation Agreement ("Participation Agreement"), dated as of October 31, 2001 among GM, as Lessee and Construction Agent, Auto Facilities Real Estate Trust 2001-1, a Delaware business trust, as Lessor, Wilmington Trust Company, as trustee of the Lessor, the Persons named therein as Investors, the Persons named therein as Backup Facility Banks, Relationship Funding Company, LLC, and The Chase Manhattan Bank (now known as

JPMCB) as Administrative Agent, as amended, together with all related agreements and documents (collectively, the “Synthetic Lease Transaction Documents”).¹

6. GM’s obligation to repay the financing advanced in the Synthetic Lease Transaction was secured by liens on certain real properties identified in the Synthetic Lease Transaction Documents as the “Properties.”

7. In order to perfect security interests in the “Properties,” multiple UCC-1 financing statements were filed in the relevant counties in which such “Properties” were located. UCC-1 financing statements were also filed with the Delaware Secretary of State.²

8. JPMCB was represented by the law firm of Simpson Thacher & Bartlett LLP (“Simpson”) in all matters relating to the Synthetic Lease Transaction. I understand that GM was represented by the law firm of Mayer Brown LLP (“Mayer Brown”) in connection with the Synthetic Lease Transaction.

¹ Attached hereto as Exhibits A through E are certain Synthetic Lease Transaction Documents relevant to this motion: Exhibit A is a true and correct copy of the Participation Agreement bates numbered JPMCB-STB-00000922-00001170; Exhibit B is a true and correct copy of Annex A to the Participation Agreement: Rules of Usage and Definitions bates numbered 00001171-00001215; Exhibit C is a true and correct copy of the Synthetic Lease Transaction Lease between Auto Facilitates Real Estate Trust 2001-1, as Lessor, and GM, as Lessee, and dated as of October 31, 2001 bates numbered JPMCB-STB-00001216-00001268; Exhibit D are true and correct copies of twelve Short Form Memorandums of Lease bates numbered JPMCB-STB-00002621-00002850; and Exhibit E is a true and correct copy of the Synthetic Lease Transaction First Amendment and Agreement to the Participation Agreement dated as of January 6, 2003 bates numbered JPMCB-STB-00000899-921.

² Attached collectively hereto as Exhibit F are true and correct copies of certain UCC-1 financing statements filed with the Delaware Secretary of State in connection with the Synthetic Lease Transaction listing JPMCB, as Administrative Agent, as the secured party bates numbered JPMCB-0000080-0000091; JPMCB-STB-00001709-00001720; and JPMCB-STB-00001835-00001840.

The Term Loan

9. My responsibilities with respect to GM also included a seven year senior secured term loan facility known as the “Term Loan,” which closed in November 2006. Specifically, on November 29, 2006, five years after the closing of the Synthetic Lease Transaction, GM and Saturn Corporation (“Saturn”) entered into the Term Loan with a different syndicate of financial institutions and JPMCB, acting as Administrative Agent. The Term Loan provided GM with approximately \$1.5 billion in financing. It was a completely separate transaction unrelated to the Synthetic Lease Transaction.

10. The Term Loan was set forth in a Term Loan Agreement³ (“Term Loan Agreement”), dated as of November 29, 2006, among GM, as the Borrower, Saturn, as a Guarantor, the Several Lenders, Credit Suisse Securities (USA) LLC, as Syndication Agent, Barclays Bank PLC, Citigroup Global Markets Inc., Deutsche Bank Securities Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, and Morgan Stanley Senior Funding, Inc., as Co-Documentation Agents, and JPMCB, as Administrative Agent, as amended, together with all related agreements and documents.

11. As part of the term loan facility, GM, Saturn and JPMCB, as Administrative Agent, also entered into a Collateral Agreement, dated as of November 29, 2006, which provided the lenders with certain security interests in assets of GM and Saturn (“Term Loan Collateral Agreement”).⁴

³ Attached hereto as Exhibit G is a true and correct copy of the Term Loan Agreement and exhibits thereto bates numbered JPMCB-CSM-0000004-0000111.

⁴ Attached hereto as Exhibit H is a true and correct copy of the Term Loan Collateral Agreement bates numbered JPMCB-CSM-0000112-0000158.

12. Specifically, the obligation to repay the Term Loan was secured by assets of GM and Saturn set forth in the Term Loan Collateral Agreement, including all “Equipment” and “Fixtures” as defined therein. *See* Exhibit H attached hereto.

13. Pursuant to the terms of the Term Loan Agreement and the Term Loan Collateral Agreement, JPMCB caused the filing of multiple UCC-1 financing statements to perfect the Term Loan lenders’ security interests in the assets securing the Term Loan. Specifically, on November 30, 2006, JPMCB caused the filing of two UCC-1 financing statements with the Delaware Secretary of State listing GM and Saturn, respectively, as the debtors and JPMCB, as Administrative Agent, as the secured party.⁵ JPMCB also caused the filing of twenty-six state fixture filings in the County Clerk’s offices where the real properties containing the assets securing the Term Loan were located.⁶

14. At all pertinent times, JPMCB was represented by Cravath, Swaine & Moore LLP (“Cravath”) or Morgan Lewis & Bockius LLP (“Morgan Lewis”) in connection with the Term Loan. Simpson did not represent JPMCB in any respect in connection with the Term Loan, and had no authority, involvement or responsibilities concerning the Term Loan.

⁵ Attached collectively hereto as Exhibit I are true and correct copies of the two UCC-1 financing statements filed in connection with the Term Loan with the Delaware Secretary of State bates numbered JPMCB-CSM-0000277-0000288.

⁶ Attached collectively hereto as Exhibit J are true and correct copies of the twenty-six Term Loan state fixture filings bates numbered JPMCB-MLB-0006089-0006093; 0006094-0006096; 0006192-0006195; 0006151-0006154; 0006181-0006183; 0006100-0006102, 0006097-0006099; 0006076-0006081; 0006111-0006135; 0006108-0006110; 0006067-0006071; 0006155-0006157; 0006103-0006107; 0006163-0006166; 0006045-0006050; 0006158-0006162; 0006175-0006180; 0006184-0006191; 0006136-0006144; 0006196-0006199; 0006038-0006044; 0006173-0006174; 0006085-0006088; 0006082-0006084; 0006072-0006075; 0006167-0006172; 0006064-0006066; and 0006145-0006150.

The Repayment of the Synthetic Lease Transaction in October 2008

15. The Synthetic Lease Transaction was scheduled to mature on October 31, 2008. On October 1, 2008, Arun Sundaram of GM informed me that GM intended to repay the outstanding amount due under the Synthetic Lease Transaction (a balance of approximately \$150 million at that time), which would be accomplished by GM's re-purchase of the remaining "Properties."⁷

16. In connection with the Synthetic Lease Transaction repayment, I received several documents drafted by GM's counsel, Mayer Brown. All of the documents that I received referenced the Synthetic Lease Transaction. None of the documents referenced the Term Loan and I did not believe that any of the documents I received related to anything but the Synthetic Lease Transaction. In the course of the closing of the Synthetic Lease Transaction in October 2008, I had no discussions with anyone regarding any of the UCC-1 financing statements that needed to be terminated in connection with GM's repayment of the Synthetic Lease Transaction.

17. As part of the termination of the Synthetic Lease Transaction, I executed a Termination Agreement and Release of Operative Agreements dated as of October 30, 2008 (the "Synthetic Lease Termination Agreement").⁸

18. Pursuant to the terms of the Synthetic Lease Termination Agreement, JPMCB, as Administrative Agent, and the Lessor "authorize[d] [GM] to file a termination of any existing Financing Statement relating to the Properties." *See*

⁷ Attached hereto as Exhibit K is a true and correct copy of an October 1, 2008 e-mail from Arun Sundaram to Richard Duker "Re: Fw: Auto Facilities Real Estate Trust" bates numbered JPMCB-00000240-00000241.

⁸ Attached hereto as Exhibit L is a true and correct copy of the Synthetic Lease Termination Agreement bates numbered JPMCB-00002801-00002812.

Exhibit L attached hereto. As set forth above, “Properties” is defined in the Participation Agreement and the Synthetic Lease Transaction Documents to mean certain specific real properties all of which related to the Synthetic Lease Transaction. The Synthetic Lease Termination Agreement was the only source of authority provided to GM by JPMCB in connection with the filing of UCC-3 termination statements relating to the Synthetic Lease Transaction.

19. On October 30, 2008, GM paid all amounts due under the Synthetic Lease Transaction and exercised its repurchase option for the remaining “Properties.” In accordance with the authority given to GM in the Synthetic Lease Termination Agreement, GM caused multiple UCC-3 termination statements relating to the “Properties” to be filed. I did not, nor was I asked to, sign any of the UCC-3 termination statements, nor was anyone else at JPMCB asked to sign the UCC-3 termination statements. I did not believe, and was unaware, that GM or its counsel, Mayer Brown, filed a UCC-3 termination statement that was unrelated to the Synthetic Lease Transaction.

20. JPMCB did not authorize GM or its counsel, Mayer Brown, to file a UCC-3 termination statement relating to the Term Loan in October 2008 or at any time prior to GM’s bankruptcy filing on June 1, 2009.

21. As set forth above, Simpson represented JPMCB only with respect to the Synthetic Lease Transaction. Simpson did not have any authority with respect to the Term Loan.

GM Continued to Treat JPMCB and the Other Term Loan Lenders As Fully Perfected Secured Parties Under the Term Loan After October 30, 2008

22. Subsequent to the Synthetic Lease Transaction repayment in October 2008, GM engaged in negotiations to amend the Term Loan with JPMCB and the other lenders between January and March 2009.

23. In January 2009, GM expected its auditors would include a “going concern” qualification in their opinion for 2008, which would have constituted a default under the Term Loan. GM therefore, among other things, sought from JPMCB and the other Term Loan lenders a waiver of the “going concern” requirement included in the Term Loan documentation, as well as the ability for GM to provide a second lien on the assets securing the Term Loan to the U.S. government – albeit junior to the lien of the Term Loan lenders.⁹ The parties also negotiated an increase to the required ratio of the net book value of the assets securing the Term Loan to the outstanding amount of the loan. *See Exhibit M attached hereto.*

24. Ultimately, the parties agreed to, among other things, an increase in fees to be paid to the Term Loan lenders, an increase in the ratio of the net book value of the assets securing the Term Loan and a requirement that GM provide the Term Loan lenders reports detailing the value of the assets securing the Term Loan on a quarterly basis.

25. The First Amendment to the Term Loan Agreement was executed on March 4, 2009 (the “First Amendment”).¹⁰ At no time during the negotiations of the

⁹ Attached collectively hereto as Exhibit M are true and correct copies of Richard Duker emails dated February 27, March 1 and 4, 2009 “Re: GM Term Loan Amendment Update” bates numbered JPMCB-00003740-00003741.

¹⁰ Attached hereto as Exhibit N is a true and correct copy of the First Amendment to the Term Loan bates numbered JPMCB-MLB-0001015-0001309.

First Amendment did anyone from GM or anywhere else suggest that the Term Loan lenders' security interests were not fully perfected. Indeed, the negotiations and the related documents reflected that the Term Loan lenders' security interests in the assets securing the Term Loan were intact.

26. Subsequent to October 30, 2008, GM continued to provide JPMCB with Collateral Value Certificates as required under the Term Loan Agreement and the First Amendment certifying that the ratio of the net book value of the assets securing the Term Loan met the contractual requirement. Specifically, GM sent Collateral Value Certificates on December 2, 2008, March 23, 2009 and on the eve of the bankruptcy, on May 28, 2009.¹¹

27. Pursuant to the May 28, 2009 Collateral Value Certificate, the assets securing the Term Loan had a net book value of more than \$5.6 billion dollars. *See* Exhibit O at JPMCB-1-0000059 attached hereto.

28. At no point in time between October 30, 2008 and June 1, 2009 did anyone from GM or any other party raise any suggestion that the Term Loan lenders' security interest in the assets that secured the Term Loan was unperfected.

Discovery of the Term Loan UCC-3 Termination Statement

29. After GM filed for bankruptcy protection on June 1, 2009, I first learned that Mayer Brown, GM's counsel in the Synthetic Lease Transaction, without JPMCB's authority, had caused a UCC-3 termination statement to be filed with the Delaware Secretary of State with respect to a UCC-1 financing statement with the filing

¹¹ Attached collectively hereto as Exhibit O are true and correct copies of the Collateral Value Certificates dated December 2, 2008, March 23, 2009 and May 28, 2009 bates numbered JPMCB-1-00000052-00000059.

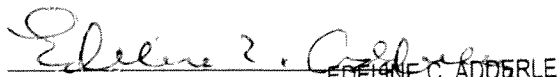
number 6416808 4 that was entirely unrelated to the Synthetic Lease Transaction or the “Properties” pledged as collateral in that transaction. This UCC-1 financing statement actually related to collateral pledged under the Term Loan.

30. GM and its counsel, Mayer Brown, were not authorized by JPMCB, the Synthetic Lease Termination Agreement, or otherwise, to terminate a UCC-1 financing statement related to the Term Loan.

31. The Term Loan was repaid on June 30, 2009. Subsequent thereto, JPMCB authorized and caused the filing of UCC-3 termination statements relating to the Term Loan, including the one with the 6416808 4 filing number, listing GM and Saturn, respectively, as the debtors as well as to each one of the twenty-six state fixture filings filed in the County Clerk’s offices where the facilities containing the assets securing the Term Loan were located.¹²


RICHARD W. DUKER

Sworn to before me this
29th day of June, 2010


Notary Public
EDELIN C. ADDERLEY
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01AD6079940 QUALIFIED IN BRONX COUNTY
CERTIFICATE FILED IN NEW YORK COUNTY
MY COMMISSION EXPIRES SEPT. 3, 2010

¹² Attached collectively hereto as Exhibit P are true and correct copies of the Term Loan UCC-3 termination statements filed subsequent to the Term Loan repayment on June 30, 2009 bates numbered JPMCB-MLB-0001403; 0001404; 0001454-0001457; 0001416-0001418; 0001325-0001328; 0001409-0001412; 0001322-0001324; 0001340-0001342; 0001400-0001402; 0001448-0001453; 0001347-0001371; 0001393-0001395; 0001336; 0001337-0001339; 0001372-0001376; 0001318-0001321; 0001388-0001392; 0001426-0001430; 0001381-0001387; 0001329-0001335; 0001314-0001317; 0001343-0001346; 0001413-0001415; 0001419-0001421; 0001422-0001425; 0001462-0001466; 0001441-0001443; and 0001471-0001476.