UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	Chapter 11
	Case No.: 09-50026 (MG)
MOTORS LIQUIDATION COMPANY, *et al.*,	(Jointly Administered)
Debtors.	
MOTORS LIQUIDATION COMPANY AVOIDANCE ACTION TRUST, by and through the Wilmington Trust Company, solely in its capacity as Trust Administrator and Trustee,	Adversary Proceeding Case No.: 09-00504 (MG)
Plaintiff,	
v.	
JPMORGAN CHASE BANK, N.A., individually and as Administrative Agent for various lenders party to the Term Loan Agreement described herein, *et al*.	
Defendants.	

Cross-Claims of Wells Cap Mgmt – 13923601 Against JPMorgan Chase Bank, N.A.

Defendant Wells Cap Mgmt - 13923601 ("Wells Cap")[1], by its attorneys, Becker, Glynn, Muffly, Chassin & Hosinski, LLP, hereby asserts the following cross-claims against defendant JPMorgan Chase Bank, N.A. ("JPMorgan"):

INTRODUCTION

1. Wells Cap is a defendant in this adversary proceeding, not through any fault of its own, but solely due to the unauthorized and reckless acts and abdication of responsibility by

[1] While named in the complaint as Wells Cap Mgmt – 13923601, the defendant's proper name is the CSAA Insurance Exchange.

JPMorgan. JPMorgan recklessly and with gross negligence caused the filing of an improper UCC termination statement purporting to terminate the principal financing statement that perfected the security interest that protected Wells Cap and other lenders (collectively, the "Term Lenders") in connection with the Term Loan. JPMorgan caused this filing in its capacity as an administrative agent for a different set of lenders and in connection with a transaction that was entirely separate from the Term Loan. JPMorgan's actions were taken wholly outside of the authority granted to it in connection with the Term Loan, in violation of the duties that JPMorgan owed to Wells Cap, and with full knowledge that none of the conditions for filing such a termination statement was present.

2. The Term Lenders, including Wells Cap, extended credit to General Motors based on the commitment and understanding that the Term Lenders would be protected by a perfected security interest in a substantial portion of General Motors's assets, the value of which was to remain well in excess of the amount needed to secure payment of the Term Loan. JPMorgan served as Administrative Agent to the Term Lenders. JPMorgan also undertook to serve as the Secured Party of Record for the Term Loan UCC Financing Statements filed to perfect the security interest.

3. In 2008, acting as Administrative Agent and Secured Party of Record for a completely different syndicate of lenders on a different financing for General Motors (the Synthetic Lease), and without any authority under the agreements governing the Term Loan, JPMorgan caused the filing of the Termination Statement that purported to terminate the Main Term Loan UCC-1, which protected a significant portion of the security interest in collateral securing the Term Loan. JPMorgan's acts were wrongful in and of themselves because they were entirely unauthorized and threatened to destroy the rights held by the Term Lenders.

Moreover, JPMorgan carried out these acts despite obvious red flags that, among other things, the Termination Statement had nothing to do with the Synthetic Lease, but instead related to the collateral for the Term Loan.

4. In so doing, JPMorgan violated a fundamental obligation as Administrative Agent and Secured Party of Record—namely, the obligation not to cause to be filed UCC-3 termination statements that would destroy the perfection of the security interest on the collateral prior to the payoff of the loan or the voluntary release of the collateral. JPMorgan also deprived Wells Cap of a critical benefit to which it was entitled under the Term Loan agreements—namely, the perfected security interest that would protect the collateral supporting its interest in the Term Loan. In breaching this obligation, and committing these acts, JPMorgan exposed its principals, including Wells Cap, to the risk of potentially devastating losses on their secured loans.

5. That risk has now become a serious prospect for Wells Cap. Following JPMorgan's error, General Motors filed for Chapter 11 bankruptcy protection. Pursuant to the terms of this Court's DIP Order, and because of Wells Cap's status as a secured creditor, Wells Cap received the interest and principal outstanding under the Term Loan Agreement. Then, within weeks of that repayment, General Motors's unsecured creditors filed this adversary proceeding challenging Wells Cap's right to repayment and demanding that the unsecured creditors be handed a massive windfall at Wells Cap's expense. The sole basis for this claim by the unsecured creditors (later the AAT) is the contention that JPMorgan's wrongful conduct destroyed the perfection of the security interest that was designed to protect the Term Lenders, including Wells Cap.

6. Following its 2008 error, JPMorgan engaged in a course of conduct that was calculated to serve its own interests at the expense of the Term Lenders. Among other things, with the cooperation of the AAT, JPMorgan spent the last six years litigating this case without the participation of Wells Cap, and while operating under a fundamental conflict of interest, litigating in its own best interests and contrary to the interests of Wells Cap and the other Term Lenders.

7. JPMorgan's misconduct should not provide a basis for liability on the part of Wells Cap. Wells Cap disputes the AAT's claims and denies that the filing of the Termination Statement was effective, as against it, to destroy the perfection of any part of the Term Loan security interest. But to the extent that Wells Cap is subject to any liability in this adversary proceeding, JPMorgan must hold Wells Cap harmless. Wells Cap would not have been placed at risk of liability had it not been for JPMorgan's gross negligence, unauthorized acts, and breaches of duty. Accordingly, Wells Cap seeks a judgment that JPMorgan breached its duties to Wells Cap, that JPMorgan acted wholly outside of any authority that it was granted in connection with the Term Loan, and that JPMorgan must hold Wells Cap harmless.

THE PARTIES

8. JPMorgan is a national banking association with its principal office in the State of Ohio.

9. Wells Cap is a reciprocal insurer with its principal office in the State of California.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157, 1331, 1332, 1334, and 1367.

11. Venue is proper under 28 U.S.C. § 1409(a) because these cross-claims arise in and relate to the underlying adversary proceeding, because the parties to the Term Loan agreements expressly consented to venue in this District, and because many of the events that give rise to the cross-claims took place within this District.

12. These cross-claims include both core claims as defined in 28 U.S.C. § 157(b)(2)(A) and non-core claims. To the extent that this or any other appropriate Court finds any part of this adversary proceeding, including any individual cross-claim, to be "non-core," or to the extent that it is determined that the Bankruptcy Court does not have jurisdiction to enter a final judgment or order consistent with Article III of the United States Constitution, Wells Cap does not consent at this time to the entry of final orders and judgments by the Bankruptcy Court, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure and Rules 7008-1 and 7012-1 of the Local Bankruptcy Rules for the Southern District of New York; provided, however, that Wells Cap reserves its right to so consent at a later date.

FACTUAL ALLEGATIONS

The Term Loan

13. The Term Loan provided $1.5 billion of essential financing to General Motors. Because of its size, the Term Loan was syndicated to a large number of lenders. JPMorgan acted as arranger for the Term Loan, negotiating its terms and organizing the group of syndicated lenders. JPMorgan would not have been able to syndicate this Term Loan (and earn the substantial fees associated with that work) had it not been for the promise that syndicate members would be protected by a perfected first-priority security interest in collateral having a value far in excess of the amount of the loan.

14. Certain of the parties' rights and obligations are set out in two agreements relating to the Term Loan, each dated as of November 29, 2006: (i) a Term Loan Agreement; and (ii) a Collateral Agreement. Upon information and belief, JPMorgan and/or its representatives drafted both agreements, which were signed on behalf of JPMorgan by Richard W. Duker, a managing director at JPMorgan.

15. Any extension of credit to General Motors at the end of 2006 had to be undertaken with extreme caution. General Motors had incurred substantial financial losses, and there was widespread speculation that it might file for bankruptcy protection. Absent a perfected security interest, any interest in properties pledged as collateral to secure repayment of the Term Loan could be jeopardized by a General Motors bankruptcy. It was critically important, and it was expressly represented to Wells Cap, that the Term Loan would be protected by a first-priority perfected security interest in substantially all of the United States machinery, equipment, and special tools of General Motors.

16. The Term Loan agreements also included an express commitment that the collateral underlying the Term Loan would at all times be protected by a perfected, first-priority security interest. Specifically, Article II of the Collateral Agreement for the Term Loan reflected General Motors's grant to JPMorgan, for the benefit of the Secured Parties, of a first-priority security interest in a substantial portion of General Motors's assets, including all of General Motors's fixtures and equipment at 42 different facilities across the United States, as well as associated intangibles, documents, and proceeds (the "Collateral"). General Motors granted JPMorgan, as Administrative Agent for the benefit of the Term Lenders, a security interest in the Collateral, which was to be perfected by the filing of UCC financing statements.

17. The security interest created by the Collateral Agreement for the Term Loan was perfected by the filing of 28 UCC-1 financing statements, the broadest of which was the Main Term Loan UCC-1. The Main Term Loan UCC-1 perfected the Term Lenders' security interest in equipment, fixtures, and related property at 42 General Motors manufacturing facilities across the United States.

18. Under the Term Loan Agreement, JPMorgan accepted the appointment as Administrative Agent for the Term Lenders, with authority to take certain specified actions on their behalf. Separately, JPMorgan undertook to serve as Secured Party of Record on the Term Loan UCC Financing Statements (including the Main Term Loan UCC-1) for the benefit of all Secured Parties on the Term Loan, including Wells Cap.

19. Upon information and belief, Duker was the JPMorgan employee with primary responsibility for arranging the Term Loan and for ensuring the execution of JPMorgan's duties as Administrative Agent and Secured Party of Record for the Term Loan.

20. JPMorgan had no authority either to terminate, or to cause others to terminate, the Term Loan UCC Financing Statements unless: (i) the Term Loan had been repaid in full; or (ii) the Term Lenders had consented in writing to the termination.

21. These limitations on JPMorgan's authority were central to the purpose and structure of the Term Loan. JPMorgan, as agent for the Term Lenders, had a fundamental duty not to take improper actions that would damage the Term Lenders' interests in connection with the Term Loan. This included a fundamental responsibility, before causing the filing of a termination statement, to read the statement and understand which security interests it would be releasing and why. JPMorgan also had fundamental obligations: (i) not to take actions outside the scope of its authority as agent; (ii) to follow the instructions of its principals; (iii) promptly to

notify its principals if it breached either of the preceding duties, in order to give its principals an opportunity to mitigate or cure the consequences of the breach; (iv) not to act adversely to its principals with respect to the subject matter of the agency; and (v) to act consistently with the covenant of good faith and fair dealing in the performance of the Term Loan agreements, including by not taking actions that would have the effect of destroying or injuring the rights of the Term Lenders to receive the benefits of the agreements.

22. JPMorgan also undertook to serve as the Secured Party of Record for the Term Loan UCC Financing Statements that were filed to perfect the security interests in the Collateral. All 28 UCC-1 financing statements, including the Main Term Loan UCC-1, named "JPMorgan Chase Bank, N.A. as Administrative Agent" as the Secured Party of Record. As was apparent from the face of the Main Term Loan UCC-1, the reference to JPMorgan as Secured Party of Record was to JPMorgan as "Agent" for the principals/lenders in the Term Loan. An annex to the Main Term Loan UCC-1 referenced, among other things, the Term Loan Agreement dated November 29, 2006.

23. By permitting JPMorgan to be named as Secured Party of Record for the Term Loan, and as the party that would be granted the security interest for the benefit of all Secured Parties, the Term Lenders entrusted JPMorgan with the security interests in the Collateral.

24. As Secured Party of Record, JPMorgan had a fundamental obligation to refrain from taking wrongful actions that would have the effect of destroying the perfection of the security interests for which it was Secured Party of Record. JPMorgan also had a duty, as Secured Party of Record, to act competently and with appropriate care before taking actions that could have the effect of damaging the interests of the other Secured Parties.

25. Wells Cap is a Lender under the Term Loan Agreement and an express third-party beneficiary of the Collateral Agreement, and also was a principal to the agency relationship in which JPMorgan served as agent.

26. JPMorgan's obligations under the Term Loan Agreement and the Collateral Agreement are valid and enforceable obligations.

27. Wells Cap has performed all conditions precedent to JPMorgan's obligations under, and is in full compliance with, the relevant agreements.

The Synthetic Lease

28. In 2001, five years before the Term Loan was issued, JPMorgan helped arrange the Synthetic Lease, which involved a $300 million financing of real properties in various states.

29. The Chase Manhattan Bank ("Chase Manhattan") was named to serve as Administrative Agent for the Synthetic Lease. In or about 2001, JPMorgan & Co. merged with Chase Manhattan to form JPMorgan. Upon information and belief, JPMorgan took over Chase Manhattan's duties as Administrative Agent under the Synthetic Lease, and acted as Secured Party of Record for the Synthetic Lease.

30. The Synthetic Lease was unrelated to the Term Loan. It involved a different set of principals on whose behalf Chase Manhattan and, later, JPMorgan, acted as Administrative Agent. The Synthetic Lease agreements did not purport to grant JPMorgan any authority to take actions in connection with that transaction that would affect any party's interests under the Term Loan. On the contrary, the Synthetic Lease documentation specifically limited JPMorgan's authority, including in connection with the termination of any financing statements, solely to properties and matters encompassed by the Synthetic Lease transaction.

31. General Motors's obligations under the Synthetic Lease were secured by liens on various General Motors properties identified in the Synthetic Lease agreements. This collateral consisted largely of real estate and was entirely separate from the assets that served as collateral under the Term Loan. At the time of the termination of the Synthetic Lease, financing statements and other documents for the Synthetic Lease related to properties in Michigan, Indiana, and Illinois were on file with the Delaware Secretary of State and various recording offices in Michigan.

32. In order to perfect the liens for the Synthetic Lease, JPMorgan filed UCC- 1 financing statements with a variety of recording offices. At the time of the termination of the Synthetic Lease, three relevant UCC-1 financing statements were on file in Delaware. Two were dated April 12, 2002, and pertained to real property and related collateral in Marion County, Indiana and Will County, Illinois (one was filed against General Motors as the debtor, and the other was filed against Auto Facilities Real Estate Trust 2001-1 as the lessor). The third was filed in 2007 against the lessor, and related to property in Detroit, Michigan. All of the statements identified the secured party of record as: "JPMorgan Chase Bank, as Administrative Agent" or "JPMorgan Chase Bank, N.A. as Administrative Agent." The phrase "as Administrative Agent" in these UCC-1 statements referred to JPMorgan in its capacity as Administrative Agent under the Synthetic Lease documents, and specifically as "Agent" for the principals/investors in the Synthetic Lease.

33. Upon information and belief, Duker was the JPMorgan employee/officer with primary responsibility for ensuring the performance of JPMorgan's obligations under the Synthetic Lease.

JPMorgan Recklessly Terminates the Main Term Loan UCC-1

34. The Synthetic Lease was scheduled to mature on October 31, 2008. On or about October 1, 2008, General Motors informed Duker that General Motors intended to pay the amounts due under the Synthetic Lease. Duker also was personally familiar with the Term Loan, and knew that General Motors was not repaying the Term Loan at that time.

35. General Motors retained the law firm of Mayer Brown LLP ("Mayer Brown") in connection with the repayment of the Synthetic Lease. Upon information and belief, Mayer Brown was not retained to provide advice or representation to General Motors, JPMorgan, or any other party in connection with the Term Loan.

36. JPMorgan, for its part, retained the law firm of Simpson Thacher & Bartlett LLP ("Simpson") in connection with the Synthetic Lease. Simpson was retained to, and did, represent JPMorgan in this transaction solely in JPMorgan's capacity as Administrative Agent under the Synthetic Lease. JPMorgan did not retain Simpson or seek Simpson's advice in connection with the Term Loan, nor did Simpson provide any legal representation or advice to JPMorgan with respect to its obligations or actions under the Term Loan. JPMorgan did not delegate to Simpson any of JPMorgan's responsibilities as Administrative Agent under the Term Loan, nor did it delegate its responsibilities as Secured Party of Record for the Term Lenders.

37. As Secured Party of Record for the Synthetic Lease transaction, JPMorgan was responsible for terminating any relevant UCC-1 financing statements supporting the Synthetic Lease upon repayment of the debt involved in the transaction.

38. General Motors and JPMorgan agreed that General Motors (including its lawyers) would prepare drafts of the documentation necessary to terminate the Synthetic Lease.

39. JPMorgan knew that if it caused an incorrect UCC-3 termination statement to be filed under its name, such as a termination statement relating to the Term Loan instead of the Synthetic Lease, such an error could result in devastating financial losses to the Term Lenders:

(a) JPMorgan knew that it was serving as Administrative Agent and Secured Party of Record for the Secured Parties named in the Synthetic Lease agreements.

(b) JPMorgan knew that it also was designated as Administrative Agent and Secured Party of Record for the different set of Secured Parties (including Wells Cap) associated with the Term Loan.

(c) JPMorgan knew that UCC-1 financing statements had been filed with the Delaware Secretary of State in connection with both the Term Loan and the Synthetic Lease transactions.

(d) JPMorgan knew that the Term Loan UCC Financing Statements filed in Delaware identified the secured party of record as "JPMorgan Chase Bank, N.A., as Administrative Agent," meaning Administrative Agent in connection with the Term Loan.

(e) JPMorgan knew that the UCC-1 financing statements filed in Delaware in connection with the Synthetic Lease identified the secured party of record as "JPMorgan Chase Bank, as Administrative Agent" or "JPMorgan Chase Bank, N.A. as Administrative Agent," in each case meaning Administrative Agent in connection with the Synthetic Lease.

(f) Upon information and belief, JPMorgan never informed Simpson of the risk created by the confluence of facts set out in Paragraphs 40(a) through (e).

(g) JPMorgan knew that, in the event of a General Motors bankruptcy, a termination statement purporting to terminate UCC-1 financing statements for collateral supporting the Term Loan might be advanced by parties to any ensuing General Motors bankruptcy as a reason to disregard the Term Lenders' security interest in the Collateral supporting the Term Loan.

(h) JPMorgan also knew, in October 2008, that there was a significant risk that General Motors would file for bankruptcy protection in the imminent future.

40. Nevertheless, and despite the serious consequences of any error as set out above, neither Duker nor anyone else at JPMorgan took any steps at all to ensure that the actions taken in connection with the repayment of the Synthetic Lease did not adversely affect the security interests of the Term Lenders.

41. In fact, JPMorgan made a colossal error in connection with the Synthetic Lease termination. General Motors and Mayer Brown's drafts incorrectly identified the Main Term Loan UCC-1 as one of the financing statements to be terminated in connection with the payoff of the Synthetic Lease. Mayer Brown then sent to Simpson, in connection with the payoff of the Synthetic Lease, draft closing checklists that identified the Main Term Loan UCC-1 as one of the UCC-1 financing statements to be terminated at the time of the closing of the Synthetic Lease payoff. Mayer Brown also sent draft closing documents to Simpson, including a draft of the improper Termination Statement. Simpson forwarded the checklists and the draft documents including the Termination Statement to Duker at JPMorgan. General Motors also circulated a draft of escrow and recording instructions with respect to the Synthetic Lease termination. The escrow instructions provided that, immediately following confirmation that the applicable conditions precedent had been satisfied and the closing of the termination of the Synthetic Lease,

the escrow agent would deliver to General Motors's counsel the UCC-3 termination statements (including the improper Termination Statement), thus allowing them to be filed with the relevant recording offices.

42. Upon information and belief, despite its full awareness of the significant consequences of the filing of a UCC-3, as well as the risks presented by its serving as administrative agents and secured parties of record on multiple credit facilities, at no point during this process did JPMorgan take any steps to determine for itself whether the draft documents provided by General Motors and its counsel had identified the correct financing statements for termination in connection with the Synthetic Lease. Nor, upon information and belief, did JPMorgan take any steps (a) to ensure that no other financing statements were scheduled for termination, including the Main Term Loan UCC-1 that is at issue in this action; or (b) to determine what UCC-1 financing statements it was causing to be terminated. Because JPMorgan undertook to serve as Secured Party of Record on the UCC-1 financing statements for the Term Loan, it was understood that any UCC-3 termination statement amending those UCC-1 statements would be filed with JPMorgan's name on it. JPMorgan accordingly assumed a duty to read and understand any UCC-3 statements filed in its name, including any statements prepared by General Motors. Instead of complying with this obligation, JPMorgan, in its capacity as Administrative Agent for the Synthetic Lease, caused the filing of UCC-3 termination statements without taking any steps to verify that those UCC-3 termination statements related only to the Synthetic Lease that was being terminated.

43. On or about October 30, 2008, the Termination Statement was filed with the Delaware Secretary of State. The Termination Statement was filed at the same time as termination statements pertaining to the Synthetic Lease.

44. JPMorgan has admitted that, in connection with the communications and acts described above relating to the preparation and filing of the Termination Statement, General Motors was acting as JPMorgan's agent. Under the circumstances set forth above, JPMorgan did not exercise reasonable care in so authorizing General Motors.

45. JPMorgan's actions did not constitute "authorization" within the meaning of the UCC. Among other reasons, JPMorgan was not acting in its capacity as Administrative Agent for the Term Lenders, and therefore was not acting as Secured Party of Record under the Main Term Loan UCC-1, when it caused the Termination Statement to be filed. JPMorgan lacked the power, in its capacity as Administrative Agent and Secured Party of Record for the Synthetic Lease, to authorize the filing of any termination statements related to the Term Loan. When JPMorgan caused the Termination Statement to be filed, it was acting beyond the authority delegated to it under the Term Loan Agreement, and contrary to the Term Loan Agreement's express contractual obligations and instructions provided by its principals, the Term Lenders.

46. Nonetheless, the AAT has contended that JPMorgan "authorized" the filing of the Termination Statement. To the extent that JPMorgan's actions constituted "authorization" or otherwise impaired the perfection of Wells Cap's security for the Term Loan, JPMorgan must indemnify Wells Cap and hold it harmless.

47. JPMorgan's actions with respect to the Termination Statement under the circumstances described above inherently constituted recklessness and gross negligence. In addition, JPMorgan's actions were wrongful because, among other reasons:

(a) JPMorgan knew that an erroneous filing could be used by General Motors's creditors in a General Motors bankruptcy in an attempt to disregard or displace

the Term Lenders' security interests, and thus could seriously impair the Term Lenders' right to repayment.

(b) JPMorgan knew that, at the same time it was acting as Administrative Agent for the benefit of the Synthetic Lease syndicate in connection with the termination of the Synthetic Lease, it had continuing responsibilities as Administrative Agent for the Term Lenders in connection with the Term Loan, and that General Motors was not at that time paying off the Term Loan.

(c) As of October 2008, JPMorgan knew that General Motors was experiencing serious financial difficulties, that there was a significant likelihood that General Motors would file for bankruptcy protection, and that the risks associated with a UCC filing mistake in that context would be particularly severe.

(d) Nevertheless, JPMorgan implemented no procedures and took no steps to ensure that the termination statements filed in connection with the payoff of the Synthetic Lease actually pertained to the Synthetic Lease, and did not instead terminate the financing statements for other financings, including the Main Term Loan UCC-1.

(e) The costs of employing such procedures would have been trivial in comparison to the devastating potential consequences associated with an erroneous filing. JPMorgan had a duty to employ such procedures.

(f) JPMorgan also ignored red flags indicating that the draft UCC-3 termination statement related to Collateral for the Term Loan. On October 15, 2008, General Motors's lawyers sent JPMorgan's lawyers a draft closing checklist along with a collection of draft UCC filings, all of which, except for the draft Termination Statement, pertained to real property. That same day, JPMorgan's lawyers forwarded the checklist

and the draft documents to Duker at JPMorgan. Under the heading "Termination of UCCs (central, DE filings)," the draft checklist listed a "financing statement as to equipment, fixtures and related collateral located at certain U.S. manufacturing facilities (file number 6416808 4, file date 11/30/2006)." This entry on the checklist made it obvious that an error had occurred because:

> (i) The Synthetic Lease was a real estate transaction, and the collateral securing that loan consisted of real estate and fixtures relating to that real estate. The references to "equipment" at "U.S. manufacturing facilities"—without any corresponding reference to real estate—were sufficient to alert JPMorgan to the fact that the draft termination statement did not relate to the collateral for the Synthetic Lease—and instead related to collateral that secured the Term Loan. Duker, the person to whom the drafts were sent, was responsible for managing both the Synthetic Lease and the Term Loan, and was well aware of the difference between the collateral securing those two obligations.
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> (ii) The reference in the draft checklist to "file date 11/30/2006" indicated that the underlying UCC-1 to be terminated was filed on November 30, 2006, the day after the signing of the Term Loan. This was another red flag, because JPMorgan knew that the Term Loan closed at the end of November 2006 and therefore should have known that this reference was to a UCC-1 relating to the Term Loan and not to a UCC-1 relating to the Synthetic Lease.

(g) Rather, despite all these warning signs, Duker and JPMorgan caused the filing of the Termination Statement.

(h) The Second Circuit Decision, which is binding as against JPMorgan, stated that "JPMorgan . . . knew that, upon the closing of the Synthetic Lease transaction, Mayer Brown was going to file the termination statement that identified the Main Term Loan UCC-1 for termination" and further stated that "JPMorgan reviewed and assented to the filing of that statement."

(i) JPMorgan's conduct showed a reckless disregard for the interests of the Term Lenders that it was required to serve, and reflected a failure to take even slight care.

48. Upon information and belief, JPMorgan—which held itself out as the industry leader in the field of syndicated lending—often simultaneously served as administrative agent and secured party of record for many different syndicated loan transactions, including multiple transactions in Delaware with respect to the same debtor. In so doing, JPMorgan employed a practice of using identical or virtually identical language to identify itself on UCC filings without specifying the transaction to which particular UCC filings related—i.e., without including identifying language such as "As Administrative Agent Under That Certain Term Loan Dated . . . ." This practice of using the same capacity designation for Delaware filings affecting different transactions created a grave risk of an erroneous filing. Having created this risk, JPMorgan had a duty to adopt and follow procedures that would manage the multiple roles that JPMorgan was playing in a manner that would prevent such an error. JPMorgan either failed entirely to adopt such procedures, or failed to follow them when it caused the filing of the Termination Statement. In either case, its conduct evinced recklessness and gross negligence.

49. JPMorgan's actions described above were not lawfully taken.

JPMorgan Compounds Its Breach of Duty With Additional Breaches In and After 2009

Acts and Omissions Prior to General Motors's Bankruptcy Filing

50. By virtue of both its status as Agent for the Term Lenders and its responsibilities as Secured Party of Record for the Term Lenders, JPMorgan had a duty, not waived or diminished by the Term Loan Agreement, promptly to notify the principals of its transgression of authority and to take any necessary actions to assist the principals in remedying any injury caused by that transgression—including, in this case, by alerting Wells Cap to the need to file a new UCC-1 financing statement and then undertaking to file such a statement.

51. Despite this duty, JPMorgan failed promptly to alert Wells Cap to its error or otherwise take steps either to enable Wells Cap to take action to protect its interests as a result of JPMorgan's transgression, or to rectify the problem promptly itself.

52. Upon information and belief, in January 2009, General Motors informed JPMorgan that its financial situation had further deteriorated. General Motors told JPMorgan that its auditors were going to include a "going concern" qualification in connection with their audit of General Motors's financial statements, and that General Motors therefore would not be in compliance with the Term Loan Agreement. A "going concern" qualification is necessary only when there is substantial doubt about an entity's ability to avoid bankruptcy or otherwise continue its operations.

53. General Motors and JPMorgan negotiated an amendment to the Term Loan Agreement that, among other things, prevented General Motors from defaulting on the Term Loan due to the "going concern" qualification. One of the key assurances provided to the Term Lenders in exchange for the amendment was an increase in the collateral coverage ratio, an

assurance that should have underscored once again for JPMorgan the importance of the collateral and the security interests in that collateral. For helping General Motors avoid default, JPMorgan was paid a $6 million fee.

54. Once the General Motors bankruptcy became likely, it would have been standard practice for JPMorgan, upon information and belief, or in any event for an entity in JPMorgan's position, to conduct a thorough review of relevant UCC filings associated with General Motors's secured loans. Upon information and belief, JPMorgan did undertake to perform such a review of the UCC filings for the Term Loan in the first half of 2009. Even a rudimentary search would have uncovered the Termination Statement. Thus, upon information and belief, JPMorgan either (i) discovered the Termination Statement or indicia thereof and did nothing, or (ii) conducted the search in such a careless and reckless manner that it failed to identify its obvious error. Had it exercised even minimal care, JPMorgan could have sought to correct its error by (i) filing (or demanding that General Motors file) a new UCC-1 financing statement for the Term Loan; and/or (ii) filing (or demanding that General Motors file) a correction statement that would have provided notice to interested parties that the Termination Statement was wrongfully filed and unreliable.

The Adversary Proceeding

55. General Motors filed for bankruptcy protection on June 1, 2009.

56. On June 30, 2009, the Term Lenders received all interest and principal outstanding under the Term Loan Agreement from the proceeds of the DIP Credit Facility (as defined in the DIP Order) approved by the Bankruptcy Court on June 25, 2009.

57. As initially filed with the Court on June 1, 2009, the proposed DIP Order contained a broad release of the Term Lenders. On or before June 25, 2009, the proposed release

language was modified to reserve certain potential claims relating to the perfection of first-priority liens with respect to the Term Loan and other senior secured debt (the "Prepetition Secured Facilities"). Along with this modification, new language was added, stating that it was "understood that the respective administrative and collateral agents for the Prepetition Senior Facilities shall have no responsibility or liability for amounts paid to any Prepetition Senior Facilities Secured Parties and such agents shall be exculpated for any and all such liabilities, excluding only such funds as are retained by each such agent solely in its respective role as a lender." In other words, the modified proposed DIP Order purported to exculpate JPMorgan, in its capacity as Administrative Agent, from any claims by the Committee seeking to recover funds paid to the other Term Lenders. Upon information and belief, the modified release language was negotiated between JPMorgan and the Committee after JPMorgan disclosed to the Committee its role in the filing of the Termination Statement, and the quoted language was negotiated for the purpose of minimizing the risk to JPMorgan while leaving the innocent Term Lenders exposed. The modified proposed DIP Order was submitted to the Bankruptcy Court on June 25, 2009, without any disclosure to the Bankruptcy Court concerning the circumstances giving rise to this provision.

58. On July 31, 2009, the Committee initiated this adversary proceeding against JPMorgan and the Term Lenders, including Wells Cap. The complaint alleged that, due to the filing of the Termination Statement, the Term Lenders were not protected by a perfected security interest in the collateral covered by the Main Term Loan UCC-1. The complaint further alleged that the remaining collateral securing the Term Loan had negligible value, and that the Term Lenders should not have been treated as secured creditors under the DIP Order. The complaint demanded the return of certain amounts Wells Cap received pursuant to the Term Loan. The

AAT served the complaint on JPMorgan in 2009, but did not serve any of the Term Lenders until many years later.

59. On or before October 6, 2009, following the filing of the initial complaint, JPMorgan sought and obtained an agreement from the AAT to request that the Bankruptcy Court allow a delay of the service of process on the Term Lenders.

60. Critically, in presenting this proposal to the Bankruptcy Court, JPMorgan's counsel made a point of telling the Bankruptcy Court that they were appearing for JPMorgan both individually "and as administrative agent." In response to this proposal, the Bankruptcy Court specifically asked JPMorgan's counsel whether JPMorgan had some of its own money in the Term Loan facility, and JPMorgan's counsel responded in the affirmative. The clear purpose of the Bankruptcy Court's inquiry was to obtain assurance that JPMorgan's interests were aligned with the Term Lenders who were unrepresented in the court, that JPMorgan would act in their interests, and that the interests of the unserved parties thus would not be prejudiced by the delay in service.

61. The stated rationale for the requested delay in service in 2009 was that the Term Lenders did not have discoverable information relevant to the events surrounding the filing of the Termination Statement, and that it accordingly was not necessary to join them at the discovery stage. But, in 2010, JPMorgan and the AAT requested further extensions of the deadline to complete service on the Term Lenders until after the Bankruptcy Court ruled on motions for summary judgment—extensions that went far beyond the original rationale offered to the Bankruptcy Court. By asking the Bankruptcy Court to allow JPMorgan and the AAT to litigate potentially dispositive motions without the participation of the Term Lenders, JPMorgan implicitly represented that it would act to protect the interests of the Term Lenders in the

litigation. As detailed below, it did not do so, but instead, laboring under a conflict of interest, it sought to protect its own interests at the expense of the interests of the Term Lenders.

62. In 2013, following the Bankruptcy Court's order granting summary judgment to JPMorgan and shortly after the filing of a notice of appeal, the AAT, with JPMorgan's consent, requested yet another extension of the deadline in which to complete service. Upon information and belief, by this point it was apparent to JPMorgan and its counsel that there was a reasonable prospect that the appellate process would extend more than six years from the 2008 date of the original breach of duty by JPMorgan, and that if the appellate ruling were to be adverse, continued delay in service might facilitate efforts by JPMorgan to argue that it had "run out the clock" on the statute of limitations for any claim that the Term Lenders might seek to bring against it. JPMorgan had a duty to disclose to the Bankruptcy Court that JPMorgan might use further extensions of time as a basis to argue that the statute of limitations had run on any such cross-claims, and thus that further extensions could prejudice the Term Lenders if a timeliness argument by JPMorgan were to prevail.

63. Neither at the time of the original stipulation—nor on the other occasions over the ensuing six years when JPMorgan and the AAT sought further extensions of the time to serve the Term Lenders—did JPMorgan disclose to the Bankruptcy Court that JPMorgan might later seek to use the delay in service of the Term Lenders as a basis to insulate itself from liability to the Term Lenders for its own breaches of duty. Had JPMorgan disclosed the possibility that it would use the extensions in an effort to prejudice the Term Lenders or that it intended to act solely in its own interests even when those interests conflicted with those of the absent Term Lenders, it is difficult to imagine that the Bankruptcy Court would have granted the extensions.

64. But, in fact, JPMorgan engaged in a litigation strategy that was calculated to protect its own interests, even if that meant acting to the detriment of the Term Lenders:

(a) In litigating the effectiveness of the Termination Statement, JPMorgan failed to assert arguments and defenses that would have protected the Term Lenders but compromised JPMorgan's own position vis-à-vis the Term Lenders. For example, JPMorgan failed to assert as an independent basis for invalidity that JPMorgan, in causing the filing, acted wholly outside the authority granted to it by the Term Lenders and, indeed, in violation of the Term Loan Agreement and its duties as the agent of the Term Lenders.

(b) JPMorgan also agreed with the AAT to the entry of a stipulation, buried in a scheduling order, that purported to limit the right of the Term Lenders to take discovery into the filing of the Termination Statement beyond that conducted by the AAT and JPMorgan. Yet, in submitting this stipulation to the Bankruptcy Court for approval, JPMorgan did not disclose that its incentives for limiting discovery were tainted by a conflict of interest: just as the AAT did not have an interest in pursuing discovery establishing that JPMorgan's acts in connection with the Termination Statement were unlawful, unauthorized by the Term Lenders, and contrary to the duties that JPMorgan owed the Term Lenders, neither did JPMorgan have an interest in pursuing such discovery. JPMorgan now has taken the position that this stipulation precludes Term Lenders from taking discovery concerning JPMorgan's misconduct. JPMorgan did not disclose to the Bankruptcy Court that it would attempt to use this stipulation as part of a strategy to avoid responsibility for its own wrongdoing.

(c) To the extent that JPMorgan did communicate regarding the adversary proceeding to some Term Lenders, it downplayed the risk to the Term Lenders, minimized its own transgressions of duty in the filing of the Termination Statement, and failed to disclose that it was acting under a conflict of interest. The Term Lenders, to the extent they were aware of the adversary proceeding at all, thus were given reason to believe that JPMorgan would put the interests of the Term Lenders ahead of its own interests or, at a minimum, clearly advise the Term Lenders that its interests conflicted with those of their putative agent. JPMorgan did neither, and instead used the few communications it had with some of the Term Lenders to lull them into inaction. For example, JPMorgan assured certain of the Term Lenders that the purpose of the service extensions was to promote "efficiency," without disclosing that JPMorgan intended to use the passage of time caused by its own proposals to delay service to argue that any claims by the Term Lenders against JPMorgan were untimely.

(d) As the adversary proceeding has unfolded, JPMorgan's assurances to the Bankruptcy Court and to certain of the Term Lenders have not been borne out. JPMorgan has indicated that it may try to use the period of delay that it secured from the Bankruptcy Court to support a statute of limitations defense against any cross-claims asserted by the Term Lenders in this action. Such an argument necessarily would fail because each and every cause of action asserted herein is timely under settled law. But for JPMorgan even to attempt such a bad-faith tactic is contrary to its obligations to the Term Lenders and inconsistent with the implicit representations that JPMorgan made to the Bankruptcy Court in requesting the extensions of time in the first instance.

65. Since the Second Circuit Decision, JPMorgan has refused to take responsibility for the consequences of its actions and has denied that it has any responsibility to reimburse, indemnify, and hold Wells Cap harmless in this case.

FIRST CLAIM FOR RELIEF

Declaratory Relief

66. Wells Cap realleges and incorporates by reference as though set forth in full the allegations in paragraphs 1 through 65, inclusive.

67. An actual and justiciable controversy now exists between the parties as to JPMorgan's obligation to reimburse, indemnify, and hold Wells Cap harmless for any liabilities or losses that Wells Cap incurs in this action.

68. As detailed in this Cross-Complaint, Wells Cap contends that, by virtue of JPMorgan's wrongful conduct, JPMorgan is obligated to reimburse, indemnify, and hold Wells Cap harmless for any liabilities to the AAT in this adversary proceeding. JPMorgan has disputed that is has such an obligation.

69. Wells Cap desires a judicial determination of Wells Cap's rights and JPMorgan's obligations.

SECOND CLAIM FOR RELIEF

Indemnification

70. Wells Cap realleges and incorporates by reference as though set forth in full the allegations in paragraphs 1 through 69, inclusive.

71. If the Termination Statement is deemed effective as against Wells Cap, and if Wells Cap incurs resulting liabilities to the AAT, such liabilities are the proximate result of JPMorgan's breaches of duty and wrongful conduct.

72. The agent-principal relationship, the terms of the parties' agreements and/or JPMorgan's wrongful conduct create an obligation for JPMorgan to indemnify Wells Cap for any liabilities or losses that Wells Cap incurs in this avoidance action, whether as a result of the breaches described above or as a result of any other breaches of duty in connection with the creation, perfection, and preservation of any security interest.

THIRD CLAIM FOR RELIEF

Breach of Contract

73. Wells Cap realleges and incorporates by reference as though set forth in full the allegations in paragraphs 1 through 72, inclusive.

74. The Term Loan Agreement prohibited JPMorgan from filing or authorizing others to file termination statements relating to the Collateral unless either: (i) the Term Loan had been repaid in full; or (ii) the Term Lenders had consented in writing to the filing. Neither of these conditions had occurred when JPMorgan caused the Termination Statement to be filed.

75. To the extent Wells Cap incurs liabilities to the AAT, any such losses are the natural, probable, and foreseeable consequences of JPMorgan's breach of contract, and JPMorgan should be required to reimburse Wells Cap for those losses.

FOURTH CLAIM FOR RELIEF

Breach of Obligations as Agent

76. Wells Cap realleges and incorporates by reference as though set forth in full the allegations in paragraphs 1 through 75, inclusive.

77. As alleged above, JPMorgan assumed certain agency roles and duties.

78. By causing the Termination Statement to be filed, JPMorgan acted wholly outside of its authority as agent and in direct contravention of the express instructions of its principals.

79. JPMorgan further breached its obligation to rectify its error promptly.

80. JPMorgan further breached its obligations to the Term Lenders through its other actions set out above, including but not limited to its conduct in 2009 and in the course of litigating this adversary proceeding.

81. To the extent that Wells Cap is held liable to the AAT in this action, such losses are a direct and proximate result of JPMorgan's breaches of duty.

FIFTH CLAIM FOR RELIEF

Breach of Fiduciary Duty

82. Wells Cap realleges and incorporates by reference as though set forth in full the allegations in paragraphs 1 through 81, inclusive.

83. As alleged above, JPMorgan assumed certain unwaivable fiduciary duties.

84. By its actions as alleged above, JPMorgan acted contrary to its fiduciary duties to the Term Lenders.

85. To the extent that Wells Cap is held liable to the AAT in this action, such losses are a direct and proximate result of JPMorgan's breaches of duty.

SIXTH CLAIM FOR RELIEF

Injurious Falsehood

86. Wells Cap realleges and incorporates by reference as though set forth in full the allegations in paragraphs 1 through 85, inclusive.

87. To the extent that JPMorgan authorized the filing of the Termination Statement, JPMorgan made a false communication about the Term Lenders' beneficially-owned security interest by representing that the Term Loan had been paid off, that the Term Lenders no longer had a security interest in the Collateral, and/or that the Term Lenders had "authorized" the release of the security interest or the termination of the perfection of a portion of the security

interest. JPMorgan made the communication either with knowledge that it was false, or recklessly and without regard to its consequences.

88. A reasonable person would have anticipated that damage would flow from the false statement.

89. If Wells Cap incurs any resulting liability to the AAT, the full amount of such liability will constitute damages, including special damages, that are the direct consequence of JPMorgan's wrongful conduct.

SEVENTH CLAIM FOR RELIEF

Injury to Property

90. Wells Cap realleges and incorporates by reference as though set forth in full the allegations in paragraphs 1 through 89, inclusive.

91. To the extent that JPMorgan authorized the filing of the Termination Statement, JPMorgan damaged the Term Lenders' property interests in the Collateral securing the Term Loan through an actionable wrong. JPMorgan did so in its capacity as Administrative Agent under the Synthetic Lease.

92. If Wells Cap incurs any resulting liability to the AAT, such pecuniary losses will be a direct consequence of JPMorgan's wrongful conduct.

EIGHTH CLAIM FOR RELIEF

Negligence

93. Wells Cap realleges and incorporates by reference as though set forth in full the allegations in paragraphs 1 through 92, inclusive.

94. As alleged above, JPMorgan voluntarily assumed a duty to handle the Term Lenders' security interests with due care.

95. By the actions alleged above, JPMorgan assumed a duty of care independent of its contractual obligations.

96. By the actions alleged above, JPMorgan breached those duties. To the extent that Wells Cap incurs any resulting liability to the AAT, such losses are a direct and proximate result of JPMorgan's negligence.

NINTH CLAIM FOR RELIEF

Noncompliance with the UCC (Section 9-625)

97. Wells Cap realleges and incorporates by reference as though set forth in full the allegations in paragraph 1 through 96, inclusive.

98. In committing the acts alleged above, JPMorgan was not acting in its capacity as Administrative Agent for the Term Loan. Rather, it was acting wholly outside its authority under the Term Loan, and exclusively in its capacity as Administrative Agent for the Synthetic Lease.

99. JPMorgan, in its capacity as Administrative Agent for the Synthetic Lease, was not the secured party of record for the Term Loan.

100. JPMorgan's actions as described above had the effect of causing a termination statement to be filed that was completely unauthorized by the relevant principals.

101. JPMorgan's acts as alleged above failed to comply with UCC Section 9- 509(d) because JPMorgan was not acting in its capacity as the Secured Party of Record for the Term Loan. JPMorgan, in its capacity as Secured Party of Record for the Synthetic Lease, was a stranger to the Term Loan and was not permitted under the UCC to authorize a filing related to it.

102. JPMorgan's conduct may cause loss to the Term Lenders. To the extent that Wells Cap incurs any liability to the AAT, such losses are a direct and proximate result of JPMorgan's noncompliance with the UCC.

TENTH CLAIM FOR RELIEF

Breach of the Covenant of Good Faith and Fair Dealing

103. Wells Cap realleges and incorporates by reference as though set forth in full the allegations in paragraphs 1 through 102, inclusive.

104. Implicit in all of the parties' agreements relating to the Term Loan was a covenant to exercise good faith and fair dealing in the performance of the agreements. Encompassed within that covenant was an obligation that JPMorgan not take actions that would have the effect of destroying or injuring the rights of the Term Lenders to receive the fruits of the contract.

105. One of the central benefits of the Term Loan agreements from the standpoint of the Term Lenders was their right and expectation, in connection with their loan of $1.5 billion to a distressed General Motors, to hold the status of secured creditors under the terms of the Term Loan agreements. Among other things, the Term Lenders had a reasonable expectation that, in exchange for granting that loan, the Term Lenders would receive the status of secured creditors with a perfected, first-priority lien on billions of dollars' worth of General Motors's property. The Term Lenders also had a reasonable expectation that JPMorgan, in exercising its functions as Administrative Agent and Secured Party of Record, would not take actions that would jeopardize the Term Lenders' status as secured creditors.

106. JPMorgan's actions as alleged above constituted a reckless disregard for the Term Lenders' rights to their benefits under the Term Loan agreements, including their status

as secured creditors. By these actions, JPMorgan breached the covenant of good faith and fair dealing implied in the Term Loan agreements.

107. Following the improper filing of the Termination Statement, JPMorgan again breached the covenant of good faith and fair dealing through its additional actions alleged above, which had the effect of potentially destroying or injuring the Term Lenders' right to receive the benefits of the Term Loan agreements, including the benefit of maintaining their status as secured creditors as General Motors approached and entered bankruptcy and the right to the services of a faithful agent.

108. To the extent Wells Cap incurs liabilities to the AAT, any such losses are the natural, probable, and foreseeable consequence of JPMorgan's breaches of the covenant of good faith and fair dealing, and JPMorgan should be required to reimburse Wells Cap for those losses.

ELEVENTH CLAIM FOR RELIEF

Equitable Subordination

109. Wells Cap realleges and incorporates by reference as though set forth in full the allegations in paragraphs 1 through 108, inclusive.

110. JPMorgan has engaged in inequitable conduct, including the conduct described in this Cross-Complaint.

111. JPMorgan's inequitable conduct has caused a direct and particularized injury to Wells Cap, including, but not limited to, Wells Cap: (i) having continued to extend credit to the Debtors without knowledge of the Termination Statement; and (ii) being at risk of having some or all of the payments made on account of Wells Cap's secured claims avoided.

112. Under principles of equitable subordination, all claims that have been or may be asserted against the Debtors by, on behalf of, or for the benefit of JPMorgan in any capacity should be subordinated for purposes of distribution, pursuant to sections 510(c)(1) and 105(a) of the Bankruptcy Code, to the claims of Wells Cap.

113. Equitable subordination as requested herein is consistent with the provisions and purposes of the Bankruptcy Code.

PRAYER FOR RELIEF

WHEREFORE, Wells Cap prays for relief as follows:

A. For an order requiring JPMorgan to reimburse, indemnify, and hold harmless Wells Cap for any liabilities or losses it incurs to the AAT in this adversary proceeding;

B. For a declaration that JPMorgan is required to reimburse, indemnify, and hold Wells Cap harmless for any liabilities or losses it incurs to the AAT in this adversary proceeding;

C. For costs of suit and attorney fees, to the extent permitted by law;

D. For pre- and post-judgment interest as authorized by law; and

E. For such other relief as the court may deem proper.

Dated: New York, New York
June 21, 2017

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