

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----x

In re: Chapter 11
MOTORS LIQUIDATION COMPANY, f/k/a Case No. 09-50026 (MG)
GENERAL MOTORS CORPORATION, *et al.*, (Jointly Administered)

Debtors.

-----x

MOTORS LIQUIDATION COMPANY AVOIDANCE
ACTION TRUST, by and through the Wilmington Trust
Company, solely in its capacity as Trust Administrator and
Trustee,

Plaintiff Adversary Proceeding Case

against No. 09-00504 (MG)

JPMORGAN CHASE BANK, N.A., *et al.*,

Defendants.

----- x

**STIPULATION AND ORDER AMENDING AND SUPERSEDING CERTAIN PRIOR
ORDERS REGARDING DISCOVERY AND SCHEDULING**

WHEREAS, on August 17, 2015, the Court entered an *Order Regarding Discovery and Scheduling* (ECF No. 153) (the “August 17, 2015 Order”), setting forth the schedule for discovery in the above-captioned adversary proceeding (the “Action”);

WHEREAS, on March 28, 2016, the Court entered the *Second Stipulation and Order Amending and Supplementing Order Regarding Discovery and Scheduling [ECF 153]* (ECF No. 442) (the “March 28, 2016 Order”), paragraph 1 of which amended the August 17, 2015 Order to establish separate, later discovery and motion deadlines relating to certain cross-claims filed against JPMorgan Chase Bank, N.A. (“JPMorgan”) (the “Cross-Claim Discovery”);

WHEREAS, on May 4, 2016, the Court entered an *Order Amending the August 17, 2015 “Order Regarding Discovery and Scheduling” To Provide For Proceedings Concerning*

Characterization and Valuation of Representative Assets (ECF No. 547) (the “May 4, 2016 Order”), staying certain discovery identified in paragraph 2 of the May 4, 2016 Order (the “Stayed Discovery”) and setting discovery and motion deadlines for additional proceedings addressing the Collateral Identification Issues and Valuation Principles Issues (as defined in the May 4, 2016 Order) with respect to 40 representative assets selected by the parties (the “Representative Assets”), while otherwise leaving the deadlines in the August 17, 2015 Order in effect;

WHEREAS, on June 22, 2016, the Court entered the *Stipulation and Order Amending and Supplementing Order Regarding Discovery and Scheduling (ECF Doc. # 153)* (ECF No. 634) (the “June 22, 2016 Order”), which amended the discovery deadlines established in the August 17, 2015 Order with respect to discovery concerning the circumstances of the filing of the UCC-3 at issue in this Action (the “UCC-3 Discovery”), to align the deadlines concerning UCC-3 Discovery with the deadlines concerning Cross-Claim Discovery, as established by the March 28, 2016 Order;

WHEREAS, on August 3, 2016, the Court entered the *Stipulation and Order Amending and Superseding Prior Orders Regarding Discovery and Scheduling (ECF Nos. 153 and 547)* (ECF No. 696) (the “August 3, 2016 Order”), which amended the discovery deadlines established in the August 17, 2015 Order and May 4, 2016 Order with respect to all discovery other than the Cross-Claim Discovery, the UCC-3 Discovery, and the Stayed Discovery;

WHEREAS, on December 2, 2016, the Court entered the *Stipulation and Order Amending and Superseding Certain Prior Orders Regarding Discovery and Scheduling* (ECF No. 805) (the “December 2, 2016 Order”), which amended the discovery deadlines established in

the August 3, 2016 Order with respect to all discovery other than Cross-Claim Discovery, the UCC-3 Discovery and the Stayed Discovery;

WHEREAS, the Court held a trial on 40 Representative Assets and certain additional issues between April and June 2017;

WHEREAS, the Court issued its decision on the issues raised at the 40 Representative Assets trial on September 26, 2017 (and as corrected on October 4, 2017, the “Decision”);

WHEREAS, as set forth in the December 2, 2016 Scheduling Order, after receiving the Decision, Plaintiff and the members of the Defendants’ Steering Committee, along with the Motors Liquidation Company General Unsecured Creditors Trust and other parties in interest, have attempted to mediate a resolution of the Action;

WHEREAS, Plaintiff and the members of the Defendants’ Steering Committee have jointly concluded that a comprehensive, mediated resolution of the Action is not possible at this time;

WHEREAS, pursuant to the December 2, 2016 Scheduling Order, other than UCC-3 Discovery, all discovery concerning any defense asserted by any defendant and discovery with respect to Collateral Identification Issues and Valuation Principles Issues for collateral other than the Representative Assets has been stayed;

WHEREAS, at the August 9, 2018 pre-motion conference, the Court directed that the parties file summary judgment motions on two issues without additional discovery: (a) the non-JPMorgan defendants’ UCC-3 effectiveness defense (the “Effectiveness Defense”), and (b) plaintiff’s arguments under Louisiana law and whether those arguments are time-barred (the “Louisiana Law Issue”);

WHEREAS, at the August 9, 2018 pre-motion conference, the Court directed that the parties file summary judgment motions on the following issues after targeted additional discovery: (a) defendants’ constructive trust defense (the “Constructive Trust Defense”), and (b) defendants’ earmarking defense (the “Earmarking Defense”);

WHEREAS, the parties agree that obtaining expedited rulings from the Court after trial on the following issues (the “Initial Discovery and Trial Issues”) could materially facilitate a consensual resolution of the above-captioned action:

- The appropriate methodology for valuing approximately 6,700 assets that were purchased by New GM out of plants left with Old GM;
- The appropriate methodology for valuing 11,000 assets at GM Orion Assembly and GM Pontiac Stamping;
- Whether GM Lordstown and GM Moraine Assembly are specialized facilities;
- Whether seven additional representative assets (to be identified by the parties by September 20, 2018) are excluded from the collateral for the Term Loan, which shall consist of: (a) four additional representative assets from assets defendants assert are fixtures and plaintiff asserts are non-fixtures because they are, according to plaintiff, “real property”; (b) two additional representative assets from assets defendants assert are fixtures because they are significant upgrades or repairs to fixtures that extend the useful life, capabilities or efficiency of the underlying asset or because they are entirely new assets and plaintiff asserts are non-fixtures because they are, according to

plaintiff, “intangible – capital repair” assets; and (c) one additional representative asset that is a robot controller;¹

- The values to be applied to the more than 40,000 assets that were left with Old GM that defendants contend are collateral for the Term Loan and are to be valued using the “Orderly Liquidation Value in Exchange” methodology described in the Decision;
- The scope of, and appropriate methodology for valuing, Saturn Equipment in which the Term Lenders had a perfected security interest, if not consensually resolved following additional discovery;
- The scope of, and appropriate methodology for valuing, Construction Work in Progress assets in which the Term Lenders had a perfected security interest, if not consensually resolved following additional discovery; and
- Whether the Term Lenders had a security interest in approximately 2,400 assets that the Term Lenders value at approximately \$25 million that were subject to a capital lease at GM Assembly Fairfax and approximately 67 assets that the Term Lenders value at approximately \$2 million that were subject to a capital lease at 22 other GM manufacturing facilities.

WHEREAS, the parties agree that, in the absence of a consensual resolution following a decision on the Initial Discovery and Trial Issues, the parties should conclude discovery on any

¹ The parties reserve the right to seek permission from the Court on or before October 31, 2018 to identify a small number of additional representative assets to be tried as part of the Initial Discovery and Trial Issues following the additional discrete issues mediation sessions the parties have scheduled for September and October 2018.

remaining disputes, and then promptly proceed to a final trial on those remaining disputes (the “Final Discovery and Trial Issues”);

WHEREAS, as directed by the Court at the August 9, 2018 pre-motion conference, Plaintiff and the members of the Defendants’ Steering Committee have met and conferred as to appropriate, expedited schedules for ongoing proceedings on the Motion Issues, Initial Discovery and Trial Issues, and the Final Discovery and Trial Issues;

IT IS HEREBY STIPULATED AND AGREED, by and among counsel for the undersigned parties:

1. **Discovery Resumes:** On the date this Stipulation is so-ordered, discovery resumes in full.

Motion Issues

2. **Schedule for Motions on Effectiveness Defense and Louisiana Law Issue:**

The following deadlines shall apply to the motions on the Effectiveness Defense and Louisiana Law Issues:

September 14, 2018	Opening briefs by the parties on the Louisiana Law Issue and by plaintiff on the Effectiveness Defense
October 12, 2018	Opposition briefs filed by the parties on the Louisiana Law Issue and by defendants on the Effectiveness Defense
October 26, 2018	Reply briefs filed by the parties on the Louisiana Law Issue and by plaintiff on the Effectiveness Defense
Date to be determined by the Court	Oral argument on Motions on Effectiveness Defense and Louisiana Law Issue

3. Schedule for Motions on Constructive Trust Defense and Earmarking

Defense: The following deadlines shall apply to the motions on the Constructive Trust Defense and Earmarking Defense:

October 16, 2018	Deadline for fact discovery related to Constructive Trust Defense and Earmarking Defense
November 6, 2018	Opening briefs filed by plaintiff on Constructive Trust Defense and Earmarking Defense
November 30, 2018	Opposition briefs filed by Defendants on Constructive Trust Defense and Earmarking Defense
December 14, 2018	Reply briefs filed by plaintiff on Constructive Trust Defense and Earmarking Defense
Date(s) to be determined by the Court	Oral argument on Constructive Trust and Earmarking

4. Schedule for Motion on KPMG OLV Bar: The following deadline shall apply to defendants' motion that plaintiff is barred from using KPMG OLV values to values left with Old GM because KPMG OLV values are inconsistent with David Goesling's "Orderly Liquidation Value in Exchange" methodology ("KPMG OLV MOTION"):

October 16, 2018	Deadline for fact discovery related to KPMG OLV methodology
October 26, 2018	Opening briefs on KPMG OLV motion
November 9, 2018	Opposition briefs on KPMG OLV motion
November 19, 2018	Reply briefs on KPMG OLV motion
Date(s) to be determined by the Court	Oral argument on KPMG OLV motion

5. To the extent that the Effectiveness Defense, Louisiana Law Issue, Constructive Trust Defense and/or Earmarking Defense are not fully resolved through motion practice, the parties will promptly meet and confer and propose a schedule for trial.

Initial Discovery and Trial Issues

6. **Schedule for Initial Discovery and Trial Issues:** The following deadlines shall apply to the Initial Discovery and Trial Issues:

September 28, 2018	Deadline to update initial disclosures under FRCP 26
October 31, 2018	Deadline for document discovery related to Initial Discovery and Trial Issues
December 14, 2018	Deadline for fact discovery related to Initial Discovery and Trial Issues; Deadline to disclose expert witnesses and topics that will be the subject of expert testimony
January 11, 2019	Deadline for exchange of expert reports related to Initial Discovery and Trial Issues
February 1, 2019	Deadline for exchange of rebuttal expert reports related to Initial Discovery and Trial Issues
February 28, 2019	Deadline for expert discovery / close of discovery related to Initial Discovery and Trial Issues
TBD by the Court	Pre-trial conference; trial dates; pre- and post-trial briefing

7. Immediately following receipt of the Court’s decision from the trial on the Initial Discovery and Trial Issues (the “Trial Decision”), the parties shall engage in expedited mediation as to a consensual resolution of the above-captioned action and report back to the Court within 30 days as to whether a consensual resolution is possible.

Final Discovery and Trial Issues

8. **Schedule for Final Discovery and Trial Issues:** In the event that a consensual resolution is not possible, the following deadlines shall apply to the Final Discovery and Trial Issues, which will focus on the fixture classification of any of the currently approximately 100,000 assets that remain disputed following receipt of the Trial Decision:

60 days following receipt of Trial Decision Deadline for completion of discovery on Final Discovery and Trial Issues

90 days following receipt of Trial Decision Trials begin category by category on a rolling basis for assets that remain disputed

9. **Adjustments to Schedule:** Each party reserves its right to apply to the Court for adjustment of any of the deadlines herein, and each party reserves its right to oppose any such application.

10. Nothing in this Scheduling Order is intended to modify the schedule for Cross-Claim Discovery, which shall remain stayed, subject to either side's right to seek a lift of the stay after meeting and conferring and providing 30-days' notice of the intent to seek a lift of the stay.

Dated: New York, New York
September 7, 2018

New York, New York
September 7, 2018

BINDER & SCHWARTZ LLP

WACHTELL, LIPTON, ROSEN & KATZ

By: /s/ Eric B. Fisher
Eric B. Fisher
Neil S. Binder
Lindsay A. Bush
Lauren K. Handelsman
366 Madison Avenue, 6th Floor
New York, New York 10017
Telephone: (212) 510-7008
Facsimile: (212) 510-7299
Email: efisher@binderschwartz.com

By: /s/ Marc Wolinsky
Harold S. Novikoff
Marc Wolinsky
Amy R. Wolf
51 West 52nd Street
New York, New York 10019
Telephone: (212) 403-1000
Email: MWolinsky@wlrk.com

*Attorneys for Plaintiff Motors Liquidation
Company Avoidance Action Trust*

KELLEY DRYE & WARREN LLP

By: /s/ John M. Callagy
John M. Callagy
Nicholas J. Panarella
Martin A. Krolewski
101 Park Avenue
New York, New York 10178
Telephone: (212) 808-7800
Email: jcallagy@kelleydrye.com

JONES DAY

By: /s/ C. Lee Wilson
C. Lee Wilson
250 Vesey Street
New York, New York 10281
Telephone: (212) 326-3885
Email: clwilson@jonesday.com

Attorneys for Defendant JPMorgan Chase Bank, N.A.

JONES DAY

By: /s/ Bruce Bennett

Bruce Bennett
Erin L. Burke
555 South Flower Street, 50th Floor
Los Angeles, California 90071
Telephone: (213) 489-3939
Email: bbennett@jonesday.com
Email: eburke@jonesday.com

Gregory M. Shumaker
Christopher J. DiPompeo
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 879-3939
Email: gshumaker@jonesday.com
Email: cdipompeo@jonesday.com

MUNGER, TOLLES & OLSON LLP

By: /s/ John W. Spiegel

John W. Spiegel
Matthew A. Macdonald
Bradley R. Schneider
350 South Grand Avenue, 50th Floor
Los Angeles, California 90071
Telephone: (213) 683-9100
Email: john.spiegel@mto.com
Email: matthew.macdonald@mto.com
Email: bradley.schneider@mto.com

Nicholas D. Fram
560 Mission Street, 27th Floor
San Francisco, California 94105
Telephone: (415) 512-4000
Email: nicholas.fram@mto.com

*Attorneys for the Term Loan Lenders Listed on
Appendix A to Dkt. No. 241*

**KASOWITZ BENSON TORRES & FRIEDMAN
LLP**

By: /s/ Andrew K. Glenn

Andrew K. Glenn
Joshua N. Paul
Michelle G. Bernstein
Frank S. DiCarlo
1633 Broadway
New York, New York 10019
(212) 506-1700
Email: aglenn@kasowitz.com
Email: jpaul@kasowitz.com
Email: mgenet@kasowitz.com
Email: fdicarlo@kasowitz.com

*Attorneys for the Ad Hoc Group of Term Lenders
listed in Appendix A to Dkt. No. 670*

HAHN & HESSEN LLP

By: /s/ Mark T. Power

Mark T. Power
Alison M. Ladd
488 Madison Avenue
New York, New York 10022
Telephone: (212) 478-7200
Email: mpower@hahnessen.com
Email: aladd@hahnessen.com

*Attorneys for Certain Term Loan Investor Defendants
identified on Exhibit I to Dkt. No. 788*

DAVIS POLK & WARDWELL LLP

By: /s/ Elliot Moskowitz
Elliot Moskowitz
Marc J. Tobak
M. Nick Sage
450 Lexington Avenue
New York, New York 10017
Email: elliot.moskowitz@davispolk.com
Email: marc.tobak@davispolk.com
Email: m.nick.sage@davispolk.com

*Attorneys for Certain Term Loan Lender
Defendants identified on Exhibit 1 to Dkt. No. 788*

IT IS SO ORDERED.

Dated: September 14, 2018
New York, New York

 /s/ Martin Glenn
MARTIN GLENN
United States Bankruptcy Judge