

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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<i>In re:</i>	:
	:
	: Chapter 11
MOTORS LIQUIDATION COMPANY, et al.,	:
	: Case No. 09-50026 (MG)
Debtors.	: (Jointly Administered)
	:
	:

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	:
MOTORS LIQUIDATION COMPANY AVOIDANCE	:
ACTION TRUST, by and through the Wilmington	:
Trust Company, solely in its capacity as Trust	: Adversary Proceeding
Administrator and Trustee,	: No. 09-00504 (MG)
Plaintiff,	:
	:
-against-	:
	:
JPMORGAN CHASE BANK, N.A. <i>et al.</i> ,	:
	:
Defendants.	:

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**MOVING TERM LENDERS' MOTION
PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9006(C) TO
SHORTEN THE NOTICE PERIOD WITH RESPECT TO
MOVING TERM LENDERS' MOTION FOR EXTENSION OF TIME
TO FILE NOTICE OF APPEAL, MOTION FOR LEAVE TO APPEAL,
AND CERTIFICATION FOR A DIRECT APPEAL PURSUANT
TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 8002(d)**

TO THE HONORABLE MARTIN GLENN,
UNITED STATES BANKRUPTCY JUDGE:

The Moving Term Lenders respectfully submit this motion (the "Motion to Shorten Time") for approval of an order shortening the notice period with respect to their *Motion for Extension of Time to File Notice of Appeal, Motion for Leave to Appeal, and Certification for a Direct Appeal Pursuant to Federal Rule of Bankruptcy Procedure 8002(d)* (the "Extension

Motion”) filed contemporaneously herewith.¹ In support of this Motion to Shorten Time, the Moving Term Lenders respectfully represent as follows:

BACKGROUND

1. Pursuant to the Term Loan Agreement, dated November 29, 2006, as amended by that certain first amendment dated March 4, 2009 (the “Term Loan Agreement”), the Moving Term Lenders were among a group who advanced \$1.5 billion to Motors Liquidation Company f/k/a General Motors Corporation (“GM”) and certain of its subsidiaries (collectively, and with GM, the “Debtors”) secured by first-priority liens (the “Liens”) on certain assets of GM. (*First Amended Adversary Complaint for (1) Avoidance of Unperfected Lien, (2) Avoidance and Recovery of Postpetition Transfers, (3) Avoidance and Recovery of Preferential Payments, and (4) Disallowance of Claims by Defendants*, dated May 20, 2015 [Docket No. 91] (the “Amended Complaint”), ¶ 572). JPMorgan Chase Bank, N.A. (“JPMorgan”) is the Administrative Agent under the Term Loan Agreement. *See id.* ¶ 9.

2. On June 1, 2009 (the “Petition Date”), the Debtors filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in this Court. *Id.* ¶ 6. As of the Petition Date, the outstanding principal balance under the Term Loan Agreement was in excess of \$1.4 billion. *Id.* ¶ 573.

3. The Committee of Unsecured Creditors of Motors Liquidation Company f/k/a General Motors Corporation (the “Committee”) commenced the instant action (the “Avoidance Action”) on July 31, 2009 by filing the initial *Adversary Complaint for (1) Avoidance of Unperfected Lien, (2) Avoidance and Recovery of Postpetition Transfers, (3) Avoidance and*

¹ Capitalized terms used but not defined herein shall have the meanings assigned to them in the Extension Motion.

Recovery of Preferential Payments, and (4) Disallowance of Claims by Defendants [Adv. Proc. Docket No. 1] (the “Initial Complaint”). The Initial Complaint challenged the Liens securing the Term Loan Agreement on the ground that the errant UCC-3 termination statement caused the Liens on the collateral to be unperfected. Initial Compl. ¶¶ 433, 440, 449.

4. On July 1, 2010, the Committee filed a motion for partial summary judgment [Adv. Proc. Docket Nos. 24-27], and JPMorgan filed a motion for summary judgment [Adv. Proc. Docket Nos. 28-42].

5. On March 29, 2011, the Court entered an order [Docket No. 9941] (the “Confirmation Order”) confirming the *Debtors’ Second Amended Joint Chapter 11 Plan* [Docket No. 9836] (the “Plan”). The Plan provided, among other things, for the creation of the Motors Liquidation Company Avoidance Action Trust (the “Avoidance Trust”) to hold and administer certain assets, including the Avoidance Action. Am. Compl. ¶ 12. On or about December 15, 2011, the Debtors transferred the Avoidance Action to the Avoidance Trust. *Id.* ¶ 13.

6. On March 1, 2013, this Court entered its *Decision on Cross Motions for Summary Judgment* [Adv. Proc. Docket No. 71], *Judgment* against the Committee [Adv. Proc. Docket No. 73], and *Order on Cross Motion for Summary Judgment* [Adv. Proc. Docket No. 72] (collectively, the “March 1, 2013 Summary Judgment Orders and Judgment”). The March 1, 2013 Summary Judgment Orders and Judgment denied the Committee’s prayers for relief set forth in the Initial Complaint, granted summary judgment in favor of JPMorgan, denied the Committee’s motion for partial summary judgment, and concluded that the errant UCC-3 termination statement did not terminate the perfection of the Liens in favor of the Moving Term Lenders. *See* [Adv. Proc. Docket No. 71], at 5-6, 74; [Adv. Proc. Docket No. 72], at 1; [Adv. Proc. Docket No. 73], ¶ 2; Am. Compl. ¶ 584.

7. On January 21, 2015, the Second Circuit reversed and remanded, holding that the filing of the errant UCC-3 termination statement was not unauthorized and was effective to terminate the Moving Term Lenders' security interest in the collateral. *See Official Comm. of Unsecured Creditors of Motors Liquidation Co. v. JP Morgan Chase Bank, N.A. (In re Motors Liquidation Co.)*, 777 F.3d 100, 104-05 (2d Cir. 2015).

8. On May 20, 2015, the Avoidance Trust filed the Amended Complaint seeking to: (i) avoid the Lien on the Collateral pursuant to Section 544(a) of the Bankruptcy Code (Am. Compl. ¶¶ 586-89); (ii) avoid and recover post-petition transfers pursuant to Section 549 of the Bankruptcy Code (*id.* ¶¶ 590-603); (iii) avoid and recover preferential payments pursuant to Section 547 of the Bankruptcy Code (*id.* ¶¶ 604-15); and (iv) disallow any claim of the defendants until disgorgement, pursuant to Section 502(d) of the Bankruptcy Code (*id.* ¶¶ 616-18).

9. Thereafter, on November 16, 2015, the Certain Term Loan Investor Defendants filed the *Motion of Certain Term Loan Investor Defendants to Dismiss the Plaintiff's Amended Complaint* [Docket No. 226] (the "TLI Motion").

10. On November 19, 2015, the *Ad Hoc* Group of Term Lenders filed the *Motion of Ad Hoc Group of Term Lenders to (1) Vacate Prior Orders of the Court; and (2) Dismiss the Adversary Proceedings* [Docket No. 262] (the "Ad Hoc Motion").

11. On January 26, 2016 the Term Loan Lenders filed the *Motion of Term Loan Lenders for Judgment on the Pleadings* [Docket No. 377] (the "TLL Motion" and with the TLI Motion and the Ad Hoc Motion the "Rule 12 Motions").

12. The Rule 12 Motions were fully briefed as of March 31, 2016, and oral arguments were heard in this Court on April 18, 2016.

13. On June 30, 2016 this Court entered the Decision and Order denying the Rule 12 Motions.

JURISDICTION

14. The Court has subject matter jurisdiction to consider and determine this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested in this motion are Bankruptcy Rule 9006(c) and Rule 9006-1 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”).

RELIEF REQUESTED

15. By this Motion to Shorten Time, the Moving Term Lenders request, pursuant to Bankruptcy Rule 9006(c), that the Court shorten the notice period and set the Extension Motion for hearing as soon as practicable. In support of this Motion to Shorten Time, the Moving Term Lenders submit the Declaration of Andrew K. Glenn, annexed hereto as Exhibit A. A proposed order is annexed hereto as Exhibit B.

BASIS FOR RELIEF

16. Local Rule 9006-1 provides that parties in interest must be provided at least fourteen (14) days’ notice on a motion filed. Bankruptcy Rule 9006(c)(1), however, authorizes this Court to reduce the notice period required for cause shown. The Moving Term Lenders submit that ample cause exists to shorten the notice period with respect to the Extension Motion as requested herein.

17. As set forth in the Extension Motion, the last day by which the Moving Term Lenders may file a notice of appeal is July 14, 2016, 7 days from now, and only 14 days from the entry of the Decision and Order.

18. Absent a hearing in the near term, the Moving Term Lenders will suffer irreparable harm as the time to file its notice of appeal will have expired within the 14 days necessitated by Local Rule 9006-1.

WHEREFORE the Plaintiff respectfully requests that this Court (a) enter an order, substantially in the form attached hereto as Exhibit B, approving the Motion to Shorten Time and (b) grant such other and further relief as it deems just and proper.

Dated: New York, New York
July 7, 2016

Respectfully submitted,

**KASOWITZ, BENSON, TORRES
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Exhibit A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	
<i>In re:</i>	:	
	:	Chapter 11
MOTORS LIQUIDATION COMPANY, et al.,	:	
	:	Case No. 09-50026 (MG)
Debtors.	:	(Jointly Administered)
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	:	

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MOTORS LIQUIDATION COMPANY AVOIDANCE	:	
ACTION TRUST, by and through the Wilmington	:	
Trust Company, solely in its capacity as Trust	:	Adversary Proceeding
Administrator and Trustee,	:	No. 09-00504 (MG)
Plaintiff,	:	
	:	
-against-	:	
	:	
JPMORGAN CHASE BANK, N.A. <i>et al.</i> ,	:	
	:	
Defendants.	:	

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**DECLARATION OF ANDREW K. GLENN IN SUPPORT OF
MOVING TERM LENDERS’ MOTION PURSUANT TO
FEDERAL RULE OF BANKRUPTCY PROCEDURE 9006(C)
TO SHORTEN THE NOTICE PERIOD WITH RESPECT TO
MOVING TERM LENDERS’ MOTION FOR EXTENSION OF TIME
TO FILE NOTICE OF APPEAL, MOTION FOR LEAVE TO APPEAL,
AND CERTIFICATION FOR A DIRECT APPEAL PURSUANT
TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 8002(d)**

I, Andrew K. Glenn, Esq., hereby declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am an attorney admitted to practice before this Court and a partner with Kasowitz, Benson, Torres, and Friedman LLP, attorneys for the *Ad Hoc* Group of Term Lenders.

I submit this Declaration in support of the Moving Term Lenders motion (the “Motion to Shorten”

Time”), pursuant to Rule 9006(c) of the Federal Rules of Bankruptcy Procedure, to shorten the notice period and fix the date and time for an expedited hearing.¹

2. Except as may be otherwise noted, all statements contained herein are based on personal knowledge or made upon information and belief.

THE NEED FOR SHORTENED NOTICE WITH RESPECT TO THE MOTION

3. In the Motion to Shorten Time, the Moving Term Lenders requests that the Court shorten the notice period with respect to the Extension Motion. The Moving Term Lenders submit that expedited consideration of the relief requested in the Extension Motion is necessary and cause exists to shorten the notice period with respect to the Extension Motion.

4. As set forth in the Motion to Shorten Time, if the Motion to Shorten Time is not granted, the Moving Term Lenders will be foreclosed from the relief sought in the Extension Motion. The last day by which the Moving Term Lenders can file a notice of appeal, and the accompanying motions for leave and/or direct certification, absent an extension, is July 14, 2016, a full week before the notice period required by Local Rule 9006-1 expires.

5. Moreover, the Moving Term Lenders require an entry of the Extension Motion due to: (i) the complex nature of this adversary proceeding and the Decision and Order; (ii) the need to analyze whether to appeal the Decision and Order; and (iii) the fact that the July 4 holiday occurred between the time the Court entered the Decision and Order and the deadline for filing a notice of appeal of the Decision and Order.

6. Allowing a hearing to be held on the Extension Motion on shortened notice, as herein provided, will enable the Moving Term Lenders to receive meaningful relief.

¹ Capitalized terms used but not defined herein shall have the meanings assigned to them in the Motion to Shorten Time.

Dated: July 7, 2014
New York, New York

/s/ Andrew K. Glenn
Andrew K. Glenn

Exhibit B

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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<i>In re:</i>	:	
	:	Chapter 11
MOTORS LIQUIDATION COMPANY, et al.,	:	
	:	Case No. 09-50026 (MG)
Debtors.	:	(Jointly Administered)
	:	
	:	

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MOTORS LIQUIDATION COMPANY AVOIDANCE	:	
ACTION TRUST, by and through the Wilmington	:	
Trust Company, solely in its capacity as Trust	:	Adversary Proceeding
Administrator and Trustee,	:	No. 09-00504 (MG)
Plaintiff,	:	
	:	
-against-	:	
	:	
JPMORGAN CHASE BANK, N.A. <i>et al.</i> ,	:	
	:	
Defendants.	:	

----- X

**[PROPOSED] ORDER GRANTING MOVING TERM LENDERS’
MOTION PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE
9006(C) TO SHORTEN THE NOTICE PERIOD WITH RESPECT TO
MOVING TERM LENDERS’ MOTION FOR EXTENSION OF TIME
TO FILE NOTICE OF APPEAL, MOTION FOR LEAVE TO APPEAL,
AND CERTIFICATION FOR A DIRECT APPEAL PURSUANT
TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 8002(d)**

Upon Plaintiff’s motion, dated July 7, 2016 (the “Motion to Shorten Time”), seeking entry of an order (this “Order”) shortening the notice period with respect *Motion for Extension of Time to File Notice of Appeal, Motion for Leave to Appeal, and Certification for a Direct Appeal*

Pursuant to Federal Rule of Bankruptcy Procedure 8002(d) (the “Extension Motion”)¹; and after due deliberation and sufficient cause appearing therefor, it is

FOUND AND DETERMINED THAT:

A. This Court has jurisdiction over the matters raised in the Motion to Shorten Time pursuant to 28 U.S.C. § 1334. Consideration of the Motion to Shorten Time and the requested relief is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this Court pursuant to 28 U.S.C. § 1408.

B. The relief requested in the Motion to Shorten Time is necessary and in the best interests of the parties.

Based on the foregoing, it is hereby ORDERED THAT:

1. The Motion to Shorten Time is granted to the extent set forth herein.
2. A hearing (the “Hearing”) to consider the relief requested in the Extension Motion will be held before the Honorable Judge Martin Glenn, United States Bankruptcy Judge for the Southern District of New York (the “Court”) on _____, 2016 at _____ prevailing Eastern Time, or as soon thereafter as counsel may be heard.
3. The objection deadline to respond to or object to the relief requested in the Motion is _____, 2016 at _____ prevailing Eastern Time (the “Objection Deadline”), unless otherwise extended.
4. Notice of the hearing on the Extension Motion in accordance with the provisions of this Order shall be good and sufficient notice of the Extension Motion, the hearing to consider the same and all proceedings to be held in connection therewith.

¹ Capitalized terms used but not defined herein shall have the meanings assigned to them in the Motion to Shorten.

5. The Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: _____, 2016

MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE