

ELENIUS FROST & WALSH

William P. Lalor  
125 Broad St., 7th Floor  
New York, NY 10004  
Tel: 212-440-2516  
Fax: 212-440-2749

ELENIUS FROST & WALSH

Paul A. Sheldon (admitted pro hac vice)  
Daniel M. Hinkle (admitted pro hac vice)  
333 S. Wabash Avenue, 25<sup>th</sup> Floor  
Chicago, IL 60604  
Tel: 312-822-4677  
Tel: 312-822-3307

DAVID CHRISTIAN ATTORNEYS LLC

David Christian (admitted pro hac vice)  
3515 W. 75th St., Suite 208  
Prairie Village, KS 66208  
Tel: 913-674-8215

*Attorneys for Continental Casualty Company*

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

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In re:

MOTORS LIQUIDATION COMPANY, f/k/a  
GENERAL MOTORS CORPORATION, *et al.*,

Debtors.

Chapter 11

Case No. 09-50026 (REG)  
(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 Administrator and  
Trustee,

Plaintiff,

against

Adversary Proceeding  
Case No. 09-00504 (REG)

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

Defendants.

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**DEFENDANT CONTINENTAL CASUALTY COMPANY'S  
ANSWER AND AFFIRMATIVE DEFENSES**

Defendant Continental Casualty Company (“Continental”), by its counsel Elenius Frost & Walsh and David Christian Attorneys LLC, hereby answers the *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 (the “Amended Complaint”), of Plaintiff the Motors Liquidation Company Avoidance Action Trust (the “AAT”).<sup>1</sup>

### ANSWER

1. States that the allegations of paragraph 1 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Continental denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 of the Amended Complaint.

2. States that the allegations of paragraph 2 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Continental denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2 of the Amended Complaint.

3. States that the allegations of the first sentence of paragraph 3 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Continental denies knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of paragraph 3 of the Amended Complaint. In accordance with Federal Rule of Bankruptcy Procedure 7012(b), to the extent that

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<sup>1</sup> On March 18, 2011, the AAT succeeded to the avoidance action claims of the Official Committee of Unsecured Creditors of Motors Liquidation Company f/k/a General Motors Corporation (the “Committee”). All references herein to the AAT also refer to and incorporate the Committee as predecessor to the AAT. Similarly, all references herein to the Committee also refer to and incorporate the AAT as successor to the Committee.

a response is required to the allegations of the second sentence of paragraph 3 of the Amended Complaint, Continental admits that the claims for relief alleged in the Amended Complaint are statutorily designated as “core” under 28 U.S.C. § 157(b), but Continental objects to the designation and treatment of this proceeding as core to the extent inconsistent with the requirements of Article III of the U.S. Constitution and *Stern v. Marshall*, 131 S. Ct. 2594 (2011), and its progeny.

4. States that the allegations of paragraph 4 of the Amended Complaint constitute representations of the AAT’s position regarding the Bankruptcy Court’s jurisdiction as to which no responsive pleading is required. To the extent a response is required, Continental states at this time, pursuant to Rule 7012-1 of the Local Bankruptcy Rules for the Southern District of New York, that it does not consent to the entry of final orders or judgment by the Bankruptcy Court.

5. States that the allegations of paragraph 5 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Continental denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 of the Amended Complaint.

6. Admits the allegations of paragraph 6 of the Amended Complaint.

7. Admits the allegations of paragraph 7 of the Amended Complaint.

8. States that the allegations of paragraph 8 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Continental denies the allegations of paragraph 8 of the Amended Complaint, except admits that the *Final Order Pursuant to Bankruptcy Code Sections 105(a), 361, 362, 363, 364 and 507 and Bankruptcy Rules 2002, 4001 and 6004 (A) Approving a DIP Credit Facility and Authorizing the Debtors to Obtain Post-Petition Financing Pursuant Thereto, (B) Granting*

*Related Liens and Super-Priority Status, (C) Authorizing the Use of Cash Collateral and (D) Granting Adequate Protection to Certain Pre-Petition Secured Parties* dated June 25, 2009 (the “DIP Order”), provides the AAT with certain limited rights “with respect only to the perfection of first-priority liens of the Prepetition Senior Facilities Secured Parties [as defined in the DIP Order]” and refers to the DIP Order for the terms set forth therein.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9 of the Amended Complaint, except admits that JPMorgan Chase Bank, N.A. (“JPMorgan”) served as Administrative Agent under the Term Loan Agreement.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10 of the Amended Complaint.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11 of the Amended Complaint.

12. States that the allegations of paragraph 12 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Continental denies the allegations of paragraph 12 of the Amended Complaint, except admits that the Bankruptcy Court entered an order confirming the *Debtors’ Second Amended Joint Chapter 11 Plan* (the “Plan”) and refers to the Plan for the terms set forth therein.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13 of the Amended Complaint.

14. States that the allegations of paragraph 14 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Continental denies the allegations of paragraph 14, except admits that the DIP Order provides the AAT with certain limited rights “with respect only to the perfection of first-priority

liens of the Prepetition Senior Facilities Secured Parties [as defined in the DIP Order]” and refers to the DIP Order for the terms set forth therein.

15-101. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 15-101 of the Amended Complaint.

102. Admits that Continental Casualty Company received a transfer, but denies that any transfer to Continental Casualty Company was from property of the estate.

103-569. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 103-569 of the Amended Complaint.

570. States that the allegations of paragraph 570 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Continental denies the allegations of paragraph 570 of the Amended Complaint, except admits that the AAT collectively refers to the parties listed in paragraphs 15 through 569 of the Amended Complaint as “Defendants.”

571. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 571 of the Amended Complaint, except admits that General Motors Corporation (“General Motors”), Saturn Corporation (“Saturn”), and JPMorgan, as Administrative Agent, entered into the Term Loan Agreement and refers to the Term Loan Agreement for the terms set forth therein.

572. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 572 of the Amended Complaint, except admits that certain lenders, including some of those named as defendants in this action, (i) extended credit to the Debtors secured by a first-priority lien on certain assets of the Debtors pursuant to the terms of the Term

Loan Agreement, the terms of which are set forth therein, and (ii) received payments during the 90 days prior to June 1, 2009 (the “Petition Date”) and/or after the Petition Date.

573. Admits the allegations of paragraph 573 of the Amended Complaint.

574. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 574 of the Amended Complaint, except admits that the Debtors filed a motion on the Petition Date seeking, *inter alia*, authority from the Bankruptcy Court to obtain postpetition financing (the “DIP Motion”) and refers to the DIP Motion for the terms set forth therein.

575. Denies the allegations of paragraph 575 of the Amended Complaint, except admits that the Debtors filed the DIP Motion seeking, *inter alia*, authority from the Bankruptcy Court to apply the proceeds of the DIP Credit Facility (as defined in the DIP Order) to repay in full all claims under the Term Loan Agreement and refers to the DIP Motion for the terms set forth therein.

576. Denies the allegations of paragraph 576 of the Amended Complaint, except admits that the AAT was involved in negotiating the DIP Order and that the DIP Order provides the AAT with certain limited rights “with respect only to the perfection of the first priority liens of the Prepetition Senior Facilities Secured Parties [as defined in the DIP Order]” and refers to the DIP Order for the terms set forth therein.

577. Denies the allegations of paragraph 577 of the Amended Complaint, except admits that the DIP Credit Facility (as defined in the DIP Order) was approved by the Bankruptcy Court on June 25, 2009 and that the DIP Order provides the AAT with certain limited rights “with respect only to the perfection of the first-priority liens of the Prepetition

Senior Facilities Secured Parties [as defined in the DIP Order]” and refers to the DIP Order for the terms set forth therein.

578. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 578 of the Amended Complaint, except admits that Continental has been repaid the interest and principal outstanding at the time of payment under the Term Loan Agreement out of the proceeds of the DIP Credit Facility (as defined in the DIP Order) and refers to the DIP Order for the terms set forth therein.

579. Denies the allegations of paragraph 579, except admits that the DIP Order states that “[a]ny Prepetition Senior Facilities Secured Party accepting Payment shall submit to the jurisdiction of the Bankruptcy Court” and refers to the DIP Order for the terms set forth therein.

580. Denies the allegations of paragraph 580 of the Amended Complaint, except admits that the AAT purports to bring this Amended Complaint to challenge a portion of the first-priority lien that secured the loan made under the Term Loan Agreement.

581. Denies the allegations of paragraph 581 of the Amended Complaint, except admits that two Uniform Commercial Code (“UCC”) financing statements were filed with the Delaware Secretary of State on November 30, 2006 in connection with the Term Loan Agreement (the “Term Loan UCC Financing Statements”), and refers to the Term Loan UCC Financing Statements for the terms set forth therein.

582. Denies the allegations of paragraph 582 of the Amended Complaint, except admits that a UCC-3 financing statement amendment, dated October 30, 2008 (the “Termination Statement”), was filed with the Delaware Secretary of State, and refers to the Termination Statement for the terms set forth therein.

583. States that the allegations of paragraph 583 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Continental denies the allegations of paragraph 583 of the Amended Complaint.

584. Denies the allegations of paragraph 584 of the Amended Complaint, except admits that, on March 1, 2013, the Bankruptcy Court entered a decision, judgment, and order on the cross-motions for summary judgment filed by the AAT and JPMorgan and refers to the decision, judgment, and order for the terms set forth therein.

585. Denies the allegations of paragraph 585 of the Amended Complaint, except admits that on or about January 21, 2015, the United States Court of Appeals for the Second Circuit entered a decision (the “Second Circuit Decision”) and refers to the Second Circuit Decision for the terms set forth therein.

**AS AND FOR AN ANSWER  
TO THE FIRST CLAIM FOR RELIEF**

586. Repeats and re-alleges its responses to paragraphs 1 through 585 of the Amended Complaint with the same force and effect as if fully set forth herein.

587. States that the allegations of paragraph 587 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Continental denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 587 of the Amended Complaint.

588. States that the allegations of paragraph 588 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Continental denies the allegations of paragraph 588 of the Amended Complaint.



589. States that the allegations of paragraph 589 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Continental denies the allegations of paragraph 589 of the Amended Complaint.

**AS AND FOR AN ANSWER  
TO THE SECOND CLAIM FOR RELIEF**

590. Repeats and re-alleges its responses to paragraphs 1 through 589 of the Amended Complaint with the same force and effect as if fully set forth herein.

591. Denies the allegations of paragraph 591 of the Amended Complaint.

592. States that the allegations of paragraph 592 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Continental admits that Section 549(a) of the Bankruptcy Code states that “the trustee may avoid a transfer of property of the estate . . . that occurs after the commencement of the case . . . that is not authorized . . . by the court” and refers to Section 549 of the Bankruptcy Code for the provisions set forth therein.

593. Denies the allegations of paragraph 593 of the Amended Complaint, except admits that the DIP Order authorized application of proceeds of the DIP Credit Facility (as defined in the DIP Order) to repay amounts outstanding under the Term Loan Agreement and refers to the DIP Order for the terms set forth therein.

594. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 594 of the Amended Complaint.

595. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 595 of the Amended Complaint.

596. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 596 of the Amended Complaint.

597. Denies the allegations of paragraph 597 of the Amended Complaint, except admits that the DIP Order provides the AAT with certain limited rights “with respect only to the perfection of first-priority liens of the Prepetition Senior Facilities Secured Parties [as defined in the DIP Order]” and refers to the DIP Order for the terms set forth therein.

598. Denies the allegations of paragraph 598 of the Amended Complaint.

599. Denies the allegations of paragraph 599 of the Amended Complaint.

600. Denies the allegations of paragraph 600 of the Amended Complaint.

601. Denies the allegations of paragraph 601 of the Amended Complaint, except admits that some portion of the collateral was secured and perfected by filings other than the UCC-1 financing statement filed with the Delaware Secretary of State on November 30, 2006 and bearing the number “6416808 4” (the “Main Term Loan UCC-1”).

602. States that the allegations of paragraph 602 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Continental admits that Section 550(a) of the Bankruptcy Code states that “to the extent that a transfer is avoided under Section . . . 549 . . . [of Title 11], the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property from . . . the initial transferee of such transfer or the entity for whose benefit such transfer was made . . . or . . . any immediate or mediate transferee of such initial transferee” and refers to Section 550 of the Bankruptcy Code for the provisions set forth therein.

603. Denies the allegations of paragraph 603 of the Amended Complaint.

**AS AND FOR AN ANSWER  
TO THE THIRD CLAIM FOR RELIEF**

604. Repeats and re-alleges its responses to paragraphs 1 through 603 of the Amended Complaint with the same force and effect as if fully set forth herein.

605. Denies the allegations of paragraph 605 of the Amended Complaint.

606. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 606 of the Amended Complaint.

607. States that the allegations of paragraph 607 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Continental denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 607 of the Amended Complaint.

608. States that the allegations of paragraph 608 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Continental denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 608 of the Amended Complaint.

609. States that the allegations of paragraph 609 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Continental denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 609 of the Amended Complaint.

610. States that the allegations of paragraph 610 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Continental denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 610 of the Amended Complaint.

611. States that the allegations of paragraph 611 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Continental denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 611 of the Amended Complaint.

612. Denies the allegations of paragraph 612 of the Amended Complaint.

613. Denies the allegations of paragraph 613 of the Amended Complaint.

614. States that the allegations of paragraph 614 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, Continental admits that Section 550(a) of the Bankruptcy Code states that “to the extent that a transfer is avoided under Section . . . 547 . . . [of Title 11], the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property from . . . the initial transferee of such transfer or the entity for whose benefit such transfer was made . . . or . . . any immediate or mediate transferee of such initial transferee” and refers to Section 550 of the Bankruptcy Code for the provisions set forth therein.

615. Denies the allegations of paragraph 615 of the Amended Complaint.

**AS AND FOR AN ANSWER  
TO THE FOURTH CLAIM FOR RELIEF**

616. Repeats and re-alleges its responses to paragraphs 1 through 615 of the Amended Complaint with the same force and effect as if fully set forth herein.

617. Denies the allegations of paragraph 617 of the Amended Complaint.

618. Denies the allegations of paragraph 618 of the Amended Complaint.

Continental denies that the AAT is entitled to any of the relief requested in its eight-paragraph prayer for relief on pages 77 and 78 of the Amended Complaint.

**AFFIRMATIVE DEFENSES**

In asserting the following defenses to the AAT’s claims, Continental does not concede that the assertion of such defenses imposes any burden of proof or persuasion on it with respect thereto, nor does Continental assume the burden of proof or persuasion for any of the defenses set forth here or with respect to any matter as to which the AAT as Plaintiff has the burden.

Further, Continental reserves the right to supplement, amend, or delete any or all of the following affirmative defenses prior to any trial of this action to the extent that its ongoing investigation and/or discovery so warrant.

Presently, Continental asserts that the claims alleged in the Amended Complaint are barred, wholly or partially, because:

**FIRST DEFENSE**

The Amended Complaint fails to state a claim upon which relief may be granted.

**SECOND DEFENSE**

The service of process on Continental was insufficient and the AAT's claims should therefore be dismissed for failure to properly serve Continental.

**THIRD DEFENSE**

The claims asserted in the Amended Complaint are barred by the doctrines of laches, waiver and/or equitable estoppel. Among other reasons, the AAT waited for approximately six years before serving Continental with either the Amended Complaint or the original complaint.

**FOURTH DEFENSE**

The claims asserted in the Amended Complaint are barred by the applicable statutes of limitations. Without limiting the generality of the foregoing, the AAT waited for approximately six years before serving Continental with any summons or complaint (including the Amended Complaint) and the prior orders of the Bankruptcy Court extending the time for the AAT to serve the summons were ineffective. Such orders were ineffective because, among other reasons, good cause (or other cause) did not exist to enter such orders and Continental did not have any notice of the AAT or the Unsecured Creditors' Committee seeking to extend the time for service.

**FIFTH DEFENSE**

The AAT's claims are barred due to a lack of due process in that Continental had no knowledge of the pending adversary proceeding until approximately six years after the adversary proceeding was filed, which has prejudiced Continental from defending this action.

**SIXTH DEFENSE**

The Termination Statement is void and ineffective because JPMorgan, in its capacity as Administrative Agent for a syndicate of financial institutions on a different financing for General Motors (the "Synthetic Lease"), was not the secured party of record under the Term Loan UCC Financing Statements and therefore had no power or authority to cause the Termination Statement to be filed.

**SEVENTH DEFENSE**

The Termination Statement is void and ineffective because JPMorgan never obtained the consent of Continental or other Term Lenders to cause the filing of the Termination Statement as required under the Term Loan Agreement.

**EIGHTH DEFENSE**

The Termination Statement is void and ineffective because JPMorgan, both in its capacity as Administrative Agent for the Synthetic Lease and in its capacity as Administrative Agent for the Term Loan, exceeded the extent of its authority as an agent of its principals, including Continental, when it caused the Termination Statement to be filed.

**NINTH DEFENSE**

The Termination Statement was filed without authority and is therefore ineffective as to Continental.

**TENTH DEFENSE**

The unauthorized and ineffective filing of the Termination Statement did not waive or terminate the security interests that Continental had in certain assets of the Debtors pursuant to the Term Loan Agreement and the Term Loan UCC Financing Statements.

**ELEVENTH DEFENSE**

Continental was a secured party and beneficiary of perfected security interests on the Petition Date in certain assets of the Debtors pursuant to the Term Loan Agreement as set forth in multiple UCC-1 financing statements filed throughout the United States, including but not limited to the UCC-1 financing statement numbered 6416822 3 and filed on November 30, 2006 with the Delaware Secretary of State listing Saturn as the “debtor” and various fixture filings in multiple states.

**TWELFTH DEFENSE**

The claims asserted in the Amended Complaint are barred by the doctrines of *in pari delicto*, unclean hands, and/or the *Wagoner* rule.

**THIRTEENTH DEFENSE**

The AAT is estopped from bringing the claims asserted in the Amended Complaint.

**FOURTEENTH DEFENSE**

The claims asserted in the Amended Complaint are barred by the doctrines of mistake, restitution, and unjust enrichment, which collectively or individually require reinstatement of the erroneously terminated financing statement.

**FIFTHTEENTH DEFENSE**

The AAT is estopped from alleging that the pertinent security interests were terminated or, in the alternative, the Bankruptcy Court should find that the Debtors held the collateral under

the Term Loan Agreement pursuant to a constructive trust for the benefit of Continental and, therefore, that such collateral is excluded from the bankruptcy estate.

**SIXTEENTH DEFENSE**

The claims asserted in the Amended Complaint are barred by the doctrine of earmarking.

**SEVENTEENTH DEFENSE**

The claims asserted in the Amended Complaint are barred to the extent that Continental is not a transferee from which the AAT may recover the value of an avoided transfer under Section 550(b) of the Bankruptcy Code. To the extent one or more of the transfers alleged in the Amended Complaint were made, the Complaint is barred by 11 U.S.C. Section 550(b)(1) because Continental took any such transfer for value, in good faith, and without knowledge of the voidability of the alleged transfers. Such transfers are thus not avoidable or recoverable as against Continental under Sections 549 and 550 of the Bankruptcy Code. To the extent that one or more of the transfers alleged in the Amended Complaint were made, the claims are barred by 11 U.S.C. Section 550(b)(2) because Continental was an immediate or mediate good faith transferee who took any such transfer for value, in good faith, and without knowledge of the voidability of the alleged transfers.

**EIGHTEENTH DEFENSE**

The claims asserted in the Amended Complaint are barred by the single satisfaction rule set forth in Section 550(d) of the Bankruptcy Code.

**NINETEENTH DEFENSE**

The claims asserted in the Amended Complaint are barred to the extent that Continental was a mere conduit with respect to any of the alleged transfers.



**TWENTIETH DEFENSE**

Because the DIP Order reserves for the Trust “only [the right to challenge] the perfection of first priority liens of the Postpetition Senior Facilities Secured Parties,” the Trust lacks standing and authority to bring some or all of the claims asserted in the Amended Complaint.

**TWENTY-FIRST DEFENSE**

The claims asserted in the Amended Complaint are barred to the extent that Continental did not receive a transfer made under the Term Loan Agreement on May 27, 2009.

**TWENTY-SECOND DEFENSE**

The claims asserted in the Amended Complaint are barred to the extent that Continental did not receive a transfer made under the Term Loan Agreement on June 30, 2009.

**TWENTY-THIRD DEFENSE**

Some or all of the claims asserted in the Amended Complaint are barred because the purportedly preferential transfers are protected from avoidance by the “safe harbor” provisions of Section 546(e) of the Bankruptcy Code.

**TWENTY-FOURTH DEFENSE**

At the time any of the purported transfers referenced in the Amended Complaint were allegedly made by the Debtors, Continental was a perfected secured creditor thereby excepting all of the alleged transfers from avoidance as preferential transfers pursuant to Section 547(b)(5) of the Bankruptcy Code.

**TWENTY-FIFTH DEFENSE**

To the extent that any purported prepetition transfers at issue are held by this Court to meet the requirements of 11 U.S.C. Section 547(b), all such transfers may nevertheless not be

avoided as preferences pursuant to 11 U.S.C. Sections 547(c)(1) because they are contemporaneous exchanges of value.

**TWENTY-SIXTH DEFENSE**

To the extent that any purported prepetition transfers at issue are held by this Court to meet the requirements of 11 U.S.C. Section 547(b), all such transfers may nevertheless not be avoided as preferences pursuant to 11 U.S.C. Sections 547(c)(2) because they were (i) in payment of a debt incurred by the Debtors in the ordinary course of business or financial affairs of the Debtors and Continental, (ii) made in the ordinary course of business or financial affairs of the Debtors and Continental, and (iii) made according to ordinary business terms.

**TWENTY-SEVENTH DEFENSE**

To the extent that any purported prepetition transfers at issue are held by this Court to meet the requirements of 11 U.S.C. Section 547(b), all such transfers may nevertheless not be avoided as preferences pursuant to 11 U.S.C. Sections 547(c)(4) because of new value provided.

**TWENTY-EIGHTH DEFENSE**

The claims asserted in the Amended Complaint to avoid transfers under Section 549 of the Bankruptcy Code are barred to the extent that such transfers were not property of the estate.

**TWENTY-NINTH DEFENSE**

The AAT's claims are barred by the doctrine of accord and satisfaction.

**THIRTIETH DEFENSE**

Any injury or damages to the AAT should be reduced to the extent that the culpable conduct of others caused or contributed to any injury or damages that the AAT may have sustained.

**THIRTY-FIRST DEFENSE**

The claims asserted in the Amended Complaint are barred by the doctrines of recoupment and/or set-off.

**THIRTY-SECOND DEFENSE**

Pursuant to the Term Loan Agreement, the Debtors agreed to hold harmless and indemnify each Term Lender to the full extent of any losses, expenses, claims, or proceedings related to or arising out of the Term Loan Agreement. Continental hereby invokes all of its contractual and common law indemnity rights, and hereby provided notice to Plaintiff and the Debtors hereof.

**THIRTY-THIRD DEFENSE**

The Complaint violates Rules 8(a)(2) of the Federal Rules of Civil Procedure, by, inter alia, (a) failing to describe each specific transfer and its recipients, and improperly combining allegations as to all defendants, (b) pleading numerous background allegations and purported legal standards that are not required for the assertion of the alleged claims, and (c) pleading numerous factual allegations about which Continental could not possibly have knowledge.

**THIRTY-FOURTH DEFENSE**

This Court lacks jurisdiction over the final adjudication of, or to enter final orders or judgments on, the claims asserted in the Complaint under *Stern v. Marshall*, 131 S. Ct. 2594 (2011) and its progeny. The asserted claims are not core proceedings consistent with the requirements of Article III of the U.S. Constitution, and Continental does not consent to the entry of a final order and judgment by the Bankruptcy Court. Continental demands a trial by jury, and Continental does not consent to a jury trial in the Bankruptcy Court.

**THIRTY-FIFTH DEFENSE**

Even if the AAT is entitled to the return of some or all of the transfers, it is not entitled to interest from the date of each alleged transfer.

**THIRTY-SIXTH DEFENSE**

The claims are barred by intervening or superseding events, factors, occurrence, or conditions over which Continental had no control.

**THIRTY-SEVENTH DEFENSE**

At the time any of the purported preferential transfers referenced in the Amended Complaint were made by the Debtors, Continental did not receive more than it would have received had the Debtors' bankruptcy cases been cases under chapter 7 of the Bankruptcy Code, had such transfers not been made, and had defendants received payment therein to the extent provided in the provisions in the Bankruptcy Code.

**THIRTY-EIGHTH DEFENSE**

Any claims alleging postpetition transfers are barred under Section 549(a) because such transfers were authorized.

**THIRTY-NINTH DEFENSE**

The claims are barred in whole or in part to the extent that Continental cannot recover from the AAT or GUC trusts the share to which it may be entitled because the AAT and GUC trusts have already distributed the pertinent funds and because the GUC trust had less funding than it might have had if any of the purported preferential transfers referenced in the Amended Complaint not been made.

**FOURTIETH DEFENSE**

Continental hereby adopts and incorporates by reference any and all other defenses asserted or to be asserted by any other defendants named in the Amended Complaint to the extent that such defenses are available to Continental.

**FOURTY-FIRST DEFENSE**

Continental hereby asserts all defenses available under federal law and under any applicable state law. Additional facts may be revealed in discovery or otherwise that support additional defenses presently available, but unknown, to Continental. Continental therefore reserves its right to assert additional defenses in the event discovery or investigation reveals additional defenses or such additional defenses become apparent at trial.

**DEMAND FOR JURY TRIAL**

Continental hereby demands, pursuant to Rule 38 of the Federal Rules of Civil Procedure and Rule 9015 of the Federal Rules of Bankruptcy Procedure, a trial by jury of all issues raised in the above-captioned adversary proceeding.

WHEREFORE, Continental respectfully requests that judgment be entered in its favor as follows:

- A. Dismissing with prejudice the AAT's Amended Complaint in its entirety and on the merits;
- B. Awarding Continental its costs of defending this action, including reasonable attorneys' fees, costs, and disbursements, and
- C. Awarding Continental such other and further relief as this Court may deem just and proper.

Chicago, IL  
July 27, 2016

Respectfully submitted,

ELENIUS FROST & WALSH

/s/ Daniel M. Hinkle

Daniel M. Hinkle (admitted pro hac vice)

Paul A. Sheldon (admitted pro hac vice)

ELENIUS FROST & WALSH

333 S. Wabash Avenue, 25<sup>th</sup> Floor

Chicago, IL 60604

Tel: 312-822-4677

Tel: 312-822-3307

-and-

David Christian (pro hac vice)

DAVID CHRISTIAN ATTORNEYS LLC

3515 W. 75th St., Suite 208

Prairie Village, KS 66208

Tel: 913-674-8215

*Attorneys for Continental Casualty  
Company*