

ICE MILLER LLP
Daniel R. Swetnam (OH 0011022)
250 West Street, Suite 700
Columbus, OH 43215
Telephone: (614) 462-2225
Facsimile: (614) 224-3568

*Attorneys for Defendant
Ohio Police & Fire Pension Fund*

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

-----		X
In re:	:	Chapter 11
	:	
MOTORS LIQUIDATION COMPANY, <u>et</u>	:	Case No. 09-50026 (MG)
<u>al.</u>,	:	
	:	Jointly Administered
	:	
Debtors.	:	
-----		X
	:	
OFFICIAL COMMITTEE OF	:	
UNSECURED CREDITORS OF	:	
MOTORS LIQUIDATION COMPANY	:	Adv. Pro. No. 09-00504 (MG)
f/k/a GENERAL MOTORS	:	
CORPORATION,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
JPMORGAN CHASE BANK, N.A.,	:	
individually and as Administrative Agent	:	
for various lenders party to the Term Loan	:	
Agreement described herein, <u>et al.</u>,	:	
	:	
Defendants.	:	

ANSWER OF DEFENDANT
OHIO POLICE & FIRE PENSION FUND

Defendant Ohio Police & Fire Pension Fund (“OP&F”), for its Answer to 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, filed May 20, 2015 [Docket No. 91] (the “Amended Complaint”), avers as follows:

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, OP&F lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 1 of the Amended Complaint and therefore denies the same.

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, OP&F lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 2 of the Amended Complaint and therefore denies the same.

3. States that the allegations 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, OP&F lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 3 of the Amended Complaint and therefore denies the same.

4. States that the allegations of paragraph 4 of the Amended Complaint do not contain any allegations against OP&F, making a response unnecessary. To the extent a response is required, pursuant to Rule 7012 of the Local Bankruptcy Rules for the Southern District of New York, OP&F does not consent to the entry of final orders or judgments by the Bankruptcy Court if it is determined that the Bankruptcy Court, absent consent of the parties, cannot enter final orders and judgments consistent with Article III of the United States Constitution.

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, OP&F lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 5 of the Amended Complaint and therefore denies the same.

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

7. Lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 7 of the Amended Complaint and therefore denies the same.

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, OP&F lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 8 of the Amended Complaint and therefore denies the same, except that OP&F admits, upon information and belief, that on June 25, 2009 the Court issued 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 (the "DIP Order") and refers to the DIP Order for the terms set forth therein.

9. Lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 9 of the Amended Complaint and therefore denies the same.

10. Lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 10 of the Amended Complaint and therefore denies the same.

11. Lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 11 of the Amended Complaint and therefore denies the same.

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, OP&F lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 12 of the Amended Complaint and therefore denies the same, except that OP&F admits that on March 18, 2011 the Court entered an order (the “Confirmation Order”) confirming the Debtors’ Second Amended Joint Chapter 11 Plan (the “Plan”) and refers to the Plan for the terms set forth therein.

13. Lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 13 of the Amended Complaint and therefore denies the same.

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, OP&F lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 14 of the Amended Complaint and therefore denies the same.

15.-370. Lacks sufficient information to form a belief as to the truth of the allegations contained in paragraphs 15 through 370 of the Amended Complaint and therefore denies the same.

371. States that the allegations of paragraph 371 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, OP&F admits that it received funds under the Term Loan Agreement (as defined in paragraph 8 of the Amended Complaint), but lacks sufficient information to form a belief as to the truth of the remaining allegations contained in paragraph 371 of the Amended Complaint and therefore denies that same.

372.-569. Lacks sufficient information to form a belief as to the truth of the allegations contained in paragraphs 372 through 569 of the Amended Complaint and therefore denies the same.

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, OP&F lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 570 of the Amended Complaint and therefore denies the same.

571. Lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 571 of the Amended Complaint and therefore denies the same, except OP&F admits, upon information and belief, that General Motors Corporation (“GM”), Saturn Corporation (“Saturn”) and JPMorgan Chase Bank, N.A., as Administrative Agent (“JPMC”) were parties to the Term Loan Agreement and refers to the Term Loan Agreement for the terms set forth therein.

572. Denies the allegations contained in paragraph 572 of the Amended Complaint as to OP&F, and lacks sufficient information to form a belief as to the truth of the remaining allegations contained in paragraph 572 of the Amended Complaint and therefore denies the same.

573. Lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 573 of the Amended Complaint and therefore denies the same.

574. Lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 574 of the Amended Complaint and therefore denies the same, except admits, upon information and belief, that on the Petition Date the Debtors filed a Motion (the “DIP Motion”) and refers to the DIP Motion for the terms set forth therein.

575. Lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 575 of the Amended Complaint and therefore denies the same, except admits, upon information and belief, that the Debtors filed the DIP Motion and refers to the DIP Motion for the terms set forth therein.

576. Lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 576 of the Amended Complaint and therefore denies the same.

577. Lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 577 of the Amended Complaint and therefore denies the same. Further, OP&F refers to the DIP Order for the terms set forth therein.

578. Lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 578 of the Amended Complaint and therefore denies the same.

579. States that the allegations contained in paragraph 579 of the Amended Complaint constitute legal conclusions as to which no responsive pleading is required. To the extent a response is required, OP&F lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 579 of the Amended Complaint and therefore denies the same.

580. Lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 580 of the Amended Complaint and therefore denies the same, except admits that the Committee (as defined in the Amended Complaint) commenced this action.

581. Admits that the UCC-1 financing statement attached as Exhibit 1 to the Amended Complaint was filed with the Delaware Secretary of State on November 30, 2006 in connection with the Term Loan Agreement and refers to that financing statement for the terms set forth therein, but lacks sufficient information to form a belief as to the truth of the remaining

allegations contained in paragraph 581 of the Amended Complaint and therefore denies the same.

582. Admits that the UCC-3 attached as Exhibit 2 to the Amended Complaint was filed with the Delaware Secretary of State on October 30, 2008, but lacks sufficient information to form a belief as to the truth of the remaining allegations contained in paragraph 582 of the Amended Complaint and therefore denies the same.

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, OP&F lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 583 of the Amended Complaint and therefore denies the same.

584. Admits that the Court entered a Decision on Cross Motions for Summary Judgment, a Judgment and Order on March 1, 2013, all of which speak for themselves, and lacks sufficient information to form a belief as to the truth of the remaining allegations contained in paragraph 584 of the Amended Complaint and therefore denies the same.

585. Admits that the Second Circuit Court of Appeals issued a decision on January 21, 2015, but lacks sufficient information to form a belief as to the truth of the remaining allegations contained in paragraph 585 of the Amended Complaint and therefore denies the same.

586. Admits and denies the allegations of the Amended Complaint as realleged in paragraph 586 as admitted and denied above.

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, OP&F lacks sufficient information to form a belief as to the truth of the allegations contained in paragraphs 587 of the Amended Complaint and therefore denies the same.

588. Denies the allegations contained in paragraph 588 of the Amended Complaint.

589. Denies the allegations contained in paragraph 589 of the Amended Complaint.

590. Admits and denies the allegations of the Amended Complaint as realleged in paragraph 590 as admitted and denied above.

591. Denies the allegations contained in 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, OP&F lacks sufficient information to form a belief as to the truth of the allegations contained in paragraphs 592 of the Amended Complaint and therefore denies the same.

593. Lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 593 of the Amended Complaint and therefore denies the same, except admits that the Court issued the DIP Order and refers to the DIP Order for the terms contained therein.

594. Lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 594 of the Amended Complaint and therefore denies the same.

595. Lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 595 of the Amended Complaint and therefore denies the same.

596. Lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 596 of the Amended Complaint and therefore denies the same.

597. Lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 597 of the Amended Complaint and therefore denies the same, except admits that the Court entered the DIP Order and refers to the DIP Order for the terms set forth therein.

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

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

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

601. Denies the allegations contained in paragraph 601 of the Amended Complaint.

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, OP&F lacks sufficient information to form a belief as to the truth of the allegations contained in paragraphs 602 of the Amended Complaint and therefore denies the same.

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

604. Admits and denies the allegations of the Amended Complaint as realleged in paragraph 604 as admitted and denied above.

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

606. Lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 606 of the Amended Complaint and therefore denies the same.

607. Lacks sufficient information to form a belief as to the truth of the remaining allegations contained in paragraph 607 of the Amended Complaint and therefore denies the same.

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, OP&F lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 608 of the Amended Complaint and therefore denies the same.

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, OP&F lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 609 of the Amended Complaint and therefore denies the same.

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, OP&F lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 610 of the Amended Complaint and therefore denies the same.

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, OP&F lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 611 of the Amended Complaint and therefore denies the same.

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

613. Denies the allegations contained in 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, OP&F lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 614 of the Amended Complaint and therefore denies the same.

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

616. Admits and denies the allegations of the Amended Complaint as realleged in paragraph 616 as admitted and denied above.

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

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

619. Defendant OP&F denies any allegation of the Amended Complaint not expressly addressed above.

AFFIRMATIVE DEFENSE

In asserting the following affirmative defenses, OP&F does not concede that the assertion of such defenses impose any burden of proof on it with respect thereto. Nor has OP&F completed its investigation and, to the extent that investigation and/or discovery warrant, reserves the right to supplement, amend or delete any or all of the following affirmative defenses prior to any trial of this action. At the present time, OP&F asserts that the claims alleged in the Amended Complaint against it are barred, in whole or in part, because:

FIRST DEFENSE

The Amended Complaint fails to state a claim against OP&F upon which relief can be granted.

SECOND DEFENSE

The claims against OP&F are barred by 11 U.S.C. § 546(e).

THIRD DEFENSE

OP&F was not served with the summons and complaint within the period of time prescribed by law and the Trustee's claims should therefore be dismissed for failure to properly serve OP&F.

FOURTH DEFENSE

The claims against OP&F should be dismissed due to insufficient process.

FIFTH DEFENSE

The claims against OP&F should be dismissed due to insufficient service of process.

SIXTH DEFENSE

The claims asserted in the Amended Complaint against OP&F upon are barred by applicable statute of limitations.

SEVENTH DEFENSE

OP&F was not the initial transferee of any payments from Debtors. Any transfer to OP&F was for value and in good faith, and OP&F was without knowledge of the voidability of any such transfer. As a result, the claims against OP&F are barred by 11 U.S.C. § 550(b)(1).

EIGHTH DEFENSE

OP&F was an immediate or mediate transferee of a transferee described in 11 U.S.C. § 550(b)(1) and, as a result, the claims against OP&F are barred by 11 U.S.C. § 550(b)(2).

NINTH DEFENSE

OP&F was not properly served with Amended Complaint in this Adversary Proceeding and/or OP&F is not subject to personal jurisdiction in the United States Bankruptcy Court for the Southern District of New York.

TENTH DEFENSE

Plaintiff is estopped from alleging that the security interest of JPMorgan Chase Bank, N.A., as Administrative Agent, was 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.

ELEVENTH DEFENSE

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

TWELFTH DEFENSE

The claims asserted in the Amended Complaint against OP&F are barred by the doctrines of *in pari delicto*, unclean hands and/or the *Wagoner* Rule.

THIRTEENTH DEFENSE

The October 2008 Amendment was filed without authority and therefore is ineffective.

FOURTEENTH DEFENSE

The unauthorized filing of the October 2008 Amendment did not waive OP&F's security interest in certain assets of the Debtors pursuant to the Term Loan Agreement and the Term Loan UCC Financing Statements.

FIFTEENTH DEFENSE

OP&F was a secured party and had a perfected security interest 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 Secretary of State of Delaware listing Saturn Corporation as the "debtor" as well as multiple state fixture filings.

SIXTEENTH DEFENSE

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

SEVENTEENTH DEFENSE

Pursuant to Bankruptcy Code section 547(c)(2), the alleged transfers sought from OP&F in the Amended Complaint were (a) in payment of a debt incurred by the Debtors in the ordinary course of business or financial affairs of the Debtors and OP&F, (b) made in the ordinary course of business or financial affairs of the Debtors and OP&F, and (c) made according to ordinary business terms.

EIGHTEENTH DEFENSE

The claims asserted in the Amended Complaint against OP&F are barred by the doctrine of earmarking.

NINETEENTH DEFENSE

The claims asserted in the Amended Complaint against OP&F are barred by the doctrine of recoupment and/or set-off.

TWENTIETH DEFENSE

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

TWENTY-FIRST DEFENSE

The claims asserted in the Amended Complaint against OP&F are barred to the extent that OP&F was not the beneficial owner of any interest in the Term Loan Agreement.

TWENTY-SECOND DEFENSE

The Plaintiff lacks standing and authority to bring the claims alleged, and the claims did not survive the confirmation of the Debtors' Chapter 11 plan.

TWENTY-THIRD DEFENSE

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

TWENTY-FOURTH DEFENSE

The claims asserted in the Amended Complaint against OP&F are barred by the doctrines of laches and estoppel.

TWENTY-FIFTH DEFENSE

The claims against OP&F are barred since the proceedings herein have violated OP&F's right to due process.

TWENTY-SIXTH DEFENSE

The claims asserted in the Amended Complaint against OP&F are barred by the doctrines of mistake, restitution and unjust enrichment which, collectively or individually, require reinstatement of the erroneously discharged security interest.

TWENTY-SEVENTH DEFENSE

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

TWENTY-EIGHTH DEFENSE

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

TWENTY-NINTH 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. OP&F hereby invokes all of its contractual and common law indemnity rights, and hereby provides notice to the Plaintiff and the Debtors thereof.

THIRTIETH DEFENSE

The claims asserted in the Amended Complaint against OP&F to avoid transfers under 11 U.S.C. § 549 are barred insofar as such transfers were not of property of the estate.

THIRTY-FIRST DEFENSE

Because paragraph 19(d) of the DIP Order reserved for the plaintiff “only [the right to challenge] the perfection of first-priority liens of the Prepetition Senior Facilities Secured Parties,” all other claims have been released and the plaintiff lacks standing and authority to bring the Second, Third, and Fourth Claims for Relief asserted in the Amended Complaint.

THIRTY-SECOND DEFENSE

OP&F 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 OP&F. OP&F 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.

THIRTY-THIRD DEFENSE

OP&F 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 OP&F.

WHEREFORE, Ohio Police & Fire Pension Fund respectfully requests that judgment be entered in its favor as follows:

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

Dated: Columbus, Ohio
July 27, 2016

Respectfully submitted,

ICE MILLER LLP

/s/ Daniel R. Swetnam

Daniel R. Swetnam (0011022)
250 West Street, Suite 700
Columbus, OH 43215
(614) 462-2225; Fax: (614) 224-3568
Email: Daniel.Swetnam@icemiller.com

*Counsel for Defendant
Ohio Police & Fire Pension Fund*

CERTIFICATE OF SERVICE

I certify that, on July 27, 2016, I caused the foregoing Answer of Defendant Ohio Police & Fire Pension Fund to be served via the Court's ECF system upon all appearing parties.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 27, 2016 at Columbus, Ohio.

/s/ Daniel R. Swetnam

Daniel R. Swetnam (0011022)

ICE MILLER LLP

250 West Street, Suite 700

Columbus, OH 43215

Email: Daniel.Swetnam@icemiller.com