

John W. Spiegel (admitted *pro hac vice*)
MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue, 35th Floor
Los Angeles, CA 90071
Tel: (213) 683-9100

[additional counsel listed on signature page]

*Attorneys for the Defendants included in the Ad Hoc Group of Term Lenders**

[*complete list of represented Defendants listed in Appendix A]

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

<hr/>)	
In re:)	Chapter 11 Case
)	
MOTORS LIQUIDATION COMPANY, <i>et al.</i> ,)	Case No. 09-50026 (REG)
)	
Debtors.)	(Jointly Administered)
<hr/>)	
)	
MOTORS LIQUIDATION COMPANY)	
AVOIDANCE ACTION TRUST, by and through)	Adversary Proceeding
Wilmington Trust Company, solely in its capacity as)	
Trust Administrator and Trustee,)	Case No. 09-00504 (REG)
)	
Plaintiff,)	
)	
vs.)	
)	
JPMORGAN CHASE BANK, N.A., <i>et al.</i> ,)	
)	
Defendants.)	
)	

CROSS-CLAIMANTS' SUBMISSION REGARDING
JPMORGAN'S PRIVILEGE DESIGNATIONS

Certain Term Lender defendants that have cross-claimed against JPMorgan (“Cross-Claimants”)¹ submit this document in response to the Court’s September 1, 2016 order (ECF No. 716), directing them to identify documents on JPMorgan’s Amended Privilege Log as to which they, in good faith, dispute JPMorgan’s continued assertion of privilege.

As a preliminary matter, Cross-Claimants appreciate both the Court’s willingness to undertake *in camera* review of documents on the Privilege Log and the opportunity to identify documents that appear to lend themselves to such review. Out of 327 documents submitted by JPMorgan for *in camera* review, Cross-Claimants have identified 13 documents for such review, for reasons discussed below (“Category 1”). Cross-Claimants further note that a significant number of the entries on the Privilege Log (75) are insufficiently specific to permit a determination of whether the listed documents relate to JPMorgan’s various advice of counsel theories and therefore are subject to the waiver of privilege and work-product protection. Although many of these entries contain information that could establish the initial existence of a privilege, such as whether a lawyer was involved in the communication and whether it included legal advice, and although many of them describe the general subject matter of the document (*e.g.*, Doc. No. 321, describing legal advice regarding “status of GM bankruptcy and other matters”), most do not indicate the content or subject matter of the document in sufficient detail to determine its potential relevance to the advice of counsel defense (“Category 2”). As discussed more fully below, instead of burdening the Court with review of all of these vaguely described documents, Cross-Claimants suggest that the Court review only a sampling of the Category 2 documents, and/or then consider whether JPMorgan should provide more detailed

¹ Term Lenders/Cross-Claimants joining this letter are those listed in Docket No. 222 and Appendix A to Docket No. 241.

descriptions on each to allow Cross-Claimants to sufficiently consider whether to challenge the designation. Subject to these preliminary considerations, Cross-Claimants have identified the following categories of document entries on the Privilege Log.

Category 1: The documents listed in Category 1, based solely upon JPMorgan’s summary Privilege Log entries, potentially could bear upon the scope of the representation by JPMorgan’s counsel and the specific work and responsibilities performed by or assigned to such firms—topics that would be sufficiently related to JPMorgan’s advice of counsel defense to fall within the scope of the waiver. From the brief descriptions, Cross-Claimants cannot be certain that these Category 1 documents in fact bear upon the advice of counsel defense as JPMorgan has articulated it, but the entries suggest that a review of these documents is warranted. These Category 1 entries are as follows:

Entry	Privilege Description
80	Confidential internal communication discussing legal advice from counsel (James D. Cooper, Esq. (Cravath)) concerning Cravath’s representation of JPMorgan on the Term Loan.
88	Confidential internal communication discussing legal advice (Robert H. Scheibe, Esq. (Morgan Lewis)) regarding Morgan Lewis’ representation of JPMorgan on the Term Loan and attaching a confidential document concerning the same.
89	Confidential internal communication reflecting legal advice (Robert H. Scheibe, Esq. (Morgan Lewis)) regarding Morgan Lewis’ representation of JPMorgan on the Term Loan.
90	Confidential internal communication reflecting legal advice (Robert H. Scheibe, Esq. (Morgan Lewis)) regarding Morgan Lewis’ representation of JPMorgan on the Term Loan.
152	Confidential communication with counsel providing legal advice regarding Morgan Lewis’ representation of JPMorgan on the Term Loan and attaching a confidential document concerning the same.
159	Confidential communication with counsel providing legal advice regarding Morgan Lewis’ representation of JPMorgan on the Term Loan.
195	Confidential communication with counsel providing legal advice regarding Morgan Lewis’ representation of JPMorgan on the Term Loan and attaching a confidential document concerning the same.

207	Confidential internal communication regarding Morgan Lewis' representation of JPMorgan involving GM and attaching confidential documents regarding the same.
237	Confidential communication with counsel discussing legal advice regarding Morgan Lewis' representation of JPMorgan on the Term Loan and attaching a confidential document regarding the same.
238	Confidential internal communication reflecting legal advice (Ann B. Silva (on behalf of Richard S. Toder, Esq. (Morgan Lewis))) regarding Morgan Lewis' representation of JPMorgan on the Term Loan and attaching a confidential document regarding the same.
239	Confidential internal communication reflecting legal advice (Ann B. Silva (on behalf of Richard S. Toder, Esq. (Morgan Lewis))) regarding Morgan Lewis' representation of JPMorgan on the Term Loan and attaching a confidential document regarding the same.
240	Confidential internal communication reflecting legal advice (Ann B. Silva (on behalf of Richard S. Toder, Esq. (Morgan Lewis))) regarding Morgan Lewis' representation of JPMorgan on the Term Loan and attaching a confidential document regarding the same.
241	Confidential internal communication reflecting legal advice (Ann B. Silva (on behalf of Richard S. Toder, Esq. (Morgan Lewis))) regarding Morgan Lewis' representation of JPMorgan on the Term Loan.

Category 2: This Category consists of entries that are insufficiently specific—or that describe covered topics that potentially could be relevant but do not give enough detail—to permit even a preliminary determination of relevance to JPMorgan's advice of counsel defense. Most of these entries appear to be designed more toward supporting an initial privilege designation than to establishing relevance to an advice of counsel defense, with the result that Cross-Claimants cannot determine in good faith whether or not they are within the scope of the waiver. As an example, the entry for Document No. 16 on the Privilege Log bears the description "Confidential internal communication reflecting legal advice (Jonathan Corsico, Esq. (Cravath)) regarding draft arrangement fee letter in connection with proposed Term Loan"—a description that, on its face, would not suggest relevance to the advice of counsel defense. Yet a mostly redacted version of this document that JPMorgan produced (dated November 2006) reveals JPMorgan asking internally why it didn't get a "closing set" from "STB" [Simpson Thacher] and how STB had been nonresponsive to communications from JPMorgan's Bangalore

document team. JPMCB-5-00077861-71. Cross-Claimants could not have gleaned from the description of this document that it contained information relevant to JPMorgan’s advice of counsel defense about JPMorgan’s relationship with Simpson Thacher. For Category 2, Cross-Claimants respectfully suggest that the Court may wish to review a sampling of documents or ask JPMorgan for a more detailed description that will facilitate a determination of whether these documents fall within the scope of the waiver. The Category 2 documents are as follows:

Entry	Privilege Description
10	Confidential communication with counsel requesting legal advice regarding the Term Loan arrangement fee and attaching revised term sheet.
11	Confidential communication with counsel discussing legal advice regarding the Term Loan arrangement fee and attaching revised term sheet.
13	Confidential communication with counsel providing legal advice concerning default provisions of Term Loan Agreement.
19	Confidential communication with counsel requesting legal advice concerning disclaimer language in Term Loan documents and attaching a confidential document regarding the same.
22	Confidential communication with counsel requesting legal advice concerning the funding notice required related to the Term Loan.
23	Confidential internal communication discussing legal advice from counsel (Jonathan Corsica, Esq. (Cravath)) concerning draft of funding notice related to the Term Loan.
24	Confidential communication with counsel discussing request to counsel concerning funding notice required related to the Term Loan.
25	Confidential communication with counsel providing legal advice concerning draft of funding notice related to the Term Loan and attaching confidential documents regarding the same.
27	Confidential communication with counsel concerning legal advice regarding the form assignment related to the Term Loan and attaching a confidential document regarding the same.
31	Confidential communication with counsel providing legal advice concerning a proposed GM credit agreement and attaching documents concerning the same.
32	Confidential communication with counsel providing legal advice concerning proposed GM credit agreement.
33	Confidential communication with counsel providing legal advice concerning proposed GM credit agreement.

34	Confidential communication with counsel providing legal advice concerning commitment letter for proposed GM credit agreement and attaching a confidential document concerning same.
35	Confidential communication with counsel regarding legal advice concerning commitment letter for proposed GM credit agreement.
36	Confidential internal communication reflecting legal advice from counsel (Jonathan Corsica, Esq. (Cravath)) concerning proposed GM credit agreement.
37	Confidential communication from counsel providing legal advice concerning the Pledge Agreement for proposed GM credit agreement and attaching confidential documents concerning the same.
45	Confidential communication with counsel requesting legal advice regarding compliance related inquiry.
46	Confidential communication with counsel requesting legal advice regarding compliance related inquiry.
47	Confidential communication with counsel requesting legal advice regarding compliance related inquiry.
48	Confidential communication with counsel providing legal advice concerning additional GM credit agreement and attaching a confidential document concerning the same.
49	Confidential communication with counsel requesting legal advice concerning additional GM credit agreement and attaching confidential documents concerning the same.
50	Confidential communication with counsel discussing legal advice concerning additional GM Credit Agreement.
51	Confidential communication with counsel requesting legal advice concerning additional GM Credit Agreement and responding to follow-up questions and attaching confidential documents concerning the same.
52	Confidential communication with counsel requesting legal advice concerning additional GM Credit Agreement and responding to follow-up questions and attaching confidential documents concerning the same.
53	Confidential internal communication discussing legal advice from counsel (Bradley Y. Smith, Esq. (Davis Polk)) concerning additional GM Credit Agreement and attaching confidential documents concerning the same.
54	Confidential internal communication discussing legal advice from counsel (Bradley Y. Smith, Esq. (Davis Polk)) concerning additional GM Credit Agreement and attaching confidential documents concerning the same.
55	Confidential communication with counsel requesting legal advice concerning additional GM Credit Agreement and responding to follow-up questions and attaching confidential documents concerning the same.
56	Confidential internal communication discussing legal advice from counsel (Kenneth J. Steinberg, Esq. (Davis Polk)) concerning additional GM Credit Agreement and attaching

	confidential documents concerning the same.
57	Confidential communication with counsel requesting legal advice concerning additional GM Credit Agreement and responding to follow-up questions and attaching confidential documents concerning the same.
58	Confidential internal communication discussing legal advice from counsel (Robert J. Cole, Esq. (JPMorgan)) concerning compliance related inquiry and attaching confidential documents concerning the same.
59	Confidential internal communication discussing legal advice from counsel (Robert J. Cole, Esq. (JPMorgan)) concerning compliance related inquiry and attaching confidential documents concerning the same.
71	Confidential internal communication with counsel requesting legal advice concerning exposure to GM pension and retaining outside counsel for JPMorgan on the Term Loan.
73	Confidential communication with counsel providing legal advice regarding the default section of the Term Loan Agreement and attaching a confidential document regarding the same.
81	Confidential communication with counsel discussing legal advice regarding term sheet for the United States Treasury loan to GM and attaching confidential document concerning the same.
82	Confidential communication with counsel providing legal advice (James D. Cooper, Esq. (Cravath)) regarding communications from Treasury and Term Loan issues.
83	Confidential communication with counsel requesting legal advice regarding status of discussions with the United States Treasury concerning GM.
84	Confidential internal communication reflecting legal advice (Morgan Lewis) regarding status of Term Loan Amendment.
85	Confidential internal communication reflecting legal advice (Morgan Lewis) regarding status of Term Loan Amendment.
87	Confidential internal communication concerning seeking legal advice (Morgan Lewis) regarding Term Loan Amendment proposal.
91	Confidential internal communication reflecting legal advice (Morgan Lewis and Kevin Kelley, Esq. (JPMorgan)) regarding the proposed terms for the Term Loan Amendment.
119	Confidential communication with counsel concerning call with GM regarding the amendment to the Term Loan.
205	Confidential communication with counsel providing legal advice regarding status of revised Term Loan Amendment.
214	Confidential communication with counsel providing legal advice regarding confirmation language and cash collateral in connection with secondary market trading of interest in the Term Loan and attaching a confidential document regarding the same.
222	Confidential internal communication reflecting legal advice (Robert H. Scheibe, Esq. (Morgan Lewis)) regarding fee and professional payments in connection with Term Loan

	Amendment.
223	Confidential communication with counsel providing legal advice regarding fee and professional payments in connection with Term Loan Amendment.
224	Confidential communication with counsel providing legal advice regarding fee and professional payments in connection with Term Loan Amendment.
230	Confidential internal communication reflecting legal advice (Christopher A. Owens, Esq. (Morgan Lewis)) regarding proposed amendment to Term Loan regarding repurchase.
232	Confidential internal communication reflecting legal advice (Christopher A. Owens, Esq. (Morgan Lewis)) regarding proposed Term Loan buyback terms.
233	Confidential communication with counsel requesting legal advice regarding GM Credit Agreement and attaching confidential documents regarding the same.
249	Confidential communication discussing legal advice (Richard S. Toder, Esq. (Morgan Lewis)) regarding negotiations with GM and the United States Treasury.
250	Confidential internal communication reflecting legal advice (Richard S. Toder, Esq. (Morgan Lewis)) regarding negotiations with GM and the United States Treasury.
251	Confidential internal communication reflecting legal advice (Richard S. Toder, Esq. (Morgan Lewis)) regarding negotiations with GM and the United States Treasury.
252	Confidential internal communication reflecting legal advice (Richard S. Toder, Esq. (Morgan Lewis)) regarding negotiations with GM and the United States Treasury.
254	Confidential internal communication reflecting legal advice (Richard S. Toder, Esq. (Morgan Lewis)) regarding proposed Term Loan repayment.
255	Confidential internal communication reflecting legal advice (Richard S. Toder, Esq. (Morgan Lewis)) regarding proposed Term Loan repayment.
256	Confidential internal communication reflecting legal advice (Richard S. Toder, Esq. (Morgan Lewis)) regarding proposed Term Loan repayment.
257	Confidential internal communication reflecting legal advice (Richard S. Toder, Esq. (Morgan Lewis)) regarding proposed Term Loan repayment.
259	Confidential internal communication reflecting legal advice (Richard S. Toder, Esq. (Morgan Lewis)) regarding proposed Term Loan repayment.
260	Confidential internal communication reflecting legal advice (Richard S. Toder, Esq. (Morgan Lewis)) regarding proposed Term Loan repayment.
261	Confidential internal communication reflecting legal advice (Richard S. Toder, Esq. (Morgan Lewis)) regarding proposed Term Loan repayment.
280	Confidential communication with counsel providing legal advice regarding status of draft Adequate Protection Order and Cash Management Order.
281	Confidential communication with counsel providing legal advice regarding draft Adequate Protection Order.

289	Confidential communication with counsel discussing legal advice regarding GM 363 sale.
293	Confidential communication with counsel requesting legal advice regarding Adequate Protection Order
308	Confidential communication with counsel discussing legal advice regarding Cash Collateral and Adequate Protection Motion.
309	Confidential communication with counsel discussing legal advice regarding Interim DIP Motion.
311	Confidential communication with counsel providing legal advice regarding Cash Collateral and Adequate Protection Motion and attaching confidential document regarding the same.
312	Confidential communication with counsel providing legal advice regarding Cash Collateral and Adequate Protection Motion and attaching confidential document regarding the same.
313	Confidential communication with counsel providing legal advice regarding DIP Order.
314	Confidential communication with counsel providing legal advice regarding Cash Collateral and Adequate Protection Motion and attaching confidential document regarding the same.
315	Confidential communication with counsel providing legal advice regarding Cash Collateral and Adequate Protection Motion.
319	Confidential communication with counsel providing legal advice regarding entry of Interim DIP Order.
320	Confidential communication with counsel requesting legal advice regarding entry of Interim DIP Order.
321	Confidential communications with counsel providing information for the purpose of obtaining legal advice regarding status of GM bankruptcy and other matters.
322	Confidential internal communication reflecting legal advice (Andrew D. Gottfried, Esq. (Morgan Lewis)) regarding entry of Interim DIP Order.

Category 3: This Category of entries, based solely upon the descriptions in the Privilege Log, appear to be related to topics that, although relevant to the underlying transactions (the Term Loan and the Synthetic Lease) do not appear likely to address topics specifically related to JPMorgan’s advice of counsel defense as JPMorgan has stated it. This encompasses all

documents in the range of documents numbered 1-326 that are not identified above, including documents withheld for Bank Examiner privilege.²

Category 4: Finally, Cross-Claimants note that, per the Court's instructions, JPMorgan did not provide the Court with copies of documents numbered 327 through 774, which postdate discovery of the erroneous UCC filing. Although Cross-Claimants understand the Court's direction that it will not conduct *in camera* review of these documents at this time, the Court's order appears to require Cross-Claimants to identify whether they dispute privilege and work-product protection for any entries on JPMorgan's log. Accordingly, Cross-Claimants note their position that Document Nos. 327-774, as described on the Privilege Log, potentially contain statements of historical fact that do not constitute the sort of "opinion work product" that is excepted from an advice of counsel waiver. Cross-Claimants reserve their right to seek these documents at a later date.

Respectfully submitted,

By: /s/ Kristin Linsley Myles

Kristin Linsley Myles
560 Mission Street, 27th Floor
San Francisco, CA 94105
Tel: (415) 512-4000
Email: kristin.linsley@mto.com

John W. Spiegel (admitted *pro hac vice*)
George M. Garvey (admitted *pro hac vice*)

² Cross-Claimants also refer the Court to their letter brief dated July 6, 2016 (ECF No. 645) for their position that applicable New York law supports a "transactional" approach to the waiver, in order to prevent "selective disclosure" on the part of the party asserting the privilege. ECF No. 645 at 4-6. Under the "transactional" approach, all of the documents listed on the Privilege Log likely would be subject to waiver because they all relate to the Term Loan or the Synthetic Lease.

Matthew A. Macdonald (admitted *pro hac vice*)
Craig A. Lavoie (admitted *pro hac vice*)
355 South Grand Avenue, 35th Floor
Los Angeles, CA 90071
Tel: (213) 683-9100
Email: john.spiegel@mto.com
Email: george.garvey@mto.com
Email: matthew.macdonald@mto.com
Email: craig.lavoie@mto.com

*Attorneys for the Term Loan Lenders as listed in
Appendix A to Dkt. 241*

ENTWISTLE & CAPPUCCI LLP

By: /s/ Joshua K. Porter

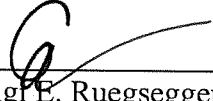
Andrew J. Entwistle
Joshua K. Porter
280 Park Avenue, 26th Floor West
New York, NY 10017
Tel: (212) 894-7200
Email: aentwistle@entwistle-law.com
Email: jporter@entwistle-law.com

*Attorneys for Teachers' Retirement System of the
State of Illinois and TCW Illinois State Board of
Investments*

CERTIFICATE OF SERVICE

I certify that, on 9/15/2016, I caused the foregoing document 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 September 15, 2016 at Los Angeles, California.



Gigi E. Ruegsegger
MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue, 35th Floor
Los Angeles, California 90071
Gigi.Ruegsegger@mto.com