

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

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

Debtors.

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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 Adversary Proceeding Case

against No. 09-00504 (MG)

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

Defendants.

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

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

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

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

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

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

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

WHEREAS, counsel for Plaintiff and counsel for the members of the Defendants’ Steering Committee met, conferred and reached substantial agreement on a proposed schedule for trial on the 40 Representative Assets as well as other outstanding issues, including a brief extension of the existing fact discovery deadline;

WHEREAS, on September 28, 2016 counsel for Plaintiff and counsel for the members of the Defendants' Steering Committee jointly submitted a letter to the Court with a proposed schedule for trial on the 40 Representative Assets and pre-trial proceedings;

WHEREAS, on September 28, 2016 counsel for Plaintiff and counsel for the members of the Defendants' Steering Committee met and discussed the submitted proposal with the Court during a status conference (the "**Status Conference**");

WHEREAS, on November 2, 2016 the Court held a telephonic conference with respect to a dispute about the fact discovery cutoff and ordered, among other things, that all fact depositions for Representative Assets shall conclude by November 16, 2016;

WHEREAS, counsel for Plaintiff and counsel for the members of the Defendants' Steering Committee met and conferred to address issues raised by the Court at the Status Conference and incorporated the Court's suggested changes in the schedule set forth herein;

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

1. The remaining deadlines set forth in the August 3, 2016 Order are hereby amended with respect to all discovery other than the Cross-Claim Discovery, the UCC-3 Discovery and the Stayed Discovery, as follows:

Nov. 16, 2016	Completion of fact discovery for Representative Assets
Nov. 23, 2016	Initial expert reports due for Representative Assets
Dec. 21, 2016	Rebuttal expert reports due for Representative Assets
Jan. 27, 2017	Expert depositions completed and close of discovery for Representative Assets
Feb. 3, 2017	Letters to the Court as to whether any of the proposed issues set out in Paragraphs 2.a and 2.b below for possible discrete resolution should be briefed and decided prior to, or concurrently with but separate from,

trial on the Representative Assets. The parties shall propose a schedule for briefing any such issues in their letters. To the extent the Court or the parties determine that the issues set out in Paragraphs 2.a and 2.b should not be briefed and decided prior to, or concurrently with but separate from, trial on the Representative Assets, these issues will be addressed at trial on the Representative Assets.

Defendants also reserve the right to submit a letter to the Court on or before this date reiterating their request that the Court participate in plant visits as part of the Representative Assets trial or pre-trial process.

Mar. 1, 2017

Pre-trial briefs. The pre-trial briefs will address whether each of the Representative Assets is a fixture, as well as the value of each of the Representative Assets, including the issues identified in Paragraph 2.c below. The pre-trial briefs will also address any of the proposed issues set out in Paragraphs 2.a and 2.b below that are not being briefed and decided prior to, or concurrently with but separate from, trial on the Representative Assets.

Mar. 8, 2017

Pre-trial motions in limine (if any) related to the Representative Assets trial

Mar. 22, 2017

Opposition to pre-trial motions in limine (if any) related to the Representative Assets trial

Mar. 31, 2017

Replies to pre-trial motions in limine (if any) related to the Representative Assets trial

Submission of joint pretrial conference order for the Representative Assets trial

Apr. 7, 2017

Pre-trial conference for the Representative Assets trial

Deadline for submitting copies of trial exhibits, including written direct testimony, with respect to the Representative Assets trial

Apr. 24 – May 5, 2017

Representative Assets trial to take place from 9:00 AM – 12:00 PM on April 24, 2017, and from 9:00 AM – 5:00 PM thereafter, provided that the Court may extend or otherwise alter the time of trial days as necessary

May 19, 2017	Submission of post-trial briefs or proposed findings of fact and conclusions of law as the Court directs
May 26, 2017	Closing arguments
2 Weeks After Decision on Representative Assets	Parties meet and confer as to next steps, including discussing the possibility of mediation, and report to the Court as to the parties' intention expeditiously thereafter Parties also meet and confer as to the schedule for reopening of fact discovery and the appropriateness of summary judgment or additional trials on any issues not yet addressed by the Court, and report to the Court with a proposal for any such summary judgment motions, including briefing schedules, or additional trials expeditiously thereafter
Date(s) to be determined by the Court	Additional fact discovery and trials on any remaining issues not yet addressed by the Court that would aid in resolution of the action

2. The parties agree that the following issues may be suitable for resolution on summary judgment or during the trial on the 40 Representative Assets:

- A. Whether the defendants had a perfected security interest in the fixtures at the Lansing Delta Township Stamping and Assembly facilities as of June 1, 2009.
- B. Whether the defendants had a perfected security interest in the fixtures at GM MFD Flint, Pontiac Powertrain Engineering Building, and GM MFD Fairfax.
- C. Whether the three leased assets included among the Representative Assets (the "**Leased Assets**") are fixtures in which the Term Loan Lenders had a perfected security interest. In the interest of making the Representative Asset process as productive as possible, the Court will also decide at the Representative Assets trial: (i) whether the Leased Assets are fixtures; and (ii) the value of the Leased Assets.

3. All further discovery concerning any defense asserted by any defendant and Stayed Discovery with respect to Collateral Identification Issues and Valuation Principles Issues for collateral other than the Representative Assets shall be stayed until after the trial on the 40

Representative Assets. The schedule for resuming such discovery shall be determined after the parties meet and confer following the trial on the 40 Representative Assets. The parties, however, acknowledge that to the extent depositions of third-parties occur as part of UCC-3 Discovery or Cross-Claim Discovery, the parties will be permitted to ask questions related to any defense asserted by any defendant during such depositions in the interest of attempting to avoid additional burdens on third-parties.¹

4. All parties reserve the right to seek leave to move for summary judgment on any of the Defendants' defenses, the effectiveness of the UCC-3 filing at issue in this action or any other issues at any time. All parties reserve the right to oppose any such request, including on the grounds that such motions are premature for defenses where fact discovery related to such defenses has been stayed.

5. The parties agree that that the following issues should not be addressed in connection with the Representative Assets trial, and can be addressed if necessary after the parties have met and conferred regarding next steps following a decision on the Representative Assets:

- A. Categorization/valuation of remaining assets.
- B. Whether remaining leased assets are fixtures in which the Term Lenders had a perfected first priority security interest.
- C. All affirmative defenses not resolved through summary judgment
- D. All remaining cross-claim issues, including dispositive motions on cross-claims.
- E. Any other issue necessary to complete resolution of the action.

¹ Defendants have asked plaintiff to agree that the parties can seek additional third-party document discovery now regarding assets at General Motors in 2009 classified as "Construction Work in Progress," notwithstanding Stayed Discovery. Plaintiff has not agreed. Defendants intend to raise this dispute with the Court at the scheduled December 8, 2016 status conference if the parties have not been able to resolve the issue by that time.

Dated: New York, New York
November 18, 2016

New York, New York
November 18, 2016

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IT IS SO ORDERED.

Dated: November __, 2016
New York, New York

/s/
MARTIN GLENN
United States Bankruptcy Judge