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February 3, 2017

By Hand, Email and ECF

The Honorable Martin Glenn
United States Bankruptcy Court for the Southern District of New York
One Bowling Green
New York, NY 10004-1408

Re: Motors Liquidation Company Avoidance Action Trust v.
JPMorgan Chase Bank, N.A., et al., Adv. Pro. No. 09-00504 (MG)

Dear Judge Glenn:

Our firm, along with Kelley Drye & Warren LLP, represents defendant JPMorgan Chase Bank, N.A. (“JPMorgan”) in the above-captioned adversary proceeding. We write jointly with the other members of the Defendants’ Steering Committee pursuant to Paragraph 1 of the stipulation and order regarding scheduling entered on December 2, 2016 (the “Scheduling Order”), which provides that, on February 3, 2017, the parties will submit “[l]etters to the Court as to whether any of the proposed issues set out in Paragraphs 2.a and 2.b” of the Scheduling

The Honorable Martin Glenn
February 3, 2017
Page 3

expert, Professor Daniel R. Fischel, and its valuation expert, David Goesling, both advance the opinion that the Old GM assets acquired by New GM should be valued on a liquidation basis. Defendants, in contrast, believe the Bankruptcy Code mandates that those assets be valued on a going-concern basis.

This dispute regarding valuation presents a threshold issue that could substantially affect the scope of the upcoming trial. Defendants, accordingly, propose to present the issue in a motion for partial summary judgment.

As defendants' motion will show, plaintiff's position is contrary to Section 506(a)(1) of the Bankruptcy Code, which provides that the value of collateral must be determined "in light of the purpose of the valuation and of *the proposed disposition or use of such property.*" 11 U.S.C. § 506(a) (emphasis added). The statute, accordingly, requires a bankruptcy court to value collateral based on the "actual" disposition or use proposed by the debtor, and not based on hypothetical events "that will not take place." *Assocs. Commercial Corporation v. Rash*, 520 U.S. 953, 963 (1997).

In a separate dispute in this case, Judge Gerber already recognized — based on briefing in advance of any trial — that, under Section 506(a)(1), collateral sold to New GM as part of a going-concern should be valued on a going-concern basis and not a liquidation basis. *See In re Motors Liquidation Co.*, 482 B.R. 485, 493-94 (Bankr. S.D.N.Y. 2012) ("the fair market value" of assets sold to New GM "would not be the value on liquidation"). The Court should reach the same conclusion here.

The Honorable Martin Glenn
February 3, 2017
Page 5

reviewing the Eaton County, Michigan real property records for the Lansing Delta Township facility would have identified JPMorgan's fixture filing. That expert testimony will need to be evaluated by the Court at trial or in resolving any motions in limine directed at the relevant experts.

Paragraph 2.B

As reflected by Paragraph 2.B of the Scheduling Order, the parties had a dispute regarding "[w]hether the defendants had a perfected security interest in the fixtures at GM MFD Flint, Pontiac Powertrain Engineering Building, and GM MFD Fairfax."¹ That dispute has been resolved in part.

Specifically, the AAT has agreed that defendants had a perfected security interest in any assets determined to be fixtures at GM MFD Flint or GM MFD Fairfax. The parties do not agree, however, on whether defendants had a perfected security interest in the fixtures at GM Powertrain Engineering Pontiac. The remaining dispute turns on whether the GM Powertrain Engineering Pontiac facility or the land on which it sits is "related or appurtenant" to the GM MFD Pontiac facility within the meaning of Section 1.01(b) of the Term Loan Collateral Agreement.

Defendants have presented expert testimony that the GM Powertrain Engineering Pontiac facility and the GM MFD Pontiac facility at all relevant times were located on the same parcel of land, and that the two plants are both historically and functionally related. Plaintiff

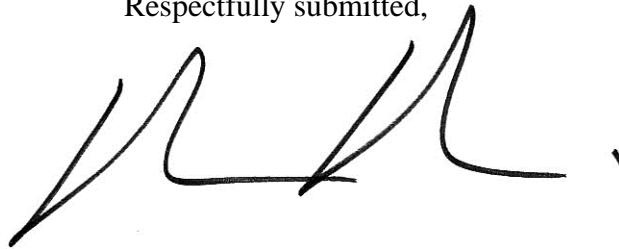
¹ While paragraph 2.B. of the Scheduling Order references the "Pontiac Powertrain Engineering Building," the parties have agreed that the Court should address whether the defendants had a perfected security interest in the fixtures at "GM Powertrain Engineering Pontiac."

The Honorable Martin Glenn
February 3, 2017
Page 6

disputes aspects of that relationship and has presented a report from a Michigan lawyer, Robert D. Mollhagen, addressing this issue. Defendants intend to move to exclude Mr. Mollhagen's testimony. If that testimony is deemed admissible, the Court will need to consider the parties' expert testimony in the context of the trial.

Defendants are available to address these matters at the Court's convenience and reserve the right to respond to any submission by plaintiff regarding summary judgment or other threshold issues.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Wolinsky', with a stylized flourish at the end.

Marc Wolinsky

cc: All counsel of record