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April 21, 2015

BY HAND AND EMAIL

The Honorable Robert E. Gerber
United States Bankruptcy Court
for the Southern District of New York
One Bowling Green
New York, NY 10004-1408

Re: *Official Committee of Unsecured Creditors of Motors Liquidation Company v. JPMorgan Chase Bank, N.A., Adv. Pro. No. 09-00504 (REG)*

Dear Judge Gerber:

We are co-counsel with Kelley, Drye & Warren LLP to defendant JPMorgan Chase Bank, N.A. ("JPMorgan"). We write to address the next steps in this adversary proceeding following remand from the U.S. Court of Appeals for the Second Circuit. As summarized below, significant issues remain to be resolved in this case, and further discovery will be necessary to resolve them. Accordingly, JPMorgan believes it would be beneficial for the parties to meet and confer regarding a schedule for additional proceedings, and then appear before the Court for a status conference. In the meantime, consistent with the mandate from the Second Circuit, JPMorgan respectfully requests that any action taken by the Court be limited to

Endorsed Order:
① Request for meet & confer granted. Wachtell is to advise Court when that accomplished, after which Court will schedule a conference
② Wachtell is to provide this Court with a copy of the Mandate, which this Court has not received.
③ Further proceedings will remain on hold pending review of Mandate and further opportunity for all to be heard.

*S/Rtg
OSBJ
4/29/2015*

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entry of partial summary judgment with respect to termination of the Main Term Loan UCC-1.¹ Further proceedings on other aspects of the case — including valuation of the collateral over which JPMorgan has a perfected security interest, as well as defenses JPMorgan has asserted — can then move forward on a schedule to be determined.

Relevant Background

The relevant background is well-known to the Court: In October 2008, in the course of the repayment by General Motors Corporation (“GM”) to JPMorgan and other lenders of the \$150 million balance due on a synthetic lease loan, GM’s counsel filed multiple UCC-3 termination statements, one of which had nothing to do with the synthetic lease transaction. That UCC-3 related to a security interest in equipment, fixtures and other assets at forty-two GM plants and facilities that had been perfected by a Delaware UCC-1 filing in connection with a separate \$1.5 billion term loan facility (the “Term Loan”) among GM, JPMorgan as administrative agent, and a different syndicate of lenders (“Term Loan Lenders”). Other UCC-1 financing statements filed in connection with the Term Loan, including twenty-six state fixture filings and a Delaware filing against Saturn assets, were unaffected by the UCC-3 filing.

On or about June 15, 2009, after GM had filed for chapter 11 protection, JPMorgan discovered, and informed the Official Committee of Unsecured Creditors (the “Committee”), that GM’s counsel had caused the filing of the unrelated UCC-3 purporting to terminate the perfection of the security interest established by the Delaware UCC-1 filing in connection with the Term Loan. On June 25, 2009, this Court entered an order (the “DIP Order”) pursuant to which the Debtors repaid the Term Loan. The DIP Order released JPMorgan and all the Term Loan Lenders from all claims, subject to the Committee’s ability to bring an action with respect “only” to the perfection of the security interests held by JPMorgan and other secured parties. *See* Chapter 11 Case, Docket No. 2529 at 25.

On July 31, 2009, the Committee commenced an adversary proceeding seeking to recover the proceeds of the Term Loan that had been paid to JPMorgan and the Term Loan Lenders during the bankruptcy. By order of the Court, the Committee was permitted to defer service on other defendants until 30 days after entry of a final, non-appealable order disposing of summary judgment motions. *See* Docket No. 82 at 2.

In July 2010, JPMorgan moved for summary judgment on the basis that the filing of the unrelated UCC-3 was not authorized. In the same motion, JPMorgan also sought the imposition of a constructive trust on the Term Loan Collateral in favor of the Term Loan Lenders. The Committee sought summary judgment only in part, “recognizing that other UCC-1s with respect to the Term Loan remained in place, covering some other collateral as to which

¹ Capitalized terms, if not otherwise defined, have the same meanings as in this Court’s Decision on Cross-Motions for Summary Judgment (Docket No. 71).

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JPMorgan and the Lenders would remain secured.” See Docket No. 71 at 3 n.8. In obtaining this Court’s permission to submit motions for summary judgment regarding whether the filing of the unrelated UCC-3 was authorized, the parties agreed that resolving this issue “before the next phase of discovery [would] serve the interests of judicial economy and avoid burdening Old GM’s estate with the complexity and costs attendant to multi-party litigation.” See Docket No. 22 at 1.

On March 1, 2013, this Court granted JPMorgan’s motion for summary judgment, holding that GM’s actions to terminate the Main Term Loan UCC-1 were not authorized, and therefore JPMorgan’s lien remained in place. See Docket No. 71, at 74. The Court did not address the constructive trust issue or the other defenses asserted by JPMorgan in its answer in this case. *Id.* at 71 n.216. The Court also had no occasion to consider the value of the other collateral securing the Term Loan. Rather, in the course of its opinion, the Court observed that — even if partial summary judgment were entered in favor of the Committee — the Court would separately need to determine the value of other collateral securing the Term Loan. *Id.* at 3 n.8.

On January 21, 2015, the Second Circuit reversed this Court’s grant of summary judgment and remanded “with instructions to the Bankruptcy Court to enter partial summary judgment for the Plaintiff as to the termination of the Main Term Loan UCC-1.” *In re Motors Liquidation Co.*, 777 F.3d 100, 106 (2d Cir. 2015). The Second Circuit issued its mandate on April 20, 2015. Like this Court, the Second Circuit did not reach the constructive trust issue, the other defenses raised by JPMorgan, or the extent and value of JPMorgan’s additional liens.

Further Proceedings

In light of the various issues to be resolved following the remand from the Second Circuit — and the need for the next phase of discovery and factual development regarding certain of those issues (including valuation of additional collateral) — the logical next step in this litigation is for the parties to consult regarding the appropriate sequence and schedule for further proceedings. Topics to be covered should include:

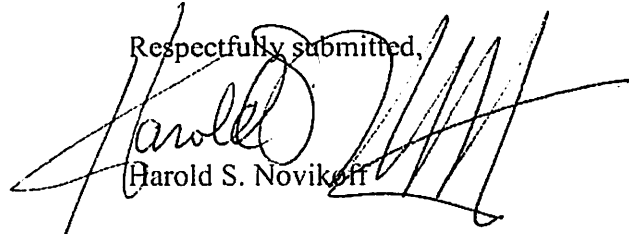
- The timing for service of the complaint on all the defendants besides JPMorgan;
- Fact discovery, including document requests and depositions, relating to the issues remaining in the case;
- Expert discovery relating to the remaining issues;
- Dispositive motions and trial relating to the remaining issues.

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Following the parties' consultation, JPMorgan respectfully requests a status conference with the Court to discuss the next stages of this litigation and the proposed schedule for further proceedings. We are of course available at the Court's convenience.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Harold S. Novikoff", is written over the typed name. The signature is stylized and somewhat illegible due to the cursive style.

Harold S. Novikoff

cc: Counsel of Record (by email)