UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
MOTORS LIQUIDATION CO., *et al.*	)	Case No. 09-50026 (REG)
Debtors.	)	
OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF MOTORS LIQUIDATION COMPANY,	)	Adv. Pro. No. 09-504 (REG)
Plaintiff,	)	
v.	)	
JPMORGAN CHASE BANK. N.A., *et al.*,	)	
Defendants.	)	

MEMORANDUM AND ORDER

Canon 3(C)(1) of the Code of Conduct for United States Judges provides, in relevant part, that a judge shall disqualify himself or herself in a proceeding in which the judge's impartiality "might reasonably be questioned."

As you know, this adversary proceeding involves allegations that JPMorgan Chase Bank and other entities that were lenders to Old GM under a $1.5 billion Term Loan Agreement (the "**Term Loan**"), who were repaid post-petition with the belief at the time that they were secured, were in fact not secured. It is generally alleged that a UCC-3 Termination Statement was filed in connection with the payoff on a synthetic lease (the "**Synthetic Lease**") that referenced, by number, the original UCC-1 financing statement for the different Term Loan, and that the filing of that UCC-3 caused the lenders' security interest on the Term Loan to come to an end. The

parties have cross-moved for summary judgment on these issues, putting forward evidence on each side that each contends supports its respective position.

Upon review of the underlying evidence that was offered on the summary judgment motions, I have come to understand that the UCC-3 was filed by the law firm representing Old GM. But it has been alleged that the filing of that UCC-3 by Old GM counsel was done with the approval and/or authority of JPMorgan Chase and JPMorgan Chase's counsel in connection with the Synthetic Lease, the law firm of Simpson Thacher & Bartlett ("**ST&B**"). Issues as to this allegation are a prominent feature in the summary judgment papers.

It appears, under those circumstances, that the actions of ST&B, and not just JPMorgan Chase, are a subject of inquiry in this adversary proceeding. Additionally, it is possible that if I ultimately were to rule in favor of the Creditors' Committee by reason of something ST&B did or did not do, JPMorgan Chase and/or other lenders in the Term Loan facility might assert claims against ST&B.

In this connection, it is appropriate for me to note that from approximately 1974 through 1983, when I was in private practice in the litigation department of the law firm of Fried, Frank, Harris Shriver & Jacobson, I represented ST&B, and one of its partners at the time, Harry Heller, as clients, after they were named as defendants in a number of civil actions consolidated for pretrial purposes under the caption *In re Home-Stake Production Co. Securities Litigation*, M.D.L. 153, in the Northern District of Oklahoma. In those cases, it was generally alleged that Home-Stake and its president, Robert S. Trippet, had defrauded investors in Home-Stake's annual oil and gas tax shelter drilling programs in the years 1963 through 1972, and that Mr. Heller, who had provided legal services to Home-Stake in most of those years, shared responsibility, under the law at the time, for the investors' losses, and that ST&B was

responsible, under agency and partnership law principles, for any liability Mr. Heller might have. In approximately 1983, the case was settled on behalf of Mr. Heller, and ST&B was dismissed.

During the 1974-1978 period of representation, I was an associate, and during the 1978 through 1983 period, I was a partner, of the Fried Frank firm. Though one (and, for a while, two) more senior lawyers at the Fried Frank firm headed up that representation, I was the next most senior lawyer on the matter, and was very active in it at the time. It is my belief that Mr. Heller, who was my principal client contact at ST&B, retired from ST&B long ago, and I last saw him, as best I recall, more than 20 years ago, by which time he had retired. From time to time, I met with or briefed other partners at ST&B with respect to the Home-Stake litigation, but though I found myself seated at a table with one of them at a bar event a few years ago, I had no other contact with those ST&B partners that I can recall since the time my work ended on that matter in or about 1983. I do of course know many of the ST&B bankruptcy and litigation partners who appear in the bankruptcy court, just as I know many of their counterparts at other firms who do likewise.

Canon 3(C)(1) goes on to provide that circumstances in which the judge's impartiality might reasonably be questioned "include, but are not limited to" five enumerated categories. None appears to apply. I do not believe that I now would have any loyalty to ST&B as a result of my representation of Harry Heller and ST&B so long ago. Likewise, and perhaps more to the point, I do not believe that my past representation of Harry Heller and ST&B so long ago would result in any favoritism for JPMorgan Chase. Thus I do not believe that the circumstances rise to such a level that I should recuse myself on my own motion.

Canon 3(A)(2) provides, in relevant part, that a judge "should hear and decide matters assigned, unless disqualified…." Accordingly, I plan to continue to act in this adversary

proceeding unless my impartiality reasonably is questioned. However, while I believe that I can and would decide the pending dispute solely on the merits, I further believe that if either the Creditors' Committee or JPMorgan Chase has doubts as to this, it should have opportunity to be heard.

Thus each of the Creditors' Committee and JPMorgan Chase will have the opportunity to be heard as to whether I should recuse myself from this adversary proceeding if either has any doubts as to my impartiality. It shall do so by submitting written notice of its desire that I recuse to my Chambers by 12 noon on November 22, 2010. If any such request is made, I will issue an order setting up the recusal request for briefing and argument.

If no request is made by the deadline, I will continue to act in this adversary proceeding, in accordance with Canon 3(A)(2). The argument on the pending summary judgment motions continues to be set for December 3, 2010, before me, pending further order of the Court.

SO ORDERED.

Dated: New York, New York
November 1, 2010

s/Robert E. Gerber
United States Bankruptcy Judge