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September 28, 2017

BY HAND AND ECF

The Honorable Martin Glenn  
United States Bankruptcy Court  
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.*, Case No. 09-00504 (MG) (Bankr. S.D.N.Y.)

Dear Judge Glenn:

We write on behalf of defendant JPMorgan Chase Bank, N.A. to call to the Court's attention what we believe is a clerical error in Table A to the Court's "Memorandum Opinion Regarding Fixture Classification and Valuation" dated September 26, 2017 (the "Opinion"). Dkt. No. 1015.

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In the Opinion itself, the Court held that “for the assets sold to New GM, KPMG’s Final Fair Value is the best available evidence of the assets’ value.” Dkt. No. 1015 at 5. The Opinion then provides that the “Final Fair Value” includes both the initial “TIC Adjustment,” as well as the so-called “Balance Sheet Adjustment.” *See, e.g. id.* at 189 (“The Court finds that the TIC Adjustment (including the subsequent Balance Sheet Adjustment) is the best available method supported by the evidence introduced at trial for removing the above-market value of the Public Policy Subsidy from the valuation of the Representative Assets.”); *id.* at 163 (“After this [Balance Sheet] adjustment, KPMG arrived at its final ‘Fair Value’”); *id.* at 170 n.24 (“Later, once it learned facts that led it to believe GMNA’s TIC was higher than it initially thought, KPMG applied the Balance Sheet Adjustment at the asset category level, raising GMNA’s final fair values of three categories of PP&E by a total of \$1.5 billion. (Klein Direct ¶ 56; DX-141 at 366.)”); *id.* at 189 (“As discussed above in Section IX, 162–63, KPMG’s work was not completed until after the application of the TIC Adjustment and Balance Sheet Adjustment.”).

However, in reviewing “Table A” to the Opinion, we observed that as to those assets with “KPMG Fair Value” listed as their “Source of Valuation,” the figures listed do not reflect the Balance Sheet Adjustment. This may be a by-product of the formatting of the “Joint Valuation Chart” that the parties jointly submitted with their post-trial briefs. *See* Dkt. No. 993 at 17, n. 6 and Exhibit A (attached hereto). The figures in Table A of the Opinion are the values found in the “Individual Asset Fair Value” column of the Joint Valuation Chart, which as noted in footnote ‘d’, “reflect the TIC Adjustment *without the Balance Sheet Adjustment . . . .*” Dkt.

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No. 993 at Exhibit A, note ‘d’ (emphasis added). As note ‘d’ then explains, it is the “New GM eFAST Ledger Value” column of the Joint Valuation Chart that includes both the TIC and Balance Sheet Adjustments. *Id.*

Therefore, to conform with the Court’s opinion, it is respectfully submitted that the figures in Table A should be changed for those assets that list “KPMG Fair Value” as their “Source of Valuation” to reflect the values from the “New GM eFAST Ledger Value” column of the Joint Valuation Chart. A proposed corrected version of Table A reflecting those figures is enclosed. The proposed corrected Table A is otherwise identical to the Table A attached to the Court’s September 26 opinion.

We brought this issue to the attention of plaintiff’s counsel yesterday afternoon, and plaintiff has asked us to include the following paragraph summarizing its position:

Defendants ask the Court to modify its opinion by describing the Court’s findings of fact as to value set forth in Table A as a “clerical error.” The use of KPMG’s Final Fair Values in Table A does not reflect a clerical error; rather, it reflects the Court’s conclusion that KPMG’s Final “Fair Values’ (also called ‘Final Concluded Values’),” Opinion at 163, are the best measure of value of the Representative Assets. *See* Opinion at 194 (“For the reasons stated above, the Court finds that the appropriate valuation of the Representative Assets sold to New GM is the KPMG Final Fair Values.”); *see also* Opinion at 5 (“KPMG’s Final Fair Value, including the TIC adjustment, was a contemporaneous, third-party valuation that was the product of months of hard work by experienced professionals” and is the “best available evidence of the

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assets' value.”). The asset values set out in the Court’s table correspond directly with KPMG’s Final Concluded Values referenced by the Court in its decision and found in DX-151A at 2 & 3 and DX-0150A at 2, which are the exhibits that set forth KPMG’s Final Concluded Values for the Representative Assets valued by KPMG. *See* Opinion at 163. The Court’s conclusion that KPMG’s Final Concluded Values are the right measure of value is further reflected in the Court’s conclusion that the value of the Danly Press is the appraised value minus a 55% reduction, the amount of the TIC adjustment that corresponds with KPMG’s Final Concluded Values as set forth in DX-151A. *See* Opinion at 195. Although KPMG’s Final Concluded Values do not reflect a balance sheet adjustment, the Court nowhere in its opinion indicated that it would be appropriate to rely on the higher values found in GM’s eFAST ledger, and the evidentiary record does not support reliance on the GM eFAST values. In fact, at no point in the Opinion’s discussion of valuation does the Court make reference to the GM eFAST values or rely on the GM eFAST ledger to derive any asset values; and the evidentiary record does not support reliance on those values. The Court should reject Defendants’ argument for substantively changing the valuation findings in the Opinion.

Our response to plaintiff’s position is as follows:

We do not believe that plaintiff’s statement represents a fair reading of the Opinion. At page 163 of the Opinion, in a section entitled “The Application of the TIC Adjustment and Balance Sheet Adjustment,” the Court defines “Final Concluded Value” as the value KPMG arrived at after it “made an upward adjustment to the valuation of the assets in three PP&E categories to account for the higher TIC. (DX-141 at 366.) After this adjustment,

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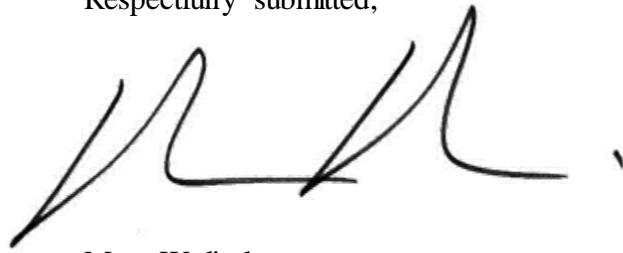
KPMG arrived at its final “Fair Value” (also called “Final Concluded Value”) figures. (*Id.*; DX-151A at 2.)” The passage that plaintiff cites from page 194 uses the term “Final Fair Values,” *i.e.*, which as made clear at page 163 includes the Balance Sheet Adjustment.

Plaintiff’s argument is also inconsistent with the reasoning of the Opinion, which accepts that the TIC adjustment was necessary because “KPMG appreciated the exact problem the Court now faces: the 363 Sale price was *not* a market price, and the amount of the non-market Public Policy Subsidy should *not* be attributed to individual assets.” Opinion at 189. As the Court explained: “The TIC Adjustment was KPMG’s solution.” *Id.* It is for that reason that the Court then “finds that the TIC Adjustment (including the subsequent Balance Sheet Adjustment) is the best available method supported by the evidence introduced at trial for removing the above-market value of the Public Policy Subsidy from the valuation of the Representative Assets.” *Id.* Thus, as the Opinion itself recognizes, it would make no sense to use values that reflect a TIC estimate that, as the Court finds, was “not completed until after the application of the TIC Adjustment and Balance Sheet Adjustment” in valuing the assets sold to New GM. *Id.* at 189. The Opinion rejects the use of RCNLD values as the best valuation because it “was essentially a midpoint in KPMG’s valuation process” (*id.* at 5) and “credit[s] only part of KPMG’s work” (*id.* at 188); as the Opinion makes clear, applying the TIC Adjustment without the Balance Sheet Adjustment would be similarly incomplete.

If the Court wishes to have a conference to discuss this matter, we can be available at any time that the Court directs.

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Respectfully submitted,

A handwritten signature in black ink, consisting of a series of fluid, connected strokes that form a stylized representation of the name 'Marc Wolinsky'.

Marc Wolinsky

cc: Counsel of Record (by email)

**Corrected Table A: Specific Conclusions of Value for Each Asset**

Asset No.	Asset Description	Sold to New GM	Fixture	Source of Valuation	Value
1	OP-150 Shims Station	Yes	Yes	KPMG Fair Value	\$117,942
2	Pits & Trenches	Yes	Yes <sup>1</sup>	KPMG Fair Value	\$1,219,221
3	Power Zone Conveyor	Yes	Yes	KPMG Fair Value	\$315,441
4	Electro-Coat Paint Operations (“ELPO”) Waste System	Yes	Yes <sup>2</sup>	KPMG Fair Value	\$493,319
5	Paint Circulation Electrical System	Yes	Yes	KPMG Fair Value	\$843,463
6	ELPO Oven Conveyor	Yes	Yes	KPMG Fair Value	\$549,178
7	Top-Coat Software	Yes	No	N/A	N/A
8	Paint Mix Room	Yes	No	N/A	N/A
9	Top-Coat Bells	Yes	Yes	KPMG Fair Value	\$1,246,182
10	Opticell Robotic System	Yes	No	N/A	N/A
11	Central Utilities Complex	Yes	Partial <sup>3</sup>	N/A	N/A <sup>4</sup>
12	Overhead Body Shop Welding Robot	Yes	Yes	KPMG Fair Value	\$8,630
13	Weld Bus Ducts	Yes	Yes	KPMG Fair Value	\$1,836,906
14	Leak Test Machine	Yes	Yes	KPMG Fair Value	\$357,753
15	Soap, Mount and Inflate System	Yes	Yes	KPMG Fair Value	\$797,390
16	Skid Conveyor	Yes	Yes	KPMG Fair Value	\$1,237,948
17	Power and Free Conveyor	Yes	Yes	KPMG Fair Value	\$818,853

<sup>1</sup> The parties agree that Representative Asset No. 2 is a fixture.

<sup>2</sup> The parties agree that Representative Asset No. 4 is a fixture.

<sup>3</sup> The parties agree that the portions of the CUC consisting of ordinary building materials are realty and not a fixture. The Court finds that the rest of the CUC, including the CUC Systems, is a fixture.

<sup>4</sup> KPMG determined the value of the portions of the CUC the Court rules are fixtures to be \$23,017,383. However, that value was based on New GM’s free and clear ownership of the CUC, *not* Old GM’s residual rights in the CUC. For the reasons discussed above in Section VII, the Court finds that there was not enough evidence presented at trial to determine the value of Old GM’s residual rights in the CUC.

<b>Asset No.</b>	<b>Asset Description</b>	<b>Sold to New GM</b>	<b>Fixture</b>	<b>Source of Valuation</b>	<b>Value</b>
18	Vertical Adjusting Carriers	Yes	Yes	KPMG Fair Value	\$2,036,052
19	Full Body Coordinate Measurement Machine	Yes	Yes	KPMG Fair Value	\$155,820
20	Wheel & Tire Conveyor	Yes	Yes	KPMG Fair Value	\$569,821
21	Final Line Skillet Conveyor	Yes	Yes	KPMG Fair Value	\$732,989
22	Fanuc Gantry Robot	Yes	Yes	KPMG Fair Value	\$71,829
23	Aluminum Machining System	Yes	Yes	KPMG Fair Value	\$491,531
24	Base Shaping Machine	Yes	Yes	KPMG Fair Value	\$303,279
25	Liebherr Hobb Machine	Yes	Yes	KPMG Fair Value	\$336,977
26	Core Delivery Conveyor System	Yes	Yes	KPMG Fair Value	\$51,433
27	Emissions System	Yes	Yes	KPMG Fair Value	\$1,609,636
28	Holding Furnace	Yes	No	KPMG Fair Value	N/A
29	GG-1 Transfer Press (Grand Rapids)	No	Yes	Goesling OLVIE	\$261,000
30	TP-14 Transfer Press (Mansfield)	No	Yes	Goesling OLVIE	\$800,000
31	Danly Press	Yes	Yes	Chrappa with 55% reduction	\$396,000
32	AA Transfer Press	Yes	No	N/A	N/A
33	B3-5 Transfer Press	Yes	No	N/A	N/A
34	Build Line w/ Foundation	Yes	Yes	KPMG Fair Value	\$179,890
35	Button Up Conveyor System	Yes	Yes	KPMG Fair Value	\$785,571
36	Helical Broach	Yes	Yes	KPMG Fair Value	\$372,185
37	Courtyard Enclosure	Yes	No	N/A	N/A
38	Gas Cleaning System	Yes	Yes	KPMG Fair Value	\$87,411
39	Core Box Robot <sup>5</sup>	Yes	Yes	N/A	N/A
40	Charger Crane	Yes	Yes	KPMG Fair Value	\$64,988

<sup>5</sup> The parties agreed not to present evidence of the Core Box Robot's value at trial.



# Exhibit A

# Joint Valuation Chart

Rep. Asset #	Asset ID	Description	Old GM Historical		KPMG			New GM eFAST	Chrappa	Plaintiff/Goesling	
			Installed Cost [1]	Net Book Value [1]	Valuation Approach [2]	Final RCNLD Value [2]	Individual Asset Fair Value <sup>(d)</sup> [2]	New GM eFAST Ledger Value [3]	Appraised Fair Market Value in Continued Use or OLV [4]	Appraised Orderly Liquidation Value in Exchange [5]	Appraised Liquidation Value in Place [6]
1	100006527	OP-150 Shims Station	467,741	359,801	Direct RCN	207,000	93,100	117,942	345,000	3,000	37,000
2	100017544	Pits & Trenches	2,307,597	2,139,335	Indirect CRN	2,440,890	1,003,905	1,219,221	2,285,000	0	231,000
3	100033438	Power Zone Conveyor	1,053,051	864,042	Direct RCN	553,000	249,000	315,441	825,000	3,000	186,000
4	100037892	Electro-Coat Paint Operations ("ELPO") Waste System	935,780	861,899	Indirect CRN	989,600	407,009	493,319	890,000	0	79,000
5	100037940	Paint Circulation Electrical System	1,899,672	1,522,210	Direct RCN	1,482,270	666,020	843,463	1,745,000	152,000	352,500
6	100037954	ELPO Oven Conveyor	1,107,185	887,189	Direct RCN	964,420	433,640	549,178	930,000	7,000	198,300
7	100038004	Top-Coat Software	200,000	27,778	Indirect CRN	61,400	27,600	34,965	145,000	0	10,000
8	100038035	Paint Mix Room	815,150	653,165	Direct RCN	636,000	286,000	362,314	750,000	82,500	170,000
9	100038119	Top-Coat Bells	2,805,703	1,900,442	Direct RCN	2,188,200	983,700	1,246,182	2,270,000	263,400	550,000
10	100041920	Opticell Robotic System	630,726	474,545	N/A	N/A	N/A	0	420,000	73,000	113,000
11	100045909	Central Utilities Complex	73,997,467	61,253,459	Indirect CRN	55,770,000	25,070,000	25,070,000	N/A	2,367,000	10,212,000
11A	100045909	Central Utilities Complex <sup>(e)</sup>	67,938,893	56,238,306	Indirect CRN	51,210,000	23,017,383	23,017,383	64,770,000	N/A	N/A
12	100048169	Overhead Body Shop Welding Robot	27,526	18,644	Direct RCN	19,210	8,630	8,630	18,100	25,000	29,000
13	100050513	Weld Bus Ducts	3,993,837	3,562,404	Indirect CRN	3,220,000	1,450,000	1,836,906	3,750,000	681,000	873,000
14	100053677	Leak Test Machine	1,254,458	1,077,998	Direct RCN	629,000	282,400	357,753	810,000	9,000	165,000
15	100060623	Soap, Mount and Inflate System	1,897,124	1,520,347	Direct RCN	1,402,500	630,620	797,390	1,715,000	59,000	127,000
16	100061079	Skid Conveyor	2,495,283	2,000,071	Direct RCN	2,172,600	977,200	1,237,948	2,290,000	15,000	446,000
17	100061614	Power and Free Conveyor	1,649,074	1,321,517	Direct RCN	1,439,520	647,280	818,853	1,445,000	24,000	295,000
18	100062269	Vertical Adjusting Carriers	4,141,896	3,340,931	Direct RCN	3,579,400	1,607,200	2,036,052	3,600,000	59,000	551,000
19	100064667	Full Body Coordinate Measurement Machine ("CMM")	354,000	283,654	Direct RCN	274,000	123,000	155,820	285,000	39,000	58,000
20	100065640	Wheel & Tire Conveyor	1,150,919	923,350	Direct RCN	1,000,100	449,800	569,821	970,000	5,000	205,000
21	100066809	Final Line Skillet Conveyor	1,484,980	1,191,961	Direct RCN	1,287,000	578,600	732,989	1,235,000	1,000	264,000
22	100069322	Fanuc Gantry Robot	270,101	205,389	Direct RCN	126,000	56,700	71,829	190,000	32,000	55,000
23	100070012	Aluminum Machining System	1,946,878	1,497,599	Direct RCN	862,000	388,000	491,531	1,475,000	14,000	246,000
24	100071009	Base Shaping Machine	1,050,540	930,169	Direct RCN	533,300	239,400	303,279	810,000	224,000	274,000

# Joint Valuation Chart

Rep. Asset #	Asset ID	Description	Old GM Historical		KPMG		New GM eFAST	Chrappa	Plaintiff/Goesling		
			Installed Cost [1]	Net Book Value [1]	Valuation Approach [2]	Final RCNLD Value [2]	Individual Asset Fair Value <sup>(d)</sup> [2]	New GM eFAST Ledger Value [3]	Appraised Fair Market Value in Continued Use or OLV [4]	Appraised Orderly Liquidation Value in Exchange [5]	Appraised Liquidation Value in Place [6]
25	100071022	Liebherr Hobb Machine	1,192,377	1,079,764	Direct RCN	591,000	266,000	336,977	965,000	244,000	298,000
26	100095344	Core Delivery Conveyor System	280,816	246,614	Indirect CRN	90,400	40,600	51,433	100,000	1,000	53,000
27	100098085	Emissions System	9,811,712	8,923,872	Indirect CRN	2,820,300	1,270,600	1,609,636	3,130,000	131,000	1,434,000
28	100099125	Holding Furnace	4,174,288	2,189,215	Indirect CRN	1,211,100	544,500	689,790	1,515,000	8,000	580,000
29	BF2016822 01	GG-1 Transfer Press (Grand Rapids)	11,340,238	0	N/A	N/A	N/A	N/A	930,000 <sup>(a)</sup>	261,000	261,000 [OLV]
30	BGI20163301	TP-14 Transfer Press (Mansfield)	4,636,106	0	N/A	N/A	N/A	N/A	500,000 <sup>(a)</sup>	800,000	800,000 [OLV]
31	BUY11820901	Danly Press	2,729,407	0	N/A	N/A	N/A	0	880,000	276,000	356,000
32	BUYR503469FA	AA Transfer Press	33,767,895	22,346,401	N/A	N/A	N/A	33,767,895	27,860,000	3,675,000	5,016,000
33	BUYR503481FA	B3-5 Transfer Press	27,682,072	18,726,108	N/A	N/A	N/A	27,682,072	22,455,000	2,400,000	3,285,000
34	NIT219381	Build Line w/ Foundation	3,580,522	0	Direct RCN	142,000	142,000	179,890 <sup>(b)</sup>	100,000	45,000	70,000
35	NITC03340	Button Up Conveyor System	2,689,706	2,065,615	Direct RCN	1,370,800	616,400	785,571	2,005,000	2,000	228,000
36	NITC03507	Helical Broach	1,472,023	1,135,009	Direct RCN	653,430	293,870	372,185	1,080,000	150,000	200,000
37	NITW0S11026A	Courtyard Enclosure	8,384,325	1,332,390	Direct RCN	2,667,590	1,097,144	1,332,458	N/A	0	612,100
37A	NITW0S11026A	Courtyard Enclosure <sup>(e)</sup>	665,448	105,749	Direct RCN	211,720	87,078	105,755	410,000	N/A	N/A
38	NJL2924414P	Gas Cleaning System	1,173,272	0	Indirect CRN	69,000	69,000	87,411 <sup>(b)</sup>	0	24,000	24,000
39	NJL2983009	Core Box Robot <sup>(c)</sup>	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
40	NJL6084400	Charger Crane	639,653	26,652	Indirect CRN	114,000	51,300	64,988	160,000	10,000	40,000

	Old GM Historical		KPMG		New GM eFAST	Chrappa	Plaintiff/Goesling	
	Installed Cost	Net Book Value	Final RCNLD Value	Individual Asset Fair Value	New GM eFAST Ledger Value	Appraised Fair Market Value in Continued Use or OLV	Appraised Orderly Liquidation Value in Exchange	Appraised Liquidation Value in Place
<b>Total for 33 Assets Valued by KPMG</b>	140,704,653	105,342,484	91,567,030	41,050,218	45,181,166	N/A	4,679,900	19,152,900
<b>Total for 33 Assets Valued by KPMG (reflecting partial Fixtures, as identified by Term Lenders)</b>	126,927,202	99,100,690	84,551,160	37,987,535	41,901,846	103,013,100	N/A	N/A
<b>Total for Representative Assets</b>	221,491,098	146,889,539	N/A	N/A	106,631,133	N/A	12,164,900	28,983,900
<b>Total for Representative Assets (reflecting partial Fixtures, as identified by Term Lenders)</b>	207,713,647	140,647,745	N/A	N/A	103,351,813	156,058,100	N/A	N/A

## Notes

- (a) Mr. Chrappa appraised these assets based on Orderly Liquidation Value because they were not included in the bankruptcy sale.
- (b) For Assets 34 and 38, KPMG calculated the Final RCNLD Values using a “hold factor” because the assets were operating past their estimated remaining useful lives. The Final RCNLD Values for these assets, accordingly, were not affected by the initial TIC Adjustment, but they increased as a result of the application of the Balance Sheet Adjustment to all asset values within the PP&E category.
- (c) The parties agreed that they would not present evidence of the value of Representative Asset 39, Core Box Robot, at trial.
- (d) The Individual Asset Fair Values reflect the TIC Adjustment without the Balance Sheet Adjustment; the New GM eFAST values reflect both adjustments.
- (e) Defendants contend that Representative Assets 11 and 37 are partially fixtures. Mr. Chrappa’s appraised value for these assets is the value that he assigned to just the portion of each asset that Defendants contend is a fixture. For both assets, to estimate the value of the portion that Defendants contend is a fixture using the other approaches in the chart, Asset 11’s and Asset 37’s values (except the Chrappa Appraised Fair Market Value in Continued Use or OLV, Goesling Appraised Orderly Liquidation Value in Place, and Goesling Appraised Liquidation Value in Exchange) have been adjusted by the percentage of each asset’s total Replacement Cost that Mr. Chrappa has identified as the Replacement Cost of just the portion of the asset that Defendants contend is a fixture. These “fixture-only” values are shown in Assets 11A and 37A. Plaintiff contests Defendants’ classification and approach to valuing the fixture components of these two assets.

## Sources

[1] DX31 (NEWGM000005131, eFAST (June 2009)).

[2] DX150A (KPMG-GM0003703, KPMG Asset Valuation Worksheet for Real Property and Leaseholds); DX151A (NEWGM000000949, KPMG Asset Valuation Worksheet for Personal Property).

[3] DX33 (NEWGM000000747, eFAST (May 2010)); PX218 (NEWGM000005130, eFAST (May 2010)).

[4] Written Testimony of Carl C. Chrappa, submitted April 7, 2017, at 41-42.

[5] Second Amended Written Testimony of David K. Goesling, submitted May 3, 2017, ¶ 412.

[6] Second Amended Written Testimony of David K. Goesling, submitted May 3, 2017, ¶ 453.