

Barry N. Seidel
Eric B. Fisher
Evan J. Zucker
DICKSTEIN SHAPIRO LLP
1633 Broadway
New York, New York 10019-6708
Telephone: (212) 277-6500
Facsimile: (212) 277-6501

Jeffrey Rhodes (*admitted pro hac vice*)
DICKSTEIN SHAPIRO LLP
1825 Eye Street, NW
Washington, D.C. 20006
Telephone: (202) 420-3150

Attorneys for Plaintiff

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

-----X
In re:

MOTORS LIQUIDATION COMPANY, f/k/a
GENERAL MOTORS CORPORATION, *et al.*,

Debtors.

Chapter 11

Case No. 09-50026 (REG)
(Jointly Administered)

-----X
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 No. 09-00504 (REG)

against

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

Defendants.
-----X

**REPLY OF MOTORS LIQUIDATION COMPANY
AVOIDANCE ACTION TRUST TO OPPOSITION OF
AD HOC GROUP OF TERM LENDERS TO MOTION FURTHER
EXTENDING TIME TO SERVE SUMMONS AND AMENDED COMPLAINT**

**TO THE HONORABLE ROBERT E. GERBER,
UNITED STATES BANKRUPTCY JUDGE:**

The Motors Liquidation Company Avoidance Action Trust (the “**Trust**”) respectfully submits this reply to the *Opposition of Ad Hoc Group of Term Lenders to Motion of Motors Liquidation Company Avoidance Action Trust for an Order Further Extending Time to Serve Summons and Amended Complaint* (the “**Opposition**”) [Adv. Pro. Dkt. No. 131] in further support of the Trust’s motion filed on July 17, 2015 (the “**Motion**”)¹ [Adv. Pro. Dkt. No. 122], seeking entry of an Order extending the time for service of a summons and the Amended Complaint upon certain defendants.

The Trust has been diligent in serving the summons and Amended Complaint. Over the two-week period from May 27, 2015 until June 8, 2015, the Trust sent the summons and Amended Complaint to 541 defendants at more than 1,300 addresses. That effort was possible because the Trust did substantial preparatory work to identify service addresses during the period of time that this case was subject to appeal to the Second Circuit. As detailed in the Motion, that service effort was overwhelmingly successful, although, based upon returned mail and communications from registered agents, follow up attempts at service and/or further inquiries were required as to 43 defendants. Since filing the Motion, the Trust has continued to follow up as to those 43 defendants and now believes it has accomplished service as to many of them.

The Opposition argues in error that the Trust was not diligent in attempting to complete service and thus has failed to establish “good cause” for an extension. To advance this argument, the Opposition necessarily ignores the following key facts:

¹ Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

- This Court was without jurisdiction over this matter, and thus the action could not possibly advance before this Court, from March 7, 2013, when the Trust appealed from this Court's grant of summary judgment in favor of JPMorgan, until April 20, 2015, when the Second Circuit issued its mandate.
- Once the mandate issued, the Trust acted promptly in coordination with JPMorgan to enter a provisional schedule, permitting the filing of the Amended Complaint. [Adv. Pro. Dkt. No. 90]
- This Court permitted the Trust to file its Amended Complaint in an order entered on May 19, 2015, and *the very next day*, the Trust filed its Amended Complaint. [Adv. Pro. Dkt. No. 91]
- The clerk's office issued a summons on May 26, 2015, and *the very next day*, the Trust began its service effort.

Given the speed with which the Trust consistently has taken action upon remand, the Opposition's arguments that the Trust is trying to delay matters and is not acting with diligence are without any merit.²

It is true that this is now a six-year-old case. But the Trust is not to blame for the age of this case. The Trust, by agreement with JPMorgan and with the approval of this Court,

² The cases relied on by the Ad Hoc Group of Term Lenders are easily distinguished, because they all involve circumstances where plaintiffs sought an extension of time *after* expiration of the service deadline. *See Beauvoir v. U.S. Secret Serv.*, 234 F.R.D. 55 (E.D.N.Y. 2006) (plaintiff ordered to show cause why it failed to serve defendants within prescribed time); *Zapata v. City of New York*, 502 F.3d 192, 199 (2d Cir. 2007) (plaintiff made no effort to effect service within the service period and neglected to ask for an extension within a reasonable period of time); *E. Refractories Co. v. Forty Eight Insulations, Inc.*, 187 F.R.D. 503, 505 (S.D.N.Y. 1999) (plaintiff sought relief from service deadline *nunc pro tunc*). Here, in contrast, extension of the service deadline was sought *before* its expiration. The Motion should be granted because the Trust has shown that it made reasonable efforts to serve all of the defendants before expiration of the service deadline. *See Geller v. Newell*, 602 F. Supp. 501, 502 (S.D.N.Y. 1984).

bifurcated the critical threshold UCC question in the case, in order to spare all parties, including the members of the Ad Hoc Group of Term Lenders, the expense of potentially unnecessary and expensive litigation involving hundreds of parties. That first phase of the case was litigated efficiently between July 2009 and July 2010, when the Trust and JPMorgan filed cross-motions for summary judgment. Then, after this Court awarded summary judgment in favor of JPMorgan on March 1, 2013, the Trust promptly pursued its successful direct appeal to the Second Circuit, which was not finally resolved until the mandate issued on April 20, 2015. Thereafter, as described above, the Trust has continued to proceed with speed and diligence.

The Opposition's unspecified claims of prejudice are disingenuous. The Trust has consistently acted in a manner intended to facilitate the defendants' ability to organize themselves. For example, the Trust could have insisted that each defendant served with the summons and Amended Complaint respond within the time period specified in Federal Rule of Bankruptcy Procedure 7012(a). As the Ad Hoc Group of Term Lenders knows, the Trust did not proceed in that way, and instead offered and agreed (subject to this Court's approval) to a unified response deadline of November 16, 2015, precisely because the Trust supports the efforts of all defendants to organize and respond in a coordinated fashion. Again, the reason the Trust encourages such efforts is to avoid expensive, disorganized multiparty litigation whenever possible. It is not clear why the Ad Hoc Group of Term Lenders has elected to oppose this routine, procedural request for an extension. Their Opposition does not promote the orderly progress of this adversary proceeding and should be rejected.

CONCLUSION

WHEREFORE, the Trust respectfully requests that the Court grant the Motion, and such other and further relief as may be deemed just and proper.

Dated: New York, New York
August 10, 2015

DICKSTEIN SHAPIRO LLP

By: /s/ Eric B. Fisher
Barry N. Seidel
Eric B. Fisher
Evan J. Zucker
DICKSTEIN SHAPIRO LLP
1633 Broadway
New York, New York 10019
Telephone: (212) 277-6500
Facsimile: (212) 277-6501
Email: fishere@dicksteinshapiro.com

and

Jeffrey Rhodes (*admitted pro hac vice*)
DICKSTEIN SHAPIRO LLP
1825 Eye Street, NW
Washington, D.C. 20006
Telephone: (202) 420-3150

Attorneys for Plaintiff

Barry N. Seidel
Eric B. Fisher
Evan J. Zucker
DICKSTEIN SHAPIRO LLP
1633 Broadway
New York, New York 10019-6708
Telephone: (212) 277-6500
Facsimile: (212) 277-6501

Jeffrey Rhodes (*admitted pro hac vice*)
DICKSTEIN SHAPIRO LLP
1825 Eye Street, NW
Washington, D.C. 20006
Telephone: (202) 420-3150

Attorneys for Plaintiff

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

-----X
In re:

MOTORS LIQUIDATION COMPANY, f/k/a
GENERAL MOTORS CORPORATION, *et al.*,

Chapter 11

Case No. 09-50026 (REG)
(Jointly Administered)

Debtors.

-----X
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 No. 09-00504 (REG)

against

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

Defendants.
-----X

CERTIFICATE OF SERVICE

I, Eric B. Fisher, hereby certify that on August 10, 2015, I caused a true and correct copy of the foregoing *Reply of Motors Liquidation Company Avoidance Action Trust to Opposition of Ad Hoc Group of Term Lenders to Motion Further Extending Time to Serve Summons and Amended Complaint* (“**Reply**”) to be served via electronic mail on the service list attached hereto as Exhibit A and via United States First-Class Mail, postage prepaid, on the service list attached hereto as Exhibit B.

Notice of filing of the Reply was provided by operation of the Case Management/Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of New York (the “**CM/ECF System**”) upon registered users of the CM/ECF System.

Dated: New York, New York
August 10, 2015

/s/ Eric B. Fisher

Eric B. Fisher

Exhibit A

- jcallagy@kelleydrye.com
- mkrolewski@kelleydrye.com
- npanarella@kelleydrye.com
- sflanagan@kelleydrye.com
- HSNovikoff@wlrk.com
- MWolinsky@wlrk.com
- DKMayer@WLRK.com
- WDSavitt@wlrk.com
- EAKleinhaus@wlrk.com
- gary.marsh@dentons.com
- oscar.pinkas@dentons.com
- gtoering@wnj.com
- Heather.Crockett@atg.in.gov
- Joan.Blackwell@atg.in.gov
- Maricel.Skiles@atg.in.gov
- michael.krauss@faegrebd.com
- rdlane@mdwecg.com
- dcdice@MDWCG.com
- JMWertman@MDWCG.com
- mindelicato@hahnhausen.com
- mpower@hahnhausen.com
- John.Spiegel@mto.com
- George.Garvey@mto.com
- Marc.Dworsky@mto.com
- Todd.Rosen@mto.com
- Matthew.Macdonald@mto.com
- Kristin.Myles@mto.com
- gshumaker@jonesday.com
- cdipompeo@jonesday.com
- bbennett@jonesday.com
- eburke@JonesDay.com

Exhibit B

Harold Novikoff
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019-6150

Douglas Mayer
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019-6150

Emil Kleinhaus
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019-6150

Oscar Pinkas
Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020

Heather Crockett
Office of the Indiana Attorney General
302 W. Washington Street
I.G.C.S. - Fifth Floor
Indianapolis, IN 46204

R. David Lane Jr.
Marshall Dennehey Warner Coleman & Goggin, P.C.
Wall Street Plaza
88 Pine Street, 21st Floor
New York, NY 10005

Joel Wertman
Marshall Dennehey Warner Coleman & Goggin, P.C.
2000 Market Street
Suite 2300
Philadelphia, PA 19103

Joan Blackwell
Office of the Indiana Attorney General
302 W. Washington Street
I.G.C.S. - Fifth Floor
Indianapolis, IN 46204

Nicholas Panarella
Kelley Drye & Warren LLP
101 Park Avenue
New York, NY 10178

Martin Krolewski
Kelley Drye & Warren LLP
101 Park Avenue
New York, NY 10178

Marc Wolinsky
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019-6150

William Savitt
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019-6150

Gary Marsh
Dentons US LLP
303 Peachtree Street
Suite 5300
Atlanta, GA 30308

Gordon Toering
Warner Norcross & Judd LLP
900 Fifth Third Center
111 Lyon Street, NW
Grand Rapids, MI 49503

Michael Krauss
Faegre Baker Daniels LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901

Denis Dice
Marshall Dennehey Warner Coleman & Goggin, P.C.
2000 Market Street
Suite 2300
Philadelphia, PA 19103

Maricel Skiles
Office of the Indiana Attorney General
302 W. Washington Street
I.G.C.S. - Fifth Floor
Indianapolis, IN 46204

Sean Flanagan
Kelley Drye & Warren LLP
101 Park Avenue
New York, NY 10178

John Callagy
Kelley Drye & Warren LLP
101 Park Avenue
New York, NY 10178

Mark S. Indelicato, Esq.
Mark T. Power, Esq.
Hahn & Hessen LLP
488 Madison Avenue, Suite 1400
New York, NY 10022

John W. Spiegel
George M. Garvey
Todd J. Rosen
Matthew A. Macdonald
MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue, 35th Floor
Los Angeles, CA 90071

Bruce Bennett
Erin L. Burke
JONES DAY
555 South Flower Street, 50th Floor
Los Angeles, CA 90071

Kristin Linsley Myles
MUNGER, TOLLES & OLSON LLP
560 Mission Street, 27th Floor
San Francisco, CA 94105-2907

Gregory M. Shumaker
Christopher J. DiPompeo
JONES DAY
51 Louisiana Ave., N.W.
Washington, D.C. 20001-2113