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Defendant JPMorgan Chase Bank, N.A.*

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

In re:	:	Chapter 11 Case
MOTORS LIQUIDATION COMPANY, <i>et al.</i> ,	:	Case No. 09-50026 (MG)
Debtors.	:	(Jointly Administered)
<hr/>		
MOTORS LIQUIDATION COMPANY AVOIDANCE ACTION TRUST, by and through the Wilmington Trust Company, solely in its capacity as Trust Administrator and Trustee,	:	Adversary Proceeding
Plaintiff,	:	Case No. 09-00504 (MG)
vs.	:	
JPMORGAN CHASE BANK, N.A., individually and as Administrative Agent for Various lenders party to the Term Loan Agreement described herein, <i>et al.</i> ,	:	
Defendants.	:	

**STATEMENT OF DEFENDANT AND CROSS-CLAIM
DEFENDANT JPMORGAN CHASE BANK, N.A. IN
RESPONSE TO THE PLAINTIFF'S OMNIBUS OPPOSITION**

INTRODUCTION

JPMorgan Chase Bank, N.A. (“JPMorgan”), a defendant and a cross-claim defendant in this adversary proceeding, respectfully submits this limited response to Plaintiff The Motors Liquidation Company Avoidance Action Trust’s (“Plaintiff”) Omnibus Opposition to Defendants’ Motions to Dismiss and For Judgment on the Pleadings (Dkt. No. 427, the “Omnibus Opposition”). The Omnibus Opposition opposes the Term Loan Lenders’ motions (Dkt. Nos. 226, 262, 377 and 390) seeking dismissal of Plaintiff’s action as to them based on, among other reasons, insufficient service of process.

Although JPMorgan is not a party to the Term Loan Lenders’ motions and takes no position on the relief requested therein, several of Plaintiff’s allegations in its Omnibus Opposition are inaccurate and misleading as they relate to JPMorgan.¹ Specifically, the Omnibus Opposition asserts that JPMorgan was acting, as administrative agent, for Term Loan Lenders when: (i) together with Plaintiff, it submitted stipulated scheduling orders to the Court in 2009 and 2010 (Dkt. Nos. 10, 17, 20 and 23) that, in part, extended Plaintiff’s time to serve its complaint on other Term Loan Lenders; and (ii) litigated whether JPMorgan had authorized General Motors Corporation’s (“Old GM”) erroneous filing of a UCC-3 termination statement pertaining to the Term Loan. (*See* Omnibus Opposition at 2, 11, and 27.) These assertions are untrue and contradicted by the factual record. Accordingly, JPMorgan submits this limited response to address these incorrect allegations.

¹ JPMorgan previously submitted a limited response to certain of the Term Loan Lenders’ motions because several of the allegations in those motions relating to JPMorgan also were inaccurate. (*See* Dkt. No. 431.)

STATEMENT

Plaintiff's original complaint, filed on July 31 2009, named JPMorgan as a defendant in both its capacity as administrative agent on the Term Loan as well as individually as a Term Loan Lender. (*See* Omnibus Opposition at 10.) A threshold issue presented by Plaintiff's complaint was whether JPMorgan authorized the filing of a UCC-3 pertaining to the Term Loan in connection with the repayment of a separate Synthetic Lease facility on which JPMorgan acted as administrative agent. It was undisputed that the other Term Loan Lenders did not have any discoverable evidence as to that issue. Accordingly, to avoid unnecessary costs and to litigate this matter efficiently, Plaintiff agreed to litigate this threshold issue only with JPMorgan and to extend the time to serve the complaint on the other Term Loan Lenders. During the first part of this action, JPMorgan communicated with Plaintiff and the Court only as a named defendant, and *not* on behalf of any of the other Term Loan Lenders. For example:

- On September 4, 2009, JPMorgan sent a letter to Plaintiff's counsel, a letter that Plaintiff fails to mention, proposing a schedule only "on behalf of JPMorgan Chase Bank, N.A. ("JPMCB")." (*See* Exhibit A annexed hereto.)

- In its September 17, 2009 letter responding to JPMorgan's proposal, Plaintiff's counsel made no reference to JPMorgan acting on behalf of anyone but itself.² (*See* Exhibit B annexed hereto.)

- Each of the stipulated scheduling orders agreed upon by Plaintiff and JPMorgan, and thereafter entered by the Court in 2009 and 2010 (*see* Dkt. Nos. 10, 17, 20 and 23), explicitly stated that they were being stipulated only between the Plaintiff and

² Consistent with these letters, the Intralinks posting that the Plaintiff relies on in the Omnibus Opposition to support its assertion makes no reference to JPMorgan acting on the other Term Loan Lender's behalf. (*See* Omnibus Opposition at 12; *see also* Fisher Decl. Ex. L.)

“Defendant JPMorgan Chase Bank, N.A. (“JPMCB”).” There is no reference to JPMorgan stipulating to the scheduling orders on behalf of any of the Term Loan Lenders.

- Further, for the avoidance of any doubt, in its Answer to the original Complaint dated October 7, 2009, JPMorgan stated:

JPMCB does not Answer this Complaint on behalf of any other defendant named in the Complaint or lender under the Term Loan Agreement.

(Dkt. No. 12.) Similarly, in the initial Agreed Protective Order submitted by Plaintiff and JPMorgan, and thereafter, entered by the Court, Plaintiff acknowledged that JPMorgan was not acting on behalf of any other defendant by expressly agreeing that “JPMCB does not stipulate, agree and/or enter into this Agreed Protective Order on behalf of any other defendant named in the above-captioned adversary proceeding or lender under the Term Loan.” (*See* Dkt. No. 15.)

- At the Court’s request, JPMorgan submitted letters in 2010 seeking permission to file a motion for summary judgment on the threshold issue of authority. (*See* Dkt. Nos. 19 and 21.) Those letters again made clear that JPMorgan sought to file a summary judgment motion only on its own behalf. (*See id.*) The Court granted JPMorgan’s request and JPMorgan filed its summary judgment motion on July 1, 2010. (*See* Dkt. Nos. 28 and 29.)

Finally, after JPMorgan prevailed on summary judgment in March 2013, Plaintiff, requested by means of a Notice of Presentment a further extension of the time to serve the Term Loan Lenders until after resolution of its appeal of the summary judgment decision, which was granted by the Court. (*See* Dkt. Nos. 79 and 81-82.) As Plaintiff’s Notice of Presentment makes clear, JPMorgan did not seek or stipulate to any such extension of service on its own behalf let alone on behalf of any other defendant. Underscoring that Plaintiff itself understood that

JPMorgan was only appearing on its own behalf, Plaintiff's counsel requested JPMorgan to transmit the Notice to the other Term Loan Lenders, which JPMorgan did on April 1, 2013, in advance of the objection deadline. (*See* Dkt. 431 at 4-5.)

While Plaintiff references the statement of JPMorgan's counsel at an October 6, 2009 hearing that he was "representing JPMorgan Chase both individually and as administrative agent" (Omnibus Opposition at 11), Plaintiff neglects to quote the very next words on the page: "we were sued in both capacities." (Dkt No. 13 at 11:2 – 11:8.) In short, JPMorgan's counsel appeared for JPMorgan in both of the capacities in which it was sued, but JPMorgan did not purport to represent anyone but itself, and repeatedly made this fact clear to Plaintiff.

CONCLUSION

Accordingly, the allegations in the Omnibus Opposition that JPMorgan acted on behalf of the other Term Loan Lenders in the first part of this action are incorrect and should be disregarded.

Dated: New York, New York
March 30, 2016

Respectfully submitted,

KELLEY DRYE & WARREN LLP

By: /s/ John M. Callagy

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EXHIBIT A

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September 4, 2009

VIA E-MAIL

Eric B. Fisher, Esq.
Butzel Long, PC
380 Madison Avenue
22nd Floor
New York, NY 10017

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

Dear Eric:

As discussed, on behalf of JPMorgan Chase Bank, N.A. ("JPMCB"), we write to propose a schedule to allow JPMCB and the Official Committee of Unsecured Creditors ("Committee") to efficiently litigate this action.

Kelley Drye will agree to accept service of summons and complaint on behalf of JPMCB, and JPMCB will support the Committee's request to extend its time to serve the complaint on the other defendants from 120 to 240 days. The Committee will ask the Court to include a provision in the scheduling order which states that no party, which is subsequently served with the summons and complaint and wishes to participate in the action, will be permitted to duplicate deposition questioning and/or discovery requests.

We also propose the following schedule:

September 30, 2009 – JPMCB to serve its response to the Committee's complaint;

September 30, 2009 – JPMCB and the Committee to exchange initial disclosures;

October 15, 2009 – JPMCB and the Committee to exchange written discovery requests;

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November 16, 2009 – JPMCB and the Committee to provide written responses to discovery requests and to produce responsive documents;


December 31, 2009 – date by which JPMCB and the Committee to complete depositions;

February 1, 2010 – date by which dispositive motions, if any, will be made;

March 1, 2010 – date by which oppositions, if any, will be filed;

March 17, 2010 – date by which replies, if any, will be filed.

JPMCB considers the complaint in this action to be meritless but recognizes that at this point you may need limited discovery to share our view. Therefore, we propose this schedule. JPMCB believes the Committee should seriously consider a voluntary dismissal of the complaint once it becomes clear that the termination statement at issue was filed without authority, and is therefore ineffective against JPMCB and the other defendants.

Sincerely,

John M. Callagy

JMC/sa

EXHIBIT B

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ATTORNEYS AND COUNSELORS

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September 17, 2009

Via Email and First Class Mail

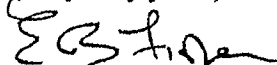
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**Re: *Official Committee of Unsecured Creditors of Motors Liquidation Company f/k/a
General Motors Corporation v. JPMorgan Chase Bank, N.A., Adv. Pro. 09-00504 (REG)***

Dear John:

Thank you for your letter of September 4, 2009 and for accepting service of the summons and complaint on behalf of JPMorgan Chase Bank, N.A. ("JPMCB"). The discovery and dispositive motion schedule that you propose in the letter is acceptable to the Committee with two clarifications. We ask that the schedule expressly provide that the Committee and JPMCB are authorized to serve subpoenas for documents and/or depositions on or after September 30, 2009. In addition, the proposed extension of the Committee's time to serve the summons and complaint is without prejudice to our right to seek a further extension in the future, if necessary. Please confirm that these clarifications are acceptable, and we will then proceed with the motion, seeking an extension of the Committee's time to serve the summons and complaint until March 29, 2010.

Very truly yours,



Eric B. Fisher