

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

In re:	:	Chapter 11
	:	
MOTORS LIQUIDATION COMPANY, <i>et al.</i> ,	:	Case No. 09-50026 (MG)
	:	
Debtors.	:	(Jointly Administered)
	:	
MOTORS LIQUIDATION COMPANY AVOIDANCE	:	Adversary Proceeding
ACTION TRUST, by and through the Wilmington Trust	:	
Company, solely in its capacity as Trust Administrator and	:	Case No. 09-00504 (MG)
Trustee,	:	
	:	
Plaintiff,	:	
	:	
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.	:	

**STIPULATION AND SUPPLEMENTAL ORDER
PURSUANT TO FEDERAL RULE OF EVIDENCE 502(d)**

WHEREAS, Plaintiff Motors Liquidation Company Avoidance Action Trust (“Plaintiff”) and Defendant JPMorgan Chase Bank, N.A. (“JPMorgan”) each served a subpoena for documents upon non-party Weil Gotshal & Manges LLP (“Weil”) on July 14, 2015 and June 29, 2015, respectively (collectively, the “Initial Subpoenas”);

WHEREAS, the Court entered a Stipulation and Order Pursuant to Federal Rule of Evidence 502(d) on June 17, 2016 (“First Weil 502(d) Order”) governing certain issues as to the Initial Subpoenas;

WHEREAS, certain Defendants and Cross-Claimants as originally listed in Appendix A to Docket No. 241 (“Certain Cross-Claim Term Lenders”) served a subpoena for documents upon Weil on March 22, 2016 (“Cross-Claim Subpoena”);

WHEREAS, JPMorgan served deposition subpoenas on Weil (pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure (“30(b)(6)”) and some of its current and former partners or employees (in particular Ronit Berkovich, Ram Burshtine, and Stephen Karotkin) on July 22, 2016 and July 27, 2016 (collectively, the “JPMorgan Deposition Subpoenas”);

WHEREAS, Plaintiff cross-noticed the depositions noticed by the JPMorgan Deposition Subpoenas on September 26, 2016 (“Plaintiff’s Cross-Noticed Depositions”);

WHEREAS, Certain Cross-Claim Term Lenders served a deposition subpoena on Weil (pursuant to Rule 30(b)(6)) on September 22, 2016 (the “Cross-Claim Deposition Subpoena”);

WHEREAS, the parties have conferred between and among themselves regarding potential privilege issues raised by the Cross-Claim Subpoena, and have agreed to the following protective order provisions, subject to the Court’s approval of the terms herein;

IT IS HEREBY STIPULATED AND ORDERED:

1. Within three (3) business days of entry of this Order, Weil shall produce one copy of (i) all emails (with their families, as applicable) for which the custodians and search terms agreed to as between Weil and Certain Cross-Claim Term Lenders produce hits (the “Requested Documents”) to each of the undersigned counsel for Plaintiff, JPMorgan, and Certain Cross-Claim Term Lenders (collectively, the “Receiving Parties”) without the necessity (but Weil shall retain the right) to review each (or any) of the Requested Documents prior to such production; *provided that* nothing in this Order shall require disclosure of documents which are unrelated to Weil’s representation of the Debtor or protected by any applicable privilege.

2. Certain Cross-Claim Term Lenders shall make the Requested Documents available to the other parties in the above-captioned action in accordance with the Court's Supplemental Case Management Order # 1 entered on April 15, 2016 (ECF Doc. # 481). All other parties to this action shall be bound by the terms of this Order.

3. To the extent that Weil withholds production of any of the Requested Documents on the basis of any applicable privilege, including but not limited to the work product doctrine, Weil must provide the Receiving Parties with a privilege log for the documents withheld within ten (10) days of the entry of this Order.

4. To facilitate the prompt and efficient production of the Requested Documents, Weil and the Receiving Parties hereby stipulate and agree that all Requested Documents produced pursuant to this Order shall be subject for all purposes, including using any such documents as a deposition exhibit in this action, to the Amended Agreed Protective Order entered April 18, 2016 (ECF Doc. # 489) that governs this action, which Weil represents it has been provided with and has read, and shall thereunder be designated "CONFIDENTIAL." Any objections to the designation of confidentiality as to the Requested Documents shall be governed by the Amended Agreed Protective Order.

5. At any time, in connection with the production that had been made of any of the Requested Documents in accordance with this Order, if Weil determines in good faith that a document is unrelated to Weil's representation of the Debtor, it may give notice of inadvertent production of that document or documents by providing written notice (the "Weil Notice") to the Receiving Parties and request the destruction or return of such documents. The Weil Notice must set forth in detail and explain the good faith basis for its assertion of the notice. The Receiving Parties shall give notice of the Weil Notice to the other parties in the above-captioned

action in accordance with the Court's Supplemental Case Management Order # 1 entered April 15, 2016 (ECF Doc. # 481). Any document, including all copies thereof, as to which notice of inadvertent production is given, shall be promptly returned to Weil or destroyed by each Receiving Party and all other parties to the action within ten (10) business days of receipt of the Weil Notice regardless of whether such party agrees that the documents subject to the Weil Notice are unrelated to Weil's representation of the Debtor. Requested Documents that have been received electronically and that cannot be returned must be electronically deleted and deleted from "trash" files, and the parties must take reasonable measures to ensure that unauthorized persons do not have access to Requested Documents resident on the party's computer server and back-up media. If a party chooses to destroy or delete, rather than return, Requested Documents that are subject to the Weil Notice, it shall provide written notice of such destruction or deletion to Weil within ten (10) business days of receipt of the Weil Notice.

6. If a Receiving Party or any other party to this action disputes the Weil Notice, resolution of the dispute shall be governed by the Court's Supplemental Case Management Order # 2 entered April 15, 2016 (ECF Doc. # 482). During the pendency of any dispute concerning the Weil Notice, all documents that are the subject of the Weil Notice shall be retained by Weil until the Court enters an order, ruling otherwise, or until the parties otherwise agree.

7. Any Receiving Party or other party to this action shall immediately return or destroy any Requested Document produced (including any copies thereof) upon that party's determination (of which such party shall promptly notify all other parties and Weil), that the document does not relate to Weil's representation of the Debtor. Upon receipt of such notification, all other parties must immediately return, delete, or destroy any document, including all copies thereof, constituting or containing information as to which notice of inadvertent

production was given within ten (10) business days of such notification regardless of whether the other party agrees with the designation of the documents as unrelated to Weil's representation of the Debtor. Upon receipt of such notification, Requested Documents that have been received electronically and that cannot be returned, must be electronically deleted and deleted from "trash" files, and the party must take reasonable measures to ensure that unauthorized persons do not have access to Requested Documents resident on the party's computer server and back-up media. If a party chooses to destroy or delete, rather than return, Requested Documents that are subject to its notice to Weil, it shall provide written notice of such destruction or deletion to Weil within ten (10) business days of its notice.

8. At any time, in connection with the production that had been made of any of the Requested Documents in accordance with this Order, if Weil determines in good faith that a document should have been withheld on the basis of any applicable privilege, it may object to the production of that document by providing written notice (the "Weil Privilege Notice") to the Receiving Parties and request the destruction or return of such documents. The Weil Privilege Notice must set forth in detail and explain the good faith basis for its assertion of the notice. The Receiving Parties shall give notice of the Weil Privilege Notice to the other parties in the above-captioned action in accordance with the Court's Supplemental Case Management Order # 1 entered April 15, 2016 (ECF Doc. # 481). If a Receiving Party or any other party to this action disputes the Weil Privilege Notice, resolution of the dispute shall be governed by the Court's Supplemental Case Management Order # 2 entered April 15, 2016 (ECF Doc. # 482). During the pendency of any dispute concerning the Weil Privilege Notice, all documents that are the subject of the Weil Privilege Notice shall be deemed and treated as privileged and shall not be

further disclosed, disseminated, or used for any purpose by any party until the Court enters an order, ruling otherwise, or until the parties otherwise agree.

9. Nothing in this Order limits the rights of any person or entity with standing to petition the Court for an *in camera* review of the documents that are the subject of a Weil Notice or a Weil Privilege Notice.

10. Pursuant to Federal Rule of Evidence 502(d), the production of Requested Documents by Weil shall not, in this case nor in any other federal or state court action or other proceeding, constitute a waiver by or that may be asserted against any holder of any privilege (including but not limited to the attorney client privilege or the work product doctrine) applicable to any of the Requested Documents. For the avoidance of doubt, neither of the Plaintiff, the Motors Liquidation Company GUC Trust, or General Motors Company, nor any other party, nor any client of Weil shall be deemed to have waived any privilege it may hold solely by virtue of Weil complying with this Order. Further, Weil shall not be subject to any liability to any person or entity, including but not limited to the persons and entities referenced herein, for any reason, including but not limited to waiver or breach of any applicable privilege or ethical/professional/fiduciary or other confidentiality obligation or duty, as a result of Weil producing the Requested Documents pursuant and subject to this Order.

11. If any Receiving Party or any other party to the above-captioned action receives a subpoena or a discovery request or other process in another action or proceeding seeking production of any of the Requested Documents (collectively, a “Non-MLC Subpoena”), then such party shall give written notice, enclosing a copy of the Non-MLC Subpoena, by hand or overnight delivery to Weil promptly, but in any event, within five (5) business days after receipt of the Non-MLC Subpoena which identifies the Requested Documents sought. Upon receipt of

such notice, Weil shall have five (5) business days to object in writing to the production of the Requested Documents sought by the Non-MLC Subpoena. Upon receipt of such notification, Weil and the party receiving the Non-MLC Subpoena shall meet and confer to resolve issues arising from Weil's objection to the production of the Requested Documents sought by the Non-MLC Subpoena. Except as ordered otherwise by a court of competent jurisdiction, the party receiving the Non-MLC Subpoena shall refrain from producing any Requested Documents in response to the Non-MLC Subpoena until the earlier of (i) receipt of written notice from Weil that it does not object to production of the designated Requested Documents; (ii) resolution of any timely objection asserted by Weil, either by agreement or by order of a court with jurisdiction to hear the objection of Weil; or (iii) failure by Weil to give timely written notice objecting to the production of the Requested Documents. The burden of opposing the enforcement of the Non-MLC Subpoena shall fall solely upon Weil. Nothing herein shall be construed as requiring Weil or anyone else covered by this Order to challenge or appeal any order directing production of the Requested Documents covered by this Order, or to subject himself or itself to any penalties for non-compliance with any legal process or order, or to seek any relief from this Court. In the event Requested Documents are produced to a non-party, the parties to this Order shall continue to treat such Requested Documents in accordance with the terms of the Amended Agreed Upon Protective Order (ECF Doc. # 489).

12. All notices to Weil hereunder shall be addressed to counsel in the signature block below.

13. In the interest of avoiding undue burden on Weil as a third party, no party in the above-captioned action may serve any further deposition subpoena on Weil or any of its current employees, partners, or agents without first securing the permission of this Court. Should any

party desire to serve such a subpoena, and unless Weil consents, that party shall submit and e-file a letter to the Court so requesting and stating the grounds upon which such a deposition is necessary. The Court may, to facilitate the fact finding process, grant such request, notwithstanding this order. No court permission is required, however, for JPMorgan to amend any of the JPMorgan Deposition Subpoenas, for Plaintiff to amend subpoenas in connection with Plaintiff's Cross-Noticed Depositions, or for Certain Cross-Claim Term Lenders to amend the Cross-Claim Deposition Subpoena, even if such amendment requires renewed notice of or service of a given deposition subpoena provided no such amendment is made within seven (7) days of the agreed upon date of the deposition; and provided further, that Weil reserves all rights to object to such amended subpoena, including to adjourn the date of the 30(b)(6) deposition in order to have reasonable time to determine the facts and prepare its witness(es) to testify as to the subjects of the amended subpoena.

14. For the avoidance of doubt, the deposition testimony in connection with the JPMorgan Deposition Subpoenas, Plaintiff's Cross-Noticed Depositions, and Cross-Claim Deposition Subpoena and deposition exhibits thereto will be governed by the terms of this Order, the First Weil 502(d) Order and the Amended Agreed Protective Order.

15. The Court shall retain exclusive jurisdiction over the subject matter of this Order, including, but not limited to, the implementation, interpretation and enforcement of its terms and conditions.

Dated: New York, New York
September 27, 2016

BINDER & SCHWARTZ LLP

By: /s/ Eric B. Fisher

Eric B. Fisher
Neil S. Binder
Lindsay A. Bush
Lauren K. Handelsman

366 Madison Avenue, 6th Floor
New York, New York 10017
Tel: (212) 510-7008
Facsimile: (212) 510-7299

*Attorneys for the Motors Liquidation Company
Avoidance Action Trust*

MUNGER, TOLLES & OLSON LLP

By: /s/ Bradley R. Schneider
Kristin Linsley Myles
560 Mission Street, 27th Floor
San Francisco, CA 94105-2907
Tel: (415) 512-4000
Fax: (415) 512-4077

John W. Spiegel
Bradley R. Schneider
Matthew A. Macdonald
355 South Grand Avenue, 35th Floor
Los Angeles, CA 90071
Tel: (213) 683-9100
Fax: (213) 687-3702

*Attorneys for Certain Cross-Claim Term
Lenders*

KELLEY DRYE & WARREN LLP

By: /s/ John M. Callagy
John M. Callagy
Nicholas J. Panarella
Martin A. Krolewski
101 Park Avenue
New York, NY 10178
Tel: (212) 808-7800

WACHTELL, LIPTON, ROSEN & KATZ

Harold S. Novikoff
Marc Wolinsky
Emil A. Kleinhaus
51 W. 52nd St.

New York, NY 10019
Tel: (212) 403-1000

*Attorneys for Defendant and Cross-Claim
Defendant JPMorgan Chase Bank, N.A.*

WEIL, GOTSHAL & MANGES LLP

By: Irwin H. Warren
Irwin H. Warren
Ronit J. Berkovich
Joseph H. Smolinsky
767 Fifth Avenue
New York, New York 10153
Tel: (212) 310-8000
Facsimile: (212) 310-8007

IT IS SO ORDERED.

Dated: October 17, 2016
New York, New York

/s/Martin Glenn
MARTIN GLENN
United States Bankruptcy Judge