

CRAIG L. SIEGEL
ASSOCIATE
PHONE 212-715-9432
FAX 212-715-8000
CSIEGEL@KRAMERLEVIN.COM

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VIA HAND DELIVERY AND ELECTRONIC MAIL (PDF)

gerber.chambers@nysb.uscourts.gov

The Honorable Robert E. Gerber, Chambers
United States Bankruptcy Court, Southern District
of New York
One Bowling Green
New York, NY 10004-1408

Re: Official Committee of Unsecured Creditors of Motors Liquidation Co.
v. U.S. Department of the Treasury, et ano., Adv. Pro. No. 11-09406

Dear Judge Gerber:

We represent the Official Committee of Unsecured Creditors (the “**Committee**”) of Motors Liquidation Company, plaintiff in the above-referenced adversary proceeding. We respectfully submit this letter in response to Your Honor’s questions during the July 19, 2011 status conference about the practical benefit of the Court ruling on the Committee’s motion for summary judgment prior to December 15, 2011. In particular, Your Honor questioned whether an appeal of such a ruling might result in the entry of a final, non-appealable judicial order determining the ownership of the Term Loan Avoidance Action only *after* December 15 and, thereby, in a realization of the adverse tax consequences to the Avoidance Action Trust that the Committee seeks to avoid with its motion.¹

The Committee submits that a ruling by the Court *before* December 15, 2011, will be extremely beneficial because it could avoid or at least minimize the adverse tax consequences identified by the Committee in its Complaint for the following reasons. *First*, the Avoidance Action Trust will value the Term Loan Avoidance Action as of the date on which the action is transferred to the trust, i.e., no later than December 15. If the beneficiaries of the trust are finally determined by a non-appealable judicial order (or the parties’ agreement) *before* December 15, then the Avoidance Action Trust will be treated for tax purposes as a liquidating trust that is a

¹ Unless defined otherwise herein, capitalized terms used herein shall have the meanings ascribed to them in the Debtors’ Second Amended Joint Chapter 11 Plan [Docket No. 9836].

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grantor trust from inception. As a result, any proceeds recovered from the Term Loan Avoidance Action would pass through the trust and be taxed only at the unit holder level (i.e., beneficiary level) for any dollar amount over the value of the Term Loan Avoidance Action on December 15. The trust itself would not pay any tax on such proceeds, meaning that the adverse tax consequences would be avoided.

Second, if the beneficiaries of the Avoidance Action Trust are *not* finally determined on or before December 15, then the trust will likely be treated for tax purposes as a disputed ownership fund until the beneficiaries are finally determined. As a result, in addition to the aforementioned tax consequences to the trust beneficiaries, the trust itself will owe tax on any increase in the value of the Term Loan Avoidance Action from December 15 through the date on which the beneficiaries are finally determined. The value of the Term Loan Avoidance Action will likely increase after December 15 merely due to the passage of time, because that value is based on projected probable recoveries discounted to present value to reflect the time needed to collect. As the time to collection diminishes, the present value of the projected probable recoveries will increase and the tax paid by the trust will increase also. In addition, the value of the Term Loan Avoidance Action will likely increase if the Term Loan Avoidance Action settles or is judicially resolved in favor of the plaintiff in that action. Thus, if the beneficiaries of the Avoidance Action Trust are finally determined *after* December 15, *the sooner they are determined the better* because this will reduce the likelihood of increases in the value of the Term Loan Avoidance Action and adverse tax consequences to the trust.

Accordingly, a ruling by the Court on the Committee's summary judgment motion before December 15, 2011, or as soon thereafter as reasonably possible, would have an extremely beneficial impact on creditor recoveries.²

Finally, in addition to the foregoing, the Committee informs the Court that today it will file a First Amended Complaint asserting only the first claim for relief in the Complaint, and omitting the second claim for relief.

² In the event that the Avoidance Action Trust owes tax on any increase in the value of the Term Loan Avoidance Action, that tax will hurt all beneficiaries by reducing the total amount that could be distributed from the trust, regardless of the separate tax treatment of individual beneficiaries.

KRAMER LEVIN NAFTALIS & FRANKEL LLP

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We thank the Court for its attention to this matter.

Respectfully submitted,

/s/ Craig L. Siegel
Craig L. Siegel, counsel to the Committee

cc: Thomas Moers Mayer, Esq. (via electronic mail only)
David Jones, Esq. (via electronic mail and First-Class Mail)
Michael Schein, Esq. (via electronic mail and First-Class Mail)