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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 09-50026 (REG)

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In the Matter of:

MOTORS LIQUIDATION COMPANY, et al.
f/k/a General Motors Corporation, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York

July 13, 2011
10:47 AM

B E F O R E:
HON. ROBERT E. GERBER
U.S. BANKRUPTCY JUDGE

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**HEARING re General Motors LLC's Motion to Supplement Order
Enforcing 363 Sale Order with Respect to Products Liability
Claim and Discovery Requests of Dr. Terrie Sizemore**

Transcribed by: Shelia Watkins

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A P P E A R A N C E S :

WEIL, GOTSHAL & MANGES LLP

Attorneys for New GM

767 Fifth Avenue

New York, NY 10153

BY: STEPHEN KAROTKIN, ESQ.

TELEPHONICALLY:

TERRIE SIZEMORE, In Propria Persona

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P R O C E E D I N G S

THE CLERK: All rise. Have your seats, please.

THE COURT: Okay. Motors Liquidation formerly known as General Motors. Let me get appearances both here in the Courtroom and on the phone.

MR. KAROTKIN: Good morning, Your Honor, Steven Karotkin, Weil, Gotshal & Manges, for New GM.

THE COURT: Okay, Mr. Karotkin. Ms. Sizemore, are you on the phone?

MS. SIZEMORE: Yes, I am.

THE COURT: All right. Folks, I've read both sides' papers. I think I understand the issues, but I'm not sure from reading your response, Ms. Sizemore, that you do.

As a result, I'm going to ask Mr. Karotkin to make his argument explaining what is bothering New GM, presumably focusing in particular on the ruling by Judge Morero, which at least seemingly is quite relevant here, and where I did not see in your response any attention to that, Ms. Sizemore. And I'll hear what you have to say, Ms. Sizemore, but I am very troubled by what you've made New GM go through in light of orders which at least seemingly are quite clear and rulings by Judge Morero which are quite clear, apart from issues arising from my own orders. But I'll hear what both sides have to say starting with you, Mr. Karotkin.

MR. KAROTKIN: Thank you, Your Honor. I will be very

1 brief and I think that our pleadings are very clear. I think
2 that by the comments you've made you obviously understand the
3 situation.

4 The relief we are seeking, Your Honor, and I'd just
5 like to -- the record to note that we understand that Dr.
6 Sizemore is appearing pro se, and we're certainly not trying to
7 take advantage of that situation, and we tried to be very
8 patient in these proceedings. But at the same time, this
9 litigation has to come to an end. And as you may recall, in
10 your original order when you enjoined Dr. Sizemore from
11 proceeding with her action and proceeding with discovery in
12 connection with that action against New GM, you indicated that
13 you wouldn't require that that action be formally dismissed
14 until the Campbell appeal, which was an appeal of your section
15 363 order with respect to the original sale of General Motors
16 to New GM, was determined because that issue had raised issues
17 in connection with product liability suits and whether your
18 ruling in the contract on that matter would stand.

19 And as we indicated in our pleadings, the Campbell
20 appeal has been finally disposed of. It is final and
21 consistent with the order that you entered initially with
22 respect to the Sizemore action as well as three or four other
23 actions that were determined at the same time. You stated in
24 that order, and I quote, "In the event the 363 sale order is
25 not altered on appeal, after the Campbell appeal has been

1 exhausted, New GM may file a motion with this Court for a
2 supplemental order requiring Dr. Sizemore to dismiss New GM
3 from the Sizemore action with prejudice, and to continue to
4 stop Dr. Sizemore from any other further prosecution of the
5 Sizemore action against New GM, or otherwise pursuing any of
6 the claims asserted in the Sizemore action against New GM in
7 any other action, forum, proceeding, or otherwise."

8 And after the Campbell appeal was determined, Your
9 Honor, and again finally disposed of, we went back to Dr.
10 Sizemore, notified her of that fact, and asked her to
11 voluntarily dismiss her action as against New GM with
12 prejudice; and she declined to do so, requiring us to come to
13 you with this motion consistent with your order, and I might
14 add against entirely consistent with Judge Morero's order on
15 appeal -- on the appeal that Dr. Sizemore had taken with
16 respect to your initial order. And he again was very clear,
17 and we cited in our pleadings that -- you know, it's on page 4
18 of our pleadings that it's time for this to come to an end, and
19 that's all we're asking for. We're asking that this now come
20 to an end, that your order be finally and fully enforced in
21 view of the fact that the Campbell appeal has been disposed of,
22 and that we move on and don't have to deal with this issue
23 anymore.

24 And that's simply where we are. If you have any
25 questions, I'm happy to answer them.

1 THE COURT: No, thank you. Dr. Sizemore?

2 MS. SIZEMORE: Yes. Hello?

3 THE COURT: I'll hear your argument. And in
4 particular, I need you to address Judge Morero's ruling.

5 DR. SIZEMORE: Okay. I believe that I -- well, I
6 thought I did. I apologize, I don't have my computer fired up
7 with the information, but Judge Morero -- you know, I don't
8 know how to say it respectfully that he respects you as a
9 Judge, which I would, you know, understand.

10 And so sometimes -- I still didn't see legal
11 conclusion that he based a decision with the -- not the product
12 liability. The difficulty that I have with the situation is
13 General Motors' attorneys and everyone appears to combine the
14 two issues, and they're separate. And I am at a complete loss
15 as to how to separate them because I am not disputing the
16 product liability issue, but Judge Morero came to the
17 conclusion that, well, if you're not allowed to do product
18 liability, then you're not allowed to ask questions.

19 Well, I'm -- I still have never seen -- when I saw
20 you a year ago, and you asked me to present law to you
21 regarding the product liability issue, I was at a complete loss
22 because what went through my mind was I just couldn't even
23 imagine that there could be a law that would allow me to
24 disrespect your order regarding product liability. But I
25 have -- when I was leaving New Jersey that day I called, "you,"

1 on quotes, because I was, you know, just completely off -- you
2 know, caught off guard when you included the action for
3 discovery because I've rerun through transcript, and when I
4 brought up the issue of the action to discovery, you kind of
5 insinuated I was derailing the train there, getting it back off
6 track with bankruptcy issues, and that wasn't the bankruptcy
7 issue that's product liability was. So when that conclusion
8 happened, I called your chambers and spoke to your law clerk on
9 my way out of town back home, and I said I'm a little confused
10 as to what law it was -- or what rule it was based on with the
11 action for discovery. And he declined a response to me.

12 And I think that, in all honesty, it appears to me
13 that General Motors is not in compliance with your order, not
14 based on product liability, but the information that I put in
15 my brief about the MPA wasn't entered fraudulently, and that
16 they are to do business as usual; and article 6 covenant,
17 section 6.1 says access to information and 6.2 says the conduct
18 of business using -- use reasonable best efforts to preserve
19 the ordinary care of business with respect to customers,
20 suppliers, the significant business dealings, and talking about
21 the preservation of records, reasonable access to records,
22 especially parties, and helping litigants. Well, I may not
23 have been able to put General Motors, but I know that there's a
24 rule sheet for this vehicle.

25 I know -- I contend that they've already given me

1 some information. So, the action for discovery was filed prior
2 to the product liability action that I mistakenly put General
3 Motors down on, and there's been no argument pled whatsoever
4 that that action for discovery violated a bankruptcy law order.
5 And I know that the Supremacy Act allows you as the federal
6 court to prevail over state courts; but I also understand that
7 if there's no federal law and there's no provision in this MPA
8 or the sale agreement that prohibits an action for discovery on
9 the purchasing party that I haven't violated that. And I -- if
10 I thought I violated your order again I would own up to that,
11 and I -- I don't know what to say.

12 I've looked through the whole transcript, and every
13 part of it and every part of the MPA refers to product
14 liability, and it refers to the one action that I filed, but
15 not the action for discovery that I filed. And had they -- and
16 some of them is public record. I mean General Motors'
17 attorneys in the transcript state that the newspapers across
18 the nation published the bankruptcy information, so it wasn't
19 secret that General Motors went into bankruptcy.

20 And I had already made a mistake in Ohio court, and I
21 feel that the action for discovery was logical; it was
22 intelligent. It was reasonable; it was legal for me to
23 approach the New GM and say, hey, I need some questions
24 answered, so I don't make more mistakes. And now I'm kind of
25 in conflict with your Court by saying, well, you couldn't sue

1 them for product liability; so, Judge Morero said that you
2 couldn't sue for product liability; you can't ask them any
3 questions about it. But I paid them my five thousand dollars
4 or whatever. You go and I look at the consumer laws and I look
5 at the revised laws that allow me an action for discovery, and
6 civil rule 34 that allows if you're filing discovery.

7 And there were other parties: there was the airbag
8 supplier, the black box people -- I have pictures that state
9 that there was a class 2 malfunction. I contend that the
10 action key clutch isn't even correct in the report that I was
11 given by General Motors. So, when you talked about the plain
12 language of a contract that General Motors entered into, the
13 purchaser and the seller, they all said that they would allow
14 me access to that information.

15 And so the incidents of -- you know, I consider fraud
16 not only a misrepresentation but a concealment of material
17 facts. And I understand I'm not an attorney and I appreciate
18 Mr. Karotkin's extension of, you know, grace there, but I'm
19 also not an engineer, and that hurts me worse when I try to
20 navigate through this process. And there are consumer
21 protection laws here, and I'm sure federally that I can
22 identify specific ones that allow me information, but I'm
23 pretty sure you know about them.

24 General Motors has failed to provide an actual law
25 that states -- the New GM, this is a bankrupt party, so it's

1 not like I'm asking for information from Motors Liquidation who
2 is the bankrupt party and I'm trying to get an action against
3 them when there's no actions allowed any longer. But according
4 to your order, I'm entitled to the information, that I'm a
5 consumer; I was allowed. And I tried to do that legally and
6 justifiably. And they're like, no, we don't want any part of
7 that.

8 And the General Motors' attorneys put in their briefs
9 to Judge Morero that whereas the plaintiffs should be given
10 their plain meanings, but they appear to twist those words just
11 to benefit themselves. And the only plea -- I mean I -- you're
12 all I have. You know, all I have is the Court because they
13 have not voluntarily given me this.

14 They've sent me letters that said we gave you
15 everything you asked for, which I contend is untrue. So if
16 they didn't have to give me information, they have given me
17 some. So now that I think they've given me the wrong
18 information, concealed material facts, when I was before you a
19 year ago I asked you if fraud and negligence violated your
20 bankruptcy orders. You stated that you couldn't give me legal
21 advice, but I contend that that's public record for the terms
22 of bankruptcy.

23 And I don't want to make more mistakes and I offered
24 to settle this for a fifth of what I originally asked for just
25 to have everybody go home and stop fighting. And I feel that

1 my issues were valid. And when General Motors declined, you
2 know, settling that with me -- all I've ever asked for was a
3 fight. And in a fair fight with -- I believe I was entitled to
4 that information, and all of the documents indicate that the --
5 what I violated had to do with my product liability action, and
6 the two separate issues that I can't seem to have separated.

7 And Mr. Karotkin mentioned that they asked me to
8 voluntarily withdraw the parties, and my understanding after
9 our February conversation was that I wasn't permitted to
10 withdraw those parties until we had this motion, and this
11 hearing, and order was rendered again. And I realize that last
12 August that Mr. Jakubowski or whatever his name was for the
13 Campbell party intended to withdraw their appeal. So the stay
14 that you granted -- and I've had to fight with the Ohio
15 attorney here for a whole year while I'm sure that all General
16 Motors' attorneys understood the terms of their order.

17 And the Ohio attorney said to the Ohio courts that
18 their order didn't have to do with their courts, and your order
19 didn't have to do with my discovery. And you know, I consider
20 those kind of, you know, questionable things to have said to
21 the Court, but I don't know how to plead with you that I
22 understand the product liability mistakes that I made; but I
23 truly don't believe that I made a mistake regarding the action
24 for discovery, and I truly don't believe that General Motors'
25 counsel has presented you a legal basis for the relief

1 regarding that issue. And even today he hasn't done that.
2 They failed to provide a law. They failed to locate one part
3 of the bankruptcy documents that prohibit an action for
4 discovery. They failed to provide in the transcript where we
5 discussed issues of the action for discovery, basically.

6 And I didn't mean to make them have to do anything.
7 In fact, as far as I know, they didn't actually have to do
8 anything until they filed their brief motion again, which was
9 over eight months and them doing that. So I don't know what
10 else -- and actually in a hearing that I had in Ohio court on
11 June 7th -- or July 7th, General Motors' attorney affirmatively
12 stated that they thought that I had a case for fraud and
13 negligence and should just file that without even doing an
14 action for discovery based on those issues. But I still think,
15 you know, even if I have a case for something, I think jumping
16 into the fire is not a good idea.

17 And I think that clearing up some things that I'm
18 legally allowed to clear up prior to filing any -- or
19 misfiling. Because if General Motors had answered that action
20 for discovery, I'd have never placed them down on the product
21 liability, and I think that's pretty clear. And those are
22 issues that Judge Morero did not address, and he did not
23 provide a federal law that says the purchasing party doesn't
24 have to give you any information based on product made prior to
25 the closing date. Because your order says that it would, it

1 seems clear to me that I would have access to that information.

2 THE COURT: All right. Thank you, Ms. Sizemore --

3 DR. SIZEMORE: And I --

4 THE COURT: -- Dr. Sizemore.

5 DR. SIZEMORE: -- apologize if I've said
6 something for the 15th time.

7 General Motors' attorneys referred me to a paragraph
8 47, I believe, in one of the documents, and I'm not sure if
9 it's in the sale order or the purchase agreement, about actions
10 against General Motors, but it references actions based on
11 claims and claims of liability. It does not clearly state that
12 an action for discovery to perfect a claim against another
13 party is prohibited by your order. The plain language of your
14 order does not prohibit that for me, and that's where my issue
15 is --

16 THE COURT: All right. I understand --

17 DR. SIZEMORE: -- today.

18 THE COURT: -- that, Dr. Sizemore. All right. Mr.
19 Karotkin, any reply? Any desire to reply

20 MR. KAROTKIN: No, Your Honor. Again, I think that
21 Judge Morero -- Judge Morero's ruling, which was not appealed,
22 again, at 439 B.R. ed. 341, he says where an order prohibits,
23 as the 360 sale -- 363 sale order does here, a particular class
24 of claims from being brought against a legal entity, it is
25 undoubtedly understood to also prohibit an action for discovery

1 with respect to that class of claims from being brought against
2 that same entity.

3 THE COURT: All right.

4 MR. KAROTKIN: As I said, we think it's finished.

5 DR. SIZEMORE: Well, he says that it's undoubtedly,
6 and there's two --

7 THE COURT: Well, Miss -- Dr. Sizemore, this isn't
8 the English Parliament: you don't interrupt your adversary --

9 DR. SIZEMORE: I'm sorry.

10 THE COURT: -- and we don't have a back and forth.
11 There is an opening argument; there is a response. And I let
12 you talk quite a long time --

13 DR. SIZEMORE: Okay.

14 THE COURT: -- and then Mr. Karotkin was in the
15 middle of his reply or maybe he was nearing the end of his
16 reply when you interrupted him.

17 MR. KAROTKIN: I'm finished, Your Honor. Thank you.

18 THE COURT: All right. Okay. Now, I can and must
19 rule.

20 In my ruling, and I recognize that you're not a
21 lawyer, Dr. Sizemore, which is why I'm not imposing sanctions,
22 and why I'm going to say things that are quite obvious, is my
23 ruling is this has gone on much too long, and it's been
24 abusive, and it's got to stop. And I am ruling once again that
25 no further litigation of any kind whether to collect money or

1 for discovery can proceed against New GM. And though the
2 reasons are or I think should be obvious, I'm going to repeat
3 them now.

4 Back a year ago, on July 1st, 2010, I issued an order
5 enjoining Dr. Sizemore from taking or pursuing any further
6 action against New GM, including any discovery, and I said that
7 in explicit terms pending final disposition of the appeal in
8 the 2nd Circuit brought by the Campbell litigants. And the
9 reason for that was that while this litigation was absolutely
10 prohibited, I recognize the possibility that even though I had
11 ruled that the litigation couldn't proceed, and the district
12 court had affirmed me, the Campbell litigants had brought an
13 action in the 2nd Circuit, and that I didn't want to prejudice
14 you, Dr. Sizemore, if the 2nd Circuit were to reverse the -- me
15 in the district court; but the 2nd Circuit didn't reverse me,
16 or the district court. And my July 1st, 2010 order also
17 provided that in the event the 363 sale order is not altered on
18 appeal after the Campbell appeal has been exhausted, New GM
19 may file a motion with this court for a supplemental order
20 requiring Dr. Sizemore to dismiss New GM from the action that
21 Dr. Sizemore had brought with prejudice, and to continue to
22 block Dr. Sizemore from any further prosecution of the Sizemore
23 action against New GM or otherwise pursuing any of the claims
24 asserted in the Sizemore action against New GM in any other
25 action, forum, proceeding, or otherwise.

1 Now, Dr. Sizemore, you've said a number of times in
2 your written pleadings and again today, "But this is only for
3 discovery." Well, that is not a satisfactory basis from
4 sidestepping my order. Judge Morero expressly ruled at 439
5 B.R. 339, among other things, Dr. Sizemore may not sue New GM.
6 That was at page 341. And he went on to say where an order
7 prohibits, as the 363 sale order does here, a particular class
8 of claims from being brought against a legal entity, it is
9 undoubtedly understood to also prohibit, and quote, "action for
10 discovery," quote, with respect to that claims from being
11 brought against that same entity. And I was reading from pages
12 341 and 342.

13 Dr. Sizemore, we have a rule of law called res
14 judicata, which means that after something has been litigated,
15 that matter is decided, unless it's reversed on appeal. Judge
16 Morero's ruling is res judicata: he has ruled on the exact
17 issue you're raising here and he has ruled against you. So as
18 I said, the only reason, frankly, that I'm being nice about it
19 is because you're not a lawyer.

20 It is time to bring this to an end. It must be
21 brought to an end, and I am issuing the order in the exact form
22 New GM asked for it with only two modifications. One is that
23 where the order, the proposed order, says, and I need to find
24 it, on --

25 DR. SIZEMORE: Can I ask Your Honor another --

1 THE COURT: -- page --

2 DR. SIZEMORE: -- question?

3 THE COURT: -- 2, in the parenthetical where it
4 says, "including any discovery," those words are to be put in
5 boldface and underlined; secondly, it is to add a paragraph
6 just before the last one that says, "Ordered," comma, "for the
7 avoidance of doubt," comma, "that this order shall not be
8 collaterally attacked in any other court," comma, "state or
9 federal," comma, "and it shall be reviewed only by a higher
10 court in the 2nd Circuit," semicolon, "and it is further," and
11 then it will flow to the final paragraph of this order.

12 Dr. Sizemore, I well understand how bankruptcy can be
13 harsh on individual litigants. Believe me, I considered your
14 contentions the first several times you made them, but with
15 respect, enough is enough.

16 DR. SIZEMORE: Well, may I --

17 THE COURT: And your litigation must now come to a
18 halt. Doctor --

19 DR. SIZEMORE: May I ask --

20 THE COURT: -- Sizemore, your time to appeal this
21 order will run from the time of entry of the slightly revised
22 order that New GM gives me. Nothing is to be brought anywhere
23 unless you choose to appeal it to the District Court of the
24 Southern District of New York. Do I make myself clear?

25 DR. SIZEMORE: Well, I understand you, but I have a

1 couple more questions.

2 THE COURT: I can't give you legal advice. If there
3 is an uncertainty as to what I said and what my ruling is, I'll
4 allow you to ask and then decide whether I should answer them.

5 DR. SIZEMORE: Okay. I have two questions. Are you
6 stating that you're not permitting me to bring legal action
7 against any party for product liability even if it's the
8 supplier or a manufacturer of a part?

9 THE COURT: I'm ruling vis-à-vis New GM and I'm
10 enforcing my earlier order. I don't remember what I said in my
11 earlier orders. I am not going beyond what I said in my
12 earlier orders, but what I am saying is I meant it when I
13 issued those earlier orders, and those earlier orders continue
14 to be in place.

15 DR. SIZEMORE: I understand that in your order you
16 talked about any incident, occurrence, or event that happened
17 after -- see, I guess what GM is saying is that they can do
18 whatever they want to at this point because if the issue has
19 anything to do with product liability that happened prior to
20 the closing date, they bear no liability even though the law
21 allows me remedy for conduct that's happened after the closing
22 date. And it appears to me that the Court is dismissing their
23 actions that have happened after the closing date because they
24 relate somehow to product liability that happened prior to the
25 closing date.

1 THE COURT: Don't paraphrase orders, Dr. Sizemore.
2 The orders say what they say. I don't think General Motors
3 asked me for permission to do anything it wants to; it asked me
4 to enforce my earlier orders.

5 And I am trying to speak very quietly and not to lose
6 my temper, but you're pushing me, Dr. Sizemore.

7 DR. SIZEMORE: Well, I apologize. That's not my
8 intent. This has been something very frustrating for me as
9 well, and I apologize to you, but everything I've understood,
10 some of it has been confusing and some of it doesn't appear to
11 match what I've read.

12 THE COURT: Well, I don't remember the exact words I
13 issued in those past orders. If you remember them, Mr.
14 Karotkin --

15 DR. SIZEMORE: I remember --

16 THE COURT: -- I'll accept your memory of them, but
17 ultimately neither Mr. Karotkin's memory of what I previously
18 ordered nor yours, Dr. Sizemore, controls; it's what I said in
19 those prior orders in writing, and as to which Judge Morero
20 affirmed me. Mr. Karotkin, can you be of help in this, or is
21 your recommendation that we simply read the earlier orders?

22 MR. KAROTKIN: My recommendation is that we read the
23 earlier order. I think it's very clear.

24 THE COURT: Okay. All right, then. We're adjourned.
25 Everybody have a nice day.

1 MR. KAROTKIN: Thank you, Your Honor. We'll submit a
2 revised order.

3 THE COURT: I'm sorry?

4 MR. KAROTKIN: We -- I'm sorry. We will submit a
5 revised order consistent with your ruling.

6 THE COURT: Very well. Have a good day.

7 MR. KAROTKIN: Thank you, sir.

8 (Whereupon these proceedings were concluded at 11:18 a.m.)

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I N D E X

R U L I N G S

DESCRIPTION	PAGE	LINE
General Motors LLC's Motion to Supplement Order Enforcing 363 Sale Order with Respect to Products Liability Claim and Discovery Requests of Dr. Terrie Sizemore Granted.	15	20

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C E R T I F I C A T I O N

I, Shelia Watkins, certify that the foregoing transcript is a true and accurate record of the proceedings.

**Shelia
Watkins**

Digitally signed by Shelia Watkins
DN: cn=Shelia Watkins, o, ou,
email=digital1@veritext.com,
c=US
Date: 2011.07.15 13:40:26 -04'00'

SHELIA WATKINS

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: July 15, 2011