

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 09-50026-reg

- - - - -x

In the Matter of:

GENERAL MOTORS CORPORATION, ET AL.,

Debtors.

- - - - -x

U.S. Bankruptcy Court
One Bowling Green
New York, New York

September 26, 2011
10:26 AM

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Hearing on Motions Filed by Billy Kidwell

Hearing on Fee Applications

Application of Mark Buttita Pursuant to 11 U.S.C. Section 503(b) for Allowance of Administrative Expenses Incurred in Making a Substantial Contribution in this Chapter 11 case from June 4, 2009 through July 15, 2009

234th Omnibus Objection to Claims (Pension Benefits Claims of Former Salaried and Hourly Employees)

235th Omnibus Objection to Claims (Pension Claims and Welfare Benefits Claims of Former Salaried Executive, or Hourly Employees)

236th Omnibus Objection to Claims (Splinter Union Employee Claims)

237th Omnibus Objection to Claims (Claims Relating to Former Employees Represented by United Auto Workers)

238th Omnibus Objection to Claims (Welfare Benefits Claims of Retired and Former Salaried and Executive Employees)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

239th Omnibus Objection to claims (Supplemental Executive Retirement Benefits Claims and Welfare Benefits Claims of Retired and Former Salaried and Executive Employees)

240th Omnibus Objection to Claims (Eurobond Debt Claims)

241st Omnibus Objection to Claims (Claims for Equity Interests and Duplicate Debt Claims)

242nd Omnibus Objection to Claims (Contingent Co-Liability Claims)

243rd Omnibus Objection to Claims and Motion Requesting Enforcement of Bar Date Orders

244th Omnibus Objection to Claims and Motion Requesting Enforcement of Bar Date Orders

245th Omnibus Objection to Claims and Motion Requesting Enforcement of Bar Date Orders

246th Omnibus Objection to Claims

Cross-Motion of Post Effective Date Debtors and Motors

1 Liquidation Company GUC Trust for Entry of Order Pursuant to 11
2 U.S.C. Sections 105(a) and 1142(b) and Fed. R. Bankr. P.
3 7012(b) and 9014(c) (1) Enforcing Settlement Agreement with
4 Claimant Barry H. Spencer, Jr.; (II) Striking Documents Filed
5 by Claimant; and (III) Enjoining Claimant from Further Action
6 Against the Debtors, Post-Effective Date Debtors, Motors
7 Liquidation Company GUC Trust, and Their Officers and
8 Professionals

9
10 Motion to Accept Indemnity & Discharge Bonds filed by Barry-
11 Henry Spencer, Jr.

12
13
14
15
16
17
18
19
20
21
22
23
24

25 Transcribed by: Dena Page

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

WEIL, GOTSHAL & MANGES LLP

Attorneys for Motor Liquidation

767 Fifth Avenue

New York, NY 10153

BY: JOSEPH H. SMOLINSKY, ESQ.

STEPHEN KAROTKIN, ESQ.

DICKSTEIN SHAPIRO LLP

Attorneys for Motor Liquidation Trust

1633 Broadway

New York, NY 10019

BY: STEFANIE B. GREER, ESQ.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HONIGMAN MILLER SCHWARTZ AND COHN LLP
Attorneys for Debtors and Debtors-In-Possession
2290 First National Building
660 Woodward Avenue
Detroit, MI 48226

BY: ROBERT B. WEISS, ESQ. (TELEPHONICALLY)

KING & SPALDING
Attorneys for General Motors LLC
1185 Avenue of the Americas
New York, NY 10036

BY: ARTHUR J. STEINBERG, ESQ.
SCOTT DAVIDSON, ESQ.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BRYAN CAVE LLP

Attorneys for Evercore Group LLC

211 North Broadway

Suite 3600

St. Louis, MO 63102

BY: BRIAN C. WALSH, ESQ. (TELEPHONICALLY)

BUTZEL LONG

Attorneys for the Unsecured Creditors' Committee

380 Madison Avenue

22nd Floor

New York, NY 10017

BY: ROBERT SIDORSKY, ESQ.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CAPLIN & DRYSDALE

Attorneys for Mr. Buttita

One Thomas Circle N.W.

Suite 1100

Washington, DC 20005

BY: RONALD E. REINSEL, ESQ.

KRAMER LEVIN NAFTALIS & FRANKEL, LLP

Attorneys for the Unsecured Creditors' Committee

1177 Avenue of the Americas

New York, NY 10036

BY: LAUREN M. MACKSOUD, ESQ. (TELEPHONICALLY)

GODFREY & KAHN S.C.

Attorneys for Fee Examiner, Brady Williamson

One East Main Street

Madison, WI 53701

BY: KATHERINE STADLER, ESQ.

BRADY C. WILLIAMSON, ESQ.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

LAW OFFICES OF ROGER GEDDES

Attorneys for Creditor, Erica Davis

826 Orange Avenue

Suite 500

Coronado, CA 92118

BY: ROGER A. GEDDES, ESQ. (TELEPHONICALLY)

MORRIS NICHOLS ARSHT & TUNNELL, LLP

Attorneys for the Unsecured Creditors' Committee

1201 North Market Street

18th Floor

Wilmington, DE 19899

BY: MATTHEW B. HARVEY, ESQ. (TELEPHONICALLY)

NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL

Attorneys for State of New York

The Capitol

Albany, NY 12224

BY: MAUREEN F. LEARY, AAG (TELEPHONICALLY)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STUTZMAN, BROMBERG, ESSERMAN & PLIFKA
Attorneys for Dean Trafelet, Future Claimants'
2323 Bryan Street
Suite 2200
Dallas, TX 75201

BY: ROBERT T. BROUSSEAU, ESQ. (TELEPHONICALLY)

UNITED STATES DEPARTMENT OF JUSTICE
Office of the United States Trustee
33 Whitehall Street, 21st Floor
New York, NY 10004

BY: BRIAN S. MASUMOTO, ESQ.
TRACY HOPE DAVIS, ESQ.
DAVID JONES, ESQ.

ALSO PRESENT:
LAURA J. EISELE, AlixPartners
BILLY RAY KIDWELL, Party Pro Se
MICHAEL EISENBAND, FTI Consulting, Inc.
ANNA PHILLIPS, FTI Consulting, Inc.
BARRY H. SPENCER, Party Pro Se

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

THE COURT: Good morning again. Have seats, please.
Have seats, everybody.

Once more, I apologize to you all.

All right, we'll deal with the GM matters in their original order. In my courtroom, I see Mr. Steinberg. You're here on Kidwell?

MR. STEINBERG: Yes, Your Honor.

THE COURT: All right, Mr. Kidwell, are you on the phone?

CourtCall, do we have other folks --

COURTCALL OPERATOR: Yes, he is.

THE COURT: I beg your pardon?

COURTCALL OPERATOR: Yes, he is on the line.

THE COURT: Okay, Mr. Kidwell, are you with us?

MR. KIDWELL: Hello?

THE COURT: Okay, good morning, Mr. Kidwell.

MR. KIDWELL: Good morning.

THE COURT: Now, I understand that you don't have a lawyer, and I'm going to cut you some slack there, but while I have to tell you that while I honor your service, I have a fair number of concerns about your legal entitlement to what you are asking for. Please focus in your argument, and I understand your frustration with your car, but I think it's a 2003, and both its express warranties and your lemon law rights expired a

1 long time ago, in fact, before the General Motors case was
2 filed two years ago. Don't talk so much about the car getting
3 you mad because I understand that. If I had a car like that,
4 it would get me mad, too. But talk about your legal
5 entitlement, please, and start with why you think I'm not fair
6 and I need to recuse myself.

7 COURT CALL OPERATOR: Mr. Kidwell has disconnected.

8 THE COURT: He's disconnected?

9 COURT CALL OPERATOR: His line has stopped
10 (indiscernible).

11 THE COURT: Okay.

12 Mr. Steinberg, I'm going to need to impose on you.
13 There are so many other people in the courtroom, and with it
14 now being 10:30, I'm going to take the 10:30 calendar and ask
15 you to sit by in case he gets back on the line. And if he
16 does, I'll hear argument. And I'm also in a position where if
17 I need to, I can rule on the briefs. Thank you.

18 Is there any reason why we can't start with the 10:30
19 calendar now? It's one minute to 10:30.

20 Is Mr. -- yeah, Mr. Williamson is there and is out in
21 right field. And Mr. Karotkin's at third base. As far as you
22 know, gentlemen, are we in a position where we can proceed?

23 MR. WILLIAMSON: Yes, Your Honor.

24 THE COURT: Okay, and who's going to take the lead?

25 Mr. Williamson, good morning.

1 MR. WILLIAMSON: Good morning, Your Honor. Brady
2 Williamson, the fee examiner, with counsel, Katherine Stadler.
3 Your Honor, we're here on the final fee applications on Motors
4 Liquidation. We've filed a final report. We have filed
5 twenty-five individual reports covering the period from October
6 1st, 2010 through the confirmation date.

7 We recommend that the Court give its approval to the
8 interim and final fees under Section 330 as they were submitted
9 and adjusted by stipulation, and we recommend that the Court
10 enter an order authorizing payment. The fees are reasonable,
11 they meet the requirements of the Code and the related
12 authority, and the professionals in this case have provided
13 real value to the estates.

14 THE COURT: Okay.

15 Mr. Masumoto or Ms. Davis, do you wish to be heard?

16 MR. MASUMOTO: Good morning, Your Honor. Brian
17 Masumoto for the Office of the United States Trustee. As
18 indicated by the fee examiner, our office did file a response
19 and did agree with the recommendations of the fee examiner. We
20 have, at this point, nothing further and no further objections
21 to raise.

22 THE COURT: Okay. Do any of the applicants
23 representing the estate fiduciaries wish to be heard in any
24 way?

25 Mr. Smolinsky, are you coming up?

1 MR. SMOLINSKY: Yes, Your Honor.

2 Good morning, Your Honor. Joseph Smolinsky of Weil,
3 Gotshal & Manges for the debtors. I think Mr. Brady (sic) laid
4 it out well. I just want to indicate --

5 THE COURT: Mr. Williamson, I assume.

6 MR. SMOLINSKY: Mr. Williamson. I'm sorry. I just
7 want to lay out for Your Honor a change from what we had
8 discussed previously on the rate increase issue. The parties
9 have gotten together and have decided that the amounts at issue
10 can be paid out subject to the parties' obligations to disgorge
11 to the extent that there are amounts that are still at issue at
12 the end of the day, and we will speak with Mr. Williamson and
13 his colleagues further on those issues and attempt to resolve
14 them.

15 THE COURT: So I decide the legal issue, but it's not
16 a matter for today?

17 MR. SMOLINSKY: That's correct, Your Honor.

18 THE COURT: Very well.

19 Anybody else wish to be heard?

20 MR. WEISS: Your Honor, this is Robert Weiss on behalf
21 of Honigman Miller Schwartz and Cohn.

22 THE COURT: Yes, Mr. Weiss, good morning.

23 MR. WEISS: Good morning, sir. I just wanted to point
24 out that the schedule that's been attached to the examiner's
25 final report, we're listed under the schedule that says

1 "amounts already paid to the professionals, eighty percent of
2 fees and a hundred percent of expenses". With regard to the
3 final fee application, we have not received any payment at all.
4 I believe the examiner agrees with that, but I just wanted to
5 make that correction.

6 THE COURT: Okay.

7 Anybody else? Mr. Williamson, come on up, please.

8 MR. WILLIAMSON: Just one logistical note, Your Honor.
9 Later today or tomorrow, with the cooperation of the debtors'
10 counsel, we'll be circulating a draft order and slightly
11 modified schedules that I think accommodate everyone's
12 concerns.

13 THE COURT: Okay.

14 Anything else?

15 All right, well, given the consensual resolution, I'm
16 not going to speak at length. This, at the risk of stating the
17 obvious, has been an enormous case placing tremendous
18 challenges on many people, most significantly the retained
19 fiduciaries in the estate and the professionals for them.

20 Any time you have a case this big, and this case was
21 huge in terms of both assets and debt, a lot of work has to be
22 done. A lot of lawyering, a lot of financial advisory
23 services, a lot of accounting services. Across the board, I
24 was very pleased with the quality of the services here, and I
25 thought the estate got excellent bang for the buck.

1 Legal fees result from an amalgam of factors. They
2 run -- they're kind of like taxis. There's how much the meter
3 flips each time and it's also how far you travel. And each of
4 those contributes to the overall size of the fee, and perhaps
5 you could even take the metaphor to a further extent, as well.
6 Although there were times when I would have preferred that
7 there be less litigiousness amongst competing creditor
8 constituencies, a view that I made known at the time, I think
9 people got the message, and I thought they did a very good job
10 in keeping the fees reasonable for the needs that had to be
11 accomplished.

12 At the same time, I'm very grateful to Mr. Williamson
13 and his colleagues for their services. Inevitably, when you
14 have so many fee requests and so many timekeepers keeping
15 record of their fees, especially those who have less experience
16 with the requirements of the bankruptcy system, people stray
17 from what we expect. And I think Mr. Williamson for helping
18 keep people get back on track.

19 By that, I don't mean to understate the contributions
20 of the U.S. Trustee's office which I will note was on the job
21 in this but which, to their credit, avoided duplication of
22 effort, and for that, too, I am grateful.

23 So the fees in the amounts that have been adjusted to
24 consensually resolve these issues are approved. The remaining
25 matters, as Mr. Smolinsky referred to in his remarks, are

1 continued. And I will enter one or more interim orders
2 consistent with my ruling today.

3 Mr. Williamson, as a mechanical matter, are you going
4 to take the lead on the order or are debtors' counsel or some
5 other party?

6 MR. WILLIAMSON: It will be collegial. I think we'll
7 be convening with the debtors' counsel this afternoon, Your
8 Honor.

9 THE COURT: Okay. What I would like is from whomever
10 presents the order or orders to give me either a letter of
11 transmittal or an e-mail transmittal that confirms that the
12 order has been run by everybody and that it is consistent with
13 what everybody thought it would say.

14 And with that, I think we're adjourned on that.
15 Anybody who's here solely on those few requests -- now we're
16 talking about estate fiduciaries -- you may have a hybrid
17 capacity, Mr. Williamson -- is free to go, if he or she wishes
18 to.

19 MR. WILLIAMSON: Your Honor, simply let me note for
20 the record that the representatives of those seeking fees for
21 ARPC and for Mr. Buttita have issues that they may want to
22 present to the Court. But we've outlined our position in our
23 report.

24 THE COURT: Okay. So you can either stay on that or
25 leave, as you see fit. When I was talking about estate

1 fiduciaries, I was intending to be very precise and not to deal
2 with their issues.

3 Mr. Masumoto, are you rising for anything other than
4 to get out of here?

5 MR. MASUMOTO: No, Your Honor, although I may monitor
6 some of these subsequent matters.

7 THE COURT: Okay.

8 MR. MASUMOTO: Thank you.

9 THE COURT: Okay. Very well. All right.

10 COURTCALL OPERATOR: Your Honor?

11 THE COURT: Yes.

12 COURTCALL OPERATOR: Mr. Kidwell is back on the line.

13 THE COURT: Okay. Good.

14 Mr. Kidwell, were you able to hear my opening
15 observations?

16 MR. KIDWELL: No, sir. My phone went dead, and I had
17 to get another one from a different room.

18 THE COURT: Okay. Well, I'm going to say it again,
19 perhaps not exactly the way I said it the first time, because I
20 was speaking without notes. But here's where I need your help.

21 First, Mr. Kidwell, I honor your service. I'm a
22 veteran too, although I wouldn't for half a second suggest that
23 I might have made the sacrifices you did. But the issue here
24 that I need your help on is your entitlement to the exact -- to
25 the relief you're asking for, because I have very little doubt

1 that the car drove you nuts. But it's a 2003 and its express
2 warranties expired a long time -- not just before today -- but
3 before the GM case was filed in June of 2009.

4 First I think I need your help in explaining to me why
5 you think I'm not going to be fair; why you think I'm
6 prejudiced against you; and why I need to recuse myself, which
7 is the legal word we use for disqualifying myself.

8 Then --

9 MR. KIDWELL: Well --

10 THE COURT: -- bear with me, because I'm telling you
11 what's on my mind and then I'm going to let you speak your
12 piece as soon as I finish the thoughts that I need you to focus
13 on.

14 MR. KIDWELL: Okay.

15 THE COURT: Then I want you to focus, not so much
16 about what's bugging you with the car, because I understand the
17 car really bugs you. But the issue we have to deal with is
18 what I can or should be doing when the warranty on the car
19 expired a long time ago, when your remedies were limited to
20 getting the car fixed, rather than getting money, and when your
21 rights under the Lemon Law expired some time ago, and when you
22 also lost in the Lemon Law procedures.

23 So the issue from a legal perspective -- and I'm
24 obviously going to cut you some slack because you're not a
25 lawyer -- is not how much the car is bugging you, but what I,

1 as a bankruptcy judge can do about it under the facts that we
2 have here.

3 So whenever you're ready, make your presentation as
4 you see fit, within a reasonable amount of time. But before
5 you're done, I need you to focus on the legal issues that I
6 identify.

7 MR. KIDWELL: Okay. Thank you, Your Honor. First
8 off, there's I believe five motions before you right now. And
9 I'd like to withdraw number 4, the motion for disqualification
10 of judge.

11 THE COURT: Okay.

12 MR. KIDWELL: I've been just stopped because of the
13 legal process and the dishonesty by GM's attorneys at every
14 stage of the proceedings.

15 Now, it seems that two matters, two points that you
16 brought up, you've been misinformed on. One, I did not lose
17 the Lemon Law hearing, I won. At the Lemon Law hearing, it was
18 found that the vehicle far exceeded the requirements for Lemon
19 Law relief, and I met all the requirements, every single one.
20 And they said that the car had a manufacturing defect that was
21 substantially imparted and that the motor was no good. The
22 transmission was no good. The wiring was no good. The doors
23 would fly open when you drove it.

24 And apparently what happened was, this was the last
25 General Motors S-10 Pickup being made, it was the last coming

1 off the assembly line, and they used the wrong parts, and they
2 couldn't fix it until they got -- after ordering parts, which
3 they told me would be two years or so later. So I was stuck
4 with a truck that would sporadically die at a red light, wasn't
5 safe to drive, and everything in the world was wrong with it.
6 So I went through the Lemon Law process and proved this.

7 What happened was in Florida's Lemon Law process, they
8 found that there was a technicality, based on we now know,
9 because it's been proven in other courts, that General Motors
10 paid a Sitel Corporation in Tampa to lie and commit perjury at
11 their Lemon Law hearings, and they have Sitel employees
12 claiming to be General Motors employees. This happened -- this
13 was discovered by the Ohio appeals court.

14 And what they did was, on this technicality, I'm
15 required to give them notice by certified mail that there's a
16 defect. Well, they claimed that I never served them by
17 certified mail after they found out that all my records had
18 been destroyed by Hurricane Charlie when my house was
19 destroyed. So they paid a Sitel employee in Tampa to lie and
20 say that she was a General Motors employee in Detroit, when
21 she's never ever been to Detroit.

22 So I -- because of them lying and saying this, the
23 technicality was that they got what's called in Florida, under
24 Florida's Lemon Law, a last chance to fix my defective vehicle.
25 So I won -- I should have gotten relief right there, but

1 because they had lied and said that notice of defect was not
2 served on them by certified mail, they got a last chance.

3 Florida statutes give them ten dollars -- I mean, ten
4 days to perform their last chance. They had ten days to fix
5 the defect after the Lemon Law court gives them a last chance
6 effort. I have been -- I have been waiting seven years for
7 them to comply with this ten-day last chance to fix the
8 vehicle.

9 Now, under Florida Lemon Law, the Florida Lemon Law
10 rights are still in effect, because under Florida's Lemon Laws,
11 I sent you a copy of it, I believe I filed it in the case
12 numerous times, but under Statute 681, which is Florida's Lemon
13 Law, and the chapter is cited at Motor Vehicle Warranty
14 Enforcement Act, the enforcement act says that any violations
15 by a manufacturer, gives me a right to pursue this. And
16 specifically, part of Florida's Lemon Law is going to Florida's
17 state courts. And it says that it becomes what's known as a
18 fraudulent business practice when the manufacturer violates
19 Florida's Lemon Law, as they did.

20 So I exercised my rights under the Lemon Law and took
21 it to Florida State Court. They -- General Motor's attorneys
22 kept trying to avoid a hearing on the merits using any delaying
23 tactic they can. And this same law firm was found guilty of
24 illegally using these tactics and made to pay three times the
25 amount to other Florida Lemon Law victims.

1 I was finally getting ready for a hearing on this
2 right before the bankruptcy came out. So the bankruptcy came
3 out, and then General Motors had the New GM attorneys go to the
4 court the day after you signed the order saying that Lemon
5 Law -- state Lemon Law obligations are an acquired liability
6 from the New General Motors. The day after you signed the law
7 saying that, they went to the state court here where I have my
8 Lemon Act Law action pending, and lied to the state court and
9 said that they was New, because they said that Lemon Law
10 obligations belonged to the Old General Motors, and were
11 protected by your bankruptcy court.

12 So the Lemon Law is still active under Florida law. I
13 have a right to pursue this before the state court when they
14 violate the chapter. They have since admitted that they had
15 violated the chapter. They put it in writing that -- because
16 when I tried to sue the Sitel employee for committing perjury
17 at the hearing, they told me then that they admitted that she
18 was never a General Motors employee, was never in Detroit, and
19 that she actually was a Sitel Corporation employee.

20 So they violated Florida's Lemon Law entitling me to
21 three times the damages from state court, which is part of the
22 Lemon Law process. And it was actually after the day after
23 your order when the -- it was the New General Motors that
24 committed this illegal act, went to the state court and lied to
25 them, saying that the state Lemon Law obligations are not part

1 of the sales order, that they're not an acquired liability of
2 the New General Motors.

3 I think what would solve a lot of time in this case is
4 if you could clarify right now, are state Lemon Law actions an
5 assumed liability of the New General Motors. Can we have a
6 decision on that?

7 THE COURT: On the New General Motors?

8 MR. KIDWELL: Yes, sir.

9 THE COURT: I think I got to give the lawyer from New
10 General Motors a chance to be heard before I issue a ruling on
11 it.

12 MR. KIDWELL: Okay. Well, it's my understanding that
13 General Motors made a deal with nine state attorneys and also
14 with the -- so it was nine state attorneys that lodged
15 objections in this case to the sales of General Motors. Also
16 the Center for Auto Safety, Consumer Action, Consumer's
17 Reliability and Safety, and the National Association of
18 Consumer Advocates, all filing objections to the GM bankruptcy
19 sale, because it attempted to minimize General Motors from
20 state Lemon Laws.

21 Well, General Motors made a deal with the state
22 attorneys, they made a deal with the Center for Auto Safety and
23 Consumer Action and all these groups. They have -- if they
24 dropped their objections, that they would make Lemon Law
25 commitments part -- an assumed liability for the New General

1 Motors.

2 And the New General Mot -- in fact, Section 2(a)(7) of
3 the amendment and restated master sale and purchase agreement
4 between Old GM and New GM, provides that New GM assumes all
5 liabilities arising not just under express written warranties,
6 but they also are responsible for all obligations under state
7 Lemon Laws. That's what it says specifically in your court
8 order and in the sales -- the restated sale and purchase
9 agreement.

10 So unless it says one thing and means something else
11 they're responsible for all state Lemon Law obligations. And
12 Florida State Lemon Laws state that I am still entitled to
13 relief. In fact, I'm entitled to three times relief, because
14 they committed fraud.

15 THE COURT: Okay. Anything else?

16 MR. KIDWELL: Is there any other concern you have
17 about the issue, because I can prove beyond any doubt that the
18 Lemon Law has not expired in this case. And I am confident
19 enough that they are still liable under Florida's Lemon Law, in
20 fact, has been ongoing continuously. It was in the state court
21 until they lied to the state court about two and a half years
22 ago to freeze that case. But if they had not lied to the state
23 court about the New General Motors being responsible for Lemon
24 Laws, we would now have a trial on it.

25 And they also lied about me not prevailing at the

1 Lemon Law hearing. I sent a judgment order to this court and
2 to every other court that specifically states that the vehicle
3 far exceeds the Lemon Law requirements. The only thing was, is
4 they were given a last chance opportunity to repair it. And
5 under Florida's Lemon Laws they have ten days to take this last
6 chance.

7 It should also be noted that under Florida's Lemon
8 Laws I have a right to appeal this to what they call a new car
9 arbitration board. And they denied me my right to do that
10 because they sent the -- General Motors' attorney sent the
11 appeal form that has to be signed within seven days or
12 something -- he sent my appeal form to a car dealership in St.
13 Petersburg, and I had never in my life lived in St. Petersburg,
14 and I didn't discover this until I sued them in state court and
15 asked for them to provide the form. I told them that I was
16 never provided my form, and they wouldn't let me take it to the
17 new car arbitration board.

18 So there's been nothing but illegal conduct by General
19 Motors in this to steal 30,000 dollars from me and my family.
20 And it should be noted, they spent probably a million dollars
21 on attorneys of the taxpayers' dollars to steal this 30,000
22 dollars from me. It's outrageous. They should not only have
23 to pay me what the Florida's Lemon Laws say I have a right to,
24 but they should be prosecuted and put in jail for this.

25 You know, it's beyond outrageous. They caused me to

1 have three heart attacks now. I had one about June or July of
2 last year. I had one Christmas Eve, I fell down and when I
3 fell down I broke my elbow, shattered my whole elbow, and then
4 I had one just about three weeks ago -- two or three weeks ago,
5 September 4th. And it's all from this dishonest conduct by
6 General Motors, in this case, where they lied to you and said
7 that I didn't prevail at the hearing, when General Motors'
8 attorneys -- General Motors was a party at the Lemon Law
9 process. They knew what the judge says, and they know they're
10 lying when they say I didn't prevail. And they know they're
11 lying when they say they didn't break Florida's law and pay an
12 employee of the Sitel Corporation to commit perjury and claim
13 that she was a GM manager in Detroit.

14 You know, they should be put in jail for their conduct
15 in this case. So I guess that's -- I'm sorry to be upset
16 towards you, but there's been so much criminal conduct, it's
17 like they operate like the Mafia and they're stealing our
18 taxpayer dollars to engage in this illegal conduct.

19 And the bankruptcy court should stop it, because it's
20 wrong to take our taxpayer dollars intended to bail out General
21 Motors and pay attorneys to lie and commit perjury and do all
22 this illegal stuff just to cheat a disabled veteran out thirty
23 grand. I paid them thirty grand, in good faith, for a truck,
24 that they left sitting in my driveway and had to stop running
25 the day I bought it.

1 So, you know, when I drove it home, it stalled the
2 first time. So they stole thirty grand from me. They've lied
3 in every court. They get by within -- they spent probably a
4 million of the taxpayers' dollars on law firm after law firm.
5 They use legal technicalities to keep the truth out of the
6 courts. And the truth is, they paid a woman to commit perjury.
7 They stole thirty grand from me. And I still -- it's still an
8 active legal Lemon Law claim that's in the state court that
9 they've stopped by lying and saying that the New General Motors
10 doesn't have to honor warranties.

11 But I guess that's it. I'm sorry to take so long.

12 THE COURT: Okay. That's okay. Thank you, Mr.
13 Kidwell.

14 MR. KIDWELL: Thank you, Your Honor.

15 THE COURT: Okay. I'll hear from New GM now. Mr.
16 Steinberg, would you come to the main lectern, please.

17 MR. STEINBERG: Good morning, Your Honor. I think Mr.
18 Kidwell's presentation highlighted the fact that a lot of what
19 he has complained about were acts made by Old General Motors in
20 the conduct of hearings that took place before the bankruptcy.
21 And all of those actions were not the actions that have been
22 assumed by New General Motors under the asset purchase
23 agreement.

24 A lot of what Mr. Kidwell has argued here with regard
25 to the Lemon Law, was presented to the federal district court.

1 And the federal district court has actually ruled on the
2 matter. There are four orders that have been entered in this
3 case which I think we would like to focus Your Honor's
4 attention to and has been laid out in our presentations before.

5 One is an order by the federal district court on
6 September 10, which dismissed New General Motors with --
7 dismissed all claims against New General Motors with prejudice.
8 Then the Eleventh Circuit said that there was a pending motion
9 for reconsideration, and therefore they wanted the district
10 court to further act on the complaint and the motion for
11 reconsideration before it would then entertain any appeal to
12 the September 10th order.

13 And so then, on December 28, 2010, the district court
14 rendered a decision -- and all of these have been provided to
15 Your Honor. And there, the district court judge, in a
16 decision, dismissed the Lemon Law claims with prejudice. And
17 on page 6 and 7 of the decision, it highlighted what Mr.
18 Kidwell had argued and said that it interpreted the asset
19 purchase agreement to provide for limited relief under what was
20 defined under the asset purchase agreement, as Lemon Law --
21 Lemon Law was actually a defined term under the APA -- but
22 dismissed with prejudice the Lemon Law rights.

23 Then in the summer of this year -- and then in the
24 context of dismissing the Lemon Law claims, it said that since
25 there was an ambiguity as to what Mr. Kidwell was claiming on

1 the express warranty claims, they were going to dismiss the
2 express warranty claims without prejudice, with leave for Mr.
3 Kidwell to replead those actions. When Mr. Kidwell did not
4 replead those actions, in I think July of this year, the
5 district court filed a sua sponte order to show cause as to why
6 the matter shouldn't be dismissed. And in August of this year,
7 the court dismissed the complaint without prejudice.

8 And then in September 15th, of this year, the Eleventh
9 Circuit ruled on the appeal of the original September 10, 2010
10 order of the district court, which had dismissed New GM with
11 prejudice, and decided to affirm the appeal for failure to
12 prosecute.

13 And so right now, we have a district court that has
14 dismissed the Lemon Law claims with prejudice, and any appeal
15 of any claims that had gone from New Gen -- with respect to New
16 General Motors as reflected in the September 10, 2010 order of
17 the federal district court, has been dismissed with prejudice
18 by the Eleventh Circuit.

19 THE COURT: Pause, please, Mr. Steinberg.

20 MR. KIDWELL: Your Honor --

21 THE COURT: Bear with me, Mr. Kidwell, I'm asking Mr.
22 Steinberg a question.

23 Mr. Steinberg, your focus, understandably, is on New
24 GM. To what extent do any of the motions Mr. Kidwell has
25 raised, in your view, call upon me to decide Old GM's liability

1 in contrast to yours?

2 MR. STEINBERG: I don't know whether Mr. Kidwell has
3 filed a proof of claim in the bankruptcy case with regard to
4 any claims against Old GM. The sole focus of the motions that
5 are before you today are with regard to New General Motors'
6 culpability. And there, the asset purchase agreement, I think,
7 specifically talked about what New GM was assuming. So I don't
8 think for purposes of today you have to rule on the Old General
9 Motors situation.

10 THE COURT: Okay. Continue, please.

11 MR. STEINBERG: The Lemon Law claims are defined in
12 Section 1.1 of the asset purchase agreement. And it references
13 back to the express warranty claims. And therefore, the
14 decision by New General Motors to take on Lemon Law claims were
15 the duties to repair.

16 Here the duties to repair had expired through the
17 express warranties in 2006. Mr. Kidwell refers to the fact
18 that he won the Lemon Law decision. There was an arbitrator
19 decision in 2005. And indeed Mr. Kidwell lost in that action,
20 because he had not given Old GM the opportunity to do the final
21 last opportunity to do a repair.

22 Mr. Kidwell's argument is that he was deprived of
23 that opportunity because of either the acts of certain parties
24 or notices were sent in the wrong spot. All of those things
25 may lead to a claim against Old GM. They aren't the claims

1 that were assumed by New GM. New GM specifically did not take
2 on all warranty claims. It only took on the express warranty
3 claims that were in effect in the glove compartment. They were
4 limited to the duties to repair. They weren't limited -- they
5 didn't assume damage-type claims at all. And they didn't
6 assume damage-type claims under the Lemon Law either. It was
7 only a duty to repair. They had expired.

8 If Mr. Kidwell has a grievance against attorneys,
9 people, actions, all taken before the bankruptcy, he has
10 whatever those rights are against those people as a claim in
11 the bankruptcy case here. But those aren't the claims of New
12 General Motors. Those aren't the claims that New General
13 Motors took as part of the asset purchase agreement.

14 THE COURT: All right. Thank you.

15 Mr. Kidwell, I'll give you a chance to reply.

16 MR. KIDWELL: Yes, sir. This is why I asked that all
17 attorneys be specifically ordered to abide by the ABA, American
18 Bar Association Model Rules of Conduct and be specifically
19 ordered to be honest, because I'd state under oath that that
20 attorney has just lied about all of the material facts. And I
21 can prove -- I have proofs he lied about all the material
22 facts.

23 In the first place, Florida's Lemon Law has not
24 expired, and according to Chapter 681 I have a right to pursue
25 it in state court. In fact, I'll tell you the exact statute

1 that says it. And I did pursue it -- timely pursue it in state
2 court. And it was pending and was getting ready for a hearing.
3 And New General Motors -- not Old General Motors, but the day
4 after you entered the order, I state under oath that New
5 General Motors notified the state court and said that were not
6 responsible for Lemon Law, that they would not honor Lemon
7 Laws.

8 Florida Lemon Law statute 681.111, Unfair or Deceptive
9 Trade Practice says that, "A violation by a manufacturer of
10 this chapter is an unfair or deceptive trade practice as
11 defined in Part II of Chapter 501". Then Florida Lemon Law
12 681.112, Consumer Remedies, says that as part of Florida's
13 Lemon Laws, "A consumer may file an action to recover damages
14 caused by a violation of this chapter. The court shall --

15 COURTCALL OPERATOR: Hold on a second. Just a moment.

16 You still there?

17 Your Honor?

18 THE COURT: The judge is.

19 COURTCALL OPERATOR: Just one moment. We have a
20 disconnection on the other phone. Just a moment, sir.

21 You're back.

22 MR. KIDWELL: Okay. Hello?

23 THE COURT: Yes, Mr. Kidwell, continue please.

24 MR. KIDWELL: I'm sorry, my phone went dead for a
25 second.

1 Florida Lemon Law 681.112 Consumer Remedies says, "A
2 consumer may file an action in state court to recover damages
3 caused by a violation of this chapter." That's my state
4 lawsuit I was telling you about. It says, "The court shall
5 award a consumer who prevails in such action the amount of any
6 pecuniary loss, litigation costs, reasonable attorney's fees,
7 and appropriate equitable relief."

8 Now, Florida's Lemon Law gave me a right to pursue my
9 state lawsuit. The state -- but New General Motors, the day
10 after you issued the order -- the New General Motors, lied to
11 the state court and said that the sales order made General
12 Motors immune from all state Lemon Laws. They lied to stop my
13 state lawsuit.

14 Now, what he's telling you about the federal lawsuit,
15 I filed a federal lawsuit, and under the Lemon Laws, they
16 claimed I filed a federal lawsuit, because the New General
17 Motors and the Old General Motors conspired together and they
18 lied to the state court and denied me my right to the state
19 courts. They denied me access to the state court for the Lemon
20 Law process.

21 And now what happened was, the federal court issued --
22 the federal court ignored me as a pro se litigant, rubber
23 stamped -- what the General Motor's attorney said. So the
24 federal state court rubber-stamped and issued a court order
25 saying that there was an immunity for the New General Motors

1 from state Lemon Laws.

2 Well, then I went and asked the court to reconsider.
3 And as an alternative I filed a mandamus from the appeals
4 court, and I attached -- I copied this court's sales order
5 saying that they were responsible for Lemon Laws. Because the
6 federal court found that General Motors had intentionally lied,
7 they issued a new court order. That's why there's four orders.
8 They issued a new court order saying, yes, the sales order does
9 say that they are responsible for Lemon Law actions, and they
10 changed their order.

11 Well, now, they gave me thirty days or something to
12 appeal. They did dismiss the board of directors for personal
13 liability, but they said that they reversed that and said that
14 the Lemon Law was an obligation of New General Motors. Well, I
15 appealed that order, and then when I appealed it, the district
16 court went and decided to change their mind, and they issued a
17 new order. So the appeals court dismissed my appeal saying it
18 wasn't from a final order, because the district court was
19 changing its final order.

20 So then I appealed that order. And the district court
21 then gave me sixty days or some time to file an amended
22 complaint. And the new requirements were I was addressing the
23 Lemon Law evidently and not addressing the personal liability
24 of the board of directors. But they did give me a time to file
25 an amended claim. And I notified the federal court that I was

1 having heart problems, and because of my health, couldn't
2 comply with the deadline. Well, I asked them -- I went to the
3 hospital. I had a heart attack. I was telling the truth. But
4 I was too ill to comply. And also, it's too complex for me to
5 comply with, if the court wants me to reword it.

6 But this whole federal lawsuit is about -- about them
7 lying to the state court. It's not about the Lemon Law. The
8 Lemon Law is still active and in state court, and it's just
9 been held up because them lying and saying that your court
10 order prevents it when your court doesn't.

11 So all these court orders and all this contradictory
12 stuff is happening because General Motors constantly lies and
13 some -- one of these courts needs to order their attorneys to
14 be truthful and get to the bottom of this. As long as they're
15 allowed to lie, they're going to do what the attorney just did
16 to you in your court, and they just tell you a bunch of lies.
17 I've got my witness -- I've got the records to prove it that he
18 lied, you know.

19 The Lemon Law has not expired, because Statute --
20 Chapter 681 in Florida says they if I file a case in court with
21 them and here like I did, that if the Lemon Law is still
22 active, I'm entitled to a decision. It doesn't matter if the
23 state case is pending twenty years. The Lemon Law is still
24 going on until that state case is resolved and I get a
25 decision. And then I have a right to appeal it before this

1 court.

2 THE COURT: Mr. Kidwell, do you agree that whoever
3 owes you this duty, the duty is limited to fixing the truck?

4 MR. KIDWELL: No, sir. That's where Florida's Lemon
5 Laws are unique. They -- under Florida's Lemon Laws, as I
6 said, if they didn't take their last chance, within ten days,
7 which they didn't -- oh, I hate to change the subject, but I
8 want to point out one more --

9 THE COURT: Please don't change the subject.

10 MR. KIDWELL: Sir?

11 THE COURT: Please don't change the subject.

12 MR. KIDWELL: No, it's just because he said -- he said
13 that I did not give Old General Motors an opportunity to repair
14 the truck, and I can prove beyond any doubt that he lied to
15 you -- that General Motors' attorney lied to you when he said I
16 didn't give him an opportunity. It sat in my driveway and
17 didn't move for seven years blocking my driveway, and I sat
18 here waiting, me, my wife, and child, waiting seven years for
19 them to come repair it, and they never came here once. And I
20 called them on the phone and begged them to come repair it.

21 And I filed the motions in state court asking when
22 they was going to come repair it. So when he says that I
23 didn't give them an opportunity to repair it, he is lying to
24 you and he should be found in contempt. Until we get some
25 truth from the attorneys you're never going to be able to make

1 a proper decision, because they keep lying to you.

2 I gave them every opportunity. Under Florida laws,
3 they had ten days to come, get it working -- if it's broke down
4 and fix it. So I would like to have that attorney explain to
5 you how I kept General Motors from coming in and fixing that
6 car within ten days, when I've been sitting here watching my
7 driveway for seven years, begging them to come get the darn
8 thing out of my driveway and fix it. You know.

9 He lied to you and you should get to the bottom of why
10 he intentionally lied to you and then we can find out what the
11 truth is in this case. So I'd like to make an oral motion that
12 the attorney explain to you --

13 THE COURT: I can't accept oral motions, Mr. Kidwell.

14 MR. KIDWELL: Your Honor?

15 THE COURT: I cannot accept oral motions. I've
16 already got five written ones from you. That's the way you're
17 supposed to do it.

18 MR. KIDWELL: Oh. Can you accept my testimony under
19 oath that he lied to you?

20 THE COURT: Not in that fashion. Under my case
21 management orders, the first appearance is a non-evidentiary
22 one. And I hold and take evidence by testimony if, but only
23 if, I think there are disputed issues of fact.

24 MR. KIDWELL: Well, he's trying to obstructing justice
25 in your court by lying to you about the facts, and I can prove

1 beyond any doubt that he lied about every fact he's spoken.

2 THE COURT: All right. Thank you.

3 MR. KIDWELL: And it is not true. But getting back to
4 it, the Lemon Law case is still pending and forwarded, and the
5 state case wasn't closed, it was just suspended indefinitely
6 because they said that the sales order makes all Lemon Law
7 obligations immune.

8 Now, one thing that was filed, all these contradictory
9 orders from the federal court and everything else, the federal
10 case is not decided. The federal case kept issuing orders that
11 the appeals court said were not final orders. And in the end,
12 the federal court agreed with me that I had claims that they
13 want me to file an amended complaint with all these complex --
14 that abides by certain standards. And so I filed an appeal
15 asking the Eleventh Circuit to appoint counsel. And my appeal
16 to the Eleventh Circuit is that under the Eleventh Circuit
17 guidelines, even though attorneys are not a right in this whole
18 case, when a case is so complex and a person is in too poor of
19 health, to comply and it would violate my doctor's orders in
20 trying to do a complex -- involved in a complex amended
21 complaint like that they need to appoint counsel.

22 So that's where it stands right now. All the stuff he
23 told you is nothing but a bunch of bull. The district court
24 case -- the district court, in the end, said that I have
25 claims. I have to refile an amended complaint, with just those

1 claims. And then I appealed that to the Eleventh Circuit,
2 where it's at right now, because I'm in too poor health. I
3 want an attorney appointed to file this amended complaint that
4 they say I have a right to.

5 Now, Florida appeals in the Eleventh Circuit were
6 found as moot because the court kept changing its orders
7 because it found out General Motors was lying to me, and it
8 kept having to change its orders. And what happened was, as
9 they kept -- the appeals court said they have -- it wasn't a
10 final order because the district court kept changing its
11 orders. But where it stands, it's knocked out and the district
12 court order -- where it stands in the district court, is that
13 they want me to file an amended complaint, and I'm not
14 medically able to. I'm asking for counsel to be appointed,
15 because I don't have the funds to appoint an attorney -- to pay
16 for an attorney.

17 It would stop all this in the district court and it
18 would stop all this confusion if this court had addressed my
19 request for judicial notice to really clarify what the sales
20 order says. You know, it would stop a whole lot of litigation
21 if this court would just issue a decision, are state Lemon Laws
22 an obligation of the New General Motors, are they an assumed
23 liability of New General Motors or is the statement in the sale
24 order a bunch of baloney. And that would solve a whole bunch
25 of this litigation.

1 THE COURT: All right. Thank you.

2 MR. KIDWELL: And if there's any way this Court can
3 decide if the statement and the sales order saying that state
4 Lemon Law obligations are an obligation of New General Motors,
5 is that a truthful statement in the sales order or is it just
6 baloney that it's an obligation to Old General Motors. Because
7 I'm sort of confused. I don't even know -- I mean, clearly the
8 district court is confused. They keep changing their orders.
9 They don't know one way or another.

10 THE COURT: Okay. Thank you.

11 Mr. Steinberg, since he said so much, I'm going to let
12 you sur-reply, but limit it to stuff that he said in his reply.

13 You may, but you really don't need to tell me that --
14 if you want to deny lying to me, you don't need to say that.

15 MR. STEINBERG: Thank you, Your Honor. In the
16 December 28, 2010 decision of the district court, the district
17 court denied without -- dismissed without prejudice the right
18 to replead the express warranty claim, as I said before. But
19 I'd like to read an excerpt from page 7 of the decision which
20 discusses the plaintiff's Lemon Law related claims.

21 It says on the second line, "Plaintiff's allegation
22 that defendant 'did intentionally commit a fraud on Florida's
23 Lemon Law process' is not within the limited scope of the sale
24 approval order." And then it has some citations to the order.

25 "Specifically, plaintiff's Lemon Law related claims

1 are really for fraud and obstructions of justice rather than an
2 action under the substantive provisions of the statute." And
3 then it has some citations to the order and then to the Ames v.
4 Winnebago case, and then it concludes by saying, "Thus Counts
5 IV and V of plaintiff's amended complaint were properly
6 dismissed with prejudice."

7 So I think Mr. Kidwell is a little confused as to what
8 the Florida district court did do. It did talk about a
9 dismissal without prejudice to the express warranty claims,
10 subject to his right to replead. So it was clear whether he
11 was asserting the type of warranty claim that New GM had
12 assumed, which was the repair responsibility only. But with
13 regard to the Lemon Law claims, the district court was clear,
14 that that was a dismissal with prejudice, and it had ruled on
15 that in the connection with the motion for consideration.

16 THE COURT: Mr. Steinberg, I mean, I assume your fees
17 are being paid by New GM and they aren't being paid by the
18 creditors of this estate?

19 MR. STEINBERG: That's correct.

20 THE COURT: Is there some reason why you and Mr.
21 Kidwell didn't just settle this thing by an agreement that he
22 would throw out all of the other stuff and that you'd just fix
23 the damn truck?

24 MR. STEINBERG: With respect to New General Motors or
25 Old General Motors?

1 THE COURT: I think it's clear, based upon my reading
2 of the briefs and the underlying statutes, that New GM doesn't
3 have any liability for anything other than fixing the truck.
4 Which I assume might cost more than a couple of thousand
5 dollars, but somehow I suspect costs a lot less than it's cost
6 to litigate this matter.

7 But if Old GM didn't give the proper notice of the
8 last clear chance to fix the truck, then it may -- and I'm
9 talking more as a lawyer or as a judge than Mr. Kidwell did --
10 then it may not be able to invoke the condition that would have
11 brought all of its Lemon Law liabilities to an end, in which
12 case the duty to fix the truck might have continued.

13 Now, I can't believe that the duty to fix the truck
14 would have cost more than giving him a new truck. And it
15 probably would have cost a lot less. But this controversy's
16 been going on kind of like Dickens wrote about a couple of
17 hundred years ago, several Dickens books, not just "Bleak
18 House". And I could deal with this on the merits. And if I
19 deal with it on the merits, I'm going to likely say that
20 whatever Mr. Kidwell has is a pre-petition claim, except to the
21 extent that you're not able to contend that all Lemon
22 liabilities ended, in which case your liability would be
23 limited to fixing the truck. And I don't know what you'd do,
24 and I'm not going to decide without more, if you can't fix the
25 truck.

1 But my reaction -- and this isn't a legal ruling, it's
2 what I would do if I were holding you both in a private
3 conference room or if I were a mediator, is say Mr. Kidwell's
4 got to give up all of that extra stuff which is way
5 overreaching, and that somebody should just fix the damn truck.
6 And that's kind of what I'm scratching my head about.

7 MR. KIDWELL: Your Honor?

8 THE COURT: Yes, Mr. Kidwell. The question was aimed
9 at Mr. Steinberg the way I articulated it. But it's really at
10 both of you guys.

11 MR. KIDWELL: Yeah. Your Honor, I've sought in good
12 faith for a settlement conference in the U.S. district court,
13 and I had their attorneys come down, and their attorneys came
14 down here and said that under no conditions would they -- were
15 they going to honor the warranty. So I tried in good faith to
16 get them to resolve this from the start.

17 THE COURT: Now, was all of that you asking to get
18 your truck fixed or to try to break the bank with all of these
19 other claims? If I can be crude about it.

20 MR. KIDWELL: I'd point out to the Court that my -- he
21 just finally admitted that the federal lawsuit was about their
22 fraud and the state lawsuit is authorized by Florida's Lemon
23 Laws, and is about the vehicle. And I'd point out that I was
24 entitled to -- according to the statute, over 600,000 in
25 damages.

1 THE COURT: Yeah, that's the big problem, Mr. Kidwell
2 because you --

3 MR. KIDWELL: But --

4 THE COURT: -- no. Mr. Kidwell, you can't interrupt
5 me. The Court has ruled there was no fraud. Old GM and New GM
6 might have been stupid, but they didn't defraud you. And
7 that's a huge difference in the amount of the damages.

8 Now, Mr. Steinberg, I'll hear your perspective.

9 MR. KIDWELL: But, Your Honor, I just wanted to
10 explain that I offered to settle if they would simply honor
11 their warranty.

12 THE COURT: Okay.

13 MR. KIDWELL: I'd point out that despite the mass
14 amount of damages, that I was just trying to get them to honor
15 their warranty. Just like you're telling them now, you know,
16 that they spent all this money on attorneys; it'd be a lot
17 cheaper if you told them to do the right thing that they should
18 have done all along.

19 THE COURT: Okay. Mr. Steinberg?

20 MR. STEINBERG: Your Honor, I want to try to be as
21 precise as I can be with respect to your particular question.
22 When I saw the lengthy procedural history in this case in both
23 the arbitration decision under Lemon Law, the state court
24 proceeding, the federal court proceeding and then the
25 bankruptcy proceeding, all with respect to the original

1 purchase of a vehicle which was between 25- and 30,000 dollars,
2 and knowing what it costs to spend the legal time for all of
3 that, I had asked the client, wasn't there any way through this
4 entire process where you could just repair the vehicle and
5 finish the matter; notwithstanding the fact that he had sued
6 GM's board for RICOH and other types of violations, but simply
7 just deal with the car and to repair the car.

8 And I think they said that -- and I'm doing this from
9 memory now -- that they felt that any attempt to try to have
10 done that from the beginning back in '05 and '06 was met with
11 resistance by Mr. Kidwell, who wanted to pursue his rights
12 through legal remedies, which were seeking damages way beyond
13 the cost of the vehicle, and therefore there was never ever the
14 ability to try to settle it in the way that you had articulated
15 it.

16 And I think even when you were trying to ask Mr.
17 Kidwell whether this could be settled simply by the repair of
18 the vehicle, because it would be cheaper to do that than to
19 continue to deal with these pro se pleadings throughout, I
20 don't think he really gave you a specific response.

21 But I did ask the same question that Your Honor had,
22 and that was the response that I got when I asked the question
23 to my client and to my colleagues in Atlanta who had been
24 litigating the district court action. And I don't have a
25 better response than that.

1 THE COURT: That's okay. Thank you.

2 All right. Both sides had an opportunity to speak
3 their piece?

4 MR. KIDWELL: Your Honor?

5 THE COURT: Mr. Kidwell, I can't -- I'm going to let
6 you speak but I can't let you be repetitious.

7 MR. KIDWELL: Okay. I just want to point out that I
8 have a stack of letters from the date the truck broke down to
9 prove that that's not true that I told them over and over
10 again, and just come and fix the damn truck. And I asked
11 for -- moved for the settlement conference again and again in
12 the state federal court, and each time I said fix the truck.
13 And you know -- you know give me the money for the truck, you
14 know.

15 THE COURT: Okay.

16 MR. KIDWELL: And each time, they have refused. So
17 his representing to you that I have resisted that's completely
18 wrong. I am the only one in this case that has tried to
19 resolve this.

20 THE COURT: All right.

21 MR. KIDWELL: And I've tried continuously since the
22 truck broke down. I agree with you that it's ridiculous that
23 they're spending this much money on attorneys instead of just
24 simply resolving it. So I would suggest that you ask him --
25 point out to him that I do have letters that I have constantly

1 tried to just get the darn truck, you know, fixed, and that you
2 have him go back to his clients and see if they can't just pay
3 me for the truck like they should have, and resolve everything.

4 THE COURT: All right. Thank you.

5 MR. KIDWELL: It would save everybody a lot of money.

6 THE COURT: Again, we've taken a lot of time on this.
7 I'm ready to rule.

8 MR. KIDWELL: Okay.

9 THE COURT: And my ruling is as follows, to the extent
10 I can rule. First, the motion to recuse me, to disqualify me
11 for not being fair, having been withdraw, I don't need to deal
12 with that.

13 On the merits of the claims -- the remaining claims,
14 and we have to keep our eye on the ball here, because these
15 claims are aimed at New GM rather than Old GM -- it's clear
16 that all claims other than whatever Lemon Law claims might be
17 surviving, after the district court action after reviewing the
18 purchase and sale agreement, cannot be asserted. So what is
19 left?

20 There is one thing left which is getting the car
21 fixed. And whether the claim for getting the car fixed
22 survives, depends upon the extent, if any, to which any Lemon
23 Law obligations under Florida law survived as late as the time
24 the purchase and sale agreement was entered into and became
25 effective, which was shortly after I issued that decision on

1 the 4th of July back in 2009.

2 Now, Mr. Steinberg, on behalf of Old GM -- excuse me,
3 New GM, properly observes that to the extent, if any, to which
4 New GM might have any claims there, they would be simply for
5 fixing the vehicle or possibly -- though I don't decide it
6 today -- replacing the vehicle if fixing it isn't doable.

7 The courts -- the Florida courts have already ruled --
8 or perhaps I should say federal court in Florida has ruled
9 there was no fraud. So all we're talking about is getting the
10 vehicle fixed. Now, Mr. Kidwell contends -- it hasn't been
11 proven, but I well understand his contention, that although he
12 acknowledges that GM -- which at the time was Old GM -- had a
13 last clear chance to fix the vehicle to make all of this go
14 away, he says it was sent to the wrong address that didn't give
15 him the notice that he needed to invoke that remedy.

16 I can't decide that issue. But I note that if his
17 contention is right, what that means is that you would have, in
18 substance, a do-over. That New GM would then say, yeah, we'll
19 give you another opportunity to fix the car. And the car would
20 be fixed. But you don't break the bank under those
21 circumstances -- and I said car, I apologize, I know it's a
22 truck -- and you fix the truck.

23 So all we have left here, gentlemen is the duty to fix
24 the truck and possibly a pre-petition claim against Old GM
25 which isn't before me today, but which, if it could be

1 asserted, would be subject to all of the usual stuff about
2 filing a proof of claim and res judicata, which means it's
3 already been decided, as a consequence of ruling in the Florida
4 federal court.

5 Now, vis-a-vis New GM's duty under the remainder, I'm
6 going to take that under submission. I am going to strongly
7 urge you -- both sides -- to make this issue go away before I
8 issue the ruling -- the final ruling, based on the obvious
9 common sense thing to do here, which is to -- and I won't use
10 the obscenity -- fix the truck and abandon all of the other
11 claims. You have thirty days to try to make that happen. If
12 you don't, I will issue a ruling, which may be embarrassing to
13 one side or both.

14 We'll take a five-minute recess, and then I'll take
15 the Buttita --

16 MR. KIDWELL: Your Honor?

17 THE COURT: Yes.

18 MR. KIDWELL: Just one thing. I would just like to
19 ask that you replace "fix the truck" with "replace the purchase
20 price", because everywhere, under Florida Lemon Law, it says
21 that consumer is returned the purchase price. And fixing the
22 truck now after seven years, won't be much help after
23 spending -- you know, I paid for a new truck. So is there any
24 possible way to change it -- obeying Florida Lemon Law
25 refunding the purchase price?

1 THE COURT: I'm not good enough on knowing the Florida
2 Lemon Law without having to do all sorts of research to study
3 that.

4 MR. KIDWELL: I can send you --

5 THE COURT: No, no. Please. This has been briefed
6 enough. One of the books I was referring to by Charles Dickens
7 was called "Bleak House", which talks about a litigation going
8 on forever. And this litigation is getting to be in
9 contention. Now it may be that the cost of litigating --

10 MR. KIDWELL: If I could --

11 THE COURT: -- no. Mr. Kidwell, you can't talk over
12 me.

13 MR. KIDWELL: Okay.

14 THE COURT: That's one of the rules we have in the
15 federal courts. Okay?

16 MR. KIDWELL: Okay.

17 THE COURT: It may be that the difference isn't that
18 big a deal. What you guys can do in making your own deal,
19 gives you much more flexibility than I can where I'm required
20 to rule within the confines of the law.

21 It also might be that replacing the whole truck is
22 cheaper than continuing this litigation for the next I don't
23 know how many years or whatever it's going to take. But I'm
24 not going to decide an issue that I'm not prepared to decide
25 today.

1 Mr. Steinberg?

2 MR. STEINBERG: Your Honor, so that I have
3 something -- I think you were clear, Your Honor, in what you
4 suggested and what you told both sides. But I would ask if I
5 can ask you to ask Mr. Kidwell whether he would be satisfied in
6 dropping all claims against New General Motors -- New General
7 Motors, if either the truck was either repaired so that it's
8 workable or that the original purchase price of the truck was
9 refunded, so that I have something clear to talk to my client
10 about as stating what Mr. Kidwell's position might be.

11 THE COURT: All right. Mr. Kidwell, do you want to
12 respond to that question?

13 MR. KIDWELL: Yes. As he knows, they found everything
14 wrong, from wiring to motor to transmission. I would be
15 agreeable to return of the purchase price.

16 THE COURT: You want a return of the purchase price
17 rather than a new truck?

18 MR. KIDWELL: I don't think the repair could ever fix
19 it, since they found even the doors and body defective. It was
20 the last one to come off the assembly line. Everything on it's
21 wrong.

22 THE COURT: No, I understand that. But there was the
23 third option which is getting a replacement truck of comparable
24 value.

25 MR. KIDWELL: Yeah. I don't think I really ever want

1 to have to -- to get --

2 THE COURT: All right. But the most important aspect
3 of Mr. Steinberg's question is, that you're prepared to drop
4 everything other than the claim for your money back?

5 MR. KIDWELL: Right.

6 THE COURT: Okay.

7 MR. KIDWELL: Yeah.

8 THE COURT: I think he answered your question, Mr.
9 Steinberg. If you require me to rule on that, after thirty
10 days, that is, the claims other than what amounts to repair or
11 rescission, you've got a reservation of rights on that, and so
12 does Mr. Kidwell.

13 MR. STEINBERG: Okay. Now, Your Honor, there were --

14 THE COURT: I think I telegraphed my leanings in that
15 regard.

16 MR. STEINBERG: I heard them, Your Honor. The --
17 there were a number of other motions, some of them are
18 sanctions motions. I don't know whether you were ruling on
19 those.

20 THE COURT: All are denied as moot.

21 MR. STEINBERG: Thank you, Judge.

22 THE COURT: Right. All right. We'll recess until
23 twenty of 12 and then I'll hear the substantial contribution
24 claim.

25 (Recess from 11:32 a.m. until 11:40 a.m.)

1 THE COURT: Okay. The Buttita substantial
2 contribution claim. I see Mr. Reinsel and Mr. Jones.

3 Folks, make your presentations as you see fit and I
4 want you to address the following questions and concerns,
5 mainly you, Mr. Reinsel. I've read all the papers, including
6 Mr. Inselbuch's submission and of course Mr. Jones.

7 I got to tell you, you're starting on your own one-
8 yard line, Mr. Reinsel. And the principal point that I want
9 both sides to address is the value, if any, to the estate vis-
10 a-vis my structuring the form of my order insofar as -- and my
11 ruling insofar as it might affect future claimants who aren't
12 within the meaning of the Code creditors, to keep it within
13 constitutional limits which, not being a constitutional scholar
14 I, nevertheless, recognized when I saw it and the question as
15 to whether that aspect had any value.

16 The more troublesome problem you have, Mr. Reinsel, is
17 one that I've dealt with in too many of my cases, of course
18 Adelpia is the poster child for it, where parties are prepared
19 to bring down a whole case, with disastrous consequences for
20 everybody, to advance their own private agendas. And while the
21 efforts to oppose the 363 sale and, if I'm not mistaken, to
22 join in the stay request even after I had opposed -- after I
23 had approved the 363 sale, at a time when the direct testimony
24 affidavits proffered by the debtor and by the U.S. government
25 made clear to the whole country the disastrous consequences of

1 a disapproval of a 363 sale, how you can be contending that
2 that is a contribution at all, much less a substantial
3 contribution.

4 I don't feel the urge to be as scathing in my
5 disapproval of that as I was when I when I saw the efforts in
6 Adelphia, but that's what you've got to help me with, Mr.
7 Reinsel, if anybody could.

8 I'll hear from you first and from Mr. Jones.

9 MR. REINSEL: Thank you, Your Honor. Ron Reinsel,
10 Caplin & Drysdale on behalf of Mr. Buttita.

11 Without going into the whole background, Judge,
12 because I'm sure you're familiar.

13 THE COURT: That's when you and I first met, if I
14 recall. Well, I knew a couple of your partners.

15 MR. REINSEL: It was, Your Honor.

16 THE COURT: I think I saw you when you were opposing
17 the 363.

18 MR. REINSEL: That's correct, Judge. And let me focus
19 about what the thrust of Mr. Buttita's opposition to the 363
20 sale was and it was -- it was to focus specifically on the
21 constitutional due process issues with respect to the future
22 claimants.

23 What the sale order -- what the sale was intended to
24 do, what the purchase agreement specifically said and what you
25 were being requested to do was to provide that the sale was

1 going to be free and clear of "All liabilities to third parties
2 for death, personal injury or other personal injury to persons
3 or damage to property arising out of asbestos exposure". It
4 was a broad, injunctive relief given to New GM to leave all of
5 those liabilities behind at Old GM despite the fact two things.
6 One, Old GM had already acknowledged, through it's 10K filings
7 and other filings, that it new, at least an estimated almost
8 650 million dollars worth of asbestos personal injury claims
9 would be brought against it. By their very nature those
10 claims, most of them because of the long latency period between
11 exposure and actually manifesting a disease, most of those
12 claims would arise, if at all, in the future.

13 What we had here was a buyer taking on what, under
14 most state law constructs, would have really established
15 successor liability to allow those future arising claims to
16 assert them against the successor entity. Yet, we had a sale
17 order or a proposed sale order that would have completely
18 shielded them and having a liquidating debtor where when those
19 claims finally did arise, matured, ripened, the existing estate
20 of what was in effect a liquidation debtor would have been
21 administered. Those claimants would have had no recovery from
22 the old entity because it would have dried up and gone. And
23 from the new entity nominally because this Court's order would
24 have protected it.

25 Where we were -- now, what the government said is we

1 didn't really provide a contribution because what Judge Gerber
2 did was simply clarify what the constitutional limits were
3 anyway. Except what they would have held out there is an order
4 from this Court that says we are shielded. Come and sue us in
5 state court, in federal courts around the country, to establish
6 your own constitutional rights, which we're going to try to
7 extinguish through this Court's order.

8 What we did, Judge, and we appreciate your, I think,
9 thoughtful consideration, that those future claimants could not
10 have received effective notice of the sale. Could not have
11 asserted their objections to the sale in any kind of fashion
12 whatsoever.

13 Now Mr. Buttita, as you noted, was not a future
14 claimant, he's a current claimant. He was asserting those
15 objections on behalf of a larger class, a class that --

16 THE COURT: In which he was not a member.

17 MR. REINSEL: In which he was not a member.

18 THE COURT: And let me tell you what's bugging me, Mr.
19 Reinsel.

20 MR. REINSEL: Yes, sir.

21 THE COURT: And you can compare and contrast your
22 behavior in this case with that of the New York AG's office
23 when we had an issue on confirmation. I think the New York AG
24 office was joined by somebody else with a similar perspective.

25 The New York AG office thought the releases were

1 overly broad. I think it was Ms. Leary, Maureen Leary, but it
2 doesn't matter. But instead of bringing down the whole
3 confirmation and bringing down the whole case, she said we
4 support confirmation but massage your order to deal with this
5 issue.

6 That isn't my memory of what you did here and in fact
7 I had given you exactly what you thought you should get,
8 putting aside the fact that Buttita wasn't a future claimant,
9 and you still supported the stay. Now by the stay -- by the
10 time of the stay my order had given future claimants the
11 protection that they could legitimately expect and you were
12 still doing it. And that just gives me deja vu all over again,
13 compared to what I see from the hedge funds before me in case
14 after case. Where am I wrong?

15 MR. REINSEL: Your Honor, Mr. Buttita's objective, and
16 really his sole objective here, was not to bring down the case.
17 It was not to bring down the sale but it was to make absolutely
18 clear that the rights of those claimants would be preserved and
19 that the injunction that would result from the sale would not
20 extend to those future claimants except through, essentially,
21 what we finally ended up doing here, which was at least through
22 a mechanism that mimicked, at best, 524(g) of the Code.

23 I think, Your Honor, and another the Treasury, I
24 think, makes light of, what that contribution of having the
25 asbestos claimants stand up before the Court and say no, you

1 can't hide behind the shield for the future claimants here.
2 That we didn't bring a substantial contribution to the case by
3 making ourselves heard at that point was belied by how the rest
4 of the facts of the case ran out. Right after the sale, the
5 sale order became final, Mr. Buttita's state court counsel, Mr.
6 Cooney, was immediately -- almost immediately approached to
7 chair a subcommittee of the unsecured creditors committee in
8 order to provide for the proper treatment of both present and
9 future claimants as the case developed.

10 Ultimately that turned into the appointment, as the
11 Court's aware, of a separate asbestos committee. That resulted
12 in the negotiation of an acceptable treatment for both present
13 and future claims through this case, a procedure that, number
14 one, resulted in a consensual estimation of the amount of the
15 claims, the development of procedures to treat both present and
16 future claims and through procedures that effectively mimic
17 section 524(g) of the Code and as a result obtained the
18 overwhelming support of all of the asbestos creditors in the
19 case.

20 Now Judge, perhaps joining in a stay motion was not
21 the wisest thing that Mr. Buttita could have done, but that was
22 not his primary thrust here. That was obviously a motion that
23 was brought by another party and things were still in a state
24 of flux at that time. But what Mr. Buttita did was to ensure
25 the proper treatment of a larger class of creditors, creditors

1 which we and you acknowledge he was not even truly a member of
2 the future claimants, to provide for their -- that ultimately
3 provided for their full and equitable treatment in the case.

4 We think, Judge, that those nece -- without those
5 necessary first steps, none of that would have happened. None
6 of it could have happened because those rights would have been
7 foreclosed. And we believe, Your Honor, that that ought to
8 resolve in -- what is, certainly in the scope of this case, a
9 very modest request for substantial contribution. Which I
10 note, number one, my firm substantially discounted fees to Mr.
11 Buttita before we came in here, by at least a third. That
12 we've turned off our fees I think a month and a half into the
13 case, about a week or so after the sale order was entered.

14 No request has been made by Mr. Buttita's personal
15 counsel, Mr. Cooney or his firm, Cooney & Conway, for what
16 ended up being hundreds and hundreds of hours devoted to his
17 representation.

18 And the only other objection that we're aware of is
19 one from the fee examiner which, although we questioned the fee
20 examiner's authority given the scope of the Court's order to
21 deal with non-estate professionals, we reached a resolution
22 with the fee examiner to, again, reduce the amount of fees that
23 we were requesting such that in our -- as modified after taking
24 into account the fee examiner's objection. We're looking for a
25 total of --

1 THE COURT: Was it 172,000 bucks or is that before you
2 had your dialogue with Mr. --

3 MR. REINSEL: Yeah. We are now, Judge, the actual
4 request should be, as agreed, \$154,692.62 in fees, \$13,973.29
5 in expenses for a total request of \$168,665.91.

6 THE COURT: Okay. Mr. Jones, may I get your
7 perspective, please?

8 MR. JONES: Thank you, Your Honor. David Jones from
9 the U.S. Attorney's Office, Southern District of New York for
10 the United States and specifically Treasury as DIP lender.

11 Your Honor, quite simply I don't see how this
12 application constitutes -- is for work that constitutes
13 substantial contributions to the estate. As the Court noted,
14 the application period is solely for June and July 2009, at
15 which point Mr. Buttita was actively opposing the sale
16 application that was the indispensable prerequisite for any
17 kind of recovery being achieved in this case.

18 And as the Court also noted, his objections were not
19 phrased as limited objections or requests to modify, in some
20 limited respect, the relief being provided but rather they were
21 outright -- phrased as outright objections and even, at docket
22 number 3013, Mr. Buttita joined a request for an expedited
23 appeal and/or stay from the Court's sale order.

24 None of that -- and as the Court also referenced,
25 there was undisputed testimony at the sale hearing that the

1 sale had to go through promptly and on the terms that had been
2 negotiated as commercially reasonable and calculated to make
3 New GM to succeed for this case to have any prospect of
4 success.

5 So for all of these reasons, the work for which
6 compensation is being sought simply did not make any material
7 contribution to the estate.

8 There's a bit of a disconnect because the -- Mr.
9 Buttita talks about subsequent stages of the case, beginning in
10 2010, when the asbestos constituency, including his counsel,
11 pursued remedies against the debtors' estate. Again, as he
12 characterized it, sort of, roughly, trying to replicate the
13 524(g) connection -- protections and procedures available in
14 plans of reorganization. That is exactly what the government
15 said and the proponents of the sale said was their property
16 remedy even back at the time of the sale hearing.

17 What we said was, 524(g) protections are not available
18 and are irrelevant for purposes of this sale. What needs to
19 occur -- that is a remedy and a requirement that exists in the
20 context of plan development in confirmation and that process
21 will be gone through, in this case, at a subsequent stage.

22 So where that process was pursued and brought into
23 being in 2010 was the appropriate stage and was consistent with
24 the government and the sale proponents' position at every step
25 in this case, yet was opposed by Buttita at the outset.

1 I'll also note that the preservation through the
2 language saying the effect of the injunction was solely to the
3 extent constitutionally permitted, if anything would permit
4 future claimants whose claims haven't ripened yet, so they're
5 not creditors, to potentially pursue some relief from New GM,
6 not from the estate. And so, again, to the extent that right
7 was preserved, which is not defined through the sale order as I
8 understand it, that is not, again, a substantial contribution
9 to the processes of this case in any respect or the resolution
10 of affairs as to the debtor. It simply is a preservation of a
11 right of a particular, as of now undefined future interest
12 group, future subset of the population who may, in the future,
13 want to proceed against New GM. Again, that is -- I don't
14 understand and I haven't seen any authority suggesting that
15 that could be compensable as a substantial contribution to the
16 functioning of this case.

17 Your Honor, if the Court has no further questions,
18 I'll just rest on our papers at this point.

19 THE COURT: All right.

20 MR. JONES: Thank you.

21 THE COURT: Mr. Reinsel, reply?

22 MR. REINSEL: Your Honor, just back to that last point
23 about the -- the Court's modification of the order simply
24 subsuming the existing law. What that would have done, I think
25 in the absence, Judge, of your opinion and the modifications to

1 the order that were ultimately entered was expressly intended
2 to, at minimum, create ambiguity and at worst to throw up an
3 absolute wall to further claimants.

4 An approach which would have cost, I think, the estate
5 itself as well as New GM significant dollars in litigation
6 outside of this court in subsequent matters to determine that
7 those rights did still exist, despite the expressed wording
8 that was sought in the sale order. That was a significant
9 success, I think, by Mr. Buttita to set the stage for what then
10 happened in the case.

11 Thank you, Your Honor.

12 THE COURT: All right. Mr. Jones, is there really a
13 need for you to rise at this point? All right.

14 MR. JONES: Only to grab my Redweld at the corner. I
15 have nothing to say, Your Honor.

16 THE COURT: You can grab your Redweld and then I want
17 everybody to sit in place.

18 (Pause)

19 THE COURT: In this contested matter in the Chapter 11
20 case of Motors Liquidation Company, formerly known as General
21 Motors and its affiliates, Mark Buttita seeks an award of, on a
22 substantial contribution basis, for services performed wholly
23 or principally by the law firm of Caplin & Drysdale during the
24 months of June and July of 2009.

25 The United States Government, on behalf of the U.S.

1 Treasury and ultimately the taxpayers, objects. The
2 government's objections is sustained and the motion for payment
3 of an administrative expense is denied.

4 The facts are not in material dispute. In fact, I
5 don't think they're in dispute in any regard. Buttita, through
6 counsel, opposed a motion, that being the 363 sale motion,
7 urged by the debtors with the support of the United States
8 Treasury, the Canadian government, the UAW and other parties,
9 including the creditors' committee as a whole, that was
10 essential to the company's survival.

11 He did so to advance his private agenda. He even
12 supported a motion for a stay after I had found as a fact,
13 consistent with affidavits that were available before the
14 evidentiary hearing on the 363 sale, as to how critically
15 important to the needs of GM stakeholders the 363 sale was. He
16 supported the motion for the stay even after I had put the
17 language in the 363 order, which provides such an important,
18 alleged contribution to the estate, in other words, the
19 objection to continuing with the sale continued after I had
20 given Buttita what he claimed he was after.

21 Now Buttita is asking the other creditors and the U.S.
22 taxpayers to pay for that. That is not a contribution, much
23 less a substantial contribution.

24 Too often, in cases on my watch, in major Chapter 11
25 cases, too often over the eleven years that I've been sitting

1 up here, I've seen stakeholders taking actions that would bring
2 the downfall of the entire estate to advance private agendas,
3 to boost individual recoveries. My concerns in this regard are
4 not new. In two published decisions, each in the Adelpia
5 case, 336 B.R. 610 and then again at 441 B.R. 6, I addressed
6 tactics of this type. I said "The bringing of motions like
7 these is not unethical or sanctionable but neither should it be
8 encouraged or rewarded. Motions that would bring an
9 intolerable consequences for an estate should not be used as a
10 tactic to augment a particular constituency's recovery."

11 To be sure, what I saw in the summer of 2009 is not
12 egregious as the actions that I dealt with in Adelpia. And at
13 the risk of stating the obvious, in one case it was destructive
14 motions that were brought on and here it was an opposition to a
15 motion that was widely acknowledged to be essential to the
16 company's survival.

17 It may have been entirely reasonable, and certainly
18 was not sanctionable from the perspective of the party that
19 wanted to advance its private agenda, but as I said it cannot,
20 in any fair meaning of the term, be regarded as either a
21 contribution or a substantial contribution. In fact, it
22 necessitated efforts by other stakeholders in the case who, by
23 the way, had more at stake than the objectors did, to expend
24 funds to deal with the objection.

25 Now Buttita properly observes that there was an

1 element of the motion that initially required fixing, which was
2 early language in the proposed sale order which would have
3 inappropriately dealt with future claims, claims in that
4 context being used loosely because, of course, they weren't 101
5 claims and in considering this application I pause to think
6 about whether I should therefore allow some kind of partial
7 award to take into account that feature.

8 But after thinking about it I rejected that notion and
9 I did so for two reasons. The first is that as the New York
10 AG's office pointed out, or exemplified perhaps better than
11 pointed out, when it objected to confirmation you can raise
12 concerns of that sort without threatening to bring down a whole
13 Chapter 11 case. There, at the risk of stating the obvious and
14 reminding people of things that I think are known to everybody
15 in this room, the New York AG filed a limited objection, said
16 we support everything but we want you to massage your
17 confirmation order to narrow it in the following respect. And
18 after hearing the New York AG's counsel, I was persuaded that
19 she was right. We massaged the confirmation order and we
20 didn't risk recoveries for thousands of affected people much
21 less, again, the taxpayers of the United States. It was wholly
22 unnecessary to raise the objection in the form it did -- it was
23 raised and it is particularly troublesome that the applicant
24 now seeks to be paid for it.

25 Secondly, as I discussed in colloquy in argument on

1 the motion, assuming, though it's obviously contrary to what I
2 just said, that any legitimate objective might have been
3 achieved by the filing of the original objection. Its stated
4 purpose, I'm not sure if it was the real purpose but I'll
5 assume arguendo that it was, was fully achieved when I issued
6 the 363 order. I put in the exact language which most, maybe
7 not everybody but most, concede was necessary to deal with the
8 constitutional issue. So that language was sitting in the 363
9 order when it then went up on appeal and when it then was the
10 subject of the stay application. And even though the
11 ostensible purpose for the objection had been fully satisfied,
12 there was still support for the stay application. At the very
13 least you have to wonder where is the benefit to the estate in
14 that regard, assuming, though the contrary inference screams
15 out for consideration, that the constitutional issue wasn't
16 what it was about at all, but that there was a higher agenda.

17 Again, such conduct may not be unethical or
18 sanctionable but neither should it be encouraged or rewarded
19 and I am not going to pay for it in the form of a substantial
20 contribution award. I shouldn't say I am not going to pay for
21 it, I'm not the one who would be paying for it either way, it
22 would be an amalgam of Old GM, Treasury and ultimately the
23 taxpayers of the United States.

24 If there is anything I would like to convey here,
25 aside from a narrow ruling on the merits, it's that there are

1 ways to accomplish legitimate needs and concerns without
2 bringing down a whole Chapter 11 case. And while doing so may
3 not always be inappropriate, the notion that it should be a
4 substantial contribution to a Chapter 11 case is offensive to
5 at least me as a bankruptcy judge.

6 Mr. Jones, you're to settle an order in accordance
7 with the foregoing.

8 MR. JONES: Very well, Your Honor.

9 MR. REINSEL: Very good, Your Honor.

10 THE COURT: Do we have any further business? Mr.
11 Smolinsky, are you coming up?

12 MR. SMOLINSKY: Yes, Your Honor.

13 THE COURT: Sure.

14 MR. JONES: Your Honor, that's my last matter today,
15 can I be excused?

16 THE COURT: Yes, sir.

17 MR. JONES: Thank you.

18 MR. SMOLINSKY: Your Honor, Joe Smolinsky on behalf of
19 the debtors and the Motors Liquidation Company trust. We're
20 going to move to the claims matters on the calendar today, they
21 appear on page 22 of the agenda.

22 The first matter is omnibus objection number 234,
23 that's pension benefit claims of former salaried and hourly
24 employees. We've had one response; as usual we will adjourn
25 with respect to that response and seek an order on default with

1 respect to the remainder.

2 THE COURT: Certainly.

3 MR. SMOLINSKY: Thank you, Your Honor. 235th omnibus
4 objections, that's pension claims, welfare, benefit claims of
5 former salaried executive or hourly employees. One response,
6 Charles Powell, we will adjourn to October 28th and seek an
7 order with respect to the remainder

8 236th omnibus objections to claim, splinter union
9 employee claims, we have received no responses and we'd like an
10 order approving that objection.

11 THE COURT: Yes.

12 MR. SMOLINSKY: Number 237, that is claims relating to
13 former UAW workers, although there was no formal response there
14 was one informal, Beverly Carrie, and we had one walk-in today,
15 Arocelia Roman (ph.), and Your Honor's chambers was kind enough
16 to find a translator for us. We spoke to Ms. Roman and it
17 appears to be an issue with her union rep as opposed to with
18 the debtors' request for relief. We're going to adjourn that
19 matter to October 28th just so we make sure that we facilitate
20 a conversation between her and the union.

21 THE COURT: Was she a splinter union member or a UAW?

22 MR. SMOLINSKY: UAW, Your Honor.

23 THE COURT: So she'll talk to the UAW about that?

24 MR. SMOLINSKY: Yeah. She had some problems with some
25 prescriptions filled, is my understanding and we're just going

1 to adjourn it and make sure that she gets an opportunity to
2 discuss the matter with the union.

3 MR. SMOLINSKY: The next matter, 238th omnibus
4 objections to claim -- that's welfare benefit claims -- of
5 retired and former salaried and executive employees. We
6 received no response and we'd like to go forward with an order.

7 THE COURT: Yes, sir; granted.

8 MR. SMOLINSKY: The same holds true for the 239th
9 omnibus objection, the 240th and the 241st; we've received no
10 responses.

11 With respect to the 242nd omnibus objection to claims,
12 that's contingent co-liability claims, we've received a total
13 of three responses from Seneca Insurance Company, State Farm
14 Fire and Casualty, and Centerpoint Associates, and we wish to
15 adjourn relief with respect to those claims until October 28th
16 and go forward with the remainder.

17 THE COURT: Help me on that, Mr. Smolinsky; usually
18 those issues come up with PRPs and folks who are like co-
19 defendants, how are the insurance companies involved? They
20 were insurers for PRPs or -- and it shelled out checks and then
21 were looking to get subrogated to what they had paid or what?

22 MR. SMOLINSKY: It's not only in the environmental
23 space, it also is any insurance company that may have been
24 insuring the debtors and have a contingent subrogation claim
25 back and has filed a claim to protect against paying out on the

1 policy.

2 THE COURT: Okay. So you're in substance, continuing
3 the dialog with them, and then if you need to disagree you'll
4 be back later?

5 MR. SMOLINSKY: Yes, and in almost all circumstances
6 we've worked it out, so I expect the same will be true in this
7 case.

8 That brings us to the 243rd objection and I'd like to
9 turn the podium over to Ms. Greer.

10 THE COURT: Sure; come on up, please?

11 MS. GREER: Good afternoon, Your Honor, Stefanie Greer
12 from Dickstein Shapiro also on behalf of the Motors Liquidation
13 Trust --

14 THE COURT: Good morning Ms. Greer, could I impose on
15 you to pull that microphone closer to you, please?

16 MS. GREER: Sure. Is that better?

17 THE COURT: Yes.

18 MS. GREER: Okay. All right, we have four objections
19 to claims. Inconsistent with Mr. Smolinsky's approach, what
20 we'd like to do is go forward only with those for which we did
21 not receive a response and adjourn the remainder.

22 So we have the 243rd omnibus objection to -- which was
23 late file claims -- we had seven, which we have either received
24 informal or formal responses and will adjourn those and go
25 forward with the rest.

1 On the 244th omnibus objection, also on the basis that
2 the claims were late filed, we received seven responses, which
3 we will adjourn. We also decided to withdraw one of those
4 objections and we are going forward with the thirty-one
5 remaining objections.

6 The 245th omnibus objection is also on the basis of
7 late file claims; these were all claims filed after the
8 effective date. Sixteen of those are being adjourned and
9 twenty-eight are going forward today.

10 Finally, Your Honor, we have the 246th omnibus
11 objection; these are claims for which the debtors do not have
12 liability on the very bases as described in the objection. Two
13 of those have been adjourned and sixteen are going forward.

14 Does Your Honor have any questions on the objections?

15 THE COURT: No, I really don't; to the extent that
16 you're pursuing the objections today, your objections are
17 sustained and those that have been kicked will be continued.

18 If I didn't sufficiently interrupt Mr. Smolinsky
19 saying the same ruling on all of his, the decision's the same.
20 So if I didn't say so explicitly, on those that he raised,
21 those that are actually being objected to today, and are being
22 pursued today, the objections on his side are sustained as well
23 and the remainder will be kicked and rescheduled.

24 MS. GREER: Thank you, Your Honor. Shall I approach
25 with orders or --

1 THE COURT: Go across the hall to my courtroom deputy,
2 Ms. Blum, and take care of the paperwork.

3 MS. GREER: Thank you, Your Honor.

4 THE COURT: Thank you. To what extent do we have
5 further business before we continue this afternoon with
6 Spencer?

7 Mr. Smolinsky?

8 MR. SMOLINSKY: As Your Honor noted we have the 2
9 o'clock hearing with Mr. Spencer and that concludes today's
10 calendar.

11 THE COURT: Okay, then we're adjourned until 2
12 o'clock.

13 MR. SMOLINSKY: Thank you.

14 (Recess from 12:19 p.m. until 2:11 p.m.)

15 THE COURT: Good afternoon, have seats please. I
16 apologize for keeping you all waiting; there was something that
17 simply had to be done before I could return to the bench.

18 All right, we have the Barry Henry Spencer matter.
19 And the motions -- it needs direction with respect to Mr.
20 Spencer's desire to not be bound by the settlement agreement he
21 signed and GM's desire that I put some controls on Mr.
22 Spencer's filings.

23 I have questions of both sides, but principally of
24 you, Mr. Spencer.

25 MR. SPENCER: Yes, Your Honor.

1 THE COURT: I've read your papers; there's a lot of
2 rhetoric in them. I cannot see the relevance of your
3 contentions that you're a sovereign citizen and the various
4 references to inalienable rights and things of that sort. I
5 did notice the absence of any allegations of what, if anything,
6 GM told you that was fraudulent. And the job of a guy like me
7 is to get behind the rhetoric and get to the underlying facts
8 and it seemed to me that a lot of what you said kind of went
9 overboard, if you will forgive me. By the same token, in
10 essence what GM is asking for is a Martin-Trigona order, that
11 being named after the famous case of Martin-Trigona, where a
12 guy with pleading after pleading was plainly abusing the
13 system. And I know we have the power to grant them and at some
14 point we do when enough is enough. But I want GM to tell me
15 whether it thinks we've gone over that point now; we may have.
16 But I want help on that.

17 Who -- well, Mr. Spencer, you're on the phone, am I
18 correct?

19 MR. SPENCER: Yes, sir. I'm sorry I couldn't be
20 there. I tried; it was not in my control.

21 THE COURT: I'm having trouble hearing you, Mr.
22 Spencer.

23 MR. SPENCER: I said I tried to get there as much as I
24 could, but it just wasn't in my control.

25 THE COURT: No, that's all right, you can appear by

1 telephone. And who is going to be arguing on behalf of GM?

2 MR. SMOLINSKY: I will, Your Honor.

3 THE COURT: Okay, Mr. Smolinsky. All right, I'll hear
4 first from you, Mr. Spencer.

5 MR. SPENCER: Your Honor, basically, I mean, I'm not
6 trying to just prolong this lawsuit. I think this case has
7 gone on since the 11th of 2009 --

8 THE COURT: Pause, please, Mr. Spencer. Are you using
9 a cell phone or something that would make it hard to understand
10 you?

11 MR. SPENCER: No, it's a regular landline, I believe.

12 THE COURT: Okay, the second time you spoke, when you
13 just made reference to the landline you sounded a little
14 clearer.

15 MR. SPENCER: Okay.

16 THE COURT: Thank you, continue, please.

17 MR. SPENCER: All right. Well, the case goes back to
18 2003, set in Massachusetts when I filed the actual complaint.
19 In 2005, when I actually docketed, we went to court; I actually
20 moved for a lien against GM and asked for discovery. And I
21 asked if they examined the vehicle because the vehicle would
22 keep shutting off on me and my fiancée numerous times, and we
23 almost crashed. You know, and --

24 THE COURT: Let me interrupt you, Mr. Spencer,
25 because --

1 MR. SPENCER: Okay.

2 THE COURT: -- I understand you're upset with the car.

3 MR. SPENCER: Right.

4 THE COURT: And --

5 MR. SPENCER: This is --

6 THE COURT: No, you can't interrupt me, Mr. Spencer'
7 you've got to let me speak. But the legal issue is whether you
8 can walk from the settlement agreement you entered into.

9 MR. SPENCER: Okay.

10 THE COURT: And the second legal issue is whether I
11 should be granting GM -- Old GM -- relief on its cross-motion,
12 where they're saying I got to put a halt to the stuff you've
13 been doing, putting a lien on GM's assets being a classic
14 example of that, because you may or may not have a claim
15 against GM, but you can't keep throwing liens on people.

16 MR. SPENCER: Your Honor, I didn't put a lien on
17 anyone. The only lien I have is the actual paperwork I filed
18 in this court, sir, and actually, as a claimant in this action.

19 THE COURT: And you're asserting a lien in this court?

20 MR. SPENCER: No, I actually -- I filed only paperwork
21 in this court because the stay had stopped me from filing any
22 paperwork in the Massachusetts court, which I had to read the
23 law and figure that out. And the only thing that I'm arguing
24 is that GM, at the time when I took the -- when I was going to
25 take the settlement, Your Honor, there was two three-family

1 houses in Massachusetts in a very good area which I was trying
2 to get on the foreclosure, which I was actually explaining to
3 Mr. Smolinsky that we're going around 100,000 a piece, so I
4 really wanted to just end all this, you know, because my life's
5 been in shambles for long enough and running back and forth to
6 court over money isn't worth it. You know, so I was going to
7 buy the houses and fix them up and sell them as condos. I
8 mean, I wasn't trying to -- to have this go on and on and on,
9 you know, even with me and Mr. Smolinsky, over the ADR, we
10 argued and he wrote down a settlement floor of 200,000; I told
11 him 500,000. You know what I'm saying? Because I feel that's
12 only fair. I mean, I had suffered 27,000 dollars' worth of
13 medical bills; fractured sternum, fractured pelvis. You know,
14 I still carry cups in my hand and drop them because my hand
15 can't close all the way because I was holding the steering
16 wheel. My knees are shot, you know. I have a hernia from when
17 I was working at the shift (ph.) that was compounded, which
18 they wanted to operate on me, you know? But it hurt more so
19 they decided not to see if it would work again. You know, I
20 don't think anything I ask is unreasonable. I'm not trying to
21 sit up here and keep filing and filing. And I told Mr.
22 Smolinsky, you know, I want to end all this.

23 THE COURT: Forgive me, Mr. Spencer, I did not want to
24 interrupt you.

25 MR. SPENCER: Oh, I'm sorry.

1 THE COURT: But at the outset I asked you to focus on
2 the legal issue, which is how you assert that GM defrauded you
3 when they agreed to give you a 200,000 dollar unsecured claim.

4 MR. SPENCER: Okay, well I --

5 THE COURT: And my other question, based on liens, was
6 based on page 5 of 28, where one of the elements of your claim
7 is billing costs associated with levies and liens upon
8 violation shall be, and then you list a whole bunch of things
9 that you're claiming.

10 MR. SPENCER: Okay. Well, I just made a billing
11 assessment, what I was getting to, in actual fact, is because
12 when I was taking the lien -- the actual settlement offer --
13 they didn't tell me that the warrants I'll have to receive
14 taxes on them, I would have to sell them. And then when I went
15 to -- asked about them, they told me I can't receive it then.
16 And then, when I found out I could receive it, they told me I
17 could only receive 25,000, to 48- to 50,000 for some of these
18 companies that actually was offering to buy the stocks at the
19 time which were no good me or my family. So I believe that was
20 fraud and deceit at the time. So that's why within twenty days
21 later -- before twenty days -- I moved to rescind and to be --
22 pull out the settlement offer. I even wrote them, I even
23 called them; they ignored my phone calls, they ignored my text,
24 they ignored everything. I tried as an honest man, trying to
25 resolve this debt, you know? I'm not trying to prolong this; I

1 mean for all I care, you know, I just want it done.

2 But I think that's very unreasonable because at the
3 time, if I was able to get what I needed, I could have had two
4 three-family houses in Massachusetts, which would have been
5 worth over a million dollars, and there was no reason to go
6 arguing with GM anymore; over anything. But now that can't
7 happen because of what was told to me at the time. And even
8 now, they still want me to go with the trust administrator, to
9 make a count, what has to be sold, and I still receive taxes
10 taken out, I still receive -- but this is for bodily injury.

11 THE COURT: Mr. Spencer, respectfully, --

12 MR. SPENCER: Are you saying I can't do that --

13 THE COURT: -- I ask you one more time to answer the
14 question I asked at the beginning.

15 MR. SPENCER: Well --

16 THE COURT: This is your last chance, sir.

17 MR. SPENCER: Okay, sir, I thought I did. But if you
18 believe that I haven't then I guess I must sit with what you
19 have given me or what you're going to rule, sir. Because it
20 seems like you're not hearing anything I've said. But
21 thanks --

22 THE COURT: Well, I read all of your stuff, Mr.
23 Spencer, and when I read all of your stuff, I was looking for
24 the one thing that I need to find, which is what you say that
25 GM said to you that was false, when you agreed to take a

1 settlement agreement, which would give you a 200,000 unsecured
2 claim, instead of the hundreds of millions of dollars that you
3 had claimed in your proofs of claim. And that's the legal
4 issue that I've got to deal with from your side, although I've
5 got to tell you, that the more we have this discussion, the
6 more I'm wondering whether I've got to grant GM a Martin-
7 Trigona order as well.

8 MR. SPENCER: Well, Your Honor, I guess you have to do
9 what you want to do.

10 THE COURT: Okay, fair enough.

11 Mr. Smolinsky, do you want to respond?

12 MR. SMOLINSKY: Yes Your Honor, thank you.

13 I think it might be helpful to give Your Honor a bit
14 of background because this is not a settlement that was reached
15 on one phone call where it was easy to forget what the
16 distributions would look like and what an unsecured claim
17 against General Motors Corporation would provide to Mr.
18 Spencer.

19 Mr. Spencer filed two unsecured proofs of claim, as
20 Your Honor is aware -- two duplicate claims, each in the amount
21 of 682 million dollars; 125 million of that was secured and
22 12.5 million of it was filed as priority. This claim,
23 immediately when it was filed, came on our radar screen and was
24 flagged for immediate review. The reason why these claims were
25 important to deal with quickly, is that it alleges personal

1 injury and as Your Honor is aware, those matters cannot be
2 estimated or liquidated by Your Honor, so we would have had to
3 slog through a state court proceeding in some other
4 jurisdiction.

5 Number two, Mr. Spencer, at the time, was incarcerated
6 and we were concerned about the ability to litigate effectively
7 with him within the confines of the time we had from the filing
8 of the case to confirmation because obviously a claim of this
9 size would make a dramatic impact on distributions to creditors
10 and, in fact, 250 million dollars of secured claims could have
11 become an obstacle to confirmation.

12 Third, Your Honor, Mr. Spencer is not a stranger to
13 litigation. We had identified twenty-nine separate lawsuits
14 where Mr. Spencer was a party; some of those are related to one
15 another, but if you look at the totality of the proceedings,
16 there are a fair amount of proceedings on different grounds.

17 So we spent a lot of time talking about the Spencer
18 claim and how we were going to resolve it. We did something in
19 this matter that we have not done with any other individual
20 claim. In order to attract Mr. Spencer to cap his claim, we
21 agreed to provide a floor of 200,000 in the settlement amount;
22 so we said if you agree to cap your claim at nine million
23 dollars, we would agree to make a settlement offer of a general
24 unsecured claim of 200,000 dollars. Even if, at the end of the
25 day, mediation was unsuccessful, we ended up litigating in

1 another court and the court finding that Mr. Spencer was not
2 entitled to any claim, our agreement was that we would offer
3 him a 200,000-dollar settlement in exchange for an agreement
4 not to appeal. And of course if he appeals the decision then
5 all bets would be off and we could seek a judgment in favor of
6 MLC or GM.

7 These conversations initially took place with
8 Sylvester, who is Mr. Spencer's brother. Mr. Sylvester Spencer
9 was identified on the proof of claim as the party who would
10 speak. I had numerous conversations with Sylvester Spencer; I
11 explained to him the court claims process, with the stock and
12 warrants that came out of the sale. At some point when it got
13 into brass tacks, I asked Sylvester Spencer whether I could get
14 a power of attorney from Barry Spencer so that I knew that he
15 was authorized to negotiate on his behalf. That power of
16 attorney was provided to me and then it was later retracted by
17 Barry Spencer.

18 THE COURT: After the settlement agreement was entered
19 into?

20 MR. SMOLINSKY: No, this was prior to -- this is when
21 we were negotiating the bracket. Brackets are used in
22 mediation often to come closer to a resolution by fixing a
23 floor and a ceiling and that's what we tried to do with Mr.
24 Spencer, to give him real benefit for agreeing to cap his claim
25 to something that would be more manageable for us to confirm a

1 plan, were we not able to settle it in mediation.

2 The 200,000 dollars, we believe was very rich for the
3 claim. Mr. Spencer had also sued Expressway Toyota, which was
4 the dealer in connection with the same car accident that was
5 involved in this claim. And in that case the claim was
6 dismissed and the appellate court ruled that --

7 MR. SPENCER: Let me interrupt for a minute.

8 THE COURT: Go on, Mr. Smolinsky.

9 MR. SMOLINSKY: -- the appellate court ruled that that
10 claim was not viable because Mr. Spencer couldn't demonstrate a
11 defect to the car and Tamika Scott, who is the owner of the
12 car, sold the car -- or disposed of the car -- so that no
13 expert testimony was possible regarding the status of the
14 vehicle and the alleged defect. So already we had a court
15 decision which ruled against Mr. Spencer in terms of product
16 liability; nevertheless, we thought that the 200,000-dollar
17 offer was a good deal for the estate because it removed a
18 confirmation obstacle. We then started negotiating with Mr.
19 Spencer, I had conversations with Mr. Spencer, I explained to
20 him the claims process.

21 THE COURT: This is after he yanked the power of
22 attorney?

23 MR. SMOLINSKY: Yes, Your Honor.

24 I explained to him the secondary market and how claims
25 were trading, the fact that claims were trading from between

1 twenty-five and thirty cents on the dollar; he asked me -- I
2 told him that there was actually a list of traders that was
3 available to him if he wanted to sell his claim immediately,
4 which would have avoided the need to sell warrants and stock.
5 And in fact the e-mail correspondence back and forth
6 demonstrates the fact that around the same time as the
7 settlement agreement, we had sent him that list of claims
8 traders. So it's not true that he was unaware that the -- that
9 he would not be receiving 200,000 dollars in cash after the
10 settlement.

11 After many rounds of negotiation, we told Mr. Spencer
12 that we could simply not go above 200,000 dollars and he
13 ultimately decided to take the 200,000-dollar general unsecured
14 claim, signed a settlement agreement and then a month later he
15 started -- or three weeks later -- he started filing with the
16 bankruptcy court various pleadings, seeking to invalidate the
17 settlement, based on "subtle threats, coercion and
18 intimidation". He purported to place maritime liens on
19 fictitious vessels in the name of various individuals including
20 myself, filed promissory note surety bonds, warrants of arrest,
21 UCC-1 financial statements.

22 Now, I agree with Mr. Spencer, we don't have any
23 indication that he filed those documents in the Secretary of
24 State -- in Massachusetts or the Office of Homeland Security,
25 which is where maritime liens are filed; it is possible that he

1 only filed those pleadings in the bankruptcy court, are those
2 documents. But they did give us reason for concern.

3 So, of course because of this ongoing repudiation of
4 the agreement where he sought not only to invalidate the
5 agreement but also to go far beyond the nine million dollars
6 and started asserting claims well above the cap, we were not in
7 a position to make distributions to him on the effective date
8 of the plan. We were very focused on confirmation and we
9 decided that we'd have to deal with Mr. Spencer after
10 confirmation. It's unfortunate because as Your Honor may be
11 aware, the stock has dropped in value, and if Mr. Spencer had
12 taken his settlement agreement -- the stock price of course
13 could come back -- but it certainly is worth a little bit less
14 than when we went effective.

15 Your Honor, I think the settlement agreement
16 constitutes a valid agreement. I don't think there's any
17 indication that entering into it was improper. If there was
18 any coercion, it was coercion against us for having to allow
19 the claim for 200,000 dollars, where if this was a straight
20 claim, we probably would have taken it to try to get a judgment
21 in favor of MLC.

22 THE COURT: Pause, please, Mr. Smolinsky.

23 What was the gross amount of the original claims? 600
24 million?

25 MR. SMOLINSKY: 682 million.

1 THE COURT: Each?

2 MR. SMOLINSKY: Each. So it was a 1.4 billion dollar
3 claim. There was a question as to whether the twelve and half
4 million priority claim should have been tacked on to that,
5 which would have made it 794 million -- add another twelve and
6 half million. But it was obviously substantial and it was a
7 big obstacle to the case.

8 So Your Honor, our papers cite New York law for the
9 proposition that settlement agreements are to be favored and
10 not to be upset unless there is a reason to -- cause to --
11 invalidate a contract; change of heart doesn't matter. I think
12 we, you know, we had very cordial conversations with Mr.
13 Spencer, I think we negotiated at arm's length, we certainly
14 negotiated in good faith. We reached a resolution, and I don't
15 know why the change of heart, but we're here to seek
16 enforcement of the contract so we can make our distributions to
17 Mr. Spencer as well as to enjoin end-runs from the plan by
18 virtue of taking further actions that would act to do an end-
19 run around the plan treatment.

20 Thank you, Your Honor.

21 THE COURT: Now -- pause. Before -- now shift from
22 why he should live with the settlement agreement to the request
23 for a Martin-Trigona order. Frankly that's the only
24 controversial aspect of this matter.

25 MR. SMOLINSKY: A Martin-Trigona order is an order

1 that provides that Mr. Spencer can't file any papers in the
2 bankruptcy court without first seeking your leave.

3 THE COURT: Right.

4 MR. SMOLINSKY: Whether it goes so far as to a blanket
5 order, what we're trying to avoid are actions taken against
6 individual officers and directors; Carrienne Basler, who is in
7 the courtroom today, has been the subject of those filings.
8 Again, perhaps filings only in the bankruptcy court, but you
9 wonder what the next step will be. So we want to strike these
10 documents; frankly, we don't even know what these documents
11 mean. Some of these promissory notes -- I can't figure them
12 out -- but the estate has already not gotten the benefit of its
13 bargain. What it bargained for is a settlement for 200,000-
14 dollar claim and in exchange it would no longer spend any
15 estate resources on this claim.

16 MR. SPENCER: Your Honor --

17 MR. SMOLINSKY: As Your Honor can see, we've continued
18 to spend money and we don't want to spend any more money.

19 THE COURT: All right. Okay. Mr. Spencer, your turn
20 to reply.

21 MR. SPENCER: Well, Your Honor, I've been sitting here
22 listening, okay. If Mr. Smolinsky can -- and make it so that I
23 don't have to pay no taxes or liquidate any kind of stocks or
24 anything and they can send me the full 200,000, I'll accept it
25 and we can stop all this.

1 THE COURT: Mr. Spencer, we're not here to play Let's
2 Make A Deal --

3 MR. SPENCER: Well --

4 THE COURT: -- nor -- nor to rewrite the Bankruptcy
5 Code, forgive me. The documents were unequivocal that the
6 company was giving you an unsecured claim and you're getting
7 treated the same on your unsecured claim that all of GM's other
8 general unsecured creditors are getting. If your legal
9 position is that the company has to give you a check for
10 200,000 dollars again with respect and I'm trying very hard to
11 keep my voice soft and to act with the demeanor everybody would
12 hope that I would act with, that is inconsistent with the law
13 and if you weren't pro se, if you were a lawyer making that
14 contention, I would have to sanction you.

15 MR. SPENCER: Oh.

16 THE COURT: Now, I won't sanction you because you're
17 not a lawyer but that kind of position doesn't stand up under
18 the law, sir.

19 MR. SPENCER: Question. It's a bodily injury, it's
20 not supposed to be taxed, that's inconsistent with the law but
21 I'm ending up in bankruptcy court and you're giving me a bunch
22 of stocks which is inconsistent with the law for a bodily
23 injury.

24 THE COURT: I am not expressing a view and I'm not
25 sure what -- whether GM is as to what your tax liability is.

1 You will get what you're entitled to from this estate and you
2 can work that out with the IRS.

3 MR. SPENCER: Okay. But if it's inconsistent with the
4 law. That's the only qualms I've been having since day one.

5 THE COURT: Okay. Any further points in reply?

6 MR. SPENCER: Okay. Well, for you to put a blanket, I
7 believe, a blanket filing on anything I filed with the court I
8 believe it would deny me due process of the law especially if I
9 wanted to appeal any decision that came out of this court, you
10 know. So, I don't believe that I did anything that would harm
11 anyone intentionally and there isn't any record of me harming
12 anyone. They may put a person on notice, you know, of me
13 protecting and observing my rights. However, I know of times I
14 have an opportunity to voice my opinion under my First
15 Amendment right even in bankruptcy court. And, Your Honor, it
16 seems as though -- Your Honor, even though he's keeping his
17 voice very lightly, has been very biased by interrupting me.
18 And when I'm trying to explain why I felt as though that the
19 settlement offer was inconsistent, you know. And why I felt as
20 though there was deceit and dishonor in it. You know, I
21 haven't even got a chance to voice my opinion. And I'm sitting
22 here listening to Mr. Smolinsky go on about issues that I
23 wanted to object to but I couldn't because I'm on the phone.

24 And two, I didn't see Your Honor interrupt him as much
25 as he interrupted me. So, I think there's a little bias here,

1 you know. So, Your Honor's going to do what Your Honor wants
2 to do, you know, because it seems like that's going to be done
3 anyone. So, and you say -- told me and I only ask for a copy
4 of the transcripts for this hearing here just in case.

5 This whole issue is me accepting the settlement offer
6 or not. So, when I said I accept it if you take away all the
7 things that are illegal about it, that I believe are illegal,
8 you still want to go on and tell right or wrong. I'm done.

9 THE COURT: The pauses you're hearing, Mr. Spencer,
10 are me waiting to hear any further points you wish to make.

11 MR. SPENCER: I'm through. Thank you for your time.

12 THE COURT: Okay.

13 MR. SPENCER: An opportunity and for the time and be
14 heard.

15 THE COURT: Okay.

16 MR. SPENCER: And God bless you.

17 THE COURT: All right. Everybody sit in place and I
18 will rule.

19 (Pause)

20 THE COURT: All right. Ladies and gentlemen, in this
21 contested matter in the jointly administered Chapter 11 cases
22 of Motors Liquidation Company and its affiliates, claimant
23 Barry Henry Spencer filed a verified declaration in the nature
24 of an affidavit of truth in commerce, rejection of the
25 settlement offer, and contract for waiver of tort. The debtors

1 responded with a cross-motion seeking enforcement of a
2 settlement agreement with Mr. Spencer, the striking of
3 documents filed by Mr. Spencer, and an injunction against Mr.
4 Spencer often referred to as a Martin-Trigona order enjoining
5 him from further action against the debtors and individuals
6 associated with the debtors.

7 The debtors' motion to enforce the settlement agreement is
8 granted. The harm already having been done, the motion for the
9 striking of the documents that he filed is denied since it
10 would no longer do any good. And the injunctions requested
11 enjoining him from further action against the debtors and
12 debtor personnel or individuals associated with the debtor will
13 be granted in a modified form. And the following are my
14 findings of fact and bases for the exercise of my discretion in
15 this regard.

16 As facts I find that Mr. Spencer's claim arises out a pre-
17 petition personal injury caused by a car accident in 2003
18 involving the vehicle that had been recalled. Mr. Spencer
19 initially filed duplicate proofs of claim on November 30, 2009
20 each for 682 million dollars.

21 On July 13, 2010, Mr. Spencer agreed to expunge the
22 duplicate claim and to cap the surviving claim at nine million
23 dollars pursuant to the alternate dispute resolution
24 procedures. This same letter also set a claims settlement
25 floor of 200,000 dollars meaning in substance that the debtors

1 agree to give him an allowed claim of 200,000 dollars
2 irrespective of the strength or weakness of Mr. Spencer's
3 claims.

4 The debtors then sent a notice to Mr. Spencer on July 19,
5 2010 indicating that they were submitting his claim to ADR,
6 that being the nickname for Alternative Dispute Resolution,
7 which included a proposed settlement offer for a general
8 unsecured claim nonpriority for 200,000 dollars.

9 MR. SPENCER: That's a --

10 THE COURT: Mr. Spencer, I'm dictating a decision.
11 I'll let you be heard after I do so but you can't interrupt me
12 now.

13 On July 24, 2010, Mr. Spencer rejected the settlement
14 offer and proposed a counteroffer of an allowed priority claim
15 of nine million dollars which if granted would put him ahead of
16 all of the other general unsecured creditors of Motors
17 Liquidation formerly known as Old GM.

18 The debtors and Mr. Spencer then engaged in negotiations
19 regarding his claim which included an explanation by the
20 debtors' counsel to Mr. Spencer of the proposed treatment of
21 allowed unsecured claims and anecdotal information on the
22 expected market value of the securities that would be
23 distributed on account of allowed claims under the plan. The
24 parties ultimately agreed to settle Mr. Spencer's claim for an
25 allowed general unsecured claim against Motors Liquidation

1 Company for 200,000 dollars. The agreement signed by both
2 parties on September 1, 2010 also extinguished any other claims
3 Mr. Spencer might have against the debtors.

4 Since the time the agreement was signed, Mr. Spencer has
5 repeatedly made filings with this Court with the goal of
6 invalidating the agreement. Among other documents, Mr. Spencer
7 filed a motion to lift the automatic stay to allow enforcement
8 of a purported lien of 112.5 million dollars which I denied on
9 June 13, 2011.

10 He also filed a UCC-1 financing statement which is used to
11 get a security interest asserting that he is a secured creditor
12 in the amount of thirty-nine million dollars.

13 Mr. Spencer's pleadings, which I've reviewed more than
14 once, do no more than merely assert his dissatisfaction with
15 the terms of the settlement agreement particularly his concerns
16 as to how much he could get if he sold the stock and warrants
17 that he would get as an unsecured creditor, that being, of
18 course, the same consideration every other unsecured creditor
19 of GM is getting and his concerns as to the tax treatment
20 which, of course, is a matter not between him but between him
21 and the United States government, the IRS.

22 In particular, I've reviewed his pleadings to see what
23 exactly he was saying that GM said to him that was false that
24 could provide a basis for fraud and there are simply no
25 allegations of that character. His pleadings provide no basis

1 for legal relief.

2 It's well settled that public policy favors settlements,
3 see, for example, In re WorldCom, Inc. Securities 388 F. Supp
4 2d, 319, 337 (SDNY 2005). The reduction of litigation and
5 related expenses is an important factor underlying this policy.
6 See for example Weinberger v. Kendrick 698 F. 2d 61, 73 (2d
7 Circuit 1982).

8 I, of course, do not hold that one could be bound to a
9 settlement if he had been defrauded in connection with that
10 settlement but the allegations of fraud that could give a
11 result -- results of that character have to be stated and
12 indeed they have to be stated with particularity and Mr.
13 Spencer has failed to comply with requirements of law in each
14 of those respects.

15 So, then we turn to the remaining matters before me those
16 being the debtors' requests for relief in the other direction.
17 I'm sympathetic to the debtors' desire to expunge the
18 allegations but the problem is that the cat is out of the bag
19 and the allegations have already been made. I could direct
20 their being expunged but it wouldn't do much good at this
21 point. I well understand the extent to which the debtors are
22 upset by the allegations which fairly read and even cutting
23 them some slack as the statements of a pro se debtor are
24 irresponsible and temperate and except for his allegations of
25 his underlying injury in the car wreck with which I have

1 sympathy but which, of course, underlie the 200,000 dollar
2 allowed claim he is getting exceedingly inappropriate.

3 Worse than what he said about the parties is, frankly,
4 debtors and bankruptcy cases have a lot of bad things said
5 about them and their professionals do as well and their
6 management do as well and we kind of get used to that, are the
7 grossly inappropriate tactics in connection with his pursuing
8 this claim both in terms of asserting claims in such an
9 astronomical amount and making claims of lien and making claims
10 of priority treatment any one of which individually and
11 certainly in the aggregate would justify sanctions if they'd
12 ever been done by a lawyer. That gets us to the remaining
13 issue which is the Martin-Trigona order.

14 The Second Circuit has held that, and I'm quoting, "Courts
15 may resort to restrictive measures that except for normally
16 available procedures, litigants who have abused their
17 litigation opportunities." In re Martin-Trigona 9 F.3d 226,
18 228 (2d Circuit 1993).

19 I think the showing for Martin-Trigona order has largely
20 been made here. The debtors might legitimately criticize me
21 for not simply giving them a full and complete Martin-Trigona
22 order. I am hoping, however, that my telling Mr. Spencer now
23 that, a, what he gets is what every other creditor gets on this
24 unsecured claim, which is, obviously, quite sizeable, and also
25 that he can't keep doing this stuff with legal pleadings in

1 this court or outside this court. And that it's got to come to
2 an end will be sufficient. So, I'm going to issue a hybrid of
3 a Martin-Trigona order.

4 I'm ruling that Mr. Spencer is still free to file matters
5 in this court but that nobody has to answer them or respond to
6 them until and unless I determine that they need to. I am,
7 however, ruling that anybody other than the debtors, like any
8 individuals he's trying to lay liens on or that he's trying to
9 sue not only that they needn't respond but that he can't attack
10 anybody other than the Motors Liquidation estate without
11 getting my approval first. I think that balances the needs to
12 be addressed aren't under a Martin-Trigona order with the
13 implementing a little of judicial restraint.

14 So, Mr. Spencer, you can't attack anybody except Motors
15 Liquidation without me giving you the green light before you do
16 so. And if you decide to attack Motors Liquidation more after
17 I've ruled today, you're not enjoined from doing that but I'm
18 ruling that nobody has to respond to that until and unless I
19 direct so.

20 Now, one clarification. I am not in any way impairing
21 your ability to appeal the order that I'm going to be entering
22 at the conclusion of this argument or shortly thereafter. You
23 do have the right to appeal and I take no position on that. In
24 due course, pretty soon, and you'll have to learn the rules on
25 appeals if you choose to appeal, you will need to submit a

1 designation of record which will include the transcript of this
2 and by all means the transcript of this hearing will be part of
3 the record on that appeal. And Mr. Smolinsky, I'm going to
4 authorize and direct that if he makes a request for the
5 transcript you have one of your folks see that it's provided to
6 him as soon as one can be prepared if he chooses, of course, to
7 appeal.

8 Any review in court can read the exhibits that were put
9 before me, can follow the various pleadings that were filed by
10 Mr. Spencer, and can determine whether or not I got it right
11 and, of course, whether I acted in any appropriate way by
12 repeatedly asking Mr. Spencer to focus on the most important
13 issue which was the extent, if any, to which he was defrauded
14 when he agreed to the 200,000 dollar allowed general unsecured
15 claim.

16 Mr. Smolinsky, you are to settle an order consistent with
17 the rulings that I dictated today. The time to appeal that
18 order will run from the time of the entry of the order and not
19 from the date of this dictated decision.

20 Not by way of reargument, does anybody have any questions?
21 Hearing none, we're adjourned.

22 MR. SPENCER: Your Honor, I have a question.

23 THE COURT: Go ahead, Mr. Spencer.

24 MR. SPENCER: Question. To note that I'll be
25 accepting this offer now, thanks to the Court, is it based on

1 the warrants? Is it still going to be the same settlement
2 amount?

3 THE COURT: Yes. I'm not allowed to give you legal
4 advice but that -- I understand the settlement is for an
5 unsecured claim, a general unsecured claim of 200,000 dollars.
6 Am I correct, Mr. Smolinsky?

7 MR. SMOLINSKY: That's correct, Your Honor. He'll
8 receive distributions on account of a 200,000-dollar general
9 unsecured claim that will be paid out in stock and warrants.
10 He'll receive the same number of shares and the same number of
11 warrants as anybody else on account of the same claim amount.
12 Although, obviously, the value of the stock and warrants go up
13 and down over time.

14 THE COURT: I understand that. And, in fact, I think
15 I expressly addressed that issue in the decision -- in the --
16 with respect to confirmation, didn't I?

17 MR. SPENCER: The attorney didn't touch it though
18 because I was wondering if it's -- the stock being down, if
19 it's at twenty-two, if it was at thirty-eight, the day that
20 they pay out it's down to twenty-two will there be more stock
21 or would it be the same amount if the stocks are at thirty-
22 eight?

23 THE COURT: It would be the exact same stock in terms
24 of numbers of shares and warrants that everybody else got on a
25 per claim basis. I addressed this exact issue in a published

1 decision which you can find in the law books.

2 MR. SPENCER: What case?

3 THE COURT: It's called In re Motors Liquidation
4 Company. I don't know the citation to it but it dealt with a
5 position that had been raised, I think, by New York State with
6 respect to whether I had to put a market movement adjustment
7 mechanism in the plan and discussing the law in that area, I
8 concluded that no such measure was necessary. And that when
9 every creditor got the same number of stock shares and warrants
10 that was equal treatment. I'm paraphrasing the opinion but
11 that's the substance of it.

12 MR. SPENCER: Oh, they can claim that actually the
13 stock is worth thirty dollars and pay out thirty dollars when
14 they actually had twenty-two dollars, you mean?

15 THE COURT: Well, I think what they're going to do is
16 give you stocks and warrants and then you can hold it and see
17 if the market goes up or down --

18 MR. SPENCER: But is it --

19 THE COURT: -- well forgive me, Mr. Spencer. Please
20 don't interrupt me.

21 MR. SPENCER: I'm trying to figure it out, Your Honor.

22 THE COURT: Okay. And I'm repeating myself but what I
23 said was you will get a bundle of stock and warrants that
24 corresponds to having their claim of 200,000 bucks. Then, you
25 will have choices. You can hold it or you can sell it. You

1 can hold it and maybe it will go up, on the other hand maybe it
2 will go down. Mr. Smolinsky didn't have to but he said in oral
3 argument that he told you of people who are willing to buy
4 claims and you can consider that. He's not giving you legal
5 advice on that and for sure I'm not giving you legal advice on
6 that. But what you are getting is an allowed claim for 200,000
7 dollars. And then that is what you're entitled to as a matter
8 of law along with the rights that go with an allowed claim of
9 200,000 dollars which is a bundle of stock and warrants that
10 measures up to a claim of that size.

11 MR. SPENCER: So, then, I got to make an account to
12 put all that in? I'm in jail.

13 THE COURT: Well, I didn't know whether you were in
14 jail or not. The fact that you're in jail doesn't affect your
15 legal rights.

16 MR. SPENCER: Yeah, I understand that but it's -- all
17 right. Okay.

18 THE COURT: But that's what you're entitled to under
19 the law.

20 MR. SPENCER: Yes.

21 THE COURT: Okay. We're now adjourned. Have a good
22 day.

23 MR. SPENCER: You too.

24 MR. SMOLINSKY: Thank you, Your Honor.

25 (Whereupon these proceedings were concluded at 3:04 PM)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

RULINGS

| | Page | Line |
|---|------|------|
| Final Fee Applications Approved | 16 | 23 |
| On the one motion remaining filed by Mr. Kidwell that the Court may rule on, the Court takes it under submission, allowing the parties 30 days to reach their own agreement before the Court will rule. | 50 | 5 |
| All Sanctions Motions Denied as Moot | 53 | 20 |
| Application of Mark Buttita for Allowance of Administrative Expenses Incurred Denied | 65 | 2 |
| 236th Omnibus Objection to Claim, Splinter Union Employee Claims Approved | 70 | 11 |
| 238th Omnibus Objections to Claim Granted | 71 | 7 |
| 243rd Omnibus Objection Sustained as to Claims Presented in this Hearing | 73 | 15 |
| 244th Omnibus Objection Sustained as to Claims Presented in this Hearing | 73 | 15 |
| 245th Omnibus Objection Sustained as to Claims Presented in this Hearing | 73 | 15 |
| 246th Omnibus Objection Sustained as to Claims Presented in this Hearing | 73 | 15 |

| | | | |
|----|---|----|----|
| 1 | Debtors' Motion to Enforce Settlement | 92 | 7 |
| 2 | Agreement Granted | | |
| 3 | Motion to Strike Documents Denied | 92 | 8 |
| 4 | Injunctions Enjoining Claimant from Further | 92 | 10 |
| 5 | Action against Debtors, et al., Granted In | | |
| 6 | Modified Form | | |
| 7 | | | |
| 8 | | | |
| 9 | | | |
| 10 | | | |
| 11 | | | |
| 12 | | | |
| 13 | | | |
| 14 | | | |
| 15 | | | |
| 16 | | | |
| 17 | | | |
| 18 | | | |
| 19 | | | |
| 20 | | | |
| 21 | | | |
| 22 | | | |
| 23 | | | |
| 24 | | | |
| 25 | | | |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

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

Dena Page
Digitally signed by Dena Page
DN: cn=Dena Page, c=US
Reason: I am the author of this document
Date: 2011.09.28 13:50:34 -04'00'

DENA PAGE

Also transcribed by:

PENINA WOLICKI, AAERT Certified Electronic Transcriber

CET**D-569

PNINA EILBERG, AAERT Certified Electronic Transcriber

CET**D-488

ELLEN KOLMAN, AAERT Certified Electronic Transcriber

CET**D 568

DEVORA KESSIN

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: September 28, 2011