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

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In the Matter of:

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

Debtors.

- - - - -x

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

October 28, 2011
9:57 AM

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

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STATUS CONFERENCE re Nova Scotia Issues:
Official Committee of Unsecured Creditors' First Amended
Objection to Claims filed by Green Hunt Wedlake, Inc. and
Noteholders of General Motors Nova Scotia Finance Company and
Motion for Other Relief

MOTION to Allow Payment of Reasonable Fees and Expenses
of the Ad Hoc Committee of Asbestos Personal Injury Claimants
Pursuant to 11 U.S.C. § 503(b)

APPLICATION for Final Professional Compensation for Asbestos
Claims Valuation Consultant to Dean M. Trafelet in his Capacity
as Legal Representative for Future Asbestos Personal Injury
Claimants for Analysis Research Planning Corporation

MOTION to Reconsider FRCP 60 or FRBP 3008 Claim No. 44306
(related document(s) 8000) re Sentry Select Insurance Company

DEBTORS' OBJECTION to Proof of Claim No. 45631 filed by Steven
Newman c/o Michael Green, Deceased

247TH OMNIBUS OBJECTION to Claims and Motion Requesting
Enforcement of Administrative Bar Date Order (Late-Filed
Administrative Proofs of Claim)

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248TH OMNIBUS OBJECTION to Claims (Insufficient Documentation)
Claims of William Kuntz III

249TH OMNIBUS OBJECTION to Claims (Insufficient Documentation)

250TH OMNIBUS OBJECTION to Claims (No Liability: Claims Assumed
by General Motors LLC)

251ST OMNIBUS OBJECTION to Claims (No Liability Claims)

Transcribed by: Lisa Bar-Leib

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P R O C E E D I N G S

THE COURT: Ladies and gentlemen, we have a very busy calendar today with three, and perhaps, four matters where I'm going to have to dictate decisions. For that reason, I want to take care of matters where -- that wouldn't be a factor, such as Nova Scotia -- and I see Nova Scotia people are up here at the front. And then more likely than not, I will take argument on everything and then take a recess and come back with all of the dictated decisions.

One or two of them are particularly easy. And I'm thinking of the Kuntz objection. And if you want to move that up front, we may be able to vary it, but I think that that will be the way I want to proceed.

All right. People want to give me an update on Nova Scotia?

MR. O'DONNELL: May it please the Court, Your Honor. Sean O'Donnell of Akin Gump on behalf of the Nova Scotia trustee.

THE COURT: I can't hear you.

MR. O'DONNELL: I apologize. May it please the Court, Your Honor. Sean O'Donnell with Akin Gump --

THE COURT: O'Donnell?

MR. O'DONNELL: Yes, sir.

THE COURT: Okay.

MR. O'DONNELL: -- on behalf of the Nova Scotia

1 trustee. As the Court may recall, we wrote to the Court
2 requesting a conference just so we could put a scheduling order
3 in place with respect to the issues that are involved in the
4 litigation. I defer to my colleagues, Mr. Finger of Greenberg
5 Traurig on behalf of the debtors and also on behalf of the
6 noteholders --

7 THE COURT: Just a minute. I hear a lot of noise on
8 the phone which is unacceptable. CourtCall, mute everybody on
9 the call unless there are people on the call who need to
10 participate in this conference.

11 THE OPERATOR: Yes, Your Honor.

12 THE COURT: Thank you.

13 MR. O'DONNELL: -- and also to Mr. Eric Fisher on
14 behalf of the general unsecured committee trust. Your Honor, I
15 think all that we need to do at this point is the parties are
16 looking to establish a hearing date with the Court's
17 indulgence. And then we can work backward and kind of fill in
18 the blanks on our own and submit a proposed order to the Court
19 rather than taking up your time with all the details. I think
20 there may be one or two other points that the colleagues -- my
21 colleagues would like to mention. But primarily, we're working
22 around an April 30th date. The preference for the Nova Scotia
23 trustee and for the noteholders would be that we work backward
24 from that date in terms of the Court's availability. And I
25 think Mr. Fisher, depending on that availability, may want to

1 work forward.

2 THE COURT: Did you consult with courtroom deputy to
3 find out available dates in that range?

4 MR. O'DONNELL: I don't think we have specific dates
5 in that range, Your Honor. I apologize.

6 THE COURT: Do you have a means for which or by which
7 I could set a schedule without any consultations with my
8 courtroom deputy?

9 MR. O'DONNELL: Speaking off the top of my head, Your
10 Honor, we could certainly provide a proposal to you with blanks
11 in it for the Court to fill in.

12 THE COURT: But you're looking for a trial date in the
13 April 30 range?

14 MR. O'DONNELL: Yes, Your Honor.

15 THE COURT: All right. Let me hear from the other
16 parties. Mr. Fisher?

17 MR. FISHER: Your Honor, Eric Fisher from Dickstein
18 Shapiro for the GUC trust. I'll be very brief because Mr.
19 O'Donnell is correct. I think we just need a hearing date and
20 the parties will be able to work collaboratively back from
21 there.

22 There was some dispute about when that hearing date
23 ought to be. And if Your Honor simply gives us an indication
24 as to the range that Your Honor considers reasonable, I'm
25 confident, as Mr. O'Donnell indicated, we can work backwards.

1 Based on how thing and given that we're still
2 expecting some documents from one of the noteholders from
3 Morgan Stanley to be delivered by mid-November, we think it's
4 reasonable to expect that document discovery will be completely
5 over by the end of December including resolving whatever stray
6 document disputes there may be. And then, Your Honor, what's
7 left between the close of document discovery and a hearing is
8 we think approximately fifteen depositions, fact depositions.
9 Expert discovery is likely. The noteholders and perhaps the
10 trustee will want to seek authorization from the Court to make
11 dispositive motions, pre-hearing submissions and then
12 ultimately a hearing.

13 So we think -

14 THE COURT: Dispositive motions? Is there a reason
15 why people think that on this fact-intensive matter,
16 dispositive motions are going to be productive.

17 MR. FISHER: Your Honor, the GUC trust certainly does
18 not think so. But I know -- just in terms of scheduling, I
19 expect that the noteholders and the trustee will seek -- will
20 write pre-motion letters and seek permission to make
21 dispositive motions. There are some standing issues that
22 they've raised that they believe are amenable to dispositive
23 motions.

24 And I mention it only because it affects determining
25 how much time we need between now and a hearing date to get all

1 the work done. We think four months, effectively, is enough
2 time. So if you envision that fact depositions get going in
3 January, we envision a hearing date April 30th or May. And
4 we're happy to consult with Your Honor's deputy and get a date
5 during the month of May. We expect four days of hearing, Your
6 Honor. I expect that our case will be largely adverse direct
7 testimony and between ten to fifteen witnesses including, in
8 all likelihood, one expert witness.

9 THE COURT: Ten to fifteen witnesses and an expert in
10 four days?

11 MR. FISHER: Yes, Your Honor.

12 THE COURT: Let me hear from you, Mr. O'Donnell. I
13 take it you're the guy who wants to file or at least wants to
14 have the option to file dispositive motions.

15 MR. STEINBERG: Your Honor, Arthur Steinberg for new
16 GM. We would also want to be able to file dispositive motions
17 on certain issues am I'm happy to speak about it after you --

18 THE COURT: All right.

19 MR. FINGER: Good morning, Your Honor. My name is
20 Kevin Finger of Greenberg Traurig on behalf of certain of the
21 noteholders. And the comments by all counsel I would echo here
22 today. To directly address the Court's question, there are
23 matters that can be decided as a matter of law. They have been
24 raised in the responses to the objection. They've been
25 highlighted there that we think can be decided separate and

1 apart from any factual issues. And taking the Court's
2 direction that the last time this issue was presented before
3 the Court to follow the rules applicable in this court for
4 presenting those dispositive motions to the Court.

5 THE COURT: And what discussions did you have with
6 your opponent with respect to what would happen to the trial
7 date while I was thinking about those dispositive motions
8 assuming I gave permission for them to be filed?

9 MR. FINGER: Our discussions, Your Honor, have
10 essentially been with Mr. Fisher to follow the rules that are
11 applicable in this court for seeking permission from the Court
12 participating in a conferencing going forward.

13 THE COURT: You already said that but that wasn't my
14 question. Presumably, you or new GM or somebody -- by
15 dispositive motion, I assume that's a euphemism for summary
16 judgment.

17 MR. FINGER: Yes, Your Honor.

18 THE COURT: That is a matter that, once you get beyond
19 preference cases, is rarely decided off the bench. I don't
20 remember exactly the amount of controversy in this case, but I
21 think it runs roughly from 350 million to a billion dollars.
22 Am I right in the ballpark terms?

23 MR. FINGER: It's higher than that, Your Honor. I
24 believe it's --

25 THE COURT: Okay.

1 MR. FINGER: -- in the neighborhood of two billion
2 dollars.

3 THE COURT: Two billion. Forgive me. It's at least
4 foreseeable, isn't it, that it's going to take me a little time
5 to decide dispositive motions?

6 MR. FINGER: It is, Your Honor, if the Court grants
7 permission to pursue that.

8 THE COURT: If I grant permission at all. And then is
9 it also foreseeable that the time to think about such motions
10 and/or to write them might have an effect upon the trial date?

11 MR. FINGER: Yes, Your Honor.

12 THE COURT: Now help me better understand the purpose
13 of a trial date when it is subject to that contingency.

14 MR. FINGER: Two primary issues, Your Honor. First,
15 we want to take these opportunity to update the Court on
16 discovery. It's been almost a year since we've been before the
17 Court and the Court authorized discovery in this matter. And
18 we want to provide a joint status report to that effect.

19 Secondly, the parties had been discussing a potential
20 schedule hearing. They've had some difficulty getting
21 resolution of those issues. And the parties believe that
22 setting a hearing date would facilitate, in terms of working
23 backwards, how the parties would then move to written discovery
24 and then oral discovery, expert discovery and work in the
25 prospect of dispositive motions. So from that perspective,

1 it's been useful --

2 THE COURT: Well, forgive me. That sounds a little
3 like Through the Looking Glass. You know, sentence first,
4 verdict later. How can one set a schedule without knowing that
5 which must be accomplished to be ready to achieve the event you
6 want me to schedule?

7 MR. FINGER: Your Honor, it has been a fruitful
8 discussion between the parties to discuss these types of
9 scheduling items. I think that if we get to a point where the
10 Court permits dispositive motions to go forward then perhaps
11 we -- discovery will be essentially complete under the Court's
12 direction and the rules applicable in this court. And at that
13 point, we may seek to adjourn the hearing and move it out to
14 accommodate the Court's consideration of those motions if
15 they're permitted to go forward.

16 THE COURT: Mr. O'Donnell, you want to be heard?

17 MR. O'DONNELL: Your Honor, I think, as he correctly
18 pointed out, the last time we were here, which was actually in
19 December of 2010, and we talked about whether or not pretrial
20 motions would be appropriate while discovery was ongoing that
21 you correctly pointed out to the parties that that's a bit of
22 putting the cart in front of the horse. And it's not so much
23 that we are looking to resolve that issue before the Court
24 today as we are to make sure that there are no surprises for
25 the Court and to let you know that the parties have discussed

1 the issues. I think at the close of the document production
2 and the deposition that, at a minimum, there will be several
3 issues that will be crystallized that we can present to the
4 Court on paper, have the pretrial motion and you'll either be
5 comfortable or not comfortable that that will fit within the
6 schedule that's been set by the Court. I think the parties,
7 and you'll hear also from Mr. Steinberg, are confident that
8 there will be at least one or two issues, of course Mr. Fisher
9 excluded, that can be resolved on summary judgment and would
10 certainly hopefully narrow the ten to fifteen witnesses that he
11 intends to call.

12 THE COURT: Mr. Steinberg, you can come on up, please.

13 MR. STEINBERG: Good morning, Your Honor. I want to
14 be clear that to the greatest extent possible, new General
15 Motors does not want to get into the way of this disagreement
16 which involves a serious issue involving up to two billion
17 dollars worth of claims. However, as we said in our pleading
18 that we filed and I articulated at the -- about ten months
19 ago -- so if I can just briefly say something in thirty
20 seconds, the committee's objection to claim embodies a Rule
21 60(b) motion or 60(b) allegation to upset the sale order which
22 obviously is something that relates to new General Motors. A
23 good portion of their theory of recovery with regard to
24 disgorgement of the consent fee involves an avoiding power
25 right which was, in effect, purchased by General Motors as part

1 of the sale order. Their issues relating to the swap claim
2 which is embedded into the Nova Scotia trustee's claim as
3 against old General Motors, that was something that was
4 purchased by new General Motors as part of the asset purchase
5 agreement. And if you read the noteholders' response to the
6 objection to claims, they raised the issue that if they don't
7 get everything that they wanted that the release embedded in
8 the lockup agreement, which protected GM Canada, may be
9 impacted.

10 So we rise and we seek to participate in these
11 proceedings to essentially protect our sale order, the assets
12 that we purchased and to make sure that GM Canada is protected
13 so that nothing that Your Honor does in relation to this claim
14 undoes the release that's embedded in the lockup agreement.
15 Other than that, we have contractually agreed to be supportive
16 of the noteholders. But the noteholders and the Nova Scotia
17 trustee are on their own in establishing the bona fides of
18 their claim in front of Your Honor. And we didn't commit to do
19 anything more than to be supportive of that.

20 And that is why I was surprised, frankly, when I saw
21 the status conference because documents were taking eight
22 months to gather and all of a sudden everybody wanted to go to
23 trial in four months. We don't care when you take this to
24 trial. I know Your Honor does care but we are indifferent. We
25 will go at whatever pace that Your Honor sets and whatever pace

1 that the parties want to set. I rise today to make sure that
2 Your Honor will allow us to participate in these proceedings,
3 protect those specific rights that I've articulated because
4 they are important to new General Motors. This is a contested
5 matter, not an adversary proceeding, so I didn't have a motion
6 to intervene to be able to say something. On the other hand,
7 I've spoken to the committee counsel and to the noteholders'
8 counsel all of whom said they recognize why we have an economic
9 interest to participate.

10 If I --

11 THE COURT: So you're looking, in substance, for a
12 Caldor order applicable in a contested matter.

13 MR. STEINBERG: That's correct.

14 THE COURT: Now to what extent (a) did I already rule
15 on this; and (b) do any of the other parties in the case have
16 any objection?

17 MR. STEINBERG: I don't think Your Honor has ruled on
18 this at all. I did speak at the last conference and I did talk
19 to each of the parties beforehand and each one recognized that
20 I should be entitled to participate in the hearing.

21 THE COURT: I have no memory of having previously said
22 you can't speak. You would just like to have that a little
23 better clarified?

24 MR. STEINBERG: Oh, I didn't -- if you did say that
25 then I --

1 THE COURT: No. I think I let you speak every time
2 you've come in and you've tried to stand up and say something,
3 haven't I?

4 MR. STEINBERG: You do. But since -- I didn't want
5 anybody to say later on that I had not formally done something
6 to solidify my opportunity to speak to protect New GM's rights.
7 And I am particularly concerned -- and I don't mean to make
8 this more complicated, but we do have a procedure where
9 avoiding power claims are essentially being asserted not in the
10 context of an adversary proceeding. And I want to make sure
11 that issue is joined with regard to whether the lockup
12 agreement will be enforced and specifically the releases
13 contained in the lockup agreement to be enforced, because the
14 last thing I want to do -- see happen is that Your Honor rules
15 how ever Your Honor will rule and then the Nova Scotia trustee
16 sues GM Canada in Canada and says it's based on Judge Gerber's
17 ruling. I'd want to make sure that Judge Gerber's ruling
18 addresses the issue that we are in compliance with the lockup
19 agreement which solidifies the release for GM Canada. And
20 that's a very, very important issue not only for New GM but
21 also for the large old creditor constituency in New GM.

22 THE COURT: Well, Mr. Steinberg, it seems to me that
23 the only thing that I could or should properly give you is an
24 opportunity to be heard on whatever you want to be heard later
25 on. Am I correct in that's really all you're asking me for?

1 MR. STEINBERG: That's all I'm asking for. But I will
2 want to, Your Honor -- and it's not for summary judgment as to
3 the allowance of a claim or not allowance of a claim. It is
4 with regard to if there's a Rule 60(b) allegation that's
5 contained in the objection to claim, which has never been
6 articulated as to what provision of Rule 60(b) they're moving
7 under, we would, before trial, like to see that thing -- and I
8 think it could be dispositive -- to get rid of that issue. But
9 we don't know for sure because he hasn't taken his depositions
10 and he hasn't told us why he's really going forward on 60(b) in
11 the first place. But obviously, the committee was supportive
12 of the sale order and now to try to undo an aspect of the sale
13 order doesn't seem to make sense.

14 To the extent that --

15 THE COURT: You're tending to repeat yourself now, Mr.
16 Steinberg.

17 MR. STEINBERG: Okay. I don't mean to, Your Honor.

18 THE COURT: All right. Folks, you know me by now. I
19 don't like a lot of motion practice on things where it's not
20 required. Does anybody want to be heard on whether I give Mr.
21 Steinberg Caldor relief so that he can be heard on whatever he
22 wants to be heard going forward? Mr. Fisher, first you.

23 MR. FISHER: Your Honor, only to say that I have
24 spoken to Mr. Steinberg. And we recognize that New GM does
25 have a financial interest in this objection. And so, we have

1 no issue with Mr. Steinberg's participation.

2 THE COURT: All right. The bondholders' side.

3 MR. FINGER: We have the same position, Your Honor.
4 We've spoken with Mr. Steinberg and recognize his right to be
5 heard in this particular matter.

6 THE COURT: Okay. Anybody else who wants to weigh in
7 on this who I haven't given an opportunity to? No. Subject to
8 one last chance to be heard, I'm going to so-order the record
9 giving Mr. Steinberg on behalf of New GM the rights to appear
10 and be heard in this contested matter to the extent he needs it
11 since 1109 would seemingly already give him that right.
12 Subject to the same conditions that I put in my published
13 decision, which I think was in Adelpia -- it might have been
14 one of my other cases -- shortly after Calgor came out where I
15 said that, of course, is always subject to the rights of the
16 judge to control his docket and to avoid duplication and
17 require coordination and the like. Anybody want to be heard in
18 opposition to that?

19 MR. ZIRINSKY (TELEPHONICALLY): Your Honor, it's --
20 can you hear me? It's Bruce Zirinsky. I'm on the phone.

21 THE COURT: Yeah. Go ahead, Mr. Zirinsky.

22 MR. ZIRINSKY: How are you, Your Honor? Your Honor,
23 just very briefly, I have no objection whatsoever to New GM's
24 right to be heard or right to participate. I just want to make
25 it clear, and I think it is clear but just for the record, that

1 this order that Your Honor has indicated he would enter would
2 not in any way waive any defenses including jurisdiction over
3 defenses that the parties might have and they might wish to
4 assert with respect to any claims or position of GM -- New GM
5 had asserted.

6 THE COURT: Well, I don't think I said anything about
7 waivers and I didn't hear any of the parties saying anything
8 about waivers. I think that goes without saying. You know,
9 this being --

10 MR. ZIRINSKY: I just want to be secure.

11 THE COURT: This being a contested matter rather than
12 an adversary, I'm not even sure if I'm saying anything that
13 isn't already the law. But you can have your non-waiver
14 rights, Mr. Zirinsky. Mr. Fisher has his non-waiver rights.
15 And if I failed to include anybody, he or she has similarly not
16 forfeited any waiver rights.

17 Mr. Steinberg, paper this ruling by a short simple
18 order that substantially states what I just said on the record.
19 Run it past the other parties in the case. See if you can
20 reach agreement on its form. If you can't -- if you can't, I'm
21 going to be upset. But if you have to, you can settle it.

22 MR. STEINBERG: Okay, Your Honor.

23 THE COURT: Thank you. All right. Now I gather
24 there's some kind of timing dispute or some kind of dispute
25 that you guys are --

1 MR. O'DONNELL: Your Honor, I actually don't know that
2 there is a dispute anymore. I think that the date that the
3 parties have pegged is April 30th. And depending on the
4 Court's availability, I think -- Mr. Fisher's anticipating a
5 four-day trial. With the number of witnesses that are
6 identified, hopefully we can narrow that down, but we were
7 hoping to hear from the Court as to what its availability was
8 either a little before or a little after April 30th.

9 THE COURT: Well, forgive me, Mr. O'Donnell, but the
10 way to try to ascertain my availability would have been to try
11 to tell me before I showed up on the bench that you were going
12 to be asking me for a particular date so that I could have
13 consulted Ms. Blum. And I didn't see it in your letter. Maybe
14 it was there and I just read it too quickly.

15 MR. O'DONNELL: No, Your Honor. Actually, at the time
16 of the letter, I think the parties were further apart. And
17 we've continued to try and resolve the issues. And as of
18 today, I think so long as it's somewhere around April 30th,
19 none of us can be heard to complain.

20 THE COURT: Well, let me tell you, gentlemen, when I
21 make discretionary calls, I do it in part on my experience
22 which is roughly eleven years as a judge and thirty years
23 before that as a lawyer. When you're taking witnesses on
24 adverse direct, and when redirect by necessity must follow it
25 and to take on a very great importance, and when you've got

1 fifteen of those witnesses even though you're promising me that
2 you can lower the number, you're smoking dope if you can do
3 that in four days.

4 MR. O'DONNELL: Yeah. I --

5 THE COURT: And -- forgive me. And there's another
6 consideration as well which is that setting the schedule, if
7 you want to make dispositive motions, is a waste of my time,
8 your time and my courtroom deputy's time unless you're content
9 to go with what would be my preference which is to raise all of
10 your legal objections at the same you raise your factual ones.
11 Now, I sense that you don't want to give that right up yet.
12 And I sense that Mr. Steinberg doesn't either. But am I
13 missing something?

14 MR. FINGER: This is Kevin Finger, Your Honor. No,
15 you're not missing that. We were not prepared to give that
16 right up at this point. So that's something that we will --
17 fully intend to pursue pursuant to the rules of this court.

18 THE COURT: When do you think you guys would be in a
19 position to tell me that you want me to consider the pre-motion
20 conference which presumably would be after you've completed the
21 remainder of your discovery?

22 MR. FISHER: Your Honor, Eric Fisher for the GUC
23 trust. I'd like to just try to cut through this because I
24 think we're here because when I suggested a May hearing date, I
25 was told that was too slow. And when I suggested a four-day

1 hearing, I was told that was too long. So now that we're
2 hearing Your Honor's views on the matter --

3 THE COURT: Well, I wasn't sitting in your
4 depositions. Do you think my experience as a litigator
5 wouldn't carry over to considering issues of this character?

6 MR. FISHER: I'm sure you're right about that, Your
7 Honor. And it's an ambitious estimate. But we've been working
8 together as collaboratively as we can. So I think we're
9 optimistic that we can put on a case efficiently for that
10 reason.

11 All that being said, I think we're going to be done
12 with fact depositions at the latest by some time in mid-
13 February. So I would simply suggest that we come back to Your
14 Honor towards the end of February. We can get a date from Your
15 Honor's deputy and use that --

16 THE COURT: Date for a conference or --

17 MR. FISHER: Date for a -- simply for a conference and
18 use that conference as a pre-motion conference as well to the
19 extent that any parties still think that they have well
20 grounded dispositive motions. And not worry about a hearing
21 date until we know what the picture is in terms of whether
22 dispositive motions are going to be going forward or not.

23 THE COURT: Mr. O'Donnell? Mr. Finger?

24 MR. O'DONNELL: Your Honor, that's acceptable to the
25 Nova Scotia trustee.

1 MR. FINGER: And to the noteholders, Your Honor.

2 THE COURT: All right. I'll agree to that in
3 principle. I think that makes sense. I take it you don't need
4 an exact date from me to interrupt this hearing to call my
5 courtroom deputy out to pull out the book at this point.

6 MR. O'DONNELL: Correct, Your Honor.

7 MR. FINGER: No, Your Honor. We'll consult with the
8 courtroom deputy for that purpose.

9 THE COURT: All right. Now to what extent do you have
10 other matters in dispute that you need me to address?

11 MR. FINGER: I don't believe there are any other, Your
12 Honor. Mr. Fisher may --

13 MR. FISHER: The only other issue, Your Honor, is
14 going into this conference, we had asked for permission or
15 consent from the other side to exceed the ten deposition limit.
16 At the very most, we're talking about fifteen depositions. If
17 we now have agreement on that then I don't think there are any
18 remaining issues.

19 THE COURT: Gentlemen?

20 MR. O'DONNELL: No objection from the trustee, Your
21 Honor.

22 MR. FINGER: We -- on behalf of the noteholders, Your
23 Honor, we don't know who the deponents would be. And I think
24 it's -- I think the reason we haven't reached agreement is
25 because we think it's premature slightly to agree to that

1 number without knowing who the potential deponents are. I
2 think, as Mr. Fisher indicated, we've worked collaboratively so
3 far to resolve our disputes. I just -- I happen to think that
4 this particular issue is premature at this point.

5 THE COURT: Gentlemen, why don't we do this? Have the
6 dialogue, talk it out. And if you continue to have a
7 difference in perspective, set up a telephonic conference call.

8 MR. FINGER: We'll do that, Your Honor. Thank you.

9 THE COURT: Okay. Anything else?

10 MR. O'DONNELL: That's it, Your Honor.

11 MR. FINGER: No, Your Honor.

12 THE COURT: All right. Then you're all excused. And
13 I would like -- did I see Mr. Smolinsky out there somewhere?
14 Mr. Smolinsky, could I ask you to come up and give me your
15 recommendations as to the way to proceed?

16 MR. SMOLINSKY: Good morning, Your Honor. Joseph
17 Smolinsky, Weil Gotshal & Manges on behalf of the post-
18 effective date debtors and the Motors Liquidation Company GUC
19 trust. Your Honor, in view of the comments made by Your Honor
20 earlier, I would suggest that Ms. Greer go forward with her
21 portion of the calendar which are the omnibus claim objections
22 and then we'll proceed through the calendar through its normal
23 course.

24 THE COURT: Okay. Ms. Greer?

25 MS. GREER: Good morning, Your Honor. Stefanie Greer

1 from Dickstein Shapiro on behalf of the trust. Today we have
2 five omnibus claim objections, Your Honor. All except for one
3 are uncontested. And the one is only uncontested (sic) as to
4 one claim and that's the Mr. Kuntz claim that you alluded to
5 earlier. If it's all right with Your Honor, I think I'll go
6 through the omnibus objections and we can go back and hear from
7 Mr. Kuntz and address --

8 THE COURT: Okay.

9 MS. GREER: Okay? So, first, we have the 247th
10 omnibus objection which is late-filed administrative claims.
11 All thirteen of those are going forward on an uncontested
12 basis. The 248th omnibus objection, which is based on
13 insufficient documentation, one of those has been adjourned,
14 one withdrawn and thirty-nine are going forward. Today -- and
15 that's where Mr. Kuntz' claim comes in and that the one
16 uncontested (sic) one -- the one contested matter. The 249th
17 omnibus objection is also an insufficient documentation
18 objection. Ten of those have been adjourned, three have been
19 withdrawn, and eighty-three are going forward. And we have the
20 250th omnibus objection. That's a no-liability objection which
21 deals with claims assumed by New GM. Two claims have been
22 withdrawn -- or two of our objections have been withdrawn and
23 sixty-four are going forward. And then the 251st omnibus
24 objection which are also no-liability claims, those are simply
25 claims that General Motors has no liability for. So eight of

1 those are going forward on an uncontested basis.

2 THE COURT: Okay. That's all fine. All right. Now
3 are you going to be arguing Kuntz on behalf of the estate?

4 MS. GREER: Yes, Your Honor.

5 THE COURT: Is Mr. Kuntz in the courtroom? Come on
6 up, please. Mr. Kuntz, come to the main lectern, please. Give
7 me your full appearance. And I will hear you. You should know
8 that I've read the papers and I will whatever you have to say
9 to supplement your papers.

10 MR. KUNTZ: William Kuntz III, India Street, P.O. Box
11 1801, Nantucket Island, Massachusetts 02554. Before getting
12 into the merits or demerits of this, I'd like to make it
13 perfectly clear that I'm more than willing to have this
14 adjourned till April. I already had a matter set for trial in
15 Florida on the 15th of November. And the date in November that
16 was offered to me would require me to fly back from Florida at
17 my own expense. And the amount of money that's at issue here
18 is microscopic compared to the sums that are at issue. It's
19 obvious to me that the debtors haven't done any investigation.
20 They didn't call anybody. They didn't look anywhere. And I've
21 had a lot of e-mail exchanges -- I'm willing to give them every
22 opportunity to dig into this. Their own press release said
23 they analyzed something. If they analyzed something, that
24 means that there has to be a form, a statement, a witness, an
25 analyst, somebody they can prove. All they've done so far --

1 THE COURT: We're going forward today, Mr. Kuntz.

2 MR. KUNTZ: That's fine, Your Honor. I have a
3 prepared statement, if I may read it.

4 THE COURT: So long as it's consistent with what I
5 said which is that it's nonrepetitive of your papers, yes.

6 MR. KUNTZ: I'm not sure what you mean by that, Your
7 Honor.

8 THE COURT: Mr. Kuntz, I have a multi-billion dollar
9 case here for which I prepare in advance based upon papers that
10 counsel give me.

11 MR. KUNTZ: Well, first --

12 THE COURT: And -- no. You can't interrupt the judge,
13 sir. And I could not run my courtroom or the cases on my watch
14 without orderly procedures. You may supplement your papers.
15 You can deal with anything that was not addressed in your
16 papers, but you are not going to impose on the patience of the
17 other people in this case or upon GM's creditors, old GM's
18 creditors. So you will proceed under the terms that I
19 articulated.

20 MR. KUNTZ: Well, Your Honor, first, let's deal with
21 the reply of the debtor. It was served -- it was not served
22 within the rules. It was out of time. They attempted to fax a
23 hundred pages worth of documents to a motel. As I understand
24 the procedures, if I don't list a fax number on my papers, if I
25 don't list an e-mail address on my papers, I'm not able to be

1 served in that fashion. I previously advised counsel that the
2 computer at the motel on Cape Cod the word system, the program
3 for reading documents, was down. They went ahead two days ago
4 or three days ago and sent me five large word files or whatever
5 that I couldn't open. I advised them that. Within twenty-four
6 hours, they started pumping pages and pages and pages and pages
7 through the motel's fax machine, a fax number which is for the
8 motels to make reservations. It's not for guests to receive,
9 you know, huge amount of faxes. The desk clerk wrote on there
10 "Refused", faxed it to them. The faxes continued to come. I
11 went up to Staples. I faxed it again. Sent -- you know, with
12 a receipt, time and date. The faxes continued to come. As I
13 stand here now, their reply papers are out of time. They're
14 out of time and not served. I got e-mails saying oh, we need a
15 better address for you. I have a post office box address on my
16 papers. The Federal Rules of Civil Procedure provide and
17 contemplate service by mail. Not Federal Express, not DHL.
18 All those things are in some other area. And to my knowledge,
19 the papers that they attempted to send to me in Nantucket were
20 put in the hands of their overnight courier after the cutoff
21 time. And in New York State, as far as I understand, if they
22 don't get the papers in to Federal Express' hands or whoever --
23 and I've never received those papers yet -- I was never served.
24 So therefore, all you have is the two magic words,
25 "insufficient documentation", and my reply and the proofs of

1 claim.

2 The proofs of claim are filed under penalty of five
3 years in prison and half a million dollar fine. How much would
4 you expect in a large case like this for somebody to document a
5 300 dollar claim. There's the form, gets signed. It was filed
6 in time.

7 The other two involve a thirty-year old truck that
8 went to one dealer and then went to another dealer. And then
9 General Motors put the guy into the small dealer exit program,
10 none of which was investigated. You know, they weren't aware
11 of that. And then right attached to the exhibit to the proof
12 of claim down in Willsboro, the demand for arbitration under
13 the New York CPLR. I don't know what they mean when they say
14 insufficient documentation. Maybe it's not boiler plate
15 General Motors style but certainly there was enough for them to
16 send a letter. In the papers, there's an e-mail from the
17 claims department in April -- April -- where they basically
18 acknowledged they've received. They'll get back with me. Did
19 I get a postcard? Did I get a letter? Nothing. This is just
20 carpet filing. This is the same that's gone on in Lehman and
21 everything else. The lawyers that come here -- you know,
22 20,000 claims have probably been knocked out of this case
23 because people don't understand the procedure. I've read some
24 of the handwritten papers that people -- they just don't
25 understand. I understand a little bit and I think that the

1 Court should rule them out of time and allow these small
2 claims.

3 THE COURT: Mr. Kuntz, I need you to focus on one
4 thing.

5 MR. KUNTZ: I have nothing more --

6 THE COURT: Which -- no.

7 MR. KUNTZ: I have nothing more to say.

8 THE COURT: You will not inter --

9 MR. KUNTZ: I have nothing more to say, Your Honor.

10 THE COURT: All right. Ms. Greer?

11 MS. GREER: Your Honor, Stefanie Greer again on behalf
12 of the trust. Our arguments are set forth in our papers, Your
13 Honor. I'll just make a quick point. Certainly, Your Honor,
14 we did assert the reply in accordance with the case management
15 order three days prior to the hearing. He obviously received
16 it since he responded to it with his own surreply. So I don't
17 think there's any valid issue there.

18 There is nothing in his claims which establishes any
19 claim against GM. And I just want to note for the record that
20 all the facts that he's alleged in his papers are otherwise --
21 the trust disputes as a matter of fact.

22 THE COURT: All right. Very well.

23 MS. GREER: Do you have any questions, Your Honor?

24 THE COURT: Not from you.

25 MS. GREER: Thank you.

1 THE COURT: Mr. Kuntz, I will hear reply limited to
2 what Ms. Greer said, if you wish.

3 MR. KUNTZ: I don't see the affidavit of service. I
4 went to the clerk's office this morning. I looked this morning
5 on the court's docket. Their proof of serving the papers has
6 not yet been filed and we're in court now. I, this morning,
7 filed an errata -- 'cause I left off my phone number on my
8 reply. So my phone number was on the papers to comply with the
9 Federal Rules of Civil Procedure. And I also filed my proof of
10 service this morning. Their proof of service of their late
11 papers is not on file as we speak. Now perhaps counsel has a
12 copy they'd like to offer. I've offered to put this over till
13 April. And I can obviously see you're -- Your Honor is
14 aggravated about this. I'm not -- I came down here to
15 basically -- I offered to start with to put it over till April.
16 They declined. This case is going to be going on in April of
17 next year. This case will probably be going on in April of
18 2014. It's their ego, their insistence that we're going to do
19 this the General Motors way that has me here making Your Honor
20 angry. I apologize.

21 THE COURT: All right. With so many people in the
22 courtroom, I don't want to interrupt the proceedings now by the
23 dictated decision. We'll go right to the next matter.

24 Let me ask the people in the courtroom who are
25 waiting. It seems to me that I have the asbestos ad hoc

1 committee. I have asbestos claims valuation consultants. I've
2 got the Newman matter. Do you have a recommendation as to the
3 order in which I take those three? I will take argument on all
4 three.

5 MR. SMOLINSKY: Again, Joseph Smolinsky, Your Honor.
6 I have no preference. Perhaps we should just go in accordance
7 with the agenda. The next matter on the calendar is the final
8 application of Analysis Research Planning Corporation.

9 THE COURT: All right.

10 MR. SMOLINSKY: Your Honor, Analysis Research Planning
11 Corporation, or ARPC, has requested total fees in this case of
12 758,031 dollars as consultant to the future claims
13 representative. We're not objecting. And, in fact, Your
14 Honor, you may recall the final approval has already been given
15 for \$422,782.50 fees. The debtors are objecting to the
16 remaining amount of \$335,248.50.

17 THE COURT: Mr. Smolinsky, the main thing I want to
18 hear about is the distinction or the delta between the date
19 that the stip was signed and the date that I approved it.

20 MR. SMOLINSKY: Your Honor, the amount that we're
21 objecting to relates exclusively to fees that were incurred
22 after the settlement was entered into on January 21st, 2011.
23 So if you look at the breakdown of the 3700 hours that were
24 incurred after that point, according to our records, there was
25 approximately 75,000 dollars that was incurred between the time

1 that the stipulation was entered into and the time the
2 stipulation was approved by the Court. Our calculations show
3 that approximately 260,000 was incurred between the time that
4 the settlement, the asbestos settlement, was approved by the
5 Court and the confirmation hearing. And then, Your Honor,
6 there was an additional 17,000 dollars that was incurred after
7 the confirmation was approved. So I used March 31st -- March
8 29th as the cutoff which is the day that the plan was
9 confirmed. So it's 75,000, 260,000 and 17,000.

10 THE COURT: Now, Mr. Smolinsky, I need your help, and
11 I'll need help from Mr. Esserman, confirming my memory in the
12 light of stuff that I've read in your respective papers. To
13 what extent, if any, had any objections been voiced to the
14 stipulation or to issues related to the stipulation in the
15 later confirmation process?

16 MR. SMOLINSKY: Your Honor, there were no objections
17 to the stipulation of settlement with respect to the fixed
18 allowance of the claims to be used under the plan.

19 With respect to plan confirmation, there were
20 certainly no collateral attacks on the validity of that
21 settlement. There were some discussions, obviously, about the
22 structure of the plan and the treatment of asbestos
23 plaintiffs --

24 THE COURT: Well, I understand that. But the
25 stipulation, among other things, fixed the amount and the

1 mechanism by which the asbestos claims would be satisfied, am I
2 correct?

3 MR. SMOLINSKY: That's right, Your Honor. And after
4 that settlement was approved, all of the professionals started
5 working on -- the attorneys started working on briefs in
6 support of plan confirmation.

7 THE COURT: Right. Now I remember a zillion -- I
8 mean, I wrote an opinion on confirmation. And I remember the
9 issues that I addressed in that opinion which principally
10 related to dealing with disputed claims, claims reserves and
11 releases.

12 I know what I dealt with in my written opinion.
13 Between the time that the stip was signed and the confirmation
14 hearing, were there pending objections that I never saw because
15 they were dropped that related to asbestos claims getting too
16 much?

17 MR. SMOLINSKY: No, Your Honor. There was never an
18 objection raised with respect to the amount of that claim and
19 that settlement. And the work that was done by the ARPC was
20 not related to confirmation of the plan. The descriptions of
21 the time that was spent for each and every entry was continued
22 to review GM case documents supplied in response to FCR and ACC
23 requests. That issue, that calculation, was never addressed
24 after the settlement was signed.

25 THE COURT: All right. Continue, please.

1 MR. SMOLINSKY: So, Your Honor, it was understood by
2 all the parties when we gathered by phone to go over the final
3 touches on the stipulation of settlement. And it was
4 understood by all the parties that it was pencils down after
5 that. There was a recognition by the parties, and, in fact,
6 the stipulation specifically provides that to the extent that
7 there was a successful challenge to the approval of the
8 stipulation that the March 1st, 2011 date -- trial date that
9 was set for estimation of those claims would be put off to
10 allow the parties to finish their discovery. And in fact, if
11 you look at the time records that were billed by the other
12 consultants, there was no time spent or virtually no time
13 spent --

14 THE COURT: By anybody other than this entity.

15 MR. SMOLINSKY: That's right. There was one
16 consultant that had thirty-nine hours after the stipulation was
17 entered into. But other than that, the consultants had no time
18 billed.

19 And for whatever reason, ARPC kept continuing to work
20 on the analysis of how much the claims totaled. They worked
21 seven days a week, overtime hours. One person billed twenty-
22 eight hours on President's Day, which was February 21st, 2011,
23 which was a week after the stipulation was approved by Your
24 Honor.

25 So we've read the response and we simply don't

1 understand and don't think that the arguments that were made
2 are relevant to the issue of whether the fees are reasonable
3 under Section 330 of the Bankruptcy Code. We're not here to
4 embarrass ARPC. We're not here to show a lack of gratitude for
5 their participation in fashioning the settlement that was so
6 critical to confirmation of the plan. But the challenged fees
7 are so egregious that we felt compelled to bring this to Your
8 Honor's attention for your consideration.

9 THE COURT: All right.

10 MR. SMOLINSKY: Thank you, Your Honor. Mr. Esserman,
11 are you going to be speaking on behalf of that applicant?

12 MR. ESSERMAN: Yes, Your Honor. Your Honor, first,
13 I've talked with ARPC and we've agreed to reduce -- well, ARPC
14 agreed to reduce their application of -- the requested
15 application to eliminate any fees post-confirmation -- post the
16 commencement of the confirmation hearing on March 3rd, 2011.

17 THE COURT: But ARPC is still asking for fees after --

18 MR. ESSERMAN: The stipulation.

19 THE COURT: -- the deal was struck or at least after I
20 approved the settlement?

21 MR. ESSERMAN: Yes, Your Honor. And the reason is as
22 follows. 75,000 dollars of that was incurred prior to the
23 entry of the Court of the stipulation.

24 THE COURT: That's the question that I asked Mr.
25 Smolinsky.

1 MR. ESSERMAN: Yes.

2 THE COURT: In your understanding of the facts, it's
3 the same 75,000 buck amount.

4 MR. ESSERMAN: 75,396 dollars was --

5 THE COURT: I'll hear the remainder of what you have
6 to say, Mr. Esserman, but that is the principle area as to
7 which I need argument.

8 MR. ESSERMAN: And that's the only area that I intend
9 to address.

10 THE COURT: No. Forgive me. Are you withdrawing your
11 request for anything after February 14th?

12 MR. ESSERMAN: No.

13 THE COURT: Well, then we have a difference in
14 perspective.

15 MR. ESSERMAN: Okay. I'm --

16 THE COURT: So you're going to have to give me some
17 help on that.

18 MR. ESSERMAN: Okay. I apologize, Your Honor. ARPC
19 received on January 13 1.1 million pages of documents of
20 discovery that we had been seeking to complete the report for
21 ARPC. Until the confirmation hearing, until Your Honor
22 approved confirmation of the plan, there was always the
23 possibility that some creditor could come in and object to
24 either the asbestos settlement or that we would need to
25 testify -- that ARPC would need to testify. And therefore,

1 they needed to complete their report. These fees were all
2 incurred to complete the report. I would point out, Your
3 Honor, that with the reduction that we've requested, the total
4 ARPC fees would be about 600,000 dollars. The unsecured
5 creditors' committee expert incurred 1.199 million, almost two
6 million dollars (sic) for the same work that ARPC has done.
7 Now they completed it prior to the execution of the
8 stipulation.

9 THE COURT: Isn't that a huge significant difference?

10 MR. ESSERMAN: It's gigantic. It's gigantic.

11 THE COURT: I'm not talking about the monetary amount.
12 I'm talking about the temporal difference, that the services
13 run up by the asbestos committee's expert were done up until
14 the time the deal was struck and the bone of contention between
15 you and Mr. Smolinsky is after the deal was struck.

16 MR. ESSERMAN: Except we got 1.1 million pages of
17 documents that could have reflected on exactly what the final
18 analysis was that had to be looked at. And that is what ARPC
19 did in order to complete the report. We entered the
20 stipulation under incredible time frames with an incomplete
21 report. We did not have time to complete the report. And ARPC
22 didn't have time to complete the report. And we were trying to
23 accommodate the Court's schedule, everybody wanting to get this
24 out, the tail of the dog being asbestos in the GM case. We
25 understood that. We understood all the issues, the pressures

1 that everyone was under to get this case done. But we still
2 felt -- the futures rep felt they needed to have a complete
3 report.

4 THE COURT: Mr. Esserman, was there any discussion
5 with ARPC about the possibility of that effort being done after
6 the deal was struck for some other purpose, for some other
7 controversy or some reason beyond a stipulation that was
8 already reached?

9 MR. ESSERMAN: It was strictly for GM -- it was
10 strictly for the GM case and strictly for the futures rep's
11 understanding and analysis of the asbestos liability.

12 THE COURT: Vis-à-vis a deal that he had already
13 struck back on January 21st.

14 MR. ESSERMAN: And a deal which he may have been
15 called upon to testify at confirmation should that have been
16 contested. And he needed to have a complete record.
17 Otherwise, he was unprepared to testify as to the amount.

18 THE COURT: Remember the questions I asked Mr.
19 Smolinsky when it was his turn? To what extent were any
20 objections raised after the stip was signed to approval of that
21 stip?

22 MR. ESSERMAN: I am not aware of any objections to the
23 asbestos -- I agree with Mr. Smolinsky -- to the asbestos
24 settlement.

25 THE COURT: All right. And if there had been any, you

1 would know it, wouldn't you?

2 MR. ESSERMAN: Oh, of course. I mean --

3 THE COURT: All right. Now to what extent were there
4 any objections to confirmation premised upon the notion that
5 asbestos claimants got too sweet a deal?

6 MR. ESSERMAN: There is no timely or untimely
7 objection filed that I was aware of.

8 THE COURT: All right. Continue.

9 MR. ESSERMAN: But that doesn't mean that we -- we
10 felt ARPC needed to be prepared and the futures rep needed to
11 be prepared.

12 THE COURT: Well, let me raise one last question, a
13 first cousin of what I asked a second ago. From time to time,
14 people don't file formal objections but they call you up, they
15 write you letters and they put you on notice that an objection
16 is in the wings. Did you get any phone calls of that
17 character?

18 MR. ESSERMAN: Not by anyone that I can recall.

19 THE COURT: Any letters of that character? Anybody
20 saying in words or substance that the deal that had been struck
21 for the asbestos claimants --

22 MR. ESSERMAN: It was somehow --

23 THE COURT: -- was too good and that it was going to
24 lead to a confirmation objection?

25 MR. ESSERMAN: Not that I'm aware of, Your Honor.

1 THE COURT: Go on.

2 MR. ESSERMAN: That's all I have to say.

3 THE COURT: All right. Mr. Smolinsky, any reply
4 limited to what Mr. Esserman said?

5 MR. SMOLINSKY: Your Honor, I don't want to beat a
6 dead horse. I just want to add that he wouldn't have received
7 any calls because these are future claimants. They don't have
8 claims yet so they couldn't object. And what I struggle with
9 in understanding is that if they finished their report and they
10 found out that they settled too low, they could only be called
11 into question for the settlement that they did based on the
12 facts that they had at the time. If they corroborated the
13 information, they were already prepared to testify at the
14 settlement hearing that the amount that was fixed by the
15 settlement was fair and reasonable. So that's all I have to
16 say, Your Honor.

17 THE COURT: Okay. Let's move on to the ad hoc
18 asbestos committee fee app. Mr. Esserman?

19 MR. ESSERMAN: Yes, Your Honor, we filed a
20 supplemental paper which I assume Your Honor has reviewed.

21 THE COURT: Yes.

22 MR. ESSERMAN: We received two timely objections and
23 one untimely objection from the U.S. trustee. We --

24 THE COURT: Mr. Esserman, putting aside whether the
25 U.S. trustee's apparent sending you the document the day after

1 was due, if math is right, assuming that it committed an
2 offense by doing that, doesn't the bankruptcy judge have an
3 independent right even in the absence of any objection?

4 MR. ESSERMAN: Absolutely. And although we've
5 objected to the timeliness, it does not detract in any way from
6 the independent right of the bankruptcy judge to address all
7 issues including those perhaps raised by the U.S. trustee. But
8 I do point that out.

9 We have been able to resolve the objections of the
10 government represented by Mr. Jones of the Treasury. We've
11 withdrawn all fees related to the sale issues and have filed
12 our amended request for \$232,082.22. We've broken it down by
13 categories of -- general categories: appointment of the
14 futures rep which was \$27,81.25; the bar date issues which we
15 addressed, which was \$37,048.25.

16 THE COURT: Now the bar date issues are those by Remy
17 and Detroit Diesel, am I correct?

18 MR. ESSERMAN: No. That's a different issue. Those
19 are what I'll call --

20 THE COURT: Oh, you said bar date.

21 MR. ESSERMAN: Yes.

22 THE COURT: Forgive me. Yeah, I need help on that
23 because I thought that the debtor had asked for a bar date
24 already.

25 MR. ESSERMAN: I'm sorry?

1 THE COURT: I thought the debtor asked me to set a bar
2 date.

3 MR. ESSERMAN: Yes. And the question on the bar date
4 was not just a bar date. The question was the timing, the
5 notice provisions, how it was going to be noticed, what time
6 asbestos claimants had to respond to that bar date. All those
7 were in play. All those were in issues. The debtor had one
8 view. We had another view of when the bar date should be
9 effective, how it should be defined, who should have to comply.
10 And all those issues, I believe, were worked out between the
11 debtor and our ad hoc group.

12 THE COURT: Tell me what the bid and the ask was, what
13 the nature of the difference in perspective was.

14 MR. ESSERMAN: I think, ultimately, the biggest
15 issue -- and I will, to a certain extent defer it to Mr.
16 Smolinsky to either refresh or change my recollection, but I
17 believe the biggest issue was -- one of the biggest issues was
18 the timing of when compliance had to be given to respond to the
19 bar date.

20 THE COURT: So 35,000 bucks were for services to agree
21 upon how many days --

22 MR. ESSERMAN: That was --

23 THE COURT: -- there would be to respond?

24 MR. ESSERMAN: That was just one issue, Your Honor.

25 The issue -- I think there were definitional issues of who had

1 to respond. There was a question as to whether or not a bar
2 date was even appropriate for unsecured asbestos claims,
3 whether or not there should be a bar date. We ultimately
4 agreed to the bar date. And I think the big issue -- a big
5 issue was how you define who needed to respond and when. And I
6 think all those issues were entailed in the bar date. Whether
7 there were others that I forgot and Mr. Smolinsky can
8 supplement me on or not, I don't recall any at this -- other at
9 this time.

10 THE COURT: Now how did that dialogue benefit
11 creditors of the estate generally as contrasted to asbestos
12 claimants?

13 MR. ESSERMAN: Well, for one thing, it would be our
14 view that if the bar dates and the definitions were used as the
15 debtor had wished, the notice could well have been
16 constitutionally infirm and could not have been binding on
17 various claimants because they would not have received
18 constitutional notice of the bar date, would not have been
19 bound and would not have had an opportunity to comply because
20 you have to remember that these people -- you're talking about
21 a hundred thousand or more of widely dispersed claimants, some
22 of whom are known, some of whom did not have lawsuits on file.
23 So this was an important issue to make sure that the proper
24 notice procedures and timeliness issues were given so everyone
25 could respond so they could be both bound by a plan and

1 ultimately channel to an asbestos trust.

2 The other issue that we spent \$72,970.50 on was the
3 Detroit Diesel and Remy issues. And those had to be -- I
4 believe we were the main opposition to --

5 THE COURT: In fact, you were the only opposition.

6 MR. ESSERMAN: I think we were the only opposition to
7 both Detroit Diesel and Remy and were successful before the
8 Court. The Court agreed with our position, disagreed with the
9 position of Detroit Diesel and Remy. And we opposed their
10 relief which would be to extend the protections of the
11 automatic stay to them. And we think that --

12 THE COURT: And you're saying this was a benefit to
13 the estate?

14 MR. ESSERMAN: Well, I think it was because people
15 then went to Remy and Detroit Diesel to settle their claims
16 instead of potentially trying to assert them against GM 'cause
17 Remy --

18 THE COURT: Well, in substance, you were saying that
19 lawsuits by asbestos plaintiffs should continue against Detroit
20 Diesel and Remy, am I correct?

21 MR. ESSERMAN: Yes.

22 THE COURT: Now --

23 MR. ESSERMAN: And not against GM.

24 THE COURT: -- the debtor was protected by an
25 automatic stay, am I correct?

1 MR. ESSERMAN: Yes.

2 THE COURT: And the debtor didn't file a response to
3 that at all, am I correct?

4 MR. ESSERMAN: Yes. I believe that's correct.

5 THE COURT: And the creditors' committee didn't
6 either.

7 MR. ESSERMAN: I think that's right.

8 THE COURT: And there was at least a contention by
9 Remy and Detroit Diesel that they had indemnification rights
10 against the estate, wasn't there?

11 MR. ESSERMAN: Yes. And that's dealt with the basis
12 of their claim for protection.

13 THE COURT: Yes. And if any of those asbestos
14 plaintiffs succeeded in the litigations, that could at least
15 potentially increase the claims against the estate, couldn't
16 it, by reason of that indemnification obligation?

17 MR. ESSERMAN: If that indemnification was, in fact,
18 valid and proper. And if it was valid and proper, it might
19 have even imposed grounds for an automatic stay.

20 THE COURT: Yeah. Go on.

21 MR. ESSERMAN: So we think what that did was
22 redirected claimants to Detroit Diesel and Remy rather than to
23 General Motors and that that did benefit the estate. And those
24 are the components that we're seeking today.

25 THE COURT: That motion didn't involve a waiver by

1 either Remy or Detroit Diesel of their rights to file claims
2 against the estate, the ones that were stayed by the automatic
3 stay, did it?

4 MR. ESSERMAN: That's correct.

5 THE COURT: Go on.

6 MR. ESSERMAN: I made one error. I said that was the
7 extent of our application. We also had \$87,430.25 of costs and
8 expenses which were -- which we categorized as asbestos due
9 diligence which really got things going on the discovery for
10 the aggregate estimation of asbestos liability, the extent of
11 liability for General Motors, all of which investigations and
12 inclusions that we reached were shared both with the future
13 claimants' representative and the official committee of
14 asbestos claimants and did not need to repeated in any way.
15 That's the, I guess, the fourth component. And that's it.

16 THE COURT: All right. Anything else?

17 MR. ESSERMAN: That's all I have to say.

18 THE COURT: Mr. Masumoto?

19 MR. MASUMOTO: Good morning, Your Honor. Brian
20 Masumoto for the Office of the United States Trustee. Your
21 Honor, counsel is correct. Unfortunately, our office did file
22 our objection on the 18th which was one day after the deadline.
23 In part, there was some discussions in our office about the
24 application which caused some delay. And one of the
25 motivations for, in fact, filing the objection was because of

1 the perception that the original application did not identify
2 relevant facts for the Court and particularly in the unique
3 circumstances relating to the asbestos committee. And in
4 addition, we felt that it did not satisfy its burden of proof
5 of proving its substantial contribution.

6 I'm sure Your Honor is aware but we wanted to make
7 sure that we had on the record that with respect to the
8 official asbestos committee although it was appointed on March
9 5th of 2010 that the Court had rendered a ruling allowing the
10 professionals or the counsel for the official asbestos
11 committee to apply for compensation beginning in October 6th of
12 2009. And that certainly overlapped with the application being
13 sought by Mr. Esserman.

14 In addition, with respect to the application itself,
15 as we indicated it was strictly a chronological presentation
16 notwithstanding a summary, a breakdown of the categories into
17 the various areas that Mr. Esserman just addressed and which
18 have been addressed in his reply. In that reply, I think, as
19 the discussion that you had with counsel indicated, there's
20 some substantial questions as to whether or not the efforts
21 that were being -- the services that were being rendered on
22 behalf of the asbestos committee benefited the estate as a
23 whole or the individual creditors at issue putting aside the
24 issue of whether or not some of those service overlapped.

25 With respect to one category that wasn't fully

1 discussed, certainly the original application, although
2 addressed in the reply, was the efforts with respect to a
3 futures claims representative. As the reply acknowledged, that
4 early attempt at the appointment of a futures claims
5 representative was originally denied arguably costing the
6 estate additional funds and perhaps unnecessary funds in
7 responding to it prematurely to a premature motion.

8 Accordingly, one of the concerns that we do have is
9 the idea of professionals volunteering their services either
10 prematurely or unnecessarily in anticipation of the actions of
11 an official committee which would then increase the cost to the
12 estate. For example, just hypothetically, in many cases an
13 unsecured creditors' committee always has the option or the
14 right to investigate the lien validity. If before the official
15 committee sought to do that, some other creditor sought to
16 preempt the committee's investigation and voluntarily begin
17 that investigation on its own, we would not want to be in a
18 position of having to consider the substantial contribution of
19 those volunteer professionals.

20 Accordingly, we believe that the services that were
21 rendered by the ad hoc committee had not sufficiently
22 established in their application that they were either -- that
23 were not either duplicative or solely for the benefit of the ad
24 hoc committee members. And accordingly, we felt important to
25 raise that issue with the Court and also to remind the parties

1 that, in fact, it was an unusual circumstances in this case in
2 which the professionals for the official committee, in fact,
3 had started to do work beginning in October of 2009. Thank
4 you, Your Honor.

5 THE COURT: All right. Mr. Esserman, reply?

6 MR. ESSERMAN: Since lots of our time and effort were
7 spent in October, November, December time period when Mr.
8 Masumoto just argued that there was overlap with the asbestos
9 committee, the asbestos committee was not appointed until March
10 5th, 2010. If you --

11 THE COURT: However --

12 MR. ESSERMAN: If --

13 THE COURT: -- didn't I nunc pro tunc Mr. Inselbuch's
14 retention application back to October over the objection of the
15 U.S. trustee?

16 MR. ESSERMAN: I was just going to get to that, Your
17 Honor. Yes. And what I was going to get to was if you look at
18 what they did during that period of time to address this
19 overlap that our services performed, there was zero overlap.
20 In fact, the total amount of fees that Mr. Inselbuch's firm
21 billed from October, November and December was 11,000 dollars.
22 And what he did during that period of time was mostly
23 administration, internal administration for their committee and
24 had nothing to do with any of the issues that we were
25 addressing. So as far as the overlap concern, there was zero

1 overlap, as far as I can see, and notwithstanding your nunc pro
2 tunc authorization, they did virtually nothing, nothing that
3 was certainly anything that we were involved in.

4 THE COURT: Mr. Esserman, I have a recollection and
5 I -- when I was reading the papers, I didn't note the source of
6 that recollection, that amongst the services for which Caplin &
7 Drysdale was compensated was not just getting themselves
8 retained but also getting the future claims representative
9 appointed and that your firm either as counsel -- as fiduciary,
10 a professional for the claims representative or the claims
11 representative himself, were also compensated for services
12 incident to that retention. So between one and three
13 fiduciaries of the estate were compensated for that appointment
14 process. Am I mistaken in that understanding?

15 MR. ESSERMAN: I think so, Your Honor. What we've
16 applied for for the appointment of future claimants'
17 representative -- it's not just the future claimants'
18 representative but we also sought appointment of the official
19 committee of asbestos claimants.

20 THE COURT: Which was denied at the time you made
21 it --

22 MR. ESSERMAN: It was denied initially but eventually
23 both of those motions were granted. So I don't know if you can
24 parse it so thinly because I think -- I think we were here
25 pressing those issues. And if those issues were not pressed, I

1 think they wouldn't have come to ultimate fruition. And that
2 is \$27,817.25 of our application. But I think that those --
3 there was no overlap and no double charging for those services
4 that we're seeking. That was mostly June of 2009 and a little
5 bit after.

6 THE COURT: Okay. Continue, please.

7 MR. ESSERMAN: That's all I have in response.

8 THE COURT: All right. Thank you. All right. I'm
9 going to do all the rulings today at one. So we'll take a ten
10 minute recess and then I'll hear the Newman matter.

11 THE COURT: Mr. Jones, are you rising to be heard?

12 MR. JONES: Actually, Your Honor, I'm asking for
13 permission to leave, if I may. This was the only matter I had
14 an interest in.

15 THE COURT: Sure.

16 MR. JONES: I'm happy to stay if it would be helpful
17 to the Court.

18 THE COURT: No. You've got permission to leave.

19 MR. JONES: Thank you, Your Honor.

20 (Recess from 11:09 a.m. until 11:20 a.m.)

21 THE COURT: Okay. Newman. I want to get appearances
22 and then I have some preliminary questions I want both sides to
23 address.

24 MR. SMOLINSKY: Your Honor, Joe Smolinsky for the
25 Motors Liquidation Company GUC Trust.

1 THE COURT: Okay.

2 MR. DONOVAN: Good morning, Your Honor. Maurice J.
3 Donovan appearing on behalf of Newman.

4 THE COURT: Okay. Thank you, gentlemen. Folks, as
5 you know, under my case management orders, the initial argument
6 on any matter unless prior arrangements have been made to the
7 contrary is nonevidentiary hearing. It seems to me, subject to
8 your rights to be heard, that one of the matters that's before
9 me is a legal issue or a bundle of legal issues, maybe breaking
10 down into four or five vis-à-vis whether the elements of the
11 Newman claim are or are not for punitive damages. And it also
12 appears that some of the matters that have been put in issue,
13 most significantly GM's contentions that even if punitive
14 damages couldn't be disallowed, there still hasn't been a
15 showing that it did conduct of the type that would trigger or
16 provide a basis for that.

17 Mr. Smolinsky, when it's your time to be heard, I
18 would like you to let me know whether you contend that that's
19 something that can be decided without an actual evidentiary
20 hearing. It seems to me that the principle focus today is on
21 whether punitive damages have been alleged here or not vis-à-
22 vis each of the elements for which Mr. Donovan wants to proceed
23 on behalf of the Green estate on behalf of Mr. Newman.

24 The underlying principle -- bankruptcy principles
25 don't seem to be in dispute. If there is some kind of

1 difference in perspective on bankruptcy law that wasn't
2 articulated in the papers, it's kind of late to raise that now
3 but you better tell me.

4 It seems to me about the various elements of the
5 claim. Now on a few of them, there may be another issue that
6 is one that can be dealt with as a matter of law. But I have
7 some questions about it and I'm not sure if I can deal with it
8 as a matter of law. And that is, I have a claim for attorneys'
9 fees. I need help on whether it can be stipulated to or
10 assumed as a fact now or whether I need to clarify it later as
11 to whether the Green estate was paying for legal services on a
12 time for services basis and actually wrote out a check for
13 those or whether this was a mini tort actions or a contingent
14 fee basis. I need to know the extent, if any, to which the
15 Newman was out of pocket anything beyond the twenty-two million
16 dollars, or whatever the exact figure is, for which Old GM
17 already wrote out a check. And I had thought from reading the
18 papers that GM paid the compensatory aspects of this and that
19 what we're now talking about is the consequences of GM's
20 alleged discovery failures which, for the purpose of this
21 argument, subject to your rights to be heard, it seems to me I
22 have to assume that the fact of the failures should be taken as
23 true but that the scienter associated with those failures is
24 something that is still in dispute.

25 So with that said, you can make your arguments as you

1 see fit and you can address my questions at any time as long as
2 you deal with them by the time you're done. I'll hear first
3 from you, Mr. Smolinsky, then from you, Mr. Donovan, then reply
4 from Mr. Smolinsky.

5 MR. SMOLINSKY: Thank you, Your Honor. Mr. Smolinsky
6 for the GUC trust. I will address your questions, Your Honor,
7 but I'd like to put it into an equitable framework because, at
8 the end of the day, we are seeking equitable disallowance of
9 this claim.

10 Your Honor, the debtors and now the GUC trust have
11 worked --

12 THE COURT: Pause, please, Mr. Smolinsky. I want you
13 to address, and also Mr. Donovan, whether anybody cares that
14 we're dealing with this in contested matter form rather than
15 adversary proceeding form. Presumably, you would be skinning
16 the cat if I either equitably subordinated this claim or
17 equitably disallowed it. In either case, your point is that
18 the unsecured creditors shouldn't be writing out a check for
19 punitive damages. Normally, we think of equitable
20 subordination as requiring an adversary. I have ruled and
21 Judge McKenna has ruled and I think it's becoming increasingly
22 clear that, under Pepper v. Litton, which did exactly that,
23 equitable disallowance is just as permissible as equitable
24 subordination is. But do we have a procedural thing or should
25 we just go straight to the merits of the issue?

1 MR. SMOLINSKY: Your Honor, I don't and I don't what
2 Mr. Donovan has to say on the issue. But my view is there's a
3 threshold contest -- matter that could be dealt with as a
4 contested matter. Equitable subordination requires factual
5 allegations of an inequitable act. We're not here saying that
6 Mr. Donovan or his clients have done anything improper. We are
7 taking the position that this Court, as a matter of equity, has
8 the ability to equitably disallow the claim and to do that on a
9 contested matter. That's our view, Your Honor. And then only
10 if we lose that threshold issue do we get into an adversary
11 proceeding which has already been the subject of litigation in
12 New Jersey.

13 THE COURT: And, of course, your point is that if you
14 didn't go through the ritual of a complaint, you'd be back
15 where you started from making the exact same arguments you're
16 making now.

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

18 THE COURT: All right. Continue.

19 MR. SMOLINSKY: And we don't believe that evidence is
20 necessary so that may also argue in favor -- for this aspect of
21 the hearing, that may also work towards finding that it's a
22 contested matter that can be addressed on these papers.

23 Your Honor, the debtors and now the GUC trust have
24 worked very hard in this case to resolve product liability
25 claims so that we can get distributions into the hands of

1 claimants. Victims of automobile accidents with horrific
2 injuries cannot look to insurance in this case, as Your Honor
3 is aware, and therefore has to accept a pro rata distribution
4 of New GM's stock and warrants.

5 The vast majority of claimants that have entered into
6 the ADR process with the debtors have settled their claims
7 consensually. As you can imagine, Your Honor, in virtually all
8 product liability cases, punitive damages are ever present. Of
9 course, their purpose is to defer future malfeasance by the
10 debtor. But they also provide a way for the plaintiffs to seek
11 recoveries beyond the full measure of their actual damages.

12 Insistence by the product liability claimants in this
13 case on getting credit for the punitive damage allegations in
14 their claims which often attach a complaint would have
15 devastated the otherwise widely successful ADR procedures that
16 have been used. Claimants in ADR, in mediation, have properly
17 abstained from pursuing those types of damage claims in
18 negotiations. And this has allowed the estate to treat all
19 product liability claimants fairly and consistently by looking
20 only to the measure of damages, actual damages and theories of
21 liability.

22 After the mistrial in 1993, Mr. Green won a trial
23 against General Motors in 1996 on his motor vehicle accident.
24 The Court awarded him twenty-two million dollars which included
25 a substantial portion of -- amount of interest as the full

1 measure of his damages. And it was based in part on a life
2 plan. That means, a plan to take care of the maintenance of
3 his person and his medical concerns up through the age of
4 seventy-seven. And if you look at the award of the twenty-two
5 million dollars, thirteen million of it was for the purpose of
6 compensating Mr. Green for future medical and future lost
7 earnings. And that's reflected in the appellate decision
8 appeal of the underlying Green trial.

9 Mr. Green unfortunately died two years after the award
10 at the age of thirty-one. Mr. Green had no dependents and that
11 resulted in his heirs receiving a windfall based on the sooner
12 than expected passing of Mr. Green.

13 In this case, Your Honor, the debtors don't object or
14 deny that certain documents were improperly withheld from Mr.
15 Green's counsel until after the second trial. We can debate
16 whether that failure was intentional or unintentional but
17 that's not really the issue here and certainly not the issue
18 here today. The issue for today is whether Mr. Green's claim
19 can stand at all in this case. Since Mr. Green won
20 conclusively at trial without all the documents in question,
21 and was paid for all of his actual and perspective damages, the
22 only remaining claim that exists are for punitive damages or
23 sanctions which, in effect, are punitive damages.

24 End of story. Mr. Donovan dresses up his claims to
25 make it look like compensatory claims, compensation for failure

1 to be able to get punitive damages. But at the end of the day,
2 they're all considered compensatory.

3 Taking us earlier back in the case, the claimant
4 agreed to cap his 486 million dollar claim at seventy-five
5 million dollars in exchange for the debtors' agreement to put
6 this claim promptly into the court-mandated ADR procedures.

7 THE COURT: Pause, please, Mr. Smolinsky. I thought I
8 heard you say that it was originally a 486 million dollar
9 claim. For some reason, I thought it was unliquidated. Was I
10 just -- don't be diplomatic. Was I mistaken in that regard?

11 MR. SMOLINSKY: I have to look, Your Honor. I believe
12 that when we took a look at the papers we concluded that the
13 totality of the unliquidated when you add it all together was
14 486 million dollars.

15 THE COURT: I see.

16 MR. SMOLINSKY: It could have come from the debtors
17 reaching out and asking Mr. Donovan what the full amount of the
18 claim was because, as Your Honor knows, we had to take all
19 unliquidated claims and turn them into liquidated claims so
20 that we could establish reserves.

21 THE COURT: Okay. Now I'm with you.

22 MR. SMOLINSKY: But we can get you that answer,
23 though, Your Honor.

24 THE COURT: Well, I'm not sure if it matters. But I
25 just thought I hadn't done my homework right. Go on, please.

1 MR. SMOLINSKY: You've never been accused of not doing
2 your homework, Your Honor.

3 In discussing the cap, the debtors provided Mr.
4 Donovan with the debtors' view that punitive damages should not
5 be awarded in these cases because all it does is dilute the
6 other creditors. We also provided Mr. Donovan with our view
7 that in a liquidating case such as this one, there's even more
8 precedent for the Court using its equitable powers to disallow
9 those claims. And as we explained, it could be likened to what
10 happens in a Chapter 7 case where there's a mandatory
11 subordination of punitive and -- or multiple damages under
12 726(a) (4) of the Bankruptcy Code.

13 Notwithstanding our position on the merits, we did, in
14 fact, initiate ADR as we had agreed to do and complied with our
15 obligations under the ADR procedures to provide Mr. Donovan
16 with a settlement offer that we believed was very meaningful.
17 Suffice it to say that that offer was not accepted and we then
18 proceeded to mediation which we held in New York. And that
19 mediation failed to result in a settlement.

20 Mr. Donovan would like to engage in a prolonged and
21 expensive litigation in New Jersey, the jury trial, to pursue
22 his damage claim and then come back to this court to determine
23 whether any resulting jury verdict could be allowed for
24 bankruptcy purposes. He envisions a jury trial which,
25 according to the pretrial order that was filed in New Jersey,

1 would include 123 fact witnesses and eight expert witnesses.

2 To the contrary, we're of the opinion that no trial is
3 necessary. This claim should be and can be expunged and
4 disallowed in its entirety based on the threshold issue of
5 equitable disallowance.

6 Your Honor, with all due respect, we think this is an
7 easy case. So many creditors in these cases have suffered
8 greatly as a result of this liquidation and they will not
9 receive full compensation for their injuries and losses.
10 There's no deterrent effect in punishing Motors Liquidation
11 Company or the GUC trust in order to prevent future
12 malfeasance. So all punitive damage award accomplishes in this
13 case is to dilute other creditor recoveries and provide the
14 Green estate with an even greater windfall.

15 Your Honor, we cite to a number of cases in our
16 papers. I'm not going to go over all of them. The Johns-
17 Manville case, which is a Southern District New York bankruptcy
18 case that discussed punitive damages, found that whether or not
19 punitive damages are recoverable in bankruptcy, it is well
20 within the authority of this Court to disallow a claim for
21 punitive damages in the circumstances of this case where
22 allowing such claim will ill serve the policy of such awards.
23 In Novak v. Callahan, an Eleventh Circuit case, future wrongful
24 conduct will not be deterred when the punitive damages are paid
25 from wrongdoer's estate rather than from his own pocket. And

1 that's exactly what's happening here, Your Honor. These
2 punitive damages, if allowed, would be paid by the estate and
3 the creditors.

4 Just to name a couple of -- two more cases, the
5 Williams v. City of New York case -- that's a Second Circuit
6 case, 1974, 508 F.2d 356. There, the Court found, at page 359,
7 "Unlike compensatory damages, punitive damages are assessed,
8 punish the wrongdoer rather than restore the victim." In re
9 Collins -- that's a Southern District New York, 44 B.R. 806
10 (1984) case. It says "Punitive damage claims are penalty
11 claims. If, as is the case, punitive damages are to be paid
12 not by the alleged wrongdoer but by his estate, the purpose of
13 the penalty is not served. The effect would be to force
14 innocent creditors sharing in the debtors' assets to pay for
15 his wrongdoing. Such a result is clearly untenable and
16 patently inequitable." And there's a long string of cases,
17 Your Honor.

18 Now we do concede that there is a Supreme Court case,
19 United States v. Noland. It's a 1996 case. And in that case,
20 you can debate how broad the holding goes. But if you take a
21 broad reading, it says that it's improper or inappropriate to
22 categorically subordinate punitive damage claims without doing
23 a case by case survey.

24 But the circumstances found in this case, including
25 (a) the liquidating nature of the plan; (b) the fact that Mr.

1 Green was already awarded and received twenty-two million
2 dollars in cash; (c) the fact that other product liability
3 claimants are only receiving a portion of their compensatory
4 damages; and (d) the fact that in hindsight, the compensatory
5 damages that were awarded back in 1996 was far in excess of Mr.
6 Green's actual damages, all way heavily in favor of equitable
7 disallowance.

8 THE COURT: I don't know if it matters, Mr. Smolinsky,
9 but when Michael Green passed on, did he do so as a consequence
10 of injuries from the accident or from some kind of intervening
11 cause?

12 MR. SMOLINSKY: I don't know, Your Honor. That would
13 probably be a fact in dispute.

14 THE COURT: Okay.

15 MR. SMOLINSKY: But I will say that the allegation
16 that the death might have occurred as a result of the delayed
17 trial, there is compensation between the first trial and the
18 second trial in interest that was paid. So he was compensated
19 for that delay.

20 But even more importantly, the mistrial did not occur
21 because of these missing documents. Without these documents in
22 the second trial, Mr. Donovan was able to successfully win,
23 blow the barn doors off this case and prove that GM was wholly
24 responsible for the damage claim. And so, there is no, I
25 think, proper position that because of the withholding of these

1 documents, there was a delay in the trial. And in fact, if you
2 look at the appellate decision which appealed the Green jury
3 verdict, the Court goes out of its way to find that the jury
4 found and determined that roof collapse was the proximate cause
5 of the injury and that a hundred percent of the injuries were
6 solely attributable as to the design defect in the T-roof
7 Camaro. The Court found that the jury disregarded the fact
8 that the car was going eighty plus miles an hour in a twenty-
9 five mile an hour zone as being relevant. So it's not as if
10 the Court apportioned liability and gave Mr. Green less than
11 his full damages. They won. And they got their full damages
12 notwithstanding the absence of these documents.

13 So, Your Honor, I can speak now as to the different
14 allegations Mr. Donovan -- the different types of claims that
15 he claims are compensatory or I can wait until after Mr.
16 Donovan presents. But the bottom line is that we believe that
17 all of the claims that are asserted are really punitive in
18 nature or sanctions in nature including the legal fees. And
19 therefore, we believe that the Court, as a matter of law, or
20 using its equitable powers here can disallow the claim in its
21 entirety without any factual determinations or any trial.

22 THE COURT: I think which category his individual
23 claims goes in or should go in is one of the most important
24 issues. And I'm not comfortable with giving you the last word
25 on that without giving Mr. Donovan a chance to respond. So I

1 would like your view on the particular claims. And then I'll
2 give Mr. Donovan a chance to give me his view. And then when
3 you get your chance to reply, it'll be limited to what he says.

4 I assume that what we're talking about is the stuff
5 that he has on pages 5, 6 and 7 of his response. But I will
6 hear whatever you have to say on that just like I'll hear Mr.
7 Donovan on those issues.

8 MR. SMOLINSKY: Let me see if I can run through them,
9 Your Honor, and if I miss any, I'll come back. One is the
10 spoliation of evidence that is claimed to be a tort that is
11 entitled to compensatory damages. Mr. Donovan cites the
12 Rosenblit v. Zimmerman case for the purpose that spoliation of
13 evidence is a separate tort. That case, I believe, Your Honor,
14 is 766 A.2d 749. It's a Supreme Court New Jersey case.

15 But the Court found there -- the Court says that "When
16 spoliation occurs, the law has developed a number of civil
17 remedies, the purpose of which is to make whole, as nearly as
18 possible, the litigant whose cause of action has been impaired
19 by the absence of [critical] evidence; to punish the wrongdoer;
20 and deter others from such conduct."

21 So the first element is to compensate for what would
22 have happened had the documents not been -- had been there.
23 But as I indicated, the Court found that we were entirely
24 responsible for all of the actual damages and future damages
25 that were incurred by Mr. Green and he was paid in cash for

1 that; the second element, to punish the wrongdoing, that's
2 punitive -- the equivalent of punitive damages; and deter
3 others from such conduct -- not relevant here, we would argue.

4 The next cause of action is New Jersey RICO. And for
5 that, Mr. Donovan cites Paul St. James v. Future Finance
6 Creative Development Enterprises, 776 A.2d 847. There, the
7 Court says, "We agree with the cases which suggest that the
8 amount of the punitive damages awarded to defendant should be
9 reduced by two-thirds of the N.J. RICO award to reflect the
10 duplicative punitive aspect of the overall award." So there
11 again, the Court says, under RICO, you can get three times the
12 damage award, but, in reality, the first third of it is
13 compensatory damages. Those are the damages that Mr. Green has
14 already received. And the second two-thirds of the award is
15 purely punitive and duplicative of the compensatory damages.

16 With respect to treble damages, you could look at the
17 case of Liberty Mutual Insurance Company v. Rose Land and Frank
18 Land -- that's 892 A.2d 1240. That goes to treble damages
19 generally for punitive damages. Under New Jersey, punitive
20 damages are capped at three times the amount of actual damages.
21 And it says, "The Punitive Damages Act" -- it actually cites
22 the statute in New Jersey for punitive damages. "The Punitive
23 Damages Act defines compensatory damages [are] 'damages
24 intended to make good the loss of an injured party, and no
25 more,' and punitive damages as damages intended 'to penalize

1 and to provide additional deterrence against a defendant to
2 discourage similar conduct in the future.'" "

3 By that definition, only one part of the treble
4 damages award covers compensatory damages and the other two
5 parts compose punitive damages.

6 So I don't know if I missed any, Your Honor, but there
7 are various arguments espoused by Mr. Donovan but it's all
8 variations on the same theme.

9 THE COURT: Well --

10 MR. SMOLINSKY: Mr. Green has been compensated.

11 THE COURT: -- I don't know whether you missed it or
12 not but, for instance, on page 5 in paragraph 12(a)(ii), they
13 talk about attorneys' fees and costs of the second trial. If
14 the decedent or his family had written out a check for that, I
15 can see how that might be argued to be compensatory. To what
16 extent do I have evidence in the record as to whether or not
17 that was done?

18 MR. SMOLINSKY: That was my last point, Your Honor,
19 with respect to attorneys' fees.

20 THE COURT: I'm sorry. Okay. Then --

21 MR. SMOLINSKY: No. It's --

22 THE COURT: -- proceed. Go ahead.

23 MR. SMOLINSKY: -- quite all right. I believe that
24 this was all contingency and therefore there wasn't a check
25 written out for the costs of the trial. If you look at the

1 cost of the trial, Mr. Donovan says that two million dollars
2 was spent on the trial and then all of this litigation with
3 respect to the punitive damages. The attorneys' fees with
4 respect to the punitive damages, in my view, at most, are
5 sanctions and therefore, are not compensatory. With respect to
6 the second trial, to the extent that costs were paid by the
7 Greens' estate for that trial, I can only say that when we went
8 into ADR, we made a settlement proposal that we think was quite
9 fair that would cover --

10 THE COURT: Careful on Rule 408.

11 MR. SMOLINSKY: And, Your Honor, I'm not getting into
12 the settlement discussions. I think it's fair to say that we
13 complied with the ADR procedures. We made an initial offer.
14 And while I do believe that the cost of the second trial -- the
15 trial was not lost because of the lack of these documents. I
16 don't know why the first case resulted in a mistrial. But with
17 the same pool of documents, the same evidence, Mr. Donovan was
18 able to succeed in the second trial.

19 So I don't think there's proximate cause, if you will,
20 for the inability to have access to these documents. I don't
21 think that connects to the cost of the second trial. And so, I
22 guess, just in conclusion, I don't think the Green estate paid
23 for the attorneys' costs other than through the contingency. I
24 think that future attorneys' fees are more in the nature of
25 sanctions. And I believe it wasn't caused by this issue, the

1 cost of the second trial. It's really the expenses after that
2 that we should be talking about.

3 THE COURT: You said you think attorneys' fees should
4 be regarded as sanctions. Aren't -- sanctions have a punitive
5 element as well --

6 MR. SMOLINSKY: That's right, Your Honor.

7 THE COURT: -- although when we grant sanctions, we
8 usually measure the amount of the sanctions by looking to the
9 cost to undo the mess. How do you think I should look the
10 sanctions punitive distinction if there should be a
11 distinction?

12 MR. SMOLINSKY: I'll only say at this point that I do
13 believe that it's punitive. I think sanctions are for the
14 purpose of deterring future malfeasance. And therefore, it is
15 punitive. To the extent Mr. Donovan has a different view, I'm
16 happy to address it on rebuttal. But I don't see why -- since
17 he won an award that would include all damages which takes into
18 account all of the costs associated with the trial, to the
19 extent he was entitled to -- to the extent he was entitled to
20 attorneys' fees as part of the underlying trial on Mr. Green's
21 actual remedies, that was addressed in connection with the
22 second trial. Anything beyond that results in penalty for the
23 discovery situation and therefore, in my mind, is sanctions
24 equals punitive. There's no distinction.

25 THE COURT: Okay. Thank you.

1 MR. SMOLINSKY: Thank you, Your Honor.

2 THE COURT: Does that take care of your needs, Mr.
3 Smolinsky?

4 MR. SMOLINSKY: For now, it does, yes.

5 THE COURT: Okay. Mr. Donovan, can I ask you to come
6 to the main lectern, please?

7 MR. DONOVAN: Good morning, Your Honor. Maurice J.
8 Donovan appearing on behalf of Mr. Newman as the executor under
9 the will of Michael Green and one of the claimants in this
10 matter. First, I want to thank the Court for allowing me to be
11 here this morning to address these issues. They are kind of
12 interesting compared to what else I've heard this morning, I
13 think.

14 When I first met Mr. Green twenty-five years ago, he
15 was a young man lying in a hospital bed. His neck had been
16 broken because General Motors put on the market a defective
17 IROC Camaro.

18 THE COURT: Pause, please, Mr. Donovan. With respect,
19 you can't talk to me like you talk to a jury. Your client was
20 already compensated for his injuries when you won the second
21 trial. I need you to hone in on the legal issues that we're
22 wrestling with and on the factual issues or mixed questions of
23 fact and law as to how we categorize the various elements of
24 your claim.

25 MR. DONOVAN: And I can do that and intend to do that,

1 Your Honor. But I think we need to understand that this Court
2 is a court of equity. The equity swings both ways, both in
3 consideration of Mr. Smolinsky's request that this claim be
4 extinguished but also the other way that this claim is so
5 important in terms of the fraud committed by General Motors in
6 the discovery practices that those equities militate in favor
7 of this claim going forward. And I think that, whether we
8 classify these claims as compensatory or punitive, whether we
9 set the standard as a negligent standard or gross standard or a
10 willful standard in a spoliation case, no matter how we parse
11 those issues, the bottom line comes down to whether this Court
12 is going to exercise its equitable powers in order to
13 extinguish a claim. And the problem with that being is -- you
14 know, Mr. Smolinsky argues that it would have no relevance.
15 Well, it does have relevance because if this Court was going to
16 extinguish this claim, what it would be telling General Motors
17 is that the new General Motors could engage in the same
18 practices that the old General Motor engages; that is, sending
19 documents through a maze and hundreds of different hands and
20 people so that they would never be found and never be produced.
21 GM made a willful decision in this case not to produce these
22 smoking gun documents. These documents say that GM knew that
23 this car they put on the market was defective. They say they
24 analyzed the various strengths of alternative designs, that the
25 alternative designs were better designs, safer designs, more

1 crashworthy designs. And yet, they decided to put the IROC
2 Camaro on the market because it had a more macho appearance.
3 And that more macho appearance translated into more dollars
4 into the coffers of General Motors.

5 That's what underlies this case. And those documents,
6 those smoking gun documents is what for the last -- since 2001,
7 we have been trying to redress against General Motors when this
8 bankruptcy was filed. And should this Court put its imprimatur
9 on the dismissal of those claims, what this Court is saying is
10 that GM has gotten away with fraud. Fraud upon -- in this case
11 and whatever other case it did the exact same thing of
12 secreting documents and can do it again in the New GM and it
13 also says to every other defendant in a litigated matter that
14 they, too, can hide documents and thwart the discovery process.
15 Just as long as they filed bankruptcy, they can get away with
16 it and especially if those claims are punitive.

17 Now, Mr. Smolinsky kept saying that somehow GM is here
18 to protect so the other people who are injured by their
19 defective products won't get full compensation. That's not Mr.
20 Green's fault; that's General Motor's fault. They decided to
21 file for bankruptcy. They decided to not honor these claims.
22 And they very could -- New GM could very well decide to pay off
23 each and every one of these individuals who was grossly injured
24 by GM's uncrashworthy vehicles. They could do that. New GM
25 could take the right path and say, we're going to do what we're

1 supposed to do. If you prove we have a defective car, we are
2 going to pay that because that is our obligation and that is
3 our moral duty to do. But no. They hide behind this
4 bankruptcy court and say to Your Honor that Mr. Green, who was
5 deprived of a viable claim, a claim for punitive damages for
6 putting on the market a car that GM knew was unsafe in its
7 design and had the potential of causing devastating injuries
8 like the quadriplegia Mr. Green sustains. They would be
9 walking away from this situation.

10 And that's what's unfair here, Judge. When GM says,
11 oh, we want to make sure everyone is compensated even if it's
12 to a small amount, that is so disingenuous. GM has battled
13 this litigation, I know from first-hand for twenty-five that
14 I've been involved with it. I tried both the Green 1 and Green
15 2 cases. I know -- there's no one around who knows more about
16 these cases than I do. So that's a little disingenuous
17 argument.

18 The claims here -- I mean, I can describe to you --
19 and we can play a semantics game. But basically, what Mr.
20 Green was deprived of by not having these documents in the
21 first trial was two things. A cause of action for punitive in
22 that first trial, Green 1, as well as having the proofs
23 necessary to show that GM had an alternative design and what it
24 was. What Mr. Smolinsky probably doesn't know is that between
25 Green 1 and Green 2, we had to change experts because the first

1 expert had a stroke. The first expert and the second expert
2 had different alternative designs. The second alternative
3 design in the second Green trial was exactly the alternative
4 design, unknownst (sic) to us at that point in time, that GM
5 had considered and tested. The first alternative design in the
6 first Green case was something entirely different. Had we had
7 those documents, we would have had the alternative design that
8 we presented in the second trial in the first trial. So that's
9 what we were deprived of there, proofs in the case which
10 necessarily would have convinced a jury in the first trial that
11 GM had put on the market a defective vehicle.

12 Now the claim for punitive damages is different in
13 this litigation. There is no claim for punitive damages in
14 this current litigation premised on the fact that GM put on the
15 market a dangerous product. Okay? There is no claim for that.
16 That claim would have been litigated in the first or the second
17 Green trials. What is sought here is damages for the
18 deprivation of a claim which Mr. Green would have had in his
19 earlier litigation.

20 Now, just as Your Honor said a few minutes ago --

21 THE COURT: Pause, please, Mr. Donovan. A claim for
22 what?

23 MR. DONOVAN: A claim for -- his claim here is for the
24 loss of that cause of action in the cases below. And just as
25 Your Honor said about sanctions, are sanctions attorneys' fees,

1 and you kind of couched it almost the same way I do. The
2 sanction is different than how we value it. We say someone did
3 wrong and we're entitled -- we're going to impose a sanction.
4 Then this next step is how are we going to value that sanction.
5 Should we put the person in jail? Should we deprive their
6 client of something? Should we do it evidentially? Or should
7 we use attorneys' fees. Attorneys' fees set the quantum of
8 damages for the sanction. They are not the sanction.

9 Just as in this case, punitive damages in the
10 underlying case may set the quantum of damages for the
11 deprivation of the claim which Mr. Green lost but they are not
12 punitive damages. They are compensatory damages in this
13 litigation.

14 Now there are punitive damage claims in this
15 litigation. There is specifically a punitive damage claim
16 sought for GM willfully secreting documents during discovery,
17 for taking these smoking gun documents and hiding them in
18 amongst thousands of documents and never producing them. That
19 is a punitive damage claim which I will concede.

20 And there are other claims here. Mr. -- you asked
21 whether there was out of pocket. Mr. Green put out of pocket
22 one million dollars in order to pursue this litigation. Out of
23 pocket.

24 THE COURT: Such as by advancing costs or expenses?

25 MR. DONOVAN: Absolutely. And that million dollars is

1 gone.

2 THE COURT: Okay.

3 MR. DONOVAN: Attorneys' fees --

4 THE COURT: Pause, please. Was that one million bucks
5 extended before trial number 1, between trial number 1 and
6 trial number 2 or after trial number 2 --

7 MR. DONOVAN: After --

8 THE COURT: -- or some combination of those?

9 MR. DONOVAN: After he got paid by General Motors in
10 1999. He put forth a million dollars to pursue this
11 litigation. He was still alive at that point. He died two
12 years after he got his money, never really enjoying any of it.

13 THE COURT: Okay. Pause for just a second.

14 (Pause)

15 THE COURT: Continue, please.

16 MR. DONOVAN: With respect to the attorneys' fees, all
17 of the matters were taken on a contingency basis including this
18 one. But attorneys' fees on a contingent basis with reference
19 to the deprivation of the claim under Rosenblit may be
20 contingent. But under the RICO, attorneys' fees are one of the
21 causes of action, the damages as part of that cause of action.
22 So therefore, if we prevail on that particular aspect of this
23 that attorneys' fees would not be a sanction, they would not
24 be -- they would be part of the cost of pursuing that
25 particular cause of action.

1 Now the fraud here as attested to by Magistrate Patty
2 Shwartz, who -- I don't know if you follow local New Jersey
3 judges -- who has just been nominated to go from a magistrate
4 to a Third Circuit judge -- wrote a hundred page opinion in
5 which she describes the fraud in which she describes the fraud
6 committed by General Motors. That was part of a privilege
7 hearing where she decided to waive General Motors'
8 attorney/client privilege under the crime/fraud exception to
9 attorney/client privilege. So she had to have found the prima
10 facie case of fraud in order to waive the attorney/client
11 privilege. That decision of Judge Shwartz was then affirmed by
12 Judge Hayden, who was the district court judge sitting on this
13 matter, as well as went to the Third Circuit and three judges
14 including Maryanne Trump Barry -- also affirmed that decision.

15 When you read her opinion, though, you see an awful
16 lot of blank -- black marks. That part of the opinion has not
17 been released. We don't know what that says because when this
18 litigation -- when this bankruptcy was filed, we were in the
19 Third Circuit trying to get all of that litigation released.
20 So we don't even know what good stuff is in that opinion that
21 she held. We don't even know what the good stuff is that was
22 in hearings, in camera hearings, during the privileged hearing
23 that we don't know about.

24 The fraud here is --

25 THE COURT: Pause, please, Mr. Donovan. I assume your

1 point, though, is that you're assuming or asking me to assume,
2 at least for the purposes of discussion, that it will show that
3 GM acted badly.

4 MR. DONOVAN: I don't know any other reason why they
5 would battle so valiantly to keep it hidden.

6 THE COURT: But let me sharpen my question because you
7 answered it the way I asked it. But your point is that the
8 stuff that was redacted would go to either GM scienter or its
9 evil motive or its evil conduct but as compared and contrasted
10 to some damages of which the magistrate judge was aware that
11 you didn't already collect on of a compensatory character.

12 MR. DONOVAN: Absolutely.

13 THE COURT: Okay. Continue, please.

14 MR. DONOVAN: Absolutely. The fraud committed here
15 should be of particular concern to this and every other Court
16 because it was fraud that attacked the very foundation of
17 litigation, the exchange of discovery and the search for the
18 truth. By hiding these documents, GM sought to deprive the
19 plaintiff and anyone else who knew about this knowing what they
20 had done in putting this car on the market which was to put a
21 defective vehicle on the market.

22 And I alluded to a minute ago the standard for
23 spoliation and I disagree with Mr. Smolinsky in the sense that
24 only a willful spoliation is actionable. And I don't think
25 that's true. And I think that's clear in the case of Pension

1 Committee of the University of Montreal Pension Plan, which is
2 685 F.Supp.2d 456, this district in which the Court said that
3 you can have a negligence spoliation, you can have a grossly
4 negligent spoliation or you can have a willful spoliation.
5 Either of those standards can apply. However, it may determine
6 what the sanction is and how the sanction is applied. For
7 instance, if you were willful, we may dismiss your whole case
8 or we may strike all of your defenses. If we have a negligence
9 spoliation then maybe we'll give you an adverse inference at
10 trial or maybe we'll impose a monetary sanction. But the
11 standard is not that I need to prove in this case that the
12 spoliation was intentionally or willfully committed. That
13 simply isn't true by that case and a very recent case in the
14 district of New Jersey by Judge Salas, Magistrate Salas then;
15 she is now a federal judge. Magistrate Salas --

16 THE COURT: Magistrate judges are already federal
17 judges.

18 MR. DONOVAN: Yeah.

19 THE COURT: Go on, please.

20 MR. DONOVAN: Well, I'm sorry. She is now a district
21 court judge. My error -- in which she found attorneys
22 responsible for spoliation of evidence because of their
23 negligence in not properly overseeing their client's retention
24 of documents in the case. Clearly a negligent standard and
25 clearly very akin to this litigation which is pending here.

1 But more importantly, in the Pension Committee case is
2 this language because this is what should tilt the scale in
3 favor of not dismissing these claims. And it talks about the
4 inherent power, the equitable power of the Courts in situations
5 such as this. It says, "The policy underlying this inherent
6 power of the courts is the need to preserve the integrity of
7 the judicial process in order to retain confidence that the
8 process works to uncover the truth. The courts must protect the
9 integrity of the judicial process because, as soon as the
10 process falters the people are then justified in abandoning
11 support for the system." And maybe that's why those people are
12 over there on Wall Street with their tents and with their tarps
13 because in this situation, General Motors is seeking something
14 that if they were an individual debtor in a Chapter 7
15 proceeding and they had gone -- and the debtor had gone out and
16 secreted documents and was able to obtain a mortgage or a loan
17 and walked with a hundred thousand dollars and then filed
18 bankruptcy the same day, this Court would never countenance in
19 getting away with that. They would say, huh uh, you pay back
20 that money.

21 But that's what General Motors wants to do here
22 because, under Chapter 11, it doesn't have the same case law
23 behind it in terms of fraud or it doesn't have the same
24 statutorily language as it does. But that's what they want you
25 to do. They want you to say, we hid these documents. We tried

1 to disrupt the litigation. And we want to walk away from it
2 scot free, Judge. We want to walk away with your imprimatur as
3 a court of equity saying that was all right, General Motors.
4 That was all right. And with no consequences of that.

5 And that's what I submit to you trumps all of the
6 other legal issues whether these are compensatory or punitive
7 damages, whether it's a negligent standard or a gross negligent
8 standard and any of the other -- the argument over whether
9 John-Mansville (sic) applies here because, really, they were
10 talking about a trust for future asbestos victims or whether
11 the Robins case applies here because, really, that was a
12 reorganization and they needed to keep the money in order to
13 have the company become viable. We can argue that till we're
14 blue in the face. But we're talking about equity here.
15 Equity. And that's what I would urge this Court to do is not
16 deny this claim and say no, go ahead with this claim. If you
17 can prove General Motors fraudulently secretly documents as
18 part of a pattern of discovery which they engaged in in order
19 to deprive claimants of rightful claims, well, I don't think
20 that would be right. I don't know if there's anything else
21 you'd like.

22 THE COURT: Thank you. Okay. Mr. Smolinsky, reply.
23 As usual, limited to what Mr. Donovan said.

24 MR. SMOLINSKY: Your Honor, as an initial matter, I
25 just want to point out that what Judge Shwartz found was not

1 that GM committed fraud. The issue was whether plaintiffs had
2 asserted a prima facie case that, under the broad definition of
3 fraud as set forth in the Ocean Spray Cranberries, Inc. v. Holt
4 Cargo case, whether it satisfies the necessary criteria for
5 opening up the privilege. And that's what the Court found.
6 This was not a trial on whether GM committed fraud nor was that
7 the holding of the case.

8 Mr. Donovan's passionate arguments keep coming back to
9 one basic point. As a matter of equity, you can't let GM walk
10 away scot free. You can't let GM walk out of the room and say,
11 I got away with fraud. I think that was his words. But if
12 Your Honor allows this claim to stand and to go forward and,
13 God forbid, go to a trial and then -- a jury trial and then
14 come back to this court, you will have New GM standing there
15 and saying perhaps I got away with fraud, I got off scot free,
16 because there's no way, under this bankruptcy case, that any
17 element of the result of this issue, if it were tried, would
18 blow back to General Motors. This is --

19 THE COURT: To new General Motors.

20 MR. SMOLINSKY: To new General Motors. This is an
21 indictment of maybe the process of discovery in large cases.
22 Maybe things have changed. I don't know. But all I know is
23 that when you look at the equity of these cases and the equity
24 of the impact of this claim on all creditors, you're making the
25 individual creditors of this estate pay for the acts of General

1 Motors Corporation. And it's not General Motors Corporation
2 that's paying the bills of the creditors.

3 And I keep coming back to that issue. Mr. Green was
4 fully compensated for all of his losses. And that's where this
5 issue should end.

6 With respect to the attorneys' fees that were out of
7 pocket, I don't know if that becomes a factual issue. I --
8 that's something for Your Honor to consider. But I do believe
9 that it was to pursue a claim that, unfortunately -- and this
10 happens from time to time. When you're pursuing a claim and
11 the defendant goes into bankruptcy that you end up losing that
12 claim. And it's unfortunate that that's a situation which
13 happens in all bankruptcy cases. And to the event it rises to
14 the level of sanctions then, as I said before, I believe it's
15 simply punitive and the creditors of these estates should not
16 be forced to foot the bill.

17 I don't have anything else, Your Honor, unless you
18 have any questions.

19 THE COURT: All right. No, I don't. Thank you. All
20 right. Here's what we're going to do. On the final matter we
21 handle today, Newman, I'm taking that under submission. And
22 while I don't know the degree of formality upon which I'm going
23 to write the decision, it will be a written decision. It will
24 not be a dictated decision.

25 On the remaining three matters, I want you folks to

1 take a long lunch and to be back here at 2:00 at which time I
2 will dictate my rulings on the three matters for which I took
3 oral argument before the Newman matter. Anybody -- most
4 obviously, you, Mr. Donovan, who has no interest in the matters
5 that others are coming back for, is free to leave. All right.
6 We're in recess. Thank you.

7 (Recess from 12:15 p.m. until 2:19 p.m.)

8 THE COURT: Good afternoon. Ladies and gentlemen, in
9 this contested matter in the Chapter 11 case of reorganized
10 debtor, Motors Liquidation Company, formerly known as General
11 Motors, the GUC trust, which was formed under the plan for,
12 among other purposes, protecting the interests of Old GM's
13 unsecured creditor community, objects to three proofs of claim
14 filed by Mr. William Kuntz, III. The GUC trust contends that
15 they failed to describe the basis for the claims and lack all
16 of the things that are necessary to even establish a prima
17 facie claim against the estate.

18 The GUC trusts objections are sustained and the claims
19 will be expunged.

20 On September 16, 2009, I entered a bar date order
21 establishing November 30, 2009 as the deadline for filing all
22 proofs of claim in these Chapter 11 cases. Prior to the
23 deadline established under the bar date order, Mr. Kuntz filed
24 three proofs of claim against debtor "General Motors". Two of
25 the claims were dated July 29, 2009 and a third was dated

1 August 23rd, 2009. For each, Mr. Kuntz utilized the Court's
2 official Form 10 for filing proofs of claim which form was the
3 same in all material respects as the form that I approved when
4 I entered the bar date order.

5 As is fundamental, a proof of claim sets forth the
6 facts necessary to support the claim for the claim to receive
7 the prima facie validity accorded to proofs of claim under the
8 bankruptcy rules. See *In re Chain*, 225 B.R. at 280 (Bankr.
9 D.Conn. 2000) and *In re Marino*, 90 B.R. at 28, another case
10 from the district of Connecticut, this one in 1998, these being
11 two of the many cases cited by my colleague, Judge Peck, in
12 addressing claims filed by Mr. Kuntz in other bankruptcy
13 proceedings in this court, there the Lehman Brothers
14 bankruptcy. See also *Ashford v. Consolidated Pioneer Mortgage*,
15 178 B.R. at 226, which was affirmed by the Ninth Circuit
16 thereafter, and *In re Allegheny International*, 954 F.2d 173-
17 174.

18 My bar date order further articulated the requirements
19 for establishing a prima facie claim. According to the bar
20 date order, all proofs of claim had to set forth with
21 specificity the legal and factual basis for the alleged claim
22 and include supporting documentation or an explanation as to
23 why such documentation is not available. See page 2 of my bar
24 date order at docket entry 4079.

25 In addition, the Court's official Form 10 and the form

1 that I approved both required, on their face, that a claimant
2 "state the type of debt or how it was incurred". In two places
3 on the forms, the claimant was instructed to "attach redacted
4 copies of any documents that support the claim". In addition,
5 the form explained that a claimant "may be required to provide
6 additional disclosure if the debtor, trustee, or another party
7 in interest files an objection "to such claim".

8 In this case, Mr. Kuntz filed nothing more than a one-
9 page form for each of his three claims. Mr. Kuntz wrote on one
10 claim for 300 dollars that it is a claim for "mail fraud/bait
11 and switch by a GM dealer." But it said nothing more and no
12 attachments that accompanied the claim.

13 Moreover, to the extent it said anything, it alleged
14 wrongful conduct by a GM dealer not by GM and did not allege,
15 assuming arguendo that it might be sufficient to do so, even
16 that the dealer was acting at GM's direction.

17 Second claim. Mr. Kuntz wrote there seeking 4500
18 dollars that it is for a "Chevy truck" and next to the words
19 "Chevy truck," Mr. Kuntz wrote "See attached" even though, like
20 the other claims, nothing was attached. No attachments
21 accompanied the claim.

22 On his third claim which was in the amount of 2400
23 dollars, Mr. Kuntz wrote that it is a for "file cabinet with GM
24 dealer, Willsboro, NY". As with the others, this baffling
25 description was not accompanied by further details.

1 At the risk of stating the obvious, neither the claim
2 that I just quoted from, nor the other two, came close to
3 meeting the requirements under the Code, the rules and the
4 official forms, much less my earlier orders, for laying out a
5 prima facie claim.

6 The GUC trust says that these claims "do not include
7 sufficient documentation to ascertain the nature or validity of
8 such claims. See omnibus objection, paragraph 9 in Exhibit A
9 as amended. And of course, the GUC trust is right in that
10 respect.

11 On October 21st, my Court received a response by Mr.
12 Kuntz to the GUC trust objection. Then he purported to add
13 meat to his earlier proofs of claim. He explained that his
14 claim for 300 dollars was connected to a free gas card promised
15 in exchange for a test drive and credit application. He
16 described the claim for 4500 dollars as a claim for the loss of
17 an old Chevy truck that Mr. Kuntz purchased from his Uncle Don.
18 And the claim appeared to reflect cause for towing the truck
19 and perhaps other expenses relating to a citation issued by the
20 police because the truck was blocking the sidewalk. Mr. Kuntz'
21 explanation was unclear and in no way explained how he was
22 entitled to a claim of 4500 dollars from the old General Motors
23 estate. And his response also addressed his claim for 2400
24 dollars explaining that it represented the loss of a fireproof
25 file cabinet which he blamed on a small dealer exit program.

1 These explanations were impossible not just difficult
2 to follow. They lacked logical coherence but, more
3 fundamentally, the supporting documentation and/or explanation
4 that is essential to a filed proof of claim.

5 Finally, on October 26th, Mr. Kuntz submitted a
6 further response after the GUC trust had filed a reply once
7 more failing to advance or substantiate his claims in any
8 reasonable or comprehensible measure.

9 Because his claims are so lacking in supporting
10 evidence and logical linkage to the debtors' cases, most
11 fundamentally in showing anything that Old GM even allegedly
12 did that was wrong, they're not entitled to any presumption of
13 validity that otherwise attaches to most creditors' proofs of
14 claim.

15 Justice Sonya Sotomayor, now of the United States
16 Supreme Court, when she was a district judge sitting in this
17 district, observed while ruling against Mr. Kuntz in one of the
18 many other matters in which he has appeared as a litigant that
19 his "status as a pro se litigant is of little import," because
20 even back then, in 1993, he had already "amassed litigation
21 experience that would embarrass the majority of associates and
22 some partners at large New York law firms" while demonstrating
23 a "consistent patter of vexatious litigation and little respect
24 for the Courts or other parties". See Kuntz v. Pardo, 160 B.R.
25 at 39.

1 Unfortunately, here, we have more of the same.
2 Assuming without deciding that a bankruptcy claimant with this
3 kind of track record would still be able to assert a claim if a
4 sufficient basis for it had been shown, that doesn't help Mr.
5 Kuntz here. His various submissions simply can't show the
6 existence of a debt, at least one that's owed by Old GM.

7 The GUC trust is to settle an order expunging the
8 claim. The time to appeal from this determination will run
9 from the time of the resulting entry of the resulting order and
10 not from the time of this dictated decision.

11 Just a moment, please, folks.

12 (Pause)

13 THE COURT: Next. In this contested matter in the
14 jointly administered Chapter 11 cases of Motors Liquidation
15 Company, formerly known as General Motors Corporation and its
16 affiliates, an asbestos valuation consultant called Analysis
17 Research Planning Corporation applies, pursuant to Sections 330
18 and 331 of the Code, for compensation for the services it
19 provided to the legal representative for future asbestos
20 personal injury claimants which we more typically refer to
21 simply as the future claims representative.

22 The application has engendered two objections, limited
23 objections in part, one by the debtors who object to the
24 payment of fees for services after January 26, 2011 (sic), the
25 date on which a key stipulation resolving obligations to

1 asbestos claimants was signed, and another by the fee examiner
2 in these cases which makes a like objection but which is
3 applicable only to the date after that earlier stipulation I
4 just mentioned was approved.

5 The fees, except insofar as objected to, are approved.
6 Both objectors' objections are sustained for the period from
7 and after February 14th. And in addition, the estate's
8 objections are also sustained for the period between January
9 21st, 2011 and that February 14th date for the reasons that
10 follow.

11 The underlying facts are not in dispute although the
12 inferences that flow from them and the conclusions that must be
13 drawn from the explanations I was given require me to make
14 findings in this area, probably mixed questions of fact and
15 law, as to the reasonableness of services after the two dates
16 in question. As facts or as mixed questions of fact and law, I
17 find that services after each of those two dates, and
18 particularly the latter, were patently unreasonable and cannot
19 in any way, shape or form be tagged upon the remaining
20 creditors in this case.

21 Under Section 330(a)(3) of the Code, when determining
22 the amount of reasonable compensation to be awarded to a
23 professional, under familiar principles, I must consider the
24 nature, extent and value of such services taking into account
25 all relevant factors including (1) whether the services were

1 necessary to the administration of the case -- and I interrupt
2 myself to say, for the avoidance of doubt, here, after each of
3 those two dates, they were not; (2) whether the services were
4 beneficial at the time at which the services were rendered --
5 and I once more interrupt myself to say that, here, they were
6 not; (3) and whether the services were performed within a
7 reasonable amount of time commensurate with the nature of the
8 task addressed as to which I, here, need make no finding
9 because the first two factors are so clear.

10 Also, under Section 330(a)(4), I should not allow
11 compensation for unnecessary duplication of services where
12 services that were either not necessary or not likely,
13 reasonably likely, to benefit the debtor's estate.

14 Since there is no objection, I'm not going to make
15 extensive findings vis-à-vis the portion of the fees that did
16 not warrant any concerns. It's sufficient for me to say that
17 they were fine and I have no problems with them. But although
18 those in the room know that I'm not speaking in anything other
19 than a conversational voice, and I'm certainly not raising my
20 voice, I am very, very troubled, disturbed and indeed annoyed
21 at the request insofar as it deals with the period after the
22 two key dates for which the objections related, and
23 particularly the services, 3,700 hours that were spent after a
24 deal had been struck.

25 On January 21st, 2011, the four parties with the

1 highest stakes in the valuation of the debtors' asbestos
2 claims -- that, of course, being the purpose for which Analysis
3 Research Planning Corp. was retained to act, those being the
4 debtors, the creditors' committee, the official committee of
5 unsecured creditors holding asbestos related claims, which we
6 refer to, in short, as the asbestos creditors' committee, and
7 the future claims representative all executed a stipulation
8 fixing the amount of the debtors' aggregate liability for
9 asbestos personal injury claims. They reached an agreement to
10 fix those at 625 million dollars. But the amount of the
11 settlement isn't important; it's the fact of the settlement
12 that's so critical.

13 Now that settlement was reached after earlier
14 litigation, most significantly, a motion previously filed by
15 the debtors seeking to estimate their aggregate liability for
16 asbestos claims at an earlier time. And it goes without saying
17 that whatever reasonably was required, from the time that the
18 controversy arose when the debtors filed a motion up to the
19 time of the stip, is a price that just needs to be paid. But
20 that February 21st date was a watershed event. The purpose for
21 all of that estimation then came to an end.

22 Now we have a slight difference in perspective between
23 the debtors, on the one hand, who start their objection running
24 on January 21st, and the fee examiner's perspective who, out of
25 discretion or kindness or common sense or giving somebody a

1 break, says he won't object until after February 14th when the
2 stipulation was ultimately approved.

3 The fee examiner's later date is not a reasonable one
4 but I reject it because of the total lack of any measures to do
5 a stop, look and listen to evaluate the risk that there was any
6 possibility that the stipulation would be disapproved. I asked
7 questions as to that to both counsel. Did anybody telegraph an
8 intention to object to that stipulation? Were there any
9 objections? Did anybody pick up the phone and say we're
10 thinking about objecting? Was there any probable cause to
11 believe that there was an objection? Every single one of those
12 answers was expressly or impliedly no. It should have been
13 pencils down at that point. Indeed, except for a relatively
14 modest thirty-nine hours that were spent by the asbestos
15 committee's counsel, all of the other people similarly situated
16 did go pencils down, much less not run up 3700 hours.

17 Incredibly, Analysis Research Planning Corporation
18 continued incurring fees not only after the execution of the
19 stip, but also after I so ordered the stip in February. That,
20 of course, underlies the fee examiner's objection. In fact,
21 the consultant's fees increased dramatically after the
22 stipulation was executed.

23 More shocking still, Analysis Research Planning
24 Corporation's highest per month fees in these cases were
25 incurred during the month that followed my so ordering of the

1 stip. They went up to 116,000 dollars for the month of
2 February 2011 and 204,000 in fees for the month of March 2011.

3 Now I got a couple of explanations for all of this.
4 One related to the fact that a high volume of documents was
5 produced for review shortly before the January 21st stipulation
6 was entered into. But as debtors' counsel properly observed,
7 that simply is irrelevant. Assuming, as was obviously the
8 case, that the future claims representative could do enough to
9 enter into the stip, once the stip was entered into, there was
10 no purpose in engaging in the late produced documents any more
11 than there was a purpose in reviewing the earlier produced
12 documents. It should have been pencils down. Obviously, it
13 wasn't.

14 The next explanation I was told was that Analysis
15 Research Planning Corporation was told by the futures claim
16 representative that it should keep working. Kind of like the
17 devil made me do it. That is an unacceptable answer. Any
18 party that is retained as a professional in a Chapter 11 case
19 in this district, and I'll go so far as to say in any
20 bankruptcy court in the United States of America undertake
21 statutory duties with which it must comply if it wants to get
22 paid. It also owes a responsibility to, first, its
23 constituency and to the system to act responsibly. As I noted,
24 there were there others in the same boat. One of them put in
25 only a minimal amount of time and the others put in none at

1 all. It was patently irresponsible and it cannot be the law
2 that one can be cleansed of its duties to comply with the
3 requirements of law by saying that one's client made him do it
4 or told him to do it. In fact, if that ever were the law, it
5 would result in a kind of laundering of the requirements that
6 we impose upon professionals for responsible activity.

7 Now it goes without saying that we don't look at these
8 things solely in hindsight. We look at services and their
9 reasonableness at the time they are rendered. And if, by way
10 of example, it had turned out that the services were reasonable
11 when rendered at the time but later didn't turn out to be such,
12 I wouldn't be disapproving them at all, much less being as
13 annoyed as I am with respect to this application.

14 Here, a settlement had been entered into. There was
15 no reason whatever to believe that it would be disapproved. At
16 the time, no reasonable professional would have put in 3700
17 hours or anything close or, I dare say, even more than the
18 slightly excessive thirty-nine hours that were put in by the
19 asbestos committee. The very fact that caused the other two to
20 not do anything thereafter was so obviously the right thing to
21 do.

22 In In re St. Rita's Associates Private Placement, LP,
23 216 B.R. 490 (Bankr. W.D.N.Y. 1998), the bankruptcy court
24 evaluated the reasonableness of services performed once a
25 settlement was "in prospect". The St. Rita's court determined

1 that the professionals should have deferred its work until the
2 outcome of the settlement had become known because such
3 settlement would render the services unnecessary. See 216 B.R.
4 at 498.

5 Another explanation I was told was that either
6 Analysis Research Planning Corporation or the future claims
7 representative -- it's not too clear to me who had this idea --
8 was worried that the stipulation or the amount fixed by the
9 stipulation might be later challenged. But it was executed by
10 each of the representatives of the primary stakeholders in
11 these cases. Who was going to challenge it? Well, from time
12 to time, it is true, as we all know, that people come out of
13 the woodwork to object to things which is why I asked the
14 question, had anybody in the world filed an objection or phoned
15 you or written you saying such would be forthcoming. And both
16 sides told me no.

17 Even if there had been such, it was incumbent upon
18 Analysis Research Planning Corporation to consider the degree
19 of risk. Contingencies can be theoretically possible and
20 nevertheless be remote. Or, if it had uncertainty, it could
21 have picked up the phone and arranged for a conference saying
22 we think we need to keep on doing work, just want to give
23 everybody a chance to be heard on that, or give us an
24 opportunity if something goes bad to let us get back up to
25 speed without requiring us to do all that work now. There were

1 a zillion things that could have been done. But the one that
2 was done, spending thousands, hundreds of thousands of dollars
3 of creditor money, was an unacceptable one.

4 Finally, I was told that the consultant was doing
5 other stuff, too, assisting the future claims representative
6 performing other asserted lien necessary functions including
7 working against the possibility that somebody might object to
8 the plan. But there was no basis whatever for concluding,
9 especially after the stipulation was approved by me, that
10 anybody would be contending that future claimants were being
11 paid too much.

12 I don't think I need to go on. I think I've more than
13 satisfactorily explained my reasons for this decision. The
14 motion is granted to the extent I noted and is otherwise
15 denied. The parties in this case are authorized and instructed
16 to take the principles that I've articulated and to convert
17 them into their dollar equivalent and to submit an order to me
18 authorizing and directing payment of the requested fees to the
19 extent that the principles I just articulated dictate and
20 otherwise denying the motion.

21 Stand by. Mr. Smolinsky?

22 MR. SMOLINSKY: Yes, Your Honor. Joe Smolinsky. In
23 the process of making my remarks this morning, I noted that we
24 had already entered a final order approving the portion of the
25 fees attributable to the period before January 21st. And so,

1 from that perspective, I don't know that we need to do anything
2 further with respect to those fees.

3 THE COURT: I see.

4 MR. SMOLINSKY: If I understood Your Honor's ruling,
5 you are disallowing everything above that, everything that we
6 objected to.

7 THE COURT: Yes. I didn't realize that there was a
8 period -- that for services through January 21st they had
9 already been paid.

10 MR. SMOLINSKY: I just want to make sure there's no
11 disagreement. We'll prepare an order which reflects that fact.

12 THE COURT: Okay.

13 MR. SMOLINSKY: Thank you.

14 THE COURT: In this third contested matter before me
15 today, this one also, of course, in the Chapter 11 cases of
16 reorganized debtor, GM, and its affiliates, the ad hoc
17 committee of asbestos personal injury claimants seeks about
18 232,000 dollars now reduced from an earlier larger request of
19 about 511,000 dollars for an asserted substantial contribution
20 to the debtors' reorganization. The United States trustee
21 objects.

22 The U.S. trustee's objection is sustained and the
23 application is denied. The following are my findings of fact
24 and bases for the exercise of my discretion in connection with
25 this determination.

1 First, by way of background, it's the law in this
2 district and others, if not everywhere, that substantial
3 contribution provisions of the Code must be narrowly construed
4 to discourage mushrooming expenses. Provisions like 503(b) do
5 not change the basic rule that the attorney must look to his
6 own client for payment. See *In re Granite Partners*, 213 B.R.
7 440 at page 445 and, likewise, *In re United States Lines*, 103
8 B.R. 427 at page 429. In short, the substantial contribution
9 provisions are narrowly construed and they're subject to strict
10 scrutiny. As Judge Bushman noted in *U.S. Lines*, that rule is
11 well settled. Page 429.

12 Similarly, as my colleague, Judge Beatty noted in *In*
13 *re Villa Luisa L.L.C.*, 354 B.R. 345 at page 348, and I'm
14 quoting, "The burden of proving substantial contribution rests
15 on the petitioning creditor and it is exceedingly difficult
16 since the general presumption is that the creditor is acting in
17 its own interest. Such an award is given only for
18 'extraordinary creditor actions on those rare occasions when
19 the creditor's involvement truly fosters [and] enhances the
20 administration of the estate.'"

21 That rule is broadly unique to this district. As
22 noted by Judge Richard Schmidt in *In re Asarco LLC*, 2010 WL
23 3812642 at page *8 -- Judge Schmidt, of course, sitting in the
24 Southern District of Texas and having a very substantial
25 expertise in Chapter 11 cases -- "Substantial contribution

1 claims may only be granted in unusual and rare circumstances.
2 Narrowly construing the allowance of substantial contribution
3 claims to rare and unusual circumstances is consistent with the
4 general doctrine that priority statutes, such as Section 503(b)
5 should be strictly construed to preserve the estate for the
6 benefit of creditors."

7 Here, I don't doubt that the ad hoc asbestos
8 committee's efforts benefited asbestos claimants. I suspect
9 they benefited asbestos claimants substantially. But I find as
10 a fact that there's been no comparable showing of a benefit for
11 anyone else. In fact, I find the exact contrary to be true.
12 This is a classic case where the ad hoc committee was acting in
13 its own interest, see Villa Luisa, even where the position it
14 was taking could harm the estate as a whole, as its position
15 did with respect to the more than half of its original fee
16 request that it later withdrew and, indeed, as the ad hoc
17 committee did with respect to another 69,000 dollars in fees
18 with respect to the Remy International and Detroit Diesel that
19 I'll discuss momentarily.

20 The ad hoc committee's motion says as much. See, for
21 example, Motion at paragraph 33. "The Stutzman firm also spent
22 numerous hours attending to asbestos due diligence issues to
23 protect and preserve the rights of its constituency at a time
24 when no other party was advocating on behalf of the debtors'
25 asbestos victims." See also Motion, paragraph 11. "The ad hoc

1 committee vigorously represented the interest of asbestos
2 creditors at a time when no other case fiduciary was advocating
3 their interests."

4 Assuming that to be true, and it's true only in part
5 because I authorized nunc pro tunc retention for counsel for
6 the official asbestos committee, even over the objection of the
7 U.S. trustee, that's a very different thing than saying that
8 the services provided were services that benefited everybody.
9 They were services that benefited a very small subset of the
10 Old GM creditor community that, as the cases make clear, is the
11 group that should pay for it, not the car wreck victims, not
12 the bondholders, not the retiree medical benefit plans.

13 The mindset of this group was evidenced by the
14 approximately 250,000 dollars in fees it spent in opposing the
15 363 sale to advance its private agenda despite how critical
16 that was to all of the ordinary and governmental creditors of
17 this case. Now, of course, that request was withdrawn. If it
18 didn't, I would truly be scratching my head. I spoke to that
19 conduct before and I note that the ad hoc committee has now
20 withdrawn its request to be paid for that reducing its request
21 from its original size of about a half million down to about
22 232,000 dollars. But its preoccupation with its own needs and
23 concerns and its failure even to materially assist everybody
24 else in anything more than the most minimal way is apparent.
25 And the request that remain still show that it was acting at

1 cross-purposes to the interest of the estate as a whole or, at
2 the very least, looking out for itself without any
3 corresponding or even modest benefit to anyone else in the
4 estate.

5 A classic example of this is the approximately 69,000
6 dollars that the ad hoc committee wants for what it calls
7 automatic stay issues. But the Old GM estate was already
8 protected by the automatic stay. The services involved a
9 request by Remy International and Detroit Diesel, two other
10 entities that can be regarded as the asbestos equivalent
11 analogue to PRPs in the environmental area, to extend the
12 automatic stay to protect themselves by lawsuits that had been
13 brought by asbestos claimants.

14 This controversy was a poster child for private
15 litigants involving themselves in the bankruptcy process to
16 advance their private agendas. The matter was so unimportant
17 to the estate that the debtors' counsel didn't respond to it.
18 The debtors' counsel didn't waste the creditors' money by
19 preparing a response. The creditors' committee whose
20 constituents' money has really been on the line in this case,
21 didn't respond either. But the asbestos committee -- ad hoc
22 committee did opposing the request which just so happened to
23 have the effect of assisting asbestos claimants in going after
24 others. And it did so when those asking for the injunction,
25 Remy International and Detroit Diesel, had a right or at least

1 an arguable right, to go after the estate for indemnification
2 which could actually increase claims against the estate. So
3 the asbestos ad hoc committee sided with asbestos plaintiffs
4 even though its doing so could increase claims against the
5 estate.

6 Now I asked questions to see if my analysis in that
7 regard was mistaken in any way. And the answer I got to the
8 extent it was an answer was that the asbestos litigants, other
9 than the ad hoc committee, of course, who wanted to bring these
10 actions, went against Remy International and Detroit Diesel
11 instead of going after the estate. But I'm not sure what
12 basis, if any, I have to make such a finding especially since
13 this was a motion to extend the stay. It had nothing to do
14 with asbestos plaintiffs giving up right to go against the
15 estate. And, frankly, folks, it walks, talks and quacks like
16 helping out one's friends in the asbestos plaintiffs'
17 community. It certainly didn't benefit this estate in any way,
18 shape or form.

19 Moreover, it's been held that "Something more than
20 mere conclusory statements regarding one's involvement in an
21 act resulting in 'substantial contribution' must be tendered in
22 order for such involvement to be compensable." It's been
23 further stated that "Corroborating testimony by a disinterested
24 party attesting to a claimant's instrumental acts has proven to
25 be a decisive factor in awarding compensation to activities

1 which otherwise might not constitute a substantial
2 contribution." See U.S. Lines, which made those observations.
3 And look also at Baldwin United, 79 B.R. at 340, where the
4 debtor's former management testified as to helpful acts in
5 mediating disputes between senior and subordinated and equity
6 security holders.

7 It's quite clear, however, that if the judge sees the
8 substantial contribution itself, that's at least as good as a
9 disinterested observer coming forward and making that
10 observation. But here, I have neither. Here, I saw no
11 evidence of any benefit to the estate as a whole as contrasted
12 to advancing the private needs of asbestos claimants.

13 This case was not asbestos driven. But dealing with
14 the needs and concerns of the small subset of asbestos
15 creditors materially delayed and complicated the case. It
16 didn't assist it in any way. And certainly the efforts of the
17 asbestos ad hoc committee didn't do so. I already was asked to
18 authorize payment of approximately 3.5 million dollars for fees
19 and expenses of counsel for the official asbestos committee,
20 counsel for the future claims representative and for the future
21 claims representative himself. Now I have a request for
22 another 232,000 dollars for a non-fiduciary plainly advancing
23 interest of the subset of the creditor community rather than
24 the entire creditor community in this case.

25 Finally, there is also an important principle of

1 fairness here. In substance, the ad hoc committee here is
2 asking all of the other creditors of this estate and the
3 taxpayers of the United States and Canada to pay its fees
4 incurred for advancing its own needs and concerns, for
5 advancing its own agenda. That's simply not tolerable in the
6 absence of a substantial benefit for everyone else, a benefit
7 for the other creditors who are being asked to foot the bill.

8 For all of these reasons, the motion is denied. The
9 U.S. trustee is to settle an order in accordance with the
10 foregoing.

11 We're adjourned.

12 MR. MASUMOTO: Thank you, Your Honor.

13 (Whereupon these proceedings were concluded at 3:15 p.m.)

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R U L I N G S

DESCRIPTION	PAGE	LINE
Request by New GM to participate in proceedings Re Nova Scotia trustee's claim as against old General Motors granted; record is so ordered	24	8
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Objection of the United States trustee re application of the ad hoc committee of asbestos personal injury claimants for payment of fees and reimbursement of expenses sustained; application denied	104	23

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

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.

Lisa Bar-Leib

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