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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:

GENERAL MOTORS CORPORATION,

Debtors.

- - - - - x

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

March 1, 2012  
9:45 AM

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

1 Hearing re: Motors Liquidation Company GUC Trust's Motion  
2 to Supplement Amended Order Pursuant to 11 U.S.C. § 105(a)  
3 and General Order M-390 Authorizing Implementation of  
4 Alternative Dispute Procedures, Including Mandatory  
5 Mediation

6  
7 Hearing re: Objection to Proof of Claim No. 61381 by  
8 Dimitrios Marangos

9  
10 Hearing re: Motion for Objection to Claim(s) Proof of claim  
11 No. 15927 by Patricia Meyer

12  
13 Hearing re: Debtors' Eighty-Third Omnibus Objection to  
14 Claims (Welfare Benefits Claims of Retired and Former  
15 Salaried and Executive Employees)

16  
17 Debtors' 103rd Omnibus Objection to Claims (Welfare Benefits  
18 Claims of Retired and Former Salaried and Executive  
19 Employees)

20  
21 266th Omnibus Objection to Claims and Motion Requesting  
22 Enforcement of Bar Date Orders

23  
24 267th Omnibus Objection to Claim(s) Number  
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1           **268th Omnibus Objection to Claims and Motion Requesting**  
2           **Enforcement of Bar Dates Orders**

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**Transcribed by: Dawn South, Cherri Brown, and Becky Flick**

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P R O C E E D I N G S

THE COURT: Good morning, have seats, please. okay, General Motors -- Motors Liquidation Company. We have many, many people who've signed up for the phone, and we have a fair number of matters to deal with today.

Here's what we're going to do, folks. I'm dealing with the ADR matters first, and we will resolve those issues and then I will thereafter deal with the various claims objections.

CourtCall, I'm going to ask that the folks who are on the line for claims objections be put on mute until we get to those. My phone log shows Mr. Carragher of the Day Pitney firm on the phone log, and I think he's here on the environmental matters because I read his submission, I think it was United Technologies. I would like him kept live if you would, please, and the remainder of the folks should be put on mute until I get to their needs and concerns.

OPERATOR: Thank you, Your Honor, I'm bringing Mr. Carragher live now.

THE COURT: Okay. Mr. Carragher, can you hear me?

MR. CARRAGHER: Yes, I can, Your Honor.

THE COURT: Very good, okay. On ADR folks, I've read your various submissions. I have some preliminary thoughts.

I think there is no doubt that the idea of ADR as

1 a whole is a very beneficial one, and what we're really  
2 going to be talking about is in addition to approving the  
3 motion on patents and other things for which there was no  
4 opposition, we need solely to address some of the concerns  
5 that were articulated in the limited objections.

6 Some of the remarks that were made by the GUC  
7 Trust in its response lead me to believe that some of the  
8 earlier concerns voiced by the objectors, which would  
9 otherwise have troubled me as well, have been addressed, but  
10 I sense that some may remain, and at least in one case,  
11 vis-à-vis, the federal government. It looked like my  
12 earlier understanding, which was reflected in writing by I  
13 think Onondaga County, that the federal EPA wasn't going to  
14 be required to participate, may have suffered a reversal by  
15 the GUC Trust side and I need an explanation as to that.

16 My general thought that I want everybody to  
17 address however is if we assume, as I think all reasonable  
18 people do or at least should, that the system as a whole is  
19 salutary and we know that the ADR process has been very  
20 beneficial for everybody in the areas in which it's already  
21 proceeded, do we really have good justifications for not  
22 doing it on a level playing field?

23 And I particularly have concerns that I need the  
24 GUC Trust side to address, as to whether the GUC Trust  
25 should have the right to pick mediators and not -- or to

1 nominate them and not those on the other side, and likewise  
2 it should have the ability to pull the plug on the process  
3 and deny that right to the other side.

4 My tentative, subject to your rights to be heard,  
5 is that the ADR process if it's to work best has to have the  
6 confidence of everybody, and that people should have comfort  
7 that it's going to run fairly on both sides.

8 So although in some respects these are some fine  
9 tuning around the edges, and arguably even micromanagement,  
10 I do want to give everybody the sense that we're going to be  
11 embarking on an enterprise where everybody has confidence in  
12 it, and that's what I need you guys to help me with.

13 Now with that said, Mr. Smolinsky, are you going  
14 to take the lead for the GUC Trust on this?

15 MR. SMOLINSKY: Yes, Your Honor.

16 THE COURT: Can I ask you to come to the main  
17 lectern, please.

18 And I think I remember you folks, but before you  
19 start talking, Mr. Smolinsky, let me get the appearances on  
20 the record and then you can continue.

21 MS. LEARY: Maureen Leary for the State of New  
22 York on behalf of the Attorney General's Office.

23 MR. JONES: David Jones from the U.S. Attorney's  
24 Officer Southern District New York for the United States.

25 MR. LINDENMAN: Eric Lindenman, Harris Beach for

1 the Town of Salina.

2 THE COURT: Mr. Lindenman, it's been a while.

3 MR. LINDENMAN: Yes.

4 THE COURT: Okay. Mr. Smolinsky.

5 MR. SMOLINSKY: Thank you, Your Honor, and of  
6 course I'm aware that Your Honor has read all the papers and  
7 I won't repeat our previous -- previous papers, but I do  
8 want to perhaps give just a minute of background because I  
9 think it's helpful to try to defuse the notion that this is  
10 an unfair process that's not likely to lead to a resolution,  
11 which is a theme that came out throughout the objections.

12 There can be no dispute that the ADR process has  
13 been extremely successful in this case. We used it  
14 primarily for litigation claims and we started out with  
15 thousands of claims -- litigation claims in excess of  
16 \$500,000. Of those we only had to designate 354 claims for  
17 ADR. That means that we were successful -- and we do have a  
18 couple of hundred claims left, including 53 claims that are  
19 still in the ADR process in the offer and counteroffer  
20 stage. So that means that we have worked diligently and  
21 quite successfully at resolving claims even before we  
22 designated them for ADR.

23 Of those 354 claims 53 are still in the process,  
24 there have been 301 mediations to date, and of those we  
25 resolved in mediation 289 of them.

1           There are ten claims that didn't settle, and I  
2 would say that I know about some of those claims and I would  
3 have guessed going into the process that we would not have  
4 settled it in ADR.

5           An additional two claims have not settled and are  
6 currently on appeal for defendants' judgments.

7           So we already won at the trial level the ADR to  
8 resolve appeal and now the appeal is going forward.

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

10           Those were actions in which the defendants' side,  
11 which would be either GM or an affiliate had won in like  
12 some state trial court but the matter was up on appeal?

13           MR. SMOLINSKY: Correct, Your Honor. That means  
14 that we -- even taking those two cases into consideration we  
15 settled through mediation 289 of 301 cases, which is a  
16 success rate of 96 percent.

17           So I could also report to the Court that the  
18 mediations have not been a free for all where the GUC Trust  
19 has simply opened its pocketbooks and given away the store.  
20 They were all done professionally, there were considerations  
21 given to hardship cases, it was done with a full exchange of  
22 information by the GUC Trust to allow the claimant to fully  
23 understand the defenses that the estate had, and there was a  
24 full sharing of information.

25           But the reason why in our papers we put in it some

1 additional language requiring the delivery of information is  
2 unlike a litigation claim where, you know, it's he said, she  
3 said, there are police reports and other documents, but  
4 calculating the damages is something which relies on a whole  
5 host of issues, what the jury is going to look like in a  
6 particular jurisdiction, how good the plaintiff's counsel  
7 is. There are a whole host of reasons.

8 When it gets down to patent claims and  
9 environmental claims it's usually something which is based  
10 on either a calculation in the patents side, a calculation  
11 of how many parts were sold during a given period of time,  
12 sometimes not by GM but by other manufacturers. For  
13 environmental claims there's often engineering work done  
14 that describes what kind of work needs to be done, and  
15 that's the first stage in understanding what the appropriate  
16 value of the claim should be.

17 So in terms of what the documents say I don't  
18 think that we envisioned that this was going to be a one-way  
19 discovery street. It was simply a way of saying to  
20 claimants, if you have information about how you're  
21 calculating your claim give it to us so we can evaluate it  
22 and we'll share our information with you as well.

23 Sometimes there are issues. I know that New York  
24 State has been looking for one particular document, a  
25 feasibility study that was commenced by GM with respect to

1 the American Axle site I believe, and in that regard the  
2 study --

3 THE COURT: Is that in Onondaga County or a  
4 different part of New York?

5 MR. SMOLINSKY: Is the American Axle --

6 MS. LEARY: No, I think it's in Erie County,  
7 Your Honor.

8 THE COURT: Out near Buffalo.

9 MS. LEARY: Yes.

10 THE COURT: Okay.

11 MR. SMOLINSKY: So in that case we provided the  
12 State, in fact we filed with the State way back a  
13 feasibility study, and prior to the bankruptcy the debtors  
14 had started a second feasibility study but it wasn't  
15 completed.

16 So there's been some talk about whether or not we  
17 should deliver the uncompleted feasibility study, and we'll  
18 get there. We will speak to the engineers and figure out  
19 how complete it is and how reliable it is and then we'll  
20 share that information. So it's not intended to be a one-  
21 way street.

22 So just talking about some of the objections that  
23 were made, and I think it touches upon some of your -- some  
24 of your concerns.

25 The unfair nature of the process. I think the

1 proof is in the pudding in terms of how we've conducted  
2 these ADR processes.

3 The need to broaden the roster of mediators. As  
4 we said in our papers, we did have at least two mediators  
5 that had extensive environmental experience.

6 We in the past with respect to litigation claims  
7 have worked with parties and in some cases have designated  
8 other mediators upon agreement. I think the same would hold  
9 true here. We're not going through this as we would in a  
10 typical litigation where if it settles fine, if it doesn't  
11 that's fine too, we're approaching this from a perspective  
12 of wanting to settle it.

13 So to the extent that there is a suggestion that  
14 there be another mediator considered we would -- we would  
15 definitely consider that, and to the extent that it made the  
16 mediation more productive we would likely go along with  
17 that.

18 The reason why the procedures don't say that the  
19 parties will come together and agree on a mediator is that  
20 sometimes that process in and of itself could take months  
21 and months and months and months, and a lot of disagreements  
22 and going back and forth.

23 So we were not intending, and I think our reply  
24 papers were quite clear on this, that we were not intending  
25 to -- to not avail ourselves of suggestions of mediators

1 that might be more constructive to getting to yes, but  
2 rather trying to make sure that the very strict deadlines  
3 that are in the ADR procedure that have worked so well to  
4 getting to resolutions within a reasonable period of time  
5 remains -- remains there and remains as an enforcement  
6 mechanism to make sure that we could get through these  
7 claims quickly and efficiently.

8 The budgetary constraints I think we addressed.  
9 We will agree to pay the mediation costs in connection with  
10 any municipally or governmental agency.

11 THE COURT: Pause. That's constructive, that  
12 isn't what I understood from your rely. I thought you had  
13 made that offer for New York State, but wasn't clear as to  
14 whether you made the same offer for Onondaga County and  
15 Salina.

16 MR. SMOLINSKY: I hadn't previously. My view on  
17 those two parties -- and I was going to get to this later --  
18 but to the extent that New York State wants to include them  
19 in the mediation process I think that they would appear and  
20 it would be the same costs that New York is addressing. And  
21 even I think it was Onondaga County that admits and concedes  
22 that New York is taking the lead basically saying we don't  
23 want to be in a mediation without New York. And it's never  
24 been our intention throughout the ADR process to exclude  
25 parties. We've had multi-party ADRs where we've had several

1 claimants in the same accidents, we've had insurance  
2 companies and claimants.

3 To the extend New York wants Onondaga County to  
4 participate we have no problem with them attending and there  
5 shouldn't be any increased cost associated with it.

6 THE COURT: All right. Well, what had troubled me  
7 -- because I think you had made it pretty clear, (a), that  
8 Onondaga County and Salina would be invited to the show, and  
9 (b), that you weren't going to tag New York State with the  
10 cost. I would have been troubled if you had said that  
11 notwithstanding those things that you were going to lay some  
12 of the costs on Onondaga and Salina.

13 MR. SMOLINSKY: It's not the intention,  
14 Your Honor. There may be a 502(e)(1)(b) objection --

15 THE COURT: I have no doubt that you would address  
16 that, but of course the way you would deal with that is  
17 paying the environmental regulator, solving the  
18 environmental regulator's needs and concerns, and then  
19 taking that into account when the others are putting in a  
20 claim for what they think they're entitled to by way of, you  
21 know, a contribution claim or something like that.

22 MR. SMOLINSKY: Right, or objecting to this claim  
23 in this court under 502(e)(1)(b).

24 So in my mind I never envisioned a scenario where  
25 we would be separately mediating with Onondaga or Salina.

1 If that -- if that comes to pass we will pay the mediator's  
2 fee.

3 THE COURT: All right. By the way, have I been  
4 mispronouncing the name of the town for the three years?

5 MR. SMOLINSKY: You say tomato I say tomato.

6 THE COURT: All right. Well, we'll wait --

7 MR. SMOLINSKY: I think I've heard different  
8 things at this point.

9 THE COURT: Mr. Lindenman can straighten this out  
10 when the time comes.

11 MR. LINDENMAN: Your Honor, if I can interrupt I  
12 vividly remember your asking the same question at a prior  
13 hearing and someone from that town said people there differ.

14 MR. SMOLINSKY: Yes.

15 THE COURT: All right.

16 UNIDENTIFIED SPEAKER: Your Honor, I'm told it's  
17 Salina, but as I indicated the last time I was here, I  
18 believe the correct pronunciation is the town. It just  
19 makes it easier, so we'll go along that.

20 THE COURT: I'm grateful for that, folk, thank  
21 you.

22 MR. SMOLINSKY: Your Honor, I remember that  
23 comment and that's why I said tomato/tomato, I didn't mean  
24 to disparage the town and mispronounce its name, I knew that  
25 there was some dispute over that fact.

1 THE COURT: No, I thought you wanted to disparage  
2 me.

3 All right, continue, please.

4 MR. SMOLINSKY: The next category of issues  
5 revolve around police and regulatory power.

6 I'll make absolutely clear we're not intending to  
7 impact and impair, and our order will certainly provide that  
8 we're not seeking to take away any municipality's right to  
9 police -- to exercise their police and regulatory power. I  
10 don't think it's relevant here because these are not sites  
11 that are owned and controlled and managed by the debtors.  
12 So in terms of their claims I believe them to be simple  
13 monetary issues.

14 So I'm not quite sure where the police and  
15 regulatory power is invoked, but we're not seeking to alter  
16 -- alter 362.

17 I think the last issue that was raised by New York  
18 was that they wanted to make sure that the claims were  
19 subject to withdrawal of the reference, and I think we  
20 addressed that -- this, but let me say what our position is.

21 We're not trying to take away anyone's rights  
22 ultimately to seek to withdraw the reference, but we think  
23 that we should at least prior to this issue being moved out  
24 of this Court that we should at least have the time to do a  
25 consensual ADR process, not invoking Your Honor's

1 jurisdiction to actually try the matter, but to give us the  
2 opportunity to resolve -- to resolve the matters  
3 consensually.

4 THE COURT: So you're okay with the notion that  
5 before anybody tees anything up for me to decide on an issue  
6 that by way of example might include a construction of both  
7 the code and CERCLA, that at that point there would be an  
8 opportunity for someone to move for a withdrawal of the  
9 reference if that claimant thought it wanted to try?

10 MR. SMOLINSKY: That's right, Your Honor, we can  
11 make that clearer in the order.

12 The issue about pulling the plug was -- that's in  
13 the procedures, because there are situations that could  
14 occur when you're going down the process of trying to  
15 mediate a claim and you know based on the discussions that  
16 take place before the mediation starts that it's not going  
17 to be a constructive process and you're not going to resolve  
18 the claim, and the point is to not force the estate to spend  
19 the \$20,000 or so it costs to actually do a mediation if  
20 it's not likely to result in any particular result and that  
21 we should be going back to the Court before we move forward.

22 I can't imagine that with respect to environmental  
23 claims of this nature, the ones that are represented in the  
24 court here today, that we would find that the mediation  
25 process is not productive once we commence it, but that's

1 the purpose for that language, and I think that that's a  
2 fair request to allow -- to force claimants to participate,  
3 but to extent that they're not participating in a way that's  
4 going to get to a result avoiding the estate's need to just  
5 spend money indiscriminately, and that's the purpose.

6 With respect to the federal government. The catch  
7 all exclusion, the carve-out for the federal government had  
8 been in there in previous orders and it was inadvertent that  
9 we kept that carve-out in our papers.

10 As a matter of fact with respect to some of the  
11 Onondaga sites New York and the federal government are both  
12 involved, and to be able to mediate the issues in Onondaga  
13 effectively we perhaps need the federal government there and  
14 present.

15 We -- as soon as Mr. Jones reached out to us and  
16 said, you know, what is our position, we told him that it  
17 was our desire and intention to include the federal  
18 government in the procedures, but I will say that the  
19 federal government has been extremely cooperative with us,  
20 not to say that other parties haven't, but we have resolved  
21 substantial claims with the EPA since confirmation of the  
22 case. You've seen some of those settlements lodged with  
23 Your Honor.

24 As a matter of fact one of the benefits of filing  
25 this motion is we've resolved a number of additional claims,

1 and you'll see other settlements being lodged shortly.

2 I'll knock on wood, but I believe that as recent  
3 as yesterday I could say that I think we've resolved all of  
4 our issues with the federal government with respect to EPA  
5 issues.

6 THE COURT: Including those that would otherwise  
7 be subject to ADR under this motion?

8 MR. SMOLINSKY: That's right, Your Honor, all  
9 environmental claims. And Mr. Jones can speak to that, and  
10 obviously there may be some additional consents and there's  
11 a procedure of lodging that has to take place, so we're  
12 reluctant to pull them out of the ADR order because we'd  
13 like to have that as a backstop in case anything happens,  
14 but the likelihood of actually mediating with the federal  
15 government is I believe remote at this point.

16 THE COURT: I don't know if you're the best guy  
17 for me to ask this or whether I should ask it of Mr. Jones  
18 or both of you, but do you have a sense as to how long it  
19 would take to know whether any requisite approvals could be  
20 obtained? At least in some government settlements the  
21 government has to put it out to public comment and so forth,  
22 and for lack of a better word we would know whether we need  
23 to put the federal government into ADR or whether things  
24 already in place will simply take their course.

25 MR. SMOLINSKY: I think I'll let Mr. Jones or

1 Ms. Leary answer that question from a regulatory  
2 perspective.

3 I would say that it is not our goal to mediate  
4 claims, just to make that very clear. Our goal is to  
5 resolve claims in advance of mediation and to use mediation  
6 as a last resort to the extent that claims can't be settled.

7 I've told both Ms. Leary and Mr. Jones that we  
8 want to give all these settlement discussions a good faith  
9 chance, and in fact some of New York's issues have been  
10 resolved and wrapped up in these agreements in principal.

11 And so I can commit to Your Honor that with  
12 respect to the Onondaga site and the federal claims that we  
13 will not designate those claims for mediation within the  
14 next 30 days and that will allow time to let these deals  
15 solidify and to get out for comment.

16 I can also assure Your Honor that to the extent  
17 that there is a settlement that's been lodged and is out  
18 there for comment, that we're not going to designate a claim  
19 during that process, I think that would be ridiculous.

20 So again, I think that the protections are in  
21 there based on those representations that the government is  
22 not going to be dragged in a mediation that's unnecessary.

23 And with respect to New York State over the last  
24 two weeks we've had several constructive conversations with  
25 Ms. Leary. I believe that we're speaking to her again

1 tomorrow, and I'm hopeful that we can make real process over  
2 the next 30 days on a number of the New York sites. That's  
3 our -- that's our goal. The ADR process is not without  
4 cost, but it's certainly cheaper than the costs of  
5 litigation.

6 So looking down at the various objections I think  
7 I've addressed our position on New York, Onondaga County,  
8 Town of Salina, same thing, we talked about the multi-party  
9 claims that Onondaga was concerned about not being able to  
10 participate for the extent New York wanted them to. United  
11 Technologies also filed a joinder, but I think that's in the  
12 same category as the 052(e)(10)(b). And I believe I  
13 addressed your comments regarding pulling the plug, picking  
14 the mediators, and the inclusion of the federal government.

15 THE COURT: Okay, thank you.

16 I think I would like to next hear from Mr. Jones,  
17 then Ms. Leary, Mr. Lindenman, and Mr. Carragher, if he  
18 wishes to be heard in addition.

19 Go ahead, Mr. Jones.

20 MR. JONES: Thank you, Your Honor, David Jones  
21 from the U.S. Attorney's Office for the U.S.

22 As Mr. Smolinsky has said, we've made tremendous  
23 progress resolving claims, and as our papers said we have  
24 essentially two outstanding settlements we're working on,  
25 both in the Onondaga area. In fact just yesterday and today

1 we have achieved at least subject to approval a notice and  
2 comment agreement in principal on one, and we're either  
3 there or very close on the other. We're going through some  
4 intergovernmental coordination and communication on our  
5 side, that is we want to talk to the county and we have been  
6 talking to the State, that's ongoing.

7 So I think as a practical matter we -- I think  
8 it's very unlikely even if this motion were granted as to  
9 the federal government that we would end up in the mediation  
10 posture, and for that reason I think, you know, my concerns  
11 are somewhat certainly less -- apply with less force, but  
12 they still exist as a principled matter.

13 So I want to make clear that -- first that the  
14 government does -- the United States does favor mediation  
15 processes where appropriate and we don't have a principled  
16 objection to being asked to mediation claims where we think  
17 that'll be productive, but in this instance it's simply the  
18 case that we don't foresee a scenario where mediation will  
19 be necessary or appropriate as to us, and we would rather  
20 not cede the still unilateral power to the GUC Trust to push  
21 us into that scenario.

22 I think realistically --

23 THE COURT: Pause, please, Mr. Jones, because I  
24 certainly under your perspective on that, but one thing that  
25 had occurred to me -- and forgive me, I don't understand or

1 know the break down of responsibility between governmental  
2 enforcement on the federal side on the one hand and on the  
3 state side on the other -- but success or fail your on your  
4 end I would have thought would then bear on whether New  
5 York's needs and concerns have been addressed, and when the  
6 two of you guys, New York and the federal government, have  
7 obtained satisfaction that could -- unless I'm corrected --  
8 have 520(e) implications for PRP's.

9 Am I -- that's why I care about you guys being in  
10 there or holding the flashlight in the forest for the other  
11 guys.

12 MR. JONES: Your Honor, you're right, I mean these  
13 are -- first off we have -- our two claims involve the  
14 Onondaga superfund site or site complex -- it's a  
15 complicated area, and we do have overlap New York State. On  
16 one of the two we serve co-trustee with New York State for  
17 natural resource damage purposes, on the other I believe  
18 it's EPA lead, but on a site by site basis EPA and state  
19 regulators will work out who plays the lead for what  
20 remediation function at what site.

21 Here there are quite a number of New York sites at  
22 issue in the bankruptcy that -- where there's no federal  
23 role. I -- the two deals or near deals that I see do  
24 involve at least a degree of coordination with New York  
25 State and we're going through that process, and we think

1 very productively and will every reason to expect success.

2 I mean, and Your Honor mentioned the 502 issue of  
3 other PRP's. One consideration we always keep in mind in  
4 negotiating is to -- is that these settlements are subject  
5 to lodging of a proposed settlement, a public notice and  
6 comment period, and then approval by the Court under the  
7 environmental laws as has occurred several times, and of  
8 course PRP's can come in and object and say that the  
9 settlements are unfair or insufficient.

10 We take pains in negotiating to try to anticipate  
11 any such possible objection and make sure that our  
12 settlement either won't trigger such an objection or would  
13 withstand such an objection, but of course if public  
14 comments come in and we've got it wrong we can revisit that.

15 I think the way this will play out is that we  
16 believe -- is just consistent with that. We believe we are  
17 presenting sound deals. The notice and comment period will  
18 either bear that out or won't, but if it doesn't, if a  
19 problem arises -- I mean the negotiating process has been  
20 very involved, we have had extensive technical discussions,  
21 each side has their own technical consultants, the program  
22 policy and policy people are all participating in the  
23 process as well as counsel, and in the event that something  
24 goes awry through other PRP's coming in or notice and  
25 comment that same process can continue. I don't -- I simply

1 don't see what a mediator would add to the process. I think  
2 it just becomes another layer of procedural complexity,  
3 time, expense for the estate, even if the government is now  
4 being excused from bearing that mediator expense, for a  
5 function that I think we simply don't need.

6 I mean I have a practical problem, Your Honor,  
7 which is I'm a creature of what I'm authorized to say or  
8 consent to, and I'm not authorized to consent to this  
9 application. I think I do want to acknowledge that  
10 Mr. Smolinsky has defanged a lot of the procedural problems.  
11 I think there are still issues with the sort of unilateral  
12 triggering mechanism and the limitations on flow of  
13 information that give us pause and we're not quite sure how  
14 this would play out. I mean the -- and the injunction that  
15 would be triggered by invocation of mediation also could  
16 become an impediment to resolving disputes, or I suppose  
17 possibly to regulatory action, although I think  
18 Mr. Smolinsky has accounted for that concern.

19 So I guess, you know, where I am, Your Honor, is I  
20 -- our expectation is that this won't be a problem because  
21 what Mr. Smolinsky has said will mean that we will simply  
22 progress on the path we've been and get deals done and be  
23 out without ever triggering this, but to me that factor is  
24 in favor of, you know, carving out or exempting the U.S.  
25 given the progress that's been made and given the lack of

1 need at least for a certain amount of time.

2 We have no problem with MLC, you know, coming back  
3 and proposing mediation and we might consent to mediation if  
4 we each agree that it would be appropriate at a future time.  
5 We're just not there yet and may never be.

6 THE COURT: Before you sit down, Mr. Jones. One  
7 of your concerns is on -- on what you described as limits  
8 and flow of information not just in monster cases like this  
9 one, but in practically every case on my watch where I've  
10 thought that ADR might be constructive. I've taken a hybrid  
11 approach.

12 History has taught me, experience has taught me  
13 that you can't mediate effectively without some exchange of  
14 information, but that the whole idea of mediation is to  
15 avoid running up what I believe, and I think many believe,  
16 is a very expensive discovery process because our discovery  
17 rules by their nature are very expensive for parties.  
18 That's why the Supreme Court has told us that we're supposed  
19 to blow away complaints at the 12(b)(6) level so people  
20 don't have to participate in discovery.

21 I would like to find that sweet spot to provide  
22 for the necessary exchange of information without getting  
23 into full-blown discovery. How do you think I should do  
24 that?

25 MR. JONES: Your Honor, this is just one person's

1 view, and you know, I haven't vetted any particular  
2 position, but the thing that fundamentally troubled me was  
3 that there's an obligation put on claimants to put forth  
4 their justification of their position and there's no  
5 reciprocal obligation put onto the GUC Trust to put forth  
6 its substantiation for its position as to what the valuation  
7 should be.

8 So at a minimum I would think simply a reciprocal  
9 exchange instead of a one-way exchange would be appropriate.

10 I will say -- and I think Your Honor's question  
11 goes to sort of general operation of the procedures in large  
12 part -- I will say that as to us there's been extremely  
13 extensive exchange of information and views and technical  
14 meetings amongst consultants on each side, so you know, I  
15 don't know that my concern is elusory as it applies to us,  
16 but I think there has been substantial exchange of  
17 information.

18 So I don't want to claim that they're playing hide  
19 the ball, but just as a structural matter it seems to me  
20 that providing for some form of streamlined exchange of  
21 information that flows both ways is better than simply  
22 putting a burden on the claimant to cough up information and  
23 then be thrown into mediation where they don't know what the  
24 GUC Trust is sitting on -- what information the GUC Trust is  
25 sitting on.

1 THE COURT: Okay, thank you.

2 MR. JONES: Thank you.

3 THE COURT: Ms. Leary?

4 MS. LEARY: Thank you, Your Honor. Maureen Leary  
5 for the State of New York and the Department of  
6 Environmental Conservation.

7 I -- New York wants this to work, that's the first  
8 thing I want to say, and it's important that it work if we  
9 have to do it and the expense has to be incurred.

10 The thing I like about it is there is a  
11 preliminary process. The problem with the preliminary  
12 process is what Mr. Jones was just eluding to, that exchange  
13 of information.

14 Why is that important? Unlike Mr. Jones'  
15 representation I can represent to you that there has not  
16 been the same type of exchange of information between New  
17 York and MLC or New York and the GUC Trust now. This hasn't  
18 happened. Whether that's a product of being too busy or  
19 whatever it is.

20 The reason it's important is -- and the problem  
21 with the procedures is they fail to recognize what I think  
22 the rules give a claimant, which under 3001(f) is quote, "A  
23 proof of claim executed and filed in accordance with these  
24 rules shall constitute, quote, prima facie evidence of the  
25 validity and amount of the claim."

1           If the process starts with the onerous -- well,  
2 articulated burden on the claimant, which is my view New  
3 York has already met because our proofs of claim are  
4 substantial, and there's no subsequent requirement for a  
5 substantiation of the other side's position this isn't going  
6 to work. It's not fair. And I'm not even going to get to  
7 the pull the plug. I don't want to pull the plug on that, I  
8 don't want that right, but I don't want the GUC Trust to  
9 have it unilateral did I.

10           I think when you're in mediation it's tough, gets  
11 hot in this kitchen, and that's why you stay, that's when  
12 things start to happen.

13           So I went through the order this morning,  
14 Your Honor, and I very much appreciate Mr. Smolinsky's good  
15 faith in trying to get us to the point of, you know, having  
16 all of our concerns addressed. We're not quite at that  
17 point.

18           Shares of the costs definitely went fairly far.

19           The agreement to in good faith consider a mediator  
20 beyond those listed is not quite far enough. We need some  
21 additional choices on that panel that I proposed from the  
22 United States Institute for Environmental Conflict  
23 Resolution which has a particular section that has many  
24 members in New York that's just devoted to environmental  
25 issues -- mediating environmental issues.

1 THE COURT: Does it have a list of people --

2 MS. LEARY: Yes.

3 THE COURT: -- who both are available to serve and  
4 who you suspect would have the requisite qualifications?

5 MS. LEARY: I actually have not gotten that far,  
6 there was only one name that I recognized on this list, and  
7 I can conditionally assert that they probably have the  
8 requisite experience, but one of the mediators -- and I --  
9 we concede this in our papers -- one of the group has one  
10 case that would appear to us to also have the requisite.

11 So we're not tossing out some of the proposals on  
12 the other side, we're just asking for more choices.

13 The other areas that I don't think are resolved I  
14 think involve things like the process for withdrawal of the  
15 reference. I think Mr. Smolinsky answered that question  
16 well in terms of what should happen, whether that's actually  
17 in the procedures however is a different issue. I do not  
18 think it is.

19 I went through the order this morning and black  
20 lined it myself with language that I thought would be both  
21 equitable to both sides and not allow either party frankly  
22 to just pull the plug at any moment and either go enforce  
23 police and regulatory authority and come back here and  
24 object to the claim. If it's going to work you want to have  
25 those options after you've given a good faith effort to the

1 process.

2 So the other issues that I don't think are  
3 resolved and I think there is a hardship on the location of  
4 the mediator for the remaining sites. These -- the  
5 remaining sites that I think may be subject to this, there  
6 are only three or four of them, and they're -- with the  
7 exception of one -- they're in Buffalo.

8 THE COURT: Well, help me on this. The site isn't  
9 going to negotiate.

10 MS. LEARY: Correct, but the witnesses are there.

11 THE COURT: Well, the question it would seem to me  
12 would be whether I should be focusing on the location of the  
13 negotiators, whether -- since I haven't heard anybody say  
14 that there would be a mini-trial I'm not sure whether or not  
15 the location of witnesses make a difference -- and since I'm  
16 not sure whether anybody would be making field inspections  
17 at the premise I'm not sure if proximity to the premise  
18 makes a difference or not. Can you help me on those things?

19 MS. LEARY: What I thought about was I envisioned,  
20 you know -- obviously we have some in the state, some  
21 financial -- fiscal constraints -- and I envisioned  
22 availability of witnesses within the agency in the regional  
23 level as probably the most important thing to be available  
24 to the mediator, someone who had the familiarity with the  
25 contamination who'd been the project manager or coordinator

1 on behalf of the agency who had worked with GM during the  
2 process of establishing nature and extent of contamination.  
3 That would be an important person I think for the mediator  
4 to hear from, and for that person from Buffalo to come to  
5 New York, well, they just wouldn't be able to do it.

6 So that -- and maybe we could do it by affidavit  
7 or otherwise, again, trying to streamline that process. All  
8 of the documents are in Buffalo. Your Honor, I'm going to  
9 Buffalo to try to get those documents, but -- and I'm not  
10 suggesting Buffalo is the only place -- but I think New York  
11 City can't be the only place, I think there has to be some  
12 greater flexibility to talk with the mediator and the GUC  
13 Trust about what makes sense. What issues have we honed  
14 down into and what do we need? Do we need an agency expert  
15 that's not on a regional level but is in a central office  
16 location in Albany to talk about what all these kinds of  
17 sites cost when you're talking about, for example, a pump  
18 and treat system for a ground water contamination problem?  
19 Who's the best person to talk about that? So that type of  
20 flexibility is not really in the procedures order.

21 And I appreciate Mr. Smolinsky's concern that we  
22 don't want to devolve into months and months of talking  
23 about location or the mediator or whatever, but that  
24 flexibility seems to be something that would be important in  
25 order to make it work.

1 THE COURT: Are you old enough to remember all  
2 those arguments in the Paris peace talks during the Vietnam  
3 War about the shape of the table?

4 MS. LEARY: No, I should.

5 THE COURT: I'm glad to see you're not, but  
6 unfortunately I am. I'm concerned about that. I want to  
7 get you guys to work.

8 MS. LEARY: Yes. We want to work, we've been  
9 working, but I don't have confidence -- I don't -- as you --  
10 Your Honor put your finger on it, I don't have confidence  
11 that this isn't just another step and we're going to end up  
12 here in a claims objection and then withdrawal the reference  
13 and have the GUC Trust really incur some costs.

14 If it's going to be meaningful and it's going to  
15 work it really can't look like this, it has to look like  
16 both sides are in good faith exchanging information and  
17 sitting down at the table without the back door being open.  
18 Both parties have the same rights, responsibilities, and  
19 obligations and options. That's what New York is looking --  
20 and any party to a mediation is looking for that. I think  
21 we can get there, but again, the devil is in the details.

22 And I went through this order, I'd really like to  
23 go through it with Mr. Smolinsky if I thought that that  
24 would result quickly in a resolution. I don't know that it  
25 will. I'm happy to give it a try with Mr. Smolinsky, but

1 the one thing we need is information from the GUC Trust  
2 about why our number is wrong.

3 I have an affidavit attached to every single proof  
4 of claim. Business documents, documenting costs, remedial  
5 investigations, feasibility, all kinds of technical  
6 information. Why isn't our number correct? Tell me before  
7 we start this whole thing. Why? And that's the one thing  
8 on several of these sites that I don't have. I've never had  
9 it. On Onondaga we did have it, and that was a concerted  
10 effort, it was a very, very big site and we did a pretty  
11 good job there exchanging information. I will say we gave  
12 more information than they did, but that's okay, it's -- we  
13 hope that it's resolved.

14 That's the -- that's probably the most important  
15 thing in this whole process, Your Honor, that hey, I can  
16 tell my client they're wrong, just tell me why you think  
17 they are wrong, because I think they're right. That's what  
18 I -- that sort of back and forth is very important in the  
19 order. And clarity.

20 If there is -- incidentally, Your Honor, if there  
21 is some deference to 362(b)(4), the automatic stay exemption  
22 that the governmental entities are entitled to, and believe  
23 me we're not looking to exercise this, that really needs to  
24 be in your order in the case there's some explosion out at  
25 one of these sites and we really have to do something. We

1 can't be tied up with an injunction. I don't even think it  
2 should be called an injunction, it should be an ADR stay  
3 that the parties say we're going to -- we are going stay.

4 THE COURT: I'm losing you on this, Ms. Leary,  
5 because I thought their injunction dealt with pushing the  
6 claim for monetary allowance. I thought GM had taken the  
7 position or had represented to me that GM doesn't operate  
8 any of the stuff anymore.

9 If something that GM still holds even though it  
10 doesn't operate it starts belching stuff into the  
11 environment and you wanted to enjoin the belching or take  
12 immediate curative action that would be closer to what I  
13 would think that your 362(b)(3) rights would allow you to  
14 do, but I don't see how collecting on a monetary claim  
15 relates to that.

16 MS. LEARY: I think that's right, Your Honor, I  
17 think -- but I read the injunction in a far broader way, and  
18 maybe I shouldn't have, maybe it is a wordsmithing solution  
19 there. I did not -- I think I remember seeing the word  
20 "any," but if the intention is that New York will be able to  
21 operate in another realm in two ways.

22 THE COURT: And a regulatory realm is contrasted  
23 to a claimant realm.

24 MS. LEARY: No, let me make this distinction.  
25 Under 362(b)94) and the Second Circuit's rule in City of New

1 York versus Exxon.

2 THE COURT: But you said (b)(4). Did they change  
3 the numbering? Am I -- again --

4 MS. LEARY: I'm pretty sure it's (b)(4), but I --

5 THE COURT: We're talking about the police powers  
6 exception under the automatic stay?

7 MS. LEARY: Yes. Would you excuse me so I can get  
8 my code, Your Honor?

9 THE COURT: You bet.

10 (Pause)

11 THE COURT: Well, you don't need to get your book,  
12 you're absolutely right that it's (b)(4), and that somehow  
13 there's as (b)(3) in there, and maybe it got renumbered or  
14 maybe --

15 MS. LEARY: I think it did, Your Honor.

16 THE COURT: -- I just got it wrong. But in any  
17 event we're talking about the same thing.

18 MS. LEARY: We are, but we're talking about it in  
19 two different ways, and I want to make this distinction.  
20 Simply because the GUC Trust or MLC or GM doesn't own a site  
21 anymore is not the determinative factor about whether we can  
22 exercise police and regulatory authority as to them -- as to  
23 the GUC Trust, MLC, GM.

24 The first situation that we were just discussing  
25 is there's an explosion, we need to act against someone else

1 and we can go and do that. I read the language in this  
2 procedures to potentially reach that situation, and I could  
3 be wrong.

4 There's a second situation which we are also in  
5 this circuit exempted from the automatic stay in pursuing,  
6 and that is even if we are pursuing a cost recovery action  
7 under CERCLA. It's all about money. It's all about these  
8 sites. It's exactly what these sites are about. Cost  
9 recovery for environmental remediation. We are exempted  
10 from the automatic stay from commencing or continuing an  
11 action to liquidate, not levy or otherwise affect other  
12 creditors, but we can liquidate that claim in any forum that  
13 has appropriate jurisdiction outside of the Bankruptcy  
14 Court, and that's city of New York versus Exxon.

15 And it's --

16 THE COURT: What did you say after bankruptcy  
17 court?

18 MS. LEARY: -- I think it's a -- pardon?

19 THE COURT: What did you say after bankruptcy?

20 MS. LEARY: I think I cited the name of the case.

21 THE COURT: Which is?

22 MS. LEARY: City of New York versus Exxon, and in  
23 that case it's a CERCLA cost recovery case. A bankrupt  
24 entity asserted that the City of New York could not seek --  
25 it might have been the State of New York -- could not seek

1 cost recovery, it was barred by the automatic stay because  
2 it involved financial issues of a bankrupt entity, and the  
3 Second Circuit rejected that and said, no, CERCLA's remedial  
4 processes are classically what 362(b)(4) is addressed at.

5 Now while the government -- and I'm now speaking,  
6 not the case -- the government cannot say, okay, now give me  
7 that money, it can still liquidate its claim. So that's why  
8 it's important to New York in terms of withdrawal of the  
9 reference.

10 And frankly, Your Honor, there's nowhere I'd  
11 rather be than in this courtroom liquidating my claim. I  
12 just think that's the most efficient way to do this.

13 Going through the withdrawal of the reference, and  
14 I could eat my words on this, but I'm being frank with you,  
15 I'm not looking to withdraw the reference, but I can't have  
16 an order or a procedures prevent me from making those  
17 decisions at a later time when facts may warrant me doing  
18 that very thing.

19 And Your Honor, you may -- you're leaving in 2014  
20 or was that just when your term is up? You --

21 THE COURT: My term ends in 2014.

22 MS. LEARY: Okay.

23 THE COURT: I've taken no position on what I'm  
24 doing in 2014 other than the fact that I don't want matters  
25 festering until 2014.

1 MS. LEARY: I'm just kidding, Your Honor, I'm -- I  
2 think that it's important for New York to protect its rights  
3 under the procedures.

4 THE COURT: I think the circuit always has the  
5 right to decide whether or not they think I'm qualified to  
6 be renominated.

7 Go on, please. I don't expect you to respond to  
8 that.

9 MS. LEARY: But you know, Your Honor, you should  
10 definitely serve beyond 2014. So-- and I -- there's  
11 probably no one that I know that would say otherwise.

12 So Your Honor, might I propose to Mr. Smolinsky, I  
13 mean I'm willing to give this some time if he wants to talk  
14 about what our concerns are. I think it may be more  
15 efficient for New York to present you with an order that,  
16 you know, we feel is addressing our concerns and yet keeping  
17 both party's feet to the fire to make this work, but I think  
18 I'd like to offer Mr. Smolinsky the opportunity to, you  
19 know, talk about some or our continuing concerns. And I do  
20 think that they can be addressed from a crafting standpoint  
21 in the procedures order.

22 If Mr. Smolinsky wants to on behalf of the GUC  
23 Trust require New York to provide information we don't have  
24 a problem with that, but we want that same ability. If you  
25 want us to substantiate our position I don't have a problem

1 with that, we want the GUC Trust to substantiate its  
2 position; sort of that equal footing kind of thing, and  
3 that's what my revisions on the procedures were all about  
4 this morning when I was attempting to see how we could  
5 present something to Your Honor to sign.

6 THE COURT: Okay, thanks very much.

7 MS. LEARY: Thank you.

8 THE COURT: Mr. Lindenman.

9 MR. LINDENMAN: Your Honor, going third makes it  
10 easier for me to be briefer.

11 Let me just address the more colorful concern you  
12 have with regard to the Vietnam peace talks here.

13 I think unlike the peace talks everyone sitting at  
14 the table has a vested interest in making sure it works. I  
15 think everyone is very concerned about the costs involved of  
16 mediation or any claims resolution, and to waste time  
17 deciding on the size of the table and the shape of the table  
18 is in no one's best interest.

19 Speaking for the town enormous amounts of money  
20 have been spent and will be spent with regard to the claims  
21 that we have, and the less that we want to do is have an  
22 extended fight over an mediator.

23 But I think as the State says, it is necessary  
24 that it not be one sided. I don't want to waste time  
25 picking a mediator, I want to find a mediator and move

1 forward. You know, just one of the two mediators that the  
2 trust had offered. I'm sure the man is immensely qualified,  
3 but his qualifications if I recall correctly had to do with  
4 nuclear accidents, and maybe he's overqualified, maybe it's  
5 just totally unrelated, I don't know, but I don't have the  
6 information necessary to determine whether that mediator or  
7 another mediator or any other mediator is qualified.

8 There's a reason that mediators typically are  
9 chosen by the parties, so the parties agree and the parties  
10 have as Your Honor says, confidence in the process. And I  
11 think if the trust is the one choosing the mediator it has  
12 the potential to leave any other participant with well, you  
13 know, there's some sense of unfairness.

14 I think it's in the party's interest to make this  
15 work, and unlike in the peace talks there isn't a judge  
16 looking over everyone's shoulder that if it doesn't work out  
17 someone is going to have to answer your Honor's questions as  
18 to why it didn't work out, and I don't think anyone wants to  
19 come back now, in 2014, or any other time to answer your  
20 question as to why it took this long or why the costs were  
21 more than they should have been just to select a mediator  
22 let along the process.

23 So I think that while I understand the concern not  
24 having the ability to select the mediator should not be  
25 outweighed by moving it forward as quickly and efficiently

1 as possible in terms of cost.

2 THE COURT: Pause, please, Mr. Lindenman.

3 As if I were inclined to say that folks other than  
4 the GUC Trust should have the right to nominate mediators or  
5 as a possible variant of that designee commonly respected  
6 mediation lists from which the mediator would be chosen,  
7 could that be done quickly enough so that it wouldn't put us  
8 in a Paris peace talks mode?

9 MR. LINDENMAN: I have to think, Your Honor, that  
10 because it's in everyone's interest to move this along, it's  
11 been a long time already, that the cost of going back and  
12 forth, even -- literally even just attorney costs, dollars  
13 spent on the phone and looking and reviewing is wasting time  
14 and it's wasting money.

15 I think that there are enough -- as Ms. Leary said  
16 -- there are enough experts out there and an access to  
17 enough information that the parties should be able to do  
18 this quickly. Again, it's the incentive to do it that  
19 matters.

20 THE COURT: And help me get a better sense of what  
21 you mean by quickly. Are we talking about a week, two  
22 weeks, three weeks? I would hope it would be less than  
23 anyone of those.

24 MR. LINDENMAN: Not having undertaken the review  
25 and the research into it I can't speak to it, but I have to

1 think that there is enough information to do it quickly. I  
2 just -- I don't feel comfortable being able to put a  
3 particular time frame on it, but I don't think it's  
4 something that Your Honor would consider to be an  
5 unreasonable amount of time. We want to move it forward. I  
6 just -- it would be remiss of me to suggest that we could do  
7 it in a week or in two weeks. I just don't have the  
8 information in front of me to know that. But I just know  
9 the incentive just has to be there for all of the parties to  
10 do it quickly. And if we can't resolve through discussions  
11 and settlement and what have you that we have an ability to  
12 move quickly. It's sitting there.

13 You know, with regard to the town, you know, the  
14 work needs to be performed, it needs to be taken care of,  
15 and every day that this process goes on longer there's more  
16 expense for my client, there's more expense for the town --  
17 for the County, there's more expense for the trust. There  
18 just is a limited pool of resources here and it makes no  
19 sense to further delay.

20 Which does add to the concern that Ms. Leary  
21 raised is, you know, this has to work because I don't want  
22 to come back to the Court and the say, well, you know, we  
23 tried but it didn't really work, the mediation process or  
24 the settlement discussions that took place before that  
25 because then we're wasting more time and we're wasting more

1 money.

2 The cost compromise that Mr. Smolinsky raised  
3 certainly is important to us. We also had the impression  
4 that New York State would be excepted from that, but not the  
5 town or the county. So knowing that we're part of the  
6 process and we won't have to endure those costs is a big  
7 important issue for the -- for the town.

8 The issue of discovery is also vitally important  
9 to the town. We have provided similar to the State, you  
10 know, enormous reams of paper with regard to our claims.  
11 The claims have never been objected to, they're never been  
12 addressed by the debtor or the trust, it just has been  
13 there. And as Ms. Leary said, tell me why it's wrong?  
14 We've asked, you know, during the course of settlement  
15 discussions without going into specific details about  
16 numbers or what have you, they said, all right, we'll offer  
17 you X dollars. I said, well, why? You know, someone came  
18 up with that number, what's the background for it? We've  
19 provided you with information and documents and so on, tell  
20 me why your number is right and we're wrong? And we haven't  
21 received anything. And if this is what's going to happen in  
22 the ADR process then we're wasting our time.

23 We need to know the basis for their settlement  
24 offer for instance because maybe it does make sense, maybe  
25 it's not worth spending even a dime on ADR and we'll just

1 take the offer, but we don't know, and we have to be assured  
2 that we're getting information pursuant to settlement  
3 discussions and then going forward as part of the mediation  
4 process, otherwise we can't know where we're missing the  
5 boat here on our claim, and maybe there is some area where  
6 we can compromise, and maybe there is something that we can  
7 deal with during the course of mediation or preferably not  
8 even get to the mediation.

9 I believe, Your Honor, that all of the other  
10 issues either were resolved by Mr. Smolinsky or have already  
11 been discussed by Mr. Jones or Ms. Leary, and along with  
12 what I've just discussed I believe that addresses all of the  
13 concerns that the town has.

14 THE COURT: Okay.

15 MR. LINDENMAN: Thank you.

16 THE COURT: Thank you. Mr. Carragher, would you  
17 like to weigh in on this?

18 MR. CARRAGHER: Your Honor, this is Dan Carragher  
19 on behalf of United Technologies.

20 Your Honor, you addressed concerns raised by the  
21 State of New York, which is undertaking the clean up then I  
22 don't have anything else to add to this discussion.

23 THE COURT: Very well. Thank you.

24 MR. CARRAGHER: Thank you.

25 THE COURT: Mr. Smolinsky, reply?

1 MR. SMOLINSKY: Jeff Smolinsky, Your Honor.

2 We've had over 70,000 claims filed in this -- in  
3 this case. We have about 1300 left, albeit perhaps some of  
4 the most difficult once. We've resolved over 30,000 --  
5 reconciled over 30,000 claims since confirmation.

6 In terms of sharing information to get to the  
7 resolution of these claims in a case of this size with these  
8 number of claims there has to be a sharing of information.

9 I think Mr. Jones is right in terms of sharing  
10 information, I think Ms. Leary is right about Rule 3001, and  
11 what 3001 says is that initially the claimant has the burden  
12 of proof to come in and demonstrate why the calculation of  
13 damages is correct. That's what we're seeking. This  
14 provision was not meant for Ms. Leary, this provision was  
15 meant for a patent claimant perhaps who hasn't demonstrated  
16 how their \$100 million claim was calculated.

17 Ms. Leary did put in declarations with her proof  
18 of claim, and what's interesting about that, this is not a  
19 level playing field in a typical litigation where you have  
20 both parties who can either share information or not, our  
21 goal is to resolve claims. So once the claimant puts  
22 forward the information by declaration or otherwise which  
23 shows how the claims were calculated, how the costs were  
24 incurred, how the costs are going to be incurred then the  
25 burden shifts to us, and we know that if we go into court

1 either here or in some other forum we're going to have to  
2 dispute those claims, and the burden is going to be on us to  
3 prove that their numbers are not correct.

4 So the notion that we're going to prepare for  
5 mediation, we're go to do all the mediation statements that  
6 we have to do as part of this process and not put forward  
7 why it is that their calculations are incorrect would just  
8 lead to a failed mediation, and that's not what we're here  
9 to do.

10 Our goal once they give us the information is to  
11 push back and demonstrate why those numbers are too high or  
12 inaccurate with every bit of information that we have at our  
13 ready. Because we know that if we don't settle that claim  
14 in mediation it's going to go to a court where it's going to  
15 be our burden to prove that those numbers are not correct.  
16 So we're going to have that burden any way.

17 And that's the good thing about a mediation. If  
18 you can't settle it otherwise you have to actually sit down  
19 with a mediator and look them in the eye and explain to them  
20 why your position is correct. And if you don't explain why  
21 your position is correct that mediator is going to look back  
22 at you and say, I don't understand. I don't understand why  
23 their numbers are -- shouldn't be taken as valid.

24 So that's the explanation for why it's crafted in  
25 such a way. We didn't want to hold up mediations by virtue

1 of obligations to deliver things that haven't been created  
2 yet or are incomplete.

3 As Your Honor noticed this is not about doing all  
4 the discovery and then going into mediation like it may be  
5 in another litigation, this is about them sharing the  
6 calculation of damages and us responding with whatever  
7 information that we have. And frankly, if we don't have any  
8 information that would support a lower number we're going to  
9 assume that the Court is going to find the same way.

10 In terms of the mediators and the location of the  
11 mediators let me put on a -- let me just lay out a proposal.  
12 I will not take up Ms. Leary's offer to draft the order, but  
13 I will commit to working over the next week -- let's say  
14 through next Friday to work with Ms. Leary and others to  
15 refine the language in such a way that it's acceptable and  
16 we can settle an order after next week if there are still  
17 issues that remain outstanding.

18 To the extent that Ms. Leary or anybody else wants  
19 to propose mediators during that week we can consider adding  
20 that to the mediator's panel as part of the order.

21 I will say that -- that if the mediator proposals  
22 are going to be mediators in Albany that derive 75 percent  
23 of their income from working with the state governments that  
24 those things are not going to be acceptable to us because  
25 that would -- that would create a situation where there

1 might be perceived by us which would affect the mediation,  
2 but otherwise I see for reason other than expense as to why  
3 a suggested mediator would not be acceptable if they're  
4 knowledgeable and otherwise unconnected to either party.

5 With respect to the pulling the plug, and it  
6 harkens back to the days of confirmation where frankly I  
7 still don't understand some of Ms. Leary's arguments at the  
8 confirmation hearing about why claims reconciliation was not  
9 subject to the jurisdiction of this Court, but I think she  
10 answered the question on pulling the plug.

11 To the extent that -- that she believes that the  
12 State can at any time decide to liquidate the claim in some  
13 other court then it should be fair game with respect to our  
14 pulling of the plug.

15 I am prepared in the case of the Onondaga sites to  
16 commit that to the extent that we commence mediation that  
17 neither party would have the right to terminate that  
18 mediation until we complete that mediation. I'm happy to  
19 commit to that because I know that in that -- with respect  
20 to that site we have no alternative other than some  
21 expensive litigation.

22 THE COURT: Pause, please.

23 One thing that I'm toying with, and it's still  
24 jump ball and I'm always reluctant to talk about musings, is  
25 to require each side to participate in the mediation for a

1 minimum amount of time to see if you can make it work or not  
2 after which both sides would have parallel or congruent  
3 rights to thereby say it's hopeless.

4 In the context of the mediations that you've had,  
5 which are in a different area or based on your sense of  
6 what's going to happen here, do you think there would be a  
7 time for which such a concept would be practical? And if  
8 so, like what kind of time are we talking about? Like say  
9 three weeks or five weeks or six weeks or whatever to see if  
10 you could make it work after which I would then have equal  
11 rights on either side to say it ain't gonna (sic) to work,  
12 we want to go back into the litigation room.

13 MR. SMOLINSKY: The problem with scheduling,  
14 Your Honor, and coming up with a firm deadline like that is  
15 that things happen outside of our control.

16 One of the reasons why the first New York  
17 settlement stip was not approved timely was that  
18 unfortunately Ms. Leary's father passed away in the summer,  
19 and so there are things that happen that if you agree to a  
20 tight time frame you may not be able -- you're going to  
21 actually impair the mediation process by allowing someone to  
22 pull -- pull the rip cord prematurely.

23 I don't know if a time factor is the right  
24 approach.

25 THE COURT: Suppose it were modified to be a

1 conceptual thing where each side would have a prima facie  
2 parallel obligation to continue, each side would have the  
3 same right to terminate, and if there were circumstances of  
4 the type you talked about either side could arrange for a  
5 conference call with me to say we should do it sooner or  
6 later?

7 MR. SMOLINSKY: I think I would prefer that,  
8 Your Honor. So in other words with respect to the New York  
9 State mediations -- ADR process I should say, to the extent  
10 that either party feels bereaved by the process that we can  
11 arrange for a chamber's conference for effectively authority  
12 to terminate the injunction and allow other proceedings. I  
13 think that would be fine.

14 I'm reluctant to include it with respect to  
15 Onondaga County and Salina because we do have tight time  
16 frames, we want to close out the environmental category of  
17 claims, and to the extent that the claim is otherwise  
18 subject to disallowance under 502(e)(1)(b) I think we should  
19 have the right, even though they're participating in the  
20 mediation but it hasn't been designated by us for mediation,  
21 but they've been invited by New York State, that that  
22 shouldn't bar our ability to go forward with a claim  
23 objection.

24 THE COURT: Of course that is complicated by the  
25 fact that I -- as I mentioned in one of my questions -- I

1 don't remember whether it was to Mr. Jones or Ms. Leary --  
2 once the environmental regulator makes progress either by  
3 agreement or by the litigation process and the environmental  
4 regulator's claims are addressed in some satisfactory  
5 fashion, that has a significant effect on what 502(e) rights  
6 are. Because if you write out a check to the government  
7 that affects what the PRP's rights are and will -- and if  
8 the PRP decides to write out a check and pays on the check  
9 -- unless you disagreed with my ruling on Lyondell Chemtura  
10 -- to the extent that the PRP has written out a check that  
11 becomes an allowed claim and no longer contingent.

12 MR. SMOLINSKY: And that's exactly the reason why  
13 we would want to be able to file our 502(e)(1)(b)  
14 objections, we wouldn't want to be barred. Because if for  
15 example there's mediation that resolves not only our  
16 obligation but also the Town of Salina, Salina could write a  
17 check that day and it would all of a sudden become a real  
18 obligation that has to be allowed.

19 THE COURT: Yes, sir, but conversely the amount of  
20 the check that Salina writes out could be influenced by the  
21 amount of the check you're writing out to New York State or  
22 the EPA.

23 MR. SMOLINSKY: It could be. I don't -- I'm not  
24 looking for an advisory opinion, but if you read the  
25 Chemtura decision carefully I don't believe that it ever

1 says that allowance of the regulator's claim is a  
2 precondition to disallowing a claim under 502(e)(1)(b). I'm  
3 not sure that I ever says that there actually has to be a  
4 claim filed by the regulator in order for that claim to be  
5 disallowed if it otherwise meets the requirement of  
6 502(e)(1)(b), that it's a co-liability and it's contingent.

7 But so I don't know that -- I don't think that  
8 there's any bar to making us wait to object to those claims  
9 until such time as the New York claim is resolved.

10 THE COURT: Uh-huh. Go on.

11 MR. SMOLINSKY: But perhaps we can work out with  
12 Ms. Leary the language that would insure that we won't pull  
13 the plug and they won't pull the plug, because I don't think  
14 that there's any need to, and certainly we wouldn't want a  
15 situation where they exercise rights under CERCLA during a  
16 mediation. So maybe we can work out some language on that.

17 THE COURT: Okay. Continue, please.

18 (Pause)

19 MR. SMOLINSKY: I think that's all I had,  
20 Your Honor.

21 I think that we've made some productive  
22 concessions prior to and at this hearing. It's -- I think  
23 Your Honor may want to rule on some of the matters, but we'd  
24 be prepared to work over the next week to try to get to a  
25 consensual order.

1 THE COURT: Well, my mind -- and I'll give you  
2 guys once last chance to be heard -- is to rule on concepts  
3 and then to ask you guys to try to draft a consensual order  
4 consistent with the concepts that fleshes them out in a way  
5 that best meets both sides needs and concerns.

6 Given that risk or possibility do you want to say  
7 anything more before I give the same offer to your  
8 opponents?

9 MR. SMOLINSKY: No, Your Honor.

10 THE COURT: Okay. Does anybody want to be heard  
11 on whether they're troubled by that concept? Apparently  
12 not.

13 Oh, Ms. Leary, I spoke too soon.

14 MS. LEARY: Your Honor, I just wanted to present a  
15 point of clarification on the strategy that was just  
16 articulated by Mr. Smolinsky on --

17 THE COURT: Come to the main mic if you would,  
18 please, Ms. Leary.

19 MS. LEARY: Having this information I didn't want  
20 to, you know, deprive either you or Mr. Smolinsky of it, but  
21 the Town of Salina has already written a check. I mean they  
22 are operating as a regulator in the Town of Salina landfill  
23 context under a State assistance contract.

24 So that there's a complication to the strategy  
25 that I think in terms of Chemtura and Lyondell I did not

1 want the Court to think that they were just another 502(e);  
2 they're not. So --

3 THE COURT: Well, to the extent that Salina wrote  
4 out a check to either you or the EPA or to remedial  
5 contractors, I would have thought that under Chemtura  
6 Lyondell if they showed the canceled check that makes those  
7 502(e) issues go away, but I'll give people reservations of  
8 rights if I'm mistaken on that.

9 MS. LEARY: That -- I just wanted to clarify it  
10 for the Court, that's all. It just -- there seems to be a  
11 misinterpretation of their role as potentially a co-liable  
12 party and the State does not view them as such.

13 THE COURT: I guess the question I had, and if  
14 this is so then I welcome your clarification, is I thought  
15 they had possible future checks to write out in the future.

16 MS. LEARY: That is true.

17 THE COURT: And that raises 502(e) issues.

18 MS. LEARY: That -- that is true, but I believe  
19 under the contract the dollars are -- it's either 90/10  
20 State Salina or 75/25.

21 UNIDENTIFIED SPEAKER: 75/25.

22 MS. LEARY: 72/25. So the majority of the dollars  
23 are State dollars.

24 THE COURT: Uh-huh. Okay.

25 MS. LEARY: So I just wanted to clarify that.

1           And I -- I actually was not clear on your question  
2           about the conceptual --

3           THE COURT: I'm going to rule on concepts.

4           MS. LEARY: I'm okay with that, Your Honor.

5           THE COURT: And then I'm going to want an order  
6           consistent with my concepts. I do recognize that sometimes  
7           the devil is in the details and my concepts may not get us  
8           across the goal line, but after you sit down -- assuming  
9           nobody else wants to be heard -- I'm going to tell you my  
10          rulings on the concepts.

11          MS. LEARY: Thank you, Your Honor.

12          THE COURT: Okay.

13          Mr. Smolinsky?

14          MR. SMOLINSKY: Just one quick thought on the  
15          Salina comment that was just made. Obviously a precondition  
16          is also that you have to be co-liable, which means that the  
17          amounts that Salina is incurring has to overlap with  
18          obligations that we would otherwise have. The Onondaga site  
19          is very complex and there could be different  
20          responsibilities with respect to different sites.

21          THE COURT: And you're not looking for me to rule  
22          on that today, but you'd like a reservation of rights on  
23          that issue.

24          MR. SMOLINSKY: That's correct, Your Honor, and  
25          that's exactly -- the issue of the 502(e)(1)(b) continuing

1 to potentially increase is the reason why we -- exactly why  
2 we need this ADR process in place, because every day that we  
3 don't resolve these environmental claims leads to potential  
4 additional exposure for the estate, and I think that was a  
5 great ending comment, because it shows the importance of  
6 this process.

7 THE COURT: Fair enough.

8 All right, everybody sit in place for a minute.

9 (Pause)

10 THE COURT: All right, folks, the underlying  
11 concept of course that the ADR process is in everybody's  
12 interest is recognized by all, and the motion as a whole is  
13 granted in concept with my only rulings being my nuances,  
14 vis-à-vis, it's execution to deal with the limited  
15 objections that were filed. And for the avoidance of doubt  
16 it's granted vis-à-vis the non-objectors, and we're talking  
17 only about what one might call tweaks or nuances, vis-à-vis,  
18 the execution of the motion.

19 I've identified and I'm going to permit you all to  
20 identify any issues that I've overlooked, are nine areas  
21 where there are differences in perception as to the  
22 execution, and I'm going deal with those pretty much in the  
23 order in which I have them on my list, which is not  
24 congruent with their levels of importance.

25 First of all, vis-à-vis, the duty of the federal

1 government and/or its agencies to participate.

2 I'm going to in essence deny without prejudice the  
3 duty of the federal government to participate for a limited  
4 period of time to allow its settlements which seem to be so  
5 far down the road to either bear fruit or fail. And my  
6 thought on that is for a period of 45 days, which can be  
7 shortened or extended for cause upon no more than a  
8 telephonic conference call with me.

9 From time to time you're going to hear in this  
10 that I'm making myself available for conference calls. My  
11 presumption is, vis-à-vis, any of such calls that they would  
12 be telephonic but on the record with any party having the  
13 right to suggest that the on the record portion be waived,  
14 but it would be waived only if all parties to the call  
15 consent to it being waived. The idea is to put money into  
16 the pockets of creditors and/or taxpayers and to minimize  
17 the burdens associated with resolving disputes, but to give  
18 you a mechanism for resolving disputes if you think that's  
19 necessary.

20 If the efforts now under way by the federal  
21 government indicate that we do still need the federal  
22 government to participate my ruling is that the federal  
23 government will have to participate, but it should be given  
24 a fair shot at avoiding the need for it to do it if either  
25 within those 45 days or a reasonable time thereafter it can

1 obviate the need to do so.

2 Turning now to the remainder of the parties, and I  
3 have a similar but slightly different thought between those  
4 remaining authorities who are governmental entities on the  
5 one hand and Mr. Carragher's client. Mr. Carragher has the  
6 misfortune of representing the only client who's not on a  
7 public fisk (ph).

8 First, all parties will have the right to  
9 participate insofar as the same sites are involved. And I  
10 must say that although I tried to read the papers with as  
11 much care as the circumstances permitted I'm still not clear  
12 on how many different sites in New York State are involved,  
13 although I do understand that everything that is now the  
14 subject of this motion is located within New York State.

15 We now have consensus that if by way of example a  
16 particular site involves not just New York but the Town of  
17 Salina, United Technologies, and so forth, that all would be  
18 allowed to come to the table and negotiate at that time. I  
19 not only permit that I would prefer that.

20 On the matter of cost sharing associated with the  
21 mediator who's going to be mediating, vis-à-vis, that site,  
22 if I heard Mr. Smolinsky right he's now agreed that just as  
23 he wouldn't make New York State pay for that he wouldn't  
24 make Onondaga County, Salina pay either. If it's no  
25 material incremental cost to not stick Unit Technologies

1 with the costs even though it's not on the public fisk, I  
2 would prefer it, but if the State wants to tag United  
3 Technologies with some portion of the cost, recognizing it's  
4 giving a free ride to the others, within reason I guess I'll  
5 let it do so.

6 I don't think I need to rule on whether the  
7 federal government would be tagged with those costs.  
8 Everybody on this planet who's been in the case for the last  
9 two and a half years knows that the federal government has  
10 already written out its share of checks, but you've got a  
11 reservation of rights on whether you want to stick the  
12 federal government with costs if it ultimately gets to that  
13 point.

14 I am however going to give you an advisory opinion  
15 that I'm sympathetic to the federal government's position in  
16 that regard, and given the difficulties of the political  
17 process and political controversy involving any time the  
18 federal government has written out a check to aid the  
19 automotive industry I do have a certain sympathy with the  
20 federal government on what it's already done.

21 Right to withdraw. I think the right to withdraw  
22 should be parallel, I don't think it should be one sided,  
23 but I do believe that both sides should be obligated to give  
24 it a good fair shot to make it succeed before anybody should  
25 exercise their withdrawal rights.

1                   Consistent with the colloquy I had with  
2                   Mr. Smolinsky I don't think it's productive to set a  
3                   particular time by my ruling today with respect to when each  
4                   side could withdraw after its thrown up its hands and come  
5                   to the view that's it's concerned that it's a waste of time.  
6                   I would prefer to have the loosey-goosey mechanism that I  
7                   discussed with Mr. Smolinsky where it is understood that  
8                   there would be a right to withdraw when there is a view that  
9                   it's going to be hopeless, that the right apply to both  
10                  sides, but that it should be based on some kind of  
11                  articulated cause which could be explained to me at a  
12                  conference telephone call at which time I could then provide  
13                  the green light. I don't want to impose a particular time  
14                  period for the reasons Mr. Smolinsky articulated.

15                  Choice of mediator. As the Second Circuit  
16                  speaking through Judge Friendly said in the Ira Hop (ph)  
17                  case back in the '60s, the process of bankruptcy must not  
18                  only be right, it must appear right, and people need to have  
19                  confidence that the system is fair and that it's not tilted  
20                  in favor of one side or the other.

21                  While that principal was articulated in a broader  
22                  context it's particularly clear -- or particularly  
23                  applicable when you're talking about mediation in which both  
24                  sides have to have confidence that they're engaged in a fair  
25                  process, because ultimately mediation is consensual and it

1 works best when people believe that it's fair.

2 Therefore, I'm ruling in concept that the counter-  
3 parties to the GUC Trust or the claimants side must be given  
4 a reasonable opportunity to nominate new mediators or  
5 additional mediators either by reference to a list that is  
6 commonly respected with the environmental remediation  
7 industry or by named people whose curriculum vitae can be  
8 examined, but the process can't drift.

9 So you are to agree, if you can, on either  
10 additional people who can be added to the list or additional  
11 folks who can be considered eligible with those nominations  
12 to come forward within a fixed period of time, and I'm  
13 thinking two weeks subject to extension for cause, but  
14 you've got to give me a reason why two weeks ain't enough.

15 I am not close enough to environmental matters --  
16 even though I've been asked to rule on a number of  
17 environmental things -- to have any knowledge as to who is  
18 respected in the field and who isn't, but I am ruling that  
19 the claimants don't have to simply accept the names that the  
20 GUC Trust nominated, and that if they can do it in a timely  
21 way they're allowed to put their own nominations forward.

22 Location of mediation. As I said in colloquy with  
23 somebody, I think it was with Ms. Leary, and to this extend  
24 I'm overruling her objection in this regard.

25 The site isn't going to testify in an ADR process.

1 It is very rare in my experience that mediators even take --  
2 of course they're not taking testimony -- comments directly  
3 from witnesses, but I don't rule that possibility out. If  
4 the principal negotiation -- if it's going to be principally  
5 a negotiation I think it's going to give us most bang for  
6 the buck if it takes place in New York. If there -- and by  
7 New York I mean New York City. If there is a reason why we  
8 need some kind of local presence in Buffalo, Syracuse,  
9 somewhere up state I think the issue is best addressed then,  
10 and you guys may come to the view that it's still best to  
11 have it in New York City, but it's cheaper rather than  
12 dragging a bunch of people up state to simply pay for a  
13 particular person to come to New York.

14 I don't want to micro manage that, but my concept  
15 is that the presumption is that it's going to be in New York  
16 and that I think most players at the table can appear in New  
17 York at least on the negotiating side, and I'll jump off the  
18 bridge of cost for anybody else who should be there, if and  
19 when that's really perceived to be necessary. We're going  
20 to do it in New York.

21 On withdrawal of the reference. I don't think I  
22 have the power nor should I weigh in on the wisdom of a  
23 withdrawal of the reference, although I assume the District  
24 Court judge who is asked to do it if he or she ever does  
25 knows the law as well as I do, which is that not every

1 matter that involves consideration of non-bankruptcy federal  
2 law warrants withdrawal of the reference, but only those  
3 that require a material consideration of the non-bankruptcy  
4 law, which case law has said is for the most part cutting  
5 issues rather than routine applications of the non-federal  
6 law.

7 But be that as it may I am not going to take away  
8 the right to move for withdrawal of the reference, assuming  
9 I had the power to do so, but do believe I have the power to  
10 impose modest restraints on the timing for any such request.

11 For sure I'm telling you that I'm not going to  
12 decide any issue that could be subject to withdrawal of the  
13 reference before giving people who would have the right to  
14 move for withdrawal of the reference an opportunity to make  
15 such a motion, but as we're going to deal with in the  
16 injunction part of this decision I think both consideration  
17 by a Bankruptcy Court and by a district judge needs to await  
18 giving the flowers in the garden a fair amount of time to  
19 bloom in the mediation process before we get into a  
20 litigation mode either here or in the District Court.

21 So that brings us to the injunction. I am going  
22 to issue an injunction that says that the parties shall be  
23 enjoined from litigating before me or any higher court while  
24 the ADR process is ongoing, and then it's going to have a  
25 proviso that says that notwithstanding the foregoing that

1 nothing in this order shall prohibit any entity that has  
2 362(b)(4) rights from exercising its police powers.

3 I am not going to decide today what that means in  
4 practical terms, although I do believe and you're going to  
5 have to convince me otherwise, that anything to recover on  
6 anything that is the subject of existing claims is not a  
7 362(b)(4) issue.

8 If Ms. Leary unfortunately encounters an explosion  
9 of the type that she mentioned she's got a reservation of  
10 rights on that. If she's talking about collecting on the  
11 claims that she's already filed -- and I got a sense without  
12 being totally clear that she may be part of the negotiations  
13 with Mr. Jones -- this issue may go away, but if there's  
14 something that comes up that invokes 362(b)(4) issues that  
15 isn't the subject of pending claims the legislative history  
16 of the order is that if it's a genuine 362(b)(4) issue she's  
17 going to have the rights to proceed to address her needs and  
18 concerns, but if it's an effort to collect on claims already  
19 filed then we're still talking about going through the  
20 normal claims process.

21 (Pause)

22 THE COURT: So for the avoidance of doubt if we're  
23 talking about claims that are already filed if they're not  
24 resolved consensually then they are going to be subject to  
25 ADR and the injunction will prohibit New York State or

1 anybody else from moving to withdraw the reference for that  
2 period of time during which ADR is under way.

3 When it comes to an end New York or anybody else  
4 will have the right to move for withdrawal of the reference.

5 As further clarification of my thinking in this  
6 regard I disagree with New York State's contention that  
7 routine claims allowance matters are not core, whether or  
8 not they involve consideration of non-bankruptcy federal  
9 law.

10 I think claims in the Bankruptcy Court are the  
11 paradigmatic example of matters that invoke the in rem  
12 jurisdiction of the Court and that bankruptcy judges  
13 constitutionally are empowered to decide. And I do so  
14 because they're claims, not because they're administration  
15 of the estate, a matter which has a certain elasticity to it  
16 as to which I have some concerns as to their scope when you  
17 get into claims allowance matters.

18 But claims allowance is if anything is left for  
19 bankruptcy judges to do in this world, what bankruptcy  
20 judges are allowed to decide, and if not then I don't need  
21 to wait until 2014, I'll quit tomorrow.

22 The hardest issue that you guys raise before me is  
23 on information sharing, but it's hard at the edges; it's not  
24 hard on the more fundamental points.

25 Each side is to tell the other side what its

1 position is and why. It's also to provide to the other side  
2 information reasonably necessary to back up the basis for  
3 what it tells the other side, and this is either at or  
4 before the mediation.

5 I am however bringing to a halt, to the extent  
6 that you haven't already voluntarily agreed to that,  
7 exercise of traditional discovery mechanisms.

8 The whole idea of ADR is to protect both sides  
9 from the costs and expenses associated with discovery, and  
10 if there's something in the grayism where anybody believes  
11 that the other side hasn't been satisfactorily forthcoming  
12 in explaining its rationale for its position or for that  
13 matter what its position is arrange for a conference call  
14 with me.

15 But the idea is as I articulated to Mr. Lindenman,  
16 finding that sweet spot where we've given the parties enough  
17 information to allow ADR to succeed on the one hand without  
18 subjecting everybody to the very extensive costs that are  
19 associated with discovery, particularly in the environmental  
20 area.

21 Not by way of your argument, are there any of the  
22 areas for concern that I haven't addressed on -- addressed  
23 one way or the other?

24 MS. LEARY: I have two questions, Your Honor.

25 On the injunction prohibition that would prevent

1 withdrawal of the reference during ADR would that similarly  
2 apply to the GUC Trust enjoining them from asserting a  
3 claims objection on the claim prior to ADR being completed?

4 THE COURT: Yes.

5 MS. LEARY: And the second question I have, I  
6 probably wasn't very clear in my presentation, but in  
7 discussing 362(b)(4) it is not the State's position that we  
8 would be entitled to collect on a claim asserted before this  
9 Court, it was that we are entitled to liquidate our claim in  
10 another forum and not collect. There's a very bright line  
11 in New York.

12 THE COURT: I understood that point you made --

13 MS. LEARY: Okay.

14 THE COURT: -- Ms. Leary, you made it very clear  
15 the first time.

16 MS. LEARY: Okay. I --

17 THE COURT: But I am going to give your opponent  
18 or opponents, which most likely is the GUC Trust, an  
19 opportunity to be heard before me if you decide to go into  
20 another forum on your 362(b)(4) rights, because I am going  
21 to decide, not some State Court, what 362(b)(4) covers and  
22 doesn't. Frankly, I believe that I have a better  
23 understanding of 362(b)(4) law than somebody might in some  
24 supreme court in some county in New York City or up state.

25 MS. LEARY: And that would be on a lift stay -- in

1 a lift stay context?

2 THE COURT: Essentially, yes.

3 MS. LEARY: Okay.

4 THE COURT: Or for a declaratory judgment that you  
5 don't need relief from the stay, because 362(b)(4) says that  
6 you have the power to do what you might think you might want  
7 to do.

8 MS. LEARY: Thank you, Your Honor.

9 THE COURT: Okay. Mr. Lindenman?

10 MR. LINDENMAN: Your Honor, just one question  
11 concerning the mediator.

12 I understand that we'll have the two weeks to add  
13 names into the pool. Who ultimately makes the decision as  
14 to which mediator? I don't think that was addressed here.

15 THE COURT: Well, I'm hoping that you can reach  
16 consensus on this. In most of my mediations the parties and  
17 not the judge decides that.

18 MR. LINDENMAN: Absolutely, Your Honor. The way  
19 it's currently drafted I just don't think it -- to me it  
20 wasn't clear.

21 THE COURT: I wasn't clear, I was intentionally  
22 not clear.

23 MR. LINDENMAN: Okay.

24 THE COURT: And the reason for that is because I'm  
25 hoping that after you nominate your nominees when you put

1 your noodles together you're going to reach a person who's  
2 satisfactory.

3 When my back has been against the wall one or two  
4 times in 11 and a half years I've chosen a mediator, but I  
5 cannot think of a single time in which I've allowed one side  
6 to dictate a mediator to the other side because that's an  
7 invitation to -- I won't say disaster -- but it raises  
8 material risks that the mediation will ultimately succeed.

9 MR. LINDENMAN: Thank you, Your Honor. Because it  
10 certainly was the antithesis of the fairness that you had  
11 started that section with, so I want to be clear that you're  
12 intentionally leaving open who decides at this point.  
13 You're not -- in other words it's not going to stay the way  
14 it is currently that the GUC Trust --

15 THE COURT: I have a strong reluctance to allow  
16 one side to dictate the mediator to the other side.

17 MR. LINDENMAN: Okay. Thank you.

18 THE COURT: But I guess if that sorts itself out  
19 I'll hear more about why you guys couldn't agree, and then  
20 if there's still an impasse I'll deal with it, but I'm  
21 hoping that ain't going to happen. The understand lying  
22 concept though is that neither side can shove the mediator  
23 down the other side's throat.

24 MR. LINDENMAN: that's perfect, Your Honor.

25 THE COURT: All right.

1 MR. LINDENMAN: Thank you.

2 THE COURT: Mr. Smolinsky?

3 MR. SMOLINSKY: Thank you, sir. I just have three  
4 -- three points or questions.

5 First of all, what we tried to do in our order was  
6 actually amend the existing ADR order, and since those  
7 procedures that have been in place are tried and true we  
8 have panels of mediators, they get to pick who the mediator  
9 is off of the panel.

10 For example, I'm reluctant to revise the whole ADR  
11 procedures with respect to everyone, and I wonder whether it  
12 would be --

13 THE COURT: Well, my point was to deal solely with  
14 the environmental claims.

15 MR. SMOLINSKY: Okay, that's --

16 THE COURT: I'm not asking you to reinvent the  
17 wheel on matters that weren't up for consideration today.

18 MR. SMOLINSKY: Thank you.

19 Obviously with respect to choosing the mediator  
20 the current procedures as I said says that the other side,  
21 the claimant gets to pick who the mediator is. Obviously  
22 we'll work to fix that along with giving them the  
23 opportunity to suggest mediators. They can't suggest  
24 them --

25 THE COURT: I didn't follow you. I assume you're

1 now shifting to the environmental mediation --

2 MR. SMOLINSKY: Yes.

3 THE COURT: -- rather than tort litigation  
4 mediation. But I thought your opponent's concerns was they  
5 didn't like having to choose amongst a panel that you would  
6 designate and only had two names in it that they weren't yet  
7 comfort.

8 MR. SMOLINSKY: Yes, so we'll change the entire  
9 procedure so that --

10 THE COURT: Okay.

11 MR. SMOLINSKY: -- they don't pick and we don't  
12 select the panel.

13 The last issue is -- I assume it's not an issue --  
14 you talked about a telephonic conference call to for example  
15 shorten the time or lengthen the time. I just wanted to  
16 make sure that Your Honor doesn't have a problem with any  
17 ability, for example, with the federal claims to just agree  
18 with the EPA that the time is shortened or lengthened, that  
19 we don't have to come back to the Court if there's an  
20 agreement.

21 THE COURT: No, my view of telephonic conference  
22 calls was to help in dispute resolution, and the more you  
23 guys can make disputes go away or agree upon things on your  
24 own the better I like it.

25 MR. SMOLINSKY: Thank you for your clarification.

1 THE COURT: Okay.

2 Ms. Leary?

3 MS. LEARY: I'll just discuss with Mr. Smolinsky,  
4 I have a -- I'm not understanding what you're saying about  
5 the mediators, but I think we can talk about that. I'm  
6 pretty clear on what you said, Your Honor.

7 The one question I have and this was in -- I  
8 believe it was in my papers, I hope it was, I didn't raise  
9 it in my argument earlier, but of the potential -- and I  
10 hope it's only three or four sites that will remain because  
11 we are still in active discussions on the remainder of our  
12 sites, so we're talking about a universe of three or four,  
13 those three or four sites are significant from a dollar  
14 standpoint from a complexity, technically, environmentally  
15 from that standpoint.

16 One thing that we do not want to receive, because  
17 it's just me, are three or four notices that all of them are  
18 going into mediation. We just don't have the resources to  
19 deal with this, so I need some good faith understanding from  
20 the GUC Trust that we are not going to be bombed as we  
21 otherwise would be in a discovery context trying to justify  
22 three or four sites at one time and provide information on  
23 those three or four all at one time in the short time frames  
24 that the procedures order allows.

25 My suggestion in fixing this was to allow one to

1 proceed during that abbreviated time frame to ADR and then  
2 know or not know and then serially have the next one come  
3 up.

4 This is a resource issue, Your Honor, and I know  
5 that everybody is in a big hurry, hopefully we will get  
6 these resolved, but I have vulnerability because those three  
7 or four sites present a formattable challenge in the context  
8 of the procedures to do all at one time.

9 THE COURT: Well, rather than make Mr. Smolinsky  
10 respond now why don't we simply provide -- we all  
11 Mr. Smolinsky, we know he's an honorable guy, and if you  
12 feel like you're being double or triple or quadruple teamed  
13 then you can pick up the phone firsthand.

14 MS. LEARY: That sounds good.

15 THE COURT: And then if that doesn't work to me.

16 MS. LEARY: Thank you very much, Your Honor.

17 THE COURT: Okay. All right, anything else,  
18 anybody?

19 Here's what we're going to do. Obviously this was  
20 a lengthy argument, but it was important, very important.  
21 We're going to take just a five-minute recess. I would ask  
22 CourtCall to keep all of the others on the phone, to unmute  
23 their lines during the next five minutes, then we're going  
24 to resume at a quarter to 12:00 in which we're going to take  
25 the claims objection issues in the other matters on today's

1 calendar.

2 Those who were here solely on environmental  
3 matters are excused if they wish to be.

4 MR. LINDENMAN: Thank you, Your Honor.

5 THE COURT: Thank you.

6 MR. SMOLINSKY: Thank you, Your Honor.

7 MS. LEARY: Thank you, Your Honor.

8 (Recess at 11:41 a.m.)

9 THE COURT: All right, we're continuing, and we  
10 now have a largely emptied courtroom, and I'll hear the  
11 matters involving the claims objections and anything else we  
12 have. At the lectern.

13 MR. GRIFFITHS: Your Honor, good morning, David  
14 Griffiths of Weil, Gotshal & Manges for the debtors, the  
15 post effective date debtors and the Motors Liquidation  
16 Company GUC Trust.

17 THE COURT: Okay, Mr. Griffiths.

18 MR. GRIFFITHS: With your permission I'll be  
19 presenting items 4 and 5 on the agenda --

20 THE COURT: Sure.

21 MR. GRIFFITHS: -- which are the 83rd and 103rd  
22 omnibus objection to claims which relate to welfare benefit  
23 claims or retired and former salaried and executive  
24 employees.

25 THE COURT: All right, Mr. Griffiths, I need you

1 to just speed a little bit slower and to keep the microphone  
2 close to you.

3 MR. GRIFFITHS: Yes, sir, of course.

4 Your Honor, before we start with respect to those  
5 omnibus objections we just wanted to bring to your attention  
6 that we have approximately 100 claims -- replies that we --  
7 or responses that we've received from former employees. Out  
8 of the approximately 3,000 claims that have been objected to  
9 those will be brought before your attention in the coming  
10 months. We plan to schedule a number of hearings in April  
11 and May to handle these, and we just request that if we  
12 schedule too many to be dealt with at any one hearing that  
13 you just let us know and we can reduce that number.

14 THE COURT: Certainly.

15 MR. GRIFFITHS: Before I start I'd like to thank  
16 the employees on the phone this morning for their patience  
17 both today and in bringing a -- in allowing us to bring  
18 these replies to your attention.

19 Your Honor, the omnibus objections that are before  
20 you today are of the type that have been dealt with at  
21 previous hearings. Most notably on July 27, 2011,  
22 September 26, 2011, and January 18, 2012. I'd like to  
23 designate as part of the record for my appeal your prior  
24 rulings with respect to these omnibus objections and claims  
25 which are similar in form and substance to what we have

1 before us today.

2 THE COURT: Granted. Anything that I've issued an  
3 opinion on either in writing or by a dictated decision at  
4 the conclusion of an argument will be deemed to be a part of  
5 the record on these proceedings.

6 The principals of law of course while not binding  
7 on any litigant are precedent, what we call in Latin stare  
8 decisis, but each individual's facts of course are  
9 considered unique to that particular individual.

10 MR. GRIFFITHS: Yes, Your Honor, of course.

11 And prior to going forward would Your Honor like  
12 to have a brief summary of the 83rd and 103rd omnibus  
13 objection to claim?

14 THE COURT: Only insofar as they're objected to.  
15 You don't need to take time on folks who did not object.

16 MR. GRIFFITHS: Yes, Your Honor.

17 So if I may with respect to the 83rd omnibus  
18 objection to claims we have three claimants who have  
19 submitted responses. Mr. Hickman, Ms. Schneider, and  
20 Mr. McMullen who I believe are all on the phone today.

21 I've spoken with each of these claimants at  
22 length, I've made them aware of Your Honor's prior rulings,  
23 and they've elected to proceed with this hearing.

24 On behalf of the Motors Liquidation Company, GUC  
25 Trust, and the debtors we'd like to just express our

1 sympathies that the -- of the impact that the debtors'  
2 financial situation has had on their personal lives, but  
3 given the debtors' liquidation there isn't any other result  
4 that's available to us today.

5 Moving to Mr. Hickman. Mr. Hickman --

6 THE COURT: Pause, please, Mr. Griffiths.

7 MR. GRIFFITHS: Yes, Your Honor.

8 THE COURT: Mr. Hickman, you on the phone with us?

9 MR. HICKMAN: Yes, I am, Your Honor.

10 THE COURT: Okay. And can you hear Mr. Griffiths  
11 okay?

12 MR. HICKMAN: Very faintly.

13 THE COURT: All right. Then I'm going to request  
14 that Mr. -- you, Mr. Griffiths, pull that microphone even  
15 closer to you and don't worry about being polite to me, keep  
16 your voice loud and speak slowly so that the folks who are  
17 appearing only by phone have the best possible chance of  
18 hearing what you have to say.

19 MR. GRIFFITHS: Yes, Your Honor, thank you.

20 Mr. Hickman has not submitted a response to the --  
21 to the omnibus objection to claims though has elected to  
22 proceed with the hearing today. We're happy to hear any  
23 representations that Mr. Hickman may make. We're content to  
24 rely on both the omnibus objection and our reply in terms of  
25 our submission with Mr. Hickman's matter.

1 THE COURT: Okay. Then you stand by at the  
2 counsel table -- or excuse me -- at the podium, and I'll --  
3 I'll hear from Mr. Hickman. But I'm wondering if I should  
4 make Mr. Hickman speak before you've had a chance to speak,  
5 because I think you're going to be making similar points,  
6 Mr. Griffiths, with respect to Mr. McMullen, Ms. Schneider,  
7 Mr. Jankowski, Mr. Alarie, and Mr. Conrad. Do you wish to  
8 make any statements that apply to them generally?

9 MR. GRIFFITHS: Yes, Your Honor, I'll make a  
10 general statement that would apply to each of the  
11 respondents.

12 THE COURT: I think you probably should and then I  
13 want to give each of those six folks a chance to be heard,  
14 and then I'm going to give you a chance to reply, and I'm  
15 going to give any of them a chance to surreply. I think  
16 that's the most efficient way of dealing with it.

17 MR. GRIFFITHS: Yes, Your Honor, thank you.

18 MS. BELLAIRE: I don't mean to interrupt, this is  
19 Linda Bellaire, and I was included in the 83rd omnibus,  
20 whatever it is, and David, you told me that I would hear  
21 whether or not my request to continue in delay would be  
22 honored and all I got was that I needed to participate  
23 today.

24 THE COURT: Are you looking for more time,  
25 Ms. Bellaire or do you want to be heard today?

1 MS. BELLAIRE: I can be heard today. I was hoping  
2 for more time, you'll get my emotional response rather than  
3 a researched and well prepared response.

4 THE COURT: Well, Mr. Griffiths, I wonder if I  
5 should give Ms. Bellaire extra time. Would there be any  
6 material prejudice if I allowed her to be heard at the next  
7 hearing that we have instead of this one?

8 MR. GRIFFITHS: No, Your Honor. It's our  
9 understanding that we had granted Ms. Bellaire an  
10 adjournment, that she had been invited to attend this  
11 hearing purely for informational purposes.

12 THE COURT: Oh, okay, fine.

13 MR. GRIFFITHS: And --

14 THE COURT: Then Ms. Bellaire, you're going to --  
15 I'm granting the request for extra time.

16 MS. BELLAIRE: Okay, thank you.

17 THE COURT: What happens today will be a  
18 precedent, but it will not be binding on you. If there's  
19 some reason why any principals of law that I announce today  
20 wouldn't apply to you.

21 MS. BELLAIRE: Okay.

22 THE COURT: Now you may, but need not stay on the  
23 line, it's up to you.

24 MS. BELLAIRE: Okay, thank you.

25 THE COURT: Okay. Go ahead then, Mr. Griffiths.

1 MR. GRIFFITHS: Thank you, Your Honor.

2 Each of the claimants require to the bar date  
3 submitted proofs of claim in each case arguing that --

4 MR. HICKMAN: I can't hear him, Judge.

5 MR. GRIFFITHS: I will speak close to the  
6 microphone. Arguing that benefit modifications that had  
7 been made by the debtors both prior to their Chapter 11  
8 filing and following the Chapter 11 filing to welfare  
9 benefit plans and life insurance were either not validly  
10 entered into or that they had some sort of claim for the  
11 difference between the value that their benefits had been  
12 reduced to and the value that their benefits had previously  
13 existed at.

14 Subsequent to this the debtors filed an omnibus  
15 objection to claims to each of these various proofs of claim  
16 that were filed. The omnibus objection to claim argues in  
17 essence that the welfare benefit plans that govern each of  
18 the benefits granted to the employees reserve the rights  
19 unequivocally for the debtors to amend or modify such  
20 benefits. Those -- those reservation of rights are  
21 contained both in the plan documents themselves and in the  
22 summary plan descriptions that were provided to employees  
23 during their employment and to retirees every five years  
24 following their retirement.

25 The omnibus objection goes on to cite various case

1 law in various jurisdictions which supports the debtors'  
2 position that there is no -- that no claim can be founded  
3 against the debtors for these benefit modification claims.

4 The omnibus objection cites Sprague in the Sixth  
5 Circuit and More Metrolife (ph) in the Second Circuit. More  
6 Metrolife particularly relevant today given that many of the  
7 replies that have been -- or responses that have been filed  
8 by employee claimants cite various discussions they had had  
9 with management of General Motors during the course of their  
10 employment and that the benefit modifications were not in  
11 accordance with their understanding of their benefit plans.

12 More Metrolife explains very clearly that the only  
13 way a benefit modification can be deemed to -- the only way  
14 that benefits can be deemed to be vested is if the plan  
15 itself provides for such vesting, and the relevant statute  
16 in this case, the Employee Retirement Income Security Act of  
17 1974 is also clear insofar as vesting requires a specific  
18 intent on behalf of the employer.

19 In terms of our reply it goes into substantially  
20 the same arguments, and our replies include a general  
21 summary of the arguments that each claimant have made. And  
22 what I propose is therefore just to briefly summarize the  
23 arguments that are being made by each claimant and then to  
24 allow each claimant to just speak at Your Honor's  
25 discretion.

1 THE COURT: All right, you may continue.

2 MR. GRIFFITHS: Thank you, Your Honor.

3 Turning first to Mr. Hickman who I believe  
4 Your Honor has indicated is on the telephone today.

5 The remarks I have just made apply to Mr. Hickman,  
6 and should he wish to make any further comments then perhaps  
7 now is an appropriate time.

8 THE COURT: All right, pause.

9 Mr. Hickman, I'll hear your argument.

10 MR. HICKMAN: Thank you, Your Honor, and thank you  
11 Mr. Griffiths for bringing this up today.

12 Since I filed by original complaint on the loss of  
13 benefits I suppose each of us has become a little better  
14 educated on the bankruptcy laws, and I've tried to settle  
15 this outside of having to follow through with the Bankruptcy  
16 Court on my own.

17 I spend 40 years to the day, November 1, 1968 to  
18 November 1, 2008 and then took what I call an early  
19 retirement, most people would probably call it late  
20 retirement, but I would be there today if it weren't for the  
21 bankruptcy.

22 My situation is slightly different than David has  
23 mentioned. I realize the loss of the benefits and the  
24 ruling of the federal bankruptcy, and I realize the  
25 reduction in those eliminations.

1                   Shortly after the bankruptcy filing -- this is a  
2                   new piece of information which I have just recently  
3                   uncovered, tried to settle it with my own input but  
4                   unfortunately have not been able to. Shortly after the  
5                   bankruptcy became effective a number of GM salary employees  
6                   were contacted either by e-mail or regular mail or  
7                   registered mail, and I don't know the circumstances of how  
8                   they were chosen, but I do know that some were provided  
9                   opportunity, a window in time between GM, HR, and  
10                  Metropolitan Life to purchase at the employee's expense a  
11                  replacement life insurance coverage for their life and the  
12                  coverage of their spouse.

13                  It's particularly important in my case. I did not  
14                  receive such a letter, but I've had it read to me over the  
15                  phone and Metropolitan does agree that it does exist in loss  
16                  of supply to employees.

17                  My case is a little different and I'm sure you  
18                  here this from all thousand of employees that (indiscernible  
19                  - 02:03:55). I spent 40 years with the company, and during  
20                  that I believe according to my business cards, that I held  
21                  15 different positions and had 12 geographical relocations  
22                  around the country. Some wonderful places, some not so.  
23                  But with those many moves I did not end up being married  
24                  till close to age 50. So there's quite a number of years  
25                  between my and my spouses age, 17 years.

1           So when the GM pamphlet of the -- prior to the --  
2           just prior to the bankruptcy was provided, I think it was  
3           about a 221-page document, I still retain it -- regard a  
4           number of agreements between you and your spouse and some  
5           witness signatures. And one of those documents related to  
6           whether your spouse would obtain spousal benefits after your  
7           death.

8           GM's formula in their retirement booklet, which  
9           was provided to us, this was November of 2008, showed a  
10          penalty if your spouse is five years different than your age  
11          and greater and it had a sliding share. So for us with 17  
12          years it was a -- it was a penalty that I couldn't take the  
13          retirement and allow the penalty.

14          So as long as we had the life insurance and  
15          coverage we chose to defer the spousal coverage which then  
16          allowed me to take the early retirement. Of course the  
17          bankruptcy --

18          THE COURT: Pause, please, Mr. Hickman. Just -- I  
19          want to keep up with you.

20          MR. HICKMAN: Yes, sir.

21          THE COURT: Are you talking on coverage for your  
22          wife about life insurance coverage --

23          MR. HICKMAN: No.

24          THE COURT: -- or medical insurance --

25          MR. HICKMAN: No.

1 THE COURT: -- or pension? Help me --

2 MR. HICKMAN: Pension.

3 THE COURT: -- better understand.

4 MR. HICKMAN: Yes, pension. Spousal coverage of  
5 the pension. And you have an opportunity in the GM  
6 documents to choose the spousal coverage after your dealt  
7 that she would receive the remaining portion -- a reduced  
8 portion of your pension, and if you chose to do that there  
9 was a penalty to pay if there were five years or greater in  
10 your ages, and it was a sliding stage. And with 17 years  
11 difference it was a little bit cost problematic for us.

12 So we still had the GM -- at that time we still  
13 had the GM life insurance coverage so we chose to defer her  
14 spousal pension coverage, which is a reduced portion of my  
15 pension.

16 THE COURT: Uh-huh. The rationale for that being  
17 that the younger your wife might be at such time as you died  
18 the longer her life expectancy at least actuarially would  
19 be?

20 MR. HICKMAN: Well that and the combination that  
21 my age is so much greater than hers that there was a longer  
22 period of coverage that they would have to pay her.

23 THE COURT: I'm with you, keep going, please.

24 MR. HICKMAN: And there was a penalty in the  
25 documents, we reviewed it with both my accountant, my tax

1 attorney, and my attorney. There was not a good answer to  
2 it, but if we were going to take the early out package I had  
3 to defer the spousal coverage because she was still going to  
4 be covered by my then retirement life insurance in the  
5 retirement (indiscernible - 02:07:45) period.

6 So there was no problem until the bankruptcy came  
7 through and of course that life insurance for the GM  
8 salaried employees was one of the eliminated components, and  
9 I understand that.

10 And what shortly followed that that GM salary  
11 employees who had retired -- and I don't know the schedule  
12 or how this formula was -- was provided -- but a letter was  
13 sent to employees in the white collar employment area that  
14 had retired -- I don't know if they were deferred to spousal  
15 coverage or if they were recent retirees -- but I know that  
16 the letter came and there was a small bundle in time. I  
17 think it was seven days, it could have been ten, that you  
18 could apply to reinstate that coverage at the employee  
19 expense to cover your spouse.

20 I never saw the letter. I'm not sure how it was  
21 provided, and many things come to us with signature  
22 requested or sign receipt or registered mail. I did not  
23 receive the letter and knew nothing about it, and with the  
24 short window of seven or ten days by the time I did find out  
25 about it through it being read to me I contacted both HR and

1 Metropolitan and they did agree that there was this special  
2 coverage available made to the employees -- or retirees for  
3 this short window in time.

4 So I have no objection to what's happened here in  
5 the bankruptcy, I understand the law, my 40 wonderful  
6 productive years I wouldn't replace it for anything, I wish  
7 I was still there, but I would just like to have the  
8 opportunity to participate in that same reinstatement at my  
9 expense of the insurance coverage that was granted during  
10 this seven or ten-day window following the bankruptcy.

11 THE COURT: Okay. I think I understood what you  
12 told me. I'm going to have to think about it a bit.

13 What I want to do next is give other folks who are  
14 on the phone a chance to be heard as you were Mr. Hickman,  
15 and then I'm going to give Mr. Griffiths a chance to reply,  
16 and then I'll rule on everybody in this group after  
17 everybody has had a chance to speak their peace.

18 Do I have -- I don't see -- yes, I do see  
19 Mr. McMullan on the phone. Would you like to be heard next,  
20 Mr. McMullan?

21 OPERATOR: Your Honor, Mr. McMullan has not joined  
22 us today.

23 THE COURT: Oh, forgive me, okay. Then  
24 Mr. McMullan did not.

25 What about Darlene Schneider?

1 MS. SCHNEIDER: I'm here, Your Honor.

2 THE COURT: Would you like to argue,  
3 Ms. Schneider?

4 MS. SCHNEIDER: I sure would.

5 THE COURT: Go ahead then, please.

6 MS. SCHNEIDER: Well, after everything that's been  
7 said in the summary that David Griffiths has made I want to  
8 just make a statement that I too appreciate that GM -- the  
9 new GM accepted the obligation to continue our pension fund,  
10 but I mean they did it for business reasons too and they did  
11 get some benefits from it. And all the years we worked for  
12 them -- I mean a big company makes decisions I mean decades  
13 before that either results in a positive or negative result  
14 in the future just as GM ended up in the bankruptcy.

15 Well, I'm just going to compare that to my  
16 situation. I made a decision to stay with General Motors  
17 for my career of 37 years for a retirement benefit, and my  
18 husband developed heart problems and had many surgeries and  
19 became totally permanently disabled and could not work  
20 almost our whole married life.

21 So we reversed roles at a very young age when we  
22 first married for his health sake and we -- and he raised  
23 the three children while I worked, okay? So I wanted to  
24 make that statement.

25 I mean my family all worked for the automotive

1 company and everyone thought, especially my father, that  
2 with my situation he felt that he was glad that I had the  
3 security behind me.

4 So I know that the statement has been made that  
5 because of bankruptcy law GM has the unilateral decision  
6 whether to eliminate benefits or not, and I just want to  
7 make a statement that I don't think it's fair that these  
8 benefits were used as a carrot kind of to us and they were  
9 kind of balancing the equation of our wages that are frozen  
10 and we need to work overtime without pay, and we did this  
11 because we were part of this great company, okay?

12 We knew that on our benefit sheet it stated, you  
13 know, that these benefits could be changed or modified or  
14 eliminated, but my leader never identifies that when  
15 whenever I spoke to him about my career or when I wasn't  
16 getting a large raise, instead the benefits were emphasized,  
17 and that's what I base my career on was the benefit package.

18 Now I want to talk about the fact that I did that  
19 because -- because of the benefits not the salary, and I  
20 base that on the fact that I was raising the children  
21 without a father's income, so it was very important to me to  
22 have benefits.

23 I started in June in 1969, I retired in 2007,  
24 okay? When I graduated with my Bachelor's in business from  
25 the University of Michigan in 1991 I had a discussion with

1 my husband about leaving GM. I was not receiving regular  
2 increasing. I was in the clerical field at that time but I  
3 was positioning myself out of the clerical field with this  
4 degree.

5 At that time I had 22 years of service and a  
6 family of three children, plus a disabled husband, and I  
7 felt that my retirement with benefits meant more to me than  
8 my salary, and so at that time I decided to make the  
9 decision to stay with GM.

10 Now I graduated in '91, so in '93 I transferred to  
11 the General Motors Milford Proving Ground, it's an hour  
12 distance from my home to take a purchasing position, and I  
13 asked the leader at that time, couldn't I just get a little  
14 bit of an increase to, you know, for gas and wear and tear  
15 on my car, and there was nothing available for me. It was  
16 just a lateral transfer. So I received no promotion, but  
17 again, I was positioning myself for a promotion. So in 1994  
18 I finally did get the promotion.

19 But the point I'm trying to make here is that  
20 during the years 1983 -- 1986 to 1993, seven years I stayed  
21 with GM and sacrificed salary increases for the sake of the  
22 corporation when GM management made the business decision to  
23 freeze my salary during these years. This decision  
24 ultimately reduced my social security benefits for  
25 retirement too. Then again it was frozen for three years

1 during 1991 through '94 for the same reason, because of  
2 decisions made by the corporation.

3 Now I'm going to go all the way to the end of my  
4 career. Here I am it's 2006, I've gotten a lot of  
5 promotions and acclamations and all that, and I finally  
6 received -- when I received my final promotion my pay grade  
7 was \$8,388 less than the market rate at that time. So there  
8 was a minimum and maximum for what you should make at that  
9 position and I was 8,000 below, and I had been thousands  
10 below in each level up, so I never really caught up with the  
11 marketability of my position and responsible, but I stayed  
12 with GM because I wanted the security of the benefits and  
13 the life insurance for my family and my husband.

14 I want to go to my objections that I put in on  
15 October 17th.

16 THE COURT: Uh-huh, go ahead.

17 MS. SCHNEIDER: I mean my first one might be  
18 thrown out because it said that I asked that General Motors  
19 retain -- not retain their unilateral right to withhold or  
20 eliminate benefits promised to employees, and now I  
21 understand under bankruptcy law that they have that  
22 opportunity.

23 My second one was about hardship cases to be heard  
24 individually and consider a settlement that would instill  
25 compensation, that would allow the party to prepare other

1 options or changes that would improve their financial  
2 position, provide some funding that would provide for  
3 alternative income to make up the difference for what I've  
4 lost. And in my case I actually when I retired early I was  
5 trying to maybe work another position so I could be with my  
6 husband in Arizona. He had to leave the winter months in  
7 Michigan to go to Arizona because of his health. He has  
8 gotten pneumonia, and because of his previous heart  
9 surgeries we had to separate, and I would fly there for a  
10 week but I couldn't afford to really keep going back and for  
11 so I usually saw him for a week and then for six weeks. So  
12 he'd stay six weeks, I'd go for a week, he'd stay six weeks,  
13 and then maybe reunite in the summer.

14 And so that after a few years didn't work very  
15 well with me so I decided to take an early retirement and we  
16 made it -- we talked about it and I said, well, I will do a  
17 job that maybe I can do in both places.

18 So I took some classes in interior design and when  
19 this happened with the bankruptcy our money just -- our  
20 whole financial thing just kind of fell apart. I mean we  
21 had a meager savings and I had by 401(b), but we didn't have  
22 enough to cover \$3,000 in medical expenses for me and his  
23 life insurance, I added more life insurance, and then his  
24 medical, which is another point I'm going to make too.

25 Let's see. We received a letter from -- it's -- I

1 sent this package over earlier so that you would have it if  
2 I referred to it in court, and it was -- I have number 3  
3 circled on the top. It says, "Material modifications to the  
4 General Motor Salary Healthcare Program effective  
5 January 1st, 2010," and it was sent by HR and the fifth  
6 paragraph down indicates that we should be getting \$260 a  
7 month to an HRA account for retirees and surviving spouses  
8 under the age 65 who are eligible for Medicare. Well, my  
9 husband is on Medicare because of his disability, and then  
10 it says, "therefore, the participant may obtain  
11 reimbursement of cost for qualified healthcare expenses."  
12 Then when we attain the age of 65, we would receive a \$300  
13 into the pension check.

14 So, we thought well at least that'll defer some of  
15 the costs; however, we did not receive that, and then when  
16 we called HR, they indicated that he was not eligible for  
17 it, and we didn't understand why. It was never really  
18 explained to us why.

19 They sent us to one of their employees who spoke  
20 to my husband to help him arrange for which healthcare would  
21 be best for him knowing he would have open-heart surgery, so  
22 we did get advice on that, but we don't understand why we're  
23 not receiving this money.

24 THE COURT: Uh-huh Pause please, Ms. Schneider.

25 MS. SCHNEIDER: And then --

1 THE COURT: Pause please, a question for you.

2 Forgive me. Are you now eligible for Medicare?

3 MS. SCHNEIDER: No, my age is 61.

4 THE COURT: Uh-huh, continue please.

5 MS. SCHNEIDER: Okay, in addition, my life  
6 insurance benefit, okay, was to equal a one year salary at  
7 the time of retirement. This amount was planned to  
8 compensate the difference of the reduction of my pension  
9 benefit to myself in case that I predeceased him, because he  
10 has no retirement benefits, and I have elected to reduce my  
11 pension, so that upon my death he does receive something.  
12 But it's not even what I get, you know. So, I used the life  
13 insurance in addition to that. Now, I've added life  
14 insurance, but it's at additional cost to me.

15 So, we've accepted, you know, a lot of different  
16 things that put us in a very awkward financial position, not  
17 what I had expected to have with General Motors when I left,  
18 and it's not their fault, but I do feel that we deserve some  
19 compensation that would help us out of our financial  
20 position. You know, some sort of settlement that could  
21 reduce our debt, and so that we could be in a better  
22 position to handle the whole situation. We just didn't have  
23 enough time to know this. So, maybe I wouldn't have taken  
24 retirement, but, you know, who knows what would have  
25 happened?

1           So, with the bankruptcy it then affected my  
2 retirement savings, the loss of the stock market, and our  
3 vestments in General Motors. I even had stock options that  
4 were given to us as a reward, instead of stock, and that was  
5 lost in bankruptcy, because we're required to hold it for  
6 five years before we are able to sell that.

7           So, you know, I'm not asking for recompense on  
8 that. I just want to be in a better position for us to be  
9 able to take care of my husband. Thank you very much for  
10 the opportunity of stating my case.

11           THE COURT: Thank you.

12           Okay, Floyd Jankowski? Do you wish to be heard,  
13 sir? Mr. Jankowski?

14           MR. JANKOWSKI: Yes?

15           THE COURT: Would you like to argue also?

16           MR. JANKOWSKI: Yes, I would. My name is Floyd  
17 Jankowski, and I retired on February 1, 1992, due to a heart  
18 condition that I've had, well, that I obtained while I was  
19 working back in 1989. I had 11 heart attacks, and I went  
20 back to work, and I worked for a little over a year.

21           Now, I retired February 1st, and on my going out,  
22 they gave me a life insurance policy for \$77,000, which was  
23 twice my base salary. They also had me get comprehensive  
24 medicals for my wife and I, in case I had to go to on a  
25 long-term care. I also had paid medical, which they were

1 paying on a monthly basis up until the latter '90s when they  
2 made salaries start paying for their medical, and then I  
3 also had an optional life insurance policy which, I was  
4 paying \$30 some dollars a month for five times my base  
5 salary, which at the age of 50 took me up to \$76,092.

6 So, okay, I retired February 1st of 1992, and  
7 December of 1992, I had a worker's comp trial, which they  
8 stated in there that I was to get all my pension benefits,  
9 and anything that was, oh, awarded to me, you know, for  
10 other stuff. And mainly, that's what I would like to get  
11 reimbursed for all the insurance that I lost which was  
12 \$60,000, or \$67,000.

13 I'd also like to get reimbursed \$5,834.60 for my  
14 extended care that I paid for, and I would also to get  
15 reimbursed for my Medicare premium that I was supposed to be  
16 reimbursed.

17 I'd also like to get reimbursed for my premium  
18 life insurance from when I was having my optional life  
19 insurance, and then I'd also like to be reimbursed for the  
20 medical insurance that I had to pay from '92 to when they  
21 started making us pay in the latter '90s, and that's  
22 typically my case.

23 I figure that if I had an award from the worker's  
24 comp trial that, that should overrule what I did when I  
25 signed out to go to retire.

1                   That's it, Your Honor.

2                   THE COURT:   Okay, thank you, Mr. Jankowski.

3                   And on the next claimant, forgive me if I am not  
4 pronouncing the name correctly, Louis J. Alarie?

5                   MR. ALARIE:   That's right, Your Honor.

6                   THE COURT:   Would you like to argue, Mr. Alarie?

7                   MR. ALARIE:   Louis J. Alarie is the English  
8 pronunciation of Louie Alarie, good French name.

9                   THE COURT:   Do you have a preference as to what I  
10 call you?

11                  MR. ALARIE:   The English pronunciation is fine.

12                  THE COURT:   Okay, then proceed with your argument,  
13 please.

14                  MR. ALARIE:   A couple of points of clarification  
15 that you might need.  The reduced pension that the previous  
16 callers talked about was a percentage of the pension that  
17 was earned to be set aside for your spouse upon your death.  
18 In my case it was five percent and it would have been half  
19 of what my pension would have been, because my wife is  
20 basically the same age I am.  All right, that was an  
21 agreement and it is done, and I certainly hope this goes on.

22                  Now, to my argument.  The other folks are arguing  
23 about the fact that we didn't have a contract, signed  
24 contract for this life insurance reduction.  Well, no, we  
25 don't have a signed contract.  We have an implied contract.

1                   When I wanted to retire and sat down with the  
2                   retirement people at the corporation, this is what I was  
3                   going to get, five percent was going to be set aside for my  
4                   wife's pension after I die, and so on, and so on, and life  
5                   insurance one time your base salary. I'm sure you  
6                   understand that, because the others have spoken about it.

7                   THE COURT: Yes, continue, please.

8                   MR. ALARIE: In my case, I guess I wasn't as well  
9                   paid as some of them, but in my case it amounted to \$36,000  
10                  that they just cut out from underneath me.

11                  Now, I retired September 1st, 1990. I have been  
12                  retired almost 22 years. I'm 77 years old, all right? I  
13                  took an early retirement back in the days when they could,  
14                  they were going through a cost reduction program, and if you  
15                  could eliminate your job without just quitting, they would  
16                  let you retire early. Well, I did. There's a long story to  
17                  that, but you don't need that for the discussion. I just  
18                  fulfilled all the requirements, and I went out early.  
19                  That's why I'm only 77 and been retired for almost 22 years,  
20                  but that's beside the point right now.

21                  The point of the matter is it was an implied  
22                  contract. It was listed on my sheet when I retired. I  
23                  still have it.

24                  Now, I realize that the board of directors can  
25                  change things whenever they want to. My point is this, the

1 board of directors was coerced in this guided, dictated,  
2 bankruptcy which broke all the rules of bankruptcy that I  
3 can rely on by putting one group of people ahead of  
4 creditors in the payoff, and to hell with everybody else.  
5 And we'll just cut out the life insurance and we won't have  
6 to pay that premium anymore.

7 In addition to that, the car czar said, we don't  
8 need to give the retirees any cost of living adjustment, and  
9 my pension hasn't increased, except over the medical  
10 business that they got out of two, three years ago. My  
11 pension hasn't increased in four years, since bankruptcy.  
12 No cost of living allowance. Finally, this year Social  
13 Security Administration has decided, well we've had enough  
14 inflation, well, we'll give the people some more money.  
15 Comes down to less than \$50 a month.

16 Now, my point is this. I counted on my full life  
17 insurance as a part of my retirement, early retirement. I  
18 had, at one point in time, but I gave up on it because the  
19 premium was too great, the opportunity to buy up to four  
20 times my base salary which I did when I was working for a  
21 long period of time, and for the first five years of my  
22 retirement. The premium got so great that I decided that I  
23 really can't afford that. All right?

24 Here's the bit. I retired under certain premises,  
25 written or not written. I have a paper in which my

1 retirement benefits were listed and on that paper is life  
2 insurance, term life insurance.

3 Now, I have written you two letters recommending  
4 several possible solutions to this problem. I'll add one  
5 more. Out of the treasury stock in the corporation, in the  
6 new corporation, they give us five shares for every \$100 of  
7 life insurance that they took away. Now, that would cost  
8 them the printing and issuing of the life insurance policy  
9 and a reduction in their treasury issues. And I'm going to  
10 say to you this. You are a federal employee, and I respect  
11 that position, but put yourself in our position, where some  
12 dictated, guided bankruptcy, which broke all the rules, can  
13 come along and say, I'm sorry, Judge, you're not going to  
14 get a big life insurance policy as you used to have, and  
15 we're going to reduce your pension, and we're going to do a  
16 whole bunch of things, and we're going to cut off your  
17 surviving spouse, and take it or leave it. Now, I don't  
18 think you'd like that. Or if we have some nutcase in  
19 Congress who decides we don't need your level of federal  
20 judge and, so, we're going to do away with you and all of  
21 your pensions and benefits, take it or leave it. What would  
22 you do? You'd be really unhappy, I think. So, would your  
23 wife if you've got one.

24 THE COURT: I do, but please continue.

25 MR. ALARIE: Now, the point is the government, the

1 administration, the car czar made edicts telling the  
2 corporation you will do these things, or we won't bail you  
3 out. And guess what? The top executives and their salaries  
4 are scrutinized. The bonuses are scrutinized. The unions,  
5 they get their money because they have a contract and the  
6 government can't fight that nor do they want to. That's  
7 their voting base. We got screwed, Your Honor. Flat out  
8 screwed by the administration and the whole thing, and I  
9 know how you're going to probably rule, because it's written  
10 all over the political pages of the newspaper, but be that  
11 as it may, I think we got some sort of compensation coming,  
12 shares of stock, five shares for every \$100 that we got  
13 screwed out of, maybe only four because it did close at \$26  
14 yesterday. Or a one-time, now I put this in the letters I  
15 sent to you. A one-time premium, get all your whiz kids  
16 sitting down, figure out with the insurance companies how  
17 much money it would be necessary to buy a one, one-time  
18 premium to cover everybody and all the money. And then  
19 figure that out and add that to your liquidation  
20 proceedings.

21 Another possible situation is to flat out restore  
22 it and tell the corporation that they have to do that. You  
23 told them they could take it away or had to take it away.  
24 Now tell them they got to put it back. There are altogether  
25 too many people out here in the world that had their, some

1 of their financial legs just cut right out from under them.

2 And that's not right. It is not the way to do business.

3 And I guess I'm done, so I will await your ruling,

4 sir.

5 THE COURT: Very well, thank you.

6 MR. ALARIE: Hello? Are you there?

7 THE COURT: Yes, but I didn't want to interrupt

8 you.

9 MR. ALARIE: I'm sorry, I cannot hear you.

10 THE COURT: Can you hear me now?

11 MR. ALARIE: Not well.

12 THE COURT: Well, I'm speaking very loudly and

13 directly into the microphone.

14 MR. ALARIE: Okay, now you're coming through.

15 THE COURT: Okay, thank you, Mr. Alarie. I would

16 like to hear next from Mr. Conrad, Mr. George Conrad, if he

17 would like to heard.

18 OPERATOR: Your Honor, this is your operator

19 again. Mr. Conrad has not joined the feeder.

20 THE COURT: Oh, okay. Very well. Then I believe

21 I have heard from all of the people on this motion, and

22 after they spoke, I'm now going to give Mr. Griffiths the

23 chance to reply, to respond to the new matter that was set

24 forth by the people who have just had a chance to be heard.

25 MR. GRIFFITHS: Thank you, Your Honor, and I'll

1 try and speak as loud as I can into the microphone, as well.

2 Turning first to Mr. Hickman's submission,  
3 obviously on July the 10th, 2009, benefits were transferred  
4 to new GM as part of the master settlement purchase  
5 agreement. New GM assumed responsibility for all pension  
6 obligations and assumed welfare benefit plans, as modified,  
7 and then put in place some modifications of its own.

8 I'm more than happy to spend as much time as  
9 necessary with Mr. Hickman trying to determine what  
10 additional benefits from new GM he thinks he may be entitled  
11 to. I'm more than happy to intercede with new GM and with  
12 their employee benefits team to determine whether Mr.  
13 Hickman was contacted by them, and whether there were any  
14 procedural irregularities in that respect.

15 I would just like to point out that these are  
16 benefits provided by new GM, not by the debtors or the GUC  
17 Trust and, therefore, this issue that he has raised today,  
18 does not have a bearing on his claim against the debtors or  
19 the GUC Trust.

20 With respect to life insurance specifically, I  
21 believe that the offer that was made by new GM following the  
22 master settlement purchase agreement, was a one-time offer  
23 to former employees, or retirees, to purchase additional  
24 life insurance at a reduced cost, and while I haven't seen  
25 the terms of that document, it was an offer made by new GM.

1 I don't believe it affected pension benefits, as such.

2 Pension benefits, having been assumed by new GM,  
3 were then subsequently increased by \$300 to compensate for  
4 the benefits.

5 THE COURT: Well, I understood Mr. Hickman to say  
6 that he made a decision about, and I would have to go back  
7 to my notes, either life insurance based upon pension, or  
8 pension based upon life. But, your point is that each of  
9 those is now being covered by new GM, and that it isn't  
10 relevant to this motion or this objection that I have before  
11 me today?

12 MR. GRIFFITHS: Yes, Your Honor. Pensions were  
13 assumed by new GM. Life insurance was reduced to \$10,000,  
14 the \$10,000 obligation was assumed by new GM, as well.  
15 There may have been a one-time offer by new GM for former  
16 employees to purchase addition insurance; that's not  
17 relevant to Mr. Hickman's claim, and the fact that the offer  
18 was made doesn't grant Mr. Hickman a claim for the modified  
19 benefits between the difference his life insurance would  
20 have been and what it was subsequently reduced to based on  
21 the arguments we've raised in our objection and reply.

22 MR. HICKMAN: Your Honor?

23 THE COURT: I'm going to give you a chance to be  
24 heard again, Mr. Hickman, but I don't want to interrupt  
25 Mr. Griffiths in his points. Make a note of the thought you

1 want to express to me, and I'll hear it in a couple of  
2 minutes.

3 Mr. Griffiths, please continue.

4 MR. GRIFFITHS: I have nothing else to say with  
5 respect to Mr. Hickman.

6 THE COURT: Okay, well then maybe it's good, even  
7 though you have other things on other people, to give Mr.  
8 Hickman a chance to respond now?

9 MR. HICKMAN: Thank you, Your Honor.

10 I believe Mr. Griffiths is primarily correct.  
11 When I filed my first loss on the old GM for the bankruptcy  
12 losses, I think all of us have become better educated.  
13 Maybe we should have been at a better level at the time we  
14 filed those losses. I have since studied it enough to  
15 understand that those losses are basically a part of the  
16 federal bankruptcy proceedings.

17 The really only two items that I see that stand  
18 out. One is the is the one I brought to your attention, and  
19 that's the fact that either all or a select number of GM  
20 white collar employees, salaried employees, were offered a  
21 one-time opportunity at the employee expense to replace the  
22 lost life insurance should they choose to. It was  
23 communicated to a group of salaried employees and I don't  
24 know in what fashion, and it was a slight window in time,  
25 either seven or 10 days that you could purchase it. Someone

1 read me the notice over the phone from the East Coast, I  
2 didn't, never received it. So, I called Metropolitan and  
3 both HR. Metropolitan acknowledged that yes, you did have a  
4 short window in time that we sent out shortly after the  
5 bankruptcy proceedings allowing the salaried employees at  
6 their expense to purchase the life insurance, but you cannot  
7 purchase it now because the window is closed.

8 So, I would like to proceed as to how I was not  
9 notified and can that window be reopened, so I can  
10 participate in that claim at my expense?

11 THE COURT: Okay, I think I understand now, and  
12 when I asked my question before and had uncertainty, I think  
13 you've now answered it. You may have said it right the  
14 first time too, but now I understand it.

15 Okay, back to you, Mr. Griffiths.

16 MR. GRIFFITHS: Mr. Hickman's understanding is  
17 largely correct. If an offer for life insurance was made by  
18 new GM and wasn't communicated to him, that's not a matter  
19 for the Motors Liquidation Company GUC Trust. That being  
20 said, we're more than happy to intercede with new GM to  
21 determine the factors surrounding the offer, and I would  
22 just like to point out, although I don't want to argue the  
23 case for new GM, that ERISA doesn't require all employees to  
24 be treated equally.

25 I can't speak to why Mr. Hickman may or may not

1 have received this offer, but I can certainly spend as much  
2 time as is necessary at finding out why, explaining it to  
3 Mr. Hickman, and bringing it to Your Honor's attention if we  
4 believe that there is a procedure irregularity in that  
5 respect.

6 THE COURT: Okay, then would you continue, please.

7 MR. GRIFFITHS: Yes, Your Honor, thank you.

8 The next claimant is Mrs. Schneider.

9 Mrs. Schneider's correct that pensions were transferred to  
10 new GM. Mrs. Schneider sent us a fax yesterday which we  
11 forwarded to the Court which raised this new issue with  
12 respect to whether she should be receiving additional from  
13 new GM. The arguments are largely the same, as raised for  
14 Mr. Hickman. Pensions were transferred to new GM following  
15 the master settlement purchase agreement. If new GM  
16 determined to make some additional benefits available to  
17 Mrs. Schneider, that's their right to do so.

18 Again, I'm more than happy to contact new GM to  
19 determine why Mrs. Schneider is not receiving benefits to  
20 which she's entitled. Having briefly looked into it last  
21 night, I suspect that the answer revolves around the  
22 definition of surviving spouse, and that those benefits are  
23 only available as an additional premium where a surviving  
24 is, in fact, what is meant by the word where the --

25 THE COURT: In other words, you're wondering it

1 would apply if you've lost your spouse --

2 MR. GRIFFITHS: Correct.

3 THE COURT: -- it would not yet be triggered if  
4 both spouses are still living?

5 MR. GRIFFITHS: Exactly, Your Honor. The  
6 definition of surviving spouse is used in all of the GM  
7 communications that I'm aware of refer to surviving spouse  
8 in that sense.

9 The document that Mrs. Schneider sent through  
10 doesn't use a defined term, as such, but new GM should be  
11 able to clear up the matter, I think. My firm will be able  
12 to have more success than she will in getting new GM to  
13 respond to the request and we would, of course, do so. And  
14 again, if there is any irregularity, bring it to Your  
15 Honor's attention. This doesn't affect Mrs. Schneider's  
16 claim against the GUC Trust or the debtors which I believe  
17 is unfounded.

18 THE COURT: Okay, continue please.

19 MR. GRIFFITHS: Thank you, Your Honor.

20 Next is Mr. Jankowski. I would just like to  
21 briefly address the settlement that Mr. Jankowski addressed.

22 I've reviewed this as part of Mr. Jankowski's  
23 proof of claim, and then subsequently requested additional  
24 documentational pages from the judgment, so that I could  
25 review it. This was a settlement providing, to settle a

1 worker's compensation claim that the transcript itself has  
2 Mr. Jankowski's attorney explaining that Mr. Jankowski would  
3 not be able to prove a worker's compensation claim against  
4 General Motors, that General Motors had agreed to enter into  
5 a settlement in full and final settlement of all the claims  
6 that Mr. Jankowski had brought, and the settlement goes on  
7 to note that this would have no effect on Mr. Jankowski's  
8 pension benefits. There's no mention of welfare benefits,  
9 as such.

10 Again, Mr. Jankowski's pension was transferred to  
11 new GM on July 10, 2009. New GM is responsible for  
12 Mr. Jankowski's pension. I'm not aware of any changes to  
13 the pension itself. I believe it continues to be paid. It  
14 is not a responsibility of the debtors or of the GUC Trust  
15 and, therefore, the settlement has no bearing on the claim.

16 Mr. Jankowski has also raised the question of  
17 extended care provided by new GM. I've explained the basis  
18 on which there is no claim against the debtors or the GUC  
19 Trust to Mr. Jankowski, but I'm happy to put it on the  
20 record.

21 The extended care program was a voluntary program  
22 that employees entered into on a pay-as-you-go basis,  
23 whereby they would pay additional premiums out of their own  
24 pocket to cover certain additional welfare benefits. That  
25 welfare benefit plan was subject to the same terms and

1 conditions as all of GM's welfare benefit plans, insofar as  
2 it could be amended or terminated at any time.

3 Mr. Jankowski was provided with the benefits under  
4 that plan while it was in existence. Once it had  
5 terminated, Mr. Jankowski was no longer for additional  
6 payments, that GM is no longer responsible to provide that  
7 benefits, and no recovery is possible for the premiums paid  
8 because, like any insurance policy, a home insurance policy  
9 or anything like that, he was covered during the time that  
10 the payments were being made. So, had he elected or had, in  
11 fact, availed himself of the benefits, then he would have  
12 received those benefits.

13 Lastly, that Medicare payments are not the  
14 responsibility of the debtors or the GUC Trust and,  
15 therefore, we have no liability for those.

16 THE COURT: Okay. Anything further, Mr.  
17 Griffiths?

18 MR. GRIFFITHS: Only if Mr. Jankowski would like  
19 to reply further.

20 MR. JANKOWSKI: Yes, I feel that you should  
21 reimburse me for all this. See, I lost my spouse in 2003,  
22 had 29.6 years seniority, and when I look at my contract  
23 with General Motors it states in there that you guys owe me  
24 for my retirement benefit, and there's -- what are  
25 retirement benefits? And that was everything -- I put my

1 life into this, into that company. I retired because if I  
2 would have I would have been dead, and I had everything set  
3 up for my wife so that in case I did die she was had gotten  
4 five times my base pay and been set for life. Well, it  
5 didn't work that way, I ended up burying her, so I feel GM  
6 needs to compensate me all the monies that I contributed to  
7 that extended care program, to my medical bills that are --  
8 or medical premiums that I had to pay from the latter '90s  
9 to when they got the other contracts going with the union.  
10 And I feel they owe me what they owe me, what I asked the  
11 judge for.

12 And I sent the judge a letter and I hope he  
13 received it the other day about, you know, what happens to  
14 me. Look, you're a judge, I'll let you have that and let  
15 you make your decision.

16 Thank you.

17 THE COURT: Mr. Griffiths, continue with the next  
18 claimant, please, if you wish.

19 MR. GRIFFITHS: Yes, Your Honor, the last claimant  
20 is Mr. Alaire. Clearly all pension benefits again were  
21 transferred to new GM addressing Mr. Alarie's argument  
22 earlier.

23 Mr. Alaire argues that new GM -- sorry, that  
24 General Motors didn't make the reduction in benefits, it was  
25 otherwise forced on them through the U.S. Treasury and so on

1 and so forth. We've cited the minutes of the board of  
2 directors of the debtors reducing their benefits, in fact  
3 well before the bankruptcy, and we believe the benefits are  
4 being validly reduced.

5 Mostly the facts with respect to Mr. Alarie are  
6 very similar to those in Sprague and we cited Sprague as  
7 authority for the elimination or the expungement of  
8 Mr. Alarie's claim.

9 THE COURT: Okay.

10 MR. GRIFFITHS: That concludes our submissions. I  
11 do believe that Mr. -- I think it was Mr. McMullen and  
12 Mr. Conrad had -- had agreed to attend today's hearing and  
13 haven't attended and we're happy to rely on our submissions  
14 and on the written submissions for each of those claims.

15 THE COURT: Okay, thank you, Mr. Griffiths.

16 Is there any claimant who has anything further to  
17 say in reply to what Mr. Griffiths said the second time?  
18 Mr. Jankowski and Mr. Hickman having already availed  
19 themselves of that opportunity, and then I'm going to rule.

20 MR. ALARIE: This is Lou Alarie. I would like to  
21 make some additional comments.

22 THE COURT: You may, sir, so long as they're  
23 limited to anything new that Mr. Griffiths said the second  
24 time.

25 MR. ALARIE: Right. That letter that was spoken

1 about about giving us the opportunity to buy life insurance  
2 when they did away with it, I never received any letter like  
3 that, and would have availed myself of it had I received it.  
4 Because for the first five years of my retirement I did  
5 participate in the extra up to four times your base salary  
6 until the premiums got to be enormous, and I decided that I  
7 didn't need to do that.

8 As far as the board of directors I'll still make  
9 my contention that even though before bankruptcy was  
10 announced the board of directors was coerced into the  
11 bankruptcy, the bankruptcy was guided by the administration  
12 and the car czar and they put a group of people ahead of  
13 creditors, they broke all kinds of rules in your court, sir.  
14 I'm sorry, but it comes down to this, you're hiding behind  
15 coercion. You want our money you'll do this. Well, the  
16 board of directors said, yeah, all right we'll do this, now  
17 give us the money and we'll announce bankruptcy.

18 I'm sorry, I just can't find a place in my heart  
19 for what went on any place, any time. I think that the  
20 liquidation company and its attorneys are presenting a  
21 factual case, yes, based on the dates of the board of  
22 directors' meetings, but as Paul Harvey used to say,  
23 "They're not telling you the whole story." And I think they  
24 should be brought to account.

25 Thank you, sir, I will await.

1 THE COURT: Thank you.

2 Okay, folks, I want you to sit in place if you're  
3 in the courtroom or stand by the phone, you're going to hear  
4 a couple of minutes of silence.

5 (Pause)

6 THE COURT: All right, folks, now I must rule.

7 In these contested matters in the jointly  
8 administered Chapter 11 cases of Motors Liquidation Company  
9 and its affiliates, Motors Liquidation being the new name of  
10 the old GM.

11 Old GM moves, along with the recently formed GUC  
12 Trust, which is a trust formed for the benefit of old GM's  
13 creditors to disallow and expunge the welfare benefit claims  
14 of retirees and former employees pursuant to old GM's 83rd  
15 and 103rd omnibus objections.

16 Welfare benefit, as I used that expression to  
17 describe the claims of the retirees and former employees, is  
18 a word of art in pension law or ERISA law and bankruptcy law  
19 to describe benefits offered to employees, at least  
20 principally in the medical and life insurance areas, and are  
21 to be compared and contrasted to pension benefits which are  
22 not the subject of this motion that we have before us today.

23 As I'll go on to explain in more detail, the  
24 claims, insofar as they are based on such welfare benefits  
25 for medical coverage or life insurance coverage, must,

1       unfortunately, be disallowed. It gives me no pleasure to  
2       deny these claims. Denial of these claims results in  
3       hardships on the objectors. It also, of course, imposes  
4       hardships on those who did not object. And, in fact, the  
5       changes in the life insurance and medical benefits have  
6       created hardships on thousands, or at least hundreds, of  
7       similarly situated employees. I'm well aware of that fact,  
8       folks, but I am compelled to comply with the law and I'll be  
9       discussing that law momentarily. First, however, my  
10      findings of fact.

11               On June 1st, 2009, GM and its affiliates commenced  
12      these Chapter 11 bankruptcy cases. The following  
13      individuals, among others, timely filed proofs of claim.  
14      Mr. McMullen, Ms. Darlene M. Schneider, Mr. Robert R.  
15      Hickman, Mr. Floyd Jankowski, Mr. Louis Alarie, and

16               Mr. George Conrad. That's six people who filed the  
17      objections that are before me today, four of whom orally  
18      argued. And I've considered both the written submissions  
19      and the oral argument in reaching these decisions.

20               Pursuant to procedures that were set up earlier in  
21      this case, the debtors filed omnibus claims objections to  
22      the claims of the six people I mentioned, among many, many  
23      others. An omnibus claims objection is one that applies to  
24      many people or entities at the same time.

25               The debtors and then the GUC Trust did so because

1 they have a fiduciary duty, that is a duty as a matter of  
2 trust, to the remainder of the creditors of old GM's estate  
3 to allow the claims that are deserving of allowance but, at  
4 the same time, to object to those that are not. The omnibus  
5 objections before me today were directed at claims of  
6 retired or former employees of old GM. Each of the six  
7 folks who I'm dealing with today timely responded to the GUC  
8 Trust's objections and the common thread that deals with all  
9 of these is that these objections, which are all, and I  
10 emphasize this and I'm going to come back to it, directed at  
11 claims that old GM rather than new GM involved rights that  
12 old GM had reserved or, to put it in another word,  
13 maintained and don't involve obligations that might be  
14 obligations imposed upon new GM.

15 Several points that were made today, most  
16 significantly by Mr. Hickman, though he wasn't the only one,  
17 deal with rights that some of them may have, vis-à-vis, new  
18 GM and I'm going to say now and I'll probably say again that  
19 rights against new GM aren't affected one way or the other  
20 by the objections we have here today.

21 Now, turning to my conclusions of law, including  
22 certain mixed findings of fact in law. A proof of claim is  
23 prima facie evidence of the validity and amount of the claim  
24 and the objector bears the initial burden of persuasion. In  
25 Re: Onita, Limited, 400BR at page 389, a decision of Judge

1 Cropper of this Court. What that means, translating from  
2 the Latin, is that, once a claimant, like each of the six  
3 people here, files a proof of claim, assuming at least if  
4 it's satisfactory, which all here have been found to be  
5 satisfactory in the first instance, it's good enough unless  
6 there is an objection. It's good enough to get paid the  
7 amount set forth in the claim.

8 When a proof of claim has been filed, the burden  
9 then shifts to the claimant if the objector produces  
10 evidence equal in force to the claim that was previously  
11 filed, which, if believed, would refute at least one of the  
12 allegations that's essential to the claim's legal burden.  
13 When the burden is shifted back to the claimant, the  
14 claimant must then prove by a preponderance of the evidence  
15 that, under applicable law, the claim should, again, be  
16 allowed.

17 Now, here we have exactly that situation. Each of  
18 the claims was prima facie okay. The GUC Trust then  
19 objected and met its burden, which meant that the claimants  
20 once more had the burden, and then I decide what the  
21 claimants are entitled to based on all of the evidence  
22 before me.

23 Here I am required to find and I do find as a  
24 mixed question of fact and law that the claimants haven't  
25 met their burden to show that their welfare benefits vested,

1 which means putting it in plainer English that they couldn't  
2 be taken away.

3 In dealing with claims of old GM retirees, which  
4 were very, very similar to the claims that are before me  
5 now, the U.S. Court of Appeals for the Sixth Circuit, in a  
6 case called Sprague versus General Motors Corp., 133 F.3rd,  
7 388, determined that, because vesting of welfare planned  
8 benefits is not required by law, an employer's commitment to  
9 vest such benefits is not to be inferred lightly. The  
10 intent to vest must be found in the plan documents and must  
11 be stated in clear and express language. And as the Sixth  
12 Circuit observed in the Sprague decision, at page 401 of  
13 that decision, most of the summary plan descriptions  
14 unambiguously reserved GM's right to amend or terminate the  
15 plan.

16 What that means is that, while the claimants may  
17 very well have had, and I assume for the purpose of this  
18 analysis they had rights as the claimants have alleged them,  
19 new GM had the right to terminate those benefits and the  
20 plan documents that the employees had said that. Thus,  
21 although the benefits existed at one time, they could be  
22 changed and new GM changed them.

23 Now, I am intentionally taking documents and plan  
24 descriptions that could be described in more legalese terms  
25 and I'm, in essence, translating them into plain English so

1 that educated people, but who are not lawyers would better  
2 understand the reasons for this ruling. I invite people, if  
3 they want to, and, of course, any Appellate Court reviewing  
4 my work, to read the Sprague decision in greater detail and  
5 to read the plan documents of each employee in greater  
6 detail.

7 Now, several of the claimants have talked about  
8 decisions they made based on the documents that they read at  
9 the time and Mr. Jankowski, in particular, asked for a  
10 return of his premiums because he feels that he didn't get  
11 what he paid for. I well understand Mr. Jankowski's  
12 frustration in this regard, but what Mr. Jankowski was  
13 paying for was the benefits that were described in the  
14 benefit plan documents that he got and the benefit documents  
15 that he got showed the rights that GM leader availed itself  
16 of.

17 I know how frustrating that is, but because the  
18 plan documents reserved or maintained that right, and,  
19 again, I'm translating into plain English, the premiums that  
20 he paid got him the benefits that were then described. And  
21 those benefits that were then described that he admittedly  
22 and acknowledgedly paid for gave old GM the right to change  
23 them.

24 Now, others, most significantly Mr. Hickman, make  
25 a slightly different kind of claim. Mr. Hickman said in

1 substance that, while he understood the basis for the  
2 changes, he was making a different contention. In  
3 substance, and I know I'm paraphrasing, he said that there  
4 was a window of time, roughly seven to ten days, although I  
5 don't hold him to that, during which an offer was made to at  
6 least some people, to his understanding, an offer that was  
7 made by a mailing that he understands some of them to have  
8 received, but that he did not receive, to participate in an  
9 opportunity to replace lost life insurance. That offer,  
10 however, appears to have been made by new GM rather than old  
11 GM and it is possible, in Mr. Hickman's case, also Ms.  
12 Schneider's and perhaps others, that they may have rights  
13 from new GM but, if that's so, they're not the subject of  
14 this motion.

15 With very limited exceptions, none of which apply  
16 today, my responsibilities involve determining what old GM,  
17 now called Motors Liquidation Company and now the GUC Trust,  
18 owe to their employees not what new GM might owe or MetLife  
19 if new GM set up arrangements with MetLife. I will say and  
20 will require the GUC Trust to say that my ruling is without  
21 prejudice, which means it doesn't affect rights that any  
22 former employees have against new GM or anybody retained on  
23 behalf of new GM. Such rights are unaffected by this  
24 determination.

25 Mr. Griffiths said, if I heard him right and I'm

1 pretty sure he did because I think I heard him say it more  
2 than once, that he would be happy to help people who are the  
3 objectors on this motion communicate with new GM and to be  
4 of any assistance he could. I'm not ordering him to do  
5 that, but I appreciate his offer in that regard. And though  
6 the people on the phone couldn't see that, when I just said  
7 that, Mr. Griffiths nodded in an up and down yes direction.

8 I know that is not full consolation to the people  
9 who were affected by this motion, but they should understand  
10 that he's trying to do the right thing.

11 The one other contention that was made that isn't  
12 already governed by what I said so far was the contention  
13 made by Mr. Alarie that, in this bankruptcy that either I or  
14 the Treasury Department or the United States Government or  
15 perhaps new GM or some combination of them, broke all of the  
16 rules of bankruptcy when we got to this point in the  
17 bankruptcy case.

18 The contentions that Mr. Alarie made were  
19 addressed in a written opinion that I issued that was  
20 roughly 80 pages long, which was then appealed to, if I'm  
21 not mistaken, five district judges and, in one of those  
22 appeals, also to the Second Circuit Court of Appeals. Two  
23 or perhaps to a lesser extent three of the District Court  
24 opinions were district courts to whom the earlier  
25 proceedings were made issued their own rulings and, in those

1 two, the decision was affirmed. I tried very hard, folks,  
2 to get it right. I guess the Appellate judges were the ones  
3 who would ultimately decide that.

4 But those rulings are what they are and fully  
5 understanding the views of Mr. Alarie on this issue and the  
6 views of hundreds of others, maybe thousands of others, who  
7 have expressed views yea or nay on the wisdom of what  
8 happened up to this point, what has happened up to this  
9 point gives me the case as I'm now required to decide it.  
10 People, of course, have the right, if they think the  
11 government did the wrong thing, to be heard at the ballot  
12 boxes around the country. But a judge like me is sworn to  
13 obey the law and to try to decide what the law is the best  
14 he or she can. And, folks, that's what I did and, after  
15 having done so, I necessarily must take the case in the form  
16 in which it's now presented to me.

17 Now, Mr. Griffiths, I'm authorizing and directing  
18 that you settle an order in accordance with what I just  
19 said. Settling an order is a word of art that doesn't mean  
20 what it sounds. Settling an order means proposing an order  
21 that I sign that is sent out to people who have the right to  
22 comment on whether they think an order as presented to me  
23 for signature is consistent with the ruling.

24 After that order is entered, each of the six  
25 people who objected has the right to seek appellate review

1 to appeal the order. The time to appeal in a bankruptcy  
2 case is much more limited than it is in other areas of the  
3 law. Fourteen days. But the time to appeal is going to run  
4 from the time that my order is entered, not from the time  
5 that I am dictating it now.

6 If you are not objecting to the form of the order,  
7 but you nevertheless want to appeal it, you have that right  
8 as long as you file a notice of appeal within the 14 day  
9 deadline after the appeal is entered and after, assuming, of  
10 course, that you comply with the other requirements for  
11 prosecuting the appeal that the law has, most significantly  
12 in rules of the Federal Bankruptcy Procedure that are to be  
13 found in rule, starting with 8,000.

14 Folks, I understand once more how hard this case  
15 has been on you and on other employees similarly situated.  
16 Other employees, other retirees. But, once again, I am  
17 required to comply with the law.

18 We're now going to take a recess until 1:30. It's  
19 now 1:22 by the clock in my courtroom. I don't know if  
20 you're all on the eastern time zone or not. and then I'm  
21 going to take the remaining matters.

22 Those who are on the phone whose matters I  
23 just dealt with are free to drop off the call or to stay as  
24 they choose. I would ask for further patience from those  
25 people whose claims I have not yet addressed and we'll

1 continue again at 1:30. We're in recess.

2 (Recess at 1:22)

3 THE COURT: Have seats, please.

4 Okay. I want to thank the folks who are on  
5 the phone for their patience. It's been a very long day and  
6 we're not done yet, but we're just going to keep moving  
7 forward. Okay.

8 I have counsel for the GUC Trust in the courtroom.  
9 Do I have recommendations as to which of the remaining  
10 issues you'd like to deal with next?

11 MS. GREER: Certainly, Your Honor. Stephanie  
12 Greer from Dickstein Shapiro on behalf of the GUC Trust.

13 Your Honor, I'd suggest that we take Ms. Meyer's  
14 claim first, followed by Mr. Marangos so we don't have to  
15 keep them on the phone. We can go to the uncontested  
16 matters. And just, I wanted to also give Your Honor an  
17 update as follow-up from our February 9th hearing. It won't  
18 take but a minute, but I think we should take Ms. Meyers  
19 first if you're amenable to that.

20 THE COURT: Fair enough. Ms. Meyer, Ms. Patricia  
21 Meyer, are you still with us? CourtCall? Do we still have  
22 Ms. Meyer showing as on your line?

23 Court Operator: No, Your Honor. Her line is no longer  
24 connected.

25 THE COURT: Oh. It's no longer connected. All right.

1                   Then, Ms. Greer, I'm going to recommend a  
2                   revision. I will dictate a decision on Ms. Meyer, but I  
3                   wonder if it would make sense if Mr. Marangos wants to argue  
4                   to move him up then and then I can dictate the decision  
5                   thereafter.

6                   MS. GREER: Sure. That's fine, Your Honor.

7                   If you'd like, my colleague, Ms. Whitman, is here  
8                   with me. She could go and see if she could get in touch  
9                   with Ms. Meyer, have her dial back in. You know, I  
10                  understand, perhaps, she got, you know, brought away. We  
11                  could at least give her the opportunity. I think we can do  
12                  that if you'd like.

13                 THE COURT: I think that's an excellent idea. Can  
14                 we do that?

15                 OPERATOR: Sure.

16                 THE COURT: Okay. Well, Mr. Marangos, are you on  
17                 the phone?

18                 MR. MARANGOS: Yes, Your Honor. I'm here.

19                 THE COURT: Okay. Very good. All right. Then  
20                 here's how we're going to do this one. Ms. Greer, I'm going  
21                 to hear your objection first, then I'm going to hear  
22                 Mr. Marangos, then I'm going to hear any reply that you  
23                 might have to what Mr. Marangos says, and I'm going to give  
24                 Mr. Marangos one opportunity further to be heard, but  
25                 limited to any of the new stuff that you might say the

1 second time around.

2 MS. GREER: Sounds good, Your Honor.

3 THE COURT: Okay. Then go ahead, please.

4 MS. GREER: Mr. Marangos, I'd like to also thank  
5 you for your patience. I will be brief, Your Honor. I know  
6 you've read the papers and, of course, happy to answer any  
7 questions. Your Honor, Mr. --

8 MR. MARANGOS: Can you speak any louder? I'm  
9 unable to hear very well.

10 MS. GREER: I'm sorry, sir.

11 MR. MARANGOS: That's okay.

12 MS. GREER: Is that better?

13 MR. MARANGOS: Yes. Thank you.

14 MS. GREER: Okay. You're welcome. All right.

15 Your Honor, Mr. Marangos filed in excess of \$20  
16 million claim against the debtors. The claim is labeled as  
17 a claim for personal injury and other. The allegations in  
18 Mr. Marangos' claim have all been addressed in prior  
19 litigation before courts in Michigan. There were eight  
20 cases that Mr. Marangos filed against old GM. Each of those  
21 cases was resolved in favor of old GM. In certain cases,  
22 Mr. Marangos exercised his rights of appeal. In other  
23 cases, I'm not sure that he did. But in any event, all of  
24 those rights to appeal or seek reconsideration were well,  
25 are past prior to the commencement of the bankruptcy case.

1           It appears that -- all of the allegations that Mr.  
2 Marangos made are related to the prior litigation and Mr.  
3 Marangos acknowledges that.

4           MR. MARANGOS: Hello?

5           THE COURT: I'm not sure what that noise was,  
6 Ms. Greer, but why don't you try to continue?

7           MS. GREER: Okay. Sorry. And Mr. Marangos  
8 acknowledges that his claims as set forth in, his proof of  
9 claim, in fact, do relate to that same litigation. In his  
10 response, what Mr. Marangos says is that the prior  
11 litigation was subject to various corrupt practices and  
12 otherwise. I don't believe, Your Honor, there's any basis  
13 for any of that. Mr. Marangos filed numerous, numerous  
14 pages of documents, including his odyssey brief, which we  
15 addressed in part in our response.

16           But the bottom line, Your Honor, is that all of  
17 the allegations that he's made he had an opportunity to  
18 raise with GM prior to the bankruptcy. They were raised and  
19 litigated. Any allegations that those cases were not  
20 properly addressed, for whatever reason, have no basis in  
21 fact as I can see it and, certainly, all those rights  
22 expired prior to the bankruptcy case. So Mr. Marangos is  
23 essentially looking for another bite at the apple, so to  
24 speak, and we don't see any basis to give him one.

25           In short, Your Honor, there is no pre-petition

1 right to payment that gives rise to a claim and Mr. Marangos  
2 hasn't met his burden. So, Your Honor, we'd request that  
3 the Court expunge the claim and certainly reserve our rights  
4 with respect to anything Mr. Marangos has to say.

5 THE COURT: Very well. Mr. Marangos, would you  
6 like to be heard?

7 MR. MARANGOS: Again, I understand what the  
8 counselor is saying, but I want to add that I have sent a  
9 filing in to the Court and to the law office of Dickstein  
10 Shapiro to Ms. Stephanie, they will agree and explain what  
11 basically has transpired and why these cases have been  
12 dismissed. This case has however been dismissed under false  
13 pretense and especially over 100 exhibits I sent to the  
14 Court. I have the proof there was a filing of civil rights  
15 and EOC for discrimination, and they should not have  
16 dismissed the case unless it went to the full review and  
17 give me the opportunity to present myself at the Court and  
18 talk about it.

19 And, unfortunately, there is missing from the  
20 Sixth District Court of Detroit with no position and, if  
21 I'm not mistaken, the laws clarify he should not dismiss  
22 discrimination case from EOC civil rights until an end that  
23 shows satisfaction. Unfortunately, Judge O'Meara (ph)  
24 again, was not good with Spanish and, in fact, the EOC would  
25 have request the Sixth District Court to provide me with an

1 attorney because once the EOC complained and he denied this  
2 right to me.

3 Also, the court clerk can provide me with the full  
4 basis of the right to the Court to give me an attorney and I  
5 can when I submit to them they just deny me to provide an  
6 attorney to me.

7 So, basically, they have railroaded everything  
8 with end of my case, they say (indiscernible - 00:07:40) to  
9 be called and then I was given all the rights and the  
10 resource to stay on that before the case and follow the  
11 proper procedure and finalize. But, unfortunately, the  
12 Court would not allow me to present myself to the Court  
13 neither to see what has happened there behind closed doors.  
14 I did not bother to (indiscernible - 00:08:01). Nobody  
15 knows. (Indiscernible - 00:08:04) they have misplaced the  
16 EOC right to (indiscernible - 00:08:11). And to me that's  
17 not an excuse. It's supposed to have been very simple to us  
18 for me or the Court or somebody else to provide that  
19 (indiscernible - 00:08:22) letter back to (indiscernible -  
20 00:08:24).

21 So basically all this has been kind of abnormal  
22 and there have bent all the rules basically and in order to  
23 dismiss this case is because if you read the brief I sent to  
24 you, you will find a lot more explanation of what has  
25 transpired over the years.

1                   Now, to go to the filing of the law office of  
2                   (Indiscernible - 00:08:51) to present by Dickstein Shapiro.  
3                   I do realize that first filing from January 26 on the page  
4                   of, not page, page number 5, which says there is no legal  
5                   factual based on the claim. They haven't touched Exhibit F,  
6                   on the very last page of the exhibits and that's the very  
7                   same exhibit where they have falsified the exhibit to the  
8                   federal courts, which was exclude on my WorldCom case.  
9                   That's what base they use to go blame for discrimination,  
10                  blackmail, et cetera, and before they don't even pay  
11                  attention (indiscernible - 00:09:36) closed the case.

12                  But this new law office now submit the same paper  
13                  to the Court, to the Bankruptcy Court, to you as a hall of  
14                  evidence to dismiss the case for a non-legal factual basis.  
15                  Well, after I received all of this information, I reply and  
16                  I should be hearing my reply by now and I closed the video  
17                  tape over the World Com case. I closed the transcript.  
18                  Also, other evidence to prove this Exhibit F, as they call  
19                  them here, this law office. It was actually Exhibit A back  
20                  in 1999, January 12, who the judge have exclude from the  
21                  record because they forced me to sign, but this law office  
22                  sent me that in order to divert the opinion of the Court and  
23                  just dismiss the case.

24                  Well, actually, see, my filing of February 2nd, I  
25                  have a couple of more replies from the law office who they

1 start talking about the legal or factual basis, and they  
2 create a footnote and the last filing under page three, who  
3 they say they submit this exhibit back to the Court, to the  
4 Bankruptcy Court for reasons as supported under my  
5 (indiscernible - 00:11:04) for background information.

6 But as you see, they hold, to an exchange now,  
7 we're not talking about legal or factual basis of my case,  
8 but we tried to hide on the bottom of the page and so nobody  
9 pay attention, they did file it again to the Court falsify  
10 records. So for one more time, we (indiscernible -  
11 00:11:29) be in 1999, excuse me, they providing again  
12 falsified records to the Court.

13 So I believe, I really believe this filing of the  
14 Dickstein Shapiro should be completely dismissed by the  
15 Court based on this falsified records provided into the  
16 Court. And I believe other courts should allow me to state  
17 my case and not have any more objection to that so go  
18 forward with that and be able, at some point in time, to  
19 have a ruling from you or someone else in order to close  
20 this case and go on with my life.

21 So any other information that you might need to  
22 know about this claim is a part of the paperwork I sent to  
23 you and the disks and also a cc to the law office, but I do  
24 believe I have legal and factual case here. Those  
25 (indiscernible - 00:12:37) just tried to throw them under

1 the board for other reasons, which is beyond my knowledge  
2 probably way up.

3 So pretty much that's what I have to say to  
4 Your Honor.

5 THE COURT: Okay. Thank you.

6 MR. MARANGOS: Thank you, Judge.

7 THE COURT: Ms. Greer, do you want to reply?

8 MS. GREER: Yes, Your Honor. Just briefly.

9 THE COURT: Go ahead.

10 MS. GREER: I don't want to belabor the point,  
11 Your Honor, but, you know, Mr. Marangos' attempts to recover  
12 from the debtors for these claims that he's asserted, both  
13 in his odyssey brief and in his proof of claim, are simply  
14 misguided. There's no factual basis, no legal basis, and  
15 the GUC Trust expressly refutes whatever facts Mr. Marangos  
16 has asserted.

17 I will point out, and as we said in our reply to  
18 Mr. Marangos' response, that we withdraw that exhibit from  
19 consideration without conceding any point and I certainly  
20 don't see any basis for why the record was falsified, as Mr.  
21 Marangos claims, but it was not essential to the pleading.  
22 In fact, it was just provided to give the Court background  
23 information as to the fact that Mr. Marangos was a former  
24 employee and that his employment terminated at a particular  
25 date.

1           So, Your Honor, I don't think we need to consider  
2           that at this time.

3           You know, again, I just wanted to reiterate that  
4           any claims that Mr. Marangos may or may not have had against  
5           GM were resolved in prior litigation. Mr. Marangos brought  
6           eight cases. They were resolved by motions to dismiss or  
7           summary judgment motions, all in favor of the debtors. So I  
8           think that sort of says it all, Your Honor, unless you have  
9           any questions.

10           THE COURT: No, I do not. Ms. Greer, have a seat,  
11           please.

12           Mr. Marangos, you will hear a moment or two  
13           of silence before I rule.

14           (Pause)

15           Ladies and gentlemen, this contested matter  
16           between the Motors Liquidation Company, GUC Trust, and

17           Mr. Dimitrios Marangos arises in the jointly  
18           administered Chapter 11 cases of Motors Liquidation Company,  
19           formerly known as General Motors and its affiliated debtors.

20           The GUC Trust moves to disallow the claim of  
21           Mr. Marangos and, after considering the record on this  
22           motion and having heard oral argument, I am granting that  
23           motion to disallow the claim and disallowing the claim. And  
24           the following are my findings of fact and conclusions of law  
25           for that determination.

1           Mr. Marangos was a GM employee from 1977 until his  
2           resignation in 1999. By his own admission, he has filed no  
3           less than eight federal lawsuits against GM, all before GM's  
4           Chapter 11 case was filed for various reasons, including  
5           discrimination, swindling of intellectual property,  
6           blackmail, and conspiracy, among others. He also filed a  
7           Workers Comp. claim in Michigan, which was ultimately  
8           settled for \$135,000.

9           As relevant here, Mr. Marangos' file, claim number  
10          61381, in the amount of \$20 million plus increases, I  
11          quoted, for the reasons of "personal injury/other." His  
12          claim form also attached information about his prior Workers  
13          Compensation claim, lists of the lawsuits he had filed  
14          against GM, information regarding an appeal of one such  
15          suit, and information about a pension from GM that he  
16          believed he was entitled to receive.

17          Mr. Marangos claimed in his response and its  
18          lengthy exhibits that GM falsified court records and that GM  
19          controlled the courts such that he did not receive a fair  
20          trial. Importantly, Mr. Marangos does not dispute that each  
21          of his lawsuits and his Workers Comp dispute were finally  
22          resolved before this bankruptcy case, including any  
23          opportunity to appeal.

24          In the case of Teachers Insurance versus Butler,  
25          803 F. 2nd 61, Second Circuit, 1986, the Second Circuit

1 observed that a Bankruptcy Court is precluded from  
2 relitigating judgments rendered by courts of competent  
3 jurisdiction absent a showing that the judgment was procured  
4 by fraud or collusion at page 66. Thus, Mr. Marangos may  
5 not relitigate before me claims that he raised in his  
6 earlier lawsuits unless his claims fall within the fraud or  
7 collusion exception.

8 To fall within the exception, Mr. Marangos must  
9 meet certain pleading requirements. To adequately plead  
10 fraud, Mr. Marangos must meet the requirements of Bankruptcy  
11 Rule 7009, which is substantively identical to Federal Rule  
12 of Civil Procedure 9 and which states that a party must  
13 state with particularity the circumstances constituting  
14 fraud or mistake.

15 The contents of Mr. Marangos' pleadings, though  
16 voluminous, do not meet this stringent pleading requirement.  
17 He does not plead the fraud he alleges with sufficient  
18 particularity. Similarly, applying the lesser standard of  
19 Rule 8 of the Federal Rules of Civil Procedure,  
20 Mr. Marangos' allegations regarding collusion similarly do  
21 not rise to the requisite level to survive the claim  
22 objection raised by the GUC Trust. He has not alleged facts  
23 from which I can find that he has made a plausible claim  
24 that GM owned or otherwise controlled the courts that ruled  
25 against him or that it falsified court records.

1           In this connection, I note that the Supreme Court  
2           has many times told us in the pleading context that  
3           conclusory statements as to ultimate facts are not enough  
4           and, instead, the court must see facts which, if proven,  
5           would establish a plausible claim upon which the court could  
6           grant the relief. Here I cannot determine that the  
7           allegations, notwithstanding how voluminous they are, meet  
8           that standard.

9           The GUC Trust motion to disallow is accordingly  
10          granted in its entirety. Mr. Marangos' claim will be  
11          expunged.

12          Ms. Greer, do I still have a request that I take  
13          action to prohibit -- to absolve you from the need to  
14          respond to further pleadings?

15          MS. GREER: Your Honor, I think it would be a good  
16          idea out of an abundance of caution. Your Honor, I'd just  
17          hate to have the trust incur expenses associated with having  
18          to review the voluminous documents that have been presented  
19          to us to the extent he tries to take further action.

20          THE COURT: All right. Given the prior request  
21          for that in writing, I don't need to take further action on  
22          this by way of argument on this request. The order will  
23          also provide that, in the event he makes any further  
24          filings, the GUC Trust does not need to respond unless and  
25          until I or another judge so directs.

1 Ms. Greer, you are to settle an order consistent  
2 with this ruling at your earliest reasonable convenience.  
3 Mr. Marangos, do you remember what I said to the people  
4 ahead of you about what settling an order is? That means  
5 giving you an indication of what the order I am going to be  
6 asked to sign will say, in fact, it gives you a copy of that  
7 order, and gives you a chance to be heard on whether the  
8 order accurately embodies the Court's ruling.

9 You do not need to respond to that notice of  
10 settlement if you wish to appeal, but if you think that the  
11 proposed order doesn't accurately convey my ruling, you will  
12 have the opportunity to comment on it or to give me your  
13 version of an order that would, which is called a counter  
14 order, within the time provided in the notice of settlement.

15 As I indicated, it does not address or affect your  
16 right to appeal. You will have 14 days from the time of  
17 entry of the earlier order to appeal, but you have no more  
18 than that. I note, for the avoidance of doubt, that the  
19 time to appeal runs from the time of entry of the resulting  
20 order, not from the time that I am dictating this decision.

21 MR. MARANGOS: Yes, Your Honor. I hear that.

22 THE COURT: Thank you. All right.

23 Mr. Marangos, you're free to drop off the line if you wish  
24 now.

25 MR. MARANGOS: Okay.

1 THE COURT: And Ms. Greer, we have the other  
2 matter involving Patricia Meyer and you have some undisputed  
3 matters?

4 MS. GREER: Yes. We have some undisputed matters,  
5 as well. Ms. Whitman reached out to Ms. Meyers and left her  
6 a message, but I don't know if she joined. Ms. Meyers?

7 OPERATOR: Excuse me, Your Honor. This is the  
8 CourtCall operator. Ms. Meyer has not rejoined at this  
9 time.

10 THE COURT: All right. Very well. Then, Court  
11 caller, is there anybody else left on the line who is still  
12 listening?

13 OEPRATOR: No, Your Honor, not at this time.

14 THE COURT: Okay. Then you are authorized to drop  
15 yourself off the line if you choose to.

16 OPERATOR: Yes, Your Honor. Have a wonderful day.

17 THE COURT: Thank you. We are, of course, staying  
18 on the record here and the court reporting equipment is  
19 continuing.

20 Go ahead, Ms. Greer.

21 MS. GREER: Thank you, Your Honor. With respect  
22 to Ms. Meyers, I understand Your Honor has read the  
23 pleadings. Would you like me to go through a little bit of  
24 the background information and the legal arguments or would  
25 you like me to rest on the papers?

1 THE COURT: No. Frankly, Ms. Greer, if she's not  
2 on the line, I don't want you saying anything more that she  
3 can't hear, and, instead, I'm going to dictate a decision.

4 MS. GREER: Okay.

5 THE COURT: And I think I should, while we're  
6 focused on it, do it now.

7 Based on a review of the papers, my ruling on  
8 Ms. Meyer's claim is as follows.

9 This contested matter between Patricia Meyer and  
10 the Motors Liquidation Company, GUC Trust, arises in the  
11 jointly administered Chapter 11 cases of Motors Liquidation  
12 Corporation, formerly known as General Motors Corporation,  
13 and its affiliated debtors, and the exercise of my  
14 discretion for the reasons that follow. The objection to  
15 the claim is sustained and the claim will be disallowed and  
16 expunged. While I said that this is an exercise of my  
17 discretion, I believe, in fact, that I can and should reach  
18 the same conclusion as a matter of law.

19 On September 16, 2009, I entered a bar date order  
20 establishing November 30, 2009, as the deadline for filing  
21 all proofs of claim against the debtors. The bar date order  
22 articulated the requirements for establishing a prima facie  
23 claim. Under the bar date order, all proofs of claim had to  
24 set forth with specificity the legal and factual basis for  
25 the alleged claim and include supporting documentation or an

1 explanation as to why such documentation was not available.

2 See page two of that order at docket entry 4079.

3 In addition, the Court's official Form 10 and the  
4 form that I approved both required on their face that a  
5 claimant attached redacted copies of any documents that  
6 support the claim. It further explained that a claimant may  
7 be required to provide additional disclosure if the debtor  
8 trustee or another party in interest files an objection to  
9 such claim.

10 It's well established that a proof of claim will  
11 set forth the facts necessary to support the claim for the  
12 claim to receive the prima facie validity accorded under the  
13 bankruptcy rules. See Ashford versus Consolidated Pioneer  
14 Mortgage, 178 BR at 226, among many other cases.

15 When a claim is not considered prima facie valid,  
16 the burden remains with the claimant to establish the  
17 validity of the claim. See Lehman, 53 BR 256. I think I  
18 lost a digit there. Decision -- oh, Bankruptcy Court  
19 decisions, excuse me, 256. A decision by Judge Peck in  
20 2010.

21 The bankruptcy code defines a claim as a right to  
22 payment. A right to payment is nothing more nor less than  
23 an enforceable obligation. A claim exists only if the  
24 obligation or if the relationship between the debtor and the  
25 creditor contains all elements necessary to give rise to a

1 legal obligation under relevant non-bankruptcy law. See,  
2 for example, *Chategay*, 53 F. 3rd at 497, a decision by the  
3 Second Circuit in 1995.

4 As for the type of claim asserted here, the  
5 District Court explained in *U.S. v. Messer*, 2000 Westlaw  
6 991337, and I'm quoting, "Section 507A of the bankruptcy  
7 code establishes priorities for certain types of expenses  
8 and unsecured claims against a debtor. Eighth on this list  
9 of priority claims are claims for unpaid income taxes. This  
10 priority reflects Congress' determination that, when a  
11 debtor is in bankruptcy, the Internal Revenue Service, which  
12 cannot choose its debtors, should be paid before the general  
13 unsecured creditors that can.

14 Congress limited its priority, however, to tax  
15 liabilities for which a return was due within three years of  
16 the filing of the bankruptcy petition. As the statutory  
17 text of Section 5078A makes clear, priority is given to  
18 allow tax claims "of governmental units" not of private  
19 individuals.

20 Turning now to Ms. Meyers' claim, on October 26th,  
21 2009, she filed proof of claim number 15927. On the face of  
22 her claim, she asserted an amount of "billions in back  
23 taxes" and the basis for her claim was "tax evasion." By  
24 checking a certain box on the proof of claim form, she, in  
25 fact, sought priority status for that claim under Section

1 5078A of the bankruptcy code as a tax or penalty owed to  
2 governmental units. Where the proof of claim asked the  
3 claimant to identify credits that might apply to the claim,  
4 she wrote, "Unknown. Check with the IRS."

5 After considering this proof of claim, the debtors  
6 contacted Ms. Meyer to request that she provide a more  
7 specific dollar amount than "billions." She responded by  
8 reducing her claim to a liquidated amount of exactly  
9 \$500,000.

10 On January 6, 2012, the GUC Trust, which was  
11 formed under the debtors confirmed plan of reorganization,  
12 filed an objection to Ms. Meyers' claim arguing that her  
13 claim was lacking in any supporting documentation or legal  
14 authority. In her response, she contended that her claim  
15 was "based on the cost of my organization's investigation of  
16 the debtors and to others related to the debtor's purported  
17 fraud."

18 These expenses began in 1997, Ms. Meyer explains,  
19 that, of course, being 12 years before the bankruptcy, when  
20 GM workers became aware of rumors of a spin-off of GM's  
21 parts division called Delphi. Apparently, these rumors led  
22 Ms. Meyer to incur expenses in the aggregate amount of  
23 exactly \$500,000 over the course of the following 15 years.  
24 She described those expenses as including office rent,  
25 office supplies, communications, travel, meetings at various

1 meeting sites, and phone bills, none of which were itemized  
2 or cataloged. And even if they were, that is, even if there  
3 were proof that these expenses were actually incurred by Ms.  
4 Meyer, I remain unable to connect such expenses to a right  
5 of payment by the debtors to Ms. Meyer under the law.

6 To be clear, there is no evidence that Ms. Meyer  
7 herself was ever employed by GM or Delphi, nor is there any  
8 indication that she ever purchased a GM product, nor is  
9 there any indication that she ever sold any parts or  
10 assemblies to GM or that she provided any services to GM.  
11 Her connection to the debtor's employment or to the debtors  
12 in any way is entirely unclear. I have been unable to find  
13 any statutory or contractual relationship between Ms. Meyer  
14 and the debtors under which they would owe any sum, whether  
15 a sum in the amount of the billions or even \$500,000.

16 As for Ms. Meyer's accusations, she contends that  
17 GM and Delphi were "cooking their books to appease Wall  
18 Street." She states that she felt she "had an honest claim"  
19 because GM "created the lie and fraud, therefore, it is GM's  
20 due to the American taxpayer." She attached to her response  
21 various pages of what appeared to be a prospectus for Delphi  
22 dated sometime around 1998, but the significance and  
23 relevance of this prospectus is impossible for me to  
24 ascertain.

25 In addition to the Delphi prospectus, she provided

1 in support of her claim e-mails and letters. Such  
2 correspondence proves that she occasionally contacted  
3 various governmental officials about her accusations  
4 concerning GM over the course of many years, but it fails to  
5 advance or substantiate her claims by any reasonable or  
6 comprehensible measure.

7           Apparently, Ms. Meyer wants to be reimbursed by GM  
8 for her investigation of GM, an investigation that led  
9 nowhere and produced no fruits whatsoever. She seems to  
10 have alleged fraud, but failed to logically tie that fraud  
11 to any discernible harm. She cited no legal authority or  
12 principles underlying her claims and I'm aware of none.

13           The federal rules require that allegations of  
14 fraud must be stated with particularity. Generalized  
15 allegations of fraud without more do not give rise to relief  
16 or a right to payment, especially where the claimant's  
17 connection to the alleged fraud is so completely mystifying.

18           Ms. Meyer's proof of claim neither articulates  
19 what GM did that might afford her legal relief, nor  
20 demonstrate how she would even have standing to pursue  
21 remedies against the debtor. And she plainly hasn't shown  
22 an entitlement to priority treatment under Section 507A-8 of  
23 the bankruptcy code, which is to be used by governmental  
24 taxing authorities only.

25           Even if I were to impose only the relaxed

1 standards for general unsecured claims under 502B, I  
2 necessarily would have to conclude and do conclude that she  
3 has alleged no legal obligation giving rise to a right of  
4 payment. Because her claim was so entirely lacking in  
5 supporting evidence and logical linkage to GM, it was not  
6 entitled to any presumption of prima facie validity and she  
7 failed to meet her burden for establishing a claim.

8 I determined that she has failed to meet her  
9 burdens to show an entitlement to relief from GM and that  
10 the claim, accordingly, must be expunged.

11 Ms. Greer, you're to settle an order in accordance  
12 with the foregoing at your earliest reasonable convenience.

13 MS. GREER: Yes, Your Honor. Thank you.

14 THE COURT: Do you want to deal with any other  
15 matters now?

16 MS. GREER: Your Honor, with the Court's  
17 indulgence, I'd like my colleague, Ms. Whitman, to quickly  
18 present to the uncontested omnibus objections.

19 THE COURT: Sure. Come on up, please,  
20 Ms. Whitman.

21 MS. WHITMAN: Mikaela Whitman from Dickstein  
22 Shapiro on behalf of the Motors Liquidation Company GUC  
23 Trust.

24 THE COURT: Welcome.

25 MS. WHITMAN: Thank you. We have three

1 uncontested omnibus objections before the Court today. They  
2 are the 266th omnibus objection. We have zero adjourned  
3 claims and five going forward. The 267th omnibus objection,  
4 we have 3 adjourned claims and 25 going forward. The 268th  
5 omnibus objection, one adjourned and five going forward.

6 Unless Your Honor has any questions, I'd like to  
7 ask the Court to approve these objections.

8 THE COURT: The objections are sustained. The  
9 claims will be disallowed to the extent you requested, so to  
10 the extent you continued them, we'll deal with them for  
11 another day. And I would ask you or one of your colleagues  
12 to get the order and floppy or CD with the proposed order  
13 over to my courtroom deputy, Ms. Blum (ph), at your earliest  
14 convenience.

15 MS. WHITMAN: Thank you, Your Honor.

16 THE COURT: Thank you. All right. It's now  
17 almost 2:15. Am I correct that we're done?

18 MS. GREER: Yes, Your Honor.

19 THE COURT: All right. Thank you, folks. We're  
20 adjourned.

21 (Whereupon these proceedings were concluded at 2:14 PM)  
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I N D E X

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I, Dawn South, Cherri Brown, and Becky Flick, certify that the foregoing transcript is a true and accurate record of the proceedings.

**Dawn South**

Digitally signed by Dawn South  
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AAERT Certified Electronic Transcriber CET\*\*D-408

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Date: March 2, 2012