

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: . Case No. 09-50026-mg
. Chapter 11
. .
MOTORS LIQUIDATION COMPANY, . (Jointly administered)
et al., f/k/a GENERAL .
MOTORS CORP., et al, . One Bowling Green
. New York, NY 10004
Debtors. .
. Thursday, December 20, 2018
. 2:00 p.m.

TRANSCRIPT OF CASE MANAGEMENT CONFERENCE
BEFORE THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For General Motors LLC: King & Spalding, LLP
By: ARTHUR J. STEINBERG, ESQ.
1185 Avenue of the Americas
New York, NY 10036
(212) 556-2158

Paul, Weiss, Rifkind, Wharton &
Garrison, LLP
By: PAUL BASTA, ESQ.
KYLE J. KIMPLER, ESQ.
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3253

For Hilliard Munoz Goodwin Procter LLP
Gonzales LLP and By: WILLIAM WEINTRAUB, ESQ.
Thomas J. Henry The New York Times Building
Injury Attorney: 620 Eighth Avenue
New York, NY 10018
(212) 813-8839

APPEARANCES CONTINUED.

Audio Operator: TL, ECRO

Transcription Company: Access Transcripts, LLC
10110 Youngwood Lane
Fishers, IN 46038
(855) 873-2223
www.accesstranscripts.com

Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

APPEARANCES: (Continued)

For Ignition Switch
Plaintiffs and
Non-Ignition Switch
Plaintiffs:

Brown Rudnick
By: EDWARD WEISFELNER, ESQ.
HOWARD S. STEEL, ESQ.
Times Square Tower, #47
New York, NY 10036
(212) 209-4917

For Wilmington Trust,
as GUC Trust
Administrator:

Drinker Biddle & Reath
By: KRISTIN K. GOING, ESQ.
1177 Avenue of the Americas, 41st Fl.
New York, NY 10036-2714
(202) 230-5177

For Participating
Unitholders:

Akin Gump Strauss Hauer & Feld LLP
By: SEAMUS DUFFY, ESQ.
One Bryant Park
New York, NY 10036-6745
(212) 872-1000

Also present:

Kirkland & Ellis, LLP
By: MARK NOMEILLINI, ESQ.
601 Lexington Avenue
New York, NY 10022
(212) 446-4800

TELEPHONIC APPEARANCES:

For Ignition Switch
Plaintiffs and
Certain Non-Ignition
Switch Plaintiffs:

Hagens Berman Sobol Shapiro LLP
By: STEVE W. BERMAN, ESQ.
555 5th Avenue, #1700
New York, NY 10017
(212) 752-5455

For Additional
Ignition Switch
Pre-Closing Accident
Plaintiffs:

Andrews Myers, P.C.
By: LISA M. NORMAN, ESQ.
1885 Saint James Place, 15th Floor
Houston, TX 77056
(713) 850-4200

For Lawrence Elliott,
Et al:

GARY PELLER, ESQ.
600 New Jersey Avenue N.W.
Washington, D.C. 20001
(240) 463-7400



1 (Proceedings commenced at 2:00 p.m.)

2 THE COURT: Please be seated. We're here in Motors
3 Liquidation Company, 09-50026. I have the list of appearances
4 in front of me.

5 Mr. Weisfelner, do you want to start?

6 MR. WEISFELNER: Yes, Your Honor. Thank you. First
7 of all, on behalf of all of the combatants, I want to thank
8 Your Honor for the flexibility that you've shown in
9 rescheduling this conference. My colleagues have asked me to
10 avoid saying things like "here we go again" or "the third
11 time's the charm," but frankly I couldn't help myself.

12 I want to divide my comments into two parts.

13 THE COURT: That's a comment that's been made by a
14 lot of people about you, Mr. Weisfelner, but --

15 MR. WEISFELNER: That I couldn't help myself.

16 THE COURT: Right.

17 MR. WEISFELNER: I accept it.

18 I want to divide my comments in two parts, starting
19 with the question of timing. And in particular, so as to avoid
20 Your Honor having to ask the question, I want to deal with why
21 is it taking us so long, and then what do we see as to the
22 timing generally going forward.

23 As we spelled out in our December 12th letter, "we"
24 meaning the plaintiffs, the GUC Trust, and the Unitholders, are
25 all working very hard on a revised proposed settlement



1 consistent with Your Honor's September 25th decision. The
2 parties are very cautious that, charging up the hill for the
3 third time, this time we need to get it right.

4 And just to give Your Honor a sense of what the delay
5 has been, first and foremost, we had to get a thorough handle
6 on the path forward, as was outlined in Your Honor's September
7 25th opinion, understanding through all of the various class
8 action gurus employed by each of our respective firms what the
9 rulings in Manville and the subsequent Ortiz decision means for
10 our path forward and ultimately what the support was for a
11 limited-fund, non-opt-out class or classes.

12 To complicate matters, as I'm sure Your Honor is
13 aware, there are brand new amendments to Rule 23.

14 THE COURT: I referenced them in the opinion.

15 MR. WEISFELNER: And in particular, amendment to Rule
16 23(e) (2) (B), which requires that the first step is to seek a
17 finding from this Court, that this Court will likely be able to
18 approve the settlement and our settlement purposes class
19 certification.

20 Which brings us to the next issue, which is notice
21 and notice costs. And, Your Honor, to fully appreciate that,
22 there are two potential universes of class members. In
23 universe one, we are looking at all Old GM registration holders
24 up to the bar date. Our best estimate is that's over
25 26 million registrants. Not cars, because the cars may have



1 been owned or leased by multiple parties, but 26 million
2 registrants. And the cost of updating those registrations and
3 getting enough information to be able to do mail notices and
4 subsequent email notices or just the mail notices, our best
5 estimate is \$13 million.

6 Conversely, there's an alternative universe, and that
7 is one where you would take out or subtract anyone who sold
8 their car before the bar date on the theory that you, by
9 definition, therefore sold the car before the recall notices.
10 That's a universe that shrinks down to some 12 million
11 registrants, and the cost of updating all those registrations
12 from the original loan or through as many successive purchasers
13 up until the person who owned the car as of the bar date is
14 estimated at some \$7 million.

15 And again, Your Honor, that's just the cost of
16 updating the registrations. There's additional cost for
17 mailing, additional cost for establishing and maintaining a
18 website.

19 The other factor is the timing of updating the
20 registration materials. For most states, we are told by the
21 vendor involved that it's a four-to-six-week process. There
22 are, however, a handful of states where you can add yet another
23 six weeks to the time frame because there are a lot more hoops
24 to jump through in those jurisdictions in order to obtain
25 updated registrations.



1 The other thing that impacts all of us in terms of
2 timing is, as I'm sure Your Honor is aware or will become
3 aware, Judge Furman has in front of him certain summary
4 judgment decisions that are currently pending that will impact
5 the size of the two universes. And without getting into the
6 complexity, it's not just a binary call, but we expect that
7 Judge Furman's summary judgment ruling could very well
8 implicate whether we're talking about 26 million registrations
9 or 11- or 12 million registrations; a cost would be the
10 13 million or 7 million.

11 We expect that ruling fairly soon. And by fairly
12 soon, I can't give you a definitive date. The judge did have
13 on his agenda bellwether trials, which are now off of his
14 plate, if you will, because of a settlement. And at least the
15 lead plaintiffs believe and hope that the summary judgment
16 ruling will now take its place in terms of order of priority.

17 THE COURT: Has he heard argument on this summary
18 judgment?

19 MR. WEISFELNER: Your Honor, I don't know. I think
20 it's fully submitted, but no oral argument. And I'm not sure
21 that he's going to request oral argument. But in any event,
22 but for any argument he may seek, the matter is fully briefed
23 by all the parties.

24 So discretion being the better part of valor, it
25 seems to us that the determination of what notice to proceed



1 with, because of the significant difference in cost, might very
2 well wait for an ultimate ruling by Judge Furman on the pending
3 summary judgment motions. That's not to say that an awful lot
4 of work can't and shouldn't be done in the interim.

5 THE COURT: How do you anticipate proposed class
6 definitions here to differ from the class definitions in the
7 district court?

8 MR. WEISFELNER: They will differ significantly for a
9 whole host of reasons, not the least of which is the two
10 classes don't overlap. There is a much different plaintiff
11 class in front of Judge Furman in his MDL. By definition, our
12 class are holders as of the bar date, and whether they include
13 prior owners of the same vehicles or prior lessees of the same
14 vehicles is the issue that, among others, is up for
15 determination by Judge Furman.

16 Just Furman, conversely, is looking at owners of the
17 cars post-sale, except for the issue of I guess successor
18 liability, which applies to presale owners as well. But
19 they're two different classes. Not only that, but Judge Furman
20 is working towards certification of a class for trial purposes,
21 which, as Your Honor knows, is a lot different a standard than
22 certification for settlement purpose.

23 Your Honor, going back to the notice and the cost of
24 notice, some of us on the plaintiff, GUC, beneficial holder's
25 side believe that in a settlement context, the defendant picks



1 up the cost of notice, the defendant in this case being the GUC
2 Trust. Some of us have expressed the view that the cost of
3 notice should be shared, and still other of us believe that GM,
4 both contractually and as a matter of equity, ought to be,
5 pardon me, picking up some or all of the notice costs. After
6 all, as I'm reminded, we wouldn't be here today but for the
7 fact that GM did not give notice of the barred date to people
8 that were impacted by these defective vehicles.

9 In any event, as Your Honor may recall from prior
10 iterations of our settlement agreement, it was originally
11 contemplated that the GUC Trust would "front," for lack of a
12 better word, \$6 million worth of notice costs, plus \$15 million
13 worth of a settlement payment, for a grand total of 21 million.
14 But remember that the GUC Trust was only going out of pocket
15 and taking a risk as to the notice costs before Your Honor were
16 -- would have been in a position to approve the settlement.

17 Now we may have to go back to the GUC Trust and ask
18 them to put a lot more money on the line before there is a
19 final determination of the merits of the settlement and the
20 certification of the class for settlement purpose.

21 That's why, Your Honor, we think we'll be done with
22 all the paperwork and done with the outstanding issues that
23 need to be resolved, and I think we're very close to a final
24 resolution, and we need until the end of January to get
25 started.



1 THE COURT: I think you're right. It said January
2 3rd. I think you've now pushed that further.

3 MR. WEISFELNER: Yeah. I'm not sure the letter ever
4 said the 3rd. I think the letter clearly said the end of -- I
5 think it said 31, actually.

6 THE COURT: Okay. I misremember then. Go ahead.

7 MR. WEISFELNER: So here's the process as we envision
8 it and when we think we get on file. By the end of January, if
9 not sooner, we will embark on what we refer to as "stage one."
10 In stage one, we will be asking the Court to approve our form
11 of notice, which will be state-of-the-art notice under Rule
12 23(e)(1); in other words, direct-mail notice. And there will
13 be one of two universes of people who are going to get the
14 notice, depending on what Judge Furman ultimately rules.

15 We'll ask Your Honor, in stage one, to make a
16 determination that you are likely to approve the settlement
17 under both Rule 9019 and Rule 7023. And once that's
18 accomplished, and we have all the information we need to
19 conduct the notice, the notice will begin.

20 Now, it will take us, as I indicated before, a period
21 of time to collect the registration data from the vendor and to
22 do the notice itself. So it may very well be that if we're in
23 and out of court in the month of January, early February, we're
24 not back in court probably until May seeking final approval of
25 both the settlement and the certification.



1 Stage three is the estimation proceeding itself. And
2 it seems to me that between now and May when we ask the Court
3 for final approval of the settlement and certification for
4 settlement purposes, we can get a lot of work done in terms of
5 ginning up the estimation proceeding. Although I do recall
6 Your Honor saying that if Your Honor were to approve the
7 settlement, you intended to direct the parties to mediation
8 before moving to estimation. And if that's still Your
9 Honor's --

10 THE COURT: It was so long ago that I said that,
11 Mr. Weisfelner, that I don't even remember it.

12 MR. WEISFELNER: Okay. But one way or the other, we
13 should be ready with estimation motion and hopefully some
14 semblance of agreement with GM on the procedure for estimation.

15 I should stop here and divert a bit to let you know
16 that consistent with Your Honor's order establishing today's
17 status conference, we did reach out to New GM and we did have a
18 meet and confer, at which time we asked New GM what its views
19 were with regard to discovery. We asked New GM what its views
20 were with regard to motions to withdraw the reference. We
21 asked New GM what its views were with regard to continuing or
22 revising its motion to stay proceedings.

23 And in fairness to New GM, their response should have
24 been anticipated, and it was, can't really tell you until we
25 see your pleadings. So we will be pressing them yet again,



1 sometime after we file our stage-one pleadings, for their view
2 on those three topics: discovery, which we think there ought
3 not be any until we get the estimation; withdraw the reference;
4 continue motion to stay.

5 The fourth and final stage, once the estimation is
6 completed, and assuming that there is any trigger of the
7 accordion feature, would be for the plaintiff's side, working
8 together with a mediator or judicial monitor, to come up with
9 what I refer to as "trust distribution procedures," and to
10 present all of that to the Court on notice to affected parties.

11 There is a possibility, at that stage, that the class
12 could be decertified, re-jiggered, you know, if any party in
13 interest felt that their interests weren't being adequately
14 protected in terms of the allocation methodology that the
15 parties ultimately put forward that Your Honor will be asked to
16 approve.

17 THE COURT: Come back to stage one.

18 MR. WEISFELNER: Yes, sir.

19 THE COURT: Do you contemplate one or more classes or
20 subclasses?

21 MR. WEISFELNER: We contemplate one or more. And not
22 to be cute about it, the current contemplation is that there
23 will be a class consisting of people who owned or leased the
24 initial defect cars. I'm forgetting my recall numbers, but I
25 think it was 047. And the other class will be all of those



1 owners or lessees of the non-initial-ignition-switch cars. So
2 those are the two classes that we currently contemplate.

3 THE COURT: So Judge Furman's various decisions
4 identify differences in the law of various states. And does
5 that compel subclasses?

6 MR. WEISFELNER: It does not, Your Honor, and let me
7 tell you why.

8 THE COURT: Go ahead.

9 MR. WEISFELNER: We contemplate that all of Judge
10 Furman's rulings with regard to underlying merits -- and Your
11 Honor may recall that one of the ones that we all seem to point
12 to, first and foremost, is manifestation versus
13 non-manifestation. And as Judge Furman has previously
14 indicated, there are some states where you can't make out a
15 claim for economic loss on a theory of "benefit of the bargain"
16 unless your vehicle demonstrated or manifested a defect.

17 And, Your Honor, when it comes to the estimation
18 procedure, that ruling and every other ruling that may impact
19 the damages calculation on an overall basis to determine how
20 much of any of the accordion gets triggered is something that
21 the plaintiffs will have the burden of culling, for fear that
22 New GM will hand our heads to us if we were to attempt to
23 demonstrate damages that in any way conflict with any of the
24 merits rulings that we've gotten from Judge Furman to date.
25 But they will not require separate classifications or



1 certification at the settlement phase.

2 It is possible that once the accordion is triggered,
3 based on the evidence that we intend to proceed with, in full
4 contemplation of Judge Furman's prior rulings, that that may
5 affect people's entitlement to all or any portion of the
6 accordion when it comes time to allocation. And it's possible
7 at that stage of the proceeding, depending on parties' views,
8 that we may very well have to -- and I don't know the exact
9 methodology -- decertify the original settlement class,
10 re-certify subclasses to take into account people's different
11 expectation levels. It gets a little complicated, because even
12 in those states that require manifestation, there may very well
13 be people whose cars manifested the defect. And, Your Honor, I
14 would think all of that needs to be accounted for in the class
15 context, albeit at the allocation stage and not before that.
16 I'd be surprised if GM didn't have a different perspective, but
17 we'll deal with it when they raise it, as I'm sure they will.

18 THE COURT: Obviously, motions to withdraw the
19 reference are decided by the district court, not by this Court.
20 But what is your view -- you recognize that Judge Furman is
21 going to be deciding a fairly large number of issues that
22 impact on class certification. He's already decided many, I'll
23 refer to them as "merits issues," that deal with economic loss.
24 Why shouldn't the reference be withdrawn and Judge Furman
25 decide all of the class issues?



1 MR. WEISFELNER: For the same exact reason that the
2 last time GM sought to withdraw the reference from the
3 bankruptcy court, the district court denied the withdraw. And
4 those are breaking them down to their two respective groupings.
5 The only summary judgment issue that could at all impact
6 proceedings before this Court is the one that speaks to the
7 size of the universe.

8 As to the merits decisions that he's made, and is not
9 likely to make any more before we get to estimation, but if he
10 were, all of those merits determinations will be -- will impact
11 our trial preparation. So there's not a decision that Judge
12 Furman has made that won't be reflected in how we try the
13 estimation case.

14 THE COURT: From your letter, I take it you agree
15 that to the extent proceedings continue in this Court, and
16 Judge Furman has issued decisions and may issue additional
17 decisions that I'll refer to as "merits," those would -- you
18 would agree those would apply in further proceedings here?

19 MR. WEISFELNER: Absolutely. Either in connection
20 with -- as we plotted out, his near-term decisions are likely
21 to involve summary judgment on the pending papers, which could
22 dramatically impact the size of the universe, therefore who
23 gets noticed, therefore the cost of notice. It makes sense to
24 most of us that we ought to be awaiting that determination
25 before we blow X number of millions of dollars on costs of



1 notice for people that Judge Furman has decided are entitled to
2 notice. There are some countervailing concerns among some of
3 the folks within the beneficiary and GUC class about just how
4 ironclad a series of protections they want, but I think it'll
5 resolve itself that way.

6 Any merits-based issues that the judge has previously
7 made or will make in the future will be reflected by necessity
8 as part of the estimation proceedings. Your Honor is not
9 likely to put in the column of adding up to hopefully
10 \$10 billion, any dollar amount that reflects damages that Judge
11 Furman has already said, sorry, doesn't fly. So we will be
12 careful, and GM will hold us to our promise to be careful not
13 to try anything that's already been determined. And in that
14 fashion, I think all of Judge Furman's past and future
15 determinations will be reflected in all of the proceedings that
16 Your Honor will be asked to engage in.

17 THE COURT: New GM's letter, which is ECF 14384, very
18 briefly addressed, because I requested it be addressed, the
19 issue of mediation. And my takeaway from that portion of the
20 letter is that they've been reasonably successful in resolving
21 personal injury/wrongful death -- presale personal
22 injury/wrongful death cases. How, if at all, does that affect
23 the -- your achieving the threshold to trigger the accordion?

24 MR. WEISFELNER: Your Honor, our co-leads, together
25 with all of our experts, have assured me that we easily get to



1 the \$10 billion threshold if you were to assume zero value for
2 personal injury/wrongful death.

3 Now, having said that, I read the letter. I've been
4 reading submissions to Judge Furman. I know approximately how
5 many personal injury/wrongful death plaintiffs actually signed
6 on to the last version of the settlement agreement. I'm led to
7 believe that not very many of them have settled, so we still
8 have the same grouping off personal injury/wrongful death.

9 I think it's great that other personal
10 injury/wrongful death claimants against New GM, primarily folks
11 that had their injury or loss after the sale date, you know,
12 are being resolved. But I don't think it's going to have a
13 dramatic impact on us, A, because I think we hit the threshold
14 without personal injury/wrongful death. But I believe that
15 we'll still have lots of company when it comes to the
16 estimation trial.

17 THE COURT: Since you're up here, I'll ask you this
18 now. Mr. Peller, I see, is on the phone list, that he's
19 appearing by telephone. His letter, which is at ECF 14382,
20 expresses his view that some or all of his clients should be
21 able to participate and agreed that they want to participate in
22 the settlement. They certainly left that open. Do you want to
23 address the issues raised by Mr. Peller's letter?

24 MR. WEISFELNER: Sure. As I view it, Mr. Peller
25 really has two concerns. One is to the extent that he has



1 clients that have accident claims relating to Delta ignition
2 switch related cars. He'll be given the same opportunity as
3 the people represented by Mr. Weintraub and his cohorts to sign
4 onto the settlement agreement, or alternatively to file
5 whatever objections he thinks are necessary. But it's our
6 intent to include his clients as part of the settlement.
7 That's sort of up to him.

8 He was invited to our meet and confer. He will be
9 shown the settlement agreement in advance. We will walk him
10 through any questions, concerns, or comments that he may have.

11 But in addition --

12 THE COURT: What about the other recalls?

13 MR. WEISFELNER: Mr. Peller has a client or clients
14 that are claiming damages on account of different
15 non-ignition-switch related claims. I guess that's Mr. and
16 Mrs. Elliott. And this is a -- an injury or a claimed defect
17 that's outside the scope of the MDL or what it is that the co
18 leads have been doing. But I understand that the GUC Trust has
19 been coordinating with Mr. Peller.

20 THE COURT: I'm going to ask Ms. Going about what the
21 GUC Trust

22 MR. WEISFELNER: But she's really in a much better
23 position to address it than I am.

24 THE COURT: Okay. That's fine. All right. Anything
25 else you want to add at this point?



1 MR. WEISFELNER: No, Your Honor.

2 THE COURT: Let me hear from Ms. Going, then.

3 MR. WEISFELNER: Thank you.

4 MS. GOING: Good afternoon, Your Honor. Kristin
5 Going, Drinker Biddle Reath, on behalf of Wilmington Trust as
6 the GUC Trust administrator.

7 So why don't I just start right where Mr. Weisfelner
8 let off. So with regard to the Elliotts and the 2006
9 Trailblazer, which I believe they are alleging a door handle
10 defect, Mr. Peller did file a joinder to the motion to file a
11 late claim on behalf of the Elliotts and their Trailblazer.
12 But as we've discussed with Mr. Peller, that the Trailblazer
13 and this door handle defect, I'm not even sure if the recall
14 for this door handle was actually issued prior to the bar date
15 or after the bar date.

16 This is completely separate and apart from the
17 ignition switch, both defined term and undefined term "ignition
18 switch defects." And so we view this as no different than,
19 say, the Gillespie matter that was before you previously on a
20 motion to file a late claim. And so we're prepared to proceed
21 on adjudicating the motion to file a late claim.

22 But procedurally here, all we have is Mr. Peller
23 joining the late-claimed motion that was filed by the economic
24 loss plaintiffs, and it attached, you know, their proof of
25 claim that was for ignition switch defects. So we've asked



1 Mr. Peller to actually file something on behalf of the Elliotts
2 specifically addressing the Trailblazer and the door handle and
3 their allegations for why they would be entitled to file a late
4 claim. And he has agreed to do that, and then we would
5 respond.

6 THE COURT: Okay. Anything else you want to add at
7 this point? A lot of what Mr. Weisfelner said really directly
8 impacts on the GUC Trust, so --

9 MS. GOING: It does. And it's -- what he said is
10 consistent. There are a lot of discussions that are continuing
11 regarding settlement, so I'm not going to get into those here.

12 THE COURT: Does your crystal ball suggest that you
13 are going to successfully reach and agreement that will be
14 reflected in a new settlement agreement and motion for class
15 certification?

16 MS. GOING: That is certainly our hope and intent
17 right now, and that's what we're working towards.

18 THE COURT: Okay.

19 MS. GOING: I guess the only -- while I'm here, I do
20 have one other issue that is related to the settlement, and it
21 involves, which you mentioned, the letter from New GM and their
22 description of the settlements that they've entered into with
23 some personal injury presale plaintiffs. So the GUC Trust's
24 intent in the revised settlement -- it was the same in the
25 former versions of the settlement -- would be to settle with



1 any and all presale personal injury plaintiffs that are willing
2 to settle with us and come forward. I think this letter, and
3 the description of the settlements that they reached, we found
4 to be very positive.

5 But at the same time, we'd like -- we need some
6 assistance, hopefully from New GM, on getting a better handle
7 of the universe of plaintiffs that they are settling with. And
8 I really view this as a -- simply, you know, an Excel
9 spreadsheet game.

10 THE COURT: May I ask you this? Have you talked to
11 Mr. Steinberg or Mr. Best about what it is you want?

12 MS. GOING: We have reached out to them this week,
13 and we're going to continue to engage with them. Just because
14 these are individuals, so we should easily be able to, you
15 know, keep track of who's settled and who is in and out of the
16 settlement.

17 THE COURT: Okay.

18 MS. GOING: And before I cede the podium, I just want
19 to make sure that the schedule that we've proposed vis-à-vis
20 Mr. Peller's client on the Trailblazer is acceptable to Your
21 Honor.

22 THE COURT: Well, tell me what the schedule is. I
23 mean, you -- I don't think you put dates on it. You indicated
24 -- well, tell me what you -- have you agreed on a schedule with
25 Mr. Peller? I'm going to hear from Mr. Peller in a few



1 minutes, so --

2 MS. GOING: Yes, I believe we have.

3 THE COURT: Okay. And what are you -- what's the
4 schedule?

5 MS. GOING: That Mr. Peller has committed to filing
6 his late claim by the end of January and --

7 (Counsel confer)

8 MS. GOING: He will file it by January 21st and we
9 will file a response by February 11th.

10 THE COURT: Okay. Perfect.

11 MS. GOING: And the last matter I just want to raise
12 with Your Honor, and I think Mr. Weisfelner alluded to it, I
13 think during this time period that we have between now and a
14 settlement getting on file, we anticipate reaching out to New
15 GM on the issue of obtaining from them the names and addresses
16 of the individuals that they sent the recall notices to in
17 2014. We believe that pursuant to the master sale purchase
18 agreement, that they do have an obligation to provide us with
19 access to books and records, and we're not looking -- we're
20 just looking for literally the names and addresses of everyone
21 that they sent recall notices to for our ignition switch
22 defined term and undefined term recalls.

23 THE COURT: And have you already made that request,
24 or are they hearing it for the first time as you're --

25 MS. GOING: They're --



1 THE COURT: -- standing there?

2 MS. GOING: Well, they've heard rumblings of it, but
3 we will be sending them a letter this week.

4 THE COURT: Okay. All right. Yeah, then I won't
5 even ask them what their response is.

6 MS. GOING: Okay.

7 THE COURT: When they get your letter, they'll
8 respond.

9 MS. GOING: Absolutely.

10 THE COURT: Okay. Anything else you want to --

11 MS. GOING: That's all, Your Honor.

12 MR. WEISFELNER: Your Honor, in fairness --

13 THE COURT: Mr. Weisfelner?

14 MR. WEISFELNER: -- months ago we went to GM to talk
15 about what information they had available with regard to
16 identification of vehicle owners. Your Honor may recall that
17 under certain federal regulations, vehicle manufacturers are
18 required to maintain records as to who they sold the car to.
19 Furthermore, one would anticipate that GM had records of who
20 they sent the recall notices to. Somewhere in between those
21 two universes is what we're looking for, and that's the owners
22 of lessees of the cars as of the bar date.

23 We got a lot of different information from New GM,
24 some of which made sense, a lot of which didn't. There appears
25 to be a vendor that everyone in the country uses to get this



1 information.

2 THE COURT: I think you told me quite some time ago
3 it was very expensive to get it from them.

4 MR. WEISFELNER: Very expensive. And furthermore,
5 we're told that the information they got is pursuant to a
6 license agreement with GM, and that this vendor won't give us
7 the information because we're not their licensed parties. And
8 not to make things too difficult, but I didn't want Your Honor
9 to be left with the impression that we haven't spoken to GM
10 about this topic --

11 THE COURT: You had --

12 MR. WEISFELNER: -- in the past.

13 THE COURT: I do remember from prior hearings that
14 this issue came up. You raised it about the vendor and what
15 the potential cost was. Today is not the time to really get
16 into that issue, so neither side really needs to argue this
17 issue. I understand it's going -- it may well be an issue.
18 We'll first take it up if you -- if you haven't, you will with
19 New GM's counsel, and at an appropriate time, if I have to deal
20 with it, I'll deal with it. Okay?

21 MS. GOING: Thank you, Your Honor.

22 THE COURT: Thank you.

23 Mr. Weintraub, do you want me to hear --

24 MR. WEINTRAUB: Yes, Your Honor.

25 THE COURT: Your beard's getting longer.



1 MR. WEINTRAUB: Yes, Your Honor. My wife keeps
2 reminding me of that every morning.

3 Your Honor, there's been some --

4 THE COURT: And grayer, but, you know.

5 MR. WEINTRAUB: And grayer. I can't help that, Your
6 Honor, it's this case.

7 MR. WEISFELNER: He was clean shaven when we first
8 filed the motions.

9 MR. WEINTRAUB: That's true. William Weintraub,
10 Goodwin Proctor, for the Hilliard/Henry docket of pre-closing
11 action and plaintiffs.

12 Your Honor, there's been some discussion about
13 mediation and settlement, so in case Your Honor was wondering,
14 there was a mediation session between -- my clients, Mr. Henry
15 and Mr. Hilliard, met with New GM this week, and the matter did
16 not settle.

17 THE COURT: Do you anticipate additional mediation
18 sessions or is the matter -- or is it an impasse and no further
19 sessions are going to --

20 MR. WEINTRAUB: I don't really know how to answer
21 that, Your Honor.

22 THE COURT: Then don't.

23 MR. WEINTRAUB: I was told --

24 THE COURT: Yeah, I don't want to get into --

25 MR. WEINTRAUB: -- discussions terminated, but I



1 don't think anything is every really over --

2 THE COURT: Nothing's --

3 MR. WEINTRAUB: -- if people want to resume.

4 THE COURT: It's not over until it's over.

5 MR. WEINTRAUB: Exactly, Your Honor.

6 THE COURT: Okay.

7 MR. WEINTRAUB: Thank you.

8 THE COURT: All right.

9 Mr. Peller, do you want to be heard?

10 MR. PELLER: I don't have anything to add, Your
11 Honor.

12 THE COURT: Do you agree with Ms. Goings with respect
13 to the schedule by when you'll file your papers and that the
14 GUC Trust will respond, I think she said you were -- your
15 date --

16 MR. PELLER: Yes, Your Honor.

17 THE COURT: -- is January 21?

18 MR. PELLER: The only issue that may pose --

19 THE COURT: Just let me finish.

20 MR. PELLER: The only issue that may pose a future
21 scheduling issue is whether there needs to be discovery with
22 respect to Old GM's knowledge of the Elliotts' non-ignition
23 switch door module defect. But my understanding is by the 21st
24 we'll file a proposed late proof of claim and that that issue
25 can be addressed later.



1 THE COURT: Okay. Thank you. All right.

2 Mr. Steinberg or Mr. Basta, whoever is going to
3 address on behalf of New GM. Mr. Basta?

4 MR. BASTA: Good afternoon, Your Honor. Paul Basta
5 from Paul Weiss. My order got a little bit jumbled up by
6 Mr. Weisfelner's presentation, so let me just cover a few
7 points. Let me start with the pre-sale settlement. We have
8 settled --

9 THE COURT: Pre-sale accident --

10 MR. BASTA: Yes.

11 THE COURT: -- settlement.

12 MR. BASTA: Yes, personal injury accident settlement.
13 We've settled 156. The way that those settlements are
14 structured is they're done by docket. And so there's a
15 settlement, and then the lawyer for the plaintiffs goes through
16 a period of allocating that among its -- their clients.

17 THE COURT: But 156 --

18 MR. BASTA: Cases have been --

19 THE COURT: -- cases.

20 MR. BASTA: Cases have been settled.

21 THE COURT: And those are -- does that correspond to
22 156 individuals or --

23 MR. BASTA: Yes.

24 THE COURT: Yes.

25 MR. BASTA: Yes, and we're expecting -- those



1 settlements are confidential. And so we're expecting that
2 process to resolve, and when that -- the follow-on process for
3 the allocation resolves, then the claims will be resolved. I
4 understand what the GUC Trust is asking, which is they asked us
5 for the information so they know what's out of their
6 settlement, and we're sympathetic to that. But I just -- I'm
7 not counsel on those mediations and I need to figure the
8 confidentiality rules to be able to deal with the GUC Trust
9 request, but we'll pay attention to that.

10 THE COURT: Okay.

11 MR. BASTA: Your Honor, we have -- Mr. Weisfelner was
12 kind enough to hold a meet and confer where he largely went
13 through with us and gave us advanced notice of what he has
14 presented to the Court, and we took it all in. I don't think
15 it will be surprising to the Court to know that we have a
16 disagreement about the -- their path forward and whether it
17 really works. But what we suggested is that they give us their
18 settlement agreement when it's ready and their proposed path,
19 and that we would have another meet and confer and suggest the
20 right path forward to get this resolved.

21 There are two things, maybe three things I'd like to
22 point out as to what's likely to come back before the Court
23 when the issues get joined. One is I don't -- under Ortiz,
24 which post-dated the Manville decision and Your Honor's ruling,
25 you know, we really don't believe that a limited class applies



1 in this circumstance, and we will be putting in briefing
2 explaining why that's the case.

3 We also don't know the extent to which the settlement
4 agreement -- it hasn't been described to us how -- in Manville
5 they had to deal with the plan modification issues. It's
6 unclear to us how that is going to be addressed, and we'd like
7 to review that and reserve on that, as well.

8 I think there's going to be a debate as to what has
9 to happen at that notice hearing. And the last time that we
10 did this, what got approved at the notice hearing was the
11 sending of the notice, and then we determined there was a --
12 Your Honor determined there was a predicate issue as to whether
13 Rule 23 applied.

14 Here at that notice hearing, you know, under Ortiz,
15 there are very specific requirements of factual findings that
16 have to happen at that first hearing, including findings
17 regarding the amounts of the claims and the -- that they're
18 liquidated, and the amount of the limited funds which could
19 impact the JPMorgan litigation. There are going to be issues
20 regarding the adequacy of class representatives and all the
21 23(a) issues that are being decided by Judge Furman present are
22 also going to be -- need to be findings of that done at that
23 notice hearing.

24 What I heard Mr. Weisfelner say is he wants to get
25 the preliminary approvals and then kind of backfill into it as



1 the rulings come down from the District Court, but I think
2 there's going to be a debate about that, whether that would
3 work.

4 Mr. Weisfelner was also correct that we were
5 non-committal on whether to seek a stay or withdrawal of the
6 reference or to do nothing, and we weren't trying to be coy
7 about it. The issue -- and Your Honor alluded to it -- is
8 there's overlap. The last time around, there were real
9 bankruptcy issues that had to be resolved here that were
10 dissectable away from the class certification issues that are
11 going on before Judge Furman.

12 Here, it's harder to navigate, and we have a
13 consistent view that we don't think there should be
14 inconsistent rulings.

15 THE COURT: Explain a little further what you see as
16 those issues.

17 MR. BASTA: Well, for example, at the notice hearing,
18 you're going to have to -- the Court would have to consider
19 factual findings regarding the amount of the claims and that
20 they're liquidated. There's briefing occurring for Judge
21 Furman regarding experts and Boettcher --

22 THE COURT: Why do I have to decide at that stage
23 that that could be liquidated? I mean, that sounds wrong to
24 me. But go ahead and explain.

25 MR. BASTA: Your Honor, it is a -- we've done the



1 research. We haven't found a case since Ortiz that has found a
2 limited fund to apply where the claims are unliquidated.
3 That's the big change of Ortiz, one of the big changes or
4 Ortiz. And so we believe that -- and we think the case is very
5 clear that it only applies to liquidated claims, and there has
6 to be findings that the amount of the claims are greater than
7 the limited fund, which all requires -- in Ortiz, it was an
8 eight-day evidentiary trial on, you know, on those factual
9 issues. And we think that that overlaps with things that are
10 coming down from Judge Furman.

11 We also think that before Judge Furman are the
12 typicality, commonality, and adequate representation issues,
13 and we disagree with the GUC Trust. All of these, the
14 viability of all of these claims, are state by state, based
15 upon state law. That's what's being worked through in the
16 district court, and that's because differences in state law
17 drive differences in the plaintiffs' rights. And I think what
18 Mr. Weisfelner described is a process where Your Honor approves
19 the fairness of the settlement preliminarily and approves a
20 nationwide class, but then fills in the subclasses based upon
21 what comes down from Judge Furman. And what we believe Ortiz
22 is going to require is that that be done at the settlement --
23 at the initial notice hearing.

24 THE COURT: As part of a settlement, can the
25 plaintiffs and the GUC Trust agree that -- as to the law that



1 will govern claims for settlement purposes rather than -- in
2 other words, could they agree or propose to agree as part of
3 the settlement that the following legal principles will --
4 substantive legal principles will apply to claims of each class
5 member, whatever states they're located in? I understand if
6 the case were litigated to judgment --

7 MR. BASTA: Right.

8 THE COURT: -- the law of each state would apply.
9 But in the settlement, is that true?

10 MR. BASTA: Your Honor, I'm a little bit out of my
11 league on this. I have to refer -- defer to my co-counsel, but
12 my understanding is that AmChem, which we went through over the
13 last hearing, says that the class certification rules in the
14 settlement context are equally stringent --

15 THE COURT: Oh, I knew that.

16 MR. BASTA: -- if not more stringent.

17 THE COURT: No question about that. But I didn't
18 think that the stringency of -- for class certification
19 dictated the substantive rules that would -- if you litigated a
20 case would have to be -- every issue would have to -- you know,
21 might have to be decided. But for settlement purposes, the
22 parties can agree that the following rule will apply to all
23 class members, whatever states they're located in. People
24 could come in and object to that settlement, but -- am I wrong
25 in that?



1 MR. BASTA: Your Honor, honestly, I'd like to see
2 what they propose, and I really don't want to misstep as to
3 whether that would work or not work. It's my understanding
4 that they need to have that set up up front, but what I'd like
5 to do is to see what they do and then brief it. I don't know
6 for sure whether that work-around would work, but it's my
7 understanding is that it does --

8 THE COURT: I wouldn't necessarily --

9 MR. BASTA: -- have to be done up front.

10 THE COURT: -- a work-around. That's -- settlements
11 can do that. I mean, I've had -- in bankruptcy cases,
12 Mr. Basta, where there are choice of law issues, it's quite
13 common for lawyers to agree that the law of X state will be
14 applied no matter -- even though there are arguments that six
15 different states should apply, the parties agree that the law
16 of New York will apply to all claims. And I've had trials with
17 that and that's not an uncommon stipulation. I -- it's always
18 dangerous to think back more than the 12 years I've been
19 sitting here, but I seem to recall being involved as a
20 litigator in settlements where, for settlement purposes, the
21 parties agreed as to the legal principles that would control
22 for determining damages, for -- you know, or in fixing amounts
23 of claims, et cetera. That's a long time ago. I haven't gone
24 back to the books myself to see if I could find that.

25 MR. BASTA: Not sure I'm answering the question, but



1 we're going to brief it. It's my understanding, under Ortiz,
2 that in the preliminary approval of the fairness of the
3 settlement, what you're doing is you're assessing what the
4 ultimate class members are actually going to receive
5 quantitatively. And so --

6 THE COURT: So could they agree in what's presented
7 to me as the proposed settlement that the following six rules
8 will apply for -- you know, it may be that they conclude that
9 maybe there's ten causes of action that have been asserted,
10 five of them would create real difficulty if you had to
11 litigate them, five are pretty clear cut. And so for
12 settlement purposes, all -- we settle on the basis of the five
13 and the claims under the other five will be barred if the
14 settlement's approved.

15 MR. BASTA: Your Honor, we will brief it. I think
16 that there's going to be complexity as to how the subclasses
17 are defined and how what entitlements -- like, who's actually
18 in the subclasses and what they're going to receive. But
19 really, I think at this point, without having seen --

20 THE COURT: You're assuming that there have to be
21 subclasses. Mr. Weisfelner had suggested that until you get to
22 an estimation stage as to if different law applies in different
23 states, it -- we'll get there at some point.

24 MR. BASTA: Yeah, okay.

25 THE COURT: All right.



1 MR. BASTA: I don't want to confuse things, Your
2 Honor, by not being crisp in my responses to you. I'm just
3 giving you what my understanding is of what the rules are that
4 apply.

5 And so the withdrawal of the reference in the stay is
6 really just because we want to see and assess, once we read
7 what they have done, where we think overlap is and really try
8 to prevent that overlap.

9 THE COURT: From what Mr. Weisfelner suggested, the
10 notion of the stay seems almost moot because he's suggesting
11 that the class certification doesn't go forward here until
12 Judge Furman has decided the summary judgment motions.

13 MR. BASTA: The thing I -- and I could speak to that
14 separately, that I didn't really understand is that at the
15 notice stage in this court, the Court would be certifying
16 classes; yet, the details of then those classes would await
17 Judge Furman. It just seems to me that that's -- either there
18 are state classes or there's a nationwide class. How those two
19 things interact, I have not figured out.

20 THE COURT: Well, that might -- and I'm going to have
21 Mr. Weisfelner come back up after you've finished talking
22 because I didn't ask him this question. I didn't go back today
23 to read -- I've got a stack of Judge Furman's decisions. Are
24 there causes of action that Judge Furman has recognized as
25 existing in each of the states in which he has rendered a



1 decision? And so I guess what I'm asking, in effect, is
2 whether -- can a settlement be proposed with a nationwide class
3 that will settle one, two, or three causes of action, and
4 provided that pursuant to the settlement, other claims, causes
5 of action will be dismissed?

6 MR. BASTA: Could you give me one moment --

7 THE COURT: Yeah.

8 MR. BASTA: -- to confer with my co-counsel, Your
9 Honor?

10 THE COURT: Yes, absolutely.

11 (Counsel confer)

12 MR. BASTA: Mr. Weisfelner might have a different
13 view, but my understanding that what's pending before Judge
14 Furman is class certification issues, summary judgment issues,
15 and Daubert issues, and that the determination of those issues
16 preclude nationwide class on any of the causes of action.

17 THE COURT: The Daubert issues, I'm not -- I -- you
18 know, once upon a time, I think I saw one of the briefs before
19 Judge Furman on it, but I really haven't gone back to look.
20 But if we get to the estimation stage, the rules, as I
21 understand it, as to what the Court may consider in an
22 estimation proceeding are not the same as the Daubert trial
23 issues. And so the parties and the Court ultimately have much
24 broader discretion in terms of what evidence is presented and
25 what evidence will be considered. The rules of -- the strict



1 rules of evidence, as I understand them, do not apply in an
2 estimation proceeding.

3 MR. BASTA: Yes, Your Honor, I think we're going to
4 unfortunately get into a chicken and an egg problem again
5 because in order to estimate, we need claims to estimate. In
6 order to need claims to estimate, we need class certification.
7 And so the question is going to come back to, I believe, Your
8 Honor, is to whether Your Honor's going to be comfortable
9 certifying a class based on Ortiz on that basis, understanding
10 that those issues are going to follow on from Judge Furman.

11 THE COURT: Okay. All right.

12 MR. BASTA: And then the last point I wanted to make,
13 Your Honor, just has to do with timing, which is that
14 Mr. Weisfelner proposed filing the settlement motion I think at
15 the end of January.

16 THE COURT: Yes.

17 MR. BASTA: And then said that there would be a
18 hearing in February. And our view is there's a lot of wood to
19 chop at this first hearing and that that's tight. But when the
20 -- there's evidence that's going to be required at that first
21 hearing, and so we will sit down when it's filed with a meet
22 and confer and come up with a schedule that we think makes
23 sense.

24 THE COURT: Okay. Does anybody else which to be
25 heard before Mr. Weisfelner gets back up? Okay.



1 Mr. Weisfelner, let me ask you the questions that I
2 asked Mr. Basta, not really -- with respect to a settlement,
3 can -- is there authority as part of the settlement to agree
4 that certain claims will be settled, and others ultimately will
5 be dismissed if -- assuming the settlement is approved?

6 MR. WEISFELNER: With all due respect, the question's
7 irrelevant, and let me tell you why.

8 THE COURT: Okay.

9 MR. WEISFELNER: There was a path down which we could
10 have gone where we viewed all of the merits-based issues either
11 resolved by Judge Furman, pending before Judge Furman, or,
12 frankly, on appeal from Judge Furman. And what we could have
13 done was in a settlement agreement settle all that stuff as
14 between us and the GUC Trust; say, you know, we heard what
15 Judge Furman said and it's up on appeal, so we're going to
16 presume the plaintiffs win; we heard what Judge Furman is
17 planning on ruling, let's obviate it, we'll just give you the
18 benefit of a positive ruling. Let me tell why I don't think
19 that's the direction that we ought to be going, and that's not
20 the direction we plan on going.

21 THE COURT: Okay.

22 MR. WEISFELNER: And a lot of it has to do with
23 Ortiz, which I think is a critical case. But what Mr. Basta
24 failed to mention is that Ortiz was determined before the
25 amendments to Rule 23. And let me tell you how I think those



1 two things coincide because they talk a lot about needing to
2 determine liability by dollar amount before you can get to
3 class certification, all of which is nonsense.

4 The way we read Ortiz and the amendments to Rule 23,
5 what you're being asked to do at the very first substantive
6 hearing is to determine whether or not certification of the
7 class is likely to happen after notice, and whether the
8 settlement agreement is likely to be approved after notice and
9 the hearing.

10 What Ortiz teaches us, I believe, before or after the
11 amendment, is a court of competent needs to make a
12 determination that what the class is being offered is as good
13 or better than what the class could have realized had their
14 litigated their brains out. That's the economic analysis that
15 needs to be done, and let me tell you how we view it. It's
16 really pretty simple.

17 The most that this class is ever able to accomplish
18 is round numbers, \$1 billion. That's if you trigger the entire
19 accordion, which requires round numbers again, a determination
20 and an estimation proceeding of \$10 billion worth of damages.
21 And I wish I had these numbers better memorized. I don't, so
22 I'm guaranteed to make a mistake. But Mr. Steele --

23 THE COURT: And that's why you --

24 MR. WEISFELNER: Mr. Steele --

25 THE COURT: That's also why you think the limited



1 fund concept works because --

2 MR. WEISFELNER: Of course. And this is the only
3 liability calculation Your Honor has to go through. First
4 issue, if we didn't all collectively, every class member, have
5 an interest in triggering the accordion, that's the
6 commonality. We all want to trigger the accordion, and we want
7 to trigger it to the maximum extent possible. So it's the shot
8 at a billion dollars versus -- what is it versus? It versus us
9 saying to heck with triggering the accordion feature, we're
10 going to go after the remaining value in the GUC Trust and
11 we're going to seek to claw back every dime that the GUC Trust
12 ever distributed to any GUC beneficiary on the theory that we
13 were as good as the -- I don't remember the numbers, \$8 billion
14 worth of allowed claims in the General Motors case other than
15 ours.

16 That -- those \$8 billion worth of claims got an
17 original GUC Trust that was at one point valued at -- how much
18 money went into the GUC Trust at the sale? Do you know? Do
19 you remember? At any event, when you do that --

20 THE COURT: Your people are letting you down,
21 Mr. Weisfelner.

22 MR. WEISFELNER: Well, they are because we've gone
23 through this math a million times. If one were to take a look
24 at all of the money that the GUC Trust ever had and figured out
25 what the distribution was, it was about 20 cents on the dollar,



1 you then add the amount of plaintiff claims on top of that.
2 And for purposes of this exercise, figure it's 10 billion. And
3 then figure there's another billion dollars' worth of value
4 that comes into the trust.

5 So you claw back everything, you have the billion,
6 you now have a much bigger plaintiff unsecured creditor class,
7 and do the math. And compare that to \$10 billion worth of
8 claims getting the billion dollar according feature
9 exclusively, not having to share it with the other general
10 unsecured creditors. And Your Honor will the numbers are such
11 that we satisfy Ortiz's test, that we did as well as we could
12 ever do through a litigation or better. That's the economic,
13 quote, "liability" test, not that you had to sit there and
14 determine what the entire class' claims are worth with
15 application to every ruling that Judge Furman did or could have
16 made, and then make an economic determination as to what that
17 claim is worth. That's not the exercise.

18 That's why we don't have to, in my judgment, pull a
19 fast one and try and settle claims as part of a settlement.
20 That would be -- someone's going to kill me for having said
21 this -- unfair to GM. Like I care. But it's not that it would
22 be unfair to GM, it's that Mr. Basta, as part of --

23 THE COURT: Don't you feel better, Mr. Basta?

24 MR. BASTA: My work is done here, Your Honor.

25 MR. WEISFELNER: It's that Mr. Basta and



1 Mr. Steinberg, on behalf of the their client, continuing their
2 scorched-earth litigation policy, would call us to task and say
3 the determination of liability, okay, in connection with and in
4 full anticipation and credence to Judge Furman's decisions get
5 made at the estimation hearing. You can't settle them.

6 THE COURT: All I can say is, life -- if you ever get
7 to the -- if you get to the point of an estimation proceeding,
8 life would be much easier if there was a settlement on the
9 legal principles that were going to be applied and not have to
10 do it on 50 states and to just --

11 MR. WEISFELNER: Yeah. And, Your Honor, I do think
12 that --

13 THE COURT: I'm not suggesting that -- I'm just --
14 that's an observation, that's all.

15 MR. WEISFELNER: Well, it's interesting because
16 that's what Judge Furman asked, as I understand it. And I'm no
17 expert on the MDL, but I what I understand is Judge Furman had,
18 for lack of a better term, bellwether determinations on, for
19 example, manifestation. I think it involved three, four, maybe
20 five jurisdictions. And then the court said, please sit down
21 GM and co-leads, and tell me the extent to which this ruling
22 applies to every other state. And the parties were unable, as
23 far as I can recall, to agree on a single state where the rule
24 either applied or it didn't apply, except plaintiffs
25 acknowledge that there were a handful of states where the



1 ruling would apply as against their economic interest.

2 All I'm saying is we will try. We will try hard. I
3 don't think it's impossible on a lot of these rulings, but I
4 think the hard work to gear up for the estimation hearing,
5 which, again, is an estimation under the Bankruptcy Code --
6 because we started this whole dialogue with Mr. Basta trying to
7 explain to you why prior determinations by Judge Furman on
8 withdrawal of the reference are going to be different now
9 because we've stripped away all the bankruptcy-related issues
10 and all we're left with is class certification stuff. He's
11 wrong. The meat of this case is going to be a claims
12 estimation under 502 of the Bankruptcy Code. And with all due
13 respect to Judge Furman, you're the man whether you like it or
14 not.

15 THE COURT: Unless he withdraws the reference.

16 MR. WEISFELNER: And -- well, but my point is he
17 ought not because you are the man.

18 THE COURT: Let me ask this question, Ms. Weisfelner.

19 MR. WEISFELNER: Yes, sir.

20 THE COURT: The last paragraph of Mr. Basta's letter
21 says, quote:

22 "Finally, in late October 2018, New GM conducted two
23 mediation sessions with counsel for certain economic
24 lost lead claimants with Judge Layn Phillips as the
25 mediator, but the mediation did not result in a



1 settlement agreement."

2 Are there going to be any -- are any future mediation
3 sessions with Judge Phillips or anyone else contemplated at
4 this point?

5 MR. WEISFELNER: Not currently, Your Honor. That's,
6 again, not to say that hope doesn't spring eternal --

7 THE COURT: That's why I only asked whether it was
8 contemplated.

9 MR. WEISFELNER: But listen, after all the lay-offs
10 this poor company has been required to go through because of
11 the poor economic circumstances there they're forced to face, I
12 don't know that we ever get back on track again. But again,
13 we're optimistic.

14 THE COURT: Sometimes there's an advantage to putting
15 all this bad stuff behind you.

16 MR. WEISFELNER: One would think.

17 THE COURT: Okay. Mr. Basta, do you have anything to
18 add on the mediation front just to this economic loss? I
19 appreciate -- I take it as to the personal injury wrongful
20 death, there are still efforts to see whether you can resolve
21 additional cases, and maybe Mr. Steinberg or someone else is
22 dealing with that.

23 MR. BASTA: Your Honor, Kirkland is the one dealing
24 with that.

25 THE COURT: Okay.



1 MR. BASTA: The -- on the personal injury wrongful
2 death, there are additional sessions scheduled through the
3 first quarter of 2019, and we are committed to keeping at it.
4 As to the global, the economic loss mediation, we're not
5 involved in that. I understand the same thing as
6 Mr. Weisfelner, which is that there's nothing currently
7 scheduled. But I agree that hope springs eternal.

8 THE COURT: Okay.

9 MR. BASTA: And as to Mr. Weisfelner's last point,
10 I'm not going to respond, I'm just going to wait to see that
11 their -- their motion and we'll file our response.

12 THE COURT: Okay. I would request that someone order
13 the transcript. I plan to send a copy of the transcript to
14 Judge Furman. Okay?

15 MR. BASTA: Yes. Thank you, Your Honor.

16 THE COURT: All right. Thank you very much for
17 coming. Everybody have a nice holiday, and Happy New Year.

18 MR. BASTA: You, too, Your Honor. And thank you.

19 (Proceedings concluded at 3:08 p.m.)

20 * * * * *

21
22
23
24
25



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

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

I, Lisa Luciano, court-approved transcriber, hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.



LISA LUCIANO, AAERT NO. 327 DATE: December 21, 2018
ACCESS TRANSCRIPTS, LLC

