

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 Case No. 09-50026-reg Adv. Case No. 11-09406-reg

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5 In the Matter of:

6 MOTORS LIQUIDATION COMPANY, et al.,
7 f/k/a General Motors Corporation, et al.,
8 Debtors.

9 - - - - -x

10 OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF
11 MOTORS LIQUIDATION COMPANY, et al.,
12 Plaintiffs,

13 -against-

14 UNITED STATES DEPARTMENT OF THE TREASURY,
15 EXPORT DEVELOPMENT CANADA,
16 Defendants.

17 - - - - -x

18 United States Bankruptcy Court
19 One Bowling Green
20 New York, New York
21 July 19, 2011
22 9:45 AM

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

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Status Conference - Complaint for Declaratory Judgment against
United States Department of Treasury, Export Development Canada
filed by the Official Committee of Unsecured Creditors of
Motors Liquidation Company

Transcribed by: Hana Copperman

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P R O C E E D I N G S

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

THE COURT: Okay. General Motors/Motors Liquidation.

We have a status conference on the declaratory judgment action brought by the creditors' committee against Treasury vis-à-vis ownership of the term loan litigation, as far as I understand. Let me get appearances, and then you folks can help clarify for me what we need to accomplish today. Mr. Schmidt, are you taking the lead for the creditors' committee?

MR. SCHMIDT: No, Your Honor. For the record, Robert Schmidt, Kramer Levin. My colleague, Craig Siegel, who I don't believe has appeared before you before, will be taking the lead today.

THE COURT: That's fine, Mr. Schmidt, but you're right that I don't know him, and I couldn't hear his name over the air conditioning.

MR. SCHMIDT: Craig Siegel.

THE COURT: Siegel?

MR. SCHMIDT: Yes.

THE COURT: Is that S-I-E-G-E-L?

MR. SIEGEL: Yes, Your Honor.

THE COURT: Okay. Good morning, Mr. Siegel. And, for the government, Mr. Jones? Are you handing off --

MR. JONES: Yes, Your Honor.

THE COURT: -- to a colleague also?

1 MR. JONES: I'm here for the United States, and --
2 this is David Jones from the U.S. Attorney's Office, Your
3 Honor, and Michael Edelman represents Canada or the EDC DIP
4 lenders.

5 THE COURT: Oh, okay. Mr. Edelman, you got Export
6 Development Canada?

7 MR. EDELMAN: That is correct. Mike Edelman, Vedder
8 Price.

9 THE COURT: I'm sorry. I couldn't hear you.

10 MR. EDELMAN: Michael Edelman, Vedder Price, for EDC.

11 THE COURT: Okay. Let me tell everybody in the room.
12 You don't want me to turn off the air conditioning, believe me,
13 but because you don't you're going to have to really keep your
14 voices up, and I'm going to need you to use the main lectern
15 for all but the shortest comments.

16 Who's going to take the lead? As I understand it
17 this is just a status conference. This is an adversary
18 proceeding, and I'm not making any findings of fact or
19 determining any issues of law today. I will deal with
20 scheduling matters if you want me to, or if you -- either side
21 thinks you need to make some speeches to me I'll hear what you
22 have to say, but I should underscore what we're to be
23 accomplishing today and what we're not to be accomplishing
24 today.

25 Okay. Mr. Siegel, do you want to take the lead on

1 behalf of the creditors' committee?

2 MR. SIEGEL: Yes, Your Honor.

3 THE COURT: Okay.

4 MR. SIEGEL: Your Honor, our purpose here today, I
5 think, is just twofold. One, to provide a little explanation
6 for the briefing schedule that the parties have agreed to and
7 the reason why we've agreed to that schedule, and, then,
8 second, Your Honor, to see if there is a time convenient for
9 the Court in late October to schedule a hearing, both on the
10 motions that the parties propose to make as well as on Kramer
11 Levin's final fee application, which we mentioned in our letter
12 to Your Honor, which Your Honor endorsed.

13 The parties have agreed to simultaneously brief the
14 DIP lenders' motion to dismiss and the committee's motion for
15 summary judgment, in part, because the summary judgment motion
16 will raise a pure question of law about the plain meaning of
17 the terms of the DIP credit agreement and Your Honor's orders
18 approving that credit agreement, and no discovery is required
19 to resolve those questions of law.

20 It's our understanding that the DIP lenders may move
21 to dismiss, based, in part, on rightness grounds. Frankly,
22 we're a bit flummoxed by that. We think the Second Circuit
23 precedent is clear that a dispute over the ownership of an
24 underlying, unresolved litigation, notwithstanding the
25 contingent nature of any success in that case, that that kind

1 of a dispute and request for declaratory relief is ripe under
2 Second Circuit precedent, especially here, where, as we've
3 outlined in our complaint, there is a serious threat of adverse
4 tax consequences if this issue is not resolved before December
5 15th, which is the date on which the litigation will be
6 transferred under the plan and the trust agreements be
7 transferred to the avoidance action trust.

8 So those are the issues that the parties intend to
9 brief, and unless Your Honor has any questions, either about
10 the proposed motions or the schedule, the schedule is set such
11 that the parties will complete their briefing at the end of
12 September, and the parties have conferred before today's status
13 conference and respectfully request a time on Your Honor's
14 calendar sometime on or after October 17th, preferably in late
15 October, if possible, to have a hearing, again, both on those
16 motions, Your Honor, but as well as have sufficient time to
17 address Kramer Levin's final fee application.

18 THE COURT: Help me with one thing, Mr. Siegel. It's
19 a confusion I had when I read your complaint, and I want to
20 underscore that I read your complaint, and Treasury and Canada
21 haven't had a chance to respond to it, and I only got one side
22 of the story. But I inferred from that that your constituency
23 is concerned about adverse tax consequences. I don't call
24 myself a tax expert, but I know a little bit about it. Your
25 constituency, on the whole, lost a lot of money in General

1 Motors, principally by lending money and not getting paid back
2 or by extending credit and not getting paid back or by
3 suffering tort injuries and not getting full compensation for
4 it. I never understood tort recoveries to be taxable anyway,
5 but if you've lost money anyway why -- and the only question is
6 if your litigation against JPMorgan Chase is successful you'll
7 maybe lose a little less money -- why is it a matter of tax
8 concern?

9 MR. SIEGEL: I, too, Your Honor, am not a tax expert,
10 but based on the advice that we've been given by our colleagues
11 in our tax department my understanding is that if on December
12 15th the ownership of the litigation is not resolved then the
13 IRS is going to treat the avoidance action trusts as a disputed
14 ownership trust and any proceeds of the litigation, either
15 through settlement or a judgment, will be taxed twice.

16 THE COURT: Taxed to whom?

17 MR. SIEGEL: If, for instance, Your Honor, the
18 unsecured creditors are determined after December 15th to own
19 litigation the -- any proceeds of the litigation will be taxed
20 twice, once when any of those proceeds go into the avoidance
21 action trust and then the trust itself will be taxed. So, for
22 instance, on -- for hypothetical purposes -- on December 15th
23 if the ownership of the trust is not yet determined a basis
24 will be assigned, a nominal value will be the basis for the
25 value of the litigation. Let's, for hypothetical reasons, say

1 that's a hundred million dollars. If after December 15th
2 proceeds come from the litigation, and if after December 15th
3 the unsecured creditors are determined to own the litigation,
4 then the proceeds will be taxed twice. Once --- let's say that
5 there is a judgment for 1.5 billion dollars. 1.5 billion
6 dollars goes into the trust, and the trust is taxed on that 1.5
7 billion minus the hundred million in basis. And then the trust
8 turns around and makes distributions to the owners of the
9 interests in the trust -- in this hypothetical the unsecured
10 creditors. When the unsecured creditors receive their portion
11 of that 1.4 billion dollars they will be taxed again by the
12 IRS, so that'll be two in -- as we argue in our complaint,
13 double taxation.

14 The alternative, Your Honor, is if the ownership of
15 the litigation is determined before December 15th then on
16 December 15th the trust will not be treated as a disputed
17 ownership trust. It will be treated as a liquidating trust,
18 and, for tax purposes, when proceeds come into the trust
19 they'll only be taxed when distributions are made to the owners
20 of the trust.

21 Does that answer your question, Your Honor?

22 THE COURT: Well, it's basically what you told me in
23 your complaint. What is the date by which I have this gun to
24 my head to decide the matter?

25 MR. SIEGEL: Your Honor, I respectfully submit we're

1 not pointing a gun to anybody's head.

2 THE COURT: Blame it on the IRS. It's the date by
3 which somebody has put a gun to my head to decide this matter.

4 MR. SIEGEL: December 15th, Your Honor, of this year.

5 THE COURT: Now, let me talk about a couple of
6 hypotheticals, neither of which, I think, is unreasonable, both
7 of which I regard as foreseeable but say nothing beyond the
8 fact that they're foreseeable. Suppose I were to determine
9 that this declaratory judgment action is justiciable and that I
10 rule in favor of the creditors' committee on the one hand, or
11 the governmental agencies on the other. It's foreseeable,
12 isn't it, that whoever loses would want to appeal?

13 MR. SIEGEL: Yes, Your Honor. That's possible.

14 THE COURT: So the matter still isn't going to be
15 decided by December 15th even if I were to issue a decision and
16 file it by December 14th.

17 MR. SIEGEL: You're correct. There's a very real
18 possibility of that occurring.

19 THE COURT: And the IRS isn't here to defend itself,
20 but how can there be a principle of law that makes a way
21 station on the road to appeal legally significant? Or are you
22 in a position to say that you're not going to defend the
23 underlying principle of law you're just the messenger boy?

24 MR. SIEGEL: Could you restate the question, Your
25 Honor?

1 THE COURT: Yes. Suppose I do exactly what at least
2 the creditors' committee wants, maybe both sides want, and I
3 decide it by December 14th. And let's say for the sake of
4 argument that you win but the government loses. I'm going to
5 put Canada and the U.S. government together for this purpose.
6 Wanting to protect the public fisc, presumably they're going to
7 appeal me. I wouldn't be mad if they appealed me. I assume
8 either side, whoever loses, is going to appeal me. So the
9 matter of ownership of the proceeds of this right of action
10 will still not be determined when I file a decision. Am I
11 correct?

12 MR. SIEGEL: That's possible, Your Honor. It's
13 certainly possible if Your Honor had decided the issue before
14 December 14th that either the parties could come to some sort
15 of settlement after getting Your Honor's guidance on what the
16 law is and Your Honor's ruling that may -- the parties have, I
17 understand, in the previous months discussed possible
18 settlement. That, obviously, hasn't come to fruition, but
19 that's one alternative. The other alternative is if there is
20 sufficient time an appeal could be filed. But you're right.
21 There is a risk that it may not be resolved before then.

22 THE COURT: So I'm, at the risk of repeating I'm
23 scratching my head and saying what's the point. I mean, other
24 than -- wholly put aside the matter of settlement. I love
25 settlements, but I assume that you've already tried to settle

1 it and so far you haven't been successful. I issue a decision.
2 Loser appeals, and what I say, even though I think this is a
3 slam dunk core matter and it doesn't involve Stern v. Marshall
4 concerns and the power of bankruptcy judges, it won't be
5 decided until some district court or the circuit or somebody
6 decides it. You're telling me that the IRS, nevertheless,
7 regards my ruling as significant?

8 MR. SIEGEL: I don't know if the IRS would regard
9 your ruling as significant, Your Honor. That's an excellent
10 question.

11 THE COURT: Because if it doesn't then I scratch my
12 head and say what's the point.

13 MR. SIEGEL: That's a fair question, Your Honor,
14 whether or not Your Honor's ruling, if Your Honor were to rule
15 in favor of the creditors' committee, would create an
16 opportunity for that December -- the impact -- the tax import
17 of that December 5th (sic) deadline to be affected, that the
18 IRS may have the power and the willingness to not impose the
19 adverse tax consequences. In the first instance, I
20 respectfully submit, that that may be a question better posed
21 to the U.S. Treasury, of which the IRS, obviously, is part of.

22 THE COURT: That thought had occurred to me. I
23 assume Mr. Jones is taking notes on this dialogue.

24 MR. SIEGEL: But, Your Honor, I don't -- candidly, I
25 don't know the answer to the question of whether or not a

1 determination by Your Honor before December 15th in favor of
2 the creditors' committee would affect the IRS's willingness or
3 authority to impose these adverse tax consequences. But we
4 certainly --

5 THE COURT: Next question, Mr. Siegel.

6 MR. SIEGEL: Yes.

7 THE COURT: I've got an underlying dispute before me,
8 cross motions for summary judgment between your conflicts
9 counsel, on the one hand, and the lawyers for JPMorgan Chase on
10 the other. How is this dec action affected by the possibility,
11 if I could do it, of deciding the summary judgment motion
12 before December 15th? Would it simply mean control of the
13 right for the loser to conduct a further battle up the road, up
14 the street, on appeal?

15 MR. SIEGEL: That's important, Your Honor, but I
16 don't think it directly affects this particular dispute,
17 because regardless of how Your Honor rules in the underlying
18 dispute my expectation is that the losing side will likely
19 appeal, and it's particularly important for the creditors'
20 committee and for the avoidance action trust administrator to
21 know who actually owns the litigation, because ownership of the
22 litigation informs under what terms the underlying litigation
23 could be settled and economic value of any settlement differs
24 depending on whether or not any recovery is going to go to the
25 creditors' committee or whether it's going to go to the DIP

1 lenders, and, so, settlement strategy is directly affected by
2 this particular adversary proceeding, Your Honor. Also, the
3 question of whether or not to appeal is directly affected by
4 who owns the litigation.

5 THE COURT: On all traditional arguments or analysis
6 of whether it's worth your time and money.

7 MR. SIEGEL: Precisely, Your Honor.

8 THE COURT: Okay. Now, other than the fact that you
9 want me to give you a date -- was it on or after October
10 17th -- do you, on behalf of the creditors' committee, have any
11 particular requests that I decide anything today?

12 MR. SIEGEL: No, Your Honor.

13 THE COURT: Okay. Any further thoughts, then, before
14 I give Mr. Jones a chance to be heard?

15 MR. SIEGEL: No, Your Honor.

16 THE COURT: Okay. Mr. Jones, may I get your
17 perspective, please?

18 MR. JONES: Yes, Your Honor. David Jones for the
19 U.S. Attorney's Office. Thank you. At the outset, Your Honor,
20 let me just say Your Honor started by asking what needs to be
21 accomplished today, and I think the answer is, really, very
22 little or nothing other than the hearing date. The parties
23 submitted, and the Court approved, an agreed briefing schedule.
24 As I was listening to the exchange the main thing I wanted to
25 say is to make very clear that I am here representing Treasury

1 as DIP lender and that there is a real -- and not IRS. There
2 is a real church-state divide. IRS's functioning is --

3 THE COURT: This is new for you, Mr. Jones, because
4 the last time I asked you which of the various governmental
5 entities you were representing, and, in particular, I was
6 thinking of U.S. as DIP lender and stockholder and U.S. as
7 environmental enforcer, you told me everybody.

8 MR. JONES: Your Honor, that is true, and, in
9 general, I do -- who we represent is always tricky. I think, I
10 mean, we represent, technically, the United States as unitary
11 executive, but in the functioning of the executive the IRS, by
12 statute and practice, is really cordoned off, and in the
13 conduct of these cases, particularly the components of Treasury
14 that serve as DIP lender and whose interests are directly
15 affected in this proceeding are being very meticulous about not
16 seeking to influence what the IRS would ordinarily do, for
17 example, with respect to any trusts that are created under the
18 plan. So I just want to make clear that I have received no
19 requests from IRS counsel. I am not acting in any respect on
20 their behalf, and I can't make any statements or projections
21 about what will happen, what the tax consequences will be from
22 IRS's point of view. That's simply a separate process.

23 THE COURT: You made yourself very clear, Mr. Jones,
24 but the question that a guy like me sitting in this chair would
25 then ask himself is should I be hauling down the IRS to send

1 somebody here, kind of like a conflicts counsel, because it
2 seems to me that you may not be in a conflict position with the
3 IRS but we're doing hoops here to satisfy stated concerns of
4 the IRS under circumstances where I have more than a basic
5 understanding of tax law. I have understandings of when trusts
6 are passed through entities and when they're not. I have lots
7 of experience in tax matters, particularly vis-à-vis NOLs, but
8 while I well understand that taxation law depends on what facts
9 may be, including how a judge has ruled, if the judge has not
10 issued a final ruling, and if it can be changed as quickly as
11 the district court or the circuit enters a contrary order, I
12 have trouble understanding why that might be of significance.
13 Are you going to, basically, tell me the same thing Mr. Siegel
14 did, which is you understand the issue but you can't
15 substantively respond to it?

16 MR. JONES: I think the answer to that is yes, Your
17 Honor. But let me just say one thing: I am unsure if there is
18 any stated concern of IRS. Your Honor used that expression and
19 I seized on that. I think this may be -- I just don't know --

20 THE COURT: Well, if you're the creditors' committee,
21 if you can try to understand your opponent's position for half
22 a second, you can understand why they would be a little
23 nervous, to put it delicately, if their recovery got taxed
24 twice.

25 MR. JONES: Oh, Your Honor, I absolutely -- I do

1 understand that, absolutely. All I'm saying, Your Honor, is
2 I'm not sure if their concern originates from anything the IRS
3 said or simply their own analysis of how the tax laws work. I
4 thought it was the latter but maybe that's wrong. But I don't
5 want to, you know, make a big issue of --

6 THE COURT: In any event, you did not object to the
7 briefing schedule.

8 MR. JONES: Right.

9 THE COURT: And you're no longer making the rightness
10 argument; you're just dealing with it on the merits.

11 MR. JONES: We are considering making a rightness
12 argument as well as merits for the reasons that this remains,
13 potentially, a dispute about nothing, given that, you know,
14 there's no certain outcome of the underlying litigation.

15 THE COURT: A billion and a half bucks is nothing?

16 MR. JONES: It is potentially nothing. I mean, if
17 the banks win there's no recovery, at which point it's nothing.

18 And Your Honor, again, I am -- we've had some
19 discussions with the committee. We have a good, frank,
20 professional relationship. They've provided authority that
21 they think should persuade us that the issue is now ripe for
22 adjudication. Honestly, we're looking at that and, you know,
23 our motion and initial response to the complaint is due August
24 5th. We're working on that quite hard right now. We're
25 exploring making an argument that the action remains unripe,

1 essentially because the underlying avoidance action remains
2 very much in doubt -- the outcome of that remains very much in
3 doubt and --

4 THE COURT: Well, I think that --

5 MR. JONES: -- in addition, we would address the
6 merits.

7 THE COURT: Forgive me, Mr. Jones, because I well
8 understand that point. But even if I were to issue a
9 relatively strong decision one way or the other, with a billion
10 and a half -- it's not quite a billion and a half because
11 that's -- you know, there's other collateral as well. But
12 there's still a billion and a half bucks of advanced money on
13 the line. Doesn't the loser have an extraordinary motivation
14 to appeal, even if a relatively small component of a billion
15 and a half is on the line?

16 MR. JONES: Yes. I think that's -- I think -- I
17 don't think anyone would disagree that whoever the loser is in
18 this adversary proceeding has an economic incentive and an
19 interest in appealing. I should say, if the government loses
20 any appeal would require Solicitor General approval and it's
21 not a certainty. You know, I can't commit that we would
22 appeal.

23 THE COURT: Oh, that's the practice where when you
24 get into the appellate sphere the local U.S. attorney's offices
25 tend to hand off to DOJ -- to the Department of Justice?

1 MR. JONES: Well, either that or we -- we certainly
2 need Solicitor General approval to affirmatively take an
3 appeal. I think formally that's required for going to the
4 circuit, not to the district court, from bankruptcy court,
5 although we would probably consult anyway prior to going up to
6 the district court. But --

7 THE COURT: Of course this is an issue of the type
8 that might qualify for a direct appeal to the circuit, wouldn't
9 it?

10 MR. JONES: That may well be correct, Your Honor.

11 THE COURT: Especially if you need to certify a
12 matter to the New York court of appeals.

13 MR. JONES: I think that's -- I think that's correct,
14 Your Honor. I think Your Honor's mind is going faster than
15 mine because I'm not sure what would be certified, but --

16 THE COURT: Well, I've thought a little bit about the
17 matter that's sub judice where, you know, you weren't driving
18 the truck. I don't remember whether you were in the courtroom
19 listening to that argument or not.

20 MR. JONES: I was.

21 THE COURT: But there were strong points made by both
22 sides.

23 MR. JONES: On the underlying dispute concerning --

24 THE COURT: Yes, sir --

25 MR. JONES: -- the avoida --

1 THE COURT: -- the cross motions for summary
2 judgment.

3 MR. JONES: Yes. We did not appear as a party-in-
4 interest in that matter because the UCC is conducting it so
5 I --

6 THE COURT: I well understand that but somehow I
7 suspect you either were personally there or had one of your
8 more junior colleagues listening in.

9 MR. JONES: Oh, I was listening raptly, Your Honor,
10 absolutely. I'm sorry, I'm just thinking in terms of if it
11 goes -- if that action goes to the circuit and we are still not
12 appearing in it and actively litigating then the Solicitor
13 General's views are unnecessary to be taken into account and
14 people can do whatever they want to do and go to the circuit or
15 seek certification.

16 You know, one possibility I guess I should mention is
17 I understand the tax -- the asserted tax ramifications of this.
18 The issue is that December 15th will be a basis setting date at
19 which a projected value of the avoidance action will be
20 assigned. And so I think the more that is known about the
21 possible outcome of that avoidance action, the farther down the
22 road it is, you know, the clearer that is -- the more
23 definiteness there may be in terms of being able to assign a
24 particular value to that. But that's a bit of a leap but
25 that's the one other variable that I think is fair to say. And

1 again, I don't say that on behalf of the IRS. That's just my
2 limited understanding of the asserted tax issue.

3 In this action, Your Honor, to circle back to Your
4 Honor's question, quite simply, yes, there's a significant
5 possibility that an appeal will be taken from any ruling of
6 Your Honor. It's also possible that the Court will decide,
7 notwithstanding that we've presented this as controlled by the
8 plain meaning of documents, that discovery could be necessary,
9 that further factual development about the parties'
10 understandings underlying those documents could be necessary.
11 And that would delay things further as well, so I don't know.
12 Right now we intend -- both parties intend to brief and believe
13 they have dispositive arguments, and we intend to present
14 those. But that's another risk that could leave the matter
15 undecided.

16 THE COURT: You see, you're not carrying the ball for
17 the IRS, but the ability to get parol evidence on the parties'
18 contractual intent, if I were to conclude that's necessary,
19 and/or the ability to allow the appellate process to determine
20 whether I'm right or wrong on any ownership dispute, would at
21 least seemingly be materially assisted if the IRS could simply
22 push back the date upon which the basis is fixed. This is
23 somewhat different, subject to your rights to be heard, than
24 what we had in June of 2009 when the debtor was bleeding money
25 and the company was going to die if I didn't issue a ruling in

1 thirty days.

2 MR. JONES: All right. Your Honor, that's absolutely
3 true. I am not at all conversant with trust tax law and with
4 what governs -- as far as I know I am told that date can't be
5 pushed, the December 15th date. Now --

6 THE COURT: To the extent -- forgive me, and I know I
7 interrupted you, Mr. Jones, and I apologize for that, but to
8 the extent that that date can't be pushed, that would at least
9 seemingly weaken your rightness argument. Conversely, if your
10 colleagues across the hall or across Pennsylvania Avenue or
11 wherever people do their jobs involving the Treasury's
12 different arms, because I think the IRS, from my high school
13 civics course, is an arm of the United States Treasury.

14 MR. JONES: That's correct.

15 THE COURT: To the extent that one arm of Treasury
16 can show flexibility in this area that would at least seemingly
17 enable the other arm of Treasury to make a stronger mootness
18 argument. Or conversely, if it doesn't, you're going to get
19 fraggd by your own grenade.

20 MR. JONES: I understand, Your Honor. I have little
21 to say to that observation other than that I understand the
22 point and --

23 THE COURT: Okay.

24 MR. JONES: -- as it now stands, we will be assessing
25 whether we have a rightness argument based on -- in part on the

1 assumption that that December 15th date and the asserted tax
2 consequence is real.

3 THE COURT: Okay. Any further thoughts?

4 MR. JONES: No, Your Honor. I mean, I -- I really
5 don't. I think we're prepared to brief and we have the
6 briefing schedule agreed upon. We appreciate the Court's
7 consideration and we're ready to proceed.

8 THE COURT: All right. Fair enough. Thank you, Mr.
9 Jones.

10 MR. JONES: Thank you.

11 THE COURT: Mr. Edelman, I assume you generally agree
12 with Mr. Jones. Would you like to add anything?

13 MR. EDELMAN: No. I think he summarized our views.
14 We agree with the dates and think that the only thing for
15 determination today would be a hearing sometime that's
16 agreeable to all parties.

17 THE COURT: Very well. Okay.

18 Mr. Siegel, do you have a desire to respond or reply
19 in any way?

20 MR. SIEGEL: No, Your Honor.

21 THE COURT: Should I ask Ms. Blum to join me with my
22 scheduling book? Would that be something everybody would like
23 me to try to do?

24 MR. SIEGEL: I think that would be very helpful, Your
25 Honor.

1 THE COURT: And I see nods from the governmental
2 side.

3 One of you guys want to get Helene?

4 Mr. Siegel, while we're waiting for that, when I
5 endorsed that order I put your fee app on for a final hearing
6 on the same day as this. And I'm wondering if I should 60(b)
7 that. How controversial, if at all, is your fee app? Or
8 should you hand off to Mr. Schmidt for that question?

9 MR. SIEGEL: I'll hand off to Mr. Schmidt, Your
10 Honor.

11 MR. SCHMIDT: I'll take that, Your Honor. Obviously
12 we don't know where things will come out with the fee examiner
13 in their final review of the applications, but you know, we're
14 hopeful we'll be able to -- we'll have those issues limited,
15 and many of them will be similar issues that the other
16 professionals will have. So there will likely be, actually,
17 some guidance on that since the Court will have heard those
18 applications.

19 THE COURT: Well, our track record over the course of
20 the case has been that most issues are resolved consensually
21 before they come to me, and I'm simply saying that what you
22 guys agreed to is okay with me, if I recall.

23 MR. SCHMIDT: That's correct, Your Honor. And you
24 know, we're -- so we're, you know, cautiously optimistic that
25 we'll have closure on the vast majority of issues, to the

1 extent that any remain. And then there is the issue that we
2 have with Treasury over our entitlement to fees expended in
3 connection with this exercise.

4 THE COURT: Oh, is that something I would need to
5 rule on?

6 MR. SCHMIDT: That's something that I think would be
7 needed to be ruled on at that time.

8 THE COURT: Would I? I want to ask you first and
9 then I want to ask Mr. Jones. Do I have the ability to rule on
10 the remainder of your fees and to separate that piece of it? I
11 assume it's a relatively small part of your total entitlement.

12 MR. SCHMIDT: It's not insignificant, Your Honor, but
13 I do think you'd be in a position to rule on it.

14 THE COURT: Okay. Helene, can you join me, please?

15 When, gentlemen and ladies, is the last brief coming
16 in on the agreed upon briefing schedule? I have the letter of
17 July 1st that I endorsed but --

18 MR. SIEGEL: Your Honor, if I may?

19 THE COURT: September 22nd, is it?

20 MR. SIEGEL: September 22nd, unless -- unless the DIP
21 lenders cross move for summary judgment and then it's possible
22 that they would submit a reply brief on September 29th. So
23 either the 22nd or the 29th of September.

24 THE COURT: And somebody help me with why the
25 recommendation was on or after the 17th? Would I, by way of

1 example, have the ability, if I could read the papers quickly
2 enough, to hold the hearing on the 5th or 6th of October?

3 MR. SCHMIDT: Your Honor, the committee would be
4 happy to have the hearing on those dates.

5 THE COURT: Mr. Jones?

6 MR. JONES: Your Honor, we'd be fine with that, as
7 long as it's okay with EDC as well.

8 THE COURT: Well, let me see what my calendar is.
9 The following week, from the 10th through the 14th, I have both
10 the NCBJ and I'm a speaker and I'm on several boards on that.
11 And then I have -- I just gave out the 18th and 19th for trial
12 in another matter. Had we set something for the 20th? Do you
13 remember what that is, what that number refers to?

14 MS. BLUM: An adversary.

15 THE COURT: A GM adversary?

16 Mr. Schmidt, this is a long shot. Would you know
17 what some kind of oral argument we have in a GM adversary on
18 October 20th might relate to? I know you're not debtor's
19 counsel.

20 MR. SCHMIDT: I'm not certain, Your Honor.

21 (Pause)

22 THE COURT: Oh, I understand why it's so unclear to
23 everybody. Helene tells me that she hasn't received any papers
24 on it and it was just something that we were asked to hold the
25 date aside for, for something that presumably you folks are

1 musing over. But at least that -- or maybe more than musing
2 but it hasn't hit the court yet.

3 Did I hear consensus that October 6th would work for
4 you?

5 MR. JONES: Yes, Your Honor.

6 THE COURT: And then I would have, depending on
7 whether the last brief comes in on the 22nd or the 29th, in
8 either way, at least three or four business days, at worst, to
9 review the briefs.

10 All right. I'll give you October 6th, or do we have
11 other problems on October 6th?

12 MR. MINTZ: Your Honor?

13 THE COURT: Is somebody on the phone?

14 MR. MINTZ: Yes. This is Doug Mintz from Cadwalader.
15 I apologize for breaking in. I just wanted to note for
16 everyone, since I'm at a desk, that the Yom Kippur starts on
17 the 7th. I don't know if that affects anyone's schedule but I
18 just wanted to make sure people realize that.

19 THE COURT: Yes, although it's my understanding, Mr.
20 Mintz, that it starts the night of the 7th. Am I correct?

21 MR. MINTZ: That's correct, Your Honor.

22 THE COURT: Now, in October sundown is, what, 6 or 7
23 o'clock?

24 MR. MINTZ: That sounds about right.

25 THE COURT: All right. Forgive me for putting it

1 that way, Mr. Mintz, but I had a lengthy discussion yesterday
2 about the limits on my ability to schedule during the month of
3 October, much of which was on matters less important -- or
4 important to a lesser number of people than Yom Kippur is.

5 All right. Do I still have the 20th and the 21st?
6 Those days were a problem because of lesser holidays, right?

7 MS. BLUM: Right, exactly.

8 THE COURT: Gentlemen, I can also give you the 20th
9 or 21st of October. I've been warned that these are also
10 holidays, although not the same kinds of holidays that -- like
11 Yom Kippur. I think I was told it was Simchas Torah and some
12 other one whose name I've forgotten. Would those present a
13 problem for anybody here?

14 MR. SIEGEL: Those would be fine for the committee,
15 Your Honor.

16 MR. JONES: Fine for me as well.

17 THE COURT: Well, I didn't think it would be a
18 problem for you, Mr. Jones.

19 What about you, Mr. Edelman?

20 MR. EDELMAN: There would be no problem with those
21 dates.

22 THE COURT: How about the morning of Friday the 21st?
23 Okay. Oral argument on Friday the 21st.

24 Okay. Anything else, anybody?

25 MR. JONES: No, Your Honor.

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THE COURT: Mr. Jones. Mr. Edelman?

MR. EDELMAN: No, thank you, Your Honor.

THE COURT: Okay. Very well. Then the morning of the 21st. Thank you very much. We're adjourned.

MR. SIEGEL: Thank you, Your Honor.

(Whereupon these proceedings were concluded at 10:26 AM)

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

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

Hana
Copperman

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