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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of:

Chapter 11

MOTORS LIQUIDATION COMPANY, Case No.: 09-50026(REG)  
et al, f/k/a General Motors (Jointly Administered)  
Corp., et al.,

Debtors.

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STEVEN GROMAN, ROBIN DELUCO,  
ELIZABETH Y. GRUMET, ABC  
FLOORING, INC., MARCUS

SULLIVAN, KATELYN SAXSON, Adv. Pro. No.:  
AMY C. CLINTON, AND ALLISON 14-01929(REG)

C. CLINTON, on behalf of  
themselves, and all other  
similarly situated,

Plaintiffs,

v.

GENERAL MOTORS LLC,  
Defendant.

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

May 2, 2014  
9:46 AM

B E F O R E :

HON ROBERT E. GERBER  
U.S. BANKRUPTCY JUDGE

Hearing re: Status Conference

Transcribed by: Dawn South and Sheila Orms

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P R O C E E D I N G S

THE COURT: Good morning, have seats, please. I know most of you at the counsel table. Mr. Steinberg, with you is whom?

MR. STEINBERG: With me is -- well, you can introduce yourself.

MR. GODREY: Richard Godfrey, Your Honor.

MR. STEINBERG: From Kirkland.

THE COURT: Mr. Godfrey? Okay. Thank you.

MR. GODREY: Good morning, Your Honor.

THE COURT: I know Mr. Weisfelner, Mr. Inselbuch, Mr. Esserman, and Mr. Flaxer. As others want to be heard I'll give them that opportunity as we go along.

Within limits I'm going allow parties to be heard as they see fit, but I have some preliminary comments.

I haven't read all 3,500 pages of the filings that have come in in the last ten days, but I've read New GM's motion, Mr. Flaxer's complaint, Mr. Weisfelner's objection, and have also read all of counsel's letters and the various proposed agenda items.

I think I have a pretty decent handle on the issues that are going to need to be addressed today and the issues that are going to need to be addressed in the upcoming several months, but I'm less clear as to the extent to which all of the issues are already on the table.

1 Identifying the issues that are going to need to  
2 be teed up for judicial determination, or more exactly  
3 figuring out how and when they're going to be put on the  
4 table, is one of the primary purposes of the conference  
5 today.

6 I think everybody understands or should that today  
7 is not the day to argue the merits of any of your respective  
8 positions or especially calling either side names. It's  
9 instead to, as I said, identify the issues that need to be  
10 addressed and to establish a fair means for getting the  
11 issues judicially determined.

12 I appreciate the efforts of Mr. Steinberg and  
13 Mr. Weisfelner and Mr. Inselbuch, Esserman, and Flaxer in  
14 conferring before we got here to avoid inefficiencies and to  
15 set up the orderly process for teeing these issues up. You  
16 got pretty far and I'll take care of the rest.

17 As you'll hear momentarily I have a number of  
18 tentatives, as that expression is used in California and  
19 elsewhere in the Ninth Circuit, which are my inclinations as  
20 to how to proceed, subject to your rights to be heard, but I  
21 have some expectations as to an orderly discussion, no  
22 histrionics, no repetition. I also have some questions and  
23 concerns that I want you to address when it's your turn.

24 Starting with my questions.

25 I gather there are now about 60 class actions and

1 a couple of individual actions pending against New GM in  
2 various parts of the country with respect to the ignition  
3 switches in some way, but I have only a partial  
4 understanding of what the claims typically characterized as  
5 for economic loss are.

6 I'd understood, rightly or wrongly, that New GM  
7 voluntarily assumed liability for wrongful death, personal  
8 injury, and property damage with respect to any "incidents  
9 or occurrences," which I understood to be things like wrecks  
10 or fires or of course death or injury, that took place after  
11 the sale in July of 2009.

12 I also understood that New GM had undertaken  
13 responsibility for satisfying the glove box warranty and for  
14 complying with state lemon laws.

15 But I need to get a handle on what's left. What  
16 is left that has engendered 60 class actions across the  
17 country? And obviously I'll hear your respective views on  
18 that. I got a pretty good sense of the legal theories that  
19 were invoked, vis-à-vis that economic loss, but I still  
20 don't understand exactly what we're talking about.

21 Mr. Inselbuch's April 24th letter identifies an  
22 issue as to whether claims against New GM, statutory or  
23 otherwise, based on post-sale conduct of New GM are subject  
24 to my orders. Mr. Esserman's April 23rd letter and  
25 Mr. Weinberg's -- I don't see Mr. Weinberg, is he here

1 somewhere? Oh, yeah there is he, okay. April 30 letters  
2 raise whey I understand to be the same issue.

3 To what extent, and I guess this is mainly for  
4 you, Mr. Steinberg, is there a dispute on that? Or is the  
5 devil in the details turning on the whether the alleged  
6 wrongful conduct is wholly past sale or there's some other  
7 nuance that would make the question harder than it would  
8 appear at first blush? Help me get a better handle on what  
9 we're talking about in that regard.

10 A similar issue exists with respect to the lemon  
11 laws as mentioned in Mr. Esserman's April 23rd letter.  
12 Please address that as well.

13 Next, each of the Steinberg and Weisfelner letters  
14 talk about getting a sense as to how the majority of the  
15 class action plaintiffs are prepared to proceed. I  
16 underscore the word majority. When each of you use that  
17 term it suggested to me, rightly or wrongly, that the  
18 plaintiffs referred to were less than all of them. I think  
19 what you were able to accomplish was very, very helpful, but  
20 have some difficulty in seeing how that by itself would get  
21 me across the goal line.

22 The fact that all plaintiffs couldn't get behind  
23 three law firms -- and on this limited issue I think I can  
24 take judicial notice -- have some proven track record in  
25 addressing the interface between tort liability and

1 bankruptcy law causes me some concern. Because as I said, I  
2 don't want repetition, and that includes making the same  
3 point in different ways. I need to hear from anybody who  
4 thinks those three firms aren't good enough why that's so,  
5 or conversely why they're not raising issues that need to be  
6 addressed. That's not to say that anybody who thinks up  
7 anything those firms couldn't can't be heard, but I need to  
8 know why and what's the problem.

9 I also want to hear from Mr. Flaxer, since he was  
10 the first and he was the only one that brought an adversary,  
11 and I don't put him in the category that I put all the  
12 others.

13 Next, Mr. Esserman speaks in his April 23rd  
14 letter, paragraph 5, of teeing up procedures for plaintiffs.  
15 I don't know if this is the class action plaintiffs he  
16 represents or all prospective plaintiffs, to show cause  
17 whether they have any claims against New GM not otherwise  
18 barred by the sale order and injunction.

19 You wrote that letter, Mr. Esserman, back on  
20 April 23rd and I gather you've had discussions with other  
21 folks since that time. I'd like you or Mr. Weisfelner, let  
22 me know whether you have any needs and concerns to get  
23 rulings on this that haven't been subsequently rolled into  
24 what needs to be addressed, and I'd like to ask the same  
25 with respect to the item you listed as number 7 in your

1 letter, procedures under which, assuming the sale order  
2 stands without modification, under which plaintiffs might  
3 seek amendments to it.

4 Okay, now for my tentatives. I apologize to you  
5 all for speaking at such length.

6 As I said these are California tentatives, which  
7 are views I formed on a preliminary basis after reading the  
8 briefs and the letters but which are subject to your rights  
9 to be heard and which I'll obviously consider in the way of  
10 modifications based on whatever you tell me verbally.

11 First. Now that fraud on the Court has been taken  
12 off the list of threshold issues I'm not sure if there's a  
13 material difference in views or for that matter any  
14 difference in views on the threshold issues that need to be  
15 addressed at least insofar as the majority of the plaintiffs  
16 are concerned.

17 I'm inclined to consider as threshold issues the  
18 two remaining issues that were shown on Mr. Weisfelner's  
19 black line, and I'm also amenable and inclined to allow any  
20 other purely legal issues to be raised along with the so-  
21 called threshold issues, such as the discrimination  
22 argument, that is the argument that creditors with personal  
23 injury claims, death claims, property claims would be  
24 addressed by New GM whereas those with the so-called  
25 economic damage claims would not.

1           It seems to me, again subject to your rights to be  
2 heard, that the more appropriate means of demarcation  
3 between claims that can and should be considered as  
4 threshold issues and those that can be put and should put to  
5 a later time is to separate issues that can be addressed  
6 without discovery from those that can only be addressed with  
7 discovery and potentially a very burdensome or at least  
8 lengthy discovery process.

9           The principal players as I read the letters, New  
10 GM and the class action plaintiff steering committee seem to  
11 feel that they can win without discovery, and whether or not  
12 either side is right in that regard that seems to me, that  
13 is to deal with issues without discovery, to be the logical  
14 place to start since even if issues need to be further  
15 addressed or refined the early work that's accomplished  
16 would set the table for the work, if any, that needs to be  
17 considered next.

18           The corollary of that would seem to be that I need  
19 to reject the contentions of a couple of you, and I'm  
20 thinking of Mr. Esserman, your first -- your April 23rd  
21 letter and Mr. Etkin's April 30 letter, that we should now  
22 have discovery, and as I read your early letter,  
23 Mr. Esserman, what would seem to be pretty massive discovery  
24 early on and that such discovery should proceed on an  
25 expedited basis.

1           Once again I note that you, Mr. Esserman, are a  
2 member of the steering committee and your views may have  
3 evolved since April 23rd when you wrote that early letter.

4           Two. My tentative is not to interfere with the  
5 MDL's hearing now scheduled for May 29th, I think that's the  
6 date, and to permit the judicial panel and multidistrict  
7 litigation to rule on where pretrial proceedings with  
8 respect to any future litigation should proceed, but that  
9 would be under the understanding, at least under my  
10 understanding -- that's why I wanted you guys to be heard on  
11 it -- that everyone understands that to the extent I  
12 hereafter rule in a way that some or more than some of those  
13 now pending litigations before the MDL panel need to be put  
14 on hold or stopped in some other fashion, that I would be  
15 free to do that, including vis-à-vis, the multidistrict  
16 panel irrespective of what the MDL panel had accomplished up  
17 to that point in time.

18           Three. I share your view that anyone who's  
19 unwilling to agree to a temporary standstill that the  
20 majority seems to agree upon should come forward within a  
21 time certain either on the date that's already proposed,  
22 which I think was May 10, or some alternate date. More  
23 likely close to that, but if fairness requires a little more  
24 time that to my thinking would be okay.

25           Reading the submissions so far it's obvious that

1 these are serious issues, and my general view -- call it a  
2 tentative or not -- is that rushing by a few days or even a  
3 few weeks on issues of this importance isn't in anybody's  
4 interest.

5 Fourth. I think we need to ascertain by a date to  
6 be agreed upon or set all of the issues that are on the  
7 table or that are to be decided even if they're not  
8 addressed as what I call Phrase I issues. I need your  
9 recommendation as to the best way to do that, and what  
10 deadline I should impose for parties to get their  
11 contentions on the table.

12 That wouldn't necessarily mean that they should  
13 all be briefed at that early time, and in fact my  
14 expectation would be that they wouldn't be, but I want to  
15 get the lay of the land on the issues that I'm going to be  
16 asked to rule upon.

17 Related to that was Mr. Flaxer's suggestion that a  
18 date should be set by which any and all interested parties  
19 should commence adversaries similar to the one he brought if  
20 they were of a mind to. My tentative is to agree with  
21 Mr. Flaxer's point in that regard.

22 Fifth. I want to accomplish as much as we can  
23 before we get bogged down in discovery. I like the idea of  
24 you guys agreeing on a stipulated record, but I don't like  
25 the variant of that, which I think was proposed by

1 Mr. Weisfelner, which was request for admissions. If things  
2 would be admitted they'd be stipulated to, and if they're  
3 not admitted they're going to result in disputed issues of  
4 fact as to which we're going to have to come up with some  
5 other mechanism, and Rule 35 requests for admissions is  
6 really nothing more than a cost shifting device any way.

7 So I want you guys when the time comes to really  
8 try to agree on everything you can agree upon consistent  
9 with your professional responsibilities and then identify  
10 issues as to which you agree to disagree and I'll decide  
11 then what to do about it.

12 Six. We have one adversary proceeding on file and  
13 one contested matter. Other adversaries may be filed  
14 consistent with the point Mr. Flaxer made, but at this point  
15 I have these two, we need to think about the possibility of  
16 more.

17 My tentative to consolidate the contested matter  
18 and any adversaries for procedural purposes. Mr. Steinberg,  
19 your letter cited decisions by Judge Lifland and Judge  
20 Walrath indicating pretty clearly holding that when you're  
21 enforcing an earlier court order you don't need to bring an  
22 adversary to do that, but many observers might agree with  
23 the judgment that Mr. Flaxer presumably made that when he  
24 wanted a declaratory judgment and he wanted some of the  
25 stuff that he asked for in there an adversary proceeding was

1 appropriate.

2 I guess the issue is whether others who are  
3 looking for things similar to what Mr. Flaxer did would need  
4 to either climb onto his adversary or bring their own  
5 adversaries. It might be appropriate for separate  
6 adversaries to be brought, although my thought would be that  
7 they would be procedurally consolidated and jointly  
8 administered as well, but I need people to focus on that.

9 If those adversaries are to be brought -- and many  
10 might regard that as a good idea, but I'm not forming a  
11 tentative on that -- Mr. Flaxer's point that it should  
12 happen by a fairly early date certain seems to me to be  
13 pretty persuasive. But again, that's a tentative.

14 Seven. While these issues mainly involve New GM  
15 some also appear to also involve Old GM or the GUC Trust,  
16 the general unsecured creditors trust, that's Old GM's  
17 successor.

18 It would seem to me that there's an issue as to  
19 whether there might be excusable neglect to file late claims  
20 against Old GM to the extent that I ruled that any of the  
21 claims being asserting are prepetition claims rather than  
22 post-petition claims if the ability to assert those claims  
23 wasn't known by the time that the Old GM case bar date  
24 expired.

25 When I was preparing for today I speculated that

1 issues of that character were why Mr. Golden wanted to have  
2 the opportunity to be heard.

3 To the extent any issues involving Old GM or the  
4 GUC Trust can be heard as matters of law my tentative is  
5 that they should be considered along with the other  
6 threshold issues and that anybody who cares about those  
7 kinds of issues should have a chance to weigh in on them.

8 Lastly, eight. In his April 24th letter  
9 Mr. Flaxer raised the issue of mediation. Obviously the  
10 idea or the prospect of meeting the two sides needs and  
11 concerns without this monstrous battle is attractive to me.

12 When I was a practicing lawyer a district judge in  
13 Delaware, Joe Farnan, some of you may know him, made an  
14 impression on me and I think a bunch of other lawyers when  
15 he said that the guy in the robe would do his job but  
16 parties' needs and concerns could be better addressed by  
17 negotiation than by forcing a judge to decide issues within  
18 the four corners of what judges are allowed to decide.

19 And frankly it would be great if whatever money is  
20 available for injured people could go to them and not to  
21 litigation costs and attorneys' fees. I have no tentative  
22 on this, but I want people to address it by the time they're  
23 done.

24 So we're ready to continue. Mr. Steinberg, I'm  
25 going hear from you first, then Mr. Weisfelner, then from

1 anybody who has any non-repetitive remarks to make after  
2 that. Oh, Mr. Flaxer, can I hear from you, please, after I  
3 hear from Mr. Weisfelner if you care to be heard.

4 Mr. Steinberg.

5 MR. STEINBERG: Thank you very much, Your Honor,  
6 and thank you for the careful consideration of the issues  
7 that have been presented.

8 I'd like to be able to address the tentatives and  
9 then go back to the questions and then maybe find the script  
10 that I had started in connection with this hearing.

11 Your Honor had identified the demarcation for  
12 threshold issues as that which could be done with either no  
13 discovery or very little discovery versus something that  
14 would lead to much more complex discovery, and we agree that  
15 that is a proper formulation.

16 The one thing that we would ask Your Honor to  
17 consider, and I understand the balance here, is that we had  
18 suggested as well as I think Mr. Flaxer, that fraud on the  
19 Court would be a threshold issue.

20 Generally we were lumping all the Rule 60 issues  
21 together, and many times when someone argues 60(d)(1), which  
22 is whether there's an equitable remedy that should be  
23 fashioned, or even the 610(b)(4), which is the procedural  
24 due process, they usually throw in 60(d)(3), which is the  
25 fraud on the court, whether it's proper or not, but that's

1 -- but they assert those in. And so I understand that fraud  
2 on the Court may require some additional discovery, but the  
3 issue is how much additional discovery and should it be  
4 considered as well as a threshold issue?

5 THE COURT: You read my mind, Mr. Steinberg,  
6 because when I thought about fraud on the Court in trying to  
7 put myself in the role of a plaintiff's lawyer then I would  
8 have thought that the plaintiff's lawyer would want to get  
9 into GM's files or communications to ascertain the extent to  
10 which behind the scenes Old GM was thinking about this  
11 liability and not making a disclosure to me. You think  
12 that's only modest discovery or can be limited in that  
13 fashion or were you thinking about a different kind of  
14 discovery that might be undertaken, vis-à-vis, that issue?

15 MR. STEINBERG: Well the issue about whether the  
16 Old GM professionals or the people in charge of negotiating  
17 the MSPA or the people in charge of presenting evidence to  
18 Your Honor, that would be a fairly discreet time period. I  
19 mean the bankruptcy was filed on June 1, the order approving  
20 the sale was July 5. So we don't think that necessarily the  
21 discovery from a time span is as significant. We're also  
22 fairly confident what the result would be of that -- of any  
23 of that type of discovery.

24 But, Your Honor, as you outline the issue if the  
25 choice that we had was to effectively piecemeal the 60(d)(3)

1 issue and the trade off would be a much more streamline  
2 procedure to present the legal issues -- so either there'd  
3 be no discovery or very, very little discovery -- that may  
4 be something that we're prepared to do, because we  
5 understand the logic of that. And though it's piecemealing  
6 a Rule 60 issue it may make sense under the circumstances to  
7 be able to present as many of the pure legal issues as  
8 possible.

9 I probably would need, and I'm sure this side of  
10 the table probably needs the opportunity to talk to their  
11 other people as well too to see whether they agree with my  
12 formulation, but I certainly understand the logic of it and  
13 if there was an agreement that there would be little or no  
14 discovery and we would just try to stipulate as much as we  
15 could to a stipulated record that may be a good avenue to go  
16 forward.

17 Your Honor, in trying to address one of your other  
18 tentatives, because I think it ties into a number of  
19 different issues, you'll see that -- that in our agenda  
20 letter we had said that the people who brought the adversary  
21 proceeding could file an amendment to the complaint by  
22 May 14th, provided that it doesn't object to the substance  
23 of what we agree to as the procedure going forward today.  
24 So if they want to restate what they think their claims are  
25 and perhaps try to make sure that it was more inclusive of

1 other people then that's fine.

2 And you see that in Mr. Weisfelner's letter that  
3 he talked about filing an amended complaint in the -- in the  
4 MDL action as a procedural issue, which we don't think is a  
5 procedural issue, we actually think it's a substantive  
6 issue. But both things -- both of those issues evolve  
7 around one of the tentative --

8 THE COURT: Forgive me, Mr. Steinberg, I lost you  
9 there. I thought you said filing an amended complaint in  
10 the MDL action. I thought that my only connection with the  
11 MDL action is I guess I have the power to put it on hold,  
12 but what else do I have to do with the MDL action?

13 MR. STEINBERG: No, Your Honor, I was trying to  
14 lead to a point, but I was merely saying that there was a  
15 point of disagreement in the letters as to whether the  
16 agreement to allow them to go forward on the May 29th  
17 hearing and that it wouldn't be stayed and that it would be  
18 for purely administrative matters, and we were disagreeing  
19 as to whether the filing of an amended complaint in the MDL  
20 action would be an administrative matter or a substantive  
21 matter.

22 But the point that I was trying to connect between  
23 these things is that -- is that the filing of an amended  
24 complaint by Mr. Flaxer or a recitation to file a  
25 consolidated complaint to try to get all those theories

1 together is really trying to address Your Honor's tentative  
2 ruling about wanting to know what are the bankruptcy-related  
3 issues, what is -- what is it that they think that they can  
4 go forward on that -- that would not otherwise be foreclosed  
5 by the sale order?

6 All of those things are touching the same thing,  
7 and my suggestion in light of your -- the tentatives and in  
8 thinking about it and the reviewing the letters is that the  
9 issue of whether they should file a complaint in the MDL  
10 action or not should be -- should in effect be deferred  
11 until the next status conference, and that one of the things  
12 that we should be doing between this status conference and  
13 the next status conference is to try to decide what we had  
14 called in our agenda letter the bankruptcy-related issues  
15 that are not the threshold issues, to try to define what it  
16 is that we ultimately are going ask Your Honor to set forth,  
17 because that's the exercise that's imbedded in doing either  
18 the amended complaint to the adversary proceeding or the  
19 amended complaint to try to coalesce all of these  
20 complaints. Those are the issues that someone will have to  
21 decide are bankruptcy-related issues or survive and should  
22 go forward without, and that's the exercise that I think  
23 should be done, and I don't think we should reach a firm  
24 decision as to whether they should be doing anything more  
25 than -- on the MDL proceeding to go forward on May 29th, do

1 the things like selection of lead counsel, the things that  
2 we can agree are purely administrative, and we should defer  
3 consideration of the amended complaint issue until the next  
4 status conference.

5 THE COURT: But matters of the character that the  
6 MDL could appropriately determine in your view could include  
7 whether the pretrial proceedings take place in say  
8 California on the one hand or New York on the other?

9 MR. STEINBERG: For the MDL I think the MDL should  
10 be able to select which forum is going to go forward on  
11 generally the MDL action to the extent that the MDL action  
12 will ever go forward.

13 THE COURT: Okay. Continue, please.

14 MR. STEINBERG: The -- Your Honor, with regard to  
15 the -- your tentative ruling on the stipulated record and  
16 that we don't do admissions, that is essentially what we  
17 have been trying to urge on the plaintiffs.

18 One of the issues was that we had discussions  
19 separately with one group versus another group and they had  
20 differing views on certain issues. And even with the group  
21 that had a larger issue what we were getting to some extent  
22 was the lowest common denominator. When you have 15 people  
23 having suggestions sometimes you get 15 suggestions because  
24 no one really wants to whittle it down and they leave it up  
25 to us to do it.

1           We urge to do a stipulated record under the theory  
2           that it's too early to do admissions, it is a -- really just  
3           a cost shifting issue as Your Honor had identified, and it  
4           leads to a dialogue. If they -- if they propose that they  
5           want us to agree to something instead of me answering as I  
6           would answer an admission I'd be sitting there saying I  
7           can't do that but I can do something different and then we  
8           would have an iterative dialogue to be able to try to  
9           present what the issues are and then I wouldn't have to try  
10          to do the reflexive issue, which is that if you want  
11          admissions then maybe I have admissions that I want to ask  
12          of you. Did you know of the bankruptcy proceeding? Did you  
13          know of a problem with your car? Those things and try to  
14          identify those issues, which may be relevant to certain of  
15          the issues whether it's -- that they may tangentially relate  
16          to the fraud on the Court issue, which may be off the table  
17          now, but -- so I said stay with the stipulation and if we  
18          can't agree to it we'll have a status conference in June and  
19          we'll tell the judge this is as far as we could get and we  
20          couldn't get all the way there, and if we couldn't agree on  
21          everything then you could propose what kind of limited  
22          discovery you think you need to conclude those facts that  
23          are necessary to determine the purely legal issue. We'll be  
24          able to evaluate it. And then if we can't agree with that  
25          we'd be before Your Honor on something specific and

1 concrete.

2           And the problem that we were having between now  
3 and May 2nd is that there was a lot of general propositions  
4 that were asserted and many times the devil is in the  
5 detail, and you need to know when someone says it's purely  
6 administrative it's not substantive you really need to know  
7 what they are talking about. When people say we can agree  
8 to some facts and it's not going to be big, it's going to be  
9 narrowly tailored you need to know what someone means when  
10 they say narrowly tailored, because when actually try to pin  
11 it down it becomes a lot more difficult.

12           So what we were proposing -- and I think there was  
13 a lot of receptivity on it from the other side -- was a walk  
14 and then run, which is give us a chance to try to do an  
15 exchange and we'll see how good we are, and give us a chance  
16 if we can't fill in all the gaps to how to complete the  
17 discovery and we'll see how good we are, and if we can't do  
18 it then I know that you're going to bridge the gap for us  
19 and then we'll both live with whatever Your Honor rules.  
20 And we're only looking to defer that consideration where we  
21 otherwise couldn't agree for like a six or seven-week  
22 period.

23           And the reason why we think that time period going  
24 a little longer versus shorter is better -- and I think Your  
25 Honor eluded to that as one of your tentative rulings that

1 sometimes things take a little longer and these serious  
2 issues -- is that until we know how they've organized -- and  
3 it's really their job to organize, but it's our burden to  
4 make sure that we're dealing with 2 groups of people,  
5 4 groups of people, or 20 groups of people, because it  
6 becomes harder to figure out briefing schedules, potential  
7 discovery, stipulation of facts if we don't know who the  
8 people are that we're dealing with you may need to have a  
9 little more time until they get better organized to be able  
10 to do that. That's why we actually suggest in our agenda  
11 letter is just tell us if you formed a group. That has the  
12 salutary effect of at least we know who we're dealing with  
13 and Your Honor will know whether they actually formed the  
14 group, and those who decide they want to be outliers well  
15 then they will have to stand up and tell Your Honor why they  
16 need to be an outlier and the liaison groups couldn't  
17 properly be formed.

18 But that's all we were trying to say on that  
19 issue, which is give them an opportunity to get themselves  
20 organized and let us know how successful you were, and where  
21 you were not fully successful just let us know because we --  
22 we on our side of the table procedurally have to deal if  
23 they're not fully organized and then ultimately Your Honor  
24 will have that same issue about how things are being  
25 presented to Your Honor.

1 With regard to -- so that's why we thought we  
2 needed a little more time. And by the way, the dates that  
3 we selected in our letter were given to us by one of the  
4 plaintiff groups, and the other plaintiff group actually  
5 said, while they shortened our dates, they also said in  
6 their letter that they're flexible about the dates. So I  
7 don't think ultimately at the end of the day we're going to  
8 disagree about dates, about when we're going to be here.

9 I think the general proposition is that between  
10 now and some time in mid to late June when we'll have  
11 another status conference we're going to try to accomplish a  
12 stipulated record for briefing the threshold issues and to  
13 see whether there's any discovery that is it warranted or  
14 not with regard to that stipulated record.

15 And I would suggest also, and this is off my  
16 agenda letter, but picking off on the tentative ruling,  
17 trying to identify during that period of time the other  
18 issues which are not threshold issues, the other bankruptcy-  
19 related issues that we'd ask Your Honor to consider, and  
20 we'd be doing all of that presentation at the next status  
21 conference. And at that next status conference, to the  
22 extent that the defendants are not fully organized, that we  
23 would try to -- and it wouldn't be me, but it would be Your  
24 Honor and the plaintiffs -- try to figure out how they can,  
25 you know, get to the end to themselves more fully organized.

1           The tentative that you had about the GUC Trust,  
2 late-filed claims, excusable neglect, we actually think that  
3 this is an issue that should be dealt with. It is not our  
4 issue, but to the extent that they've raised or some of them  
5 have raised a procedural due process issue relating to the  
6 bar order, which was after the sale order had taken place  
7 and they're saying that they don't have a remedy -- an  
8 effective remedy against Old GM, well there is a GUC Trust,  
9 there are a number of -- there's a number of values still  
10 left in the GUC Trust. Whether they actually are a  
11 creditor, where they actually have excusable neglect I'm not  
12 trying to prejudge it, but we were urging that they  
13 shouldn't just assume that there was nothing there when  
14 there is potentially something there and they should be able  
15 to and should be almost in fact required to at least explore  
16 that as an alternative to try to get a recovery, if they're  
17 entitled to a recovery. I wasn't trying to say that they  
18 were or not.

19           As far as the suggestion of mediation, it is  
20 always hard to say that you're against mediation. The only  
21 thing that I would say, Your Honor, is that New GM has hired  
22 Ken Feinberg, who is a very well known person who tries to  
23 figure out how to deal with circumstances and to how to  
24 adjust situations on a non-legal base, but to try to  
25 negotiate a resolution.

1 Mr. Feinberg is working on the matter but he  
2 hasn't -- while studying what to do he hasn't taken it to  
3 the next step. And my own feeling about mediation is that  
4 we would like to see whether Mr. Feinberg -- what  
5 Mr. Feinberg will do and not do and let's see where the  
6 legal issues lie, but understand that the overall sentiment  
7 that Your Honor expressed, which is that at the end of the  
8 day if there's going to be a negotiated resolution you  
9 better do it -- you're better off doing and being able to  
10 pay the people who claim to have suffered injury, better off  
11 paying them than to end up building up a big load star and  
12 paying other people.

13 Your Honor had asked what the -- to confirm what  
14 these lawsuits were about. Your Honor was absolutely  
15 correct that under the MSPA, the asset purchase agreement  
16 upon which New GM took assets, that New GM assumed the  
17 liability for the glove box warranty, the lemon law  
18 liability, and for accidents, incidents that led to the loss  
19 of life, personal injury, or property damage for anything  
20 that took place after the sale. So if there was an Old GM  
21 vehicle that was -- got into an accident after the sale and  
22 that led to an injury issue that was something that New GM  
23 assumed the responsibility for.

24 These lawsuits are not those cases, and we didn't  
25 move by the way just so it's clear -- we did not move to

1 enforce Your Honor's injunction for the presale accidents,  
2 which were actually retained liabilities under the MSPA. We  
3 purposely carved out the accident victims whether it's  
4 presale retained liability or post-sale assumed liability,  
5 because we wanted to focus in as to what these lawsuits were  
6 about. These lawsuits are about a claimed economic loss,  
7 the value of a car which is six, seven, eight, nine, ten  
8 years old for the loss in value because of the announcement  
9 that there was going to be an ignition switch recall and  
10 that that car had lost its value until the time that it is  
11 being repaired through the recall or not. I'm not sure if I  
12 can figure that out.

13 THE COURT: Pause please. Maybe this question is  
14 better directed at your opponents. But is this before or  
15 after the cars were fixed?

16 MR. STEINBERG: This --

17 THE COURT: I mean the loss in value, because I  
18 would assume that if a car hasn't been fixed it would lose  
19 value, but I'm not sure what the view of --

20 MR. STEINBERG: This has --

21 THE COURT: -- parties would be after it's been  
22 fixed.

23 MR. STEINBERG: This I don't think has anything to  
24 do with the cars being fixed or not, because by virtue of  
25 the recall New GM is committed to fixing the cars, replacing

1 the ignition switches, and to doing it tentatively now they  
2 think they'd be able to complete it by the end of October of  
3 this year. So everybody is going to have their car fixed  
4 and so the ignition switch is going to be fixed. This is a  
5 perceived loss in value of a car that has some history on it  
6 for the -- because of the announced recall for whatever that  
7 loss of value is.

8 So frankly in one of the individual cases that was  
9 brought in Texas where we were involved in a litigation as  
10 to whether all of the cars with the ignition switch issued  
11 should be parked. The actual lawsuit was about a 2006  
12 Cobalt -- Chevy Cobalt which had 165,000 miles on it, and  
13 the issue was the deterioration in value of that car by  
14 virtue of the announcement of the ignition switch recall.  
15 That was what that lawsuit was about.

16 The injunctive relief was whether all cars should  
17 be parked because of a perceived defect between now and  
18 until it was repaired.

19 But that was the nature of that lawsuit, and I  
20 know that if I'm not properly characterizing how the  
21 economic losses are I'm sure that the people who'll follow  
22 me at this rostrum will be able to -- be able to do that,  
23 but that's my understanding of it.

24 These are people who have not had any accident,  
25 any property damage, or personal injury, this is for the --

1 and they are going to get compensated for -- they are going  
2 to get their -- the repair of the ignition switch by virtue  
3 of the recall, and I think that to the extent that they had  
4 to do it themselves before the recall has a provision about  
5 whether they get compensated for that as well, but this is  
6 for the perceived deterioration in the value of their car by  
7 virtue of this announcement.

8 Now just to make it clear too because it deals  
9 with the issue, Your Honor, as to what's, you know, the New  
10 GM conduct versus the Old GM conduct. I think Your Honor  
11 had talked about that. All of the -- all of the cars with  
12 an ignition switch issue, all of them were Old GM vehicles.  
13 By the time of the sale the ignition switch had been  
14 corrected in the cars. The recall --

15 THE COURT: By that you mean new cars then being  
16 constructed?

17 MR. STEINBERG: Right.

18 THE COURT: Okay.

19 MR. STEINBERG: The issue why the recall involves  
20 some post-sale cars is a nuance difference.

21 What happened was someone with a new car, which  
22 had a good ignition switch, would go in to have their car  
23 repaired and there was a possibility that the person who  
24 repaired that car, which may have been a GM dealer or may  
25 have been someone totally different, they may have actually

1 put in an old ignition switch part. They may have taken a  
2 good part out and put a bad part in. And since New GM  
3 didn't know whether -- whether that -- which cars that  
4 occurred to it announced the recall for some post-sale cars.  
5 But the cars that would ever be impacted by this is a very,  
6 very small element, but New GM is repairing all of those  
7 ignition switches.

8 So the issue in our view is that we believe that  
9 everything they're talking about relates to Old GM conduct,  
10 Old GM manufactured cars, and that -- and that what they're  
11 trying to build on is the fact that under the sale order and  
12 the MSPA New GM accepted as a covenant, not an assumed  
13 liability, but a covenant, to comply with -- with the  
14 federal laws relating to recall, and they're saying that  
15 that somehow creates claims because New GM didn't recall  
16 these vehicles fast enough and that they should have done it  
17 faster. And we believe that all of that relates to -- all  
18 of those claims whether they could ever assert that as a  
19 private right of action, which we don't think is correct, we  
20 think all of that is an Old GM retained liability issue.

21 Now, I don't expect them to agree with my  
22 recitation of that, but that is the nuance, right, that is  
23 the issue as to why it's not a clear demarcation.

24 What is clear is that if New GM manufactured and  
25 sold the vehicle and anything happen to do that vehicle that

1 is not a retained liability, that is a --

2 THE COURT: An ordinary liability.

3 MR. STEINBERG: -- that is an ordinary New GM  
4 liability. And if there was an accident that has taken  
5 place based on an Old GM vehicle, that is not before Your  
6 Honor, that is not part of the list of ignition switch  
7 actions that we brought before Your Honor, that's going to  
8 go forward in New GM, understands that New GM is defending  
9 that. It's not also part of the MDL. So that is -- that is  
10 why I think --

11 THE COURT: Pause please, Mr. Steinberg, I'm  
12 trying to keep up with you.

13 What was the very last thing you said, the nuance  
14 you were making on what would still be going forward?

15 MR. STEINBERG: What is going forward is if  
16 there's an accident relating to an Old GM car and if there's  
17 an accident relating to a New GM manufactured car.

18 THE COURT: Any kind of accident.

19 MR. STEINBERG: Any kind of accidents are going  
20 forward.

21 With regard to just the glove box warranty and the  
22 lemon law, just so Your Honor understands the nuance that we  
23 put in our papers, is that lemon law is defined in the MSPA,  
24 it's defined as that you need to have brought it more than  
25 one time to have a repair and it wasn't done. And our

1 argument is that while we did assume lemon laws none of  
2 these ignition switch actions that have been pled to date  
3 talk about having brought it once to have it repaired and it  
4 wasn't repaired and the second time it wasn't repaired to  
5 qualify within the definition of what a lemon law means for  
6 purposes of our assumption.

7 So I think it's correct that we did agree to  
8 assume lemon laws, but -- a lemon law type claim, but none  
9 of what is being asserted here fits within that paradigm.

10 If I'm wrong and there's a particular nuance out  
11 of all the lawsuits that have been brought that was one of  
12 the elements that we had asked for in our motion to enforce  
13 which is in effect to show cause, tell us why you think  
14 you're not otherwise bound, that you fit within the lemon  
15 law that we assume because of your particular fact  
16 circumstance and then we would evaluate it. Because I can  
17 make the general statement, but there may be a specific  
18 exception that I haven't accounted for, but the general  
19 statement is as far as I'm aware, based on the general  
20 pleadings that have been done, is that no one asked to have  
21 this being repaired a second time. And as far as the glove  
22 box warranty we're -- for all of these vehicles we're -- or  
23 almost all these vehicles we're outside of the glove box  
24 warranty, it's expired by this point in time.

25 So I think, Your Honor, with regard to the issue

1 that you had raised about the threshold issues we actually  
2 had thought that the issues that had been raised in the  
3 adversary proceeding under Rule 60 were all threshold  
4 issues. We understand the differences, and if it turns out  
5 we can streamline discovery significantly by taking out  
6 fraud on the Court that may be a better way to go, and we do  
7 agree also that the discrimination issue that was raised by  
8 Mr. Weisfelner in his papers is a pure legal issue. I  
9 frankly think Your Honor has decided the legal issue before,  
10 but it's a pure legal issue and we think it should be taken  
11 off the table. And frankly there's a practical reason why  
12 it should be taken off the table and we eluded to it in our  
13 papers.

14 One of the things that Mr. Feinberg has been hired  
15 to do is to evaluate whether there's something that should  
16 be done to these prepetition accident victims, people who  
17 have actually had an accident to which are a retained  
18 liability should New GM --

19 THE COURT: That would mean people who were  
20 injured in prepetition accidents who were only getting 30  
21 cents on the dollar who had filed claims --

22 MR. STEINBERG: That's correct.

23 THE COURT: -- or who had blown the bar date but  
24 were actually hurt?

25 MR. STEINBERG: Right. That's why Mr. -- that was

1 one of the primary reasons why Mr. Feinberg has been hired,  
2 to see whether there's something that should be done as a  
3 general basis.

4 If someone is going to say that if we did someone  
5 on a voluntary basis for those victims, those people who  
6 actually suffered an injury from an accident that we're  
7 somehow picking up liabilities for a bunch of people who are  
8 worried about the deterioration and the value of their car  
9 then I think we need to know that, and so therefore we want  
10 to put this as an earlier issue and not a later issue. And  
11 if they want to abandon it because they don't think it's a  
12 proper issue to raise then that's okay too. We're not  
13 trying to litigate something that they're prepared to  
14 abandon, but it has been raised.

15 If you actually read the pleading filed by -- on  
16 this issue it makes it seem like it's a very important issue  
17 and we're prepared to meet it head on and to -- and I don't  
18 think it requires any discovery at all.

19 If you just bear with me just one second, Your  
20 Honor, just to go through the rest of my notes.

21 I think that Your Honor when we -- when I came  
22 into court and I think Your Honor summarized it correctly we  
23 had actually agreed in many concepts with the people that we  
24 had spoken with, and so there was a general understanding  
25 that they would stand down on litigation and that those who

1 didn't -- who weren't prepared to stand down would have to  
2 show cause as to why they think they shouldn't stand down.

3 And there was a recognition on our part that to  
4 the extent that we got bogged down for some reason that we  
5 couldn't envision on the threshold issues and the other  
6 bankruptcy-related issues needed to be brought to attention  
7 or that they thought that there were issues that were not  
8 bankruptcy-related issues but they had decided to in effect  
9 wait on and that they would otherwise be a part of the MDL  
10 we had agreed, and I think the date differences were end of  
11 July versus beginning of September, we would have an  
12 effective grace period but then we thought they had to come  
13 to Your Honor. If they wanted to relax the stay because  
14 they thought they were otherwise being aggrieved because  
15 this process wasn't playing out the way that they had  
16 envisioned or that they thought they --

17 THE COURT: You mean the process before me in  
18 terms of --

19 MR. STEINBERG: That's correct.

20 THE COURT: -- getting these issues --

21 MR. STEINBERG: That's right.

22 THE COURT: -- judicially decided?

23 MR. STEINBERG: They then could try to make their  
24 case before Your Honor, and we thought that that was okay.  
25 I mean no one -- no one could quite envision exactly how

1 this is going to go, we wanted to have a breathing spell to  
2 make sure that this is going along in the direction that  
3 everybody thinks it's going along, but we were not looking  
4 to permanently foreclose anybody's rights if they thought an  
5 adjustment had to be made. And so if they needed to have  
6 that explicit as part of their agreement up front to stay  
7 their litigation then we were prepared to do it, and I think  
8 there was just a difference in a month, and I think our date  
9 was -- probably made more sense because of the inherent  
10 delays that we'd have in the system.

11 I think, Your Honor, we had agreed on most of the  
12 threshold issues and Your Honor's tentatives had addressed  
13 the rest. We had actually agreed to in effect do this in  
14 two steps, and Your Honor has properly identified that while  
15 doing it in the two steps we should make progress and try to  
16 identify what will be litigated in the second step. And I  
17 think Your Honor's tentative addressed the differences we  
18 had on stipulations of facts versus admissions and the  
19 timing of submissions.

20 So I think Your Honor's tentatives have bridged  
21 the gap where we differed and we were fairly close coming  
22 into the courtroom, and I think you for that and I'll turn  
23 over the rostrum to other people.

24 THE COURT: Before you do, please, Mr. Steinberg.

25 The day after you wrote your letter, I think yours

1 was on April 30th, I got both a letter and a black line from  
2 Mr. Weisfelner where he'd massaged what had been one of your  
3 paragraphs and he gave me a black line articulating issues  
4 that would be decided as threshold issues. Is there any  
5 difference between you and Mr. Weisfelner, that is between  
6 your thinking and his black line mark up?

7 MR. STEINBERG: Yes. The --

8 THE COURT: On that point, how so? I didn't  
9 follow that.

10 MR. STEINBERG: Well our original proposal  
11 included fraud on the Court being a threshold issue and they  
12 had crossed that out, so that is one difference.

13 The second difference was that we thought the  
14 discrimination argument was a threshold issue and they had  
15 said they didn't think it should be a threshold issue.

16 THE COURT: So he wanted to drop fraud on the  
17 Court from the first phase and you leaned in favor, although  
18 I thought you -- the way I heard you you didn't think of it  
19 as something you felt strongly about, you thought that with  
20 limited discovery it could be considered as a Phase I issue  
21 and you favored inclusion of the discrimination argument and  
22 you understood him to prefer not to deal with that now.

23 MR. STEINBERG: I think he crossed that out and  
24 asked to not deal with that, yes.

25 THE COURT: Okay.

1 MR. STEINBERG: So --

2 THE COURT: Thank you.

3 MR. STEINBERG: -- and so just to be clear, while  
4 I thought fraud on the Court should be a threshold issue  
5 because it's a Rule 60 issue, to the extent that we can  
6 accomplish something significant on the discovery front in  
7 curtailing it then I understand clearly the logic of making  
8 that a secondary issue.

9 THE COURT: Okay. Thank you.

10 Mr. Weisfelner.

11 MR. WEISFELNER: Judge, thank you, I don't know  
12 what Your Honor's preference is.

13 Not only have some of our thoughts matured and  
14 changed over time but based on Your Honor's tentatives and  
15 the questions you asked they may change even further.

16 I don't know that we can accomplish a lot in a  
17 ten-minute recess, but one of my colleagues passed me the  
18 note to ask if you thought it would be appropriate. If not  
19 I can start and go forward and take a break whenever Your  
20 Honor thinks is good.

21 THE COURT: Well if you think it would be  
22 productive I'm not going to stand in the way of that,  
23 Mr. Weisfelner. I don't want to use up what is relatively  
24 limited time that we have if it drifts, and there are a lot  
25 of people both on the phone in this courtroom and presumably

1 in overflow courtrooms, but if you think you can usefully  
2 use ten minutes I think that's a good investment.

3 MR. WEISFELNER: And, Your Honor, I think ten  
4 minutes is the right -- we're either going to make progress  
5 in ten minutes or we're not.

6 THE COURT: Okay.

7 MR. WEISFELNER: So I wouldn't want anymore than a  
8 ten-minute adjournment.

9 THE COURT: Then let's recess until five to 11:00  
10 on the clock up there.

11 MR. WEISFELNER: Thank you, Judge.

12 THE COURT: Thank you.

13 (Recess at 10:44 a.m.)

14 THE COURT: Have seats everybody.

15 MR. WEISFELNER: Your Honor, thank you for the  
16 time, I think it was well spent.

17 Judge, for the record, Edward Weisfelner, Brown  
18 Rudnick LLP appearing on behalf of the Robinson Calcagnie  
19 firm, and I have Mark Robinson of the firm with us in court  
20 today as well as Haigins Berman (ph), and as Your Honor has  
21 indicated while they reserve the right obviously to correct  
22 me where I go wrong we are working closely together with  
23 Sander Esserman of Stutzman, Bromberg, Esserman & Plifka, as  
24 well as Elihu Inselbuch of Caplin & Drysdale, and as I think  
25 Your Honor knows the collective plaintiff group has also

1 asked the three of us to coordinate our activities as we  
2 deem necessary with Ms. Siganowski (ph) of the Otterbourg  
3 firm, and we will utilize her services as appropriate and  
4 necessary.

5 Judge, I want to as Mr. Steinberg did address your  
6 tentatives, move on to your questions and avoid merits, name  
7 calling, and the other no-noes that Your Honor laid out, but  
8 I would like to note a couple of factors that I think are  
9 relevant and bleed directly interest your tentative ands  
10 your questions.

11 What one may characterize as part of the good news  
12 there's lots of information in the public domain regarding  
13 the defect that's the subject of the recall. Lots in the  
14 public domain about who knew what when.

15 I characterize that as good news to the extent  
16 that, and as Mr. Robinson has indicated to me, in his many,  
17 many years of litigating in the auto products field both in  
18 terms of Toyota, the Ford Pinto, claims against GM, it's  
19 rare that you see this level of information already in the  
20 public domain before discovery or formal discovery between  
21 the parties necessarily starts. That's part of the good  
22 news.

23 Part of the bad news is, depending on your  
24 perspective, but I think it's a relevant factor in  
25 understanding how the parties can or can't get together in

1 terms of the timing of the resolution of the issues, the  
2 fact of the matter is that New GM, as we understand it, is  
3 the subject of a -- it's a term of art -- boatload of  
4 regulatory investigations. We are aware of congressional  
5 investigations, and maybe there's more than one, at least  
6 one attorney general investigation, an SEC investigation.  
7 We understand that New GM has commenced its own internal  
8 investigation, and I may have run out of fingers to count  
9 just how many investigations they're currently the subject  
10 of.

11 I mention those because one could imagine a  
12 sensitivity on the part of a corporate entity to necessarily  
13 engage in discovery during the pendency and/or before  
14 investigations of both civil and potential criminal  
15 consequences are concluded. And I can only advise Your  
16 Honor that I think it behooves both sides to take the  
17 reality of what's going on in the marketplace into  
18 consideration with regard to the timing of discovery or the  
19 narrowing of issues between the parties. There are other  
20 factors that might influence either side of the tables'  
21 speed with regard to those issues.

22 Your Honor, to address the tentatives.

23 First of all I think from a starting perspective,  
24 and I was unavailable for another meeting among plaintiffs  
25 that took place yesterday in New York, but I've gotten a

1 download, and I'm not blaming Mr. Steinberg, Your Honor  
2 ought to know that with one outlier, and only one outlier  
3 that I'm aware of, the plaintiffs as a group are on the same  
4 page and intend, unless I or Elihu or Sander slip up, to  
5 allow one or the other of us to speak for the group, and I  
6 presume that outlier will speak for him or herself at an  
7 appropriate time.

8           And I also understand that the difference of  
9 opinion between all of the plaintiffs and this one single  
10 plaintiff really comes down to what ought the threshold  
11 issues be that the parties work towards preparing and  
12 presenting to Your Honor for as efficient resolution as is  
13 possible. And it boils down to a distinction between  
14 whether or not we focus our collective attention on the what  
15 we think is the right threshold issue, whether or not  
16 parties impacted by this ignition switch problem were denied  
17 due process, and if so what's the appropriate remedy?

18           They would, the outliers would like to put on the  
19 table as part of the threshold issue a determination of  
20 whether or not there was fraud on the Court. And, Your  
21 Honor, again, for reasons that we can delve into I don't  
22 think they're necessarily appropriate for today because  
23 there'll be another status conference where I think whatever  
24 remaining differences there are between the plaintiffs taken  
25 as a group and New GM can and will be resolved down to the

1 details of timing for discovery, briefing, and subsequent  
2 hearings.

3 Your Honor, the next tentative you talked about  
4 was the MDL proceedings and I'd like to unpack that just as  
5 a matter of fact into two parts, because I think as to part  
6 number one there is unanimity in the entirety of the  
7 courtroom. All plaintiffs and New GM as to what happens in  
8 step one, and as I understand it only a very narrow  
9 disagreement on what I'll call step number two.

10 And, Your Honor, please forgive me because the one  
11 thing I'm not is a class action or tort lawyer, I'm just a  
12 measly bankruptcy lawyer, but this is what I understand the  
13 two parts to be.

14 Part number one, on May 29th in Chicago before a  
15 joint panel on multidistrict litigation, which I understand  
16 consists of some seven Article III judges, that panel will  
17 determine the venue for any further multidistrict litigation  
18 consideration, and I've been told that the panel has under  
19 consideration --

20 THE COURT: Pause. When you put it that way I  
21 wasn't clear on whether you were talking about it consistent  
22 with my understanding of what would be done by the judicial  
23 panel and multidistrict litigation. Is this 28 U.S.C. 1407?

24 MR. WEISFELNER: Yes, it is, Your Honor.

25 THE COURT: Which as I understood it addresses the

1 locale for pretrial proceedings in multiple litigation after  
2 which when the pretrial proceedings end they're farmed back  
3 to whatever districts, venue would otherwise be appropriate?

4 MR. WEISFELNER: Correct. So --

5 THE COURT: Now were you meaning -- forgive me.  
6 Were you meaning to say something different than my -- what  
7 I just said?

8 MR. WEISFELNER: No, other than where I think we  
9 all agree is that nothing is going to interfere with, and  
10 none of the parties or the Court, nor will the Court be  
11 asked to interfere with the activities of the joint panel on  
12 the 29th, which we all understand to mean that they'll pick  
13 an ultimate venue for MDL proceedings as between Michigan,  
14 California, New York, or some other jurisdiction.

15 Where we appear to have a difference of view, as I  
16 heard Mr. Steinberg discuss the issues before Your Honor,  
17 was how far should the MDL go once it receives the case some  
18 time after May 29th?

19 THE COURT: By that you mean the temporary  
20 transferee court after it's been transferred by the panel?

21 MR. WEISFELNER: Correct.

22 THE COURT: Okay.

23 MR. WEISFELNER: And as I understand it what that  
24 court will do is procedural, it will among other things  
25 select lead and/or liaison counsel not for bankruptcy

1 purposes but for purposes of actually trying the case, and  
2 as typically happens would require that the many complaints  
3 filed against New GM -- and as I understand it they're up to  
4 some 60 plus different class action complaints -- be  
5 procedurally consolidated into a single complaint, a process  
6 that my guess will take a period of time, and certainly a  
7 period of time beyond what we anticipate to be the next  
8 status conference before Your Honor.

9 But we wouldn't want the record of this or any  
10 other proceeding before Your Honor to be used or cited for  
11 the proposition that from Your Honor's perspective getting  
12 the complaints narrowed down to a single complaint, doing  
13 whatever else it is that the MDL judge typically does, which  
14 is figure out which counsel they're going to for lack of a  
15 better word lead the fray, there should be nothing that  
16 impacts that procedural mechanism from moving forward. It's  
17 going to in our view at least get the parties or -- and the  
18 issues that may ultimately be tried narrowed and get the  
19 disbursed plaintiffs' groups better organized on the merits  
20 should they ever get to the merits.

21 THE COURT: Pause, please, Mr. Weisfelner.

22 MR. WEISFELNER: Certainly.

23 THE COURT: Can you envision a scenario under  
24 which rulings by me might affect the extent to which claims  
25 remain which would then be the subject of gathering up and

1 bundling in that amended complaint?

2 MR. WEISFELNER: Certainly, and again, this is  
3 just my opinion, but when viewed from the perspective of  
4 judicial economy if there is a single complaint and Your  
5 Honor were then to determine what's kosha (ph) and what's  
6 unkosha (ph) about that amended complaint one has an easier  
7 vehicle to start making chops to.

8 As opposed to, and it sort of bleeds into some of  
9 your other tentatives and some of your other questions, have  
10 a multiplicity of lawsuits and then having to parse each and  
11 every one of them to determine what portion of the  
12 allegations, the complaints, the prayers for relief does or  
13 doesn't violate or do violence to Your Honor's directive as  
14 it currently stands or as it may ultimately morph after this  
15 procedure currently before you develops.

16 THE COURT: You said what I had anticipated that  
17 you would say. The corollary of that would at least  
18 seemingly be that after the panel sends it wherever it's  
19 supposed to go, and I'll call it the transferee judge, even  
20 though it may eventually go back somewhere or to different  
21 places, that there simply be a stop, look, and listen, vis-  
22 à-vis, interfering or not interfering with the acts of the  
23 transferee judge after determinations have been made in this  
24 court and everybody in this room has had his chance to speak  
25 his peace.

1 MR. WEISFELNER: And, Your Honor, I think like  
2 many things in life it's all a matter of timing. Because I  
3 anticipate the transferee court is never going to get around  
4 to the job of figuring out what's the next procedural steps  
5 to narrow the issues that may be before him or her. I think  
6 we'll be further advanced on the issues that need to be  
7 resolved by Your Honor, and the coordination between Your  
8 Honor's decision making process and what does or doesn't  
9 happen in the MDL will be much further advanced.

10 So while I'm not sure that it benefits anyone to  
11 pursue this in any greater detail, my only point with regard  
12 to this is I detected a difference between where we come  
13 out, where I thought New GM was coming out on this, and what  
14 I heard Mr. Steinberg say earlier this morning, which is we  
15 have to leave open the possibility that the MDL proceedings  
16 may be put on ice simply because this process is still  
17 ongoing without a resolution.

18 THE COURT: Well stand by. Mr. Steinberg, come on  
19 up and take Mr. Weisfelner's place for a second.

20 Is there a substantive disagreement here? Because  
21 I thought I was hearing consensus that we'd let the MDL  
22 panel decide who the transferee district should be and then  
23 we're going to have stuff that goes on here.

24 Would you have a substantive or procedural problem  
25 with doing a stop, look, and listen in this court to then

1 decide whether I should enjoin the transferee judge from  
2 doing anything more, or should not do so?

3 MR. STEINBERG: Your Honor, I would agree with  
4 everything that you say except that I would assume that you  
5 would be enjoining the parties not the court from moving  
6 forward.

7 THE COURT: Correct. And I don't think in 13 and  
8 a half years I've ever enjoined a court, but I enjoin  
9 parties all the time.

10 MR. STEINBERG: Then other than that, Your Honor,  
11 I agree with exactly what you said.

12 THE COURT: Okay.

13 All right, Mr. Weisfelner, I think that issue just  
14 went away so come on up and let's proceed.

15 MR. WEISFELNER: Great.

16 Your Honor, we take your points to heart with  
17 regard to tentatives three and four both with regard to the  
18 propriety of standstill agreements and your admonition that  
19 we don't necessarily -- we shouldn't necessarily be rushing  
20 in favor of getting it right.

21 One area where I think the parties may need some  
22 additional time with each other but maybe we could explore  
23 in a little bit more detail Your Honor's tentative with  
24 regard to new complaints along the lines of what Mr. Flaxer  
25 filed.

1           And I will tell Your Honor frankly that before  
2 Mr. Flaxer hit the docket with his complaint I know I and my  
3 shop and I venture to guess many other shops were working on  
4 similar complaints.

5           Viewed from our perspective is the right  
6 procedural mechanism for bringing the issue before Your  
7 Honor; however, once we had the advent of New GM's motion  
8 frankly I'm not sure what the procedural advantage is of  
9 moving forward with that adversary proceeding complaint much  
10 less inviting other parties to replicate it or to file  
11 additional or add-on adversary proceeding complaints. It  
12 may -- it may involve some interesting work by a bunch of  
13 bankruptcy and/or class action firms. I think it's just  
14 going to clog the docket here, and I think procedurally we  
15 were of the view that rather than lose any of the  
16 allegations or procedural advantages that are perceived or  
17 actually exist in the adversary proceeding they all ought to  
18 be subsumed within the contested matter. Parties ought to  
19 be afforded an opportunity to file their own objections to  
20 the motion, join in our objection to the motion, or anything  
21 in between.

22           But I'm not sure, nor do my colleagues feel, that  
23 there's necessarily a substantive or procedural advantage to  
24 separating the adversary proceeding and giving it a life of  
25 its own even for the purposes of inviting other people to

1 file new adversary proceedings.

2 THE COURT: I partly lost you with the negative  
3 that was in your last sentence. In other words you're  
4 saying the formalities aren't important, put it in a big  
5 bundle and just decide it all together or am I --

6 MR. WEISFELNER: That's exactly --

7 THE COURT: -- stating it too crudely?

8 MR. WEISFELNER: No, that's -- well, you couldn't  
9 have stated it any cruder than I would have had I thought  
10 about it, but that's exactly our sentiment, you know, let's  
11 have one bundle and not have separate adversary proceedings  
12 and separate contested matters, let along invite people to  
13 file new adversary proceedings that address the same issue.  
14 And I think the parties did intend on conferring with each  
15 other on appropriate procedural mechanisms to allow that  
16 ball of wax to form without violating anybody's procedural  
17 or substantive rights. And I think we can come up with in  
18 very short order, certainly before the next status  
19 conference, the procedural mechanism that we think is  
20 appropriate. But what we would like to avoid is either the  
21 necessity or the thought out there that people better rush  
22 to file, you know, identical or new or expanded adversary  
23 proceedings.

24 THE COURT: Now that's a different point than the  
25 separate -- at least in your mind from the separate point

1 that I thought I was making that if there are any  
2 substantive issues on the table that haven't been  
3 potentially to be put on the table that I want to hear what  
4 those points are.

5 MR. WEISFELNER: And I think that can be readily  
6 accommodated by virtue of setting a date by which parties  
7 will want to respond to the motion that New GM has filed. I  
8 mean we obviously filed within, and I think before the  
9 expiration of 24 hours. Obviously there may be people out  
10 there with further reflection that come up with better,  
11 different, more expansive responses and we don't want to  
12 preclude that. We just don't want to get into a  
13 (indiscernible - 01:19:05) of a separate docket for an  
14 adversary proceeding, a separate docket for contested motion  
15 practice, and any possibility that, you know, the resolution  
16 of those issues shouldn't be at some point joined. And  
17 again, I think the parties can work out a proposal for Your  
18 Honor's consideration that deals with melding together the  
19 adversary proceeding and the contested matter.

20 Number five, Your Honor, which I guess was the  
21 issue between stipulations and admissions. And, Your Honor,  
22 I think the answer is we get it and the parties will work as  
23 best they can on stipulations and will only elevate the heat  
24 intention as we have to both in terms of narrowing discovery  
25 and avoiding unnecessary contests that have to be determined

1 by this Court. And again, you know, I'm focusing on all of  
2 this from the perspective of the what we've referred to as  
3 the gaiting issue.

4 And this -- and I want to sort of then flip to the  
5 questions that Your Honor asked, and either attempt to  
6 respond to them or tell you why I'd like to evade them as  
7 best I can.

8  
9 And again, you know, I'm focusing on all of this from  
10 the perspective of the what we've referred to as the gaiting  
11 issue. And this -- and I want to sort of then flip to the  
12 questions that Your Honor asked, and either attempt to  
13 respond to them or tell you why I'd like to abade them as  
14 best I can.

15 THE COURT: Before you move on to those, please,  
16 Mr. Weisfelner, the one issue that I still see as open  
17 between you and Mr. Steinberg is with respect to two issues  
18 that might or might not be addressed as part of Phase I, the  
19 most classic threshold issues, fraud on the Court and  
20 discrimination amongst different kinds of creditors.

21 My preference would be in terms of meeting my own  
22 responsibilities would be to get issues on the table and  
23 teed up for judicial determination, and to the extent  
24 practical decided sooner rather than later, which would  
25 cause me to come to the view that on fraud on the Court, if

1 we could deal with that without having the associated  
2 discovery bog us all down, it would be handled sooner rather  
3 than later and the same thing with discrimination, which  
4 doesn't seem to involve discovery issues.

5 I sense that you would prefer to defer fraud on  
6 the Court, but would you be of the same mind to defer it if  
7 just the limited discovery of the type that Mr. Steinberg  
8 recommended were undertaken so that issue could be teed up  
9 with the others?

10 MR. WEISFELNER: Your Honor, we would be opposed  
11 to it and let me explain why.

12 First of all we share Your Honor's perspective  
13 that issues that could resolve matters from the perspective  
14 of either side where discovery can be limited ought to be  
15 preferred on issues that potentially don't decide the matter  
16 even if they don't require a lot of discovery.

17 So let me take the easier example first, the  
18 discrimination issue, raised in retrospect unfortunately in  
19 my papers as opposed to anybody else's. And, Your Honor, it  
20 seems to me that we could brief that issue at whatever cost  
21 is required. It doesn't require discovery. Your Honor  
22 could make a ruling.

23 And notwithstanding how you rule I don't think it  
24 gets the plaintiffs any closer to trying claims against New  
25 GM or for that matter New GM any closer to preventing the

1 plaintiffs' claims from moving forward based on their  
2 reliance on the injunction and the sale order. It's an  
3 interesting issue but it's in no event dispositive of either  
4 parties' position on the fundamental issue.

5 For that reason, even though I was the one who  
6 first raised it and frankly raised it before I understood  
7 the entire history behind the metamorphous that the final  
8 sale order took on the carve out for wrongful death, injury,  
9 and property damage, which as I understood it originally  
10 what New GM was purporting to assume was wrongful death,  
11 personal injury, property damage solely with regard to cars  
12 that it sold post-petition or post-sale rather, and it  
13 morphed at the direction in part of various attorneys  
14 generals and consumer advocates.

15 THE COURT: In the middle of the trial.

16 MR. WEISFELNER: Sorry?

17 THE COURT: In the middle of the sale trial.

18 MR. WEISFELNER: Right.

19 THE COURT: Yeah, I remember the history.

20 MR. WEISFELNER: Okay.

21 THE COURT: Oh, by the way I'm going to interrupt  
22 you. I want each side not to tell me today but to think  
23 about the extent to which I'm allowed to use my knowledge of  
24 what happened back then in connection with the findings of  
25 fact.

1 MR. WEISFELNER: Well, Your Honor, I could tell  
2 you now without even consulting with my colleagues, unless  
3 Your Honor were to be willing to undergo a lobotomy I don't  
4 know how anyone could take the position that Your Honor  
5 cannot, should not, or may not take into account your  
6 knowledge and familiarity with what transpired during the  
7 bankruptcy proceeding and in fact during post-reorganization  
8 or post-restructuring matters that were brought to Your  
9 Honor's attention.

10 But I want to sort of get back to --

11 THE COURT: Pause.

12 MR. STEINBERG: I was going to -- without  
13 inferring whether there should be a lobotomy or not -- I was  
14 going to say that we agree with Mr. Weisfelner as well, that  
15 you should be able to take into account your position.

16 THE COURT: Okay. Fair enough.

17 Go on then, please, Mr. Weisfelner.

18 MR. WEISFELNER: Any way, Your Honor, I'm sort of  
19 getting back to what we ought to be collectively spending  
20 time and attention on.

21 From the plaintiffs' perspective we ought to be  
22 spending time and attention, which converts into money and  
23 effort, in dealing with as narrow a set of facts that we  
24 have to deal with to determine whether or not the sale order  
25 applies to our underlying clients.

1           The discrimination argument, Your Honor, may be  
2 left on the table in the unlikely from my perspective and  
3 unfortunate event that we lose the threshold issue. But why  
4 it needs to be determined today, even though it's an issue  
5 of law and not a matter to discovery, it's not dispositive  
6 from either sides' perspective, it doesn't get us closer to  
7 where either one of us wants to get to.

8           And if I could then turn to the fraud on the Court  
9 issue.

10           Your Honor, there are subtleties on top of  
11 subtleties on top of details that suggest to us that you  
12 could not make a determination with regard to fraud on the  
13 Court with anywhere close to the narrow discovery that  
14 Mr. Steinberg suggests. And it's sort of all subsumed I  
15 think or fear in the whole due process argument, and without  
16 in any way trying to argue the merits but just to lay out  
17 what the issues are as objectively as I can without tilting  
18 them in either direction, remembering again that there's a  
19 lot of information in the public record about what GM knew  
20 when they knew it with regard to the ignition switch.

21           I think that New GM would say, well, wait a  
22 second, determining GM's -- Old GM's knowledge and for that  
23 matter New GM's knowledge isn't necessarily determined --  
24 and I use this very bad analogy but I'll give it to you any  
25 way -- by focusing on the guy in the test laboratory who's

1 got grease up to his elbows and is wearing overalls. That  
2 person may have knowledge, but it may not necessarily be  
3 imputed to someone sitting in a conference room who has the  
4 luxury of wearing a suit and tie every day. And I think New  
5 GM may ultimately argue that Joe the mechanic's knowledge  
6 isn't to be imputed into an executive office let along a  
7 board room.

8 Now frankly we're encouraged by the fact that  
9 plenty of people who wore suits and white collars have  
10 already put their position on the record or it's otherwise  
11 discoverable through things that the National Highway Safety  
12 Council has made available or the Congress has made  
13 available or what we can read and report on in the press,  
14 but to suggest that we can or should pursue fraud on the  
15 Court to my mind and gender is a discovery dispute at three  
16 different levels by the way. Old GM, New GM, and based on  
17 not my intuitions, but my discussions, I think we're going  
18 to get into a discussion of what treasury in its role as the  
19 intermediary between Old GM and New GM knew or didn't know.

20 And as much as I like spending time with Matt  
21 Feldman and Jim Milstein (ph) and Harry Wilson, I don't know  
22 that I necessarily want to get involved in discovery of what  
23 any of those people knew or should have known in the context  
24 of proving --

25 THE COURT: You used the word should have known.

1 Since when is should have known an element of a claim of  
2 fraud against the Court?

3 MR. WEISFELNER: Your Honor, I'm not sure that it  
4 is, which is another reason why when I think about this, and  
5 maybe I think about it in an overly simplistic fashion, but  
6 I have the comfort of knowing that my co-counsel thinks  
7 about it the exact same way, in fact all of the plaintiffs  
8 think about it exactly the same way with the exception of  
9 one possibly outlier, and that is if I start with the  
10 proposition, understanding that it's a proposition and not a  
11 proven fact, that the consumers of this product were known  
12 to have had a defective product and that Old GM did nothing  
13 to let those people know that they had a defective product,  
14 didn't give them notice of the bankruptcy, didn't give them  
15 notice of the sale, and didn't give them notice of the  
16 extent to which the sale could affect their rights, if our  
17 contentions are accurate isn't it the case that these  
18 individuals were deprived of due process?

19 In that context should the sale order apply to  
20 them or should some portion of the sale order apply to them?  
21 Not a revocation of the sale order, we're not going cut it  
22 up and carve it out and chop it up as it relates to anybody  
23 else other than people who prove to you that they were  
24 denied due process.

25 Why we need to then get into at this stage the

1 other elements of fraud on the Court, Your Honor, we  
2 respectfully suggest is beyond what we ought to be doing if  
3 we want to do something efficient and effective from the  
4 perspective of these injured parties.

5 THE COURT: Do you think that for the purposes  
6 solely of my case management discretionary calls, as  
7 contrasted to the merits in figuring out how we should tee  
8 these things up, it's appropriate for me to assume that  
9 there might be a difference between defrauding the driving  
10 public on the one hand and defrauding the Court on the  
11 other?

12 MR. WEISFELNER: Yes. And, Your Honor, I'd make  
13 the distinction though, we're not defrauding the driving  
14 public, that's not our contention. Our contention is that  
15 the number of people who bought, leased, or owned these  
16 cars, and to my knowledge, the number is something below 3  
17 million, I could be wrong, so it's not the driving public,  
18 it's these specific people that were sold cars with this  
19 ignition switch problem.

20 And again, this is not the place or time to get  
21 into this, so then I won't, I just want to get back to your  
22 issue. I do think that it's a matter of Your Honor's  
23 discretion in setting our own calendar in terms of dealing  
24 with dispositive issues first.

25 If Your Honor were to decide that these people

1 were denied due process, and therefore, the injunction that  
2 New GM bargained for should not apply to them, case over,  
3 from our perspective.

4 It's only if Your Honor were to decide there was  
5 no denial of due process, that we may want to ask Your Honor  
6 to tee up and consider other issues. Until that time, I  
7 think it's a matter of case management and Your Honor's  
8 discretion, that's the right way to go. And I say that  
9 because we've thought about it, and we think it's the right  
10 way to go, not to be determinative of what Your Honor  
11 decides in terms of exercising your own discretion.

12 But we clearly think it's the easy way to go, and  
13 I'm not sure I understand how expanding either the factual  
14 issue or the legal issue into fraud on the Court serves the  
15 purpose of narrowing the issues and letting the parties and  
16 the Court get to the -- a resolution in the most cost-  
17 effective manner possible.

18 Now, Your Honor, I'm happy to sort of move on to  
19 the questions that Your Honor had.

20 THE COURT: Go ahead. And I'm going to do this in  
21 such a fashion as I possibly can, so as not to insult the  
22 Court. But you asked what's left its engendered so much  
23 heat, and with all -- in other words, what are the damages  
24 that people could possibly be concerned about here, since  
25 wrongful death, personal injury, and property damage are off

1 the table.

2 And Mr. Steinberg in his opening tried to -- or  
3 talked to you about five, six, seven, eight-year old cars  
4 driven a lot of miles that have a broken switch that GM's  
5 prepared to fix, so what are the damages.

6 Oh, and I think he mixed in the fact that we're  
7 talking about a pretty cheap set of vehicles, Chevy Cobalts  
8 and other such cars. And, Your Honor, in the simplest  
9 terms, it's our view that the measure of damages that  
10 plaintiffs could prove were they permitted to pursue claims  
11 against New GM, notwithstanding your injunction, is a matter  
12 for determination by a court of competent jurisdiction who  
13 doesn't have New GM waving the injunction in front of it.

14 Once that injunction is gone, Your Honor's  
15 question is really within the bailiwick of Court's  
16 interpreting state law, federal --

17 THE COURT: Forgive me, with respect to you, Mr.  
18 Weisfelner, that isn't the purpose of my question. The  
19 purpose of my question is to ascertain the extent to which  
20 claims your guys want to bring, is or is not within the  
21 scope of the existing sale order, which is the question  
22 which we start with after which we then determine the extent  
23 to which the provisions of that sale order are in whole or  
24 in part unenforceable against your constituency.

25 MR. WEISFELNER: Ah.

1 THE COURT: So please do not restate or  
2 misunderstand my question.

3 MR. WEISFELNER: Thank you, Your Honor. I did --  
4 I misunderstood it completely.

5 I should call to Your Honor's attention, and I'm  
6 hoping that this is in the process of being fixed, because  
7 I've been told that's in the process of being fixed, but one  
8 would hope that as this process moves forward and the  
9 parties reach consensus on how to form and present the  
10 issues in the most effective way, that we don't have  
11 exacerbation of the problem or the issue.

12 We were told the story about an individual who in  
13 connection with the recall went to his or her dealer to have  
14 this ignition switch fixed, and was presented by the dealer  
15 with a form that she was being told she had to sign before  
16 the work could be done on her car.

17 And the form, while I haven't seen it, I'm told,  
18 either had the individual consenting to arbitration of any  
19 issue that may arise in connection with the work that was  
20 being done and/or contained a waiver of any claims that  
21 could be asserted in connection with any of the work that's  
22 being done.

23 Now, I'm told that these issues were brought to  
24 New GM's attention and New GM has or is in the process of  
25 ensuring through communication with its dealers that the

1 fixing of the switch is not to be conditioned on parties  
2 signing anything that may impact their claims or causes of  
3 action going forward, and that to the extent that people  
4 have already signed anything as a precondition to having  
5 their car dealt with on a recall, that it won't be enforced  
6 or sought to be enforced by New GM.

7 The other thing I want to bring to Your Honor's  
8 attention, and again, it's not within my bailiwick, except  
9 that I've heard enough about it from underlying plaintiffs'  
10 lawyers and have read enough about it is, there is not an  
11 agreement between this side of the courtroom, meaning the  
12 plaintiff's side --

13 THE COURT: Pause please, Mr. Weisfelner.

14 Right after you told me that anecdote, which  
15 troubled me, as it would trouble most folks I think, you  
16 said that when GM, New GM heard about it, it pulled the plug  
17 on that deal -- issue acting that way, and told them, you  
18 didn't use these words, you, jerk, you can't do that. So  
19 why did you tell me that?

20 MR. WEISFELNER: I told you that for at least two  
21 reasons. Having New GM tell the dealers to stop acting like  
22 jerks may or may not cause the new dealers -- the underlying  
23 dealers and the fixers, guys who are dealing with the  
24 recall, to stop acting like jerks. And I just wanted to let  
25 Your Honor know that we are concerned about people acting

1 like jerks on a going forward basis.

2 The second reason I brought it to Your Honor's  
3 attention is, to the extent that people have historically  
4 signed the pieces of paper that the jerks gave them to  
5 review, I haven't seen anything in the record other than an  
6 oral communication that said New GM will not hold those  
7 releases or agreements to arbitrate against the plaintiffs,  
8 I raise it now only because for all of our benefit, we'd  
9 like to see something about this in writing at some point.

10 I brought it up in the context of Your Honor's  
11 concern about presale conduct and post-sale conduct, and  
12 Your Honor, the plaintiffs very much agree that to the  
13 extent that one could readily distinguish between actions  
14 that go to New GM's conduct, that they can't, as Mr.  
15 Steinberg indicated, properly be the subject of the  
16 injunction.

17 But the devil is also in the details on this one  
18 because we're not --

19 THE COURT: Pause for a second. Mr. Steinberg,  
20 I'm going to give you another chance to be heard, why don't  
21 you sit down for now.

22 MR. WEISFELNER: In terms of what constitutes New  
23 GM's actions versus Old GM's actions, you heard at least one  
24 example of how it's difficult, and that is New GM does a  
25 recall and could arguably be replacing the ignition switch,

1 not with a new ignition switch, but with an old ignition  
2 switch, or that parties are concerned that, you know, they  
3 went to their dealer, they got a new ignition switch, they  
4 don't know now whether it was a recalled ignition switch or  
5 an old switch.

6 But, Your Honor, and again, I just mention this,  
7 not because I think it needs to be resolved, or because I  
8 have any evidence to prove it's true, but a lot of what  
9 we're reading suggests that calling this an ignition switch  
10 defect is an impermissible narrowing of what the issues are.

11 The ignition switch may or may not have been the  
12 cause of air bag failure to deploy. The fixing of the  
13 ignition switch, given the electronic calibrations between  
14 the switch and the air bags may or may not address the air  
15 bag problem. I don't know the answer to any of this.

16 Other than to tell you again, when we parse out or  
17 attempt to parse out actions against New GM for New GM  
18 conduct, or things that New GM definitively agreed to assume  
19 as part of the sale process, versus actions that could  
20 arguably or do, in fact, implicate the injunction that's  
21 part of the sale order is, for lack of a better term, easier  
22 said than done.

23 Nevertheless, the plaintiffs as a whole do reserve  
24 the right if this process gets bogged down or takes too  
25 long, to say, you know what, maybe the quickest thing to do

1 is to spend the time and energy that hopefully we won't have  
2 to, to parse through whatever's been filed, and to  
3 demonstrate to Your Honor that the allegations that are  
4 being made, the liability that's being ascribed, and the  
5 damages sought to be obtained as they relate to New GM  
6 conduct do not implicate Your Honor's injunction.

7 For now, however, we'd prefer not to get into all  
8 of those potentially dicey issues, as to what does and what  
9 doesn't constitute a direct claim against New GM that is  
10 outside of the injunction, at least until the parties work  
11 hard on trying to get to a position where the due process  
12 issue gets teed up for Your Honor's consideration.

13 And if we can do that in an effective vehicle and  
14 quickly, then all of the other noise that may be necessary  
15 down the road could be avoided. Because whether it's  
16 actions against New GM or actions that New GM contends  
17 they're not liable for because of the injunction, if the  
18 injunction is dissolved as to this group, because of lack of  
19 fundamental due process, it doesn't matter.

20 So I'd prefer, we collectively would prefer to  
21 deal with that issue as, when and if it does matter.

22 I'm going to skip over the lemon law issues,  
23 because I don't think we have much difference of view with  
24 regard to the answer that you got from Mr. Steinberg. I do  
25 want to stress on your question number four, the inability

1 to get together.

2 The plaintiffs are together, and with the  
3 exception of again one outlier on the issue of what ought to  
4 be part of the threshold and what not be part of the  
5 threshold, there's not a plaintiff group that we're aware of  
6 that isn't prepared to have their interests in the first  
7 instance, represented by one of the three of us, with  
8 consultation with Ms. Cyganowski, subject, of course, their  
9 ability to stand up and say, hey, they didn't present my  
10 issue. But we have a commonality of position, a commonality  
11 of interest, and a desire to work collectively through these  
12 three lawyers.

13 I'm just trying to see if there was anything else.  
14 You've heard our views with regard to an adversary  
15 proceeding versus motion practice. I didn't touch on the  
16 impact on Old GM and the GUC Trust. And I liked Your Honor  
17 took comfort in the fact that Mr. Golden is here, as I do  
18 take comfort any time Mr. Golden shows up anywhere.

19 Look, Your Honor, it's obvious, and you get it,  
20 that one of the arguments that New GM may make is if these  
21 individuals were damaged or deprived of due process, let's  
22 not jump to the conclusion that the right remedy is to have  
23 the injunction not apply to them.

24 Instead let's consider the alternative remedy of  
25 having them all get shifted into the category of late filed

1 claims, judicially acknowledged late filed claims, will now,  
2 as part of a bankruptcy process, go through a procedure for  
3 determining what those claims might be worth individually or  
4 on some class basis.

5 And when that process is all over, then we can let  
6 the GUC Trust and its beneficiaries know that their expected  
7 future dividends may have to be adjusted or wiped out in  
8 order to allow these new beneficiaries of the trust to, in  
9 effect, catch up on distributions that have already been  
10 made, if in fact, that can be done as a matter of  
11 practicality.

12 And I anticipate that holders of the units  
13 including Mr. Golden's clients and others may very well have  
14 an opinion about that.

15 Again, it seems to me that before we ever get near  
16 that thorny issue, where lots of people are going to be  
17 impacted, and it may not be practical, if we resolve the  
18 threshold issue of whether, because of lack of due process  
19 the injunction ought not to apply, then we never get into  
20 this issue. Unless someone were to argue that  
21 notwithstanding the denial of due process the right remedy  
22 is not let the injunction dissolve, but the right remedy is  
23 somehow to treat these people as if they had late filed  
24 claims, and will now just dilute all of the other  
25 beneficiaries of the GUC Trust.

1 Your last point was on mediation, and like Mr.  
2 Steinberg, I agree that litigation is inherently wasteful,  
3 time consuming, and not a very efficient way of resolving  
4 matters, and that whenever possible, mediation is the way to  
5 go.

6 I just am concerned that given where I started,  
7 which is to identify, as I'm sure Your Honor knows, the  
8 multiplicity of investigations that are currently underway.  
9 Just what the role of Ken Fineberg is, just how much money  
10 Mr. Fineberg may have at his disposal to attempt to resolve  
11 issues, while we would collectively prefer to mediate than  
12 litigate, I'm not sure that the environment is such today  
13 that we're presented with that effective choice.

14 Should circumstances change, as I think Your Honor  
15 knows very well, the plaintiffs are as willing to attempt to  
16 resolve issues notwithstanding how prepared they'll be to  
17 prove their cases and collect their appropriate damages.  
18 Thank you, Judge.

19 THE COURT: All right. Thank you. Mr. Flaxer.

20 MR. FLAXER: Thank you, Your Honor. I note that  
21 I'm working in conjunction as co-counsel with the firm of  
22 Wolf Halthenstein (ph) which is here by counsel.

23 Perhaps, Your Honor, I should jump right into an  
24 issue that was maybe the only area where the plaintiff group  
25 wasn't able to come to complete consensus. And Your Honor

1 added some thoughts to it that I think shed a lot of light  
2 and were actually extremely helpful in my own thinking about  
3 it. Which is in identifying the threshold issues what the  
4 sort of philosophical line of demarcation should be and if I  
5 heard correctly one notion that Your Honor suggested was  
6 things that can be decided on a legal basis, without the  
7 necessity for discovery, but that's -- I'm going to sort of  
8 pause there, and say discovery, we've talked about a  
9 possibility of limited discovery as opposed to more  
10 extensive discovery.

11 So -- and I think that's an important point to  
12 keep in mind. Our view has been that the claim of fraud on  
13 the Court, which the objection to the motion and which our  
14 adversary proceeding both assert, our concern has been that  
15 it's difficult to separate it out from the lack of due  
16 process point because although superficially I suggest it  
17 might be a -- maybe that's not the right word, but it might  
18 be -- it may seem that since fraud on the Court is sort of a  
19 more broad remedy or has more prongs to it that maybe need  
20 to be established that the discovery in establishing that  
21 claim would be much broader and take a lot more time.

22 As I step back from it, and think about it, if  
23 there's going to be discovery on a due process violation, I  
24 think when the actual discovery process gets going, the  
25 discovery on those two claims will be basically the same.

1 And I think Your Honor got into --

2 THE COURT: Wait. I was keeping up with you, Mr.  
3 Flaxer, until you said basically the same. Obviously under  
4 the covers of all this, is that fraud generally is subject  
5 to a time limitation, if I recall correctly, it's one of  
6 your words, fraud on the Court, it's not, and that's the  
7 difference between 60(b) and 60(d).

8 But I wasn't clear after that what the distinction  
9 you were making was.

10 MR. FLAXER: The distinction I'm making is that if  
11 a due process violation is going to be a threshold issue,  
12 and we're going to wind up taking discovery on that issue,  
13 then as a matter of judicial economy, it may be wiser to  
14 include fraud on the Court at that point, because the  
15 discovery is likely to be I think extraordinarily similar if  
16 not identical.

17 THE COURT: I'm not inclined to differ with you in  
18 that regard, Mr. Flaxer, but I thought the consensus until  
19 you spoke was that other folks in the room who spoke before  
20 me thought that due process could be addressed at least in  
21 major respects without any discovery.

22 MR. FLAXER: And if -- and my view on that is, I'm  
23 -- what I would say is, that may or may not be right. So  
24 maybe what we ought to do here to sort of resolve everything  
25 for today at least, is let's proceed with the process of

1 developing stipulations of facts, and lawyers from both  
2 sides will work together on that. And when we come back for  
3 the next time, I think the parties will be able to advise  
4 the Court whether or not they think that based on what's  
5 stipulated, we should just put the due process issue to the  
6 Court, and put fraud on the Court, perhaps to the side for  
7 the moment.

8 But I don't think we ought to decide that one  
9 today, nor do I think we need to. So I don't think there's  
10 any need for any difference of opinion going forward from  
11 today to the next status conference.

12 I will confess some skepticism about whether  
13 stipulations of fact will be sufficient to address the  
14 alleged lack of due process issue, but I'm happy to keep an  
15 open mind about it, because as events develop, we all have  
16 to be prepared to have an open mind and change.

17 So our view for today is, we don't have to decide  
18 whether or not fraud on the Court should be a threshold  
19 issue or not. Let's kick that to the next status conference  
20 and let's see how the process goes with developing  
21 stipulations of fact.

22 And I would add as Mr. Weisfelner very eloquently  
23 observed, there are a number of government investigations  
24 ongoing. I understand that GM's internal report is due  
25 fairly soon, I think in early June. That may shed a lot of

1 light on a lot of issues, and that's another fact on the  
2 ground that may affect our thinking when we get to the next  
3 status conference.

4 Trying to focus on your threshold issues, and  
5 trying not to repeat, I don't have anything to add to the  
6 MDL, that's all been said.

7 As to the dates for when events should happen, we  
8 agree that, you know, on the one hand we want to get in and  
9 out of this court as fast as we can. On the other hand, we  
10 don't want to rush or we're going to wind up right back  
11 before you asking for more time, so we think the dates that  
12 were in Mr. Steinberg's agenda letter are fine, and we're  
13 fine with those.

14 As to a deadline for amending -- I mean, I'm  
15 sorry, for filing additional adversary proceedings or  
16 joining in ours, it was never our intention to encourage  
17 more adversary proceedings, but we did think it was  
18 important that there be a time when the Court be able to  
19 know that. I now know the universe of what the pleadings  
20 are.

21 THE COURT: What people want to assert.

22 MR. FLAXER: Yes. So we're fine with picking a  
23 date for that, maybe a date in mid to late May would be  
24 fine. Mr. Steinberg's agenda letter suggested May 14th as a  
25 date for us to amend our complaint. We are considering

1 three amendments, which we don't think would have any effect  
2 on the process that's being developed here, but we're okay  
3 with that date.

4 Mr. Weisfelner discussed sort of the interplay  
5 between adversary proceedings and the contested matter. I  
6 think that there is agreement here that for discovery  
7 purposes and for the scheduling we're doing here today, they  
8 should be treated as consolidated and run contemporaneously,  
9 and there's no need at this point to have any distinction  
10 that's meaningful that I can think of.

11 I mentioned to Mr. Steinberg this morning in the  
12 hallway that, you know, because we filed a complaint, a  
13 summons has been issued, and there's a date to answer, which  
14 backs into a date for a Rule 26(f) conference. But I think  
15 those dates can be just sort of rolled into this process so  
16 we don't have to have any, you know, separate concerns about  
17 other dates that sort of automatically come with a filing of  
18 an adversary proceeding.

19 THE COURT: I think my understanding then might  
20 flow from what you just said, but you're also equally  
21 amenable to any procedural consolidation, including briefs  
22 to cover the field in both.

23 MR. FLAXER: Correct.

24 THE COURT: Okay.

25 MR. FLAXER: And I think the last point that I

1 have to mention since everything's been so, I must say, very  
2 efficiently covered is we're the ones who did raise the  
3 possibility of mediation. I think I agree with what both  
4 counsel have said before me. I would just urge that we  
5 don't lose sight of it and as much as we'd like to avoid  
6 extensive discovery here, and as much as I'd hope we can  
7 avoid it, but I fear it may not be avoidable, the mediation  
8 alternative may wind up being much more productive and  
9 better for the victims we're all seeking to serve than  
10 extensive litigation.

11 THE COURT: Okay. Thank you.

12 MR. FLAXER: Thank you, Your Honor.

13 THE COURT: Is there anybody else who hasn't had a  
14 chance to be heard for the first time who would like to be?  
15 Come on up, please.

16 I'm taking someone in the courtroom first, and  
17 then I'll ask about the phone.

18 MR. MARTORANA: Good morning, Your Honor, Keith  
19 Martorana of Gibson Dunn & Crutcher on behalf of the GUC  
20 Trust.

21 THE COURT: Did you say Marona?

22 MR. MARTORANA: Martorana.

23 THE COURT: Martorana.

24 MR. MARTORANA: Yes.

25 THE COURT: I'm sorry.

1 MR. MARTORANA: Your Honor, I stand because you  
2 had suggested at the outset of this hearing the possibility  
3 that issues related to the GUC Trust and claims against the  
4 GUC Trust might be better addressed as a threshold issue to  
5 start.

6 Based upon what I'm hearing today, it sounds like  
7 there's a consensus among the parties here at least, that  
8 this is something that should not be addressed as a  
9 threshold issue.

10 THE COURT: Well, that depends on who you're  
11 including within that consensus, Mr. Martorana.

12 MR. MARTORANA: I meant just these parties over  
13 here. Don't -- you would like to have it addressed to the  
14 threshold issue?

15 UNIDENTIFIED: I'll address it later.

16 MR. MARTORANA: Okay. All right. Then I guess  
17 there is no consensus on that, but I will tell you that from  
18 our perspective, we believe that it should not be addressed  
19 as a threshold issue.

20 We do believe that first off it will require at  
21 least some discovery, probably substantial discovery. We  
22 also believe, you know, particularly because as it relates  
23 to issues of excusable neglect, which are fact sensitive.

24 We also believe that it's not dispositive of -- as  
25 Mr. Weisfelner said the -- you know, the fundamental issue

1 here which is whether or not claims can be asserted against  
2 New GM.

3 Moving off it being a threshold issue, we also  
4 don't believe that this is an issue frankly that needs to be  
5 addressed at any point during this hearing -- during this  
6 proceeding.

7 No claimants, none of the plaintiffs, no claimants  
8 or potential claimants had raised this as a possibility. No  
9 one has filed a motion to lift the bar date. The only  
10 person that has raised it has been New GM, based upon, you  
11 know, some statements of fact in some pleadings. But the  
12 only person that has actually moved forward with it is New  
13 GM, and frankly, you know, it's our view that this is  
14 essentially a way to deflect liability away, and you know,  
15 the attention away from New GM and put it on to a third  
16 party.

17 To the extent that Your Honor is inclined to rule  
18 against us and have it either be dealt with as a threshold  
19 issue or as a -- I guess, a subsequent issue, we would  
20 request to participate in any of the discovery that does  
21 transpire. And then to the extent that there are any claims  
22 against New GM to be resolved, we would also ask to  
23 participate in any mediation.

24 THE COURT: Okay. Thank you.

25 MR. FLAXER: Thank you.

1 THE COURT: Let's see, Mr. Golden, Mr. Posner.  
2 First you, Mr. Golden, then I'll hear from you, Mr. Posner.

3 MR. GOLDEN: Thank you, Your Honor, Daniel Golden,  
4 Akin Gump Strauss Hauer and Feld, counsel for certain  
5 publically traded public -- publically traded unit trust  
6 holders.

7 Your Honor, I do take your admonition not to pile  
8 on, although my name was used in vain, so I figured I'd  
9 stand for a minute or two, we agree with the position just  
10 advocated by counsel for the GUC Trust.

11 We think it interesting that none of the potential  
12 plaintiffs who might have asserted late claims against a GUC  
13 Trust have indicated an intention to do so. It's only New  
14 GM that has raised that issue.

15 THE COURT: Well, pause please, Mr. Golden.

16 MR. GOLDEN: Yes.

17 THE COURT: You've been around the block a couple  
18 of times.

19 MR. GOLDEN: Too many times.

20 THE COURT: If you were a plaintiff's lawyer,  
21 would you rather collect a hundred cents on the dollar or 30  
22 cents on the dollar? And if I'm allowed to ask a compound  
23 question, would you prefer to try to shoot the moon with a  
24 claim for punitive damages or would you prefer to assert  
25 that punitive damages claim in a bankruptcy where punitive

1 damages come at the expense of the remainder of the creditor  
2 community?

3 MR. GOLDEN: So I'm assuming both of those  
4 compound -- both parts of that compound question were  
5 rhetorical.

6 THE COURT: Yes.

7 MR. GOLDEN: I understand, Your Honor. I  
8 understand the strategy involved, but I think Mr. Weisfelner  
9 is correct. There is a looming threshold issue here. I'm  
10 not here to argue pro or con on that threshold issue, but  
11 that issue once resolved will determine whether there needs  
12 to be claims asserted or attempted to be asserted against  
13 the GUC Trust.

14 I think Mr. Weisfelner was entirely correct, we  
15 actually debated among ourselves whether to either --  
16 whether to even file a letter seeking to participate at this  
17 hearing, because none of this hearing had anything to do  
18 with the Trust or the beneficial interest holders of the  
19 Trust.

20 I was, however, concerned on April 30th, that  
21 somehow some way the GUC Trust was going to be injected into  
22 those proceedings, and therefore, we sent the letter asking  
23 to participate.

24 Sure enough, seven hours later, New GM filed their  
25 letter. And for the first time injected that issue into

1 these proceedings. We don't think it's appropriate. We're  
2 frankly strangers to these proceedings. There may come a  
3 time when the plaintiffs and the claims that the plaintiffs  
4 represent, seek to assert those claims against the GUC  
5 Trust, it's not now. They haven't done so, they haven't  
6 indicated an intention to do so.

7 Furthermore, Your Honor --

8 THE COURT: Pause please, Mr. Golden. Put  
9 yourself -- I made you put yourself in the shoes of the  
10 plaintiffs' lawyers, now I want you to put yourself in my  
11 shoes.

12 Can you see how a judge might be uncomfortable  
13 with a scenario under which there's no claim against  
14 anybody, assuming solely for the purpose of discussion, that  
15 the claim otherwise has merit?

16 MR. GOLDEN: Absolutely, Your Honor. I've said to  
17 my colleagues that you must be struggling at night with  
18 these issues, whether to proceed, allow these claims to be  
19 filed against New GM. If so, then there's no need for the  
20 GUC Trust. But if not, does there -- is there another  
21 remedy available by going against the GUC Trust. I  
22 understand the discomfort of the Court, but that discomfort  
23 was caused by actions taken by other parties.

24 There's often times unfortunate circumstances when  
25 people are deprived of their ability. They fail to assert

1 their rights, they fail to a -- timely assert their rights.  
2 Unfortunate things happen in bankruptcy, Your Honor is well  
3 aware of that, and I understand the discomfort level. But  
4 it doesn't change the fact that to adjudicate whether or not  
5 these claims should be allowed against the GUC Trust will  
6 require a significant amount of discovery.

7 The Pioneer standards themselves that regulate or  
8 determine whether or not there is excusable neglect is ripe  
9 with discovery and evidentiary rationales.

10 So, Your Honor, I think I agree with Mr.  
11 Weisfelner's suggestion, hold this off, it won't be  
12 permanently held off. If Your Honor is to determine that  
13 the plaintiffs can proceed against New GM, that will  
14 probably be the end of it as it relates to the GUC Trust.  
15 If that's not the Court's ruling, we can revisit the issue  
16 if and when it becomes appropriate.

17 But to do it as a threshold issue, when there are  
18 already so many issues on the table, we think is a mistake.

19 THE COURT: Okay. Thank you.

20 MR. GOLDEN: Thank you, Your Honor.

21 THE COURT: All right. Mr. Posner, come on up,  
22 please. Now, I understand that you and your partner, Ms.  
23 Cyganowski are acting as liaison between Mr. Weisfelner, and  
24 Mr. Esserman and Mr. Inselbuch on the one hand, and the  
25 other, I guess it's, I don't know, 50 to a hundred other

1 class action lawyers, do you have some points that you need  
2 to make that Mr. Weisfelner didn't satisfactorily make?

3 MR. POSNER: No, Your Honor, just briefly, David  
4 -- for the record, David Posner from Otterbourg, and as you  
5 pointed out, and as Mr. Weisfelner mentioned I think twice,  
6 Ms. Cyganowski, my partner, has -- is working with that  
7 group as a consultant and a liaison counsel-type role.

8 She asked me to convey to the Court that to the  
9 extent that she can be helpful in harmonizing any discord in  
10 connection with the plaintiffs' group, she stands ready to  
11 assist in that regard. And I would be remiss, Your Honor,  
12 if I didn't say I'm working with co-counsel, Harley Tropin  
13 of the Kozyak Tropin firm who's here today in the court.

14 THE COURT: Okay.

15 MR. POSNER: Thank you, Your Honor.

16 THE COURT: Thank you, Mr. Posner. Mr. Etkin.

17 MR. ETKIN: Your Honor, Michael Etkin, Lowenstein  
18 Sandler for the plaintiffs in two pending class actions.

19 I rise only to talk about an issue that has been  
20 raised and was raised in Mr. Weisfelner's letter of  
21 yesterday, just so I have some clarity.

22 First of all, given the time frame, the number of  
23 lawsuits, the number of lawyers, I think it's extraordinary  
24 that the plaintiffs' side has been able to achieve this  
25 level of cooperation so quickly for purposes of today's

1 hearing. And having dealt in the class action realm for  
2 many years, it is not the usual.

3 Second of all, I have enormous respect for Mr.  
4 Inselbuch and his firm, Mr. Esserman, and his firm and Mr.  
5 Weisfelner and his firm, that goes without say. However, I  
6 just want to quote from the second to last bullet point of  
7 Mr. Weisfelner's letter as it related to the question of  
8 liaison counsel for plaintiffs. And that's --

9 THE COURT: The letter of May 1?

10 MR. ETKIN: His letter of May 1, yes. And that's  
11 what I thought and assumed the state of play was as we  
12 walked into the courtroom today. And it's short.

13 Mr. Weisfelner says, "A majority of plaintiffs has  
14 designated counsel as lead counsel for the May 2nd  
15 conference. Counsel will endeavor to further a continued  
16 coordination amongst plaintiffs. The May 2nd conference  
17 agenda should not include debate about the appropriate  
18 procedures for such coordination, and if necessary, it can  
19 be addressed at a later conference."

20 I agree with that. I think that there's  
21 coordination that still needs to be discussed as we move  
22 forward. These three esteemed counsel were designated to  
23 appear on behalf of a majority of the plaintiffs for  
24 purposes of today's hearing, and I just want to make sure  
25 that I understand the state of play correctly.

1 THE COURT: Well, I take it you're not asking me  
2 for a ruling on that.

3 MR. ETKIN: No. I'm not asking you for a ruling  
4 at all. It's not something that really was placed on the  
5 agenda, and it's really something for the plaintiffs'  
6 counsel and their respective bankruptcy counsel to work out,  
7 to the extent more coordination is necessary.

8 THE COURT: Okay. All right. Anybody else -- oh,  
9 there was a gentleman on the phone if I'm not mistaken.

10 MR. BECNEL: Yes, Your Honor, Daniel Becnel of  
11 Becnel Law Firm. I have since filed in the Eastern District  
12 of Louisiana --

13 THE COURT: Okay. Pause please. Was it Becnel?

14 MR. BECNEL: Becnel, B-e-c-n-e-l.

15 THE COURT: And did you give me a letter, Mr.  
16 Becnel? My prep didn't reflect that letter.

17 MR. BECNEL: No, we did not submit a letter.  
18 We've been on all of the conferences though.

19 THE COURT: I beg your pardon?

20 MR. BECNEL: We've been with all of the conference  
21 calls that all of the lawyers have had together.

22 THE COURT: Well, forgive me, Mr. Becnel, I asked  
23 another attorney to put himself in my shoes, and I'm going  
24 to do the same with you. But frankly I'm not looking for  
25 your understanding. I'm looking for you to understand my

1 ruling.

2 I have before me one full courtroom here, and I  
3 believe I have two overflow courtrooms. And I issued an  
4 order to obviate this exact situation, which every one of  
5 the other lawyers in this entire case was fully able to  
6 comply with, and when I issue an administrative order to  
7 avoid conduct that results in chaos in a case on my watch, I  
8 need the legal community to understand that when I issue  
9 orders, I mean them.

10 So respectfully, I am denying you the opportunity  
11 to be heard. If you have concerns, I'm sure that Mr.  
12 Weisfelner or his colleagues will return your phone calls.  
13 And as you've undoubtedly heard, they're fairly capable  
14 advocates.

15 So I think my ruling is clear. I'm denying you  
16 the opportunity to be heard for failure to comply with the  
17 requirements of my case management order.

18 Mr. Stein -- is there anybody else on the phone,  
19 of course, a person on the phone who has complied with the  
20 requirements of the order?

21 (No response)

22 THE COURT: Mr. Steinberg, you can reply.

23 MR. STEINBERG: Your Honor, I'm going to be very  
24 brief. One, to the extent there was a discussion about  
25 mediation and Ken Feinberg, I want to just make it

1 absolutely clear that Mr. Feinberg has not been retained to  
2 examine the economic losses which are inherent in these  
3 lawsuits. His focus has been on the accident victims.

4 Second, that the accident victims, while not a  
5 part of our motion to enforce, it does not mean that there  
6 -- that our position is not that they are retaining  
7 liability at this point in time for the pre-sale accident  
8 victims only.

9 Third, that I agree with Mr. Weisfelner and Mr.  
10 Flaxer that I think as far as melding the two procedures and  
11 making sure that the adversary proceeding, the contested  
12 matter are all dealt with efficiently, I think we'll be able  
13 to do that and work with each other to do that.

14 I did think Mr. Flaxer had actually a very good  
15 suggestion on the fraud and the court issue, is that once we  
16 go through the stipulated facts and the -- whether there  
17 will be discovery and if so, what narrowly tailored  
18 discovery there will be, then we will be able to evaluate  
19 whether it's still efficient to deal with fraud on the Court  
20 or not as a threshold issue.

21 And so our suggestion would be as Mr. Flaxer has  
22 modified it, is to let us go through the process of  
23 stipulated facts and if we do want to put on fraud on the  
24 Court as a threshold issue because we actually think we can  
25 get rid of it based on a legal theory, and whatever facts we

1 stipulated to, we want to reserve the right to do it. We're  
2 not asking Your Honor to rule on that now or not, but we  
3 would take that up at the next hearing if we're at that  
4 stage.

5 As far as the GUC Trust, the late filed claim, the  
6 reality is that the person who raised this issue was not me  
7 in my letter. The person who raised the issue was the  
8 objector, and I think it was Mr. Weisfelner who claimed a  
9 denial of procedural due process for failure to get notice  
10 of the bar order, and saying that he had no other remedy,  
11 and the only remedy that he could possibly look to is New  
12 GM.

13 The other person who put it on the calendar was  
14 Mr. Flaxer's client, because we've agreed that a threshold  
15 issue is three -- I'm sorry, 60(d)(1), which is that if  
16 there was some kind of a violation, is there -- should there  
17 be an equitable remedy that's fashioned against New GM for  
18 Old GM's conduct.

19 So he's put on the issue as to whether -- because  
20 there's no other opportunity to get any kind of recovery,  
21 that you have to look to New GM.

22 Now, when I said that I didn't concede that this  
23 was a threshold issue or not, it was because it was more  
24 nuanced. I'm not trying to suggest that as a threshold  
25 issue we brief the Pioneer issues. What I am suggesting is

1 that the plaintiffs here cannot make a legitimate procedural  
2 due process argument relating to the bar order if they want  
3 to sleep on their rights and not go against Old GM while Old  
4 GM is still sitting with securities. And I thought that  
5 that needed to be flabbed (ph).

6 And that if it's inherent in the 60(d)(1) issue  
7 that they're going to look to us because they otherwise have  
8 no other remedy, then I think that that is an issue that has  
9 to be dealt with. Having said that, and I don't say  
10 anything more on that issue.

11 I do think, Your Honor, and I wasn't sure why Mr.  
12 Weisfelner went into it, but his concerns with regard to an  
13 issue that I think Your Honor dealt with adequately, which  
14 is dealers who may have tried to put conditions on fixing an  
15 ignition switch, and Your Honor asked essentially, why are  
16 you asking me that, I think New GM clarified that. And as  
17 far as we know, it was one dealer, and it was immediately  
18 dealt with, and when they asked whether there were other  
19 dealers involved, we never got a list for anything else.

20 So I only say that not because it's relevant to  
21 anything here, except that there is press that is listening  
22 to this issue, and everybody likes to say in a very broad  
23 brushed way, New GM is acting irresponsibly. On this  
24 particular issue, we did act responsibly, and on all the  
25 issues I think we're trying to act responsibly.

1           And to the extent that Mr. Weisfelner conceded  
2           that he wasn't a class action lawyer, or a negligence  
3           lawyer, he's probably also not a scientist or an engineer  
4           who could decide whether the air bag issue is one thing or  
5           another thing.

6           I only say that again because the people listening  
7           here, that it should be absolutely clear that you can say  
8           whatever you want to say, but at the end of the day, it  
9           ultimately has to be grounded in fact and a probable claim.

10           Other than that, Your Honor, we appreciate the  
11           time you've given us today.

12           THE COURT: All right. Ladies and gentlemen, I  
13           want you to take a lengthy bathroom break, but hopefully no  
14           more than that. I would like people who are interested in  
15           my resulting directions to be back in 15 minutes. That  
16           would be 25 to 1 on the clock up there.

17           I can't guarantee you that I'll have it buttoned  
18           up all then, but I don't want to impose on you to wait any  
19           more than you need to. We're in recess.

20           (Recessed at 12:21 p.m.; reconvened at 1:10 p.m.)

21           THE COURT: Have seats, please. I apologize for  
22           keeping you all waiting. Here's what we're going to do. In  
23           most respects, it will be similar to my tentatives, but with  
24           some refinements.

25           One, I want to leave as much time for thoughtful

1 briefing and thought by the Court as possible. But at the  
2 same time, I want this to proceed as expeditiously as I can  
3 consistent with fairness. So we're going to consider as  
4 threshold issues the two remaining issues shown on Mr.  
5 Weisfelner's blackline, the discrimination argument, the  
6 possibility that the claims now being asserted may be claims  
7 against Old GM or the GUC Trust, and subject to what I say  
8 momentarily, even the fraud on the Court contentions.

9 Messrs. Steinberg, Weisfelner, Flaxer, Martorana,  
10 and Golden, or their designees, are to confer and to prepare  
11 an order then to be settled on three business days' notice  
12 or overnight mail, consistent with these determinations that  
13 I'm dictating now, but putting meat on the bones, and  
14 providing for agreed upon dates.

15 Two, you're to meet and confer to agree upon facts  
16 to the maximum extent possible, consistent with your  
17 professional duties to your clients. To the extent you need  
18 to agree to disagree, you're to identify the matters that  
19 you can't agree upon and jointly present those identified  
20 matters to me, after which I'll determine the materiality of  
21 what's not agreed on and how it should affect further  
22 proceedings, either by way of authorizing limited discovery,  
23 or by taking issues off the table for now, and determining  
24 them later.

25 As a general matter, we're going to get as far as

1 we can without discovery. And notwithstanding what my case  
2 management order otherwise provides, there will be no  
3 discovery in either the adversary proceeding or the  
4 contested matter until and unless I order otherwise.

5 Three, I consider it preferable to consider the  
6 fraud on the Court claims as early as possible, and at this  
7 juncture, I'm including it as an issue to bring before me as  
8 one of the threshold issues.

9 But I recognize or at least assume that the fraud  
10 on the Court claim is likely to require at least some  
11 discovery. You're to confer and see if you can agree on  
12 limited discovery that will meet your respective needs on  
13 this. I hope, but I'm not sure that you'll be successful.

14 If after good faith discussion, agreeing on  
15 limited discovery is impossible, either side will be  
16 permitted to take the fraud on the Court issues off the  
17 table as threshold matters, and to defer them for  
18 consideration until a later time, assuming that you first  
19 identified the problem to me and gotten my green light to do  
20 so.

21 Four, I agree with Mr. Martorana and Mr. Golden  
22 that the matters involved in compliance with Pioneer are  
23 fact intensive, and are not appropriately threshold issues.  
24 But any party will be free to assert that claims now being  
25 asserted against New GM are prepetition and not post-

1 petition claims.

2 Before any decision is made on the extent to which  
3 the GUC Trust might have to satisfy any of those claims,  
4 each of Wilmington Trust and any holders of GUC Trust units  
5 will have full opportunity to be heard on any and all  
6 issues.

7 Each of Wilmington Trust and any holders of GUC  
8 Trust units, though in the latter case, with the same kinds  
9 of coordination that I expect from the plaintiffs' side,  
10 will have unlimited standing to be heard on not just GUC  
11 Trust related issues, but on any of the issues that we're  
12 considering as part of this exercise; either in the  
13 adversary proceeding or the contested matter.

14 Likewise, in the Wilmington Trust and any holders  
15 of GUC Trust units, again subject to the coordination  
16 requirement, will be free to participate in any discovery I  
17 authorize in connection with the remainder of the issues,  
18 even though I'm not authorizing any such discovery now.

19 But related to that, to the extent Wilmington  
20 Trust told me in our discussion that it had a desire for  
21 discovery, its request for that is denied at this time,  
22 without prejudice to renewal at a time when it's more  
23 appropriate.

24 Five, I will not interfere with the MDL panel's  
25 hearing now scheduled for May 29 and will permit the

1 judicial panel and multi-district litigation to rule on  
2 where pretrial proceedings with respect to any of the  
3 underlying actions might proceed.

4 But this ruling is without prejudice to the rights  
5 of any party to ask me to stay further proceedings before  
6 the transferee judge based on rulings in this Chapter 11  
7 case, or based on any perceived delay in my issuing rulings  
8 in this Chapter 11 case.

9 Six, anyone who is unwilling to agree to the  
10 temporary stand still that the majority seems to agree upon  
11 must come forward before me within a time certain, either on  
12 the date proposed in the Steinberg and Weisfelner letters,  
13 or an alternative date they might agree upon, in  
14 consultation with the other parties that I've allowed to  
15 participate in the formation of the order, with a motion  
16 asking me to rule on whether I should force such a  
17 standstill on the dissenter by TRO or preliminary  
18 injunction.

19 Nothing in the scheduling order will, however,  
20 change the usual burdens associated with getting a TRO or  
21 preliminary injunction relief.

22 Seven, parties are to identify any and all issues  
23 they want me to decide by a date certain to be proposed by  
24 that team who I've designated for that purpose, the same one  
25 that's preparing the proposed form of order, and to state

1 whether or not their issues to be addressed as threshold  
2 issues or not.

3 They are then to confer with the others as to when  
4 any such issues are best decided, whether as threshold  
5 issues or as later issues. If any such additional issues  
6 are to be presented as threshold issues, briefing on them  
7 should be rolled into the briefing, otherwise authorized.  
8 But if they're not perceived to be threshold issues, they  
9 can be deferred with a full reservation of rights.

10 Eight, matters in the adversary proceeding and in  
11 the contested matter will be jointly administered. For the  
12 avoidance of doubt, this will include joint briefing and  
13 joint discovery, if and when any discovery is authorized.

14 Parties should agree upon a preferred place for a  
15 single docket to file all of the documents in connection  
16 with this controversy, and to provide for that in the  
17 proposed order. As far as I'm concerned, either the  
18 adversary or the contested matter will be equally  
19 satisfactory.

20 Nine, other than as I stated, I don't think that I  
21 intended to disapprove anything that had been agreed upon  
22 between Mr. Steinberg and the class action plaintiff  
23 steering committee. But for the avoidance of doubt, if you  
24 think I left something out, or was inconsistent in my  
25 rulings, I would ask that you tell me that now.

1 Ten, the matter of mediation is deferred without  
2 prejudice to anyone's right to raise the issue at a later  
3 time.

4 So, folks, you can take the weekend off, but after  
5 that, please get together as soon as practical to get me an  
6 agreed upon form of order, at least agreed upon between the  
7 people I mentioned, then to be settled. That order should  
8 take care of details, such as proposed dates, which I've  
9 intentionally left out of the rulings I just announced. I  
10 think you can and should meet your needs and concerns on  
11 that.

12 Now, not by way of reargument, I suspect that  
13 there may be some details I failed to address or some loose  
14 ends, and I'll allow people to be heard on that.

15 Mr. Steinberg?

16 MR. STEINBERG: Your Honor, I think I can deal  
17 with everything you said. The only thing is, do we talk to  
18 your chambers about the next status conference date, or do  
19 you want to give us the date and we'll try to back into to  
20 the sum of the requirements before then?

21 THE COURT: My preference, I think, Mr. Steinberg,  
22 is that we do it as an iterative process. You guys, after  
23 you've figured out the time you need, tell me what you would  
24 recommend as far as a date within a zone. Thereupon my  
25 courtroom deputy, Ms. Calderone will see how it fits into

1 the schedule. She'll advise you what we're in a position to  
2 do, and then you can either massage your dates, or plug the  
3 date we give you into the order that you settle.

4 MR. STEINBERG: That's acceptable, thank you.

5 THE COURT: Okay. Anything else? Mr. Esserman,  
6 were you rising to be heard in any way?

7 MR. ESSERMAN: No, thank you, Your Honor.

8 THE COURT: Oh, okay. All right. Does anybody  
9 have anything else?

10 (No response)

11 THE COURT: No. Okay. Thank you very much.

12 We're adjourned.

13 (Proceedings concluded at 1:22 PM)

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IDENTIFICATION

PAGE

Judge's ruling

95

1  
2  
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6  
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11  
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C E R T I F I C A T I O N

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

**Dawn South**

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I, Sheila G. Orms, certify that the foregoing is a  
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Dated: May 3, 2014

**Sheilia G. Orms**

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