

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026

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In the Matter of:

GENERAL MOTORS CORPORATION,

Debtor.

- - - - -x

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

June 23, 2009
2:08 PM

B E F O R E:

HON. ROBERT E. GERBER
U.S. BANKRUPTCY JUDGE

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HEARING re Motion to Appoint an Official Committee of Family &
Dissident Bondholders.

Transcribed by: Pnina Eilberg

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P R O C E E D I N G S

THE COURT: Seats please. Okay. GM, we're here on the motion of the ad hoc committee of family and dissident GM bondholders asking me to appoint an additional committee.

I've read the papers and I think I understand them. We get motions of this type a lot. Mr. Richman, good afternoon.

MR. RICHMAN: Good afternoon, Your Honor.

THE COURT: I'll hear from you first. As I said, you can assume that I've read the papers and I've understood them.

MR. RICHMAN: Thank you, Your Honor. May I take the podium?

THE COURT: I would ask that you do.

MR. RICHMAN: Good afternoon, Your Honor. Michael Richman, Patton Boggs for the Unofficial Committee of Family and Dissident GM Bondholders.

Your Honor, when we first filed our motion and request for official committee recognition we had asked that it be heard prior to the June 19 deadline for objections to the Section 363 transaction. It turns out that having this hearing today, four days after the deadline has passed, is very important and material to the motion for the following reason, neither the official committee nor the two indentured trustees who sit on the official creditors committee appear to have raised any substantive objection to the fast track Section 363

1 transaction.

2 This demonstrates, conclusively, that our group, which
3 did file a very substantial objection, is not adequately
4 represented within the meaning of the statute. And an even
5 stronger case than the one we made in our opening papers is
6 made for official committee recognition under Section
7 1102(a)(2). But there is much more here that supports a
8 compelling need for an independent official committee
9 recognition, which I will get to shortly.

10 Also, I should note other developments of a factual
11 nature since we filed the motion. It appears that over thirty
12 separate objections have now been filed and the number keeps
13 growing every time I look at my BlackBerry by a whole variety
14 of individual bondholders who would be part of a larger
15 constituency that we hope to be able to represent. And I would
16 submit that an additional factor for the Court to consider
17 would be whether the hearings on the Section 363 transaction
18 and other activities in the case, particularly with this large
19 number of individual clamoring to be heard would be best
20 organized under an official committee that represents those
21 interests.

22 First, I want to update you briefly on the unofficial
23 committee, a committee of small bondholders who are looking for
24 a voice in these cases. Since the time we filed our committee
25 recognition motion, the number of bondholders who have

1 registered through the website, Main Street Bondholders, which
2 is the main way that our unofficial committee networks with the
3 larger community of small bondholders, has grown from 1,500 to
4 approximately 2,000. We believe that the face value of the
5 bonds represented is now more than 500 million dollars.

6 According to the best information we've been able to
7 obtain to date, there were approximately twelve series of
8 institutional bonds issued by GM and outstanding as of the
9 petition date there were five series of foreign currency debt
10 issues, six issues of retail bonds and notes and four series of
11 convertible debentures. Most of the holders in our group, we
12 believe, are in the retail bond and note series and the
13 convertible debt series, some of which had face values as small
14 as twenty-five dollars.

15 THE COURT: Pause please, Mr. Richman. Because when I
16 read your motion I also looked at your 2019, which referred to
17 three individuals. Has there been an updated 2019 documenting
18 the extent to which you represent anybody other than those
19 three people, putting aside the deficiencies articulated by the
20 U.S. Trustee vis-a-vis the disclosures on the three people?

21 MR. RICHMAN: On that point, Your Honor, first I would
22 note that until I received the trustee's papers, and I've had a
23 number of very cordial discussions with the office which I
24 thought gave us a fair hearing on our letter request for
25 appointment by the trustee's office. And at no time did

1 anybody suggest to me that there was any defect in the 2019.
2 And had that been pointed out to us and we'd been asked to
3 supplement it, we would.

4 THE COURT: Well you know what 2019 says.

5 MR. RICHMAN: I know what it says and we are -- we
6 don't represent anybody -- my firm represents only the
7 unofficial committee of three. And we were careful to say in
8 our papers that that committee, through its network with the
9 larger community of bondholders, is hoping to have official
10 status to represent them. And at least informally, there is a
11 belief in that bondholder community that that committee is
12 serving its interest even though I don't have an
13 attorney/client relationship with any other individual
14 bondholders nor even the three on the committee. The
15 engagement is with the committee itself as an entity.

16 As far as their holdings are concerned, we did
17 disclose their holdings and we are preparing a supplement to
18 disclose any trading activity or anything else that's
19 encompassed within the rules for positions that might have been
20 acquired in the last year and that's easily done. And whatever
21 the trustee's office wants, by way of disclosure, that we can
22 provide we will provide. But I say to Your Honor, we have not
23 expanded the unofficial committee membership beyond the three
24 individuals that we identified in our papers.

25 THE COURT: Okay. Continue, please.

1 MR. RICHMAN: Thank you, Your Honor. On June 12 we
2 reached out to this network through the website and asked
3 people to share with us more information about their holdings
4 and their circumstances. I'm trying, in as much as I've stated
5 our beliefs about the nature of this bondholder community and
6 how it is very distinct from the institutional bondholders that
7 have been represented in the case; I'm trying to do what I can
8 to gather as much verifiable information as possible.

9 We received details reports, so far, from 150 members
10 of the larger group. And I'm not claiming this is a scientific
11 survey, Your Honor, it's just illustrative. But of the 150 who
12 wrote to us, eighty-six percent of them purchased their bonds
13 between eighty and a hundred cents. A stunning sixty-eighty
14 percent of this group reported to us that the potential losses
15 to them and their GM bondholders will affect their lives in
16 significant and detrimental ways.

17 More than half of them reported to us that they had
18 been living off the interest or --

19 MR. MILLER: Excuse me, Your Honor.

20 MR. RICHMAN: -- using the interest as an important
21 source to supplement their retirement.

22 THE COURT: Just a minute please, Mr. Richman.

23 MR. MILLER: Your Honor, I don't understand. Are
24 these facts? Is this supposed to be in evidence? This is all
25 hearsay.

1 THE COURT: Of course it's hearsay. If it were
2 admissible by a witness and it's, in substance, a lawyer
3 testifying. The objection is sustained, Mr. Richman.

4 MR. RICHMAN: Your Honor, I'll move on.

5 THE COURT: You've got to stay within the confines of
6 the objection that you filed.

7 MR. RICHMAN: I will, Your Honor. I just thought it
8 important to give Your Honor the flavor of the people that
9 we're dealing with and hearing with on a daily basis. I
10 appreciate it's not evidence but I felt it was important
11 that --

12 THE COURT: Mr. Richman, we've got to move on. After
13 I rule, I rule.

14 MR. RICHMAN: Thank you, Your Honor.

15 THE COURT: Thank you.

16 MR. RICHMAN: The statute provides a very simple,
17 broad discretionary standard for an additional committee. The
18 statute says, and I quote, "If necessary to assure adequate
19 representation of creditors." Some of the objectors citing
20 some previous cases have argued that the appointment of an
21 additional committee is an extraordinary remedy and some courts
22 have said that. Courts addressing Section 1102(a)(2) have also
23 articulated roughly six factors that they believe should be
24 used to evaluate such requests and all of us have made efforts
25 to address those factors.

1 I will, in a minute, summarize the factors and the
2 party's arguments while showing that in the facts of this case
3 all the factors support the appointment of our group as an
4 additional official committee. But I want first to emphasize
5 that the text of the law, the words of the statute, provide
6 only that this Court needs to determine if the additional
7 committee is necessary in the circumstances of the case to
8 assure the adequate representation of creditors. There's
9 nothing in the statute that suggests that the relief should be
10 considered extraordinary or rarely granted nor requiring any
11 special burdens.

12 Before I get to the non-exclusive factors that all the
13 parties have discussed, I want to urge Your Honor to weigh
14 heavily an important factor that is not among the non-exclusive
15 six but one that I believe overrides this entire case and
16 subsumes a number of the factors. Will the appointment of a
17 separate official committee of non-institutional family and
18 dissenting bondholders protect and enhance the integrity of the
19 bankruptcy process? Or stated differently, will it enhance the
20 administration of justice in this case? The answer to both of
21 these important questions is resoundingly yes.

22 This case is being watched widely and closely both
23 here and around the world. People want to know whether the
24 legal system that we promote around the world and which has
25 been copied in many parts of the world is as fair and provides

1 the kind of due process and protection of dissident rights as
2 we say it does. They see that the government has powered its
3 will over GM in the months leading to the bankruptcy filing and
4 they now see that the only official committee in the case, as
5 well as the two indentured trustees on that committee, have
6 apparently lined right up with the government and the debtors
7 for a fast track Section 363 transaction that would, as a
8 practical matter, end run due process and creditor protections
9 built into the plan process.

10 The government is the debtor. It is the debtor's
11 lender and it is the new GM purchaser. It is paying the legal
12 expenses of all of those parties and we have also heard that
13 the government has agreed to pay the legal expenses of the ad
14 hoc committee of institutional bondholders who have also not
15 opposed the 363 transaction.

16 In the circumstances vitally important in our system
17 of adversarial process and justice, there's a serious question
18 whether and to what extent this Court will receive anything
19 close to a full airing of the important, substantive and
20 procedural issues that are raised in this case.

21 In a case of this magnitude, with issues of such
22 importance, we believe that the Court should hear both sides
23 and have the benefit of the full throated debate and the
24 intendant evidence that is the essence of our adversarial
25 system of justice. Giving our group official committee status

1 will enable us to vigorously present the other side. It will
2 promote overall transparency and justice. And however this
3 Court ultimately decides the issues, the public will be better
4 informed, with a better understanding of the choices that were
5 made and why.

6 Equally related to the important issue of enhancing
7 the administration of justice and the bankruptcy system is the
8 importance of going so far as is reasonably possible to assure
9 that any appearance of conflict or unfair influence is
10 mitigated. The United States Trustee does an excellent job and
11 the comment I'm about to make should not be construed as any
12 criticism of her performance here or in any other case. But it
13 is a fact that the trustee's office, which appoints the
14 official committee in this case, is part of the same executive
15 branch of the government that is the unitary voice for the fast
16 track Section 363 transaction in this case.

17 In the unique circumstances of this case and
18 especially where the official committee is now silent on this
19 key transaction, it is a legitimate question whether the
20 committee was selected and balanced in such a way as to
21 predetermine their position in favor of the government's plan.

22 We are constrained to ask where a fast track 363
23 transaction will walk in discriminatory treatment between
24 different classes of legally similar unsecured creditors,
25 namely the UAW claims and the claims of the bondholders and

1 other general unsecured creditors, how is it possible that
2 there is no substantive objection from the official committee
3 that is supposed to represent all unsecured creditors equally
4 or even from the two indentured trustees who sit on that
5 committee.

6 An additional official committee, independent of the
7 trustee's office, independent of the government and free from
8 whatever politics have restrained the official creditors
9 committee or the indentured trustees on the committee from
10 speaking out will be able to give this Court and the public the
11 important benefits of vigorous opposition and the airing of
12 issues that the bankruptcy process and the sound administration
13 of justice requires.

14 I want to turn now to the six factors, Your Honor,
15 that have been identified by some of the courts and objectors
16 to see whether and to what extent they figure into an
17 appropriate analysis of the need for an additional committee in
18 this case. The first one is the ability of the existing
19 official committee to function.

20 The debtors argue that the F&D bondholders, for family
21 and dissident GM bondholders, are adequately represented by the
22 official creditors' committee because they say that committee
23 has a fiduciary duty to protect all unsecured creditors and
24 because it includes two indentured trustee representatives who
25 are also duty bound to represent the interests of all

1 bondholders.

2 The U.S. Trustee adds that there is no indication that
3 the official committee has not been able to function
4 effectively. The official committee makes similar points
5 arguing that we have not established that the committee is
6 failing to function. But with all due respect to the courts
7 that have made this a factor, the issue is not whether the
8 official committee can function but rather, as the statute
9 expressly suggests, whether it is providing adequate
10 representation.

11 THE COURT: Pause please, Mr. Richman. Because, as
12 you properly observed, the six factors have been set forth in a
13 bucket of cases, at least in Enron and Dana in this district.
14 I think down in Winn Dixie in the Middle District of Florida
15 and elsewhere. When we bankruptcy judges do our job, we start
16 with a statute. We start with textual analysis. But if we
17 were to rely on textual analysis alone there would be no
18 Lionel. The Lionel decision points out that 363 doesn't place
19 any limits on the ability of a debtor to engage in a 363 sale.
20 And yet, it was the start of a body of case law. Do I, as a
21 judge, have the ability to ignore what may be at least three,
22 four or five decisions in this district and dozens around the
23 country that set forth those statutory factors?

24 MR. RICHMAN: Well Your Honor, I don't --

25 THE COURT: Set forth those factors in implementation

1 of the statute even though the words of the statute don't set
2 them forth.

3 MR. RICHMAN: I don't suggest, Your Honor, that you
4 ignore them. In fact, I'm trying to suggest and I'll try to do
5 it a little better, that those factors properly construed with
6 the statute and the statutory test support the appointment of
7 an additional committee in this case.

8 What I'm saying, on this particular factor the
9 functioning of a committee, it's possible that there may be
10 some cases in which somebody's going to argue that a committee
11 is deadlocked and is unable to function. But I don't think
12 anyone's argued that that's what this factor means in this
13 case. And if it were simply a matter of the committee being
14 able to --

15 THE COURT: Well, it's what it generally means isn't
16 it?

17 MR. RICHMAN: I think it can mean a lot of different
18 things. And what I'm suggesting is that viewed in light of the
19 statute and viewed in light of this case, where the statute
20 says that the test is adequate representation, then to me,
21 looking at the factor of effective functioning, it's whether
22 the creditors' committee can function to provide the adequate
23 representation that the statute says one looks at. This
24 creditors' committee may be able to function but it is
25 effectively silent on the issues affecting the bondholders and

1 other unsecured creditors. So in respect of adequate
2 representation the committee is not functioning adequately.

3 The second factor, Your Honor, is called the nature of
4 the case. The objectors argue that the large size of a case is
5 not a reason, in and of itself, for an additional committee
6 where the dissenters are adequately represented by the official
7 committee. But as I've just argued, we contest with as much
8 protest as possible, that we are not being adequately
9 represented by the committee, particularly this is not just a
10 large case. This is a large case in which the multiple hats
11 that are worn by the government and the government's
12 relationship with the debtors and the justice department show a
13 need for a creditors' committee that is truly independent.

14 Further, as I've argued before, it's inconceivable
15 that the dissident bondholders could be said to be adequately
16 represented by the official committee when neither the
17 committee nor the indentured trustees, who are supposed to be
18 their representatives on the committee, are giving any voice to
19 their grievances.

20 The third factor is the standing and desires of the
21 constituencies. We argued in our motion that the F&D committee
22 constituency is distinctly different from the institutional
23 bondholders whose indentured trustees sit on the committee.
24 And at least on this point the official committee agrees with
25 us. But they argue that this does not establish a lack of

1 adequate representation. The debtors argue, and this is my new
2 favorite sentence in any brief that I've ever seen written
3 against the position I've taken, the debtors argue that the
4 fact that our interests are diametrically different from the
5 official committees is, and I quote, "A mental attitude that is
6 incorrect."

7 I will agree that some people think that we're insane
8 to be standing in opposition to this process. But the real
9 point is adequate representation. This is just another way of
10 expressing it. The institutional bondholders have different
11 economic considerations, a different class of bonds, they had a
12 seat at the table, many of them agreed to a deal before the
13 case filed. There's a question as to whether the indentured
14 trustees on the committee have their positions predetermined
15 before the case. They do not and cannot adequately represent
16 us, that's something more than just a substantial difference in
17 mental attitude.

18 The fourth factor is the ability to continue
19 participating and recover costs. Both the debtors and the
20 official committee say that the F&D committee is represented by
21 experienced and competent counsel who can continue to represent
22 them in these cases and for that we are grateful. This factor
23 also usually invites a discussion of the eligibility of
24 unofficial committees for fees and expense recovery under the
25 substantial contributions standard of Section 503(b). And the

1 U.S. Trustee makes that point in its objection.

2 The debtors say, baldly, that under this factor the
3 Court should view our request as essentially one to transfer
4 the costs of our professionals to the debtors. However, this
5 factor just summarizes a truism in virtually all the 1102(a)(2)
6 cases and it should not have any real weight. In most cases
7 the motion for an official committee is likely to be prosecuted
8 by a law firm of substances. And in virtually every case it
9 will be a fact that an unofficial committee that is not granted
10 official committee status will be able to seek reimbursement of
11 its fees and expenses under 503(b). It's inconceivable that
12 standing here seeking official committee status one would not
13 feel that one will be able to make a substantial contribution
14 to the case.

15 And 1102(a)(2) and 503(b) exactly overlap in their
16 permission for the appointment of committees, of creditors or
17 equity security holders and in the reimbursement for
18 substantial contribution. In other words, if the availability
19 of 503(b) reimbursement is a legitimate reason to deny official
20 recognition under 1102(a)(2), then 1102 would be a nullity.

21 On the economic points embedded in this factor and the
22 objector's arguments, just because the bondholders were able to
23 get us to this point does not mean that they have anything near
24 the means to mount a vigorous and effective opposition, they do
25 not. We've been hearing from them in waves, since word got out

1 that we were trying to represent the committee. Of course the
2 benefit of a state coverage of fees and expenses is the
3 principal and salient objective of 1102(a)(2). So accusing
4 somebody of trying to shift professional fees to the estate is
5 a nonfactor, that's what the statute is designed to do. That's
6 the main reason people seek official committee status. And in
7 this case those resources would empower this committee to do
8 far more than it could ever do as a practical matter in giving
9 voice to the objections to this process as well as full
10 participation in a plan process. Including, importantly, the
11 ability to retain financial advisors to provide expert opinions
12 to counter the opinions that will be paid for by the
13 government.

14 This flows directly into the fifth factor, Your Honor.
15 The question whether or not the additional cost to the estates
16 is justified. The debtors say it's not justified because it
17 will delay consummation of the 363 transaction and lead to
18 duplicative efforts in these cases, which would add no value to
19 the administration of these cases. And the official committee
20 also claims it will lead to duplication of efforts and they
21 worry that the added costs will affect creditor recoveries.

22 Well as for the claim of duplicative efforts, please
23 somebody tell me whose work we would be duplicating. The
24 official committee is not objecting to the transaction, we
25 would be. That's not duplication. And can the debtors

1 legitimately argue that the costs are not justified because
2 they would be used to delay the 363 transaction? Absolutely
3 not. That just speaks volumes about the desire of the debtors
4 to silence this committee, limit its ability to function and
5 otherwise choke any opposition. And it's completely untrue.

6 As our objection to the 363 transaction makes clear,
7 we are in favor of seeing New GM created within the sixty to
8 ninety days that the government and the debtors promised the
9 world that they would be seeking to create New GM when they
10 filed this case. Our position is that this should be done in
11 an accelerated plan process and not through a fast track 363
12 sale that will predetermine creditor recoveries outside a plan
13 process. To use the fact that we are substantively in
14 opposition to the strategy of the debtors as a means to deny us
15 funding as a voice in the process is not a legitimate
16 objection.

17 Lastly, the sixth factor called other considerations.
18 The debtor's main argument under this factor, which is now also
19 joined in by the official committee, again has nothing to do
20 with the statutory requirement of whether or not we are
21 adequately represented but rather their concern that empowering
22 us will delay the 363 transaction.

23 The official committee says that they are concerned
24 that there could be confusion if we differ from the approach
25 that they are taking. In other words, again, both the debtors

1 and the official committee would prefer that our opposition be
2 silenced or limited.

3 So to sum up, the failure of the official committee
4 and the two indentured trustees on that committee to object to
5 any aspect of the proposed fast track 363 transaction, which
6 for all intents and purposes is the core of this case and will
7 predetermine unsecured creditor distributions in a manner that
8 discriminates against bondholders, demonstrates on its face
9 that the existing representation of the official committee is
10 not adequate. Adequate representation has to mean something
11 more than that there is a committee in existence to protect
12 unsecured creditors or that it merely includes representatives
13 of the same class seeking official recognition.

14 The integrity of the bankruptcy process is the central
15 issue, especially if by choking off this large constituency of
16 small bondholders the Court is unable to hear vigorous
17 opposition. The integrity of the process is key where the
18 government is governing the debtor and its decision making and
19 lending the DIP money and masterminding the so-called purchase.
20 The administration of justice is implicated where in this
21 unusual case the only official committee is appointed by the
22 same branch of government wearing the management, lender and
23 purchaser hat.

24 These appearances and processes demand that there be a
25 vigorous airing of issues through an opposition given official

1 voice in this process. Whatever this Court eventually decides,
2 the administration of justice and the integrity of the
3 bankruptcy process will be protected, upheld and honored if the
4 Court is able to have the benefit of the full professional
5 presentation of opposing views, law and evidence.

6 Thank you, Your Honor.

7 THE COURT: Thank you. All right. Mr. Miller, I'll
8 hear from you and U.S. Trustee's office then the creditors'
9 committee, then anybody else who wishes to weigh in.

10 MR. MILLER: Good afternoon, Your Honor. Harvey
11 Miller, Weil Gotshal & Manges for the debtors. If Your Honor
12 please, the argument which is being made by Mr. Richman
13 basically when you cut to the core is the fact that Section
14 1102 has been interpreted by courts, and there are ample
15 decisions in this district as to the responsibility and burden
16 that is on the moving party that should be ignored. The Enron
17 decision, the Winn-Dixie decision, Dow Corning, the Oneida
18 decision, all of these decisions should be ignored.

19 The standard for the appointment of an additional
20 committee is a high standard. There is a burden of proof that
21 is put on the moving party to establish that there is a lack of
22 adequate representation, Your Honor. And the only lack of
23 adequate representation that we hear is that Mr. Richman
24 believes that this creditors' committee, the official committee
25 that's been appointed in this case, has failed to adequately

1 represent the bondholders because it hasn't objected to the 363
2 sale.

3 That means, Your Honor, if you take his principal to
4 its logical extreme, any time a group of creditors is in a
5 difference of opinion with the creditors' committee there
6 should be an additional committee appointed. And that, Your
7 Honor, is clearly not the law.

8 A review of the applicable determinative factors, Your
9 Honor, demonstrates that the GM bondholders are adequately
10 represented by the official committee. And what did the U.S.
11 Trustee do here, Your Honor? At the organizational meeting it
12 interviewed many of the creditors who appeared at that meeting.
13 The U.S. Trustee appointed a fifteen member committee,
14 including two indentured trustees. In point of fact, Your
15 Honor, when Mr. Richman and inquiries made of Mr. Richman as to
16 whether any one of these three ad hoc committee members would
17 serve on the official committee, the answer was no. So the
18 whole purpose of this, Your Honor, is to have a committee that
19 can object to the 363 sale and have its expenses paid by the
20 debtor's estates. That's not a lack of adequate representation
21 Your Honor. That's a difference of opinion with the official
22 committee. And I don't really know where Mr. Richman is going
23 about they haven't objected, the time to object or to file
24 responsive papers on the part of the official committee has not
25 yet expired. The official committee has not yet filed whether

1 it supports, objects or whether it has a limited objection. So
2 I don't know exactly what Mr. Richman is replying to.

3 There is no requirement, Your Honor, that a creditors'
4 committee must represent every different interest in the
5 creditor community. And that has been established in many
6 cases, including the Sharon Steel case. The best committee,
7 Your Honor, is a committee of diverse interests and that's
8 exactly what the U.S. Trustee attempted to do here.

9 In accordance with Section 1102(b)(1), the committee
10 represents the different kinds of claims which have been
11 asserted and which will be involved in this Chapter 11 case.
12 And I believe the U.S. Trustee carefully selected this
13 committee so that it would represent the different kinds of
14 claims in this case.

15 So we have the two indentured trustees, Your Honor.
16 And indentured trustees have an obligation, not only to
17 represent institutional bondholders but to represent all the
18 bondholders that are covered by that indenture, and that
19 includes the retail bondholders as well as the institutional
20 bondholders. And in addition to that, Your Honor, we have an
21 ad hoc committee of bondholders.

22 As Your Honor may recall, at the first day hearings
23 Mr. Rosenberg from Paul Weiss appeared and that ad hoc
24 committee represents a committee which is, if I recall
25 correctly, in dollar amount represents more than fifty percent

1 of the outstanding bonds. That's almost, Your Honor, fourteen
2 billion dollars worth of bonds.

3 So we're in a situation today where this ad hoc family
4 and dissident bondholders group has one objective, they want to
5 file -- they have filed an objection to the 363 sale. They
6 have predetermined, Your Honor, that this Section 363 sale
7 should not be approved. How did they make that determination?
8 They didn't do any research, they haven't reviewed the
9 transaction but they have already determined and they want Your
10 Honor to approve the appointment of this additional committee
11 so they can pursue this objection which is made on the basis of
12 their own conclusions because of the insolvent state of General
13 Motors.

14 Now, if that is the basis for the appointment of
15 additional committees, Your Honor, then I suggest to Your Honor
16 we're going to have a lot of additional committees in this
17 case. We also already have motions for other additional
18 committees and if the sole difference, Your Honor, is we don't
19 agree with the official committee that this may be a proper
20 cause of action, that does not establish adequate -- a lack of
21 adequate representation. And in point of fact, Your Honor, the
22 ad hoc family and dissident bondholders committee, they can
23 present those objections.

24 Mr. Richman made a very able presentation today; he
25 can make another able presentation when the 363 transaction

1 comes up. They have demonstrated today that they have the
2 capacity to object and to take whatever action they deem
3 appropriate. And Mr. Richman stood at this lectern, Your
4 Honor, and said we will make a substantial contribution. Well
5 if he is so sure they're going to make a substantial
6 contribution, then he should have no problem because Section
7 503(b) will be there when it is demonstrated that he has made a
8 substantial contribution. We don't believe that he will make a
9 substantial contribution. And we don't believe, Your Honor,
10 that these debtors' estates should bear the cost because he is
11 dissatisfied with the composition of the official committee.

12 What the U.S. Trustee did, Your Honor, was to comply
13 with the statute, to comply with the precedents in this
14 district and appoint a representative committee. And
15 Mr. Richman, Your Honor, has not established a lack of adequate
16 representation. This committee is represented, it is
17 functioning, it has been engaged ever since its appointment on
18 June 3rd in getting information and dealing with the issues in
19 this estate.

20 Mr. Richman's committee represents apparently a very
21 small group of bondholders. If we're going to have additional
22 committees for a small group of bondholders when they have
23 representation on the official committee, Your Honor, as I said
24 before, we are going to end up with a lot of additional
25 committees in this case, which would be inappropriate and would

1 be inefficient in the administration of these estates, Your
2 Honor. There is no justification, at this point in time, Your
3 Honor, for the appointment of an additional committee of
4 bondholders. And the large size of the case and the
5 circumstances of the case, Your Honor, do not mean that there's
6 a lack of adequate representation. The U.S. Trustee took that
7 into consideration. This is a committee that has two
8 indentured trustees on it, is ably represented by attorneys,
9 ably represented by financial advisors and has been discharging
10 its function.

11 Mr. Richman can't point to any lack of adequate
12 representation except the one that he pursues, Your Honor, and
13 that is the committee hasn't objected. That does not establish
14 a lack of adequate representation, Your Honor. There may be a
15 difference between the official committee and the ad hoc
16 committee. That doesn't prove or establish in accordance with
17 the high standard that is required in this district, that there
18 is a lack of adequate representation. There will be
19 differences and there are differences, I'm sure, within the
20 committee, Your Honor. And that's why the Code says you should
21 appoint a committee that represents the different kinds of
22 claims. And it's within the committee process that those
23 claims are resolved by debate, by dialogue within the
24 committee. Mr. Richman's clients don't even want to serve on
25 that committee. They might have had the opportunity to serve

1 on that committee yet they rejected it, Your Honor.

2 What the U.S. Trustee did was discharge her functions
3 in accordance with the Bankruptcy Code and appointed a very
4 representative committee. And nothing has been established
5 here today except, Your Honor, a lot of rhetoric about the
6 integrity of the Court. What happened here was a compliance
7 with the provisions of the Code, the appointment of a
8 representative committee and a total failure of establishing a
9 lack of adequate representation in these cases, Your Honor.
10 All we have heard is the official committee will not object,
11 therefore we must have another committee on the basis of a
12 predetermined judgment that this proposed Section 363
13 transaction should not be approved. That's not establishing a
14 lack of adequate representation, Your Honor.

15 So we would submit to Your Honor, in consideration of
16 the seven factors and what has been put forth today, there has
17 been no proof meeting the standard that is imposed upon a
18 moving party that there's a lack of adequate representation by
19 the official committee. And we urge Your Honor to deny the
20 motion.

21 Thank you, Your Honor.

22 THE COURT: All right. Thank you. Ms. Riffkin,
23 Mr. Masumoto, U.S. Trustee's office.

24 MR. MASUMOTO: Good afternoon, Your Honor. Brian
25 Masumoto for the Office of the United States Trustee.

1 As Your Honor is aware, the United States Trustee
2 filed a response to the motion of the unofficial family and
3 dissident bondholders for an order directing the United States
4 Trustee to appoint a separate committee.

5 In our response the United States Trustee asked the
6 Court to deny the motion because the unofficial committee
7 failed to demonstrate that the appointment of a separate family
8 and dissident bondholder committee isn't necessary for the
9 adequate representation of that group of bondholders interest.

10 Before addressing the merits of the case the United
11 States Trustee would like to point out or to discuss the
12 requirements under Rule 2019.

13 As indicated by counsel, the Federal Rules of
14 Bankruptcy Procedure, Rule 2019, specifically Rule 2019(a)(4),
15 requires the disclosure by the members of the unofficial
16 committee with respect to their bondholdings. And in
17 particular the times when acquired, the amounts paid therefore
18 and any sales or other dispositions thereof.

19 Given the appearance of all the parties today, Your
20 Honor, the U.S. Trustee does not request that this proceeding
21 do not go forward. In fact, however, we do ask that the Court
22 withhold its decision pending disclosure of the requirements
23 under the Rule 2019. In part --

24 THE COURT: Mr. Masumoto, if your opponent, in this
25 case Mr. Richman, had stonewalled you and indicated an

1 unwillingness to comply, I would give the point you made a lot
2 of serious consideration. But I wonder whether in light of the
3 desire, if not also a need, of many constituencies in this case
4 to keep things moving forward that a guy in my position should
5 triage those matters and try to address parties needs and
6 concerns as quickly as possible and only hold up things when
7 its really necessary to do that.

8 As I said, he said he's going to give you compliance.
9 Mr. Richman's a man of honor, at least I've always thought of
10 him as such and I take his commitment as good enough for me for
11 now, wouldn't you?

12 MR. MASUMOTO: Your Honor, and from the standpoint of
13 the U.S. Trustee that's fine once compliance is met. The only
14 concern that we have is that if in fact these requirements are
15 not met is essentially a license to future movants in other
16 cases to avoid the requirements of the rule and nevertheless
17 seek a disposition of their motion. And in fact in this case
18 we don't believe, given the representation that the disclosure
19 will be made, we believe that there ostensibly should be very
20 little delay in making the decision. However, delaying it
21 until the disclosure is made does enforce the requirements of
22 the rule and indicate the importance of that disclosure. In
23 fact, the disclosure may in fact inform the Court as well to
24 the other parties in interest as to the various motivations of
25 the parties and the determination of the various factors set

1 forth to determine adequate representation.

2 Having said that, Your Honor, I do believe that as,
3 certainly as indicated by the debtor's reply as well as the
4 official committee's reply with respect to the motion, we
5 believe that certainly even not taking into account any of the
6 undisclosed information there's sufficient facts to determine
7 that the unofficial committee is adequately represented and
8 therefore does not require the appointment of a separate
9 committee.

10 So having said that, I would like to move on to the
11 merits of the under Section 1102(a)(2) regarding adequate
12 representation. As indicated and acknowledged by all the
13 parties, the norm is the appointment of a single committee.
14 And that in fact the appointment of a separate committee is an
15 extraordinary remedy.

16 Furthermore, as indicated by debtor's counsel, the
17 burden is on the moving party to establish the need for a
18 separate committee in order to provide adequate representation.
19 As indicated, adequate representation is not defined by the
20 code and in fact various case laws have identified factors to
21 consider in making that determination. Essentially the
22 analysis seems to devolve on a case-by-case analysis of the
23 various factors that relate to the particular circumstance.
24 And in that regard, Your Honor, I would like to indicate that
25 the typical starting point is the formation of the official

1 committee of unsecured creditors. And specifically would like
2 to address the statements made by Mr. Richman suggesting that
3 there was some sort of collusion or influence in the formation
4 that was intended to dictate the outcome with respect to the
5 363 sale.

6 I can say unequivocally there was no communication
7 between the office of the United States Trustee and any member
8 of Treasury, the Auto Task Force or the United States
9 Attorney's office representing the Auto Task Force in the
10 formation of the committee. The determination was made
11 strictly within the United States Trustee's program under the
12 standards that have been applied in all bankruptcy cases. And
13 there is absolutely, and I would like to make it quite clear,
14 no influence and no intent on the part of the United States
15 Trustee to form a committee solely for the purpose to advance
16 the approval of the proposed 363 sale.

17 And in that regard, as mentioned, the United States
18 Trustee appointed a fifteen member committee. As indicated,
19 that committee is composed of seven different groups of
20 creditors. There are pension obligations, employee
21 obligations, trade claims, dealer claims, tort claims, asbestos
22 claims and the bondholder claims. As indicated, two indentured
23 trustees representing all of the bond issuances were appointed
24 to the committee.

25 Also as indicated, at the organizational meeting there

1 were, in fact, three representatives of bondholder interests
2 that registered their appearance, the two indentured trustees
3 and an individual bondholder. The individual bondholder did
4 not remain to be interviewed by the United States Trustee and
5 we were, therefore, unable to consider that individual for
6 appointment on the committee.

7 Also as indicated, the United States Trustee did reach
8 out, after the formation of the official committee, to the
9 unofficial committee to inquire whether or not there were any
10 members who were interested in serving on the committee and the
11 response was in the negative.

12 Your Honor, the U.S. Trustee believes that given the
13 burden that the unofficial committee, as a moving party there,
14 is with respect to the establishment of adequate protection of
15 the lack of adequate protection would believe that the failure
16 and the refusal of the committee -- unofficial committee
17 members to serve on the official committee should weigh heavily
18 with respect to the claim of lack of adequate representation.

19 Also we'd like to point out, as we did in our papers,
20 that in the interview that the U.S. Trustee conducted with
21 respect to their various creditor constituencies, the U.S.
22 Trustee specifically questioned the indentured trustees
23 regarding their fiduciary obligations and received
24 representations from both indentured trustees that they were
25 able to operate as fiduciaries for the entire unsecured

1 creditor class in these cases even though or even if a majority
2 of the bondholders had committed themselves to support the
3 debtor's proposed sale.

4 The indentured trustees were not bound or
5 circumscribed in any manner in seeking the maximum recovery on
6 behalf of all of the unsecured creditors as a fiduciary to the
7 unsecured class -- the class of unsecured creditors.

8 Finally, Your Honor, to address the various factors
9 that have been indicated, again I will quickly go through the
10 factors that in fact has been articulated by the various
11 parties and in the papers. Certainly the nature of this case,
12 although large and arguably perhaps even complex, is not a very
13 difficult case in that the major goal in this case is really
14 what is the consideration to be realized from the sale of
15 substantially all of the debtor's assets. And in this regard,
16 we believe that that goal is the same goal as the goal in
17 common with the committee as a whole as well as its individual
18 constituents, including the unofficial committee of F&D
19 bondholders.

20 Therefore, as indicated previously, since the
21 indentured trustees are not constrained, even by a majority
22 vote of bondholders in favor of the sale, the indentured
23 trustees could and should have independently determined the
24 validity and the merits of the proposed 363 sale. And in that
25 regard the family and dissident bondholders interests are

1 directly represented in the committee and in the case.

2 One of the other factors raised is the factor of
3 whether or not the official committee has been able to
4 function. And as indicated by debtor's counsel and I believe
5 as represented by the official committee and its papers and
6 response to the motion, the committee has been functioning
7 properly, has been functioning effectively and is not, as
8 indicated, deadlocked in any manner that would render it
9 ineffective.

10 Certainly, as indicated -- I don't think I need to go
11 into detail, the pleadings that have been filed by the
12 unofficial committee indicates that a level of legal and
13 financial sophistication sufficient to guarantee an appropriate
14 participation within the case. And certainly, as indicated
15 before without having to go over the factors again, the
16 unofficial committee's counsel certainly has the opportunity to
17 apply for 503(b) recovery with respect to their expenses as an
18 administrative expense. There is no bar to that request and
19 therefore their participation, if resulting in a substantial
20 contribution to the estate, would allow them to recover those
21 expenses.

22 Furthermore, as indicated in our papers, there's no
23 evidence that the unofficial committee members or the family
24 and dissident bondholders as a group or as a community will be
25 discriminated against under a plan. I believe that the

1 recovery that is sought under the 363 sale will effectively
2 benefit all unsecured creditors equally. There is no
3 discriminatory treatment that has been alleged that would occur
4 pursuant to a subsequent plan of reorganization.

5 Accordingly, taking into account all of those factors
6 it does not appear that a separate committee of family and
7 dissident bondholders is warranted in this case given the
8 additional cost that would be generated simply in order to
9 represent this unique, individual point of view.

10 Accordingly, the United States Trustee respectfully
11 requests the Court to deny the motion seeking an order
12 directing the appointment of an official committee of family
13 and dissident bondholders.

14 THE COURT: Okay. Thank you.

15 MR. MASUMOTO: Thank you, Your Honor.

16 THE COURT: Creditors' committee, Mr. Eckstein,
17 Mr. Schmidt, would you care to be heard?

18 MR. ECKSTEIN: Your Honor, good afternoon. Kenneth
19 Eckstein of Kramer Levin appearing on behalf of the Official
20 Committee of Unsecured Creditors in the General Motors Corp.,
21 Chapter 11 cases.

22 Your Honor, the creditors' committee has carefully
23 considered the motion by the family and dissident ad hoc
24 committee for the appointment of a separate committee. The
25 official committee agrees that the Winn-Dixie and Enron

1 standards are the factors that should be applied by this Court.
2 And after careful consideration it has determined that the
3 factors in these cases weigh heavily in favor of the Court
4 denying the motion.

5 Allow me to speak to several of the points that have
6 been raised by the movants, in particular with respect to
7 certain comments made with respect to the role and function of
8 the official committee.

9 I think, as Your Honor has already seen from the
10 papers and has heard from the presentations, the official
11 committee in this case is a large and diverse committee
12 consisting of fifteen members. As Your Honor, I believe, is
13 aware, there are two indentured trustees serving on the
14 committee in addition the committee includes the PBGC, the IUE,
15 the UAW, the United Steel Workers Union, there are three trade
16 and supplier representatives, there are three dealer
17 representatives, there is a representative of asbestos
18 claimants and there are two other tort claimant representatives
19 on the committee.

20 It is significant that when the committee was formed,
21 as we understand, none of the individual bondholders that
22 either are members of the ad hoc or unofficial movants in this
23 case or that are consulting with the movants in this case
24 sought appointment to the official committee.

25 Your Honor, I can confirm first hand that the

1 committee is functioning actively and dynamically on a wide
2 array of issues in these cases. There is no question that the
3 first standard that applies to whether or not there is a need
4 or a basis for appointing additional committees is not met
5 here. There is no evidence whatsoever that the committee is
6 not functioning. And I believe that every party that is
7 actively involved in these cases would confirm to Your Honor
8 that the committee is playing an around-the-clock, active and,
9 we believe, very effective role in dealing with the pressing
10 issues that are affecting this case.

11 Your Honor, over the last several weeks and on a daily
12 basis we are dealing on an active -- an interactive way with
13 the debtor, with the U.S. Treasury, with the ad hoc bondholders
14 committee, with representatives of tort claimants, with the
15 unions and with the other parties that have an interest in the
16 outcome of this case. I can represent to Your Honor first hand
17 that there are many competing interests that have to be
18 considered, both in connection with the propriety of the
19 proposed 363 sale and what the results will be from a
20 transaction if one is approved and how those results will
21 impact upon the interests of unsecured creditors.

22 The issues are complex and we in fact believe that
23 those interests are being well served through the role of the
24 official creditors' committee and from the involvement of
25 multiple constituencies and multiple interests with multiple

1 goals and multiple needs sitting in one room and expressing
2 their respective voices within a large and diverse official
3 committee.

4 Your Honor, Mr. Richman made a great deal out of the
5 fact that the official committee has not responded to the
6 motion. And he suggested maybe not having the benefit of full
7 information that the committee has somehow abdicated its
8 responsibility or its intent to take a position on the sale.
9 The fact of the matter is that the committee's deadline to
10 respond to the 363 sale has been extended to tomorrow,
11 Wednesday, at noon. And the committee certainly intends to
12 submit a response to the 363 sale, and it will be a detailed,
13 substantive response.

14 The fact of the matter is, that we are continuing to
15 meet today. We've met over the weekend. We met yesterday and
16 I expect we'll continue to meet tonight dealing with an
17 extensive list of issues that the committee is considering many
18 of those issues directly impact an interest bondholders and
19 other unsecured creditors and how they're implicated by the
20 sale. And we believe that it's in fact quite advantageous that
21 the committee has deferred submitting a response. We don't
22 believe it would have been useful to respond prematurely
23 because we believe that significant progress will get made
24 through the dialogue that is taking place. But I don't want it
25 to be suggested by an omission on the record that the committee

1 has, in any way, abdicated its responsibility to respond. The
2 committee will be responding tomorrow by noon with a
3 substantive response. I cannot represent that it will
4 necessarily be precisely what Mr. Richman wants to hear but we
5 believe it'll be a significant and valuable response for the
6 Court.

7 The fact of the matter is that notwithstanding the
8 role that the official committee is playing, that the ability
9 of various interested parties in this case to respond to the
10 proposed sale motion in a substantive fashion is not lost. In
11 fact, already four members of the official committee have filed
12 objections to the sale. So the fact that they are serving on
13 the committee has not eliminated the ability of individual
14 creditors to express their interest. The IUE has filed a
15 response. The asbestos claimant has filed a response and the
16 two tort claimants have filed responses, in each case objecting
17 in a substantive fashion to the sale.

18 I also had the occasion to see that Mr. Richman's firm
19 has filed an extremely substantive response to the sale. And I
20 believe that goes directly to one of the critical factors that
21 the Court has to consider in determining whether or not there
22 is or is not a basis to appoint an additional committee. And
23 that is whether or not the movants or the objectors in this
24 case can affectively be represented. The reality is, Mr.
25 Richman has submitted an extremely substantive response and

1 there's no question, by reading his papers, that they are in a
2 position to effectively advocate the very substantive issues
3 that have been raised. And I don't want to, for a minute;
4 minimize the importance of the issues.

5 And the fact of the matter is, given their ability to
6 have submitted a thirty-page, substantive legal objection it's
7 clear they don't need official committee status in order to
8 raise and present the issues and insure that there's going to
9 be an effective dialogue on what Mr. Richman has characterized
10 as issues of importance to the Court and to the public at
11 large. Official committee status is not necessary for the
12 voice to be heard and for the issues to be raised. Whether or
13 not it affects compensation issues should not be a driving
14 factor in whether or not the Court decides to appoint an
15 official committee.

16 Your Honor, as we look at this case, we concur with
17 the comments made by debtor's counsel that if one were to
18 accept the position that has been articulated by Mr. Richman, I
19 would submit that one probably could adopt that same position
20 for multiple constituencies in this case.

21 As the committee has determined with respect to this
22 motion, the committee that's been appointed is large, is
23 diverse, as we can best tell represents the complete panoply of
24 unsecured creditor interests in this case. And we believe that
25 the official committee provides the appropriate vehicle through

1 which the interests of unsecured creditors can be expressed.
2 To the extent there is opposition, we believe Mr. Richman and
3 others have already demonstrated an ability to raise those
4 oppositions. And we believe the merits of those positions can
5 and will be heard by the Court when the 363 sale motion is
6 considered next week.

7 For all of those reasons, Your Honor, the official
8 committee believes that the motion that's currently being heard
9 should be denied.

10 THE COURT: Okay.

11 MR. ECKSTEIN: Thank you.

12 THE COURT: I think I've now heard from everybody
13 who's filed papers on this matter. Do I have somebody who
14 didn't file papers who's rising to be heard?

15 MR. FELDMAN: Yes, Your Honor. David Feldman, Gibson
16 Dunn on behalf Wilmington Trust.

17 THE COURT: All right. Mr. Feldman, considering all
18 the talk that's been made about your client, I think I'd like
19 to hear what you have to say.

20 MR. FELDMAN: Good afternoon, Your Honor. Again,
21 David Feldman, Gibson Dunn & Crutcher on behalf of Wilmington
22 Trust, the indentured trustee for more than twenty-three
23 billion dollars of the bonds in this case.

24 I don't want to repeat much of what Mr. Eckstein has
25 already gone through but let me confirm a few items.

1 Wilmington Trust, like the official committee of unsecured
2 creditors does not have an objection deadline, a response
3 deadline until tomorrow at noon. We have been in careful
4 consideration of the motion that has been filed, have been in
5 detailed and ongoing and extensive conversations with the
6 committee, with the committee's legal and financial advisors,
7 with the other ad hoc committee of bondholders and their
8 advisors as well as receiving calls from numerous individual
9 bondholders that have come into my client and into my firm.

10 I know the one constituency that has not reached out
11 to us in any capacity is Mr. Richman or his client. But
12 frankly, our objection deadline is not until tomorrow and we'd
13 be happy to speak to them as well. We have, in fact, read
14 their pleading and understand their positions. But there are,
15 obviously, in this case many, many bondholders. We represent
16 from the largest financial institution to the thousands and
17 thousands of Americans who hold these bonds in their individual
18 capacity.

19 Wilmington Trust understands its fiduciary duty to its
20 full constituency and is taking that fiduciary duty very, very
21 carefully -- is taking that fiduciary duty very, very
22 seriously, both as indentured trustee for the bondholders and
23 as a member and chairperson of the official creditors'
24 committee.

25 A couple of other points that I'd like to make. There

1 was some allusion, in Mr. Richman's comments, to some
2 predetermination on the part of the various players. Again, we
3 haven't filed a pleading in this case. Frankly, our
4 involvement and discussions with the various parties in this
5 case about the sale motion, about the structure of this case,
6 really didn't fully engage until after the deal had been baked
7 and the deal had been filed. So Wilmington Trust certainly was
8 not a party to that process beforehand.

9 So Your Honor, I guess the point that I would leave
10 with, and this is an issue that we did discuss at some length
11 with the United States Trustee when we were appointed to the
12 committee, is that we have an independent and objective duty to
13 represent all of our constituents. Frankly, our indenture
14 speaks to the notion that we consider not only what the
15 majority would like to do, and I'll pause there for a moment
16 because I'll note while much has been made about whether and to
17 what extent Paul Weiss and that ad hoc group represents a
18 majority of bondholders. I will say that to date we've not
19 been instructed by any majority to take any position, one way
20 or the other. And we have, in fact, in our view, all actions
21 that we've taken to date and will take in the case, unless and
22 until instructed by a majority, will be in an exercise of our
23 objective assessment of the situation and the facts and the law
24 at hand.

25 I will note, though, even if we were to receive a

1 direction by the majority of the bondholders in any particular
2 issuance, based on our indentures we don't always have to
3 follow the direction of the majority. We have the ability --
4 we're governed by two different indentures and certainly under
5 our ninety-five indenture, which is the great bulk of where our
6 bonds sit, we have the ability to consider not only what the
7 majority of people would like to do but also the minority
8 holders. And we take, again, our obligations and the
9 provisions set forth in our indentures very seriously and we've
10 carefully considered all the issues. And we will take whatever
11 position we will take in connection with tomorrow's deadline or
12 whatever deadline ultimately is applicable to Wilmington Trust
13 as indentured trustee.

14 Thank you, Your Honor.

15 THE COURT: Okay. Thanks.

16 MS. CHRISTIAN: Jennifer Christian --

17 THE COURT: I can't hear you but I will invite you to
18 come on up.

19 (Pause)

20 THE COURT: Forgive me. Would you mind introducing
21 yourself again, please?

22 MS. CHRISTIAN: Yes, Your Honor. Jennifer Christian
23 of Kelley Drye & Warren for Law Debenture Trust Company of New
24 York, the indentured trustee.

25 THE COURT: Your last name again, please.

1 MS. CHRISTIAN: Christian.

2 THE COURT: Okay. Thank you. Go ahead,
3 Ms. Christian.

4 MS. CHRISTIAN: We represent Law Debenture the
5 indentured trustee for the debtor's revenue bonds.

6 THE COURT: Okay.

7 MS. CHRISTIAN: Your Honor, as Wilmington's counsel
8 stated, as Wilmington does, Law Debenture takes its fiduciary
9 duties very seriously, both with respect to its holders and
10 with respect to the general unsecured creditors. Law
11 Debenture, too, is a member of the unsecured creditors'
12 committee. We'd just like to address some of the comments that
13 were raised by Mr. Richman.

14 First of all, we represent all the bondholders under
15 the indenture, not just one subset or another. And the
16 indentured trustee is ready, willing and able to listen to its
17 holders and the subset of holders and make any arguments that
18 it deems appropriate before the Court. But we were not
19 contacted by these holders or their counsel and we just wanted
20 to make that clear.

21 Mr. Richman also alluded to some predetermination that
22 Wilmington -- excuse me, that Law Debenture had made in
23 connection with the transaction and that is, in fact, not the
24 case. And in fact Wilmington is a successor trustee and became
25 involved in the case shortly after it was filed.

1 So we just wanted to clarify some of those comments
2 that were made for the record.

3 THE COURT: Okay.

4 MS. CHRISTIAN: Thank you very much.

5 THE COURT: Thanks. All right. I'll take reply from
6 Mr. Richman and any surreply from anybody else. In each case,
7 limited to the stuff that was brought up ahead of you.

8 MR. RICHMAN: Thank you, Your Honor and thank you for
9 the comments you made from the bench before, I appreciate it.
10 In this courtroom today I know I'm not very popular.

11 I think that listening to the comments that were made
12 by the indentured trustee, both of them, and the committee it
13 keeps in my mind resounding to the point I made in my opening
14 which is that yes we have representation on the committee but
15 no it's not adequate. And I wasn't intending to accuse the
16 indentured trustees of breaching their duties but it's quite
17 clear, when one listens to how they approach their duties in
18 this case, that giving adequate representation to this distinct
19 route of small bondholders, non-institutional bondholders, who,
20 in numbers, are far, far in excess of the institutional
21 bondholders who reportedly supported the government's plan and
22 are represented by Paul Weiss and the ad hoc committee. It's
23 quite clear that they can't be said to be adequately
24 representing, and I thought it was revealing that neither of
25 them indicated that they would object. And while they said we

1 didn't get in touch with them, they've had our papers and I'm
2 sure they've read them.

3 And I was, in fact, a little distressed to hear from
4 the committee that they have been communicating on a regular
5 basis with the ad hoc committee and other constituencies that
6 aren't on their committee. But again, knowing our position no
7 one has actually reached out to us and tried to do anything to
8 accommodate our positions in the process.

9 Again, it says to me that while -- and I didn't say
10 that the creditors' committee wasn't functioning; I just said
11 in the circumstances any representation of this particular
12 group could not be adequate.

13 The ad hoc committee, the report that some fifty
14 percent or fifty-four percent support the government's plan, I
15 have to tell Your Honor, that in the same way that I was
16 stopped for putting hearsay in the record, there's been no
17 verification of that in any source that I've read. And I've
18 seen numerous press accounts of it but I've seen no tally of it
19 nor methodology for tallying it or any other way of
20 understanding how it's reliable. But people keep using it and
21 referring to it as though that means that other bondholders
22 should stand down because the majority support it. That's just
23 not evidence that is of record anywhere that I've been able to
24 tell.

25 Obviously I did not know that an extension had been

1 given to the creditors' committee or to the trustees until
2 tomorrow. I wish somebody had told me that but I did not know
3 that.

4 Lastly, going back to Mr. Miller's comments, I think
5 the argument that he made with the most vigor was a concern
6 that the policy we were articulating or the rule we wanted Your
7 Honor to follow was that any time there's a group that has a
8 disagreement of position with a creditors' committee that you
9 should appoint an additional committee. I thought I was pretty
10 clear that we were not saying that. This is a unique case.
11 The 363 transaction is the case. This is not just a motion in
12 passing where we have a difference in judgment from the
13 committee. The whole case is predetermined if the 363
14 transaction goes forward. And therefore, in the very unique
15 circumstances of this case it is not just a difference of
16 opinion but it is, again, the central question of adequate
17 representation.

18 The positions that the official committee and the
19 indentured trustees take or don't take, with respect to this
20 very transaction is the entirety of the case, that's what makes
21 this difference and that's why the fact that we do have a very
22 substantive point of view that has not been put on the record
23 and not been followed by any constituency that we can see,
24 although there seem to be tons of individuals that are making
25 similar arguments in a dispersed way, we haven't seen

1 representation of that important position or voicing of that
2 opposition or any suggestion that Your Honor will be given a
3 vigorous opposition to this on June 30 and thereafter in the
4 record.

5 My last point, I'm not and I did not suggest, in fact
6 Your Honor asked me this directly; I didn't say ignore the six
7 factors, what I said was that they need to be construed in the
8 context of what the statute says, which is why I draw it back
9 to adequate representation. And I believe that in my opening
10 presentation I did argue and demonstrate that as to those
11 factors, in the unique circumstances of this case plus what I
12 think for this case is another factor; those six factors are
13 not exclusive. The very important public interest and benefits
14 to the administration of justice and transparency in a process
15 like this, which is so unusual none of us has ever seen it
16 before and we may never see it again. It is very, very
17 unusual, so important that it be done with transparency so that
18 the people, and particularly the bondholders, the trustees told
19 about the calls and e-mails they've been getting, I've been
20 getting them too. This isn't just about fees and expenses it's
21 also about an ability to be able to say to the bondholder world
22 yes your rights are being protected.

23 I got calls and e-mails from people who only heard
24 that there was an objection deadline by a notice that they got
25 after the deadline and they don't know what to do. And I can't

1 give them individual advice. I can't have attorney/client
2 relationships with 1,500 bondholders. But if there was an
3 official committee, we could communicate with them through the
4 web, through internet sites. We could tell them we're speaking
5 for you; we're giving voice to your grievances; your rights
6 will be protected. We may not prevail but we will speak for
7 you. That's a very important distinction existing in this case
8 that so far as I know has not existed in any of the others,
9 Your Honor.

10 Thank you.

11 THE COURT: Okay. Thank you. Everybody had a chance
12 to speak their peace, Mr. Miller.

13 MR. MILLER: If Your Honor please, there's an old
14 maxim that says, when you don't have the law and you don't have
15 the facts then argue policy and that's exactly what Mr. Richman
16 is doing, Your Honor. He can't make a case under the
17 applicable, principals of law and apply it for the appointment
18 of additional committee.

19 And basically, if you listen carefully, what Mr.
20 Richman is saying that if the official committee doesn't object
21 then it doesn't adequately represent the bondholder community.

22 Now we've heard from the representatives of the two
23 indentured trustees saying explicitly that each indentured
24 trustee has an obligation, a fiduciary obligation, to represent
25 all of the bondholders, whether they're institutional or

1 whether they're individuals. And that's what the indentured
2 trustees are doing, Your Honor.

3 Saying that I believe that the official committee is
4 not going to file an objection to the 363 transaction
5 automatically requires the appointment of an additional
6 committee, Your Honor, is just inconsistent with all of the
7 applicable principles of law. And it's not that there will be
8 no voice, Mr. Richman has a bold, clear voice. He has filed
9 papers. He will be able to present whatever position the three
10 members of his ad hoc committee want to present.

11 As so far as other creditors are concerned, Your
12 Honor, there are numerous websites, there are numerous places
13 where creditors can go and there has been a lot of dialogue and
14 a lot of contact by other debenture holders. There is nothing
15 in this record, Your Honor, that shows that this official
16 committee does not adequately represent all of the bondholders.
17 There are bondholder representatives on this committee. It's
18 consistent with everything that's been done in this district
19 for the last fifteen years. And there's nothing in this
20 record, other than the rhetoric which Mr. Richman alludes to
21 about the integrity of the court and the transparency.

22 The Bankruptcy Code has a process, Your Honor. It
23 prescribes the appointment of a representative committee. And
24 what the U.S. Trustee did in this case is appoint a committee
25 of the different kinds of claims involved in this case and that

1 committee adequately represents the interest of all the
2 unsecured creditors. And there's nothing else that has been
3 presented to this Court today that would change that fact, Your
4 Honor. Mere rhetoric about transparency does not sustain the
5 burden of proof which is on the movants, Your Honor. And
6 therefore this motion should be denied, Your Honor.

7 THE COURT: All right. Thank you. All right. Folks,
8 we're going to take a recess and I would like you all back by
9 twenty of four. We're in recess.

10 (Recess from 3:20 p.m. until 4:10 p.m.)

11 THE COURT: I apologize for keeping you all waiting.
12 In these jointly administered cases under Chapter 11 of the
13 Bankruptcy Code an ad hoc committee, identifying itself as the
14 ad hoc Committee of Family and Dissident GM Bondholders, moves
15 for an order of this Court appointing an additional official
16 committee to represent unsecured bondholders.

17 Its motion is opposed by the debtors, the Office of
18 the United States Trustee and the creditors' committee. The
19 United States Trustee, raising institutional concerns, also
20 asked me to defer deciding the motion by reason of a threshold
21 issue pending implementation of promised debtor compliance by
22 the ad hoc committee with the requirements of Federal Rule of
23 Bankruptcy Procedure 2019.

24 For reasons I'll articulate hereafter, I believe that
25 the motion can and should be decided today. And on the merits,

1 the motion is denied. The following are my findings of fact,
2 conclusions of law and bases for the exercise of my discretion
3 in connection with this determination.

4 As facts, I find that on June 3, 2009, two days after
5 the commencement of the instant Chapter 11 cases, the U.S.
6 Trustee appointed an official committee of unsecured creditors
7 of the type that we usually see in medium and large Chapter 11
8 cases. Before appointing the committee, the U.S. Trustee
9 interviewed perspective members and inquired as to who was
10 interested in serving. The creditors' committee, as appointed
11 by the U.S. Trustee, was about twice as large as is typical in
12 our larger Chapter 11 cases and has fifteen members.

13 GM has creditors of many different types and so does
14 the creditors' committee. The creditors' committee's fifteen
15 members, as appointed by the U.S. Trustee, include the PBGC,
16 which is the guarantor of GM's pension plans; three unions,
17 which are collective bargaining representatives for GM
18 employees; two supplier creditors; a trade service creditor,
19 three dealers; two tort claimants; an asbestos claimant and, as
20 relevant here, Wilmington Trust Company and Law Debenture Trust
21 Company the indentured trustees for all of GM's bonds,
22 including the bonds that the ad hoc committee members hold

23 Both indentured trustees have stated, unequivocally,
24 that their legal and fiduciary obligations to all bondholders
25 are in no way circumscribed by any decisions that have been

1 made or may be made by individual bondholders, including the
2 apparent but not yet definitely established decision by a
3 majority of the bondholders to support the proposed sale of
4 substantially all of the debtor's assets.

5 Counsel to the ad hoc committee has advised the U.S.
6 Trustee's office that none of the ad hoc committee's members
7 wish to serve on the official creditors' committee.

8 On June 9, 2009, the ad hoc committee asked the U.S.
9 Trustee to appoint a separate, additional committee of
10 unsecured bondholders. However, after considering the request
11 the U.S. Trustee declined to do so.

12 Based on the undisputed facts set forth in the motion
13 papers and the ad hoc committee's failure to give me any
14 further evidence that would cause me to come to a different
15 view, I find that the official committee, especially since it
16 has the two indentured trustees, adequately represents the
17 interests of all unsecured creditors of the debtors. I have
18 seen no evidence and have no reason to believe that the
19 interests of bondholders wouldn't be satisfactorily represented
20 by the official committee or especially the two indentured
21 trustees.

22 I further find that the ad hoc committee is free to
23 appear and be heard on any issue in this case, without having
24 been designated as an official committee. And that the quality
25 of its representation has been highly capable and vigorous.

1 But especially in light of that, I also must and do make
2 another finding of fact. The conclusion is inescapable that
3 the ad hoc committee is making this request because it wants
4 the estate, which means as a practical matter all of GMs other
5 creditors to pay its legal fees and the costs for any financial
6 advisors the ad hoc committee might wish to retain.

7 I finally find, as a mixed question of fact and law
8 for reasons I'll address momentarily, that the appointment of
9 an additional official committee of bondholders in this case is
10 not necessary to assure adequate representation of creditors or
11 of the subset of creditors or bondholders.

12 Turning, now, to my conclusions of law and the bases
13 for the exercise of my discretion in connection with this
14 determination. First on the threshold issue raised by
15 Mr. Masumoto on behalf of the U.S. Trustee. Mr. Masumoto
16 properly comments on the importance of Bankruptcy Rule 2019 and
17 the need to comply with it. And he's also right when he says
18 or implies that the last thing we want to do is to permit
19 people to say that they speak for other people when they fail
20 to comply with Bankruptcy Rule 2019.

21 But here Mr. Richman has stated that he'll supplement
22 his earlier submission to comply, and he's a man of his word.
23 The issues before me are otherwise capable of determination
24 today. In the exercise of my discretion, where I've received
25 assurances that the deficiencies in compliance will be promptly

1 remedied, I think I should decide the issues today.

2 Turning, then, to the merits. Section 1102(a)(1) of
3 the Code provides "Except as provided in paragraph 3, as soon
4 as practicable after the order for relief under Chapter 11 of
5 this title, the United States Trustee shall appoint a committee
6 of creditors holding unsecured claims and may appoint
7 additional committees of creditors or of equity security
8 holders as the United States Trustee deems appropriate."

9 Subsection 2 of 1102(a) goes on to say that "On
10 request of a party in interest, the Court may order the
11 appointment of additional committees of creditors or of equity
12 security holders if necessary to assure adequate representation
13 of creditors or of equity security holders."

14 As the U.S. Trustee observes, and as would follow from
15 the use of the word "may" in 1102(a)(2) the statutory scheme,
16 as implemented in Section 1102(a) gives the Court the
17 discretion to order the appointment of an additional unsecured
18 creditors' committee if necessary to assure adequate
19 representation of a separate group of unsecured creditors.

20 But the appointment of an additional committee, under
21 Section 1102(a)(2) is considered an extraordinary remedy. See,
22 *In re Enron Corporation* 279 B.R. 671 (Bankr. S.D.N.Y. 2002)
23 decision by my colleague Judge Gonzales, affirm 2003 U.S.
24 Distr. Court LEXIS 18-149 (S.D.N.Y. October 9, 2003); *In re*
25 *Dana Corp.* 344 B.R. 35, pg. 38, decision of the Bankruptcy

1 Court, my colleague Judge Lifland in 2006. And as I noted, the
2 issue is within the discretion of the Bankruptcy Court.

3 Now we had some colloquy with respect to how I should
4 make that discretionary determination, especially after
5 Mr. Richman's clarifications, I think we now all agree that
6 while we bankruptcy judges start with the words of the statute,
7 as I've just done, we also make determinations based upon
8 applicable case law that imposes requirements, standards or
9 factors to consider beyond those that emerge beyond the bare
10 words of the statute. That's especially true where decisions
11 are discretionary and courts have articulated factors for other
12 courts to consider.

13 Those factors aren't always exclusive, in fact they
14 typically aren't but we judges routinely apply the factors that
15 have been applied in cases before us. Examples -- by way of
16 examples and there are many of them include the Sonax factors
17 for relief from the stay. Here the case law, much of it in
18 this district, whereas I've stated in writing before,
19 consistency is very important, lays out many underlying
20 standards and factors for courts deciding motions of this
21 character to apply. Specifically, in requesting an additional
22 committee the applicant has the burden of proving that the
23 appointment of an additional committee is necessary to insure
24 adequate representation of the moving party. See Enron 279
25 B.R. 685; In re Dow Corning Corp. 194 B.R. 121 decision of the

1 Bankruptcy Court in the Eastern District of Michigan, 1996,
2 reversed on other grounds 212 B.R. 258, District Court decision
3 out of the Eastern District of Michigan in 1997.

4 Likewise, the party seeking the appointment of an
5 additional committee bears the burden of demonstrating that its
6 interests are not adequately represented. See *In re Winn-Dixie*
7 *Stores, Inc.* 325 B.R. 853 p. 857, decision of the
8 (Bankr. MD Fl) in Jacksonville, as best I recall, in 2005.

9 In most cases only one committee of unsecured
10 creditors is appointed which committee generally represents the
11 best compromise of adequate representation, efficiency and
12 economy. See, for example, *In re Sharon Steel Corp.*, 100 B.R.
13 767, (Bankr. WD Pa, 1989).

14 As all parties, including the movants, seem largely to
15 agree, the determinative factors in considering the adequacy of
16 representation by an official committee of unsecured creditors
17 have included (1) the ability of the committee to function; (2)
18 the nature of the case; (3) the standing and desires of the
19 various constituencies; (4) the ability for creditors to
20 participate in the case even without an official committee and
21 the potential to recover expenses pursuant to Section 503(b)(3)
22 of the code; (5) whether different classes may be treated
23 differently under a plan and thus need representation; (6) the
24 motivation of the movants; (7) the cost that would result if
25 the Court grants the motion and (8) the task that a committee

1 or separate committee is to perform. See, for example, Enron,
2 Winn-Dixie, Dana.

3 This has been held to be a non-exclusive list, thus a
4 court may consider other factors in exercising its discretion
5 as well. See, for example, Dana 344 B.R. 38. No one factor is
6 dispositive and the amount of due consideration given to each
7 depends on the circumstances of the particular Chapter 11 case.
8 See, for example, Dana 344. B.R. 38.

9 Turning now to those factors, the first is the ability
10 of the committee to function. There has been no showing that
11 this creditors' committee can't function. There has been no
12 proof or any other indication by way of example, that the
13 committee has been deadlocked, has been unable to gather up a
14 quorum or has had so much discord that it couldn't do its job.
15 And it includes, amongst its members, two highly experienced
16 indentured trustees who have confirmed that they know their
17 fiduciary responsibilities and will comply with them.

18 The second factor is the nature of the case. The ad
19 hoc committee asserts that the large size of this case warrants
20 the appointment of an additional committee of unsecured
21 creditors, and that's simply not so. A similar argument was
22 made and rejected in Dana, see 344 B.R. 39. And in Adelphia,
23 for example, on my watch which involved about seventeen billion
24 dollars in debt and where there was significant interdebtor and
25 intercreditor disputes, we still had one creditors' committee.

1 Of course, individual creditor groups have different
2 perspectives and believe me I heard about them but we still had
3 only one committee.

4 In Dana the Court rejected the argument made by the
5 moving party that because it had only one representative on the
6 Dana committee the other members of that committee would be
7 dominant and would overpower their representative. The Dana
8 court reminded parties that the different interests of the
9 membership of a statutory committee need not be aligned and
10 that the presence of potential conflicts among the different
11 interests of committee members does not necessitate the
12 appointment of additional creditors' committees to provide
13 adequate representation.

14 In fact, a point that was made to me in argument is
15 both correct and noteworthy. It's not uncommon in Chapter 11
16 cases, particularly large ones, for individual creditors or ad
17 hoc committees of creditors to differ with the official
18 creditors committee as to the desirability of future courses of
19 action.

20 In fact, I can think of very few cases, among those on
21 my watch, where there wasn't a disagreement of that character.
22 But that doesn't equate to a basis for the conclusion that
23 creditors or creditors of a different class aren't being
24 properly represented nor does it dictate the appointment of
25 different committees to fund the articulation of the differing

1 views.

2 Mr. Richman, recognizing that general rule said that
3 this case was special but I cannot agree because creditors'
4 committees, by their nature and by the efforts of U.S. Trustees
5 doing their jobs, reflect different perspectives by design,
6 individual creditors will have different perspectives than the
7 official committee in many, if not the majority, of Chapter 11
8 cases. But in the absence of much more that has not been
9 regarded as a basis for appointment of additional committees.

10 The issue is whether the official committee is
11 representative of the different kinds of unsecured creditor
12 claims involved in the Chapter 11 cases. We plainly have that
13 here. It's well established that the membership of an official
14 committee need not be an exact replica of the creditor body.
15 See, for example, Dana 344 B.R. 39; Enron 279 B.R. 690 and
16 Hills Stores 137 B.R. 4, p. 7, another decision in this
17 district, 1992.

18 The next factor is the standing and desires of the
19 constituencies. Of course the ad hoc committee has standing to
20 be heard, that's a right it has under Section 1109 of the Code.
21 And the ad hoc committee doesn't need to be appointed as an
22 official committee to achieve that end. And it doesn't need
23 the appointment of others to put forward its views as it's free
24 to assert them itself.

25 Then turning to a movant's desires, of course they

1 can't be determinative because everyone wants to fight their
2 fights using someone else's money. And while the ad hoc
3 committee's desires may be different than those of many of the
4 other bondholders, perhaps the majority though the number at
5 this point doesn't matter, bondholders still hold the same
6 bonds and there's no showing that the indentured trustees lack
7 the intention or ability to do their jobs.

8 The next factor is the ability to continue
9 participating and recover costs. Well, we've already discussed
10 the ability of the ad hoc committee to continue participating
11 in this case and as we've all seen, the ad hoc committee is
12 represented by competent counsel and it hasn't hesitated to
13 participate in this case. It's free to continue to do so as it
14 considers appropriate. If it does, I'll be considering its
15 views, just as I did today, as I'll be considering the views of
16 every other stakeholder in this case. Likewise, if at the end
17 of the case the members of the ad hoc committee believe they've
18 made a substantial contribution, they'll be free to file a
19 request under 503(b).

20 As the debtors have argued, the ad hoc committee's
21 request is, in substance if not also in every respect, an
22 effort to make someone else pay their fees. But when requests
23 of that nature are made and people say that the fees will thus
24 have to be absorbed by the debtors, what they're really saying
25 is that the fees will have to be absorbed by other creditors.

1 Unfortunately, we bankruptcy judges not infrequently see
2 efforts by creditors to litigate on someone else's dime. But
3 as the many cases I've noted above hold, we permit that only in
4 extraordinary circumstances. Here the cost of one or more
5 additional committees can be substantial since the appointment
6 is closely followed by applications to retain attorneys and
7 accountants, see Dow Corning 194 B.R. 143. The additional cost
8 that would result from this request cannot here be justified.

9 The next factor is whether different classes may be
10 treated differently. This factor, too, dictates against the
11 formation of a separate committee. I've seen no indication
12 that the debtors propose to treat different groups of
13 bondholders differently.

14 The next factor is the motivation of the movants.
15 Well, that seems to be pretty clear. The movants seemingly
16 want two things, more money paid out on their claims and they
17 want the estate, that is other creditors, to pay their legal
18 fees. Neither of these is unusual in Chapter 11 cases but
19 neither is a satisfactory basis for appointing another official
20 committee.

21 The next factor is the costs incurred by the
22 appointment of additional committees, and I've already talked
23 about this. While I'd agree that costs here wouldn't be as
24 great if they would be -- if anyone contemplated a Chapter 11
25 case that would go on for many months or years, I still require

1 costs, as a meaningful concern, and this is nevertheless an
2 incremental cost. And history has told us that when somebody
3 else is paying the expenses, spending restraint seems to go out
4 the window. Once more, we don't give out the power to run up
5 such expenses except in extraordinary circumstances.

6 The last factor that's been identified in the case law
7 is other considerations. But given that all of the factors
8 I've addressed so far so overwhelmingly weigh against forming
9 another official committee, I don't need to consider the
10 additional point that the debtors made, that the appointment of
11 another official committee would slow down a case which some,
12 perhaps many, parties in this case wish to move very quickly.

13 For the foregoing reasons, the motion is decided today
14 and is denied on the merits. Mr. Masumoto you or your office
15 is to prepare an order in accordance with the foregoing -- to
16 settle an order, two days notice.

17 Am I correct that we have no further business for
18 today?

19 MR. MILLER: Correct, Your Honor.

20 THE COURT: We're adjourned. Have a good day.

21 MR. MILLER: Thank you, Your Honor.

22 MR. RICHMAN: Thank you, Your Honor.

23 (Proceedings Concluded at 4:35 p.m.)
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I N D E X

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

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

Pnina Eilberg

AAERT Certified Electronic Transcriber (CET**D-488)

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Date: June 24, 2009