UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK		
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In re	:	Chapter 11 Case No.
	:	
MOTORS LIQUIDATION COMPANY, et al.,	:	09-50026 (REG)
f/k/a General Motors Corp., et al.	:	
	:	
Debtors.	:	(Jointly Administered)
	:	
	X	ORDER

The typed transcript of the Court's 4/29/10 rulings on fees and related matters is

to be corrected in the respects noted on the attached pages. This order is without

prejudice to the rights of any party to argue that the uncorrected transcript should be used

instead.

Dated: New York, New York May <u>10</u>, 2010 <u>s/Robert E. Gerber</u> United States Bankruptcy Judge

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1.15
UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 09-50026 (REG)
       In the Matter of:
MOTORS LIQUIDATION COMPANY, et al.,
f/k/a GENERAL MOTORS CORP., et al.,
            Debtors.
                    - - - - - - - - - - - - x
            U.S. Bankruptcy Court
            One Bowling Green
            New York, New York
            April 29, 2010
            5:24 PM
BEFORE:
HON. ROBERT E. GERBER
U.S. BANKRUPTCY JUDGE
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1 HEARING re First Application of Weil, Gotshal & Manges LLP, as 2 Attorneys for the Debtors, for Interim Allowance of 3 Compensation for Professional Services Rendered and 4 Reimbursement of Actual and Necessary Expenses Incurred from 5 June 1, 2009 Through September 30, 2009 [Docket No. 4803] 6 7 HEARING re First Interim Application of Kramer Levin Naftalis & 8 Frankel LLP, as Counsel for The Official Committee of Unsecured 9 Creditors, for Allowance of Compensation for Professional 10 Services Rendered and for Reimbursement of Actual and Necessary 11 12 Expenses Incurred for the Period from June 3, 2009 Through September 30, 2009 [Docket No. 4459] ("Kramer Fee Application") 13 and Correction and Supplement to the Kramer Fee Application 14 [Docket No. 4715] 15 16 HEARING re Application of Butzel, Long, a Professional 17 18 Corporation, as Special Counsel to the Official Committee of Unsecured Creditors of Motors Liquidation Company f/k/a General 19 Motors Corporation, for Interim Allowance of Compensation for 20 Professional Services Rendered and Reimbursement of Actual and 21 Necessary Expenses Incurred from June 10, 2009 Through 22 23 September 30, 2009 [Docket No. 4450] 24 25

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1 HEARING re First Interim Application of FTI Consulting, Inc. 2 for Allowance of Compensation and Reimbursement of Expenses for 3 Services Rendered in the Case for the Period June 3, 2009 4 Through September 30, 2009 [Docket No. 4455] 5 6 HEARING re First Application of Honigman Miller Schwartz and 7 Cohn LLP as Special Counsel for the Debtors, for Interim 8 Allowance of Compensation for Professional Services Rendered 9 and Reimbursement of Actual and Necessary Expenses Incurred 10 from June 1, 2009 Through September 30, 2009 [Docket No. 4446] 11 12 HEARING re First Interim Fee Application of Jenner & Block LLP 13 for Allowance of Compensation for Services Rendered and 14 Reimbursement of Expenses [Docket No. 4451] 15 16 HEARING re First and Final Application of Evercore Group L.L.C. 17 18 for Compensation and Reimbursement of Expenses [Docket No. 4453] 19 20 HEARING re First Interim Application of the Claro Group, LLC 21 22 for Allowance of Compensation and Reimbursement of Expenses for 23 the Period June 1, 2009 Through September 30, 2009 [Docket No. 4506] 24 25

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4 1 HEARING re Fee Examiner's Statement Concerning Fee Application 2 of AP Services [Docket No. 5567] 3 4 5 HEARING re Fee Examiner's Motion for Clarification of Appointment Order [Docket No. 5483] 6 7 HEARING re Fee Examiner's Application to Authorize the Extended 8 9 Retention and Employment of the Stuart Maue Firm as Consultant to the Fee Examiner as of March 8, 2010 [Docket No. 5431] 10 11 HEARING re Status conference regarding the Order Pursuant to 11 12 13 U.S.C. Sections 327(a) and 330 Authorizing the Debtors to Amend the Terms of Their Engagement with Brownfield Partners, LLC 14 [Docket No. 5313] 15 16 HEARING re Request for Leave to File Claim [Docket No. 5178] 17 18 and Request for Relief from Automatic Stay [Docket No. 5179], 19 filed by Lisa Gross. 20 21 HEARING re Second Interim Fee Application of Jenner & Block LLP 22 for Allowance of Compensation for Services Rendered and 23 Reimbursement of Expenses [Docket No. 5263] 24 25

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5 1 HEARING re Second Interim Application of LFR Inc. for Allowance 2 of Compensation and for Reimbursement of Expenses Rendered in 3 the Case for the Period October 1, 2009 Through January 31, 4 2010 [Docket No. 5270] 5 6 HEARING re Second Interim Application of FTI Consulting, Inc. 7 for Allowance of Compensation and for Reimbursement of Expenses 8 for Services Rendered in the Case for the Period October 1, 9 2009 Through January 31, 2010 [Docket No. 5279] 10 11 12 HEARING re Second Interim Application of Jones Day, Special Counsel to the Debtors and Debtors-in-Possession, Seeking 13 Allowance of Compensation for Professional Services Rendered 14 and for Reimbursement of Actual and Necessary Expenses for the 15 Period from October 1, 2009 Through January 31, 2010 [Docket 16 No. 5285] 17 18 HEARING re Second Interim Application of the Claro Group, LLC 19 for Allowance of Compensation and Reimbursement of Expenses for 20 the Period October 1, 2009 Through January 31, 2010 [Docket No. 21 5290] 22 23 24 25

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1 HEARING re Second Interim Application of Brownfield Partners, 2 LLC as Environmental Consultants to the Debtors for Allowance 3 of Compensation and Reimbursement of Expenses for the Period 4 from October 1, 2009 Through January 31, 2010 [Docket No. 5291] 5 6 HEARING re Second Application of Butzel Long, A Professional 7 Corporation, as Special Counsel to the Official Committee of 8 Unsecured Creditors of Motors Liquidation Company, f/k/a 9 General Motors Corporation, for Interim Allowance of 10 Compensation for Professional Services Rendered and 11 Reimbursement of Actual and Necessary Expenses Incurred from 12 October 1, 2009 Through January 31, 2010 [Docket No. 5293] 13 14 HEARING re First Application of Plante & Moran, PLLC, as 15 Accountants for the Debtors, for Interim Allowance of 16 Compensation for Professional Services Rendered and 17 Reimbursement of Actual and Necessary Expenses Incurred from 18 October 9, 2009 Through January 31, 2010 [Docket No. 5294] 19 20 HEARING re Second Application of Weil, Gotshal & Manges LLP, as 21 Attorneys for the Debtors, for Interim Allowance of 22 Compensation for Professional Services Rendered and 23 Reimbursement of Actual and Necessary Expenses Incurred from 24 25 October 1, 2009, Through January 31, 2010 [Docket no. 5295]

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1 HEARING re Second Interim Application of Kramer Levin Naftalis 2 & Frankel LLP, as counsel for the Official Committee of 3 Unsecured Creditors, for Allowance of Compensation for 4 Professional Services Rendered and for Reimbursement of Actual 5 6 and Necessary Expenses Incurred for the Period from October 1, 2009 Through January 31, 2010 [Docket No. 5296] 7 8 HEARING re First Interim Application of Jones Day, Special 9 Counsel to the Debtors and Debtors-in-Possession, Seeking 10 11 Allowance of Compensation for Professional Services Rendered and for Reimbursement of Actual and Necessary Expenses for the 12 Period from June 1, 2009 Through September 30, 2009 [Docket No. 13 4448] 14 15 HEARING re Final Application of Alan Chapell, Consumer Privacy 16 Ombudsman, Appointed Pursuant to Section 332 of the Bankruptcy 17 18 Code for Final Approval and Allowance of Compensation for 19 Services Rendered During the Period From June 8, 2009 Through and Including October 4, 2009 [Docket No. 4456] 20 21 22 23 24 25

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8 1 HEARING re Motion of Debtors for Entry of Order Pursuant to 11 2 U.S.C. Section 105(a) and General Order M-390 Authorizing 3 Implementation of Alternative Dispute Resolution Procedures, 4 Including Mandatory Mediation (the "Debtors' ADR Motion") 5 [Docket No. 4780] 6 7 HEARING re Debtors' Twelfth Omnibus Objection to Claims 8 (Workers' Compensation Claims) [Docket No. 5326] 9 10 HEARING re Debtors' Objection to Proof of Claim No. 65796 Filed 11 by Rudolph V. Towns [Docket No. 5384] 12 13 HEARING re Application of the Official Committee of Unsecured 14 Creditors of Motors Liquidation Company for Entry of an Order 15 Authorizing the Employment and Retention of Bates White, LLC as 16 the Committee's Consultant on the Valuation of Asbestos 17 Liabilities Nunc Pro Tunc to March 16, 2010 [Docket No. 5480] 18 19 20 21 22 23 Transcribed By: Clara Rubin 24 25

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1 2 APPEARANCES: WEIL GOTSHAL & MANGES LLP 3 Attorneys for the Debtors 4 5 767 Fifth Avenue New York, NY 10153 6 7 8 BY: JOSEPH H. SMOLINSKY, ESQ. (TELEPHONICALLY) 9 GODFREY & KAHN S.C. 10 Attorneys for the Examiner, Brady Williamson 11 One East Main Street 12 Suite 500 13 Madison, WI 53701 14 15 16 BY: ERIC J. WILSON, ESQ. 17 U.S. DEPARTMENT OF JUSTICE 18 Office of the United States Trustee 19 33 Whitehall Street 20 21st Floor 21 New York, NY 10004 22 23 BY: ANDREW D. VELEZ-RIVERA, ESQ. 24 25

10 1 BAKER & MCKENZIE 2 Interested Party 3 130 East Randolph Drive 4 5 Suite 3900 6 Chicago, IL 60601 7 8 BY: ANDREW P.R. MCDERMOTT, ESQ. (TELEPHONICALLY) 9 10 BUTZEL LONG, A PROFESSIONAL CORPORATION Attorneys for the Official Committee of Unsecured 11 Creditors 12 380 Madison Avenue 13 22nd Floor 14 New York, NY 10017 15 16 ERIC B. FISHER, ESQ. (TELEPHONICALLY) BY: 17 18 DICONZA LAW, P.C. 19 Attorneys for LFR 20 630 Third Avenue 21 New York, NY 10017 22 23 BY: GERARD DICONZA, ESQ. (TELEPHONICALLY) 24 25

11 1 KELLY DRYE & WARREN LLP 2 Attorneys for Creditor, Law Debenture Trust Company of 3 New York 4 5 101 Park Avenue 6 New York, NY 10178 7 8 BY: JAMES E. FARRAH, ESQ. (TELEPHONICALLY) 9 KRAMER LEVIN NAFTALIS & FRANKEL LLP 10 Attorneys for the Official Committee of Unsecured 11 12 Creditors 1177 Avenue of the Americas 13 New York, NY 10036 14 15 16 BY: THOMAS MOERS MAYER, ESQ. (TELEPHONICALLY) 17 LOWE FELL & SKOGG 18 19 Interested Party Republic Plaza 20 370 Seventeenth Street 21 Suite 4900 22 Denver, CO 80202 23 24 DAVID W. FELL (TELEPHONICALLY) BY: 25

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1 MCCARTER & ENGLISH, LLP 2 Attorneys for Brownfield Partners 3 Four Gateway Center 4 100 Mulberry Street 5 6 Newark, NJ 07102 7 8 BY: JEFFREY T. TESTA, ESQ. (TELEPHONICALLY) 9 10 11 MILBANK, TWEED, HADLEY & MCCLOY LLP 12 Interested Party One Chase Manhattan Plaza 13 New York, NY 10005 14 15 JEREMY S. SUSSMAN, ESQ. (TELEPHONICALLY) 16 BY: 17 18 PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP 19 20 Interested Party 21 1285 Avenue of the Americas New York, NY 10019 22 23 BY: ABIGAIL CLARK, LAW CLERK (TELEPHONICALLY) 24 25

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NEW YORK STATE DEPARTMENT OF LAW Interested Party BY: MAUREEN F. LEARY, AAG (TELEPHONICALLY) AURELIUS CAPITAL MANAGEMENT Interested Party BY: DENNIS A. PRIETO (TELEPHONICALLY) BROWNFIELD PARTNERS Consultants to the Debtors BY: STUART L. MINER (TELEPHONICALLY) THE CLARO GROUP BY: DOUGLAS DEEMS (TELEPHONICALLY) LISA P. GROSS, IN PRO PER/PRO SE (TELEPHONICALLY) Creditor JAKE RODD, IN PRO PER/PRO SE (TELEPHONICALLY)

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14 PROCEEDINGS 1 THE COURT: All right, good evening. Has the Weil 2 firm now been able to link up with CourtCall? 3 MR. SMOLINSKY: Yes, Your Honor. This is Joe 4 Smolinsky. 5 THE COURT: All right. Very good, Mr. Smolinsky. 6 And I have counsel for the fee examiner here in the 7 courtroom. 8 All right, ladies and gentlemen, in the Chapter 11 9 10 cases of Motors Liquidation Corporation, formerly known as General Motors and Affiliates, I have eleven of an original 11 seventeen contested matters before me, the remainder having 12 been continued or having been resolved, relating to: interim 13 fee applications by lawyers and other professionals for the 14 estate and its creditors; the request by the fee examiner to 15 extend the retention of a firm called Stuart Maue, which uses 16 computer techniques to analyze fees, and which has been hired 17 by the fee examiner as a consultant; the request by the fee 18 examiner denominated as a clarification of appointment order 19 for an order expanding the scope of its responsibilities beyond 20 examining fees; for a continuance of the hearing on the second 21 interim applications for fees; and a continuation of the final 22 application for Evercore. 23 24 On these motions and applications, the fee examiner's objections are sustained in part and overruled in part. 25 The

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15 Maue firm's retention will be extended for a time sufficient 1 for it to assist in the second round of fee applications, after 2 which we'll do a stop, look and listen to see if the services 3 it provides are worth the cost. 4 The fee examiner's requested clarification will be 5 granted, and upon clarification the motion to expand the nature 6 of the fee examiner's role will be denied. 7 The fee examiner's request for a continuance to give 8 him further time for review will be granted. 9 And the fee examiner's request for a continuance of 10 the Evercore application will be granted. 11 The specifics of my rulings and the bases for the 12 exercise of my discretion in connection with these matters 13 But before getting to the specifics, some preliminary 14 follow. 15 observations. Lawyers say about me, according to the Almanac for the Federal Judiciary which issues report cards for judges 16 based on comments based by lawyers, that I closely review fee 17 requests, and it's been said that I'm very tough on fees. 18 Others say that I take a close look at them but I'm all right 19 in the end and that I'm reasonable with respect to fees. 20 But all of those lawyers are talking about the same judge -- me --21 and the difference results from the inherent nature of fee 22 requests. 23 Fee requests by their nature take money out of the 24 pockets of creditors, so of course we judges care about them 25

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and will be tough, as some lawyers say, in cases where we're 1 uncomfortable with what we see. But we judges, especially 2 those of us who've had large Chapter 11 cases on our watch for 3 many years, hoping to keep companies alive, save jobs and get 4 money into the hands of creditors, have come to understand that 5 achieving those ends requires a lot of work and, necessarily, 6 fees by the people who do the work. Though there's not a 7 perfect correlation, since higher fees can result from a host 8 of factors, such as thorny commercial issues such as 9 environmental issues, intercreditor and interdebtor disputes, 10 and even the need to replace corporate officers who've been 11 indicted, our larger cases almost always result in larger fees 12 and materially larger fees. The challenge for a judge is in 13 achieving fairness in finding the appropriate balance between 14 keeping the fees as low as is necessary to do the job and to 15 maximize value for the creditor community without unfairly 16 penalizing lawyers and others doing the work. 17

To his credit, the fee examiner here did what I would 18 hope he would do: engaging in a dialogue with the parties to 19 get more information and explanation when warranted, to secure 20 voluntary reductions in instances of error on the part of 21 professionals and, conversely, to drop objections when 22 appropriate. He also could, and did, sometimes compromise 23 issues of potential dispute, which comprises I would approve 24 except in any instances wherein I thought the compromise was 25

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17 beyond the range of reasonableness, and all of which ge 1 I find reasonable and approve today. 2 But if the parties can't agree, the matter goes to the 3 judge. At the risk of stating the obvious, a fee examiner, 4 like any examiner, is not a special master -- masters aren't 5 Le FRBP authorized in bankruptcy cases (C.F.R. BP 9031) -- nor is he or 6 she a judge. On those issues where agreement could not be 7 reached, the judge must decide them. 8 Doing so, I sustain some of the objections and 9 overrule others. Many of the issues apply to multiple 10 applicants. The requested fees are largest with respect to 11 12 Weil, and the largest number of issues applied to Weil, but when my ruling set forth general principles applicable to many, 13 they'll of course apply across the board. 14 Turning first to the objections insofar as they 15 involve Weil, and then turning first to the matter of 16 17 retainers, the fee examiner suggested that amounts still on a pre-petition retainer should be applied to the fee awards for 18 19 this period as compared and contrasted to being held on account 20 of future payments risk. Weil has consented to this, and I'll so order it here for both Weil and any others similarly 21 affected, because on the facts of this case I think that's the 22 right thing to do. 23 24 But because everything we judges say in this court 25 seems to have a life of its own, even when simply part of a

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	ากการเขาสู่ประสมุณภาณร์ร่างการปฏิมีและการสะเปล่งสร้างได้สุดไป และการการไป (การเวลากรุกษณฑร์) เหตุ ประสมุณภาณร์ร่างการปฏิมีและการสะเปล่งสร้างได้และการการไป (การเวลากรุกษณฑร์)	f £1
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dictated decision, I'll briefly explain. Retainers are sought 1 and held by lawyers as a hedge against the risk of not being 2 paid in the future; that's in the nonbankruptcy context and 3 also in the bankruptcy context. In the bankruptcy context, 4 they're also important to ensure that the lawyer isn't a 5 creditor of the estate at the time of the filing as a lawyer 6 retained, as anything other than special counsel must be 7 ⁴ disinterested, as that expression is used in bankruptcy 8 parlance. 9 The pre-petition receipt of a retainer, assuming that 10 it exceeds the amount of fees due for pre-petition services, 11 helps ensure that the lawyer isn't a creditor of the estate and 12 in fact is the opposite. It creates a debt from the lawyer to 13 the client to pay back the excess of any retainer over the 14 value of the fees that were earned. 15 There's no hard-and-fast rule as to when I'll require 16

a retainer to be applied to post-petition services. Since it's 17 a debt to the estate that will need to be paid back if it isn't 18 earned, but it may well be earned in the future, I determine? 19 based on factors fincluding the liquidity of the estate, its 20 administrative solvency or insolvency, the extent of secured 21 debt and assets that aren't secured creditor collateral, and 2.2 the nature of any cash collateral obligations or conditions --23 whether there's a risk of nonpayment in the future. If there's 24 not, I'd be more inclined, as I'm more inclined here, to 25

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require application of the retainer before the end of the case. If there is a material risk of nonpayment, I'd be less inclined to make the professional apply it to past services and, hence, go unprotected going forward. Here, I believe that there's no material risk of nonpayment going forward, and it's in the best interest of the estate that the retainer be applied sooner rather than later.

8 Turning next to summer associates and law clerks, the 9 fee examiner objects to Weil's charges for summer associates 10 and law clerks. I'm sustaining the fee examiner's objection to 11 charges for summer associates but overruling his objection to 12 law clerks. I think we need to slice and dice that objection a 13 little more finely, because we're talking about different 14 things.

Turning first to summer associates, I recognize that 15 there's contrary authority in other districts, such as in the 16 Recycling Industries case in Colorado, but as I ruled in 17 earlier cases when that issue was presented to me, the best 18 known of these being Chemtura, I don't approve payment for 19 summer associate time. I've ruled that way based on lessons 20 learned in thirty years in a large firm before I came on the 21 bench ten years ago, in two of which I ran that firm's summer 22 program. As I think I've stated the reasons that I've so ruled 23 at greater length in one or more other decisions, I won't lay 24 25 out now all of the reasons why I don't think summer associate

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time is properly compensable, but I'll state some of them. 1 Summer associates aren't, of course, associates as we 2 normally think of them; they're law students, most commonly who 3 are two-thirds of the way through law school. They sometimes 4 make valuable contributions, but they're hired principally as a 5 recruitment device, not for their productivity, to get the best 6 and the brightest law students before another law firm gets 7 them. And with very few exceptions, they're dreadfully 8 inefficient and require extraordinary handholding by more 9 senior lawyers, even when, though it's often not the case, 10 they've taken the course work or already had the training they 11 need for the matters to which they're assigned. 12 Additionally, of course, I've noted over and over 13 again, including in this case -- that is, in the GM case --14 15 that I believe in the importance of consistency and predictability in bankruptcy cases and follow the earlier 16 decisions of other bankruptcy judges, including myself, in the 17 absence of manifest error. I'm staying true to that principle 18 today. 19 By contrast, law clerks, which in this context means 20 law school graduates who aren't yet admitted to the bar, have 21 the benefits of law degrees and permanence. Subject to any 22 other applicable considerations and reasons for disallowance, 23 their time will generally be compensable, and I'm ruling that 24

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Turning now to long billing days, I also have an 1 expression of concern by the fee examiner as to lawyers billing 2 more than twelve hours a day and an objection to compensation 3 for two attorneys who worked an average of eighteen hours a day 4 for eleven days. I assume that these hours were really worked; 5 of course, if they hadn't I'd be ballistic, but there's been no 6 suggestion or showing that such is the case. I won't 7 disapprove those charges. Those of us with experience in large 8 matters and large Chapter 11 cases, in this district and 9 elsewhere, know that lawyers on those matters must from time to 10 time work extraordinarily hard. And anyone who was present 11 during the first six weeks of this case knows what was going on 12 during that time. In fact, if I could bill by the hour, I'd be 13 subject to much of the same criticism. 14

Turning next to vague entries, the fee examiner also 15 challenges vague time entries in the timesheets supporting 16 Weil's efforts. I accept as true Weil's response that the 17 entries were made when the time pressure and number of matters 18 that required immediate attention were extraordinary, but 19 timekeeping is something that should be routine for a 20 bankruptcy lawyer, and nonbankruptcy lawyers working on 21 bankruptcy matters must learn to do it right as well or suffer 2.2 the consequences of failing to do so, especially if they work 23 at firms that have major bankruptcy practices. I agree with 24 25 Weil that perfect compliance may not be commercially or

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professionally practical, as, for example, might be the case if a lawyer is fielding many calls or doing many things in a single six-minute increment or is extraordinarily stressed or harried.

I think there's some room for taking those 5 considerations into account, but I agree with the fee examiner 6 that failures to comply with the guidelines must have at least 7 some consequences. In this case, I agree with the fee examiner 8 9 that many of the entries are too vaque, including enough to support the fee examiner's recommendation that fifteen percent 10 of the time charges supported by the allegedly vague entries be 11 12 the subject of fee reductions. Thus, the fee examiner's objection in this regard and his request that fifteen percent 13 of those time charges be disallowed will be sustained. 14

15 On first-class air travel, I'll sustain the fee examiner's objection as well, though I think that Weil has 16 already addressed this on its own. While it's easier to work 17 on a plane with the extra space that first class provides, the 18 U.S. Trustee Guidelines provide that first-class travel will 19 normally be objectionable, and here we got a commitment early 20 in this case not to charge for first-class travel. 21 While lawyers can still fly by that means, their firms will normally 22 23 have to absorb the incremental cost. And here I'm ruling that under the facts of this case, professional firms will have to 24 25 absorb the extra cost. I'm expressly not ruling on the

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circumstances that could warrant an exception, other than to 1 recognize the possibility that such circumstances could exist. 2 The fee examiner also objects to hotel rates charged. 3 Of course, rates for hotels vary materially depending on the 4 city involved. And though I've never stayed overnight in a New 5 6 York City hotel, there seems to be no serious dispute that New York's rates are among the highest. I'm going to provide 7 generalized guidance here and leave it to the parties to work 8 the details out. To the extent that Weil or any other firm was 9 paying no more than the going rate for business traveler-type 10 hotels in New York City, I'll approve reimbursement for such 11 hotel charges even if the rate for a room exceeds a defined 12 price point, such as the 400 dollars per night that was 13 mentioned. To the extent that any of the hotels stayed at were 14 at luxury hotels more expensive than those normally used by 15 business travelers or had rooms in those hotels which were at 16 luxury-level rates I with two daily rates in particular that 17 were described in the objection being a matter of concern to 18 me, I'm disapproving reimbursement for the incremental cost and 19 Weil will have to absorb it. 20 The fee examiner also objects to certain local 21 transportation charges, contending that they should be regarded 22 as overhead. I agree in part, but only in part. New York, 23

unlike most other parts of the U.S., is not a city where most employees drive to work and where driving home in one's own car

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is an option. And exigent needs, including, by way of example, when one is working the great bulk of the day and late in the day for a single client, can make charging a taxi or car service home appropriate. On the other hand, where there is a lesser strain on the lawyer, charging a debtor client may be inappropriate.

Which side of the line that the issue falls on will at 7 least generally be fact-specific, and it is here as well. 8 Weil's local transportation policy generally conforms to that 9 historically considered to be appropriate in this Court and to 10 the policies in place at other law firms. But I agree with the 11 fee examiner that, to the extent that local transportation was 12 charged for after the closing with New GM, charging the estate 13 for local transportation would be inappropriate. The fee 14 examiner's local transportation objections in this regard and 15 to this extent will be sustained. 16

The fee examiner also objects to certain personal 17 expenses, including reimbursing lawyers for costs they incurred 18 when they had to cancel vacations, and paying laundry expenses 19 20 for out-of-town lawyers working in New York. While I agree that it was appropriate as a matter of human decency for Weil 21 to pay those charges, I think that under all the circumstances 22 Weil should have absorbed them as overhead, to the extent it 23 did not already do so, which I believe it did do on its own for 24 25 the vacations. The fee examiner's objections in this regard,

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to the extent not moot, are sustained.

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Turning now to double-billing, nonworking travel time, 2 and mistakenly charged expenses, the fee examiner found 3 instances of double-billing, nonworking travel time and 4 mistakenly charged expenses. I sense that when the fee 5 examiner discovered them and called them to Weil's attention, 6 Weil agreed to make the corrections immediately and without 7 objection. To the extent, however, that they're not moot, the 8 fee examiner's objections in these areas will be sustained. 9 The fee examiner also challenges about 53,000 dollars 10

in charges for miscellaneous expenses, of which about 44,000 was for a hotel's food, beverage and miscellaneous charges for creditor meetings, and about 9,000 dollars in miscellaneous charges that was not documented until Weil filed its response to the fee examiner's objections.

The creditors' meetings were for the organizational 16 meeting of creditors and for a 341 meeting. I'm meetings 17 not troubled by a debtor paying such charges. It's common, if 18 not also customary, for debtors to pick up the tab for those 19 things. And I remember back in my first life as a lawyer that 20 when I represented a debtor estate in a medium or large Chapter 21 11, we would advance those funds as a courtesy or service to 22 the U.S. Trustee. Likewise, if the debtors hadn't advanced 23 those charges and instead stuck them on the U.S. Trustee, or 24 the creditors' committee for example, I'd approve reimbursement 25

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from the estate to whomever picked up those charges. So I'm not troubled by the debtors paying them, and I'll overrule that objection to the extent that it remains after the debtors explained exactly what they spent the money for.

Likewise, while I understand why the fee examiner 5 6 objected to the previously unexplained additional miscellaneous charges and would have preferred that they be explained before 7 they became a subject of a fee examiner objection, Weil has now 8 satisfactorily explained them. It's explained that they were 9 for an invoice for electrical services incurred by Weil, at the 10 request of GM, for setting up the CEO's press conference held 11 at Weil on the day Chapter 11s were 12 were commenced. As Weil fairly observed, that was one of the 13 most important days in GM's history. Such an expense is 14 15 entirely reasonable.

Weil has now provided an invoice for the electrical 16 services and I would think that its doing so puts the matter to 17 rest. I'm not going to require that Weil get an itemization 18 from the electrical contractor of labor hours or itemized 19 material charges; I'm a little surprised that such was even 20 requested. If payment for electrical services have been made 21 by GM instead of Weil, the cost would have been exactly the 2.2 same and the issue would not have come up. This isn't the 23 first time that a lawyer advanced the funds for a client's 24 otherwise reasonable expenses, and I'm confident that it won't 25

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be the last. Since the underlying expense is for an entirely understandable purpose, I won't disapprove reimbursement for it now.

I should say in this connection, however, that the 4 controversy as to this alerts me as to an underlying issue: 5 The failure to simply provide the electrical services invoice 6 from the outset resulted in a back-and-forth which had its own 7 costs associated with it. On matters relating to 8 disbursements, I think time charges might be in a different 9 category, as discussed in connection with the Kramer Levin 10 application below, I'm going to require going forward that 11 backup be either provided or, perhaps more realistically, be 12 made available for inspection on request routinely from the 13 outset so a fee reviewer needn't do anything more than say I 14 need to see it. The idea is to save creditors the cost of the 15 back-and-forth. I don't think that's as practical for 16 explanation as to why services were performed or were 17 reasonable, matters that I discuss below, but I think that, for 18 disbursements, making that backup available is no big deal. 19 Turning now to the billing rates and the request for 20 the five percent reduction, the most emotional issue that I 21

21 the live percent reduction, the most emotional issue that 1 22 need to address is whether I should require Weil, creditors' 23 committee counsel Kramer Levin, and any others similarly 24 situated to discount their rates by five percent, not because 25 work wasn't performed or was otherwise reasonable but because

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other firms might have lower hourly rates and/or voluntarily offered the discount.

I welcome and applaud the voluntary steps taken by those others, but as a judge I'm not authorized to dock professionals for otherwise reasonable claims for their services based on private notions of propriety, either the fee examiner's or my own, especially by a mechanical and arithmetic computation. Rather, I think that a request of that character must be analyzed under the law and then under the applicable facts.

As a matter of law I haven't been shown any basis in the code or case law for imposing what amounts to an arbitrary reduction of five percent or any other figure. Those who have appeared before me know that I start my analysis of matters under the code with textual analysis, and that I also rely heavily on case law precedent. Authority from either source for honoring that request is conspicuously lacking. See, for example, the fee framiner's Weil objection at paragraphs 22 to $p \neq t$

20 While I try to get a fair result in every case I do so 21. in the context of statutory provisions that Congress has 22. provided for the use of the judicial branch, and of case law 23. that's developed over the years. I'm extraordinarily 24. uncomfortable in departing from the code or the case law. 25. As a factual matter, everyone acknowledges the efforts

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and success in Weil's representation which, as the fee examiner noted were Herculean. And it appears to be agreed that attorneys at Weil, "Worked hard when required but did not unnecessarily or inappropriately record time." The efforts were performed in the context of a case with liabilities of 172 billion, with a capital B. See 407 B.R. at 475. The efforts helped save the jobs of 235,000 employees worldwide, 95,000 of whom were in the U.S., and saved thousands of additional jobs at GM's suppliers.

In general, at least, lawyer's fees are set in the 10 marketplace. And the fees are at market rates. I'm reluctant 11 to question them in the absence of statutory or case law 12 authority to do so. To be sure, if it were shown that a firm's 13 rates for lawyers K subject to fee review K were higher than 14 15 those for its lawyers performing similar services on nonbankruptcy matters, and hence did not fully conform to the 16 rates in the marketplace, that would be a matter of concern for 17 me which is why I asked the questions at argument that I did. 18 But there having been no showing of that matter of concern 19 20 here, I don't need to address any issues with respect to that today. For these reasons I won't require the requested 21 discounts. 2.2

Turning now to the Kramer Levin application, starting first with summer associate time and law clerk time, several of the rulings I just made apply equally to the Kramer Levin firm,

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counsel to the creditors' committee. I won't repeat them now. For the reasons stated in my rulings on the Weil application, I'm sustaining the fee examiner's objection to Kramer Levin's summer associate time, and overruling them with respect to permanent lawyers with law degrees who are not yet admitted to the bar.

Turning next to clerical and administrative tasks, vague and repetitive entries, and block billing, likewise by reason of an analysis that's essentially factual I'm sustaining the fee examiner's objections to billing for clerical and administrative tasks, resulting in a 16,000 dollar reduction.

I'm also sustaining the fee examiner's objections in 12 part to the vague and repetitive entries and block billing. 13 I'm sustaining them to the extent of requiring a 30,000 dollar 14 reduction for vaque and repetitive entries, and 50,000 for 15 block billing. I sustain those objections in part, but only in 16 part, by reason of the difficulty in describing certain 17 activities with greater precision, and because if many of the 18 more discrete tasks were separately described doing so would 19 consume much of the day. 20

I agree with Kramer Levin's contention that the purpose of the block billing rule is to correct abuse where it might appear that lawyers are "running the clock" to fill idle hours. And if I were ever to see that I'd not just disallow the time but consider sanctions. But there's no evidence in

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the record to suggest that such a concern would have any applicability or relevance here.

As I noted previously, the fee examiner is right when he says that failures to comply with applicable rules and guidelines must have consequences. Thus, I'm imposing the consequences I've described here. But I also believe that the circumstances at the time the services are performed and the practicalities of perfect compliance must be weighed in assessing the penalty for non-compliance. Under all the circumstances, I believe the adjustments described above best balance the competing interests.

Turning next to billing rates and five percent 12 reduction requests for Kramer Levin, as I indicated, I'm 13 overruling the objection seeking the arbitrary five percent 14 reduction in fees for reasons I discussed in connection with 15 Weil as a matter of law. I'm also overruling them for similar, 16 though not identical, reasons based on the facts of the case, 17 which include the skill Kramer Levin brought to this case, 18 presumably aided in material part by its experience in 19 Chrysler. The reasons that are based in fact, as contrasted to 20 law, overlap with those based on the contentions that Kramer 21 Levin engaged in unnecessary work to which I turn next. 22 In that connection and additionally, I disagree with 23 the fee examiner's contentions that work Kramer Levin did was 24 unnecessary or excessive. Rather, I find as a fact to the 25

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contrary. While I recognize that the fee examiner wasn't here 1 during the first six weeks of this case, I was, With the 2 possible exception of the creditors' committee counsel in 3 Adelphia where the fee committee that I had there did not make 4 a similar recommendation And even though the fees in 5 Adelphia, as a percentage of debtors' fees were much higher, 6 principally I think by reason of major litigation brought by 7 the Adelphia creditors' committee against secured lenders TIVA 8 never seen a creditors' committee counsel perform as 9 effectively and economically in a Chapter 11 case on my watch, 10 as I saw Kramer Levin perform here. 11 But, first, as a preliminary matter a threshold issue. 12 How much detail must a professional put into a fee application 13 to show that its work was necessary and appropriate? I have no 14 memory of having had to rule on this before, or having seen any 15 other judge's answer to this question, but I think the answer 16 to this is at the easier end of the spectrum of the issues I 17 need to address today. There should be enough detail in the 18 fee application to make a prima facie case and to touch the 19 bases. Basis. But I think it would be wrong for courts or U.S. 20 Trustee personnel or fee examiners to require an exegesis on 21 matters of necessity and reasonableness. If we were to do that, 22 it would require much more work on the part of the professional 23 than the preparation of the fee application, especially if the 24 application were to be filed on paying of fees disallowance. 25

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Most of the time the need for the work to be done, and much of the work that was done, will be obvious to the major constituencies in the case and to the judge, And there is no reason in my view to require extra detail in the fee application, or argumentative or persuasive writing in the fee application, to bolster reasonableness or necessity which extra writing would only have to be paid for by the estate or its creditors.

Rather, I think that in those rare cases where the need for the services or the professional's work is in question, the matter would be better addressed by providing answers to questions informally and, if necessary, addressing them in the courtroom, as, of course, was done here. I don't want to create a rule that requires professionals to put even more work at resulting greater expense into their fee apps when such usually will not be necessary.

Here, based on facts of which I'm aware by judicial notice of the case on my watch, and by Kramer Levin's supplemental showing, I can and do easily find that Kramer Levin's services were substantial, necessary and reasonable.

Kramer Levin faced challenges in this case because like most creditors' committee counsel, it wished to maximize the recovery for the unsecured creditors' community. But it couldn't do so in a way that would blow the 363 sale, by which the creditors would be fragged by their own grenade.

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As I ruled in my Section 363 decision, which now has been affirmed by two judges of the district court, apart from a third judge's ruling on a stay application, the alternative for the unsecureds in this case to the 363 sale was liquidation, a disastrous result.

Kramer Levin had some very sympathetic members of its constituency, most significantly tort victims. But if it pushed too hard to advance unsecured creditors' interests, or the interest of any subset of them it could poison the deal by which all in the unsecured creditors' community would do much better. It negotiated an additional assumption of liabilities by New GM that may benefit hundreds, if not thousands, of people injured in accidents for result whose desirability nobody in this case I think would quarrel. It also negotiated a 225 million dollar increase in the war chest for administrative expenses, to which I'll turn in a moment.

The great bulk of the consideration for the 363 sale, and the amount that would effectively go to unsecureds — estimated to be six billion dollars, at the time was in the form of New GM stock, which creditors would want to be able to trade consistent with the federal securities laws, and which would require an 1145 exemption obtainable only under a confirmed plan. And I well remember Kramer Levin's efforts to increase the size of the funding for administrative expenses by 225 million dollars, so as to better enable a confirmable plan.

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Securing that additional 225 million dollars would decrease risks of the need to sell some of that New GM stock privately, which if it had to be done would reduce the stock available for the unsecured creditor community. This was a major accomplishment for which I think Kramer Levin justly may claim credit.

I also cannot agree with the fee examiner's dismissal 7 of the Kramer Levin attention to environmental claims, which 8 for the debtors, creditors and me were and are still matters of 9 substantial concern. As evidenced most recently in Lyondell 10 Chemical and Chemtura, two other massive cases on my watch 11 with material environmental concerns, the interplay between 12 environmental law and bankruptcy is among the most difficult 13 issues that parties in bankruptcy cases and bankruptcy judges 14 face. 15

Material environmental liabilities could and still may massively affect creditor recoveries. It's no wonder that Kramer Levin spent time on these issues. I would have been surprised and disappointed if it had not.

Likewise, I've considered the other suggestions that Kramer Levin overworked the case, and as findings of fact reject them. Accordingly, I overrule such objections and decline to reduce Kramer Levin's compensation based on those factual premises.

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Turning last in the Kramer Levin case to matter 1 descriptions, the fee examiner also objects to Kramer Levin's 2 use of many detailed categories to describe the work Kramer 3 Contending that work in many areas that the Levin performed, 4 fee examiner would have preferred to consider in a combined way 5 were separately described, making the fee examiner's work more 6 difficult. I assume that the way Kramer Levin did it did make 7 the fee examiner's work more difficult. But Kramer Levin 8 argues that such was required under this Court's Local court 9 rules, and Kramer Levin is right in this regard. More 10 specificity in my view is a good thing, not a bad thing. In 11 any event, whatever one's preferences may be for best practices 12 in data gathering and presentation, and even assuming that it 13 made the work for the fee examiner more difficult, I will not 14 penalize Kramer Levin for recording its time with the greater 15 specificity that its use of more categories entailed. 16

Turning next to FTI, FTI's issues are largely subsumed 17 within my earlier rulings, with one material exception. The 18 fee examiner objects to the amount of time FTI incurred on firm 19 retention and compensation maters, contending that it should be 20 capped at five percent of the amount of the total billings in 21 the absence of extraordinary circumstances. But FTI responds 22 that the objection has an insufficient time to reasonableness, 23 And, in particular, fails to take into account that the value 24 of the services provided by a professional like FTI might 25

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exceed the cost of the monthly payments that had to be made under the retention. More importantly, FTI argues that its fee was based on a fixed fee arrangement. And that when FTI did more work as it might, for example, if it were asked to do more on something other than retention or compensation, FTI wouldn't get anymore compensation for doing so.

Though, neither sides has provided me with any cases on point, and the matter is, so far as I'm aware, one of first impression that I've never seen in the thirty-seven years since I started in the bankruptcy business, I agree with FTI as to this issue. Though hourly rates for professionals retained on a fixed basis are computed and analyzed by many of us, we judges require those hourly rate equivalents computed to help protect the estate against windfalls, not because those hourly equivalents for those compensated on a fixed fee basis, have independent legal significance.

Where the fee is on a fixed fee basis irrespective of hours worked, the extra time spent on a retention or fee application doesn't matter. I see no basis in law or equity for docking the professional based on a perception that the professional put in more work on retention or anything else than the one questioning the fee application regards as reasonable.

24Turning now to Butzel Long, the fee examiner also25objects in part to the fee request of Butzel Long, co-counsel

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to the creditors' committee, seeking a disallowance of about 46,000 dollars in fees. I sustained the fee examiner's objection to summer associate time for the reasons I've described above. But the fee examiner's principal objection is to costs incurred incident to getting Butzel Long retained as the cost of the retention effort amounts to about twenty-three percent of Butzel Long's total fees for that period. That's because the remainder of Butzel Long's fees were relatively modest during that time.

The fee examiner's objection raises what amounts or 10 almost amounts to a philosophical issue. How do we treat the 11 cost of getting retained, which is compensable under applicable 12 law and which largely is a fixed cost, when the actual work to 13 be done is modest, or is modest in the applicable fee period? 14 Though / neither side has presented me with any authority on 15 point, I think the answer must be that such time is 16 compensable, And that if we think the substantive work to be 17 done by the professional to be retained is so de minimis that 18 the retention costs will be disproportionately high, we should 19 think about that before retaining the professional in the first 20 place. 21

I start with the recognition that the cost of getting retained is compensable under the case law and that within broad limits it's largely a fixed cost. There isn't a suggestion here, and there normally won't be a suggestion in

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most large Chapter 11 cases, that the professional can get 1 itself retained materially more cheaply. In fact, I don't want 2 people cutting corners on their retention applications, as we 3 all agree on the importance of full disclosure of connections 4 and potentially adverse interests, and we want thorough 5 conflict checks. So the ratio of retention costs, on the one 6 hand, and costs for services for the real work, if I can call 7 it that, on the other, is a function not so much of the 8 9 retention costs as it is for the size and scope of the real work performed and to be performed. And it will sometimes be 10 the case, as it is here that the real work will be modest in one 11 fee period, but may be much greater in the later period. Of 12 course, in that case the objection will likely be moot, because 13 it would be unfair to dock the professional for work performed 14 in period one when the work performed in period two is much 15 greater. 16

But if it isn't, that raises questions as to the 17 wisdom of hiring the professional. But I think it's better for 18 the fiduciaries for the estate and its creditors to consider 19 whether the professional should be hired if the service will be 20 de minimis before retaining the professional in the first 21 place. 🕐 22 Since fees are based on the reasonableness of the 23 services performed, and in most cases the retention 24

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price, it's hard to find a statutory or even common sense basis for denying compensation for a professional's necessary efforts in getting itself retained. And I won't disapprove that component of the fee application here for that reason.

Turning next to Claro Associates, the fee examiner also objects to the application of Claro Associates, a consulting firm that helped GM address its environmental responsibilities. He seeks to disallow about 35,000 of the 190,000 requested, which is about 18 percent of the total fees, down from an earlier 41,000 dollars, which was roughly 22 percent of the total.

Many of the problems seem to arise from the fact that Claro was guilty of classic vagueness and bulk billing offenses which in turn seem to arise from the fact that Claro isn't accustomed to the higher standards of detail, and of explanations for work performed that we customarily expect in bankruptcy cases, and that Claro did the work that it did without complying with those rules.

Claro billed for its time in half hour increments rather than the tenths of an hour that we require; used descriptions of its services broader than those that we require; described its work in terms that we'd regard as excessively vague, and put professionals to work on matters that could fairly be characterized as administrative or clerical.

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The objections to these practices were well taken, and as I've noted above, failures to comply with applicable court rules and guidelines should have consequences. But I think that in determining the appropriate penalty it's appropriate to consider whether an entity is a regular player in the bankruptcy system, and should know better. I also think that it's not just appropriate but critical to consider whether the professional was previously warned or otherwise advised of the need to comply, as parties in this case will be warned and advised for their services going forward.

Here I can't wholly close my eyes to Claro's failures to do a better job in substantiating its fee request and think some penalty is appropriate. But for an entity that doesn't regularly provide services to the bankruptcy community and hasn't previously been warned, I think that the penalty that's been proposed is excessively punitive.

While I'd likely agree with the fee examiner if he'd 17 noted the same deficiencies by a law firm, accountant or 18 financial advisor that's more frequently retained in bankruptcy 19 cases, I'm not going to be that harsh on a relatively small 20 player providing environmental remediation counseling here for 21 this first offense. The fee examiner's proposed disallowance 22 will be reduced from 35,000 to 18,000, with the consequence that 23 Claro's fee application will be reduced by the 18,000 dollars 24 which I still think must be imposed. 25

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4 - 1 nder verstall eine eine weisender jahren heteren weisen der Gretten รถการสุกรีบกว้างรู้อย ค.ณพ์ หลังการกรุปการปรุปการกรุปการกรุปการกรุปการกรุปการกรุปการกรุปการกรุปการกรุปการกรุปก erid – a S. . Germanas and Eavel along Laborating Systematic . การการสุดสุดภูมิทร์ที่สู่ใน (ก.) (15) มีผู้และการสินสุดสินสารศักร์ที่ได้ ได้สารทำสารสินสินสินสารสารสารสาร า. มากรับที่ตามแนวตรูส์ปรูลที่กุ่มการกำหนังแต่ หมู่ คุณมีประกัด จากปรีชื่อง and for particult + enterprise, we enclude the take (most gree yes as particular is the rebuild of including project in and of the second entr to busided estated to the the placestones says increamentary ນກາວ ກາງການພະກັບເກັ້ນ, ຈະກອງມີການ ສນີ້ທີ່ເອົາການແລະ, ມີສີ່ກັກການນີ້ ພະການອະນະ ມີ 0 Diversity galops were specified in Comparison 3 j. j see a long three to be not the shall exclude the strength of the shall the sould a . Shanda na chuna na shekara iyo a gula ka an chindha da kata ing masara 2 m ata an c . . timel of build orthographic for the cost due to straight and the second · • ากว่า และสวกฎหา จุดว่า**สุขม**ี่การสุดได้แก่ การ จำการแห่งเห็น การแรกสู่การไปรู้ เก 5.1 allitat padakean, bent defe Angles an (Argreth dared vederrange) hit. Det a 📜 🐅 🗺 🐨 Million Milliongan Alas Gaserrie (ali) Berauga en la pre-in an ist paper as a classes contraction and a spectrum of the state ••••• i an an an annanas i fha shear a ga msanaalishi shadha ada ambaac 3.5 2017 - 111 felo concorregenergo Elemente entre tor agridad la basegregi. ŧĹ ปนะการว่า⊈หมู่สุดมีสาคากการสะยังนี้มหากจะการกฎกการการผงไปไป และผงก 45 🚂 🏨 🐉 เป็นสมับ และ และวิจาน ชนะศักรณ์ เป็นสุดคริมีเดียว และติไปสาคม และประวัติ รู และการสี่สุนไปเหลือเล่า เป็นปฏิสินสูงการทำการได้เล่าจรูกเอสเติกันหรือ การทำสินไปไป และสู้การที่สัง to a major sea group and the second to store of Like . . . 5.5 le Élétér de coepáre lea facelmente leve, est élétér s 1.5 жаандыр <u>ма</u>старал жазары –

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合于你的现在分词。

Turning now to AP Services. AP Services, the crisis managers now serving and for all practical purposes running Motors Liquidation, disputes the fee examiner's contention that AP Services is subject to fee examiner review, right to audit, and right to object to the compensation of AP Services. It contends that the fee examiner's authority applies only to retained professionals in the case.

8 While a reading of the relevant orders would at least 9 seemingly support AP Services' position in this regard, the 10 dispute isn't yet ripe for a decision as the fee examiner 11 hasn't tried to audit or object to AP Services' fees and the 12 fee examiner hasn't responded to the points AP Services made in 13 its objection, presumably being consumed with the many fee 14 applications to which the fee examiner has objected.

Accordingly, I'm not deciding these issues today. If there is an objection, AP Services can dust off and re-file its submission, or if it prefers give me a new one. And each side will now have a reservation of rights with respect to these issues.

Finally, the fee examiner objects to the fee request of Evercore, the debtors' investment banker. The fee examiner contends that the request is premature but goes on to seek the disallowance of particular itemized disbursement amounts. agree that it's premature because Evercore's remaining entitlement will be subject to a condition that hasn't

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transpired yet, and while most parties won't have the right to object to reasonableness hereafter, the U.S. Trustee's office will. So I don't think I can or should issue substantive rulings on Evercore today, including on the disbursements. They can be considered when the much more substantial payment to Evercore comes up for review or is otherwise up for allowance.

Turning next to the U.S. Trustee Office's response. 8 The U.S. Trustee requests a ten percent deferral of payment or 9 a, quote, "holdback" of fees. That request is granted. As 10 I've stated many times before albeit only, I think, in 11 dictated decisions, holdbacks are imposed for two reasons. 12 They're a hedge against uncertainty in the future of the case, 13 and in particular the risk of administrative insolvency, and 14 they function as a carrot to incentivize professionals to get 15 the case wrapped up and to get plan consideration into the 16 17 pockets of creditors.

In this case the unsecured creditors are relying on their receipt of stock and warrants that can be distributed consistent with the requirements of the federal securities laws only if and when a plan is confirmed. And if the administrative expenses get too high and can't be paid in cash, some of that critically important stock may have to be sold to keep the plan together.

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Thus, while I have no reason to doubt the diligence of

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44 the professionals in this case, I'm going to grant the U.S. 1 2 Trustee's request. This ruling is without prejudice, however, to any later request that I reduce the holdback to five percent 3 when the debtors' environmental issues are settled or 4 judicially resolved and to any request that I reduce the 5 holdback to zero percent when the debtors have accomplished 6 that -- that is, the environmental resolution -- and also have 7 filed a plan that has creditors' committee's support. For now, 8 however, the U.S. Trustee's request is granted, and the ability 9 to reduce the holdback further will await those other major 10 forward steps in the case. 11 As the U.S. Trustee's other principal point was that 12 she generally concurs with the fee examiner's suggestions --13 see U.S. Trustee response at page 9 -- I needn't address them 14 separately now. 15 Then, in a point applicable to all or many of the 16 17 applicants, or at least all that are law firms, the fee examiner asked me to approve scrutiny of contracts with 18 electronic research services like Westlaw and Lexis. I'm 19 declining to provide for that and here's why. Applicable rules 20 and guidelines already prohibit professionals from making a 21 profit on disbursements. . And I don't understand expenses for 22 electronic research like Westlaw and Lexis to be an exception. 23 And if I'm not mistaken, professionals must certify that 24 they're not making a profit, and I of course regard a false 25

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certification to be serious business.

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If certifications are no longer required -- I haven't gotten into the details of my cases on that issue in a long time -- I'd order in a heartbeat that parties do so certify if anyone wants it. But I'm not sure if it's appropriate for a judge, much less a fee examiner, to tell lawyers how they should do their research or, especially, whether they should or should not do it by electronic means for cost or for other reasons.

Also, the particular circumstances of a firm could 10 affect its decision as to how to get its research done as, for 11 example, whether the firm has alternatives such as the hard 12 copies of books and what the costs of various alternatives are. 13 For example, the U.S. courts, in a cost saving measure, are 14 trying to get judges to do away with reading books and to rely 15 on electronic services. They're asking us to do exactly the 16 opposite of what the fee examiner would want to explore here. 17

So long as nobody is making a profit on legal research 18 I don't think it's appropriate for me to rule on this issue on 19 a one off basis. Any law firm will use its law library and 20 electronic research services to meet its needs in serving many 21 clients. And this goes too close to the matter of 22 professionalism or a matter of professionalism, how lawyers do 23 their jobs, for my comfort. Imposing a requirement in this 24 25 area would go beyond adjudication; it would amount to rule

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2	Any requirement for when electronic research materials	
3	might appropriately be used would require, in my view, at the	
4	least, a local Court Role issued after an opportunity for	
5	public comment. And if we're not going to have that any time	
6	soon, at least, it's unnecessary and inappropriate to make	
7	lawyers hand over their contracts with their electronic	
8	research providers.	
9	For the foregoing reasons, the fee examiner's	
10	objections are sustained in part and overruled in part. To the	
11	extent that the fee examiner did not object or consensually	
12	$h \sim h \sim resolved$ its objections, fees are approved and the resolutions	
13	of those objections are ratified and approved by me.	
14	I'm not going to micromanage the further proceedings	
15	by getting involved in applying my rulings to individual time	
16	entries. You're to apply the rulings and principles I	
17	articulated to the individual fee applications involved and	
18	agree on the fees that are appropriately payable now in	
19	accordance with those rulings.	
20	If you somehow can't agree we can address any issues	
21	by conference call off the record, or if anybody wants it, on	
22	the record. Except as disallowed as a consequence of my	
23	rulings described above, the professionals can and should be	
24	paid up to the level of the U.S. Trustee holdback level that I	
25	likewise described above.	

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Finally, I ruled on the request for the Maue retention extension, the motion for clarification, and the second interim fee applications' continuance in the hearing itself earlier today. I explained the reasons that would underlie my rulings in the tentatives that I announced then. I see no reason to repeat or amplify upon them now.

I would ask the debtors, if they're willing, to take the lead on converting my ruling into an order after each of the individual professionals have had an opportunity to agree or at least confer with the fee examiner on the implementation of this ruling. I would like the parties to get the supplemental distributions that would be occasioned by this as early as is practical with due regard to the highest priority, which is the underlying needs of the Chapter 11 case.

Folks, it's been a very long day and evening. It's now after twenty to 7. We're adjourned. Have a good evening. Thank you.

(Proceedings concluded at 6:42 PM)

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÷ 48 1 2 INDEX 3 4 RULINGS 5 DESCRIPTION PAGE LINE The Maue firm's retention will be extended 15 1 6 7 for a time sufficient for it to assist in the second round of fee applications. 8 9 10 Motion of the fee examiner for 15 6 clarification of appointed order, granted, 11 12 and upon clarification the motion to expand the nature of the fee examiner's 13 role will be denied. 14 15 9 16 Request of the fee examiner for a 15 continuance to give him further time for 17 review, granted. 18 19 10 15 Request of the fee examiner for a 20 21 continuance of the Evercore application, granted. 22 23 24 25

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RULINGS (cont'd.) PAGE LINE DESCRIPTION Amounts still on a pre-petition retainer should be applied to the fee awards for this period as compared and contrasted to being held on account of future payments risk. Objection of the fee examiner to charges for summer associates, sustained. Objection of the fee examiner to charges for law clerks, overruled. Objection of the fee examiner to charges for long billing days, overruled. Objection of the fee examiner to vague time entries and his request that fifteen percent of those time charges be disallowed, sustained. Objection of the fee examiner to charges for first-class travel, sustained.

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2	RULINGS (cont'd.)		
3	DESCRIPTION	PAGE	LINE
4	To the extent that Weil or any other firm	23	11
5	was paying no more than the going rate for		
6	business traveler-type hotels in New York		
7	City, such reimbursement for hotel charges,		
8	even if the rate for a room exceeds a		
9	defined price point, is approved.		
10			
11	Objections of the fee examiner to	24	16
12	reimbursement to Weil for charges for		
13	local transportation in connection with		
14	work performed after the closing with		
15	New GM, sustained.		
16			
17	Objection of the fee examiner regarding	25	1
18	charges for personal expenses, to the		
19	extent not moot, sustained.		
20			
21	To the extent issues relating to double-	25	9
22	billing, nonworking travel time, and		
23	mistakenly charged expenses are not moot,		
24	the fee examiner's objections are sustained.		
25			

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: 51 1 RULINGS (cont'd.) 2 PAGE LINE 3 DESCRIPTION Objection of the fee examiner to 44,000 26 2 4 dollars for miscellaneous expenses, to the 5 extent it remains after the debtors 6 explained exactly what they spent the 7 money for, overruled. 8 9 Objection of the fee examiner to 9,000 10 26 15 dollars in miscellaneous charges, 11 12 overruled. 13 Objection of the fee examiner to charges 14 30 9 15 for clerical and administrative tasks, sustained, resulting in a 16,000 dollar 16 17 reduction. 18 19 Objection of the fee examiner to charges 14 30 20 for vague and repetitive entries are sustained in part, to the extent of 21 22 requiring a 30,000 dollar reduction for . 23 vague and repetitive entries, and 50,000 24 for block billing. 25

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52 1 RULINGS (cont'd.) 2 PAGE LINE DESCRIPTION 3 Objection of the fee examiner to billing 31 14 4 rates and arbitrary five percent reduction 5 requests for Kramer Levin, overruled. 6 7 Objection of the fee examiner to Kramer 36 14 8 9 Levin's use of many detailed categories to describe the work Kramer Levin 10 performed, overruled. 11 12 First interim application of FTI Consulting, 13 37 19 14 Inc. for compensation and reimbursement of expenses for the period from 6/3/0915 through 9/30/09, approved. 16 17 18 Second interim application of FTI 37 19 19 Consulting, Inc. for compensation and 20 for reimbursement of expenses for the 21 period from 10/1/09 through 1/31/10, 22 approved. 23 24 25 VERITEXT REPORTING COMPANY

ł 53 RULINGS (cont'd.) 1 DESCRIPTION 2 PAGE LINE Objections of the fee examiner to the 40 3 3 fee request of Butzel Long, seeking a 4 5 disallowance of about 46,000 dollars in fees, overruled. 6 7 The fee examiner's proposed disallowance 41 23 8 to the application of Claro Associates to 9 10 be reduced from 35,000 to 18,000 dollars. 11 Request of the U.S. Trustee for a ten 10 12 43 13 percent deferral of payment or a holdback of fees, granted, with option to 14 reduce holdback as detailed on the record. 15 16 17 Request of the fee examiner to approve 20 44 scrutiny of contracts with electronic 18 research services like Westlaw and Lexis, 19 20 overruled in part and sustained in part. 21 To the extent the fee examiner did not 22 object or consensually resolved its objections, fees are approved and the 23 24 resolutions of those objections are 25 ratified and approved.

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2	RULINGS (cont'd.)		
3	DESCRIPTION	PAGE	LINE
4	Ruling on the fee examiner's statement	42	15
5	concerning the fee application of AP		
6	Services, reserved.		
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2	CERTIFICATION
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4	I, Clara Rubin, certify that the foregoing transcript is a true
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6	Clara Rubin Reason: 1 am the author of this document
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