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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026-reg

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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

February 3, 2011
9:53 AM

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

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Debtors' 111th Omnibus Objection to Claims and Motion
Requesting Enforcement of the Bar Date Orders (Late-Filed
Claims)

Debtors' 112th Omnibus Objection to Claims (Claims with
Insufficient Documentation)

Debtors' 113th Omnibus Objection to Claims (Claims Relating to
Former Employees Represented by United Auto Workers)

Debtors' 114th Omnibus Objection to Claims (Welfare Benefits
Claims of Retired and Former Salaried and Executive Employees)

Debtors' 115th Omnibus Objection to Claims (Welfare Benefits
Claims of Retired and Former Salaried and Executive Employees)

Debtors' 116th Omnibus Objection to Claims (Welfare Benefits
Claims of Retired and Former Salaried and Executive Employees)

Debtors' 117th Omnibus Objection to Claims (Welfare Benefits
Claims of Retired and Former Salaried and Executive Employees)

Debtors' 118th Omnibus Objection to Claims (Amended and
Superseded Claims and Duplicate Claims)

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Debtors' 119th Omnibus Objection to Claims (Duplicate Debt Claims)

Debtors' 120th Omnibus Objection to Claims (Multi-Debtor Claims)

Debtors' 121st Omnibus Objection to Claims (Duplicate Debt Claims)

Debtors' 122nd Omnibus Objection to Claims (Duplicate Debt Claims)

Debtors' 123rd Omnibus Objection to Claims (Duplicate Debt Claims)

Debtors' 124th Omnibus Objection to Claims (Duplicate Debt Claims)

Debtors' 125th Omnibus Objection to Claims (Duplicate Debt Claims)

Debtors' 126th Omnibus Objection to Claims (Duplicate Debt Claims)

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Debtors' 127th Omnibus Objection to Claims (Duplicate Debt Claims)

Debtors' 128th Omnibus Objection to Claims (Duplicate Debt Claims)

Debtors' 129th Omnibus Objection to Claims (Duplicate Debt Claims)

Debtors' 130th Omnibus Objection to Claims (Duplicate Debt Claims)

Debtors' 131st Omnibus Objection to Claims (Duplicate Debt Claims)

Debtors' 132nd Omnibus Objection to Claims (Eurobond Deutsche Debt Claims)

Debtors' 133rd Omnibus Objection to Claims (Eurobond Deutsche Debt Claims)

Debtors' 134th Omnibus Objection to Claims (Eurobond Deutsche Debt Claims)

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Debtors' 135th Omnibus Objection to Claims (Eurobond Deutsche Debt Claims)

Debtors' 136th Omnibus Objection to Claims (Eurobond Deutsche Debt Claims)

Motion of Judd Wiesjahn and Annalisa Sand to File Late Proof of Claim, or in the Alternative, to Amend Informal Proof of Claim

Motion of Green Hunt Wedlake, Inc., Trustee of General Motors Nova Scotia Finance Company, Pursuant to Bankruptcy Rule 3018(a) for the Temporary Allowance of Its Claim Solely for Purposes of Voting on the Debtors' Proposed Plan of Reorganization

Amended Motion of Certain Noteholders Pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of the Nova Scotia Guaranty Claims for the Purpose of Voting to Accept or Reject the Plan

Debtors' (I) Objection to Proof of Claim No. 19633 filed by LaRonda Hunter and Robin Gonzales and, in the Alternative, (II) Motion to Estimate Proof of Claim No. 19633

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Debtors' Objection to Proof of Claim No. 45630 filed by William O'Connor and Melody O'Connor; Proof of Claim No. 45628 filed by John Pakai; and Proof of Claim No. 45629 filed by David Sidner
Debtors' Objection to Proof of Claim No. 65304 filed by Amiel D. Foley

Debtors' Objection to Proofs of Claim Nos. 16440 and 16441
filed by Michael A. Schwartz

Transcribed By: Dena Page

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ALSO PRESENT:

DARLENE SCHNEIDER, Party Pro Se

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P R O C E E D I N G S

THE COURT: All right, GM Motors Liquidation Corporation. We have a number of things on today's calendar, most of which, I sense, won't require judicial time, but several of which will. Since I suspect that the bulk of the people are here by reason of the claims estimation issues, my thought is to deal with that ahead of the tort relief from -- excuse me, late proof of claim matter. But I'll take recommendations from you.

(Pause)

THE COURT: I'm sorry. I lost my train of thought. I had a request that the late proof of claim issue be dealt with earlier rather than later, but I don't know how many matters I have running on plan issues. Mr. Smolinsky, can I get your recommendation?

I will tell you that I have a tentative on the late proof of claim, which is to not decide it today and set up an evidentiary hearing on whether or not he got actual notice, and to rule that an informal proof of claim is insufficient. But I will give people a chance to be heard on that. And I'll take your recommendation as to how we're going to proceed.

MR. SMOLINSKY: Good morning, Your Honor. Joe Smolinsky from Weil, Gotshal & Manges for the debtors. The 3018 matters which are comprised of two separate main motions can be dispensed with fairly quickly. There are a lot of

1 lawyers in the courtroom, and I think we agree with your
2 recommendation to deal with those matters which Mr. Karotkin
3 will address. And then we can move to the remainder of the
4 calendar.

5 THE COURT: Okay.

6 MR. SMOLINSKY: Shouldn't take very long.

7 THE COURT: All right.

8 MR. STANLEY: Your Honor, this is Mr. Stanley on that
9 late claim issue.

10 THE COURT: Yes.

11 MR. STANLEY: I apologize for interrupting. I do have
12 a court order mediation with a judge waiting for me in about an
13 hour and fifteen minutes in downtown Los Angeles. And I heard
14 the Court's tentative, and I understand the Court's tentative.
15 I don't think the defendants filed any affidavits or any
16 evidence in opposition to my motion. That would be my
17 position.

18 THE COURT: I understand that, Mr. Stanley, but you
19 have to understand that I have a case with thousands of
20 creditors here and a pretty full courtroom and I'm going to get
21 through my calendar as quickly as I can.

22 MR. STANLEY: All right. I'm happy to be patient. I
23 just wanted to let the Court know that --

24 THE COURT: I understood that before you spoke, Mr.
25 Stanley.

1 MR. STANLEY: I apologize. Thank you, Your Honor.

2 THE COURT: Mr. Karotkin?

3 MR. KAROTKIN: Thank you, Your Honor. Stephen
4 Karotkin, Weil, Gotshal & Manges for the debtors. I think we
5 have a resolution on the 3018 issues, if I could report that to
6 the Court.

7 THE COURT: Go ahead.

8 MR. KAROTKIN: With respect to those other than Green
9 Hunt Wedlake, which is the trustee for the Nova Scotia entity,
10 I believe we have an agreement as follows. With respect to
11 those entities represented by the Greenberg Traurig firm, they
12 would be entitled to vote their claims as part of the guarantee
13 claim. That would be limited, Your Honor, to fifteen entities
14 voting. So fifteen in number. The same with respect to the
15 Brown Rudnick clients, limited to seven in number voting. And
16 with respect to Goldman Sachs and Morgan Stanley, I had a brief
17 conversation with counsel, and they would be treated the same
18 way. He advised me that he believes they only have one vote
19 each, but he will confirm that with me later in the day. We
20 have no objection if it's slightly more than one, as well, and
21 I'm sure that we can work that out. With the further
22 understanding being, Your Honor, that the cumulative amount
23 voted with respect to all of those entities cannot exceed 1.072
24 billion, which I believe is the amount of the guarantee claim
25 filed.

1 THE COURT: Um-hum.

2 MR. KAROTKIN: And of course, all rights are reserved
3 with respect to the substantive objection to the claim filed by
4 the creditors' committee.

5 And I think with that, unless there's any disagreement
6 from counsel in the room representing those entities, I think
7 that resolves those pleadings.

8 THE COURT: Before I'm comfortable that everything has
9 been resolved, I want to hear the totality of what's open and
10 what's not open.

11 MR. KAROTKIN: Okay.

12 THE COURT: What about Green Hunt Wedlake?

13 MR. KAROTKIN: With respect to Green Hunt Wedlake,
14 Your Honor, we have the reached the following agreement, which
15 I'd like to read into the record.

16 "The Nova Scotia trustee shall be permitted to
17 provisionally vote, as one vote, its Class III general
18 unsecured claim in the amount of \$1,607,647,592.49, provided,
19 however, that all rights of the debtors and the creditors'
20 committee are expressly reserved and retained at or prior to
21 the hearing on confirmation of the plan to renew the opposition
22 to the 3018 motion on not less than five calendar days' notice
23 and to argue that the vote of the Nova Scotia trustee should
24 not be counted under Bankruptcy Rule 3018 in the event, one,
25 the Nova Scotia trustee does not vote to accept the plan and,

1 two, Class III, which is the general unsecured creditors
2 claim -- class votes to reject the plan."

3 THE COURT: Mr. Karotkin, if I were to approve those
4 two resolutions, what remaining issues would there still be?

5 MR. KAROTKIN: I would just like to make -- there's
6 one more part of that if --

7 THE COURT: Oh, go ahead.

8 MR. KAROTKIN: "In addition, upon delivery by the Nova
9 Scotia trustee of its objections to confirmation of the plan in
10 writing, the debtors shall meet and confer with the Nova Scotia
11 trustee in an effort to resolve those objections."

12 Now, answer --

13 THE COURT: Say that last paragraph slower, please,
14 Mr. Karotkin.

15 MR. KAROTKIN: Yes.

16 "Upon delivery by the Nova Scotia trustee of its
17 objections to confirmation of the plan in writing, the debtors
18 will meet and confer with the Nova Scotia trustee in an effort
19 to resolve those objections."

20 THE COURT: That last duty being simply to meet and
21 confer --

22 MR. KAROTKIN: That's --

23 THE COURT: -- confer impliedly in good faith.

24 MR. KAROTKIN: Yes, sir.

25 THE COURT: Uh-hum. Now, if I were to approve those

1 or consider that a satisfactory resolution, other than
2 reservations of rights on behalf of the creditors' committee,
3 which I well understood from its submission, what open issues
4 would there be vis-a-vis matters of voting?

5 MR. KAROTKIN: It would -- first of all, it's a
6 reservation of rights on behalf of both the debtors and the
7 creditors' committee.

8 THE COURT: Okay.

9 MR. KAROTKIN: As to voting, I don't think there are
10 any other issues.

11 THE COURT: All right. Does anybody want to be heard
12 on this before I focus on it further?

13 Mr. Zirinsky, come to a microphone, please.

14 MR. ZIRINSKY: Happy to, sir.

15 Good morning, Your Honor. Bruce Zirinsky, Greenberg
16 Traurig, on behalf of Appaloosa, Aurelius, Fortress and -- I
17 always forget the last one -- Elliott. We represent those four
18 management firms that, in turn, represent the fifteen entities
19 that Mr. Karotkin referred to.

20 Mr. Karotkin, from our perspective, has accurately
21 described the resolution as to the voting of those claims. I
22 just want to add that all other rights are being reserved, but
23 it does, in response to Your Honor's question, resolve, from
24 our perspective, our voting issues with respect to plan.

25 THE COURT: Okay.

1 MR. ZIRINSKY: Thank you.

2 THE COURT: Anybody else?

3 Come up, please, Mr. -- I see two people. Mr. Dublin,
4 you first. You've got Green Hunt Wedlake?

5 MR. DUBLIN: Yes, Your Honor.

6 THE COURT: Okay.

7 MR. DUBLIN: Philip Dublin, Akin Gump Strauss Hauer &
8 Feld, on behalf of Green Hunt Wedlake. Same issue, Your Honor,
9 we -- the representations by Mr. Karotkin resolve our issues
10 with respect to, at least in the interim, the 3018 motion and,
11 of course, without having to say so, all rights reserved as far
12 as the claim objection goes and any plan objections.

13 THE COURT: Okay. Anyone else?

14 MR. PIRON: Your Honor, Caleb Piron from Brown
15 Rudnick. We represent certain holders not represented by the
16 Greenberg group.

17 THE COURT: Who?

18 MR. PIRON: I do have a list here, Your Honor. We
19 filed a couple of joinder pleadings, one of which was to the --
20 was to Greenberg's response to the committee's objection, the
21 second of which was to Greenberg's 3018 motion. And I
22 apologize if I told Mr. Karotkin --

23 THE COURT: Who? Answer my question, please.

24 MR. PIRON: Sure, Your Honor. It's Anchorage Capital
25 Master Off Shore Limited, Canyon-GRF Master Fun, L.P., Canyon

1 Value Realization Fund, L.P., CSS, LLC, Knighthead Master Fun,
2 L.P., LMA SPC for the benefit of MAP 84, the Lyxor/Canyon
3 Realization Fund, Onex Debt Opportunity Fund, Redwood Master
4 Fund, and the Canyon Realization Fund.

5 Your Honor, I think I told Mr. Karotkin approximately
6 seven. That number is actually ten, so we'd request that we
7 have the consent to vote those ten claims.

8 THE COURT: All right. Do you have any substantive
9 objection other than the question you want me to put to Mr.
10 Karotkin?

11 MR. PIRON: I don't, Your Honor.

12 THE COURT: All right, Mr. Karotkin, does that cause
13 you to change your request to me in any way?

14 MR. KAROTKIN: No, sir.

15 THE COURT: All right.

16 MR. PIRON: Thank you, Your Honor.

17 THE COURT: Okay. Has everybody had a chance to speak
18 their piece?

19 All right, I have no problem with the agreements that
20 have been made so long as they're for voting only. And I will
21 simply say, since I think it counts a little more when I say it
22 than when the parties say it, that this with a full reservation
23 of rights on the underlying issues raised by the creditors'
24 committee and includes, without limitation, reservations of
25 rights by the creditors' committee by the debtors on behalf of

1 the estate and with respect Green Hunt Wedlake and the various
2 funds who've been mentioned as well.

3 So you can and should paper that, Mr. Karotkin or give
4 me whatever you think is necessary to implement that, and then
5 I'm going to ask everybody who is here only on that matter to
6 leave as soon as you want to.

7 MR. KAROTKIN: Thank you, sir. I will circulate a
8 proposed order among the parties.

9 THE COURT: Okay.

10 MR. KAROTKIN: May I be excused, Your Honor?

11 THE COURT: Yes, you may.

12 MR. KAROTKIN: Thank you.

13 THE COURT: Now, Mr. Smolinsky, I'll deal with the
14 late proof of claim on Wiesjahn if we can next, so he can get
15 onto his other obligation.

16 Let me flesh out my tentative on that. It seems to
17 me, subject to your rights to be heard, based upon my knowledge
18 of the law and my review of the underlying pleadings, that the
19 debtors are entitled to presumptions of mailing. But it also
20 appears to me that it's not an irrebuttable presumption and
21 that Mr. Stanley has stated in declarations that,
22 notwithstanding what I understand the debtors to have told me,
23 that there were three separate mailings, that he still didn't
24 get the notice.

25 My tentative is that because the presumption of

1 receipt is not irrebuttable, he's entitled to his day in court
2 to show me, by old fashioned testimony and subject to duties to
3 be cross-examined, that actual notice was not given. And I
4 think that where you have a duty to provide actual notice, and
5 you know who's supposed to get it, in contrast by way of
6 example to the Apartheid claimants whose identities, for the
7 most part, aren't known, he's entitled to his opportunity to
8 convince that the presumption should be overridden. I find the
9 remaining points that it was an informal proof of claim, pretty
10 unpersuasive, although I guess I will hear argument on that.
11 Although, I think that, frankly, I think it all comes down to
12 his credibility, and he's going to have to come to New York and
13 get in that witness box and testify, and then I'll decide
14 whether or not he's telling me the truth or not. That's my
15 tentative. I'll hear your position. I'll hear Mr. Stanley
16 next. Obviously, I've read the papers. You don't have to go
17 through late claims 101.

18 MR. SMOLINSKY: Your Honor, Joe Smolinsky. Do you
19 want Mr. Stanley to go first given the fact that it's his
20 motion or --

21 THE COURT: All right. Fair enough. Mr. Stanley?
22 You still with me, Mr. Stanley?

23 MR. STANLEY: Can you hear me okay?

24 THE COURT: Just now, I can. If you said anything
25 before "can you hear me okay", I didn't hear that.

1 MR. STANLEY: Yes, Your Honor. I had the phone on
2 mute while you were handling the other matter. I forgot to
3 turn it back on.

4 Yes, thank you for taking me. I appreciate you
5 considering my other obligation. I have heard the Court's
6 tentative. I am happy to come to New York if need be. I will
7 state to the Court that, as Your Honor can see from the papers,
8 the envelopes were misaddressed, and I did not receive them.
9 But I am happy to come to court and testify.

10 The defendant's filed not one declaration in
11 opposition to my motion, and there isn't any competent evidence
12 to the contrary. But again, I'm happy to come to New York. I
13 am having a heart procedure on February 16th. It's going to
14 lay me up for thirty days, and so I have a doctor's note from
15 Cedars-Sinai -- which is the big hospital here in Los Angeles;
16 I don't know if Your Honor's familiar with it -- from the
17 director there of the heart institute to that effect. And
18 that's my only -- I have a civil trial obligations, but that's
19 my real obligation. Otherwise, I'm happy to come to New York
20 if Your Honor wants me to. And I'm happy to testify.

21 THE COURT: All right. Now, Mr. Stanley, whether or
22 not it was misaddressed is a disputed issue of fact. As I
23 understand it, the envelopes were addressed to Martin Stanley,
24 Law Office of, and one of the issues that we'll be dealing with
25 at an evidentiary hearing will be to explore the significance

1 of that.

2 MR. STANLEY: Actually, it was addressed, Your Honor,
3 to Stanley Martin, the Law Office of Stanley Martin, and it
4 didn't say -- and it was not addressed, actually, to the Law
5 Office of Stanley Martin. It was addressed to Annalisa Sand,
6 on the first line, for example, Judd Wiesjahn on the next line
7 -- on the first line, with the next line being Stanley Martin
8 Law Office, and I am not Stanley Martin and never have been.

9 THE COURT: Oh.

10 MR. STANLEY: And there's never been a representation
11 to that effect. And the defendants were always aware because
12 in our original papers, we clearly stated that I am Martin
13 Louis Stanley. I was in the court filings here in the county
14 court in California at all times.

15 THE COURT: Forgive me, Mr. Stanley, I didn't realize
16 until you said it this moment that the first name and last name
17 were flip-flopped.

18 MR. STANLEY: Correct. And there's no evidence to the
19 other -- to any other effect. They had that that way the
20 entire time, and we did receive a paper some time about a month
21 or two ago which caused me my concern because, for example, it
22 was randomly delivered and it did have the wrong name on it.
23 I'm pretty sure; I don't have it in hand because I'm not at the
24 office because it's very early in the morning here. Lucky I
25 don't live in Hawaii.

1 But the naming was flip-flopped. And again, it did
2 not say in care of the Law Office of Martin Stanley or care of
3 anybody. It just Annalisa Sand and Judd Wiesjahn on the first
4 lines.

5 THE COURT: All right. Okay, thank you. I understand
6 the issue much better now than I did at the outset.

7 MR. STANLEY: I apologize, Your Honor if I didn't make
8 that clear in my declaration. I'm happy to come to New York to
9 make it clear and if I can find the paper that I did receive
10 recently that triggered my thought process on this, I'm happy to
11 bring it. I'm not a bankruptcy practitioner. I have been
12 nominated twice in the last four years for e-trialer of the
13 year (ph.). I have been a state bar probation monitor, and I
14 have taught, probably, hundreds of MCLE seminars on ethics of
15 malpractice, but at least dozens. So I'm happy to come.

16 THE COURT: Okay.

17 MR. STANLEY: I've never handled a bankruptcy case in
18 my life, and I'm not as familiar as you all are with the
19 procedures. I can tell you this. None of us got this
20 document. We've never missed a filing deadline in my office,
21 ever.

22 THE COURT: I understand. The issue, it's not going
23 to be so much one of bankruptcy law; it's going to be whether,
24 if Mr. Stanley tells me what he just told me and tells it to me
25 from the witness stand, and if I believe him, then the

1 rebuttable presumption will have been rebutted.

2 Mr. Smolinsky, I'll hear from you.

3 MR. SMOLINSKY: Thank you, Your Honor. Joe Smolinsky
4 for the debtors. I understand your tentative ruling, Your
5 Honor, but I do feel that I need to say a few words, because we
6 are going to be dealing with hundreds of similar instances, and
7 it's important that we try to make sure that his rights are
8 preserved while not overburdening the Court.

9 From our perspective, Your Honor, this isn't even a
10 closed case. The premise of the argument is that claimant
11 never received notice of the bar date. First of all, he argues
12 that there was no service on the plaintiffs, who were the
13 parents of the decedent, and second, that the name of the firm
14 was wrong.

15 As Your Honor noted, there were three notices of the
16 bar date sent. They did -- they were served on the Law Offices
17 of Stanley Martin instead of the Law Offices of Martin Stanley.
18 However, none of those three notices came back. They were not
19 returned as undeliverable. Mr. Stanley --

20 THE COURT: Mr. Stanley, every time you shuffle a
21 paper on your desk, it sounds like an explosion in my
22 courtroom.

23 MR. STANLEY: I apologize, Your Honor. I was blowing
24 my nose because I have still a cold from returning from the
25 trip I was on just recently. I apologize.

1 THE COURT: All right.

2 MR. SMOLINSKY: Mr. Stanley cites to a Fifth Circuit
3 case, the Adams case, for the premise that a notice has to be
4 sent to the proper name and address. But in that case, the
5 address was wrong, the notice came back undeliverable, and the
6 claimant had no notice of the bankruptcy.

7 Interestingly, when we -- the first thing we did when
8 we received the motion was to make sure that the address was
9 correct, so we did put into Google the Law Offices of Martin
10 Stanley and got back from Google Stanley Martin, Attorneys at
11 Law. So even the World Wide Web is confused as to whether it's
12 Stanley Martin or Martin Stanley. But the fact of the matter
13 is that the notice did not come back undeliverable.

14 It's also interesting that, in the declaration, he
15 says he says that he never received notice, but the motion
16 cites four reasons for the failure of service, including "GM's
17 failure to use proper business name of Wiesjahn/Sand counsel if
18 it even mailed notice". So this was the first pleading that
19 Mr. Stanley filed, and he had already known that the business
20 name was incorrect.

21 Second, I just want to speak to the assertion that we
22 should have served the plaintiffs directly, which may not be
23 part of your tentative ruling. You may have already ruled on
24 that. But I just wanted to note a few things. First of all,
25 well, the complaint that was filed did not provide the address

1 of the plaintiff. It simply said that they resided in
2 Monterey, California. The complaint was filed less than a
3 month before the bankruptcy. There was no discovery in the
4 case yet.

5 We called our co-counsel that was assigned to the
6 matter, and the only thing that is in the file so far is an
7 accident report that lists the decedent's address as a P.O. box
8 in Big Sur where the accident occurred, which he thought might
9 be the morgue or the state police. So we had -- we never had
10 notice of an address for the plaintiffs, individually, and we
11 did make every effort when we served over two and a half
12 million parties to serve both the plaintiffs and the
13 plaintiffs' counsel, if we had the address.

14 Mr. Stanley had notice of the bankruptcy through the
15 suggestion of bankruptcy that was filed in the state court
16 litigation, and he never came to us and asked for different or
17 additional notice.

18 The case law supports the fact that serving on counsel
19 is sufficient. I note the in re: Caritas case 435 B.R. 111.
20 That's the Eastern District of New York, 2010. The in re:
21 Linzer case 264 B.R. 243. That's the Bankruptcy Court, Eastern
22 District of New York, holding that a creditor's nonbankruptcy
23 is deemed to an authorized agent for receiving notice. And the
24 Netherlands Antilles re: Treister case. That's 38 B.R. 228.
25 That's a Southern District of New York case that finds that

1 service on co-counsel, as opposed to lead to lead counsel, is
2 sufficient for all purposes.

3 Just a moment on the equities here. Mr. Stanley
4 argues that the claim is negligible and therefore it's no harm,
5 no foul to the estate. But again, I remind this Court that the
6 aggregate of all similar case -- claims that have been asserted
7 is daunting.

8 While I loathe to get into the facts of the case, I
9 think it is relevant as to how much time and money the estate
10 is going to spend on this. If Your Honor took a look at the
11 complaint that was filed to the motion, this relates to a
12 product liability claim relating to a car accident. As the
13 clai -- as the complaint alleges, the decedent was a passenger
14 in a car driven by a drunk driver, hit by another drunk driver,
15 and the decedent passed away at the scene. And then there's a
16 line about the spare tire being defective. There's no
17 allegations that the car swerved. There's no allegations that
18 the spare tire contributed in any way to the incident. And I
19 just note that for the record, because this evidentiary hearing
20 will, at least, cost some money to do.

21 The last thing that I just want to bring up to Your
22 Honor' attention, I think Your Honor noted it, but I wanted to
23 cite to one case, the Ms. Interpret v. Rawe Druck-und-
24 Veredlungs case, 222 B.R. 409, that's a bankruptcy, Southern
25 District, 1998 case that stands for the proposition that a

1 party must do more than merely assert that it had not received
2 the mailing. Its testimony or affidavit of nonreceipt is
3 insufficient standing alone to rebut the presumption that the
4 addressee received a proper mailed item when the sender
5 presents proof that it has properly addressed, stamped, and
6 deposited the item in the mail.

7 When we attached to our papers an affidavit of service
8 of the bar date, which lists the three notices that went out.
9 We did not put it in declaration form, pursuant to the case
10 management order. We understand if Your Honor wants to take
11 testimony from Garden City Group on whether, in fact, it did
12 place it in the mail. But to the extent that we do have an
13 evidentiary hearing, I would only ask Your Honor that we -- in
14 view of all the other factors that we limit the evidentiary
15 hearing solely to the issue as to whether or not the mailing
16 was sent and whether or not it came back undelivered.

17 THE COURT: All right. Mr. Stanley, I'll take brief
18 reply.

19 MR. STANLEY: Can Your Honor hear me okay?

20 THE COURT: Yeah.

21 MR. STANLEY: Okay. Two points, Your Honor. One, I
22 think mine is the only case where they reversed the names, so
23 it's not going to cause a floodgate of litigation with regards
24 to this issue. And secondly, we indicated in our brief that we
25 put something in there in our first papers, actually, if Your

1 Honor would look at their web site, which we did, the Motors
2 Liquidation web site, it's clearly indicated that my name was
3 backwards and incorrect. So of course, that's how we figured
4 it out. We didn't just guess at that.

5 THE COURT: All right.

6 MR. STANLEY: It's right up there on their web site.

7 THE COURT: All right. Anything else?

8 MR. STANLEY: Nothing else, Your Honor.

9 THE COURT: All right. Gentlemen, I am going to
10 adhere to my tentative, and now I'm merely going to flesh it
11 out since this is just a weigh station to the evidentiary
12 hearing that I think is necessary.

13 As I indicated in my preliminary remarks, upon
14 mailing, there is a, not just an inference but a presumption of
15 receipt. And while I think what's sauce for the goose is sauce
16 for the gander, and therefore I should hear a Garden City Group
17 testimony, it wouldn't surprise me if that evidence is going to
18 show that they had routinized procedures under which they mail
19 things in accordance with their proofs of service. And that
20 will, indeed, be sufficient to set up the presumption.

21 However, I am not going to limit the evidentiary
22 hearing to whatever Garden City says, just as I'm not going to
23 ask the United States Postal Service have its employees deposed
24 or showing up in my courtroom because I mainly want to hear Mr.
25 Stanley and look him in the eye and make my own factual

1 determination as to whether or not he got actual notice.

2 Because he was a known agent of his clients, there was
3 no need for the debtors to serve the individual clients.

4 However, I don't think you don't need to be a brain surgeon to
5 see whether, if there was error here, how it came up. You've
6 got a guy whose first name and his last name both happen to be
7 in common usage as both. I wouldn't be surprised if Garden
8 City tells me that it kept people's name alphabetically by last
9 name, and then that that accounts for why it may have been
10 addressed that way. And then we'll figure out what happened.

11 And it's going to rise on the credibility issue
12 because, frankly, I don't see floodgates as being an issue here
13 where you have the perfect storm of a guy's name being flip-
14 flopped. And if the guys wants to come in my courtroom and
15 testify as to nonreceipt, I'm going to let him. And the
16 remaining issues don't, either, require an evidentiary hearing
17 or any further ruling on my part.

18 This is all about actual notice. I don't consider it
19 an implied or informal proof of claim showing to have been
20 appropriately made here. That issue is out of the case at this
21 point.

22 So you're to deal with teeing it up for an evidentiary
23 hearing if the whole issue can't be resolved in some other way.
24 And of course, the debtors will give Mr. Stanley the same
25 courtesies they always give everyone else in terms of

1 accommodating his medical condition for the time of any
2 hearing.

3 And if I do permit the claim to be late-filed, of
4 course that's allowing a claim. Presumably, then it will go
5 into the same ADR mechanism, which, if it happens, will duly
6 take into account the fact that the decedent's injuries, at
7 least seemingly, may have resulted, in great part, from the
8 effects of the two other causes, two drunken drivers. That's
9 my ruling, folks.

10 MR. STANLEY: Can I just have a few seconds on that
11 last issue, Your Honor?

12 THE COURT: No, because other than giving you a
13 reservation of rights, I'm not ruling on it in any way.

14 MR. STANLEY: Fair enough.

15 THE COURT: Okay.

16 MR. STANLEY: I appreciate it. Thank you. And when
17 is it that the Court would like to have the hearing, or do we
18 set that up --

19 THE COURT: You talk to Mr. -- you talk to Mr.
20 Smolinsky or one of his designees and tee this up for further
21 proceedings.

22 MR. STANLEY: All right, I appreciate your help and
23 counsel's help, Your Honor, in --

24 THE COURT: You don't need to thank me. That's why
25 the government pays me.

1 MR. STANLEY: Of course. Thank you for letting me
2 appear on CourtCall at least. (Indiscernible) fly out there
3 for a hearing.

4 THE COURT: All right, very well.

5 MR. STANLEY: Okay, take care.

6 THE COURT: Thank you.

7 MR. STANLEY: Bye.

8 THE COURT: Next matter, Mr. Smolinsky; your next
9 series of matters.

10 MR. SMOLINSKY: Thank you, Your Honor. The last
11 contested matter, which isn't really contested, is the
12 objection to the claim of Amiel D. Foley. That was a claim
13 filed in the amount of 999 trillion dollars or, in the
14 alternative, to make him CEO of the company.

15 I don't know if Mr. Foley is in the courtroom or on
16 the phone.

17 THE COURT: Want to pause to find out?

18 MR. SMOLINSKY: Yes. Is Mr. Foley present?

19 THE COURT: All right. Well, he doesn't appear to be
20 present in the courtroom. Is Mr. Foley on the phone?

21 The record will reflect no response.

22 MR. SMOLINSKY: Thank you, Your Honor. We tried to
23 ascertain the background of this claim. It may relate to a
24 letter he sent to General Motors Corporation relating to an
25 idea for a new engine. We noted in our papers that in New GM's

1 effort to take any technology that existed, they took an
2 assignment of that letter to the extent that it was an
3 executory contract. But we have no further information about
4 the claim.

5 Obviously, given the size of the claim and the lack of
6 foundation, we would ask this Court to expunge the claim at
7 this time.

8 THE COURT: Objection sustained. Have one of your
9 staff paper the ruling.

10 MR. SMOLINSKY: Yes, Your Honor.

11 Speaking of papering ruling, just as a housekeeping
12 matter, we thank you for your timely decision on the Apartheid
13 matter. It was unclear whether or not you intended us to
14 submit an order or whether your bench decision served that
15 purpose.

16 THE COURT: No, I realized that after I did it, Mr.
17 Smolinsky, but I'm very careful that when I anticipate that a
18 ruling be not just an explanation of my views, but also an
19 order, I say it very, very explicitly. And I'm also mindful,
20 especially since I wrote this section of Collier on it, of the
21 separate judgment rule.

22 So yes, it must be followed by an order and, because
23 of the nature of this, it can be a combined order and judgment,
24 but it must say the baby words, judgment -- baby-talk words,
25 judgment in addition to merely saying order.

1 And while I'm confident that you have a cooperative
2 working relationship with the folks on the other side, since I
3 assume that they would want to, at least, consider their
4 opportunities for appeal, and you would have to put in full
5 reservations of rights, my recommendation to you is that the
6 order and judgment be settled upon them, but that you have a
7 phone call with them to find out in advance whether they --
8 what they need in the way of an opportunity to submit a counter
9 order or judgment.

10 And for the avoidance of doubt, I'm going to say now
11 that the time to appeal from, either, the order aspect or the
12 judgment aspect, or both, is going to run from the time that's
13 entered and not from the time of the written decision that I
14 issued. I forgot when I issued it.

15 MR. SMOLINSKY: Last week.

16 THE COURT: This week, earlier this week, last week,
17 whenever it was. I think it was Friday afternoon or something
18 like that.

19 MR. SMOLINSKY: That sounds about right.

20 THE COURT: Okay. So settle an order. Maybe the way
21 to do it, Mr. Smolinsky, is to simplify what I said. Give them
22 two calendar weeks, fourteen days, by mail or seven days by
23 hand, fax, or e-mail. But if one of them calls you up and says
24 we'd like more time before the order is signed because we want
25 to submit a counter order, if it's reasonable -- and by

1 reasonable, I'm thinking weeks, a week, not multiple weeks --
2 give them that courtesy.

3 MR. SMOLINSKY: Your Honor, we've spoken to claimant's
4 counsel since the decision, and I don't think it'll be a
5 problem to be able to submit to Your Honor even before this
6 time frame of consented to order of --

7 THE COURT: Okay.

8 MR. SMOLINSKY: -- both parties.

9 THE COURT: Which, of course, would be without
10 prejudice to both sides' rights if either of them -- either
11 side wants something beyond my court.

12 MR. SMOLINSKY: Of course, Your Honor.

13 THE COURT: That's fine. I should have let you speak
14 before I went into that lengthy discussion. Of course you were
15 right. It did require an order and judgment, and just make it
16 happen.

17 MR. SMOLINSKY: We'll do that, Your Honor.

18 THE COURT: Oh, I would appreciate it if you or your
19 designee, when that order comes in, tells me whether it is ripe
20 for immediate entry or whether I still need to allow for time
21 for the other side to counter.

22 MR. SMOLINSKY: I will, of course, Your Honor.

23 THE COURT: Okay, thank you.

24 MR. SMOLINSKY: On the uncontested matters, the first
25 matter is an objection to several proofs of claim relating to

1 what we call the GTO class action. Your Honor, these claimants
2 apparently withdrew their claims upon receiving our motion, and
3 what we'd like to do, nevertheless, rather than withdraw the
4 motion is to submit an order that, obviously, reflects the fact
5 that the claims have been withdrawn but nevertheless
6 disallowing them.

7 There's been no response to the motion -- to the
8 substance of the motion.

9 THE COURT: Okay.

10 MR. SMOLINSKY: The next matter, similarly, is a class
11 action. This relates to parking brakes. We've objected to
12 those claims on class certification and other matters. We've
13 received no response to that motion. We ask that the claims be
14 disallowed.

15 THE COURT: They are, granted.

16 MR. SMOLINSKY: With respect to the other matters,
17 they're all omnibus claims objections, running from, I guess
18 it's 111 to 136. As usual, Your Honor, we've received a
19 variety of formal and informal responses. Your law clerk had
20 reached out to us and had indicated that there were a few
21 letters that were sent to the court that have not yet been
22 uploaded to ECF. We suspect that we also got copies of those
23 letters, but we also want to make sure that we don't expunge
24 claims to the best of our ability to the extent that there are
25 outstanding requests.

1 So what we would ask Your Honor, unless you have any
2 questions is to wait two or three days until the dust settles
3 and then submit the orders, which, as usual, will reflect the
4 schedules to those orders, which claims are being expunged
5 because we've resolved any issues or there were no response,
6 which claims have been adjourned and which claims that we're
7 withdrawing our motion with respect to.

8 THE COURT: That's fine, Mr. Smolinsky, but you and
9 your guys can help me by you being the ones who are proactive.
10 When you think the dust is sufficiently cleared, then say now,
11 we think it's ripe.

12 MR. SMOLINSKY: Yes, Your Honor.

13 THE COURT: Okay.

14 MR. SMOLINSKY: I think that resolves the calendar.

15 THE COURT: Okay, very well. Then, we're adjourned.
16 Have a good day everybody.

17 MR. SMOLINSKY: Thank you, Your Honor.

18 (Whereupon these proceedings were concluded at 10:35 AM)

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I N D E X

RULINGS

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

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

Dena Page

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