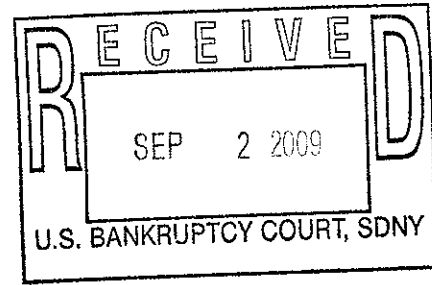


The clerk of the Court

United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, N.Y. 10004-1408



Lead Case # 09-50026

In Re:)	
)	Chapter 11
GENERAL MOTORS CORP., et. al.,)	Case # 09-0950026
)	(Gerber)
Debtors)	Jointly Administered

ADVERSARIAL COMPLAINT

Radha Ramana Murty Narumanchi ("Murty")	Plaintiff) Adversarial Complaint
	<u>Pro Se</u>) # 09-00501 (Reg)
)
vs.)
)
General Motors Corporation (GM), et al.)
	DEFENDANTS) Date: September 1, 2009¹

PRO SE PLAINTIFF'S OPPOSITION TO BOTH
WILMINGTON TRUST COMPANY'S ("WTC") 7-16-2009 MOTION TO DISMISS; AND ALSO
"GENERAL MOTORS" 7-16-2009 MOTION TO DISMISS²

PART ONE - EXECUTIVE SUMMARY

1.1 This adversarial complaint was filed on **6-16-2009** with a demand and request in bold letters that **there should be a jury trial**. That request and demand will continue.

1.2 In the lead case this *pro se* Plaintiff was positively precluded by this Court from participating in the pre-evidentiary hearing discovery process, as well as in the evidentiary hearing itself³, and

¹ This brief was due on 8-26-2009, but because the plaintiff was "under the weather" for about ten days, after filing his first response (see note # 2 below) he had to call the attorneys for the three sets of defendants and inform them that this brief would be filed by 9-3-2009, i.e. a week later. This deferral of submission by one week should not affect the defendants, as the hearing on their motions is not due until 9-30-3009.

² Plaintiff has already responded on 8-17-2009 to "Federal defendants'" Motion to Dismiss.

³ Consequently, the following Issue, among others, was raised by the *pro se* plaintiff/creditor and appellant in his appeal dated 7-7-2009 (see Case # 09-CV-7011 (NRB) assigned to U.S. District Court, SDNY.:

"Lower court's specific bias against and prohibition of *pro se* parties of interest (especially the so-called

notwithstanding such preclusion, any papers filed by plaintiff therein were/are meant to preserve his rights on appeal, and nothing else. So, a full-scale discovery is warranted and called for at this stage.

1.3 GM might have lingered in the zone of insolvency for a few days at the beginning of 2006, but then it became positively comatose and then brain dead, i.e. became completely insolvent, before the end of the first quarter of 2006, but due to various artificial devices, deceptive practices, and fraud, it took another three + years to declare that it was officially insolvent (i.e. dead) and declare bankruptcy on 6-1-2009. The so-called flow of funds from the U.S. Treasury to GM that began on 12-31-2008, in violation of the U.S. Constitution and the statutes, could not revive GM. Instead, the U.S. Treasury threw billions and billions of dollars into a bottom-less pit (you may even call it a black hole) before it compelled GM to declare bankruptcy and then steal all crown jewels.

1.3 Once the full-scale discovery is over, with regard to his allegations, Plaintiff will no doubt amend his complaint suitably to conform to facts (and hence possible evidence) discovered.

1.4 Plaintiff rejects the claims of defendants that the case against them needs to be dismissed under the rubric of “*res judicata*”, “*Issue preclusion*”, and “*Law of the case*”.

1.5 Plaintiff is fully aware of the doctrine of “equitable mootness”. The claims in any amended complaint will not involve the overturning of the 363 sale, but will demand full money damages for the loss caused to unsecured bondholders by virtue of the crooked business run by all the defendants.

1.6 If necessary, more defendants will be added pursuant to Rule 19 of the Federal Rules of Civil Procedure. Alternatively, defendants are at liberty to exercise their privilege under Rule 14 of F.R.C.P.

PART TWO – DISCUSSION

Sub-Part (A) OF PART TWO- Constitutionality of Unlimited Powers accorded (given) to or vested in a single Non-Article III Bankruptcy Judge

2.0 Plaintiff submits that he has some serious doubts about the very constitutionality of a U.S. Bankruptcy Statute, a creation of Congress, according/vesting/giving unlimited powers to a single non-Article III Bankruptcy Judge.

2.1 It is submitted that the Third Article of the Constitution of the United States says that the judicial power shall have cognizance over controversies between citizens of different states etc., but an act of Congress could restrain the inferior courts such as the Circuit Courts or the Trial Courts from exercising jurisdiction under certain circumstances.

2.2 Also, courts created by statute cannot assert a just claim to jurisdiction exclusively conferred on another or withheld from all, *Sheldon v. Sill*, 49 U.S. 441, 8 How. 441 (1850). Also, courts created by statute can have no jurisdiction but such as the statutes confer. **Id.**

unsecured bondholders - creditors) from effectively and vigorously participating in the pre-evidentiary hearing discovery (such as request for production of documents), examination of potential witnesses or participating during deposition of any potential witnesses; and cross-examination of witnesses during evidentiary hearing on 6-30-2009 and 7-1-2009; and participating in the closing arguments on 7-1-2009 and 7-2-2009, had effectively stifled, emasculated, and decimated the procedural and substantive due process rights of such parties of interest and made the evidentiary hearings virtually ineffective.”

2.3 Under U.S.C.A. Constitution Article 3, vesting judicial power in supreme court and such inferior courts as Congress may from time to time ordain and establish, **Congress having power to establish inferior courts must define their respective jurisdictions.**

2.4 Also, under Constitution Article 3, vesting judicial power in supreme court and such inferior courts as Congress may from time to time ordain and establish, **Congress may withhold from any court of its creation jurisdiction of any of enumerated** controversies.

2.5 The founding fathers and framers of the U.S. Constitution were very much aware that power corrupts, and absolute power corrupts absolutely. That is the reason why they created a Constitution with appropriate checks and balances, and made all three branches of the U.S. government co-equal. When the U.S. bankruptcy laws were created, may be about 209+ years ago, and a separate cadre of non-article III judges was created, the bankruptcies, either of individual or corporate nature, were of small value, probably not exceeding a couple of million dollars. However, since the time of creation of such non-article III cadre of judges, times have changed, and today the corporations have grown in size, in terms of revenues, assets, stockholders' equity, number of employees, number of creditors etc. that far exceed in size and complexity than the most modern western economies. The case of General Motors is a case in point⁴.

2.6 Hence, plaintiff submits respectfully that the lack of controls and the grant of unfettered power without limit to a single non-article III judge in deciding the bankruptcy cases is in violation of the spirit and letter of the U.S. constitution and should, therefore, be declared by this Court unconstitutional and *ultra vires* of the powers granted to Congress under the constitution. Consequently, upon such a declaration, this case may be remanded to the U.S. District Court. **This is a threshold issue for gaining jurisdiction to decide this adversarial complaint, and hence must be decided on an urgent basis.**

Sub-Part (B) OF PART TWO – COMMON TO BOTH SETS OF DEFENDANTS HEREIN

3.0 Defendants Wilmington Trust Company “WTC”; and General Motors Corporation (“GMC”) (now downgraded and morphed and soon to be liquidated), now Motors Liquidation Company “MLC” are corporate citizens in the State of Delaware. As such, all their corporate actions are to be governed by the substantive Delaware state corporate law. The same law also applies to the Directors (Mr. Henderson and Mr. Kresa) of MLC.

3.1 The various Trust Indentures (and in fact, they seem be more and more since this adversarial complaint was filed on 6-16-2009) were created by GMC in New York State, and hence, they are all specifically made subject to substantive law of New York State.

3.2 The federal procedural law is applicable to all defendants.

3.3 All defendants (including Federal Defendants⁵) request the application of any one of the

⁴ As of 6-1-2009, the date of bankruptcy filing, General Motors, on a consolidated basis (unaudited), has total assets of about \$82.290 billion, liabilities of about \$172.810 billions, 329, 407 shareholders of record, and about 192,526 so-called unsecured bond holders.

⁵ It is interesting to note that on 6-26-2009, i.e. four days before the evidentiary hearing in the lead case, Mr. Louis Gerstner, the former International Business Machines Corp. (IBM) Chief Executive Officer, had lambasted President Obama's Auto Task Force, headed by Mr. Steven Rattner, as “It is sort of like asking the

affirmative defenses, viz. “*Res judicata*”, “Issue or Claim Preclusion”(or collateral estoppel); or “Law of the Case”⁶ to have their Motions to Dismiss granted in their favor. **Plaintiff submits that such defenses are unavailable to all the defendants, and hence an application of those affirmative defenses is out of the question.**

3.3.1 The U.S. Supreme Court has this to say with regard to “*res judicata*” or “collateral estoppel” or “law of the case” in the case of *State of Arizona vs. State of California*, 460 U.S. 605, 103 S. Ct. 1382 (1983):

“.....Unlike the more precise requirements of *res judicata*, law of the case is an amorphous concept.”

“Law of the case directs a court’s discretion, it does not limit the tribunal’s power. (Cases cited are omitted). In that sense, the doctrine might appear applicable here. But law of the case doctrine was understandably crafted with the court of ordinary litigation in mind. Such litigation proceeds through preliminary stages, generally matures at trial, and produces a judgment, **to which after appeal, the binding finality of *res judicata* and collateral estoppel will attach.** (Emphasis placed).

“To preclude parties from contesting matters that **they had a full and fair opportunity to litigate** protects their adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions.”

3.3.2 **Plaintiff respectfully submits that the lack of “a full and fair opportunity to litigate” had permeated and vitiated the entire evidentiary hearings that took place in the lead case on 6-30-2009, 7-1-2009, and 7-2-2009, and especially more so with regard to this plaintiff/creditor/appellant.**

3.3.3 Now let us go to docket # 3897 in the lead case where the transcript of the hearing on 8-18-2009 provides on page 14 the following comment by this court:

“Mr. Parker, there is a case that I have decided some years ago, I think it was in Ames Department Stores, squarely on point. You can’t include as part of a record something that was never before the bankruptcy judge, and that the bankruptcy Court didn’t consider. Now, are you suggesting to me that when I issued that decision, I was wrong, or the cases upon which I relied were wrong? Or is there something that I overlooked?”

arsonist to run the fire department.” This comment, coming as it does, from Mr. Louis Gerstner, who is considered to be a savior of IBM, speaks volumes, and should have alerted this court, on the eve of the evidentiary hearing of any impending disaster.

⁶ Under the “law of the case” doctrine, a legal decision made at one stage of litigation, **unchallenged in a subsequent appeal** when the opportunity to do so existed, becomes the law of the case for future stages of the same litigation, and the parties are deemed to have waived the right to challenge that decision at a later time, see *U.S. v. Miller*, 822 F.2d 828 (at 832) C.A. 9 (Cal.)(1987). It must be noted that the 7-5-2009 363 Sale decision of this court is already in appeal and assigned to the U.S. District Court, SDNY. **Hence, this avenue is foreclosed to the defendants.**

3.3.4 It was precisely the crux of the issue about a “**full and fair opportunity to litigate**” In the case of the *pro se* attorney, Mr. Parker, a creditor⁷ of GM, where he was allowed to participate in the pre-evidential hearing in terms of request for production of documents and examining the witnesses through depositions, the debtor’s attorneys, provided Mr. Parker with **350,000 pages of material** may be just hours before the proposed deposition, for him to review and digest and prepare single-handedly for any questioning during the depositions. Translated, those 350,000 pages would mean seventy (70) boxes of 5,000 pages of material in each box. It would take no less than a team of 1,000 attorneys to review such material and prepare for a possible examination within the next five to six hours. This court has lost control over the defendants who played such shenanigans. There was never a ghost of chance for Mr. Parker to make any meaningful presentation during the evidential hearing.

3.3.5 In the case of this *pro se* non-attorney creditor he was not even allowed to participate in any such pre-evidential hearing discovery process.

3.3.6 Attorney Miller, representing the debtor, no doubt knew the mind of this court, and no wonder he therefore started his oral argument on 7-1-2009 by pointing out that none of those parties that opposed the 363 sale had produced any evidence in record to invalidate the motion to approve the 363 sale.

3.3.7 When this court had very reluctantly allowed this *pro se* plaintiff/creditor/appellant to make a few minutes of oral argument, on 7-2-2009, he had to point out that he was deprived of any opportunity whatsoever to participate in the request for production of documents and to examine the impending witnesses in their deposition, as well as to examine them when they were testifying in the evidential hearing itself. **So, the result was that he made his final closing argument (again, very reluctantly permitted by the court) for a few minutes, without any record to back him up** ⁸.

3.3.8 To sum up, there was no meaningful discovery process afforded by this court to attorneys that opposed the 363 sale. This *pro se* plaintiff/creditor/appellant was not even allowed to participate in such exercises. **THERE WAS, THEREFORE, A COMPLETE LACK OF “FULL AND FAIR HEARING”. THERE IS ALSO NO FINALITY BECAUSE THE 7-5-2009 363 SALE DECISION IS ALREADY IN APPEAL AND THE APPEAL IS ASSIGNED TO THE U.S. DISTRICT COURT, SDNY. Hence, this avenue is also closed to all the defendants.**

3.3.9 The U.S. Supreme Court, in the case of *Turner vs. State of Arkansas*, 407 U.S. 366, 92 S. Ct. 2096, held that “collateral estoppel” is part of the Fifth Amendment’s double jeopardy guaranty and is a matter of **constitutional fact a court must decide through an examination of the entire record.** (emphasis supplied). Again, the U.S. Supreme Court in the case of *Allen v. McCurry*, 449 U.S. 90, 101 S. Ct. 411, stated that the concept of collateral estoppel cannot apply when the party against whom the earlier decision is asserted did not have a full and fair opportunity to litigate that issue in the earlier case.

3.3.10 Let us now turn to the affidavit of a Mr. Irwin H. Warren dated 8-19-2009 filed by debtor

⁷ And now an appellant. So, is the case with this *pro se* plaintiff/creditor/appellant.

⁸ The transcript of the hearing on 7-2-2009 provided to me by attorneys for Debtor (in fact some opening pages were even missing) was nothing short of garbage with nothing in common with the actual remarks made by me. In fact, one of the creditors, a Mr. Thomas B. Cannon of Texas, had this to say even with regard to audio tapes: “About 90% of your Honor’s comments were muffled, clipped and unintelligible.” (Docket # 3812) (emphasis supplied).

with regard to plaintiff's request to give him access to certain sealed documents. In paragraph 3 of the said affidavit Mr. Warren⁹ states "*Pro se litigants* received.....". (emphasis supplied). Please note the misleading and untrue statement "litigants" (plural) made herein under oath by an attorney representing the debtor, who very unfortunately also happens to be an officer of this court. Plaintiff has scoured the entire record in the lead case and finds one and only instance where a *pro se* creditor had sought documents in the pre-evidentiary hearing stage and it was Mr. Parker, who also happens to be a licensed attorney in Florida State. As already explained this *pro se* creditor/plaintiff/appellant who is not an attorney was prohibited by this court from participating in the hearing proceedings and such a confirmatory remark was also made by the court twice during the hearings.

3.3.11 The confidentiality Order issued by this court on **6-24-2009** does not specifically permit non-attorney *pro se* "party of interest"¹⁰ (the court also said during the hearings that an exception was if the *pro se* creditor is also an attorney). In any case, this Confidentiality Order was **too late in the day to make any meaningful discovery request and for presentation of evidence for record during the ensuing evidentiary hearings on 6-30-2009 (a time difference of less than five days)**. Also, this court should realize that there were **172,000 so-called** unsecured bondholders (for a total claim of a huge amount of **\$27,500,000,000**) spread all over the world (that includes the five other continents on this globe) and it was well nigh impossible for any one from a far away place to travel to New York City at his/her own cost at such a short notice (that may include this *pro se* plaintiff who had to travel from New Haven, Connecticut to New York City for three days in a row, leaving his entire other activity and business in cold storage) to participate in the discovery process¹¹.

3.3.12 This court may have felt content that it was able to speed up the process of evidentiary hearings and finish it in less than 1-1/2 days, but the perception is otherwise in the minds of most of the unsecured bondholders who have been stiffed through these judicial proceedings.

SUB-ART (C) OF PART TWO – DEFENDANT WILMINGTON TRUST COMPANY ("WTC")

4.0 WTC's argument (A) that "Equal and Ratable Clause" claim is barred by *Res Judicata* and/or under "collateral estoppel" and/or "Law of the case" doctrines, in view of the discussion under sub-part (B) above.

⁹ It is not for Mr. Warren to unilaterally decide whether the so-called confidential information, sealed in this court, is related or not to *pro se* plaintiff's case. Let the *pro se* plaintiff decide it for himself and then let the court decide on the merits of his presentation.

¹⁰ For example, paragraph 3 of the said order states that "A copy of this Confidentiality Order shall be delivered to each party and to each person within categories (iii), (iv) and (vi) of paragraph 2© above to whom a disclosure of confidential information is made, at or before the time of disclosure, by the party making the disclosure or by its counsel. The provisions of this Confidentiality Order shall be binding upon each such person to whom disclosure is made."

¹¹ It is never too late to obtain new testimony to remove the gross deficiencies that had occurred in the discovery process and consequently in creating proper record, prior to and during the evidentiary hearings on 6/30, 7/1, and 7/2/2009. In the case of *Combs v. Hodge*, 62 U.S. 397, 21 How. 397, as far back as 1858 (i.e. 151 years ago) the U.S. Supreme Court had held that on appeal to the United States Supreme Court, where the circumstances attending the transaction which was the subject matter of the suit were not well disclosed in the record, the cause was remanded to the circuit court, with directions to allow the parties to amend the pleadings, and to take testimony, if they should be so advised. **That seems to be the best course of action in this case also.**

4.1 In fact, the *pro se* plaintiff now finds (i.e. subsequent to filing this adversarial complaint on **6-16-2009**) that besides the two specific 11-15-1990 and **the 12-7-1995** trust and indenture agreement(s), there were quite a number other indentures that were created by bankrupt and insolvent debtor GM, and some properties obviously covered by those later indentures were also secured and leined, subsequent to the 12-7-1995 indenture (apparently this is/was besides the **12-31-2008 loan agreement** between the United States Treasury and the Debtor that laid first liens on some properties and yet second liens on some other properties). Hence, this maze of transactions requires extensive discovery to determine exactly how many new indentures were created subsequent to the 12-7-1995 indenture, what were the properties covered by first and/or second liens, whether the new loans (including the emergency 12-31-2008 and subsequent loans from the U.S. Treasury, under the TARP provisions¹² were fully secured or partially secured, and so what were the free assets, notwithstanding any escape clause in such loan agreements or security agreements or guarantees, for, once the “Equal and Ratable Clause” is triggered, at any time, **there is absolutely no mechanism in the 12-7-1995 indenture to undo such a provision (i.e. implementing the equal and ratable clause) with regard to the so-called unsecured bond holders, at a later date.**

4.2 We also have to ascertain whether debtor GM was involved in creating fraudulent so-called “**synthetic leases**”¹³ so that any liabilities (that are material to financial statements) are kept off the books. We have to all know how many synthetic leases were created and also what was the extent of this fraud.

4.3 We have to know how many companies are owned and involved in the debtor’s consolidated group; how many of them are/were domestic, and how many foreign; how many were principal domestic manufacturing units, and how many were non-manufacturing units; what were the principles of consolidation for the purpose of reporting to SEC; how many reciprocal accounts were eliminated between manufacturing companies consolidated¹⁴; what were the book values of the various assets, and the present values of liabilities on 1-1-2006, and what were the fair market values (including the principles that determined such FMVs) of assets on 1-1-2006, and consequently what was the shareholders’ equity on 1-1-2006 and the same information at every three months’ interval thereof, and at least whenever the debtor had declared and paid the dividends on its common stock between 1-1-2006 and 12-31-2006, the amount of dividends paid out; any exercise and cashing of any stock options by insiders like the Directors, Officers, etc. of the GM. This is just a non-exhaustive list that needs to be

¹² The issue about constitutionality and violation of the takings clause (where about \$27.5 billion dollars of debt owed to so-called unsecured bond holders was completely wiped off without just compensation) when TARP funds were initially loaned to automobile manufacturers (between 12-31-2008 and 6-1-2009), and then such funds were used for DIP financing; and also to create a government owned corporation to buyout the crown jewels of GM are still under appeal.

¹³ The generally accepted accounting principles (“GAAP”) of USA have not provided for such synthetic (artificial) leases that can be treated as off-balance sheet accounts (shades of fraud *a la Enron Corporation* that resulted in Sarbanes-Oxley Act, to prevent false accounting in books of accounts), i.e. treating them as operating leases for some time, and then switching over to capital lease treatment at other times (showing up on balance sheets). If these are material transactions then it would be a criminal offense and consequently the bankruptcy filings should also be treated as fraud on bankruptcy courts. In any case, treating the leases as synthetic leases would have resulted in material understatement of liabilities at the time of bankruptcy filing.

¹⁴ This means that this *pro se* plaintiff would require this bankruptcy court to direct by way of an official court order to the debtor GM, to allow us to have full access to all work papers of its principal (and group) auditors for the years 2006, 2007, 2008, and then so far in 2009.

discovered.

4.4 Another glaring case is the adversarial case filed (under Docket # 3593) by the Official Committee of Unsecured Creditors, against J.P. Morgan Chase Bank, et al., in this lead case under # **09-00504**. This *pro se* plaintiff has since filed a request on 8-12-2009 to grant him permission to file *amicus curie* briefs, as are necessary, in this case. This *pro se* plaintiff also now requests access to all documents and papers in this case second adversarial case # 09-00504 to which the Official Unsecured Creditors Committee may have access.

4.5 Pursuant to a Declaration of Harry Wilson, dated **6-24-2009** (remember that the instant adversarial complaint was filed on **6-16-2009**) an Inter-Creditor Agreement between Gelco Corporation, the U.S. Treasury Department, and General Motors, dated 2-17-2009, was produced under Docket # 2577 in the lead case, whereby the U.S. Treasury Department was able to procure a second lien on certain properties. Necessary discovery is needed to determine to what extent such inter-creditor agreement could/had become the trigger to cause the equal and ratable clause in the 12-7-1995 agreement.

4.6 In any case, now that GM had declared bankruptcy on **6-1-2009**, which *per se* constitutes default, Section 315 © of the Trust Indenture Act of 1939 (the "TIA") (15 U.S.C. § 77 aaa et al.) is now in effect and specifically sub-section © which states:

“© Duties of the trustee in case of default

“The indenture trustee shall exercise in case of default (as such term is defined in such indenture) such of the rights and powers vested in it by such indenture, and to use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.”

is applicable with regard to the conduct of defendant WTC.

4.7 Also, under Section 315 (a) of the TIA, the trustee would have a duty to examine all of the certificates submitted by obligor GM under Section 1017 (a), (b), and © for compliance with the provisions of the indenture. see *Semi-Tech Litigation, LLC vs. Bankers Trust Company*, 353 F. Supp. 2d 460 (SDNY - 2005). This means that a discovery to be done now would extend to verifying such documents between the period 12-7-1995 and 6-1-2009.

4.8 The indentures created by GM are subject to New York State substantive law. Hence, we would like to draw the attention of this court to the case of *United States Trust Co. V. First Natl. City Bank* (57 AD2 285, affd. 45 NY2d 869), where the court held that fidelity to the terms of an indenture **does not immunize** an indenture trustee against claims that the trustee has acted in a manner inconsistent with his or her fiduciary duty of undivided loyalty to trust beneficiaries. Accord: *Beck v. MHT*, 218 A.D. 2d 1, 632 N.Y.S. 2d 520. In any case, we have yet to see defendant WTC take formal appropriate action to accelerate payment of the so-called unsecured bonds' principal amount and all accrued interest.

SUB-PART (D) OF PART TWO – DEFENDANTS “GENERAL MOTORS GROUP”

5.1 **Here, the corporate governance, the fiduciary responsibilities of directors, officers, etc. are all governed by the substantive law of Delaware state where GM was incorporated.**

5.2 Plaintiff submits that:

(A) to the extent information is available in the public domain, all relevant facts have been properly stated in the complaint, to form the basis for his claims against the GM defendants – such presented facts speak volumes with regard to most, if not all, claims;

(B) to the extent any facts and information is within the peculiar knowledge of the defendants, such facts will be ferreted out during discovery and will be incorporated in an amended complaint;

© to the extent any claims may have become moot, since the 7-5-2009 decision under the theory “equitable mootness”, they will be discarded in the amended complaint;

(D) to the extent any claims need to be modified, such changes will be also made in the amended complaint; and

(E) to the extent any new parties need to be added for a just resolution of all the claims, that will also be taken care in the amended complaint.

5.3 Plaintiff does not own any “convertible” bonds. He does not know where from the defendants gathered their information, that plaintiff owns “convertible bonds”, but they did not get their facts straight.

5.4 Defendant GM was in the zone of insolvency, may be just for a few days or a few weeks in the first quarter of 2006. Then, it became comatose and insolvent probably by no later than the end of the first quarter of 2006¹⁵, a fact that can be proven easily after appropriate discovery. Also, note that the action by the United States Treasury (“UST”), on 12-31-2008, in utter violation of the federal law that created TARP, was meant to create a spider web into which the GM was initially drawn, but as is the case with any spider, its real target and victim is/was GM. The funds provided by UST did not reduce the accumulated deficit of GM - rather an extension of such funds by UST between 12-31-2008 and 6-1-2009 had deepened the insolvency, thereby causing tremendous direct damage to the so-called unsecured creditors.

5.5 Once the exact moment in the year 2006 that GM became insolvent is determined, the fiduciary responsibility of Directors etc. of GM shifts dramatically (from that of shareholders) towards the creditors of the corporation¹⁶, and also issues such as whether GM had benefitted from each and every challenged expenditure, to wit: severance payments made to employees in billions of dollars between the 2nd quarter of 2006 and until 6-1-2009, any stock options that were allowed to be cashed by

¹⁵By this time all the common shareholders (GM is said to have no preferred stockholders) have lost their equity, and, hence, technically the only business that could be before the Directors of GM was how to dissolve the corporation, after paying off all the creditors. Note that Directors of a corporation are elected by shareholders and hence their agents. Their *de facto* existence thereafter should be as short as possible and should be subject to the approval of the creditors to whom they owe their fiduciary duty.

¹⁶ When a corporation is solvent, the fiduciary duties that the directors owe the corporation may be enforced by its shareholders, who have standing to bring derivative actions on behalf of the corporation because they are the ultimate beneficiaries of the corporation’s growth and increased value; when a corporation is insolvent, however, its creditors take the place of the shareholders as the residual beneficiaries of any increase in value. *North American Catholic Educational Programming Foundation, Inc. Vs. Gheewalla, et al.*, 910 A.2d 92 (Supreme Court of Delaware, 5-18-2007). Also, any amended complaint will take care of the derivative nature of this law suit.

employees, excessive remunerations paid to outside consultants, etc. Remember that the so-called "business judgment" rule defense is not a *mantra* for exculpation from personal civil monetary liability (including possible criminal liability), unless there is concrete evidence shown that the corporation had received "fair benefit" for the challenged expenditure (the rule here is "fair market value of assets or benefits received" = "fair market value of assets given up"). All directors that had approved the payment of dividends from the insolvent corporation will also become personally responsible. Such exculpatory provisions of corporate charters do not protect directors from fiduciary duty claims. *Production Resources Group v. NCT Group*, 863 A.2d 772 (11-17-2004).

5.6 When the valuation of GM was done prelude to bankruptcy filing, under the best and the worst scenarios, plaintiff does not believe that the present value of future net operating loss carry forward was included (in the value of assets sold under Section 363) to determine the consideration received by GM from the government sponsored and government owned new GM.

5.7 The very trade name "GM" or "GMC" or other similar trade marks have been valued at their fair market value for the purpose of the 363 sale.

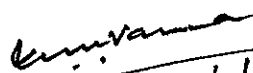
5.8 The bankruptcy court is a court of equity, where "substance" should always trump the "form". In the opinion of Plaintiff, it would be rank hypocrisy either for Plaintiff or for debtors and/or other parties, or even for a Court of Law (may be we can coin it as "judicial hypocrisy") to insist upon a technical form over substance, especially when in a judicial forum like this bankruptcy court, GM had committed its ultimate act of "assisted harakiri" (committing suicide with its own sworn the Japanese style, of course with judicial sanction) and what is left of it now is nothing but a cadaver. If, however, this honorable court insists that deficiency can be cured in short order.

PART THREE - SUMMATION

The claims of plaintiff do not deserve to be dismissed. If there is a need to make some claims clear, it will be done after due discovery.

Respectfully submitted.

Plaintiff (*Pro Se*)

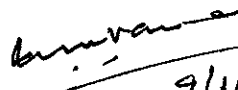

9/1/2009

(Radha R.M. Narumanchi)
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New Haven, Conn. 06513
Phone: (203) 562-0536
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Certification

This is to certify that a copy of the aforementioned was mailed by first class mail, postage paid this 1st day of September, 2009 to:

- 1) Weil, Gotshal & Manges LLP, Attorneys for Debtors, 767 Fifth Avenue, New York, N.Y. 10153-
Attn: Harvey R. Miller/Stephen Karotkin/Joseph H. Smolinsky;
- 2) Cadwalader, Wickersham & Taft LLP, Attorneys for the Purchaser, One World Financial Center,
New York, N.Y. 10281 - Attn: John J. Rapisardi;
- 3) Kramer Levin Naftalis & Frankel LLP, Attorneys for the Creditors Committee, 1177 Avenue of
the Americas, New York, N.Y. 10036, Attn: Kenneth H. Eckstein;
- 4) Cleary Gottlieb Steen & Hamilton LLP, Attorneys for the UAW, One Liberty Plaza, New York,
N.Y. 10006 - Attn: James L. Bromley;
- 5) Cohen, Weiss and Simon LLP, Attorneys for the UAW, 330 West 42nd Street, New York, N.Y.
10036 - Attn: Babette Ceccotti;
- 6) Vedder Price, P.C., Attorneys for Export Development Canada, 1633 Broadway - 47th Floor,
New York, N.Y. 10019 - Attn: Michael J. Edelman/Michael L. Schein;
- 7) Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street,
21st floor, New York, N.Y. 10004 - Attn: Diana G. Adams;
- 8) U.S. Attorney's General Office, S.D.N.Y., 86 Chambers Street - Third Floor, New York, N.Y.
10007 - Attn: David S. Jones/Matthew L. Schwartz;
- 9) Cravath, Swaine & More LLP, 825 Eighth Avenue, New York, N.Y. 10019, Attn: Robert D.
Joffe;
- 10) Gibson, Dunn & Crutcher, LLP, 200 Park Avenue, 47th Floor, New York, N.Y. 10166, Attn:
Adam Offenhartz/David Feldman; and
- 11) Courtesy Copy to the Chambers of Honorable Judge Robert E. Gerber, United States Bankruptcy
Court, Southern District of New York, One Bowling Green, New York, N.Y. 10004-1408


9/1/2009

(Radha R.M. Narumanchi)