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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 Corporation, et al.,

Debtors.

- - - - -x

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

September 20, 2011  
9:57 AM

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

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HEARING re Debtors' Objection to Proof of Claim No. 45631 filed  
by Steven Newman c/o Michael Green, Deceased

HEARING re Notice of Presentment of Proposed Order Granting  
Motors Liquidation Company GUC Trust's Objection to Claim Nos.  
39218, 39219, 39220, 39221, and 39222 for Failure to Comply  
with Amended Order Pursuant to 11 U.S.C. Section 105(a) and  
General Order M-390 Authorizing Implementation of Alternate  
Dispute Procedures Including Mandatory Mediation

Transcribed by: Lisa Bar-Leib

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A P P E A R A N C E S :

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(TELEPHONICALLY)

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P R O C E E D I N G S

THE COURT: Motors Liquidation.

MR. SMOLINSKY: Good morning, Your Honor. Joseph Smolinsky of Weil, Gotshal & Manges for the post-effective date debtors as well as for the Motors Liquidation Company GUC Trust.

THE COURT: Thank you. Pause for a second, Mr. Smolinsky. Do I have Donald Watson on the phone?

MR. WATSON (TELEPHONICALLY): Yes, Your Honor. Donald Watson is here by phone. Also from my firm, we have Ms. Chan Abney on behalf of Ms. Tanisha Gary. Donald Watson speaking now.

THE COURT: All right. Gentlemen, I've read the papers. I'll hear first from Mr. Smolinsky and then from you, Mr. Watson.

MR. WATSON: Yes, sir.

THE COURT: This matter has been a source of frustration to me. But reading the Watson firm's response, it appears to me that there are two separate bases upon which I have to grant Motors Liquidation's request. First, what seems to be very strong and uncontroverted evidence that notice repeatedly got to the law firm in some fashion. But even if we put that aside, the underlying client's not being cooperative, as you say, Mr. Watson -- even if you had responded fourteen times over, you would have given me the same response you gave

1 on this motion. And although I don't like to penalize clients  
2 for the acts of their lawyers, if I can avoid it, the fact is  
3 that they had an ample opportunity to help themselves and  
4 they're not cooperating and they made their own bed. That's  
5 what I need both sides to address starting with you, Mr.  
6 Smolinsky.

7 MR. SMOLINSKY: Thank you, Your Honor. Mr. Watson and  
8 his colleagues come from a fairly sizeable and reputable and  
9 successful law firm. We therefore are not here seeking  
10 sanctions against the firm. In fact, the only thing that we do  
11 take issue with in their objection is the statement that they  
12 didn't receive notice. The affidavit of service demonstrates  
13 that not only did we send first-class mail -- by first-class  
14 mail the objection, but we also sent the objection by e-mail to  
15 Mr. Watson at the e-mail address that was indicated on the  
16 proof of claim form.

17 Now the objection itself highlights the fact that the  
18 clients of the firm have been less than cooperative in  
19 participating in the mediation program. What Mr. Watson  
20 describes as irreconcilable differences, I take issue with that  
21 characterization. I don't think that there is a difference in  
22 philosophy or legal strategy. I think it's just the fact that  
23 the client has not complied with the terms of the ADR order.  
24 It also is evident from the objection that the clients have  
25 been made aware of the punitive nature of the expungement of

1 the claim that could result from failure to participate.

2 So I don't think that it would be fair or equitable to  
3 the estate to allow the Hawkins' estate to have another bite at  
4 the apple and to bring in new counsel as requested by Mr.  
5 Watson. I believe that the statements made in the objection  
6 relating to the lack of cooperation should be deemed to be  
7 evidence or Mr. Watson could quickly put on a narrative of the  
8 lack of cooperation and Your Honor should, based on that  
9 testimony, expunge the claim.

10 THE COURT: Am I right from what you said that I don't  
11 need to find anything vis-à-vis the Watson firm itself and I  
12 can rely solely on the failure to cooperate by the underlying  
13 claimants?

14 MR. SMOLINSKY: Your Honor, you've asked us to add a  
15 paragraph to the order which requires the Watson firm to  
16 appear. They obviously came in and called Your Honor prior to  
17 entry of the order. And we're happy to strike that paragraph  
18 from the order if Your Honor is inclined to do so, so that it  
19 would be just a basic order which expunges the claim based on  
20 the record of the hearing. But we would like Mr. Watson to  
21 confirm again, as evidence, that there has been no cooperation  
22 so we don't end up having to come back to court.

23 THE COURT: Well, Mr. Smolinsky, he put it in his  
24 papers. And under my case management order, allegations in  
25 motions are taken as true unless they're controverted. So if

1 you want -- I guess I could ask Mr. Watson to say it again, but  
2 he already said it once in his papers, and that's part of the  
3 record now, isn't it?

4 MR. SMOLINSKY: The only thing I'm concerned about,  
5 Your Honor, is the statement in the objection that says there  
6 are irreconcilable differences which would, in ordinary  
7 circumstances, perhaps give rise to --

8 THE COURT: Require a motion to withdraw?

9 MR. SMOLINSKY: That's correct, Your Honor. And I  
10 think that if we make a record that irreconcilable differences  
11 is the fact that they won't appear when directed to do so by a  
12 Court and not the difference of philosophy or legal strategy  
13 then I'm fine relying on the rest of the objection as evidence.

14 THE COURT: Oh, fair enough. Mr. Watson, may I get  
15 your perspective, please?

16 MR. WATSON: Yes, just briefly, Your Honor. Because  
17 the Court had mentioned the possibility of referring the matter  
18 to a disciplinary body, we just thought it necessary to just  
19 confirm. We're not saying that the law firm did not give  
20 service. But there was no direct -- no deliberate attempt or  
21 deliberate failure or refusal to comply with the Court so I  
22 just wanted the record to reflect that. But we do apologize.  
23 Whatever the problem is and certainly with our law firm in  
24 terms of the receipt of mail, that needs to be -- certainly  
25 will be corrected.

1 With regard to the client's cooperation, I would just  
2 reiterate that we have not been able to get that cooperation.  
3 And there is, in fact, differences of philosophy but a  
4 difference of philosophy in terms of how the case should be  
5 resolved or should have been resolved. But for purposes of  
6 this hearing, we will stand on our previous papers in terms of  
7 the lack of cooperation from the client.

8 THE COURT: All right. Thank you. Any desire to  
9 reply, Mr. Smolinsky?

10 MR. SMOLINSKY: Your Honor, I am concerned about this  
11 difference of philosophy. I don't want this order to be  
12 challenged later based on a failure of Mr. Watson to adequately  
13 represent the client's interest. I don't know how to square  
14 that but I do want a clean order so that we could no longer  
15 keep reserves for this claim. And perhaps simply putting in  
16 the order that no reserves need to be made for this claim is  
17 sufficient. And perhaps we should send a copy of the proposed  
18 order to the client's address if Mr. Watson provides us with  
19 that address and they could come into court and explain why  
20 there's a difference of philosophy which would give rise to not  
21 showing up at a mediation or refusing to cooperate.

22 THE COURT: Okay. I'm going to grant Motors  
23 Liquidation's motion with some refinements in the order. And  
24 the following are my findings of fact and bases for the  
25 exercise of my discretion.



1 First, I find that notice was duly provided to the  
2 agent by, at the very least, e-mail and the efforts to  
3 telephonically communicate the agent and by the presumption of  
4 mailing which, while on occasion it can be refuted, has not  
5 been refuted here.

6 But I further find that with appropriate notice, I  
7 would have gotten the same response from the Watson firm that I  
8 got on this motion which says, in substance, two things. One,  
9 it says there are irreconcilable differences; but it also says  
10 that the client isn't cooperating. And while I normally would  
11 not, or at least would try not to penalize a client for counsel  
12 error, here, as I indicated in my opening remarks, the  
13 prejudice to the client that might otherwise result is the  
14 client's own doing.

15 So the Motors Liquidation's motion is granted with the  
16 following refinements:

17 You're to drop from the order any references to the  
18 quality of representation by the Watson firm. I'm satisfied  
19 that whatever might have happened before, any deficiencies were  
20 cured and that the Watson firm did ultimately respond;

21 Second, you are to say expressly, if you wish, Mr.  
22 Smolinsky, that the estate need not reserve funds on account of  
23 this claim;

24 And, third, you are to provide that a copy of the  
25 order is to be mailed both by first-class mail and by a

1 mechanism, either Federal Express or certified mail or whatever  
2 you find most appropriate, that provides a proof of delivery.

3 And the effective date of this order will be three  
4 weeks after the order is mailed to the underlying Hawkins  
5 estate. I am not going to prejudge what I would do if suddenly  
6 they decided that either they wanted to cooperate or they  
7 wanted to appear. That's why we have a three-week gap in  
8 effectiveness. I imagine the estate can reserve for another  
9 three weeks.

10 I will hear from each of the two of you any  
11 suggestions for further refining the order, but that's my  
12 mindset, gentlemen. Mr. Smolinsky, first from you.

13 MR. SMOLINSKY: Your Honor, I presume that you would  
14 like us to serve not only Mr. Watson but also the claimant  
15 themselves. And I would only ask that Mr. Watson provide us  
16 with the correct mailing address.

17 THE COURT: Well, certainly, it had been my thought  
18 that it was going to go to both of them. Mr. Watson, my phone  
19 system doesn't pass sound in two directions at the same time.  
20 But I thought you wished to be heard.

21 MR. WATSON: I was just going to say that we'll  
22 absolutely provide the address --

23 THE COURT: Okay.

24 MR. WATSON: -- for the claimant.

25 THE COURT: Okay. Any other mechanical matters that I

1 need to attend to, either side? Okay. Hearing none, does that  
2 take care of Motors Liquidation for the day, Mr. Smolinsky?

3 MR. SMOLINSKY: No, Your Honor. There's one other  
4 matter. Before we get to it, there's a housekeeping matter.  
5 If you recall, when we had the Hawkins estate's motion on the  
6 first time there was also another claim of the estate of Larry  
7 Torres Rodriguez. You had a similar direction to us at the  
8 prior hearing. We did send out a notice of proposed order with  
9 the language that you asked us to include about having them  
10 call chambers to explain why it shouldn't be turned over to the  
11 grievance committee. As a courtesy, we called counsel after  
12 that hearing. We actually spoke to another attorney in the  
13 office who said that they would speak to the attorney in charge  
14 and get back to us. We haven't heard anything. I don't know  
15 if Your Honor has heard anything. But at this point, we'd like  
16 to have Your Honor execute that order and we'll serve it with  
17 the language that Your Honor directed us to.

18 THE COURT: It saddens me to have to do that but I  
19 think that's exactly what I need to do, Mr. Smolinsky. So make  
20 it happen.

21 MR. SMOLINSKY: We will submit it to chambers, Your  
22 Honor.

23 The last matter on the agenda is an objection to the  
24 claim of Steven Newman which is a representative for the estate  
25 of Michael Green. On Friday, Your Honor received a letter

1 asking for an adjournment noting that Mr. Donovan, counsel to  
2 the plaintiff, was on trial and couldn't make it. We have a  
3 mandate from our client to resolve all the remaining claims  
4 issues as quickly as possible. And Your Honor knows that we've  
5 been doing that largely without the use of judicial resources.  
6 But we do bring to your attention areas where there is some  
7 concern.

8 We had agreed to adjourn this matter once before at  
9 the request of Mr. Green. Of course, we did that -- Mr.  
10 Donovan. Of course, we did that willingly. And we did it with  
11 the tacit agreement that their objection -- their reply to the  
12 objection would be filed no later than the 6th of September.  
13 We would have a week to reply and then today would be the  
14 hearing on the matter. Mr. Donovan agreed to those dates. It  
15 was included in the notice of adjournment.

16 The 6th came and went. We didn't receive a response.  
17 We then called Mr. Donovan, left a message; no response. We  
18 left another message a day later. A secretary called back  
19 saying that Mr. Donovan received the message but she couldn't  
20 tell us anything about the circumstances. We then sent a  
21 letter by FedEx to Mr. Donovan telling him that his failure to  
22 respond would be treated as a default. Heard no response. And  
23 then Friday, he sent a letter directly to you; did not reach  
24 out to us for an adjournment.

25 Mr. Donovan is not here. Mr. Donovan is on trial in

1 New Jersey. We, of course, understand if Your Honor agrees to  
2 adjourn this matter. However, this is a seventy-five million  
3 dollar claim. Mr. Donovan's clients have already received  
4 twenty-two million dollars in cash from the pre-petition  
5 debtors on account of the claim. And we need to proceed  
6 because a seventy-five million dollar claim does make an impact  
7 on distributions to creditors. So we would ask Your Honor, if  
8 Your Honor is inclined, to grant the request for an adjournment  
9 to provide in that order of adjournment a specific deadline to  
10 respond and a specific hearing date.

11 THE COURT: Yeah. I saw that letter and I sensed the  
12 frustration. And I have it, too. I will authorize one final  
13 seven-day extension. The order is to expressly provide there  
14 will be no further extensions. And it's to expressly provide  
15 that your opponent is to work nights or weekends to get it in  
16 if he is busy during the daytime. I've had it with this. I am  
17 fed up. Seven days from the date of entry. And if you give me  
18 an order with that content today, it'll be entered today.

19 MR. SMOLINSKY: Thank you, Your Honor. And we'll work  
20 out a hearing date. Maybe we'll pick one and if he's not  
21 available on that date, we'll come to chambers and get a quick  
22 new date that works for both of us.

23 THE COURT: I understand. This is not a small claim.  
24 This is a very, very major claim against the estate and I would  
25 have expected counsel to deal with it responsibly -- your

1       opponent to deal with it responsibly.

2                   MR. SMOLINSKY: Thank you, Your Honor.

3                   THE COURT: Okay. Anything else?

4                   MR. SMOLINSKY: No, sir.

5                   THE COURT: Okay. Then have a good day.

6                   MR. SMOLINSKY: Thank you.

7                   (Whereupon these proceedings were concluded at 10:16 a.m.)

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I N D E X

R U L I N G S

DESCRIPTION	PAGE	LINE
Motors Liquidation's objection to claim of Ryan Hawkins on behalf of Barbara Hawkins granted with order to contain language: (a) removing reference to Mr. Watson's law firm; (b) that says estate need not reserve funds on account of this claim; and (c) that says a copy of the order was mailed both by first-class mail and by a second means that provides a proof of delivery	9	15
Debtors' objection to proof of claim no. 45631 filed by Steven Newman c/o Michael Green, deceased adjourned for seven days with no further extensions	13	13

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

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.

Lisa Bar-  
Leib

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Date: September 25, 2011