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Company GUC Trust

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re	:
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MOTORS LIQUIDATION COMPANY, et al.,	:
f/k/a General Motors Corp., et al.	:
	:
Debtors.	:
	:
-----X	

Chapter 11 Case No.

09-50026 (REG)

(Jointly Administered)

**MOTORS LIQUIDATION COMPANY GUC TRUST’S RESPONSE TO
JAKE W. RODD’S MOTION FOR ENFORCEMENT OF OFFER ORDER**

TO THE HONORABLE ROBERT E. GERBER,
UNITED STATES BANKRUPTCY JUDGE:

The Motors Liquidation Company GUC Trust (the “**GUC Trust**”), formed by the above-captioned debtors (collectively, the “**Debtors**”) in connection with the Debtors’ Second Amended Joint Chapter 11 Plan, dated March 18, 2011 (as may be amended, supplemented, or modified from time to time, the “**Plan**”), submits this Response to Jake W. Rodd’s Motion for Enforcement of Offer Order (ECF No. 11069) (the “**Motion**”), and respectfully represents:

Preliminary Statement

1. Jake W. Rodd (“**Mr. Rodd**” or the “**Claimant**”) filed a claim that is time barred under the applicable statute of limitations. Nonetheless, in order to avoid the cost of litigation and appeal, the GUC Trust offered a settlement to Mr. Rodd after explaining the significance of the statute of limitations. After agreeing to settle his claim at the amount offered by the GUC Trust, Mr. Rodd declined to execute the stipulation to settle the claim and endeavored to find ways to obtain a greater recovery. Mr. Rodd now asks that his claim be mediated notwithstanding the fact that, only a year ago, he filed an opposition to the implementation of alternative dispute resolution procedures in these cases. Mr. Rodd also asserts that counsel for the GUC Trust acted improperly during negotiations on his claim or provided false information. In efforts that would neither establish the merits of his claim nor demonstrate that mediation is appropriate, Mr. Rodd also seeks to subpoena several individuals, including an associate of Weil, Gotshal & Manges LLP and a former chairman and chief executive officer of General Motors Corporation.

2. As both a legal matter and a practical matter, Mr. Rodd’s request for mediation should be denied. In light of the relatively small size of the claim, the fatal defenses that can be asserted by the GUC Trust that will inform the GUC Trust’s willingness to entertain a settlement in a larger range, and the costs of mediation that must be borne by both parties, the request for mediation should be denied so that the GUC Trust can object to the claim on the grounds of the applicable statute of limitations. Mediating the claim would constitute a misuse of the estates’ limited resources and would unduly burden Mr. Rodd with out-of-pocket expenses and should therefore be denied.

Background

3. Mr. Rodd alleges that he sustained personal injuries on July 14, 2004, in connection with an accident (the “**Accident**”) in Florida involving a vehicle manufactured by the Debtors.

4. On June 1, 2009, nearly five years after the Accident, Motors Liquidation Company and certain of its affiliated debtors commenced voluntary cases under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) before the United States Bankruptcy Court for the Southern District of New York (the “**Court**”), Ch. 11 Case No. 09-50026 (REG).

5. The Claimant filed Proof of Claim No. 6916 (the “**Claim**”) against the Debtors on October 6, 2009, asserting an unsecured claim in the amount of \$500,000. To the best of the Debtors’ knowledge, prior to filing the Claim, the Claimant did not commence an action against the Debtors in any court.

6. On February 23, 2010, the Court entered the Order Pursuant to 11 U.S.C. § 105(a) and General Order M-390 Authorizing Implementation of Alternative Dispute Procedures, Including Mandatory Mediation (ECF No. 5037), which was amended by Order dated October 25, 2010 (ECF No. 7558) (the “**ADR Order**”). Pursuant to the ADR Order, certain claimants were eligible to participate in alternative dispute resolution if they submitted a letter to the Debtors proposing to cap their claim at a reduced amount (a “**Capping Proposal Letter**”) and the Debtors accepted the reduced cap amount.

7. Mr. Rodd filed an objection (the “**Objection to ADR Order**”) (ECF No. 4925) to the Debtors’ motion to approve the ADR Order, wherein the Claimant stated that he “[did] not consent to Binding Arbitration,” and requested that the Court “exempt [his] claim from Binding Arbitration.” The Objection to ADR Order was overruled because, among other

reasons, the ADR Order provided for mandatory mediation to be commenced at the sole discretion of the Debtors but did not subject a claimant to mandatory arbitration without its consent.

8. By letter dated March 10, 2010, the Claimant submitted a Capping Proposal Letter (ECF No. 5287) that specified a cap amount that was equal to the full amount of the Claim. As such, the Debtors did not accept the cap amount specified in the Claimant's Capping Proposal Letter at that time and, pursuant to the ADR Order, the Claim was not scheduled for alternative dispute resolution.

9. Subsequently, the GUC Trust engaged in discussions with the Claimant to settle the Claim in light of the GUC Trust's potential defenses, including the statute of limitations. The GUC Trust explained to Mr. Rodd the statute of limitations issues and its position that the Claim could not stand. Nonetheless, the GUC Trust and Mr. Rodd agreed to settle the Claim by allowing it as a general unsecured claim in the amount of \$5,000. As referenced in the Claimant's Motion for Rehearing (as hereinafter defined), the GUC Trust delivered to the Claimant a stipulation (the "**Stipulation**") reflecting the settlement at \$5,000. At no time did the GUC Trust or its counsel instruct Mr. Rodd to sign the Stipulation against his will or attempt to exert undue pressure on Mr. Rodd to execute the Stipulation.

10. Mr. Rodd did not execute the Stipulation. On October 24, 2011, the Claimant filed a Motion for Reconsideration/Rehearing of Offer (the "**Motion for Rehearing**") (ECF No. 11069), wherein he requested (i) "a Reconsideration/Rehearing of my Settlement by the Honorable Robert E. Gerber," and (ii) that the Claimant be furnished with "all paperwork pertinent to the decision for the settlement to be \$5,000."

11. On December 9, 2011, Mr. Rodd filed the Motion, wherein he withdrew

the Motion for Rehearing and requested that (i) the ADR Order be enforced, (ii) the Court subpoena certain individuals, including an associate of Weil, Gotshal & Manges LLP and a former chairman and chief executive officer of General Motors Corporation, and (iii) the Court inquire why his personal information now appears on Google.

Response

12. It appears that Mr. Rodd believes the GUC Trust is asserting that the Claimant is legally bound to settle the Claim at \$5,000. The Claimant has not executed the Stipulation, and while oral agreements to settle a claim are enforceable as matter of contract law, *see V'Soske v. Barwick*, 404 F.2d 495, 499 (2d Cir. 1968), the GUC Trust does not wish to enforce the settlement if Mr. Rodd believes, correctly or incorrectly, that counsel for the GUC Trust forced him into the settlement. The GUC Trust did notify Mr. Rodd, however, that it would object to the Claim in the near future.

13. Having initially accepted the offer to settle the Claim at \$5,000, Mr. Rodd has since endeavored to find a means to procure a higher distribution through mediation. The ADR Order, however, does not compel either the Debtors or the GUC Trust to mediate his Claim and, in fact, has not to date resulted in mediation of any claim assessed in an amount less than \$1,000,000. As a practical matter, the GUC Trust has determined that mediation of this Claim would be a misuse of resources for all parties. As explained below, the ability of the GUC Trust to offer a higher settlement through mediation is limited by the view that the Claim is time barred under the applicable statute of limitations. Thus, it would be irrational for the GUC Trust to bear the cost of mediating the Claim, which could easily surpass the value of the settlement previously reached by a substantial amount. As also explained below, mediation is not a costless exercise for Mr. Rodd either, as he would have to bear half of the mediation costs. It simply

would not be fair to saddle Mr. Rodd with costs that would exceed the market value of any settlement offer the GUC Trust would be prepared to make.

A. The Claim Is Time Barred Under the Applicable Statute of Limitations

14. As previously held by this Court, a personal injury claim that is time barred under the applicable statute of limitations may be disallowed by the bankruptcy court. See Transcript of March 1, 2011 Hearing at 71-76, *In re Motors Liquidation Co.*, No. 09-50026 (Bankr. S.D.N.Y. 2011), annexed hereto as **Exhibit “A.”**¹

15. Where a court is “exercising bankruptcy jurisdiction over state law claims under section 1334(b), the court applies the choice of law rules of the forum state to determine the applicable statute of limitations.” *Adelphia Commc’ns Corp. v. Bank of Am. (In re Adelphia Commc’ns Corp.)*, 365 B.R. 24, 57 n.136 (Bankr. S.D.N.Y. 2007) (citing *Official Comm. of Asbestos Claimants of G-I Holdings, Inc. v. Heyman*, 277 B.R. 20, 29-30 (S.D.N.Y. 2002)). In this instance, the forum state is New York, which has enacted a statute of limitations “borrowing statute,” which provides: “An action based upon a cause of action accruing without [New York State] cannot be commenced after the expiration of the time limited by the laws of either [New York State] or the place without [New York State] where the cause of action accrued, except that where the cause of action accrued in favor of a resident of [New York State] the time limited by

¹ Notwithstanding 28 U.S.C. § 157(b)(2)(B), it is well settled within this jurisdiction that a bankruptcy court may disallow a personal injury claim because of a legal defense such as the statute of limitations. *Asbestos Claimants v. U.S. Lines Reorganization Trust (In re U.S. Lines, Inc.)*, 262 B.R. 223, 234 (S.D.N.Y. 2001) (citing *In re Chateaugay Corp.*, 111 B.R. 67, 76 (Bankr. S.D.N.Y. 1997)) (“[T]he bankruptcy court must have jurisdiction to make the threshold determination of whether as a matter of law, a claim exists which can be asserted against the debtor, even if the claim sounds in personal injury, tort or wrongful death.”); *Flake v. Alper Holdings USA, Inc. (In re Alper Holdings USA, Inc.)*, 398 B.R. 736, 750 (S.D.N.Y. 2008).

the laws of [New York State] shall apply.” N.Y. C.P.L.R. 202.²

16. Since Mr. Rodd is a nonresident of New York, the applicable statute of limitations with respect to the Claim is the shorter limitations period under either New York law or the law of the state where the cause of action accrued. In order to determine the state where the cause of action accrued, an inquiry must be made as to the specific cause of action being asserted. While Mr. Rodd does not articulate a specific cause of action, it appears that he is attempting to assert a claim for strict products liability and/or negligence, each of which accrued in Florida, the place of the accident giving rise to the injury. *Martin v. Julius Dierck Equip. Co.*, 374 N.E.2d 97 (N.Y. 1978) (holding that a negligence and strict products liability claim asserted in New York by a resident of the District of Columbia accrued in Virginia, the state where the physical injury occurred). Consequently, the Claim is time-barred if the limitations period for asserting a strict products liability and negligence claim had run under either New York or Florida law.

i. The Claim Is Time-Barred Under New York Law

17. Under New York law, the limitations period to assert a negligence claim is governed under Rule 214(5) of the New York Civil Practice Law and Rules, which provides that a negligence claim must be brought within three years. N.Y. C.P.L.R. 214(5). Additionally, the limitations period under New York law to assert a strict products liability claim is also three years. *See Victorson v. Bock Laundry Mach. Co.*, 335 N.E.2d 275, 279 (N.Y. 1975) (statute of limitations “governing injuries to person or property are those properly applicable to a strict

² Statute of limitations “borrowing statutes,” which have been enacted by most states, have the purpose of denying nonresidents the benefit of a forum state’s longer limitations period if the place where the cause of action accrues ascribes a shorter limitations period. *Martin v. Julius Dierck Equip. Co.*, 374 N.E.2d 97, 99 (N.Y. 1978).

products liabilities claims”) (citations omitted). As the Accident occurred on July 14, 2004, under the New York limitations period, Mr. Rodd had until July 14, 2007 to timely file a strict products liability or negligence claim against the Debtors, which he neglected to do.

ii. The Claim Is Time-Barred Under Florida Law

18. Under Florida law, the limitations period to assert a negligence claim is governed under section 95.11 of the Florida Statutes, which provides that such a claim must be brought within four years. Fla. Stat. § 95.11(3)(a). The limitations period to assert a products liability claim under Florida law is also four years. *Id.* § 95.11(3)(e). As such, in order to have been timely under Florida law, an action must have been commenced not later than July 14, 2008. Thus, regardless whether the applicable statute of limitations is that of New York or Florida, the Claim is clearly time barred under either scenario.

B. Mediating the Claim Would Be a Misuse of Resources

19. Pursuant to the ADR Order, unless otherwise agreed between the parties, the GUC Trust and Mr. Rodd would each be required to equally share the fees and costs charged by the American Arbitration Association and the selected arbitrator(s). The GUC Trust estimates that such fees and costs would approximate \$5,000. Additionally, pursuant to the ADR Order, each party would be required to incur their own costs to travel to one of the five cities in which mediation is offered.³ Thus, Mr. Rodd would be required to bear the cost of traveling from Jacksonville, Florida to Dallas, Texas, the closest mediation location to him. These costs are exclusive of any lodging and other incidental costs that Mr. Rodd would have to bear. The GUC Trust would also be required to prepare mediation briefs, all for a matter which it ultimately

³ The five cities are New York, New York; Detroit, Michigan; Dallas, Texas; San Francisco, California; or Chicago, Illinois.

cannot settle beyond a nominal amount because of the view that the Claim is time barred under applicable statutes of limitations.

20. For these reasons, mediation is simply not a cost-effective means to resolve the Claim and the business judgment of the GUC Trust to proceed with an objection to the Claim is justified in the view of Mr. Rodd's disavowance of the prior settlement. Ideally, the GUC Trust would like to settle the Claim with Mr. Rodd pursuant to the terms of the Stipulation to which he had previously agreed to. However, in the event Mr. Rodd declines to do so, the resources of the estates would best be served through the GUC Trust filing an objection to the Claim in this Court.

WHEREFORE the GUC Trust respectfully requests that the relief requested in the Motion be denied.

Dated: New York, New York
December 15, 2011

/s/ Joseph H. Smolinsky

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EXHIBIT A

Transcript of March 1, 2011 Hearing

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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.

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

March 1, 2011
9:52 AM

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

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HEARING re Motion of Debtors for Entry of an Order Establishing
Claims Reserves in Connection with Distribution to Be Made
Under the Debtors' Amended Chapter 11 Plan

HEARING Motion of Debtors for Entry of an Order Estimating
Maximum Amount of Certain Claims for Purposes of Establishing
Claims Reserves under the Debtors' Amended Joint Chapter 11
Plan

HEARING re Debtors' Seventeenth Omnibus Objection to Claims
(Tax Claims Assumed by General Motors, LLC)

HEARING re Debtors' Objection to Proof of Claim No. 69998 filed
by Thomas Smalley

HEARING re Debtors' Motion to Reclassify Proof of Claim 60528
Filed by the Michigan Department of Environmental Quality

HEARING re Debtors' Motion Pursuant to 11 U.S.C. § 365(a) to
Reject Utility Services Agreement

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HEARING re Motion of Debtors for Entry of Order Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code (i)Authorizing the Providing of Certain Retiree Benefits Consistent with Union Settlement Agreement by General Motors LLC; and (ii)Granting Participation in General Unsecured Claim

HEARING re Motion of the Junsos to Be Deemed to have Timely Filed an Informal Proof of Claim or, Alternatively, for Leave to Late File a Proof of Claim

HEARING re Debtors' Objection to Proof of Claim No. 02307 Filed by Bobbie Jean Ford Pierce

HEARING re Debtors' Objection to Proof of Claim 69923 Filed by Ella M. Lewis

HEARING re Debtors' Objection to Proof of Claim 69969 Filed by Luceal Anderson

HEARING re Debtors' Objection to Proof of Claim 69970 Filed by Bernadine Toliver

HEARING re Debtors' Objection to Proof of Claim 70000 of Audrey Magee

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HEARING re Debtors' Objection to Proof of Claim No. 70461 Filed
by Christi Coleman

HEARING re Debtors' Eighteenth Omnibus Objection to Claims (Tax
Claims Assumed by General Motors, LLC)

HEARING re Debtors' Twenty-Seventh Omnibus Objection to Claims
(Incorrectly Classified Claims)

HEARING re Debtors' 110th Omnibus Objection to Claims
(Contingent Co-Liability Claims)

HEARING re Debtors' 146th Omnibus Objection to Claims (Claims
for Equity Interests)

HEARING re Debtors' 147th Omnibus Objection to Claims (Claims
for Equity Interests)

HEARING re Debtors' 148th Omnibus Objection to Claims (Claims
for Equity Interests)

HEARING re Debtors' 149th Omnibus Objection to Claims (Claims
for Equity Interests)

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HEARING re Debtors' 150th Omnibus Objection to Claims (Claims
for Equity Interests)

HEARING re Debtors' 151st Omnibus Objection to Claims (Claims
for Equity Interests)

HEARING re Debtors' 152nd Omnibus Objection to Claims (Claims
for Equity Interests)

HEARING re Debtors' 153rd Omnibus Objection to Claims (Claims
for Equity Interests)

HEARING re Debtors' 154th Omnibus Objection to Claims (Claims
for Equity Interests)

HEARING re Debtors' 155th Omnibus Objection to Claims (Claims
for Equity Interests)

HEARING re Debtors' 156th Omnibus Objection to Claims (Claims
for Equity Interests)

HEARING re Debtors' 157th Omnibus Objection to Claims
(Duplicate Debt Claims)

1 HEARING re Debtors' 158th Omnibus Objection to Claims (Eurobond
2 Deutsche Debt Claims)

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4 HEARING re Debtors' 159th Omnibus Objection to Claims
5 (Continent Co-Liability Claims)

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7 HEARING re Debtors' 160th Omnibus Objection to Claims (Claims
8 Assumed by General Motors LLC)

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10 HEARING re Debtors' 161st Omnibus Objection to Claims (Claims
11 Assumed by General Motors LLC)

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13 HEARING re Debtors' 162nd Omnibus Objection to Claims (Claims
14 Assumed by General Motors LLC)

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16 HEARING re Debtors' 163rd Omnibus Objection to Claims
17 (Insufficient Documentation)

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19 HEARING re Debtors' 164th Omnibus Objection to Claims
20 (Insufficient Documentation)

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22 HEARING re Debtors' 165th Omnibus Objection to Claims and
23 Motion to Enforce Bar Date Orders (Late-Filed Claims)

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1 HEARING re Debtors' 166th Omnibus Objection to Claims

2 (Duplicate Debt Claims - Industrial Revenue Bonds)

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4 HEARING re Debtors' 167th Omnibus Objection to Claims (Products

5 Liability Claims Assumed by General Motors LLC)

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7 HEARING re Debtors' 168th Omnibus Objection to Claims

8 (Supplemental Executive Retirement Benefits Claims of Former

9 Executive Employees)

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11 HEARING re Debtors' 169th Omnibus Objection to Claims (Welfare

12 Benefits Claims of Retired and Former Salaried and Executive

13 Employees)

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15 HEARING re Debtors' 170th Omnibus Objection to Claims (Welfare

16 Benefits Claims of Retired and Former Salaried and Executive

17 Employees)

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19 HEARING re Debtors' 171st Omnibus Objection to Claims (Welfare

20 Benefits Claims of Retired and Former Salaried and Executive

21 Employees)

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23 HEARING re Debtors' 172nd Omnibus Objection to Claims (Welfare

24 Benefits Claims of Retired and Former Salaried and Executive

25 Employees)

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HEARING re Debtors' 173rd Omnibus Objection to Claims (Welfare Benefits Claims of Retired and Former Salaried and Executive Employees)

HEARING re Debtors' 174th Omnibus Objection to Claims (Welfare Benefits Claims of Retired and Former Salaried and Executive Employees)

HEARING re Debtors' 175th Omnibus Objection to Claims (Welfare Benefits Claims of Retired and Former Salaried and Executive Employees)

HEARING re Debtors' 176th Omnibus Objection to Claims (Welfare Benefits Claims of Retired and Former Salaried and Executive Employees)

HEARING re Debtors' 177th Omnibus Objection to Claims (Welfare Benefits Claims of Retired and Former Salaried and Executive Employees)

HEARING re Debtors' 178th Omnibus Objection to Claims (Welfare Benefits Claims of Retired and Former Salaried and Executive Employees)

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HEARING re Debtors' 179th Omnibus Objection to Claims (Welfare Benefits Claims of Retired and Former Salaried and Executive Employees)

HEARING re Debtors' 180th Omnibus Objection to Claims (Welfare Benefits Claims of Retired and Former Salaried and Executive Employees)

HEARING re Debtors' 181st Omnibus Objection to Claims (Welfare Benefits Claims of Retired and Former Salaried and Executive Employees)

HEARING re Debtors' 182nd Omnibus Objection to Claims (Welfare Benefits Claims of Retired and Former Salaried and Executive Employees)

HEARING re Debtors' 183rd Omnibus Objection to Claims (Welfare Benefits Claims of Retired and Former Salaried and Executive Employees)

HEARING re Debtors' 184th Omnibus Objection to Claims (Welfare Benefits Claims of Retired and Former Salaried and Executive Employees)

1 HEARING re Debtors' 185th Omnibus Objection to Claims (Welfare
2 Benefits Claims of Retired and Former Salaried and Executive
3 Employees)

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5 HEARING re Debtors' 186th Omnibus Objection to Claims
6 (Qualified Defined Benefits Pension Benefits Claims of Former
7 Salaried and Hourly Employees)

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9 HEARING re Debtors' 187th Omnibus Objection to Claims
10 (Qualified Defined Benefits Pension Benefits Claims of Former
11 Salaried and Hourly Employees)

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13 HEARING re Debtors' 188th Omnibus Objection to Claims
14 (Qualified Defined Benefits Pension Benefits Claims of Former
15 Salaried and Hourly Employees)

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17 HEARING re Debtors' 189th Omnibus Objection to Claims
18 (Qualified Defined Benefits Pension Benefits Claims of Former
19 Salaried and Hourly Employees)

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21 HEARING re Debtors' 190th Omnibus Objection to Claims (Claims
22 Relating to Former Employees Represented by UAW)

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24 HEARING re Debtors' 191st Omnibus Objection to Claims
25 (Incorrectly Classified)

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HEARING re Debtors' 192nd Omnibus Objection to Claims
(Duplicate Debt Claims from different Series of Debt)

HEARING re Debtors' 193rd Omnibus Objection to Claims
(Duplicate Debt Claims from Different Series of Debt)

HEARING re Debtors' 194th Omnibus Objection to Claims
(Duplicate Debt Claims from Different Series of Debt)

HEARING re Debtors' 195th Omnibus Objection to Claims
(Duplicate Debt Claims from Different Series of Debt)

HEARING re Debtors' 196th Omnibus Objection to Claims (Claims
for Equity Interests and Duplicate Debt Claims)

HEARING re Debtors' 197th Omnibus Objection to Claims (Claims
for Preferred Stock)

HEARING re Debtors' 198th Omnibus Objection to Claims (Claims
for Preferred Stock)

HEARING re Debtors' 199th Omnibus Objection to Claims (Claims
for Preferred Stock)

1 HEARING re Debtors' 200th Omnibus Objection to Claims (Claims
2 for Preferred Stock)

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4 HEARING re Debtors' 201st Omnibus Objection to Claims (Workers'
5 Compensation Claims)

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7 HEARING re Debtors' 202nd Omnibus Objection to Claims
8 (Duplicate Debt Claims)

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10 HEARING re Debtors' 203rd Omnibus Objection to Claims
11 (Duplicate Debt Claims)

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13 HEARING re Debtors' 204th Omnibus Objection to Claims
14 (Duplicate Debt Claims)

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16 HEARING re Debtors' 205th Omnibus Objection to Claims (Tax
17 Claims Assumed by General Motors LLC)

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19 HEARING re Debtors' 206th Omnibus Objection to Claims (Claims
20 Against GMAC)

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22 HEARING re Debtors' 207th Omnibus Objection to Claims
23 (Insufficient Documentation)

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HEARING re Debtors' 208th Omnibus Objection to Claims
(Contingent Co-Liability)

HEARING re Debtors' 209th Omnibus Objection to Claims
(Contingent Co-Liability)

Transcribed by: Lisa Bar-Leib

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Southern District of New York
86 Chambers Street
New York, NY 10007

BY: NATALIE N. KUEHLER, AUSA

DAVID S. JONES, DEPUTY CHIEF, CIVIL DIVISION

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P R O C E E D I N G S

THE COURT: Please be seated. Okay. We're here on GM, Motors Liquidation Company. Reserved matters, the Smalley claim and perhaps some other matters. Who's going to take the lead? Mr. Karotkin? Mr. Smolinsky?

MR. SMOLINSKY: Good morning, Your Honor. Joe Smolinsky of Weil Gotshal & Manges for the debtors. Your Honor, we served last night an amended agenda. I hope Your Honor received it -

THE COURT: I did --

MR. SMOLINSKY: -- albeit late.

THE COURT: -- and the first five pages of it gave me what I think I need to know.

MR. SMOLINSKY: Then maybe we can just --

THE COURT: So you can let me know whether there were any further consensual resolutions since then or where we stand.

MR. SMOLINSKY: The only one, Your Honor, is with respect to Toyota. They will be withdrawing their objection to the unliquidated claims reserve motion.

THE COURT: Okay. Fair enough. Do you have a recommendation as to how you'd like to proceed on the remainder?

MR. SMOLINSKY: I think, Your Honor, we can just go through the agenda in its order if that's okay with you, Your

1 Honor.

2 THE COURT: Go ahead.

3 MR. SMOLINSKY: Your Honor, in connection with
4 confirmation of the plan, as with any liquidating plan, we need
5 to establish reserves in connection with distributions to make
6 sure that holders of disputed claims, unliquidated claims, are
7 taken care of. We can't obviously distribute all of our assets
8 to the holders of allowed claims as of that date on the
9 effective date. This is an arduous process that requires a lot
10 of attention to detail to make sure that everyone is protected.
11 That includes not only fully reserving for liquidated filed
12 claims in their full face amount if they're disputed or
13 unresolved but also involves, for example, filers of
14 administrative, secured and priority claims that we may contend
15 later on do not constitute priority claims. We need to reserve
16 unliquidated claims so that if we are successful --

17 THE COURT: In other words, if they're not admin
18 claims, they may still be unsecured claims in which case you
19 got to reserve them.

20 MR. SMOLINSKY: That's correct, Your Honor.

21 THE COURT: I understand.

22 MR. SMOLINSKY: Additionally, we have the JPMorgan
23 litigation, for example, where we are reserving for the full
24 unliquidated amount of the claim. In the event that the
25 committee's lawsuit is successful, they may end up with an

1 unliquidated unsecured claim.

2 THE COURT: Yeah. Help me understand that because I
3 would have thought that the only way by which that would happen
4 would be if JPMorgan Chase has got to write a check back to the
5 estate for a billion and a half dollars. And then that would,
6 at least seemingly, providing the funding source for that
7 claim.

8 MR. SMOLINSKY: Well, Your Honor, the plan provides
9 for pro rata distributions of the same consideration for
10 unsecured claims. So if they pay back cash, they're still
11 entitled to their pro rata portion of the New GM securities --

12 THE COURT: Which would, under the economics of this
13 case, seemingly be a lot less than a billion and a half
14 dollars.

15 MR. SMOLINSKY: It could be, Your Honor. There would
16 be a trial to determine -- if Your Honor finds that the liens
17 go away but the claims remain as unsecured claims then Your
18 Honor would have to look at the portion that may be still
19 secured and there would have to be an evaluation trial because
20 I think at the end of the day there may still be collateral,
21 some collateral.

22 THE COURT: I'm with you now. Go on.

23 MR. SMOLINSKY: So, Your Honor, as we -- we've
24 obviously been on a claims resolution tare the last several
25 months. But we still are left with certain unliquidated

1 claims. In order to establish reserves for those claims, we
2 filed two motions. The first is a fully unliquidated reserve
3 motion. That is for claims that despite our efforts to get a
4 liquidated amount from the claimants, they are still filed in a
5 fully unliquidated amount. And we need to establish reserves
6 for that.

7 The second motion is for partially unliquidated
8 claims. Those are for claims that have a liquidated amount but
9 there may be language to the extent of and such other amounts
10 as may be later determined or plus interest and fees. And we
11 used the motion to make sure that the cap that we were using,
12 the amount that we were using, for the distributions are
13 acceptable to the claimants.

14 Let me first deal with the fully unliquidated claims
15 and then come back to the partially. This motion seeks to
16 establish an initial reserve in an amount equal to claims of
17 420 million dollars set aside for the 1500 or so claims that
18 were attached as exhibits to the motion. Attached to the
19 motion is a declaration of Carrienne Basler who is a managing
20 director of Alix Partners and also a vice president of Motors
21 Liquidation Company. And she has been primarily involved in
22 the claims process.

23 THE COURT: Just a minute, please, Mr. Smolinsky. I
24 have the same problem I always have with rustling and people on
25 the phone disrupting my courtroom. CourtCall, would you put

1 everybody on mute, please, until I authorize certain people to
2 speak?

3 Go on, Mr. Smolinsky.

4 MR. SMOLINSKY: Your Honor, set forth in the Basler
5 declaration, Ms. Basler has reviewed all of the unliquidated
6 claims on those schedules, has attached numbers to those claims
7 and has determined that a reserve of 370 million dollars should
8 be more than enough to satisfy those unliquidated claims if, as
9 and when they come to be allowed claims. In addition, they've
10 included a fifty million dollar cushion bringing us to the 420
11 million. But there's perhaps more good news because of the
12 1500 or so claims that are subject to that motion, we have
13 objected to a large number of them and those objections are
14 pending many of which are being handled on today's calendar.
15 So we believe that by the time the effective date comes, there
16 should only be about 400 claims that will share in that 420
17 million dollars. So those reserves should be more than
18 sufficient.

19 There are several buckets which are included in the
20 unliquidated claims reserve. There are the fully unliquidated
21 claims that were filed whether before the bar date or late
22 filed. There are contracts that may be rejected as part of
23 confirmation and those parties will have a period of time after
24 confirmation in which to file rejection damage claims. So they
25 would be included in this reserve. And finally, we thought it

1 was prudent to allow the ability at our discretion to add into
2 the reserve later claims that were inadvertently disallowed.
3 We've now objected successfully to something like 20,000
4 claims. There's always the possibility of notice issues or
5 whatever and we thought it was prudent to be able to have that
6 cushion available because if they're not taken care of in this
7 motion, if they do come back and have a valid concern about the
8 disallowance, there would be no source in which to take care of
9 them later on.

10 Additionally, Your Honor, the unliquidated claims
11 motion seeks to establish procedures where we'll able to
12 liquidate claims in the future. And obviously, it's subject to
13 consent by the opposing party and if there's a dispute, we
14 would come back to the Court with respect to that estimation.
15 We don't expect that procedure to be used extensively.

16 This has been a good opportunity to have lots of
17 discussions with claimants that were on the list either to make
18 them comfortable that they're adequately protected or to allow
19 them to liquidate their claim and to be moved off of this
20 motion and into a separate liquidated claim reserve.

21 THE COURT: Pause, please, Mr. Smolinsky. Am I
22 correct that where claimants have duly liquidated their claims,
23 at least at this stage, you'd simply reserve for whatever
24 they're asking for?

25 MR. SMOLINSKY: That's correct, Your Honor.

1 THE COURT: Okay.

2 MR. SMOLINSKY: So, for example, the Numi (ph.)
3 claim, we are setting aside distributions on account of a 500
4 million dollar claim until that claim is ultimately resolved.

5 THE COURT: Um-hmm.

6 MR. SMOLINSKY: So after resolving many parties'
7 formal and informal objections, we are left with just a handful
8 of objections. As I said earlier, the Toyota Corporation
9 objection has been resolved now. Their unliquidated claim will
10 come off of the schedules and will be effectively estimated at
11 zero. Of course, they continue to have claims that are
12 reserved in their full amounts. I think it's seventy plus
13 million dollars that's being set aside for Toyota's claims.

14 That leaves -- and let me just run through the
15 objections. I think there are four objections remaining. The
16 first is Edmund Ster --

17 (Phone interference)

18 THE COURT: CourtCall, is that coming from people on
19 the phone or is that coming from you?

20 THE OPERATOR: All lines are muted and my line has
21 been muted until I just opened it.

22 THE COURT: You have any idea why I'm getting all
23 this noise in my courtroom?

24 THE OPERATOR: Your Honor, I'm not seeing line --

25 THE COURT: I beg your pardon?

1 THE OPERATOR: I'm not seeing any noise coming from
2 any line.

3 THE COURT: It's not what I'm seeing. That's the
4 problem. It's what I'm hearing. All right. Continue, Mr.
5 Smolinsky.

6 MR. SMOLINSKY: The first remaining objection is
7 Edmund Sterniak. Mr. Sterniak is an equity holder. His claim
8 is that he wants a dollar claim for his shares. We believe
9 that this is a confirmation objection and not an objection to
10 the reserve motion.

11 The second remaining objection is Sentry Insurance.
12 It seems from Sentry Insurance's papers that they are seeking a
13 reservation of rights under 502(j) to reconsider. For obvious
14 reasons, we don't believe that this is an objection to this
15 motion because we can't reserve for 502(j) reconsiderations.
16 So, of course, their rights are reserved for whatever they're
17 worth to bring motions under 502(j), but we don't believe that
18 that is relevant to the current reserve motion.

19 The third objection is Sharyl Carter. Ms. Carter,
20 which should be no stranger to this Court, has filed an
21 objection asserting that her claim should be paid in cash
22 rather than in New GM stock. Again, we think that this is a
23 confirmation objection and not an objection to this motion.

24 Finally, we have Tracy Woody. Ms. Woody has asserted
25 a general unsecured claim in the amount of \$39,376.02. I'm not

1 sure what Ms. Woody's objection is. We spoke to Ms. Woody.
2 She said the amount's not big enough. We said what would be
3 big enough. She said 40,800 dollars. We said sold. We'll
4 reserve for that amount. She seemed happy with that and then
5 called back later and said that she was no longer happy. So
6 we'll hear from her as to what her continuing objection is.

7 And those are the objections --

8 THE COURT: Let me make sure I understand. You
9 agreed to consensually reserve for 41,000 and you understood
10 her to say that that was insufficient.

11 MR. SMOLINSKY: That's right. She called back and
12 said she spoke to a lawyer and she's no longer accepting of
13 that. Of course, if we did agree with her as to a number, we
14 would take her off this motion and we would treat it as simply
15 a liquidated claim subject to our rights to object to that
16 claim in the future.

17 THE COURT: Okay.

18 MR. SMOLINSKY: I think we'll stop there unless Your
19 Honor has any questions and deal with the partially liquidated
20 motion later.

21 THE COURT: Your recommendation is that I deal with
22 partially liquidated separately?

23 MR. SMOLINSKY: I think so, Your Honor --

24 THE COURT: All right.

25 MR. SMOLINSKY: -- otherwise it might get confusing.

1 THE COURT: CourtCall, now take everybody who's on
2 the phone and temporarily unmute them. I won't try to make you
3 find particular callers. Is Mr. Sterniak in the courtroom? No
4 response. Mr. Sterniak, are you on the phone? No response.
5 Okay. Sentry Insurance. In the courtroom? No. On the phone?
6 No. Sharyl Carter? In the courtroom? No. Ms. Carter, are
7 you on the phone? No.

8 THE OPERATOR: Yes, Your Honor.

9 THE COURT: Who just spoke, please?

10 THE OPERATOR: Oh, this is the operator. I was
11 letting you know I'm not shutting down the lines.

12 THE COURT: Oh, okay. Tracy Woody. Ms. Woody, are
13 you in the courtroom?

14 MS. WOODY (TELEPHONICALLY): I'm on the telephone.

15 THE COURT: Okay. Ms. Woody, would you like to be
16 heard on the motion?

17 MS. WOODY: Yes.

18 THE COURT: Go ahead.

19 MS. WOODY: Well, when I was contacted by GM and I
20 talked with an attorney about it, they had indicated that --
21 about a capital reserve of some kind. And when I talked with
22 the attorney, they wanted to try to speak for me and I said
23 that would be -- I was advised by my attorney that's not a good
24 idea. And the reason why the cap of reserve I'm having a
25 little difficult with is because I'm still facing ongoing

1 charges for renting a car -- or I should say for using a car
2 that's not my vehicle. And the dispute with the SUV scenario
3 litigation is going on. So I'm still experiencing expenses
4 from that. Also, court costs and so forth. And when I mean
5 court costs, I mean this call and I'm filing these motions,
6 papers and so forth -- fees and everything. That is, I'm still
7 being charged for this. And so, when I think about some of
8 those ongoing expenses, do this litigation, it's still ongoing.

9 And the other problem I have as well is as far as the
10 deadline for objections --

11 THE COURT: Just a minute. Pause, please, Ms. Woody.
12 Is that noise on your line or is that on somebody else's line?

13 MS. WOODY: Someone talking? No. I'm in a quiet
14 area.

15 THE COURT: Okay. CourtCall, put everybody else
16 other than Ms. Woody on mute for a moment, please. Continue,
17 please, Ms. Woody.

18 MS. WOODY: Yes, Your Honor. I learned from my
19 episode to be in a quiet spot.

20 But in any event, also, I noticed that the -- on
21 number 3 of the motion that I filed an objection, it says that
22 the claim reserve if no estimation objection is timely filed is
23 only ten days and you should be able to -- and I was thinking
24 that since they have -- drawing this information, I have been
25 given probably about 300 documents to review by GM. And it

1 says that any type of objections, it's like the documentation
2 they filed. I didn't even see my claim or whether it was
3 litigated in this case. I didn't see any claim related to my
4 claim that I had filed back in October. And I amended the
5 claim just recently. And so, I didn't see any reference to my
6 claim at all in any of the documentation which kind of
7 concerned me. And I was granted an allowable at least proof of
8 claim to litigate in this court regarding the matter against
9 Motor Liquidation.

10 Also, the fourteen days would allow at least a couple
11 more days to review all this documentation. You know, I'm
12 proceeding pro se at this point. And that's kind of a main
13 thing right there that I was entertaining. In the claim said
14 that if you already filed a proof of claim in accordance with
15 the attached instruction, you didn't need to refile. However,
16 I had to amend the complaint -- the proof of claim because
17 General Motors -- I was directed on their website that said
18 that my claim was zero.

19 THE COURT: Okay.

20 MS. WOODY: So --

21 THE COURT: Thank you, Ms. Woody. I take it that
22 takes care of it?

23 MS. WOODY: Yes.

24 THE COURT: Very well. Mr. Smolinsky, do you want to
25 reply in any way?

1 MR. SMOLINSKY: Your Honor, I'd just note that the
2 ten days that she's talking about I think refers to the timing
3 on the procedures to estimate additional claims. So if we were
4 to file an objection to Ms. Woody's claim, we would do that on
5 the full thirty days notice that we utilize on any claim
6 objection. All we need, Your Honor, is a number. If she wants
7 60,000 or 70,000, we'll reserve that. But all we need is a
8 number.

9 THE COURT: All right. Ms. Woody, do you have any
10 number other than the approximately 41,000 dollars that they're
11 now prepared to reserve for you on?

12 MS. WOODY: Well, I guess the speedy litigation would
13 help which I'm going to go ahead and start working on. You
14 know, I think maybe if I could just put down, if he wants a
15 number, I'll give them the number. But I don't believe that it
16 was 41.

17 THE COURT: It was 40,800. I gave you the extra 200
18 bucks.

19 MS. WOODY: Okay. Yes. I think I can go ahead and
20 reserve for that number.

21 THE COURT: All right. Then I think that that issue
22 is now moot. Thank you very much, Ms. Woody.

23 MS. WOODY: Thank you.

24 THE COURT: Have a good day.

25 MS. WOODY: You, too.

1 THE COURT: Very well. Mr. Smolinsky, give her the
2 extra 200 bucks. Make it 41,000.

3 MR. SMOLINSKY: Yes, Your Honor.

4 THE COURT: I should say when setting up the reserve.
5 This is not, of course, a claims allowance determination today.

6 MR. SMOLINSKY: Right.

7 THE COURT: Right.

8 MR. SMOLINSKY: Your Honor, unless Your Honor has any
9 other questions, before we go on with third party comments
10 generally, because I think there are some parties that want to
11 make some general statements, perhaps we should now go to the
12 partially liquidated, talk about those objections and then
13 people --

14 THE COURT: Certainly.

15 MR. SMOLINSKY: -- could make reservations of
16 positions.

17 As I said previously, Your Honor, the second motion
18 seeks to cap partially unliquidated claims. We have done our
19 best to address all of the issues that people have raised. We
20 have discussed and dealt with at least twenty parties in this
21 regard. And let me just go to the objections. Before I talk
22 about the formal objections, there was one informal objection
23 that was interposed by the Quanta Site Group and the Edgewater
24 Administrative Site Group. Those are environmental claims.
25 And we entered into an order, an agreed order, to liquidate

1 their claims for purposes of the reserve and take them out of
2 this motion. And we'll just submit that order to Your Honor.

3 THE COURT: Okay.

4 MR. SMOLINSKY: That leaves only two remaining
5 objections. The first is by Onondaga County.

6 THE COURT: The other is --

7 MR. SMOLINSKY: The other --

8 THE COURT: -- United Technology?

9 MR. SMOLINSKY: That's correct, Your Honor. Both of
10 these claims deal with the Onondaga environmental site. As
11 background, Your Honor, the EPA has filed liquidated claims in
12 the amount of over two billion dollars. We have been working
13 with them and are close -- we have agreements in principle on
14 many, many sites and are close with respect to others. And we
15 expect that for the effective date before you will be a
16 stipulation allowing claims by the United States for a
17 multitude of sites. Now, I don't know -- I don't think that
18 Onondaga is necessarily going to be one of them that we get
19 resolved. But I can tell you that with respect to the Onondaga
20 site, there will be a -- the two billion dollars will come to
21 reflect the various resolutions. So that number will come down
22 substantially. But there will be an amount of over a hundred
23 million dollars that will be set aside for Onondaga to protect
24 the continuing dialogue with respect to that site.

25 THE COURT: Now, pause, Mr. Smolinsky. I don't know

1 if you can answer this or whether you have to hand off to the
2 U.S. attorney's office. When I've had other similar types of
3 issues in other cases, most obviously Lyondell and Chemtura,
4 the -- I was asked to consider settlements that were
5 quarterbacked by the federal EPA but where the state
6 environmental agencies also coordinated, such as the California
7 Toxic Substances Commission, or whatever the exact name is
8 there. Are we talking about similar types of settlements here
9 where the state and federal governments are going to work hand
10 in hand or is there less coordination in this case than there
11 was in Lyondell and in Chemtura?

12 MR. SMOLINSKY: I'll let the U.S. attorney speak,
13 Your Honor. However, I know that there's a lot going on behind
14 the scenes and a lot of discussions taking place. And I think
15 the government expects to lodge those -- those settlements and
16 have a public comment period before they bring it to Your Honor
17 to approve.

18 THE COURT: All right. I want you to keep talking.
19 And I want to ask Mr. Jones to be prepared to help me on that
20 when it's his turn to speak.

21 MR. SMOLINSKY: Thank you, Your Honor. So as not to
22 be lost, I think there could be an impression from reading
23 Onondaga's papers -- Onondaga County's papers, that we are
24 seeking to reserve for that claim at zero dollars. In fact,
25 there's a twelve and a half million dollar claim that was the

1 liquidated portion of their claim.

2 THE COURT: Twelve and a half million dollars?

3 MR. SMOLINSKY: That's correct, Your Honor.

4 THE COURT: Now, there are two major environmental
5 issues that I'm aware in New York State or at least I think
6 there are, one in Onondaga County which is near Syracuse; and
7 the second -- is it Massena which involves the tribe up near
8 the Canadian border?

9 MR. SMOLINSKY: That's correct, Your Honor.

10 THE COURT: Okay. Continue.

11 MR. SMOLINSKY: And you might have noticed that New
12 York State had filed an objection as well but that objection
13 has been resolved, allowing for a liquidated claim subject to
14 our continuing rights to object.

15 THE COURT: Okay. Continue.

16 MR. SMOLINSKY: We have attempted to speak to
17 Onondaga County about getting liquidated amounts to the extent
18 that they believe that the twelve and a half million dollars
19 combined with the EPA amount is not sufficient. But we have
20 not received any alternative amount.

21 THE COURT: Pause, please, Mr. Smolinsky. I'm not
22 sure I'm keeping up with you. You offered to set up a reserve
23 of twelve and a half million dollars for the county separate
24 and apart from whatever you're doing with the federal EPA?

25 MR. SMOLINSKY: That's right, Your Honor. And just

1 so we're clear, we're not talking about a specific account for
2 each claim. This is part of a global reserve for each disputed
3 claim. So everyone is protected but there's no separate
4 account.

5 THE COURT: No segregated account.

6 MR. SMOLINSKY: That's correct, Your Honor. So while
7 we don't believe that any additional claim is necessary, we're
8 obviously not before you seeking to litigate an estimated
9 amount for these claims. But Onondaga County has been
10 unwilling so far to provide an alternative amount.

11 United Technologies Corporation -- this is a claim
12 relating to the same site. Clearly, we believe that this claim
13 will go away under 502(b)(1)(B).

14 THE COURT: United Technologies -- or what was it,
15 it's carrier division, is a PRP?

16 MR. SMOLINSKY: That's correct, Your Honor. So,
17 again, we think this claim is duplicative of the reserves that
18 we already have and don't think that any additional amount is
19 necessary.

20 THE COURT: But you have not yet filed a formal
21 502(e) to blow it away.

22 MR. SMOLINSKY: We did, Your Honor. There's one
23 pending.

24 THE COURT: Oh, it's pending but not -- I haven't
25 heard it yet?

1 MR. SMOLINSKY: That's correct, Your Honor.

2 THE COURT: Okay.

3 MR. SMOLINSKY: And those are the two remaining
4 objections. So maybe we can pause here and allow comments.

5 THE COURT: Okay. CourtCall, unmute anybody who's
6 now on mute. I'll hear first from Onondaga County. I should
7 say, is Onondaga County here in the courtroom? No. Is
8 Onondaga County on the phone?

9 MR. MENDEZ (TELEPHONICALLY): Yes, Your Honor.

10 THE COURT: Okay. May I get your appearance, please?

11 MR. MENDEZ: Yes. This is senior deputy county
12 attorney, Luis A. Mendez. And --

13 THE COURT: Pause. Did you say Mendez?

14 MR. MENDEZ: That is correct.

15 THE COURT: Thank you, Mr. Mendez. Proceed, please.

16 MR. MENDEZ: First --

17 (Gap in audio)

18 MR. MENDEZ: -- question about whether or not the
19 county has been willing to provide Motors Liquidation with an
20 estimate. We have been in discussions with Motors Liquidation
21 very early on. We're also pending receipt from EPA of the
22 remedial investigation of feasibility studies. To confirm, the
23 information that we needed to provide the estimate for one
24 prong of our claim, that has not happened. By the time we did
25 get back to Motors Liquidation, they advised that they were in

1 active discussions with the EPA and were not going to entertain
2 additional discussions.

3 Be that as it may, the county's claims that are being
4 brought as claims -- the 12.5 million dollar reserves does not
5 relate to recovery of the EPA oversight costs of the entire
6 Onondaga Lake system of which Lake Creek is a subsite.

7 THE COURT: Pause, please, Mr. Mendez. You said it
8 relates to EPA's and whose?

9 MR. MENDEZ: DEC's oversight --

10 THE COURT: DEC?

11 MR. MENDEZ: Yes. Department of --

12 THE COURT: DEC stands for Department of
13 Environmental Conservation?

14 MR. MENDEZ: That is correct.

15 THE COURT: Isn't that a state agency rather than a
16 county one?

17 MR. MENDEZ: It is a state agency.

18 THE COURT: Then help me understand why that's an
19 element of your claim.

20 MR. MENDEZ: Because both the USEPA and DEC have
21 pursued the county of other -- for a recovery of those
22 oversight costs.

23 THE COURT: The county is a PRP? I thought you were
24 on offense.

25 MR. MENDEZ: The county has been named as a PRP in --

1 throughout the Onondaga Lake site system. We have a number of
2 different issues that had approached a resolution. As relate
3 to the Lower Ley Creek site, the county, along with Motors
4 Liquidation, were also named as potentially responsible
5 parties.

6 THE COURT: Pause, please, Mr. Mendez, 'cause I must
7 confess, in my prep, I thought the nature of your claim was
8 kind of like the federal EPA or the New York State Department
9 of Environmental Conservation was where you were trying to act
10 in an enforcement capacity. The allegations are that you're in
11 one of those four categories that makes you liable as a PRP?

12 MR. MENDEZ: Yes. And that was actually stated in
13 our proof of claim on the docket --

14 THE COURT: Okay.

15 MR. MENDEZ: -- our proof of claim.

16 THE COURT: But then, if you're a PRP, why don't we
17 have 502(e) issues?

18 MR. MENDEZ: There may be 502 issues if the Lower Ley
19 Creek claim is resolved. If it is not resolved, then we would
20 contest that we have liability and apportionment issues with
21 respect to the site under the -- it was a decision that
22 preclude a 502(e) motion.

23 THE COURT: Have you read my decisions in Chemtura
24 and Lyondell --

25 MR. MENDEZ: Yes, we have.

1 THE COURT: -- on that?

2 MR. MENDEZ: Yes, we have, Your Honor. And there are
3 a number of potentially distinguishing factors with respect to
4 the Lower Ley Creek claim that probably are better addressed in
5 the confirmation phase. But with respect to the matter at
6 hand, right now which was the amount for -- that would be
7 estimated. We understood the debtors' proposed estimation with
8 respect to the Lower Ley Creek portion of the claim to be a
9 zero estimation. And we objected in large part based on our --
10 on the debtors' failure to specify how they had reached that
11 number in light of the procedure that they described in the
12 disclosure statement for estimating the other environmental
13 claims that they have thus far been able to resolve, if you
14 apply the same procedures, could possibly arrive at a zero
15 dollar for an estimation. That was the basis of our --
16 essential basis for our objection was the zero explanation for
17 that -- that portion of the Lower Ley Creek claim that seeks
18 remedial related costs.

19 THE COURT: Mr. Mendez, did you or your county file a
20 liquidated claim for any past out-of-pocket expenses that
21 the --

22 MR. MENDEZ: Well --

23 THE COURT: -- county had to shell out?

24 MR. MENDEZ: We did not file an administrative claim
25 for those.

1 THE COURT: Or a pre-petition claim?

2 MR. MENDEZ: Or a pre-petition claim.

3 THE COURT: Were there amounts that you already had
4 to pay out?

5 MR. MENDEZ: Not for the Lower Ley Creek site itself,
6 Your Honor.

7 THE COURT: All right.

8 MR. MENDEZ: Most about costs for the Lower Ley Creek
9 site really have related to this litigation.

10 THE COURT: Okay. Anything else, Mr. Mendez?

11 MR. MENDEZ: No. Just to reiterate that our limited
12 objection is related to that aspect of the Lower Ley Creek
13 claim that spoke to the remedial costs not the oversight claims
14 which is a 12.5 million dollar reserved amount.

15 THE COURT: Okay. Anything else?

16 MR. MENDEZ: No, not at this time, Your Honor.

17 THE COURT: Thank you. United Technologies? Is that
18 Mr. Carragher?

19 MR. CARRAGHER (TELEPHONICALLY): Yes, it is, Your
20 Honor.

21 THE COURT: Are you on? I guess you are.

22 MR. CARRAGHER: Yes, I am.

23 THE COURT: Go ahead.

24 MR. CARRAGHER: Your Honor, Daniel Carragher for
25 United Technologies. Your Honor, I, too, was confused by the

1 nature of the county's claim in preparing our papers and I hope
2 I didn't contribute to the Court's confusion. I felt that they
3 were outdated and forced with capacity as well whereas they are
4 really in the same position as United Technologies as a PRP.

5 But the basis for our objection, and everyone's
6 objections were to -- at the same time on rather short notice,
7 was not to increase or establish high reserves for our
8 co-liability claims but to make sure the underlying claims
9 weren't artificially capped which would potentially harm us by
10 increasing our orphan share problem by application of some
11 artificial cap.

12 It does appear that the states and Honeywell did not
13 object to the capped amounts on their claims. And those are
14 two -- that have potential liability. The Town of Salina did
15 and there has been a resolution. If I could hear what that
16 resolution is that may resolve our concerns.

17 THE COURT: That's the Salina resolution?

18 MR. CARRAGHER: Yes, Your Honor.

19 THE COURT: Are you in a position to do that, Mr.
20 Smolinsky?

21 MR. SMOLINSKY: I think so, Your Honor.

22 THE COURT: You want to yield to Mr. Smolinsky for a
23 second, Mr. Carragher, to give him a chance to respond to your
24 inquiry?

25 MR. CARRAGHER: Yeah. I would appreciate that.

1 THE COURT: Go ahead, Mr. Smolinsky.

2 MR. SMOLINSKY: Your Honor, the -- we've been in
3 discussions with the Town of Salina. They did file an
4 objection and subsequently withdrew the objection when they
5 understood the treatment that we were providing in the motion.
6 We are currently reserving for a liquidated claim for the Town
7 of Salina in the amount of \$41,076,137.63. That was the amount
8 of the liquidated portion of their claim. And after
9 discussions, they've agreed to withdraw their objection.

10 THE COURT: Okay. Does that help you, Mr. Carragher?

11 MR. CARRAGHER: It does, Your Honor. And I also saw
12 the New York State resolution appears to be on similar lines.
13 And our concern, as with the county's, on the EPA, which is the
14 primary amount, is we didn't know what portion of that was --
15 if its cap -- if any, was attributable to Lower Ley Creek. And
16 that's where we are -- had been in as a potentially responsible
17 party. We would appreciate more information about that. I did
18 hear Mr. Smolinsky's presentation that the Onondaga Lake claims
19 would be reserved at the hundred million dollar level, most
20 likely. And if there's some portion of that to allocate it to
21 Lower Ley Creek, that was -- would give us more comfort. We're
22 not being impaired by the application of these motion.

23 THE COURT: I feel a little bit like we're playing
24 Let's Make a Deal here in the courtroom. But if this exchange
25 of information can be constructive, it's worth it. Mr.

1 Smolinsky, can you or anybody else bring something to the table
2 on this?

3 MR. SMOLINSKY: I'm not sure what to propose, Your
4 Honor. I guess, we --

5 THE COURT: No. I wasn't looking for a new proposal.
6 I was looking for you just giving information to Mr. Carragher.
7 If I have the full array of information after you and the EPA
8 and Mr. Carragher speak, I'll rule.

9 MR. SMOLINSKY: I think you do, Your Honor. The
10 twelve million five -- I think there was a question on where
11 that number came from. And that number was taken from
12 paragraph 8 in the addendum to the --

13 THE COURT: The twelve and a half million being for
14 the Town of Salina?

15 MR. SMOLINSKY: No. That's the Onondaga County.

16 THE COURT: Oh. Right. Forgive me. Excuse me.

17 MR. SMOLINSKY: That was --

18 THE COURT: Salina got forty-one million.

19 MR. SMOLINSKY: That's correct, Your Honor.

20 THE COURT: Okay.

21 MR. SMOLINSKY: And obviously not -- they will be
22 reserved for.

23 THE COURT: Okay. Now is the twelve and a half
24 million dollars for Onondaga County for Onondaga Lake, Lower
25 Ley Creek or some other property or all of the above?

1 MR. SMOLINSKY: It refers to the Onondaga Lake
2 Superfund site which I don't know enough to know whether that's
3 the entire --

4 THE COURT: You don't know how broadly that site is
5 defined?

6 MR. SMOLINSKY: That's correct, Your Honor.

7 THE COURT: Okay. Okay. All right. Are you in a
8 position yet where you need more information, Mr. Carragher, or
9 do you have to make your legal arguments? When I was doing my
10 prep --

11 MR. CARRAGHER: No. I don't need any more
12 information, Your Honor. Our primary concern was that the --
13 with the resolution of the Town of Salina, the USEPA claims and
14 Honeywell claims are not artificially capped. And since those
15 parties haven't objected and there's a two billion dollar
16 number still at this point being used for the USEPA then I
17 think that does satisfy our concerns.

18 THE COURT: Okay. Very good. I'm glad to hear that.
19 All right. So United Technologies' concerns have been
20 addressed.

21 MR. MENDEZ: If I may be heard one more time, if I
22 may impose on the Court?

23 THE COURT: Who is this speaking, please?

24 MR. MENDEZ: This is Mr. Mendez --

25 THE COURT: Go ahead, Mr. Mendez.

1 MR. MENDEZ: -- for Onondaga County. We, too, have
2 benefited from the exchange of information here and understand
3 that there are continuing discussions and discussions that
4 involve the Onondaga Lake site, generally, and perhaps the
5 Lower Ley Creek, in particular. And based on those
6 discussions, I would only request that if something develops in
7 the next twenty-four hours or so, if debtors' counsel would
8 communicate with us so that we can apprise our client and be in
9 a better position to advise them on how to proceed with
10 Thursday's presentation.

11 THE COURT: Can I impose on you to do that, Mr.
12 Smolinsky? Any time by -- that by sharing information you can
13 make an objection go away, that's a pretty good deal.

14 MR. SMOLINSKY: We've tried to do that, Your Honor.
15 And we're happy to speak to Mr. Mendez going forward.

16 THE COURT: Okay. You got it, Mr. Mendez.

17 MR. MENDEZ: Thank you, Your Honor.

18 THE COURT: Okay. Well, then am I right, folks, that
19 on the partially liquidated claims, both objections have now
20 been resolved?

21 MR. MENDEZ: Yes, Your Honor. I would say that that
22 would be the case.

23 MR. CARRAGHER: Yes, Your Honor. I agree also.

24 THE COURT: Okay. Very good. All right. Then my
25 thought, Mr. Smolinsky, had been to take a recess to deal with

1 any open issues. But I wonder if this is a good time for you
2 to put any deals on the record or for counterparties' deals --
3 to put whatever they want to say on the record.

4 MR. SMOLINSKY: Your Honor, I didn't intend to put
5 the deals, the liquidated amounts, on the record unless Your
6 Honor is interested.

7 THE COURT: I don't need that. But I thought you
8 were telling me that some people wanted to make remarks.

9 MR. SMOLINSKY: I believe there are some parties --
10 JPMorgan, specifically, had asked to reserve some time to make
11 some comments.

12 THE COURT: Mr. Toder, is that you or one of your
13 guys?

14 MR. TODER: It's me this time, Your Honor.

15 THE COURT: Okay. Come on up.

16 MR. TODER: But it's not a lot of time.

17 THE COURT: I would hope not.

18 MR. TODER: Thank you, Your Honor. Richard Toder,
19 Morgan, Lewis & Bockius, for JPMorgan Chase Bank. Debtors
20 advised us that, in fact, the estimation motion was not
21 intended to cover JPMC's administrative claims. We had been
22 listed in the exhibit with respect to two administrative claims
23 which led to the confusion. And that indeed, the term loan
24 avoidance claim was being fully reserved as a liquidated claim.
25 The motion had been for unliquidated claims. We thought we

1 were within that category. They fully agreed -- they've agreed
2 to fully estimate.

3 Because of the close relationship between the
4 estimated claims and the plan confirmation hearing, there are
5 two and a half issues that remain. And in response to the
6 Court's administrative order regarding the confirmation
7 hearing, at the end of last week, we filed a motion seeking no
8 more than five minutes of argument time. We have not been
9 included among the parties. On what I think is fair to
10 characterize as unique issues, the Court has not ruled on that.
11 I was hoping that we could impose upon the Court or request of
12 the Court that you allow us that five minutes. And the
13 commitment that I will give to the Court is that if -- and I
14 have some hope that this would be the case based on
15 conversations with debtors' counsel -- that we're able to
16 address these remaining -- as I refer to euphemistically as two
17 and a half issues that we won't impose on the Court for even
18 the five minutes. So I guess I'm requesting albeit the --

19 THE COURT: All right. I don't have a yellow light
20 and a red light. You can have the five minutes. I would hope
21 that on an issue of this character, you don't have to use it.

22 MR. TODER: Me, too, but thank you very much.

23 THE COURT: All right.

24 MR. KOEVARY: Thank you, Your Honor. Jonathan
25 Koevary, Paul, Weiss, Rifkind, Wharton & Garrison, for

1 Enterprise Holdings Inc. Your Honor, just to put -- we were an
2 objector. Our objection was resolved. Your Honor offered to
3 have us put things on the record. We understand we're being
4 taken off of the schedules and that we have a liquidated claim
5 for plan reserve purposes at the amount that we requested in
6 our objection. Thank you.

7 THE COURT: All right. Thank you, Mr. Koevary. Mr.
8 Smolinsky, did he get it right?

9 MR. SMOLINSKY: Yes, Your Honor.

10 THE COURT: Okay. Anyone else?

11 MS. KUEHLER: Your Honor, Natalie Kuehler from the
12 U.S. attorney's office.

13 THE COURT: Your last name, please?

14 MS. KUEHLER: Natalie Kuehler.

15 THE COURT: Kuehler?

16 MS. KUEHLER: Yes.

17 THE COURT: Thank you.

18 MS. KUEHLER: On behalf of the United States. I want
19 to mention for the record that United States was -- there were
20 EPA claims or United States claims that were initially included
21 in both motions currently before the Court, the fully
22 unliquidated reserves motion and the partially unliquidated
23 claims motion. The United States and the debtors have reached
24 agreement to remove the United States claims that were part of
25 the fully unliquidated reserves motion from that motion so they

1 would no longer be part of the unliquidated claims reserve but
2 could be satisfied from the existing two billion dollar reserve
3 established in the partially unliquidated claims motion.

4 In addition, I wanted to address Your Honor's
5 questions about coordination between USEPA and the states on
6 the various environmental liabilities of the debtors. As Your
7 Honor knows, we have reached settlement on own site liabilities
8 and submitted an environmental response -- a proposed
9 Environmental Response Trust Consent Decree and Settlement
10 Agreement. There was extensive cooperation with the relevant
11 states on that. And in fact, fourteen of the states and a
12 tribe --

13 THE COURT: I'm sorry. There was coughing while you
14 were saying that last remark.

15 MS. KUEHLER: And fourteen states and a tribe are co-
16 signatories on that agreement. In addition, we have reached
17 settlement agreements for certain nonowned sites --

18 THE COURT: The distinction you're making -- stuff
19 that GM owned at the time it filed its petition, on the one
20 hand, and that it had once owned but no longer owned, on the
21 other?

22 MS. KUEHLER: No. These are all -- there are certain
23 properties within the environmental response trust that are
24 being resolved although they are currently no longer owned by
25 the debtor but they were at the time of the petition date.

1 There are also --

2 THE COURT: Oh, just since June of 2009.

3 MS. KUEHLER: Since June of 2009.

4 THE COURT: Okay.

5 MS. KUEHLER: There are also some small parcels that
6 were never owned by the debtors but that for reasons of
7 efficiency were included in the environment response trust
8 settlement agreement. And separate from that, there are six
9 settlement agreements that are also already on record with the
10 Court for sites that the debtors did not own at the petition
11 date. And at those separate six settlement agreements, we also
12 had extensive coordination with the states involved.

13 For the remaining environmental liabilities, there
14 are certain sites where there are no co-extensive state claims
15 and there are others where there are. The Onondaga related
16 claims, for example, which we've been discussing here today, we
17 have been coordinating closely with the New York DEC. So
18 depending on the site and the particular issues involved, there
19 has been extensive coordination. Or, where no coordination was
20 necessary, none.

21 THE COURT: Okay. Thank you. All right.

22 MS. LEARY: Your Honor, if I might?

23 THE COURT: Yes.

24 MS. LEARY: Maureen Leary from the New York attorney
25 general's office --

1 THE COURT: Ms. Leary?

2 MS. LEARY: -- on behalf of the State of New York and
3 the Department of Environment Conservation. Just to confirm
4 Mr. Smolinsky's representation that our objection to the cap
5 motion has been withdrawn based upon the deletion of two of New
6 York's twenty-one claims in that motion in the exhibits. Ms.
7 Wine and Mr. Smolinsky have provided me with a letter, I
8 believe. It's directed to the claims agent that would put
9 those two claims, along with the other New York claims, and
10 they will be reserved at the face amount --

11 THE COURT: That New York State asked for?

12 MS. LEARY: -- that New York State asserted. So I
13 just wanted to confirm that.

14 THE COURT: All right.

15 MS. LEARY: Is that okay?

16 THE COURT: Thank you, Ms. Leary.

17 MS. LEARY: All right.

18 THE COURT: Anybody else? Okay. Let's review the
19 bidding. I think I need to rule on Sterniak, Sentry Insurance
20 and Sharyl Carter. Am I missing anything else?

21 MR. SMOLINSKY: Umm --

22 THE COURT: Other objections having been withdrawn or
23 resolved.

24 MR. SMOLINSKY: That's correct. With Ms. Woody's
25 claim being resolved, that's correct.

1 THE COURT: Okay. Under these circumstances, I don't
2 need to take a recess if that is all that's left because my
3 understanding is that the partially liquidated claims motion
4 had previously been resolved vis-à-vis everyone except Onondaga
5 County and United Technologies and those matters were resolved
6 this morning.

7 What is left before me are three objections to the
8 wholly unliquidated claims reserve motion, that of Mr.
9 Sterniak, Sentry Insurance and Sharyl Carter. Reservations of
10 rights typically, and especially vis-à-vis 502(j), do not rise
11 to the level of requiring reserves to be set up for them. And
12 if 502(j) claims or entitlements were ever construed to be of
13 that character, we could never reorganize Chapter 11 cases. We
14 could never proceed with a Chapter 11 plan. The whole name of
15 the game is to narrow the claims that are deserving of allowed
16 claim treatment and to give those with genuinely allowed claims
17 recoveries without undue delay. And accordingly, I'm allowing
18 Sentry Insurance to have any rights it has under 502(j) and to
19 reserve any other rights that it has under applicable law. But
20 I'm ruling that they don't have any relevance to the reserves
21 motion that's before me.

22 As I've said in other contexts, as early as the 363
23 decision on the 4th of July weekend back in 2009, it's
24 unfortunate that there isn't enough value in the Old GM estate,
25 the Motors Liquidation estate, to make distributions to equity

1 holders. But that's the harsh reality of Old GM's financial
2 circumstances. Where, as here, I'm not in a position to make
3 full distributions to the unsecured creditor community, of
4 course, I cannot authorize either distributions or reserves for
5 the benefit of equity holders. So Mr. Sterniak's objection
6 will be overruled for that reason.

7 Lastly, Sharyl Carter would like cash instead of New
8 GM stock. I think it's likely that there are many creditors
9 who feel likewise. But that isn't the consideration that New
10 GM provided to Old GM at the time of the 363 sale. And it's,
11 in any event, a confirmation objection, if that, although I
12 supposed I've telegraphed my thinking on the extent to which it
13 would be a valid confirmation objection as well. So that
14 objection is overruled.

15 Mr. Smolinsky, you and your folks are to paper these
16 rulings at your earliest convenience including papering any
17 revisions in the arrangements that were made as part of
18 resolving claims consensually.

19 MR. SMOLINSKY: Yes, Your Honor. We'd like to ask
20 your indulgence to perhaps wait twenty-four hours and then
21 submit an order because we are dealing with a lot of claims
22 here today that will allow us, if those claims are disallowed
23 to pull them off of the schedules so there'll be fewer claims
24 that are subject to that unliquidated claims reserve.

25 THE COURT: That's fine.

1 MR. SMOLINSKY: Thank you, Your Honor. The next
2 matter on the --

3 THE COURT: Pause, please, Mr. Smolinsky. Anybody
4 who is here on just what we went through so far is free to
5 leave if he or she would like to.

6 (Pause)

7 MR. CARRAGHER: I'll leave the phone call also.
8 Thank you, Your Honor.

9 THE COURT: Very well.

10 (Pause)

11 THE COURT: Okay, Mr. Smolinsky. Go ahead.

12 MR. SMOLINSKY: Thank you, sir. The third matter on
13 the calendar is the seventeenth omnibus objections to claim.
14 Your Honor, this has been carried for some time. We have three
15 remaining responses to that motion. It's the Ohio Department
16 of Taxation, the state of Michigan and the IRS. I'm happy to
17 report that we have recently completed a stipulation with the
18 IRS that will resolve and disallow and expunge all of the IRS'
19 remaining claims. And we can just submit that stipulation to
20 Your Honor for consideration.

21 THE COURT: Okay.

22 MR. SMOLINSKY: The state of Michigan has agreed to
23 withdraw its claims and that would resolve the motion as to it.

24 And that remains -- that leaves us with the Ohio
25 Department of Taxation. The Ohio Department of Taxation has

1 filed several claims against the debtors totaling in excess of
2 fifty-one million dollars. The problem with those claims at
3 this juncture is that they're filed as priority claims. So
4 that would mean, Your Honor, that we would have to deal with
5 them in connection with establishing cash reserves on the
6 effective date which we cannot do. So we bring it before Your
7 Honor today.

8 I think our papers are fairly straightforward. Under
9 the MSPA, the -- all tax claims were assumed by New GM. The
10 state of Ohio has been in discussions, negotiations with New
11 GM. We have not been a party to those discussions. But it's
12 clear that the parties are acting consistent with the fact that
13 New GM has assumed that liability. I don't think that there's
14 any dispute by the state of Ohio that this liability has been
15 assumed. But they're not happy with allowing the disallowance
16 of the claim.

17 THE COURT: Well, the real issue isn't that New GM
18 said it would pay them. The issue -- and there was a question
19 I wanted to ask the state of Ohio. And let me pause for a
20 second. Is state of Ohio here in the courtroom? No. Is state
21 of Ohio on the phone? Anybody from the state of Ohio on the
22 phone? CourtCall, is everybody unmuted? CourtCall, are you
23 still on?

24 THE OPERATOR: Yes, Your Honor. Everyone's unmuted.

25 THE COURT: Okay. I'm going to ask once again. Is

1 there anybody here on behalf of the state of Ohio? All right.
2 It seems to me, Mr. Smolinsky, the relevant issue isn't just
3 that New GM agreed to pay them but that the sale order, the 363
4 order, said that Old GM was off the hook on them.

5 MR. SMOLINSKY: That's correct, Your Honor. And I'll
6 note that the attorney general for the state of Ohio was
7 certainly noticed with the sale motion. In fact, they
8 appeared. They filed objections to the sale on a myriad of
9 points. They were there when the order was papered. And
10 paragraph 26 of the order clearly states that the debtors
11 cannot be pursued for liabilities that have been assumed.

12 So I think Your Honor hit the nail on the head that
13 there's no basis to continue to pursue the debtors on this
14 claim.

15 THE COURT: Okay. One last time. Is anybody here on
16 behalf of the state of Ohio before I rule on this issue? No
17 response.

18 All right. In this contested matter in the Chapter
19 11 case of Motors Liquidation, Old GM, I have the debtors'
20 motion to expunge the claim of the state of Ohio. The motion
21 is granted.

22 As Mr. Smolinsky observed in oral argument, New GM
23 agreed to assume the tax liability. As importantly or more so,
24 frankly more so, the sale order, the 363 sale order, provided
25 that Old GM was off the hook on liabilities such as this tax

1 liability that New GM assumed. Accordingly, by reason of the
2 sale order, New GM is not -- is liable on this to the extent
3 it's otherwise liable under law. And Old GM is off the hook on
4 them. Nothing in this ruling should be deemed to be a
5 determination as to the obligation of New GM to the state of
6 Ohio. But what I am ruling on today is that Old GM is not
7 liable for it. Accordingly, the claim must be expunged.

8 MR. SMOLINSKY: Thank you, Your Honor. We can submit
9 an order.

10 THE COURT: Paper it with a written order the time to
11 appeal from this determination will run from the time of entry
12 of the order and not from this dictated decision.

13 MR. SMOLINSKY: Yes, Your Honor. We'll do that.
14 Your Honor, the last contested matter is the debtors' objection
15 to proof of claim number 69998 filed by Thomas Smalley.

16 Your Honor, we were expecting to go forward with this
17 motion on an uncontested basis until we received yesterday a
18 copy of the objection -- or a response. So we stand before
19 still wanting to go forward but we've had very little time to
20 respond to the responses filed by Mr. Smalley.

21 THE COURT: I think I understand the issues. Mr.
22 Smalley, are you on the phone? Or, first, let me ask, Mr.
23 Smalley, are you in the courtroom? No response. Mr. Smalley,
24 are you on the phone? No response. I am in a position to rule
25 on this on the papers. But I'll need to take a recess till

1 approximately 11:00 or shortly thereafter to do it. Do you
2 want to supplement or make any verbal remarks, Mr. Smolinsky?

3 MR. SMOLINSKY: No, Your Honor. I just want to make
4 sure that CourtCall opened the lines. And then what I would
5 recommend is maybe we run through the uncontested calendar and
6 let everybody else go that might be here on that. And then
7 I'll stay while you prepare your decision.

8 THE COURT: Fair enough. CourtCall, I think you told
9 me that you had unmuted all of the lines, am I correct?

10 THE OPERATOR: Yes, Your Honor.

11 THE COURT: Okay. I'm going to ask one more time.
12 Is Mr. Smalley on the phone or anybody on his behalf? No
13 response. Okay. Take care of the rest of your business, Mr.
14 Smolinsky. Then anybody who's here for matters other than the
15 Smalley thing will be free to leave.

16 MR. SMOLINSKY: Thank you, Your Honor. On the
17 uncontested matters, we have debtors' motion objecting to the
18 Michigan Department of Environmental Quality. We have entered
19 into a stipulation with the state of Michigan which we will
20 submit to Your Honor for consideration.

21 We then have the debtors' motion to reject utility
22 services agreement. Your Honor may recall that we filed a
23 motion to simply reject that one agreement. There was a
24 response filed asserting that this was part and parcel of a
25 number of agreements that would constitute a single integrated

1 contract. After reviewing the agreements, we agreed with that
2 position and we've agreed with DTE that we would agree to
3 reject all three of those agreements. And there'll be a
4 stipulation reserving the parties' rights with respect to
5 365(h) rights as to whether it impacts it, that it's an
6 integrated contract, rejection damages and the like. So we
7 were just exchanging signature pages late last night and we'll
8 submit that stipulation to Your Honor.

9 THE COURT: Okay.

10 MR. SMOLINSKY: Next we have the final motion,
11 hopefully, on the splinter unions. And I think Mr. Karotkin
12 will address this motion.

13 THE COURT: Okay. Mr. Karotkin?

14 MR. KAROTKIN: Good morning, Your Honor. Stephen
15 Karotkin, Weil Gotshal & Manges, for the debtors. Your Honor,
16 the motion, I believe, is self-explanatory. It was served on
17 all of the twenty-four remaining former union retirees who are
18 represented by the Boilermakers.

19 As set forth in the motion, Your Honor, the
20 settlement with the what we call the splinter unions has been
21 made available to any of the unions that wanted to participate.
22 All of the unions other than the Boilermakers have already
23 decided to participate and orders were entered approving their
24 participation as well as --

25 THE COURT: But for some reason the Boilermakers

1 didn't go to bat for their former employees?

2 MR. KAROTKIN: That is correct, Your Honor. They
3 didn't go to bat. They didn't want to be involved. We tried
4 to get them to be involved but without success. So at the end
5 of the day, the debtors and New GM took it upon themselves to
6 make the settlement available to these people rather than
7 basically shutting them out of their benefits.

8 So what this motion does, it provides these twenty-
9 four former employees who were Boilermakers with the same
10 benefits to be provided by New GM that are being provided to
11 the other retirees who elected to participate in the settlement
12 and also enables them to participate for their ratable
13 proportion of the one billion dollar allowed general unsecured
14 claims.

15 As I said, notice was given to all twenty-four
16 members of the union who are now retirees. No response or
17 pleadings were filed. As we set forth in our pleadings, we
18 think that -- and, as well, New GM thinks that this is the fair
19 and appropriate thing to do even though there's no requirement
20 that it be done. And we simply would like the authority to
21 move forward with that.

22 THE COURT: You did the right thing. It's approved.

23 MR. KAROTKIN: Thank you, sir.

24 THE COURT: Okay. Mr. Smolinsky?

25 MR. SMOLINSKY: Your Honor, the next motion on the

1 calendar was a motion actually filed by Mr. Junso to have his
2 claim be timely filed. Mr. Junso is one of the, I believe, the
3 Campbell group that appealed the sale order. And we had agreed
4 in connection with withdrawing the -- their agreement to
5 withdraw that appeal that the debtors would not object to the
6 timeliness of that claim. However, the committee was left with
7 the full rights to do so. They have filed their response.
8 There's been an agreement reached between the committee, the
9 debtors and Mr. Junso that he will be able to file a claim in
10 the next twenty days so that he gets in before the effective
11 date, hopefully, of the plan and that would allow him to have a
12 claim of up to five million dollars and would make them subject
13 to the ADR procedures. So we have a stipulation that we could
14 submit to Your Honor.

15 THE COURT: Fair enough. That's going to be just
16 fine.

17 MR. SMOLINSKY: We then have a number of objections
18 to individual claims. We received no responses to these
19 objections. We have Bobbie Jean Ford Pierce, Ella Lewis,
20 Luceal Anderson, Bernadine Toliver, Audrey Magee. And maybe I
21 could just open it up in case they're on the phone?

22 THE COURT: Okay. Are any of those folks in the
23 courtroom? No. Anybody -- any of those folks on the phone?
24 No response. Go ahead, Mr. Smolinsky.

25 MR. SMOLINSKY: So we'd ask for the reasons set forth

1 in the motion that those claims be expunged and disallowed.

2 THE COURT: They will be. They will be disallowed.

3 MR. SMOLINSKY: Your Honor, the debtors' eighteenth
4 omnibus objections to claim -- that's another motion that's
5 been hanging around for a while. We finally have been able to
6 cajole the city and county of San Francisco to allow that to go
7 forward on an uncontested basis. So that will close out
8 eighteenth omnibus objection to claims.

9 THE COURT: Very well.

10 MR. SMOLINSKY: The twenty-seventh omnibus objections
11 to claim -- we're only going forward with respect to the Jones'
12 response. Mr. Jones has notified the debtors that he no longer
13 has an objection to that motion. So we would like to submit an
14 order disallowing and expunging that claim and adjourning with
15 respect to the rest.

16 THE COURT: Yes, you may.

17 MR. SMOLINSKY: Your Honor, the debtors' 110th
18 omnibus objection to claims -- those are contingent co-
19 liability claims. We've been in discussions with the variety
20 of the parties that remain, the New Flyer, Northrop, Cummins,
21 Detroit Diesel, Expedition Helicopters. I think we're there on
22 orders. So what I'd like to do is to see if we can get you all
23 the orders in the next twenty-four hours. And if there's any
24 issue, we would adjourn it to the March 9th hearing and
25 continue to try to paper those agreements.

1 THE COURT: In other words, these would be orders
2 sustaining the objections because the counterparties recognize
3 that the debtors are entitled to it?

4 MR. SMOLINSKY: For a variety of reasons, they want
5 their own order whether it's a reservation under 502(j) or the
6 ability to pursue New GM even though they know our position
7 that they can't do that under the sale order. But for a
8 variety of reasons, they want their own language in an
9 individual order. And we'll, of course, accommodate them.

10 THE COURT: Okay. That's fine. I saw a person
11 moving up. Did you want to be heard, ma'am?

12 MS. ELISON: Yes, please.

13 THE COURT: Come up to the microphone, would you
14 please?

15 MS. ELISON: Thank you. I appreciate it, Your Honor.
16 Good morning.

17 THE COURT: Good morning. Just state your name first
18 because a recording is being made of this.

19 MS. ELISON: Okay. My name is Julia M. Elison. I'm
20 here on behalf of my mother, Claudette Elison. She had filed a
21 claim for General Motors, for the old General Motors, I
22 believe. And she -- I just wanted -- well, I'm here to make
23 sure that she was included into the omnibus, I believe, claim
24 as a claimant. And the omnibus claims -- I'm sorry. I'm
25 nervous.

1 THE COURT: That's okay. Don't be nervous.

2 MS. ELISON: I'm very nervous, Your Honor.

3 THE COURT: Do you know whether the debtors wanted to
4 expunge -- that is, to say that claim wouldn't be allowed
5 today?

6 MS. ELISON: Well, she received a letter in the mail.
7 And I didn't understand what it was. She had passed away. It
8 will be a year tomorrow. And so she had started receiving --
9 well, I have received letters in the mail on her -- on this.
10 And this is all brand new. I didn't have any knowledge of what
11 was read. I had tried to talk to -- seek legal counseling in
12 Michigan. We're from Michigan -- I'm sorry.

13 THE COURT: You came all the way from Michigan?

14 MS. ELISON: Yes. We came all the way here from
15 Michigan just to make sure that she was included with the
16 claims that was filed -- that was here for the General
17 Motors --

18 THE COURT: Okay.

19 MS. ELISON: -- account.

20 THE COURT: Did you say your name was Ms. Elison?

21 MS. ELISON: Yes. Yes, Your Honor.

22 THE COURT: And is your mom also Ms. Elison? Or
23 is --

24 MS. ELISON: Yes, Your Honor.

25 THE COURT: Okay.

1 MS. ELISON: Her name is Claudette Elison.

2 THE COURT: Claudette.

3 MS. ELISON: Yes.

4 THE COURT: Okay. Mr. Smolinsky, I don't know if,
5 under these circumstances, you're prepared to respond and you
6 know about Ms. Elison's mother's claim. I guess the thought I
7 have is if you can respond substantively, okay. But otherwise,
8 perhaps an approach would be to say that for the time being her
9 rights are preserved and that if you have moved to expunge it
10 for a failure to respond, you'll just continue it as you do so
11 many others.

12 MS. ELISON: Okay.

13 THE COURT: Mr. Smolinsky?

14 MR. SMOLINSKY: Your Honor, the good news is in the
15 courtroom we have Carrienne Basler and an iPad. So, I think
16 that while Your Honor takes a break, we can talk to Ms. Elison,
17 find out where her claim resides and maybe it could be resolved
18 today. We'll find out what's going on with it and report back
19 to Your Honor when you come back --

20 THE COURT: Good. You can do it while I'm taking the
21 recess on the other matter.

22 MR. SMOLINSKY: Yes, Your Honor.

23 MS. ELISON: Thank you.

24 THE COURT: Okay. Do we have any other further
25 business before I take the recess?

1 MR. SMOLINSKY: Your Honor, we just have the new
2 omnibus objections. That's omnibus objection 146 to 209. As
3 usual, we have agreed to adjourn those that have filed
4 responses and seek orders with respect to those that have not
5 responded.

6 I'll just note that the 208th and 209th omnibus --
7 you may notice in the agenda that there are lots of them that
8 are being carried. Those are the 502(e)(1)(B). And we believe
9 that a lot of those will go away in connection with the EPA
10 agreements. But we'll be back before Your Honor on the 29th.
11 United Technologies, for example, is on that motion. And so
12 we'll be back before Your Honor on the 29th to address those
13 matters.

14 THE COURT: Okay. Does that take care of it?

15 MR. SMOLINSKY: I think that's right, Your Honor.

16 THE COURT: Okay. We'll be in recess. I would like
17 everybody back here by 11:15 on the clock up there. We're in
18 recess.

19 (Recess from 11:04 a.m. until 11:27 a.m.)

20 THE CLERK: All rise.

21 THE COURT: Have seats, please. All right. Ladies
22 and gentlemen, after the recess, I'm now in a position to rule
23 on the objection to the claim of Thomas Smalley. I assume that
24 Mr. Smalley is still not on the phone. The motion's been
25 decided on the papers.

1 (Pause)

2 THE COURT: In the jointly administered Chapter 11
3 cases of debtor, Motors Liquidation Company, formerly General
4 Motors Corporation, which, as in the past, I'll refer to as Old
5 GM, I have the debtors' objection to the claim of Thomas
6 Smalley. The claim arises from a car accident that took place
7 in 1997, twelve years before the filing of Old GM's bankruptcy
8 case. And the objection to the claim gives rise to the
9 contested matter that I have to decide today.

10 Mr. Smalley never filed a lawsuit against Old GM and,
11 as I'll discuss, the statute of limitations with respect to his
12 claim passed. In addition, Mr. Smalley filed his proof of
13 claim late despite receiving actual notice of the bar date.
14 For those two reasons, I necessarily must conclude, therefore,
15 that his claim must be disallowed. My findings of fact,
16 conclusions of law and bases for the exercise of my discretion
17 in connection with these determinations follow.

18 First, as facts, I find that Mr. Smalley, a resident
19 of the state of Iowa, was injured in a motor vehicle accident
20 on September 27, 1997, almost twelve years before Old GM's
21 Chapter 11 filing. He was injured in DuPage County, Illinois
22 while driving a Buick Regal, a vehicle manufactured by Old GM.
23 According to Mr. Smalley, the accident occurred due to a loss
24 of steering and control of the Buick that resulted in a roll
25 over accident. Mr. Smalley did not file a lawsuit against Old

1 GM at the time, however, or since.

2 On June 1st, 2009, Old GM commenced its Chapter 11
3 case in this court. On June 19, 2009, eighteen days later, Mr.
4 Smalley contacted the debtors' customer assistance center and
5 notified the debtors of his accident for the first time. As a
6 result of Mr. Smalley's call to the assistance center, he
7 received actual notice of the bar date order by mail.

8 The bar date order states that proofs of claim
9 against the debtors must be actually received on or before the
10 bar date. And it further explains that any creditor who fails
11 to comply with the bar date order will be forever barred from
12 asserting the claim or filing a proof of the claim. In
13 addition to providing actual notice of the bar date, the
14 debtors also provided notice by publication in several national
15 newspapers. However, the important thing here is that he got
16 actual notice of the bar date by mail.

17 On February 8, 2010, three months after the bar date
18 had come and gone and approximately twelve and a half years
19 after his accident, Mr. Smalley then filed a proof of claim
20 against Old GM. On December 12th, 2010, Mr. Smalley was
21 engaged by Old GM to discuss settlement of his claim of which
22 he declined. He has asserted that his claim is worth between
23 fifteen million dollars and eighty million dollars. That's 8-0
24 million dollars.

25 Turning now to my conclusions of law and bases for

1 the exercise of my discretion. I'm forced to expunge this
2 claim for two separate reasons: first, because it is time
3 barred; and second, because the proof of claim was filed late.

4 It's a well settled law in this district, the
5 Southern District of New York that bankruptcy courts may
6 determine issues of law with respect to personal injury claims
7 such as issues as to whether or not the statute of limitations
8 has run. See *In re U.S. Lines Inc.*, 262 B.R. 223 at 234
9 (S.D.N.Y. 2001). As Judge Lifland explained in *Chateaugay*, a
10 finding that the claim is subject to disallowance as a matter
11 of law is not tantamount to a determination on the merits of
12 the personal injury tort. *In re Chateaugay Corp.*, 111 B.R. 67,
13 76 (Bankr. S.D.N.Y. 1997).

14 To state the obvious, my subject matter jurisdiction
15 to decide a claims allowance matter is clear under 28 U.S.C.
16 1334. And by reason of that case law, I likewise have the
17 power as a bankruptcy judge to decide the issue under 28 U.S.C.
18 157 even though I don't have Article 3 status.

19 Determining which statute of limitations to apply is
20 not as debatable as it might be since there are only two
21 possibilities and neither one of them is long enough to
22 accommodate a claim that was filed twelve years after the
23 accident occurred. However, I'll briefly explain the analysis.

24 As I discussed in my decision in *Adelphia*
25 *Communications Corporation* where, as here, a Court is

1 exercising bankruptcy jurisdiction over state law claims under
2 28 U.S.C. Section 1334(b), the Court applies the choice of law
3 rules of the forum state, which is New York, of course, to
4 determine the applicable statute of limitations. See *Adelphia*
5 *Communications Corp. v. Bank of America, In re Adelphia*
6 *Communications Corp.*, 364 B.R. 24, 57, Note 136 (Bankr.
7 S.D.N.Y. 2007).

8 New York has a statute of limitations "borrowing
9 statute", New York CPLR 202. That statute provides that "an
10 action based upon a cause of action accruing without the state"
11 -- and I say, parenthetically, the state there is New York
12 State -- "cannot be commenced after the expiration of the time
13 limited by the laws of either New York State or the place
14 without New York State where the cause of action accrued except
15 that where the cause of action accrued in favor of a resident
16 of New York State, the time limited by the laws of New York
17 State shall apply. In many cases, when I was quoting the
18 statute, I substituted the words "the State", the cryptic
19 drafting which New York's legislator in its wisdom used when
20 drafting the statute, and plugged in "New York State" which, of
21 course, makes much more sense to the reader.

22 Under New York law and assuming that Mr. Smalley is
23 asserting a strict products liability claim or a negligence
24 claim, the two real bases for his claim, the cause of action
25 "accrued", as that expression is used in New York CPLR 202, at

1 the place where the accident occurred. *Martin v. Julius Dierck*
2 *Equipment Company*, 43 N.Y.2d 583, 588 (1978). I note
3 parenthetically that this is a rule that's applicable to
4 negligence and product liability claims. It is not the same
5 rule that would apply to a contract claim or a claim for a
6 purely economic injury.

7 In New York, the statute of limitations for both
8 negligence and products liability claims is three years. See
9 New York CPLR 214(5); and *Victorson v. Bock Laundry Machine*
10 *Company*, 37 N.Y.2d 395, 404 (1975). However, in my view, it's
11 the statute of limitations of Illinois where the accident took
12 place that controls. And under Illinois law, that statute of
13 limitations for both negligence and products liability is two
14 years. See 735 Ill. Stat. 513-202; and *Golla v. General Motors*
15 *Corp.*, 657 N.E.2d 894, 903 (Ill. 1995) which holds that the
16 two-year statute of limitations for product liability claims
17 begins to run at the time of the accident.

18 Under Illinois' shorter statute of limitations, Mr.
19 Smalley's claim is time barred. However, while I think it's
20 pretty clear under the New York law, CPLR 202, that the place
21 where the cause of action accrued is controlling and that's
22 Illinois, I note that even under New York's longer three year
23 statute of limitations, his claim would still be time-barred.
24 Thus, the claim must be disallowed because it's barred under
25 the statute of limitations.

1 Similarly, the claim cannot be allowed because the
2 proof of claim wasn't timely filed. Section 502(b)(9) of the
3 Code provides that a claim will be disallowed if the proof of
4 such claim is not timely filed and a party has objected to the
5 claim. Pursuant to Bankruptcy Rule 3003(c)(3), a proof of
6 claim isn't timely filed unless it's done prior to the deadline
7 fixed by the bankruptcy court. As Chief Judge Gonzalez
8 explained in XO Communications, "A bar date is not to be
9 disregarded by claimants since it's meant to function as a
10 statute of limitations and effectively disallows late claims in
11 order to provide the debtor and its creditors with finality to
12 the claims process to permit the debtor to make swift
13 distributions under the plan." In re XO Communications, Inc.,
14 301 B.R. 782, 797-798 (Bankr. S.D.N.Y. 2003).

15 Despite receiving actual notice by mail, Mr.
16 Smalley's proof of claim was filed three months late. And he
17 filed it late without any explanation. In particular, he's
18 made no showing that this delay was excusable. The Supreme
19 Court has held that excusable neglect hinges on five factors:
20 (1)the degree of prejudice to the debtors; (2)the length of the
21 delay and its potential impact on judicial proceedings; (3)the
22 reason for the delay including whether it was within the
23 reasonable control of the claimant; (4)whether the claimant
24 acted in good faith; and (5)if a claimant had counsel whether a
25 claimant should be penalized for his or her counsel's mistake

1 or neglect. See Pioneer Investment Services Company v.
2 Brunswick Associates, 507 U.S. 380, 385-387 (1993).

3 The Second Circuit has noted that "the equities will
4 rarely, if ever, favor a party who fails to follow the clear
5 dictates of a Court rule." In re Enron Corp., 419 F.3d 115,
6 122-123 (2d Cir. 2005).

7 The Second Circuit went on to explain that the
8 Pioneer factors are not to be equally weighted and that the
9 excuse provided by the litigant may be given the greatest
10 importance. That's Enron, too, at the same page.

11 Here, the relevant factors weigh heavily against
12 allowing Mr. Smalley's claim. First, the prejudice to the
13 debtors who, of course, are acting for all of the other
14 creditors in the case, is significant. Reserving fifteen
15 million dollars in this case, much less eighty million dollars,
16 would be severely prejudicial to Old GM's other creditors given
17 the need to make distributions available to them and the fact
18 that we have a confirmation hearing for this case coming up
19 this Thursday.

20 Also, since the claim is clearly time-barred, it
21 would be an unnecessary hardship to GM's -- Old GM's other
22 creditors to force Old GM to expend more resources in order to
23 litigate a claim that could never be allowed anyway.

24 Next, while the delay was only three months, or was a
25 relatively small three months, the delay of even that amount

1 was not explained. And it's in the context of a creditor
2 having been given actual notice after he actually called and
3 was in contact with the debtors.

4 Third, Mr. Smalley has provided no reason for the
5 delay. This is especially significant because the Second
6 Circuit explained in its Enron decision that this factor should
7 be weighed most heavily.

8 Finally, while Mr. Smalley has at least seemingly
9 acted in good faith, this factor alone is insufficient to
10 outweigh the other factors.

11 The claimant has not made the required showing of
12 reasonable neglect.

13 For the reasons I've just stated, the debtors'
14 objection to Mr. Smalley's claim must be sustained and the
15 claim must be disallowed. The time to appeal this decision
16 will run from the time of entry of the resulting order and not
17 from the time of this dictated decision.

18 I note that, to their great credit, the debtors
19 apparently had some discussions with Mr. Smalley vis-à-vis a
20 possible settlement notwithstanding the very apparent
21 weaknesses in this claim. I won't prohibit the debtors from
22 doing so. And if the debtors want to and the creditors'
23 committee doesn't voice an objection, if they want to try to
24 still resolve this in the near future before the order is
25 entered, I don't mind. But if Mr. Smalley requires me to act

1 in accordance with this decision, he's going to have to live
2 with the decision that I just dictated.

3 Am I correct, Mr. Smolinsky and Mr. Karotkin, that we
4 have no further business?

5 MR. SMOLINSKY: Your Honor, Joe Smolinsky for the
6 debtors. I just want to provide Your Honor with an update on
7 Ms. Elison.

8 THE COURT: Oh, yes.

9 MR. SMOLINSKY: We did take the opportunity to speak
10 to her. Her claim is subject to omnibus claim objection number
11 147. Unfortunately, that's an objection seeking to reclassify
12 claims into equity interests. Ms. Elison's mother filed a
13 claim --

14 THE COURT: For stock she held?

15 MR. SMOLINSKY: -- reciting the fact that she had
16 stock. And we see no other claims. We discussed with Ms.
17 Elison the priority scheme under the Bankruptcy Code and the
18 upcoming confirmation and the impact of that. We offered Ms.
19 Elison the opportunity to consult an attorney before we enter
20 the order. She took us up on it. So we'll adjourn the motion
21 as to her till March 29th. And I assume that she's going to be
22 comforted in corroborating what we explained to her. And --

23 THE COURT: Okay.

24 MR. SMOLINSKY: -- it's unfortunate but that's --
25 those are the facts.

1 THE COURT: Ms. Elison, I see you're still in the
2 back of the room. I talked about this in a different context.
3 Unfortunately, until and unless GM's creditors get paid, there
4 isn't much we can do about stockholders. But what the debtors
5 have offered to do is to give you a chance to get your own
6 advice on that and nothing is going to be done to you or your
7 family today.

8 MS. ELISON: Okay.

9 THE COURT: Thank you.

10 MS. ELISON: Okay. Thank you, Your Honor.

11 THE COURT: Thank you. Okay. Anything else, Mr.
12 Smolinsky?

13 MR. SMOLINSKY: I think that's a wrap, Your Honor.

14 THE COURT: Okay. Then we're adjourned.

15 (Whereupon these proceedings were concluded at 11:49 a.m.)
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I N D E X

R U L I N G S

DESCRIPTION	PAGE	LINE
Debtors' motion seeking to establish reserves of \$420 million set aside for approximately 1500 fully unliquidated claims granted:	58	17
Sentry Insurance's objection to motion overruled;	57	20
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Debtors' motion for entry of order approving settlement with former Boilermakers employees authorizing them to receive same benefits as splinter unions granted	65	21

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I N D E X, cont'd

R U L I N G S

DESCRIPTION	PAGE	LINE
Debtors' objections to individual proofs of claims filed by Bobbie Jean Ford Pierce (claim #02307), Ella M. Lewis (claim #69923), Luceal Anderson (claim #69969), Bernadine Toliver (claim #69970), Audrey Magee (claim #70000), Christi Coleman (claim #70461) sustained; claims will be disallowed/expunged	67	1
Debtors' twenty-seventh omnibus objection to claims (incorrectly classified claims) with respect to Michael Jones' claim (#29055) sustained; claim will be disallowed/expunged	67	15
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I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.

LISA BAR-LEIB

AAERT Certified Electronic Transcriber (CET**D-486)

Veritext

200 Old Country Road

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Date: March 2, 2011

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