

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 09-50026 (REG)

4 Adv. Case No. 10-05015 (REG)

5 Adv. Case No. 12-09803 (REG)

6 - - - - - x

7 In the Matter of:

8

9 GENERAL MOTORS CORPORATION,

10

11 Debtor.

12 - - - - - x

13 TOYOTA MOTOR COROPRATION,

14 Plaintiff,

15 v.

16 MOTORS LIQUIDATION CO. F/K/A GENERAL MOT,

17 Defendant.

18 - - - - - x

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20 DONNA M. TRUSKY,

21 Plaintiff,

22 v.

23 GENERAL MOTORS COMPANY,

24 Defendant.

25 - - - - - x

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U.S. Bankruptcy Court  
One Bowling Green  
New York, New York

June 14, 2012  
9:51 AM

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

1       Hearing re:   Adv. - 10-05015 - Case Conference

2

3       Hearing re:   Motion for Order to Change Venue for

4       Determination of Claim filed by Gerald D. Wahl on behalf of

5       Marcus Jordan

6

7       Hearing re:   Debtors' 170th Omnibus Objection to Claims

8       (Welfare Benefits Claims of Retired and Former Salaried and

9       Executive Employees)

10

11       Hearing re:   Debtors' 171st Omnibus Objection to Claims

12       (Welfare Benefits Claims of Retired and Former Salaried and

13       Executive Employees)

14

15       Hearing re:   Debtors' 175th Omnibus Objection to Claims

16       (Welfare Benefits Claims of Retired and Former Salaried and

17       Executive Employees)

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19       Hearing re:   Debtors' 177th Omnibus Objection to Claims

20       (Welfare Benefits Claims of Retired and Former Salaried and

21       Executive Employees)

22

23       Hearing re:   Debtors' 178th Omnibus Objection to Claims

24       (Welfare Benefits Claims of Retired and Former Salaried and

25       Executive Employees)

1 Hearing re: Debtors' 180th Omnibus Objection to Claims  
2 (Welfare Benefits Claims of Retired and Former Salaried and  
3 Executive Employees)

4

5 Hearing re: Debtors' 181st Omnibus Objection to Claims  
6 (Welfare Benefits Claims of Retired and Former Salaried and  
7 Executive Employees)

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9 Hearing re: Debtors' 183rd Omnibus Objection to Claims  
10 (Welfare Benefits Claims of Retired and Former Salaried and  
11 Executive Employees)

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13 Hearing re: Debtors' 184th Omnibus Objection to Claims  
14 (Welfare Benefits Claims of Retired and Former Salaried and  
15 Executive Employees)

16

17 Hearing re: Debtors' 185th Omnibus Objection to Claims  
18 (Welfare Benefits Claims of Retired and Former Salaried and  
19 Executive Employees)

20

21 Hearing re: Motion to Approve Notice Pursuant to Fed. R.  
22 Civ. P. 23(h) for Award of Attorneys Fees from claim No.  
23 51093 Settlement fund on behalf of Anderson Class Counsel.

24

25 Hearing re: Motion of Motors Liquidation Company GUC Trust

1 for Limited Modification of the Automatic Stay and the Plan  
2 Injunction as to the Proof of Claim Filed by Anne Valdes for  
3 the Sole Purpose of Allowing Claimant to Liquidate the Proof  
4 of Claim by Filing an Action

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6 Hearing re: Adv. 1-12-09803 - Pretrial Conference

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25 Transcribed by: Dawn South

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P R O C E E D I N G S

THE COURT: Okay, let's get to work on General Motors. Want to come on up, please, folks.

Mr. Smolinsky, gives folks a chance to have seats and then we'll start.

(Pause)

THE COURT: Okay, terrific, whenever you're ready.

MR. SMOLINSKY: Thank you. Good morning, Your Honor, Joseph Smolinsky of Weil, Gotshal & Manges for the Motors Liquidation Company GUC Trust.

If I may propose how we proceed this morning I think it would sense to hold the status conference first, then move to the uncontested matters, then come back to the contested matters so that I can take my leave and my colleague, Mr. Griffiths, can finish up the hearing.

THE COURT: Sure, that's sound like.

MR. SMOLINSKY: Item number 1 of the agenda is the status conference of the adversary proceeding, Toyota Motor Corporation versus Motors Liquidation Company.

I think Your Honor correctly noted that while we had resolved the NUMMI claim that was part of that -- that period of litigation, which concluded with the motion to dismiss filed by the debtors, we have not resolved the claim of Toyota. And why we had some concern that Your Honor had thought that it was all settled and therefore there was

1 nothing remaining under advisement, given the workload that  
2 Your Honor had with other matters under advisement and given  
3 the fact that we were still midway through the claims  
4 reconciliation process we thought it was advisable to wait  
5 on that matter for a period of time before finding out  
6 whether Your Honor was mistaken that this matter was  
7 resolved.

8 THE COURT: Are you diplomatically telling me that  
9 I took something under submission there that I haven't ruled  
10 on?

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

12 THE COURT: I thought that Toyota was a joint  
13 venture partner in NUMMI and that the rights that the joint  
14 venture -- NUMMI joint venture would have against General  
15 Motors would belong to the joint venture as compared and  
16 contrasted to its individual joint venture partners.

17 Now I assume Toyota isn't here today; am I  
18 correct?

19 MR. SMOLINSKY: Toyota is here.

20 THE COURT: Oh, okay.

21 MR. SMOLINSKY: Counsel --

22 THE COURT: But I also assume that my  
23 understanding in that regard may be mistaken.

24 MR. SMOLINSKY: At the hearing --

25 THE COURT: Or at least it's arguably mistaken.

1 MR. SMOLINSKY: At the hearing on the motion to  
2 dismiss, which was heard on February 9th, 2011, my view is  
3 Your Honor correctly was skeptical of Toyota's claims versus  
4 NUMMI's claims, which was the joint venture as opposed to  
5 another joint venture partner, Nevertheless, Toyota  
6 continued to pursue its claims as a joint venture partner  
7 believing that the other joint venture partner, General  
8 Motors Corporation, had duties to it that would result in  
9 claims that were asserted in its remaining proof of claim.

10 THE COURT: Okay. I want to give Toyota's counsel  
11 an opportunity to be heard, but to your understanding,  
12 Mr. Smolinsky, what was before me? Did we have full  
13 briefing on it and argument, and when did I take it under  
14 submission? I don't rule out the possibility that a ball  
15 fell between the outfielder's hand.

16 MR. SMOLINSKY: The matter was fully briefed, and  
17 if Your Honor recalls, Toyota had asserted various claims,  
18 their primary claim was for research and development costs  
19 that they incurred in connection with developing the  
20 automobiles that were produced by NUMMI.

21 THE COURT: Like the Pontiac (indiscernible -  
22 00:05:37)?

23 MR. SMOLINSKY: Then there were additional claims  
24 for workers' compensation and environmental that this Court  
25 properly noted were subject to disallowance under

1 502 (e) (1) (b) , and those claims were voluntarily dismissed.

2 THE COURT: The 502(b)(1)(b) claims.

3 MR. SMOLINSKY: Yes.

4 THE COURT: But not the remainder.

5 MR. SMOLINSKY: But not the remainder. I do have  
6 a copy of the transcript from February 9th if it would  
7 assist Your Honor.

8 THE COURT: Please tell me that was February 1911  
9 (sic).

10 MR. SMOLINSKY: 2011.

11 THE COURT: Okay. And I then took it under  
12 submission?

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

14 THE COURT: Okay. Anything further before I hear  
15 from counsel for Toyota?

16 MR. SMOLINSKY: No, just maybe -- maybe just a  
17 little bit more background.

18 If you recall we had objected to Toyota's proof of  
19 claim and NUMMI's proof of claim. At an initial hearing  
20 Your Honor thought that it was difficult to parse through  
21 the various contracts that were at issue and therefore  
22 thought that a plenary proceeding was more appropriate.

23 THE COURT: I made Federal Civil Rules 8, 9, and  
24 12 applicable.

25 MR. SMOLINSKY: Correct, and that's why each of

1 Toyota and NUMMI filed adversary proceeding --

2 THE COURT: Right.

3 MR. SMOLINSKY: -- which initiated the motions to  
4 dismiss.

5 THE COURT: Okay. May I hear from counsel for  
6 Toyota, please. If you'd use the main lectern, please.

7 MS. NANN: Sure. Good morning, Your Honor, Alissa  
8 Nann from Foley & Lardner on behalf of Toyota Motor Corp.

9 THE COURT: Could you speak a little louder and  
10 pull that microphone closer to you?

11 MS. NANN: Sure. Alissa Nann from Foley & Lardner  
12 on behalf of Toyota Motor Corporation.

13 THE COURT: That's Mann, M-A-N-N?

14 MS. NANN: It's Nann N like Nancy, A-N-N.

15 THE COURT: Oh, forgive me.

16 MS. NANN: No problem.

17 THE COURT: Okay.

18 MS. NANN: My colleagues, Jeff Soble from our  
19 Chicago office and Matt Riopelle from our San Diego office  
20 are on the phone I believe.

21 THE COURT: Okay.

22 MS. NANN: And they were involved in the earlier  
23 proceedings and can answer any questions that you may have.

24 THE COURT: I guess I need to know from you,  
25 Ms. Nann, or neither your colleagues, whether you have any

1 problems with the accuracy or completeness from what I just  
2 heard from Mr. Smolinsky.

3 MS. NANN: From my understanding of what I've been  
4 -- been brought up to speed on this, Your Honor, I believe  
5 Mr. Smolinsky's representations to the Court were accurate.

6 THE COURT: Okay. So you're waiting just like he  
7 is --

8 MS. NANN: Exactly, yes.

9 THE COURT: -- for me to issue a ruling on that.

10 MS. NANN: Yes, we are.

11 THE COURT: Okay. Ms. Nann, do you have a problem  
12 if I ask your colleagues if they want to supplement what you  
13 said in any way?

14 MS. NANN: No.

15 THE COURT: Okay. Ms. Nann's colleagues on the  
16 phone from Foley & Lardner out of town, do you guys want to  
17 be heard on this in any way?

18 MR. SOBLE: Your Honor, (indiscernible - 00:08:29)  
19 Chicago. I just have one comment I'd like to add.

20 I do factually what's been stated is true  
21 procedurally about where we are with everything in the  
22 complaints and the motion.

23 The only thing that I would wish to clarify on  
24 Toyota's behalf is that the claims that are pending for that  
25 are not as a JV partner but as a contractual party with an

1 LC. The claims relate to the -- to Toyota's position as a  
2 direct contractual party and are based mostly in breach of  
3 contract of the vehicle supply agreement in the 2006  
4 memorandum of understanding.

5 THE COURT: Okay.

6 MR. SOBLE: The claims are not derivative or  
7 resolved by NUMMI's settlements, they're separate and  
8 independent based on direct contracts.

9 THE COURT: Okay, I understand. All right. All  
10 right.

11 Well, thank you, folks, it sounds to me like I  
12 just have another log on my fire, and we'll get to it as  
13 soon as we can. What else --

14 MS. NANN: Thank you, Your Honor.

15 THE COURT: -- you got, Mr. Smolinsky before you  
16 need to get out of here?

17 MR. SMOLINSKY: Would it assist the Court if I  
18 left a copy of the transcript?

19 THE COURT: Yeah. Would you give it to one of my  
20 law clerks, please.

21 MR. SMOLINSKY: Let me just run through the  
22 uncontested matters.

23 The first matter is a motion filed by the Motors  
24 Liquidation Company GUC Trust for a limited modification of  
25 the automatic stay to allow Anne Valdes to file an action.

1           She is a claimant, a personal injury claimant. We  
2 had gone through the ADR process, which was unsuccessful,  
3 and there is no prepetition pending action.

4           Given the fact that this Court doesn't have  
5 jurisdiction to liquidate the claim we need to have a  
6 pending action in some court. We would prefer that action  
7 to be in the Southern District of New York. The U.S. Lyon's  
8 Second Circuit decision tells us that while the District  
9 Court has the right to direct what court a case should be  
10 filed in, this Court does not, and therefore other than a  
11 gentle suggestion in our motion papers that they should file  
12 in the Southern District of New York where they may very  
13 well face a motion for removal and transfer we have asked  
14 the Court to direct that an action be filed within the next  
15 45 days to file a claim wherever proper jurisdiction lays,  
16 including the Southern District of New York.

17           The motion further goes on to request that if the  
18 action is not filed within 45 days and there's not a motion  
19 to extent the time for cause filed within that period that  
20 the claim would be automatically expunged.

21           THE COURT: Forty-five days is a fairly tight  
22 period. Has she been previously represented by counsel and  
23 participated in the ADR process in an active way?

24           MR. SMOLINSKY: She is represented in counsel --  
25 by counsel, they did -- they did appear at the mediation.



1 THE COURT: Uh-huh.

2 MR. SMOLINSKY: And they are aware of the motion.

3 THE COURT: And did they object to your 45-day  
4 request?

5 MR. SMOLINSKY: We received no objection to the  
6 motion.

7 THE COURT: Uh-huh. Where does she live?

8 MR. SMOLINSKY: Miami, Florida, according to the  
9 proof of claim.

10 THE COURT: All right. I'm going to grant your  
11 motion given that it was unopposed, Mr. Smolinsky, but the  
12 legislative history of this order is going to be that if  
13 before the end of the 45 days there is a timely request for  
14 an extension for an additional 45 days and if cause is shown  
15 I'm likely to grant it.

16 You don't need to put that in the order, but we're  
17 going to have a transcript to that effect.

18 With this much time having gone by I don't want  
19 there to be a forfeiture of rights because the balls fell  
20 between the outfielders.

21 MR. SMOLINSKY: Understood, Your Honor. And as I  
22 said, the order does provide that a motion could be filed to  
23 extent the time for cause.

24 THE COURT: Oh, it already provided for that.

25 MR. SMOLINSKY: Yes. Yes.

1 THE COURT: Oh, okay, you were a step ahead of me  
2 then.

3 MR. SMOLINSKY: And I will -- I will send a cover  
4 letter with the order, which we'll put in bold, the  
5 provision of the order that says that if a complaint is  
6 timely filed then the claim shall be automatically  
7 extinguished.

8 THE COURT: All right. And such a complaint could  
9 be put in any court of competent jurisdiction.

10 MR. SMOLINSKY: That's correct.

11 THE COURT: Okay, that's fine, you got it.

12 MR. SMOLINSKY: Subject to of course our rights of  
13 removal and transfer.

14 THE COURT: I understand.

15 MR. SMOLINSKY: The next matter on the agenda is  
16 the motion by the Anderson Class Counsel, which is a motion  
17 for approval of notice in connection with a request for the  
18 awarding of fees to class action counsel.

19 THE COURT: Okay. You want to hand off to them?

20 MR. SMOLINSKY: Yes.

21 THE COURT: Good morning.

22 MR. RACHMUTH: Good morning, Your Honor, Paul  
23 Rachmuth from Gersten Savage.

24 THE COURT: I'm having trouble hearing you.

25 MR. RACHMUTH: Good morning, Your Honor, Paul

1 Rachmuth from Gersten Savage. I have with me my co-counsel  
2 A.J. De Bartolemeo --

3 MS. DE BARTOLOMEO: Your Honor, it's De  
4 Bartolemeo.

5 THE COURT: Okay.

6 MR. RACHMUTH: From Girard Gibbs in California who  
7 has been admitted pro hac to this Court. I'll let her give  
8 the specifics and answer your questions.

9 The motion requests notice approval to be sent to  
10 the class of parties who are subject to a settlement, and we  
11 are asking this Court for dates to allow for that notice and  
12 a subsequent hearing on the Girard Gibbs fees.

13 THE COURT: Sure. Did you recommend particular  
14 dates? Or come on up, Ms. De Bartolemeo.

15 MS. DE BARTOLOMEO: Good morning, Your Honor. And  
16 once again thank you for permitting me to appear pro hac  
17 here.

18 Your Honor, it really depended on in terms of the  
19 dates we wanted to allow enough time under the Bankruptcy  
20 Rules and the Class Action Rules for a comment period and  
21 then we wanted to coordinate debtor's counsel as to an  
22 appropriate hearing date that fit the schedule.

23 We were conferring prior to this -- the Court  
24 taking the bench and we're happy to work with debtor's  
25 counsel so that it fits in either the next hearing date or

1 the following one. We'd love the Court's guidance on how  
2 much time you believe would be appropriate for the comment  
3 period under class action standards. I would probably  
4 recommend 30 days from the notice, but depending upon how  
5 the Court feels about 30 days we're willing to take whatever  
6 guidance you can offer.

7 THE COURT: Refresh my recollection as to whether  
8 you're only talking about opportunity to object to your fees  
9 or whether you're talking about opportunity to object to the  
10 fairness of the settlement.

11 MS. DE BARTOLOMEO: At this point, Your Honor,  
12 it's only the fee application. Your Honor already granted  
13 the settlement last year, and so this is under Rule 23 in  
14 the Bankruptcy Rules their opportunity to comment to the  
15 Court as to whether class counsel should be compensated for  
16 the work we've done post-petition to establish the common  
17 fund.

18 THE COURT: For that purpose 30 days is fine. But  
19 what I need you to do, without sounding like I'm abdicating  
20 my responsibility, is you got to talk to my courtroom deputy  
21 and tell her that I approved the amount of time you were  
22 talking about in concept and let her give you a date, I just  
23 don't have the knowledge of my calendar or the ability to  
24 give out particular dates from here up on the bench.

25 You can tell Ms. Plum just down the hall that I'm

1 fine with the 30 days you recommended and to get you in on  
2 the next one.

3 You've come from out of town, from the west coast?

4 MS. DE BARTOLOMEO: Yes, Your Honor.

5 THE COURT: I'll allow you to appear  
6 telephonically unless you're looking for an excuse to come  
7 to New York.

8 MS. DE BARTOLOMEO: Well, Your Honor, actually I  
9 was here on other business, and the fact that it's Father's  
10 Day this weekend and my father is in Connecticut --

11 THE COURT: It is?

12 MS. DE BARTOLOMEO: -- it just -- it all worked  
13 well nicely. I appreciate your setting the hearing and  
14 General Motors setting it right before Father's Day.

15 THE COURT: Okay. All right. Your call. If  
16 you're looking for another excuse to come New York you can,  
17 I'll waive personal appearance.

18 MS. DE BARTOLOMEO: Okay. Thank you, Your Honor.

19 THE COURT: And you can argue by phone in the  
20 event there's an objection.

21 MS. DE BARTOLOMEO: Perhaps I can reserve my  
22 rights and see if there are any objections and then make a  
23 determination at that point?

24 THE COURT: Of course.

25 MS. DE BARTOLOMEO: Okay. Thank you, Your Honor.

1 THE COURT: Okay. What else we got on this one?

2 Sure, you're excused.

3 MR. RACHMUTH: Thank you.

4 MS. DE BARTOLOMEO: Thank you.

5 MR. SMOLINSKY: The next item on the uncontested  
6 matters is the debtor's 170th omnibus objections to claim.  
7 There was one claim left -- one objection left filed by  
8 Douglas Sterett. That matter really should have been on the  
9 contested matter section of the agenda.

10 Initially Mr. Sterett said that he had no  
11 objection to the relief requested. My understanding now is  
12 that he has changed his mind.

13 So what we're going to do is adjourn this matter  
14 to the July 17th hearing and we'll take it up then.

15 THE COURT: Sure. Our next one is July 17th?

16 MR. SMOLINSKY: Yeah.

17 THE COURT: Uh-huh.

18 MR. SMOLINSKY: There are just two resolved  
19 matters which I'll just mention. There is a motion filed by  
20 Wells Fargo Bank with respect to distributions. My  
21 understanding is that Wells Fargo had reached out the  
22 chambers and that that order is going to be entered without  
23 need for an appearance. And then a motion to file a late  
24 claim by Geneva Avamurtez (ph), that motion is being  
25 withdrawn because we settled that claim.

1 THE COURT: Okay.

2 MR. SMOLINSKY: Moving to the contested matters.

3 The first matter on the agenda is a motion by  
4 Marcus Jordan for an order changes venue for termination of  
5 claim.

6 Your Honor, I can proceed or we can let Mr. Jordan  
7 present his motion.

8 THE COURT: Okay. Mr. Jordan, are you on the  
9 phone?

10 MR. WAHL: My name is Gerald Wahl, I'm an attorney  
11 for Mr. Jordan.

12 THE COURT: Oh, yes, I see you, Mr. Wahl.

13 MR. WAHL: Thank you, Your Honor. Thank you for  
14 allowing me to appear telephonically.

15 THE COURT: Not a problem.

16 Now, Mr. Wahl, you have a claim against the GM  
17 estate. GM isn't going after you, you're going after GM.  
18 And you wish to liquidate it elsewhere. And as I understand  
19 GM's objection, they think that wherever it's liquidated now  
20 isn't the time to do it and that at the very least there  
21 should be the usual ADR process first, if I understand the  
22 state of play between you. To what extent --

23 MR. WAHL: May I comment, Your Honor?

24 THE COURT: To what extent do I not understand the  
25 issues and to what extent do you have a problem on that?

1           My tentative, subject to your rights to be heard,  
2           is to deny your request for change venue now without  
3           prejudice to renewal after you've completed the ADR process,  
4           and then if you can't solve this part of that you're going  
5           to have something similar to what we heard on the docket  
6           before, which is we'll then decide whether you bring any  
7           plenary litigation elsewhere or whether it's liquidated in  
8           the District Court as I would -- oh, wait, no, this is not a  
9           tort personal injury action, this is employment  
10          discrimination action; am I correct?

11           MR. WAHL: It is, Your Honor.

12           THE COURT: Okay. All right. But my tentative  
13          would still be the same, although that could bear on whether  
14          the matter is heard before the District Court in I think  
15          Michigan, Eastern District of Michigan if I'm not mistaken.  
16          Let me get your perspective, Mr. Wahl.

17           MR. WAHL: Yeah, I've been trying to get the  
18          perspective of General Motors for a year now, and my last  
19          conversation was deference to while counsel was appearing  
20          was a conversation with Mr. Woo and Susan Brown from Aling's  
21          (ph) Partners and they said that unless -- they would not  
22          give me ADR unless I withdraw the motion first, and even  
23          then they would only consider it, which is why I went ahead  
24          with the motion.

25           I heard what the Court said, I understand what the



1 Court said, but I -- this has been going on, I've been  
2 sending e-mails to a Jennifer Wine (ph) to try -- you know,  
3 I was told that we would be placed in ADR last year, and  
4 finally on May 1 I filed the motion for change of venue.

5 I would request that the Court consider this as an  
6 unresolved designated claim under 92) (e) paragraphs 3 and 4  
7 of the ADR order just because this has gone around now for a  
8 year and a half since the cap on the claim was established  
9 in February of 2011. I don't know that -- that it's going  
10 to be anymore cumbersome or costly to do -- to put this into  
11 the District Court.

12 Additionally I may -- if I may, Your Honor, one  
13 trailing point here is the fees associated with this are  
14 difficult for Mr. Jordan to bear. He's an single father.  
15 The mediators that I see on the ADR list charge north of 400  
16 bucks an hour, and the split fee arrangement is going to  
17 make it difficult for him in his reduced employment capacity  
18 to pay these fees. I mean they're extraordinarily expensive  
19 and will likely run into the thousands of dollars.

20 THE COURT: What's your prayer for relief,  
21 Mr. Wahl?

22 MR. WAHL: Well, the -- by this motion, Your  
23 Honor?

24 THE COURT: No, I understand what you're trying to  
25 do by the motion. How much money are you trying to get out

1 of GM in the form of an allowed claim?

2 MR. WAHL: Well, his damages -- his black boarded  
3 economics are approximately two million.

4 THE COURT: Uh-huh.

5 MR. WAHL: And I put all of this in an e-mail when  
6 we had discussions with GM counsel regarding capping the  
7 claim.

8 THE COURT: Uh-huh. Okay. Okay. other thoughts  
9 before I give Mr. Smolinsky or disclose designee a chance to  
10 respond?

11 MR. WAHL: No, Your Honor. Thank you.

12 THE COURT: Okay. Mr. Smolinsky, do you want to  
13 be heard in opposition?

14 MR. SMOLINSKY: Yes, sir.

15 This is one of the few claims that has not yet  
16 been designated. We've been taking through ADR claims from  
17 one million up to as high as the claims have gone. This is  
18 kind of at the low end of the range and we hadn't gotten to  
19 it yet.

20 My understanding of the conversations with  
21 Ms. Brown and Mr. Woo was simply that we were prepared to  
22 put the claim into the ADR program, and what we suggested to  
23 counsel is that we would put the claim in ADR and that he  
24 should withdraw the motion without prejudice to renew it but  
25 after the ADR was completed.

1           We are prepared to go forward with ADR. We didn't  
2 think -- when counsel suggested that he was not prepared to  
3 withdraw the motion with prejudice we held off on  
4 designating it until Your Honor had a chance to rule on the  
5 venue request, but we're prepared to send out an ADR  
6 designation notice today. That notice will have an offer of  
7 settlement, it will allow for a very inexpensive exchange  
8 between counsel to try to resolve the claim. If not the  
9 mediation -- one of the mediation locations in Michigan in  
10 Detroit where claimant is located, and it seems to me to be  
11 a lot cheaper for claimant than to go to trial in the  
12 Michigan courts.

13           So we renew our objection to the motion and would  
14 ask that we be allowed to proceed with the ADR process.

15           THE COURT: Do you want to be heard on the cost  
16 sharing component, the cost of the mediation component of  
17 his request?

18           MR. SMOLINSKY: There is a room in the procedures  
19 for hardship, so we do have the ability to pay for it.

20           I would note that he is represented by counsel,  
21 and to the extent that it's not settled in offer and  
22 counteroffer before the mediation ever takes place the  
23 decision is whether to incur the costs of going to a  
24 mediation versus settling. But we would take under  
25 advisement paying for the mediator if in fact there is a

1 hardship request.

2 If he does -- excuse me -- if he does ultimately  
3 win at the end of the day then I would think that the costs  
4 could be borne by the proceeds.

5 THE COURT: Uh-huh.

6 Mr. Wahl, reply?

7 MR. WAHL: I'm just unclear, Your Honor, as to the  
8 under advisement piece. I know where the Court has  
9 indicated its direction on the ADR and the decision on my  
10 motion, but I would just request that the fees be borne by  
11 the debtor. It is -- it's a process, and you know, will  
12 involve a great deal of work on both sides. I view them as  
13 equivalencies in terms of getting prepared for trial and  
14 going through the ADR procedure in terms of documenting the  
15 claim because of the hundred pages of transcript, this was a  
16 prepetition litigation and the documents in the case, but  
17 you know, that's just my own assessment and my own whining.

18 I leave that to the Court's discretion, but --  
19 obviously, but the money part of it is a different matter.

20 THE COURT: All right. Here's what we're going to  
21 do, folks. The matter is going to go into ADR. I  
22 understand that ADR is available in the claimant's locality  
23 in the Detroit area, which will obviously reduce the  
24 expenses.

25 The motion for change of venue is denied without

1 prejudice to renewal at the conclusion of ADR if the ADR  
2 turns out to be successful, and I express no views on the  
3 outcome of that motion if it were later to be renewed.

4 The request for cost shifting is likewise denied  
5 without prejudice and also because it is not yet ripe. GM  
6 can and should decide whether they want to give hardship  
7 allowance now to the duty to advance the fees. By analogy  
8 it's a corporate governance matters like in Delaware. What  
9 we're talking about is GM advancing the fees.

10 If there is a pot of money that is ultimately  
11 recovered, and by money I mean either green money of the  
12 United States or the usual consideration by which value is  
13 given out in allowed claims under the plan, which obviously  
14 includes new GM securities, I won't fully decide the issue  
15 now, but the likelihood is very high that I'm going to then  
16 make the claimant pay for the cost of the mediation from the  
17 recovery pot.

18 If the claimant totally strikes out the issue of  
19 any mediation fees before the claimant struck out can be  
20 litigated then and both side's rights will be reserved in  
21 that regard.

22 Okay. Not by way of reargument, are there any  
23 questions as to my ruling?

24 MR. WAHL: None from me. Gerald Wahl on behalf of  
25 claimant, Marcus Jordan. None from me, Your Honor.

1 THE COURT: Okay. Mr. Smolinsky?

2 MR. SMOLINSKY: We can prepare an order denying  
3 the motion. Do you want the rulings with respect to the fee  
4 sharing on -- in that order or could we just refer to the  
5 record of the hearing?

6 THE COURT: Mr. Wahl, you just comfortable with  
7 relying on the transcript if you guys ever have to agree to  
8 disagree?

9 MR. WAHL: I can rely on the transcript, Your  
10 Honor, I'm comfortable with that.

11 THE COURT: Good. Then let's do it that way.  
12 Let's keep it clean and simple.

13 MR. WAHL: And we can expect then an ADR notice as  
14 counsel represented some time over the next week I guess.

15 THE COURT: Is he correct in that regard,  
16 Mr. Smolinsky?

17 MR. SMOLINSKY: Yes, sir.

18 THE COURT: Okay. Yep, you got it, Mr. Wahl.

19 MR. WAHL: All right. Thank you very much.

20 THE COURT: All right. Mr. Wahl, you can drop off  
21 the phone if you choose to.

22 MR. WAHL: I will. Thank you.

23 THE COURT: Okay. Have a good day.

24 MR. WAHL: You too.

25 THE COURT: What you got next, Mr. Smolinsky?

1 MR. SMOLINSKY: At this point I'm prepared to cede  
2 the podium to Mr. Griffiths, and while I may stay for a few  
3 minutes, I would ask the Court's permission to leave.

4 THE COURT: Of course, you got it.

5 MR. SMOLINSKY: Thank you, sir.

6 THE COURT: Have a good day.

7 Mr. Griffiths, come on up, please.

8 MR. GRIFFITHS: Good morning, Your Honor.

9 THE COURT: Good morning.

10 MR. GRIFFITHS: David Griffiths of Weil, Gotshal &  
11 Manges for the debtors, the post effective date debtors, and  
12 Motors Liquidation Company GUC Trust.

13 Your Honor, this morning we have ten omnibus  
14 objections relating to welt fair benefit claims going  
15 forward. We have ten former retired or executive employees  
16 of the debtors on the telephone today, and with Your Honor's  
17 permission I propose to adopt the modified hearing format  
18 we've used in previous hearings and hear from the claimants  
19 first. I would only ask that we be able to designate for  
20 the record for any appeal Your Honor's prior rulings with  
21 respect to welfare benefit claims, in particular the --

22 THE COURT: And by that pause, because people who  
23 are on the phone today may not know what you're talking  
24 about. You're talking about prior explanations of the law  
25 that I gave in those earlier proceedings?

1 MR. GRIFFITHS: Correct, Your Honor.

2 THE COURT: Okay. Go on.

3 MR. GRIFFITHS: Your Honor, with your permission  
4 we can proceed with the first claim. We have Mr. Stanley  
5 Jack on the telephone.

6 THE COURT: Okay. Mr. Jack, are you on the phone?

7 MR. JACK: Yes, sir, Your Honor.

8 THE COURT: Okay. Where you calling in from,  
9 Mr. Jack?

10 MR. JACK: I'm calling in from Cedarville,  
11 Michigan, which is the UP of Michigan.

12 THE COURT: Okay. You understand the issues we  
13 have today?

14 MR. JACK: Yes, I do, sir.

15 THE COURT: Okay. Would you like to argue on the  
16 matter?

17 MR. JACK: Yes, I would, sir.

18 THE COURT: Go to it.

19 MR. JACK: Okay. Actually on the first issue of  
20 my pension -- reduction of my pension, what I didn't have  
21 was a letter from the corporation to supply that I was  
22 strongly urged by the corporation to retire and that the  
23 future of General Motors was bleak, didn't know if I would  
24 be relocated, shuffled to another country, et cetera, so  
25 with that I ended up I did retire. When I retired they



1 reduced my pension by half, but they did give me \$65,000 and  
2 a -- \$65,000.

3 But the situation is, is that throughout my career  
4 my wife and I we both, you know, saved thinking my pension  
5 was going to be \$6,300 a month, and with the storm-arming of  
6 corporation I had to take a reduced pension, and I just --  
7 that's my argument.

8 It's just -- I don't see how a corporation can do  
9 that. And again, we're being asked now to separate our ties  
10 from the corporation by cashing in our current pension,  
11 which isn't pertaining to this case. But that's really what  
12 I had.

13 And I also -- I looked at the documents that I  
14 turned over to the Court as far as my calculation for my  
15 claim, and I must say that I did include in my claim wages  
16 that I would have made as if I would have been able to  
17 continue to work if they allowed me to work, and I guess I'm  
18 letting you know that I shouldn't be entitled to those  
19 because I had not worked those, but I strongly feel that the  
20 \$792,000 due to my lost pension is what I should be entitled  
21 to.

22 THE COURT: Mr. Jack, do I correctly understand  
23 that your concerns are with respect to your pension as  
24 contrasted to medical benefits or life insurance benefits  
25 which are the normal subject of employee welfare benefit

1 plans?

2 MR. JACK: Correct. I have two claims actually,  
3 sir. One was for \$54,000 for my health care coverage, and  
4 then my second claim was for any retirement pension, yes.

5 THE COURT: Okay. Mr. Griffiths, I have some  
6 questions about the pension portion, but before that I want  
7 to ask Mr. Jacks if he has anything further -- excuse me --  
8 Mr. Jack, do you have any further thoughts before I let the  
9 lawyer for the GUC Trust, the general unsecured creditor  
10 trust respond?

11 MR. JACK: No, sir.

12 THE COURT: Okay. Thank you.

13 All right, Mr. Griffiths, you want to respond?

14 MR. GRIFFITHS: Thank you, Your Honor.

15 The first point to note simply is that this  
16 welfare benefits motion doesn't seek to affect ongoing  
17 pensions, but the reply notes, the GUC Trust's understanding  
18 of what happened with respect to Mr. Jack's pension  
19 payments.

20 He retired at age 52 under a voluntary buy-out  
21 program. Our understanding of the way the voluntary buy-out  
22 program would work is that an employee would be given the  
23 option to retire voluntarily.

24 I've heard from a number of employees that they  
25 had -- former employee of the debtors who retired under the

1 voluntary buy-out programs, that they felt in some way  
2 compelled to retire because the option may have been that  
3 they could retire voluntarily and sign a voluntary  
4 retirement agreement and in exchange take an additional  
5 retirement payment, or alternatively --

6 THE COURT: You mean an early payment like in a  
7 lump sum but in exchange for lesser payments going forward?

8 MR. GRIFFITHS: Correct, Your Honor. I mean the  
9 -- Mr. Jack would have received a one-time payment in cash  
10 in exchange for accepting voluntary retirement. His pension  
11 benefits obviously vest, you know, and accrue on a yearly  
12 basis.

13 Mr. Jack retired at 52 instead of 62, he therefore  
14 didn't receive ten years -- the additional ten years of  
15 accrued pension benefits he would otherwise have received  
16 had he worked through age 62; however, what he did receive  
17 was a voluntary payment that he accepted.

18 I can't speak to whether the -- this was properly  
19 explained to Mr. Jack at the time of his retirement;  
20 however, there's no documents to suggest otherwise.  
21 Mr. Jack hasn't provided a copy of a retirement agreement or  
22 anything else that would suggest that the retirement was  
23 anything but voluntary, and unfortunately it appears that  
24 the terms of Mr. Jack's retirement were that he would retire  
25 at age 52 with the pension benefits that had vested, and an

1 additional payment to compensate him for the -- the  
2 difference in terms of pension payments that he would have  
3 otherwise have received had he worked through age 62.

4 THE COURT: Am I correct, Mr. Griffiths, that the  
5 pension payments come out of a pension trust rather than out  
6 of the Motors Liquidation Company estate?

7 MR. GRIFFITHS: Your Honor, obviously in 2009 when  
8 new GM agreed to take on the ongoing business of Motors  
9 Liquidation Company new GM agreed to take on the  
10 responsibility for pension payments for retired and former  
11 executive employees, and therefore new GM is currently the  
12 responsible party paying for Mr. Jack's pension. I  
13 understand that Mr. Jack is receiving what he is currently  
14 contractually entitled to.

15 The -- Mr. Jack's argument with respect to the  
16 difference in pension payments that he would have received  
17 if he hadn't retired is probably not a claim for either MLC  
18 or new GM to have to deal with because our position is is  
19 that there is no claim.

20 THE COURT: Okay. Mr. Jack, do you want to  
21 respond?

22 MR. JACK: I guess, Your Honor, my only response  
23 would be is that I wasn't given the option to work those  
24 additional ten years, and so like I say, I was basically  
25 strong-armed into retiring when I did, and my pension was

1 reduced 50 percent because of that. I mean just the math  
2 the 10 years retiring early I still had 31 years with the  
3 corporation, so I was entitled to the equivalent of that  
4 money that I spoke to.

5 THE COURT: Uh-huh. When did you retire,  
6 Mr. Jack?

7 MR. JACK: I retired in 2008.

8 THE COURT: Okay. Anything --

9 MR. JACK: And --

10 THE COURT: I'm sorry, go ahead, sir.

11 MR. JACK: Oh, I'm sorry, sir, go ahead.

12 THE COURT: No, I just wanted to ask you if you  
13 had further thoughts you wanted to convey to me.

14 MR. JACK: No. No, sir, thank you.

15 THE COURT: Okay. Thank you, Mr. Jack.

16 I'm going to rule on your issues along with other  
17 people's at the end after the other people who want to be  
18 heard on this hearing conference call get opportunities like  
19 you did.

20 MR. JACK: Okay.

21 THE COURT: So please stay on the line, but try to  
22 keep things quite on your end while other employees get  
23 their turns to be heard.

24 MR. JACK: Thank you, sir.

25 THE COURT: Okay. Mr. Griffiths, who do we have

1 next?

2 MR. GRIFFITHS: Thank you, Your Honor. We have  
3 Mr. David R. Volpe.

4 THE COURT: Mr. Volpe, are you on the line?

5 MR. VOLPE: Yes, I am, Your Honor.

6 THE COURT: Where you calling from, Mr. Volpe?

7 MR. VOLPE: The Atlanta area.

8 THE COURT: Okay. Would you like to be heard in  
9 argument just like Mr. Jack was heard?

10 MR. VOLPE: Yes, Your Honor.

11 THE COURT: Go ahead, please.

12 MR. VOLPE: I believe the main issue in my claim  
13 is whether or not General Motors has the right to change the  
14 terms of an employment and retirement contract ex post  
15 facto.

16 And if I may offer up some background information,  
17 mine is a little different than Mr. Jack's in that I was  
18 recruited by General Motors out of high school and attended  
19 General Motors Institute for five years, received my  
20 engineering degree, finished in the top ten percent of my  
21 class, which then afforded me to opportunity to compete for  
22 a General Motors fellowship for grad school, which I then  
23 was afforded. I was given the GM fellowship, went to grad  
24 school, and went through various engineering positions and  
25 eventually ended up as a regional manage for the southeast.

1           At the age of 50 in 2001 I had seen what was going  
2           on in the corporation and decided that possibly it was time  
3           for me to move on and do other things.

4           So at the time there were these voluntary window  
5           retirements going on and I was not approached, even though I  
6           had crossed that magical threshold of 30 years with General  
7           Motors, and at that time I asked my management if I could be  
8           part of that group, if I could go out on retirement, and I  
9           was told that I could not, that my technical skills were  
10          needed and that I was not one of the people that they wanted  
11          to push out the door.

12          I felt that I was not being afforded an equal  
13          opportunity, and I pressed the issue up through the vice  
14          president of personnel or human resources at the time, and  
15          the word came back that you really need to offer a  
16          retirement to Mr. Volpe, there's no reason why he should be  
17          denied this.

18          So from that we negotiated on my initiation a  
19          retirement that included my understanding of terms and  
20          provisions of my retirement, and it is the very essence of  
21          those terms that I accepted and made the decision going  
22          forward that General Motors now is saying they have the  
23          opportunity and the right to change those terms unilaterally  
24          and ex post facto and without any input from me.

25          Had I known that that was the case it would have

1 most likely changed my decision as to whether or not I had  
2 pursued retirement. Because once again, I look at this as a  
3 contract, an employment contract between General Motors and  
4 myself.

5 Now, along these lines, Your Honor, I understand  
6 and accept the fact that as a stockholder of General Motors  
7 that there is risk, and I was a stockholder and I lost. I  
8 also was a bondholder of General Motors and I understood the  
9 risk and I paid the price there. But I never understood  
10 that my employment contract was in risk of non-enforcement  
11 of contract law.

12 And again, I'm at a disadvantage here not having a  
13 legal background, but it would seem to me that our entire  
14 culture, our entire business framework of the United States  
15 is based upon the fact that contract law is upheld and that  
16 if two parties agree upon something that that agreement is  
17 then held up in the courts as part of that contract.

18 So with that being said, General Motors -- again,  
19 I proceeded forward through my retirement, left July 1st of  
20 2001, and some of my fears actually played out. The reason  
21 that we're here today. Some of the bad decisions that were  
22 made have forced General Motors into bankruptcy, and from  
23 that perspective General Motors now has taken the approach  
24 of doing away with many or most of the welfare benefits, the  
25 insurance -- life insurance and the medical insurance that



1 we had all been promised, and once again, that I felt that I  
2 had entered into a contractual relationship with General  
3 Motors.

4 Again, I looked at my -- as a professional I  
5 looked at my employment with General Motors as a contract,  
6 one where General Motors offered me a combination of  
7 compensation and benefits in return for my professional  
8 services, and I looked upon it that way every year with  
9 them. If I didn't feel that the package that they were  
10 offering me was commensurate with what I felt I was worth  
11 then I could have gone elsewhere. And quite frankly, if  
12 General Motors didn't feel that I was providing enough  
13 benefit for what they were paying they could have asked me  
14 to leave and indicated that they didn't want my services  
15 anymore. But that was not the case. Both of us felt we had  
16 a relationship, and it was a good relationship for many,  
17 many years, and I felt good about what I was doing, what I  
18 was being paid, and I retired from that perspective.

19 So again, it is whether or not General Motors by  
20 putting this disclaimer that they reserve the right to amend  
21 or terminate benefit programs or similar language, can they  
22 do that after the fact?

23 I fully understand if they want to change the  
24 terms going forward that I then can take that into  
25 consideration whether or not I want my employment contract

1 to go forward with them, but once this agreement is made  
2 then I feel that I have an obligation and General Motors has  
3 an obligation to that agreement, my retirement agreement, to  
4 fulfill those terms, and that's the essence of my claim,  
5 Your Honor.

6 THE COURT: Mr. Volpe, I need to ask you some  
7 questions apropos that by way of background, and although  
8 you may not be a lawyer I think I understood your position  
9 quite clearly.

10 MR. VOLPE: Right.

11 THE COURT: By the way, you said you were in the  
12 top ten percent of your class. Were you in Tau Beta Pi?

13 MR. VOLPE: I was.

14 THE COURT: Uh-huh.

15 MR. VOLPE: As is my son and my father-in-law.

16 THE COURT: I can see why GM put you in those  
17 honors' programs.

18 But here's the issue that I need help from you on,  
19 Mr. Volpe. Bankruptcy does honor and respect contracts even  
20 though its debtors don't always have the resources to pay  
21 100 cents of the dollar on their contracts, and although the  
22 value of the stock that's going to claimants could go up or  
23 down, allowed claims are probably worth in the ballpark of  
24 25 cents on the dollar and not 100 cents on the dollar even  
25 when they're allowed, but what we're talking about of course

1 is whether the contract affects GM's rights to change your  
2 benefits or not. So it isn't really a question of honoring  
3 the contract, it's a question of finding out what the  
4 contract said at the relevant time. So with that by way of  
5 background here are the questions I need to ask you.

6 Help me with the timing. To what extent did you  
7 work before you first saw a document from GM where GM said  
8 that it reserved the right to change your welfare benefits?

9 MR. VOLPE: I'm not sure I can answer that, Your  
10 Honor, because having once again been a 30-year employee the  
11 benefits packages that were given to us on a sporadic basis  
12 -- I'd like to say yearly, but I don't know that that's the  
13 case -- but documents come out from personnel all the time  
14 and some may have had that disclaimer and some may not, but  
15 I can't answer that is definitively.

16 THE COURT: I take it it's not a matter of dispute  
17 that at some point in time GM did start sending you notices  
18 that it reserved the right to change your benefits?

19 MR. VOLPE: That's correct.

20 THE COURT: And based on your memory, if I heard  
21 you right, you can't say at this point with any degree of  
22 comfort how much you worked after you started getting those  
23 notices.

24 MR. VOLPE: I cannot.

25 THE COURT: I hear you.

1 MR. VOLPE: Yeah.

2 THE COURT: Okay.

3 MR. VOLPE: In all honestly I cannot. I don't --  
4 it was not a topic of concern at that point in time, and I  
5 think you can understand that things were going -- we were  
6 rocking and rolling for many years.

7 THE COURT: Uh-huh. And did GM ever give you any  
8 piece of paper in which GM promised, not necessarily  
9 verbatim but in concept, not to change your benefits?

10 MR. VOLPE: Not to my knowledge, Your Honor.

11 THE COURT: Okay. I'm going to give you a chance  
12 to reply, but I want to give you opponent a chance to be  
13 heard now.

14 MR. VOLPE: Okay.

15 THE COURT: Mr. Griffiths.

16 MR. GRIFFITHS: Thank you, Your Honor.

17 Simply with respect to the question as to when  
18 Mr. Volpe first had seen any sort of reservation of rights  
19 in the plan documents relating to his welfare benefits, I  
20 would note in that in the omnibus objection filed to his  
21 claim at page 10 there's a footnote and it's footnote 5 and  
22 it's a footnote that's drawn from the Spraug (ph) case in  
23 the Sixth Circuit for Mr. Volpe's benefit, the Spraug case  
24 is a case where the Sixth Circuit looked at GM welfare  
25 benefit plans similar to the ones that (indiscernible -

1 00:51:38) to Mr. Volpe and took into consideration a large  
2 amount of evidence, including welfare benefit plans going  
3 back to at least 1984, and I note the quote at footnote 5  
4 which quotes the reservation of rights language from a 1984  
5 benefits plan.

6 So if my math is approximate, if Mr. Volpe had  
7 worked 30 years that would put his employment commencing at  
8 approximately 1980, and we have a welfare benefit plan at  
9 least dated 1984 that's documented with a specific  
10 reservation of rights.

11 With respect to the terms of Mr. Volpe's  
12 retirement agreement, Mr. Volpe hasn't provided us with a  
13 copy of his retirement agreement, and if he has such a copy  
14 we're of course more than happy to look at it to see if in  
15 fact the terms are different from the retirement agreements  
16 that other employees have received and which I've reviewed.

17 Having reviewed those retirement agreements they  
18 appear to be consistent insofar as they don't vest welfare  
19 benefit, they don't alter the terms of the benefit plans,  
20 they simply note a retiring employee's rights to continued  
21 benefits under those welfare benefit plans.

22 Motors Liquidation Company, General Motors weren't  
23 in the habit of already agreeing to any sort of ongoing  
24 retirement plan, everything was documented in writing, and  
25 you know, we're more than happy to look at any additional

1 documents that Mr. Volpe has, but to date there's nothing to  
2 suggest that his welfare benefits were provided under any  
3 other agreement than under the welfare benefit plan itself.

4 THE COURT: Okay. Thank you.

5 Anything further, Mr. Griffiths?

6 MR. GRIFFITHS: That's all, Your Honor.

7 THE COURT: Mr. Volpe, would you like to reply?

8 MR. VOLPE: I would, Your Honor, in that I will  
9 have to look in any archives to see if I can dig out  
10 anything that fits the framework that Mr. Griffiths talked  
11 about. And I don't know -- in all honestly, I don't know  
12 that the documentation provided by General Motors is going  
13 to be any different.

14 It is the fact again though the basis of my claim  
15 and my understanding and my argument is such that to change  
16 the terms of a contract after both parties agree is a breach  
17 of contract, and that's -- if contracts were written with  
18 disclaimers that say I, one party to the contract can change  
19 the term of the contract unilaterally at any point in the  
20 future, to me that's not a contract, that's nothing that  
21 anyone can rely upon, and I go back to the basis of the  
22 entire framework of American business. No one would enter  
23 into a contract if there were -- they were allowed to have  
24 disclaimers written in by the other party that indicated  
25 that they could change at will unilaterally the terms of the

1 contract. And that to me it just defies logic. I'm an  
2 engineer, again, it doesn't make sense that you would allow  
3 someone -- that the legal system would allow someone to do  
4 this.

5 So whether there's been a precedent set or there's  
6 been a ruling on this I don't have the resources nor am I  
7 willing to spend the money to hire a team of lawyers to go  
8 dig out and find out whether or not there is some language  
9 of the law that allows this to happen. Common sense would  
10 dictate that once you have an agreement the agreement should  
11 be -- I don't want to say cast in stone -- but if it's  
12 changed both parties would then sit down and renegotiate,  
13 and that's the essence of my argument.

14 THE COURT: Okay, thank you.

15 Mr. Griffiths, who is the next claimant whose  
16 needs and concerns we need to focus on?

17 MR. GRIFFITHS: Your Honor, that would be  
18 Mr. Glenn Kuntz, K-U-N-T-Z.

19 THE COURT: Okay. Just a minute, please.

20 (Pause)

21 THE COURT: Mr. Kuntz, are you on the phone?

22 MR. KUNTZ: Yes, my name is Glenn Kuntz, and I  
23 want to thank you for hearing my case.

24 THE COURT: Where you calling in from, Mr. Kuntz?

25 MR. KUNTZ: I'm sorry?

1 THE COURT: Where you calling in from?

2 MR. KUNTZ: I'm calling in from Dayton, Ohio.

3 THE COURT: Okay. Let me give you your chance to  
4 be heard just like the guys ahead of you.

5 MR. KUNTZ: Okay. May I proceed?

6 THE COURT: Yes, sir.

7 MR. KUNTZ: I want to thank you for hearing my  
8 case, Judge.

9 I'm really pleading on the mercy of the Court  
10 here, and I want you to know that I worked for GM 35 years.  
11 When I retired in 1988 as an unclassified executive  
12 responsible for running and closing the O'Leary Ohio plant  
13 of (indiscernible - 00:56:46) Division I received a document  
14 that stated I would have basic and supplemental group life  
15 insurance for the remainder of my life. As you know --  
16 probably know, all but \$10,000 in that insurance was taken  
17 from me.

18 Now at the age -- at 77 years of age with health  
19 problems getting life insurance is virtually impossible, and  
20 even without health problems the cost of comparable  
21 insurance would be over \$1,900 per month.

22 As things stand now my wife's financial plan was  
23 seriously interrupted by GM, and my wife would be  
24 financially challenged when I pass on. And I think that  
25 pretty well states my case.



1           Certainly when I took retirement after closing the  
2 plant in O'Leary, Ohio I had never had any indication that  
3 there would be a -- GM would have the ability to change the  
4 provisions of the document I received after I retired, as a  
5 matter of fact many years after I retired.

6           Again Judge, my claim is for replacement of my  
7 life insurance, and I won't ask for anything else at this  
8 point in time, but as I heard Mr. Volpe say, he was not  
9 aware at any time while he was with GM that they could, you  
10 know, change provisions regarding life insurance or anything  
11 else at will at any time. Certainly I was not aware of that  
12 when I made the decision to accept retirement at the closing  
13 of the O'Leary plant, which I was asked to do.

14           THE COURT: Did I hear you right, Mr. Kuntz, that  
15 you required in 1988?

16           MR. KUNTZ: 1988 is correct.

17           THE COURT: Okay. Further thoughts before I give  
18 your opponent a chance to respond?

19           MR. KUNTZ: I'm sorry, Judge?

20           THE COURT: Do you have anything further before I  
21 give Mr. Griffiths the opportunity to respond?

22           MR. KUNTZ: I don't know what more I can say  
23 except that I did retire in 1988 and certainly at that time  
24 there were no documents that I saw or was aware of that said  
25 GM could change their benefits at any point in time.

1 THE COURT: Okay. Mr. Griffiths, I'll --

2 MR. KUNTZ: I --

3 THE COURT: I'm sorry.

4 MR. KUNTZ: -- I do have a document that by the  
5 way I think I mentioned along the way that said that, for  
6 example, just one statement, "Your supplemental group life  
7 insurance equal to three times your annual base salary will  
8 be continued for the remainder of your life. General Motors  
9 pays the full cost of this insurance."

10 THE COURT: Okay.

11 MR. KUNTZ: That document is dated July 1988.

12 THE COURT: Okay. Anything else, Mr. Kuntz?

13 MR. KUNTZ: No, I think that covers it.

14 THE COURT: Okay.

15 MR. KUNTZ: Thank you.

16 THE COURT: Mr. Griffiths, I'll hear your  
17 response.

18 What I need you to focus on then is facts that  
19 apply to Mr. Kuntz that are not generally applicable to  
20 other people. It appears that if my math is right he worked  
21 31 of his 35 years before the 1984 time, which is the  
22 earliest time at which GM was reserving the right to change  
23 the welfare plans.

24 MR. GRIFFITHS: Yes, Your Honor.

25 The first point to note is the footnote from

1       Sprraig isn't in fact the earliest reservation of rights that  
2       we're aware of in a welfare benefits plan but is -- is a  
3       reference that is just readily available today.

4               If Your Honor would like us to research and  
5       perhaps place on the docket earlier summary plan  
6       descriptions or welfare benefit plans that contain a  
7       reservation of rights then we're of course more than happy  
8       to do so subject to our ability to obtain those documents  
9       from -- from general -- from new GM. It may be possible for  
10      us to obtain those documents.

11             With respect specifically to the documents  
12      submitted by Mr. Kuntz, if it's helpful, what we've done in  
13      the response is drawn out the specific reservation of rights  
14      language that is contained in each of the documents that  
15      Mr. Kuntz has submitted, and while I understand that many  
16      employees, including Mr. Kuntz, argue that they weren't  
17      aware of the ability for the welfare benefit plans to be  
18      amended or modified, the fact of the matter is that the  
19      documents submitted by Mr. Kuntz specifically note that the  
20      terms of their welfare benefits is subject to welfare  
21      benefit plans. And of course this requires an additional  
22      step on behalf of an employee to go and look at the terms of  
23      a welfare benefit plan and then also to be looking for that  
24      reservation of rights language, which you know, in  
25      Mr. Kuntz' case if he's retiring, you know, 19 -- or

1 requiring in the 1980's he's unlikely to have done so  
2 because the financial distress of the debtors wasn't  
3 contemplated.

4 I mean, Your Honor, I don't have any other  
5 arguments with respect to Mr. Kuntz' claim because I don't  
6 have any documentary evidence to suggest that GM didn't  
7 reserve its rights to amend welfare benefit plans going back  
8 to even prior to the Spraug case.

9 THE COURT: Okay. I'm going to take you up on  
10 that offer, Mr. Griffiths, and I'm carving Mr. Kuntz out  
11 from the remainder to focus on the additional issue that I'm  
12 going to articulate, and it's what I call the Chemtura  
13 issue, which has its origins in that Appalachian by reason  
14 of something that I dealt with in dealing with similar  
15 issues in Chemtura where an employee had worked for many,  
16 many years before the debtor had started to reserve the  
17 right to change the benefit plans, and then changed it. And  
18 while I'll address along with the others at the end the  
19 general rule that whether or not they saw the reservation of  
20 rights, the reservation of rights would be part of the  
21 employee's contract.

22 I was troubled in Chemtura for a much shorter  
23 period of time, and I am troubled for a guy who worked 31  
24 out of his 35 years before there was a reservation of  
25 rights. If I said 34 maybe I should have said 35, I'm not

1 sure if I spoke accurately a moment ago or not. That  
2 requires more in the way of research as to when GM started  
3 reserving the rights and raises an arguably different legal  
4 issue as to how you deal with what seems to be a potentially  
5 as much as 31 years of working before the reservation of  
6 rights came into place.

7 So what I'm telling you is a couple of things.  
8 First I want you to find out and give to Mr. Kuntz when GM  
9 first started reserving those rights or reserving those  
10 rights in a way that they might apply to him. And also, as  
11 I always do, to see if there is a separate contract that  
12 might have existed way back in 1988 that didn't exist in  
13 later times that might put him in a specific boat.

14 So at this time I'm neither going to sustain nor  
15 overrule the objection to Mr. Kuntz' situation, it has the  
16 potential of being a different situation from the other  
17 guys, and we're just going to continue this to sort of more  
18 in the way of facts and if appropriate to give people more  
19 of a chance to make legal arguments.

20 It's a much more difficult issue when a guy works  
21 31 out of 35 years before the reservation of rights kicks  
22 into place. It may result in the same decision, it may not,  
23 I'm not deciding that today, but it's a big enough  
24 distinction that I need help from you guys on that.

25 Mr. Kuntz, did you understand my ruling, my ruling

1 to the extent it was a ruling, which is that I'm carving you  
2 out for today?

3 MR. KUNTZ: I understand that, and I appreciate it  
4 and I'll look forward to getting the information that  
5 Mr. Griffiths says existed --

6 THE COURT: Okay.

7 MR. KUNTZ: -- about my retirement.

8 THE COURT: I'm not promising you a favorable  
9 outcome, you understand, I just think that it needs more  
10 attention.

11 MR. KUNTZ: I understand, I very much appreciate  
12 it. And as I said, I was 77 years old and that is a very  
13 serious problem at my age.

14 THE COURT: Okay, thank you.

15 Mr. Griffiths --

16 MR. KUNTZ: Thank you very much, Judge.

17 THE COURT: You're very welcome, Mr. Kuntz. Now,  
18 Mr. Kuntz, you're -- because you have been carved out you're  
19 free to drop off the line or stay on as you prefer.

20 MR. KUNTZ: I will drop off, Judge.

21 THE COURT: Okay.

22 MR. KUNTZ: Thank you.

23 THE COURT: Who do we have next, Mr. Griffiths?

24 MR. GRIFFITHS: Thank you, Your Honor.

25 We'll certainly do the research as quickly as

1 possible and then I'll speak to Mr. Kuntz later today to  
2 update him on how we're going to proceed. Your Honor, the  
3 next -- oh, and if Your Honor permits may we adjourn  
4 Mr. Kuntz' claim to the -- not the following hearing, but  
5 perhaps the one after, July 17th, and obviously subject to  
6 our ability to obtain the required documents?

7 THE COURT: That's fine, but it's possible that  
8 Mr. Kuntz has since dropped off the phone, so if he didn't  
9 hear what you have to say you better let him know some other  
10 method.

11 MR. GRIFFITHS: I'll certainly give him a call by  
12 telephone today and send him a message, Your Honor.

13 Your Honor, the following claimant would be  
14 Ms. Jane C. Bogue, B-O-G-U-E.

15 (Pause)

16 THE COURT: I don't see -- oh, was that with a B  
17 like brothel?

18 MR. GRIFFITHS: B bravo, Your Honor, yes.

19 THE COURT: Oh, okay. Ms. Bogue, are you on the  
20 phone?

21 MS. BOGUE: Yes, I am, Your Honor.

22 THE COURT: Okay. Where are you calling from,  
23 Ms. Bogue?

24 MS. BOGUE: Longview, Texas.

25 THE COURT: Okay. Would you like to be heard,

1 Ms. Bogue?

2 MS. BOGUE: Yes, please.

3 THE COURT: Go ahead, please.

4 MS. BOGUE: Sir, I retired from General Motors in  
5 1989 after 32 plus years of credited service, and mine is  
6 similar to the gentleman that just talked in that I have a  
7 letter that I sent you a copy I think you have from General  
8 Motors dated December 1991 stating that my life insurance  
9 had decreased to the lowest amount, which was \$29,172, and I  
10 also have a letter from Metropolitan Life that I sent you a  
11 copy telling the same thing, and then some years ago I  
12 received the same information that they did that they  
13 insurance had been dropped to \$10,000.

14 And I'm asking that you honor -- that they honor  
15 the information that I had counted on all those years and  
16 after having worked almost 33 -- having 33 years of credited  
17 service think I'm entitled to.

18 THE COURT: So let me get the math right. You  
19 started working for the company roughly in 1966?

20 MS. BOGUE: I started to work in 1954 I believe.

21 THE COURT: 1954.

22 MS. BOGUE: Uh-huh.

23 THE COURT: Forgive me. Okay.

24 MS. BOGUE: During that time, Your Honor, it's  
25 hard for me to remember, I'm almost 77 years old, but during



1 the time that I worked for GMAC they closed the office here  
2 in Longview, Texas and we either had to transfer to Dallas  
3 or go on a layoff, and so I chose to go on the layoff and  
4 they gave me like a year at that time of credited service.  
5 Then when they reopened the Longview office they bridged my  
6 service, so that's why the years don't add up between 1954  
7 and 1989. But technically on the papers that I have from  
8 retirement they've credited me with I believe 32 and a half  
9 years of credited service.

10 THE COURT: Now to what extent did GM give you any  
11 piece of paper in which it said it wouldn't change your  
12 benefits?

13 MS. BOGUE: I may -- I sent a copy with this, but  
14 I'm looking at it, it's dated December the 10th, 1991 from  
15 General Motors National Benefit Center in Southfield,  
16 Michigan. It says:

17 "As a retiree of General Motors with ten or more  
18 years of participation in the life and disability benefits  
19 program you're eligible for continuing life insurance. Our  
20 insurance records show our continuing life insurance has now  
21 fully reduced to the ultimate amount of \$29,172. This  
22 ultimate amount will remain in effect for the rest of your  
23 life and is provided by General Motors at no cost to you.  
24 Important, you should keep this notice with your other  
25 available papers."

1 THE COURT: Uh-huh.

2 MS. BOGUE: And then I also have a letter from  
3 Metropolitan Life that I believe I sent you a copy dated  
4 11 of '89, and it states that continuing life insurance for  
5 salaried retirees of ten years or more of service and it  
6 says, "fully reduced amount of your continuing life  
7 insurance, \$29,172."

8 THE COURT: Yes. Your correspondence sounds to be  
9 either identical or very similar to those that I've seen for  
10 a lot of earlier GM retirees, but I think I asked you --

11 MS. BOGUE: Like the man that just spoke; is that  
12 right?

13 THE COURT: I think I asked you the wrong question  
14 before. Forgive me.

15 MS. BOGUE: Okay.

16 THE COURT: Did GM ever give you a piece of paper  
17 that said we promise not to change the amount of your life  
18 insurance --

19 MS. BOGUE: Not to my knowledge.

20 THE COURT: -- that actually used words very  
21 similar to that? And did it ever used the word --

22 MS. BOGUE: Not to my knowledge.

23 THE COURT: -- vest to you? Ms. Bogue, were you  
24 able to hear my last question?

25 MS. BOGUE: I'm sorry, I have a hard time hearing.

1 Would you repeat it?

2 THE COURT: Of course. Did GM ever give you a  
3 piece of paper that used the word vest to you in the context  
4 of your life insurance?

5 MS. BOGUE: Not to my knowledge.

6 THE COURT: Okay. Were you able to hear questions  
7 that I asked to Mr. Kuntz? Do you know the point in the  
8 time at which GM started telling you that it reserved the  
9 right to change the amount of your insurance or your welfare  
10 benefits?

11 MS. BOGUE: I don't know that I ever received  
12 anything like that.

13 THE COURT: Uh-huh.

14 MS. BOGUE: But that's not to say that I didn't,  
15 do you understand, but I don't remember it.

16 THE COURT: Yeah, I understand.

17 MS. BOGUE: Uh-huh.

18 THE COURT: Okay. Further thoughts you want to  
19 share with me before I give Mr. Griffiths an opportunity to  
20 respond?

21 MS. BOGUE: Well, other than just like I said, I  
22 had worked all those years and then when I retired then  
23 just, you know, in the past few years when all this happened  
24 they dropped all of our benefits and at that point gave me  
25 \$300 a month additional retirement money, and of course \$300

1 wouldn't even begin to pay for insurance, so subsequently I  
2 have no dental insurance or vision insurance and things like  
3 that that I thought I was going to have the rest of my life,  
4 and besides that, that was \$3,600 more that I had to share  
5 with income to pay taxes on. I know these are small amounts  
6 to what's going on now, but it means a lot to me.

7 THE COURT: I well understand.

8 Okay. Mr. Griffiths, response?

9 MR. GRIFFITHS: Your Honor, I'm -- I assume that  
10 Your Honor's concern with respect to Mr. Kuntz' claims are  
11 echoed with Ms. Bogue in the sense that it would be helpful  
12 to know also in the case of Ms. Bogue at what point whether  
13 in the 1960's GM had been including a reservation of rights  
14 in the summary plan description and the welfare benefit  
15 plans themselves that was sent to employees.

16 So while the arguments with respect to the  
17 specific letter that Ms. Bogue has submitted remain the same  
18 as the ones we've raised at prior hearings in the sense that  
19 we don't believe that the retiree servicing center letter  
20 submitted, that is the letter that Ms. Bogue is referring to  
21 that's attached -- that she submitted with her claim,  
22 provides a vested benefit nor does it provide a separate  
23 contraction time to life insurance and welfare benefits.

24 I'm of course more than happy to go back and look  
25 at the plan descriptions, to the extent I can obtain them,

1 and summary plan descriptions and then submit those for the  
2 Court's review so that at least we can answer that one  
3 question as to when Ms. Bogue would have been aware of the  
4 -- or first become aware of the General Motors' ability to  
5 amend or modify the welfare benefit plans.

6 I also don't know at what point life insurance  
7 first commenced. I don't know what the inception date of  
8 the life insurance plan was.

9 So I'll obtain that information provide it for the  
10 Court's review, and perhaps it might be sensible then to  
11 adjourn Ms. Bogue's claim in the same way as Mr. Kuntz so  
12 that we could answer all of the -- all of those questions  
13 with respect to employees who retired prior to 1984 in a  
14 consistent manner.

15 THE COURT: You assume exactly right,  
16 Mr. Griffiths, and I appreciate your sensitivity to my  
17 concerns in that regard and the concerns of these employees  
18 who are in this unusual situation.

19 Ms. Bogue, normally I would give you a chance to  
20 reply, and I'm still going give it to you, but basically  
21 what Mr. Griffiths said, as I understood it, and I think I  
22 did understand it, is that when you have an employee who  
23 started working way back in 1954, if I heard your facts  
24 right, and may have put in many years of service before GM  
25 started reserving these rights to change the benefit that

1 may be, not necessarily is, but may be something that puts  
2 you in a different situation than people who worked most of  
3 their career when they knew about the reservation of rights.

4 So what he said was that he's going to go back and  
5 check the records, and of course I'm sure he would also look  
6 at any records that you have, to see when your insurance  
7 went into place and how many years of service you had before  
8 GM started to say that it had the rights to change, and  
9 therefore he's asking me to continue the matter, which is to  
10 adjourn it to a later date where we can get more facts.

11 Did you understand what he said and what I said,  
12 and do you have any further desire to hear -- to say stuff  
13 to me given that we're not going to decide it today?

14 MS. BOGUE: No, sir, I understood what you said  
15 completely, and I appreciate your attention and thank you  
16 for hearing me.

17 THE COURT: Okay, very much well.

18 So I'm going to tell you the same thing that I  
19 told Mr. Kuntz, which is that you're being carved out of  
20 today's proceedings and you're going to be continued to  
21 July 17 was that Mr. Griffiths?

22 MR. GRIFFITHS: Yes, Your Honor.

23 THE COURT: Okay. July 17 and you can call in on  
24 the phone just like you did today.

25 MS. BOGUE: Very good. Thank you very much, sir.

1 THE COURT: Okay, have a good day.

2 What do we have next, Mr. Griffiths?

3 MR. GRIFFITHS: Yes, Your Honor, we have  
4 Mr. Gordon Hall, H-A double L.

5 THE COURT: Okay. Mr. Hall, are you with us?

6 MR. HALL: Yes, sir, my name is Gordon Hall and I  
7 thank you for hearing my case as well.

8 THE COURT: Okay. Where you calling from,  
9 Mr. Hall?

10 MR. HALL: Murphy, North Carolina.

11 THE COURT: Okay, thank you.

12 MR. HALL: I'm representing myself today in a  
13 claim for a specific amount of life insurance that I believe  
14 was promised to me in the good faith document sent to me by  
15 General Motors in 1998, and with the Court's permission,  
16 Your Honor, I would like to read about a one and a half page  
17 document in support of my claim.

18 THE COURT: Go ahead.

19 MR. HALL: Okay. I wanted to bring the Court's  
20 attention to a letter that you're probably familiar with  
21 that I included in my claim packet I submitted to all the  
22 parties, it's labeled as Exhibit 1 and it was mailed to me  
23 from the GM retiree servicing center dated June 15th, 1998,  
24 which was just 15 days before -- or after my retirement. I  
25 retired on June 1st, 1998 with 33 years with GM.

1           The document I'm referring to is a very specific  
2 document, which was mailed to me personally, and which  
3 unambiguously states a specific and ultimate amount of life  
4 insurance, and it further states that this ultimate amount  
5 will remain in effect for the rest of my life at no cost to  
6 me. It was mailed specifically to inform me of my life  
7 insurance amounts after retirement, it was mailed from the  
8 GM National Retiree Servicing Center of NAO personnel  
9 administration, and at the time of that mailing NAO, or  
10 North American Operations, included all of GM's United  
11 States and Canada assembly plant operations as well as GM  
12 headquarters operations and staff in support of NAO.

13           So given the source of the letter and the timing  
14 of the letter and the great specificity of the letter I was  
15 as certain as anyone could be that this letter was  
16 legitimate and it meant exactly what it said.

17           Your Honor, with the Court's permission I would  
18 like to read this very brief letter now.

19           THE COURT: Go ahead, please.

20           MR. HALL: It's from GM National Retiree Service  
21 Center on NAO personnel administration letterhead.

22           "Dear PG Hall, as a retiree of General Motors with  
23 ten or more years of participation in life and disability  
24 benefits program you are eligible for continuing life  
25 insurance. Our insurance records as of the date this of



1 letter show the continuing life insurance has now fully  
2 reduced to the ultimate amount of \$78,804. This ultimate  
3 amount will remain in effect for the rest of your life and  
4 is provided by General Motors at no cost to you." In bold  
5 letter, "Important, you should keep this notice with your  
6 other available papers." Which I have done.

7 And if I may, Your Honor, there's a couple aspects  
8 of the letter I wanted to elaborate on just a little bit.

9 THE COURT: Go ahead, please.

10 MR. HALL: Okay. The letter was written with the  
11 full authority of and as a functioning part of NAO as  
12 evidenced by the words NAO personnel in the letter heading.  
13 The National Retiree Service Center was authorized to speak  
14 for GM's North American Operations personnel and as such for  
15 GM.

16 Furthermore you'll notice the direct and final  
17 nature of the letter, and it's also to me very important to  
18 note that there were absolutely no qualifying words or  
19 statements in the letter which would in any way diminish or  
20 change the very specific content, and there was nothing that  
21 referred it to any other resource which did.

22 And now just one qualifying statement about the  
23 life insurance itself. My claim is for \$147,608. And while  
24 the June 15th, 1998 letter specifies the amount of 78,804  
25 basic life insurance, that was my basic salary at

1 retirement, and the base salary was the coverage volume and  
2 two times the base salary was the actual amount of life  
3 insurance, and that is supported by two documents that I  
4 also sent to all the people, the attorneys, and I think to  
5 Your Honor. One is a June 11th, 1998 flex enrollment  
6 document and the other is a 2007 enrollment document, which  
7 states, "Life insurance coverage of \$159,200 in the '98  
8 enrollment and two times 78,804 for \$157,680 in the second  
9 document. So my actual claim is for the 147,608, which is  
10 157,608 minus the current \$10,000.

11 I guess that pretty much concludes my comments on  
12 my claim on my behalf, if nobody has a question about --

13 THE COURT: Yes, I do, Mr. Hall.

14 Apart from the letter of June 15th, 1998 when you  
15 were living in Marble, North Carolina --

16 MR. HALL: Yes.

17 THE COURT: -- did you get any other letters from  
18 GM or its servicing centers that either made promises or  
19 that arguably made promises to you about your life  
20 insurance?

21 MR. HALL: No, this is the only -- this is the  
22 only letter that would -- I mean if I just picked this  
23 letter up and given what I've just gone through I would  
24 consider a promise for life insurance for the rest of my  
25 life, and this is the only one.

1 THE COURT: Uh-huh. Were you able to hear  
2 questions I asked other people in terms of when they first  
3 saw letters from GM where GM said in substance that we  
4 reserve the right to change the terms of your welfare plans  
5 at any time?

6 MR. HALL: Absolutely. Many times over the years,  
7 I can't deny that and it was mailed out almost annually for  
8 -- not the first years because I don't think that was even a  
9 part of it since 1965, but probably through the late '80s  
10 and '90s. No question about that.

11 My -- my position is that this letter was mailed  
12 15 days after my retirement, and just on the face of it it  
13 appeared to me that okay, now you're in retirement and this  
14 is on official GM letterhead and this is where you stand now  
15 in retirement, and in my mind separated it from anything  
16 that qualified it, there was nothing in here that referred  
17 me to my GM documents that did qualify those benefits.

18 So to answer you question, yes, I have seen that  
19 throughout the years.

20 THE COURT: Let me ask you a harder question.

21 MR. HALL: Okay.

22 THE COURT: Do you know when you first started  
23 seeing them? I think you said you started working for the  
24 company roughly in 1965?

25 MR. HALL: Yeah. You know, I'm -- I take

1 everything that's sent to me very seriously and I have a  
2 detailed filing system, so I would say probably mid '90s for  
3 sure. I've been aware of it for years, you know, I mean  
4 before my retirement, say ten years before my retirement I  
5 can honestly say I was aware of it.

6 THE COURT: Uh-huh. Anything further before I  
7 give Mr. Griffiths a chance to respond?

8 MR. HALL: No, sir, I do appreciate the  
9 opportunity.

10 THE COURT: Okay. Mr. Griffiths?

11 MR. GRIFFITHS: Thank you, Your Honor, the -- if  
12 Mr. Hall retired in 1965 we're dealing with the same issues  
13 as Mr. Kuntz and Ms. Bogue, and I'm happy to adjourn the  
14 claim to July 17th as appropriate.

15 I would just respond, I mean to the extent that  
16 we're able to find documents that support GM's view that  
17 they did in fact reserve their rights to amend or modify  
18 welfare benefits plans, by way of explanation to Mr. Hall  
19 that the retiree servicing center letter has been dealt with  
20 at a number of hearings before Your Honor, there's no doubt  
21 that it was unfortunately worded and could have been a lot  
22 clearer, but the reason Motors Liquidation Company is  
23 proceeding on the letter is because the letter itself refers  
24 in its terms to the welfare benefit plans under which the --  
25 or the life insurance plan under which the benefits are

1 being provided. The GUC Trust supported by applicable law  
2 doesn't believe it's reasonable for former employees to look  
3 at this letter in isolation and not refer to the terms of  
4 the welfare benefit plans to assess what the, you know, the  
5 terms and conditions of the life insurance would be,  
6 including their ability to amend or modify it.

7 Following -- and I don't know if Mr. Hall took  
8 advantage of this -- but following GM's Chapter 11 filing in  
9 June 2009, in August 2009 a voluntary life insurance program  
10 was offered to former employees and would have been offered  
11 to Mr. Hall that he would have been able to obtain life  
12 insurance at his own cost, which doesn't mitigate the loss,  
13 but it in some way defrays it.

14 So those would be my only comments with respect to  
15 that letter, but I'm -- again, I'm happy to adjourn this  
16 claim to July 17th as indeed for any claimants whose  
17 employment started prior to 1984 so that we can provide Your  
18 Honor with documents that support the -- the GUC Trust view  
19 that GM had reserved their rights to modify or amend welfare  
20 benefits for the last 40 years or so.

21 THE COURT: I appreciate that, Mr. Griffiths.

22 Mr. Hall, what Mr. Griffiths has basically said,  
23 and you heard him just as I did, was that you can't look at  
24 the letter in isolation and that you have to look at  
25 documents that it said that it was incorporating, which are

1 those letters where they said they reserve, but what makes  
2 your situation possibly similar to those of Mr. Kuntz and  
3 Ms. Bogue is that it's seemingly the case that you worked  
4 for many years before you started getting those reservations  
5 of rights, which presents a tougher legal issue.

6 And the way we're going to go about that is to see  
7 when those letters first started reserving the right and how  
8 many years of your career you worked before you started  
9 getting those letters, and we're going leave this for  
10 July 17th and we're going to talk about it more there.

11 Given that, I'm not going to decide it today, but  
12 I'll give you a chance to be heard anymore if you want to.

13 MR. HALL: No, I understand, Your Honor.

14 THE COURT: Okay. All right, thank you. Then  
15 you're free to either drop off or stay on.

16 We will, unless you're told otherwise, have a  
17 follow-up hearing by -- that you can appear in my phone on  
18 July 17th, and we'll talk about your situation then.

19 I would appreciate it if you work with GM in  
20 trading documents back and forth and sharing information  
21 between then and now.

22 MR. HALL: I'll be very happy to do that.

23 THE COURT: Okay, thanks.

24 MR. HALL: Thank you.

25 THE COURT: Who do we have next, Mr. Griffiths?

1 MR. GRIFFITHS: Your Honor, we have Mr. Timothy  
2 Kuechenmeister. And for the record that's spelled  
3 K-U-E-C-H-E-N-M-E-I-S-T-E-R.

4 THE COURT: Okay. Mr. Kuechenmeister, are you on  
5 the line?

6 MR. KUECHENMIESTER: Good morning, Your Honor,  
7 yes, I am, Timothy Kuechenmeister.

8 THE COURT: Okay. And were you on one of our  
9 earlier calendars and adjourned? I'm not sure.

10 MR. KUECHENMIESTER: No, Your Honor, I wasn't.

11 THE COURT: Okay. Perhaps a name similar to  
12 yours.

13 MR. KUECHENMIESTER: I was wondering if there was  
14 another Kuechenmeister.

15 THE COURT: Fair enough. Where you calling from,  
16 Mr. Kuechenmeister?

17 MR. KUECHENMIESTER: I'm calling from central  
18 Florida.

19 THE COURT: Central Florida?

20 MR. KUECHENMIESTER: Yes.

21 THE COURT: Okay. All right. Would you like to  
22 be heard on your circumstances?

23 MR. KUECHENMIESTER: Yes, Your Honor, I would.  
24 I'll make it brief.

25 I too have one of the letters you're discussing,

1 the only difference is the ultimate amount. I've submitted  
2 this letter with my original submission.

3 I have been employed at General Motors from  
4 January 1973 till April 2002. I do recall having seen that  
5 General Motors reserved the right to modify future benefit  
6 programs, I don't recall exactly when the first time I did  
7 see that.

8 But I do have one other issue, and that's -- they  
9 -- that statement certainly didn't make it clear that they  
10 could come back and take away something that they supposedly  
11 had already given, which I think is the case here.  
12 Certainly future -- you know, future insurance programs,  
13 future medical programs I recognize their link to modify  
14 those, but I believe that this was something that they had  
15 already given me as part of my early retirement process.

16 THE COURT: Okay. Further thoughts?

17 MR. KUECHENMIESTER: That's it.

18 THE COURT: Okay. Did you submit all of the  
19 paperwork you had in which anything that made promises or  
20 you might argue made -- might have made promises --

21 MR. KUECHENMIESTER: Yes, Your Honor.

22 THE COURT: -- was including --

23 MR. KUECHENMIESTER: I did submit that letter and  
24 I also submitted a transition (indiscernible - 01:32:23)  
25 that spoke of the differences between the life insurance and



1 the medical. The medical plan it says things like may be  
2 continued --

3 THE COURT: I'm having trouble hearing you. Could  
4 you speak a little louder, Mr. Kuechenmeister?

5 MR. KUECHENMIESTER: I'm sorry. I've submitted  
6 also -- two things. I submitted the letter from General  
7 Motors with the promise of the ultimate amount of life  
8 insurance and I submitted the transitioning your coverage  
9 document which addresses the issues between medical programs  
10 and insurance program. Medical programs they say may be  
11 continued, the insurance program -- basic life insurance  
12 says you will get this and you will get a reduced amount.  
13 So both have been submitted.

14 THE COURT: Okay. All right.

15 Mr. Griffiths, do you want to respond?

16 MR. GRIFFITHS: Simply to perhaps, you know, it  
17 would be helpful to find out from Mr. Kuechenmeister when  
18 his employment with GM commenced.

19 MR. KUECHENMIESTER: January 1973. I'm sorry, I  
20 thought I said that.

21 MR. GRIFFITHS: Your Honor, for the sake of  
22 fairness for all of the employees on the phone today for  
23 anyone that commenced employment prior to 1984, the GUC  
24 Trust is more than happy to adjourn claims with respect to  
25 welfare benefits and life insurance so that we can submit

1 documents supporting our view that the benefit plans can be  
2 amended or modified.

3 If we're able to do that I would just apply the  
4 same comments I have to Mr. Kuechenmeister's as to the ones  
5 raised with Mr. Hall. The retiree servicing center letter,  
6 the particular one received by Mr. Kuechenmeister  
7 specifically states that the life insurance -- well, the  
8 amount guaranteed by the life insurance -- sorry -- the  
9 amount of the life insurance is not guaranteed. I'm  
10 referring to the April 8, 2002 letter that  
11 Mr. Kuechenmeister supplied. The letter specifically says  
12 this is not a guarantee of the coverage amount, and  
13 certainly for the balance of Mr. Kuechenmeister's  
14 employment.

15 So 1984 onwards he would have been on notice every  
16 year and every five years (indiscernible - 01:34:40) his  
17 retirement that welfare benefit plans and life insurance  
18 could be amended or modified, and Mr. Kuechenmeister would  
19 have also been able to obtain life insurance -- additional  
20 (indiscernible - 01:34:50) life insurance under the new GM  
21 life insurance plan that was offered to all former employees  
22 at their own cost in August 2009.

23 THE COURT: Okay. So in that event we would be  
24 kicking this one too, even though Mr. Kuechenmeister has a  
25 statement in his letter that doesn't appear in all of them,

1 which say this is not a guarantee of the coverage amount.

2 MR. GRIFFITHS: Yes, Your Honor, I mean the -- the  
3 question as to whether Mr. Kuechenmeister would have been  
4 aware of the reservation of rights from the start of his  
5 employment is important to the GUC Trust as it is to Your  
6 Honor. The GUC Trust doesn't adopt an adversarial position  
7 in terms of resolving claims. If we can allow a claim we  
8 will. And you know, I would like to go back and look to see  
9 if there's any arguments that can be made on  
10 Mr. Kuechenmeister's behalf as well that would support a  
11 view that life insurance could until some way vest.

12 I doubt it's the case, but there's no harm in  
13 going back to how we look and giving Mr. Kuechenmeister the  
14 benefit of the doubt and adjourning the claim for a month or  
15 so.

16 THE COURT: Okay. Did you follow all that,  
17 Mr. Kuechenmeister?

18 MR. KUECHENMIESTER: Yes, I did.

19 THE COURT: Okay. Then you're going to be kicked  
20 along with the others to July 17th.

21 MR. KUECHENMIESTER: Okay. Thank you very much,  
22 Your Honor.

23 THE COURT: Okay.

24 MR. KUECHENMIESTER: Can I get off the line now,  
25 is that --

1 THE COURT: Yes, you may. Yes, you may.

2 MR. KUECHENMIESTER: Thank you.

3 THE COURT: Who do we have next?

4 MR. GRIFFITHS: Then, Your Honor, I believe that  
5 would be all of the employees we have on the telephone  
6 today.

7 Mr. Curzan agreed that the hearing could go  
8 forward and decided not to appear telephonically as did  
9 Mr. Zach (ph).

10 A note on Mr. Zach's claim. This was a claim that  
11 was first brought before Your Honor I believe at a July -- a  
12 July hearing last year, and this was when the retiree  
13 servicing center letter issue was first brought before Your  
14 Honor's attention. Mr. Zach's welfare benefits were  
15 expunged and we were given the opportunity to go and look at  
16 the retiree servicing center letter and brief the issue  
17 fully before proceeding on it.

18 And having done so, you know, Your Honor's prior  
19 rulings on the retiree servicing center letter has given us  
20 guidance on how to proceed with a claim, and we spoke with  
21 Mr. Zach who understands that the -- that we would now like  
22 to proceed and expunge that claim.

23 So we would simply request that Your Honor's  
24 ruling with respect to claims that are being expunged also  
25 be applied to Mr. Zach and to Mr. Curzan.

1 THE COURT: That request is granted.

2 So of the people who I heard today who have we in  
3 the situation where they haven't been kicked already?

4 MR. GRIFFITHS: I believe we have Mr. Gradich (ph)  
5 who did not appear, we spoke with Mr. Stanley -- if  
6 Mr. Stanley is still on the telephone maybe you ought to  
7 know when he started his employment. And again, I'm more  
8 than happy to adjourn that claim if his employment commenced  
9 prior to 1984.

10 THE COURT: You said Mr. Stanley, did you mean  
11 Mr. Stanley Jack?

12 MR. GRIFFITHS: Oh, I'm sorry, Mr. Jack, correct.

13 THE COURT: Mr. Jack, are you still with us?

14 MR. JACK: Yes, sir, Your Honor.

15 THE COURT: Can you tell us when you first started  
16 working for GM?

17 MR. JACK: 1978.

18 THE COURT: And you retired when?

19 MR. JACK: I retired in 2008.

20 THE COURT: Okay.

21 MR. GRIFFITHS: There's a six-year stop period,  
22 Your Honor, between '84 when we had the first documented  
23 welfare benefit plan, so there's no problem from our side in  
24 taking a look at Mr. -- for Mr. Jack as well.

25 THE COURT: Okay. So then you're going to kick

1 that too.

2 Then to what extent do I have to rule on anything  
3 today?

4 MR. GRIFFITHS: Your Honor, I believe you only  
5 need to rule with respect to Mr. Gradich, Mr. Curzan, and  
6 Mr. Zach, who are the claimants who haven't appeared, and as  
7 we've noted, Your Honor, that we would simply like to apply  
8 Your Honor's prior rulings in this matter to these claims.

9 THE COURT: Yes, I'm going to do that.

10 And for those who are still on the phone, where  
11 we're seemingly headed, but I'm not making any final rulings  
12 today, is that when GM reserved the right to change your  
13 benefits in these plan descriptions, whether you saw the  
14 letter or not, that's a part of your contract with GM. GM  
15 can't walk from your contract, but that is part of your  
16 contract.

17 The more difficult issue, which is the one that  
18 we're leaving for another day is that when you worked for  
19 many years before GM started to tell you as part of your  
20 contract that it reserved the right to change your benefits  
21 and when you continued to work thereafter how we deal with  
22 that change in your contract and if it matters when the  
23 majority of your working career, sometimes the great  
24 majority, was before the contract was changed. I'm not  
25 deciding that today. Hopefully I'll never have to decide

1 it, but if I do it'll be only after both sides have had an  
2 opportunity to be heard on how you deal with that hybrid  
3 kind of situation. Okay.

4 MR. GRIFFITHS: Your Honor, if I may just --

5 MR. VOLPE: Your Honor?

6 THE COURT: Yeah, who's speaking, please?

7 MR. VOLPE: This is David Volpe in Atlanta.

8 THE COURT: Yes, sir.

9 MR. VOLPE: I'd like to know if I can additional  
10 information based on all of this conversation about the  
11 dates?

12 I also fall into the category of having started  
13 employment with General Motors in August of 1969, which was  
14 15 years before the 1984 date that seems to be quite  
15 critical.

16 And while the discussion was going on I also went  
17 and dug out my records. I have a letter in my file dated  
18 October 2002 very similar to the other retirees indicating  
19 that my life insurance was a certain amount and this is --  
20 this will be provided for the rest of your life, it's in  
21 effect for the rest of your life to be provided by General  
22 Motors at no cost to you.

23 So I have one of those identical letters that I'm  
24 looking at that I did not argue when I was given my  
25 opportunity, but now knowing that this is a pertinent issue

1 I would ask the Court to be included in that group that  
2 maybe gets deferred and adjourned until a later time.

3 THE COURT: Well, actually you were wise not to  
4 argue that letter, because that letter by itself I've ruled  
5 in prior proceedings by itself is not enough to change it,  
6 but the fact that you worked from -- did you sake 1969,  
7 Mr. Volpe?

8 MR. VOLPE: That is correct.

9 THE COURT: From 1969 to some period in the early  
10 '80s, well, later than that of course, but at some point we  
11 know in 1984, possibly earlier, that was changed, and the  
12 fact that you had all those years of service before it was  
13 changed is enough for me to put you in the category where  
14 we're going to consider you with the others.

15 You provide the information you can to GM, GM is  
16 going to be digging into its records as well. The letters  
17 -- the letter that you described is very similar, if not  
18 identical, to letters that I've ruled on before.

19 MR. VOLPE: Okay.

20 THE COURT: That -- that isn't what is troubling  
21 me today, what is troubling me is years and years of service  
22 before GM started changing the policy, and I'm not telling  
23 you anymore than I'm telling anybody else how I'm going to  
24 decide that issue, frankly it's a head scratcher, but what I  
25 am saying is that I'm okay with you being -- trading



1 information with GM and considering you on July 17th and not  
2 today.

3 MR. VOLPE: Thank you, Your Honor.

4 THE COURT: Okay.

5 MR. GRIFFITHS: And Your Honor, just a note with  
6 Mr. Volpe we're of course happy to accept Mr. Volpe's claim  
7 for pension benefits as supplemented by a claim for welfare  
8 benefits, but Mr. Volpe had made a claim from the difference  
9 between what he had received as a pension entitlement at the  
10 age of 52 and what he subsequently -- or what he believes he  
11 would have been due had he retired ten years later.

12 I'm more than happy for this whole claim to be  
13 adjourned to July 17th.

14 THE COURT: Okay. Although, Mr. Volpe, you have  
15 to understand that GM isn't trying to change your pension  
16 benefit, so that issue isn't before we, but if you're trying  
17 to get money out of GM for changing the pension benefit --

18 MR. VOLPE: Oh, no, not at all, Your Honor. The  
19 pension is not at issue here, it's strictly life insurance  
20 and medical benefits.

21 THE COURT: Oh, okay. I thought I had somebody  
22 who raised that issue.

23 MR. VOLPE: No, I'm not arguing that at all.

24 THE COURT: Okay.

25 MR. GRIFFITHS: Sorry, Mr. Volpe.

1 MR. VOLPE: That's an argument for a different  
2 day. That just started. They lit the fuse on that on  
3 June 4th.

4 THE COURT: All right. Trying to get money out of  
5 GM for changing the benefits is a much more difficult road  
6 to hoe.

7 MR. VOLPE: Yeah.

8 THE COURT: Okay. Mr. Griffiths, do you have any  
9 further business for today?

10 MR. GRIFFITHS: That would be all -- yes, Your  
11 Honor, that's all of the business today.

12 THE COURT: Okay. Is there anybody on the phone  
13 who didn't understand my ruling insofar as it affected him  
14 or her?

15 Hearing no response we're adjourned. Thank you  
16 folks, I expect for hear from many of you on July 17th.

17 MR. VOLPE: Thank you, Your Honor.

18 MR. JACK: Thank you, Your Honor.

19 THE COURT: CourtCall, you may drop off the  
20 participates on the line.

21 (Whereupon these proceedings were concluded at 11:34  
22 AM)

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I N D E X

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

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

Dawn South

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