

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026

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In the Matter of:

GENERAL MOTORS CORPORATION, et al.,

Debtors.

- - - - -x

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

June 30, 2009
10:07 AM

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

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2 HEARING re Debtors Motion Pursuant to 11 U.S.C. §§ 105, 363(b),
3 (f), (k), and (m), and 365 and Fed. R. Bankr. P. 2002, 6004,
4 and 6006, to (i)Approve (a)the Sale Pursuant to the Master Sale
5 and Purchase Agreement with Vehicle Acquisition Holdings LLC, a
6 U.S. Treasury-Sponsored Purchaser, Free and Clear of Liens,
7 Claims, Encumbrances, and Other Interests; (b)the Assumption
8 and Assignment of Certain Executory Contracts and Unexpired
9 Leases; and (c)Other Relief; and (ii)Schedule Sale Approval
10 Hearing

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12 HEARING re Notice of Settlement of an Order Denying Motion of
13 the Unofficial Committee of Family & Dissident GM Bondholders
14 for an Order Directing the United States Trustee to Appoint an
15 Official Committee of Family & Dissident Bondholders

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17 HEARING re Debtors' First Omnibus Motion to Reject Certain
18 Unexpired Leases of Nonresidential Real Property

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20 HEARING re Motion of Debtors for Entry of Order Pursuant to 11
21 U.S.C. §§ 105(a) and 366 (i)Approving Debtors Proposed Form of
22 Adequate Assurance of Payment; (ii) Establishing Procedures for
23 Resolving Objections by Utility Companies; and (iii)Prohibiting
24 Utilities from Altering, Refusing, or Discontinuing Service

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HEARING re Motion of Debtors for Entry of Order Pursuant to 11 U.S.C. §§ 105(a), 327, 328 and 330 for Authorization to Employ Professionals Utilized in the Ordinary Course of Business

HEARING re Application of the Official Committee of Unsecured Creditors of General Motors Corporation, et al. for an Order Authorizing and Approving the Employment and Retention of Kramer Levin Naftalis & Frankel LLP as Counsel, Nunc Pro Tunc, to June 3, 2009

HEARING re Debtors' Second Omnibus Motion to Reject Certain Unexpired Leases of Nonresidential Real Property

HEARING re Greater New York Automobile Dealers Association's (i)Motion for Consideration of Amicus Curiae Statement; and (ii)Amicus Curiae Statement Regarding Debtor's Motion to Approve Sale Pursuant to Master Sale and Purchase Agreement with Vehicle Acquisition Holdings LLC

Transcribed by: Lisa Bar-Leib

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THE COURT: Good morning. Have seats, everybody. Before we begin, I want to make some apologies to you. It wasn't practical to move to another courthouse with a bigger courtroom and better air conditioning. I'm told that our amplification system is overloaded, is overheated. I'll try to keep my voice up until we can get the amplification system fixed.

As far as the temperature goes, you all have permission, if you need it, to take off your suits -- your suit coats. You can take off your ties, for that matter. Anything you want to do to help make yourself more comfortable under these circumstances is fine with me.

ALL: We can't hear you, Your Honor.

THE COURT: Can you hear me now?

ALL: A little better.

THE COURT: Well, I don't mind raising my voice a little but I'm kind of screaming now. Can you hear me in the back at all?

ALL: No, Your Honor.

THE COURT: All right. Then we're going to have to take a recess until we can get this straightened up.

(Recess from 10:09 a.m. until 10:59 a.m.)

THE COURT: All right, folks. Have seats, please. I'm sorry. I don't know how many courts are typically capable

1 of handling a case with the needs of this one that would jog
2 with a 100 year old building. Let's get to work.

3 With so many people appearing about so many things,
4 we're going to have to establish some orderly procedures. So
5 here's what we're going to do. If anybody sees the need to do
6 the lease rejection motion, he can do it. He can have about
7 five minutes or less. If counsel really wants to be heard on
8 that, he's going to have to address my decision in Ames
9 Department Stores. Is he here -- she here? Okay. Back then I
10 ruled -- it's a written decision; I assume you have a copy --
11 that compliance with broom-clean and cleanup obligations can't
12 be an impediment to exercising the rights to reject under 365.
13 And that would seemingly be dispositive of this motion. But if
14 there's something that you want to say to show me that I got it
15 wrong back when I decided Ames Department Stores, I'll give
16 you that opportunity.

17 Turning to the main issues, folks, from everything
18 I've read, I understand the issues. And I don't want openings.
19 They're not necessary. With everyone who has filed papers, if
20 we had openings, we'd be here forever. We will, of course,
21 have appropriate opportunity for summation and argument at the
22 end of the evidentiary phase of the hearing, subject to the
23 requirements for coordination and limits to avoid duplication
24 that I'll discuss.

25 I do, however, want to hear from you, Mr. Miller, or

1 your designee as to how issues have been narrowed or eliminated
2 since I got all of those briefs. And if you can speak to that
3 after my preliminary remarks, that would be helpful.

4 I am also going to want, at some point, and I'll take
5 your recommendations as to the best time, for objectors on
6 successor liability issues, which are the main issues in this
7 case, and of the debtor, to give me one-page submissions as to
8 their understanding as to which of the successor liability
9 issues remain and which have been eliminated. I want to know
10 the extent to which modifications in the purchase agreement or
11 otherwise have made successor liability issues go away and
12 which of them still remain matters of concern to parties.

13 Okay. Then we're going to get the evidentiary record
14 buttoned up. I'm going to take evidentiary objections first
15 from anybody who wants to raise them. We're then going to take
16 the cross and, of course, any applicable redirect and the like
17 from the movant witnesses. If there's any adverse direct of
18 any of those witnesses, and I sense from your pretrial
19 submissions that there may be, it's my view subject to parties'
20 rights to be heard that we should deal with it then so I won't
21 have to make witnesses bounce up and down and to go through
22 this stuff more than once. Then, likewise, we'll have cross of
23 any objector witnesses, rebuttal witnesses, if any, then
24 summation and argument. More about that in a minute.

25 I didn't receive any designations of deposition

1 testimony or, if I did, I don't know about it. Normally, I get
2 them a few days before. But I understand how hard you folks
3 have been working and it's possible that you folks were working
4 right through the weekend or even yesterday to do depositions.
5 Subject to your rights to be heard, my thought is that if
6 anybody wants to designate any deposition testimony, he or she
7 should do it by noon tomorrow with twenty-four hours for the
8 debtors to submit any Rule 32 counterdesignations. If anybody
9 thinks that's not a workable course here, I'll hear discussion
10 on that.

11 Oral argument. I can't blame anybody, especially
12 since you were obligated to put in your objections at the same
13 time. But the objecting briefs make many similar points over
14 and over again. As we've done in all of my other huge cases
15 where there were many, many parties who would be aligned in
16 interest in making the same points, we have to have some
17 coordination. After first hearing from the debtors and the
18 debtors' allies and their advocates for the motion, which are
19 to be likewise coordinated to avoid duplication, with the
20 debtors speaking first unless the debtor has a different view,
21 I'll first take oral argument from one representative each of
22 the following objector or limited objector groups: first, the
23 creditors' committee to the extent it's an objector; next, the
24 dissenting bondholders. Mr. Richman, you or your folks; Center
25 for Auto Safety or another representative for tort claimants;

1 asbestos litigants; AGs; dealers; non-agreeing unions; nonunion
2 retirees.

3 If issues are still outstanding and argument is
4 really necessary, I'll take brief, very brief argument, from
5 lienholders, taxing authorities and the County of Wayne.

6 I won't take oral argument from shareholders,
7 workers' comp objectors or any objectors other than the County
8 of Wayne expressing concerns as to decisions as to whether or
9 not to close down particular plants.

10 Other parties in the classes I've described are to
11 coordinate with their group advocate and won't separately be
12 heard except on issues that weren't addressed at all to come
13 back and be -- or whether there's a conflict of interest
14 between the various objectors. Remember, folks, I have the
15 briefs.

16 If the U.S. trustee or the indenture trustees wish to
17 be heard, they can be heard any time they choose. And as I
18 said, the U.S. government, PBGC, the UAW and other supporting
19 unions -- supporting bondholders and others supporting the
20 motion should coordinate with the debtors. But if they have
21 points to make after the debtors have been heard then we're
22 going to give them that opportunity.

23 Cross-examination. Cross-examination is going to be
24 heard in the same coordinated fashion that I discussed with
25 respect to argument with the objector representatives that I

1 noted being heard first. So, by way of example, we would start
2 with the creditors' committee, then Mr. Richman and move on
3 from there.

4 After that, others feeling the need to cross will
5 have that chance but subject to other parties' rights to raise
6 asked and answered objections and my inherent power to control
7 my courtroom and avoid duplicative questioning. Actually, that
8 principle will be applicable throughout. I hope that we won't
9 have the need to raise a lot of asked and answered objections
10 but if I have to rule on them, I will.

11 Next: briefs. Folks, I understand people worked
12 hard on their briefs. But there was much too much in the way
13 of failures to comply with the requirements of the case
14 management order whose purpose is to help me understand briefs
15 when -- if you put them all together, they're almost two feet
16 high; failures to highlight defined terms so I've got to go
17 back and make sure that you're talking about the things that I
18 think you're talking about; and especially failures to give me
19 tables of authorities and tables of contents make it much, much
20 harder for me to do my job and for me to help you all. You
21 know, I won't embarrass any particular constituency in the
22 courtroom but when I get a sixty-one page brief without a table
23 of authorities or a table of contents, how am I supposed to
24 compare your discussion of TWA with the debtors or on Fairchild
25 Aviation or of White Motor?

1 So, it's tough on me when you do that, folks, and --
2 now I don't have a page limit on briefs and I feel like no good
3 deed goes unpunished. So the people who failed to comply with
4 the requirements for tables of authorities and tables of
5 contents have now until noon tomorrow to give it to me. You
6 don't have to give me new briefs. I'm not going to strike your
7 briefs. I'm not going to make you comply with the other
8 respects in which you were deficient. But you're going to give
9 me those tables of authorities because when this is done, I'm
10 going to be going back to put your discussion of the TWAs and
11 the other cases that are relevant to this against the debtors.
12 And we're going to see who's right and who's wrong. But I
13 can't do that unless you help me out, folks.

14 All right. Fair enough. On the listing of the
15 issues that remain or are resolved on the successor liability
16 issues, there should be lists or bullet points, one page
17 hopefully per constituency and they're not to include federal
18 argument. I just need to know what's open and what isn't.

19 Okay. With that said, I think it's time to hear from
20 you, Mr. Miller.

21 MR. MILLER: Good morning, Your Honor. Harvey
22 Miller, Weil Gotshal & Manges, on behalf of the debtors. In
23 response to your question, Your Honor, as to what has been
24 changed since June 1, as Your Honor noted, the weekend and
25 yesterday were really devoted to depositions. They went on

1 through Saturday, Sunday and Monday. So there was little
2 opportunity, Your Honor, to try and reach conclusions as to
3 open issues. There are two areas in which there has been
4 progress. On the product liability side, Your Honor, in
5 respect of product liability claims arising from expressed
6 warranties in connection with accidents from products,
7 anything -- any accident that occurs after the closing date,
8 Your Honor, irrespective of when the vehicle was manufactured
9 and sold, will be assumed by the purchaser, now New General
10 Motors Corporation. Product liability claims that may arise
11 subsequent to the commencement of the Chapter 11 case and up
12 through the closing to the extent they're triggered by an
13 accident, those, Your Honor, should be administrative expense
14 claims. So there is a major concession on the part of the
15 purchaser, Your Honor, with respect to that type of claims.

16 There hasn't been any progress, Your Honor, in
17 respect of the asbestos claimants as to future asbestos
18 claimants and existing asbestos claimants so that those claims,
19 under the proposal, Your Honor, would remain with Old GM.

20 Other tort claims, other than what I've already
21 explained, Your Honor, would remain with Old GM. In connection
22 with what we refer to, Your Honor, as the splinter unions and
23 the contention made by the splinter unions led by the IUE that
24 the treatment which may be afforded to those claimants,
25 retirees, those will be claims against the old company. There

1 are no active employees of IUE or these other splinter unions
2 that will be working for the new company. And the purchaser
3 has exhibited no desire to assume any of those liabilities,
4 Your Honor.

5 There has been an amended and restated master sales
6 and purchase agreement which was filed on Friday, Your Honor.
7 It is also on the website. It makes a number of changes, not
8 many substantive changes at all, Your Honor. And we have
9 copies here for anybody who's interested in it.

10 That, essentially, Your Honor, is where we stand
11 today. The motion is as it was filed with these exceptions.
12 And what we would propose to do, Your Honor -- one exception,
13 Your Honor. There has been some issue raised in connection
14 with the loan and security agreement with the United States
15 government that was entered into on December 31, 2008. And we
16 would like to offer that -- that was not, I think, on our
17 original exhibit list. And we would like to offer that into
18 evidence as part of the debtors' direct case. With the
19 schedules that are attached to that loan and security
20 agreement.

21 MR. SCHWARTZ: It's on the exhibit list.

22 THE COURT: Oh, it's on the exhibit list, Your Honor,
23 but the schedules weren't there. And these are the schedules
24 that are attached to it.

25 THE COURT: So the basic agreement is but the

1 schedules to it aren't?

2 MR. MILLER: Yes.

3 THE COURT: Okay. Any objection? Hearing none,
4 that's admitted.

5 (Loan and security agreement between GM and U.S. government
6 dated 12/31/08, was hereby received into evidence as of this
7 date.)

8 MR. MILLER: And we would offer as the debtors'
9 direct case, Your Honor, the declarations or affidavits of Mr.
10 Henderson, the first day affidavit and the supplement to that;
11 the declaration of Mr. Repko; and the declaration or affidavit
12 of Mr. Worth and Mr. Koch. And in the amended evidence and
13 witness list which was submitted to the Court, we had listed,
14 Your Honor, Exhibits 1 through 16 in support of those
15 declarations and affidavits. And to anybody that doesn't have
16 a copy, Your Honor, we have additional binders with all of
17 these documents.

18 THE COURT: All right. Fair enough. Any evidentiary
19 objections? Mr. Richman?

20 MR. RICHMAN: Your Honor --

21 THE COURT: I think you need to come to one
22 microphone or another, Mr. Richman.

23 MR. RICHMAN: There are two -- and we're trying also,
24 Your Honor -- Michael Richman for the -- Patton Brogs for the
25 family and dissenting GM bondholders -- to try to narrow the

1 issues and the focus to be as constructive as possible. And
2 the issues that are the most important to us that are what we
3 believe to be the fulcrum of the hearings are the Lionel
4 factors of the debtors' business judgment; related to that, the
5 expressed need for urgency; and tied into that, the effect
6 which the bankruptcy case has on the value of the enterprise.
7 And I say that to create focus and not to waive any of the
8 other factors or issues. And I also don't want to argue
9 extensively; I'm mindful that the time is limited. But as to
10 those issues, we believe that witness credibility is very, very
11 important. And that Your Honor should see and hear the
12 witnesses on those issues that we should be able to see and
13 hear them and be able to cross-examine what the witnesses
14 actually say as distinct from what the declarations have been
15 written to say.

16 So, to the limited extent of any of the declarations
17 providing evidence on those issues, we object and we would
18 request that there be live direct examination. Thank you, Your
19 Honor.

20 THE COURT: All right. Mr. Miller?

21 MR. MILLER: Your Honor, I've read --

22 THE COURT: My message to you -- I was going to
23 surprise you. It sounds to me I'm too loud. And, folks,
24 including me, and I'll comply, please move back from the
25 microphones for the benefit of the people in the other rooms.

1 MR. MILLER: Your Honor --

2 THE COURT: Go ahead, Mr. Miller.

3 MR. MILLER: I have read Your Honor's case management
4 order very carefully. And Your Honor's order really states --
5 too loud?

6 THE COURT: As much as I'd like to avoid excessive
7 sound to the others, I think it's more important that people in
8 the courtroom and me hear what you have to say and that you
9 guys hear what I have to say. So, this close, Mr. Miller,
10 speak so people in the back can hear.

11 MR. MILLER: I'm saying, Your Honor, that I read your
12 case management order carefully and your case management order
13 clearly enunciates that direct cases can be put into a
14 declaration and affidavits. Mr. Henderson, Mr. Worth, Mr. Koch
15 are all in the courtroom and can be cross-examined as to
16 everything that is set forth in the affidavits and
17 declarations, Your Honor. If we're going to move this process
18 forward, that's the way to do it.

19 THE COURT: Okay.

20 MR. MILLER: I must add one other thing, Your Honor.
21 I neglected to say there has been considerable advances made
22 with respect to the tax claims by governmental entities. And
23 we believe that that will be resolved before the end of this
24 hearing, Your Honor.

25 THE COURT: Okay. Thank you. Mr. Richman --

1 MR. MILLER: If I may, Your Honor, add one more thing
2 about the F&D dissidents bondholders committee. As Your Honor
3 may recall, there was a motion made by the F&M dissident
4 bondholders committee for the appointment of an additional
5 bondholders committee. And at the time of argument, the U.S.
6 trustee raised the issue as to the completeness of the Rule
7 2019 statement on behalf of the bondholders. And counsel said
8 that there was no problem, they would file that 2019 statement
9 subsequent to the hearing.

10 There was an indication or a suggestion during the
11 hearing, Your Honor, that the three members of the F&M
12 dissident bondholders committee were almost par-bias of GM
13 bonds. Subsequent to the hearing, Your Honor, an amended 2019
14 statement was filed. And in that 2019 statement for these
15 three members, one member who was actually buying bonds on June
16 1, 2009, the date of the filing of this petition, the cost of
17 that bondholder per hundred dollars of value was two dollars.
18 The other bond -- none of these bondholders, Your Honor, paid
19 more than twenty dollars per hundred dollars of -- per thousand
20 dollars of value of these bonds. These are three bondholders,
21 Your Honor, who claim to represent family and dissident
22 bondholders. But there are only three members. And every one
23 of those three members, Your Honor, bought their bonds
24 substantially below par and one significantly, significantly
25 below par. So I would question, Your Honor, their motivation

1 and their standing in connection with this proceeding.

2 THE COURT: All right. I'm not going to make Mr.
3 Richman respond on the issue of standing because the amount
4 that these guys paid for their investments to make them
5 bondholders still doesn't go to their rights under 1109 to
6 appear and be heard in the case.

7 Practically everybody in this room knows that we get
8 distressed debt investors all the time in this courthouse and
9 other districts as well taking very active roles in these cases
10 having bought their bonds or other investments at very
11 distressed prices. So I'm overruling your objection to deny
12 him standing. And I'll allow you or anyone else, subject to
13 relevance considerations, to amplify on the points you made as
14 we go forward.

15 I looked at his amended 2019 and I find it to be in
16 compliance with what 2019 requires. So I don't need to deal
17 with the issues of what I or any other judge would do if a 2019
18 failed to comply or if constituency failed to file a 2019 at
19 all or gave a grossly insufficient one.

20 The underlying objection on the direct testimony
21 affidavit is overruled. And I don't need to spend a lot of
22 time on the reason. As Mr. Miller appropriately pointed out,
23 my case management order provides for it. And it's the only
24 ways guys like me can function in complex cases with a lot of
25 numeric and statistical information, a lot of historic facts.

1 This is, of course, without your right, Mr. Richman, to pool on
2 the credibility issues as much as you choose to on cross.

3 Although the objection was only focused at the
4 movants' witnesses, the same applies to anybody else who gave
5 their direct testimony affidavits or declarations going
6 forward.

7 I sense that there may be a relevance objection to
8 some of this splinter union affidavits. I'll deal with that.
9 But that isn't an objection on whether the affidavits are
10 admissible at all. The question is the relevance of what they
11 say. All right. Are there -- yes, sir?

12 MR. JAKUBOWSKI: Yes, Your Honor.

13 THE COURT: Would you identify yourself for the
14 record, please?

15 MR. JAKUBOWSKI: May I approach the podium?

16 THE COURT: Of course. But do me a favor. I
17 intentionally didn't want everybody making a lot of appearances
18 on the record. But when you first speak, folks, please
19 identify yourself.

20 MR. JAKUBOWSKI: Thank you, Your Honor. My name is
21 Steve Jakubowski. I'm here from Chicago and I very much
22 appreciate your permitting me to appear in this case. I
23 represent product liability claimants and I'm also joint
24 counsel with the Center for Auto Safety --

25 THE COURT: Yes. I saw your submission, Mr.

1 Jakubowski.

2 MR. JAKUBOWSKI: -- and a number of consumer
3 organizations.

4 The evidentiary issue that I'd like to bring to the
5 Court's attention is the question of the exhibits and the
6 documents that we would like to have -- to use for purposes of
7 cross-examination of witnesses. Every one of the documents --
8 I have five particular documents that we've designated last
9 night as exhibits that we would like to be able to present to
10 Your Honor to deal with the limited issues of successor
11 liability in the TWA case. And all of those are privileged --
12 or excuse me. All of those are highly confidential documents
13 that are subject to an agreement among the parties between
14 myself and the debtor and myself and Treasury regarding the
15 ability to disclose them in court.

16 The debtors have raised an objection to relevance but
17 the relevance objection came before my particular exhibits were
18 designated. So what I would like to do is ask whether or
19 not -- is to try to come up with some procedure as to how to be
20 sure that the exhibits that I would like to present to the
21 witnesses on cross-examination are appropriately held
22 confidential but enough to be able to give you the information
23 you need to be able to rule properly.

24 THE COURT: I need some help from you, Mr.
25 Jakubowski. Without disclosing the confidential portion, can

1 you tell me the nature of the confidentiality concern?

2 MR. JAKUBOWSKI: Sure. Well, I'm not sure. It's
3 their concern and we haven't really discussed --

4 THE COURT: Oh, is the debtor concerned --

5 MR. JAKUBOWSKI: It's the debtor's concern.

6 THE COURT: -- that you got the document subject to a
7 confidentiality --

8 MR. JAKUBOWSKI: Correct, Your Honor.

9 THE COURT: Well, maybe I should give them a chance
10 to be heard and give you a chance to respond if you need to.

11 MR. JAKUBOWSKI: Thank you, Your Honor.

12 THE COURT: The presumption, folks, is that in a
13 hearing in a case of this type that's of fairly considerable
14 public importance, I really do not want to have to close the
15 courtroom or to deprive the public of access to this if there's
16 any possible way to be avoided.

17 Let's see if we can flesh this out. Another
18 possibility, Mr. Jakubowski, is that since, under my
19 guidelines, I would be giving the creditors' committee and Mr.
20 Richman the first opportunities to cross, is it helpful for me
21 to suggest that you have a caucus with the movants in the next
22 recess to see if you can work something out with them on giving
23 you what you need to do or the ability to do what you need to
24 do without impairing any commercial confidentiality concerns?

25 MR. JAKUBOWSKI: I would be happy to do that.

1 THE COURT: Mr. Miller, can I get your views, please?

2 MR. MILLER: I beg your pardon, Your Honor?

3 THE COURT: Can I get your views, please?

4 MR. MILLER: I -- Your Honor, this amended and
5 restated witness list from Mr. Jakubowski came in at 2 a.m.
6 this morning. I think Your Honor's suggestion is the
7 appropriate suggestion. I think we need some time to talk with
8 Mr. Jakubowski and see if there is some way that we can
9 alleviate this problem.

10 THE COURT: Fair enough. Then let's get on with the
11 cross. And, Mr. Jakubowski, if you would drop down a couple
12 notches in the questioning order, that won't be a big deal and
13 that way you guys can hopefully resolve it at this juncture.

14 MR. MILLER: And, Your Honor, I take it that what I
15 described before is now moved into evidence?

16 THE COURT: Yes. It is so moved and admitted.
17 (Declarations/affidavits of Mr. Henderson, Mr. Repko, Mr. Worth
18 and Mr. Koch were hereby received into evidence as of this
19 date.)

20 MR. MILLER: Thank you, Your Honor.

21 THE COURT: And you had a writing for me with that
22 stuff in the other courtroom. But if you want to just give me
23 an extra one now, that might be helpful.

24 MR. MILLER: May I approach, Your Honor?

25 THE COURT: Yes. Thank you.

1 MR BRESSLER: Your Honor, may I be heard before the
2 Court?

3 THE COURT: Yes.

4 MR. MILLER: Excuse me just one moment. This is the
5 amended and restated master exhibit list.

6 THE COURT: Okay. Good morning.

7 MR. BRESSLER: Good morning, Your Honor. Barry
8 Bressler from Schnader Harrison. We're the ad hoc committee of
9 consumer victims.

10 THE COURT: Pause, Mr. Bressler. Now, unless I read
11 the briefs incorrectly, you have similar concerns to Mr.
12 Jakubowski, don't you?

13 MR. BRESSLER: I wanted clarify where we do not. We
14 represent 300 tort claimants not his five. We do have a
15 similar concern as to 363. But we have raised two other
16 objections on which we have deposed the witnesses: one is the
17 sub rosa plan objection and the other is a bad faith objection
18 not raised by the --

19 THE COURT: Purchaser bad faith?

20 MR. BRESSLER: Yes. And as to those, since Mr.
21 Jakubowski did not have those objections, I would like to be
22 heard for the consumers.

23 THE COURT: This is kind of what I was talking about,
24 that overlap, folks, 'cause Mr. Richman made very similar
25 points. I'm not going to rule in advance but this is exactly

1 the kind of thing where we need to avoid duplication. And
2 whether you agree with Mr. Richman or disagree with Mr.
3 Richman, nobody can suggest that he wasn't a capable advocate
4 for the views that he advanced.

5 So I'm going to hear from Mr. Richman. And then when
6 it's tort claimants' turn, I'm going to hear from Mr.
7 Jakubowski or the Center for Auto Safety, which, I gather, is
8 his ally on this, first. And then subject to what I ruled
9 before, if Mr. Richman failed to make a point that you think he
10 should have made or could have made, not made it badly but if
11 he left out -- I don't think there's going to be a distinction
12 because if he makes it, he's going to make it competently, I
13 think you can assume, this willingness without prejudice to
14 your rights to come up and say we could ask something else.

15 MR. BRESSLER: Thank you, Your Honor. We do not
16 intend to duplicate.

17 THE COURT: Okay. Anything else? All right. Mr.
18 Richman, do you have a preference as to who you cross-examine
19 first?

20 MR. RICHMAN: Your Honor, Mr. Henderson. And my
21 partner, Mark Salzberg, is going to be my designee for this
22 purpose.

23 THE COURT: Okay. Mr. Salzberg was it?

24 MR. RICHMAN: Yes.

25 THE COURT: Thank you. Is Mr. Hen -- yes. Mr.

1 Henderson, could you come up to the witness box, please, and
2 remain standing to be sworn by the operator.

3 (Witness duly sworn)

4 THE COURT: Have a seat, please, Mr. Henderson.
5 Normally, I tell people to keep their voices up. In this
6 situation, I don't know whether to do that or tell you the
7 opposite. Why don't you try talking the way you feel like
8 talking and if the people can't hear then raise your hands and
9 hopefully it won't be too loud for the other people.

10 THE WITNESS: Thank you, Your Honor.

11 THE COURT: Mr. Salzberg, proceed.

12 MR. SALZBERG: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. SALZBERG:

15 Q. Good morning. Can you please state your name for the
16 record?

17 A. My name is Frederick Henderson.

18 Q. And, Mr. Henderson, what is your present position?

19 A. I'm the president and chief executive officer of General
20 Motors.

21 Q. And you became the president and CEO of General Motors on
22 what date?

23 A. April 1st of this year.

24 Q. And prior to that, you were the chief operating officer,
25 is that correct?

1 A. That's correct, sir.

2 Q. Okay. The U.S. Treasury extended certain loans to General
3 Motors and certain of its affiliates on December 31, 2008, is
4 that correct?

5 A. That's correct.

6 Q. And there were some loans extended in the months
7 subsequent up until the petition date on June 1, 2009.

8 A. Also correct.

9 Q. Do you know what the amount of those loans were that were
10 extended on December 31, 2008?

11 A. Four billion dollars.

12 Q. And at the time the four billion dollars was extended on
13 December 31, 2008, was GM adequately capitalized?

14 A. No.

15 Q. Okay. Was it able to pay its debts as they become due --
16 as they came due, excuse me.

17 A. Without that loan, no.

18 Q. Okay. And at that time, were the assets of GM in excess
19 of its liabilities?

20 A. Could you repeat the question, sir?

21 Q. Sure. At the time that the initial four billion dollars
22 was extended on December 31, 2008, were GM's assets in excess
23 of its liabilities?

24 A. No.

25 Q. Okay. And there were subsequent advances made in January,

1 February, March, April, May of 2009, correct?

2 A. That's correct.

3 Q. And is it fair to say that in each one of those instances,
4 when those subsequent loans were extended, GM was not
5 adequately capitalized?

6 A. That would be my opinion, yes.

7 Q. Okay. And GM was not able to pay its debts as it came
8 due.

9 A. Without those draws, correct.

10 Q. Okay. And its liabilities exceeded its assets, is that
11 correct?

12 A. Also correct.

13 Q. Okay. When GM first received the initial four billion
14 dollars, how did GM intend to pay that four billion dollars
15 back to the U.S. Treasury?

16 A. At the time, we were planning to develop -- we had plans
17 to develop a viability plan which would restructure our
18 business, restructure our business preferably outside of a
19 bankruptcy court. And one key objective of that restructuring
20 would be to repay the loans to the Treasury.

21 Q. So it was a question. GM was not sure it could pay the
22 loans back in its restructured business, is that correct?

23 A. That's correct.

24 Q. And would the same be true at each time that the
25 subsequent pre-petition loans were extended that GM was only

1 able to pay back those loans if it restructured its business?

2 A. Yes.

3 Q. And did that restructuring include converting the debt
4 into equity?

5 A. Not initially. That was not initially the view, sir.

6 Q. And when did that become the plan?

7 A. In the second quarter of this year when we launched the
8 bond exchange, one element of that was to equitize at least
9 half of the loans that were provided by the Treasury prior to
10 June 1st.

11 Q. Okay. So sometime in April or May of 2009, GM came to the
12 conclusion that it could only pay back its loans to the U.S.
13 Treasury or loans from the Treasury by at least partially
14 equitizing those loans, is that correct?

15 A. When we launched the bond exchange, we felt that in order
16 for us to proceed, and for the bondholders to consider their
17 opinions that we needed to identify that as one of the
18 conditions to the bond exchange. We felt it was important for
19 that to happen in order for us to have an adequate
20 capitalization.

21 Q. But just so I'm clear and so the record is clear, was it
22 GM's belief that the only way it could satisfy -- it could pay
23 back, at that point, the approximately seventeen billion
24 dollars in pre-petition loans was that if some of those loans
25 were converted to equity?

1 A. That was our judgment, yes.

2 Q. Okay. So would it be fair to say that since December 31,
3 2008, the United States Treasury had some sort of lev -- some
4 type of leverage over General Motors?

5 A. Correct.

6 MR. MILLER: Objection to the form of the question,
7 Your Honor.

8 THE COURT: Overruled.

9 Q. And when GM received the four billion dollar installment
10 December of '08, was there any other source of funding for GM?
11 Any other source of loans?

12 A. No.

13 Q. And since that time, from December of '08 until the
14 petition date of June of '09, was there any other source of
15 funding for GM?

16 A. For our U.S. operations, no.

17 Q. Okay. And under the loan agreement that was entered into
18 between the debtor and the trustee -- I'm sorry, U.S. Treasury,
19 excuse me -- was the U.S. Treasury able to call the loans if a
20 viability plan was not proposed by GM which was sufficient in
21 its view?

22 A. Yes.

23 Q. So at any time from December of '08 through June 2009 when
24 the bankruptcy was filed, U.S. Treasury could have said these
25 loans are payable now, immediately due because GM has not

1 proposed a viability plan which we find acceptable?

2 A. Yes.

3 Q. Now your predecessor CEO was Richard Wagoner, is that
4 correct?

5 A. Yes.

6 Q. And he resigned sometime around April 1st, I guess, 2009,
7 is that correct?

8 A. Correct.

9 Q. What were the circumstances surrounding --

10 MR. RICHMAN: Well, let me rephrase that. Excuse me.

11 Q. How did Mr. Wagoner come to resign as CEO of GM?

12 A. We were asked to come to Washington and review with the
13 automotive task force their preliminary results of our
14 viability plan that was submitted on February 17th. That was a
15 Friday. I believe it was March 27th but it was the Friday of
16 that week. Whether -- I'm not sure if it was exactly the 27th.

17 At that meeting, the head of the automotive task force,
18 Steve Rattner, asked to see Rick Wagoner in advance in a one on
19 one meeting. And at that meeting, he asked Rick to step down.

20 Q. So Mr. Rattner asked the CEO of GM to step down?

21 A. I was not at the meeting but Mr. Wagoner indicated to me
22 that he was asked to step down as both chairman and CEO.

23 Q. Do you know under what authority Mr. Rattner, on behalf of
24 the auto task force, asked Mr. Wagoner to step down as CEO?

25 A. No.

1 Q. Did he have -- did the U.S. Treasury have contractual
2 authority to essentially terminate the CEO of GM?

3 A. Not that I'm aware of.

4 Q. Are you familiar with papers filed by the U.S. Treasury in
5 support of the sale motion?

6 A. Umm --

7 Q. Have you seen them?

8 A. No.

9 Q. Okay. There's reference -- I will represent to you that
10 there's reference, and Mr. Miller will correct me if I'm wrong,
11 to the U.S. Treasury acting as a "prudent lender" in the
12 statement. Are you familiar with that phrase or are you aware
13 that they use that language?

14 A. Yes.

15 Q. Okay. Do you know of any other instances where a lender
16 has acted as a prudent lender where it actually instructed its
17 borrower to terminate its CEO?

18 A. I'm not aware of any.

19 Q. Do you know of any other instances where lenders have
20 instructed borrowers to terminate their CEO or undertake --

21 MR. MILLER: Objection, Your Honor. This assumes
22 facts that are not in the record. Mr. Henderson testified that
23 Mr. Rattner asked Mr. Wagoner to step down.

24 UNIDENTIFIED SPEAKER: We can't hear.

25 MR. MILLER: Sorry. Mr. Henderson testified, Your

1 Honor, that as far as he knows, Mr. Rattner asked Mr. Wagoner
2 to step down. He did not terminate him. That was a decision
3 that had to be made by the board of directors of GM. And if
4 counsel has the document, he should show it to the witness who
5 said he never saw the document.

6 THE COURT: All right. I'm going to sustain the
7 objection on form without prejudice to rephrase.

8 MR. SALZBERG: Thank you, Your Honor.

9 BY MR. SALZBERG:

10 Q. Mr. Henderson, you were a member of the GM board of
11 directors, is that correct?

12 A. I am now, yes.

13 Q. Okay. Were you a member prior to April 1 of 2009?

14 A. No.

15 Q. Okay. Were you -- did you -- well, as a nonmember, did
16 you attend the board of directors meetings where Mr. Wagoner's
17 resignation was discussed?

18 A. Yes.

19 Q. Okay. How did the board -- I'm sorry. Did the board ask
20 Mr. Wagoner to resign as CEO at that meeting on or about March
21 27th, 2009?

22 A. There was a telephonic meeting of the board that had been
23 regularly scheduled for noon that day, on the Friday. At that
24 meeting, Mr. Wagoner indicated to the board what was asked of
25 him and a discussion ensued. And, no, the board did not ask

1 for his resignation at that meeting.

2 Q. So how did Mr. Wagoner end up resigning?

3 A. Mr. Wagoner resigned, I believe, on Sunday, that weekend,
4 after a number of board calls.

5 Q. Would you agree with me that Mr. Wagoner resigned at the
6 suggestion of the U.S. Treasury?

7 A. Yes.

8 Q. And would you agree with me that Mr. Wagoner resigned at
9 the suggestion of the head of the U.S. auto task force?

10 A. Yes.

11 Q. And would you also agree with me that Mr. Wagoner resigned
12 at the suggestion of the only lender that GM had at that time?

13 A. Yes.

14 Q. Okay. Now, the debtor has not filed a plan of
15 reorganization as we stand here today, is that correct?

16 A. That's correct.

17 Q. There were discussions prior to the filing of the petition
18 regarding --

19 MR. SALZBERG: Strike that. Let me rephrase that.

20 Q. Prior to the bankruptcy being filed, there were
21 discussions between GM and the U.S. Treasury regarding filing a
22 plan of reorganization to accomplish this asset sale, is that
23 correct?

24 A. Could you rephrase the question, please? I'm sorry.

25 Q. Sure. Were there discussions prior to the petition date

1 between the debtor and the U.S. Treasury regarding different
2 processes for accomplishing the asset sale?

3 A. Yes.

4 Q. And one of those processes that was discussed was filing a
5 plan, a pre-packaged plan of reorganization, is that correct?

6 A. Correct.

7 Q. And was one of the processes discussed filing a pre-
8 negotiated plan of reorganization?

9 A. Yes.

10 Q. Okay.

11 MR. SALZBERG: Excuse me. Your Honor, if I may?

12 THE COURT: Yes.

13 MR. SALZBERG: Your Honor, Mr. Miller and I just have
14 to talk about the confidentiality issue that was raised by
15 counsel 'cause we do have some exhibits.

16 (Pause)

17 MR. SALZBERG: I apologize, Your Honor. We're just
18 dealing with procedural --

19 THE COURT: Oh, I understand. Go on.

20 (Pause)

21 MR. MILLER: No objection, Your Honor.

22 MR. SALZBERG: Your Honor, this is a mea culpa. Over
23 the last few days, we've been attending depositions and the one
24 thing I forgot were exhibit stickers. And so I apologize. But
25 may I approach -- Your Honor, may I hand mark --

1 THE COURT: Do it the old-fashioned way. Take a pen
2 and then you can mark it as an exhibit.

3 MR. SALZBERG: Thank you, Your Honor.

4 THE COURT: Just tell me how you've marked and, for
5 the record, a general description of your document without
6 prejudice to the witness' ability to identify it --

7 UNIDENTIFIED SPEAKER: Your Honor, I have sticker.

8 MR. SALZBERG: Thank you, Your Honor. Your Honor,
9 for the record, I'm going to mark this document Bondholder
10 Exhibit number 1.

11 THE COURT: Sure.

12 MR. SALZBERG: And if I may approach the witness and
13 Your Honor?

14 THE COURT: Yes, you may.

15 THE WITNESS: Thank you.

16 (Bondholder's Exhibit 1, proposed pre-packaged plan of
17 reorganization, was hereby marked for identification as of this
18 date.)

19 Q. Do you recognize this document, sir?

20 A. I recognize parts of this document but not the document in
21 its entirety.

22 Q. Okay. Thank you. If you would, please turn to page 4
23 which is entitled "Plan B Options".

24 A. Yes, sir.

25 Q. Okay. Do you recognize this page of the document?

1 A. No.

2 Q. I'm sorry?

3 A. No.

4 Q. Okay. Let's get to it this way. You see there are
5 three -- three boxes that one is noted "90-day Cramdown, 4/1";
6 the second is "60-day pre-pack, 5/31"; and the third is the
7 "363 Sale, 5/15", do you see that?

8 A. Yes, I do.

9 Q. Okay. Were there discussions prior to the filing of the
10 petition between the debtor --

11 MR. SALZBERG: Well, I'm sorry. Let me rephrase.

12 Q. Did the debtor contemplate filing a plan of reorganization
13 on or about April 1, 2009?

14 A. No. Not April 1st.

15 Q. Okay. But there were discussions prior to the filing
16 about filing a plan on the petition date, is that correct?

17 A. Yes.

18 Q. And there were discussions -- the debtor considered using
19 the plan confirmation process in order to effectuate the sale
20 of the assets, is that correct?

21 A. There was a discussion regarding a plan of reorganization
22 pursuant to a pre-packaged bankruptcy. And also a discussion
23 of a 363.

24 Q. Okay. But I just want to be clear that one of the
25 issues -- one of the processes discussed was filing a plan of

1 reorganization on the first day, is that right?

2 **A. That's correct.**

3 MR. SALZBERG: Your Honor, I'm going to show the
4 witness what's been marked as Bondholder Exhibit number 2. And
5 if I may approach?

6 THE COURT: Yes, sir.

7 MR. SALZBERG: Two copies. There you go.

8 THE WITNESS: Thank you.

9 MR. SALZBERG: You're welcome.

10 MR. MILLER: Let me have a copy, please.

11 MR. SALZBERG: Yes. Your Honor, if I may, I'd like
12 to move Exhibit -- Bondholder Exhibit 1 into evidence.

13 THE COURT: Any objection?

14 MR. MILLER: No objection.

15 THE COURT: Bondholder Exhibit 1 is admitted.

16 (Bondholder's Exhibit 1, proposed pre-packaged plan of
17 reorganization, was hereby received into evidence as of this
18 date.)

19 MR. SALZBERG: For the record, Bondholder Exhibit 2
20 is a document bearing Bates stamps GMPR92336 through 92360 and
21 it bears on the first page "Cadwalader Use of Section 363 to
22 Expedite Restructuring of Distressed OEMs".

23 **Q. Sir, Cadwalader, the law firm, represents the U.S. trustee**
24 **in this case -- the U.S. Treasury in this case, is that**
25 **correct?**

1 A. Yes.

2 Q. So during the planning of this bankruptcy, you had
3 discussions -- you, being GM, had discussions with Cadwalader,
4 is that right --

5 A. Yes.

6 Q. -- in conjunction with your counsel, is that correct?

7 A. Yes.

8 Q. Okay. If you would turn to page 3 of this document --
9 first of all, have you ever seen this document before?

10 A. Yes.

11 Q. Okay. When did you see it?

12 A. Sunday.

13 Q. At your deposition?

14 A. Yes.

15 Q. Prior to that had you seen it?

16 A. I'd seen parts of it but not in its entirety.

17 Q. Okay. Page 3 of the document -- did you see this page 3
18 prior to your deposition on Sunday?

19 A. No.

20 Q. Okay. You see there are two columns, one is entitled
21 "Section 363" and the other is entitled "Plan"?

22 A. Yes.

23 Q. Okay. And if you read under Section 363, there's some
24 bullet points there. Do you see the bullet points?

25 A. Yes, I do.

1 Q. Okay. Was one of the reasons why the debtor chose to file
2 a sale motion as opposed to file a plan because the consent of
3 creditors and shareholders would not be required under a 363
4 sale whereas they would be required in a plan?

5 A. Could you rephrase the question, please?

6 Q. Sure. Was one of the reasons why the debtor chose to file
7 a sale motion as opposed to filing a plan on the petition date
8 because the Section 363 sale could be done without obtaining
9 the consents of creditors and shareholders?

10 A. No.

11 Q. That had nothing to do with it?

12 A. The discussion with respect to the Treasury was what
13 structure they were prepared to do in terms of both financing
14 the company as well as, in this case, the view was that they
15 were prepared to proceed using a 363 process. The discussion,
16 for example, of shareholder votes was not a critical factor
17 that we discussed during the deliberations and then how
18 creditors were being affected were basically depending upon
19 what path was chosen.

20 Q. But it's correct that one of the issues pointed out by
21 Cadwalader in support of the 363 sale was that consent of
22 shareholders and creditors would not be required, is that
23 correct?

24 A. Yes, that's correct.

25 MR. MILLER: Objection, Your Honor. Mr. Henderson

1 testified that he never saw that page.

2 UNIDENTIFIED SPEAKER: Can't hear.

3 THE COURT: I'm going to sustain the objection on the
4 ground that what the document says is the best evidence of what
5 it says and I'm not going to ask a witness who's only seen
6 parts of the document before to characterize it --

7 MR. SALZBERG: Okay.

8 THE COURT: -- without prejudice to your rights to
9 argue in summation and to bring parts of the document to my
10 attention.

11 MR. SALZBERG: Thank you, Your Honor.

12 Q. Without looking at the document and without referring to
13 the document, were there discussions between the debtor and the
14 U.S. Treasury leading up to the petition date that a 363 sale
15 would be better strategically because the standards for the
16 sale would be lower than that required under a plan of
17 reorganization? By U.S. trustee, I meant U.S. Treasury. I
18 don't know why I keep making that mistake.

19 A. Yes. The -- we did have significant discussion regarding
20 the benefits and the risks of 363 and a plan through -- over
21 many months. So, I'm just trying to make sure I understand
22 your exact question.

23 Q. Well, was one of the benefits you discussed, benefits of
24 the 363 sale, was it that the standards for the sale would be
25 lower than that required under a plan confirmation?

1 A. Well, I understood the standards were different, for
2 certain.

3 Q. Okay. And was one of the reasons why the debtor opted for
4 the 363 sale because it would provide less of an opportunity,
5 less of an opportunity, for creditors to object?

6 A. I don't recall that discussion.

7 Q. Okay. Would it be fair to say that one of the reasons --
8 well, there were strategic reasons why the debtor chose to
9 effectuate the sale of the assets through 363 as opposed
10 through a plan, is that correct?

11 A. That's correct.

12 Q. Okay. Are you aware of any document filed in this
13 proceeding which identifies the recovery for unsecured
14 creditors as compared to the UAW retirees?

15 A. I've seen the document in that regard so it must be a
16 part.

17 Q. Okay. And it's your testimony, just so I'm clear, that
18 there is a document in this file which would identify the level
19 of recovery that the unsecured creditors would get dollar wise,
20 the dollar value of recovery, as compared to UAW retirees.

21 A. Yes.

22 Q. Okay. Do you know what the dollar value in comparison is
23 in the recoveries?

24 A. It depends on the value of the equity.

25 Q. Okay. Well, is it correct to say that the unsecureds,

1 which primarily --

2 MR. SALZBERG: Let me back up.

3 Q. Is it correct that the unsecured creditor class consists
4 primarily of the bondholders?

5 A. That's correct.

6 Q. Okay. Do you know the percentage of the claims, the
7 bondholder claims, which make up the unsecured creditor class?

8 A. I don't know. I just know that the unsecured bondholders
9 at twenty-seven billion dollars would be the largest component
10 of the unsecured creditor class.

11 Q. Okay. I believe that the Form 8K filed by GM in late May
12 said the bondholder claim would be primarily the -- primarily
13 all the unsecured creditors.

14 A. That's correct.

15 Q. Okay. And the UAW retirees will get what out of this deal
16 as proposed?

17 A. The UAW --

18 MR. MILLER: Objection, Your Honor. If counsel would
19 lay a foundation -- get from whom?

20 UNIDENTIFIED SPEAKER: Your Honor, we can't hear.

21 THE COURT: Mr. Miller, there is a microphone on your
22 desk but I don't know if bringing it closer to you is going to
23 help --

24 MR. MILLER: I don't think it's on, Your Honor.

25 MR. SALZBERG: I'll refer --

1 THE COURT: People in the background, do you hear Mr.
2 Miller's tapping on that microphone?

3 UNIDENTIFIED SPEAKER: No.

4 THE COURT: All right. Then, Mr. Miller, you're
5 going to just have to come up to the main lectern microphone.

6 MR. MILLER: Your Honor, counsel keeps referring to
7 what the UAW employees or retirees are getting as a result of
8 the Section 363 sale. He fails to identify from whom and how.
9 He's making an assumption that -- a predicate that is not in
10 the record.

11 THE COURT: Well, I don't think there's a predicate
12 that's not in the record but I think there's an ambiguity. So
13 why don't we sustain it on form and you just clarify the
14 question. You can ask it again sharpening the question.

15 MR. SALZBERG: Yes, Your Honor. And, by the way, I
16 would ask that Bondholder Exhibit 2 be moved into evidence.

17 MR. SCHWARTZ: Objection.

18 THE COURT: Any objections? Please, Mr. Schwartz?

19 MR. SCHWARTZ: I just want to be clear for what
20 purpose it's being --

21 THE COURT: Mr. Schwartz, you're going to have to
22 come up to the mic, too. Unfortunately, we're talking into
23 three corded ones here.

24 MR. SCHWARTZ: Matthew Schwartz for the United
25 States. I just want to be clear for what purpose the exhibit

1 is being offered. Probably I ought to have made the same
2 objection to the first exhibit. If it's being offered for the
3 truth of the content, it's hearsay. And if it's being offered
4 for anything else, Mr. Henderson testified he hadn't seen the
5 entire document before.

6 THE COURT: Okay. I'll take a response.

7 MR. SALZBERG: Your Honor, I believe that document
8 number 2 is a business record maintained by -- it's either the
9 U.S. trustee -- U.S. Treasury, excuse me, or the debtor. It
10 was produced by GM, actually, in response to a document
11 request. It was -- from its contents, it was drafted by its
12 counsel sometime immediately prior to or during the lead up to
13 the bankruptcy filing.

14 THE COURT: Well, I don't think it's a business
15 record. But it may qualify as an admission depending on who
16 its author was and the purpose for which it was put forward.
17 It also raises issues of double hearsay. My inclination,
18 folks, is for you to -- well, it's more than that. If I
19 mention it, it's my ruling. Lay a foundation. Find out who
20 the author of the document is. If the author of the document
21 is GM, they're your opponent and I'll admit it as an admission.
22 If the author of the document is the auto task force or
23 Treasury, they're a party in interest with a different
24 perspective but I have problems with taking it as an admission
25 at least without a case that says that a party -- a multi-party

1 1109 case -- Chapter 11 case is, by reason of 1109, a party
2 opponent with the Federal Rules of Evidence.

3 Alternatively, if you want to offer it for a lesser
4 purpose, not for the truth of the matter asserted but for the
5 fact that somebody said something, then at least standing
6 there, you wouldn't have any hearsay issues at all. So I'm --
7 Mr. Schwartz kind of hit the nail on the head when he talked
8 about the purpose. It may be admissible for all purposes but
9 it may be admissible only for certain ones.

10 MR. SALZBERG: Your Honor, in response, I believe
11 that Mr. Wilson, who will be proffered by the U.S. Treasury,
12 will be able to identify the document. Cadwalader acted as
13 U.S. Treasury's outside counsel in this matter. But I think
14 just for purposes of right now, what the document is being --
15 what we're seeing to introduce the document for is to show not
16 necessarily that 363 is better than a plan for the reasons
17 stated here but that there were discussions between the debtor
18 and the U.S. trustee (sic) at the U.S. Treasury, and their
19 outside counsel concerning these very issues.

20 THE COURT: All right. Well, if your only purpose is
21 to show that it was discussed, I would think that that isn't
22 for the truth of the matter asserted. Mr. Schwartz, am I
23 missing something?

24 MR. SCHWARTZ: I think you're exactly right. And for
25 that purpose, it's appropriate to mark it Bondholder's 2 for

1 identification, so it can be used as a talking point, but not
2 to move it into evidence.

3 THE COURT: All right. Here's my ruling.

4 MR. SALZBERG: Your Honor, if I may? I'm sorry.

5 THE COURT: Yes.

6 MR. SALZBERG: And the other issue is that Treasury
7 did file an opposition to our, the bondholders' opposition to
8 the sale motion. So they are taking an affirmative stand
9 against our position.

10 THE COURT: I understand that. And that's why I had
11 the uncertainty as to what the case law would say about whether
12 many parties in an 11 are considered party opponents for the
13 purpose of what's an admission. And, of course, I'm talking
14 the old style long before there were Federal Rules of Evidence.

15 Here's what we're doing, folks. Here's what I'm
16 ruling. I'm taking it, for all purposes relevant to whether
17 something was stated. I'm not yet taking it for the truth of
18 the matter asserted, by way of example, whether 363 is better
19 than plans, or the plans are better than 363. That's
20 especially a matter of concern when you have subjective views
21 being expressed in the document as to which people in this room
22 elsewhere have differences in view.

23 It's without prejudice to anybody showing me a case
24 that if somebody who disagrees with you in a multiparty
25 alleging or anything they say is an admission. I've been at

1 this for almost forty years. I don't think I've seen a case on
2 it. But you guys have done a lot more homework in preparation
3 for this hearing than I have. So I'll keep an open mind on
4 that second level issue.

5 I mean, a classic example of that is the creditors'
6 committee. The creditors' committee has said stuff. Some
7 people agree with the creditors' committee on some issues and
8 not on others. I'm not of a mind, subject to seeing some case,
9 to say that anything the creditors' committee generates is an
10 admission of all of the unsecured creditors in this case,
11 because its agent, the creditors' committee, said something.
12 That's a pretty complicated area, and I'm not going to decide
13 that on the fly now. So it's admitted for the purpose of
14 anything that's in it having been expressed as a view. Beyond
15 that, the objection is sustained without prejudice to
16 reconsideration. Go ahead.

17 (Bondholders' Exhibit 2, document entitled "Cadwalader Use of
18 Section 363 to Expedite Restructuring of Distressed OEMs", was
19 hereby received into evidence for a limited purpose as of this
20 date.)

21 MR. SALZBERG: Thank you, Your Honor. I'd like to
22 mark this document -- mark it as Bondholders' Exhibit 3. And
23 if I may approach, Your Honor?

24 THE COURT: Yes, sir.

25 (Bondholders' Exhibit 3, GM/UAW/UST VEBA discussions dated May

1 18, 2009, was hereby marked for identification as of this
2 date.)

3 (Pause)

4 MR. SALZBERG: For the record, Bondholders' Exhibit 3
5 is Bates stamped Treasury IUE CWA 2609 through 2626. And the
6 first page bears the title "GM/UAW/UST VEBA Discussions Dated
7 May 18, 2009."

8 BY MR. SALZBERG:

9 Q. Sir, do you recognize this document?

10 A. Yes.

11 Q. What is this document?

12 A. It's a document that reviews the nature of the VEBA
13 obligation, restructuring terms, pro forma analysis of the
14 capital structure, and the benefits of the restructure.

15 Q. Was it prepared for you?

16 A. (No response)

17 Q. Let me rephrase that. Who prepared the document?

18 A. I think General Motors prepared this document.

19 Q. Okay. And did you see it on or about May 18, 2009?

20 A. Yes.

21 MR. SALZBERG: I would ask that Bondholder Exhibit 3
22 be moved into evidence.

23 THE COURT: Any objection?

24 MR. MILLER: No objection.

25 THE COURT: Admitted without objection.

1 (Bondholders' Exhibit 3, GM/UAW/UST VEBA discussions dated May
2 18, 2009, was hereby received into evidence as of this date.)

3 Q. Sir, if you would turn to page 12 of this document? Just
4 tell me when you get there. What is page -- page 12 bears the
5 title "Illustrative Valuation"?

6 A. Yes.

7 Q. What does page 12 --

8 THE COURT: Forgive me, Mr. Salzberg, what page were
9 you referring to?

10 MR. SALZBERG: I'm sorry. Page 12.

11 THE COURT: Thank you.

12 Q. What is this page of this document purporting to show?

13 A. It's purporting to arrive at a pro forma common equity
14 value.

15 Q. The second -- the bottom half of this page bears the title
16 "Recovery Analysis". Do you see that?

17 A. Yes, I do.

18 Q. And we were talking a moment before regarding the recovery
19 to be achieved by the unsecured bondholders and UAW retirees.
20 Do you recall that conversation?

21 A. Yes.

22 Q. If you look at the line item that says New VEBA -- and
23 VEBA, just to clarify for the Court, what does VEBA stand for?

24 A. It's the Voluntary Employee Benefit Association. But in
25 this case it is intended to be the vehicle with which post

1 retirement healthcare plans were paid for UAW members.

2 Q. Simply for the UAW retirees, correct?

3 A. Yes.

4 Q. And if you look at the last column, for line item New
5 VEBA, it shows a 65.6 percent recovery rate. Do you see that?

6 A. Yes, I do.

7 Q. And then for bondholders, who you said consist of
8 primarily or they make up primarily all of the unsecured
9 claimants, this is a nine percent recovery rate. Do you see
10 that?

11 A. Yes.

12 Q. Now, these numbers were calculated using a proposal to the
13 UAW which is not the proposal that's not on the table today,
14 correct?

15 A. That's correct.

16 Q. There is a UAW retiree settlement agreement which has been
17 made part of the sale motion which has different recoveries for
18 the UAW retirees than the one shown here, correct?

19 A. Correct.

20 Q. And those are actually higher recoveries, correct?

21 A. Depends on the equity value.

22 Q. Under the UAW retiree settlement, the retirees are going
23 to receive seventeen and a half percent of the common stock of
24 New GM, correct?

25 A. Correct.

1 Q. A 2.5 billion dollar note, correct?

2 A. That's correct.

3 Q. 6.9 billion dollars in preferred stock?

4 A. 6.5.

5 Q. 6.5, excuse me. And warrants to acquire an additional 2.5
6 percent of the common stock of New GM, correct?

7 A. At a 75 billion equity value, yes.

8 Q. And that stands -- well, let's compare that to what the
9 bondholders/unsecureds will recover out of this bankruptcy.
10 What is that?

11 A. The bondholders/unsecureds would --

12 MR. MILLER: Objection, Your Honor. Counsel used the
13 phrase "out of this bankruptcy"?

14 MR. SALZBERG: I'll rephrase.

15 MR. MILLER: The UAW is getting --

16 THE COURT: All right. Once he said he would
17 rephrase, you don't have to continue. Go ahead, Mr. Salzberg.

18 Q. What is the recovery for the unsecured creditors?

19 A. The unsecured creditors would receive ten percent of the
20 equity of the New General Motors and two different sets of
21 warrants, each at seven and a half percent, so fifteen percent
22 warrants. The first is a seven-year warrant, struck at a
23 fifteen billion equity value, and the second, I believe, is a
24 ten-year warrant struck at a thirty billion equity value.

25 Q. And the UAW retiree claim, how much is that?

1 A. We've estimated the liability that was owed to the UAW at
2 approximately twenty billion dollars, actually twenty-one
3 billion dollars.

4 Q. Okay. And the unsecured -- well the bondholders' claim is
5 twenty-seven billion dollars?

6 A. That's correct.

7 Q. Now, there were references in the sale motion that the
8 U.S. Treasury has said that it will not fund the DIP --
9 continue to fund the DIP if the sale order is not entered by
10 July 10th. Do you recall that?

11 A. Yes.

12 Q. Now, if the U.S. Treasury does not fund on July 10th and
13 the sale order is not entered by that date, what options are
14 there for GM at that point?

15 A. Well, if they don't continue, we would liquidate.

16 Q. And has a calculation been done by GM as to what the U.S.
17 Treasury will recover in a liquidation?

18 A. We have done liquidation value, the focus of which is to
19 determine what the recovery is of the unsecured creditors. I
20 don't recall what the recovery of the U.S. Treasury would be.

21 Q. It won't be a hundred percent recovery, would it?

22 A. No.

23 Q. Do you think -- do you have any understanding of what the
24 range would be a projected recovery?

25 A. I'm sorry, I don't.

1 Q. Let's talk about the performance of GM right now. Were
2 there targets set for sales of vehicles in June of 2009?

3 A. Yes.

4 Q. And how is the company performing as compared to those
5 targets?

6 A. We're performing in line, if not slightly better than the
7 targets, in terms of retail.

8 Q. So the company is doing better than expected?

9 A. The company's certainly better than the forecast coming
10 into the month, again, with respect to retail. We're off on
11 fleet sales, because fleet customers have actually pulled back
12 their orders associated with the bankruptcy because they didn't
13 know their status in the bankruptcy.

14 Q. But with respect to other sales other than fleet, you're
15 doing better?

16 A. Yes.

17 MR. SALZBERG: Your Honor, may I have a moment to
18 confer?

19 THE COURT: Yes, sir.

20 (Pause)

21 Q. Now, in the sale motion that was filed by the debtor,
22 there are assertions that the sale has to take place by July
23 10th, correct?

24 A. Yes.

25 Q. How was that date arrived at by the debtors?

1 A. That date was arrived at by the purchaser, actually, as a
2 key date that they felt that was important to them.

3 Q. Do you have an understanding as to why that date was
4 important to them?

5 A. Because they, like we, are concerned about the business
6 status of the company in a bankruptcy process.

7 Q. But again, we discussed that the business of the debtor is
8 actually doing better than expected, correct?

9 A. The business is doing better for a number of reasons, one
10 of which is the expectation that this will move quickly and
11 that the company, in the 363 process, would be successful.

12 Q. Just a few more questions. There are references in the
13 documents that were produced over the weekend to a sixty to
14 ninety-day sale after the petition date. Is that correct?

15 A. Yes.

16 Q. And so that would mean that the sale would be closing
17 outward of ninety days out, which would be August 31 of 2009.
18 Is that correct?

19 A. We said no later than that, yes.

20 Q. So actually, the debtor had contemplated with -- I'm --

21 MR. SALZBERG: Let me rephrase that.

22 Q. Was the August 31 date chosen in conjunction with or in
23 communication with the U.S. Treasury?

24 A. Yes.

25 Q. So there were discussions between the debtor and the U.S.

1 Treasury about a sale actually closing as late as August 31,
2 2009?

3 A. The actual closing, yes.

4 Q. Yes, okay. Were there any discussions prepetition as to
5 whether it was feasible to file a plan on the petition date of
6 June 1 and get to plan confirmation within ninety days?

7 A. I don't recall those discussions.

8 Q. And you would agree with me that the plan confirmation
9 process would afford additional opportunities for creditors and
10 other stakeholders to raise objections and be involved in the
11 process. Is that correct?

12 MR. MILLER: Objection. It calls for a legal
13 conclusion.

14 THE COURT: Sustained on legal conclusion, but I'll
15 permit his layman's understanding.

16 A. Could you repeat the question, please?

17 Q. Sure. I think. You would agree with me that a plan
18 confirmation process would provide additional opportunities for
19 creditors and other stakeholders to be involved and to assert
20 objections to the proposed disposition of the GM assets?

21 A. That was my understanding of how it would work, yes.

22 Q. And in fact, in the plan confirmation process, creditors
23 would know how other stakeholders and creditors are being
24 treated, correct?

25 A. That's my understanding, yes.

1 Q. And there would likely be disclosure in the disclosure
2 statement showing expected recoveries for the creditors and
3 other stakeholders?

4 A. Yes, that's my understanding.

5 MR. MILLER: Objection. Same objection.

6 THE COURT: I'm taking it only as his layman's
7 understanding, and it's subject to what the law thinks that he
8 is.

9 MR. SALZBERG: I have no further questions, Your
10 Honor. Thank you.

11 THE COURT: Okay. Before I provide for redirect, I'm
12 inclined to have all of the cross proceed. Who is next along
13 the lines that I outlined previously?

14 MR. RICHMAN: Your Honor, auto safety group, Your
15 Honor. Auto safety group.

16 THE COURT: Thank you, Mr. Richman. Auto safety wish
17 to -- does auto safety want to yield to Mr. Jakubowski?

18 MR. JAKUBOWSKI: I am here with my co-counsel, Adina
19 Rosenbaum, for Public Citizen. We would like to yield in order
20 to have the ability to speak to Mr. Miller --

21 THE COURT: Certainly. Certainly. Okay. How about
22 asbestos litigants? Is that Mr. Esserman or somebody
23 different? I see Mr. Esserman in the back there. You can keep
24 it off, if you want, Mr. Esserman.

25 MR. ESSERMAN: Thank you, Your Honor.

1 CROSS-EXAMINATION

2 BY MR. ESSERMAN:

3 Q. Mr. Henderson, my name is Sandy Esserman. I represent the
4 ad hoc committee of asbestos claimants in this case. You're
5 aware that there are asbestos claims against General Motors,
6 are you not?

7 A. Yes.

8 Q. And General Motors has done an estimate of its liability
9 that they put to 10K, that shows a ten-year estimate, present
10 valued at about 650 million dollars. Are you generally
11 familiar with that statement?

12 A. Yes.

13 Q. And from what does this liability arise?

14 A. It's my understanding -- I'm not an expert. But it's my
15 understanding that it principally arises as a result of
16 asbestos that was used in brake linings.

17 Q. Did General Motors --

18 THE COURT: Pause, please. Did you say brake
19 linings?

20 THE WITNESS: Yes.

21 THE COURT: Okay.

22 Q. And would the exposure to these claimants occur when the
23 brakes were cleaned or changed or brake jobs were done on the
24 cars?

25 A. I don't know for certain, sir. I'm sorry.

1 Q. Does General Motors still put asbestos in their brakes?

2 A. I do not believe so.

3 Q. Do you know when they stopped putting asbestos in their
4 brakes?

5 A. I do not know.

6 Q. Are you aware of the treatment of asbestos claims in the
7 sale agreement that you've entered into with the Treasury?

8 A. Yes.

9 Q. And what is that treatment?

10 A. The assumption of liability is not contemplated by the New
11 General Motors.

12 Q. And that liability -- is that liability for current
13 claims, for claims on file now?

14 A. It's my understanding it's on -- it's with respect to any
15 claims that are outstanding today.

16 Q. What happens if -- are you familiar with the disease
17 mesothelioma?

18 A. Not -- no, sir.

19 Q. Asbestos related cancer?

20 A. I'm familiar with that, yes.

21 Q. Okay. If a claimant who was working on General Motors'
22 brakes develops asbestos related cancer five years from now, is
23 it your understanding that New General Motors will be liable
24 for that, if there's anything found to be liable for, for that
25 claim?

1 A. Sir, I'm not an expert in this area, so I couldn't give
2 you an opinion.

3 Q. What's your intention as a layman, as a representative of
4 General Motors? Is it to take care of that claimant is it to
5 send him to the bankruptcy court with a proof of claim?

6 A. In the case of the purchaser of the company is not
7 planning to assume the obligations associated with asbestos
8 liabilities, it would be my expectation that it would not an
9 obligation of the New General Motors.

10 Q. Calling an asbestos claim that will arise post sale a
11 future claim, would it be a correct statement of fact that all
12 future claims would not be assumed by the new purchaser,
13 relating to asbestos claims?

14 MR. SCHWARTZ: Objection, Your Honor. I think as to
15 this entire line of questioning, the actual sale and purchase
16 agreement is the best evidence of the terms of the deal. I
17 know a lot of objectors are going to have questions about what
18 stays and what goes.

19 THE COURT: I think, the Court's view is that's
20 right. So Mr. Esserman, help me understand why his layman's
21 understanding is better than what the plan says?

22 MR. ESSERMAN: Well --

23 THE COURT: Unless it's the predicate for some
24 further questioning that --

25 MR. ESSERMAN: -- that's exactly what it is.

1 THE COURT: Can I make a suggestion?

2 MR. ESSERMAN: Yes, sir.

3 THE COURT: Perhaps not evidentiary perfect. Why
4 don't you ask a question premised on your understanding of what
5 the 363 sale contemplates, hopefully articulated in a
6 nonargumentative way, so Mr. Schwartz would agree with you.
7 And then, if the question is reasonable in its assumptions, you
8 can ask questions concerning his businessman's understandings
9 or knowledge that are premised upon that undisputed fact.

10 MR. ESSERMAN: That's fine, Your Honor.

11 THE COURT: Thank you.

12 BY MR. ESSERMAN:

13 Q. Mr. Henderson, it's my understanding that the New GM will
14 not be assuming any liability for future asbestos claims. Is
15 that --

16 A. That's my understanding as well, yes.

17 Q. But that's not true with regard to all tort claims. Is
18 that correct?

19 A. That's correct.

20 Q. And what tort claims is GM -- what is your understanding
21 of tort claims that GM is assuming in the future?

22 A. In terms of product liabilities, sir?

23 Q. Yes.

24 A. The assumption of liability would include, for any vehicle
25 sold post-June 1st, number one. Number two, for any accidents

1 incurred post closing, irrespective of when they were sold.
2 And then finally, we have indemnification obligations with
3 respect to our dealers.

4 Q. And was this a recent decision that was made with regard
5 to product liability claims?

6 A. The recent change was the agreement to assume obligation
7 for accidents post-closing.

8 Q. And when was that change made?

9 A. Late last week.

10 Q. But there's no change as regards to asbestos claims. Is
11 that correct?

12 A. That's correct.

13 Q. If New GM were to assume the asbestos claims, the
14 liability from the asbestos claims, is it your understanding
15 that that would not have an effect on the viability of the new
16 entity?

17 MR. SCHWARTZ: Objection. Relevance?

18 THE COURT: Pause. I'm going to overrule the
19 objection but require a predicate as to whether he has an
20 understanding, first. If he has an understanding, you can ask
21 him.

22 Q. Do you have an understanding of whether or not assumption
23 of asbestos claims would have an effect on the viability of New
24 General Motors?

25 A. My business judgment would suggest that it would not

1 impair our viability.

2 THE COURT: I couldn't hear the answer.

3 THE WITNESS: Excuse me. I'm sorry, Your Honor. In
4 my judgment, it would not impair our viability.

5 Q. GM would still be a viable com -- just so I understand
6 what you said, GM would still be a viable company if, in fact,
7 the purchaser would assume the asbestos claims?

8 A. Yes.

9 Q. Whose decision was it not to assume the asbestos claims?

10 A. The purchaser, in their judgment, felt it was not
11 appropriate that they should be responsible for the asbestos
12 claims.

13 Q. Was that the United States Treasury?

14 A. Yes. They're the purchaser.

15 Q. In that negotiation with the United States Treasury, did
16 you participate?

17 A. I participated in a number of negotiations with the U.S.
18 Treasury.

19 Q. For New General Motors --

20 A. Yes.

21 Q. -- for the purchase? Were you aware of whether or not
22 there was anyone at the bargaining table to create new General
23 Motors that was advocating on behalf of tort claimants or
24 asbestos claimants?

25 A. We outlined for the U.S. Treasury, as the purchaser, a

1 range of obligations that we felt were sensitive that we wanted
2 to discuss with them, including, number one, quantifying them;
3 number two, explaining them; and number three, outlining a
4 range of options that might be considered.

5 Q. So if you considered a claim sensitive, then it was
6 something that you advocated for with the Treasury to assume?

7 A. It's something that we felt warranted the discussion, yes.

8 Q. Did you discuss asbestos claims?

9 A. Yes.

10 Q. With the United States Treasury?

11 A. Yes.

12 Q. And what decision was made?

13 A. The conclusion was that the asbestos claims would not
14 carry forward to the New GM.

15 Q. And did you agree with that conclusion?

16 A. Yes.

17 Q. Well, you're referring to the purchaser as New GM, but
18 isn't New GM the same as Old GM, without some of the
19 liabilities?

20 A. Well, the assets of General Motors are being purchased in
21 forming New GM, and so, pursuant to a 363 transaction. That's
22 how I understand it.

23 Q. But New GM -- there's going to be no difference between
24 New GM and Old GM, except for shedding liabilities. Isn't that
25 correct?

1 A. No, that's not correct.

2 Q. Well, tell us what the differences are, in your opinion?

3 A. Our business will be fundamentally restructured in terms
4 of the operating -- the operations of the business and the
5 capital structure of the business will be significantly changed
6 and improved.

7 Q. So the capital structure might be changed, but the
8 products you sell are the same, aren't they?

9 A. Yes.

10 Q. You're not moving offices, are you?

11 A. No.

12 Q. Your management isn't changing after the sale, is it?

13 A. It could well change, but we haven't announced those
14 changes yet.

15 Q. Your employees are the same?

16 A. Yes.

17 Q. And your name's the same?

18 A. We'll changes some names, but the operating business will
19 still be General Motors.

20 MR. ESSERMAN: I'm almost done, Your Honor.

21 THE COURT: Okay.

22 MR. ESSERMAN: There may be one other asbestos
23 claimant that may have some follow-up questions. Thank you. I
24 was just informed, he does not.

25 THE COURT: All right. Very good. I want to pause

1 here for a second and ask you folks to comment. We lost an
2 hour -- more than an hour because of the overload. But now
3 we're proceeding. It's now 12:20, though, and I don't know if
4 you folks want to give up your lunches entirely or to give up a
5 chance to take even breaks. So this is a possible breaking
6 point for either a break or a lunch hour. I'd like to get your
7 views on it. I would like to keep this hearing moving forward,
8 and I would like to get Mr. Henderson off the stand as quickly
9 as circumstances permit, consistent with your opportunity for
10 folks to do their jobs. Mr. Miller, can I get your thoughts
11 first?

12 MR. MILLER: Your Honor, Harvey Miller. The debtor
13 joins with Your Honor. We are perfectly prepared to waive
14 lunch and to proceed.

15 THE COURT: All right. I don't know if we're
16 prepared to waive lunch all the way up to dinner time.

17 MR. MILLER: We are prepared to waive dinner too,
18 Your Honor.

19 THE COURT: Well, okay. That's why judges decide
20 things. Do other parties want to weigh in on this? I don't
21 see any voices here. Here's what I want to do, folks. I just
22 want to give folks a chance to go to the bathroom or get a
23 drink. And then while we're on a roll, I don't want to take
24 our long lunch recess now. So let's take -- I would say five
25 minutes if I thought that people could get back from the

1 bathroom that quickly. Let's take ten, but with the
2 understanding that we mean it. In that ten minute gap, Mr.
3 Miller, I'd like you to talk to Mr. Jakubowski, about seeing if
4 you can button up any understandings vis-a-vis what documents
5 he can use and what he can't. And then -- folks, when I'm
6 speaking, please give me the courtesy of not even rising or
7 yammering.

8 MR. JAKUBOWSKI: Your Honor, I have one issue.

9 THE COURT: All right. Just a minute, please. But I
10 still can't let you interrupt me. Mr. Jakubowski. Then we're
11 going to resume. Mr. Henderson, while you're in recesses and
12 while you're under cross, or for that matter, before you're
13 questioned on redirect, I'm going to ask you not to talk to
14 anyone other than maybe whether you want a tuna fish sandwich
15 for lunch.

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: Okay. Mr. Jakubowski, I'll hear you now.

18 MR. JAKUBOWSKI: Your Honor, I have just one
19 technical issue. I ordered my documents from Chicago by FedEx.
20 I hear they didn't get there until 10:30. I'm going to ask Ms.
21 Rosenbaum if she will go over to the hotel and get the
22 documents so that we could continue through. In the meantime,
23 I will talk to Mr. Miller about the documents being admitted
24 into evidence. And so hopefully, I will be able to accommodate
25 the schedule, but I do have a technical issue in terms of just

1 getting the box which is about half a mile away to the court.

2 THE COURT: Why don't I just not prejudge those
3 things now and see if we can skin the cat by giving anybody
4 else who wants to question a chance to get ahead of you, and --
5 was it Ms. Rosenbaum? Rosenberg? I'm sorry. I saw the name
6 on the --

7 MR. JAKUBOWSKI: Adina Rosenbaum, Your Honor.

8 THE COURT: Okay. All right. Ten minute recess.

9 (Recess from 12:25 p.m. to 12:38 p.m.)

10 THE COURT: Have seats everybody. Can we resume?

11 (Pause)

12 THE COURT: Okay. Mr. Henderson, you're still under
13 oath. Next questioner, please.

14 MR. CORDRY: Good afternoon, Your Honor. I was going
15 to say good morning but we've managed to make afternoon. Karen
16 Cordry, bankruptcy counsel for the National Association of
17 Attorneys General and I'm appearing here on behalf of the
18 various Attorney Generals that have filed objections in this
19 case.

20 THE COURT: Sure, Ms. Cordry, go ahead.

21 MR. CORDRY: Thank you. Just a couple of questions.

22 CROSS-EXAMINATION

23 BY MS. CORDRY:

24 **Q. In discussions about the specific language in the order,**
25 **quite a few provisions in the order of the asset purchase**

1 agreement dealing with successor liability. Who drafted that
2 language as between GM and the purchaser?

3 A. I don't know, ma'am.

4 Q. Did GM have a hand in drafting that language?

5 A. General Motors would but who specifically I don't know,
6 within our staff.

7 Q. I'm not really looking for a person as opposed to sides.
8 Was General Motors, then, involved in drafting that language?

9 A. Yes, General Motors would have been involved.

10 Q. And was Treasury involved in drafting that?

11 A. I believe so. Yes.

12 Q. Okay. Was it primarily Treasury? Primarily GM? Was it a
13 collaborative process? How was that language reached?

14 A. I have no idea.

15 Q. Okay. Who would have been the parties involved in
16 deciding those issues from GM?

17 A. I believe it would have been the U.S. Treasury as the
18 purchaser, General Motors as the debtor, our counsel; counsel
19 to the Treasury would have been involved.

20 Q. Okay. And your counsel would be Weil Gotshal, is that
21 true?

22 A. Yes, ma'am.

23 Q. Okay. And Treasury's counsel Cadwalader?

24 A. Yes, ma'am.

25 Q. Okay. Do you know if these are primarily issues that were

1 being decided on a lawyer to lawyer basis, on a business
2 judgment to business judgment kind of process?

3 A. I think a combination, ma'am.

4 Q. Okay. Were you present at any of those discussions about
5 that language?

6 A. No.

7 Q. Okay. So specifically would you also have any idea about
8 who decided provisions in the order that provide that the
9 purchaser would not be treated as the successor for any
10 purpose?

11 A. I don't know for certain who would have done that but my
12 presumption is it would be the U.S. Treasury as the purchaser.

13 Q. Okay. And the same question with respect to the language
14 in a number of places there that tries to describe what -- let
15 me back up. There's a description of a claim in the master
16 purchase agreement that uses language, including things like
17 defenses and rights to recoupment and investigations and so
18 forth, do you know who drafted that language?

19 A. No, ma'am.

20 Q. Okay. Do you know between General Motors versus
21 Treasury --

22 A. I don't know.

23 Q. -- where that came from? And has there been any
24 discussions that you've been involved in since the case was
25 filed about changing the scope of that -- the language in the

1 original purchase agreement or the order with respect to
2 successor liability?

3 A. The only discussion that I've been involved in, subsequent
4 to June 1st, had to do with the changes last week with respect
5 to product liability.

6 Q. Okay.

7 A. That's the only area.

8 Q. Okay. And apart from the substance we will cover claim X
9 versus claim Y, are you aware if there have been any
10 discussions going on about the more global language, I will
11 say, the language actually in the order that says that we will
12 sell free and clear of various things, those kind of
13 provisions?

14 A. I have not been involved in those discussions.

15 Q. And that would -- would it be the lawyers involved in
16 that?

17 A. Yes.

18 Q. And would there be anyone else at GM that the lawyers
19 would have been speaking to about those kind of issues if it
20 wasn't you?

21 A. Yes.

22 Q. Okay. And who would that be?

23 A. I would think it would be our subject matter experts
24 depending upon the area.

25 Q. Okay. So again, I'm really looking at a more global

1 level. There's specific inclusions and exclusions in the
2 purchase agreement. But in the order there's some very broad
3 language about things are being sold free and clear, we're not
4 a successor, those kind of provisions and that's what I'm
5 really trying to get at. Who would have been making the
6 decisions as to whether or not to consider any changes in that
7 language?

8 A. I believe the purchaser would.

9 Q. Okay. As opposed to GM?

10 A. A purchaser, this is directly relevant to them.

11 Q. Okay. Nothing further.

12 A. Thank you

13 THE COURT: Okay. Next please. Mr. Eckstein?

14 CROSS-EXAMINATION

15 BY MR. ECKSTEIN:

16 Q. Mr. Henderson, good afternoon. I'm Kenneth Eckstein from
17 Kramer Levin representing the creditors' committee, if I may
18 ask you a few questions?

19 A. Certainly.

20 Q. Mr. Henderson, I'm assuming as the CEO of General Motors
21 that you are generally familiar with the principal documents
22 that comprise the sale of substantially all of the assets from
23 Old GM to New GM, am I correct?

24 A. Correct.

25 Q. And do those documents include the master purchase and

1 sale agreement?

2 A. Yes.

3 Q. And the master lease agreement?

4 A. Yes.

5 Q. And a transition services agreement?

6 A. Yes.

7 Q. And am I correct that each of those agreements are
8 agreements between Old GM and New GM?

9 A. I believe so. Yes.

10 Q. Okay. Can you tell me who negotiated -- on behalf of Old
11 GM who negotiated the master purchase and sale agreement?

12 A. It would have been the management team as well as our
13 counsel.

14 Q. And were you involved in the negotiation of that
15 agreement, sir?

16 A. In some areas, yes.

17 Q. And did there come -- and is the same true for the master
18 lease agreement and the transition services agreement?

19 A. Yes, but I would not have been involved in either of those
20 two.

21 Q. And who at the company had principal responsibility for
22 the transition services agreement?

23 A. It would depend on the area, sir, I don't know. I mean, I
24 think it would be multiple people.

25 Q. All right. Sitting here today do you know some of the

1 individuals in senior management who would have been
2 responsible for the transition services agreement?

3 A. Certainly, for example in the area of accounting it would
4 have been the chief financial officer and our chief accounting
5 officer in terms of provision of accounting services. There's
6 a whole series of issues that have to do with transition.

7 Q. And would you know who, among senior management, would
8 have been responsible for the master lease agreement
9 negotiations?

10 A. No.

11 Q. Now did there come a point in time when the board of OldCo
12 or current GM approved the principal documents for the sale of
13 substantially all the assets from OldCo to NewCo?

14 A. Yes.

15 Q. And about when did that board meeting take place?

16 A. The board meeting took place -- the final board meeting
17 took place on May 29th and 30th in New York, which was a Friday
18 and a Saturday.

19 Q. And has the board met since May 29th to consider any
20 amendments to the principal agreements?

21 A. Yes.

22 Q. And when did those meetings take place?

23 A. I believe last week.

24 Q. Has there been only one meeting or more than one meeting
25 since May 29th?

1 A. We have regular briefings for our board. I know there's
2 at least one where it was an official meeting, which is where
3 the amendments were considered. As to whether or not there
4 were any other official meetings, I don't remember. We have
5 regular briefings with our board, so there was at least one.

6 Q. So the board approved the basic agreements on or about May
7 29th, am I correct?

8 A. May 30th, actually. Yes.

9 Q. May 30th. And you're a member of the board?

10 A. Yes.

11 Q. What's your position on the board?

12 A. I'm a director.

13 Q. And who's the chairman of the board?

14 A. The interim chairman of the board is Kent Kresa.

15 Q. Thank you.

16 THE COURT: That name again, please?

17 THE WITNESS: Kent Kresa.

18 THE COURT: K-R-E-S-S-A?

19 THE WITNESS: K-R-E-S-A.

20 Q. And am I correct that you participated in the May 30th
21 board meeting to approve the principal documents associated
22 with the transaction?

23 A. That's correct.

24 Q. And the meeting that took place last week, do you recall
25 the date of that meeting, sir?

1 A. It's normally Friday. And so I believe Friday but I'm not
2 certain. We have regular briefings for our board.

3 Q. I understand. Middle of June?

4 A. Yes.

5 Q. And did you participate in the middle of June board
6 meeting to approve the amended agreements?

7 A. Yes.

8 Q. And are there board meetings scheduled to approve any
9 further amendments that are being negotiated or have been
10 negotiated in the last few days?

11 A. No.

12 Q. And so I'm correct that the board of Old GM approved the
13 principal transaction documents on or about May 30th and then
14 approved the amended documents at the meeting held in the
15 middle of June, is that correct?

16 A. That's correct.

17 Q. Now can you tell me, sir, how many members of the board
18 are there today?

19 A. I believe there are either twelve or thirteen today.

20 Q. Now can you tell me, what is the current contemplation
21 with respect to the board composition for NewCo? How many of
22 the twelve or thirteen current board members are expected to
23 become the members of the NewCo board?

24 A. Five members of -- five independent board members from the
25 old General Motors will move to the New General Motors board

1 and myself, so six.

2 Q. So essentially six of the twelve or six of the thirteen
3 are going to move and become members of the NewCo board?

4 A. That's correct.

5 Q. And presently are any members of the current board
6 expected to become members of the OldCo board once the
7 transaction closes?

8 A. No.

9 Q. So at present do you know who will comprise the members of
10 the OldCo board?

11 A. The chief restructuring officer of what will be the Old
12 General Motors, Albert Koch is -- has been going through a
13 recruitment process with respect to selection of board members
14 for the OldCo board.

15 Q. And am I correct, sir, that you are intended to be the CEO
16 of NewCo, is that correct?

17 A. That's correct.

18 Q. And so therefore as CEO of NewCo am I correct that you
19 will essentially be in charge of enforcing the principal
20 documents that comprise this transaction as between NewCo and
21 OldCo?

22 A. That's correct.

23 Q. You had testified in your direct, sir, that unsecured
24 creditors of OldCo are expected to receive ten percent of the
25 equity of NewCo, is that correct?

1 A. Plus warrants, yes.

2 Q. And in addition they're going to receive warrants from
3 NewCo as well, that's for an additional fifteen percent, am I
4 correct?

5 A. Yes.

6 Q. In addition to the stock that's been allocated to
7 unsecured creditors, are there funds that have been set aside
8 in OldCo to wind down the OldCo estate?

9 A. Yes.

10 Q. And how much has been set aside?

11 A. Approximately 950 million dollars.

12 Q. And am I correct that those funds are intended to fund the
13 administrative and priority obligations of OldCo?

14 A. And wind down costs, yes.

15 Q. And wind down costs. And in your view are those claims
16 intended to be adequate to fund the administrative and priority
17 obligations of OldCo?

18 A. When we sized -- when we developed an estimate of what the
19 cost would be, we developed it with the intention that it would
20 be sufficient to cover those costs.

21 Q. And do you have any reason to believe today that those
22 aren't sufficient?

23 A. I believe updated estimates have recently been done with
24 respect to possible cost of environmental which might result in
25 additional amounts beyond the 950 million dollars.

1 Q. Do you have any sense, sitting here today, what additional
2 funds might be necessary?

3 A. I am advised that the most recent estimate could be
4 between 1.1 and 1.2 billion dollars. But again, this is an
5 area where the precise number is difficult to determine
6 sometimes.

7 Q. But am I correct that the intention of the transaction was
8 that there would be funds in the estate sufficient to fund the
9 wind down of the estate so that the monies that were allocated
10 for unsecured creditors who had the stock and warrants
11 allocated for unsecured creditors would be distributed to
12 unsecured creditors?

13 A. Certainly when we sized the 950 million dollars we
14 intended to cover the total cost. Our current estimate is it
15 may be short to a certain degree and certainly the other assets
16 are there but certainly what we would hope is that the amount
17 that was allocated would be sufficient.

18 Q. Thank you, sir.

19 A. Thank you.

20 THE COURT: Mr. Frankel?

21 MR. FRANKEL: Good afternoon, Your Honor. It's Roger
22 Frankel from Orrick Herrington.

23 THE COURT: Mr. Frankel?

24 MR. FRANKEL: Frankel. Your Honor, we represent the
25 unofficial creditors' committee that was appointed by the

1 National Dealer Counsel. I actually don't have any questions
2 of Mr. Henderson but the dealer community was on your list and
3 I wanted the Court to know we were in the courtroom all the way
4 in the back so it's a little bit hard to get up here and I may
5 have questions of some of the other witnesses.

6 THE COURT: Thank you, Mr. Frankel. Next?

7 (Pause)

8 MR. KENNEDY: Good morning, Your Honor. Thomas
9 Kennedy for the objecting unions IUE-CWA, the steel workers and
10 the operating engineers. We have prepared, Your Honor, a set
11 of exhibits that we will be referring to many of them in the
12 cross examination of Mr. Henderson. They consist of the
13 deposition, extract from them, that were done on Saturday,
14 Sunday and Monday and the exhibits that were identified in
15 those depositions.

16 We've pointed out to Mr. Miller and given him copies
17 and I would ask that I provide you with a book of those
18 exhibits and the witness as well.

19 THE COURT: I couldn't hear your question.

20 MR. KENNEDY: Yes, I'd just like permission to
21 provide you with a book of our exhibits.

22 THE COURT: Oh, all right.

23 MR. KENNEDY: And the deposition extracts.

24 THE COURT: You can give me the book and then
25 separately focus on the one you have and you want to introduce.

1 MR. KENNEDY: Thank you.

2 (Pause)

3 CROSS-EXAMINATION

4 BY MR. KENNEDY:

5 Q. Good afternoon, Mr. Henderson. Would you agree with me
6 that as of April 30, 2009 the IUE-CWA represented more than
7 25,000 GM retirees?

8 A. Yes.

9 Q. And the steel workers represented another 4,000 GM
10 retirees?

11 A. Yes.

12 Q. And the operating engineers approximately forty, correct?

13 A. Yes.

14 Q. And the December 31, 2008 post retirement health and life
15 obligation that GM owed to the IUE and other non-UAW unions as
16 of that date was 3.724 billion dollars?

17 A. Correct.

18 Q. And ninety percent or more of that 3.724 billion dollars
19 was owed to IUE-CWA members?

20 A. That's my understanding, yes.

21 Q. In April of 2009 GM had decided that it wanted to arrange
22 a consensual restructuring without resort to the bankruptcy
23 court, is that correct?

24 A. That's correct.

25 Q. And GM had determined that it needed the consent of three

1 key constituencies to attempt consensual organization, do you
2 agree with that?

3 A. Yes.

4 Q. And those three were the bondholders, the UAW and the U.S.
5 Trustee acting as a secured lender?

6 A. Correct.

7 Q. And I take it that GM launched a bond exchange in late
8 April that would have required at least ninety percent of the
9 bondholders to agree to exchange their bonds for slightly above
10 ten percent of General Motors, is that also correct?

11 A. Yes, sir.

12 Q. And the UAW was asked -- the UAW VEBA was asked to accept
13 at least one half of its obligations from GM in equity in
14 General Motors?

15 A. It was a condition to the bond exchange, yes.

16 Q. And was a further condition to the bond exchange that the
17 treasury would agree that one half of the pre-June 1 borrowings
18 would be taken in the form of equity in General Motors?

19 A. At least one half, yes.

20 Q. And if the bond exchange and its preconditions had been
21 satisfied, General Motors, as far as you understand it, would
22 not have commenced the bankruptcy proceeding, correct?

23 A. Had we been successful, our view is we would have likely
24 not proceeded with the bankruptcy proceeding.

25 Q. Now during the time that the bond exchange was being

1 proposed in April of 2009, were you having discussions with the
2 GM leadership group about the advantages and disadvantages of a
3 prepackaged bankruptcy for GM as opposed to a Section
4 transaction?

5 A. In April, sir?

6 Q. Yes.

7 A. Yes.

8 Q. You examined, in that period of time, the advantages of a
9 possible 363 asset sale, possible cram down and a traditional
10 Chapter 11 process, correct?

11 A. Correct.

12 Q. And you examined the advantages and disadvantages of each?

13 A. Yes.

14 Q. Had General Motors made a determination of which of those
15 three alternative bankruptcy processes if the bond exchange
16 failed you would undertake as of April 15, 2009?

17 A. No.

18 Q. Did General Motors prepare a detailed contingency plan
19 that described the advantages and disadvantages of a 363 filing
20 on or around April 15th?

21 A. We did that type of analysis through April and May. I
22 don't know, on or about April 15 but I think it would -- I
23 think, yes, we were in mid-April and we were doing that kind of
24 analysis.

25 Q. All right. Well, let me direct your attention to Exhibit

1 3, to the exhibit we have marked for your deposition which
2 would be Exhibit 10, which is entitled contingency plan update.

3 A. Exhibit 10?

4 Q. No, Exhibit 3.

5 A. Okay. I'm sorry.

6 Q. Let me just be clear about the structure. The exhibits
7 attached to your deposition are, for the purposes of that book,
8 called Exhibit 10. The Exhibit 3 to your deposition is the one
9 I'm directing your attention to right now, okay. And you've
10 seen that --

11 THE COURT: Help me too, Mr. Kennedy.

12 MR. KENNEDY: Sure.

13 THE COURT: Is the document you're talking about one
14 that says IUE APBO on the top?

15 MR. KENNEDY: No, Your Honor. The first thing to do
16 would be look for the inner tab which says 10 Henderson
17 Transcript.

18 (Pause)

19 THE WITNESS: Oh, 10 Henderson Transcript. I'm
20 sorry.

21 MR. KENNEDY: Yes.

22 THE WITNESS: I was also on the IUE.

23 THE COURT: Well, maybe Mr. Henderson's with you, but
24 I'm not.

25 MR. KENNEDY: I understand that, Your Honor.

1 THE COURT: Are we talking about this huge notebook
2 you gave me, Mr. Kennedy?

3 MR. KENNEDY: Yes.

4 THE COURT: Okay. And if I open up to tab 10, should
5 I see what you're talking about?

6 MR. KENNEDY: No, Your Honor. The first forty-seven
7 tabs, I'm sorry. I think this is the source of the confusion,
8 are actually part of Exhibit 9, the Rawley (ph.) transcript.

9 THE COURT: Oh, I see. Then I find a tab that says
10 Henderson transcript.

11 MR. KENNEDY: Yes.

12 THE COURT: And then I go to another tab 3.

13 MR. KENNEDY: Yes, you do.

14 THE COURT: Contingency plan update?

15 MR. KENNEDY: Yes.

16 THE COURT: Okay. I'm with you now. Okay.

17 BY MR. KENNEDY:

18 **Q. Now hopefully with us all literally on the same page, do**
19 **you recognize this as a contingency plan that General Motors**
20 **had prepared on or about April 15, 2009?**

21 **A. Yes.**

22 **Q. And for purposes of analyzing the impact of a Section 363**
23 **plan as opposed to a cram down, isn't it a fact that General**
24 **Motors concluded that the UAW collective bargaining contract,**
25 **your obligations with respect to it would not be affected**

1 whether you took a 363 approach or a cram down approach. Do
2 you have a recollection as to that, sir?

3 A. No, because one element of our Treasury funding a facility
4 was that we needed to renegotiate our collective bargaining
5 agreement with the UAW to become competitive and at the same
6 time we needed to equitize at least half of our VEBA
7 obligations. Whether it was outside of bankruptcy or inside of
8 bankruptcy, that was a requirement of our loan agreement.

9 Q. Could you do me a favor then and take a look at page 17 of
10 that contingency plan update that we've identified as Exhibit 3
11 at your deposition?

12 A. Certainly.

13 (Pause)

14 Q. You'll note under the title Pension OPEB and Employee
15 Obligations there's a statement that UAW CBA will drive hourly
16 life EDB legal and other benefit obligations - assume that
17 similar result reached for both filing scenarios.

18 A. Yes.

19 Q. Do you see that, sir? Does that refresh your
20 recollection?

21 THE COURT: Pause please, Mr. Kennedy. What serial
22 number page was that?

23 MR. KENNEDY: It's page 17, Your Honor. The Bates
24 number of that page is 327319. It's page 17 of the contingency
25 plan.

1 THE COURT: I don't see the page number but it says
2 US Liability Analysis at the top?

3 MR. KENNEDY: Yes, the page number is on the lower
4 right-hand corner, white against black, sir.

5 THE COURT: Oh, okay. Go ahead.

6 Q. So does that portion of the page I just reminded you of or
7 I should say directed your attention to, Mr. Henderson, does
8 that refresh your recollection as to whether the UAW-CBA issues
9 were regarded to be the same under both filing scenarios?

10 A. We needed the change under both, yes.

11 Q. All right. And isn't it also true that General Motors had
12 concluded that IUE and other splinter group obligations may be
13 more addressable in a 363 proceeding?

14 A. Yes.

15 Q. And you see that as the next bullet under the one I had
16 just read you, correct?

17 A. I do.

18 Q. And when you -- General Motors concluded that the
19 obligations for the IUE and other splinter unions could be more
20 addressable in a 363 situation, what did you mean?

21 A. Well, in the event of a 363 transaction, it was not
22 expected that the new General Motors would need to have a
23 contract with the IUE because there were no active employees.
24 And so therefore it wouldn't necessarily be the case that the
25 new company should assume nor enter into a contract with the

1 IUE or the other splinter unions.

2 Q. So I take it then it was General Motors' view that under a
3 363 proceeding it would be easier to eliminate the obligations
4 for the employee post retirement health and life care that we
5 talked about at the beginning of our conversation.

6 A. Well, our conclusion was at that point that decision
7 hadn't been taken. But if the new company did not need to have
8 a contract, it did not have to assume those liabilities

9 Q. In fact, I gather you understood in a section 363
10 transaction a purchaser can cherry pick the liabilities that it
11 assumes?

12 A. That was in one of the earlier exhibits, yes.

13 Q. And that was your assumption and General Motors assumption
14 in planning the 363 process, correct?

15 A. Well the purchaser, as I understand a 363 process, it's an
16 asset sale and the purchaser could then decide what obligations
17 need to be assumed as part of the asset purchase that are
18 necessary for purposes of running the business.

19 So it's my understanding that the selection of those
20 liabilities is the purchaser's discretion and they can decide
21 which liabilities they choose to assume and which they don't.

22 Q. I'm not asking you for a legal conclusion but as a
23 businessman did you understand that the Bankruptcy Code imposed
24 any obligations on the purchaser in a 363 transaction to assume
25 certain liabilities of the seller?

1 MR. MILLER: Your Honor, he just answered that
2 question.

3 THE COURT: Sustained.

4 Q. In the April and May timeframe of 2009, did you understand
5 that if the prepackaged bankruptcy option had been chosen
6 General Motors would need to negotiate contracts with its other
7 unions, non-UAW unions, including principally the IUE-CWA?

8 A. Yes.

9 Q. I take it it's because in a prepackaged bankruptcy
10 proceeding the existing General Motors would have continued to
11 perform and would therefore have continued its obligations to
12 its other unions?

13 A. That was my understanding, yes.

14 Q. Did General Motors prepare, from time to time, contingency
15 planning documents that identified which obligations would be
16 assumed by the New GM?

17 A. Yes.

18 Q. And do you know if there was a document that was prepared
19 on May 7th that concluded that a potential 363 offered
20 demonstrated financial advantages over a cram down?

21 A. A liability reduction.

22 MR. MILLER: Your Honor, excuse me. If there is a
23 such a document why didn't counsel show it to the witness?

24 MR. KENNEDY: I'm happy to.

25 Q. Would you turn to page --

1 THE COURT: All right. Objection sustained. Go
2 ahead.

3 Q. Would you turn to document 6?

4 A. In my deposition?

5 Q. In your deposition, yes.

6 (Pause)

7 Q. Specifically page 2, the first line.

8 A. Yes.

9 Q. And you would agree with me that at the point in time this
10 documented was generated, on May 7th, General Motors had
11 concluded that the 363 process had demonstrated financial and
12 execution advantages over cram down?

13 A. Yes.

14 Q. And I gather, from the following line, that General Motors
15 had concluded that a 363 process allowed incremental liability
16 extinguishment of approximately six to seven billion?

17 A. Yes.

18 Q. Were the retiree health and life obligations owed to the
19 non-UAW unions part of the six or seven billion that could be
20 incrementally extinguished as part of the 363 process, as you
21 understood it?

22 A. I believe so. Yes.

23 Q. And I take it, if you turn to page 8 of that document,
24 there's a listing of GM liabilities to New GM, and I'm
25 referring to page 8 of document 6 in the Henderson exhibit

1 portion of the book. Do you see that listing of liabilities,
2 sir?

3 A. I do.

4 Q. And am I correct that the fourth of fifth item down
5 indicates that the GM liabilities to the new GM were expected
6 to include a substantial impairment to splinter group health
7 and life benefits, is that correct?

8 A. It was the assumption and yes it was identified that we
9 would have expected that.

10 Q. And again, that was an assumption in the context of the
11 363 sale, correct?

12 A. That's correct.

13 Q. Now are you aware that as part of this contingency
14 planning 363 analysis on May 7, 2009 a pro forma analysis of
15 the financial implications of a cram down versus a 363 scenario
16 was created?

17 A. Yes.

18 Q. And I direct your attention to Page 11 of the document
19 we've identified as Item 6. I'm sorry; would you make that
20 page 10.

21 (Pause)

22 Q. Are you with me?

23 A. Yes.

24 Q. Okay. The third item on page 10, entitled GM Consolidated
25 Liabilities Analysis - Detail, under number 3, Pension OPEB

1 there's a line that says "Other hourly health and life," do you
2 see that, sir?

3 A. Yes, I do.

4 Q. That repeats that 3,724,000,000 figure that we used
5 earlier in our discussion?

6 A. Correct.

7 Q. Do you see that? And under your cram down scenario, how
8 much of that liability is presumed to go to the NewCo?

9 A. This assumed it would go in its entirety.

10 Q. So all 3.724 billion would go to NewCo under the cram down
11 scenario?

12 A. In this analysis that was the case, yes.

13 Q. Yes. And the 363 scenario indicated that 1.4 billion of
14 the non-UAW OPEB would remain with OldCo and 2.3 billion would
15 go to NewCo, is that correct?

16 A. This analysis indicated that, yes.

17 Q. And do you know where these numbers were drawn from?

18 A. No, I do not know.

19 Q. Do you know who was responsible for preparing the May 7th
20 contingency planning analysis?

21 A. I believe it would have been put together by Joseph DeMore
22 (ph.).

23 Q. And he's one of your executives?

24 A. Yes.

25 Q. And I assume he was incorporating information he was

1 receiving from the U.S. Treasury as part of the liabilities the
2 Treasury was willing to assume?

3 A. As of this date, May 7th, we wouldn't have had definition
4 around that yet on this particular liability. So we were
5 estimating what it might be.

6 Q. Well at some point, in terms of the non-UAW retiree
7 obligations, did you get direction from Treasury to provide an
8 outcome for the non-UAW unions that was similar to what was
9 being given to the UAW members?

10 A. No.

11 Q. You never got -- General Motors never got such a
12 direction?

13 A. Is it similar to the UAW members?

14 Q. Yes.

15 A. No.

16 Q. Okay. At any point was there a discussion with Treasury
17 and General Motors about NewCo accepting some portion of the
18 liabilities that were owed to non-UAW union members for retiree
19 health and life?

20 A. Yes.

21 Q. And what was that discussion, sir, and can you tell us
22 when it first occurred?

23 A. It was later in May and it was done in connection with a
24 total number of liabilities. We had highlighted this through
25 the month of May but in late May the Treasury asked us to look

1 at a total of liabilities which were approximately 7.9 billion
2 dollars, which included the other hourly health and life and
3 indicated at the time that the target reduction of that
4 liability should be approximately two-thirds or alternatively
5 that one third of those liabilities, which in their judgment as
6 a purchaser may not be necessary to run the business going
7 forward and they were prepared to assume. And so they asked
8 they asked the management to consider a two-thirds reduction in
9 this total 7.9 billion liability.

10 Q. Okay. We'll go into that conversation. Prior to that
11 conversation, which we'll call the 7.9 billion dollar
12 conversation, had you had any direction or had General Motors
13 had any direction as to NewCo assuming some responsibility for
14 non-UAW retiree health and life?

15 A. Discussion, no definition.

16 Q. Okay. And you mean by that you've had discussions with
17 Treasury but you didn't get a definitive direction from them?

18 A. As the purchaser, that's correct.

19 Q. Has General Motors concluded that if the 363 process goes
20 through it is probable that the Old GM will go through a
21 Section 1114 proceeding to cancel retiree health benefits to
22 non-UAW members?

23 A. That decision would either be taken by Mr. Koch as well as
24 the board of directors of the Old General Motors. I can't
25 presuppose what they would do. My expectation is they would

1 likely do that.

2 Q. In fact, you regard it as probable that they will go
3 through an 1114 process once the 363 goes through, if it goes
4 through, to cancel the non-UAW OPEB, correct?

5 A. Again, it's their decision not mine. But my opinion is
6 they will likely do that.

7 Q. Now Old GM, at this point in the planning process if the
8 363 sale goes through, is going to last for how long?

9 A. I don't know, sir.

10 Q. Is there a target date as to when it will wind up its
11 affairs?

12 A. I don't -- I have not seen a specific target date.

13 Q. I assume Mr. Koch's job, as the new CEO, is to wind up the
14 affairs of old GM, correct?

15 A. Yes.

16 Q. And have you had any discussions with him about how long
17 that's going to take?

18 A. Typically it's about several years but there's no
19 certainty as to what the date would be.

20 Q. Would it be fair to say you expect it to be completed
21 before three years are out?

22 A. Again, I can't say for certain but I think that's a
23 reasonable expectation, yes.

24 Q. And the assets of Old GM, if the 363 sale goes through,
25 will consist of the 950 million dedicated for wind up

1 activities and the ten percent of New GM plus the warrants for
2 an addition fifteen percent, correct?

3 A. That's correct.

4 Q. Where in that process would there be any money to fund the
5 3.724 billion dollars that Old GM owes to non-UAW retirees?

6 A. The 950 million would clearly not be sufficient to fund
7 us.

8 Q. So what is your anticipation as to how these retirees,
9 many of whom worked thirty years for General Motors, are going
10 to be able to continue their lifetime healthcare if the 363
11 plan goes through?

12 A. This was one of the reasons why we, in discussions with
13 the Treasury, suggested we needed to bring forward at least a
14 portion of the liabilities to provide coverage for IUE members.

15 Q. Because you knew that as structured -- as left in Old GM
16 they will not be able to maintain their health benefits,
17 correct?

18 A. We were concerned about that. Yes.

19 Q. Did you at some point conclude that the issue of retiree
20 health and life insurance for non-UAW members was politically
21 sensitive?

22 A. Yes.

23 Q. And you informed the Treasury that the retiree obligations
24 to the non-UAW members were politically sensitive, correct?

25 A. Amongst other liabilities, yes.

1 Q. Who is Steve Rattner (ph.)?

2 A. Steve Rattner is in Automotive Task Force.

3 Q. In fact, is he essentially the head of it for purposes of
4 these discussions?

5 A. In effect, yes.

6 Q. Did there come a point in time in May 2009 when you had
7 detailed discussions with Mr. Rattner about the splinter
8 unions?

9 A. Yes.

10 Q. And you mentioned earlier that Mr. Rattner and you
11 discussed a grouping of liabilities that in total composed 7.9
12 billion?

13 A. That's correct.

14 Q. And am I right that the four elements of that -- of those
15 liabilities consisted of salaried life and health, number one.
16 Number two, executive life and health; number three, executive
17 pension and number four non-UAW union healthcare and life
18 insurance?

19 A. That's correct.

20 Q. What was the largest single element of the 7.9?

21 A. The 3.7 billion

22 Q. That was owed to the IUE and other non-UAW?

23 A. Yeah, the non-UAW health and life.

24 Q. I think you've already identified Mr. Ken Kresa as the
25 acting chairman of the board, correct?

1 A. That's correct.

2 Q. Did you ask some GM executives to get together some
3 information about splinter union obligations so he could
4 present the information to Steve Rattner?

5 A. Yes.

6 Q. And did you -- did Mr. Kresa advise Mr. Rattner that
7 General Motors was targeting to negotiate reduced OPEB
8 liabilities with its splinter unions?

9 A. It was the recommendation of General Motors and Mr. Kresa
10 that we assume a part of the liability. And, however, at the
11 same time it would have been a reduction, yes.

12 Q. I'd like to direct your attention to Exhibit 7 in the
13 portion of the book that relates to your testimony.

14 A. Yes.

15 Q. And you recognize that as an e-mail from Mr. Kresa to
16 Gregory Lowe?

17 A. I do.

18 Q. And Mr. Lowe is an executive of some sort with General
19 Motors, I suppose?

20 A. He is.

21 Q. Okay. And the second page of this e-mail represents the
22 information concerning splinter unions that you had asked Mr.
23 Lowe to get together for Mr. Kresa?

24 A. That's correct.

25 Q. Okay. I'd like to direct your attention to the second

1 sentence of the second paragraph which reads, "The initial
2 direction with the UST was to provide similar funding as used
3 for (on a pro rata basis) as with the UAW." Had you seen that
4 before today?

5 A. Yes.

6 Q. Okay. And are you able to conclude from that that at some
7 point General Motors had received a direction from UST to
8 provide similar funding for the non-UAW unions as was used with
9 the UAW?

10 A. I don't remember when we would have gotten that direction.
11 We were, again, exchanging ideas as to what a possible
12 treatment might be.

13 Q. Well what are Mr. Lowe's duties?

14 A. Mr. Lowe is responsible for executive compensation.

15 Q. And you asked him to get together information for Mr.
16 Kresa to discuss with Mr. Rattner, correct?

17 A. That's correct.

18 Q. And do you assume he accurately compiled information as to
19 what the splinter union discussions had been prior to this e-
20 mail on May 27, 2009?

21 A. Yes.

22 Q. Is it possible that there was a direction from UST to
23 provide similar funding for the non-UAW unions --

24 MR. MILLER: Objection. That's not what it says,
25 Your Honor. Object to the form.

1 THE COURT: Okay. Why don't you rephrase.

2 MR. KENNEDY: Sure.

3 Q. In terms of the normal operations of you as CEO and in
4 terms of your role with or in the discussions that were going
5 on between Treasury and General Motors, is it likely that you
6 would not have been aware of a direction from the Treasury to
7 provide similar funding for the non-UAW health and retiree
8 obligations?

9 MR. MILLER: Objection, Your Honor. That's not what
10 the exhibit says. It says the initial direction with the UST.
11 It means the initial direction made by Mr. Kresa and GM.

12 MR. KENNEDY: I disagree with that.

13 THE COURT: All right.

14 MR. KENNEDY: Mr. Miller can testify if he wants --

15 THE COURT: Folks, we're not the English parliament
16 here. We don't talk to each other. I am going to sustain the
17 objection but not for the reason that you said, Mr. Miller.
18 Mr. Kennedy, you can read him the language and probe his
19 understanding of what the language means, to the extent he has
20 an understanding. He seems, as I understand it, to have been
21 copied on this but not to have been the author. So you can ask
22 it that way, don't assume that he was the author. You can read
23 the language exactly the way it reads and find out what he
24 knows about it and ask him to tell you what he knows about it.

25 Go ahead.

1 MR. KENNEDY: Thank you, Your Honor.

2 Q. Just to be clear, Mr. Henderson, the second page of the
3 document we've been referring to was created by Mr. Lowe at
4 your direction, correct?

5 A. The second page of the document was actually created by
6 Tom Krosky (ph.) for Greg Lowe, yes.

7 Q. Okay. But it was ultimately at your direction?

8 A. Yes.

9 Q. And you were copied on the e-mail which included page 2?

10 A. Yes.

11 Q. And when the e-mail arrived did you read it?

12 A. Yes.

13 Q. And did you advise either Mr. Lowe or Mr. Krosky that they
14 were in error in how they had summarized what the discussions
15 between UST and General Motors had been at the time of the e-
16 mail?

17 A. No, because the second sentence there, which was my
18 understanding at the time, was once the Treasury understood
19 that there were very few active workers that a much lower level
20 of funding was going to be required.

21 Q. Okay. So would it be fair to say that there came a point
22 in time when the Treasury decided, or I should say learned,
23 that there were very few active members that were included in
24 the non-UAW union?

25 A. Yes.

1 Q. Do you know when that was and how they learned it?

2 A. It would have been likely early mid-May and we would have
3 supplied the information to them.

4 Q. And prior to that point, was the Treasury position --
5 prior to the point they learned how many actives were involved,
6 prior to that point was it the treasury position that General
7 Motors, the New General Motors, should provide the same level
8 of funding for the non-UAW unions that the UAW had gotten?

9 A. We had, Mr. Kennedy, reviewed various alternatives and I
10 didn't have, at any point, until later in May what I considered
11 firm direction from the Treasury as to what they wanted to do.
12 We looked at multiple scenarios but we had not yet engaged in
13 something which I would consider to be direction to us.

14 Q. I take it at least one of the scenarios you did discuss
15 with Treasury was the idea of funding the non-UAW retiree
16 health and life at the same level as the UAW had received?

17 A. Yes.

18 Q. It is true, as we stand here today, that the IUE-CWA has
19 very few active members, correct?

20 A. Yes.

21 Q. If we went back in time a year to June of 2008, the
22 General Motors Moraine plant was still operating, correct?

23 A. Yes.

24 Q. It might have had 1,500 members?

25 A. That's a reasonable estimate.

1 Q. Okay. And General Motors closed that plant on December 23,
2 2008, correct?

3 A. Yes.

4 Q. So am I right that General Motors is using the fact that
5 it closed the last IUE plant to then decide that it didn't have
6 to provide continuing healthcare to the 25,000 IUE retirees?

7 MR. MILLER: Your Honor, I object to the question,
8 grounds of relevance.

9 UNIDENTIFIED ATTORNEY: Can't hear.

10 MR. MILLER: I object to the question on the grounds
11 of relevance.

12 THE COURT: Overruled. You may answer, Mr.
13 Henderson.

14 A. We closed the plant because sales of the vehicles built in
15 that plant were no longer sustainable.

16 Q. And the IUE asked you to put additional product in that
17 plant, correct/

18 A. They did.

19 Q. And there has been product assigned since that plant was
20 closed, isn't that correct?

21 A. Yes.

22 Q. And that some of those products could have been put in to
23 the Moraine facility, isn't that also correct?

24 A. Could have, yes.

25 Q. And if product has been put in the put in the Moraine

1 plant, then is it your understanding that the IUE-CWA members
2 would have been given the same OPEB treatment that the UAW
3 members were given as a result of this bankruptcy?

4 A. I don't know but we would have had active employees and we
5 would have had to negotiate an agreement.

6 Q. Now at some point in late May, you understood that GM was
7 prepared to offer a retiree health and life plan to the non-UAW
8 unions that would cost eighty percent less than the amount
9 being paid by the Old GM, correct?

10 A. The liability would be eighty percent less, yes.

11 Q. So that would be -- in essence we'll call it a twenty
12 percent offer to the non-UAW unions?

13 A. Yes.

14 Q. And did you receive any information from your labor
15 relations executives on whether a twenty percent plan was
16 likely to be accepted by the non-UAW unions?

17 A. Yes.

18 Q. And what is it they advised you?

19 A. They advised that this would likely -- very likely not be
20 acceptable.

21 Q. The ultimate offer that was made to the non-UAW unions for
22 the retiree health and welfare, according to the company's
23 figures, represents a thirteen percent recovery, correct?

24 A. Versus the book value, yes.

25 Q. And if your labor relations advisors had indicated to you

1 that the unions were unlikely to accept a twenty percent offer,
2 what made you think that a thirteen percent offer would in some
3 way be acceptable to the IUE-CWA, the USW or the IUOE?

4 A. We offered, as we put together the package our conclusion
5 was we would offer the retirees, the IUE and the steel workers
6 retirees the same packages we have for our salaried employees
7 for healthcare. That was the conclusion and that's what we
8 felt we should move forward with.

9 Q. Now you had earlier identified, and I'm sorry I'm
10 backtracked a little bit, about the 7.9 billion discussion you
11 had with Mr. Rattner that various executive programs were
12 included in that 7.9 billion, correct?

13 A. Correct.

14 Q. And is it true that on May 11, 2009 you personally sent
15 Mr. Rattner an e-mail that included several presentations in
16 effect advocating Treasury to continue the executive SERP (ph.)
17 and life insurance?

18 A. We made -- early May we made a number of presentations,
19 including myself to Steve, Steve Rattner, talking about what
20 alternatives might be for treatment of the SERP and other
21 liabilities.

22 Q. Well, would you look at Exhibit 8 --

23 A. Sure.

24 Q. -- in the portion of the book that deals with your
25 deposition?

1 A. Yes, sir.

2 Q. That's an e-mail you sent to Steve Rattner on May 11,
3 2009, correct?

4 A. Yes.

5 Q. And attached to it is a document entitled sales rationale
6 for considering salaried retiree treatment?

7 A. That's correct.

8 Q. And the third and fourth pages refer to executive
9 compensation issues?

10 A. That's correct.

11 Q. Now isn't it fair to say, Mr. Henderson, that in both of
12 these attached documents you advocate for existing General
13 Motors executive programs to be continued and absorbed in the
14 New GM?

15 A. Yes.

16 Q. Did you ever send a similar e-mail to Mr. Rattner
17 advocating that the IUE, USW or operating engineer retiree
18 health and life insurance be continued by the New GM?

19 A. Well, we recommended that the pensions be brought forward
20 for the IUE and the steel workers along with the UAW. And with
21 respect to the obligation for health and life, as I said, we
22 identified what the size of the liability was and what the
23 options would be.

24 Q. But in the give and take of actual negotiations, I assume
25 Mr. Rattner --

1 MR. KENNEDY: Let me withdraw that.

2 Q. I assume you expected Mr. Rattner would regard it as
3 significant that you sent him a personal e-mail urging the
4 continuation of certain programs; wouldn't you agree with me on
5 that?

6 A. Yes.

7 Q. And did you ever send a similar personal appeal to Mr.
8 Rattner urging that the IUE or other union, non-UAW union, OPEB
9 be continued by the New GM?

10 A. I certainly was involved in discussions with Steve Rattner
11 regarding bringing forward at least a portion of the liability
12 to the new company so that some benefits could be provided,
13 yes.

14 Q. Okay. Now the portion that would be brought forward to
15 the new company was directly --

16 MR. KENNEDY: Let me withdraw that.

17 Q. When you talk about bringing forward a portion of the
18 liabilities owed to the IUE and the steel workers and the
19 operating engineers, you're referring to permitting certain of
20 the IUE and other union non-UAW union members to participate in
21 the salaried post-retirement plan, correct?

22 A. For healthcare, yes.

23 Q. For healthcare. Now did you at some point describe to
24 U.S. Treasury what the terms of the salaried plan were that
25 would be extended to the IUE and other union representatives?

1 A. Yes.

2 Q. In fact, if you look at Exhibit 13 to your deposition at
3 page 5, does that contain the detail on what the actual plan
4 would be if they were put in the pre-Medicare plan?

5 A. Yes.

6 Q. Is that the plan that was ultimately offered to the IUE or
7 the steel workers or the operating engineers, do you know?

8 A. I don't believe so.

9 Q. In fact the plan that's described on the page 5 of Exhibit
10 13 is significantly better from the point of view of the
11 participants, meaning cost the participants a lot less than the
12 plan that was ultimately offered to the IUE-CWA and steel
13 worker an operating engineer members, correct?

14 A. The final -- we did make final changes in order to achieve
15 it, a two-thirds reduction of the liability.

16 Q. And the basic assumption that you had in talking with the
17 Treasury representatives in late May, is that the IUE, steel
18 worker and operating engineer members would be offered the same
19 plan as salaried retirees, correct?

20 A. Yes.

21 Q. The plan for salaried retirees was cut off at age 65,
22 correct?

23 A. That's right. Medicare.

24 Q. So it was a pre-Medicare plan?

25 A. That's correct.

1 Q. As things stand here today, the plan that General Motors
2 offers to the IUE, steel workers and operating engineers is a
3 retirement to death plan, correct?

4 A. Yes.

5 Q. There is no cutoff at age 65?

6 A. That's correct.

7 Q. So the plan you were offering to the unions I represent
8 included a cutoff at age 65 of all benefits and a limited
9 benefit pre-65?

10 A. Similar to our salaried retirees, yes.

11 Q. Okay. But isn't it a fact that your salaried retirees, as
12 of January 1, 2009, were provided a 300 dollar a month pension
13 increase so they could purchase a Medigap plan to cover them
14 post 65?

15 A. We did increase the benefit by 300 dollars a month at the
16 time we made these final -- at the time we made these changes,
17 yes.

18 Q. And isn't it a fact that the purpose of the change was to
19 permit the salaried retirees to purchase insurance to replace
20 the insurance that was taken away from them on January 1, 2009?

21 A. Yeah, given the status of our salaried pension plan at
22 that point, we were able to do that and we did that, yes.

23 Q. Okay. The offer that was made to the IUE-CWA, the steel
24 workers and the operating engineers did not include a similar
25 300 dollar a month pension increase for retirees whose health

1 insurance, GM health insurance would be taken away as a result
2 of your offer, correct?

3 A. Correct.

4 Q. Did you explain to Treasury at any point that although you
5 were purporting to offer a parallel plan, in fact it was
6 different in that the post 65s, under the salaried plan, had an
7 extra 300 month and under the plan you were proposing to the
8 unions I represent there wouldn't be the 300 dollars a month?

9 A. I believe we did.

10 Q. So did Mr. Wilson know that?

11 A. I don't know for certain.

12 Q. Now I'd like to direct your attention to Exhibit 14. It's
13 a chart entitled salary and splinter union benefit obligations;
14 do you see that, sir?

15 A. Yes.

16 Q. I'm referring to the second page of Exhibit 14. And the
17 total obligations is identified as 7.883 billion?

18 A. It's the 7.9 billion I referred to before.

19 Q. Okay. And if we wanted to isolate the individual
20 components of the liability, we would simply look under the
21 word total in the first column under either retiree basic life
22 or salaried retiree healthcare and so forth?

23 A. Correct.

24 Q. At the time this chart was created, it appears to have
25 presented a sixty-two percent reduction in these six

1 categories, correct?

2 A. Correct.

3 Q. And was that approved by the board of General Motors?

4 A. It was approved to submit to the Treasury by the
5 compensation committee of the board of General Motors.

6 Q. And in assembling this, who is it that decided which
7 components would be cut the most, when you were looking at the
8 sixty-two percent proposal that you were going to give to
9 Treasury?

10 A. The management was responsible.

11 Q. And is it fair to say that the executive non-qualified
12 pension plan, the SERP, under the initial proposal was cut by
13 only thirty-two percent?

14 A. In total, yes.

15 Q. And would you agree with me that in many bankruptcy
16 proceeding an unfunded, unqualified SERP goes to zero?

17 MR. MILLER: I object to the question.

18 THE COURT: Overruled.

19 Q. Now in the 363 proceeding that's being contemplated, New
20 GM is going to absorb 787 million of the existing liabilities
21 under the SERP, is that correct?

22 A. Yes.

23 Q. And is it also true that more than two-thirds of that 787
24 million is payable to executives that have already retired?

25 A. I believe so. Yes.

1 Q. So your analysis of the IUE-CWA and steel worker and
2 operating engineer liability in which it needn't be carried
3 forward to the New GM because there were no active employees,
4 why would you, on the other hand, permit recovery of two-thirds
5 of that 787 million by New GM even though these are retired
6 executives who will perform no further work for either Old GM
7 or New GM?

8 A. First of all, it was the decision of the purchaser in this
9 case but in our judgment the pension plans for both the
10 salaried and the hourly employees were unaffected and being
11 carried forward in their entirety to the New General Motors.
12 And so therefore carrying forward a portion of the executive
13 non-qualified plan would be appropriate. But in this case, it
14 had a thirty-two percent reduction.

15 Q. Would you agree with me that for individuals whose --
16 individual executives whose combined income, between the
17 salaried retirement plan and the SERP plan was less than
18 100,000 dollars a year in retirement only received a ten
19 percent decrease?

20 A. A ten percent decrease in their SERP.

21 Q. In their SERP.

22 A. Yes.

23 Q. Okay. So if someone had a 4,000 a month salaried retiree
24 program benefit and a 4,000 a month SERP benefit, meaning 8,000
25 a month, they received a cut of 400 dollars in their benefit?

1 A. That would be accurate, yes.

2 Q. And are you under the impression that there's some basic
3 fairness between taking executives and cutting them by 400
4 dollars and at the same time eliminating entirely the health
5 insurance that had been promised to IUE-CWA members for years?
6 Is there a fairness to that?

7 A. Our view was the fairness valuation of the pension was
8 bringing forward the pension in its entirety for all hourly and
9 salaried employees was an important consideration and then
10 having all executives salaried and the IUE and the other unions
11 on the same healthcare plan was the appropriate treatment.

12 Q. Now, at some point, when General Motors suggested that the
13 group of liabilities identified on the first page of Exhibit 14
14 was cut by only sixty-two percent, is it accurate that the
15 Treasury came back to you and said we said two-thirds, we meant
16 it, bring it up to sixty-seven percent?

17 A. Correct.

18 Q. And does this tell us where that additional five percent
19 was found within all of these categories?

20 A. Yes.

21 Q. It was found from the salaried retiree healthcare and the
22 non-UAW union healthcare, correct?

23 A. Correct.

24 Q. And the effect of that ultimate change was to reduce the
25 value of the offer to the non-UAW unions to only thirteen

1 percent of what the book value of the obligation showed?

2 A. Correct.

3 Q. And that 400 million dollars in extra reductions was
4 achieved by making it, the health plan, less lucrative for
5 participants and cheaper for GM, is that fair to say?

6 A. Correct.

7 Q. In fact, the health plan that was offered to the members
8 of the IUE-CWA and the other unions, is one in which the
9 company's obligations are capped and fixed, is that true?

10 A. Correct.

11 Q. And the cap is about 4,000 dollars a year for a single and
12 8,000 for family?

13 A. I believe that's true, yes.

14 Q. And those caps are based on 2006 medical figures?

15 A. Yes.

16 Q. But are you aware that the mechanic for accomplishing the
17 extra 400 million dollar reduction in what we've identified as
18 Exhibit 14, page 2 was to lower those caps for years beginning
19 2010?

20 A. No, I was not aware of the mechanic.

21 Q. What did you think the mechanic was for squeezing 400
22 dollars more out of the union retirees and the salary?

23 A. There were changes in vision and dental. And I was aware
24 that further changes needed to be made in order to implement
25 that direction.

1 Q. And if I told you those changes were to reduce the outyear
2 cap so as we go on this plan becomes more and more expensive
3 for union members, would you believe me?

4 A. Oh, yes, I would.

5 Q. Are you aware that when the plan that was presented to the
6 IUE-CWA on June 5th of this year, was presented -- it was done
7 a take it or leave it basis?

8 A. I think it was presented -- I don't know on what basis it
9 was presented, I wasn't at the meeting.

10 Q. Was the first offer what the company described as its
11 last, best and final offer?

12 A. I think it was described as what we were able to provide
13 as part of the negotiation with the purchaser.

14 Q. If you had taken -- and when I say you, I mean General
15 Motors, the extra 400 million that was used to get to sixty-
16 seven percent from the SERP program, could the benefit plan
17 that was offered to the IUE-CWA and other unions have been
18 better from the point of view of the individual participants?

19 A. Yes.

20 MR. KENNEDY: I have no further questions, Judge.

21 THE COURT: Okay. I would like to keep going till 2
22 or 2:30, but I don't think we should do away with the lunch
23 hour entirely.

24 MR. KENNEDY: Your Honor, my associate reminds me
25 that I should offer these documents into evidence.

1 THE COURT: All right. Are there evidentiary
2 objections? All right, hearing none, I'll admit it.

3 MR. KENNEDY: Thank you, Your Honor.

4 THE COURT: Yes, ma'am?

5 MS. KATZOFF: Your Honor, my name is Sue Katzoff and
6 I represent the Schaeffer Group. And I believe I have a couple
7 of questions which have not --

8 THE COURT: You represent who?

9 MR. KATZOFF: The Schaeffer Group which filed an
10 objection to the motion. And I believe I have a couple of
11 questions which are not duplicative of anything we've heard yet
12 today.

13 THE COURT: First I need your name, then I need to
14 understand the Schaeffer Group in the context of the various
15 categories that I said I will be taking.

16 MS. KATZOFF: Okay, Your Honor. My name is Sue
17 Katzoff.

18 THE COURT: K-E --

19 MS. KATZOFF: K-A-T-Z-O-F-F.

20 THE COURT: Okay, Ms. Katzoff.

21 MS. KATZOFF: And I represent the Schaeffer Group
22 which is part of a tort litigation not covered by the other
23 tort claimants. But we have sued GM as a third party for
24 common law contribution and indemnification.

25 THE COURT: All right. Now, I don't think the

1 principal advocate for your class has been heard yet, if I'm
2 not mistaken.

3 MS. KATZOFF: I don't know that I have a class
4 beyond --

5 THE COURT: Are they tort litigants?

6 MS. KATZOFF: We, personally, are not. We are being
7 sued by a former employee. And we have in turn sued GM for
8 common law contribution and indemnification.

9 THE COURT: All right. You know, all my question is
10 trying to find out where you are could possibly take longer
11 than your questions. So just go ahead.

12 MS. KATZOFF: Thank you, Your Honor.

13 THE COURT: But I do want everybody in the room to
14 understand that this is the kind of thing I'm trying to avoid
15 by an orderly procedure. Go ahead, Ms. Katzoff.

16 MS. KATZOFF: Thank you.

17 CROSS-EXAMINATION

18 BY MS. KATZOFF:

19 Q. Good afternoon.

20 A. Good afternoon.

21 Q. I just have a couple of questions for you. I assume, and
22 correct me if I'm wrong, that you're aware that your attorneys
23 on behalf of GM filed on or about June 26th the first update to
24 the seller's disclosure schedules which formulated a part of
25 the sale motion?

1 A. Yes.

2 Q. And as part of that they identified for the first time on
3 Schedule 2.2(a)(7), which had not previously been filed, what
4 personal property was going to be included, and, therefore, you
5 could determine what could be excluded from the sale motion?

6 A. I'm not aware of that, no.

7 Q. Okay. So you're not aware that one of the things listed
8 on the schedule is the GMPT Messina plant, specifically the
9 metallurgy and sand lab as being part of the sale motion?

10 A. Well, I know we needed to deal with all of our facilities.
11 Perhaps, I could see the document?

12 MS. KATZOFF: Your Honor, I only have what I printed
13 off of the website. May I approach the witness and show him
14 the exhibit?

15 THE COURT: Have you shown it to your opponents?

16 (Pause)

17 MS. KATZOFF: May I approach the witness, Your Honor.

18 THE WITNESS: Okay. Thank you.

19 MS. KATZOFF: You're welcome.

20 Q. The document as submitted lists the personalty that is to
21 be included in the sale transaction, which the particular
22 personalty is located on an excluded real property site. So
23 the real property is not being transferred as part of a sale
24 motion, but the particular identified personalty is, according
25 to the schedule.

1 A. Okay.

2 Q. So my question to you is can you tell me what is included
3 in the highlighted item located at the Messina plant?

4 A. No.

5 Q. Is there someone at the company that can identify with
6 particularity what's included in that personalty?

7 A. Yes.

8 Q. And who would that be?

9 A. It would be the head of the core train, basically engines
10 and transmission, power train engineering because it's a lab.

11 Q. And who is that person?

12 A. It could be Dan Hancock.

13 Q. And where is he located?

14 A. Detroit.

15 Q. Detroit.

16 A. Actually, Pontiac, Michigan in this case.

17 Q. So you, then, can't tell me whether or not particular cast
18 line or furnaces are included in the personalty that is subject
19 to the sale motion?

20 A. I'm sorry, ma'am, I cannot.

21 MR. MILLER: The exhibit says metallurgy and sand lab
22 complete. That's what's being transferred.

23 MS. KATZOFF: Yes, Your Honor. But I don't know
24 what's included in that. And that's what I was asking the
25 witness.

1 THE COURT: I think the witness told you he doesn't
2 know, and he can't give you any assistance in that regard, Ms.
3 Katzoff.

4 MS. KATZOFF: Right. I was just responding to the
5 objection. I know what the exhibit says, I don't know what is
6 included, that's all I was asking.

7 THE COURT: Any further questions?

8 Q. You had indicated that the Old GM would have 950 million
9 dollars dedicated to the wind-down process. Does the Old GM
10 currently continue funding its workers' comp insurance?

11 A. It's my understanding that with the exception of four
12 states workers' compensation moves to the new company. There
13 is still an open issue with respect to the State of Michigan on
14 certain conditions regarding that. But other than that
15 workers' comp, there are four states that wouldn't happen, that
16 would not move forward, the rest of them come to the New GM
17 with this one issue in Michigan that I know is still open.

18 Q. And do you know with respect to New York State whether the
19 workers' comp will move to the new company?

20 A. I believe New York State it does move to the new company.

21 Q. And the Old GM currently is self-insured with respect to
22 its workers' comp?

23 A. I believe so, yes.

24 Q. And do you know if the New GM would also be self-insured?

25 A. In general that would be our preference, yes.

1 Q. And I have one last question. With respect to any books
2 and records relative to anything that's going to be part of the
3 sale motion, are the books and records going to be transferred
4 as well?

5 A. I believe so, yes.

6 Q. And if something is excluded from the sale motion, can I
7 assume, then, that books and records will remain with the Old
8 GM?

9 A. I believe books and records are included in transition
10 services agreements, but they're certainly available for the
11 Old General Motors.

12 Q. Okay.

13 MS. KATZOFF: Thank you. I have nothing further.

14 THE COURT: All right. Before we take the next
15 questioner, I'm going to speak very softly and I'm going to try
16 to keep my cool. We have hundreds of lawyers listening to
17 these proceedings in three courtrooms, all of whom are
18 presumably billing their clients. And I would think that
19 everybody in these three rooms shares the objective putting
20 more money into the pockets of creditors and minimizing the
21 legal fees associated with serving their needs. And keeping
22 this hearing focusing on the important stuff. It was for this
23 reason, folks, that I directed an orderly procedure by which
24 questioning would proceed. And I have a fear that people have
25 forgotten why we're here, what we're trying to accomplish.

1 And, though, I sometimes issue my rulings without saying I
2 rule, folks, when I say something I mean it.

3 Now, I'm not going to deny anybody due process. But
4 I expect questioning more focused on the important issues that
5 we need to decide, and by the people that I've authorized to
6 speak, as the people whom I reviewed of the briefs suggested to
7 me, have the greatest attention to the issues that I need to
8 decide here. Okay.

9 Mr. Jakubowski, are you now ready to proceed?

10 MR. JAKUBOWSKI: I am ready, Your Honor. Thank you.

11 THE COURT: Come on up, please.

12 CROSS EXAMINATION

13 BY MR. JAKUBOWSKI:

14 Q. Good afternoon, Mr. Henderson.

15 A. Good afternoon, Mr. Jakubowski.

16 Q. You remember me. Mr. Jakubowski, I represent five tort
17 claimants, personal injury claimants, and I also am here as co-
18 counsel with a number of consumer organizations, including the
19 Center for our Safety and Public Citizen.

20 A. Yes, sir.

21 Q. Do you have this big binder right there?

22 A. Okay.

23 Q. I'd like to turn to your deposition. And, in
24 particular -- excuse me for just one second.

25 (Pause)

1 MR. JAKUBOWSKI: We were talking about skinning the
2 cat earlier, Your Honor. The Federal Express that I ordered
3 somehow has not arrived even in my hotel. And Ms. Rosenbaum
4 checked the hotel and it had not arrived yet.

5 I think in the -- because it's important to move this
6 along, I think I can go through the matters with Mr. Henderson
7 on the basis of the fact that he's already seen the documents,
8 we've had a discussion about it. And I think I can do it
9 through testimony. And I don't believe I'm going to need the
10 three other short exhibits that I was intending on introducing
11 into evidence.

12 THE COURT: You can try subject to the attorney's
13 rights to be heard.

14 MR. JAKUBOWSKI: Okay. Let's try that, Your Honor.

15 Q. Mr. Henderson, do you recall that there is an item on your
16 balance sheet as of 12/31/08 that identifies what the product
17 liability claims are that have been accrued for the company,
18 correct?

19 A. Correct.

20 Q. And that number we went through was 916 million as of
21 12/31/2008, right?

22 A. Yes.

23 Q. And you explained that that number relates only to product
24 liability claims, correct?

25 A. Claims and claims costs.

1 THE COURT: Pause, please, Mr. Jakubowski. By claims
2 cost you mean the cost of processing the claims --

3 THE WITNESS: And defense costs.

4 THE COURT: I beg your pardon?

5 THE WITNESS: And defense costs, Your Honor.

6 THE COURT: Okay, continue.

7 Q. And, in fact, there's two major components of the lost
8 reserve of 916 million, correct?

9 A. Correct.

10 Q. And you didn't pick that number out of thin air, did you?

11 A. No.

12 Q. And neither did anyone at GM, correct?

13 A. No.

14 Q. And, in fact, what they did is they hired Aon Global Risk
15 Consulting, right?

16 A. Yes, that's correct.

17 Q. And they hired Aon Global Risk Consulting in order to do
18 an analysis of what those lost reserves should be for the year-
19 ended 2008, correct?

20 A. Yes.

21 Q. And the methodology was rigorous, right?

22 A. Yes.

23 Q. And you enabled them -- when I say you, I mean GM. GM
24 gave the full access to the litigation records, correct?

25 A. They were retained for purposes of providing expert

1 information for our financial statements. So I believe we
2 would have provided them any and all access necessary in order
3 for them to do that job.

4 Q. Okay, thank you. And the purpose of the report as you
5 understand it, was to provide assistance to GM in establishing
6 a reasonable estimate of retained loss and defense costs and
7 containment expense, right?

8 A. Correct.

9 Q. And you believe they did that, correct?

10 A. Yes.

11 Q. And you believe they did a satisfactory job, correct?

12 A. No reason to believe otherwise.

13 Q. And, in fact, you put that number in your balance sheet?

14 A. Yes.

15 Q. And, again, let's go through the two components. The
16 first component is the loss component, right?

17 MR. MILLER: Excuse me, Your Honor. I object. I
18 don't understand the relevance of this. If Mr. Jakubowski
19 wants a mitigating offer of proof, maybe we'll stipulate to it.
20 But, otherwise, as to the issues that affect this motion before
21 Your Honor, I don't see the relevance of this.

22 THE COURT: The relevance, Mr. Jakubowski?

23 MR. JAKUBOWSKI: Well, I think it's pretty clear,
24 Your Honor. The issues here are what are the liability claims
25 that are being left behind, and what are the liability claims

1 that are being assumed.

2 THE COURT: No, I understand your clients' position,
3 and I'm happy about them, but have more difficulty
4 understanding how the exact number of them -- dollars to the
5 legal issue I have to decide.

6 MR. JAKUBOWSKI: Well, the legal issue you have to
7 decide is whether or not there are releases of non-debtors with
8 respect to claims, correct? In particular, whether the
9 purchaser is going to be released from claims asserted by non-
10 debtor third parties, under a theories of successor liability.
11 And so the question is what is the magnitude of that? And the
12 reason that's important is because later on I will establish
13 through the board meeting that there was as determination made
14 as to how a liability should be segregated pre -- for the
15 liabilities that would be assumed by NewCo and the liabilities
16 that would be left at OldCo. And there was a decision that was
17 made through a process that took about a month, and that
18 decision was made at the board meeting on May 29th, correct,
19 Mr. Henderson?

20 THE WITNESS: Yes.

21 THE COURT: Wait, you don't do that.

22 MR. JAKUBOWSKI: I'm sorry, Your Honor, I apologize.
23 But I'd just rather confirm that -- I'm sorry. Okay, I
24 apologize.

25 THE COURT: Go on.

1 MR. JAKUBOWSKI: So at that board meeting on May
2 29th/May 30th, the decision was made as to what liabilities
3 should be assumed, and what liabilities should be left. The
4 PowerPoint presentation, I believe the testimony is that at
5 that meeting a determination was made as to what that number
6 should be. And there was an additional determination made that
7 there would be no purchase price adjustment afterwards, period.
8 There would be no purchase price adjustment afterwards.

9 Now, afterwards, after the case was filed, you know
10 that there have been changes to the deal. There have been
11 changes to the deal in two ways. The first way is that future
12 claims are being assumed. The future claims is part of this
13 916 million dollars. The question is how much of the 916
14 million dollars is it and I believe that is established by the
15 report.

16 Now, the question is, is there a purchase price
17 adjustment as a result of that? And the answer is no, there is
18 no purchase price adjustment because of that. And so --

19 THE COURT: I'm trying to be patient. Which I was
20 looking for the answers of which was legally relevant to the
21 argument vis-a-vis these claims and as articulated by the
22 creditors' committee and certain other parties in this hearing.

23 MR. JAKUBOWSKI: I will tell you how it is. TWA in a
24 number of cases suggest that it may be relevant for purposes of
25 determining successor liability whether there is a purchase

1 price adjustment as a result of liabilities that would be
2 assumed or not assumed as part of the transaction. It is my
3 contention through the evidence that if the remaining successor
4 liability claims with respect to product liabilities were
5 assumed by the buyer, that, in fact, there would be no purchase
6 price adjustment. And so if they'd done it voluntarily there
7 could be nor purchase price adjustment. If it's done
8 involuntarily through you, I believe there could be no purchase
9 price adjustment. And, therefore, I think it's relevant to the
10 analysis, the policy analysis in TWA as to whether the
11 assumption of the liabilities would have an affect on the
12 purchase which may have a related to affect on the estate.

13 THE COURT: Now, I'm not going to rule on the merits
14 of your ultimate argument. Creating pauses suggest my
15 uncertainty in that regard. I'm going to let you make your
16 record subject to you asking the questions in a quickly and --
17 you articulated the reasons by which you were asking them.

18 MR. JAKUBOWSKI: Okay.

19 THE COURT: Without prejudice to Mr. Miller's rights.

20 MR. JAKUBOWSKI: Understood.

21 THE COURT: The last objection is overruled.

22 BY MR. JAKUBOWSKI:

23 **Q. Now, the ultimate loss as determined as of 12/30/08 was**
24 **916 million, correct?**

25 **A. Correct.**

1 Q. Now, that's broken into two pieces, correct? One is cases
2 that exist, right?

3 A. Yes.

4 Q. And the other are cases that have not been reported yet?

5 A. That's correct.

6 Q. And those are called the incurred but not reported cases,
7 correct?

8 A. Correct.

9 Q. And if they're not reported, the likelihood, they haven't
10 been incurred yet. In other words, they're future claims,
11 right?

12 A. I think incurred but not reported suggest they have been
13 incurred but not reported.

14 Q. Well, but isn't it the case that you said that for every
15 vehicle year as to which there's a reserve that it includes all
16 the expected future losses with respect to their vehicle year?

17 A. That's correct.

18 Q. And, therefore, there are a number of claims in that
19 reserve that, in fact, had not even been incurred yet, have not
20 existed?

21 A. The accident hasn't happened yet, yes.

22 Q. Okay. And so you break into these two categories of cases
23 that exist, cases that don't exist. Now, in the report do you
24 recall that for the cases that have been filed and exist the
25 reserve was 414 million dollars, approximately? I guess it

1 would be in your deposition, but I can --

2 A. Let's go to the page of the deposition so I can refresh my
3 recollection?

4 Q. Okay, sure.

5 A. I think you were after Mr. Bressler. There you are Mr.
6 Jakubowski, page 184.

7 Q. Thank you.

8 THE COURT: I don't think I have it. I'm going to
9 let you proceed without giving it to me, but if it makes a
10 difference I'm going to need to see it.

11 MR. JAKUBOWSKI: Okay, Your Honor.

12 THE COURT: If it refreshes Mr. Henderson's
13 recollection I don't need to see it.

14 MR. JAKUBOWSKI: Well, what I can do, Your Honor, is
15 simply approach the witness, show him the report and he can
16 confirm that it's in the report. Again, I apologize, the
17 Federal Express simply did not come today, and there's nothing
18 I can do.

19 MR. MILLER: Your Honor, please, I'm going to renew
20 my objection as to relevance. As I understand Mr. Jakubowski's
21 argument is that the amount is so small Your Honor can order
22 the treasury to assume that liability. The way the deal is
23 structured, Your Honor, if they're dissatisfied with sale
24 order, they don't have to close. But what he's doing is making
25 a legal argument. He can make an order of proof, and then we

1 can move on, Your Honor. This is hardly relevant to the
2 issues.

3 THE COURT: Is there going to be a credibility
4 dispute or any other factual dispute, or as is offer of proof,
5 or you're going to accept it as a given.

6 MR. MILLER: I'll accept it, Your Honor.

7 MR. JAKUBOWSKI: Okay. That would be fine, Your
8 Honor. I'd be happy to go through it.

9 THE COURT: If you will accept it as a given, is
10 there anybody who is aligned with Mr. Miller who disagrees with
11 Mr. Miller's undertaking?

12 All right, no response. Mr. Jakubowski, make your
13 offer of proof.

14 MR. JAKUBOWSKI: Okay.

15 THE COURT: And if Mr. Miller accepts it as being
16 part of the record, we'll move on.

17 MR. JAKUBOWSKI: Thank you. The evidence through Mr.
18 Henderson and through this exhibit would show that the 916
19 million dollars in losses are broken in between 414 million
20 dollars of existing claims, and 502 million dollars of claims
21 to be incurred.

22 Of that amount, in fact, that's further broken down,
23 because that's an aggregate amount that represents loss and
24 expense -- litigation expense. And on page 32 of the report
25 they break down the loss reserve, the actual claims for

1 liability at 388 million gross. The gross reserve of 916
2 million, 388 million, 793,000 represent cases that exist, and
3 376,403 represent, effectively, future claims that are to be
4 incurred.

5 So that I believe is the -- and the remainder of 151
6 million reflects fees associated with the two buckets of case -
7 - existing cases and future claims. And that's broken down
8 twenty-five million dollars in legal fees for existing claims,
9 and 125 million of existing fees for future claims. And that
10 takes you up to the aggregate bucket of 414 million for
11 existing claims, 502 million for future claims. That's all
12 that I have to say with respect to this exhibit, Your Honor.

13 THE COURT: All right. Mr. Miller, are you okay with
14 that as being incorporated his assumption that I can proceed
15 with in any decision?

16 MR. MILLER: Yes, Your Honor.

17 THE COURT: All right. Does that --

18 MR. JAKUBOWSKI: It does, Your Honor. Thank you very
19 much. I just had really a few more questions.

20 THE COURT: Oh, of course.

21 MR. JAKUBOWSKI: Let me finish up.

22 THE COURT: Yes, by all means.

23 BY MR. JAKUBOWSKI:

24 **Q. Now, with respect to the liabilities that would be**
25 **segregated as of the filing, in terms of what goes to the**

1 purchaser and what stays with Old GM, there were certain
2 politically -- what you called politically sensitive assets,
3 and politically sensitive liabilities, right?

4 A. Correct.

5 Q. And what did it mean to categorize an asset or liability
6 as politically sensitive?

7 A. We attempted to identify for the purchaser those assets
8 and liabilities that might normally just simply be left behind
9 in the Old General Motors. And we also identified assets,
10 actually, that were in that category. But certainly
11 liabilities. And we wanted to highlight for the purchaser what
12 those liabilities were, how much they were, and what a range of
13 possible treatments might be for each of those obligations.

14 Q. And one of those liabilities was product liability claims,
15 correct?

16 A. Correct.

17 Q. And from the company's perspective, what is the customer
18 relationship issue associated with product liability claims?

19 A. OH, as we look at product liability claims, the reputation
20 of the company, whether it's via a warranty coverage, or for
21 recall, or in this case, product liability is an important
22 consideration for the company.

23 Q. And so from the company's perspective -- particularly,
24 from a reputational perspective, you considered it important in
25 your capacity as CEO of the company to assume -- to have all of

1 the product liability claims covered, correct?

2 A. We showed all the information to the purchaser. We shared
3 with them what our views were on the reputational related
4 elements of this particular decision. And discussed with them
5 and negotiated with them how product liability might be
6 treated, yes.

7 Q. And, originally, the decision was made by the treasury,
8 correct, that none of those liability claims would be assumed?

9 A. The original decision was any vehicle sold post-June 1st,
10 that the new company would assume liability for those. New
11 company also continues to have indemnification responsibility
12 with respect to our dealers. Subsequent to that, late last
13 week, agreement was reached that we would modify that to ensure
14 that any accident which occur post-closing would also be
15 assumed by the new company.

16 Q. Okay. But in terms of the 916 million dollars that was on
17 the balance sheet at 12/31/08, all of those liabilities under
18 the original dealers of June 1 were rejected and were supposed
19 to be left with OldCo, correct?

20 A. Can you repeat the question, please?

21 Q. As of the filing date, and as reflected in the existing
22 purchase agreement -- excuse me, the purchase agreement that
23 was filed as of June 1, all of the product liability claims
24 that arose from cars that had been sold prior to the petition
25 date, would not be assumed by the seller?

1 THE COURT: Mr. Jakubowski, does that go to you
2 establish -- or at least, stuck in part of your proffer that a
3 chunk of the 917 million was for the defense costs and
4 processing costs. And that -- and this may or may not be in
5 the same bucket, but a chunk of that is for existing claims and
6 a chunk of it was for possible claims in the future.

7 MR. JAKUBOWSKI: True, Your Honor. And my point is
8 that as of the first iteration of the document in June 1, none
9 of those future claims, put aside the legal, none of those
10 future claims that arose out of cars sold before the petition
11 date were going to be picked out. One of the changes made by
12 treasury was, in fact, to pick up those future claims that
13 were -- that happened after the closing date.

14 THE COURT: Why don't you ask a new question that is
15 more sharply consistent with what you established before.

16 MR. JAKUBOWSKI: Okay.

17 Q. So, there was -- after June 1 there was a change in the
18 bucket with respect to product liability?

19 A. Correct.

20 Q. And that change was to effectively pick up the
21 approximately 376 million dollars worth of estimated future
22 claims that would be incurred after the closing?

23 A. I don't know if the number was 376 million, but certainly
24 the conclusion was any subsequent -- any claim arising from an
25 accident subsequent to the closing would be assumed by the new

1 company.

2 Q. And had the closing date been, for example, as of
3 12/31/08, that, in fact, the 376 million dollars of future
4 claims would have, under the deal as it exists right now, been
5 assumed by the purchaser, correct?

6 A. That's a fair estimate.

7 Q. But prior to that change the 376 million would not have
8 been assumed, correct?

9 A. Yeah, that's correct.

10 Q. Okay. Now, with respect to that change it's your
11 understanding that there's no change in the purchase price as a
12 result of the buyer picking up this effectively 376 million
13 dollar bucket, correct?

14 A. The consideration provided to Old General Motors in terms
15 of shares warrants was unchanged as a result of this move.

16 Q. Did any consideration change that was being paid by the
17 purchaser in the transaction as a result of this change?

18 A. Not to the best of my knowledge.

19 Q. Okay. So now we're dealing effectively with the 388
20 million dollars worth of what we'll call preexisting
21 liabilities, okay. Now, those liabilities are not being
22 assumed by the purchaser, correct?

23 A. So there would be vehicles sold prior to June 1st, and
24 vehicles where the accidents incurred prior to June 1st.

25 That's correct.

1 Q. Yes, that's correct. Vehicles that where the accidents
2 were incurred, the cases exist, as of the petition date?

3 A. Correct.

4 Q. And that is -- let's assuming the closing date was
5 12/31/08 that number would be approximately 388 million
6 dollars, correct?

7 A. Yes.

8 Q. Now, you said earlier there was another amendment that
9 effectively picks up or indemnifies a third party for some of
10 those claims, right?

11 A. Well, I don't think it was an amendment -- our agreement
12 with our dealers provides indemnification for our dealers.

13 Q. So if the dealers are sued by some of these preexisting
14 claimants under state laws or whatever state law exists to
15 pay -- that would hold the dealer responsible for the product
16 liability claim, I take it it's now going to be the obligation
17 of the purchaser to indemnify the dealer for their loss?

18 A. That's correct.

19 Q. And have you undertaken any kind of analysis as to what
20 that number is?

21 A. I have not seen that analysis, no.

22 Q. No. How many -- let me ask it this way. On a ballpark
23 range, how many cars in the past three years, four years, are
24 sold through dealers and versus any other manner?

25 A. All of our cars, other than direct fleet sales --

1 actually, even fleet sales are sold through dealers.

2 Q. So, effectively, what you're saying is that for product
3 liability claims that were incurred in the past three years, to
4 the extent that all of them were to go against -- have the
5 right to go against the dealer, and would be successful against
6 the dealer, the purchaser would be required to indemnify that
7 dealer, correct?

8 A. Based upon all of those assumptions, yes.

9 MR. JAKUBOWSKI: Now, I guess I would like to make
10 one additional proffer with respect to this report, Your Honor.
11 And we will get it and I would like you to at least have it in
12 your hand.

13 THE COURT: You know, what I'd like you to do, Mr.
14 Jakubowski, I want you to take a second to concur with -- to
15 consult with Mr. Miller and see if he concurs with what you
16 would like to do.

17 (Pause)

18 Q. Now, let me ask this, Mr. Henderson --

19 MR. JAKUBOWSKI: I won't make that proffer, Your
20 Honor.

21 Q. Let me ask you this. I take it that at the time that the
22 purchaser signed off on the concept of indemnifying the
23 dealers, correct?

24 A. Yes.

25 Q. And they did not demand a change in the purchase prices as

1 a result of that, correct?

2 A. It's part of our dealer contract, they understood that,
3 yes.

4 Q. So there's going to be no increase to the purchase price
5 as a result of this indemnity to the dealer?

6 MR. MILLER: Objection, Your Honor. That calls for a
7 legal conclusion.

8 THE COURT: Sustained.

9 MR. JAKUBOWSKI: I'll stick with the last answer that
10 we have, Your Honor. I think that last answer is fine.

11 Q. Now, I take it, Mr. Henderson, that none of the changes
12 that were made with respect to the assumption by the purchaser
13 of future claims and of indemnities for the dealers is in any
14 way going to affect the viability of New GM, correct?

15 A. Not in my opinion, no. I agree with you.

16 Q. Now, I want to be clear on one additional point, because
17 we're required to make submissions to the Court. With respect
18 to claims that arise in this -- excuse me, that happen. With
19 accidents that happen between June 1 and June 30, let's assume
20 the purchase closing was today, that those claims are not being
21 assumed by the purchaser, they're being left in the estate but
22 they're going to be deemed an administrative claim, correct?

23 MR. KAROTKIN: Your Honor, that's a legal conclusion.

24 THE COURT: I have to sustain the objection insofar
25 as it asks for a legal conclusion. If you're asking for this

1 man's understanding as a predicate for the next question, I'll
2 permit it. What he says is not going to bind either the debtor
3 or the creditors' committee or any other party in interest,
4 vis-a-vis whether it's an allowed admin claim or not.

5 Q. Let me ask it this way to try to put it in a businessman's
6 perspective. If there's a accident -- if an accident occurred
7 on June 15th with respect to a car that was sold before June
8 1st, is it your understanding that in the event that a loss is
9 determined that needs to get paid, that that liability will be
10 paid by the purchaser?

11 A. Cars sold prior to June 1st?

12 Q. And the accident happened on June 15th. What's your --
13 who do you understand is responsible?

14 A. I don't know the answer to that question.

15 Q. Okay. But your understanding, though, is that one way or
16 the other they're going to get paid?

17 A. I just don't know the answer to the question, I'm sorry.

18 Q. That's fine.

19 THE COURT: Mr. Jakubowski, so I understand the
20 question you asked. Pre-filing date manufacture, post-filing
21 date injury, that's the scenario for which you asked the
22 question. And Mr. Henderson told you he doesn't know.

23 MR. JAKUBOWSKI: Correct, pre-closing -- the accident
24 was pre-closing.

25 Q. So the sale was pre-filed, the accident was post-petition,

1 pre-closing, who pays, the estate as an admin -- who pays, the
2 state or the purchaser?

3 A. Mr. Jakubowski, there's been some discussion about this.
4 I just don't understand exactly how it works, so I can't answer
5 your question in the detail that you'd like.

6 Q. So were you here when counsel represented on the record
7 what the change in the deal was with respect to that?

8 A. I focused on accidents post-closing that would be covered.
9 I know there's some discussion, but it was my understanding it
10 was vehicles sold post, but I must say I'm not an expert in
11 this area.

12 Q. Okay. I take it, though, that with respect to the
13 negotiations that you've testified at length here, it was your
14 understanding that it was really up to the purchaser. At then
15 end of the day it was up to the purchaser to decide which
16 liabilities would be assumed, and which liabilities would be
17 left behind, right?

18 A. Correct.

19 Q. And you would make some recommendations, but at the end of
20 the day that wasn't your call, right?

21 A. We made recommendations, we negotiated, but the purchaser
22 made those decisions.

23 Q. And is it your understanding that -- isn't it your
24 understanding that the relative priorities among the various
25 claimants that are being assumed, was completely irrelevant to

1 **the purchaser?**

2 MR. MILLER: Objection, Your Honor, I don't know
3 what's being questioned.

4 THE COURT: Sustained.

5 MR. JAKUBOWSKI: Okay. I'll ask that of Mr. Wilson,
6 Your Honor, I don't think I need to incur that anymore. If you
7 don't mind, give me one more minute here, Your Honor.

8 (Pause)

9 MR. JAKUBOWSKI: One further question.

10 **Q. You discussed with the purchaser the concept of assuming**
11 **the pre-petition for product liability, correct?**

12 **A. It was one of the options, yes.**

13 MR. MILLER: Your Honor, the questions been asked
14 and --

15 THE COURT: Well, that question has been asked and
16 answered. But if you're using that as the predicate for the
17 next question, it's common for litigators to just ask it to set
18 the table for the next question. Go ahead.

19 **Q. And isn't it true that after the filing you made no**
20 **additional attempt to try to get the purchaser to assume these**
21 **pre-petition claims?**

22 **A. Well, there's been discussions with the purchaser with**
23 **regard to product liability after the filing, pretty**
24 **significant amount of discussions during the month of June. So**
25 **it wouldn't be true that we had no discussions.**

1 Q. But I thought your testimony was that the purchaser made
2 it very clear that they had no interest in taking
3 responsibility for pre-petition claims, correct?

4 A. Yes, correct. Pre-petition accident.

5 Q. Pre-petition accidents, pre-petition claims?

6 A. Yes.

7 Q. And, therefore, you didn't even see a need in June to even
8 talk to them about that issue because they were so dead-set
9 against it, correct?

10 A. Well, we had ongoing discussions through the month of June
11 on product liability, but their conclusion was clear.

12 Q. But those discussions were focused on future claims,
13 correct?

14 MR. MILLER: Your Honor, the witness answered the
15 question, he said there were discussions.

16 THE COURT: Sustained.

17 MR. JAKUBOWSKI: Okay. Your Honor, I have no further
18 questions. I thank you for your indulgence.

19 THE COURT: All right. Before the next questioner I
20 want to ask you a question -- a few questions under 614.
21 Remind you, of course, that you have a right to object to my
22 questions.

23 Mr. Henderson, I don't know how much you drilled down
24 in the framework of management, do you have any knowledge for
25 relief that isn't speculation as to who often GM gets sued in

1 products liability actions when it is sued and the dealer that
2 sold the car isn't also sued?

3 THE WITNESS: No, Your Honor, I don't know the answer
4 to that question.

5 THE COURT: Okay, no further questions. Does the
6 Center for Auto Safety have any questions at this point?

7 UNIDENTIFIED ATTORNEY: No, we do not.

8 THE COURT: It's now 2:20, I think it's now time for
9 a lunch break. And I want thing to keep moving forward. And I
10 would make it less than an hour except that I don't think you
11 can get down in the elevators quickly enough and get back up
12 quickly enough, so we're going to make it an hour.

13 For anybody who wants to question after the lunch
14 break I'd like them to register with my law clerk to tell me
15 who they are, who they represent and what they propose to
16 question about. We're in recess for one hour.

17 (Recess from 2:22 p.m. until 3:23 p.m.)

18 THE COURT: Have seats, everybody. Ad hoc torts
19 committee. Mr. Bressler?

20 MR. BRESSLER: Yes. Thank you, Your Honor. Good
21 afternoon. After a review of what's been said already and
22 having reviewed Mr. Henderson's deposition, for which she was
23 more than forthcoming, we're going to designate deposition
24 sections and not ask any live questions.

25 THE COURT: Very well. What I would like you to do,

1 Mr. Bressler, is give your designations to the debtor and the
2 debtor is going to have twenty-four hours to counter-designate.
3 And then I would like you or them, it doesn't matter to me, to
4 give me the parts that's been designated, your designations in
5 one color, theirs in another, all returned with markings so
6 I'll know whose is who. And I'll read it.

7 MR. BRESSLER: Thank you, Your Honor.

8 THE COURT: I would like to have it available as soon
9 as is practical for the debtors. But the debtors can take the
10 full twenty-four hours after they get it from you if they need
11 that. Oh, U.S. government wants the same opportunity?

12 MR. JONES: Yes, Your Honor. David Jones from the
13 U.S. attorneys' office. Please, we would appreciate that.

14 THE COURT: Of course. Anybody else feel like they
15 want counter-designation rights? All right. Mr. Jones and Mr.
16 Miller or their designees will get it. And they'll have a
17 chance to assign a designee.

18 MR. BRESSLER: Thank you, Your Honor.

19 MR. JONES: Does Mr. Bressler know, Your Honor, when
20 we will get them?

21 MR. BRESSLER: His Honor said by noon tomorrow.
22 We'll try to get them over first thing in the morning actually.

23 MR. JONES: Thank you.

24 THE COURT: Okay. All right. Next. Oliver Addison
25 Parker?

1 MR. PARKER: Just one minute, Your Honor.

2 THE COURT: Okay. For the four people who registered
3 to question with my law clerk before the lunch break, I'm going
4 to take Mr. Parker first and then I'll expect everybody, of
5 course, to be nonrepetitive. And let's proceed.

6 MR. PARKER: Thank you, Your Honor. I'm Oliver
7 Addison Parker. I'm an attorney in Ft. Lauderdale, Florida and
8 I'm, I suspect, the largest uninstitutional bondholder of
9 General Motors. I own five million dollars.

10 THE COURT: Pause, please, Mr. Parker. Just ask your
11 questions.

12 MR. PARKER: Okay. Sure. Thank you.

13 CROSS-EXAMINATION

14 BY MR. PARKER:

15 **Q. Mr. Henderson, first thing I'd like to ask you, Mr.**
16 **Henderson, is in December of 2008, GM's liabilities were**
17 **approximately 190 billion dollars and their assets were about**
18 **82 billion dollars, something in that ballpark?**

19 MR. MILLER: Excuse me, Your Honor. Could he
20 establish a foundation? Is he talking about --

21 MR. PARKER: I'm trying to establish a foundation for
22 something.

23 MR. MILLER: If he wants to --

24 THE COURT: Don't communicate with each other.

25 You're saying you want a foundation for the question he just

1 asked?

2 MR. MILLER: He's asking about assets and
3 liabilities. Is he talking about for accounting purposes or
4 what?

5 THE COURT: Fine. Sustained as to form. You can
6 rephrase, Mr. Parker.

7 MR. PARKER: Okay.

8 THE COURT: Talk about whether you're talking book
9 value, appraised value or whatever you want.

10 MR. PARKER: All right.

11 Q. In the fourth quarter in 2008, General Motors released a
12 profit and loss statement, correct?

13 A. Correct.

14 Q. Okay. And under that profit and loss statement, they
15 showed what they had, roughly 190 billion dollars in
16 liabilities and something like eighty-two billion dollars in
17 assets, is that correct?

18 A. I believe so.

19 Q. And so, under that profit and loss statement, shareholder
20 equity in December of 2008 was negative, is that correct?

21 A. Correct.

22 Q. In 2008, the market value -- I mean, the share price of
23 General Motors stock was somewhere around four or five dollars
24 a share, is that correct?

25 A. Certainly, toward the end of the year, yes.

1 Q. And there were roughly 600 million, 650 million shares
2 outstanding?

3 A. Correct.

4 Q. So the market value of the shares was somewhere between
5 two and a half and three billion dollars? Maybe three and a
6 half billion dollars?

7 A. Reasonable estimate.

8 Q. Okay. Now, in December 1st of -- sorry. In December 31st
9 of 2008, General Motors signed a loan agreement with the United
10 States Treasury, is that correct?

11 A. Correct.

12 Q. And under the terms of the loan agreement, you were
13 supposed to get 13.4 billion dollars, that's billion with a B,
14 with a first installment on December 31st of four billion. Is
15 that correct?

16 A. Yes.

17 Q. Now, is it safe to say that four billion dollars is more
18 than twenty percent of shareholder equity whether you use book
19 value, which was negative, or market value which was between
20 two and a half and three and a half billion dollars?

21 A. Yes.

22 Q. Okay. The mortgages -- the money that you borrowed from
23 the Treasury and the mortgages that you gave the Treasury, the
24 mortgages, the liens, the -- whatever else you want to --
25 security interest, were the loans for property that you bought?

1 Were the liens on security for the property that you bought?

2 A. No.

3 Q. Were the loans on property -- sorry. Were the security
4 interests, the mortgages, on property that you already owned?

5 By you, I mean General Motors.

6 A. General Motors? Yes.

7 Q. Now, had General Motors entered into any sort of a
8 contract with United States that required General Motors to
9 enter into a pledge or security agreement to secure partial
10 progress, advance or other payments pursuant to contractor
11 statute?

12 A. No.

13 Q. Okay. So this isn't a case where the government needed
14 tanks to be built or needed whatever to be built and in order
15 to make sure that you could do the job that required some sort
16 of a mortgage or pledge in order to secure performance, is that
17 correct?

18 A. Correct.

19 Q. This was just a straight out we need to borrow money,
20 we're pledging assets we already have to get it?

21 A. Correct.

22 Q. Okay. The mortgage agreement that you entered into
23 with -- by you, I mean, General Motors -- that General Motors
24 entered into with the United States Treasury, what did it
25 encumber?

1 A. It encumbered a series of assets, intellectual property,
2 nonmanufacturing real estate, selected stocks in foreign
3 subsidiaries, small amount of inventory.

4 Q. Credited its mortgage real estate, is that correct?

5 A. Nonmanufacturing related real estate.

6 Q. Okay. Did it mortgage General Motors equity or shares in
7 any manufacturing subsidiaries?

8 A. Domestic manufacturing subsidiaries?

9 Q. Yes.

10 A. No.

11 Q. I see.

12 MR. PARKER: Just a second to find it.

13 Q. All right. Have you -- has General Motors introduced the
14 loan and security agreement by and between the borrower listed
15 on Appendix A and borrower, the United States Department of the
16 Treasury?

17 MR. SCHWARTZ: Yes.

18 MR. PARKER: Have you entered these in as an exhibit?

19 MR. SCHWARTZ: Yes.

20 MR. PARKER: Could I ask what exhibit number it is?

21 MR. SCHWARTZ: 6.

22 MR. PARKER: Okay. So that's --

23 MR. SCHWARTZ: Exhibit 6.

24 MR. PARKER: -- GM6?

25 MR. SCHWARTZ: Yeah.

1 BY MR. PARKER:

2 Q. All right. Do you have a copy of GM6?

3 A. I have no idea, Mr. Parker, if it's in that book.

4 Q. All right.

5 MR. PARKER: Could I have a copy of GM6 to show
6 the --

7 MR. MILLER: May I, Your Honor?

8 MR. PARKER: Thank you. May I approach the witness,
9 Your Honor?

10 THE COURT: Yes.

11 Q. Would you please go to -- there's two paginations on this.
12 There's a pagination that says 29. There's another pagination
13 that says 35 of 111. The 35 of 111 is the top right-hand
14 corner.

15 A. Yes, sir.

16 Q. Okay. Are you looking at Section 4, Collateral Security,
17 4.01, Collateral Security Interest?

18 A. Yes, sir.

19 Q. Okay. Does subparagraph (a) read: "Subject to any
20 amendments, restatements, supplements or other modifications in
21 Section --

22 MR. MILLER: Your Honor, the document speaks for
23 itself. He doesn't have to read it into the record.

24 THE COURT: Of course the document does. If you want
25 to call his attention, however, to a particular portion of it

1 and then ask him a question, you can do that. But don't ask
2 him to simply read the document itself.

3 MR. PARKER: No. I'm reading it in order to get
4 someplace, Your Honor.

5 THE COURT: All right. I'll overrule that objection
6 but it would be helpful to me, Mr. Parker, if you got to the
7 point a little more quickly.

8 MR. PARKER: Well, I'm trying to, Your Honor.

9 Q. If you'll go down, one, two, three, four -- four lines,
10 does it say that "GM is giving a lien on and security interest
11 in all of its right, title and interest in and to all personal
12 property and real estate wherever located and without
13 limitation the following whether now or here ever existed on
14 where they're located"?

15 A. That's what that provision says, Mr. Parker, but it does
16 go on to the next page to provide exceptions to that.

17 Q. Okay. If you would please tell me where the exceptions
18 are.

19 A. The definitions are on page 30 of excluded collateral.

20 Q. All right. What paragraph is that in?

21 A. Top of page 30.

22 Q. 30 --

23 A. Top of page 36 of 111.

24 Q. 36 of 111.

25 A. Where it says "And the borrower is not pledging or

1 granting a security interest in" --

2 Q. What line is that in that paragraph?

3 A. In the third line, sir.

4 Q. Okay. Go ahead.

5 A. It says "The borrower is not pledging or granting a
6 security interest in any properties except that such property
7 constitutes excluded collateral."

8 Q. Okay. Now, was there a list of assets that were included
9 anywhere?

10 A. Sir, my understanding is what's outlined in the document.

11 Q. Wasn't there a --

12 MR. PARKER: Bear with me a second.

13 Q. Wasn't there an appendix with a list of schedules to the
14 document?

15 A. Sir, I didn't -- I wasn't involved in negotiating this
16 document. There could very well be appendices but I wouldn't
17 have necessarily reviewed them.

18 Q. Okay. So when I asked you on Saturday, I believe it was,
19 in your deposition --

20 A. Sunday.

21 Q. Was it Sunday?

22 A. It was, sir.

23 Q. Okay. Sunday. You're right. When I asked you Sunday in
24 your deposition, I believe you indicated that the excluded
25 properties dealt with foreign properties and not with domestic

1 **manufacturing?**

2 MR. MILLER: Excuse me, Your Honor. If Mr. Parker
3 has a deposition, would he show it to him?

4 THE COURT: That's the way we do it. Sustained.
5 Show him the deposition transcript and ask him if he was asked
6 this question and he gave that answer.

7 MR. PARKER: Very well, Your Honor. Since I don't
8 have the deposition, I can't do that. However, let me at
9 least -- 'cause I may be able to get it from other witnesses
10 later. Let me at least go over a couple of things. Have you
11 placed into evidence the 1995 indenture.

12 MR. MILLER: Yes.

13 THE COURT: What evidence number is it?

14 MR. SCHWARTZ: 10.

15 MR. PARKER: Okay. Do you recognize these as being
16 copies of 10 so I can let him look at them? It's what you have
17 provided me, right?

18 (Pause)

19 MR. SCHWARTZ: He's got it up there.

20 MR. PARKER: Oh, okay.

21 **Q. Do you have Exhibit number 10 in that book?**

22 MR. SCHWARTZ: That's the wrong book.

23 MR. PARKER: That's the wrong book?

24 MR. SCHWARTZ: It's not in that book.

25 MR. PARKER: Which book is it?

1 MR. SCHWARTZ: The one he was looking at before.

2 THE WITNESS: This book? Oh, okay, yeah.

3 Q. Exhibit number 10.

4 A. Yes, sir, I do.

5 Q. Could you go to Section 1408?

6 A. Of this Exhibit 10? 1408, okay.

7 Q. Yes.

8 A. Give me just a moment, sir. 1408 --

9 THE COURT: 1408?

10 A. -- says New York Contract.

11 Q. Right, right. The indenture is governed by New York law,
12 correct?

13 A. Yes.

14 Q. Okay. Would you go to Section 406, please?

15 MR. PARKER: This is a horrible copy.

16 A. Yes, sir.

17 MR. SCHWARTZ: Wait a minute, please.

18 A. Limitations on Liens section.

19 Q. Limitation on Liens. It basically says, does it not, that
20 GM will not give --

21 MR. MILLER: Your Honor, same objection. The
22 document speaks --

23 THE COURT: Sustained.

24 Q. Under 406, could General Motors give a lien on its
25 manufacturing facilities? Domestic. Domestic manufacturing

1 facilities.

2 MR. MILLER: Objection. Calls for a legal
3 conclusion.

4 THE COURT: Sustained.

5 Q. From your business judgment, could GM give a --

6 MR. MILLER: Excuse me, Your Honor. It's not a
7 question of business judgment.

8 MR. PARKER: Okay.

9 THE COURT: Sustained. Mr. Parker, I normally cut a
10 lot of slack for pro se litigants. I don't get that many pro
11 se litigants who are lawyers. I think under those
12 circumstances I have to give you kind of a hybrid kind of
13 courtesy.

14 MR. PARKER: Right.

15 THE COURT: What I would suggest is if there is
16 exception of the document of undisputed content that you want
17 to rely on --

18 MR. PARKER: Yes, sir.

19 THE COURT: -- read him the sentence that you have in
20 mind. Then ask him if he has a business understanding as to
21 what that means. This businessman's understanding isn't
22 binding on the company or any of the other parties in the case
23 as -- with respect to what it says it's a judgment of law that
24 I would make after hearing appropriate argument when necessary.

25 MR. PARKER: Right. Okay.

1 THE COURT: But if and to the extent relevant you
2 want to ask him his businessman's understanding on the
3 provisions in the agreement, I'll let you do it notwithstanding
4 that the fact that the legal conclusions trumps his
5 businessman's understanding.

6 MR. PARKER: All right.

7 BY MR. PARKER:

8 Q. Section 406 provides that "For the benefit of the
9 securities, the corporation will not nor will it permit any
10 manufacturing subsidiary to issue or assume any debt secured by
11 a mortgage upon any principal domestic manufacturing property
12 or corporation of any manufacturing subsidiary upon any shares
13 of stock or indebtedness of any manufacturing subsidiary
14 whether such principal domestic manufacturing shares of stock,
15 indebtedness, et cetera, together with that of the corporation"
16 -- basically -- well, it's very long. Have you read it?

17 A. I just read it here.

18 Q. Okay. When General Motors entered into its agreement with
19 the United States Treasury, were they aware of the limitation
20 on liens provision of this document?

21 A. Yes, sir.

22 Q. Okay. Was the Treasury Department aware of the
23 limitations on lien provision of this document?

24 A. Sir, I wasn't involved in the negotiation of the document
25 in December of '08, but it's my understanding they were aware.

1 Q. Okay. Is an empty building a manufacturing plant or
2 facility?

3 A. If it's an empty manufacturing plant, yes, sir.

4 Q. Okay. So what does a manufacturing plant or facility mean
5 to you, sir?

6 A. It's a facility that's intended to manufacture vehicles,
7 power trains, stampings, the various parts of our business.

8 Q. Would it include machinery?

9 A. Generally, yes.

10 Q. Okay. Did -- under the loan agreement, did you grant a
11 lien on all of your machinery? The loan agreement with the
12 United States Treasury, did GM grant a security agreement on
13 all of its domestic machinery.

14 MR. MILLER: I assume, Your Honor, he's just asking
15 for Mr. Henderson's understanding.

16 MR. PARKER: Yes.

17 THE COURT: With the clarification, the objection
18 becomes moot.

19 A. Could you repeat the question, sir?

20 Q. Sure. Under your understanding of GM's loan agreement
21 with the Treasury, did the Treasury have a security interest on
22 the manufacturing equipment in domestic manufacturing plants?

23 A. I don't believe so.

24 Q. Okay. Did it -- did you give a security interest on the
25 shares of stock of any subsidiaries of GM, domestic

1 subsidiaries?

2 A. No domestic manufacturing subsidiary to the best of my
3 knowledge.

4 Q. What are the domestic manufacturing subsidiaries of
5 General Motors?

6 A. Generally, our manufacturing operations are included in
7 the corporation. I think if we have a domestic manufacturing
8 subsidiary, it might be Saturn. But I don't think -- we
9 generally don't have substantial domestic manufacturing
10 subsidiaries. The parent -- the corporation owns the U.S.
11 manufacturing plants.

12 Q. Is Saturn a separate plant -- I mean, a separate
13 corporation?

14 A. I believe so, yes.

15 Q. And did you grant a lien on Saturn's shares?

16 A. I don't know.

17 MR. PARKER: May I ask a question of counsel? The
18 exhibit -- no, no. The exhibit that you provided with the
19 appendices, on the two appendices to the agreement that listed
20 the properties that are included and the ones that were
21 excluded, they were blank. Do you have a copy?

22 MR. MILLER: I don't know what he's talking about.

23 MR. SCHWARTZ: I don't know what you're talking
24 about.

25 MR. PARKER: Okay. What I'm talking about is the --

1 (Pause)

2 MR. PARKER: You might notice it. It's a schedule --
3 that's out of order. This is the first page. It's a schedule
4 of appendices to the loan agreement.

5 MR. SCHWARTZ: Which one?

6 MR. PARKER: The one between Treasury and GM. And
7 when you get to the final two schedules, they're blank.
8 They're the schedules for assets that are liened and assets
9 that are excluded. Toward the end. Actually, if I may -- I'll
10 show you since it's this area. Schedule 6.29 and 6.30. As you
11 can see, they're blank with a statement that it's privileged
12 information. Is it attached to what you gave the Court?

13 (Pause)

14 MR. PARKER: It was page -- on this, it's page
15 GMPR3959 and GMPR3961 -- 3960. There's a big skip. Here's
16 3958. While they're looking, I'll move on.

17 THE COURT: Thank you.

18 BY MR. PARKER:

19 Q. Would you go to Section -- Schedule 6.28 of the document?

20 A. Which document, sir?

21 Q. The -- it's called -- it's schedules of, I guess, Exhibit
22 10.

23 A. 6.28.

24 Q. Yes.

25 A. Section 6.28, did you say?

1 Q. Yes.

2 A. All right. So it's earlier in the document.

3 Q. No. It's Schedule 6.28 not section.

4 A. Okay.

5 Q. I'm sorry. Schedule 6.28.

6 A. What's the name of the schedule, sir?

7 Q. Assets Subject to Senior Lien.

8 A. Maybe you can show it to me. I can't find it here.

9 Q. Well, this is the copy they gave me.

10 A. So, let me find it. Mr. Parker, which page so that I can
11 get on the same page as you are.

12 Q. Does yours have the stamps on them?

13 A. No. Unfortunately, I don't have a GMPR on this page.

14 Q. 'Cause it's 3955. The schedules aren't otherwise aren't
15 numbered. The only numbers on these schedules are the GMPR
16 stamps.

17 A. Perhaps there's -- would you like me to work from yours?

18 Q. Yeah. If you take a look at the first one, the first
19 asset, I believe it's -- there's a one 1,400,000,000 lien in
20 favor of a bank, is that correct?

21 A. Yeah. This was a 1.4 billion dollar machinery and
22 equipment term loan that was issued in 2006.

23 Q. On Saturn, correct?

24 A. That was Saturn as guarantor so it was basically, the
25 parent -- the corporation as well as Saturn Corporation.

1 Q. Right. And did it also guaranty -- pledge sixty-five
2 percent of Saturn's stock?

3 A. This is the --

4 Q. It's in that same page.

5 A. This is the 2006 transaction?

6 Q. Yes.

7 THE COURT: Forgive me. Mr. Parker, I'm trying very,
8 very hard to be --

9 MR. PARKER: I know.

10 THE COURT: -- very, very patient. The costs to the
11 creditors in this case with examination is enormous. I can no
12 longer permit you to ask your opponents to find stuff for you.

13 MR. PARKER: Okay.

14 THE COURT: And I can no longer ask the witness to
15 find things or to construe documents that are already in the
16 record. If you want to make legal arguments based upon what
17 the documents say, of course you may do that. But you're going
18 to have to help me understand why this examination can't
19 proceed more quickly and why you should be putting the witness
20 through a memory test on what the company's documents say.

21 MR. PARKER: All right, Your Honor. It's my position
22 that the -- it's -- I'm sorry. I've got the wrong page. If I
23 may? It's my position the bondholders are actually secured
24 creditors, Your Honor.

25 THE COURT: Fair enough. But if the documents are in

1 evidence, why can't you make your argument based on what the
2 documents say?

3 MR. PARKER: All right. I'd like to introduce a
4 document that is not in evidence, if I may. It's a document I
5 received in discovery from General Motors. I'm going to ask
6 the witness if he can identify it.

7 MR. MILLER: Your Honor, this is a document filed
8 June 27, 2003.

9 MR. PARKER: Yes, it is.

10 MR. MILLER: I don't know where Mr. Henderson was on
11 June 27th, 2003.

12 THE COURT: I guess he can tell us when Mr. Parker
13 tries to lay the foundation for the submission.

14 MR. PARKER: All right. I'd like to label this
15 Parker Exhibit 1 for identification. 4424D5.

16 THE COURT: All right. Parker Exhibit 1 for id.
17 (Parker's Exhibit 1, GM Perspecta Supplement 2, was hereby
18 marked for identification as of this date.)

19 BY MR. PARKER:

20 **Q. Could you take a look at that document, sir? Okay? Now,**
21 **do you recognize it?**

22 **A. No.**

23 **Q. Did General Motors issue a set of Series C subordinated**
24 **bonds?**

25 **A. Mr. Parker, at that time I was president of GM Asia**

1 Pacific. I had nothing to do --

2 Q. Okay.

3 A. But I do believe we did issue bonds, the specifics of
4 which I wasn't involved in at the time.

5 Q. All right. Who could identify it?

6 A. Well, this is a General Motors document. I mean, it's --
7 but I just --

8 Q. Well, but do you recognize it as a General Motors
9 document?

10 A. Yes, sir. It looks like it's a Perspecta Supplement.

11 Q. It's a Perspecta Supplement with a attached Perspectus
12 that it's a Perspecta Supplement 2.

13 A. Yes, sir.

14 Q. All right. So all I'm asking is can you identify it as a
15 Perspecta Supplement from General Motors.

16 A. I believe it is, yes.

17 MR. PARKER: All right. Your Honor, I'd like to
18 introduce --

19 THE COURT: Any objection?

20 MR. MILLER: No, Your Honor.

21 THE COURT: All right. It's admitted.

22 MR. PARKER: Okay.

23 (Parker's Exhibit 1, GM Perspecta Supplement 2, was hereby
24 received into evidence as of this date.)

25 MR. PARKER: When I argue on it, may I refer to

1 sections of it, Your Honor?

2 THE COURT: Can't think of any reason why not.

3 MR. MILLER: What are we marking this as, please?

4 MR. PARKER: Parker's Exhibit 1 in a --

5 Q. Do you still have that other document?

6 A. I do, sir.

7 Q. On the second page of the document, is there -- does it
8 indicate -- and the document, I believe, is the exhibits -- the
9 atta -- the schedules to Exhibit 10, General Motors Exhibit 10.

10 A. I'm reading. This is the second page of the document you
11 gave me.

12 Q. Yeah. Well, the second -- yes.

13 A. Yes.

14 Q. I believe it's Schedule 6 -- I mean, about 628.

15 A. 6.28, that's what it says.

16 Q. It's page 2 of Schedule 6.28, correct?

17 A. Yes.

18 Q. Does it indicate a loan? Not to the government.

19 MR. MILLER: Objection, Your Honor.

20 THE COURT: Sustained.

21 MR. PARKER: Your Honor, the predicate is under the
22 term --

23 THE COURT: Forgive me, Mr. Parker, but I believe
24 I've ruled. You can ask your next question.

25 MR. PARKER: Okay.

1 Q. Under the terms of that, is there an indebted creditor
2 whose security is sixty-five percent of Saturn?

3 A. The sixty-five percent of the stock is Controlodora
4 General Motors S.A. de Sivi which is General Motors de Mexico.

5 Q. Okay. I misread it then. Thank you.

6 A. You're welcome.

7 Q. So what's encumbered -- well, under the sales agreement
8 that General Motors is asking the -- the master sale purchase
9 agreement that the debtor is asking the Court to approve, your
10 manufacturing facilities were being sold to the new GM, is that
11 correct?

12 A. That's correct, sir.

13 Q. Is it true that in your negotiations with General
14 Motors -- sorry -- in General Motor's negotiations with the
15 Treasury Department regarding the master sale and purchase
16 agreement that you strongly advocated the senior executive --
17 retaining the senior executive retirement plan?

18 A. I testified to that before, yes.

19 Q. Okay. Did you also strongly advocate negotiating a better
20 deal for bondholders?

21 A. Yes.

22 Q. What were your efforts in that regard?

23 A. Two things. I had two areas I would call. One, when we
24 launched the bond exchange, the Treasury indicated to us that
25 they would not be supportive of offering the bondholders any

1 more than ten percent of the company. We, therefore, selected
2 ten percent. We went to the maximum because we felt it was the
3 right thing to do. And the second thing is, when the bond
4 exchange failed and the Treasury approached us with regard to
5 providing an updated proposal to the bondholders, this is
6 subsequent to the bond exchange failing, we reacted quickly.
7 That subsequent offer included both ten percent of the new
8 company substantially de-levered from what was in the bond
9 exchange plus the two different sets of warrants of seven and a
10 half percent each. And we immediately moved to issue an 8K,
11 provided a disclosure, so that the advisor to the informal bond
12 committee could go out and contact bondholders.

13 Q. Okay. In April of 2008, did an ad hoc bond committee come
14 to GM to try to negotiate a different settlement offer?

15 A. I believe it was April 2009, yes.

16 Q. Yeah. 2009, yes, sir. Did that happen?

17 A. We were approached and we suggested that -- since we
18 were -- I don't remember exactly what date but we suggested
19 that the committee approach the Treasury.

20 Q. All right. Did you tell the committee that you weren't
21 authorized to negotiate?

22 A. Because at that point, I believe -- I'm not certain but I
23 believe our bond exchange was in the market. And so, we were
24 not authorized to negotiate.

25 Q. Okay. At any time, did you -- at any time subsequent to

1 that that you urged the Treasury to negotiate with the
2 bondholders and give them more favorable treatment than the ten
3 percent off?

4 A. In late May.

5 Q. Prior to that.

6 A. Prior to that? While the bond exchange was outstanding?
7 We were quite careful that we would not -- we could not -- we
8 could not bargain at that point.

9 Q. Is it true that you originally approached the government
10 for a loan in late September -- by you, I mean GM -- in late
11 September, early October of 2008?

12 A. I believe that's correct.

13 Q. Is it true that the Treasury Department said that they
14 would not grant you a loan under TARP at that time?

15 A. I believe that's also correct.

16 Q. Did they recommend that you go to Congress to ask for a
17 loan to get congressional authorization for a loan?

18 A. At some point, yes.

19 Q. Was Treasury's stated reason that they couldn't give you a
20 loan was that TARP could not authorize -- they were not
21 authorized to lend money under TARP?

22 MR. SCHWARTZ: Objection, relevance.

23 THE COURT: Well, if your point, Mr. Schwartz, is
24 with the enabling legislation is what's relevant to Mr.
25 Henderson's understanding of it basically -- is that basically

1 your relevance point, Mr. Schwartz?

2 MR. SCHWARTZ: That's one of several actually. I
3 mean, in addition, the authority of Treasury to lend money
4 under TARP is not relevant. The bills that were not passed by
5 Congress are not relevant.

6 THE COURT: I need to hear your response on the
7 evidentiary issue, Mr. Parker.

8 MR. PARKER: Yes, sir. I believe the fact that
9 Treasury originally took the position that they were not
10 authorized to act -- that TARP did not authorize them to extend
11 loans, that they recommended that they go to Congress, that
12 Congress declined to authorize them to lend loans to General
13 Motors, and that subsequently Treasury changed its mind is
14 relevant.

15 THE COURT: Well --

16 MR. PARKER: I'm simply trying to establish the
17 facts.

18 MR. SCHWARTZ: If I might, I appreciate --

19 THE COURT: Yeah. Go ahead, Mr. Schwartz.

20 MR. SCHWARTZ: I appreciate the argument but this
21 transaction doesn't involve any TARP money. The proper time to
22 make this objection would have been last week in connection
23 with the DIP which this Court approved with a specific binding
24 that the funds were appropriately expended under EESA and TARP.

25 THE COURT: Yeah, I understand that. Of course, the

1 more fundamental issue is whatever the authority of the
2 government to do what it did is, this witness' understanding of
3 the governmental authority is irrelevant. I'm sustaining the
4 objection.

5 MR. PARKER: Your Honor, I was simply trying to get
6 the factual --

7 THE COURT: Mr. Parker --

8 MR. PARKER: -- predicate of what happened.

9 THE COURT: You're a lawyer. You know that when a
10 judge rules --

11 MR. PARKER: Yes, sir.

12 THE COURT: -- you go on.

13 MR. PARKER: I'll go on.

14 BY MR. PARKER:

15 Q. Mr. Henderson, I believe you testified that there's
16 approximately -- there's 950 million dollars that -- I'm
17 unclear whether General Motors is leaving that behind or
18 whether it's new DIP financing. Whichever way, the 950 million
19 dollars that Old GM is going to have after the transaction
20 might not be enough to pay all the administrative expenses, is
21 that correct?

22 A. Correct.

23 Q. Under the master sale and purchase agreement, if it is
24 insufficient to pay -- the 950 million is insufficient to pay
25 the -- all the administrative expenses, is New GM under an

1 obligation to get further money?

2 A. No.

3 Q. Okay. Is -- how much money does General Motors have on
4 hand at the moment?

5 A. We expect in the U.S. to have at the end -- well, excuse
6 me. At the end of last week, we had a little over twelve
7 billion dollars. We have very large secured -- the line of
8 credit as well as the term loans are due and payable this week.
9 So we expect substantial outflows this week.

10 Q. Okay. When you close the transaction, assuming that the
11 Court approves the transaction, will there be a net transfer of
12 cash from Old GM to New GM?

13 A. Yes.

14 Q. About how much?

15 A. I don't know.

16 Q. Do you have any idea?

17 A. Not today, no.

18 Q. Okay. Did Treasury require GM to negotiate with the UAW?

19 A. Yes.

20 Q. As a condition of the sale?

21 A. It was part of our loan agreement, number one. And number
22 two, it was part of a condition -- as a condition of the sale,
23 yes.

24 Q. Okay. Under 363 sale and purchase, is it your
25 understanding -- do you have an understanding as to whether or

1 not a purchaser is required to assume a collective bargaining
2 agreement?

3 A. I believe so, yes.

4 Q. Okay. So is General Motors going to assume all of the
5 collective bargaining agreements that presently exist?

6 A. No. The new General Motors will not.

7 Q. New General Motors will not? Does the new General Motors
8 have the right to decide which collective bargaining agreements
9 it will --

10 THE COURT: Sustained.

11 MR. PARKER: Okay.

12 Q. Is management to receive any stock or stock options? Is
13 the management of the new GM to receive any stock or stock
14 options?

15 A. First of all, with respect to stock options, I think
16 they're prohibited on -- as I understand, under current
17 legislation, at least for the top twenty-five. And with
18 respect to stock, it is expected that that would be the case.
19 But at this point, no decisions have been made with respect to
20 the amount of stock that might be granted to the management.

21 Q. But it's expected management will be given some stock?

22 A. Yes.

23 Q. You said that one of the differences between the old GM
24 and the new GM is that management may be different in the new
25 GM, is that correct?

1 A. Yes, sir.

2 Q. Okay. Do we know who the new CEO is going to be?

3 A. I believe it will be me.

4 Q. The senior management team, is it going from the old GM to
5 the new GM?

6 A. Yes.

7 Q. Okay. Did -- under Section 4.05 of the 1995 indenture
8 agreement, the management is required to give a statement of
9 officers that the corporation is not in default of the loans
10 within the first four months of each year. In 2009, did
11 management give a statement of officers that General Motors is
12 not in default under the terms of the bonds?

13 A. First four months in 2009?

14 Q. Yes.

15 A. I don't know the answer to that question.

16 Q. Okay. Is it true that the bonds that were issued in 2003
17 were under the 1995 indenture agreement with Citibank?

18 MR. MILLER: Your Honor, same objection. The
19 document --

20 THE COURT: Sustained.

21 Q. Is there a limitation on liens provision in the loan and
22 security agreement?

23 MR. MILLER: Same objection, Your Honor.

24 THE COURT: Sustained. I'm not, Mr. Parker, going to
25 turn this into a memory case on what documents contain. If the

1 documents are otherwise admissible then you can tell me what
2 they say in oral argument. It's not fair to Mr. Henderson and
3 it's especially not fair to the creditors of this estate.

4 **Q. Who determined the ten percent number for the**
5 **bondholders -- well, for the unsecured creditors?**

6 MR. MILLER: Your Honor, the guidelines for this
7 hearing was that we should not be duplicating questions that
8 have been already prepondered.

9 THE COURT: Sustained.

10 MR. PARKER: Okay.

11 **Q. In May of 2009, was General Motors the top seller of**
12 **automobiles in the United States?**

13 **A. Yes.**

14 **Q. So far, in June of 2009, is General Motors the top seller**
15 **of automobiles in the United States?**

16 **A. Yes.**

17 **Q. Did Evercore do an analysis of New GM equity?**

18 **A. Yes.**

19 **Q. What was their analysis?**

20 **A. They did an analysis of what the possible equity value for**
21 **the company might be.**

22 **Q. Okay. Could you give us what the result was if you know**
23 **it?**

24 **A. They had a range of potential equity values on a steady**
25 **state basis, if you will, of approximately thirty-eight to**

1 **forty-eight billion dollars.**

2 **Q. Thirty-eight to forty-eight?**

3 **A. Yes, sir.**

4 **Q. Okay.**

5 MR. PARKER: No more questions, Your Honor.

6 THE COURT: Very well. All right. Who was next on
7 our list?

8 MR. BERNSTEIN: I believe I was.

9 MR. PARKER: By the way, Your Honor -- Your Honor,
10 would I be given an opportunity later to take a look at Exhibit
11 10 in evidence?

12 THE COURT: Now that the document's in evidence, it's
13 a public document. Your point is that you didn't bring a copy
14 so you need somebody else to give it to you?

15 MR. PARKER: No. I'm saying that my copy -- my point
16 is that I don't have a -- if I've got a copy of it, it's
17 apparently incomplete. And I just wanted to compare it with
18 the copy that's in evidence.

19 THE COURT: Anybody object to giving Mr. Parker
20 another look at Exhibit 10?

21 MR. SCHWARTZ: No, Your Honor.

22 THE COURT: No? I see a lot of negative nods. Work
23 it out, Mr. Parker. Of course you may.

24 MR. PARKER: All right. Thank you.

25 MR. BERNSTEIN: Good afternoon, Your Honor. My name

1 is Norman Bernstein. I'm also one of the trustees, the
2 Environmental Conservation Chemical Corporation Site Trust
3 Fund.

4 CROSS-EXAMINATION

5 BY MR. BERNSTEIN:

6 Q. Mr. Henderson, I want to quickly summarize what I
7 understood you testified to this morning as a preface to asking
8 you a related -- a different question. Is it correct that from
9 the latter part of December 2008 through the end of May 2009
10 General Motors could only pay its bills in the ordinary course
11 as they came due by borrowing money from the Treasury?

12 A. That's correct.

13 Q. Is the reciprocal also true that by borrowing money from
14 the Treasury, it could pay its bills in the ordinary course?

15 A. Correct.

16 Q. In May 2009, did General Motors pay all of its bills as
17 they came due in the ordinary course given the fact that it
18 could?

19 A. I believe so, yes.

20 MR. BERNSTEIN: Your Honor, I'd like to make a brief
21 offer of proof based on the documents we've already submitted
22 with our papers that on or about September 10, 1991, Judge
23 Nolan of the United States District Court of the Southern
24 District of New York entered a consent decree for the cleanup
25 of a superfund site called Environmental Conservation Chemical

1 Corporation Site and that General Motors was a signatory to
2 that consent decree as well as the United States, the state of
3 Indiana and a significant number of other companies; second,
4 that the EnviroChem Superfund Site is on EPA's national
5 priority list of some of the worst, or at least most serious,
6 superfund sites in the United States; third, that pursuant to
7 the terms of that consent, a trust was created to obtain money
8 from certain defendants, including General Motors, to fund the
9 cleanup of that site and that, pursuant to the Court's order,
10 General Motors was obligated to make payments to the trustees;
11 that on April 20th of 2009, General Motor received an
12 assessment from the trustees of the Environmental Conservation
13 Chemical Corporation Site Trust Fund of one-half million
14 dollars in total of which General Motors' share was 62,591
15 dollars.

16 It was not just simply a party to the consent decree,
17 it was the largest company in terms of percentage interest.
18 And that on or about May 20th, the trustees of EnviroChem Site
19 Trust Fund were informed by General Motors that it would not
20 honor any consent decree and that it would not pay the payment
21 due in the consent decree even though it was a payment due in
22 the ordinary course and, as we've established today, it, in
23 fact, could do so.

24 THE COURT: All right. Putting aside the slightly
25 argumentative last sentence, does the debtor prepared to

1 stipulate to that, Mr. Miller?

2 MR. MILLER: Your Honor, I don't have any knowledge
3 of the facts concerning this.

4 THE COURT: All right.

5 MR. MILLER: Although, I'd be happy to look into it,
6 Your Honor.

7 MR. BERNSTEIN: May I add, Your Honor, that all those
8 facts are set forth in our papers which were duly filed with
9 this Court under docket number 1865.

10 THE COURT: Yeah. I saw them there as part of my
11 preparation, Mr. Bernstein.

12 MR. BERNSTEIN: Thank you.

13 THE COURT: Some of this stuff that you said I can
14 take judicial notice of, like court decrees and the like. The
15 fact that the debtor didn't pay it is probably something that
16 you can stipulate to. Somehow I suspect that if the debtor had
17 paid it, you wouldn't be here.

18 MR. BERNSTEIN: Yes, sir.

19 THE COURT: Let's do it this way because I think what
20 we're really talking about is whether your objection is well
21 grounded in law or not but it isn't particularly a factual
22 dispute. I sense without prejudice to giving the estate a
23 chance to hear that -- to be heard on that. So what I would
24 like to suggest is that you propose the stipulation in oral
25 terms with your offer of proof and the debtors will get back to

1 you after they've had a chance to sleep on it and to caucus on
2 it. And if we need to find out a mechanism to find the core of
3 facts which are deemed to have been satisfactorily evidenced as
4 issues of fact, we'll figure out a way to do it without
5 prejudice to your position and any opponent's position on the
6 underlying solution.

7 MR. BERNSTEIN: That's fine, Your Honor. May I ask
8 the witness one additional question?

9 THE COURT: Sure. Go ahead.

10 BY MR. BERNSTEIN:

11 Q. If, in fact, General Motors made a conscious decision not
12 to carry out its obligations under a federal court consent
13 decree in May of 2009, who would have had the authority at
14 General Motors to make such a decision?

15 A. I honestly don't know, sir.

16 Q. Were you a party to any discussions concerning the payment
17 for environmental liabilities?

18 A. This is the first time I've heard this discussion. So --

19 Q. Well, you previously testified that there were some
20 politically -- I think you said sensitive issues. Were
21 environmental liabilities one of the politically sensitive
22 issues?

23 A. We discussed environmental liabilities in general.

24 Q. And with whom did you have that discussion?

25 A. It would be with the Treasury.

1 Q. And did the Treasury take any position as to General
2 Motors payment of its environmental liabilities?

3 A. I wasn't involved in those discussions so I couldn't say
4 what the purchaser's and Treasury's position was.

5 Q. Could you say who was involved for General Motors on those
6 discussions relating to environmental issues, sir?

7 A. I'm sorry. I don't know who it would have been.

8 Q. Is it fair to assume that General Motors had a team that
9 was doing the negotiating with the Treasury?

10 A. Yes.

11 Q. Who were members of the team?

12 A. That would include -- depends on the facts but it could
13 include Mr. Jordan Barken (ph.); could include our counsel; it
14 could include our labor team to the extent it was labor
15 related; it could include compensation specialists to the
16 extent it was compensation related; it could include me
17 depending upon the subject matter; it could include the chief
18 financial officer; it could include our general counsel; could
19 include our head of manufacturing; could have included a lot --
20 we have a lot of people involved with the purchaser.

21 Q. Was there someone who had primary responsibility for
22 environmental issues?

23 MR. MILLER: Your Honor, please, he's talking about
24 67,000 dollars. It's costing this estate more right now on his
25 questioning of the 67,000 dollars.

1 MR. BERNSTEIN: If you'd pay your bill, I wouldn't be
2 here, sir.

3 MR. MILLER: We didn't pay the bill and that may be a
4 fact.

5 THE COURT: I'm going to sustain the objection simply
6 on the Court's hearing power. Mr. Bernstein, I think we've
7 laid the factual predicate that you need to get your objection
8 heard if it's well founded in law. I think that this is not a
9 good use of our time to be going beyond what you already
10 accomplished.

11 MR. BERNSTEIN: All right, Your Honor. Thank you,
12 Your Honor.

13 THE COURT: Thank you. Anybody else? Come on up,
14 please?

15 MR. REINSEL: Good afternoon, Your Honor. Ron
16 Reinsel from Caplin & Drysdale. I represent Mr. Mark Buttita
17 (ph.).

18 THE COURT: Sure. Your last name again, please?

19 MR. REINSEL: Reinsel, R-E-I-N-S-E-L. Mr. Buttita is
20 a personal representative of Mr. Sal Buttita --

21 THE COURT: Right. I know that.

22 MR. REINSEL: -- a deceased asbestos claimant.

23 CROSS-EXAMINATION

24 BY MR. REINSEL:

25 Q. Mr. Henderson, I want to follow up on just a few questions

1 that Mr. Esserman asked you. I don't want to be redundant but
2 I'll just kind of take you back to that testimony if I could.

3 A. Certainly, sir.

4 Q. Mr. Esserman questioned you about and you said that you
5 were familiar with a report referenced in GM's March '09 10K
6 that provided an estimate of GM's asbestos liability. Do you
7 recall that?

8 A. Yes, sir.

9 Q. And that that was about approximately a 650 million dollar
10 liability over a ten year period, is that right?

11 A. That's correct.

12 Q. And, in effect, most of that 650 is for future claims, is
13 that right?

14 A. I believe so, yes.

15 Q. And those are future claims of folks who have not yet
16 become and don't know if they have a claim yet.

17 A. So this is a -- I understand this is a very complex area.
18 I simply know that the liabilities intended to provide a longer
19 term perspective. And as to when a particular liability is
20 triggered, I'm not an expert in that field.

21 Q. But generally, illnesses haven't manifested themselves
22 yet.

23 A. Over a ten year period? Again, I'm not an expert in this
24 area.

25 Q. Would you agree, sir, that if people who have not yet

1 manifested their illness wouldn't know they have a claim yet?

2 MR. MILLER: That's speculation, Your Honor.

3 THE COURT: I'll allow it.

4 A. I think it's a fair assumption.

5 Q. Mr. Henderson, as a part of GM filing its present
6 bankruptcy proceeding and the sale, it gave broad notice of
7 these proceedings.

8 A. Yes, sir.

9 Q. The objective being to let people know that if they have a
10 claim, those claims and their rights could be effective, is
11 that right?

12 A. Yes, sir.

13 Q. You would agree that if someone doesn't know they have a
14 claim yet, that notice wouldn't do them any good?

15 MR. MILLER: Again, Your Honor, same objection.

16 THE COURT: Overruled.

17 A. I would agree with you.

18 Q. 'Cause they wouldn't get notice.

19 THE COURT: You made your point once, Mr. Reinsel.
20 You don't need to do it again.

21 MR. REINSEL: Second point -- second set of questions
22 and I'm done, Your Honor.

23 Q. Mr. Henderson, as we understand if the sale is approved,
24 goes forward as it's presently proposed with the exclusion of
25 asbestos -- future asbestos liabilities, New GM, either because

1 those claims are not being assumed or they're otherwise being
2 protected, New GM's being protected from people asserting
3 those, a future claimant will not have recourse against New GM,
4 is that right?

5 A. That's my understanding, yes.

6 Q. And if I recall your earlier testimony, if the sale goes
7 through, Old GM will then liquidate, is that right?

8 A. Yes.

9 Q. If asbestos claim -- and you say that that liquidation
10 period, you estimated, would be done within three years?

11 A. I said I didn't know for certain but it was a fair
12 assumption that it could be done within three years. I just
13 don't know.

14 Q. Relatively expeditiously.

15 A. I think that would be the objective, yes.

16 Q. And, say, then that if an asbestos or any of the other
17 excluded future injuries arise after that liquidation is
18 concluded, it would have no recourse against Old GM, is that
19 right?

20 MR. MILLER: Your Honor, again it calls for a
21 conclusion.

22 THE COURT: Yes. That calls for a conclusion as well
23 and I'm going to sustain that objection.

24 MR. REINSEL: All right. Thank you, Your Honor.

25 THE COURT: And I don't think his businessman's

1 understanding would help us much in that regard.

2 MR. REINSEL: That's fine, Your Honor. Thank you
3 very much.

4 THE COURT: Okay. All right. I think we've now
5 heard everybody who told us that they wanted to follow up with
6 a committee representatives and the main ones. I think it's
7 time for your allies and the debtor to question. Do you need
8 or would you like a short recess before we begin, Mr. Miller,
9 or would you like --

10 MR. MILLER: Could we have five minutes, Your Honor?

11 THE COURT: Beg your pardon?

12 MR. MILLER: Five minutes.

13 THE COURT: You've got it. All right. We're in a
14 five minute recess.

15 (Recess from 4:31 p.m. until 4:41 p.m.)

16 THE COURT: Can we settle down, please? Mr. Miller,
17 as soon as it quiets down, you can begin. Mr. Henderson,
18 you're still under oath.

19 MR. MILLER: Harvey Miller for the debtors.

20 REDIRECT EXAMINATION

21 BY MR. MILLER:

22 **Q. Mr. Henderson, during your cross-examination, you referred**
23 **to sales during the month of June. How did those sales compare**
24 **with sales last year for the same period?**

25 **A. We expect to be down in total of approximately thirty**

1 percent and then retail down at least twenty percent from the
2 prior year.

3 Q. And in the prior year, did GM make money in the month of
4 June?

5 A. I do not believe so, no.

6 Q. And did GM make money in 2009 in the month of June?

7 A. We do not expect to make money in June of 2009.

8 Q. Do you have an opinion as to why GM beat the downside
9 projections for the month of June 2009.

10 A. I do.

11 Q. What is that opinion?

12 A. Three reasons, I believe. Perhaps four but we'll go
13 through one at a time. First, our marketing has been focused
14 on loyal GM customers. We have a GM credit card, for example,
15 that has historically been used by loyal GM customers. We went
16 out to those customers this month to offer them a set of
17 incentives which made it attractive for a loyal GM customer to
18 consider a GM vehicle in this particular month sold. Our
19 marketing was very, very focused on the loyal GM customer as
20 opposed to the conquest GM customer who we would like to have
21 consider our product.

22 Number two, the offers we've had have been attractive for
23 that loyal GM customer. So the value is there for the
24 customer.

25 Number three, we have some fantastic cars and trucks with

1 a great offer on the table. And so, we have marketed them to
2 the best of our ability.

3 And number four, I believe that there's a confidence
4 certainly that a customer can purchase a GM vehicle --
5 certainly the loyal GM customers are looking at it and saying
6 you can purchase a GM vehicle, be assured that it could be
7 serviced. You can receive parts. The government has, in fact,
8 actually stood behind our warranty even though we don't believe
9 the government will have to ever make good on that guaranty
10 because we will be there for the customer.

11 And the expectation that the bankruptcy process, having
12 seen what's happened with Chrysler, would go quickly with
13 General Motors as well.

14 Q. And do you believe that the Chrysler case had anything to
15 do with the sales?

16 A. As I said in my comments, I think it's the last point, the
17 fact that Chrysler did -- 363 transaction with Chrysler did go
18 relatively quickly, provided some buyers certainly some
19 assurance that, in fact, this can be done relatively quickly.

20 Q. And do you have a category of potential customers under
21 the title of, say, "Conquest"?

22 A. Yes.

23 Q. What does it mean?

24 A. Conquest would typically mean where we are -- where a
25 customer might either be loyal to a Toyota or a Nissan or some

1 other brand or, in fact, perhaps would consider us but wasn't
2 coming out of a GM vehicle. So they hadn't been a loyal GM
3 customer. So therefore, it could be someone who's been very
4 satisfied with some other brand and we would be -- this is the
5 toughest marketing challenge, if you will. Or, customers who
6 are coming out of a GM product would consider our product but
7 also looking at a full range of other products at the same
8 time.

9 Q. And how did GM fare in the conquest category during
10 these --

11 A. Our conquest matrix which have been -- I think it's one of
12 our biggest challenges -- certainly, in the last several months
13 and certainly in the month of June in the last wave of research
14 we saw which show the consideration for customers thinking
15 about General Motors has fallen which is of significant concern
16 to us.

17 Q. And fallen for what reasons, if you know?

18 A. Well, the rapid falloff actually took place in the last
19 wave of research which was in the middle of June. So we think
20 at least, in part, it had to do with our filing.

21 Q. Now, Mr. Henderson, turning to the UAW settlement, do you
22 know what the source of the consideration that would be
23 provided to the UAW retirees and beneficiaries is?

24 A. I think the source is the purchaser.

25 Q. And as part of that settlement, the claim that the UAW may

1 have the VEBA and under the collective bargaining agreement,
2 against Old GM, if this sale is approved, that claim will be
3 waived, will it not?

4 A. It'll be released, yes, that's my understanding.

5 Q. And is OldCo providing any of the consideration that is
6 going to the UAW as part of the UAW settlement?

7 A. OldCo, sir?

8 Q. Yes.

9 A. I believe not.

10 Q. Did GM manufacture any asbestos products?

11 A. No.

12 Q. What is the source of the asbestos claims against GM?

13 A. To the best of my knowledge, the largest single factor
14 were asbestos used in brake linings.

15 Q. And those brake linings were furnished by a supplier?

16 A. Yes.

17 Q. And have you ever heard of the expression orphan-share?

18 A. No.

19 THE COURT: I didn't hear that expression.

20 MR. MILLER: Orphan-share, Your Honor.

21 THE COURT: Often-share?

22 MR. MILLER: An orphan. This is the share in an
23 asbestos settlement where one or more of the companies has gone
24 into bankruptcy, and whoever remains picks up that orphan
25 share.

1 THE COURT: I've sat in many asbestos cases and I
2 still didn't hear that. Often?

3 MR. MILLER: Orphan.

4 THE COURT: Oh, orphan. It must be your New York
5 accent.

6 MR. MILLER: It's probably the New York accent.

7 THE COURT: Orphan-share, yes I have -- okay.

8 Q. Mr. Henderson, turning to the cross-examination by Mr.
9 Kennedy. Mr. Kennedy referred to the 300 dollars per month
10 that was added to the retirees' pension plan payments?

11 A. Yes, from the salaried retiree plan, yes.

12 Q. And that 300 dollars per month is payable out of what?

13 A. It's paid from the salaried pension fund.

14 Q. And at the time that the decision was made to increase the
15 pension payments, what was the status of the fund?

16 A. It was overfunded at the time.

17 Q. And had there been a previous increase in the pension
18 benefits prior to the 300 dollars?

19 A. For salaried employees?

20 Q. Yes.

21 A. No.

22 Q. For how long?

23 A. For many years.

24 Q. In connection -- if you would, Mr. Henderson, would you
25 look at the binder that Mr. Kennedy was using?

1 A. Which one? First hearing or 9 to 12?

2 Q. Nine to twelve. And if you would look under the exhibits
3 relating to your deposition? So that would be under 10. And
4 if we could go to page 3, GM assets to New GM?

5 A. Page 3 of the deposition?

6 Q. Under -- yes. Not of the deposition. I'm sorry.

7 MR. MILLER: Might I approach, Your Honor, just to
8 show him?

9 THE COURT: And after you help him, you can help me.

10 THE WITNESS: Oh, tab 3.

11 (Pause)

12 Q. If you look under tab 6 --

13 A. Tab 6 behind my deposition?

14 Q. Yes.

15 THE COURT: The contingency plan 363 now?

16 MR. MILLER: On page 3.

17 THE WITNESS: I have it now. Thank you.

18 Q. If you would look, Mr. Henderson, at page 3, GM assets to
19 New GM, the third bullet point says, "Core Assets Retained."
20 Do you know what was meant by the phrase "core assets"?

21 A. These would be assets that we generally consider to be
22 necessary and important to run the business going forward.

23 Q. And was that a subject matter in which the U.S. Treasury
24 was involved?

25 A. Yes.

1 Q. And essential in what sense?

2 A. We had iden -- it was management's view that we needed to
3 identify those assets which needed to be part of the New
4 General Motors to run the business. And we wanted to be able
5 to show those and outline them for the purchaser.

6 Q. And that was in connection with making New GM a viable
7 entity?

8 A. Yes.

9 Q. And if GM was a highly viable entity, what would be the
10 effect on the capital stock of the New GM?

11 A. It provides the best chance to maximize value.

12 Q. And as more liabilities were imposed upon New GM, what
13 wouldn't be the effect of that?

14 A. It would reduce value.

15 Q. How many active employees do the splinter unions -- and by
16 the splinter unions, I mean the IUE and the other unions which
17 Mr. Kennedy referred to --

18 A. Actually working today?

19 Q. Actually working today?

20 A. I think about 150.

21 Q. And how many active employees does the UAW have?

22 A. Approximately 60,000.

23 Q. 60,000? Would New GM be able to operate its plants
24 without the UAW employees?

25 A. No.

1 Q. Do you know what the cost of the IUE retiree benefits are
2 on a monthly basis?

3 A. The total cost that we're paying today is approximately 26
4 million dollars a month.

5 Q. And on an annual basis that would be --

6 A. That's not IUE. That's IUE plus all the splinter unions,
7 yes.

8 Q. And on an annual basis --

9 THE COURT: Mr. Henderson, as to all the unions, you
10 meant all of the splinter unions --

11 THE WITNESS: Yes, sir.

12 THE COURT: -- but not the UAW?

13 THE WITNESS: Correct, sir. Yes, sir.

14 Q. So that --

15 THE COURT: What was the figure? I'm sorry.

16 THE WITNESS: Twenty-six million dollars a month.

17 THE COURT: Thank you.

18 Q. So on an annual basis, that would be more than 300 million
19 dollars a year?

20 A. That's correct.

21 Q. Now, if you would turn please to -- let me ask you this.
22 The salaried retirees of GM, what will happen to their retiree
23 benefits if the 360(b) transaction is approved?

24 A. The salaried retiree healthcare benefits?

25 Q. Yes.

1 A. They would be modified in accordance with the schedule to
2 achieve the sixty-seven percent reduction in the liability, and
3 they would continue on that basis.

4 Q. And those benefits would generally encompass what?

5 A. We provide a certain level of coverage that's capped prior
6 to age sixty-five. And then once someone -- once a retiree
7 reaches Medicare, they go to Medicare, and the company is no
8 longer responsible.

9 Q. And the New GM will assume those responsibilities?

10 A. Correct.

11 Q. And as to pension for salaried employees and for hourly
12 employees, are those being assumed by New GM?

13 A. In their entirety, yes, both plans.

14 Q. Now, Mr. Kennedy referred to -- if I can find it -- if you
15 would turn, Mr. Henderson, I think it's Tab 14, entitled
16 "Salaried and Splinter Union Benefit Obligations Guideline
17 Objectives."

18 A. Yes, sir.

19 Q. And this is the chart which referred to the original
20 proposal of sixty-two percent?

21 A. Correct.

22 Q. And the changes made?

23 A. Correct.

24 Q. Now, looking at the line SOBP-Executive Life, what
25 happened to those benefits?

1 A. These were benefits provided to executives for life
2 insurance, and they are eliminated in their entirety.

3 Q. And going above that, Mr. Henderson to "Salaried Retiree
4 Health Care and Executive Nonqualified Pension (DB)", what
5 actually had been taken with those benefits prior to the date
6 of this document?

7 A. Well, the salaried healthcare plan had been changed
8 several times in the last several years. The first thing that
9 was done with the salaried -- and by the way, salaried
10 healthcare includes all executives. So there's no difference
11 in plan between -- on healthcare between an executive and a
12 salaried employee -- or retiree, excuse me. We capped the
13 company's contributions. I believe that was during 2006. And
14 then effective 1/1/09 was when we -- when we drop after a
15 retiree reaches Medicare.

16 Q. So that over the years prior to the date of this document,
17 salaried employees have been subjected to a number of cuts?

18 A. Yes.

19 Q. And during that period of time, were members of the
20 splinter unions subjected to similar cuts?

21 A. In 2006, subsequent to the negotiation in 2005 of
22 healthcare changes with the UAW, we did negotiate with the IUE
23 and made modifications which, in the end, lowered the company's
24 costs associated with healthcare in a way that was analogous to
25 what the UAW did in 2005.

1 Q. And that was the subject of collective bargaining?

2 A. Yes.

3 Q. And as to the salaried employees, GM had a unilateral
4 right to reduce?

5 A. Correct.

6 Q. Mr. Henderson, did General Motors commence these Chapter
7 11 cases as part of a conspiracy to deprive the splinter unions
8 of retiree health and medical benefits?

9 A. No.

10 Q. Now, in the cross-examination by Mr. Jakubowski, he spent
11 some time about whether the purchase price was subject to
12 modification. And he talked about the assumption of
13 liabilities by the Treasury. Isn't it a fact that assuming
14 liabilities increases the purchase price?

15 A. That's true.

16 Q. And puts more liabilities on NewCo?

17 A. Correct.

18 Q. And in terms of the provision in the MPA or the master
19 sales and purchase agreement, it prohibits, without approval,
20 adjustments downward in the purchase price, rather than
21 upwards?

22 A. I don't know.

23 Q. And in connection with the indemnity of dealers as to
24 product liability of clients, I believe you said that GM
25 generally indemnifies all of its dealers?

1 A. Correct.

2 Q. And post closing of a 363 transaction, would that mean
3 that in connection with product liability claims that are
4 sustained, the New GM would have to indemnify the dealers
5 concerning those claims?

6 A. Correct.

7 Q. And GM is going -- New GM will retain a good portion of
8 the dealer network?

9 A. Yes.

10 MR. MILLER: Just one moment, Your Honor.

11 Q. Mr. Henderson, in the deliberations of the auto directors
12 and management as to, let me call it, choice of debtor relief,
13 consideration was given to a traditional Chapter 11?

14 A. Yes.

15 Q. And in connection with that consideration, was there any
16 consideration given to the financing of such a Chapter 11 case?

17 A. Yes.

18 Q. And what conclusion was reached?

19 A. The conclusion was reached, we outlined this actually in a
20 report that we submitted on February 17th, a viability plan,
21 that a traditional Chapter 11 process, one, would involve very
22 substantial amounts of financing, even beyond that which is
23 being identified here, potentially; and two, it would take a
24 reasonably long period of time. And the only source of
25 financing was the U.S. Treasury.

1 Q. And to the best of your knowledge, that was a
2 consideration that the United State Trustee gave in reaching
3 its conclusions?

4 A. The U.S. Treasury?

5 Q. Yes.

6 A. I believe so, yes.

7 Q. And that additional -- the financing that has been
8 approved by the Court in connection with these Chapter 11 cases
9 is 33.3 billion dollars. You're aware of that?

10 A. That's the debtor-in-possession financing, yes.

11 Q. And the indebtedness to the U.S. Treasury pre-June 1
12 commencement date is 19.4 billion dollars?

13 A. Correct.

14 Q. And if the --

15 MR. MILLER: I'll withdraw that.

16 Q. Do you have any opinion, Mr. Henderson, that absent a UAW
17 retiree settlement, what action the UAW would take in
18 connection with their continued Chapter 11 for a different
19 transaction for the disposition of these assets?

20 A. Well, certainly one of the requirements of our loan and
21 service agreement and of the U.S. Treasury was that we needed
22 to negotiate a new collective bargaining agreement or changes
23 to the collective bargaining agreement which would allow us to
24 be fully competitive and equatize at least half of the VEBA
25 obligation we had. Otherwise it was our judgment that the

1 treasury would not proceed.

2 Q. And would you characterize the negotiations with the
3 Treasury as arm's-length, strenuous negotiations.

4 A. They were very strenuous negotiations.

5 Q. And were they conducted in good faith?

6 A. Yes.

7 MR. RICHMAN: Your Honor, that calls for a legal
8 conclusion.

9 THE COURT: If you mean by 363(m) standards, or
10 rather good faith as used under the applicable standard for 363
11 sales, it's sustained on legal conclusion. If you want, you
12 can rephrase and get a businessman's understanding, as long as
13 it doesn't equate to what Mr. Richman is driving at.

14 Q. Mr. Henderson, during the course of your career, you've
15 been engaged in a lot of negotiations?

16 A. Yes.

17 Q. And the negotiations with the Treasury, from your
18 perspective, were they good faith negotiations?

19 MR. RICHMAN: Same objection, Your Honor.

20 THE COURT: Sustained.

21 Q. How would you describe those negotiations, Mr. Henderson?

22 A. I would describe them as professional, tough, just given
23 the situation we were all in. I have, in my career, not seen a
24 more dedicated group of people in the automotive task force
25 working around the clock with us working around the clock to

1 try to find solutions. They were tough on us where they needed
2 to be. We did -- we tried to problem solve to find solutions.
3 And there were a number of cases where we were at loggerheads
4 and we tried to find solutions, and in other cases, as the
5 purchaser, their views were of paramount importance. And given
6 their position as a secured lender, they had a significant
7 amount of leverage in the negotiations.

8 Q. During a hearing in this Court last week, the attorney for
9 the creditors' committee referred to the U.S. Treasury as an
10 800 pound elephant. Would you agree with that?

11 A. Well, it's a mixed metaphor, actually. But they were very
12 powerful, yes.

13 MR. MILLER: That's all, Your Honor. Thank you.

14 THE COURT: Anybody supporting the motion want to
15 redirect before I give an opportunity for recross?

16 MR. JONES: No, thank you, Your Honor.

17 THE COURT: Anybody else? Okay. I will now take a
18 recross, same order as originally, limited to the scope of
19 redirect.

20 MR. RICHMAN: Good afternoon, again, Your Honor.

21 Michael Richman for the family and dissident GM bondholders.

22 RE-CROSS-EXAMINATION

23 BY MR. RICHMAN:

24 Q. Good afternoon, Mr. Henderson.

25 A. Good afternoon.

1 Q. I'm going to just ask a few questions related to some
2 questions that Mr. Miller just asked. Mr. Miller was asking
3 why you thought that GM's business was doing so well in June
4 compared to prior months, and particularly after the bankruptcy
5 was filed. And you gave four reasons, the first three of which
6 were changes in the business model and other innovations in
7 dealing with customers. Remember that testimony?

8 A. Yes, I do.

9 Q. Then you spoke to -- and I don't know if I remember your
10 words correctly, but you said you also felt that customers have
11 confidence now that a vehicle can be serviced and that the
12 company would stand by the warranties, and an expectation that
13 the bankruptcy process will go quickly. Isn't it a fact that
14 the government announced that it was standing behind the
15 warranties well before the bankruptcy case was filed?

16 A. Oh, it did. Sure.

17 Q. So the confidence that customers would have in warranties
18 and servicing related to steps the government took that were
19 completely independent of the bankruptcy filing. Isn't that
20 correct?

21 A. It was -- they announced it before the bankruptcy filing,
22 and it's been something we've continuously communicated through
23 the process.

24 Q. Right. Now, do you have your declaration in front of you?
25 I think it's Debtors' Exhibit 15.

1 A. I do not have it in front of me.

2 MR. RICHMAN: Do we have an exhibit binder with that?

3 THE WITNESS: Is it in here?

4 Q. It's in one of them. Do you have two?

5 A. I've got two. I don't think it's in the IUE. It must be
6 in the other one.

7 Q. In the other one.

8 A. What tab is it in?

9 Q. It's toward the back. It is Debtors' Exhibit 15.

10 A. Here it is. Thank you.

11 Q. Thank you. I want to direct your attention to paragraph
12 84 where you discuss the risks to GM of a prolonged Chapter 11
13 process.

14 A. Yes, sir.

15 Q. Is that what you meant when Mr. Miller asked your opinion
16 of a traditional Chapter 11 bankruptcy?

17 A. Yes.

18 Q. A prolonged process, in your words?

19 A. Yes.

20 Q. And isn't it a fact that when the case was filed, these
21 bankruptcy cases were filed on June 1, that you made several
22 public statements to the effect that GM expected to emerge from
23 bankruptcy in sixty to ninety days?

24 A. No later than sixty to ninety days, yes.

25 Q. Yes. And then the White House made similar statements,

1 didn't they?

2 A. Yes.

3 Q. You also say in paragraph 84 that "Information compiled by
4 or at the direction of the company confirms that the mere
5 threat of a bankruptcy filing has depressed GM's sales, and
6 that in an extended period of a bankruptcy case, the sales
7 reductions and customer defections can be expected to be even
8 more significant." Do you see that statement?

9 A. Yes.

10 Q. That hasn't happened yet, has it?

11 A. Based upon June sales, it has not happened yet.

12 Q. And when you told Mr. Miller that it was your opinion that
13 customers had an -- expectations -- that one reason you were
14 doing well in June was because customers had an expectation
15 that the bankruptcy process would go quickly, was that based on
16 any information compiled by or at the direction of the company?

17 A. That's pure judgment, sir.

18 Q. Your personal pure conjecture?

19 A. And -- well, dealers, talking -- basically we get
20 anecdotal information from dealers as to what they believe.
21 But there's no -- we don't have hard research which would
22 suggest that.

23 Q. And were you to file a Chapter 11 plan that could create
24 New GM in sixty to ninety days, don't you believe that
25 customers would continue to be assured and will continue to

1 purchase vehicles as they have during the month of June?

2 A. Well, in this case, the U.S. Treasury as purchaser
3 indicated that we needed to move forward with the 363
4 transaction. And that's how we've proceeded.

5 Q. Because Treasury directed you to do it that way?

6 A. They were providing the financing for the transaction.

7 Q. Right. And Treasury has indicated that its financing will
8 go through July 10, but has not, so far as I can tell from
9 anything I've seen in the record, said anywhere that at July
10 10, they will never agree to any extensions or further
11 financing, have they?

12 A. I just know that July 10, sir.

13 Q. Is their deadline?

14 A. Yes.

15 Q. And that they've made -- today, they haven't made any
16 commitments beyond that?

17 A. I have not heard any such commitments.

18 Q. Briefly, just on the collective bargaining agreement Mr.
19 Miller asked you about with respect to the UAW. Isn't it a
20 fact that the collective bargaining agreement as modified
21 through the negotiations that Treasury asked you to engage in
22 has already become effective?

23 A. The operating measures are -- I think at this point, are
24 by and large, in effect.

25 Q. They are in effect. So the union is already operating in

1 connection with the amended collective bargaining agreement?

2 A. The -- I believe some parts of it are. For example, the
3 changes in the jobs bank -- or excuse me, doing away with the
4 jobs bank, launching the attrition plan. I'm not sure if all
5 of the provisions are in place today. I'm just not sure. And
6 I know that the VEBA has not yet, certainly, changed.

7 Q. If the Court expressed a preference to proceed under an
8 accelerated Chapter 11 plan, to create a New GM in sixty to
9 ninety days, do you have any reason to believe that the union
10 is going to breach its collective bargaining agreement or
11 otherwise cease working because the judge expressed a
12 preference that a sale not take place within the time frame
13 being requested?

14 A. I can't speak for the UAW.

15 Q. Okay.

16 MR. RICHMAN: I have nothing further, Your Honor.

17 THE COURT: Okay. Any re-redirect?

18 MR. MILLER: No, Your Honor.

19 THE COURT: Okay. Oh.

20 MR. JAKUBOWSKI: Your Honor, I have some questions.

21 THE COURT: Oh, I'm sorry.

22 RE-CROSS-EXAMINATION

23 BY MR. JAKUBOWSKI:

24 Q. Mr. Henderson, Mr. Miller asked you on direct, redirect,
25 whether or not the purchase price to the seller increases to

1 the extent that it assumes various liabilities, right? And you
2 recall saying the answer to that is yes?

3 A. Yes.

4 Q. But from the estate's perspective, there's no diminution,
5 is there, as a result of that increase, is there?

6 A. Well, the purchaser would be paying more, and so
7 therefore, if a liability that was otherwise with the old
8 company was going to go with the new company, the old company
9 would be better off.

10 Q. Okay. So the estate would actually be enhanced as a
11 result of that increase -- the resulted increase in purchase
12 price to the purchaser?

13 A. That's correct.

14 Q. Okay. Now, I would like to ask you about the dealer
15 indemnity that Mr. Miller brought up on redirect.

16 MR. JAKUBOWSKI: And let me go to the next exhibit,
17 is it Exhibit 4, Mr. Henderson? Does anyone know?

18 Q. How many exhibits do you have in front of you right now?

19 MR. JAKUBOWSKI: Does anyone know --

20 A. Incalculable.

21 Q. So we will do the product liability claimant advocates
22 PLCA Exhibit 1.

23 MR. JAKUBOWSKI: And if I may approach the witness,
24 and I'll give you a copy, Your Honor. And I will give a copy
25 to --

1 THE COURT: I assume your opponent received a copy?

2 MR. JAKUBOWSKI: Yes, Your Honor.

3 THE WITNESS: Thank you, sir.

4 Q. Do you recognize this document, PLCA-1?

5 A. Yes.

6 Q. And could you just tell the Court generally what this
7 document is?

8 A. It's providing an update on the 363 sale as of June 5th.

9 Q. And this is a format that the company, GM, has used to
10 provide periodic updates to its executives and to Treasury,
11 correct?

12 A. And to our board of directors, yes.

13 Q. And this is an update that was prepared after the filing
14 of the bankruptcy, correct?

15 A. Correct.

16 Q. And in that, you have a -- on PowerPoint page 4 of that,
17 you have identified what you call a liability reduction
18 tracking sheet, right?

19 A. Correct.

20 Q. And what was the purpose of that?

21 A. To provide an update on where we stand on each of these
22 individual liabilities.

23 Q. And these were liabilities that would either be assumed by
24 NewCo or not be assumed by NewCo, correct?

25 A. Correct.

1 Q. And you broke them into various categories, buckets -- for
2 example, your general debt; your pension; your OPB litigation;
3 tax related; and operational liabilities. Correct?

4 A. Correct.

5 Q. And these were forecasted based on your 12/31/08 numbers,
6 correct?

7 MR. JAKUBOWSKI: Strike that question. I'm sorry. I
8 apologize.

9 Q. It also includes off-balance liabilities that you were
10 tracking, correct?

11 A. Yes.

12 Q. Now, would you please turn to page 13 -- PowerPoint page
13 13 of the document? Excuse me. Please start with page 12.
14 And the summary on page 4 is broken down at the back of the
15 document at pages 12, 13 and 14, correct?

16 A. Yes.

17 Q. And as far as you can tell, do you believe that this
18 reflected an accurate analysis on June 5th of the initial
19 forecast of liability reduction and the current forecast as of
20 that date?

21 A. As of June 5th?

22 Q. Yes.

23 A. No reason to believe otherwise.

24 Q. So if you look at the section called "Litigation", number
25 6 on page 13, you see it references product liability claims,

1 correct?

2 A. Yes.

3 Q. And the 934 million dollar initial forecast was based on
4 the first quarter 10Q as of March 31, 2009, correct?

5 A. I believe that's true.

6 Q. And your current forecast as of June 5th says that that
7 projected liability reduction is actually going to go down by
8 400 million dollars, correct?

9 A. Correct.

10 Q. And you said the reason -- isn't it the case that the
11 reason it went down was because of the dealer indemnity
12 agreements that you had struck just after the filing of the
13 petition?

14 A. Our dealer agreements customarily include indemnification
15 for dealers. And so it is true that we would have updated our
16 estimate, and it's purely an estimate of what that might be.

17 Q. But your estimate at the time was about 400 million dollar
18 assumption of liabilities by the purchaser, correct?

19 A. Through the indemnification, yes, that would be a fair
20 assumption.

21 Q. Okay. Now, Mr. Miller talked to you a bit about product
22 liability case. And are you aware, as a businessman, of the
23 approximate number of states in which dealers are required by
24 law to pay for product liability claims with respect to
25 vehicles they sell?

1 **A. No, I'm not.**

2 **Q. You have no sense of that?**

3 **A. No, sir.**

4 MR. JAKUBOWSKI: Your Honor, I have no further
5 questions. I guess I do have one question for you, if I may.
6 And that is whether or not you have any interest in seeing a
7 supplemental memorandum on the issue of the responsibility of
8 dealers in various states for indemnity obligations?

9 THE COURT: No.

10 MR. JAKUBOWSKI: Okay.

11 THE COURT: I don't think that's relevant to legal
12 issues that are before me.

13 MR. JAKUBOWSKI: Okay. I have no further questions,
14 Your Honor. Thank you.

15 THE COURT: Fine. Mr. Esserman?

16 MR. ESSERMAN: Yes.

17 REXCROSS-EXAMINATION

18 BY MR. ESSERMAN:

19 **Q. Mr. Henderson, my name is Sandy Esserman. I represent the**
20 **ad hoc asbestos committee, and I have a few follow-up questions**
21 **that were raised by Mr. Miller's direct. And then I think**
22 **you're just about done for the day. Mr. Henderson, you talked**
23 **about several factors that you thought might be part of the**
24 **reason why GM sales were looking pretty good. You talked about**
25 **your marketing your GM credit card. Do you recall that**

1 testimony just now?

2 A. What I said was our sales were going to be down twenty to
3 thirty percent. So they were better than we had expected.
4 They're still terrible. And the point is, is that the
5 marketing around the GM card has been a factor, yes.

6 Q. And that GM credit card that you're talking about, that's
7 used in connection with the purchase of a GM automobile?

8 A. Yes. There's credits that a customer would have that they
9 could use in connection with the purchase of a GM automobile.

10 Q. And those credit cards are good for Old GM as well as New
11 GM?

12 A. These are cards actually issued by a bank that's had an
13 affinity program with us for many years.

14 Q. And have those cards been used to purchase Old GM cars,
15 cars made by this debtor?

16 MR. MILLER: Can you fix a period in time, please?

17 Q. Any time prior to today?

18 A. Yes, certainly.

19 Q. And will those credit cards also be honored post-sale by
20 General Motors?

21 A. The -- what the customer has are credits that they can
22 use, akin -- I mean these are credits that they build up by
23 using the card over time. And we very much welcome when
24 customers wish to use them. As a form of incentive, it's
25 actually a fairly attractive way to maintain loyalty with

1 traditionally loyal GM customers.

2 Q. Can we just cut through to all of that -- those credit
3 cards were good to purchase cars from Old GM, they're going to
4 be good to purchase cars from New GM?

5 A. That's not true. The credit cards don't purchase the
6 cars. The credits --

7 Q. The credits, okay. The credits.

8 A. -- on the credit card can be used to purchase a GM
9 vehicle.

10 Q. Both from Old or New GM, correct?

11 A. Well the Old GM won't be selling -- the New GM will be
12 selling GM vehicles.

13 Q. Old GM's selling cars today, aren't they?

14 A. Yes. Yes, sorry.

15 Q. So, and there is no New GM yet, correct?

16 A. Correct.

17 Q. So all cars being sold by GM are being sold by Old GM. Is
18 that right?

19 A. That's correct.

20 Q. And these credits can be used to purchase cars from either
21 Old GM or New GM. Is that right?

22 A. New GM doesn't exist today.

23 Q. When New GM does exist?

24 A. That's correct.

25 Q. And you talked about your marketing loyalty of your

1 customers. Those would be the customers that you hope will
2 continue from the Old GM to the New GM. Is that correct?

3 A. Well, loyal -- traditionally, a loyal GM customer would
4 have been someone who would have bought over the course of
5 years a number of GM vehicles and has a proclivity and
6 inclination to continue to buy a GM vehicle. That's what we
7 refer to when we talk about a more traditionally loyal GM
8 customer.

9 Q. And you want that customer to view this as a seamless
10 transaction, don't you?

11 A. Yes.

12 Q. Something that he won't notice that when he goes in to buy
13 his Cadillac, that there's any difference from what he
14 purchased last year. Is that correct?

15 A. Correct.

16 Q. And the same answer would be for your excellent GM
17 service, your parts, and your standing behind the warranty.
18 You want that to be a seamless transaction to New GM, do you
19 not?

20 A. That's correct.

21 Q. Let's talk a little bit about the UAW settlement that Mr.
22 Miller discussed with you.

23 A. I believe Mr. Miller stated and you agreed that OldCo is
24 providing no consideration to the UAW, that their stock that
25 they're going to receive as part of this transaction isn't

1 going to be paid by NewCo. Is that right?

2 A. The stock they received, they received from the Treasury.
3 And so that's part of their -- that's part of the deal in the
4 new company.

5 Q. And that OldCo is providing no consideration of the UAW,
6 is that --

7 A. I'm not aware of any consideration of OldCo providing to
8 the UAW.

9 Q. Okay. But isn't it a fact, under the sale agreement,
10 OldCo is giving the UAW a release?

11 A. I think the UAW gives OldCo a release.

12 Q. OldCo doesn't give the UAW a release?

13 A. Perhaps they do. I don't know.

14 Q. It would be in a document if, in fact, it's the case?

15 A. I'm aware of the UAW and the VEBA giving OldCo the
16 release, so that they no longer have a claim for post-
17 retirement healthcare benefits against the Old General Motors.

18 Q. Are you aware of any releases being given by OldCo as part
19 of this transaction to sell to New GM?

20 A. I'm sorry, sir, I'm not aware.

21 Q. That's fine. Part of Mr. Miller's recross was talking
22 about --

23 MR. MILLER: Redirect.

24 MR. ESSERMAN: Oh, sorry, redirect. Thank you, Mr.
25 Miller.

1 Q. -- I won't get into this orphan share, I frankly couldn't
2 understand it either -- but this asbestos brakes is what he
3 asked you about. Do you recall that line of questioning?

4 A. I do, sir.

5 Q. And Mr. Miller said that the asbestos brakes were
6 furnished by suppliers to GM. Is that --

7 A. It is. The brake linings, yes.

8 Q. -- okay. And one of those suppliers was Delphi, isn't it?

9 A. I'm not -- I don't know if Delphi was ever in brake
10 linings. They may have been. I just am not aware. They were
11 brakes, but they were not -- I'm not sure if they were in brake
12 linings.

13 Q. Do you know where GM purchased their brake linings from,
14 then?

15 A. Multiple suppliers.

16 Q. Could Delphi have been one of them?

17 A. They could have been, but I don't know.

18 Q. Okay. Finally, Mr. Miller talked about the tough
19 negotiations as part of the sale transaction. You're aware of
20 that?

21 A. Yes.

22 Q. And a couple final questions I have for you. As part of
23 these tough negotiations, would it be a correct statement of
24 fact that no one from GM carried the banner or represented at
25 the table the asbestos claimants?

1 A. I think we outlined for the Treasury the level -- the
2 nature of the asbestos liability, the issues surrounding it,
3 and the purchaser, or the Treasury, in this case, concluded
4 that it was not appropriate to bring forward.

5 Q. My question -- and listen to my question carefully,
6 because I understand your answer, but I don't think that was
7 quite what I was asking. Did anyone at GM advocate for the
8 interests of asbestos claimants in negotiating with the U.S.
9 Treasury Department?

10 A. Beyond simply highlighting it, no.

11 Q. And did anyone at the Treasury Department advocate for the
12 interests of the asbestos claimants?

13 A. I don't know.

14 Q. Do you recall giving your deposition few days ago?

15 A. Um-hmm.

16 Q. I'd like you to read a statement and see if you agree with
17 this statement that I represent you gave --

18 A. Yes, sir.

19 Q. -- at your deposition. It was at page 415 -- 414, line
20 25. And see if this is a correct statement.

21 THE COURT: Mr. Esserman, what I normally like to do
22 is, does he have a copy in front of him, I'd like if he'd be
23 able to read along with you.

24 MR. ESSERMAN: Okay.

25 UNIDENTIFIED ATTORNEY: There's one in our book, Your

1 Honor.

2 THE WITNESS: I'll grab it. Hold on.

3 Q. Page 414, starting at line 25.

4 A. Yes, sir.

5 Q. Okay. "Question: In negotiating with the U.S. Treasury
6 Department, did anyone at GM advocate for the interests of the
7 asbestos claimants?

8 "A. The purchaser didn't. In looking at this, had no reason
9 to assume these liabilities for a number of reasons, and
10 concluded it wasn't necessary for the New General Motors to
11 operate going forward."

12 And that's the end of the answer. Is that the correct
13 answer?

14 A. That's what I said.

15 MR. ESSERMAN: Okay. Thank you, Your Honor. Thank
16 you.

17 THE COURT: Are you done, Mr. Esserman?

18 MR. ESSERMAN: Yes.

19 THE COURT: All right.

20 MR. JAKUBOWSKI: Your Honor, while we're changing the
21 guard, I inadvertently forgot to move for admission of PLCA-1
22 into evidence. And I would like to do that, with your
23 indulgence?

24 THE COURT: Objections?

25 MR. MILLER: No objection.

1 THE COURT: No objection. It's admitted.

2 (Exhibit PLCA-1, debtors' update on 363 sale as of 6/5, was
3 hereby received into evidence as of this date.)

4 THE COURT: All right. Now back giving the debtors
5 any final opportunity.

6 MR. KENNEDY: Well, Your Honor, I had a question or
7 two on recross.

8 THE COURT: Oh, I'm sorry, Mr. Kennedy. Come on up,
9 please.

10 RE-CROSS-EXAMINATION

11 BY MR. KENNEDY:

12 Q. Mr. Henderson, could I direct you to Exhibit 14 in the
13 section of Exhibit 10 that's related to your deposition in the
14 exhibit, sir? It's that chart, "Salaried and Splinter Union
15 Benefit Obligations" that I think you've addressed once or
16 twice, and I believe you looked at again with Mr. Miller.

17 A. Yes, sir. Okay.

18 Q. Now, would you agree with me that since the Sprague
19 decision in the eighties, it's been clear that General Motors'
20 salaried employees were subject to having their retiree basic
21 life insurance canceled at any point by the company,
22 unilaterally?

23 A. Changed, modified or canceled, yes.

24 Q. Okay. And the same is true with respect to the salaried
25 retiree healthcare plan, correct?

1 A. We did change -- we did freeze it and implement a new
2 plan.

3 Q. And the executive nonqualified pension was subject to
4 being canceled, certainly, in this bankruptcy proceeding,
5 correct?

6 A. Yes.

7 Q. And the SLBP executive life was subject to cancelation by
8 General Motors, correct?

9 A. Correct.

10 Q. And that leaves the splinter unions life insurance
11 healthcare. Would you agree with me that the IUE, CWA and the
12 other unions that are covered by that group, have always taken
13 the position that their members' entitlement to these benefits
14 is vested and uncancelable by the company?

15 A. That has been their position.

16 Q. And General Motors has taken the position that you could,
17 in fact, change them, correct?

18 A. Yes.

19 Q. And in resolving those to positions, isn't it also true
20 that in October of 2008, GM and the IUE agreed to fund a VEBA
21 for IUE retirees in the amount from General Motors of 2.455
22 billion dollars?

23 MR. MILLER: If Your Honor pleases, that goes way
24 beyond redirect.

25 THE COURT: Sustained.

1 MR. KENNEDY: I have no other questions, Your Honor.
2 Thank you.

3 THE COURT: Okay. Are there any other objectors who
4 I forgot. I seemed to have done that a couple of times. Now,
5 one more time, Mr. Miller, anything further?

6 MR. MILLER: No, Your Honor.

7 THE COURT: All right. Mr. Henderson, you're
8 excused. You can step down and remain in the courtroom.

9 THE WITNESS: Thank you, Your Honor.

10 THE COURT: Thank you. Okay. It's 5:30. My energy
11 level is okay. I'd like to keep going at least for another
12 couple of hours, if you people feel up to it also. What I
13 think I would like to do is determine now, who will be the next
14 witness, take five minutes, and resume with the next witness,
15 cross examination and the similar -- Mr. Richman, were you the
16 leadoff man, you or your partner?

17 MR. RICHMAN: Yes, Your Honor.

18 THE COURT: Who would you like to take next?

19 MR. RICHMAN: Mr. Worth.

20 THE COURT: Mr. Worth?

21 MR. RICHMAN: Yes.

22 THE COURT: Okay. Five minutes, and we'll continue
23 with Mr. Worth.

24 (Recess from 5:30 p.m. until 5:45 p.m.)

25 THE COURT: Take your seats, please. Before we begin

1 with Mr. Worth, I'd like to be in a position where we can help
2 everybody to plan their evening and tomorrow. So I would like
3 to take a moment for a nonbinding estimates, how long we expect
4 to be with this witness, then to ascertain whether the person
5 who's number 3 in the lineup would be needed tonight or I could
6 tell him he could leave. I'm not going to put a sock in
7 anybody's mouth or cut him off, but I'd like to get a sense
8 from you, Mr. Richman, as to how long you think this would be.
9 How many folks, besides you, want to question Mr. Worth, and
10 then answer my questions for the next couple of minutes?

11 MR. RICHMAN: Thank you, Your Honor. We've had some
12 discussions among counsel during the break, also, to see
13 whether there was any common ground. I don't have a great many
14 number of questions for Mr. Worth or for Mr. Koch. I don't
15 think either of them will take very long.

16 THE COURT: That's the order of the two folks you
17 want to take?

18 MR. RICHMAN: Yes.

19 THE COURT: You want to take Mr. Worth first and then
20 Mr. Koch?

21 MR. RICHMAN: And then Mr. Koch. I can't speak for
22 other parties in the courtroom and it may well be with my
23 questions being limited that that could well expand the needs
24 of other parties. But it certainly seems to us that once you
25 get to Mr. Wilson, you're going to be engaged in another

1 exercise that may be comparable in time to what we had with Mr.
2 Henderson. And I think for everyone's benefit, at a minimum
3 that would be a good time for a break to start fresh with Mr.
4 Wilson in the morning, rather than to try to begin that this
5 evening.

6 THE COURT: I hear you. Then, what I would like to
7 do is now ask the other folks whether a scenario that takes Mr.
8 Worth and Mr. Koch tonight and starts with Mr. Wilson in the
9 morning makes sense.

10 MR. RICHMAN: Just so I can clarify, Your Honor, I
11 didn't mention Mr. Repko. We do not have any plans to question
12 him, but other parties may. And he's the forth of the debtors'
13 four witnesses who will be before we got to Mr. Wilson. So
14 just for clarity of record, other parties may want to comment
15 on that.

16 THE COURT: Fair enough. Why don't we invite other
17 people to weigh in?

18 MR. MILLER: As far as the debtors are concerned,
19 Your Honor, we would agree with Mr. Richman to take Mr. Worth
20 and Mr. Koch tonight and start fresh with Mr. Wilson tomorrow
21 morning, hopefully early, Your Honor.

22 THE COURT: All right. Mr. Jakubowski, you rise to
23 be heard?

24 MR. JAKUBOWSKI: Thank you, Your Honor. We have no
25 questions for any of the other debtors' witnesses that are

1 proposed. And the only other questioning we'll have is of Mr.
2 Wilson.

3 THE COURT: Okay. Anybody -- Mr. Kennedy?

4 MR. KENNEDY: We have ten minutes or so for Mr.
5 Repko, none for the other witnesses until we get to Mr. Wilson.

6 THE COURT: Okay. Mr. Eckstein.

7 MR. ECKSTEIN: We may have a few questions for Mr.
8 Koch.

9 THE COURT: Yeah, I thought you might. Okay. Then
10 let's assume that we're going to definitely start with Mr.
11 Wilson in the morning. I guess the question is, is it too
12 ambitious or should we give Mr. Repko a break and tell him he
13 could go home tonight? Everybody's shrugging their shoulders.
14 As far as tomorrow goes --

15 MR. RICHMAN: Did you mean Mr. Repko or Mr. Worth?

16 MR. KENNEDY: I meant Repko.

17 THE COURT: All right. As far as tomorrow goes, I
18 have an 8:00 relief from stay motion which was perceived by
19 somebody to be important. So I'll hear it at 8:00. And then
20 what I was going to ask you people is if you wanted to start at
21 9 instead of 9:45. And if you want I'll start and finish that
22 relief from stay motion if that helps. I don't know if it will
23 or not. I would have thought that a relief from stay motion
24 wouldn't take a long time, but I would have thought that it
25 wouldn't be arguable. Mr. Richman, I want to get your

1 perspective.

2 MR. RICHMAN: Well, I think some of it relates to
3 getting into the courthouse and the courtroom. This morning
4 people weren't allowed in until about beginning at 8:30 and it
5 took a very long time for the line to clear.

6 And related to that, will we have this courtroom
7 tomorrow and we'll be able somehow to reserve these seats so we
8 don't have the kind of chaos we had this morning.

9 THE COURT: Well, those are legitimate questions. I
10 think that if I tell the marshals that I want you guys let in,
11 they'll listen to me. And I'll do that.

12 As far as -- yes, we've got clearance to use this
13 courtroom. And I know you guys all have your places and things
14 like that, but what I would like to do is have the people who
15 have their existing places and more prominent roles in the
16 case, having the spots at counsel table. And those of you who
17 are in the audience you're welcome to come back as far as I'm
18 concerned. I do need to have the comfort that the people who
19 have participated so far know that they can get into this
20 courtroom and that they won't have to fight for places to be
21 heard, or to hear what I have to say.

22 So, Mr. Richman, the answer is sure. I'll also let
23 you leave your stuff here as long as you understand that I
24 can't guarantee its security. But as far as having permission
25 to leave your stuff in the courtroom, that's fine.

1 So the one open issue is what time we're going to
2 start the main event tomorrow. And I'm afraid, Mr. Richman,
3 even if I give the marshals the authority to let people in
4 early we're still going to have logistic issues. So I'm going
5 to start the main event a 9:00.

6 With that, let's bring up Mr. Worth. Okay. Mr.
7 Worth is here.

8 MR. RICHMAN: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. RICHMAN:

11 Q. Good afternoon, Mr. Koch -- I'm sorry, Mr. Worth. Just so
12 we have clarity of the record, Mr. Worth, could you for the
13 record describe what your and Evercore's assignment was in this
14 case, when it began and where it stands right now.

15 A. We have been advisors to General Motors since about June
16 of 2008.

17 Q. Could you use the mic? I think people are having
18 difficulty hearing in the back.

19 A. Absolutely. Is that better?

20 Q. Yes.

21 A. We've been financial advisors to General Motors since
22 about June of 2008, on a variety of matters, as this case has
23 progressed.

24 Q. Now, are you -- next to Mr. Repko, are you the senior
25 person responsible for the engagement?

1 A. Yes.

2 Q. And were you responsible for the preparation of the
3 fairness opinion?

4 A. Yes.

5 Q. That fairness opinion I note is attached to your
6 declaration which is in evidence as Debtors' Exhibit 3, is
7 that -- did I get that right? Is it 3? Exhibit 3. So are you
8 able to testify about the contents of the fairness opinion? Do
9 you have specific knowledge from your oversight and preparation
10 of it to be able to speak to its contents?

11 A. Yes.

12 Q. Do you have it in front of you, there should be a binder
13 of debtors' exhibits? It would be tab 3, Exhibit 3. And just
14 for the record it's called "Fairness Opinion Letter" which is
15 Exhibit A to your declaration. And that's a letter dated May
16 31, 2009 on the letterhead of Evercore Group LLC, and addressed
17 to the board of directors of General Motors Corporation?

18 A. Yes, sir.

19 Q. I'd like to refer you to page 3 of that letter.

20 A. Yes.

21 Q. The paragraph at the bottom of the page indicates "that in
22 preparing the fairness opinion Evercore" -- and I'm just
23 reading from the letter to ask you to confirm this "relied on
24 management in Evercore's conclusion that GM's range of options
25 have narrowed to a choice between (1)the 363 sale, or (2)a

1 bankruptcy liquidation as described in the liquidation
2 analysis," that's a correct statement?

3 A. Yes.

4 Q. So would I be correct in saying you were directed not to
5 consider a fair valuation of New GM under any other scenario?

6 A. Can you repeat the question?

7 Q. Did you perform any fairness valuation of New GM if New GM
8 was created, for example, as a spin-off under a Chapter 11
9 plan?

10 A. No.

11 Q. Or any other scenario other than the two indicated in the
12 letter, which is the 363 sale or a liquidation?

13 A. No, we did not.

14 Q. In your experience would there be any reason to believe
15 that if New GM was created in a Chapter 11 plan with the same
16 business objectives, that the valuation would be different than
17 it would be in a Section 363 sale?

18 MR. MILLER: Objection, Your Honor. You have to
19 establish foundation. Who does the financing? How the case is
20 going to proceed without financing. He's talking apples and
21 oranges, Your Honor.

22 THE COURT: I'm going to sustain it. But if you lay
23 out a few more parameters in a way of background facts, and if
24 you want to get his opinion on that opinion.

25 MR. RICHMAN: Thank you, Your Honor.

1 Q. Mr. Worth, how many Chapter 11 plan valuations have you
2 been involved in, in your career, ballpark?

3 A. Very few.

4 Q. Very few?

5 A. Yes.

6 Q. Approximately how many?

7 A. Where I've testified?

8 Q. No, where you have as a professional provided a fairness
9 opinion, or supervised a fairness opinion?

10 MR. MILLER: In a Chapter 11 context?

11 MR. RICHMAN: Yes.

12 Q. I'm asking specifically about the valuation of a company
13 being created under a Chapter 11 plan?

14 A. Fairness opinions, none.

15 Q. Did you take into account or did person working under your
16 supervision in preparing the fairness opinion, take into
17 account General Motors' net operating losses?

18 A. Which General Motors; OldCo or NewCo?

19 Q. OldCo.

20 A. Not other than in the capital structure of NewCo. The
21 only company we valued was NewCo.

22 Q. How are NOLs valued in NewCo? Where would I find that?
23 Is that actually in the letter or in any of the documents that
24 were produced?

25 A. Yes. It's implicit in the valuation of NewCo. There are

1 deferred tax attributes at current General Motors that carry
2 over into NewCo, those are part of the valuation.

3 Q. Could I trouble you to just show me where I would find
4 that in your fairness letter or in the exhibits?

5 A. In the valuation methodology description, it's probably
6 the best place. Exhibit G, where we describe the various
7 methodologies we use to value OldCo -- sorry, NewCo. Give me a
8 second and I'll find a reference. I apologize, I don't see a
9 page number. The third page of Exhibit G.

10 THE COURT: What exhibit?

11 THE WITNESS: Exhibit G.

12 THE COURT: G, golf?

13 THE WITNESS: G, golf. The third page last
14 paragraph.

15 A. There's a description of how we valued the deferred tax
16 attributes, deferred tax assets of General Motors.

17 Q. But this doesn't contain any particular amounts, does it?

18 A. No, simply methodology.

19 Q. Is there a place where I would find the amount of the
20 NOLs?

21 A. It is more implicit in the core enterprise value than it
22 is explicit on the amount in any page. So -- let me refer you
23 back to the appendix. Give me one second. In Exhibit F to the
24 affidavit.

25 Q. I appreciate your help with this.

1 A. Page 22 of Exhibit F. There's a line there that says
2 "core enterprise value."

3 Q. This is in the -- it looks like a PowerPoint presentation?

4 A. Correct. There's a line three lines down that says "core
5 enterprise value," the value of the tax assets is imbedded in
6 core enterprise value.

7 Q. But it's not broken out as a separate number anywhere?

8 A. No, sir.

9 Q. So we can't see what the -- do you know what the existing
10 NOLs are that are in the Old General Motors?

11 A. I recall the value of those tax attributes was somewhere
12 in the ten to twelve billion dollar range?

13 Q. Ten to twelve billion, did you say?

14 A. Correct.

15 Q. And do you have any understanding of how they are able to
16 get to New GM?

17 A. I'm not a tax lawyers, but I have a lay understanding of
18 the process that they're going to use, called the G re-org, to
19 preserve those tax attributes.

20 THE COURT: G re-org, did you say?

21 THE WITNESS: Yes, sir.

22 A. To preserve those tax attributes.

23 Q. But that hasn't been done -- that's not in the current
24 structure?

25 A. It is assumed to have been accomplished as part of this

1 transaction. So those tax assets would be preserved if a G re-
2 org is approved.

3 Q. Can you explain for us what a G re-org is, in your
4 understanding?

5 A. Not being a tax attorney, probably not adequately.

6 Q. I'm not either.

7 A. It would have the net impact of preserving the value of
8 the NOLs currently at General Motors, and being transferred
9 from OldCo to NewCo.

10 Q. So am I correct in understanding that if this G re-org is
11 not done then the value of the NOLs will not transfer to New
12 GM?

13 A. Not in totality, no. Some but not all would be available
14 to NewCo.

15 MR. RICHMAN: Excuse me one second, Your Honor.

16 Q. Just last question. When I was reading from page 3 of the
17 letter before there was a reference to the two options; the 363
18 sale and the liquidation analysis. Was the liquidation
19 analysis that was referred to in the fairness opinion, the one
20 that was prepared by AlixPartners and Mr. Koch?

21 A. Yes, sir.

22 Q. Thank you.

23 MR. RICHMAN: I have no further questions, Your
24 Honor.

25 THE COURT: Okay, thank you. Mr. Kennedy?

1 MR. KENNEDY: Your Honor, I was in error before, I do
2 have some questions of Mr. Worth, not of Mr. Repko, I
3 apologize.

4 THE COURT: All right. You want to come up?

5 MR. KENNEDY: Well, I'm typically not the second
6 person, so I don't know if there are other people who want to
7 go first.

8 THE COURT: I think Mr. Eckstein focused on Mr. Koch.
9 Do you have any of Mr. Worth, sir?

10 MR. ECKSTEIN: I do have a few questions for Mr.
11 Worth.

12 THE COURT: Whichever.

13 CROSS-EXAMINATION

14 BY MR. KENNEDY:

15 Q. Mr. Worth, I'd like to direct you to Exhibit F to your
16 declaration, which is Exhibit 3 in the exhibits marked by the
17 debtor. That consists of a project main presentation to the
18 board of directors. Can you go to that, sir? Do you have in
19 front of you?

20 A. I have it right in front of me.

21 Q. Would you describe what the Exhibit F is?

22 A. It is a presentation that we delivered to the board of
23 General Motors on May --

24 Q. It's dated if it would help, the first page.

25 A. May 31st.

1 Q. And is that date the date it was presented?

2 A. Yes.

3 Q. And is that the same date that the board of General Motors
4 made the decision to proceed with the bankruptcy petition?

5 A. Yes, sir.

6 Q. I'd like to address your attention to page 5, if I could.

7 A. Yes.

8 MR. KENNEDY: Do you have it, Your Honor?

9 THE COURT: Not yet. If you'll bear with me. You
10 said Exhibit F, page 5?

11 MR. KENNEDY: Yes, sir. To Exhibit 3. And this is
12 not my book. This one isn't my fault.

13 THE COURT: No. I understand. Bear with me.

14 MR. KENNEDY: You had it right there, sir. I think
15 that could be it, I don't know.

16 THE COURT: You're right. Okay. Go ahead.

17 MR. KENNEDY: Move to page 5 of that.

18 THE COURT: Overview of transaction in
19 (indiscernible) process?

20 MR. KENNEDY: Yes, sir.

21 Q. What is this page intended to depict, Mr. Worth?

22 A. It is a simplified version of the capitalization of the
23 company at the end of the transaction.

24 Q. So at the end of the 363 transaction, this is essentially
25 what the company is going to look like, correct?

1 MR. MILLER: As of that date?

2 Q. As of that date, yes?

3 A. Correct.

4 Q. And I take it that you identified a few of the important
5 elements of the capitalization on this page, would you agree
6 with me on that?

7 A. Yes.

8 Q. And I noticed that you called out pension and OPEB
9 obligations, why were they among all the potential obligations
10 of this company? Why were they called out for special mention
11 on page 5?

12 A. Part of the success of NewCo and the profile of NewCo
13 depended on the restructuring of some of those obligations.
14 Principally OPEB obligations and Canadian pension obligations.

15 Q. Okay. So that they -- first the pension and OPEB
16 obligations referred to is the obligation for NewCo to pay 900
17 million in cash and 700 million in note to a Canadian
18 healthcare trust structure, is that correct?

19 A. Correct.

20 Q. And the second one was prefunding of an assumed Canadian
21 pension with 3.6 billion in cash, is that also correct?

22 A. Correct.

23 Q. But the third one is actually a reduction of liability,
24 it's not a recognition of liability on the new company,
25 correct?

1 A. Can you rephrase the question?

2 Q. Sure. Is the third one item mentioned here a reduction in
3 liability as opposed to a statement of cash or equity that
4 would have to be paid out?

5 A. It is a statement of an assumption, which at the time we
6 gave this presentation was still undefined that there would be
7 a reduction in the cash flow requirements for the non-UAW OPEB
8 obligations. And that that would then have an impact on the
9 profile of NewCo.

10 Q. Okay. So that the non-UAW OPEB obligations which you've
11 been sitting here you may now at least recognize refers to IUE,
12 Steelworkers, IUOE and other unions, that was identified as
13 significant enough to be included on this page, correct?

14 A. Correct.

15 Q. And how much of a reduction in OPEB obligation for non-UAW
16 unions were you assuming at the point you were preparing this
17 document?

18 A. I believe at the time we did this analysis we had
19 assumed --

20 Q. While you think about it, let me remind you if it does.
21 And I believe the total of the non-UAW OPEB obligation is 3.725
22 billion?

23 A. Correct.

24 Q. Does that help refresh your recollection as to how much
25 you might have been referring to as a reduction?

1 A. Let me answer the question this way. At the time that we
2 were developing the models -- I'm sorry, rephrase that. At the
3 time that the NewCo models were being developed and we did the
4 valuation of NewCo there was an assumption made around non-UAW
5 OPEB. And at this very moment, I can't remember exactly what
6 that assumption was. But there was an assumption that they
7 would be reduced.

8 Q. In fact, would it be fair to say that the assumption of
9 the reduction would be in billions of dollars or it would not
10 have been identified separately on this page?

11 A. That's fair.

12 Q. And that that was one of the factors that the board
13 considered in determining whether to go through the new company
14 transition, or transaction, rather?

15 A. That's fair.

16 Q. All right. I'd like to address your attention to page 15.
17 I take it from this page and from other information that the
18 credit bid Treasury is making to accomplish the 363 transaction
19 is in the amount of 48.7 billion dollars?

20 A. That's correct.

21 Q. And it's also true that as of the filing, June 1, Treasury
22 had made 19.4 billion in pre-petition loans to General Motors,
23 correct?

24 A. Correct.

25 Q. Are the 19.4 billion in pre-petition loans included in the

1 48.7 billion dollar credit bid which is referred to on page 15
2 of Exhibit F and elsewhere in these documents?

3 A. Yes.

4 Q. I also gathered from the document, and if you need to I'm
5 referring to page 16, that the NewCo equity value is assumed to
6 be between thirty-eight billion and forty-eight billion?

7 A. Yes, sir.

8 Q. And if you look at the combination of holdings that the
9 U.S. Treasury has -- is expected to have as a result of the 363
10 transaction of 72.5 percent equity, and 2.5 billion in
11 preferred, what amount of the thirty-eight to forty-eight
12 billion would you understand Treasury to own?

13 A. The U.S. Treasury?

14 Q. Yes.

15 A. A loan?

16 Q. Uh-huh.

17 A. I believe the percentage is sixty percentish of the
18 equity.

19 Q. So if we were looking at the equity range, thirty-eight to
20 forty-eight billion, we would understand the treasury owned
21 about sixty percent of that, or a little more, maybe?

22 A. Of the common shares outstanding at close, correct.

23 Q. And when you say at close, you mean at the expected close?

24 A. Correct.

25 Q. And how much of that sixty percent in effect of equity or

1 value that the U.S. Treasury would have is represented by the
2 portion of the credit bid reflecting the 19.4 billion pre-
3 petition loans?

4 A. Point of clarification?

5 Q. Sure.

6 A. The U.S. Treasury and Industry Canada are both part of the
7 DIP loan.

8 Q. Okay.

9 A. So the equity that results from the credit bid --

10 Q. You might want to speak up, I hear somebody saying they
11 can't hear.

12 A. Sorry. The equity that results from the credit bid is,
13 both to the U.S. Treasury and Canada EDC.

14 Q. So that sixty percent figure is representative of both
15 U.S. Treasury and Canada.

16 A. Sixty is just the UST.

17 Q. I see.

18 A. The Canada equity ultimately in the transaction comes from
19 the credit bid and from the other amounts that the Canadian
20 government is lending into the overall transaction. So it's --
21 you need a calculator to give you the answer that you just
22 asked, which is the portion of the credit bid that is
23 specifically related to the UST, which results in a sixty
24 percent ownership.

25 Q. Okay. Is it at least clear as we sit here today that some

1 of the equity ownership the treasury is obtaining is as a
2 result of their pre-June 1 loans to General Motors?

3 A. Yes.

4 MR. KENNEDY: All right. I have no other questions,
5 Your Honor.

6 THE COURT: Okay. Mr. Eckstein.

7 CROSS-EXAMINATION

8 BY MR. ECKSTEIN:

9 Q. Mr. Worth, good evening. My name is Kenneth Eckstein, I
10 represent the official creditors' committee. I have a few
11 questions, if I may.

12 A. Good evening.

13 Q. Mr. Worth, can you just clarify for me on whose behalf did
14 Evercore provide a fairness opinion in connection with this
15 transaction?

16 A. We provided an opinion to the board of directors of
17 General Motors.

18 Q. So, essentially, OldCo, the selling company, is that
19 correct?

20 A. Yes.

21 Q. And do I understand correctly that in connection with
22 providing the opinion, you advised the board of directors?

23 A. We provided the opinion to the board of directors. We've
24 been an advisor to the company and to the board of directors
25 during the course of our assignment.

1 Q. Did Evercore participate in the negotiations of the
2 transaction as well as providing a famous opinion to the board
3 of directors?

4 A. In portions.

5 Q. Which portions of the negotiations were you involved with,
6 or was the form of Evercore involved with?

7 A. There were multiple areas that we were witnesses of and
8 provided advice to the company. It was probably a half dozen
9 different areas. We were not front and center in those
10 negotiations, though.

11 Q. Did you participate in the negotiations between
12 representatives of the bondholders and U.S. Treasury regarding
13 the allocation of equity to OldCo?

14 A. During it's final iteration, no.

15 Q. Did you participate in the negotiations with UAW?

16 A. No.

17 Q. I assume that the opinion that Evercore provided was the
18 written opinion that is attached to your declaration, is that
19 correct?

20 A. Correct.

21 Q. And that's dated May 29, 2009, am I correct?

22 A. I believe it's dated May 31st.

23 Q. May 31 or May 29?

24 A. May 31st.

25 Q. May 31st, right. And was there a meeting with the board

1 of directors at which you presented your opinion and
2 recommendations?

3 A. There was.

4 Q. Was that one meeting or several meetings?

5 A. There was a meeting on Saturday, the 30th, I believe, in
6 which we went through our presentation. We subsequently
7 delivered our opinion on a telephonic meeting on the 31st.

8 Q. Were there any subsequent meetings in which you dated your
9 recommendations to the board?

10 A. Yes.

11 Q. When did those take place?

12 A. This past Friday we were asked whether the changes to the
13 MSPA as they had occurred as distinct from the MSPA that we had
14 May 31st the day of our opinion, whether had we known those
15 changes at the time that we had delivered our opinion, would it
16 have changed the substance of our opinion. And we met with our
17 creditors' committee, we obtained the opinion committee on the
18 substance of the changes and we advised the board during that
19 telephonic board meeting that the substance of our opinion
20 would not have changed had we known all of those facts at the
21 time we had presented them with our opinion. We did not update
22 our opinion in writing.

23 Q. Which changes to the MSPA were you considering in
24 connection with your supplemental advice?

25 A. There were a few, about sixteen different small changes.

1 Some of them were mechanics in the MSPA. One specific was
2 around the warrants and the capitalization table, which, at the
3 time we delivered our opinion, we did not have the exact number
4 of warrants that were being issued, nor did we have a cap
5 table. We also -- another change was the product liability and
6 the assumption of product liability.

7 Q. Was this the change that reflected the agreement by NewCo
8 to assume product liability that arises subsequent to the
9 closing of the transaction?

10 A. Yes. And there were a handful of other changes to the
11 MSPA, all non-major substantive money issues.

12 Q. Were there any other changes that you could recall that,
13 in your view, materially affected the amount of liability that
14 was being left with OldCo or was not being assumed by NewCo?

15 A. Could you repeat the question?

16 Q. Were there any other modifications that in your view were
17 material that involved an assumption of additional liability by
18 OldCo or releasing NewCo of liabilities that it had previously
19 agreed to assume?

20 A. There were none that were material to our opinion.

21 Q. Were there any modifications made in connection with
22 workers' compensation liability?

23 A. I don't recall specifically. But, again, none that I
24 recall that would have affected our opinion.

25 Q. And as you said, this was not done in writing, this was

1 done orally, am I correct?

2 A. Yes.

3 Q. Okay. Can you tell me what you understand the value of
4 the equity that is being left with NewCo to be under this
5 transaction?

6 A. Can you repeat that, you mean OldCo?

7 Q. What is the value of the equity being left with OldCo?

8 A. Again, clarification, the equity and the warrants?

9 Q. First the equity?

10 A. Our estimate of the value of NewCo was the range between
11 thirty-eight and forty-eight billion dollars for 100 percent of
12 the common equity of NewCo. So straight ten percent of that
13 would be 3.8 to 4.8 billion dollars.

14 Q. 3.8 to 4.8 billion dollars was ten percent?

15 A. Correct.

16 Q. And did you ascribe a value to the seven-year warrant for
17 seven and a half percent of the equity?

18 A. We did.

19 Q. And approximately how much value did you ascribe to the
20 warrant?

21 A. The value -- I'm going to refer you back to page 14 of
22 that same Exhibit F that we've been talking about. The value
23 ascribed in this presentation was 2.1 to 2.9 billion dollars
24 for that warrant -- the seven-year warrant. At the time that
25 we did this valuation, we did not have the exact number of

1 warrants, nor the cap table, that affects the valuation
2 slightly of both the warrants and the way that we would do the
3 valuation. The net impact, though, internal of all of that new
4 information was not significant on the bottom line range that
5 you have here of 7.4 to 9.4 million dollars. So that is the
6 value of the entire package; ten percent of the equity plus the
7 fifteen percent warrants.

8 Q. So based upon the amended opinion that you provided last
9 week, the value ranges have not changed in your opinion?

10 A. Not substantively, no.

11 Q. And just so I understand the value that you ascribed to
12 the ten-year warrant, what is referred to as warrant B, is that
13 one and a half to 2.1 billion dollars?

14 A. That's correct.

15 Q. And so am I correct that the value that -- of the
16 equity -- the straight equity and the warrants that are being
17 left with OldCo in your view is between 7.4 and 9.8 billion
18 dollars?

19 MR. MILLER: He just testified to that, Your Honor.

20 THE COURT: I'm going to sustain. But just to try to
21 get to the next question, you can move on. I think you got it
22 enough that I wrote it in my notes, Mr. Eckstein.

23 MR. ECKSTEIN: Thank you, your Honor, that's fine.

24 Q. In connection with your opinions did you make any
25 evaluation of the liabilities that were being retained by

1 OldCo?

2 A. Yes. In estimating the value of those assumed
3 liabilities, we took the book value of those liabilities. But
4 for pension where in all of our valuation methodology, we
5 estimated the value of pensions to be the present value of
6 future contributions.

7 Q. Can you tell me what liability level you were assuming was
8 being retained by OldCo in connection with this transaction?

9 A. If you look at page 15 of that same exhibit the total
10 numbers 48.4 billion dollars.

11 THE COURT: Mr. Worth, would you mind standing a
12 little closer to the microphone, please?

13 THE WITNESS: Certainly, sorry.

14 A. So the total on page 15 is 48.4 billion dollars.

15 Q. These are the liabilities that are being retained by
16 OldCo, or the liabilities that are being assumed by NewCo?

17 A. Forgive me, those are the liabilities that are being
18 assumed by NewCo.

19 Q. I had asked you the question, did you make any assumptions
20 as to the aggregate amount of liabilities being retained by
21 OldCo?

22 A. No.

23 Q. So for purposes of your fairness opinion, you simply
24 looked at the value of the -- let's called it the asset side
25 rather than the liability side of the transaction, at least as

1 it impacted OldCo, am I correct?

2 A. Yes, sir.

3 Q. Did you express any opinion as to the fairness of the
4 transaction on the OldCo creditors in connection with your
5 opinion?

6 A. No.

7 MR. ECKSTEIN: Your Honor, that's all I have. Thank
8 you.

9 THE COURT: Okay. Any other objectors want to
10 question? No. Okay, redirect, Mr. Miller?

11 MR. MILLER: No, Your Honor.

12 THE COURT: All right. Mr. Worth, you're excused,
13 thank you.

14 MR. PARKER: No. I do, sir. I raised my hand.

15 THE COURT: Come on up.

16 MR. PARKER: I don't have many questions.

17 CROSS-EXAMINATION

18 BY MR. PARKER:

19 Q. Mr. Worth, I believe you stated that the value of the net
20 operating losses is ten to twelve billion dollars, is that
21 correct?

22 A. Yes, sir.

23 Q. Is that their market value to acquiring a corporation?

24 A. No.

25 Q. Okay.

1 A. That is the value implicit in the value of NewCo. So it
2 is the value of those tax assets to a fully operational NewCo.

3 Q. Okay. So on page 22 of your report you have the MPV at
4 37.3 to 53.9, is that correct? Page -- I think it was 22.

5 A. 22.

6 THE COURT: 22 of the exhibit, the one that said to
7 NewCo DCF?

8 MR. PARKER: Yes, sir.

9 A. Can you repeat the question?

10 Q. Maybe I misheard your testimony that's why I'm asking.
11 But you said the MPV is between 37.3 and 53.9?

12 A. That is the MPV of the base case, value of the equity in a
13 base case, just in a cash flow analysis.

14 Q. Okay. So that has nothing to do with the net operating
15 losses?

16 A. Included in that value it is an estimate of the value of
17 the net operating losses to NewCo.

18 Q. Okay. Was there anywhere on this page where you had the
19 value of the net operating losses?

20 A. No. It's implicit in the core enterprise value.

21 Q. Okay. I'm curious how you came up with a ten to twelve
22 billion dollar figure for the net operating losses?

23 A. We valued the business as a full taxpayer.

24 Q. Uh-huh.

25 A. And a discounted cash flow analysis. And separately we

1 valued the usage of the NOLs based on the projected taxable
2 earnings of the U.S. company, and of all the companies around
3 the world.

4 Q. Do you know what the net operating losses of Old GM are
5 right now?

6 A. The face value of them escapes me right now.

7 Q. Has old GM had operating losses of about eighty-eight
8 billion dollars over the last five years, does that sound about
9 right?

10 A. I don't know.

11 Q. You're being offered as an expert witness, right?

12 A. Yes, sir.

13 Q. Okay. Assuming for a moment that the net operating losses
14 for the last five years were somewhere in the eight billion
15 dollar range, what would be their value to a company?

16 THE COURT: Sustained, under what circumstances? In
17 a liquidation as a going concern?

18 Q. Well, first off, what would be their worth to the company
19 in tax savings?

20 A. Which one?

21 Q. The company who has them. Suppose GM started to make
22 profits again, what would that be in tax savings to them, what
23 would it represent?

24 A. The value of those --

25 THE COURT: Wait just a minute, an attorney rises to

1 be heard. You've got to pause. Mr. Miller, go ahead.

2 MR. MILLER: Your Honor, please, I object. It's pure
3 speculation, there's no foundation laid.

4 THE COURT: I'm going to sustain. Mr. Parker, if you
5 want to ask about this you'd better give a lot more facts.

6 MR. PARKER: Okay.

7 **Q. Do that operating losses have a market value to someone
8 who could purchase them to use them to offset income?**

9 **A. In isolation?**

10 **Q. Yeah.**

11 **A. If one can structure a purchase in such a way that the
12 acquirer can take advantage of them?**

13 **Q. Yes.**

14 **A. Yes, they can have value.**

15 **Q. What kind of value can they have?**

16 **A. The value --**

17 MR. MILLER: Excuse me. Again, Your Honor.

18 MR. PARKER: I'm asking for market value.

19 THE COURT: Well, I'm going to overrule the
20 objection. It's a big question and it deserves a big answer.
21 You can give an answer commensurate with the question that was
22 asked.

23 **A. The value of the net operating losses depends on their
24 ability to shield taxes in the future.**

25 **Q. Okay. Do you know what the corporate tax rate is?**

1 A. I would assume thirty-five percent.

2 Q. So thirty-five percent of eighty billion would be
3 something like twenty-eight billion? That's the amount that --

4 MR. MILLER: Your Honor, that's the --

5 THE COURT: Sustained.

6 Q. Okay. On page 15 of your -- I think it's your Exhibit F,
7 the one that says Analysis of Proposed Transaction Summary
8 Purchase Price Analysis.

9 A. Yes, sir.

10 Q. Okay. I notice that in analyzing the -- I take it this is
11 an order to analyze the fair price, the fair purchase price, is
12 that correct, of the assets that Old GM is giving to New GM?

13 A. Sorry, can you rephrase the question?

14 Q. What was the purpose of the analysis of proposed
15 transaction summary purchase price analysis?

16 A. To compare the purchase price as defined in the MSBA to
17 the liquidation analysis performed by AlixPartners.

18 Q. Okay. You took the credit bid of 48.7 billion, added
19 assumed liabilities of 48.4, added the 7.4 to 9.8 that's
20 allegedly being given to OldCo and sub-rated out 13.4 billion
21 in cash, is that correct?

22 A. Correct.

23 Q. And you came up with ninety-one to ninety-three billion?

24 A. Correct.

25 Q. The thing I'm curious about here is, a 48.4 billion that

1 you've got, does that include the 20.5 billion that's going to
2 the UAW VEBA is giving up a claim of 20.5 billion against old
3 UAW -- sorry, against Old GM when the transaction has been
4 completed, I believe that was testified to by Mr. -- the new
5 CEO of GM.

6 A. Mr. Henderson.

7 Q. Yeah. So does that include the twenty -- it says 48.4
8 billion in assumed liabilities, does that include the
9 liabilities owed to the UAW VEBA?

10 A. No.

11 Q. Okay. One of the things in there it says is employee
12 obligations, so what does that mean?

13 A. Can you flip to page 25?

14 Q. Sure.

15 A. It'll break it down for you, what was included in that
16 obligation. The employee obligations you're referring to are
17 payroll and pensions.

18 Q. Okay. The government's credit bid is for roughly forty-
19 nine billion, is that correct?

20 A. That's correct.

21 Q. Okay. Other than 400 million that's owed by GM Canada to
22 the Canadian government, is the Canadian government presently a
23 creditor of GM?

24 A. Yes.

25 Q. How much are they owed?

1 A. In the DIP facility of 33.3 --

2 Q. Uh-huh.

3 A. -- the total amount of Canadian participation in the 33.3
4 should be about 3.2 of the --

5 Q. Okay. So if I recall the documents correctly Canada is
6 supposed to be contributing roughly nine billion dollars
7 between debt forgiveness and new money, is that correct?

8 A. Could you rephrase the question?

9 Q. Okay. Canada's contribution to the New GM roughly equals
10 about nine billion dollars, is that correct?

11 A. I think about nine and a half.

12 Q. Nine and a half. And that includes debt forgiveness for
13 new money, correct?

14 A. I don't understand the distinction debt forgiveness and
15 new money.

16 Q. Well, right now it's contributing 3.2 million toward the
17 33.3 million, correct of financing?

18 A. Correct.

19 Q. Okay. It's -- where's the other six million?

20 A. That would be lent directly to GMCL, GM's Canadian
21 operation.

22 Q. Post the transaction?

23 A. Some pre, some post.

24 Q. Okay. Then it sounds like the forty-nine billion dollar
25 credit bid that the government's making includes 3.2 billion

1 that goes to Canada, is that correct?

2 A. Correct.

3 Q. So the government's contribution -- the government's share
4 of the credit bid is roughly forty-six billion?

5 A. That sounds fair.

6 Q. 19.4 billion of which is pre-bankruptcy debt and the
7 remainder is post-bankruptcy debt, right?

8 A. Correct.

9 Q. So you were earlier asked -- you admitted that some of the
10 60.8 percent of equity that the government is getting from New
11 GM or retaining with New GM is due to pre-bankruptcy debt, the
12 19.4 billion. It would sound like it wouldn't be that hard to
13 do a calculation, would it?

14 MR. MILLER: Your Honor, please. This is --
15 Mr. Eckstein did this. This has been on the record and he
16 keeps repeating the same stuff.

17 THE COURT: Sustained. Mr. Parker, I'm not going to
18 cut you off but you've got to be more focused on new stuff.

19 (Pause)

20 Q. I'm also confused by one other thing, is the value of New
21 GM, the stock value, between thirty-eight and forty billion or
22 is it between thirty-eight and forty-eight billion? I'm not
23 sure which one I heard.

24 A. We chose a reference rate of thirty-eight to forty-eight.

25 Q. Thirty-eight to forty-eight? Okay.

1 MR. PARKER: No further questions, Your Honor.

2 THE COURT: Are we now ready for any redirect?

3 MR. MILLER: Just one question, Your Honor.

4 THE COURT: Go ahead, Mr. Miller. Come on up.

5 REDIRECT EXAMINATION

6 BY MR. MILLER:

7 Q. Mr. Worth, how long have you been in the investment
8 banking business?

9 A. Over twenty years.

10 Q. And during the course of your career have you participated
11 and formulated fairness opinions outside the Chapter 11
12 context?

13 A. Many.

14 Q. How many?

15 A. Over thirty.

16 Q. Thank you.

17 THE COURT: Any recross? All right. None. Mr.
18 Worth, you're excused. Folks, I'd like to go right into Mr.
19 Koch now unless people need a break. Mr. Richman?

20 MR. RICHMAN: That's fine. I do want to revise one
21 statement I made earlier. Bbased on Mr. Worth's testimony I
22 would like some limited question of Mr. Repko.

23 THE COURT: All right.

24 MR. RICHMAN: And that can be tomorrow.

25 THE COURT: Okay. Do we still have consensus that we

1 want to ask Mr. Koch to come up now?

2 MR. MILLER: Yes. I'm on the fence on that, Your
3 Honor. If everybody wants to proceed we can proceed.

4 THE COURT: I think Mr. Koch is on the fence because
5 you're on the fence.

6 MR. RICHMAN: He's at the gate, Your Honor.

7 THE COURT: Come on up, please, Mr. Koch. Mr. Worth,
8 you want to give him your spot, please?

9 (Pause)

10 THE COURT: Mr. Koch, after you get in there, you
11 want to remain standing for a moment?

12 (Witness duly sworn)

13 THE COURT: Okay. Thank you. Have a seat please,
14 Mr. Koch. I think on balance you need to keep the microphone
15 close to you.

16 CROSS-EXAMINATION

17 BY MR. RICHMAN:

18 Q. Good evening, Mr. Koch.

19 A. Good evening.

20 Q. Could you please describe your affiliation at present and
21 your assignment for General Motors, when it began, what it
22 consists of?

23 A. I'm a managing director and vice chairman with
24 AlixPartners. And beginning in December we began serving as
25 advisors to General Motors, primarily focused on contingency

1 planning in the event that an out-of-court solution was not
2 possible. We were working with the company to prepare for a
3 possible bankruptcy filing and that's been the substance of
4 what we've been working on.

5 Q. And your declaration, I want to ask you if you have it in
6 front of you, it's Debtor's Exhibit 5 in the binder.

7 (Pause)

8 A. I have it.

9 Q. That includes within it a liquidation analysis, doesn't
10 it?

11 A. It does.

12 Q. Could you explain who asked you to prepare that and what
13 the purpose of it was?

14 A. We were asked by the company's counsel, Weil Gotshal, to
15 prepare that. And it is for the purpose of demonstrating that
16 the -- what the creditors will receive under a proposed
17 transaction with the U.S. Treasury is at least as great as what
18 creditors would receive in a liquidation.

19 Q. When were you asked to prepare that?

20 A. I'm going to guess that it was early in May, perhaps a
21 little earlier.

22 Q. Were you asked to prepare a liquidation analysis in
23 connection with the proposed Chapter 11 plan?

24 A. The liquidation analysis would have been the same in a
25 Chapter 11 regardless of how it was to be used in a chapter

1 proceeding.

2 Q. Were you surprised that nobody objected to the proposed
3 transaction on the basis of perhaps a belief they would receive
4 more in liquidation value?

5 MR. MILLER: Objection, Your Honor, whether Mr. Koch
6 was surprised or not is not relevant to what's going on in
7 today's courtroom.

8 THE COURT: Mr. Richman, help me on this one.

9 MR. RICHMAN: Your Honor, I'll move on.

10 THE COURT: Okay. Objection sustained.

11 Q. Did you hear my discussion earlier with Mr. Worth about
12 NOLs?

13 A. I did.

14 Q. Do you have understanding of NOLs in your experience?

15 A. I have some. I'm not a tax attorney but I have some
16 understanding.

17 Q. You have been in the business a long time, I know.

18 A. I have.

19 Q. About how many years have you been doing financial
20 advisory work?

21 A. A long time.

22 Q. Ballpark.

23 A. More than forty years.

24 Q. More than forty years, congratulations.

25 A. Thank you.

1 Q. Approximately how many Chapter 11 cases have you been
2 involved with, probably hundreds?

3 A. Certainly dozens.

4 Q. In forty years I bet it's more than that.

5 A. Well, I haven't been doing restructuring work for all of
6 that forty years.

7 Q. Do you have an understanding from your experience of how a
8 company can keep NOLs or transfer NOLs to a purchaser?

9 A. It is a -- it is relatively difficult to structure a
10 transaction where NOLs will survive. And the specifics of how
11 to do that are really beyond my expertise. In a Chapter 11,
12 which is a reorganization where there's a change of control,
13 there are typically limitations that are placed on the use of
14 NOLs. I know that there was some legislation that
15 benefitted -- will benefit the OEMs, General Motors in the use
16 of NOLs going forward. But I'm not familiar -- I'm not
17 conversant with the details.

18 Q. You said before that this liquidation analysis would be
19 the same analysis that would be applied for a conventional
20 Chapter 11 plan, is that correct?

21 A. Yes.

22 Q. So if the debtors had filed a Chapter 11 plan on June 1st
23 and tried to get confirmation on an accelerated basis, the same
24 liquidation analysis would have been used for that exercise,
25 correct?

1 **A. I believe that's correct.**

2 MR. RICHMAN: Excuse me one second, Your Honor.

3 THE COURT: Sure.

4 (Pause)

5 **Q. And just to be clear, when I asked you if the liquidation**
6 **analysis would be the same, this liquidation analysis would be**
7 **used to show that creditors under a Chapter 11 plan would**
8 **receive more than the value shown in the liquidation analysis,**
9 **correct?**

10 **A. Presumably that would be the case, yes.**

11 **Q. Okay.**

12 **A. The liquidation analysis would show what it shows.**

13 **Q. For a liquidation of the company?**

14 **A. Correct.**

15 **Q. Thank you.**

16 MR. RICHMAN: That's all for now, Your Honor.

17 THE COURT: Okay. Mr. Eckstein, did you want to
18 question too?

19 MR. ECKSTEIN: Yes.

20 CROSS-EXAMINATION

21 BY MR. ECKSTEIN:

22 **Q. Mr. Koch, good evening.**

23 **A. Good evening.**

24 **Q. My understanding is that currently you are the chief**
25 **restructuring officer for General Motors, is that correct?**

1 A. That is correct.

2 Q. And am I correct that once the proposed transaction
3 closes, that you are anticipated to become the CEO of what's
4 referred to as OldCo, am I correct?

5 A. That is correct.

6 Q. And what do you understand your responsibilities as CEO of
7 OldCo would be?

8 A. Well, it would be to oversee the wind down of OldCo, the
9 settlement of claims and the distribution of the stock that --
10 of NewCo that is held by OldCo.

11 Q. And do you anticipate that OldCo will be retaining any of
12 the employees of current General Motors?

13 A. The current plan is for all employees of General Motors to
14 move to NewCo.

15 Q. So the employees of OldCo will essentially be yourself and
16 other AlixPartners individuals, is that correct?

17 A. A number of AlixPartners individuals as well as other
18 people, perhaps, that we -- perhaps retirees of General Motors
19 that have a particular expertise that, you know, we may retain
20 as consultants or as contractors.

21 Q. So am I correct that an important part of implementing the
22 wind down of OldCo will be the implementation of a transition
23 of services agreement between OldCo and NewCo, am I correct?

24 A. It is an element. It's an important element, yes.

25 Q. Do you recall hearing Mr. Henderson testify that the

1 transition services agreement was one of the key transactional
2 documents being negotiated in connection with the transaction?

3 A. Yes.

4 Q. And are you responsible at the company -- principally
5 responsible for negotiating the transition of services
6 agreement?

7 A. I and my colleagues have, on behalf of OldCo, have taken a
8 lead role in negotiating those, yes.

9 Q. And I assume you would agree that it's important to OldCo
10 to make sure that we have as much cooperation as possible from
11 NewCo once the transaction closes, am I correct?

12 A. That is correct.

13 Q. Now I'm assuming one of the areas where cooperation is
14 going to be needed is going to be to maintain access to the
15 legal staff at NewCo in terms of assisting OldCo in winding
16 down the assets and the liabilities, am I correct?

17 A. Certainly we need access to legal records. I believe the
18 decision has been made that GM legal will not be providing
19 services to OldCo going forward.

20 Q. Who made the decision that GM legal will not be providing
21 services to OldCo, Mr. Koch?

22 A. I believe GM legal.

23 Q. And sitting here today, do you know how you're going to
24 get the legal advice necessary to deal with all of the
25 remaining contracts and claims that are being left with OldCo?

1 A. Yeah. I believe we will primarily work with debtors'
2 counsel. Weil Gotshal will remain our counsel going forward.
3 So we'll primarily rely on them. To the extent necessary,
4 we'll retain other law firms and if necessary we'll hire
5 attorneys internally.

6 Q. Did you participate in the negotiation of that provision,
7 Mr. Koch?

8 A. I would say yes.

9 Q. In your opinion, is this the relationship that you think
10 is most advantageous to OldCo going forward with respect to the
11 provision of legal services?

12 MR. MILLER: Objection, Your Honor. I don't know.
13 This line of testimony doesn't relate to the issues which are
14 before the Court.

15 THE COURT: Overruled.

16 A. I believe it's a satisfactory result.

17 Q. Would it be fair for me to assume that it would be
18 preferable to OldCo if it had ongoing access to the in-house
19 General Motors legal staff, isn't that correct?

20 A. I believe that I've answered that it's a satisfactory
21 arrangement.

22 Q. In connection with the -- am I correct that part of the
23 transaction that's being considered by the Court is an
24 arrangement whereby OldCo will be leasing various plants to
25 NewCo post the closing of the transaction?

1 A. That is correct.

2 Q. Approximately how many plants do you expect will be left
3 with OldCo and leased to NewCo?

4 A. I'm going to say there might be -- I don't have a number
5 on the top of my head, you know. I would say in the range of
6 ten plants, perhaps, that have varying shutdown dates that have
7 been identified that NewCo will lease from OldCo until the date
8 that they're taken out of service.

9 Q. And do you know how the determination was made to leave
10 certain plants with OldCo rather than have them go to NewCo?

11 A. I believe that was based upon the company's production
12 plans going forward and in an assessment of the vehicles that
13 are being produced and a whole range of business factors that
14 led them to that conclusion.

15 Q. And so there are ten plants, thereabout, that are being
16 left with OldCo and is there going to be a lease agreement
17 that's being entered into between OldCo and NewCo in connection
18 with these plants?

19 A. Yes, there is.

20 Q. And does this lease agreement essentially provide for
21 NewCo to assume the ongoing responsibilities in connection with
22 these plants while the plants are being used by NewCo in its
23 business?

24 A. Yes, they're constructed as triple-net leases plus one
25 dollar a foot rental income for OldCo.

1 Q. So it's fair for me to assume that the business intention
2 is for OldCo not to have ongoing liabilities arising out of
3 these plants while these plants are being utilized by NewCo, is
4 that correct?

5 A. Let me phrase it this way, to the extent that liabilities
6 are created between the date of the sale and the date that GM
7 exits, NewCo would be responsible for those matters. To the
8 extent there are existing environmental issues, they would be
9 dealt with by OldCo.

10 Q. So let me understand, you're saying if an environmental
11 liability exists today, that liability is being left with
12 OldCo?

13 A. Yes, sir.

14 Q. But if an environmental liability arises post closing
15 while the plant is being operated by NewCo, that would be a
16 liability of NewCo, is that what you're saying?

17 A. That is correct.

18 Q. And at this point in time are you aware of any
19 environmental liabilities that exist with respect to the plants
20 that are being retained by OldCo?

21 A. Yes, we are.

22 Q. And have those been included in any estimates of the wind
23 down liabilities that are expected to be the responsibility of
24 OldCo?

25 A. Yes, they have.

1 Q. And do you have any estimate as to what those amounts are?

2 A. We estimate presently approximately 530 million dollars.

3 Q. And have those liabilities been included in the 950
4 million dollars that is being left with OldCo in order to
5 satisfy the wind down responsibilities?

6 A. We're having ongoing discussions with General Motors as
7 well as with the U.S. Treasury as to what the wind down budget
8 needs to be. And so we're working with draft -- with a draft
9 budget. And to the extent that either new liabilities or we
10 learn of liabilities that are going to be left in OldCo that
11 either we were unaware of or that we thought -- did not realize
12 were to be settled in cash, then we needed to increase the
13 budget for that.

14 Similarly, as we have learned more from environmental
15 consultants that we retained, we've adjusted the estimated cost
16 to reflect what we've learned from our environmental
17 consultants.

18 Q. Other than the environmental liabilities that you just
19 addressed, are there any other categories of liabilities
20 associated with the plants that will be leased to NewCo that
21 are not being assumed by NewCo under the master lease
22 agreement?

23 A. May I ask you to repeat that, please?

24 Q. Other than the environmental liabilities that you just
25 referred to, are you aware of any other category of liability

1 that is not being assumed by NewCo in connection with these
2 plants that are being leased to NewCo post closing?

3 A. Yes. Plant decommissioning cost and holding cost of the
4 property after GM exists, after NewCo exits, property taxes,
5 insurance, security, those costs will remain with OldCo.

6 Q. And are these costs -- have they been included in the wind
7 down budget that you've prepared in connection with what it
8 will cost to wind down OldCo?

9 A. We have.

10 Q. And you believe that there are sufficient reserves to deal
11 with the costs you've just described?

12 A. We do.

13 Q. Are you familiar with the categories of liabilities,
14 prepetition liabilities, that are being retained by OldCo?

15 A. I believe I'm generally familiar, yes.

16 Q. Sitting here today, do you have an estimate of what those
17 liabilities will aggregate?

18 A. No.

19 Q. Have you prepared any analyses that would set forth what
20 those liabilities would aggregate?

21 A. No.

22 Q. Is it fair for me to assume that this is an exercise that
23 will need to be undertaken post closing?

24 A. Yes, sir.

25 Q. Do you have any sense of how long that exercise is likely

1 to take?

2 A. We think that it will probably be first quarter 2010 to
3 second quarter 2010 before we'll be in a position to file a
4 liquidating plan at the earliest. And we'll need to set a bar
5 date so I think it'll probably be early in 2010 that we'll be
6 in a position to estimate liabilities.

7 Q. Mr. Koch, in your capacity as CRO and your future capacity
8 as the CEO of OldCo, is it your expectation that the -- that
9 OldCo will have sufficient assets to satisfy the administrative
10 and priority obligations being incurred by General Motors?

11 A. To the extent that claims such as cure claims are not
12 assumed by NewCo, we have had ongoing discussions with the
13 Treasury. They have more diligence work to do on the budget
14 but it has been reaffirmed that it is their intention to leave
15 behind adequate assets to satisfy the liabilities. And so I
16 have comfort that the answer to your question is yes.

17 Q. Thank you, sir.

18 MR. ECKSTEIN: No further questions.

19 THE COURT: Before you come up, Mr. Kennedy, just
20 give me a second, please.

21 (Pause)

22 THE COURT: Okay. Mr. Kennedy, whenever you're
23 ready.

24 (Pause)

25 CROSS-EXAMINATION

1 BY MR. KENNEDY:

2 Q. Good evening, Mr. Koch. My name is Tom Kennedy. I'm
3 acting on behalf of the IUE-CWA, the steel workers and the
4 operating engineers in this proceeding. I just have a couple
5 of questions.

6 How long do you expect the wind up of General Motors to
7 take if the 363 sale transaction is approved?

8 A. I think the heavy lifting we'll move as quickly as we can.
9 I think the heavy lifting will be finished in two to three
10 years. And there undoubtedly will be some aspects that may
11 drag on a couple of years longer than that.

12 Q. Are you aware that Old GM has a book value obligation of
13 3.7 billion dollars to its non UAW unions for post retirement
14 life and health?

15 A. Yes, sir.

16 Q. And you indicated a moment ago that Treasury has committed
17 to provide enough money to Old GM to satisfy its wind down
18 obligations, is that correct?

19 A. That's correct.

20 Q. Is any part of that 950 million dollar wind down budget,
21 or whatever it ends up being, intended to satisfy the claims of
22 non-UAW union retirees for their health and welfare?

23 A. There is a portion that is anticipated. We do anticipate
24 a contract rejection procedure. And so there is a portion that
25 is estimated that will be an administrative expense prior to

1 the consummation of that contract rejection action.

2 Q. Are you familiar with the phrase Section 1113 of the
3 Bankruptcy Code?

4 A. Yes, sir.

5 Q. And is that what you refer to when you used the words
6 contract rejection a moment ago?

7 A. Yes, sir.

8 Q. Are you also familiar with the term Section 1114 of the
9 Bankruptcy Code?

10 A. Yes, sir.

11 Q. And you're aware that that's a section that deals with
12 post retirement health obligations?

13 A. Yes, sir.

14 Q. And is it your anticipation, as we sit here today, that if
15 the 363 sale's process is approved, Old GM will begin a Section
16 1114 process to cancel the health and welfare owed to non-UAW
17 union members?

18 A. Yes, sir.

19 Q. And when would you anticipate doing that?

20 A. Next week.

21 MR. KENNEDY: All right. I have no other questions,
22 Your Honor.

23 THE COURT: Okay. Thank you, Mr. Kennedy.

24 CROSS-EXAMINATION

25 BY MR. BRESSLER:

1 Q. Good evening, Mr. Koch. My name is Barry Bressler, I
2 represent the Ad Hoc Committee of Consumer Victims, product
3 liability tort claimants and I just have a couple of questions.

4 Have you contemplated a procedure yet for liquidating the
5 existing product liability tort claims?

6 A. Not in detail but we have contemplated that we would look
7 to put in place a mediation process.

8 Q. And has the cost of handling that procedure been included
9 in the wind down budget?

10 A. Yes, sir.

11 Q. Are you contemplating a binding mediation process or
12 mediation process with some sort of appeals?

13 A. We have not gotten that far.

14 MR. BRESSLER: Thank you, sir.

15 THE COURT: Okay. Mr. Esserman?

16 MR. ESSERMAN: Just a few questions, Your Honor.

17 THE COURT: Okay.

18 CROSS-EXAMINATION

19 BY MR. ESSERMAN:

20 Q. Good evening, Mr. Koch. My name is Sandy Esserman. I'm
21 counsel to the Ad Hoc Asbestos Committee. I just have a few
22 questions for you on your testimony. As it stands now, the
23 wind down budget is set at 950 million, is that correct?

24 A. That number has been referred to, that would not be the
25 amount that we're currently anticipating.

1 Q. And what amount are you anticipating?

2 A. We currently believe that wind down will be something
3 slightly in excess of 1.25 billion dollars.

4 THE COURT: Pause, please, Mr. Esserman. Did you say
5 1.25 billion, Mr. Koch?

6 THE WITNESS: Yes, Your Honor.

7 Q. Has the United States Treasury committed to leave 1.25
8 billion dollars behind in this estate to liquidate it?

9 A. What the treasury has committed to us is that they will
10 meet with us, we'll work through -- they need to do some more
11 diligence on the wind down budget. But it is their stated
12 intention to leave us with sufficient cash to satisfy the costs
13 estimated in the wind down budget that is ultimately agreed to.

14 Q. Well, what happens if the Treasury Department disagrees
15 with you on how much it's going to wind down this estate and
16 this Court has approved a sale?

17 A. I expect that we will have reached agreement with the U.S.
18 Treasury before that occurs.

19 Q. Well, this Court may rule tomorrow or the next day, are
20 you anticipating an agreement between tonight as we sit here
21 today and tomorrow morning such that that agreement will be in
22 writing and circulated to the creditors?

23 A. I don't know that it would be in writing but it will be
24 documented.

25 Q. You mean not in writing, I always thought documented was

1 in writing.

2 A. Sir, you asking me to speculate as to how long it's going
3 to take to generate a legal agreement. What I'm telling you is
4 that I'm relying on what the Treasury folks have said. They've
5 been very straightforward to work with so far, I anticipate
6 they will continue to be straightforward to work with. And I
7 believe that we will have, in ample time, what is needed to
8 document the agreement.

9 Q. You know, Mr. Koch, you're right it is speculation.
10 Because as you sit here today you don't know whether the
11 treasury department will agree to a budget that will adequately
12 fund a wind down of this estate, do you? You're hopeful. I
13 understand that.

14 A. Well --

15 Q. But you don't know that, do you?

16 A. Well, I know it -- I believe I do know it because
17 yesterday my partner and I talked with one of the treasury
18 people who reaffirmed that that is the intention of the
19 Treasury to do that.

20 Q. But you have nothing in writing from the U.S. Treasury on
21 this subject, do you?

22 A. I do not today, no.

23 Q. Okay. And yet you're here asking the Court to approve a
24 sale which may leave inadequate funds for a wind down budget if
25 you and the Treasury don't agree, isn't that what you're asking

1 this Court to do?

2 A. Sir, I'm not asking the Court to approve a sale.

3 Q. You're not? Okay. You're not asking the Court to approve
4 the sale? Okay. Would you like this Court to deny the sale?

5 A. No.

6 Q. Okay. As it sits today, if there are no further
7 agreements with the United States Treasury, what is the amount
8 of money that the United States Treasury has allowed as a wind
9 down budget of this estate?

10 A. I believe the number is 950 million.

11 Q. And it's your view that that number is inadequate?

12 MR. SCHWARTZ: I'm sorry; I think documents were
13 filed last night that say at least 950 million dollars.

14 MR. ESSERMAN: I don't know what they filed last
15 night but --

16 THE COURT: Well --

17 MR. ESSERMAN: My point simply, Your Honor --

18 THE COURT: No, Mr. Esserman.

19 MR. ESSERMAN: I apologize.

20 THE COURT: Thank you. On the one hand I can
21 understand why you might not know what something that was filed
22 last night says. But on the other hand, once you've been told
23 that there's a document out there that may be inconsistent with
24 the premise of your question, I'm not going to permit you to
25 ask a question premised upon a fact that's in doubt until it's

1 clarified. And frankly, if a lawyer, any lawyer on any side of
2 this case makes a representation to me, until he or she has
3 shown to me that that lawyer's own reliability is unreliable, I
4 think a representation from a lawyer in this courtroom is good
5 enough for me.

6 Now there's a problem with a premise so you can ask a
7 question that doesn't have that premise. Or if you think it's
8 so important, I'll give you the opportunity to ask more
9 questions of Mr. Koch tomorrow after you can see if Mr.
10 Schwartz is lying to you and lying to me when that
11 representation was made.

12 MR. ESSERMAN: Your Honor, I would have no further
13 questions and, frankly, would withdraw every question I asked
14 if Mr. Schwartz would stand up and say we're committed to fund
15 the estate for a wind up budget of --

16 THE COURT: No. We're not going to make let's make a
17 deal here. What we will do is you're entitled to test Mr.
18 Schwartz' credibility in making a representation to me, if you
19 want to.

20 MR. ESSERMAN: Okay. Your Honor, it's -- there's
21 nothing nefarious here. I'm just concerned, from the estate's
22 standpoint, that there's enough money being left behind. And I
23 get concerned --

24 THE COURT: Mr. Esserman, you made that point to me
25 between five and ten minutes ago. I understood it when Mr.

1 Eckstein made it.

2 MR. ESSERMAN: Okay.

3 THE COURT: I understood it when you made the first
4 five or ten questions of your further examination and I
5 understand when you asked the question, in words or in
6 substance, there isn't anything in writing yet and Mr. Koch
7 pretty much agreed with you. Not pretty much, totally agreed
8 with you. You made your point at that point in time.

9 MR. ESSERMAN: I'm done and I apologize to the Court.

10 THE COURT: All right. Thank you. Thank you. Other
11 objectors? Okay, Mr. Parker, you're up, please.

12 (Pause)

13 CROSS-EXAMINATION

14 BY MR. PARKER:

15 Q. Mr. Koch. Hi. I'm Oliver Parker. I've got a couple of
16 questions for you. The -- your liquidation value that you did,
17 as part of the liquidation value, did you make a calculation of
18 what the net operating losses might be worth to an acquiring
19 company in a liquidation?

20 A. Sir, in a Chapter 7 liquidation, net operating losses
21 would have zero value.

22 Q. Okay. In a Chapter 7 liquidation, a -- the corporate
23 shell could not be sold independently of the assets?

24 A. The -- I believe, sir, that the rules surrounding
25 survivability of net operating losses would really preclude

1 that from occurring.

2 Q. Okay. You're going to be the chief restructuring officer
3 of the new -- I'm sorry, of the old company, correct? Sorry,
4 the new CEO?

5 A. Yes, sir.

6 Q. When -- are there any other liabilities that are going to
7 be administrative expenses besides the environmental liability
8 and, of course, the cost of administration and the cost of the
9 mediation process that you're talking about?

10 MR. MILLER: In Mr. Parker's question, he said the
11 cost of administration. That includes everything that relates
12 to the administration. So I don't know what he's talking
13 about.

14 THE COURT: Sustained as to form. But you can
15 rephrase, Mr. Parker.

16 MR. PARKER: Okay.

17 Q. Besides the cost of actually hiring some people like
18 yourself and others to wind up OldCo, you indicated that there
19 were some other costs of administration; there was
20 environmental costs of -- I think you said something like 530
21 million dollars; there were costs of mediation for the tort
22 claimants to try to settle with them. Are there any other
23 costs, administrative or priority costs, that you anticipate?

24 A. Well, there will be some priority tax claims. We don't
25 have an estimate of their amount, but all of the expenses that

1 we incur, whether it be wind-down costs or holding costs for
2 plants that are being decommissioned, all of those would be, in
3 my view, costs of administration that are included in as
4 administrative expenses.

5 Q. Are those plants going to have any value?

6 A. Well, we hope so, but they're going to be -- they're going
7 to be very difficult to -- they're going to be very difficult
8 to either sell or dispose of. Many, if not most, have some
9 form of environmental contamination that will need to be dealt
10 with. So we'll have a very difficult time. We'll do the best
11 that we can.

12 Q. Do you know, is the Treasury Department willing to amend
13 the contract with General Motors to provide that if the costs
14 of administration exceed their estimate that there will be a --
15 that they will bring additional money to the table?

16 MR. SCHWARTZ: Objection.

17 THE COURT: Asked and answered?

18 MR. SCHWARTZ: Asked and answered.

19 THE COURT: Sustained.

20 Q. Okay. The 950 million, or whatever it turns out to be,
21 the money that's given to wind down the estate to pay the cost
22 of administration, will that have a lien or claim on the ten
23 percent stock and fifteen percent warrants that are supposed to
24 be distributed?

25 A. I believe that as -- that it will not have a lien on

1 the -- it will not have a lien on the stock, but the -- it will
2 be a nonrecourse loan to the Treasury. So the stock of New GM
3 will be held free and clear in OldCo until we're in a position
4 to make a distribution to the creditors.

5 Q. And the U.S. Treasury will not be one of the creditors
6 that gets a distribution?

7 A. That is my understanding, sir, unless --

8 MR. SCHWARTZ: Objection. To clarify, that's on
9 account of the LSA and the DIP.

10 THE COURT: All right, time out here, because I
11 think, in essence, you were trying to correct Mr. Parker. I
12 don't have the ability to make an evidentiary ruling on whether
13 this question is objectionable or not. I think what we need to
14 do is I have to temporarily sustain that objection. You have
15 to lay a foundation, Mr. Parker. And that's the way we would
16 have to do it by the book, by conditional use of evidence.
17 Maybe if you want to take eight seconds to talk to Mr. Schwartz
18 about how you can ask the question so he won't object to it,
19 that would save us a lot of time, more time than going by the
20 book.

21 (Pause)

22 Q. What I'm trying to find out is, is the government going to
23 be getting some of the ten percent stock and fifteen percent
24 warrants that's going to Old Company because of the 950 million
25 dollars?

1 A. No, sir.

2 Q. Okay, so Treasury isn't looking for reimbursement from the
3 stock and the warrants for the 950, or whatever it is?

4 MR. MILLER: Answered, Your Honor.

5 THE COURT: Sustained.

6 MR. PARKER: Okay.

7 Q. How much does it cost to decommission a plant?

8 A. It varies by plant, but I believe it's probably on the
9 order of five or six million dollars to drain the fluids and
10 basically do the above-ground environmental that will make the
11 plant safe.

12 Q. And how many plants are we decommissioning?

13 A. Well, there's a total, I believe, of about sixty-nine
14 million dollars in the budget. So that probably sounds like
15 about a dozen.

16 Q. Okay. The -- I realize that the cost of the 513 and 514
17 procedures, from your testimony, is going to be an
18 administrative cost, but whatever the --

19 THE COURT: What? What sections do those include,
20 did you say?

21 MR. PARKER: 1113 and 1114.

22 THE COURT: Oh, okay.

23 MR. MILLER: I'm sorry.

24 Q. But once it's determined whatever the outstanding claim is
25 of the non-UAW unions, that's not an administrative cost, is

1 it?

2 A. No, sir.

3 Q. And while the cost of mediation is an administrative cost,
4 that is, a cost of mediation for the tort claimants, their
5 underlying claims would not be administrative costs, correct?

6 A. That is correct.

7 Q. Do you have any idea what you expect the total claims to
8 range, the nonadministrative claims to range?

9 MR. MILLER: Objection, Your Honor. Asked and
10 answered.

11 THE COURT: It's in exhibits we have in the record,
12 Mr. Parker.

13 MR. PARKER: Yeah, but I don't think he's testified
14 to it, Your Honor.

15 THE COURT: If you think that his knowledge trumps
16 what's in the exhibits and is relevant for that purpose, you
17 may answer. Go ahead, Mr. Koch. If you have an understanding,
18 I'll let you answer.

19 A. I did answer earlier that we do not have an estimate of
20 total claims at this time.

21 Q. Any ballpark?

22 A. No, sir.

23 Q. Okay.

24 MR. PARKER: Is it possible for us to get a copy of
25 the document that was filed yesterday, Your Honor -- I mean,

1 this morning, Your Honor?

2 THE COURT: Forgive me, Mr. Parker. I've cut you an
3 awful lot of slack about coming to the Court unprepared, and I
4 don't think it's fair to ask the other parties, or the Court,
5 to fetch for you.

6 MR. PARKER: No, Your Honor --

7 THE COURT: Make your presentation. Are you talking
8 about seeing a document that's in evidence?

9 MR. PARKER: No, sir, I'm talking about seeing a
10 document that the government represents was filed this morning.
11 None of us has seen it.

12 THE COURT: Mr. Schwartz, is it on the electronic
13 filing system?

14 MR. SCHWARTZ: Yes, it's, to be clear, not a document
15 that the government filed. It's a motion the debtors filed.
16 But as to timing, actually, this has been on the docket for
17 some time. In the final DIP order that Your Honor signed on
18 the 25th of this month, it provides for a wind-down facility,
19 quote, "in an amount not less than 950 million dollars".

20 THE COURT: All right. You want to let Mr. Parker
21 look over your shoulder so he can see what you were reading
22 from?

23 MR. PARKER: Your Honor, I'm a little confused
24 because I understood when the previous person asked -- was
25 asking questions, he wanted to know whether or not there was

1 anything in writing that said the government would give 1.25
2 billion for the --

3 THE COURT: No, he asked two separate questions, Mr.
4 Parker.

5 MR. PARKER: And he was then informed that something
6 was filed this morning with that regard. That's what I thought
7 I heard.

8 THE COURT: No. What I heard -- I guess what I hear
9 probably counts as much as anything -- I heard that management,
10 Mr. Koch, believed that it'd probably take in the ballpark of
11 about 1.2 billion to cover the administrative costs. And I
12 heard Mr. Schwartz say -- and I also heard Mr. Koch say, and
13 this is a paraphrase, that he understood the government would
14 do that which was necessary. The exact words were the exact
15 words, and if there's a difference between my memory, the exact
16 words trump what my memory is.

17 Now, apart from that, I think Mr. Schwartz
18 represented that a document had been filed in court that said -
19 - and, Mr. Schwartz, you can read it again now because I don't
20 think my memory should trump the words you've read. But I
21 think we have those three separate things that were transmitted
22 to me. Now, if anybody thinks that's wrong, I won't be so pig-
23 headed as to insist that my memory is correct. And I certainly
24 want to hear the exact words Mr. Schwartz read once again, even
25 though I know it's repetitious.

1 MR. SCHWARTZ: I think that you captured exactly what
2 I said, which was a response, I think, to the suggestion in Mr.
3 Esserman's questioning that it was precisely a 950 million
4 dollar budget. And I rose to say that there was a document
5 filed which says it turns out to be the final DIP order, that
6 there is a wind-down facility, quote, "in an amount not less
7 than 950 million dollars".

8 THE COURT: All right.

9 MR. PARKER: But, Your Honor, not less than does not
10 necessarily mean they're going to go more than.

11 THE COURT: I understand that.

12 MR. PARKER: And I thought the line of questioning
13 was that how do we know that there'll be sufficient funds? And
14 I had thought that we were being told that the government is --
15 Treasury is representing that there will be sufficient funds,
16 that they won't --

17 THE COURT: Well, we haven't heard that from the
18 Treasury yet.

19 MR. PARKER: Okay.

20 THE COURT: I think Mr. Koch has told you his
21 understanding, which is, frankly, all you can get out of Mr.
22 Koch.

23 MR. PARKER: Thank you, Your Honor.

24 THE COURT: Okay.

25 MR. PARKER: I have no further questions.

1 THE COURT: Okay. All right, any other objectors up
2 for Mr. Koch? Redirect, Mr. Miller?

3 REDIRECT EXAMINATION

4 BY MR. MILLER:

5 Q. Mr. Koch, you heard Mr. Worth's testimony as to the value
6 of the equity and warrants that will be the property of the
7 estate of OldCo?

8 A. I did.

9 Q. And do you recall what that value was?

10 A. 3.9 to 4.9 billion dollars.

11 Q. Did you take into account the value of the warrants?

12 MR. RICHMAN: Objection, Your Honor. The question
13 went to Mr. Worth's testimony and what Mr. Koch recalls. So --

14 THE COURT: Sustained.

15 Why don't you rephrase, please, Mr. Miller?

16 MR. MILLER: If I may, Your Honor, may I show the
17 witness -- I think it's Exhibit 3, Mr. Worth's --

18 THE COURT: Yes, you may.

19 MR. MILLER: -- declaration.

20 Q. I draw your attention to page 14. Do you see the value
21 that Mr. Worth beforehand put down, the equity value and the
22 common stock going to OldCo?

23 A. I do.

24 Q. And that value's how much?

25 A. 7.4 billion to 9.8 billion dollars.

1 Q. So that the estate -- if that value is correct, the estate
2 of OldCo will have over 7 billion dollars of value, not
3 counting the 950 million dollars?

4 A. That is correct.

5 Q. At least the 950 million dollars, is that correct?

6 A. Yes, sir.

7 Q. In your opinion, is there any possibility of the
8 administrator -- the estate of OldCo being administratively
9 insolvent?

10 A. No, sir.

11 MR. MILLER: Thank you.

12 THE COURT: All right. Any recross?

13 MR. RICHMAN: One second, Your Honor.

14 THE COURT: Sure.

15 (Pause)

16 MR. RICHMAN: Just a few, Your Honor.

17 RE-CROSS-EXAMINATION

18 BY MR. RICHMAN:

19 Q. Mr. Koch, are you familiar with the widely reported
20 agreement of GM's bondholders with Treasury that was reported
21 just prior to the bankruptcy filing as to what consideration
22 they would be receiving from NewCo?

23 A. I know only what I read in the newspaper.

24 Q. Was that ten percent of the equity of NewCo and warrants
25 to acquire another fifteen percent were going to be what

1 **bondholders, indeed what all unsecured creditors, could expect**
2 **to receive from NewCo in these Chapter 11 cases?**

3 MR. MILLER: Objection, Your Honor. If Mr. Richman
4 has such a document, if he could show it to the witness. All
5 Mr. Koch said is what he read in the newspaper.

6 **Q. Do you have knowledge that there is an agreement that has**
7 **been reported that unsecured creditors will receive ten percent**
8 **of the equity of NewCo and warrants to acquire another fifteen**
9 **percent?**

10 MR. MILLER: That assumes facts that are not in the
11 record, Your Honor, and goes beyond redirect.

12 MR. RICHMAN: I believe it is in the record in a
13 number documents, including briefs.

14 THE COURT: I think it does not exceed redirect, and
15 I'm going to overrule the objection with the understanding that
16 if you -- that you don't have to accept his premises if you
17 don't want to, Mr. Koch. You can answer the question as best
18 you can.

19 **A. I have only a very general understanding. So to make a --**
20 **some -- to give you a specific answer as to what my**
21 **understanding of the specific deal that's been reached, I don't**
22 **know the specific deal that's been reached.**

23 **Q. Well, if there was a specific deal reached of the type I**
24 **just described that would provide ten percent of the equity of**
25 **NewCo and warrants to acquire another fifteen percent for the**

1 benefit of all unsecured creditors, would I be correct that
2 your testimony in response to Mr. Miller's last question is
3 that unsecured creditors could not, under any reasonable
4 scenario, expect to receive those distributions?

5 A. It is possible that we would need to sell some of the new
6 stock. It is -- we would -- if we had 950 million dollars to
7 work with, we'll do our very best to wind down the estate at
8 minimum cost. Any excess monies will be returned to the
9 Treasury. I think it would be unlikely that we would get it
10 done for 950; I wouldn't rule it out entirely. And so if we
11 were unable to get it done for 950, then it is possible we
12 would need to sell some of the stock.

13 Q. So I would be correct in saying, then, that the -- any
14 distribution that has been set aside for unsecured creditors
15 would likely have to be invaded and diminished in order to
16 handle wind-down and other administrative costs that are not
17 being covered by Treasury --

18 A. It is --

19 Q. -- correct?

20 A. That is possible.

21 MR. RICHMAN: Thank you.

22 THE COURT: Okay. Mr. Eckstein?

23 RECROSS-EXAMINATION

24 BY MR. ECKSTEIN:

25 Q. Mr. Koch, let me just clarify a couple of items that I

1 believe were the subject of your testimony. Did I understand
2 you to testify that in your view this estate will have
3 sufficient assets outside of the stock that is being retained
4 by OldCo, the stock and the warrants; that this estate will
5 have sufficient liquid assets, either the 950 or some
6 additional amount of cash being provided by Treasury, to
7 satisfy the wind-down obligations of this estate?

8 MR. MILLER: Objection, Your Honor.

9 THE COURT: Sustained. And here's the problem,
10 folks. I understand the point that both of you folks are
11 making. Mr. Miller, you made the point that there's aggregate
12 assets so that there's no way that I or another judge could
13 find the case administratively insolvent. Mr. Eckstein is
14 making quite a different point, which is that a good chunk,
15 let's call it between 7.4 and 9.8 billion bucks' worth of
16 stock, is going to be illiquid until it's converted to cash and
17 before it's registered with the SEC without an 1145 exemption.
18 It's going to be hard to unload. In the meantime, the estate's
19 going to be short on liquidity.

20 I understand the points that you're trying to make,
21 Mr. Epstein, but you got to ask questions that are focused on
22 liquidity as contrasted to administrative insolvency in the
23 technical sense, unless you're trying to show me something
24 different.

25 MR. ECKSTEIN: Your Honor, and I'll save it for --

1 the argument I'll save for later in the hearing, but I am
2 making a somewhat different point, and that is that -- and I
3 understood Mr. Koch to testify that he expects that the amount
4 of cash that is being left in the estate by the United States
5 Treasury will be sufficient to satisfy the wind-down
6 obligations separate and apart from the stock and the warrants.
7 And it was that issue that I was going to, which subsumes the
8 liquidity issue, Your Honor. But --

9 THE COURT: Okay, but then if you've got further
10 nuances, I'm not keeping up with you on that. So if you have
11 further questions that you want to develop, go ahead and do it;
12 just make them a little clearer in terms of whether you're
13 talking about assets, liquidity or something possibly --

14 MR. ECKSTEIN: I will do so, Your Honor. Thank you.

15 THE COURT: Okay. Thanks.

16 BY MR. ECKSTEIN:

17 Q. Mr. Koch, are you familiar with negotiations that took
18 place, prior to the commencement of this case, between
19 representatives of an ad hoc committee for bondholders and the
20 United States Treasury regarding the amount of equity and
21 warrants that will be left for the benefit of unsecured
22 creditors of this estate?

23 A. I have secondhand knowledge of those discussions.

24 Q. And what did -- what was your understanding as to what was
25 agreed to, to be left for unsecured creditors of this estate?

1 MR. MILLER: Objection, Your Honor. It's hearsay.

2 THE COURT: It is hearsay. So unless it's not for
3 the truth of the matter asserted, I have to sustain Mr.
4 Miller's objection.

5 MR. ECKSTEIN: Just a few more questions, if I may.

6 THE COURT: Sure. Of course.

7 **Q. Mr. Koch, did you ever see a term sheet that summarized**
8 **the understanding reached between the bondholders and the U.S.**
9 **Treasury?**

10 MR. MILLER: Object to the question, Your Honor. It
11 assumes there was an agreement between the bondholders and
12 somebody. I don't know who he's talking about.

13 THE COURT: Sustained as to form for lack of
14 foundation. But if you can lay the foundation, Mr. Eckstein,
15 you can try.

16 **Q. Mr. Koch, are you familiar with a term sheet that**
17 **reflected any discussions that took place between U.S. Treasury**
18 **and an ad hoc committee of bondholders?**

19 **A. I don't recall if I ever saw a term sheet or not.**

20 MR. ECKSTEIN: Your Honor, may I approach the witness
21 for a moment?

22 THE COURT: Sure. You can go ahead and see it now.
23 But before you ask the question --

24 MR. ECKSTEIN: I will, Your Honor.

25 THE COURT: -- give Mr. Miller a copy, and anybody

1 else who needs to see it.

2 (Pause)

3 Q. Mr. Koch, have you ever seen this term sheet?

4 A. No, sir.

5 Q. So you're not familiar with it?

6 A. That is correct.

7 Q. Okay.

8 MR. ECKSTEIN: Thank you, You Honor. I'll save the
9 question.

10 THE COURT: Okay. Any other objectors for Mr. Koch?
11 All right, Mr. Miller, anything further?

12 MR. MILLER: No, sir.

13 THE COURT: All right, Mr. Koch, you're excused.
14 Thank you.

15 THE WITNESS: Thank you.

16 THE COURT: Okay, folks, it's now twenty-five to 8.
17 I'd like to get a sense as to how long Mr. Repko's expected to
18 be. If he's more than a very modest period of time, I inclined
19 to go tomorrow.

20 MR. RICHMAN: Your Honor?

21 THE COURT: Mr. Richman?

22 MR. RICHMAN: With your permission, I would prefer
23 that we do that tomorrow. I think it would be more efficient.
24 I don't know who else has questions. There's -- I think we can
25 benefit from a break as well.

1 MR. MILLER: Your Honor, can we get some idea as to
2 what Mr. Richman -- how many -- what time he expects --

3 THE COURT: You can get an idea, but I'll tell you
4 that I'm not going to bind him to his representation. Mr.
5 Richman, do you have a sense as to how long you're going to be?

6 MR. RICHMAN: I'm thinking in the nature of thirty to
7 forty-five minutes. It may be less.

8 THE COURT: Okay. Are there other folks who think
9 they may -- other objectors who think they want to question Mr.
10 Repko too? All right, Mr. Parker raised his hand. I will
11 start -- we'll do Mr. Repko tomorrow. But, Mr. Richman, who do
12 you want to take first so that people can plan?

13 MR. RICHMAN: Mr. Repko.

14 THE COURT: All right. Fair enough. Okay then,
15 folks --

16 MR. MILLER: Your Honor, if I might interrupt.

17 THE COURT: Yes, Mr. Miller?

18 MR. MILLER: There are some other matters on the
19 calendar which I think we could clear up very quickly.

20 THE COURT: All right. Any objection to that?

21 UNIDENTIFIED SPEAKER: Couldn't hear. What?

22 MR. MILLER: There are other matters on the -- that
23 were set on the calendar for today which we could clear up very
24 quickly, including some uncontested matters.

25 THE COURT: Okay. Yeah, I think you have to tell

1 people what you have in mind so that -- because if I ask if
2 they object without them knowing, it makes it a little hard for
3 them to respond.

4 MR. MILLER: I tried, Your Honor. Mr. Smolinsky will
5 handle that, Your Honor.

6 THE COURT: Okay.

7 MR. SMOLINSKY: Good evening, Your Honor. Joe
8 Smolinsky from Weil, Gotshal & Manges, for the debtors. On the
9 calendar today we have a lease rejection motion that Your Honor
10 alluded to earlier. We're rejecting thirty-nine leases and six
11 subleases. The rejection is effective today. There was one
12 objection, Your Honor, Environmental Testing Corporation, which
13 was a lease, a thirty-eight year lease. It expires on its
14 terms December 2009. ETC had objected to the sale based on 105
15 of the Bankruptcy Code; Your Honor had made a comment about
16 that earlier. And in speaking with counsel for ETC, they were
17 willing to rest on their papers and have Your Honor decide as
18 to whether or not Your Honor would defer to the business
19 judgment of the company in rejecting that lease.

20 THE COURT: All right. Charlie, do you have my file
21 on that?

22 MR. SMOLINSKY: Your Honor, we did file a reply
23 yesterday. I'm not sure if Your Honor has it.

24 THE COURT: All right. I'm granting the motion vis-
25 a-vis the nonobjectors, and I'm also granting it vis-a-vis the

1 objector, in reliance, in part, on my 2004 decision in Ames
2 Department Stores, 306 B.R. 43. In that case we had a very
3 similar situation in which a debtor wanted to reject the lease
4 and leave his mess behind. And the landlord contended that the
5 debtor couldn't reject the lease until it left the leased
6 premises in the condition that they were supposed to have been
7 left in under the lease.

8 And I ruled that the very purpose of the rejection
9 aimed to relieve the estate of burdensome obligations. The
10 failures to meet lease obligations could not themselves be
11 impediments to the ability of a debtor to enforce those rights
12 or to apply its rights to reject for the benefit of the
13 creditors of the estate.

14 And I stated at page 51, "The Court necessarily must
15 reject the landlord's implicit contention that the debtor's
16 statutory right to reject can be qualified by requirements not
17 in the Bankruptcy Code itself and especially by an implied
18 requirement in compliance with lease covenants that are
19 burdensome to the debtor, that they form part of the rationale
20 for rejection in the first place." I'm not going to read the
21 totality of that language, but I think it's directly on point
22 here.

23 I fully recognize that any rejection can be a
24 hardship to the lease counterparty, but there are a lot of
25 people suffering in this case and I simply can't help everybody

1 who appears before me.

2 I refer everybody to the Ames decision in greater
3 length for a more extensive discussion of that. But the motion
4 is granted even vis-a-vis the objector.

5 And, Mr. Smolinsky, I would appreciate it if you or
6 your designee would provide a copy of this portion of the
7 transcript to your counterparty and, with that, then settle an
8 order granting relief vis-a-vis that entity as well as the
9 remainder, the ruling being nunc pro tunc to the time of the
10 filing of the motion.

11 MR. SMOLINSKY: Thank you, Your Honor. Actually, the
12 effective date of the rejection is today.

13 THE COURT: Oh, okay. That's less controversial.

14 MR. SMOLINSKY: Thank you, Your Honor.

15 THE COURT: Okay.

16 MR. SMOLINSKY: To clean up the docket, Your Honor,
17 there were two utility objections that were carried over from
18 the 25th. We have now resolved those objections and we can
19 mark those matters off calendar.

20 THE COURT: Okay.

21 MR. SMOLINSKY: We can notify chambers. Your Honor,
22 the last matter is an ordinary-course professional motion. It
23 seeks to allow us to use streamlined procedures for the
24 engagement of ordinary-course professionals, which are limited
25 to lawyers and limited to those that bill less than 150,000

1 dollars a month with a two million dollar overall cap for each
2 professional. The motion also contains a 20,000 dollar a month
3 cap on de minimis professionals which don't need to go through
4 the procedures of filing declarations and affidavits with the
5 Court.

6 We've been in discussions -- we've had discussions
7 with the U.S. trustee, with the creditors' committee; they have
8 no objection. Your Honor, the U.S. trustee had asked us to
9 make a representation on the record with respect to the de
10 minimis professionals, that those professionals will not be
11 engaged in activities related to the debtors' core
12 restructuring activities. And while we don't necessarily
13 object to the general premise of that representation, we do
14 have certain concerns about misrepresenting the facts. So if I
15 could just spend a minute to explain how the company engages
16 professionals. We have approximately 70 ordinary-course
17 professionals, which is between the 20,000 and 150,000. We
18 have hundreds of professionals that would fall below the 20,000
19 dollars. These professionals are engaged -- these lawyers are
20 engaged by the hundred-plus in-house lawyers that work for
21 General Motors. So it's hard to coordinate the efforts of
22 understanding what every de minimis professional is doing at
23 every moment.

24 These de minimis professionals are engaged in
25 providing legal opinions in the ordinary course, assisting on

1 international aspects of transactions, lemon law litigation,
2 product liability litigation, environmental litigation, labor
3 law, franchise law issues.

4 So these professionals are not engaged, are not hired
5 for the bankruptcy, but the concern is that they may do certain
6 aspects that relate indirectly to the bankruptcy efforts, such
7 as getting legal opinions in connection with mortgages, and the
8 like. So we can make the representation that these de minimis
9 professionals are not engaged specifically but have long-
10 standing relationships with the company for the aspects of the
11 work that they're going to be engaged in.

12 THE COURT: Okay. Mr. Masumoto, Ms. Davis, are you
13 okay with what he had to say? Just come to the microphone, if
14 you would.

15 MR. MASUMOTO: Yes, Your Honor. The representations
16 made satisfy the requirements that we set -- agreed to with
17 counsel.

18 THE COURT: Okay. Okay, Mr. Eckstein, do you guys
19 want to be heard now?

20 MR. ECKSTEIN: Your Honor, we're satisfied with the
21 relief being sought.

22 THE COURT: Okay. Thank you.

23 MR. SMOLINSKY: Yes, Your Honor, with respect to the
24 rejection of leases, there are two leases that are going to be
25 handled by co-counsel because of conflict issues.

1 THE COURT: Sure. Come on up, please.

2 MR. MURRAY: Your Honor, Dan Murray for Jenner &
3 Block, special counsel for the debtor. Your Honor, this is the
4 second -- this is the debtor's second omnibus motion to reject
5 certain unexpired leases of nonresidential real property. It's
6 on the agenda for today. Your Honor, the landlord has no
7 objections to the entry of an order that's been slightly
8 modified by us, a draft order, to make a correction on an
9 address. And it's not objected to by the landlord, Your Honor.
10 We would submit --

11 THE COURT: Okay. Is the order that I've already
12 received in the form that the landlords have had a chance to
13 see it?

14 MR. MURRAY: They have seen the revised version, Your
15 Honor, and I have it with me to give it to your clerk at the
16 conclusion of the hearing.

17 THE COURT: Okay. Do that as soon as we're done, Mr.
18 Murray.

19 MR. MURRAY: I will, Your Honor. Thank you.

20 THE COURT: It's approved.

21 MR. MURRAY: Thank you, Your Honor.

22 THE COURT: Okay. Anything else? Mr. Miller?

23 MR. MILLER: Yes, Your Honor. Mr. Eckstein's --

24 THE COURT: Sure. Come on up, please, Mr. Eckstein.

25 MR. ECKSTEIN: Thank you, Mr. Miller. Thank you,

1 Your Honor. Your Honor, item number 3 on the agenda in the
2 uncontested section is the application of the official
3 committee to retain my firm, Kramer Levin, as counsel for the
4 official committee. I am told by my partner, Mr. Schmidt, that
5 this application has been discussed extensively with the United
6 States trustee. And I believe all of the issues have been
7 resolved to the satisfaction of the United States Trustee, and
8 there are no objections that have been filed. So we would
9 respectfully ask --

10 THE COURT: Okay. Yeah, why don't you just stand in
11 place for a second? Mr. Masumoto, can you join Mr. Eckstein at
12 the lectern, please?

13 MR. MASUMOTO: Yes, Your Honor. That's correct. We
14 have no further objections to the retention.

15 THE COURT: Okay.

16 MR. MASUMOTO: Your Honor, if I may, just as a
17 housekeeping matter, with respect to the ordinary-course
18 professionals, I just did want to indicate that it was also an
19 agreement with our office that the debtors would modify the
20 language of the order to indicate that if they intended to seek
21 a raising of the limit of the ordinary-course professional cap,
22 that they would apply to the Court.

23 THE COURT: Okay. Let me just try to stay organized
24 here. I want to give Mr. Eckstein a chance to sit down and to
25 give his partner some comfort. Mr. Eckstein, you're motion's

1 granted.

2 MR. ECKSTEIN: Thank you, Your Honor.

3 THE COURT: Now, Mr. Smolinsky, if you can come on up
4 and just confirm that you're okay with what Mr. Masumoto's
5 saying.

6 MR. ECKSTEIN: Your Honor --

7 MR. SMOLINSKY: Yes, Your Honor.

8 MR. ECKSTEIN: Sorry. We'll submit an order.

9 THE COURT: Sure.

10 MR. SMOLINSKY: Yes, Your Honor. We will comply with
11 that and we'll add language to the order. And we'll get in
12 touch with Brian to make sure that he's okay with the language.

13 And I also stand because I -- while I don't want to
14 prejudge the outcome, I don't believe Your Honor has approved
15 the motion yet.

16 THE COURT: I haven't approved which motion?

17 MR. SMOLINSKY: The ordinary-course professional.

18 THE COURT: This is why we need to take a recess
19 tonight. Yes, your ordinary-course professionals motion is
20 granted.

21 MR. SMOLINSKY: Thank you, Your Honor.

22 MR. MILLER: Thank you, Your Honor.

23 THE COURT: Okay, Mr. Miller.

24 MR. MILLER: Your Honor, there is one other matter on
25 the calendar, Greater New York Automobile Dealers Association's

1 motion for consideration of amicus curiae statement, an amicus
2 curiae statement regarding the 363 transaction.

3 THE COURT: Can you think of any reason why I should
4 tell them they can't file a brief?

5 MR. MILLER: No, sir.

6 THE COURT: It's granted.

7 MR. MILLER: Thank you, Your Honor.

8 THE COURT: Okay. All right. We're adjourned until
9 tomorrow, 8:00 for the relief from stay motion. I assume that
10 that will be lightly attended, one lawyer, or whatever, on
11 behalf of the estate, or whatever it takes, should be here at
12 8:00 for the movant. And he or she should tell security, if
13 there's a problem in getting in early, that that person's
14 needed for an 8:00 hearing. I'll tell the marshals to let
15 people in starting at 7:30, unless we need to get things --
16 people going through security even earlier than that. And I'll
17 expect the rest of you folks at 9. Those folks who have staked
18 out positions at the counsel table or, for that matter, in this
19 courtroom, should tell the marshals, if you have a problem,
20 that I said you can have your seats back. Okay, we're
21 adjourned until tomorrow.

22 ALL: Thank you, Your Honor.

23 (Whereupon these proceedings were concluded at 7:51 p.m.)

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I N D E X

T E S T I M O N Y

WITNESS	EXAM BY	PAGE	LINE
Frederick Henderson	Mr. Salzberg	59	13
Frederick Henderson	Mr. Esserman	91	1
Frederick Henderson	Ms. Cordry	101	22
Frederick Henderson	Mr. Eckstein	105	14
Frederick Henderson	Mr. Kennedy	114	3
Frederick Henderson	Ms. Katzoff	150	18
Frederick Henderson	Mr. Jakubowski	155	13
Frederick Henderson	Mr. Parker	179	14
Frederick Henderson	Mr. Bernstein	209	5
Frederick Henderson	Mr. Reinsel	215	1
Frederick Henderson	Mr. Miller	218	21
Frederick Henderson	Mr. Richman	233	23
Frederick Henderson	Mr. Jakubowski	238	23
Frederick Henderson	Mr. Esserman	243	18
Frederick Henderson	Mr. Kennedy	251	11
Stephen Worth	Mr. Richman	258	10
Stephen Worth	Mr. Kennedy	265	14
Stephen Worth	Mr. Eckstein	272	8
Stephen Worth	Mr. Parker	279	18
Stephen Worth	Mr. Miller	287	6

I N D E X, cont'd

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T E S T I M O N Y

WITNESS	EXAM BY	PAGE	LINE
Albert Koch	Mr. Richman	288	17
Albert Koch	Mr. Eckstein	292	21
Albert Koch	Mr. Kennedy	301	1
Albert Koch	Mr. Bressler	303	1
Albert Koch	Mr. Esserman	303	19
Albert Koch	Mr. Parker	308	14
Albert Koch	Mr. Miller	317	4
Albert Koch	Mr. Richman	318	18
Albert Koch	Mr. Eckstein	321	1

E X H I B I T S

NO.	DESCRIPTION	ID.	EVID.
Parker-1	Loan and security agreement between GM and US government dated 12/31/08		48
Debtors	Declaration of Mr. Henderson		56
	Declaration of Mr. Repko		56
	Declaration of Mr. Worth		56
	Declaration of Mr. Koch		56

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I N D E X, cont'd

E X H I B I T S

NO.	DESCRIPTION	ID.	EVID.
Bondholders-1	Proposed pre-packaged plan of reorganization	69	71
Bondholders-2	Document entitled "Cadwalader Use of Section 363 to Expedite Restructuring of Distressed OEMs"		81
Bondholders-3	GM/UAW/UST VEBA discussions dated May 18, 2009	81	83
Parker-1	GM Perspecta Supplement 2	196	197
PLCA-1	Debtors' update on 363 sale as of 6/5		251

R U L I N G S

DESCRIPTION	PAGE	LINE
Debtors' first omnibus motion to reject certain unexpired leases of nonresidential real property granted	328	5
Debtors' second omnibus motion to reject certain unexpired leases of nonresidential real property granted	331	21

I N D E X, cont'd

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2
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R U L I N G S

DESCRIPTION	PAGE	LINE
Application of creditors' committee of to retain Kramer Levin Naftalis & Frankel LLP as counsel, nunc pro tunc, to 6/3/09 granted Debtors' motion for authorization to employ professionals utilized in the ordinary course of business granted	333	2
Greater New York Automobile Dealers Association's motion for consideration of amicus curiae statement regarding debtor's motion to approve sale pursuant to master sale and purchase agreement with Vehicle Acquisition Holdings LLC granted	334	7

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

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

LISA BAR-LEIB

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

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