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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026 (REG)

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In the Matter of:

MOTORS LIQUIDATION COMPANY, et al.

f/k/a General Motors Corporation, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

October 26, 2010

9:53 AM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

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HEARING re Motion of General Motors LLC to Enforce 363 Sale Order and Approved Deferred Termination Agreements against Rose Chevrolet, Inc., Halleen Chevrolet, Inc., Andy Chevrolet Company, and Leson Chevrolet Company, Inc.

HEARING re Motion of Movant in the Action Entitled Walter J. Lawrence V. General Motors Hourly Rate Employee Pension, and General Motors Corporation, 5:07-CV-408 OC, United States District Court, Middle District of Florida for Entry of an Order Thereby Ordering United States District court Judge for the Middle District of Florida to Appear before This Court to Answer These Criminal Charges

Omnibus Objections to Beneficial Bondholder Claims:  
HEARING re Debtors' Forty-Seventh Omnibus Objection to Claims (Duplicate Debt Claims)

HEARING re Debtors' Forty-Ninth Omnibus Objection to Claims (Duplicate Debt Claims)

HEARING re Debtors' Sixty-First Omnibus Objection to Claims (Duplicate Debt Claims)

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HEARING re Debtors' Sixty-Third Omnibus Objection to Claims  
(Duplicate Debt Claims)

HEARING re Debtors' Sixty-Fifth Omnibus Objection to Claims  
(Duplicate Debt Claims)

HEARING re Debtors' Seventy-First Omnibus Objection to Claims  
(Duplicate Debt Claims)

HEARING re Debtors' Motion for Preliminary Approval of  
Settlement, Including Claims Estimation, for Conditional  
Certification of Settlement Class, to Approve Cash Disbursement  
and Forms of Notice, and to Set Fairness Hearing, Boyd Bryant  
vs. Motors Liquidation Company, Adv. Proc. 09-00508-REG

HEARING re Motion of Weber Automotive Pursuant to Rule 60(b) of  
the Federal Rules of Civil Procedure and Bankruptcy Rule 9024  
for Relief from Order Granting Debtors' Twenty-Third Omnibus  
Objection to Claims

Omnibus Objections to Tax Claims:

HEARING re Debtors' Eighty-Seventh Omnibus Objection to Claims  
(No Liability Tax Claims)

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Omnibus Objections to Claims Assumed by General Motors, LLC:  
HEARING re Debtors' Twenty-Third Omnibus Objection to Claims  
(Claims Assumed by General Motors, LLC)

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

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

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

HEARING re Debtors' Thirtieth Omnibus Objection to Claims  
(Incorrectly Classified Claims)

HEARING re Debtors' Thirty-Second Omnibus Objection to Claims  
(Incorrectly Classified Claims)

HEARING re Debtors' Ninety-Eighth Omnibus Objection to Claims  
(Incorrectly Classified Claims)

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HEARING re Debtors' Ninety-Ninth Omnibus Objection to Claims  
(Incorrectly Classified Claims)

Omnibus Objections to Claims with Insufficient Documentation:  
HEARING re Debtors' Thirty-Seventh Omnibus Objection to Claims  
(Claims with Insufficient Documentation)

HEARING re Debtors' Eighty-Fifth Omnibus Objection to Claims  
(Claims with Insufficient Documentation)

HEARING re Debtors' Eighty-Sixth Omnibus Objection to Claims  
(Claims with Insufficient Documentation)

HEARING re Debtors' 104th Omnibus Objection to Claims (Claims  
with Insufficient Documentation)

HEARING re Debtors' 105th Omnibus Objection to Claims (Claims  
with Insufficient Documentation)

HEARING re Debtors' 106th Omnibus Objection to Claims (Claims  
with Insufficient Documentation)

HEARING re Debtors' 107th Omnibus Objection to Claims (Claims  
with Insufficient Documentation)

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HEARING re Debtors' 108th Omnibus Objection to Claims (Claims with Insufficient Documentation)

Omnibus Objections to Employee-Related Claims:

HEARING re Debtors' Eightieth Omnibus Objection to Claims (Supplemental Executive Retirement Benefits Claims of Former Executive Employees)

HEARING re Debtors' Eighty-Second Omnibus Objection to Claims (Claims Relating to Former Employees Represented by United Auto Workers)

HEARING re Debtors' Eighty-Third Omnibus Objection to Claims (Welfare Benefits Claims of Retired and Former Salaried and Executive Employees)

HEARING re Debtors' One Hundredth Omnibus Objection to Claims (Claims Relating to Former Employees Represented by United Auto Workers)

HEARING re Debtors' 101st Omnibus Objection to Claims (Claims Relating to Former Employees Represented by United Auto Workers)

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HEARING re Debtors' 102nd Omnibus Objection to Claims (Claims  
Relating to former Employees Represented by United Auto  
Workers)

HEARING re Debtors' 103rd Omnibus Objection to Claims (Welfare  
Benefits Claims of Retired and Former Salaried and Executive  
Employees)

Omnibus Objections to Late-Filed Claims:

HEARING re Debtors' Eighty-Ninth Omnibus Objection to Claims  
and Motion Requesting Enforcement of Bar Date Orders (Late-  
Filed Claims)

HEARING re Debtors' Ninetieth Omnibus Objection to Claims and  
Motion Requesting Enforcement of Bar Date Orders (Late-Filed  
Claims)

HEARING re Debtors' Ninety-First Omnibus Objection to Claims  
and Motion Requesting Enforcement of Bar Date Orders (Late-  
Filed Claims)

HEARING re Debtors' Ninety-Second Omnibus Objection to Claims  
and Motion Requesting Enforcement of Bar Date Orders (Late-  
Filed Claims)

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Omnibus Objections to No Liability GMAC Debt Claims:  
HEARING re Debtors' Ninety-Third Omnibus Objection to Claims  
(No Liability GMAC Debt Claims)

HEARING re Debtors' Ninety-Fourth Omnibus Objection to Claims  
(No Liability GMAC Debt Claims)

HEARING re Debtors' Ninety-Fifth Omnibus Objection to Claims  
(No Liability GMAC Debt Claims)

HEARING re Debtors' Ninety-Sixth Omnibus Objection to Claims  
(No Liability GMAC Debt Claims)

HEARING re Debtors' Ninety-Seventh Omnibus Objection to Claims  
(No Liability GMAC Debt Claims)

Omnibus Objection to Duplicate and Amended and Superseded  
Claims:  
HEARING re Debtors' Eighty-Eighth Omnibus Objection to Claims  
(Duplicate and Amended and Superseded Claims)



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Interim Fee Applications:

HEARING re Third Application of Weil, Gotshal & Manges LLP, as Attorneys for the Debtors, for Interim Allowance of Compensation for Professional Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred from February 1, 2010 through May 31, 2010

HEARING re First Interim Quarterly Application of Caplin & Drysdale, Chartered for Interim Compensation and Reimbursement of Expenses with Respect to Services Rendered as Counsel to the Official Committee of Unsecured Creditors Holdings Asbestos-Related Claims for the Period October 6, 2009 through May 31, 2010

HEARING re Third Interim Application of the Claro Group, LLC, for Allowance of Compensation and Reimbursement of Expenses for the Period February 1, 2010 - May 31, 2010

HEARING re First Interim Application of Dean M. Trafelet, in His Capacity as Legal Representative for Future Asbestos Personal Injury Claimants, for Allowance of Interim Compensation and Reimbursement of Expenses Incurred for the Period from November 13, 2009 through May 31, 2010

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HEARING re Third Interim Application of Kramer, Levin, Naftalis & Frankel LLP, as Counsel for the Official Committee of Unsecured Creditors, for Allowance of Compensation for Professional Services Rendered and for Reimbursement of Actual and Necessary Expenses Incurred for the Period February 2, 2010 through May 31, 2010

HEARING re Second Application of Plante & Moran, PLLC, as Accountants for the Debtors, for Interim Allowance of Compensation for Professional Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred from February 1, 2010 through May 31, 2010

HEARING re First Interim Application of Stutzman, Bromberg, Esserman & Plifka, a Professional Corporation, for Allowance of Interim Compensation and Reimbursement of Expenses Incurred as Counsel for Dean M. Trafelet in his Capacity as Legal Representative for Future Asbestos Personal Injury Claimants for the Period from February 24, 2010 through May 31, 2010

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HEARING re First Application for Interim Professional Compensation\First Interim Application of Bates White, LLC, as Asbestos Liability Consultant to the Official Committee of Unsecured Creditors, for Allowance of Compensation for Professional Services Rendered and for Reimbursement of Actual and Necessary Expenses Incurred for the Period from March 16, 2010 through May 31, 2010

HEARING re First Application for Interim Professional Compensation/First Interim Quarterly Application of Legal Analysis Systems, Inc., for Interim Compensation and Reimbursement of Expenses with Respect to Services Rendered as Consultant on the Valuation of Asbestos Liabilities to the Official Committee of Unsecured Creditors Holdings Asbestos-Related Claims for The Period April 28, 2010 through May 31, 2010

HEARING re Third Interim Fee Application of Jenner & Block LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses

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HEARING re First Application of Togut, Segal & Segal, LLP as  
Conflicts Counsel for the Debtors for Allowance of Interim  
Compensation for Services Rendered for the Period December 21,  
2009 through May 31, 2010, and for Reimbursement of Expenses

HEARING re First Interim Application of Analysis Research  
Planning Corporation as Asbestos Claims Valuation Consultant to  
Dean M. Trafelet in His Capacity as Legal Representative for  
Future Asbestos Personal Injury Claimants for Allowance of  
Interim Compensation and Reimbursement of Expenses Incurred for  
the Period from March 1, 2010 through May 31, 2010

HEARING re Third Application of Butzel Long, a Professional  
Corporation, as Special Counsel to the Official Committee of  
Unsecured Creditors of Motors Liquidation Company, f/k/a  
General Motors Corporation, for Interim Allowance of  
Compensation for Professional Services Rendered and  
Reimbursement of Actual and Necessary Expenses Incurred from  
February 1, 2010 through May 31, 2010

HEARING re Amended First Interim Fee Application of Deloitte  
Tax LLP as Tax Services Providers for the Period from January  
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HEARING re Third Interim Application of FTI Consulting, Inc.  
for Allowance of Compensation and for Reimbursement for  
Expenses for Services Rendered in the Case for the Period  
February 1, 2010 through May 31, 2010

HEARING re First Application of Hamilton, Rabinovitz &  
Associates, Inc. as Consultants for the Debtors with Respect to  
Present and Future Asbestos Claims, for Interim Allowance of  
Compensation for Professional Services Rendered and  
Reimbursement of Actual and Necessary Expenses Incurred from  
February 1, 2010 through May 31, 2010

HEARING re First Consolidated Application of Brady C.  
Williamson, Fee Examiner, and Godfrey & Kahn, S.C., Counsel to  
the Fee Examiner, for Interim Allowance of Compensation for  
Professional Services Rendered from December 28, 2009 through  
May 31, 2010 and Reimbursement of Actual and Necessary Expenses  
Incurred from December 28, 2009 through August 31, 2010

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HEARING re Second Interim Application of LFR Inc. for Allowance of Compensation and for Reimbursement of Expenses for Services Rendered in the Case for the Period October 1, 2009 through January 31, 2010 and Third Interim Application of LFR Inc. for Allowance of Compensation and for Reimbursement of Expenses for Services Rendered in the Case for the Period February 1, 2010 through May 30, 2010

HEARING re Stipulation and Order for Adjournment of October 26, 2010 Hearing on Third Interim Fee Application of LFR Inc.

HEARING re Debtors' Third Omnibus Motion Pursuant to 11 U.S.C. §365 to Reject Certain Unexpired Leases of Nonresidential Real Property (Tricon Verizon Leasing Only)

Transcribed by: Lisa Bar-Leib

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## P R O C E E D I N G S

THE COURT: Have seats, please. All right. GM. Motors Liquidation Company. It seems like we have a zillion matters on today's calendar. My agenda runs about twenty-five pages. Let me get a recommendation from you, Mr. Smolinsky as to the means by which I can get the most people out of the courtroom as quickly as possible. My tentative, subject to rights to be heard is to deal with the dealer matters at the end because I'm likely to have to dictate one or more rulings possibly after a recess. And I don't want to make people wait while I'm doing something like that. Go ahead, Mr. Smolinsky.

MR. SMOLINSKY: Good morning, Your Honor. Joseph Smolinsky of Weil Gotshal & Manges for the debtors. As usual, we have a long calendar but we have tried to make it as user friendly as possible. I do think that we can run through most of the calendar fairly quickly. I have no objection and that actually makes sense to move the dealer motion to the end. I think that may be the only matter other than the fee requests that will take a substantial amount of time.

With respect to --

THE COURT: Pause, please, Mr. Smolinsky. Based on your dialogues and other professionals' dialogues, are we going to have as long a session of argument on the fee apps that we had the last two times?

MR. SMOLINSKY: I don't think so, Your Honor. We

1 have twenty fee applications on today. All matters, as I  
2 understand it, are resolved except with respect to four. With  
3 respect to those four, there are only two issues that remain at  
4 issue in this hearing. The first is the fee rate issue. And  
5 the second is the ability of law firms to be compensated for  
6 defending their fee application. So I don't expect oral  
7 argument on those two issues to be that lengthy unless Your  
8 Honor has specific extensive questions.

9 THE COURT: Go ahead then in accordance with your  
10 recommendation.

11 MR. SMOLINSKY: Okay. Maybe what would make sense  
12 because we have a number of people here from the Bryant class  
13 action to tackle that matter first so that those people can  
14 leave. That matter was initially scheduled for 8:45 this  
15 morning. And then --

16 THE COURT: Did you say 8:45?

17 MR. SMOLINSKY: It was, Your Honor. And then  
18 chambers notified us that they wanted the hearing at 9:45 and  
19 we filed an amended agenda in that regard.

20 (Pause)

21 MR. SMOLINSKY: Your Honor, this motion which appears  
22 as the first uncontested matter seeks final approval of a  
23 settlement with the Bryant class action claimants. This matter  
24 concerns a nationwide class action based on allegedly defective  
25 parking brakes which were found in the 1999 to 2002 GMC and

1 Chevrolet pickups and SUVs.

2 The action was originally pending in the state court  
3 of Arkansas and was transferred to this court and follows  
4 lengthy litigation on class litigation on class action  
5 certification. We were before Your Honor on August 6th, 2010  
6 to request preliminary approval of the settlement agreement and  
7 to schedule a fairness hearing. As Your Honor may recall, on  
8 August 9th, 2010, the Court entered an order approving the  
9 settlement preliminarily and setting today as the fairness  
10 hearing.

11 Since that time and in accordance with the  
12 preliminary order, Bryant and the provisionally designated  
13 class counsel published a notice three times on August 31st,  
14 September 1st and September 2nd in the USA Today on one-  
15 sixteenth of a page a summary form of notice which was attached  
16 to the preliminary order. We have attached copies with the  
17 declaration of Jeffrey Dahl (ph.) which is attached to the  
18 debtors' brief in support of the settlement as Exhibit B. The  
19 full settlement agreement, mailed notice and the reimbursement  
20 claim forms were also posted on a website,  
21 [www.parkingbrakeclasssettlement.com](http://www.parkingbrakeclasssettlement.com) and a 1-800 number was  
22 established for parties interested in the settlement agreement  
23 to order a copy of the full settlement agreement, the mailed  
24 notice and copies of claim forms.

25 In addition to notice of publication, Garden City

1 Group, together with MLC, also sent direct mail notices of the  
2 settlement to each potential Bryant class action members. You  
3 may recall, Your Honor, that we had a list of approximately  
4 6,000 potential claimants that were received from the records  
5 of New GM and that is the list that we used to mail notice of  
6 the settlement and the claims form.

7 Both forms of notice advised the absent class members  
8 of their ability to opt out of the settlement and their ability  
9 to file objections to the hearing today. To date, no  
10 objections have been received and we have had a steady flow of  
11 claim forms coming in under the procedures that were  
12 established. So now today, we request entry of a judgment  
13 finally approving the settlement, finally certifying the class  
14 counsel as a class and upholding the Court's approval of the  
15 notice that were established in the preliminary order.

16 The underlying settlement contemplates a one billion  
17 dollar claim being reduced and allowed in the amount twelve  
18 million dollars.

19 THE COURT: Mr. Smolinsky, did we lose our microphone  
20 or did you just drift a little.

21 MR. SMOLINSKY: I may have stepped away.

22 THE COURT: Okay. Keep going, please.

23 MR. SMOLINSKY: Again, Your Honor, the initial claim  
24 was filed in the amount of one billion dollars. The settlement  
25 was for an allowed claim in the amount of twelve million

1 dollars. The creditors' committee played an active role in the  
2 negotiation of the settlement and fully supports approval.

3 The Court should also approve the settlement pursuant  
4 to Rule 23(e) of the Federal Rules of Civil Procedure because  
5 the settlement agreement is procedurally fair, reasonable,  
6 adequate and not the product of collusion. Rather, the  
7 settlement agreement is the product of extensive arm's length  
8 negotiations conducted by experienced counsel with input from  
9 the parties. Just for the record, Your Honor, the settlement  
10 is substantially fair. In that regard, all the factors set  
11 forth in *City of Detroit v. Grinnell*, 495 F.2d 448, which  
12 provides the analytical framework for evaluating substantial  
13 fairness of a class action settlement weigh in favor of final  
14 approval. Litigation through trial would be complex, expensive  
15 and long.

16 Second, the settlement classes' reaction to the  
17 settlement agreement was positive. No settlement class member  
18 objected to the settlement agreement or requested exclusion.

19 Third, the parties have completed enough discovery to  
20 recommend settlement. The pertinent question is whether  
21 counsel had an adequate appreciation of the merits of the case  
22 before negotiating. The parties engaged in aggressive  
23 discovery efforts obtaining voluminous amounts of documents and  
24 taking over ten depositions. The resulting discovery allowed  
25 them to evaluate their strengths and weaknesses of their case.

1           Next, the risk of establishing liability and damages  
2 further weighs in favor of final approval. There's also a risk  
3 of maintaining class status throughout the trial. If this  
4 settlement was not approved, the debtors would likely be before  
5 Your Honor trying to decertify the class. And, of course,  
6 there are risks attendant to that litigation.

7           Finally, Your Honor, the value of litigating is  
8 called into question simply given the debtors' bankruptcy. As  
9 with a lot of litigation claims here, the risk of bankruptcy  
10 and the cents on the dollar aspect creates a positive impetus  
11 towards settlement.

12           So based on the foregoing and for the reasons set  
13 forth in the Court's preliminary order, including the Court's  
14 specific finding at the time that the settlement agreement is  
15 in the best interest of the debtors, their estates, creditors  
16 and all parties in interest, including as to all members of the  
17 class, we ask that the Court approve the settlement not only  
18 under Rule 9019 of the bankruptcy rules but also Rule 23 of the  
19 federal rules.

20           Your Honor, in the preliminary order, we set out --  
21 and in the motion, of course, we set out the fees that are  
22 going to be paid to class action counsel. That also is part of  
23 the settlement here today. Class counsel is here to answer any  
24 questions on the fees. But the way it works is that they get  
25 the greater of a claim for four million dollars or thirty-three

1 percent of the total amount of the claim or four million  
2 dollars in cash, whichever is higher, but they're not entitled  
3 to get more than thirty-three percent of the claim unless the  
4 claims come in such that there's excess value. So all claims  
5 would have to be satisfied in full before they can get more  
6 than the thirty-three percent of the claim amount. That's  
7 consistent with the contingency fee agreement that was entered  
8 into and approved by the Arkansas court.

9 I think that's it, Your Honor, unless you have any  
10 questions. There was one change to the final judgment. We had  
11 estimated an expense reimbursement number for noticing out of,  
12 I think, 295,000. That number's been reduced to 279,000 and  
13 that's been reflected in a revised judgment that would be  
14 submitted to your Court for consideration.

15 THE COURT: Okay. I have no objections. However, I  
16 will permit counsel for either of the two official committees  
17 or class counsel to be heard if any wants to be. I see no  
18 interest in that.

19 All right. Because this matter is unopposed, I'm not  
20 going to make extensive findings. A settlement of this type,  
21 like a few others that I've been called to deal with in my  
22 other bag of cases over the last six months, requires me to  
23 make findings of two different types. One of them is the  
24 classic 9019 inquiry which has as its underlying premise me  
25 satisfying myself that the estate isn't giving away the store.



1           Additionally, as I've had to do in certain  
2 environmental settlements and other class action settlements,  
3 I'm called upon to make a different kind of inquiry analogous  
4 to that which district judges frequently make to satisfy myself  
5 that the settlement is fair to the class from the plaintiff's  
6 perspective.

7           In this case, I can and do find that it's within the  
8 range of reasonableness and is substantively fair to both sides  
9 for the reasons that Mr. Smolinsky articulated. Accordingly,  
10 Mr. Smolinsky, you or your designee -- you can enlist class  
11 counsel if you wish -- are to provide me with the paperwork to  
12 reflect my approval from both points of view.

13           MR. SMOLINSKY: Thank you, Your Honor. We will.  
14 Next, Your Honor, maybe we can go back to the uncontested -- I  
15 mean, to the contested matters and handle the Walter Lawrence  
16 motion seeking to hold the district court judge from the Middle  
17 District of Florida in contempt -- criminal contempt, I  
18 believe, for violating the stay.

19           Your Honor, we filed responsive pleadings not because  
20 we were the target of the motion but because justice screamed  
21 out for us to do so. I don't know if Mr. Lawrence is here in  
22 person or on the phone to present his motion.

23           THE COURT: Is Mr. Lawrence in the courtroom? Mr.  
24 Lawrence, you on the phone?

25           MR. LAWRENCE (TELEPHONICALLY): This is Mr. Lawrence.

1 THE COURT: Okay. Mr. Lawrence, I read your brief.  
2 Do you want to supplement it in any way?

3 MR. LAWRENCE: Excuse me, Your Honor?

4 THE COURT: Do you want to supplement your brief?

5 MR. LAWRENCE: In regards to the contempt of court?

6 THE COURT: Yes.

7 MR. LAWRENCE: Yes. I'd like to supplement it with  
8 just one quick thing, if I may, Your Honor. In regards to  
9 Judge Hodges' order of September 21st, counsel for the other  
10 side has stated -- he's bifurcated his ruling -- Judge Hodges'  
11 rulings into two parts.

12 THE COURT: Would you pause, please?

13 MR. LAWRENCE: As --

14 THE COURT: Please, Mr. Lawrence. Just a minute.

15 (Pause)

16 MR. LAWRENCE: Excuse me?

17 THE COURT: Just a minute, please, Mr. Lawrence.

18 MR. LAWRENCE: Oh, okay. Thank you.

19 THE COURT: Do you have the copy that I had  
20 underlined and highlighted? Hmm? Yeah. Go ahead.

21 All right. Go ahead, Mr. Lawrence.

22 MR. LAWRENCE: Okay. I'm directing the Court's  
23 attention to page 31 of Judge Hodges' order where he states "I  
24 want them to" -- he bifurcates the defendants into two groups.  
25 And -- but then he makes rulings on items (3), (4), (6), (7),

1 (8), (9), (10), (11), (12), (13), (14), (15) and (16) where he  
2 does not bifurcate the groups into -- the pension plan and  
3 General Motors. For example, number (5) -- excuse me -- number  
4 (7), for example -- item (7): "Defendants' Motion to Strike  
5 Plaintiff's Motion for the Court to Take Judicial Notice is  
6 DENIED AS MOOT". And now, he applies that to the defendants  
7 which means, if you look at the caption on the case, the  
8 defendants are General Motors and the Pension Plan. So in  
9 regards to items (3), (4), (6), (7), (8), (9), (10), (11),  
10 (12), (13), (14), (15) and (16), are all violations of the  
11 automatic stay and that because he does not bifurcate. He just  
12 deals with the parties generically as plaintiffs and  
13 defendants. And so, he knew that there had to be a bifurcation  
14 between the two because he did that in items (1) and (2) and  
15 items (4) (sic) where he said, for example, on item (1):  
16 "Plaintiff's Motion for Summary Judgment is DENIED as to  
17 Defendant General Motors Hourly-Rate Employees Pension Plan".  
18 And he does the same thing on item (2) and (4) (sic). But all  
19 the other items, he doesn't bifurcate them.

20 It's my position that because he has made a ruling as  
21 to Defendant General Motors and Defendant Pension Plan that the  
22 ruling in regards to Defendant General Motors is in violation  
23 of the automatic stay. And what I'm asking the Court  
24 specifically to do is to either certify this matter to the  
25 district court as to the civil side of it; and then on the

1 criminal side, refer this matter to the appropriate U.S.  
2 attorney's office for his or her consideration as to criminal  
3 contempt of court under 18 U.S.C. 401.

4 In regards to my objections on omnibus number 82, and  
5 in the interest of brevity and the Court's time, I'll stand on  
6 my documents as filed.

7 THE COURT: Okay. Mr. Smolinsky, you may respond if  
8 you wish.

9 MR. SMOLINSKY: Your Honor, I think what the Court in  
10 Florida did was made factual findings that were necessary in  
11 order to reach the decision that there was no liability by the  
12 GM Pension Plan which is a separate entity. And I don't think  
13 that the findings of fact necessarily spill over to General  
14 Motors Corporation as --

15 MR. LAWRENCE: Excuse me, Your Honor. I can hardly  
16 hear counsel.

17 MR. SMOLINSKY: I'm sorry and I apologize. I'm a  
18 little under the weather today so it's a little bit more  
19 difficult for me.

20 But I was saying that we read the decision carefully.  
21 We believe that the findings of fact made by the Court in  
22 Florida support the ruling as against the GM Pension Plan,  
23 which is a separate legal entity from MLC. We obviously are  
24 very cognizant of the automatic stay and the importance to the  
25 debtors but we think that the decision doesn't even -- doesn't

1 touch upon a violation of the stay and, certainly, is not  
2 subject to this Court's contempt -- criminal contempt which the  
3 Courts have found relate to actions that occur in front of the  
4 judge's view. I think that Mr. Lawrence's source of remedy  
5 here is to go back to Florida and to appeal the decision of the  
6 district court, not to come in to this court.

7 THE COURT: All right. Thank you. Mr. Lawrence, any  
8 reply limited to what Mr. Smolinsky said?

9 MR. LAWRENCE: Yes. Thanks but no thanks, counsel,  
10 to the invitation because if I were to file a notice of appeal,  
11 and I think that's what you're hoping would happen but I'm not  
12 going to do it, I'd be in the same boat right now as Judge  
13 Hodges. I'd be looking at a criminal charge, possible criminal  
14 prosecution under 18 U.S.C. 401. And that I'm not going to do.  
15 Thanks anyways.

16 THE COURT: All right. Folks, because this matter is  
17 so straightforward -- can you hear okay, Mr. Lawrence, because  
18 I'm having problems with the microphones in my courtroom.

19 MR. LAWRENCE: I can hear you now. Thank you, Your  
20 Honor.

21 THE COURT: All right. Because this matter is so  
22 straightforward, I'm not going to make lengthy findings. By  
23 entering the order that the Florida Court, the Florida Court  
24 did it exactly by the book, did it exactly right. The case law  
25 is clear that the automatic stay does not stay proceedings

1 against co-defendants. See, for example, decisions by Judge  
2 Weinfeld and by the Second Circuit in Teachers' Insurance v.  
3 Butler.

4 Moreover, the Florida Court didn't violate the  
5 automatic stay as to our debtor, Motors Liquidation Company,  
6 because the Florida Court stated that the dismissal was subject  
7 to the right of any party to move to reopen the case upon a  
8 showing that the bankruptcy stay had been lifted or for other  
9 cause shown.

10 In other words, the Florida district court did it  
11 exactly the way the Court is supposed to. Therefore, although  
12 I also agree with the debtors' point that parties other than  
13 the debtor or a bankruptcy trustee don't have standing to  
14 complain of violations of the automatic stay, even if I were to  
15 assume arguendo that there were standing, I would issue the  
16 same two rulings on the merits that I just issued.

17 Accordingly, I determine that there was no violation  
18 of the stay and that the Florida Court's rulings vis-à-vis the  
19 nondebtor with respect to whom the Florida Court ruled were  
20 entirely appropriate and proper. Debtors are to settle an  
21 order in accordance with the foregoing. Since Mr. Lawrence  
22 isn't present in the courtroom, you're to do it on -- give him  
23 a full two weeks notice of settlement. Mr. Lawrence, your time  
24 to appeal from my ruling will run from the time of the entry of  
25 the resulting order and not from the time of this dictated

1 decision. And whether or not you choose to take any action in  
2 the Eleventh Circuit is for you to decide and I express no view  
3 on that subject.

4 Mr. Smolinsky, next matter, please. Mr. Lawrence,  
5 you may either stay on the phone or drop off as you prefer.

6 MR. LAWRENCE: Can I ask just one other thing, Your  
7 Honor --

8 THE COURT: I can't give you legal advice but it --

9 MR. LAWRENCE: -- because --

10 THE COURT: No. Time out, Mr. Lawrence. You can't  
11 speak over me. As I was saying, I can't give you legal advice  
12 but if you wish to ask a question of a procedural character,  
13 you may.

14 MR. LAWRENCE: I'm just concerned about my pending  
15 appeal. Are you going to rule on this omnibus now or are you  
16 going to let that stay until appeal is final?

17 THE COURT: Which appeal is that, sir?

18 MR. LAWRENCE: Excuse me?

19 THE COURT: Which appeal?

20 MR. LAWRENCE: I only have one appeal.

21 THE COURT: I can't --

22 MR. LAWRENCE: And that was your order.

23 THE COURT: Well, I can't -- I can't take an appeal  
24 of my own order, sir.

25 MR. LAWRENCE: I'm not asking you to take an appeal.

1 I'm asking you are you going to stay your hand because --  
2 become divested of jurisdiction because it's on appeal, the  
3 matter.

4 THE COURT: I just ruled as I said I'm ruling. If  
5 you have a separate matter in the district court, I'm not going  
6 to tell the district courts in this district what to do. And  
7 if you have a pending -- if you have a pending appeal, as I  
8 sense you do -- one of the problems is that when things go up  
9 on appeal, we're not always currently briefed on their status.  
10 But if you have an appeal before the district court, whatever  
11 happens there is not anything I would be interfering with. And  
12 if the district courts issue a ruling that tells me what to do,  
13 of course I'm going to comply.

14 MR. LAWRENCE: Thank you for your time, sir.

15 THE COURT: Very well. Have a good day.

16 MR. LAWRENCE: You, too, sir.

17 THE COURT: Okay. Mr. Smolinsky, back to you.

18 MR. SMOLINSKY: Thank you, Your Honor. I think other  
19 than the fee applications, we only have one other contested  
20 matter. And I consider this a group.

21 We had filed, as Your Honor knows, omnibus objections  
22 to over 18,000 bondholder claims on the basis that they were  
23 already allowed by virtue of the claims that we allowed in the  
24 name of Wilmington Trust Company. When we filed the many  
25 motions seeking to expunge those 18,000 plus claims, we



1 received various phone calls and letters and informal  
2 objections. We were very successful in reaching out to those  
3 parties and to explain to them what it was that we were trying  
4 to achieve. And all of those objections went away but for six.  
5 And those six remain. We adjourned the motion with respect to  
6 those six objections and we want Your Honor to hear them today.

7 We believe that all six of these objections are  
8 really objections dealing with their lack of happiness about  
9 the fact that they've lost money in connection with the bonds  
10 rather than a substantive objection to the relief requested.  
11 These six parties either didn't respond to our phone calls and  
12 letters or refused to discuss it outside of the court context.

13 Your Honor, the six objections are from Dr. Helga  
14 Harm, Francis Caterina, Marianne Lisenko, Miguel Villalobos,  
15 Nick Zonas -- Nick and Diane Zonas and Sharyn Weinstein. I  
16 think our papers are very clear as to what we were trying to  
17 achieve and the basis for the relief requested. And, Your  
18 Honor, you've seen the objections and to the extent that these  
19 bondholders are here, they can speak as to their specific  
20 issues.

21 THE COURT: Okay. Are there such bondholders who  
22 would like to be heard? Would -- sir, would you please stand  
23 where Mr. Smolinsky is standing and take control of the  
24 microphone, please, and I'll hear you.

25 MR. CATERINA: Thank you, Your Honor. Our argument

1 is --

2 THE COURT: Well, before you begin, tell us your name  
3 so that --

4 MR. CATERINA: I understand.

5 THE COURT: -- when we make a transcript --

6 MR. CATERINA: I understand.

7 THE COURT: -- we know who spoke. And you may  
8 proceed.

9 MR. CATERINA: I am Joseph R. Caterina and I'm here  
10 on behalf of my wife, Francis H. Caterina. And I think she's  
11 omnibus number 49? Is that correct?

12 Ours is a simple argument, Your Honor. We filed a  
13 claim like all the other people and we litigated the claim as  
14 best we could. And then they made an omnibus motion to expunge  
15 all the claims.

16 THE COURT: Pause, please, Mr. Caterina. Am I right  
17 that your wife is a bondholder?

18 MR. CATERINA: That's correct.

19 THE COURT: Continue, please.

20 MR. CATERINA: I'm sorry. So we opposed this motion  
21 because we feel as if it's denying us our due process. We had  
22 two phone calls from the law offices and the last phone call  
23 they ended with "What do you want to settle?" So I came to  
24 court last month not knowing that the case was canceled and I  
25 filed my wife's authorization for settlement. And then General

1 Motors opposed everything that we did.

2 There's a uniqueness in our claim inasmuch as that we  
3 don't think that anybody can expunge everybody's due process by  
4 motion and it seems as if they want the Court to do this for  
5 them. The best I could find out was under 18 U.S.C. 241 and 18  
6 U.S.C. 242 not being addressed to the various people of  
7 different colors and ethnic background but being addressed  
8 solely to the fact that under those laws citizens are protected  
9 from being denied due process. And General Motors is very  
10 adamant on stopping everybody's due process and proceeding with  
11 their motion. And we object to that.

12 THE COURT: Okay. Fair enough. Mr. Smolinsky, you  
13 may respond if you wish. It's up to you.

14 MR. CATERINA: Your Honor, I filed a rebuttal this  
15 morning down in the clerk's office.

16 THE COURT: Well, forgive me, Mr. Caterina, but --

17 MR. CATERINA: I'm sorry --

18 THE COURT: -- I have case management orders. I  
19 can't take papers --

20 MR. CATERINA: I understand.

21 THE COURT: -- filed on the morning of arguments. I  
22 think I understand the issues.

23 MR. CATERINA: All right. Thank you.

24 THE COURT: And --

25 MR. CATERINA: Am I finished or --

1 THE COURT: If you have any additional points that  
2 you didn't make in your objection --

3 MR. CATERINA: Yes.

4 THE COURT: -- yes.

5 MR. CATERINA: Under Miranda, Miranda states that "No  
6 rule or legislation can abrogate said rights" referring to  
7 constitutional rights. We noticed in the 363 transaction under  
8 which this whole bankruptcy operated that we were denied the  
9 right to trial by a jury as per the rules of that procedure.  
10 And we -- when we filed our original claim -- they're only one-  
11 pagers -- we reserved all our rights under Uniform Commercial  
12 Code because under the Uniform Commercial Code, you will find  
13 preserved your right to trial by a jury. So we questioned  
14 whether or not the 363 transaction is in violation of Miranda's  
15 noted decision that no rule or legislation can abrogate said  
16 rights and that legislation did just that. Then, by virtue of  
17 their motion to expunge everybody's due process, we believe  
18 that they're violating 18 U.S.C. 241 and 242.

19 So therefore, we feel as if as a bondholder we  
20 preserved our rights under the Uniform Commercial Code. And in  
21 the Uniform Commercial Code, we don't have these problematic  
22 issues on constitutionality of what's being done and what's not  
23 being done. In addition of that, under the Uniform Commercial  
24 Code, bondholders are secured investors. However, they  
25 rebutted by saying that the bondholders are not secured

1 investors.

2 Other than that, I don't want to belabor you in my  
3 enthusiasm for this argument.

4 THE COURT: All right, folks. Mr. Smolinsky, if  
5 you're willing to waive rebuttal, I'm in a position to rule.

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

7 THE COURT: All right.

8 MR. CATERINA: Should I go --

9 THE COURT: You can have a seat because I'm about to  
10 issue a ruling. And my ruling is more by way of explanation to  
11 you, Mr. Caterina, and to your wife because while I am  
12 compelled to and do sustain the debtors' objection, I want to  
13 explain it.

14 You, like thousands of other folks, you and your  
15 wife, Mr. Caterina, are bondholders. You have indenture  
16 trustees who filed claims on your behalf. To the extent that  
17 Motors Liquidation Company has the resources to do it, it's  
18 going to recognize the validity of its bondholders' claims. We  
19 all know that it doesn't have enough value in the estate to  
20 make anything more than a modest distribution on the claims.  
21 But because there are thousands of bondholders like you, Mr.  
22 Caterina -- or you and your wife, we have a system under which  
23 indenture trustees go to bat for you when they file a proof of  
24 claim on your behalf. So you don't have a separate right to  
25 recover on your bonds but your right to recover on your bonds

1 has already been respected because your indenture trustee went  
2 to bat for you.

3 Now we all recognize that there isn't enough money in  
4 the Motors Liquidation estate, as I said, to make more than a  
5 modest distribution to bondholders. But you're already going  
6 to get what you're entitled to. Therefore, since all we're  
7 talking about is what is, in substance, a duplicative claim, I  
8 don't need to speak to the fact that in bankruptcy you don't  
9 have a right to a jury trial, that on unsecured bond issues, I  
10 don't need to deal with what Article 9 or other aspects of the  
11 Uniform Commercial Code would provide.

12 So therefore, Mr. Smolinsky, you or one of your guys  
13 is to submit an order that says in substance that the objection  
14 to the claim is sustained but nothing in this order will result  
15 in the disallowance of the entitlement of Mr. Caterina or his  
16 wife or any of the other people to their entitlements on their  
17 bonds as filed by the indenture trustees in this case or words  
18 to that effect.

19 MR. SMOLINSKY: We will, Your Honor.

20 THE COURT: Very well. Thank you.

21 MR. CATERINA: Thank you.

22 THE COURT: Mr. Caterina, your time to appeal from  
23 this ruling, even though hopefully I gave you the peace of mind  
24 so that you understand that you don't need to, will run from  
25 the time of the resulting order and not from the time of this

1 dictated decision.

2 MR. CATERINA: I will not appeal, Your Honor. But  
3 I --

4 THE COURT: If you want to say something, you got to  
5 say it into a microphone, please. But understand that, in  
6 substance, you won. So you may not want to mess with what you  
7 got.

8 MR. CATERINA: These funds are in my wife's IRA  
9 account. In her IRA account, not even Morgan Stanley can  
10 settle anything without her written consent. The trustee has  
11 nothing to do with her IRA account. So how can somebody  
12 outside of her IRA account have the authority to make decisions  
13 on her financial future?

14 THE COURT: I'm not sure if that's the legal issue  
15 that's before me, Mr. Caterina.

16 MR. CATERINA: All right. Thank you for your  
17 concern.

18 THE COURT: Very well. Have a good day. Mr.  
19 Smolinsky?

20 MR. SMOLINSKY: Your Honor, one thing to note just  
21 for Your Honor's information, we have reviewed the Wilmington  
22 Trust stipulation. And it appears out of the twenty-one and a  
23 half billion dollars that there may be approximately fifty  
24 million dollars of original issue discount that was included in  
25 the calculations. FTI and the debtors and Wilmington Trust are

1 working on this issue. And we may before Your Honor with an  
2 amended stipulation which would adjust the twenty-one and a  
3 half billion dollar claim by no more than fifty million  
4 dollars. We just wanted Your Honor to be aware of that.

5 THE COURT: You do what you and the others consider  
6 appropriate. And if anybody has a problem with that, I'll give  
7 anyone an opportunity to be heard at that time.

8 MR. SMOLINSKY: Thank you, Your Honor. With respect  
9 to the other five, I don't know -- we should give them an  
10 opportunity if they're on the phone to speak.

11 THE COURT: Is any other bondholder on the phone who  
12 wants to be heard? I guess not. All right. My ruling, Mr.  
13 Smolinsky, should be deemed to apply to everybody. Say in baby  
14 talk for the peace of mind of the bondholders that it's without  
15 prejudice to the entitlements to recover under the proof or  
16 proofs of claim that have been filed by the indenture trustees.

17 MR. SMOLINSKY: We will, Your Honor. And I believe  
18 the orders that we had entered with respect to the others had  
19 similar language. But we'll -

20 THE COURT: Good enough. Thank you.

21 MR. SMOLINSKY: Your Honor, moving to the uncontested  
22 matters, item number B on the agenda, this is a motion by Weber  
23 Automotive pursuant to Rule 60(b) to reconsider our order with  
24 respect to debtors' omnibus objection to claims number 23.  
25 This was a motion seeking to expunge claims that were related



1 to contract damages based on the fact that the contracts were  
2 assumed and assigned to New GM. Even though Weber did not  
3 respond to that motion and a default was taken, in their motion  
4 for reconsideration, they raised the fact that there were  
5 certain contracts that were not assumed and assigned to New GM.  
6 We went back and researched those issues and, in fact, they're  
7 correct. So we have agreed to a stipulation which allows their  
8 claim to be resurrected notwithstanding the order that was  
9 entered by the Court subject, of course, to all of our  
10 continuing rights to object to that claim during the  
11 reconciliation process. And we'll submit that order to Your  
12 Honor.

13 THE COURT: That's fine.

14 MR. WILKINS (TELEPHONICALLY): Your Honor, Matthew  
15 Wilkins on behalf of Weber Automotive Corporation and Albert  
16 Weber GmbH. We have agreed to the terms of the stipulated  
17 order that Mr. Smolinsky wanted entered.

18 THE COURT: Fair enough, Mr. Wilkins. Are you about  
19 to move on to the next matter, Mr. Smolinsky?

20 MR. SMOLINSKY: Yes, Your Honor. Mr. Wilkins, you  
21 can choose. You can either stay on the call or you can drop  
22 off, whichever you prefer.

23 MR. WILKINS: I'll drop off and I appreciate being  
24 able to appear by telephone.

25 THE COURT: No problem.

1 MR. WILKINS: Thank you.

2 MR. SMOLINSKY: Your Honor, the rest of the agenda  
3 other than the fee applications relate to claim objections,  
4 omnibus claim objections filed by the debtors. It's a  
5 combination of claim objections that were on the calendar  
6 before that we've continued to try to resolve as well as  
7 omnibus claims motions 85 to 108 which are new motions.

8 As we have been trying to make it easier on Your  
9 Honor, we have attached to the agenda a schedule of those  
10 claims that were not seeking relief with respect to today  
11 either because we've decided to withdraw the motion after  
12 receiving additional information or we've agreed to adjourn to  
13 continue our discussions. And unless anyone wants to be heard  
14 with respect to that, we would suggest that we simply submit  
15 orders for those parties who did not respond to the motion and  
16 to address the other claims as identified on the schedule to  
17 the agenda.

18 THE COURT: Fair enough. Anybody in the courtroom  
19 who wants to be heard given what Mr. Smolinsky just said? No  
20 response. Anybody on the phone who wants to be heard given  
21 what Mr. Smolinsky said?

22 MS. MEYER (TELEPHONICALLY): My name is Patricia  
23 Meyer. And I'm not sure that I applied to work this motion in  
24 at the present time. My name is Patricia Meyer and my i.d. is  
25 317595. And the case number is, of course, 09-50026. I filed

1 an omnibus claim against the Liquidation Motors (sic) and that  
2 GM was never held accountable for -- in the amount paid.  
3 Number one --

4 THE COURT: Pause, please, Mr. Meyer (sic). What was  
5 your claim for again?

6 MS. MEYER: For an omnibus objection against  
7 reservation orders. And my name is Patricia Meyer --

8 THE COURT: Well, I heard your name. But even though  
9 you repeated it, either because of the phone or my lack of  
10 understanding, I didn't get the substance of what your claim is  
11 for.

12 MS. MEYER: It's against the debtor, Motors  
13 Liquidation Corporation.

14 THE COURT: Well, I understand that. But what --

15 MS. MEYER: It's for recovery --

16 THE COURT: What is the nature of the debt?

17 MS. MEYER: Recovery. Fines for the indemnification  
18 in what we have done to prove what we have above General Motors  
19 Corporation and the bankruptcy.

20 THE COURT: What kind of investigation? What kind of  
21 recovery? I lost you.

22 MS. MEYER: It would be a personal recovery for the  
23 cost of our indemnification and what we have done with the  
24 government agencies and trying to work with General Motors  
25 through the path --

1 THE COURT: You mean, you want to be paid for having  
2 the government investigating General Motors?

3 MS. MEYER: No, sir. We took our claims to the  
4 government and to federal agencies and we have been in the  
5 courtroom before with General Motors. And so I filed an  
6 omnibus claim and wanted to bring it before you. And when he  
7 said that some of these issues are not cleared up, they may not  
8 be. I am coming before you as Patricia Meyer, a person who was  
9 -- who activated all the investigations.

10 THE COURT: Mr. Smolinsky, is that a claim that you  
11 want me to deal with today?

12 MR. SMOLINSKY: No, Your Honor. If I recall, this  
13 claim arises out of a whistleblower claim that Ms. Meyer has  
14 been trying to assert before the government with no success for  
15 several years. I don't believe that it's the subject of the  
16 motions that are on today. We will double check. And if Ms.  
17 Meyers (sic) wants her day in court with respect to her claim,  
18 we'll provide her with that opportunity.

19 THE COURT: Fair enough. All right. Ms. Meyer, do  
20 you understand what Mr. Smolinsky just said?

21 MS. MEYER: Yes. Do I deal with the Court for my --  
22 just asking -- or do I have to deal with Mr. Smolinsky to put  
23 me on a time for a court hearing?

24 THE COURT: Well, for scheduling, I would appreciate  
25 it if you coordinated with Mr. Smolinsky or one of his guys.

1 If you agree to disagree on whether you have a claim,  
2 ultimately, the decision as to whether it's a good claim or not  
3 will be mine. And --

4 MS. MEYER: All right. And --

5 THE COURT: -- you'll have your day in court as Mr.  
6 Smolinsky said.

7 MS. MEYER: That is fair, Your Honor. And that's  
8 what we need. Thank you.

9 THE COURT: Very well. Okay.

10 MS. MEYER: I'll be looking for -- do I contact them?  
11 Is that my -- that's what I have to do now?

12 THE COURT: What I would suggest is that since I  
13 suspect it's going to be a busy day today, over the next few  
14 days arrange with somebody at Mr. Smolinsky's firm or if they  
15 haven't -- maybe it would be easier if they detail somebody who  
16 they would like to deal with you and talk about what to do --

17 MS. MEYER: That would be --

18 THE COURT: -- what to do next. I'm not making any  
19 substantive rulings today.

20 MS. MEYER: Thank you very much, Your Honor.

21 THE COURT: Okay.

22 MS. MEYER: I'll be looking forward to working with  
23 their firm.

24 THE COURT: Very well. Ms. Meyer, you may be excused  
25 from the call if you wish.

1 MS. MEYER: Thank you, Your Honor.

2 THE COURT: Okay. Next, Mr. Smolinsky? Or if -- was  
3 that the only person who spoke up when we invited people on the  
4 phone to speak up? Anybody else on the phone who wants to be  
5 heard? The record will reflect no response. Okay.

6 Your motion is, to the extent you wanted to push it  
7 against non-responders, is granted or, I guess more  
8 technically, your objections are sustained for the  
9 nonobjectors. They're continued for those who you said would  
10 be continued including Ms. Meyer.

11 MR. SMOLINSKY: Thank you, Your Honor.

12 THE COURT: Okay.

13 MR. SMOLINSKY: I think, as promised, that leaves the  
14 fee applications as the last matter to address today.

15 THE COURT: Okay. What's your recommendation --

16 MR. SMOLINSKY: How would Your Honor like to proceed?

17 THE COURT: -- as to how you want to proceed on that?

18 MR. SMOLINSKY: Perhaps we should start with the fee  
19 examiner who can give an update on where --

20 THE COURT: All right. I see Mr. Wilkinson (sic)  
21 coming up -- good morning, Mr. Wilkinson. I said Wilkinson. I  
22 meant Williamson. I apologize. I'm tired, Mr. Williamson.

23 MR. WILLIAMSON: Good morning, Your Honor. Thank  
24 you. Brady Williamson, the fee examiner in this proceeding.  
25 My colleagues from Godfrey & Kahn are on the telephone if their

1 involvement is needed.

2           Your Honor, the Court has before it twenty  
3 applications totaling approximately fifteen million dollars.  
4 We believe that we have resolved all but five. And with one  
5 exception, we further believe that those five turn on the two  
6 issues that we've highlighted for the Court in the summary that  
7 we filed. Those two issues, of course, being the question of  
8 hourly rate increases during the term of the case. And the  
9 second issue being the question of to what extent should  
10 professionals be compensated for dealing with the U.S. trustee  
11 and with the fee examiner on issues involving fees. And I  
12 think we've come to an agreement that using the shorthand "fees  
13 on fees" is a good way to describe that second issue.

14           Our memorandum to the Court outlined the case law on  
15 both of these issues. I think particularly with respect to the  
16 question of fees on fees, Your Honor, Professor Resnick and  
17 Henry Sommer tell us in their volume that there was a split of  
18 authority. There is indeed a split of authority. I think it  
19 reflects a tension between avoiding dilution of the  
20 professionals' work and their hourly compensation, on the one  
21 hand, and incentive or disincentive for preparing fee  
22 applications that comply with the letter and the spirit of the  
23 law. And that tension, I think, whether you agree with Judge  
24 Bernstein in Brous, B-R-O-U-S, or whether you agree with Judge  
25 Cudahy in In re Smith, that tension permeates the issue.

1           With respect to hourly rate increases during the term  
2 of this proceeding, or, for that matter, any other, in our  
3 report, Your Honor, we do not recommend a deduction of those.  
4 But what we do ask is, both retrospectively and prospectively,  
5 that the Court ask that professionals when they impose an  
6 hourly rate increase for associates, partners,  
7 paraprofessionals, that they provide, at a minimum, notice and  
8 an affidavit so that if an objection were warranted it could be  
9 lodged. We note that this Court in other cases has imposed  
10 that requirement at the outset of the case. It was not imposed  
11 at the outset of the case here. But we think given the  
12 magnitude of the amounts involved, in simply in the hourly rate  
13 increases for lawyer X, an increase from 450 dollars an hour to  
14 525 dollars an hour, that kind of hourly rate increase can  
15 amount to real money. In this fee period, we think it's about  
16 650,000 dollars attributable solely to the delta, the  
17 differential between an hourly rate in the preceding fee period  
18 and in this fee period.

19           So, in the first two cycles, Your Honor, we talked a  
20 lot about trees and forests. I think it's good news that we're  
21 here primarily this morning to talk about the forest, that  
22 being those two issues. Let me also note that there are tree  
23 issues involving both the debtors' counsel and the committee  
24 counsel. But I really do think that we can those to the extent  
25 they haven't already been resolved.



1 THE COURT: Pause, please, Mr. Williamson. And if  
2 I'm going to embarrass myself, I'll do it in front of a full  
3 courtroom. I spent all my time today preparing on the New GM  
4 issues with its dealers and on the rulings that I had issued  
5 yesterday in Chemtura and on the stuff I did last week on  
6 Chemtura and several of my other big cases. I'm underprepared  
7 on the legal issue as to the split in the authorities on the  
8 fees on fees issue although I'm generally aware of it.

9 What I'm not aware of, and I need your help and any  
10 opponent's help, is on the extent to which there is authority  
11 in this district -- because, as I've said a zillion times, I  
12 follow the opinions of other judges in my district except in  
13 cases of manifest error because I think that predictability in  
14 this district is of such great importance. I think you said  
15 there was a ruling on this by Judge Bernstein. And I think you  
16 also said there's a split in authority as Collier recognizes --  
17 either Collier or -- you said Professor Resnick and I don't  
18 know if that's separate or it's just in Collier.

19 But what --

20 MR. WILLIAMSON: He's the new --

21 THE COURT: I'm sorry?

22 MR. WILLIAMSON: Excuse me. He's the new editor of  
23 Colliers. I was --

24 THE COURT: Right. I know him. What is the  
25 authority in the Southern District of New York on this issue?

1 MR. WILLIAMSON: The two most recent and two most  
2 significant cases, we believe, were both written and issued by  
3 Judge Bernstein. The most --

4 THE COURT: By Judge Stu Bernstein upstairs?

5 MR. WILLIAMSON: Yes, sir.

6 THE COURT: Keep going.

7 MR. WILLIAMSON: The most recent on August 24th of  
8 this year, In re CCT Communications. And it's cited in our  
9 papers and also in the papers filed by debtors' counsel and  
10 committee counsel. And then three years ago, another decision  
11 by Judge Bernstein, In re Brous, B-R-O-U-S, and again cited in  
12 the papers that the Court has before it. And I think it's fair  
13 in the interest of candor to say that the two cases are not  
14 automatically reconcilable because in one, CCT, the most  
15 recent, Judge Brous -- excuse me -- Judge Bernstein allowed --  
16 permitted an award of fees for contesting, defending, whatever  
17 the right word is, a fee application against an objection. In  
18 re Brous, four years earlier, 2007 case, it was a Chapter 7 --  
19 that may have some significance. Judge Bernstein denied the  
20 same request for fees on fees.

21 THE COURT: Pause. Did any one of these -- because  
22 it tends to boost admin expenses, tends to gore the ox of the  
23 remaining creditors like the unsecured community. Were there  
24 any particular facts in either Brous or CCT, which I assume was  
25 an 11, that would cause that to be unusually a matter of

1 concern?

2 MR. WILLIAMSON: CCT was a Chapter 11. It was a  
3 final fee application. And I think the Court felt that since  
4 the counsel had substantially prevailed -- I believe that's a  
5 magic phrase, "substantially prevailed" -- that the fees should  
6 be permitted. And that's -- in that same case, by the way,  
7 Judge Bernstein was quite, I think, forceful in saying that the  
8 review and editing of time records is not compensable which --

9 THE COURT: Well, I already ruled on that --

10 MR. WILLIAMSON: You did.

11 THE COURT: -- in one of the earlier cycles, if I  
12 recall. Okay. And I'm going to ask the question first of you,  
13 Mr. Williamson and I'm going to ask it of whoever has a  
14 different view of the world than you. Would you prefer that I  
15 rule on it based upon my general knowledge of the area or would  
16 you prefer that I defer ruling until I've been able to read CCT  
17 and Brous and any other authorities that people think are  
18 particularly relevant?

19 MR. WILLIAMSON: I would prefer that on the question  
20 of fees on fees, Your Honor, that you defer ruling because I  
21 think the issue is quite significant. And over the course of  
22 this case and others, has a significant financial impact. So  
23 that would be my preference. And I think between debtors'  
24 counsel, committee counsel and our work, the case law is there  
25 and about ten significant decisions, two from this district,

1 one from the Western District of New York. And I think it  
2 raises some significant philosophical issues, if that's the  
3 right term, in terms of this tension that I discussed.

4 THE COURT: Fair enough. I appreciate that.

5 MR. WILLIAMSON: And, Your Honor, in our memorandum,  
6 we basically suggest the Court has three choices: approve them  
7 all, approve none or accept our admittedly pragmatic suggestion  
8 of fifty percent which is, as the Court recalls, what it did  
9 with respect to the issue of preparing not fee application but  
10 preparing time records.

11 THE COURT: Well, if I heard you right, though, based  
12 on something you said before, I'm wondering if there's a fourth  
13 alternative which is to look at it, as you described Judge  
14 Bernstein's ruling in CCT, to make perhaps not an  
15 excruciatingly detailed analysis of the merits of the  
16 underlying dispute that caused counsel -- or presumably it  
17 applies to professionals generally -- to defend their request  
18 or to see whether they were defending themselves because ways  
19 in which, for lack of a more delicate word, they screwed up or  
20 whether they substantially prevailed or whether this was on  
21 cutting edge issues or perhaps some alternative approach.

22 MR. WILLIAMSON: There are two difficulties with  
23 that, it seems to me, Your Honor. The first is that would not  
24 place an appropriate value on either the prophylactic effect of  
25 the fee review process nor would it take into account the

1 process itself in that, as the Court knows, we start with a  
2 letter raising questions, the professionals respond, we winnow,  
3 hopefully, the number of issues down. And the use of the term  
4 "substantially prevailed" I don't think does justice to those  
5 other two categories.

6 I would also point out that --

7 THE COURT: Pause, please, though, Mr. Williamson,  
8 because while I can see that you and perhaps other folks might  
9 contend that that's not the best approach, if one goes with the  
10 judicial philosophy that I've papered in close to a dozen  
11 written decisions, do you think that kind of approach would be  
12 manifest here if Judge Bernstein did that? And I'm wondering  
13 if certainly due diligence would require me to read his  
14 decision. But unless I conclude that he blew it, I got to tell  
15 you, my tentative would be to follow a colleague in this  
16 district.

17 MR. WILLIAMSON: The difficulty with that, Your  
18 Honor, is, I think, Judge Bernstein has been of two minds  
19 because if you look at the bottom line result in each of the  
20 case -- each of the two cases, they are --

21 THE COURT: You're respectfully suggesting they can't  
22 be reconciled.

23 MR. WILLIAMSON: Yes, sir.

24 THE COURT: Okay.

25 MR. WILLIAMSON: They can be distinguished. One is a

1 7, one is an 11. And it's interesting, Your Honor --

2 THE COURT: But they're both under 330, I assume.

3 MR. WILLIAMSON: Yes. It's interesting, Your Honor,  
4 that, if you look at the basket of cases, ten or twelve of  
5 them, each of the Courts that have addressed this have said  
6 here's my rule, no fees for fees except in exceptional cases.  
7 And then the other Courts that have come out the opposite way  
8 have said fees on fees are approved, parens, except in  
9 exceptional cases because the Courts in the latter basket are  
10 concerned, I think rightfully, about a lax or relaxed approach  
11 to the fee process which then results in professionals who  
12 don't devote appropriate diligence being compensated while they  
13 do what, one would argue, they should have done in the first  
14 place.

15 THE COURT: I understand. Okay. Is it time to give  
16 your opponents a chance to be heard or did you have further  
17 points?

18 MR. WILLIAMSON: Only to note, Your Honor, that the  
19 question about hourly rate increases can be addressed not at  
20 least at this hearing in a quantitative yes or no approach but  
21 rather simply to direct that professionals who raise rates  
22 during the course of a proceeding provide a notice of that and,  
23 if anyone chooses to be heard, not just the fee examiner or the  
24 UST, that they have an opportunity to do that.

25 THE COURT: Okay. Thank you. Who would like to be

1 heard? Mr. Smolinsky?

2 MR. SMOLINSKY: Thank you, Your Honor. Joe Smolinsky  
3 of Weil Gotshal for the debtors.

4 Let me start with the two cases that the fee examiner  
5 has mentioned and let me just raise a very significant  
6 distinction. I believe in the CCT Communications case, that  
7 was an analogous situation where there was a fee examiner in  
8 the case and the Court found that the law firm substantially  
9 prevailed and denial of the defense costs would simply dilute  
10 the award.

11 In the Brous case, you had a creditor, a third party  
12 creditor, I believe Bear Sterns, that took issue with the  
13 reasonableness of the fees in a single, stand out dispute and  
14 was successful in that dispute and the Court found that the  
15 professionals should not be reimbursed for defending that fee  
16 application.

17 I think it's very different because we are, as Your  
18 Honor knows, subject to quarterly forensic audits, effectively,  
19 of our fee applications. There is not a standing dispute as to  
20 the reasonableness of the fees in this case. This is simply a  
21 quarterly analysis, under very different standards than third  
22 parties outside of bankruptcy or clients outside of bankruptcy  
23 would typically be engaged in.

24 Your Honor, we take no issue with the way that the  
25 fee examiner has approached these issues. I think that he's

1       been fair in how sets out the issue. He acknowledges the fact  
2       that there are cases for, cases against. Ultimately these are  
3       policy issues and I think that's hugely significant here.

4               The question is whether my firm and other firms  
5       should be penalized for establishing policy in this case, which  
6       ultimately starts the process of a national movement to modify  
7       the way that fee applications are dealt with. And  
8       respectfully, I believe that that discussion should happen in  
9       Washington, not necessarily in this case. I don't think the  
10      fee examiner specifically points to any rules or judicial  
11      precedent for what he's looking for here.

12             THE COURT: The underlying problem, isn't it, Mr.  
13      Smolinsky, that every time one of us even issues a dictated  
14      decision it acquires a life of its own?

15             MR. SMOLINSKY: That's right, Your Honor. And  
16      ultimately, these issues may be appealed not for purposes of  
17      this case but for purposes generically.

18             I think the American rule, which is what this is  
19      about, especially in the context of cases like Brous where you  
20      have a creditor challenging the debtor and saying the debtors'  
21      estate should not pay for this, I think has no place here.  
22      These are policies. Again, they are not challenges to the  
23      reasonableness of fees.

24             The American rule is very much about each party  
25      paying its own way and evaluating whether the costs of bringing



1 up the issues are outweighed by the risks associated with doing  
2 so and the benefits that could be incurred by proceeding.

3 They don't deal with single issues. They deal with  
4 whether or not we should publicly announce our fees rates to  
5 the world whenever we increase rates and things of that nature.

6 I would note that the examiner, the fee examiner, has  
7 no client here other than the United States trustee and the  
8 U.S. government. That makes it very easy to take on issues  
9 outside of the typical American rule. I don't think that the  
10 American rule would see a situation where an eight-page  
11 response would be filed with respect to a fourteen dollar  
12 expense dispute, which was the case of Legal Analysis Systems'  
13 fee applications.

14 So this is very much about the estate, in this case,  
15 paying for a determination of policy issues. And if the estate  
16 is going to be paid for those claims to be pursued, those  
17 challenges to be pursued, then it should pay for the costs of  
18 the determination of whether that policy should be invoked.

19 With respect to the fee rates and the increases, I  
20 would only add that law firms such as Weil Gotshal are very  
21 sensitive to announcing when rates are increased publicly. We,  
22 in our fee applications, provide enough information to  
23 understand what rates of lawyers that are working on the  
24 matters when they increase.

25 THE COURT: Pause, please, Mr. Smolinsky.

1 "Sensitive" is subject to a double entendre. It can mean that  
2 you're already ahead of us in making that information known or  
3 it could mean that it's sensitive in the sense that it's  
4 something that you would prefer not to disclose. Which of the  
5 two meanings am I supposed to draw from this one?

6 MR. SMOLINSKY: We would prefer not to disclose, in  
7 the public forum, the way that the fee examiner requests.  
8 Understand that the -- when we increase rates, as we did here  
9 in January and we do put into place annual increases, that this  
10 is not a GM issue. This is not a restructuring department  
11 issue. This is a firm-wide decision to raise rates and that's  
12 consistent with our obligation to charge the same rates that we  
13 charge our other clients.

14 What the fee examiner is asking for is to file a  
15 public affidavit every time the firm increases rates, setting  
16 out each --

17 THE COURT: Well, is he saying that or is he saying  
18 every time the firm raises rates in a case in which the  
19 creditors of the case are going to have to pay?

20 MR. SMOLINSKY: Well that's certainly not the case  
21 here, Your Honor, because the creditors, the unsecured  
22 creditors of this estate are not paying the fees.  
23 Interestingly enough the U.S. government is on both sides of  
24 this issue.

25 THE COURT: So you're saying I should issue a Bush

1 vs. Gore ruling which is not a precedent for anything except  
2 the exact matter that I have before me? I tend to believe that  
3 I should go by, kind of, like a rule of law.

4 MR. SMOLINSKY: We have no problem providing the  
5 Court, providing the fee examiner with a schedule of rates when  
6 they're increased. But the media is the media and what Your  
7 Honor would be starting is a precedence where every major law  
8 firm would, once a year, publicly file in the bankruptcy court  
9 their new rate schedule. And that would be -- that would just  
10 become a circus which I don't think this Court intends.

11 The purpose of the notice is to provide information  
12 about the reasonableness of fees and the rates. That  
13 information is already provided. Every time we file we provide  
14 a monthly fee statement or a quarterly fee application. In our  
15 summary in the beginning it sets out the rates of each  
16 professional. And to the extent that the fee examiner has some  
17 need to tick and tie old rates to new rates, we're happy to  
18 provide that information to help him do that.

19 I think the notion that every large law firm now has  
20 to, once a year, file in every Chapter 11 case in which they  
21 perform services an affidavit that they had a firm-wide rate  
22 increase, I think is a little overboard and creates a precedent  
23 that I think is not healthy. So I think when you look at the  
24 American rule I don't think that it's really appropriate here.  
25 The fee examiner -- the U.S. trustee has delegated a portion of

1 its duties to the fee examiner paid out of the estate to pursue  
2 policy issues and general issues, which we have to respond to.  
3 And these quarterly audits are significant, they're  
4 substantial, they're expensive to comply with and ultimately it  
5 would just create an automatic discount to our fees if the  
6 examiner was allowed unlimited access to the debtors' coffers  
7 and we were forced to pay, on our own dime, for responding.

8 THE COURT: Okay. Fair enough. Others want to be  
9 heard on this? Mr. Schmidt?

10 MR. SCHMIDT: Thank you, Your Honor. Robert Schmidt  
11 from Kramer, Levin, Naftalis & Frankel on behalf of the  
12 creditors committee.

13 Your Honor, we're pleased to report that we were able  
14 to work out, as Mr. Williamson reported, virtually all our  
15 issues with the fee examiner. It took a lot of effort but we  
16 got there.

17 The issue that remains is the fee on fee issue for  
18 us, which I won't retrace the arguments made by Mr. Smolinsky.  
19 We certainly agree with his arguments and we believe that we  
20 should be compensated for the amounts charged in that regard.

21 I would add, Your Honor, with respect to the  
22 committee's issue here, it took on particular importance  
23 because as the Court may recall the fee examiner took a very  
24 aggressive approach with respect to the duties that the  
25 committee performed on a variety of important estate issues,

1 including environmental claims, the DIP and wind down claims,  
2 collateral review. And he really, aggressively, went after the  
3 fees that we incurred in connection with those very important  
4 projects and we felt we had to vigorously oppose his objection  
5 to our fees on that front and so we did expend significant time  
6 and effort on that front.

7 The Court heard the arguments during the April 29 fee  
8 hearing so I won't rehash them. And I believe we did  
9 substantially, ultimately substantially prevail wherein we  
10 ended up taking 114,000 dollar reduction on a 4.5 million  
11 dollar fee application. So I think, if you do the math, that  
12 is certainly a very modest reduction for a fee application and  
13 we believe that it does evidence that we did prevail and that  
14 would comport with the rulings in, certainly, Judge Bernstein's  
15 CTT case.

16 THE COURT: Got a different question for you, Mr.  
17 Schmidt, because one of the things that I've wrestled with over  
18 the last week was your constituencies differences in  
19 perspective with the U.S. government in which I understood, I  
20 think correctly based on what was presented to me at least,  
21 that the unsecured creditor community in this case is subject  
22 to a dilution risk if the admin expenses in this case get too  
23 high. And while I had assumed, and you just confirmed, that  
24 you would agree with Mr. Smolinsky on the fees on fees issue,  
25 I'm wondering if you want to weigh in on the issue of increases

1 going forward?

2 MR. SCHMIDT: Your Honor, if I may, before I get into  
3 the increases, the increase in the potential administrative  
4 claim base is not necessarily diluted; it's really the  
5 unsecured claims base that's diluted. The only time that you  
6 get into an issue on the administrative claims base is if we  
7 blow through the wind down budget.

8 THE COURT: Right. But I thought that was enough of  
9 an issue that I should be paying attention to it.

10 MR. SCHMIDT: Fair enough, Your Honor.

11 THE COURT: So if you're not taking a position on the  
12 second issue all you've got to do is tell me that, but I don't  
13 know what your position is on that.

14 MR. SCHMIDT: Your Honor, on the rate increase issue  
15 I would just simply note that yes we do periodically assess and  
16 increase our rates. We acknowledge that and make it clear in  
17 our initial retention papers that we implement step-up  
18 increases for associates on a yearly basis and come the end of  
19 the calendar year, assess the marketplace and determine whether  
20 to make additional market driven increases, which we do from  
21 time to time.

22 If it's a matter of providing a list to Mr.  
23 Williamson in advance, that's certainly not a problem for us.  
24 But we do note that we take that position up front in our  
25 retention application.

1 THE COURT: Now as far as I know every firm does,  
2 doesn't it?

3 MR. SCHMIDT: I believe that's fairly standard.

4 THE COURT: Okay. Mr. Reinsel, any of the other  
5 official committees or your firm want to be heard on this? I  
6 guess I only have one other official committee, which is you.

7 MR. REINSEL: Your Honor, Ron Reinsel, Caplin &  
8 Drysdale, for the asbestos committee. I think we would just  
9 join with the debtor and the committee.

10 THE COURT: Fair enough. All right. Anybody else  
11 want to be -- Mr. Seidel?

12 MR. SEIDEL: Yes, Your Honor.

13 THE COURT: And then I'll give you a chance, after  
14 that, Mr. Masumoto.

15 MR. SEIDEL: Good morning, Your Honor. Barry Seidel  
16 of Butzel Long, we're special counsel to the creditors  
17 committee, as you know.

18 I just stood up to answer the question that Your  
19 Honor addressed before anyone made remarks, which is whether  
20 any of us were interested in having you deliberate further on  
21 the issue or have you rule on general knowledge.

22 Your Honor, I know that before you sat on the bench  
23 you were a long-time practicing lawyer. I personally believe  
24 you are familiar enough with the law and certainly the facts in  
25 this case to make a ruling without further deliberation. So I

1 join with Mr. Smolinsky and Mr. Schmidt on the issue of fees on  
2 fees.

3 THE COURT: On the merits of that issue.

4 MR. SEIDEL: Yes. And as to the other issue, we're  
5 not affected by that.

6 THE COURT: Fair enough.

7 MR. SEIDEL: Thank you, Your Honor.

8 THE COURT: Okay. Anybody else want to be heard for  
9 a first time? Mr. Williamson, I'll hear from you in reply if  
10 you have any limited to what your opponents said in their  
11 remarks after you. Oh, I'm sorry Mr. Masumoto. Go ahead.

12 MR. MASUMOTO: Your Honor, if you don't mind?

13 THE COURT: No disrespect. Come on up, please.

14 MR. MASUMOTO: Good morning, Your Honor. Brian  
15 Masumoto for the Office of the United States trustee. Your  
16 Honor, as indicated in our papers, we do support the fee  
17 examiner's recommendations with respect to the various fee  
18 applications. However, we did also want to stress that, as  
19 highlighted by all of the parties who have spoken previously,  
20 there were two major matters of concern that we would like to  
21 articulate our position on, which are the rate increases and  
22 the issue referred to as fees on fees.

23 With respect to the rate increases -- I'm sorry;  
24 before I get into that I would like to respond to a comment  
25 made by debtors' counsel. The U.S. trustee did not delegate



1 any of its responsibilities to the fee examiner. In fact, as  
2 Your Honor may recall, the appointment of a fee examiner was  
3 based on a consensual arrangement among the parties, including  
4 the debtors' professionals and the committee. And as Your  
5 Honor knows, fee examiners have been appointed in a number of  
6 cases.

7 This attempt at utilizing a fee examiner is not to  
8 absolve the U.S. trustee from its responsibility to examine the  
9 fee applications because we do, regardless of whether fee  
10 examiners are appointed or not, we do examine the fee  
11 applications. However, I think it's quite apparent that given  
12 the nature of the very large mega cases that exist, that the  
13 amount of resources available by the U.S. trustee cannot be  
14 measured or cannot be compared to the resources of a dedicated  
15 fee examiner.

16 So I would like to indicate that the fee examiner is  
17 not just merely a tool for the U.S. trustee but for the Court,  
18 as well as the various estates, to insure that the expenses,  
19 fees and expenses, meet the criteria set forth in the statute.

20 With respect to the two major issues, we certainly  
21 have no quarrel with respect to rate increases. We have no  
22 quarrel with the approach of providing notice and an  
23 opportunity to be heard. However, we did want to articulate a  
24 major concern that there be no ambiguity or misunderstanding  
25 that whatever notice is provided, whether it's provided prior

1 to fee application or at the time of the fee application, the  
2 true test of determining whether or not the fee increases are  
3 reasonable can only be fully and accurately examined or  
4 evaluated in the context of a fee application. So for example,  
5 if in fact the Court imposes a requirement that notices be  
6 provided at the time the increases occur, which may not  
7 coincide with the fee application. That whatever issues are  
8 raised or highlighted or if none at all, it does not estop or  
9 preclude further examination in valuation at the time of the  
10 fee application. I believe that all of the cases that referred  
11 to rate increases and so forth were, in fact, examined in the  
12 context of a fee application.

13 So, I guess, in some respects, it might be similar to  
14 the monthly compensation procedure in which monthly invoices  
15 are issued, payments are made and objections can be raised.  
16 However, no objections are waived at the time of the fee  
17 application. So similarly, if in fact advanced notice and an  
18 opportunity to be heard is required and/or allowed in any of  
19 these cases, we would certainly maintain or reserve our right,  
20 one, to be able to evaluate it in the context of a fee  
21 application as well as reserve our rights based upon, perhaps,  
22 that advanced notice, to engage in any appropriate discovery  
23 regarding those rate increases.

24 Second, moving on to the issue of fees on fees, I  
25 think the parties have outlined the various split in the case

1 law in the southern district. I would like to indicate that I  
2 believe that Judge Bernstein, essentially, is applying a  
3 similar approach, I think, even across the board, on both sides  
4 of the divide. I believe there's an element, at the polar  
5 extremes. One is that on one hand you want to discourage  
6 improper fee applications, you want to encourage compliance;  
7 you want to make sure that it gets done at the same time. At  
8 the opposite extreme is not to penalize professionals for  
9 frivolous or vexatious type objections to fee applications that  
10 are raised as part of a strategic matter.

11 And I think the Courts, in struggling to address  
12 those, will come out one way in one case and the other in --

13 THE COURT: I think you may have nailed it, Mr.  
14 Masumoto but if that is the kind of thought process that I or  
15 another judge would go through would Judge Bernstein's approach  
16 represent the sweet spot in achieving that balancing?

17 MR. MASUMOTO: Well, I think Judge Bernstein -- yes.  
18 In response to your question I think it does because if you  
19 look at Brous I think the conclusion was that the objections  
20 were valid, the objections to the fee applications and the  
21 defense of the fee applications were valid and the creditor who  
22 raised the objections prevailed. In the CCT Communications,  
23 the Court determined that the objections were not valid and  
24 that the fee applicant had properly defended the contents of  
25 its fee applications. I suppose in some respects it was a form

1 of -- as Judge Bernstein mentioned this is, sort of, the  
2 application of the American rule. However, the distinction  
3 that we want to make with respect to the current fee  
4 application and the trustee's recommendation is that the  
5 trustee's recommending a fifty percent.

6 THE COURT: Five-zero.

7 MR. MASUMOTO: Right. A five-zero percent and that  
8 is an approach which is a compromise, sort of a realistic  
9 compromise, and I think consistent with Your Honor's ruling  
10 with respect to the second interim fee application.

11 The concern that we have in the application of that  
12 fifty percent, that the prophylactic portion for, what I  
13 believe all the courts have indicating, including Your Honor in  
14 the second, is the concern that the estate not be saddled with  
15 the correction of mistakes and failures or omissions.

16 Hypothetically, part of the issue and the difficulty  
17 Your Honor encountered in the second interim is that some of  
18 the issues raised had not been really fully developed or  
19 articulated by the courts in other cases. In fact, Your Honor  
20 was concerned that applying a rule retroactively would penalize  
21 the applicants and I believe, in part, that that's justified or  
22 at least a warrant of the fifty percent application.

23 The concern, I think, as Your Honor articulated even  
24 in that ruling is that once the courts start to rule and  
25 establish the parameters going forward with respect to these

1 fee applications, that ignorance should no longer exist and  
2 that latitude should not longer exist.

3 So, theoretically, as we move forward and the  
4 experienced increases amongst the professionals, presumably the  
5 reviewing and having to deal with some of the issues raised,  
6 Your Honor's concern about checking, I believe you raised a  
7 concern about privilege reviews and the amount of details that  
8 are necessary to address the privilege issues in the bankruptcy  
9 cases which don't exist in non-bankruptcy cases, that as that  
10 experience develops in fact what you may see is that perhaps a  
11 smaller amount of time necessary to review and correct and edit  
12 the time records which, I believe, Judge Bernstein and even  
13 Your Honor has ruled should not be compensated because that's  
14 not available to non-bankruptcy practitioners.

15 So what's left is, in fact, correcting mistakes. A  
16 large portion that will be left is the debtors' -- not  
17 debtors' -- I'm sorry -- the professional's response to  
18 criticisms or objections and corrections. So if a fifty  
19 percent rule is applied in that context, a larger and larger  
20 proportion would presumably be for correcting errors and those,  
21 I think, the Court has been quite adamant, I mean, in an  
22 attempt to try to eliminate the compensation for correcting  
23 errors you applied in the context, given the nature of the  
24 unknown factors, uncertain case law, the fifty percent rule  
25 didn't make sense because arguably fees that would have been

1 compensated you reduce by fifty percent. And although there  
2 were fees that should not be included at all, which are the  
3 correcting and dealing with omissions, that portion of the fees  
4 which would not be permitted at all would still also suffer a  
5 reduction.

6 But I think, on balance, I think the Court's  
7 determination was the results achieved effectively eliminated  
8 any possibility that a firm would benefit by correcting its  
9 mistakes.

10 Our concern is that unless there is that absolute  
11 deterrence, there's always an incentive not to comply or at  
12 least not intentionally not to comply but not be as careful  
13 because it doesn't matter. Even if you get only fifty percent  
14 of the correction, you're still, in fact, increasing your  
15 recoveries and still don't have to spend the time complying  
16 completely with the case law.

17 Now I believe that there has been, in fact, some  
18 difficulty in applying all of the different considerations from  
19 Your Honor's second interim fee application ruling, in the  
20 sense that if the fifty percent rule apply not only to the fees  
21 on fees but the actual deficient fees, that, again, increases  
22 the deterrence for not having compliant time records.

23 If in fact it only applies to the time records that  
24 are under question, the actual fees on fees, then the level of  
25 deterrence is certainly not as high.

1           Our main concern is that however the rule is applied,  
2           whether or not the Court applies a fifty percent rule in terms  
3           of taking the overall picture, including the fee applications,  
4           that there be a complete deterrence from not complying with the  
5           rules. Anything less would encourage a -- it would reduce the  
6           prophylactic effect of any rule. And that is, I guess, from  
7           our perspective our departure from the, sort of, I guess,  
8           pragmatic approach of the fee examiner.

9           We do want a rule that maintains a hundred percent  
10          deterrence against non-compliance.

11          THE COURT: Mr. Masumoto, that analysis in a lot of  
12          ways advances the ball. So let me ask a couple of follow-up  
13          questions on that. The first is that, as Mr. Smolinsky  
14          observed and I think he was right, there is a certain cost  
15          associated with responding to inquiries, and in some cases  
16          objections, irrespective of whether your fees were justified or  
17          not, kind of like a mandatory cost imposed upon the  
18          professional for playing -- not playing, for complying with the  
19          informational requirements that are imposed upon it and, in  
20          some cases, for justifying the propriety of its fees even if it  
21          did nothing wrong.

22          And then there is a second layer above that, the cost  
23          of responding to its screw ups or its failures to comply. The  
24          points you made, for the most part, apply to the second half of  
25          what I said rather than the first, I would think or do you

1 think I'm off base in that regard?

2 MR. MASUMOTO: I think that's right, Your Honor. And  
3 to address the first point, one, as, sort of, a primary and  
4 basic matter, I believe that the courts have held, and I think  
5 it should be an important principle to, sort of, hold to which  
6 is that the burden of proof is on the fee applicant. They have  
7 the burden to justify the reasonableness and necessity of their  
8 fees and expenses. If they fail to do so, triggering or  
9 requiring further inquiries, they should bear the cost.

10 Now once again, we have the opposite extreme. If  
11 someone is undertaking a frivolous or vexatious type of  
12 inquiry, clearly, I think, most courts and certainly the U.S.  
13 trustee would feel that in order to defend against that type of  
14 tactic that the professionals should not be penalized.

15 THE COURT: And presumably, if you use a  
16 substantially prevailed type of approach, then the professional  
17 wouldn't have to eat the costs of defending against that  
18 frivolous attack.

19 MR. MASUMOTO: That's correct, Your Honor. I would  
20 also -- I'm sorry.

21 THE COURT: No, finish your thought but I have  
22 another one after that, Mr. Masumoto.

23 MR. MASUMOTO: The other concern that I had, in terms  
24 of the inquiry and so forth, is to note, Your Honor -- as Your  
25 Honor knows, having practiced for so long, prior to the advent



1 of the electronic filing all fee applications were, in its  
2 entirety, available to the public. They were filed with the  
3 court in hard copy and were available to individuals to  
4 examine.

5 After the advent of electronic filing, given the size  
6 of the files that were necessary in some cases for fee  
7 applications, as Your Honor probably is aware, not all the time  
8 records are actually on file. They're not universally  
9 available to anyone who wants them. They're available upon  
10 request from the professionals but in the very large cases many  
11 of the professionals with very voluminous time records do not  
12 file them online. They will file the narrative and the  
13 schedules but the actual time records are actually not online.  
14 And so if Your Honor is perhaps concerned about inquiries from  
15 people who might want an opportunity to review time records,  
16 that's in fact a function of the system and the parties.

17 I believe some of your colleagues have required, even  
18 in the mega cases, that the fee applications, the actual time  
19 records, are filed online. I believe sometimes the mechanism  
20 is used that the monthly compensation invoices have to be filed  
21 online and therefore would be available for review at the time  
22 of the fee application. But in many cases, I believe, in many  
23 of the large cases actual time records are not universally  
24 available.

25 So any inquiries regarding time records and detail

1 and so forth that may be raised by interested parties isn't at  
2 a cost upon the professionals but certainly, it seems to me, a  
3 choice and a function of how they approach the filing  
4 requirements.

5 THE COURT: Mr. Masumoto, when you study physics you  
6 learn about the Heisenberg Uncertainty Principle, which it's  
7 been a long time since I studied physics but I, kind of,  
8 capture it by saying that by measuring a phenomenon you alter  
9 it. And while subject to review of the cases my inclination  
10 might well be to have some kind of merits-based evaluation, at  
11 least beyond the requirements of dealing with the objection at  
12 all, what I mentioned a moment ago, that has merits to it but  
13 there's also an expense associated with getting into that  
14 merits-based inquiry. And I would be a little nervous about  
15 establishing a regime under which the creditors of the cases on  
16 my watch are paying more for the precision than they're getting  
17 in the way of benefits of the merits-based fine-tuned analysis.  
18 Do you want to comment on that trade off?

19 MR. MASUMOTO: Yes, Your Honor. It is unfortunate,  
20 as Your Honor indicated, that perhaps individual estates might  
21 have to bear that additional cost. However, in those cases  
22 where the cost is borne by a particular estate, they become and  
23 serve, I think as Your Honor noted in your decision regarding  
24 the second interim fees, as standards to be applied going  
25 forward, eliminating the excuses on the professionals.

1           Just as a really practical example Your Honor, as  
2 Your Honor knows if you look at -- one of the review functions  
3 that you have, a simple one, you can't bill more than twenty-  
4 four hours a day. I mean, it should be -- no one should be  
5 billing more than twenty-four hours a day. I believe that the  
6 fee examiner, in some of the earlier fee applications, based  
7 upon the mechanical software available to Stewart Maue, was  
8 able to identify applications in which there were timekeepers  
9 who billed more than twenty-four hours a day. Now should that  
10 ever occur? Shouldn't the law firms, in preparing their fee  
11 applications, have checking functions that would screen that  
12 out?

13           Another example is the compromise that was reached  
14 with respect to overtime meals and expenses. I believe at the  
15 last interim application, I don't recall the exact amount, I  
16 think it was either five or six hours, but the idea is that if  
17 someone billed, for the debtor, less than five hours of work  
18 for that day they shouldn't be entitled to an overtime meal  
19 and/or a cab ride home.

20           Now I can tell you that as far as I know Your Honor,  
21 I don't know of any law firm that has any software in effect  
22 that can do that checking. Now the fee examiner was able to  
23 utilize the services of Stewart Maue and in fact could make  
24 that cross reference very easily and could screen that out.

25           Now if Your Honor ruled in the cases that it's

1 impermissible to have a time keeper bill an hour or two a day,  
2 open up the file at the end of the day and then ask for a meal  
3 and/or a cab ride home and the firms know that that is the  
4 standard, then how difficult would it be for those firms to  
5 implement a checking procedure to require it. I'm aware, at  
6 least with respect to one applicant when the issue was raised,  
7 said that their software prevents anyone from requesting or  
8 putting in for a fee reimbursement without any time records.  
9 However, it didn't specify the amount. It didn't say if you  
10 only have less than five hours you can't bill something. But  
11 that was an effort.

12 Now if in fact Your Honor ruled and other judges  
13 ruled and enforced a rule that you can't bill for time -- for  
14 overtime expenses without a certain minimum amount of time  
15 billed to the estate, then presumably the firms would implement  
16 that procedure.

17 So I understand that in individual cases one might  
18 see, perhaps as Your Honor indicated, an absorbing of  
19 additional costs in order to justify it but I think, in the  
20 long run, it would serve as, sort of, an emerging standard to  
21 impose upon the firms so that in fact the concern -- if we had  
22 to do it in every case I agree with Your Honor, it may be  
23 unfair to impose that burden on every individual case. But  
24 once the Court establishes procedures, and the Court has done  
25 it, in fact that's the reason for the southern district

1 guidelines and the various local guidelines, where the Court  
2 attempts to impose standards on the law firms to prevent  
3 perceived abuses.

4 So I cannot -- I cannot say or evaluate the benefit  
5 in an individual case that has to bear that particular cost,  
6 but for purposes of insuring, in general and certainly for  
7 future cases, a standard avoiding abuses, I think it is part of  
8 the cost that the system, in general, has to bear.

9 THE COURT: Okay. Thank you very much, Mr. Masumoto.

10 MR. MASUMOTO: Thank you, Your Honor.

11 THE COURT: Mr. Eisenband?

12 MR. EISENBAND: Thank you, Your Honor. Michael  
13 Eisenband with FTI Consulting. I guess my situation is a  
14 little unique. I'm not -- obviously I'm a financial advisor,  
15 not an attorney, so I'm going to leave it to the attorneys to  
16 talk about case law. But I do want to talk about the fees on  
17 fees because even though FTI is billing on a fixed fee basis  
18 and does not charge any extra for the time spent on responding  
19 to fees, that has not stopped the fee examiner from proposing a  
20 57,000 dollar reduction to FTI for fees on fees.

21 And it comes to the issue of what I believe is a  
22 frivolous objection and I think the objections in this case  
23 clearly are frivolous for two specific reasons. First, as I  
24 stated, FTI is not billing any additional time for any hours  
25 spent on defending any of the objections. If FTI didn't spend

1 the time, the fees would still be the same amount, so we're not  
2 billing.

3 And the second one, I would just like to read from,  
4 actually, an excerpt from the first hearing, Your Honor,  
5 something that you said talking about, and this I quote from  
6 you, Your Honor, "FTI argues that its fee was based on a fixed  
7 fee arrangement and that when FTI did more work, as it might,  
8 FTI wouldn't get any more compensation for doing so."

9 You said, referring to the fee examiner's position,  
10 you stated, "I've never seen this position taken in the thirty-  
11 seven years since I started the bankruptcy business. I agree  
12 with FTI as to this issue."

13 That was on the first fee application. We had to  
14 deal with their objections on the second fee applications on  
15 the same issues and now we've had to deal on the third  
16 application.

17 Now I understand the fee examiner has an important  
18 role and certainly FTI is aware that the fee examiner is and  
19 should be looking at FTI's fees. But to propose objections to  
20 hours spent on FTI's fee application, when we're not getting  
21 paid for these additional hours, to me is certainly frivolous  
22 and I think it puts into question -- the judge has actually  
23 ruled on this issue, as it pertains to FTI. Yet the fee  
24 examiner is spending more time, the estate's money, on  
25 objecting to FTI's issue. The fee issue is just one, there is

1 also objection, and you might have seen it in their objection  
2 and our response, that we're sending too many people to  
3 meetings, even though we're obviously not billing by the hour  
4 and those are different issues that maybe we can talk about  
5 after. But that's all I wanted to say on fees on fees.

6 THE COURT: All right. Anybody else before I give  
7 Mr. Williamson a chance to reply?

8 THE COURT: All right. Mr. Williamson?

9 MR. WILLIAMSON: Thank you, Your Honor. Let me  
10 address, very briefly, FTI's expression of concern. In each of  
11 those first two bench decisions the Court also noted that there  
12 would come a day, at the end of this case, when even fixed fee  
13 arrangements are subject to review and the case law is quite  
14 clear that the hourly rate, as computed within a fixed fee, is  
15 a relevant factor. So yes, we pay attention. Yes, we called  
16 things to FTI's attention, including some of the expense issues  
17 that this Court has dealt with.

18 Now let me turn to the two principle issues. The  
19 debtors' counsel used the phrase public policy issue. And  
20 that's not a phrase that should frighten anyone because both of  
21 these issues are inherent, embodied in the term reasonableness.  
22 If a professional submits a deficient application should that  
23 professional be paid from the estate to remedy deficiencies,  
24 errors, mistakes, misstatements that shouldn't have been on an  
25 application to begin with?

1           If a professional, during the course of two fee  
2 periods, raises an associate's rate by almost a hundred dollars  
3 an hour, that goes to the question of reasonableness. And in  
4 the interest of the professional, it's either a reasonable  
5 increase now or it isn't. And it is possible, by comparing the  
6 hourly rates listed in the first application and the third  
7 application, to determine when there's been an increase. So  
8 given the Code's commitment to a public transparent process,  
9 I'm not quite sure of the validity of that concern.

10           In the two cases Judge Bernstein decided it was a  
11 very finite question, very finite objections, one application.  
12 Here we have twenty and by the end of the case we may have  
13 twenty-five or more.

14           My concern, Your Honor, with the phrase substantially  
15 prevailed is that while it appears talismanic, it isn't. And  
16 the reason it isn't is because I, for one, don't want to be at  
17 this podium arguing with my colleagues about whether the fee  
18 examiner or the UST prevailed on a particular point of  
19 disagreement. I don't think the Court would look kindly on  
20 that kind of discussion, and with good reason. And of course  
21 we're left with the inherent problem that my computation of the  
22 fee examiner's batting average might be somewhat different than  
23 my friends at counsel table's computation of the batting  
24 average of the fee examiner, especially when you take into  
25 account the prophylactic issues that the U.S. trustee's office



1 very ably discussed.

2 It's not my responsibility, I don't think, to give a  
3 report card but there is no doubt that incrementally, taken as  
4 a whole, the fee applications submitted to this Court have  
5 improved significantly and the best example of that is the fact  
6 that we are here, by and large, talking about the forest and  
7 not individual trees.

8 You know, I don't know if this case is a perfect  
9 vehicle for having some of these issues decided but the fact  
10 remains that this case, unlike Lehman Brothers just to pick  
11 one, involves taxpayer dollars directly. The Code doesn't say  
12 anything about cases funded by tax dollars, but I think that  
13 that is a very real issue here. Because we're not simply  
14 dealing with a company, its shareholders, its creditors, we're  
15 dealing with taxpayers, we're dealing with organized labor,  
16 we're dealing with huge pension funds, we're dealing with  
17 incredibly environmental and asbestos problems. And so I think  
18 the integrity of the process is important here, whether or not  
19 we set the dinner ceiling at twenty dollars or whether we set  
20 the dinner ceiling at thirty-five dollars.

21 The Court asked about precedent. Judge Peck, in  
22 Lehman Brothers, has these issues pending before him right now.  
23 To my knowledge, as of this morning, he had not issued any  
24 decisions and, in fact, he may not even be writing a decision.

25 THE COURT: When you said these issues, did you mean

1 both of the issues on today's calendar or the fees on fees  
2 issue?

3 MR. WILLIAMSON: Both. And they've arisen in Lehman  
4 Brothers in this context. Lehman Brothers, of course, has a  
5 fee committee and the fee committee has recommended a one  
6 percent of gross fees absolute ceiling on all fee-related time.  
7 Call it what you will, anything to do with fees is compensable  
8 only to one percent.

9 THE COURT: I think I ruled on that before, didn't I?  
10 And -- or at least in oral argument thought that arbitrary  
11 percentages were a matter of concern to me?

12 MR. WILLIAMSON: Yes, and we have not proposed it.  
13 I'm simply addressing the Court's request for what's happening  
14 in this district; to the extent we know it. And the hourly  
15 rate increase has been addressed by the fee committee with a  
16 recommendation that fees be frozen at the 2009 rates. In other  
17 words, that there be no increase in 2010.

18 Now Judge Peck has not ruled on those but the  
19 recommendations of the fee committee in that case, I think, are  
20 quite clear. And whether either of those approaches, one  
21 percent or no rate increases, is the right one, these clearly  
22 are issues that transcend this particular case.

23 Getting back to the point, and I'll conclude quickly  
24 Your Honor, about substantially prevailed. The Court used the  
25 phrase well what if it turns out that the fee examiner or the

1 UST raised an inquiry, made an objection and there was, in the  
2 Court's words, "Nothing wrong". The problem with that  
3 approach, of course, is putting aside the Court's determination  
4 not, hopefully, ninety-eight percent of what we have in our  
5 dialogue with the professionals is not about whether something  
6 is wrong or nothing wrong, it's whether in a rational,  
7 deliberative process we can come to a conclusion and in most  
8 cases we've been able to do that.

9 This Court has often said, in a different context,  
10 still this case, it's not a question of whether professionals  
11 should be able to travel first class. It's not a question of  
12 whether professionals should be able to dine beyond twenty  
13 dollars a meal. It's a question of who pays that price, who  
14 bears that burden. And that's, I think, a concern with this  
15 talismanic approach that may have had appeal in a narrow case  
16 where there was no fee committee and no fee examiner but  
17 probably won't work here.

18 THE COURT: Very well. Thank you.

19 MR. WILLIAMSON: Your Honor, before the Court -- let  
20 me just note one other thing. I have a scheduling matter that  
21 I'd like to raise at an appropriate time; it should only take  
22 thirty seconds.

23 THE COURT: All right. Mr. Eisenband, is it really  
24 important?

25 MR. EISENBAND: I --

1 THE COURT: Because frankly I'm not into a mind to  
2 make a he said/she said type of determination on the FTI issue  
3 today.

4 MR. EISENBAND: I would just like, Your Honor, that  
5 you can help on just one issue and that is while the fee  
6 examiner talks about that he understands that FTI will be  
7 really -- the issue will be dealt at the end, he still objects  
8 and requests a disallowance on a monthly basis that makes us  
9 spend time responding to it, even though he basically said  
10 he -- and he says in the objection that he understands that it  
11 probably will be overruled.

12 I would ask that he stops with these types of  
13 objections until the final fee hearing. Thank you.

14 THE COURT: All right. Here's what we're going to  
15 do, folks. I've historically prided myself on being properly  
16 prepared for arguments and the decisions by Judge Bernstein are  
17 of enough materiality that I think it would be contrary to my  
18 historic practice and unfair for you for me to rule on the fees  
19 on fees issues without deciding that.

20 And while I have a pretty strong tentative in my mind  
21 as to how I should deal with the notice of the changes in fees,  
22 if this is a matter that is already before Judge Peck, I think,  
23 given my historic desire to be consistent with my colleagues I  
24 should resist the temptation to rule based on my tentative, in  
25 the absence of having issued a more premeditated decision in

1 that regard.

2 Some of these matters also raise issues as to  
3 whether, if they are to be implemented, I'm thinking  
4 particularly of the notice issue, as well or better handled by  
5 way of an amendment to court rules and/or guidelines rather  
6 than in a one-off ruling in a particular case.

7 For these reasons, the fees are approved to the  
8 extent that they either were not objected to by the fee  
9 examiner or the U.S. trustee's office or were resolved in a  
10 manner or manners satisfactory to those parties. And if and to  
11 the extent they weren't paid, they're now authorized to be  
12 paid. However, to the extent, albeit only the extent, to which  
13 they involve either of these two issues, they're to be carved  
14 out of the remainder of the application and I will arrange for  
15 an on-the-record conference call in which I will dictate a  
16 ruling on that.

17 I've got to caution you, folks, that I'm juggling a  
18 lot of balls in this case and the other cases on my watch. And  
19 on this issue it could be several weeks or, potentially, worse  
20 before I can issue that part. But, folks, I'm like the Dutch  
21 kid with his finger in the dyke; I just have to deal with the  
22 most pressing issues on my watch and the fees on fees issue and  
23 the notice issue, in the world of the triaging that I have to  
24 do, just can't be put at the top of the pile.

25 Also, to tell you the truth, I have less interest in

1 deciding policy matters and issuing precedent for other cases  
2 than I do with meeting the responsibilities that are on me in  
3 any given case. So that's the way we're going to do it.

4 Mr. Masumoto?

5 MR. MASUMOTO: Your Honor, just for the record, we  
6 did ask for a ten percent holdback. I think there is no  
7 objection to that, I just wanted to allow the parties to  
8 confirm that.

9 THE COURT: Is there anybody who has a problem with  
10 what Mr. Masumoto just said? Hearing no response, that'll be  
11 the way it is.

12 We'll now take a ten minute recess. Everybody who's  
13 here on anything other than the New GM dealers matters is free  
14 to leave. And after the break I'll take that. Mr. Williamson,  
15 oh, you had that scheduling matter you wanted to address.

16 MR. WILLIAMSON: Yes, just two and very quickly, Your  
17 Honor. With respect to the Court's ruling from the bench,  
18 debtors' counsel and the fee examiner do have a few trees to  
19 work through but I'm hopeful we will do that without any  
20 difficulty. And if we have difficulty we'll consider it under  
21 the umbrella of what the Court said.

22 THE COURT: Would it work for you and the counsel to  
23 say that if you can work out a deal you can implement it  
24 without further order from me and if you have to agree to  
25 disagree you should tee it up for some kind of determination?

1 MR. WILLIAMSON: Correct.

2 THE COURT: Okay.

3 MR. WILLIAMSON: No difficulty. Your Honor, today is  
4 October 26th. We are now current on all pending fee  
5 applications. The next round of fee applications covers the  
6 period from June to the end of September. They are due on  
7 November 15th in terms of filing under the local rules.

8 The end of the year sometimes matters to law firms  
9 and consulting firms; we're not unaware of that. And we're  
10 prepared to at least make a significant effort to process the  
11 next round of fee applications, Your Honor, if it is within the  
12 Court's ability to schedule a hearing in the second half of  
13 December so that the end of the year would at least provide an  
14 opportunity for the professionals to become current for their  
15 own purposes.

16 THE COURT: Well, having been a lawyer, as some  
17 people noted, I'm sensitive to that but I am less clear on how  
18 much of an issue that is nowadays when we have interim fee  
19 orders. To what extent does the ratification on a quarterly  
20 basis affect that? And maybe you're the wrong guy to be asking  
21 that, Mr. Williamson. Maybe I need some help from Mr.  
22 Smolinsky and Mr. Schmidt and Mr. Reinsel on it, and for that  
23 matter your special counsel colleagues.

24 But I would have thought that the lawyers are going  
25 to get pretty much what they're entitled to whether or not I

1 hold an interim fee app hearing in the last few weeks of  
2 December. Would you be willing to yield to give them a chance  
3 to be heard on that exact issue, Mr. Williamson?

4 MR. WILLIAMSON: I've concluded, Your Honor, and I  
5 thank the Court for noting that some of us aren't on the  
6 eighty/twenty program.

7 THE COURT: Wait. I lost you on that.

8 MR. WILLIAMSON: Well, some of the professionals,  
9 Your Honor, aren't --

10 THE COURT: Oh. Like you, yourself?

11 MR. WILLIAMSON: Yes.

12 THE COURT: Fair enough. I certainly understand that  
13 concern. So let me understand, first, if this is mainly an  
14 issue for those who aren't on the eighty/twenty program. Mr.  
15 Smolinsky?

16 MR. SMOLINSKY: Your Honor, Joe Smolinsky for the  
17 debtors. We are on the eighty/twenty program. I think the  
18 difference for us is maybe the ten percent on fees.

19 THE COURT: So you have the issue, too?

20 MR. SMOLINSKY: We have the issue. I don't know if  
21 it's enough to upset your whole schedule but I guess we are  
22 sensitive to the fee examiner's issue not being on that  
23 program.

24 THE COURT: Can you guys get your ducks in a row a  
25 week or two before Christmas day?



1 MR. SMOLINSKY: Why don't we work together on  
2 scheduling and see if we can come up with --

3 THE COURT: I have enough memory of what it used to  
4 be like to be a lawyer to be sensitive to your concerns, folks,  
5 especially if it's consensual getting you something a little  
6 before Christmas would be something I would try very hard to do  
7 if I can. And I assume that it's of enough importance to you  
8 that you'd be willing to do it, like, at 8:30 in the morning or  
9 at 6 o'clock at night, if need be. So Mr. Smolinsky, you put  
10 your noodle together with Mr. Williamson and anybody else who  
11 has to do deal with this and to tell you the truth, if I can  
12 get some rest between Christmas and New Year's I'm going to  
13 try. But if I can do something for you in the way of giving  
14 you court time in the week or so before Christmas, I'll try  
15 very hard to do that.

16 MR. SMOLINSKY: Maybe for Christmas we can give you  
17 an uncontested fee hearing.

18 THE COURT: I need more than that from you guys for  
19 Christmas but it's a step in the right direction. Okay. Fair  
20 enough. All right, we'll take a ten minute recess then we'll  
21 start, without any more than that, in the way of New GM and the  
22 dealers. Anybody who is here just on what we've had so far is  
23 free to leave. We're in recess.

24 (Recess from 11:50 a.m. until 1:12 p.m.)

25 THE CLERK: All rise.

1 THE COURT: Have seats, please. All right. Motors  
2 Liquidation, New GM and the dealers. I want to get appearances  
3 from everybody and then I have observations. So let me get the  
4 appearances, then sit down and I'll tell you what you need to  
5 address.

6 MR. STEINBERG: Arthur Steinberg and Scott Davidson  
7 from King & Spalding on behalf of New General Motors.

8 THE COURT: All right.

9 MR. COOPER: Good afternoon, Judge. Jeffrey Cooper  
10 from Carella Byrne and Mark R. Beebe -- I'm sorry. I  
11 apologize, Judge -- Adams and Reese from New Orleans,  
12 Louisiana. Mr. Beebe has been admitted pro hac vice by Your  
13 Honor's order for Leson Chevrolet.

14 THE COURT: Okay, Mr. Beebe.

15 MR. BEEBE: Thank you, Your Honor.

16 MR. BLATT: Good afternoon, Your Honor. Steven Blatt  
17 from Bellavia Gentile on behalf of Rose Chevrolet, Halleen  
18 Chevrolet and Andy Chevrolet.

19 THE COURT: All right, gentlemen. Here's what we're  
20 going to do. First, on the Ohio car dealers, it appears to be  
21 acknowledged that the Ohio car dealers' situation is, I think  
22 the words that were used, virtually identical to those in the  
23 matter upon which I ruled for Rally. So I want both sides to  
24 address the extent and/or manner to which I should deal with  
25 the matter that at least seemingly must be decided before the

1 31st of October, while simultaneously providing appropriate  
2 opportunity to take into account any views that Judge Patterson  
3 might express on the Rally appeal, which at least seemingly  
4 would not be binding on this issue but at the same time be  
5 beneficial. But on the Ohio dealers' issue, Mr. Blatt, I got  
6 to tell you that I see no basis for distinguishing the Ohio  
7 dealers' circumstances from those I addressed. Please have a  
8 seat.

9 MR. BLATT: Oh, I'm sorry.

10 THE COURT: The more difficult challenge for me,  
11 gentlemen and what I need both sides to address, is the Leson  
12 Chevrolet matter.

13 Now I gather that it's considered perfectly okay, in  
14 some places, perhaps a lot of places, to be going into your  
15 local tribunal to get an ex parte order, although I think it's  
16 much less okay when you're trying to do that in the face of  
17 both contractual provisions and court orders that say that this  
18 court has exclusive jurisdiction of it.

19 But to the extent that the Leson Chevrolet involve  
20 going to one's hometown tribunal to get out of my jurisdiction  
21 and order, and I will speak softly and I will control the  
22 outrage by which I view such measures, they're legally  
23 indistinguishable from those in the Ohio dealers situation,  
24 unless you, Mr. Beebe or your co-counsel, can explain to me  
25 something to which I'm unaware, given the extensive analysis

1 and thought that I gave to these issues before.

2 The more difficult issue, gentlemen, is what I should  
3 do about the fact that Leson Chevrolet won an arbitration and  
4 this is not a down-home court and this court looks at matters  
5 objectively. And on the merits, I have trouble with both of  
6 your positions but especially New GM's.

7 Now here, we do not have a situation where the dealer  
8 has lost an arbitration and wants a second bite at the apple  
9 and is looking for some kind of a do over somewhere else and  
10 instead it is trying to enforce the arbitrator's ruling. Now  
11 in my earlier decision, I distinguished situations to enforce  
12 the ruling from those to get out of it.

13 Now what I need both sides to address is a number of  
14 issues in that vein, because just as I believe that parties  
15 should live with the results of the arbitration when they lose,  
16 I'm of the view that the converse is also true. And just --  
17 or, putting it differently, just as I believe that the dealers  
18 have to live with the consequences of the arbitration when they  
19 lose, I think New GM has to do likewise.

20 Now, in that connection, under the law of New York,  
21 in which I was trained, and I suspect but don't know that it's  
22 true under the law of Michigan which was the law whose -- the  
23 law the parties said would apply in connection with the  
24 termination agreements, one can't rely on the failure of a  
25 condition that ones own conduct has occasioned. GM has a

1 problem in this regard because by having started a termination  
2 process and deprived Leson of vehicles which, if they had been  
3 provided might have given it more liquidity and/or more ability  
4 to get financing, that put Leson in a catch 22 situation where  
5 it was reinstated but may have lacked either the working  
6 capital or the ability to get financing that were elements of  
7 its ability to continue as an operating concern. Frankly, I  
8 don't know how far that analysis takes on and, for that reason,  
9 I want both sides to address it. But it's a matter that  
10 troubles me, gentlemen.

11 I also notice the seeming disconnect between what 747  
12 says that the winning dealer gets and what GM offered it. Now  
13 Leson cites in its brief the language of 747 and I assume  
14 nobody is quarreling with the accuracy of its quotation which  
15 says that the New GM has to provide the dealer, if it wins, if  
16 the dealer wins, a customary and usual letter of intent to  
17 enter into a sales and service agreement. And I have questions  
18 in my mind as to whether GM did that.

19 I also have heard, but am not impressed by the  
20 argument, that by giving the dealer X days, and although there  
21 was a reference to two days, I think, it may be that the more  
22 accurate number is ten, but even ten, on a take-it-or-leave-it  
23 basis, I have issues in my mind as to whether, (a) any assent to  
24 that should be regarded as being under duress; and (b) whether  
25 GM had the right to make such a demand.

1 I also have questions in my mind as to the extent to  
2 which there should be res judicata or collateral estoppel with  
3 respect to the arbitrator's findings on Leson's ability to  
4 perform. And I also am sensitive to Leson's desire to get  
5 discovery on the issue of whether it did in fact get what is  
6 customary and usual.

7 So, as you can tell from these preliminary remarks,  
8 gentlemen, I'm pretty annoyed at both sides. And until I can  
9 get my arms around these issues I have a strong disinclination  
10 to allow GM to pull the plug on Leson, notwithstanding how  
11 offended I am about the way Leson behaved, and it appears to  
12 me, subject to people's rights to be heard, that if Leson could  
13 bring itself into compliance within a reasonable period of time  
14 or satisfy me that it's capable of meeting what the statute  
15 requires it to meet, as compared and contrasted to what GM  
16 demands that it should meet, that I, as a neutral court, should  
17 be a little slow to deny it the benefits of the arbitration  
18 award that it won.

19 I'll hear first from the New GM side. Actually, I  
20 want to rephrase that. I'll hear first from the Ohio dealers  
21 because I don't, frankly, think there's much to talk about for  
22 the Ohio dealers other than how, if at all, I should leave  
23 things to be adjusted by reason of any change in precedent but  
24 nothing binding on me. I think I want to talk about the Ohio  
25 dealers, get that behind us and then talk about the more

1 difficult issues involving Leson.

2 So, Mr. Blatt?

3 MR. BLATT: Thank you, Your Honor. Steven Blatt,  
4 Bellavia Gentile for the Ohio dealers. Your Honor, I believe  
5 in accord with both the letter that I sent and Mr. Jeff Jones  
6 sent yesterday to the Court, trying to resolve the motion, I  
7 believe we've done that in the hall prior to taking the bench.

8 With your permission, we propose that -- you know,  
9 both sides acknowledge that the issues, the legal issues with  
10 respect to this Court's jurisdiction litigated in Rally are, I  
11 believe, virtually identical, as I acknowledged in my letter  
12 yesterday. As a result, we propose to submit a proposed order,  
13 a joint order, granting the motion on the same terms as the  
14 Rally motion. However, both sides would be subject to the stay  
15 that Judge Patterson has enacted in the Rally Rule 8005 motion  
16 that we filed with him and that, to put it as simply as I can,  
17 the Ohio dealers will agree to rise and fall with Rally on its  
18 Rule 8005 motion and its appeal. We'll agree not to go to any  
19 other court with respect to the order that you'll enter, that  
20 we'll submit with respect to this GM motion returnable today.  
21 And whatever Judge Patterson decides with respect to that  
22 motion and whether or not we go forward with the appeal, we'll  
23 abide by that.

24 THE COURT: On the GM side, Mr. Steinberg, did he  
25 accurately describe the deal?

1 MR. STEINBERG: Yes. But I probably have a few more  
2 words. So if Your Honor would indulge me I'd like to be able  
3 to add what I think we had agreed to but would be a little more  
4 expansive.

5 THE COURT: Pull the mic closer to you, please.

6 MR. STEINBERG: If I could --

7 THE COURT: That's probably best, so, yes, do that.

8 MR. STEINBERG: It was agreed that if any appeal of  
9 the Ohio dealer's order would be treated as a related matter so  
10 that it would go before Judge Patterson as well, so we wouldn't  
11 have two district courts hearing, essentially, the same kind of  
12 case. We would be presenting to Your Honor the language that  
13 Judge Patterson included in his order to show cause, which  
14 basically froze the situation until he actually ruled on the  
15 Rule 8005 motion. So there as, in effect, a TRO and we would  
16 copy that language there and it was agreed that, as Rally goes  
17 on the stay issue, so will the Ohio dealers consensual stay.  
18 And that they will not, if Judge Patterson denies the stay,  
19 they will not run to another district court in the southern  
20 district trying to get stay relief from another judge. And  
21 that, as he said, that there would be -- the exclusive  
22 jurisdiction of this Court will be recognized, they won't go to  
23 any other courts but it'll be without prejudice for them  
24 pursuing their appellant rights, either in the district court  
25 or for an appeal of the district -- the southern district of



1 New York.

2 And that the stay, and to the extent that the Rally  
3 order had the requirement to dismiss the Ohio litigation, it'll  
4 not run off the date of Your Honor's order but will run off the  
5 date of termination of the stay by Judge Patterson and it'll be  
6 something like three business days to terminate, with  
7 prejudice, the litigation and two days thereafter to file  
8 evidence of the termination with the Court.

9 So we're going to try to stay as close as we can to  
10 the agreed upon Rally order, which Mr. Blatt was also involved  
11 with, but would encompass those terms. And I think that  
12 that -- that satisfies the Ohio dealers and as a practical  
13 matter, it satisfies New GM because we believe that this is  
14 related to Judge Patterson. Judge Patterson already entered  
15 this kind of TRO stay. So, as a practical matter, if they  
16 appeal and then went in front of Judge Patterson he would do  
17 the same thing until he ruled.

18 We also think this is relatively -- a very short term  
19 measure because at the oral argument Judge Patterson indicated  
20 that he would try very hard to make his decision before October  
21 31st, which is Sunday. So we assume that the status quo will  
22 remain in place.

23 We felt strongly, though, about having this hearing  
24 and this order because, as Your Honor will note, that after we  
25 filed our motion before Your Honor, they went into the Ohio

1 court and in effect they asked to change the equation and the  
2 Ohio judge there refused to grant a temporary restraining  
3 order. We didn't want any kind of repeat of that again.

4 THE COURT: Mr. Blatt, except for the last sentence  
5 or two that Mr. Steinberg said, which I assume was his view of  
6 the world as contrasted to describing the deal you made with  
7 him, did he accurately describe the deal?

8 MR. BLATT: Yes, Your Honor.

9 THE COURT: Okay. Gentlemen, I regard that approach  
10 as very sensible and actually superior to the tentative that I  
11 had articulated in my endorsed order. So I'm going to approve  
12 it. Can I get your respective recommendations as to whether  
13 you're merely having stated it on the record and me having just  
14 stated that I approve it is sufficient or does it need to be  
15 papered in any further way, either for the record here or to  
16 help Judge Patterson?

17 MR. STEINBERG: I think --

18 THE COURT: You can use that mic if you just pull it  
19 close to your mouth.

20 MR. STEINBERG: I think Mr. Blatt would prefer to  
21 submit an order. So we will endeavor to do the first draft,  
22 get something to Mr. Blatt this afternoon and hopefully be able  
23 to present something to Your Honor.

24 THE COURT: Which order, I take it, will be  
25 consistent with what I just heard on the record.

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

2 MR. BLATT: Yes, Your Honor.

3 THE COURT: Sure. Okay. That takes care of that.

4 MR. BLATT: Your Honor, if I may take my leave?

5 THE COURT: Yes, sure. I'm sorry?

6 MR. BLATT: If I may take my leave?

7 THE COURT: Yeah. What I was about to say is if you  
8 don't feel like you need to hear Leson, you're free to leave,  
9 if you choose to.

10 MR. BLATT: Thank you for your consideration, Your  
11 Honor.

12 THE COURT: Okay. All right. Now, on Leson, I think  
13 I still should be hearing from you first, Mr. Steinberg.

14 MR. STEINBERG: That's fine.

15 THE COURT: Then we'll have the usual back and forth.

16 MR. STEINBERG: Your Honor, I plan on addressing your  
17 remarks. There was the threshold question, which I think Your  
18 Honor alluded to but I wasn't sure of the phrase in the  
19 question as to your exclusive jurisdiction and whether you  
20 needed to hear argument on the jurisdictional point or whether  
21 you wanted me to go directly to the questions that you had  
22 where you expressed some displeasure with New GM.

23 THE COURT: Do you know, from your dialogue with  
24 Leson, whether Leson is really challenging my exclusive  
25 jurisdiction? If it is, I think you better address it but I've

1 got to tell you, Mr. Beebe, I don't regard this as any closer  
2 for you then it is for the Ohio dealers.

3 MR. BEEBE: Your Honor, I would like to present a  
4 short brief argument on that issue but I do hear what you're  
5 saying and I do appreciate the Court's position on that. I  
6 think it's just slightly different based on two factors,  
7 primarily --

8 THE COURT: Well, fair enough. And I'll give you  
9 that opportunity but with that preview, Mr. Steinberg, make --  
10 you know what, since you're presumably going to be responding  
11 to somewhat different points than Mr. Beebe's going to make on  
12 behalf of Leson, as contrasted to what the other dealers did,  
13 why don't we flip flop the order and let Mr. Beebe be heard  
14 first on everything and then you can respond. I'll let him  
15 reply and I'll let you surreply.

16 MR. STEINBERG: Your Honor, I think that it makes  
17 perfect sense to hear his remarks on exclusive jurisdiction and  
18 then Your Honor can see whether you needed any further argument  
19 from the arguments that I had made in Rally. But I did have  
20 specific answers to a lot of the questions that were troubling  
21 with -- troubling you about what you perceived to be the heavy-  
22 handedness of New GM and I think I probably could advance the  
23 ball in the dialogue.

24 Having said that, I'm prepared to do it any which way  
25 you want.

1 THE COURT: Well, if you think you can advance the  
2 dialogue then let's bifurcate it. Mr. Beebe, I'll hear your  
3 points on exclusive jurisdiction, give Mr. Steinberg a chance  
4 to respond, you to reply and him to surreply on jurisdiction.  
5 And then we'll flip flop the order in the event, as I've got to  
6 tell you is likely, that I still see myself as having the  
7 jurisdiction.

8 MR. BEEBE: Thank you, Your Honor, and it is a  
9 privilege and honor to appear before you and I thank you for  
10 signing the order for me to appear pro hac.

11 Judge, I want to address one issue, before I get into  
12 the jurisdictional issue, just so the record is clear. I heard  
13 the Court's admonishment regarding what was perceived to be  
14 Leson's ex parte attempts to secure jurisdiction outside of  
15 this court. But I think factually --

16 THE COURT: It wasn't just securing jurisdiction,  
17 didn't you get a cease and desist order out of the Louisiana  
18 agency?

19 MR. BEEBE: The LMVC, that's correct Your Honor.  
20 Actually co-counsel with another firm but I'm not disregarding  
21 that obviously here on behalf of Leson, our client.

22 The reason, though, Your Honor was that we were  
23 coming upon an impending deadline and GM was going to terminate  
24 or potentially terminate the LOI or the wind down or the  
25 amended wind down and we had no idea, because this was in

1       September. Realize, we filed that on September 13th, long  
2       before the October 4th Rally hearing before Your Honor. We had  
3       no idea that this Court felt so strongly about exercising  
4       exclusive jurisdiction.

5               Even in the Rally hearing Your Honor entertained  
6       quite a considerable amount of argument about the AAA rules  
7       applying, about Rule 48(c) and the enforcement of some  
8       arbitration judgment or order being conducted in some other  
9       tribunal, besides this court. And you even acknowledged in  
10      that Rally hearing, Your Honor, that that may be a  
11      consideration, that you could go someplace else and maybe go to  
12      state court or federal court but we don't have that situation  
13      here, is what you said.

14             We're in that situation where Leson has won. We  
15      filed in September just to say wait, let's maintain the status  
16      quo, let's not lose our dealership. And I think it was wise,  
17      on our part, to get some relief. Had we known that the Court  
18      wanted to exercise jurisdiction, we certainly would have come  
19      here. Although in our minds it would have been a leap for  
20      Leson because it would have been inconsistent with 747, at  
21      least from where we're coming from, from the standpoint  
22      Congress carves out jurisdiction from this Court and says,  
23      look, you dealers who have been terminated, we're going to give  
24      you an opportunity to go ahead and prove your case to an  
25      arbitrator but you're going to do it in your home state. So it

1 makes little sense, at least in our minds, that we would come  
2 here if Congress, in its infinite wisdom decides you, Leson,  
3 terminated dealer, go and prove your case and we win, then you  
4 would go and enforce your judgment in a state or federal court  
5 under 48(c) of the AAA rules.

6 But in Louisiana, the LMVC regulates all the  
7 relationships between a manufacturer and a dealer. So it's  
8 logical that's where we would go to seek relief and say we want  
9 to be reinstated, can't we just be reinstated and proceed  
10 because we won back in July and we still don't have new  
11 inventory, we still can't sell cars. And as you pointed out,  
12 Your Honor, in one of the questions that you posed to New GM  
13 and their "heavy-handedness", it's killing us.

14 And so I just want the record to be clear and the  
15 judge to understand that we didn't feel like we were doing  
16 anything wrong or attempting to circumvent the jurisdiction of  
17 this Court. And the timing and the facts certainly indicate  
18 that we weren't doing that. And in fact we didn't hear about -  
19 - they removed, meaning GM removed to the Eastern District of  
20 Louisiana. That court sua sponte dismissed the remand --  
21 dismissed the removal. And so it went back to the LMVC, they  
22 ex parted, asked for a stay of that remand order and so we had  
23 a teleconference with the Judge, with both GM counsel and  
24 myself participating. And the Judge rescinded his stay order  
25 and that's why the LMVC said, well, we'll proceed as we

1 normally would proceed because it's more than a month old at  
2 this point in time.

3 So again, my apologies to Your Honor. Had we thought  
4 this was -- the Court wanted to exercise exclusive jurisdiction  
5 over this matter we would have certainly come here. But there  
6 was no reason why we would think that, based on the facts, as  
7 we knew them on September 13th when we filed before the LMVC.

8 Now let me go into the jurisdiction issue. Your  
9 Honor, you've been more than patient with me. We think there's  
10 two factors that the Court needs to look at and one, in fact,  
11 is your 363 order. Under that particular sale where you  
12 created a regime where you had two types of dealers, you had  
13 participating dealers and those are the ones that had the  
14 relationship with New GM going forward and then third  
15 termination dealers which we happen to fall into. And if you  
16 read Your Honor's order, at paragraph 32, this talks about  
17 participation agreements. And at the end it says, "Any  
18 disputes that may arise under the participation agreements  
19 shall be adjudicated on a case by case basis in an appropriate  
20 forum other than this court."

21 In paragraph 32, you chose to say new dealers, you're  
22 not coming back here. And in preparation for this argument I  
23 called the Louisiana AG; because I understood they participated  
24 in these early on discussions and they said yes there were  
25 discussions regarding what would happen to these new dealers.



1 Would they have to continue to come back before Judge Gerber to  
2 resolve all disputes regarding their new participation  
3 agreements and their relationship going forward? And they said  
4 no, that was something that was very important to the AGs and  
5 in fact I spoke to National -- Counsel for the National  
6 Association of Attorneys General who also confirmed that was a  
7 negotiated term and discussed regarding those participating  
8 dealers.

9 And, secondly, if you look at paragraph 71 of the 363  
10 order, it says, "This Court does not retain jurisdiction to  
11 hear disputes arising in connection with the application of the  
12 participation agreements." You, Your Honor, specifically  
13 carved out jurisdiction for participating dealers. So under  
14 your regime, there were two, as I said. There's participating  
15 agreements and deferred termination dealers.

16 Originally, we fell into deferred termination dealer.  
17 But 747 comes along almost five/six months after this order's  
18 issued. It's a carve-out. It says "Please proceed to  
19 arbitration, prove that you were wrongfully terminated." We  
20 did it with flying colors, Your Honor. As you can see from the  
21 arbitrator's decision, it was clear that we were a very  
22 successful dealership. We had put in twenty-five million  
23 dollars of profit in GM's pocket for three years before we  
24 were -- before we received the wind-down in 2008.

25 And there's several other factors. We were one of

1 the dealers in Louisiana. We have 2.5 times the capital  
2 because of our property than the average dealer in our region,  
3 which includes a thousand dealers. All of these facts were  
4 heard by the arbitrator and decided in our favor.

5 But, more importantly, once we win arbitration under  
6 747 we presume that we're not a deferred termination dealer,  
7 but we're more akin to a participating dealer. The ones that  
8 you said, that, Your Honor, under 363 we don't want to exercise  
9 jurisdiction over. You have a dispute with New GM go through  
10 the state route. Go through whatever remedies you have, either  
11 under state or federal court.

12 So the one -- the one exception, at least under your  
13 own order, 363, would say that the Leson is more like a  
14 participating dealer than it would be a -- a dealer that lost  
15 arbitration. So that's the first limitation to this Honorable  
16 Court's jurisdiction. And in spite -- ironically, it seems  
17 that GM is violating the 363 order by bringing Leson here.

18 The second issue, 747, Your Honor. It's a carve-out.  
19 Congress said we're going to limit the bankruptcy court's  
20 jurisdiction for the purposes of those deferred termination  
21 dealers. And there's no question that we fell into that --

22 THE COURT: Where does 747 say anything about the  
23 bankruptcy court's jurisdiction?

24 MR. BEEBE: Your Honor, I don't think it specifically  
25 addresses it. And I know that in the Rally hearing you wanted

1 to harmonize those. And what I'm trying to understand is how  
2 to do that jurisdictionally. But here's how what the  
3 conclusions we come down to, Your Honor.

4 If you look at 747 -- just give me a moment.

5 (Pause)

6 You'll see in paragraph E it talks about what happens  
7 in the arbitration. The first thing in that paragraph E of 747  
8 it says that you'll go to the Triple A. It says that "The  
9 arbitrator shall be selected from a list of qualified  
10 arbitrators and it will proceed under the Triple A." It  
11 follows and continues. It says "The arbitration shall be  
12 conducted in the state where the covered dealership is  
13 located." Why did it do that? Why did Congress choose to give  
14 that up. It could have said, you know, Judge Gerber, we know  
15 you're busy but we're going to ask that you administer --

16 THE COURT: Forgive me, Mr. Beebe. In my court we  
17 start any statutory analysis with textual analysis. And we  
18 talk about what the statute says, not what people read into the  
19 statute.

20 So tell me in response to the question that I asked,  
21 but you did not answer --

22 MR. BEEBE: Your Honor --

23 THE COURT: -- what 747 says that addresses the  
24 matter of the jurisdiction of the bankruptcy Court?

25 MR. BEEBE: And that's a fair question, Your Honor.

1 It does not specifically address the bankruptcy court's  
2 jurisdiction. And, so, it is subject to Your Honor's  
3 interpretation in saying that look, I've got to harmonize  
4 these.

5 The one thing I would point to is paragraph G that  
6 says "Notwithstanding the requirements of this provision  
7 nothing in here shall prevent a covered manufacturer from  
8 lawfully terminating a covered dealership in accordance with  
9 the applicable state law."

10 I would argue that the Court also -- Congress also  
11 carved out a particular situation where you could -- GM could  
12 go and exercise its rights under state law. If that was  
13 intended why -- how could that happen if, in fact, this Court  
14 had exclusive jurisdiction.

15 There is -- you have to give meaning to paragraph G,  
16 in pari materia, if you give that statutory interpretation and  
17 give G meaning, you couldn't have that carve-out, GM couldn't  
18 go to state court if that were the case, at least the way I  
19 would read it in statutory interpretation.

20 And as a consequence, it seems to be a reasonable  
21 interpretation to take the other paragraphs of 747 and  
22 interpret that there was some limitation. Because otherwise  
23 paragraph G is meaningless. It has absolutely no meaning  
24 because GM can't go and terminate them under state law, they've  
25 got to come here. And that's not what paragraph G of 747 says,

1 Your Honor.

2 So it's a consequence the combination of the 363  
3 limitations, your court's own limitation, Your Honor, about  
4 dealing with participating dealers, and then 747 which has a  
5 carve-out. And it's under paragraph G, it's clear Congress  
6 gave at least GM some other alternative. If that wasn't  
7 intended, then why is it in that particular statutory scheme.

8 So those two particular provisions at least are on  
9 line with 363 order, on its face, as well as 747 would allow us  
10 to go to our home state, where the arbitration took place, and  
11 seek enforcement of our reinforcement rights -- reinstatement  
12 rights, I'm sorry.

13 That's really what we're asking. And it seems to be  
14 consistent with Congressional intent when they say let's do it  
15 expeditiously and lets do it cost-effectively versus having to  
16 come to New York to seek reinstatement. That seems to be  
17 consistent with the spirit of that statute.

18 And I can't -- again, it may have been oversight, it  
19 was a long -- a long law, frankly, and this was tagged at the  
20 end of that particular law that was passed. But it's clear  
21 under paragraph G there was a -- some limitation to this  
22 Court's jurisdiction because otherwise it becomes meaningless  
23 without giving G some effect.

24 Your Honor, I'm happy to answer any questions you may  
25 have regarding the jurisdictional issue, but that's the sum and

1 substance of my argument.

2 THE COURT: Fair enough. Mr. Steinberg.

3 MR. STEINBERG: The Rally motion was filed on  
4 September 10th. Their request for a hearing in the cease and  
5 desist came after that on September 14th in Louisiana.

6 This past week there's been a hearing scheduled for  
7 the end of this week in connection and before the Louisiana  
8 Motor Vehicle Commission.

9 I think, but counsel can confirm this, because I  
10 don't know this for a fact, I think they did something to try  
11 to provoke that kind of hearing after Your Honor ruled on Rally  
12 and after the motion was filed.

13 I do think that there's a simple answer to the  
14 jurisdiction question, though, because I think counsel said if  
15 he knew that the Court wanted to exercise jurisdiction he would  
16 have come here. So I think it -- notwithstanding all of the  
17 argument, he basically said if I thought there was exclusive  
18 jurisdiction here and I knew the Court felt this strongly I  
19 apologize, but I would have come here. So now we're here. So  
20 I think he's consented to the Court's exclusive jurisdiction.

21 On his surreply he could say whatever he wants to say  
22 in response to try to clarify it, but I think that's what he  
23 said.

24 The definition of participation agreement is in  
25 Section 6.7 of the master sale and purchase agreement. They

1 are not someone who signed a participation agreement. That  
2 provision in the sale order which talked about the different  
3 type of relief that someone who has a participation agreement  
4 would have, is not them.

5 So you can listen to them closely, Mr. Beebe said  
6 it's akin, which is his concession that it wasn't -- it wasn't  
7 an actual participation agreement.

8 And in 6.7(b) it says "Participation agreements and  
9 the related continuing brand dealer agreements will be auto --  
10 will automatically be assumable executory contracts hereunder."  
11 So the notion is is that Old GM had assumed these agreements,  
12 had assigned them to New GM and now they were an assumed  
13 contract by the purchaser. And people in the context of  
14 dealing with the AG in the order, carved out something special  
15 for participation agreements.

16 But on the flip side it clearly didn't have the same  
17 type of thing for people covered by the wind-down agreements,  
18 which is what Leson had, which is what Leson signed.

19 So they are not a participation, they didn't have the  
20 right. They started their request before the Louisiana Motor  
21 Vehicle Commission. But after the Rally motion was started,  
22 they -- I think that they precipitated action before the  
23 Louisiana Motor Vehicle Commission within the last days -- last  
24 ten days to have a hearing. And the provision in Section 747,  
25 which they referred to, didn't say you pursue under -- in the

1 state courts, it just says pursue under state law if you wanted  
2 to terminate somebody. And I think that's a different --  
3 that's not the same thing as saying that statute is saying you  
4 should pursue your remedies in state court.

5 But the bottom line is that if he said I made a  
6 mistake, I didn't realize it, we're prepared to accept him at  
7 his word, and then he's consented to the jurisdiction of this  
8 Court. And Your Honor has said that you have particular  
9 concerns of New General Motor's conduct, and I'm prepared to  
10 try to address those concerns.

11 THE COURT: Well, before you do, I think I need to  
12 rule on the jurisdictional issue.

13 MR. BEEBE: Your Honor, if I may just have --

14 THE COURT: Yes, I'll permit you to do that.

15 MR. BEEBE: One reply regarding --

16 THE COURT: Okay.

17 MR. BEEBE: -- co-counsel's -- other counsel's  
18 comments.

19 Your Honor, clearly we didn't know about the Rally  
20 here, and we're not monitoring the GM bankruptcy. GM can't  
21 come here before you and say they served Leson with the Rally  
22 pleadings, that's absurd. And that's --

23 THE COURT: Have a seat, please, Mr. Steinberg.

24 MR. BEEBE: That's the misimplication that Mr.  
25 Steinberg has just led this Court to believe.



1           We had no idea about Rally. But so it's clear, Your  
2 Honor, we do believe that this Court can share jurisdiction,  
3 it's not -- it shouldn't be exclusive just because of the two  
4 factors we cited. And I've been over that and I won't  
5 reiterate that argument.

6           Just from the fact -- the standpoint of -- again,  
7 there's been two limitations and it would not offend the  
8 notions of this Court's jurisdiction to have that particular  
9 non-exclusive jurisdiction over the Leson matter.

10           Thank you, Your Honor.

11           THE COURT: All right. Gentlemen, stay in place for  
12 a second.

13           (Pause)

14           THE COURT: All right. Gentlemen, I'm ruling that  
15 just as I had exclusive jurisdiction in the Rally in the Ohio  
16 dealership matters, where the dealers lost in the arbitration  
17 process, I have that same exclusive jurisdiction where the  
18 dealer won in the arbitration process.

19           I don't need to rehash. I think everybody agrees on  
20 what the sale agreement and the 363 order provided. And,  
21 therefore, the only remaining issue appears to be whether if  
22 somebody wins in the arbitration process, and, therefore, is  
23 entitled to avail itself over or of what 747 provides that  
24 rewrites history. And without a doubt it gives the winning  
25 dealership rights, which I discussed in my preliminary

1 observations, and which we'll discuss further. But it doesn't  
2 unwind history.

3 Leson, like the Ohio dealers, like Rally, like  
4 countless other dealers that lost in the arbitration process,  
5 was subject to a deferred termination agreement with respect to  
6 which Congress gave dealers the arbitration mechanism to change  
7 that conclusion.

8 As I ruled on page 47 of the Rally transcript in the  
9 slightly different context, and, of course, talking about a  
10 different dealer, "Here and to the extent Rally was successful  
11 in the arbitration, of course, that would be a defense to" --  
12 and there's a transcription error, "to any effort to make it  
13 terminate its agreement."

14 But the fact is that what Leson won in the  
15 arbitration was what 747 gives it. It didn't make the  
16 termination agreement disappear. And until and unless the new  
17 agreement comes into place Leson lives under the provisions of  
18 the termination agreement, subject, of course, to its rights to  
19 come in here, to cause me to conclude, as I may ultimately  
20 conclude, that I need to implement the arbitrator's ruling.

21 Now, it is not a satisfactory explanation to say that  
22 now we're no longer under the termination agreement that we  
23 signed, but that we entered into or should be deemed to enter  
24 into it, because it's undisputed that they didn't, a new  
25 agreement that one could, in any way, shape or form regard as a

1 participation agreement.

2 Mr. Steinberg, on behalf of New GM, said that Leson's  
3 contention was that the new agreement, or that the rights it  
4 had, were akin to a participation agreement. I don't think he  
5 quoted it exactly correct because I took it in my notes. What  
6 Mr. Beebe actually said was two things, which I wrote in my  
7 notes. We presume. And he said it's more like a participating  
8 dealer.

9 We can and will talk about whether it is appropriate  
10 to implement the arbitrator's ruling. But whatever the  
11 arbitrator did rule it cannot in any way, shape or form be read  
12 as saying that Leson didn't really enter into a deferred  
13 termination agreement back in 2009. And it was and continues  
14 to be acting under a different statutory regime.

15 So observers may no doubt notice the parallelism or  
16 congruity in what I'm ruling. I have exclusive jurisdiction  
17 whether you win or lose. So that's what we're going to talk  
18 about next.

19 This ruling will be implemented in connection with  
20 any final order, or interlocutory order that gets entered in  
21 connection with this controversy. But, gentlemen, that matter  
22 is now decided for the purpose of going forward. Although,  
23 your rights to appeal or seek leave to appeal that  
24 interlocutory order will run from the time of its entry and not  
25 from the timing that I'm saying it now.

1 All right, Mr. Steinberg, now let's address the  
2 merits, which I regard as much more significant and debatable.

3 MR. STEINBERG: Thank you, Your Honor. I think Your  
4 Honor put your finger on a number of issues that were troubling  
5 you. And I think they were -- that you were right to be  
6 troubled by them. Because when I reviewed the file, as well, I  
7 wanted to be able to have answers for Your Honor with respect  
8 to these types of questions.

9 They are, other than the fees, dealer, which is the  
10 Iowa court decision, which you have, they are the only one we  
11 are in litigation with, where they actually won in arbitration,  
12 but they haven't been formally reinstated.

13 I'm sure Mr. Beebe will argue that will be a sign of  
14 New General Motors recalcitrant's, and I would say the  
15 opposite, which is that if we can get along with everybody else  
16 and figure out how to institute an ordinary and customary  
17 letter of intent with everyone else other than Leson, that  
18 perhaps the problem is with Leson not with New General Motors.  
19 I don't think that advances really the argument very far, I  
20 just wanted to be able to point out that this is a unique  
21 circumstance. And New General Motors has been struggling with  
22 how to try to get a satisfactory resolution of this matter.

23 Now, I think that there were two competing concerns  
24 here, and they're legitimate concerns from Leson and legitimate  
25 concerns from New General Motors.

1           In an ordinary and customary letter of intent there  
2 needs to be something that addresses the net working capital  
3 requirement, and there needs to be something that addresses a  
4 floor dealer financing -- floor planning financing. That's the  
5 requirements that they put in all of their dealerships, and it  
6 was in the dealership that Leson had signed before the  
7 bankruptcy and was included in the LOI.

8           The issue is is what should those numbers be? When  
9 New GM sent the proposed LOI it used the same working capital  
10 requirement that was in the original Leson dealership  
11 agreement, and had been the same between 2003 and 2008.

12           The purpose of the net working capital agreement, and  
13 if Your Honor has an evidentiary hearing on this, we will  
14 actually have to present testimony on this, but my  
15 understanding talking to my colleagues, some of whom are on the  
16 phone here, is that you need to be able to demonstrate to New  
17 General Motors that you have the capability of performing your  
18 projected business plan, not your past performance over the  
19 last twelve months, but your projected business plan.

20           The number that was included in the letter of intent,  
21 which was the same number that was in the prior dealership  
22 agreement, essentially gave Leson four months to get up to that  
23 net working capital agreement. That proposal was given to  
24 Leson -- the LOI was given in June and was signed by Leson on  
25 July 1, and required that by October 31 it would have to get

1 back to the same threshold, it would have had three/four months  
2 to try to be able to do that.

3 The issue about financing was that they had to get  
4 financing within a sixty-day period of time. If you read the  
5 arbitrator's decision you'll see there's a reference that they  
6 told the arbitrator that they either had or could get it. And  
7 so that was -- and they had a commitment letter from local  
8 banks. So it was assumed that they would be able to try to  
9 accomplish something within the sixty days.

10 Sixty days goes by, New GM still has not been sued,  
11 but they say they're having problems with the dates. So New GM  
12 pushes --

13 THE COURT: Problems with the what?

14 MR. STEINBERG: Meeting the dates, meeting the  
15 deadlines.

16 New GM pushes the deadlines to give them more  
17 opportunity to try to comply with the deadlines. To try to get  
18 the floor -- the dealer floor financing and to try to get the  
19 ability to get 2.85 million dollars of net working capital,  
20 which is a formula that has -- is based on your current assets  
21 and has some additions and some subtractions. I think one of  
22 the exhibits to the Leson objection does have some of the  
23 materials on that. Not the complete materials but some of the  
24 materials.

25 So we had given Leson the opportunity and they still

1 had the opportunity as of October 31.

2 When we gave the extension in September we hadn't  
3 been sued. And then after giving the further extension we did  
4 get sued. And I think the real dynamic here is as follows,  
5 Your Honor. And I did try to approach this sort of in a  
6 practical basis, because we could litigate, you know, as to  
7 whether there was duress here or not. Because if there was no  
8 duress then they voluntarily signed a letter of intent with  
9 certain requirements which they haven't been able to meet,  
10 which should lead to the termination.

11 THE COURT: Why don't you assume for the purpose of  
12 this discussion there's at least an issue of fact as to whether  
13 there was duress in 2010.

14 MR. STEINBERG: Right. We would have to -- we would  
15 have to have that as a special trial. But if we were  
16 successful at that trial that would be the end of the issue.

17 But we tried to approach this on practical basis.  
18 And I don't think it violates privileged communication for me  
19 to tell you what our last settlement proposal was. I won't say  
20 anything about what they did other than that this proposal was  
21 out there, and was made last Friday. And I think it does  
22 illustrate to Your Honor what we're trying to do to try to  
23 address this on a practical basis.

24 But if we can't address it on a practical basis we  
25 will have an evidentiary hearing and address it on the merits.

1           We had made this proposal to a principal of Leson.  
2        "That the parties will agree that the wind-down agreements and  
3        the letter of intent would be extended, along with the present  
4        dealer sale and servicing agreement, to the dates contemplated  
5        in the settlement outlined below. We'll be sending you a  
6        letter as soon as the parties have executed the settlement  
7        agreement advising that the dealer agreement had been extended  
8        pursuant to this resolution.

9           Item one, by January 31, 2011, Leson Chevrolet will  
10        have 2.137 million level of net working capital. That's  
11        seventy-five percent of the 2.85 million," which is in the  
12        letter of intent.

13           "As soon as possible, but in no event later than" --  
14        I'm sorry. "As soon as possible, but in no event later than  
15        January 31, 2011, Leson will have acceptable floor planning in  
16        place as contemplated by the LOI." So we were giving them  
17        another four months to get their floor planning in place and  
18        lowering the net working capital requirement.

19           "Leson will be required to reach the 2.85 million  
20        dollar level by January 31, 2012. Leson will provide GM with  
21        building plans acceptable to GM for it's showroom and  
22        facilities by June 30, 2011. They'll have all their permits  
23        and needed actions completed to start construction by January  
24        31, 2012, and will commence the facility construction on that  
25        date, with a completion date by December 31, 2012.



1           If Leson fails to meet these requirements or dates,  
2 then the dealer servicing agreement will terminate at that  
3 point in time, together with the wind-down agreement, and  
4 provides it complies with its terms Leson will resume the wind-  
5 down payment that's in paragraph 6.

6           And then the parties will sign a stipulation to  
7 reflect that."

8           The purpose of that proposal was to try to meet, to  
9 some extent, Leson's argument that the reason why it has a  
10 problem ramping up to the working capital that it had in 2008  
11 was because they were suffering under the wind-down agreement.

12           So if you go back to when the arbitration award was  
13 ended in June we would have, essentially, given them seven  
14 months to try and ramp up to seventy -- a level of seventy-five  
15 percent of that, which we think was more than generous and  
16 certainly within the ordinary and customary language of what  
17 we'd done, with both the people that got reinstated through  
18 arbitration and through the people who we settled. And we're  
19 prepared to try that matter.

20           The only thing that we want is that whatever the  
21 numbers shift out, whatever they turn out to be, if they can't  
22 meet then it has to be an end. We don't get continually  
23 litigated over the issue. We want an agreement that, in  
24 effect, has a remedy that is effectuating. That's the approach  
25 that we have here.

1 I think the real robust of why this thing can't get  
2 resolved, is because they don't want to have a firm remedy for  
3 whatever the numbers turn out to be.

4 And my suggestion to Your Honor is understanding  
5 these issues, and I'll try to address each of the specific  
6 issues, is that you set an evidentiary hearing that we will not  
7 terminate them. We set an evidentiary hearing for whatever's  
8 convenient for your schedule. I think my brethren on the phone  
9 will be prepared to try this thing as soon as they can.

10 But the parties can either -- to do two things. They  
11 can either litigate and try to settle on a practical basis to  
12 try to reach some kind of economic number, whether it's  
13 seventy-five percent of the working capital agreement, whether  
14 it's February versus January versus December. It doesn't seem  
15 to me that its overly complicated to ultimately strike a deal  
16 on these numbers.

17 The real issue is Leson's concern that it won't be  
18 able to meet it. And the real concern -- I mean, clearly,  
19 every letter of intent should have the ability of their dealer  
20 to provide financing. They say it's a chicken and egg  
21 situation. Right. Until I lock in onto a working capital  
22 requirement and have a servicing agreement I can't get the  
23 final commitment.

24 But as of today they still don't have, I believe, a  
25 final commitment. Counsel will stand up if I'm wrong on that

1 issue, it would be able to say I'm wrong, and be able to  
2 pronounce that he's got firm financing.

3 But without firm financing, forget about the working  
4 capital requirement, whether created this or not, if they don't  
5 have dealer floor financing they're not a qualified dealer,  
6 under every circumstance.

7 Now the issue is how much do I give them -- how much  
8 time do we give them to ramp up to their old levels, and what  
9 should be their interim benchmarks? Things like that get  
10 negotiated in various types of deals all the time. And they  
11 should be able to be able to come to some kind of an  
12 arrangement to be able to do that.

13 And it's not -- their proposal was all I should be  
14 able to give you is 1.8 million dollars because that's what I  
15 did during the wind-down agreement. Well, we could quibble  
16 with this, but if we have to argue this it's my understanding  
17 that the dealer service agreement in Section 10.1 provides that  
18 if there are changes in the operating conditions that indicate  
19 the capital needs have changed that's when you change it. But  
20 you don't have to change it all the time.

21 And it's certainly unreasonable for us to set their  
22 working capital needs based on a wind-down period when they're  
23 supposed to set it for purposes of their projected business  
24 going forward. They'll be able to buy new cars, they need to  
25 have more working capital. It shouldn't be based on the

1 numbers when it was set when they couldn't buy more cars. And  
2 so the bid and the ask I think they presented an affidavit was  
3 something like a million-eight. Was it? A mil -- was it a  
4 million-eight?

5 MR. BEEBE: It's a million-eight, but that's what GM  
6 really requires under it's accounting guidelines.

7 MR. STEINBERG: It was a million-eight based on -- I  
8 disagree with that we could -- when we get into the battle of  
9 the experts we'll be able to show that's not true.

10 But for purposes of just pure numbers, yours was a  
11 million-eight based on wind-down performance over the last  
12 eighteen months. And New GM has made a proposal that said they  
13 want you to get up to a 2.1 -- 2.137 million net working  
14 capital performance in the next four months, presuming you're  
15 buying cars and you're ramping up, and trying to make money and  
16 be in business, make money for yourself and make money for New  
17 GM.

18 So my practical solution is, Judge, set this out far  
19 enough so that the parties can either negotiate a deal and use  
20 their dollars for that purposes. And if they can't we will  
21 present to you evidence on the duress issue, on the letter of  
22 intent, to demonstrate that they had the opportunity to do  
23 exactly what they're doing now, and they chose not to do it.  
24 They were clearly lawyered up, they just came from an  
25 arbitration, and they chose to sign a letter of intent.

1           Once they signed a letter of intent, and the letter  
2 of intent has language about this is knowing representation, et  
3 cetera, then they should be stuck with it, and they will have  
4 violated the letter of intent.

5           GM is not trying to be heavy-handed about this.  
6 We've tried to meet them halfway, but we're not going to agree  
7 to do a deal with a dealer who can't get financing, who won't  
8 commit in the future to have financing locked in by a specific  
9 time. And won't commit to a working capital requirement that  
10 is -- they want to have it predicated on a wind-down number.  
11 And that clearly can't be the case, because they don't want to  
12 do business as they've been doing it on the wind-down basis.  
13 They need to do it based on buying new inventory, which means  
14 it's a higher number.

15           We'll have a trial then for Your Honor to say well,  
16 what should have been customary and usual. And we'll see how  
17 much money we'll spend to see whether we can get something that  
18 fits between his 1.8 million dollar number and the offer that  
19 we made which is at the 2.137 million dollar number as of  
20 January 31. And giving them another full year to ramp up fully  
21 to their operations that they had in 2008.

22           Your Honor had said that you were concerned about the  
23 res judicata of the arbitrator's findings. Our belief is that  
24 under the Dealer Arbitration Act the arbitrator could put in  
25 whatever his reasoning was, but his final determination was

1 reinstate or not reinstate subject to a letter of intent. And  
2 that's the only significance of the arbitration finding.

3 The sentence that Leson's pulled out which says that  
4 we think they met the capital needs because it goes back to  
5 2003 I don't think is relevant for what Your Honor's  
6 determination will have to be. I don't think it's entitled to  
7 res judicata effect. And it wasn't part of what they were  
8 supposed to do.

9 And, Your Honor --

10 THE COURT: Pause, please, Mr. Steinberg. What did  
11 you mean you don't think it was part of what they were supposed  
12 to do? You mean the arbitrator wasn't required to make that  
13 finding, or you're saying he acted ultra vires by making it?  
14 Or are you saying that you understand he made it but it's  
15 irrelevant? Or some fourth possibility?

16 MR. STEINBERG: That the arbitrator's -- the  
17 relevancy of the arbitrator's finding is to reinstate or to not  
18 reinstate. And how we got to the decision and how we weigh the  
19 seven factors that the statute talked about should not have res  
20 judicata effect for purposes of any subsequent hearing.

21 THE COURT: Uh-huh.

22 MR. STEINBERG: The issue on discovery on customary  
23 and usual, we actually do have a trial, is that we would say  
24 that Your Honor should bifurcate and first try the issues of  
25 duress. Because if we win on duress that there was no duress,

1 then the letter of intent governs and it's not relevant  
2 anymore. They just will have not been able to perform.

3 THE COURT: Well, why don't you give me a preview,  
4 Mr. Steinberg. What was the legal authority under which GM  
5 gave them the deadline to sign it or not sign it? I don't  
6 remember whether it was two days or ten days, or whatever?

7 MR. STEINBERG: It was ten days.

8 THE COURT: All right. And what was the statutory  
9 authority or alternative authority which entitled New GM to  
10 make that demand?

11 MR. STEINBERG: I don't think it's in the statute  
12 that is says it's ten days, two days or twenty days. It just  
13 says you're supposed to give a letter of customary and ordinary  
14 -- a customary and usual letter of intent, and that's what  
15 they did.

16 They didn't want the offer to be outstanding. I  
17 think you can actually see Leson's objection, you'll see that -  
18 - ironic that Leson signs the letter of intent on July 1. And  
19 on July 2 New GM is writing a letter to Leson saying you have  
20 to July 16th to determine whether you want to sign the letter  
21 of intent. So there wasn't -- I don't think there's anything  
22 statutory. I think it's just simply a matter when someone  
23 makes an offer they'd like to have a deadline as to when the  
24 offer will then be rescinded. So that's what it is.

25 THE COURT: You're not troubled by the notion of

1 giving a dealer a deadline, especially one that short, without  
2 any statutory authority for a take it or leave it proposal?

3 MR. STEINBERG: I think we -- I think, and -- I think  
4 this is the case, but we -- I would need to confirm it, I think  
5 that's what we did for the dealers. I mean, I think that's  
6 what we did. Because at some point in time you need to  
7 start -- you need to come back on the bandwagon and you need to  
8 start performing. And so there was a desire as to now that  
9 you've won, now we want to get you on the bandwagon, here's the  
10 terms, and you have ten days to accept the terms.

11 I mean -- and think about it, what happens if they  
12 had said no, does that mean that the world stopped at that  
13 point in time? They could have done exactly what they're doing  
14 now, which is that they would come to court and say I didn't  
15 get something that was ordinary and customary, I'm not signing  
16 this agreement. I want to have something that's ordinary and  
17 customary, or simply I want to have another two weeks to  
18 evaluate what it is. But they didn't do either. They signed a  
19 letter of intent.

20 So I --

21 THE COURT: Better make your next point, Mr.  
22 Steinberg.

23 (Pause)

24 MR. STEINBERG: I think, Your Honor, the only thing  
25 that I have left to say was that the wind-down provision



1 affected Leson's performance. And I think what New GM tried to  
2 do was to give a lead time for them to ramp back up to their  
3 2008 performance. They weren't saying you needed to have net  
4 working capital by a specific date. They gave them four months  
5 to get to that point in time.

6 THE COURT: Isn't that the real thing to get one's  
7 arm's around, either by negotiating or by litigation? When the  
8 dealer has atrophied, if you will, because of the consequences  
9 of the wind-down environment, to what extent is it appropriate  
10 to meet otherwise legitimate needs to get the proper  
11 capitalization and floor financing, to simultaneously address  
12 GM's legitimate needs and concerns, and the dealers think God,  
13 I'd love to comply, but given what you did to me for the last  
14 eleven months how am I supposed to do it.

15 So I would concede to you, or at least for purposes  
16 of argument I would concede to you, that the devil is in the  
17 details, and that one should try to find a sweet spot to have  
18 the dealer get into compliance, recognizing the dealer can't  
19 get into instantaneous compliance, and how to reconcile those  
20 needs. That is far better, it would seem to me, than arguing  
21 about what is customary and usual when the environment in which  
22 that's measured has been distorted by the consequences of the  
23 deferred termination agreement.

24 MR. STEINBERG: Yeah, I think, Your Honor, you're  
25 absolutely correct. And that's why I stood up to say that I

1 thought I can address some of your concerns and try to give it  
2 it's color and try to push where I think this thing needed to  
3 go. I mean, at some point in time hearing stopped, business  
4 people get to absorb Your Honor's comments, and then they  
5 either will react and change their negotiation position, or we  
6 will set up a litigation backdrop for people to get more  
7 realistic in their expectations.

8 And I think -- I tried to be very candid to you --  
9 with Your Honor, which is that they raised, I believe, an issue  
10 about how long should I have to ramp up. And am I going to  
11 have a draconian remedy when I'm concerned about whether I  
12 won't be able to perform because I won't be able to get what I  
13 need from New GM. So I'm concerned about the draconian remedy.  
14 I think there's an underlying tension there.

15 So how much time do we give them to try to build in  
16 that concern and to be able to make sure that they have every  
17 opportunity to perform, with the concern that New GM has, which  
18 is that this is the dealer who may not be able to perform. And  
19 at some point in time you need to cut bait with them. And  
20 that's the tension here in this case.

21 Clearly, it can't be that the numbers should be set  
22 based on the wind-down agreement. And their argument is I  
23 can't do 2008 numbers now and I need to have time to be able to  
24 do the 2008 numbers. And with regard to financing I have a  
25 chicken and egg situation. I need to show that I'm real and

1 that I can get my lenders finally to commit to me.

2 So how much time do you need, and what do I need to  
3 do to be able to do that? Most of those things are much better  
4 accomplished at a negotiating table with business people by the  
5 side who did thing for a living every day, to try to reach a  
6 deal.

7 And I'm suggesting to you that the -- my interim  
8 solution that I would recommend to Your Honor for your  
9 consideration and for my counsel -- my co -- my opposing  
10 counsel's consideration. Is that I don't think anything should  
11 go forward in the Louisiana Motor Vehicle Commission this week.  
12 I think Your Honor's ruling on exclusive jurisdiction means  
13 that that has to stop.

14 I think that we would commit to have parties continue  
15 the dialogue. The settlement offer that I read is -- we will  
16 leave on the table for a period of time for them to further  
17 consider in view of Your Honor's ruling. And that we ask that  
18 Your Honor if -- set a date for an evidentiary trial, as to  
19 whether we acted appropriately and whether the LOI was in the  
20 context of a duress. That we know Your Honor's schedule's very  
21 busy and that if we don't see a dynamic moving on the business  
22 side, that within a ten-day period of time we would call,  
23 collectively, Your Honor's chambers and try to put this on for  
24 a hearing. And during that in between time, before we have the  
25 actual hearing on the evidentiary side, we will agree that they

1 won't be terminated.

2 THE COURT: Uh-huh. Okay, Mr. Beebe, your turn.

3 MR. BEEBE: Thank you, You Honor.

4 There's a lot there, Your Honor. And I want to begin  
5 with the net working capital issue and dealing with what GM  
6 really requires under its dealer and service and sales  
7 agreement.

8 Your Honor, if I may I'll provide you with a copy.

9 THE COURT: Okay. I assume you have one for Mr.  
10 Steinberg.

11 MR. BEEBE: I do, Your Honor.

12 (Pause)

13 MR. BEEBE: GM's counsel paraphrased, and I think not  
14 necessarily correctly, but the point shouldn't be lost on the  
15 Court regarding 10.1 and what it provides.

16 Now, Your Honor, I also want to point out this is the  
17 agreement which is governing the relationship between the  
18 parties, along with, I presume the wind-down. But this is the  
19 dealer sales and service agreement in which Leson is operating.  
20 And it was the one that was introduced in the arbitration and  
21 is considered to be -- GM at least admitted in the arbitration  
22 it has effect currently.

23 And you can see 10.1 net working capital. "The  
24 capital standard addendum reflects the minimum net working  
25 capital necessary for a dealer to effectively conduct

1 dealership operations. Dealer agrees to maintain at least this  
2 level of net working capital. GM Motors will issue a new  
3 addendum if changes in operating conditions or General Motors  
4 guidelines indicate capital needs have changed materially."

5 Well, Your Honor, they have changed materially.  
6 They've changed materially because of GM's wrongful termination  
7 of Leson.

8 Rebo's calculation is consistent with what GM  
9 requires.

10 If I may, Your Honor, if you'll look at Exhibit P,  
11 I'm going to give you what's actually their -- from their  
12 accounting guidelines. Or, actually, their requirements. This  
13 is what GM says is required. And I'll give you the addendum  
14 here in a second, Your Honor.

15 If I may --

16 THE COURT: Mr. Beebe, is this one unique to the  
17 GM/Leson relationship, or is this a prototype for a use and  
18 other matter?

19 MR. BEEBE: This is what they have, this is for all  
20 dealers, Your Honor. I believe this comes up as a computer  
21 generated document. In other words, their manual is on their  
22 server. And if you were to go and say I want to pull net  
23 working capital standard, this is what would -- you would find.

24 And as you can -- and I also gave you Exhibit O which  
25 is the addendum which supplements the dealer service and sales

1 agreement.

2 But, Your Honor, if you look at this net working  
3 capital standard, it says on page 1 of the operating report,  
4 "Represents the minimum amount of net working capital needed to  
5 sustain satisfactory operation of the business. This net  
6 working capital standard is part of the contractual agreement  
7 between the dealership and the manufacturer established  
8 annually based on the dealer's method of operation and data  
9 shown on the operating reports for a twelve-month period."

10 And it says "The determinants are," and it gives you  
11 six determinants. And Ms. Rebo has calculated those for you.  
12 And it comes out to be 1.8 million dollars based on the twelve  
13 months running through, I believe, maybe September or August.  
14 But, essentially, it's 1.8 million dollars during the wind-down  
15 period.

16 And what Leson expects is GM to honor its promises.  
17 Honor its obligations; its contractual obligations. Whether  
18 it's under the dealer sales and service agreement or what  
19 they're saying is how they calculate it.

20 There has been a material change and Your Honor  
21 pointed out, when you said it seems a little unfair if GM  
22 creates a situation and then tries to benefit from it. They're  
23 the ones who wrongfully terminated Leson, and now saying well,  
24 you have to disregard that. We want 2008 performance because  
25 we're certain you're going to get there.

1           How are they certain we're going to get there? Okay.  
2           What if they decide they can't -- they don't manufacture cars  
3           quick enough or get us to the inventory that we need to sell?  
4           There are so many other factors.

5           So all Leson is saying is honor your commitment,  
6           honor what the written document says. Let's calculate it.  
7           And then in thirteen months if you want to recalculate it,  
8           let's recalculate it based on our performance. Okay. Because  
9           that's really what should happen here. And what they -- what  
10          GM has offered here, is saying no, we really want a hook here,  
11          we want seventy-five percent of that net working capital.

12          But the fact is it's based on operational  
13          performance. And so if we get the inventory, but we still  
14          can't get inventory from them, so we -- four months from now  
15          it's not going to really matter to have it at 2.1 million  
16          dollars if you don't get any cars to sell. I mean, it truly is  
17          a chicken and egg situation, Your Honor, that we find ourselves  
18          in where GM keeps saying we want 2.8 million dollars. So we go  
19          to GMAC and say well, we're working on that. We think they're  
20          going to allow us to have a lesser number, we think it should  
21          be 1.8. GMAC says well, we really want to get that number  
22          because that's going to be amount of capital you have really  
23          sitting on the side.

24          The key, Your Honor, and you're going to have to  
25          understand this, is a commitment. And financial resources

1 committed to the dealership.

2 And, in fact, I'm going to provide to you a copy of  
3 what was Exhibit -- I want to say 18, to the Thys' brief. It  
4 is what is considered according to Mr. Aronson, counsel for  
5 Thys, which is being transferred to you out of Iowa, a  
6 customary and usual LOI. And you'll see there are no  
7 operational directives in it.

8 And, in fact, it says you have thirty days to decide  
9 what -- whether you're going to accept this or not. And,  
10 again, this is based on -- this is something that was attached  
11 to the brief in Thys. And, obviously, GM has a copy of it.

12 Your Honor, you see that there is no specific number  
13 of net working capital in this standard LOI. What it does  
14 require is that commitment. We have an eight million dollar  
15 facility, fourteen acres in Metropolitan New Orleans in the  
16 West Bank. We're the only GM Chevrolet dealer on the West  
17 Bank. This family has been there for eighty years.

18 THE COURT: By West Bank you mean the West Bank of  
19 the Mississippi?

20 MR. BEEBE: Yes, sir. I apologize, the West Bank of  
21 Mississippi.

22 THE COURT: No, I just -- I've been to New Orleans  
23 but I don't know it as well as I think you do.

24 MR. BEEBE: Well, it's right over the river probably  
25 about two miles from the bridge. So not too far from downtown.



1 It's a wonderful location, but they have eighteen acres. The  
2 second busiest intersection in the State of Louisiana,  
3 according to traffic surveys and part of the evidence that had  
4 been introduced.

5 So this family is committed, they've been there for  
6 eighty years. And you'll hear a long and distinguished history  
7 if we ever have that opportunity to present that to you, Your  
8 Honor. But we'll get to that on the res judicata question.

9 But what you can see, and this is why GM isn't being  
10 as forthcoming as it appears in usual and customary LOI. No  
11 mention of net working capital number, no mention of a floor  
12 plan financing. They do what evidence of commitment of  
13 financing. Okay. But they don't put specific operational  
14 parameters in this particular LOI. And they give you thirty  
15 days.

16 There is -- it's not consistent with 747 when it says  
17 you're supposed to get a dealer in service -- a dealer sales  
18 and service agreement, and in that particular statute it says  
19 you get the LOI and it specifically references that you will  
20 get -- it contains the operational parameters in that deal, the  
21 sales and service agreement under 747.

22 It says after executing the sales and service  
23 agreement and successfully completing the operational  
24 prerequisite set forth therein.

25 So, by reference, the operational prerequisites are

1 to be set forth in the DSSA and not in the LOI. That's one  
2 thing that we have an issue with substantively about why they  
3 haven't complied.

4 But getting back to the net working capital, Your  
5 Honor, it should be at 1.8 million dollars. There's no debate  
6 about what GM requires other dealers. And the fact is there's  
7 been a material change, a material change caused by GM in that  
8 regard. And then when GM comes to you and says oh, let's  
9 litigate the duress issue, and if they lose then there's no  
10 further issue, no, there is a further issue. Whether we  
11 entered into the LOI under duress or not, the question is, is  
12 it appropriate to have those terms? Is it appropriate to have  
13 it there in ten days? Is it appropriate to have 2.85 million  
14 dollars worth of net working capital when their own accounting  
15 manual will tell you otherwise? When our own operational  
16 parameters, just from a practical standpoint, how is that we go  
17 to a bank and we say GM says they only want to look at 2008.  
18 Mr. Banker, we want you to only look at our 2008 financial  
19 performance. Do you know what the bank says? You got to be  
20 kidding me, I want to see what you did in 2009 and 2010. 2008  
21 is irrelevant. But GM doesn't seem to understand that, Your  
22 Honor.

23 You want to give us a four-month ramp-up period, why?  
24 Are you going to give us cars after that four-month ramp-up  
25 period? Find out how many cars we sold and let's go calculate

1 it according and in accordance with GM's net working capital  
2 requirement under its own manual. That's really what's  
3 required. That's what the obligations of the party happens to  
4 be under, whether it's the wind-down, whether it's the DSSA,  
5 that's what's required. So recalculate it annually, but it  
6 certainly should be based on our performance. And it's poor,  
7 as you saw from Ms. Rebo's declaration submitted to this court.  
8 When you have 700 cars to sell and you're down to thirty cars  
9 to sell it's very tough. And we're not getting any new  
10 inventory, and we don't seem like we're going to get any new  
11 inventory.

12 So in that regard, Your Honor, I think that GM is  
13 dead wrong when they say the duress issues satisfies the whole  
14 LOI problem.

15 Now, there's a question about whether it's usual and  
16 customary, and it's clear it's not. And I think that they're  
17 going -- you'll find through discovery that, in fact, they've  
18 given other dealers different deals. You'll find those  
19 participating dealers don't meet net working capital. That's  
20 what we think we'll find if you go through discovery. You'll  
21 find that they've allowed some dealers to slide in one point --  
22 slide a little bit on net working capital.

23 Our fear is we agreed to this -- because GM hasn't  
24 honored their promises with Leson. And so there's a real fear  
25 that wow, we're our net working capital's at 2.1, you've agreed

1 to walk away, we're going to make you walk away from this  
2 dealership. And that's hard for the Leson family to accept.  
3 Again, eighty years they've been in business, and it troubles  
4 them to say why is it we can't get to some agreement that's  
5 reasonable.

6 And that was the whole purpose, frankly, before the  
7 LMDC, that's really what they do. During the manufacturing the  
8 dealer in and they say here, let's talk about what we think the  
9 various issues are between you and get the lines of  
10 communication.

11 GM has sent their in-house counsel --

12 THE COURT: Pause, please, Mr. Beebe. Do they  
13 provide a mediation function, or an adjudicative function, or  
14 both?

15 MR. BEEBE: Both, Your Honor. The preliminary  
16 hearing, as I understand it, is where they sit down and talk  
17 about -- about here's your issue GM, here's your issue Leson.  
18 Let's figure out what the resolution is going to ultimately be.  
19 Because I think they really are attempting to balance the  
20 playing field between a manufacturer and dealer, but make  
21 certain that both are satisfied. GM gets the security that  
22 they need with respect to determining okay, is this dealership  
23 going to function.

24 Because that's really what net working capital's  
25 about, right? Is it are they going to survive? Are they going

1 to have enough capital to weather the storm? And that's why  
2 it's based on a couple of months average of sales, of parts,  
3 used cars, et cetera.

4 But G -- Leson is in it for the long haul, and they  
5 have secured some financing. But it's not going to get to 2.8  
6 million dollars. And they're working on that to take out GMAC,  
7 which has the first lien on its property. It's probably more  
8 facts than Your Honor needs, but --

9 THE COURT: On the fee or on the vehicles, or both?

10 MR. BEEBE: Well, floor plan would be on the  
11 vehicles. And then they have the real estate, which, again,  
12 the dealership is worth between five and eight million dollars,  
13 depending on the appraisal.

14 THE COURT: You mean, the land.

15 MR. BEEBE: Land, yes, sir. And they're looking to  
16 take the floor plan financing out of GMAC's hands and going to  
17 a local bank. And based on SPA's latest legislation that  
18 they've put forth and availability of funds, it appears that --  
19 we're hopeful that we'll get that and be able to take GMAC out  
20 of the equation and have the floor plan financing as well as  
21 the facilities, or the real estate loan covered by this local  
22 bank. So we're working on that.

23 But we also have secured a million dollars from  
24 another local bank, which would put our working capital at  
25 2.1/2.3. But, again, that's not what's required. That's the

1 problem. They're saying, you know, you got to take that  
2 million dollars, we need to use some of that million dollars,  
3 obviously, to reinvest in the business, reinvest in our  
4 employees and grow our business.

5 But, Your Honor, as far as net working capital and  
6 usual and customary I think I covered the ground on that unless  
7 you have some questions regarding that. But we feel pretty  
8 strongly that GM isn't honoring their promises, and, frankly,  
9 the net working capital should be calculated at the number that  
10 Ms. Rebo has submitted to Your Honor.

11 And the fact is this letter, while submitted in  
12 another matter, is fairly determinative that GM hasn't  
13 submitted a usual and customary LOI to Leson, at least in these  
14 circumstances. And I think Thys is going to take that very  
15 same position before Your Honor when they arrive here, because  
16 they're being transferred from Iowa.

17 Now, Your Honor, you talked about the res judicata  
18 effect of the arbitrator. And I think the arbitrator's  
19 decision that we have met our capital requirement absolutely  
20 stands. And I'll tell you why.

21 Congress in 747 said "The factors considered by the  
22 arbitrator shall (1) include the covered dealerships  
23 profitability in 2006, 2007, 2008, and 2009, (2) the covered  
24 manufacturers overall business plan, (3) the covered  
25 dealerships current economic viability, (4) the covered

1 dealerships satisfaction of performance objective established  
2 pursuant to the applicable franchise agreement, (5) the  
3 demographic and geographic characteristics of the covered  
4 dealerships market territory, (6) the covered dealership's  
5 performance in relation to the criteria used by the covered  
6 manufacturer to terminate, not renew, not assume, or not assign  
7 the covered dealership's franchise agreement, and (7) the  
8 length of experience of the covered dealership.

9 THE COURT: Pause, please, Mr. Beebe.

10 MR. BEEBE: Sure.

11 THE COURT: The words that preceded that list of  
12 seven things, what did you read to me? Did it say in substance  
13 the arbitrator shall consider or take into account? What were  
14 the exact --

15 MR. BEEBE: Yes. "The factors considered" --

16 THE COURT: -- words?

17 MR. BEEBE: -- "by the arbitrator shall include those  
18 seven factors."

19 THE COURT: Okay.

20 MR. BEEBE: And so -- and you can see from the  
21 opinion he drew a conclusion that all of those weighed in favor  
22 of Leson. And so we can't revisit that here.

23 THE COURT: So pause, please. Your position is that  
24 he made factual findings in connection with that determination  
25 on those seven sub-issues prior to issuing, what we might call

1 in slang, a bottom line decision.

2 MR. BEEBE: That's right. And you'll see that in his  
3 opinion, Your Honor, or his decision. Which I think is  
4 submitted to Your Honor as -- let's see, it is Exhibit C to our  
5 reply. And it's approximately six or seven pages, but there  
6 are several facts that he has presented to Your Honor in that  
7 decision. And it's pretty clear that, again, all of them  
8 weighed in favor of Leson.

9 So Leson is a little fearful that we're going to come  
10 back and relitigate those issues. And we certainly shouldn't  
11 have to. It seems completely unfair when you have a  
12 determination after somebody having heard evidence for two days  
13 comes to the conclusion regarding Leson's viability, it's  
14 economic contribution to GM and says you should be reinstated  
15 per 747.

16 THE COURT: Brief me on the arbitration procedure.  
17 Was there opportunity to cross-examine?

18 MR. BEEBE: Yes, Your Honor. It was just like a --  
19 essentially, a trial. We had our opening arguments, our  
20 opening statements, and had witnesses presented by Leson first,  
21 cross-examined by GM's counsel. The arbitrator asked questions  
22 when he thought it was appropriate. Then GM was allowed to put  
23 on their defense case. And then we were allowed to put on a  
24 rebuttal case. There were no closings.

25 THE COURT: Continue, please.



1 MR. BEEBE: I'm sorry?

2 THE COURT: Continue, please.

3 MR. BEEBE: Okay. Now, so with respect to that, we  
4 ask that the Court look very carefully at 747 and look at the  
5 factors that were considered and look at the arbitrator's  
6 decision. It's clear that it should res judicata regarding  
7 those particular factors and Leson's satisfaction of its  
8 performance obligations to GM under the dealer's sales and  
9 service agreement which was really what we're talking about  
10 here. And as a consequence, there shouldn't be a lot of issues  
11 regarding Leson's inability to perform going forward.

12 Part of it is what would have happened if GM had said  
13 you should have ten million dollars in net working capital?  
14 Why is that not unreasonable? I mean, so the point is, they  
15 have a formula which they're completely disregarding.

16 Your Honor, there was also -- you had raised -- let  
17 me take a look at my notes. I want to talk a little bit about  
18 the duress issue, Your Honor. GM takes the position that on  
19 July 1st we just signed the agreement without any thought. As  
20 you'll note in our submission to you, Your Honor, we gave you a  
21 copy as Exhibit E of the June 28th, 2010 correspondence and as  
22 Exhibit F our July 1st, 2010 correspondence. I have copies for  
23 Your Honor if you'd like.

24 THE COURT: Yeah, you can hand it up, please. I  
25 couldn't find it in my pile.

1 MR. BEEBE: I have E -- here's the letter we sent  
2 basically two days after we receive the LOI, raising the very  
3 issues that we're here raising before Your Honor regarding  
4 propriety of the LOI and the inconsistency with 747. And,  
5 again, when we signed -- because they said you have ten days,  
6 we were really concerned; we had no choice but to sign it.

7 With -- July 1st, when we sent it to them and we made  
8 phone calls, Your Honor. That'll be -- that's clear from the  
9 record and the submission of Lisa Rebo calling GM to talk about  
10 this. And we sent a second letter that raises considerable  
11 issue with GM's approach and heavy-handed approach on demanding  
12 that we sign the LOI that wasn't consistent with our reading of  
13 747. And so you can see we have a long laundry list of issues  
14 or complaints here in Exhibit E and the same is repeated again  
15 in Exhibit F which accompanied the signed LOI.

16 And, so, Your Honor with respect to duress, we think  
17 we'd be able to prove the case of duress but it seems to us  
18 that what the Court should be focusing on is getting the  
19 parties together and saying GM, what is really your obligations  
20 under the dealer's sales and service agreements and Leson, what  
21 are your obligations in that regard, going forward now that  
22 you've been reinstated?

23 We think our net working capital, if it's 1.8 million  
24 dollars, we're going to get the financing and get the floor  
25 plan financing and get new cars in and be able to meet --

1 recalculate it, net working capital, recalculate performance  
2 parameters that are equivalent or consistent with those  
3 particular requirements based on our financial performance.

4 It can't be usual and customary, Your Honor, where  
5 you wrongfully terminate somebody, you create this financial  
6 hardship and then we can't go to a bank and say, we only want  
7 you to look at 2008 numbers. And the bank says, no, we want to  
8 look at 2009 and 2000 (sic) numbers -- 10 numbers. That can't  
9 be usual and customary. It's commercially unreasonable to  
10 demand that Leson automatically reach its 2008 performance.  
11 Four months isn't enough time. It's simply not enough time.  
12 It took eighteen months or sixteen months to get here. Why is  
13 it you wouldn't have that same ramp up time to see how many  
14 cars you have, then set the net working capital, based on that  
15 performance after you've had a chance to at least sell a full  
16 inventory and sell it for twelve months? That seems to be the  
17 reasonable business approach, get a full inventory, sell these  
18 cars then recalculate net working capital. That's really how  
19 it should work and that's how it worked, frankly, I think,  
20 before the arbitration and before the GM bankruptcy.

21 Your Honor, with respect to discovery, I've kind of  
22 covered that briefly with regards to the -- what we consider to  
23 be at least a question about usual and customary. We're sort  
24 of in that catch-22 that you mentioned earlier. It's the  
25 expense that it takes to engage in this battle and Leson,

1 again, is not getting any new cars any time soon and so it puts  
2 us at a sever disadvantage and it's very problematic.

3 We don't want to spend a lot of money engaged in  
4 extensive discovery, but I'm pretty certain that we're going to  
5 be able to prove what we say that GM hasn't given us a usual  
6 and customary LOI. And you'll see that they've negotiated with  
7 several dealers. And they say that's a tribute to their good  
8 faith. Well, maybe they can take it with respect to their good  
9 faith with those other dealers, but certainly not in Leson's  
10 case.

11 Also, the other thing, Your Honor, is we'd -- we  
12 believe that the choice of law is important here. We think  
13 that the choice of law analysis and obviously with this Court  
14 sitting here in New York that New York's choice of law analysis  
15 would govern. But ultimately, the Court would conclude that  
16 Louisiana law would govern this arrangement in this  
17 relationship.

18 THE COURT: You better help me with that, Mr. Beebe,  
19 because the choice of law ruled in New York as in most states  
20 will respect choice of law provisions in other documents.

21 MR. BEEBE: That's certainly true, Your Honor, but in  
22 your opinion, I believe it's in Lois/USA Incorporated 264 B.R.  
23 69, it's -- you basically acknowledge that under Cargill, that  
24 the Second Circuit has noted that New York law allows a court  
25 to disregard the party's choice when the most significant

1 contact with the matter in dispute are in another state.

2 THE COURT: Are you a Saints fan?

3 MR. BEEBE: I am, Your Honor.

4 THE COURT: You know what a Hail Mary is?

5 MR. BEEBE: Yes, Your Honor, I do.

6 THE COURT: Well, when you're trying to get out of a  
7 contractual choice of law provision. That's kind of like a  
8 Hail Mary.

9 MR. BEEBE: I understand, Your Honor, but --

10 THE COURT: Now --

11 MR. BEEBE: -- I do want to raise --

12 THE COURT: Now --

13 MR. BEEBE: -- that issue --

14 THE COURT: -- there is more room under choice of law  
15 doctrine, conflicts of law doctrine, for resort to other forums  
16 when there is no express choice of law provision. But didn't  
17 the termination agreement provide for Michigan choice of law?

18 MR. BEEBE: It does, Your Honor. There is a specific  
19 provision in the wind-down agreement that applies Michigan law.

20 THE COURT: Under normal choice of law rules, unless  
21 you can tell me that I've missed something over the last ten  
22 years, a New York Court would honor a choice of law provision  
23 providing for the selection of Michigan law.

24 MR. BEEBE: No, and I appreciate that, Your Honor. I  
25 will tell you, for example, I believe the dealers' sales and

1 service agreement also provide Michigan law, but I believe that  
2 in Louisiana, the Louisiana Court or the LMVC would apply  
3 Louisiana law because of the strong public policy that's  
4 involved with regards to the manufacturer of vehicles in  
5 Louisiana and its police powers that are being exercised under  
6 its regulatory scheme that enabled and created the LMVC in  
7 Louisiana.

8 As a consequence, Louisiana court would in fact apply  
9 Louisiana law to that relationship. And, again, your decision  
10 in Lois cites Cargill which would allow the Court to disregard  
11 it if the most significant factors weigh to another state. And  
12 here we'd argue that, look, Leson's dealership is there, GM  
13 goes all over the country and they deal with other states'  
14 laws. The contract was signed in Louisiana, at least on  
15 Leson's part. That's where the real dispute is with regards to  
16 the administering of Leson's Chevrolet.

17 THE COURT: Are you aware of any case in the country  
18 that has ever based choice of law on a physical locality of  
19 where a contract was signed?

20 MR. BEEBE: No, not exclusively. But I believe  
21 that's one of the factors that was listed, at least, in the  
22 Cargill decision, Your Honor, from the Second Circuit here. So  
23 it's not persuasive -- it's not determinative certainly, but  
24 it's a factor to be taken into consideration apparently.

25 THE COURT: Well, your other points have been a

1 little stronger, Mr. Beebe, so why don't you get back on track?

2 MR. BEEBE: Okay. Your Honor, I want to make certain  
3 that I've answered each and every one of your questions here.

4 Your Honor, I think that I've covered each of your  
5 questions, at least as listed in my notes regarding first the  
6 failure to meet the performance criteria, was created obviously  
7 by GM's wrongful termination. I think we've covered that and  
8 feel pretty comfortable that we find ourselves in this  
9 situation because of GM's wrongful termination.

10 Now, with respect to what GM has offered in its LOI,  
11 we clearly believe there's a disconnect and inconsistency  
12 what -- which is absolutely required under 747 where it says  
13 you are to give them an LOI, usual and customary, and then a  
14 dealers' sales and service agreement not an amended wind-down  
15 agreement which they were offering. And so, we're still  
16 waiting for that dealer's sales and service agreement and  
17 that's where the operational parameters should be contained.  
18 That's where they should be listing what you're required to  
19 have as far as net working capital, as far as floor plan  
20 financing.

21 And then as far as the issue dealing with duress,  
22 Your Honor, I think it's well documented regarding our position  
23 and signing it under protest, beginning on the 28th of June and  
24 then subsequently on July 1st.

25 And then finally, Your Honor, res judicata. We ask

1 that you carefully review the arbitrator's decision and the  
2 factors that he considered in 747 and that we not be forced to  
3 revisit those here. Because I think absolutely, it is  
4 persuasive and determinative of the fact that Leson had reached  
5 and had maintained a proper dealership and maintained  
6 consistent with it dealer's sales and service obligations. And  
7 as a consequence, it should be reinstated.

8 THE COURT: All right.

9 MR. BEEBE: And finally, Your Honor, just with  
10 respect to discovery, obviously we think that we should be  
11 entitled to it and that ultimately, it really would relate to  
12 what is usual and customary. You may also have some discovery  
13 on duress, but usual and customary, I think it will be  
14 demonstrated, that GM doesn't have something that's completely  
15 usual and customary but what they sent out to Leson certainly  
16 is not usual and customary and consistent with what they had  
17 sent out previously and perhaps with even another arbitration  
18 winners. Thank you, Your Honor.

19 THE COURT: very well. Mr. Steinberg.

20 MR. STEINBERG: Your Honor, attached to the reply  
21 memorandum is the Ohio -- Iowa decision in Thys. And on page 8  
22 of the decision, it describes what New GM did to Family Auto  
23 which was the dealer in Thys and what the LOI was that it sent.

24 And it says that it wanted to establish and maintain  
25 a 296,000 net working capital, obtain all appropriate silence



1 to conduct the franchise and return its wind-down payments.  
2 And then New GM asked Family Auto to sign and return the letter  
3 of intent within ten days of receipt.

4 So counsel got totally confused in its presentation  
5 of what is ordinary and cust -- ordinary, customary and we will  
6 have that opportunity to present it to Your Honor. But the  
7 first thing he did was totally misstate the letter of intent  
8 that was given to the person who won the arbitration award.

9 What he did give you was something different. Your  
10 Honor doesn't have the Thys case yet in front of it, but the  
11 decision in Thys related to the fact that this dealer, while it  
12 had just -- while it was in arbitration, essentially sold his  
13 business. And what counsel gave to you was the letter that  
14 New GM gave to the buyer of the business, the buyer who bought  
15 from the entity that won in the arbitration award. So it  
16 wasn't a letter of intent in connection with having won an  
17 arbitration award. It was essentially the type of letter that  
18 you give to someone who's going to become a new dealer in your  
19 network.

20 Even if you wanted to look at that document that he  
21 said doesn't have provisions, it does have provisions. So  
22 paragraph 1, the second bullet point says, "Evidence that the  
23 investment had been made in accordance with the proposal of the  
24 capitalization of the dealer company to include originating  
25 account disbursements as represented on the Source of Fund

1 statement together with like deposits in the dealer company."  
2 So they were asking the new dealer to give me the evidence of  
3 your capitalization proposal.

4 The fifth bullet point, "Evidence that the dealership  
5 had obtained a separate line of credit from a credit-worthy  
6 financial institution acceptable to GM to enable the dealership  
7 company to sufficiently finance the purchase of a sufficient  
8 number of new GM vehicles to meet the obligations under the  
9 dealer agreements." Which is essentially the same kind of  
10 general language which was in the letter of intent about the  
11 ability to get capitalization.

12 So we're not here -- and I don't mean to try to turn  
13 what was not supposed to be an evidentiary hearing into an  
14 evidentiary hearing. And I think Your Honor should have the  
15 opportunity for that if we end up getting to that stage. But  
16 what he gave you was totally wrong. He tried to give you  
17 evidence of what was in the letter of intent. The decision in  
18 the Iowa court describes what was in the letter of intent.  
19 He's giving you the response that we gave to the person who was  
20 going to buy -- bought the business from the dealer.

21 The second thing. The exhibit that counsel gave to  
22 you about the capital standard addendum, the second paragraph  
23 which is his -- which was denominated as Exhibit O says,  
24 "General Motors has determined that the minimum net working  
25 capital standard necessary for the dealer to adequately conduct

1 the dealership operations consistence (sic) with the dealer's  
2 responsibility is 2.85 million dollars." So this is where that  
3 number came from; it didn't dream ten million dollars. It was  
4 in the dealership agreement. And it's not predicated upon what  
5 you did in the past and it's predicated on what you expect to  
6 do in the future. The whole concept is to make sure you're  
7 capitalized to do your anticipated work, not that you're  
8 capitalized to the extent that you may have poorly performed in  
9 the prior year.

10 It's perspective. And we will have that opportunity  
11 if we have a trial on this thing to be able to present that  
12 type of evidence and we'll be able to show that the Exhibit P,  
13 which has been presented, is sort of taken out of context and  
14 is not supposed to be reset on a twelve month period, but is to  
15 be set in accordance with Section 10.1 of the dealership  
16 agreement.

17 I let counsel say over and over again that New Gm  
18 didn't honor their promises and I will just say once that there  
19 was a letter of intent signed by his client and we believe they  
20 have not honored their promises. Part of the problems in  
21 negotiating the deal is -- if we have a deal, is that level of  
22 distrust because both sides said that the other haven't honored  
23 their promises. But, no one should think it's a one-sided  
24 situation where only New GM has been at fault for their conduct  
25 in this case. And I won't even say they're at fault.

1           They were a bankruptcy debtor who chose to enter into  
2 wind-down agreements, consistent with their opportunity to  
3 reject executory contracts. Congress passed a statute after  
4 the fact and then they revisited the decisions to reject in an  
5 arbitrator's rule. And sometimes the arbitrator sided with GM  
6 and sometimes it didn't and that's just the way it was.

7           But you don't translate that kind of activity into  
8 saying that we breached the agreement. Having said that, I  
9 still recognize what Your Honor was troubled with, which is  
10 that by virtue of them being in wind-down mode not being able  
11 to purchase new inventory, their business has suffered. And  
12 that they need to have the opportunity to ramp up.

13           The arbitrator's decision and -- is with regard to  
14 the working capital standard, was that Leson has also met GM's  
15 capital requirements as it hasn't changed since 2003. They - -  
16 the decision didn't say what the capital requirement should be  
17 as -- for purposes of a letter of intent. And there is nothing  
18 there in the decision which says what it should be. And this  
19 arbitrator didn't have the ability to set that amount. And  
20 what New Gm did was set it at the existing amount and gave what  
21 it thought what the appropriate time to ramp up. And if we  
22 have a trial, it'll be to show that we gave other dealers the  
23 same type of time to ramp up to their past performance deals.

24           The arbitrator's decision also did include on  
25 paragraph 9 a statement that the dealership has secured

1 drawings for a new car showroom and a commitment letter from a  
2 local bank for perspective financing, once it's reinstated by  
3 General Motors. Whatever that commitment letter is from a  
4 local bank doesn't seem to still be a lot. They don't seem to  
5 have the financing as part of the issue and the concerns that  
6 New GM has. And I guess that was the basis upon -- one of the  
7 things why this arbitrator believed that it was appropriate to  
8 reinstate the dealer.

9 But, Your Honor, I want to stop myself here because I  
10 feel that if I go back and forth on a tit for tat basis, he  
11 didn't give you the full evidence but we'll present it later  
12 on, I won't be serving judicial resources' time appropriately.  
13 At this point in time, it seemed to me that we have differences  
14 that either we negotiate or that we need Your Honor to make  
15 rulings on. And I go back to what I had proposed before which  
16 is give the clients the opportunity to absorb the ruling.  
17 We've done our sparring for today. If he wants to continue to  
18 spar, I don't think I have much more to say.

19 I'm sure if I let my co-counsel on the phone who's  
20 been listening to this, they're probably jumping up and down  
21 with a lot -- what they want to say, but I don't think it  
22 matters because we have to present it to you in an organized  
23 form with proper briefing and proper evidence and this is not  
24 an evidentiary hearing. And Your Honor has wanted to hear the  
25 issues for purposes of the evidentiary hearing, but at some

1 point in time we stop because we don't turn this into an  
2 evidentiary hearing.

3 If we can't resolve it, I go back to what I s said  
4 before which is that whether the letter of intent was entered  
5 into duress is the show stopping gating issue. Because if  
6 we're correct that it was not under duress, then they will not  
7 have performed and then under the contractual commitment that  
8 they made, they would have lost their dealership. And that  
9 should be, if they want to save expense, that should be the  
10 gating issue that it happens.

11 If they can establish that there's a factual issue  
12 that -- or that they win on that issue, we're not bound by the  
13 letter of intent, then we can get into the litigation as to  
14 whether what is ordinary and customary. And we have a large  
15 track record of what we've done in this case, what we've given  
16 to people who have settled and not gone to arbitration, what  
17 we've done in connection with people who won arbitrations. I  
18 mean -- and what they got is consistent with what we gave. And  
19 it addresses the two most critical issues here which is  
20 financing and working capital requirements. And if we end up  
21 asking Your Honor to be the Solomon decision maker here as to  
22 setting what the working capital requirements are for this  
23 dealership and what -- and when they should get their financing  
24 in place, so be it.

25 Most li -- most parties like to put that situation

1 into their own hand as compared to giving it to a judge to  
2 decide, but we're prepared to do it either way. If you think  
3 it should be negotiated, if it can't be negotiated then we  
4 should have a hearing. I know Your Honor is very busy. I know  
5 we will try hard so that we don't need to do it. I do think  
6 that the cost of a hearing will be expensive in light of where  
7 we are right now. Remember? He wants to use the wind-down  
8 provisions -- the wind-down performance as the basis for  
9 setting net working capital requirements for when they have to  
10 start ordering inventory to show that they can be capitalized  
11 as a running business. We think that that notion is ludicrous  
12 and we'll be able to show that right of way so that the number  
13 will naturally rise.

14 And the issue is -- we're at 2.137 million dollars  
15 over four months and then giving him another year to get up to  
16 where he was in 2008. I'm not sure if we're off, how far we  
17 are off at all. But I'm pretty sure that whatever we end up  
18 litigating will eat into some of these differences.

19 But that's what I think, Your Honor, is the best way  
20 to go forward. I did have some more notes as to what the res  
21 judicata effect, choice of law. I think Your Honor would be  
22 better off, if they do want to raise it, if it does become  
23 issues, to get the benefit of briefs to be able to have the  
24 benefit of documentary evidence and not the way that this has  
25 gone on for the last little while. Because it's clear that

1 when he referred to the Thys situation and referred to a  
2 dealership, he was not referring to the letter of intent that  
3 was given to that dealer. Thank you.

4 THE COURT: All right. Thank you.

5 MR. BEEBE: Your Honor, if I may. Just one last  
6 point if I may.

7 THE COURT: If brief, go ahead.

8 MR. BEEBE: Well, Your Honor, one thing. I think the  
9 record is clear now --

10 THE COURT: Come to the microphone first, please.

11 MR. BEEBE: Mark Beebe on behalf of Leson Chevrolet.  
12 Your Honor, I think the record is clear regarding what this is  
13 in Exhibit 18. I wasn't suggesting that, obviously, this is  
14 what was given to Family Car Dealership are -- is -- this is  
15 something Mr. Anderson who represents those particular dealers  
16 submitted to the Court in Iowa suggesting this is usual and  
17 customary and that's the representation that I made on the  
18 record.

19 Your Honor, the one thing that I'd ask that you  
20 carefully consider is perhaps given -- I heard you say this  
21 morning that you felt like the Dutch boy with his finger in the  
22 dyke. Perhaps I would ask that you abstain under, you know,  
23 1334(c)(1) --

24 THE COURT: That's not going to happen, Mr. Beebe.  
25 So let's talk about the issues that --



1 MR. BEEBE: Okay.

2 THE COURT: -- are before me.

3 MR. BEEBE: Well, and then finally, Your Honor, I'm  
4 going to need -- I respectfully request a stay. I think, which  
5 has been -- also been granted to the other dealers regarding  
6 the termination or potential termination to October 31. I  
7 think Your Honor had entered this language and it said order  
8 that sufficient reason having been shown therefore pending the  
9 hearing and the termination, I would say of Leson's  
10 application, pursuant to Federal Rules of Bankruptcy Procedure  
11 Rule 8005, New GM is hereby enjoined, restrained and prohibited  
12 from A) seeking to enforce this Court's order today and B0  
13 terminate suspending, canceling, limiting or otherwise  
14 restricting under the wind-down agreement Leson's Chevrolet  
15 dealership agreement and right to own and operate a Chevrolet  
16 dealership.

17 THE COURT: Whose language was that because I  
18 wouldn't have thought that I --

19 MR. BEEBE: That's Judge Patterson's language.

20 THE COURT: -- was bound by 8005.

21 MR. BEEBE: I'm sorry. This is Judge Patterson's  
22 language. I apologize.

23 THE COURT: Nobody's given me a copy of Judge  
24 Patterson's order. Would you be good enough to do that?

25 MR. BEEBE: I would, Your Honor. I apologize because

1 I've highlighted -- but if counsel's okay with it, then  
2 certainly. This is the order to show cause that you signed  
3 leading up to the hearing, Judge.

4 MR. COOPER: To be clear, Your Honor, this is the TRO  
5 that he entered for to stay -- to keep the status quo until he  
6 heard the actual argument on the stay pending appeal and he has  
7 not rendered a decision on that. But that's the order to show  
8 cause that he signed.

9 THE COURT: So this is not a stay pending on appeal,  
10 strictly speaking.

11 MR. COOPER: That's correct.

12 THE COURT: It is something that he ordered to  
13 preserve the status quo while he considered the stay  
14 application?

15 MR. STEINBERG: That's correct, Your Honor.

16 THE COURT: Okay. All right. Fair enough. All  
17 right, gentlemen. We're going to take a recess and I want  
18 everybody back here by 3:25. I don't know if I'll be fully  
19 ready by that time, but that's when I'm going to want you guys  
20 available. We're in recess.

21 MR. STEINBERG: Thank you, Your Honor.

22 (Recess from 3:06 p.m. until 3:41 p.m.)

23 THE COURT: Have a seat, please.

24 Okay. Some of the issues we have here are easy, some  
25 are much harder. The easy ones are those with respect to

1 jurisdiction and to abstention. The more difficult ones  
2 involve the merits which I will deal with because I will be  
3 exercising jurisdiction if you people can't consensually  
4 resolve it.

5 With respect to the easy issues, I rule in accordance  
6 with my earlier decisions involving the losing car dealerships,  
7 that I have subject matter jurisdiction, that this is a core  
8 matter, that the jurisdiction of this Court is exclusive and  
9 that I need not nor should I abstain and I won't abstain. I  
10 will exercise the exclusive jurisdiction that was provided for  
11 back in 2009.

12 For the avoidance of doubt, the Louisiana Motor  
13 Vehicle Commission will not decide the issues with respect to  
14 the enforcement of the arbitrator's rulings. I will. And also  
15 for the avoidance of doubt, I'm going to enjoining Leson from  
16 any proceedings before the Louisiana Motor Vehicle Commission  
17 with respect to this controversy, including most obviously the  
18 proceedings that are scheduled for Thursday of this week.

19 On the merits, however, Leson has established the  
20 existence of issues of fact vis-a-vis the enforcement of the  
21 arbitrator's award in its favor on at least the following  
22 issues: (1)whether it's signed the 2010 letter of intent under  
23 duress; (2)whether New GM imposed the ten-day deadline for  
24 acceptance of that letter of intent in good faith; and  
25 (3)whether New GM did in fact provide Leson with a customary

1 and usual letter of intent to enter into a sales and service  
2 agreement which is at least seemingly what Section 747  
3 requires.

4 By articulating those issues, I do not intend to  
5 foreclose any other issues that might reasonably be raised by  
6 either party. But it's my view as my articulation of those  
7 issues implies that having prevailed before the arbitrator,  
8 Leson is entitled to a reasonable opportunity to secure the  
9 benefits of that ruling. It's that simple. In that  
10 connection, the two sides should be free to argue for or in  
11 opposition to res judicata, collateral estoppel or law of the  
12 case with respect to the arbitrator's findings that it made  
13 before the arbitrator issued the bottom line decision.

14 As my colloquy with each of you hopefully indicated,  
15 the underlying concern I have, which may or may not be part of  
16 the issues that I articulated above or a separate issue, is  
17 whether, under the applicable law, New GM may avail itself of  
18 the failure of a condition that its own conduct, at least in  
19 material part, occasioned.

20 And though I think I know the answer to the question  
21 that follows or questions that follow, the two sides can have a  
22 reservation of rights as to the state whose law will apply and  
23 whether the conduct that occasions the failure of condition  
24 needs to be malicious or otherwise wrongful or otherwise  
25 intentional or simply to have happened.

1           As I indicated, I'll give you further opportunity to  
2 discuss the choice of law, discuss and/or address and also the  
3 standard for the application of the principal that I  
4 articulated or, for that matter, whether I'm imagining a  
5 principal of law that doesn't exist which I'm not deciding  
6 today. But I believe each side is entitled to its day in court  
7 on those issues. Leson will also be entitled to reasonable  
8 discovery as to these issues, though subject to appropriate  
9 confidentiality protection.

10           Until my further order, or any decision adjudicating  
11 the merits, both sides will be enjoined. Leson, as I  
12 indicated, is enjoined from proceeding before the Motor Vehicle  
13 Commission. Leson will get its day in court but it will get it  
14 from me. By the same token, New GM is to be enjoined and is  
15 hereby enjoined from terminating Leson's dealership until I  
16 decide the issues on the merits or any further order from me.

17           You are to paper those two injunctions by a separate  
18 written order whose form you are to agree upon without  
19 prejudice to your respective rights to appeal my determinations  
20 today or to seek leave to appeal this interlocutory  
21 determination. If after trying you can't come up with a  
22 satisfactory order to paper that, each side will have the right  
23 to settle it upon the other, but I would hope that on a matter  
24 of this simplicity that that's not necessary.

25           For the avoidance of doubt, however, I am so ordering

1 the record and telling you guys right now that you're enjoined.  
2 And that if as it's foreseeable, it takes you a few days to  
3 come up with the written order, that written order will  
4 supersede my oral injunction today and starting this minute,  
5 3:50 p.m. Eastern time on Tuesday, October 26, Leson is not  
6 going to proceed before the Louisiana Motor Vehicle Commission  
7 and GM is not going to proceed to terminate Leson's dealership.  
8 In each case, the enjoined action is stayed.

9 Now, with that said, folks, it's obvious to me from  
10 hearing the argument and from considering that which is  
11 appropriate to implement the arbitrator's ruling, that each  
12 side has legitimate needs and concerns. GM needs its dealers  
13 to be viable and to satisfy appropriate requirements. Leson  
14 needs a fair time to satisfy those requests and to meet  
15 requirements that are reasonably appropriate to comply with the  
16 requirements of Section 747, the arbitrator's ruling, and to  
17 bring itself into compliance with the requirements that I  
18 believe that GM reasonably can impose.

19 I don't see Leson as having the right to get an  
20 indefinite get out of jail free card from the requirements that  
21 I think GM can legitimately impose. I think it is ultimately  
22 likely as a matter of negotiation to be one of setting  
23 appropriate requirements and providing for a reasonable time to  
24 comply with them. This matter cries out for a consensual deal  
25 that balances those competing needs and concerns. But I don't

1 think that I can or should try to micromanage it and I should  
2 not get -- be involved in dictating the terms of any such deal.  
3 Instead, it should be negotiated between the parties. Failing  
4 which, if you guys want to roll the dice and litigate before  
5 me, you'll ultimately have that opportunity. Frankly, I think  
6 that would be suicidal for both sides, but you obviously have  
7 that underlying legal entitlement.

8           However, I have both the right under Section 105(d)  
9 of the Code and my inherent ability to manage the cases on my  
10 watch and the responsibility for managing this litigation in a  
11 sensible way. So while I'll authorize the discovery and will  
12 decide the underlying controversy if I need to, I first want  
13 you to take the effort to try to settle it either one-on-one or  
14 with the assistance of a mediator. The choice between direct  
15 settlement and use of a mediator, one as to which I express no  
16 present view, but what I am telling you is that I am  
17 authorizing discovery but the discovery in my view isn't  
18 necessary to settle in the matter and to come up with a  
19 satisfactory letter of intent. And therefore the discovery  
20 will be held in abeyance while -- for a reasonable period of  
21 time during which you try to resolve it consensually. If you  
22 try and fail then the discovery will proceed before I decide  
23 the matter on the merits.

24           As my questioning to each of you indicated, I haven't  
25 been happy with either side's past conduct to date. But now

1 that both sides understand that I'm invoking my exclusive  
2 jurisdiction and that I'll be doing whatever it takes to  
3 maintain control of this litigation and to ensure that both  
4 sides act appropriately, I assume that the actions by each side  
5 that bothered me are now a thing of the past.

6 So we're either going to resolve this consensually or  
7 litigate it; taking as the obvious backdrop for that what  
8 Section 747 provides and what the arbitrator's ruling said.

9 All right. Not by way of reargument, are there any  
10 open issues? Mr. Steinberg?

11 MR. STEINBERG: Your Honor, do you think it would be  
12 appropriate to set some kind of calendar date to have a 105(d)  
13 conference for us to come back to be able to report as to  
14 whether we are in a settlement mode or whether we need to have  
15 something more formal?

16 THE COURT: I think that's fine. I can't give you a  
17 date this minute. I have no problem with the two of you  
18 walking across the hall to do it.

19 Mr. Beebe, I assume that if you're in New Orleans  
20 it's a burden for you to come up here and if we're talking  
21 about a conference only as contrasted to an evidentiary  
22 hearing, I'd be willing to do that by conference call.

23 MR. BEEBE: Thank you.

24 THE COURT: Although I would want to hear your  
25 respective views as to whether any such conference call should



1 be on the record or off. Normally, if either side wants  
2 something on the record, I give it to him. But I prefer to get  
3 the recommendation from the parties as to what they think best  
4 skins the cat in that regard. And I wouldn't ask you to decide  
5 that now. It's easier, to tell you the truth, to hold a  
6 conference call than to hold a full hearing, especially with  
7 what I'm juggling.

8 I'm agreeable in concept to what you proposed, Mr.  
9 Steinberg, but what we need to do is find the sweet spot that  
10 doesn't let it drift too much on the one hand but gives you a  
11 fair opportunity to have the dialog that I think is essential,  
12 on the other.

13 MR. STEINBERG: Your Honor, I think that I would  
14 appreciate having the opportunity to talk to my client to try  
15 to figure out logistically how they want to approach the  
16 resolution and how they think it best to do. And so, having  
17 made the suggestion for setting a conference date, if we can  
18 just defer for a few days and maybe by Friday of this week,  
19 counsel and I can call your chambers and try to lock in a  
20 convenient date. But this will give us more of an opportunity  
21 to confer with our clients and digest a little of what  
22 transpired today.

23 THE COURT: I assume you're okay with that, Mr.  
24 Beebe?

25 MR. BEEBE: I am, Your Honor.

1 THE COURT: Okay. All right, then let's do that. Am  
2 I correct that we have no further business?

3 MR. STEINBERG: I don't have anything, Your Honor.

4 THE COURT: All right. Thank you very much, folks.  
5 Have a good day. We're adjourned.

6 ALL: Thank you.

7 (Whereupon these proceedings were concluded at 3:58 p.m.)

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I N D E X

R U L I N G S

| DESCRIPTION  | PAGE | LINE |
|--|------|------|
| Debtors' motion seeking final approval of a settlement with the Bryant class action claimants granted  | 32   | 12   |
| Motion of Walter Lawrence seeking to hold the district court judge from the Middle District of Florida in criminal contempt, I believe, for violating the stay |      |      |
| Debtors' omnibus objection seeking to expunge bondholders' claims for reason that they are duplicative sustained as to claim of Francis H. Caterina            | 44   | 11   |
| Motion by Weber Automotive pursuant to Rule 60(b) to reconsider order with respect to debtors' omnibus objection to claim #23                                  |      |      |
| Fee apps approved with a 10% holdback to the extent they're not objected to by the fee examiner or UST   | 92   | 7    |

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I N D E X, cont'd

R U L I N G S

| DESCRIPTION   | PAGE | LINE |
|---|------|------|
| Motion of GML to enforce 363 sale order and approved termination agreements with respect to Leson Chevrolet granted subject to stay that Judge Patterson enacted in Rally Rule 8005 motion and subject to further representations made on the record to be submitted in an order; | 106  | 11   |
| This Court has subject matter jurisdiction; this is a core matter; that jurisdiction of this Court is exclusive; and that Court need not abstain nor will it abstain  | 171  | 5    |
| Both Leson and New GM to be enjoined; Leson enjoined from any proceedings before Louisiana Motor Vehicle Commission with respect to this controversy, including proceedings scheduled on 10/28/2010;  | 173  | 11   |
| New GM enjoined from terminating the Leson dealership until Court issues further order;   | 173  | 15   |

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I N D E X, cont'd

R U L I N G S

| DESCRIPTION  | PAGE | LINE |
|--|------|------|
| Injunctions to be submitted in written order<br>without prejudice to parties' rights to appeal<br>or seek leave to appeal; | 173  | 17   |
| If parties cannot agree upon order,<br>each side to settle upon the other;   | 173  | 23   |
| Record so ordered;   | 173  | 25   |
| Written order to supersede oral injunction;  | 174  | 4    |
| Enjoined action is stayed with regard to both<br>Leson and New GM;   | 174  | 8    |
| Discovery authorized but held in abeyance<br>to give parties time to try to work out<br>matters consensually               | 175  | 17   |

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

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

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LISA BAR-LEIB

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

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: October 27, 2010