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

December 15, 2010

2:10 PM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

HEARING re IUE-CWA's Motion Pursuant to 11 U.S.C. §§ 105 and 363(b) to Approve Assignment of Claim of IUE-CWA to a VEBA Trust

HEARING re Fourth 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 June 1, 2010 through September 30, 2010

HEARING re Second 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 June 1, 2010 through September 30, 2010

HEARING re Second 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 June 1, 2010 through September 30, 2010

HEARING re Second 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 June 1, 2010 through September 30, 2010

HEARING re Second 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 June 1, 2010 through September 30, 2010

HEARING re Fourth 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 June 1, 2010 through September 30, 2010

HEARING re Second Interim Fee Application of Deloitte Tax LLP as Tax Services Providers for the Period from June 1, 2010 through September 30, 2010

HEARING re Fourth Interim Application of FTI Consulting, Inc. for Allowance of Compensation and for Reimbursement of Expenses Rendered in the Case for the Period June 1, 2010 through September 30, 2010

HEARING re Second 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 June 1, 2010 through September 30, 2010

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

HEARING re 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 June 1, 2010 through September 30, 2010

HEARING re Third 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 June 1, 2010 through September 30, 2010

HEARING re Fourth Interim Application of The Claro Group, LLC for Allowance of Compensation and Reimbursement of Expenses for the Period June 1, 2010 - September 30, 2010

HEARING re Second Application of Togut, Segal & Segal LLP as Conflicts Counsel for the Debtors for Allowance of Interim Compensation for Services Rendered for the Period June 1, 2010 through September 30, 2010, and for Reimbursement of Expenses

HEARING re Second 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 June 1, 2010 through September 30, 2010 and Reimbursement of Actual and Necessary Expenses Incurred from September 1, 2010 through October 31, 2010

HEARING re Second Application of Stuart Maue for Allowance of Compensation and Reimbursement of Expenses for the Analysis of Interim Fee Applications of Selected Case Professionals

HEARING re Pre-Trial Conference Regarding Official Committee of Unsecured Creditors' Objection to Claims filed by Green Hunt Wedlake, Inc. and Noteholders of General Motors Nova Scotia Finance Company and Motion for Other Relief

HEARING re Second 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 June 1, 2010 through September 30, 2010

HEARING re 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 Fourth Interim Application of LFR Inc. for Allowance of Compensation and for Reimbursement of Expenses for Services Rendered in the Case for the Period June 1, 2010 through September 30, 2010

Transcribed by: Lisa Bar-Leib

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

WEIL GOTSHAL & MANGES LLP
Attorneys for the Debtors and Debtors-in-Possession
767 Fifth Avenue
New York, NY 10153

BY: STEPHEN KAROTKIN, ESQ.

KING & SPALDING LLP
Attorneys for New GM
1185 Avenue of the Americas
New York, NY 10036

BY: ARTHUR J. STEINBERG, ESQ.
SCOTT DAVIDSON, ESQ.

U.S. DEPARTMENT OF JUSTICE
Office of the United States Trustee
33 Whitehall Street
21st Floor
New York, NY 10004

BY: BRIAN MASUMOTO, ESQ.

AKIN GUMP STRAUSS HAUER & FELD LLP

Attorneys for Claimant Green Hunt Wedlake, Inc. as Trustee of General Motors Nova Scotia Finance Company

One Bryant Park

New York, NY 10036

BY: SEAN E. O'DONNELL, ESQ.

DEAN CHAPMAN, ESQ. (TELEPHONICALLY)

BROWN RUDNICK LLP

Attorneys for Certain Noteholders of General Motors Nova Scotia Finance Company

Seven Times Square

New York, NY 10036

BY: DANIEL J. SAVAL, ESQ.

BROWN RUDNICK LLP

Attorneys for Certain Noteholders of General Motors Nova Scotia Finance Company

One Financial Center

Boston, MA 02111

BY: CALEB B. PIRON, ESQ.

(TELEPHONICALLY)

BUTZEL LONG P.C.

Attorneys for the Official Committee of Unsecured Creditors

380 Madison Avenue

22nd Floor

New York, NY 10017

BY: ERIC B. FISHER, ESQ.

CAPLIN & DRYSDALE, CHARTERED

Attorneys for Official Committee of Unsecured Creditors Holding Asbestos-Related Claims

One Thomas Circle, NW

Suite 1100

Washington, DC 20005

BY: RONALD E. REINSEL, ESQ.

DICONZA LAW, P.C.

Attorneys for LFR, Inc.

880 Third Avenue

New York, NY 10017

BY: GERARD DICONZA, ESQ.

GODFREY & KAHN S.C.
Attorneys for the Fee Examiner, Brady C. Williamson
One East Main Street
Suite 500
Madison, WI 53701

BY: KATHERINE STADLER, ESQ.
BRADY C. WILLIAMSON, ESQ. (TELEPHONICALLY)
MONICA SANTA MARIA, ESQ. (TELEPHONICALLY)
ERIC J. WILSON, ESQ. (TELEPHONICALLY)

GODFREY & KAHN S.C.
Attorneys for the Fee Examiner, Brady C. Williamson
333 Main Street
Suite 600
Green Bay, WI 54307

BY: CARLA O. ANDRES, ESQ.
(TELEPHONICALLY)

GREENBERG TRAURIG, LLP

Attorneys for Certain Noteholders of General Motors Nova Scotia Finance Company

MetLife Building

200 Park Avenue

New York, NY 10166

BY: BRUCE R. ZIRINSKY

JOHN H. BAE, ESQ.

KENNEDY, JENNIK & MURRAY, P.C.

Attorneys for IUE-CWA

113 University Place

New York, NY 10003

BY: SUSAN M. JENNIK, ESQ.

LOEB & LOEB LLP

Attorneys for Deloitte Tax LLP

345 Park Avenue

New York, NY 10154

BY: DANIEL B. BESHKOF, ESQ.

MORRISON & FOERSTER LLP
Attorneys for Citigroup Global Markets, Inc.
1290 Avenue of the Americas
New York, NY 10104

BY: JORDAN WISHNEW, ESQ.

RICHARDS KIBBE & ORBE LLP
Attorneys for Morgan Stanley International plc
One World Financial Center
New York, NY 10281

BY: NEIL S. BINDER, ESQ.

STUTZMAN, BROMBERG, ESSERMAN & PLIFKA, P.C.
Attorneys for Dean M. Trafelet
2323 Bryan Street
Suite 2200
Dallas, TX 75201

BY: HEATHER PANKO, ESQ.

P R O C E E D I N G S

THE CLERK: All rise.

THE COURT: Have seats, please. All right. General Motors -- Motors Liquidation. Mr. Karotkin, I'll hear your recommendations as to the order in which we should proceed. I gather that the IUE's motion is wholly unopposed. Should we get that out of the way?

MR. KAROTKIN: I was going to suggest that first. Sure.

THE COURT: All right.

(Pause)

MS. JENNIK: Thank you, Your Honor. Susan Jennik for IUE-CWA. As you know, the IUE-CWA has a claim in this matter because of the settlement agreement with General Motors. The settlement agreement requires any assignment of the claim be approved by the Court.

THE COURT: Can I interrupt you, Ms. Jennik? Because I saw the motions, I saw the papers. And most importantly, I saw that it was wholly unopposed and was wholly innocuous. Any reason why I shouldn't grant it without any further comment?

MS. JENNIK: I have an amended version of the order, Your Honor, which makes some corrections. And I'd like to offer that up. I've given it to the committee counsel and also the U.S. trustee and the counsel for the debtors.

THE COURT: Okay.

MS. JENNIK: And there's been no objection from them. If I may approach?

THE COURT: Yes.

MS. JENNIK: What you have there is a redline version and also the amended order in a clean copy.

THE COURT: Sure. It's granted. It'll be entered as soon as I get this --

MS. JENNIK: Thank you, Your Honor.

THE COURT: -- courtroom support to get it typed.

(Pause)

MR. KAROTKIN: Your Honor, the other -- I think the only other -- there are two subject matters on the calendar. One is fee applications and the other is the dispute related to the Nova Scotia claims. I think -- and counsel for the fee examiner is here. I think that all but two of the fee applications have been resolved.

THE COURT: Those being Caplin & Drysdale and LFR?

MR. KAROTKIN: Yes, sir. So my suggestion, again, subject to whatever you'd like to do, is that you address those first.

THE COURT: All right. We'll do that but everybody stay seated. Folks, I'm concerned that the costs of the fee examiner process are excessively cutting into the very savings that the fee examiner process is supposed to accomplish. And I don't want to make that situation which, frankly, is getting me

increasingly annoyed, even worse by lengthy argument today.

I'm also concerned that the factor that most affects the legal fees and other professional expenses in this case isn't the vague time descriptions or even contentions that two senior lawyers are doing things, but the intercreditor disputes, most significantly, the battling between the creditors' committee and the asbestos claims creditors' committee. And I think that those who've spoken in writing and in panels about their efforts to keep these down in large 11s are kidding themselves and the public when they don't realize that the thing that most affects the cost of running a large 11 isn't the things that the examiner and the professionals on this motion and in the last three applications we've had have been fighting about but this intercreditor jousting.

Now, I can and will do the bandaid types of measures that the Code requires me to do as part of my responsibility. But I need to tell you all that I want to keep our eye on the ball in this case. And I want to bring this case to an end. And I don't think we should be self-congratulatory, on the one hand, or spending all of this time, on the other, vis-à-vis the issues that we have on this fee application dispute today because until and unless we stop the intercreditor bickering, we're never going to get this case done and we're never going to keep the case expenses reasonably under control.

Now, with that said, I have a number of tentative

rulings based upon my review of the papers, all of which I have read, and I will hear very brief legal argument directed at telling me why, after reading the briefs I am wrong.

One, the Caplin & Drysdale younger partners, for the most part, the same price as the Weil and Kramer Levin associates. I find nothing troublesome about people who are called young partners or partners doing work when the associates who would be posted at other firms for doing that same work are charging what is, in substance, the same amount. The showing -- except for Inselbuch and Lockwood -- the Caplin & Drysdale lawyers are at the cheap end of what I've seen. And the showing that other firms' associates are billed at rates comparable to the young partners or the younger partners at Caplin & Drysdale makes me unpersuaded that I'm going to make a big deal of that issue.

Next. There are enough deficiencies in each of the positions of Caplin & Drysdale and the fee examiner's so that neither side substantially prevailed in the back and forth and the disputes. I don't need a conference call. The cost of Caplin & Drysdale's responding to a fee examiner criticism will not be compensable. Obviously, many of the fee examiner positions were likewise not accepted by me but that isn't the test.

The objections based on vague descriptions even if made vague for tactical reasons or for confidentiality reasons

are sustained. You'll have to figure out what the dollar consequence of that is. There are ways to skin the cat by means of description more specific than saying "Reading a pleading to determine whether our committee's interests are affected".

And when a task that's in the middle of a list of many tasks separately stated to avoid the anti-bunching rules is a tact as being beneath the level of sophistication of the remainder of the lawyer, I think that's so de minimis and so inefficient to critique and punish the lawyer for doing something when it's a flow of work matter that I'm not going to penalize the lawyer for being so accurate in his or her description or for allowing a seemingly menial task to be mixed as part of a larger flow.

With that said, what else do we have on Caplin & Drysdale?

MS. STADLER: Good afternoon, Judge. Katherine --

THE COURT: Ms. Stadler?

MS. STADLER: Katherine Stadler, yes, for the fee examiner of Godfrey & Kahn. Nothing really left on Caplin & Drysdale, Judge. I don't quarrel at all with any of your conclusions. I did want to just clarify one thing for the record. The issue with the task allocation wasn't whether it should be done by partners or associates. The issue was whether they were more in the nature of clerical tasks that

were inappropriate to bill attorneys for at all, such as docket monitoring, et cetera.

THE COURT: Well, were there ever any instances of an attorney charging for using the xerox machine or something of that sort?

MS. STADLER: Not indicated on the time detail, no. It would be check PACER, create to do lists, that sort of thing.

THE COURT: I'm not persuaded by that distinction, Ms. Stadler.

MS. STADLER: That's the only point on Caplin that I have remaining after your tentatives, Judge.

THE COURT: All right. Anybody from Caplin & Drysdale want to be heard given what I already said? Mr. Reinsel?

MR. REINSEL: Thank you, Your Honor. Robert Reinsel for Caplin & Drysdale. Just want to briefly respond to two points you raised, Judge. With respect to the -- I want to come back to your fee order and whether or not fees would be compensable for responding to the fee examiner based upon your earlier ruling that the parties substantially prevailing ought to be able to be compensated for that.

The first objection that we responded to, Your Honor, that's involved here, although the fee examiner didn't quantify a number or quantify their objection, they do acknowledge that

that went to significantly all of our fees or a significant portion of all of the fees in our first fee application which were in excess of 400,000 dollars. What we did was work with the examiner, spent a great deal of time responding and, ultimately, ended up compromising without admitting that anything was wrong only about 13,000 dollars out of a 400,000 fee application with Your Honor. Respectfully, Your Honor, I would say that we did substantially prevail on that.

THE COURT: Respectfully, Mr. Reinsel, aside from the fact that I thought I made my thinking clear, I don't think that pleading nolo contendere is a satisfactory way to get a "Get out of jail free" card on this issue. The fact is that I got problems with both sides' positions and I don't find that the Caplin & Drysdale side of the feuding was sufficiently persuasive that I can find that you substantially prevailed. Under those circumstances, as I stated in my last opinion, the one that I had to publish, we go by the American rule and you got to eat it.

MR. REINSEL: I understand your ruling, Your Honor.

THE COURT: Okay.

MR. REINSEL: The second part, Your Honor, dealing with the fee examiner's assertion of vagueness in certain billing entries, as you say, there are a number of ways to slice that cat up when we come down to it. One of our problems in responding both to the fee examiner's present objection and

to others is the lack of specificity in what they were asserting was wrong with the particular billing entries. What they did was simply attach all of the billing run for one of our attorneys and say take ten percent off of his entire cut when the objection that they specifically framed, our vague reference to review, analyze pleadings for impact on the committee, really only accounted for six hours out of over 200 hours of his effort. Now, if what the Court is saying is work with the fee examiner to see if we can't refine that number, our problem is with their just overall reach and making a generalized take ten percent off the top.

THE COURT: My ruling is that you identify the issues that were subject to the -- or the time entries that were subject to that affliction and those are disallowed. And if that's less than the ten percent then you win. And if that's more than ten percent then Mr. Williamson wins.

MR. REINSEL: Understand, Your Honor. Thank you very much.

THE COURT: Okay. LFR. Now, is Mr. DiConza here? Come on up, please.

Folks, it's been the law in this district since long before I was a judge, much more than ten years ago, probably twenty or twenty-five, that the test for determining whether or not a person or entity is a professional is governed by two things. One, the degree of control over the Chapter 11 case;

and, two, the extent to which those services would be provided in the absence of bankruptcy. If anybody believes that I'm applying the wrong standard, he or she can correct me.

Under that standard, it seems to me that I don't have a need for a retention of an environmental consultant who would have to clean up the mess whether or not GM -- or Motors Liquidation was in Chapter 11. And Mr. DiConza has pointed out that I already ruled on this issue in one of our earlier sessions on fees. Ms. Stadler, to what extent am I mistaken in either of those understandings? Mr. DiConza, make room for her, please.

MS. STADLER: Thank you, Judge. I don't think you're mistaken in either of those. I would note that there are numerous environmental consultants in the case that are retained subject to Section 327 of the Bankruptcy Code. Arguably, your analysis would apply to any of them. With respect to the first part of your inquiry, I wouldn't have any corrections to make.

THE COURT: All right. Mr. DiConza, do you want to be heard?

MR. DICONZA: Well, Your Honor, we did file responsive papers several days ago and basically we argued that under the Seatrain decisions and cases that have followed it that TEA is not a professional within the meaning of the Bankruptcy Code. What was troubling is that the fee examiner

sought disallowance of a hundred percent of my client's requested reimbursements with -- in connection with TEA under the third and then an arbitrary fifty percent under the fourth interim application. We believe that the invoices submitted in connection with the TEA expenses do contain sufficient detail. And obviously -- we were on a conference earlier today with the fee examiner and were able to resolve all the other issues with the third and fourth interim fee applications. If the fee examiner has any particular issue with any of the time entries submitted by TEA, my client would be more than happy to work with the fee examiner and obtain additional information. The problem we had with TEA was that the fee examiner took a hardline position and said, look, they are a professional, they should have been retained and, therefore, we're going to seek disallowance of all of their expenses under the third and fifty percent under the fourth.

THE COURT: All right. Well, my ruling on the TEA/LFR issue is as follows:

I am adhering to my stated articulation of what the law is and when a party is a professional and when it isn't. However, when an entity is used as a subcontractor for a professional, retained professional, having opened the door by getting oneself retained, the LFR estate -- or entity, excuse me, as you properly anticipated, Mr. DiConza, must take the heat or make any adjustments if any of the underlying time

turns out to have been unreasonable. So the overall objection that TEA was not retained is overruled. However, the -- to the extent that there were any instances of inappropriate billing by TEA, TEA and/or LFR is going to have to eat those. And you can work out your specifics with the fee examiner staff to make that happen. Your deals with the fee examiner staff, I don't need to hear in detail. If they're consensual between the two of you, they'll be ratified and confirmed.

MR. DICONZA: Yes, Your Honor. Thank you.

THE COURT: All right. Am I correct that we have no further fee issues? All right. I'm just going to say one other thing.

As I indicated at the outset of my remarks, in my view, the kinds of things that we dealt with today and the kinds of things that were consensually resolved before I had to deal with them today are miniscule in importance compared to the major, major costs that the estate is incurring both in terms of running meters and delay in getting distributions to creditors occasioned by the intercreditor disputes. I want you to redouble your efforts to resolve those issues and/or if you have to agree to disagree, to minimize the number of people and meters running to address those concerns.

All right. Now, we'll turn to the one issue which also has, of course, intercreditor dispute trappings but which raises very serious issues which is the Nova Scotia matter. As

I understand it, we have just a status conference today. Mr. Fisher?

MR. FISHER: That's correct, Your Honor.

THE COURT: Come on up, please.

MR. FISHER: Good afternoon, Your Honor. Eric Fisher from Butzel Long for the creditors' committee. I think, Your Honor, that the only issue for the Court's consideration today is the question of how the creditors' committee's objection that's at issue which is an objection that arises out of Old GM's guaranty of approximately a billion dollars face amount of bonds issued by a subsidiary, GM Nova Scotia Finance. The only question is how that objection ought to be litigated. And just to cut right to the chase to the area of disagreement that we have with noteholders' counsel, with trustee's counsel and, I think, with New GM's counsel as well, it's the creditors' committee's position that this objection raises complicated factual issues. Discovery is necessary. And discovery will ultimately contribute to the most efficient resolution of the case even if that means that it needs to go the distance and be heard at an evidentiary hearing before your Court -- before Your Honor.

And it's the position of the claimants here that early summary judgment is called for. No discovery is necessary. And our view is that this early summary judgment type approach will actually impede, as opposed to expedite, the

progress of the case because given how complicated it is factually, I think, Your Honor, that it's a virtual certainty that if there's no discovery that's permitted and then we're faced with early summary judgment motions, we will be opposing the summary judgment motions at least in part on Rule 56(f) grounds and tell Your Honor that we need discovery.

And so, we think it's important for the Court to put in place a reasonable discovery schedule, to schedule an evidentiary hearing down the road. And certainly, we're open to dispositive briefing in advance of that evidentiary hearing as long as there is a reasonable period of discovery that precedes that dispositive briefing.

If Your Honor will permit, I wanted to take just a few minutes, since this is our first appearance before Your Honor with respect to this objection, to just sketch out the procedural history behind the objection, give Your Honor in very broad brushstrokes just a sense of what our objection is all about, and then describe what we think the proposed scope of discovery and what a reasonable discovery schedule would look like.

THE COURT: Yes, but in a nonargumentative way because I don't want an argument, mini or otherwise, on the merits of this controversy today.

MR. FISHER: I will try to give Your Honor just the facts. We first filed the objection on July 2010. And when we

filed the objection, we secured from chambers an evidentiary hearing date in November. And soon after --

THE COURT: My chambers gave you an evidentiary hearing date for -- on the filing of an objection?

MR. FISHER: Yes, Your Honor. We called chambers and reque -- we indicated that we thought the objection was appropriate for an evidentiary hearing --

THE COURT: Well, it isn't that it's not appropriate for an evidentiary hearing. The problem is that an evidentiary hearing on a matter of this character is one that isn't like a new value preference hearing that you resolve in an hour and a half.

MR. FISHER: Right. Your Honor, as a practical matter, I think that date served as nothing more than a placeholder at this point. But what we did was within a few weeks of serving -- of filing and serving our objection, we served discovery requests on the GM Nova Scotia Finance bondholders' counsel at Greenberg Traurig and we also served interrogatories. The response that we got was we don't think discovery is appropriate here. We don't think any discovery should go forward. Let's have a meeting. We had a meeting with bondholders' counsel at Greenberg in September 2010. At the time, Greenberg Traurig was representing the bondholders and, I believe, also representing the GM Nova Scotia Finance trustee.

For the time being, at that meeting, we agreed to disagree about whether or not there would be discovery or what the scope would be or whether we would agree to litigate threshold issues before proceeding with discovery. We continued to talk. And then in November 2010, still no response to our discovery because we had a disagreement with them about whether there would be any discovery. We had another meeting. That meeting was attended by Akin Gump who had now come on as counsel for the GM Nova Scotia Finance trustee. And it was attended by the New GM. And following that meeting, the creditors' committee filed an amended objection which is the operative objection before Your Honor. That was filed on November 19, 2010. And then pursuant to an agreed schedule, because the noteholders and the other claimants here wanted to be able to put in a response before Your Honor had an initial pretrial conference in the case, they did so just this past Monday, December 13th.

There were three substantive responses filed. It's more than 110 pages of response. And there were a number of joinders that were filed as well.

Procedurally, that's where we are. A brief overview of the objection. The claims that we're challenging arise out of something called a lockup agreement. The lockup agreement was entered into hours and maybe minutes before GM filed its bankruptcy petition on June 1, 2009. And the consequences of

the lockup agreement are that the GM Nova Scotia Finance bondholders received a consent fee, a cash consent fee, of 369 million dollars which is thirty-six percent of the face amount of their bonds. They have asserted 2.67 billion dollars worth of claims in the Old GM bankruptcy proceedings. And you get to that number by adding the GM Nova Scotia Finance trustee's claim and the guaranty claim that's been asserted by the bondholders. 600 million dollars of that 2.6 billion dollars worth of claims relates to a swap that, in the first instance, was an obligation that GM Nova Scotia Finance owed to Old GM. And through a series of provisions in the lockup agreement that I know Your Honor doesn't want to hear about now, that became a claim against the Old GM estate.

And so, it's this whole ball of wax that we are taking aim at with our objection. And all of these claims, at the end of the day, are based upon 1.07 billion dollars worth of notes that were guaranties by Old GM and that we argue in our objection ought to, in the first instance, be reduced by the 369 million dollar consent fee that was paid because we say it wasn't really a consent fee. It was a payment against the principal amount of the notes.

I won't take Your Honor through the various legal theories that we have in our objection. But --

THE COURT: I've read the objection.

MR. FISHER: -- those are the facts that are

essential to our objection.

As I said at the outset, we need discovery. It's been our position from the very beginning that we need discovery. That's why we served discovery requests in August.

I think that part of the arrangements behind the lockup agreement and the choreography that followed the lockup agreement was to try to have the agreement escape this Court's scrutiny. And we want to make sure that we have a full and fair opportunity to kick the tires and to test the legitimacy of these claims. And so, I think what we envision is document discovery from the parties to the lockup agreement. We envision taking between ten and fifteen depositions. And then it's possible that this objection would require expert testimony on the question of whether this consent fee, the 369 million dollar fee was reasonable.

What we've proposed to the other side was that we ought to devote five months to all of that discovery, that's the paper discovery, the deposition discovery and, potentially, the expert discovery. Based on the Court's calendar, it should be scheduled for an evidentiary hearing for sometime thereafter. And we would be happy to work with all the other parties to come up with an agreed to pre-hearing briefing schedule so that as many issues that can be vetted as a matter of law in advance of the hearing are vetted.

In a nutshell, that's our position, Your Honor.

THE COURT: All right. Mr. Zirinsky, are you speaking for some of the noteholders or all of them?

MR. ZIRINSKY: I'm speaking for four noteholders that I represent, Your Honor.

THE COURT: All right. Come on up.

MR. ZIRINSKY: For the record, Bruce Zirinsky, Greenberg Traurig on behalf of Appaloosa, Aurelius, Fortress and Elliott. Your Honor, mindful of your point that we're not here today to argue the merits, I'm not going to argue the merits.

THE COURT: All right. I'll tell you the same thing that I told Mr. Fisher. I read your response and Philip Dublin's response and the New GM response although somebody can help me understand its standing a little bit better along with the creditors' committee's response.

MR. ZIRINSKY: Thank you, Your Honor. Just to put things into context, Your Honor. The objection obviously seeks to disallow and/or reduce or and/or equitably subordinate the claims filed by the noteholders on their guaranty against GM. GM is the guarantor of the bonds. It also seeks similar relief with respect to a claim filed by the bankruptcy trustee of GM Nova Scotia which is a claim based upon the Companies Act of Nova Scotia. Nova Scotia is what's called an unlimited liability company. GM -- Old GM is the sole member and, under Canadian law, Old GM is responsible for payment of any

deficiency claim upon the winding up of the unlimited liability company. So those are the two claims.

I'm not going to go into all of the background and transactions. Suffice it to say that there were arm's length negotiations held between the bondholders, represented by me, and GM shortly before GM filed for bankruptcy. The terms of that agreement were set forth in what's described as a lockup agreement. There was a public disclosure through an SEC filing by GM on June 1st through an 8(k) in which the entire transaction or the agreement was disclosed. It was the subject of a consent solicitation process which occurred, I believe, sometime in either late June or early July of 2009. The -- part of the arrangement was a release of intercompany claims held by GM Nova Scotia of about a billion three hundred million or a billion four hundred million dollars depending upon the exchange rate of Canadian versus U.S. dollar. So GM Canada received a release of that intercompany claim in exchange for the payment of the consent fee.

As a consequence of that, GM Canada was able to avoid the necessity for seeking bankruptcy or similar relief under Canadian law. And as the Court is well aware, GM Canada, a wholly owned subsidiary of Old GM was part of the assets acquired by New GM under the purchase agreement which Your Honor approved back in July of 2009 as part of the overall GM restructuring sale transaction.

The objection ignores or tends to overlook or try to overlook two or three very important elements. First of all, these transactions were fully known and were public and were disclosed at the time of the sale held before Your Honor. At the time of the sale and included in the sale of assets to New GM were any claims against GM Canada, including any avoidance actions which were acquired by New GM under the sale order.

In addition, under the sale order, as I mentioned, the stock of GM Canada was sold to New GM. And in addition, New GM assumed -- the lockup agreement was assumed and assigned by Old GM to New GM under Section 365. It was an assumed agreement.

Now, without getting into an argument today as to what all of that means, as we set forth in our papers, we believe that even if you accept the factual allegations of the committee on their face, which obviously we don't, and their attempt to characterize the transactions as something inappropriate, which again they weren't, the fact is that we believe, as a matter of law, all of these claims can be disposed of by the Court by way of summary judgment. At the very least, we believe that a motion for summary judgment would enable the Court to determine to what extent, if any, there were any genuine tryable issues of fact which might be the basis for discovery.

The committee has suggested and they've given us a

working list of fifteen potential deponents, including the U.S. Treasury Department and the Export Development Canada, two governmental agencies which were, if not involved, were aware of these transactions at the time they were being negotiated. My point -- and they're proposing a five month discovery schedule at which time will then first determine how to proceed before Your Honor with a hearing.

Our clients are owed substantial amounts of money. The debtors' plan, which is -- Your Honor just recently, I believe, approved the disclosure statement -- treats these claims as disputed claims. And as a consequence, no distributions can be made on these claims if that's the way the plan ultimately gets confirmed. No distributions can be made on these claims unless and until Your Honor has resolved the objections. We believe that's, obviously, unfavorable to all of the bondholders who will not receive any distributions if that remains the state of play. Moreover, the type of schedule that the committee is proposing, five months of discovery and then we'll decide how to try the case, means, for all intents and purposes -- and I'm mindful of one of Your Honor's remarks earlier in connection with the fee hearing or the fee applications -- that this will delay distributions to creditors. We don't think that's fair. We think this matter should be adjudicated as promptly as possible and --

THE COURT: Well, you're not suggesting it's going to

delay distributions to all creditors. It's just going to delay distributions to those creditors who are parties to this transaction.

MR. ZIRINSKY: It will delay distributions to all bondholders of these -- all holders of these notes. And there are many holders of these notes beyond the four entities that I represent. So none of those parties will receive a distribution on these notes or on the guaranty claim under these notes as long as the objection is outstanding unless the Court were to make some ruling to the contrary allowing some form of distribution.

So we believe it's important that these matters get resolved expeditiously. We are mindful that Your Honor has a rule that you must, in effect, approve any motion for summary judgment --

THE COURT: Not just me. The entire Southern District of New York.

MR. ZIRINSKY: Well, which also applies to Your Honor. We are mindful of the rule. And we obviously were tempted to ask Your Honor to permit us to file summary judgment some time ago. But we also determined that given the efforts to try to work this out with the committee's counsel to see if there was a way to avoid a dispute about this and to see if we could proceed on some form of summary judgment basis, on an expedited basis, which unfortunately did not work out. We were

unable to reach agreement on that, we decided to file our responses.

New GM is represented here by Mr. Steinberg. He can speak to any questions you have for them. But in terms of their standing, I think that -- remember that the committee is not only objecting to the claims, but the committee has filed a motion or has included within their objection, a request for relief under Federal Rule 60(b) to set aside the sale order or to modify the sale order. Obviously that would have rather substantial consequences to New GM as well as potentially to the entire Chapter 11 case, but I'll let Mr. Steinberg speak as to the potential consequences for New GM. So there, I think they are potentially affected by what happens here.

And we also believe that the committee has failed utterly to set forth any basis -- legitimate basis -- for that kind of relief. And given the fact that the entire predicate of their claim is that somehow or another the consent fee was somehow a fraudulent transfer or otherwise an avoidable transfer, and that claim has been assigned -- any avoidance claim has been assigned to New GM, it doesn't belong to the estate. The claim was given up.

So just as a matter of law, we don't see how that can be pursued, unless the committee is serious about trying to ask Your Honor to, in effect, set aside Your Honor's order of 2009, which approved the sale to GM -- to New GM, and modify the sale

order, which we don't think is warranted. We don't think there's any basis for it. And again, we think that's something that should be disposed of by the Court up front. In connection with a motion for summary judgment, we would also seek a ruling from Your Honor as to the 60(b) relief requested by the committee.

So just to sum it all up, Your Honor. We would propose to file a motion for summary judgment in early January. We could agree to a schedule. Obviously before argument is made, Your Honor will have an opportunity, together with the parties, to determine, based on the papers filed, whether or not there are any legitimate, genuine issues of fact that need to be pursued or tried for which discovery may possibly be warranted. And so even if we don't eliminate all claims and all discovery, I think we will certainly narrow the field substantially. It will also reduce the time necessary for discovery, if that's the way it goes. And it will also substantially reduce the cost and expense of litigating and potentially resolving this matter. Thank you.

THE COURT: All right. I don't see Mr. Golden or Mr. Dublin.

MR. O'DONNELL: Your Honor, may it please the Court. Sean O'Donnell.

THE COURT: McDonald?

MR. O'DONNELL: O'Donnell.

THE COURT: O'Donnell.

MR. O'DONNELL: Mr. Golden and Mr. Dublin are in Delaware on another matter and apologize for not being here today.

THE COURT: I see your name on the submission.

MR. O'DONNELL: Yes, Your Honor.

THE COURT: All right, Mr. O'Donnell.

MR. O'DONNELL: Your Honor, for the record, Sean O'Donnell with Akin Gump on behalf of Green Hunt Wedlake Incorporated, Trustee of General Motors Nova Scotia Finance Company. We join in the suggestion by the noteholders that, in fact, most if not all of the claims could be disposed of by summary judgment.

If you were to look at essentially the five claims for relief that the committee's seeking, they all can either be dealt with as a matter of law or by certain undisputed facts that are either in public filings or in their very own papers. The duplicative claim, for example, is an issue of law that can be dealt with by summary judgment, and the remainder of the claims, the avoidance claims, go towards -- the lynchpin of the claim is an objection to the lockup agreement and the consent fee. And as mentioned a moment ago by counsel for the noteholders, on June 1, 2009 there was an 8-K that was filed by the debtors. That 8-K expressly, not only identifies the lockup agreement but goes through and describes the very terms

that the committee is objecting to now.

THE COURT: Mr. O'Donnell, as I understand the exchange of papers, or at least the committee's position, they're not saying that this was done in the dead of night; they're saying that this was a bad transaction that would be no less bad if it were done in Macy's window, which it seemingly was. Both you and Mr. Zirinsky had talked about the disclosure of it. But as I understand the gist of the creditors' committee's position, as to which I express no substantive view, but I hear when people talk to me, they're saying that in substance it was an avoidable transaction and/or one that justifies equitable subordination.

MR. O'DONNELL: The problem with that position, Your Honor, is they didn't say that at the sale hearing. They didn't say it -- in fact not only did they not object, they consented and supported the transfer of any claim relating to the consent fee by GM Canada to New GM. It's no longer an asset of the estate. It's not something that the committee can complain of after approving the sale. So there's no dispute as to the disclosure and a month later they say this is fine, you can sell these claims to New GM. It's part of what New GM bought. It's why, if you were to grant the relief that they're seeking, you'd have to essentially unwind that 363 sale, which I don't think anybody wants.

Now, Your Honor, at a minimum, what I would suggest

is allow the parties to move on an expedited basis, summary judgment briefing. We can -- in the meantime, document requests can go out the door, but we're prepared to move for summary judgment within another week or two. The other side is free to argue that it's premature or that there are facts that will raise tryable issues. We don't think that's the case, Your Honor. And we're pretty sure that we can convince you of that with our papers. Thank you.

THE COURT: I'll hear from New GM, at least until I can ascertain its standing.

MR. STEINBERG: Good afternoon, Your Honor. Arthur Steinberg from King & Spalding on behalf of New GM. There's a part of me that wants to agree with you and then sit down. And I would, because this is really an objection to claims filed by an estate representative against claimants who have filed large claims in the case. So under normal circumstances, what would a purchaser of the assets have to weigh in on the subject, and why would, in effect, New GM want to weigh in something where the plaintiff is the creditors' committee? And so, to that extent, Your Honor, I was almost happy to sit maybe even further --

THE COURT: Yes, I kind of thought that New GM had an interest in the welfare of the creditors of Old GM.

MR. STEINBERG: That's correct, Your Honor. And on the same token, the creditors of Old GM have an interest in the

welfare of New GM. And it is because of that reason that I stand here today, why we filed a fairly substantial response, and why I believe there are five separate reasons why we have to weigh in on this matter and why I actually support the suggestions made by that side of the table that so much of this can be resolved without five months of discovery with lots of depositions, because some of the issues are very specific, very concrete, and can be decided on the papers. But I'd like to go through what Your Honor's threshold issue is, which is why New GM is weighing in on this controversy, and go through the five factors.

The first, as articulated by Mr. Zirinsky, was that there's a Rule 60(b) request to vacate the sale order. We're the purchaser under the sale order. We had a final and nonappealable order. The ramifications of any kind of Rule 60(b) relief, given to the committee or anyone else, has major ramifications to New GM. So on that basis alone, New GM would be appearing.

And by the way, if I can just digress off the five points? Because I think that whole 60(b) relief is a tempest in a teapot. And the fact that no one really wants to say what it is, except for what I'm about to say now, I think it's important for Your Honor to hear. They filed a 60(b) relief. The other side files fifteen pages of briefing in response to it. The committee doesn't really articulate what their 60(b)

request is, other than to say it's protective, which is a very unusual way of articulating what it is.

What I think that's really behind here, just so that Your Honor has the issue on the table, without trying to articulate it, is that when New GM designated the lockup agreement as an executory contract to be assigned to it, it did so because it believed that there was a cooperation covenant in the agreement that if either Old GM hadn't complied with, it could potentially unravel the lockup agreement and particularly have an impact on GM Canada. So they asked for the assignment in order to make sure that that cooperation covenant was going to be complied with.

The noteholders have articulated that the assumption and the assignment of that lockup agreement constituted the allowance of the noteholders' claims and the Nova Scotia trustee claim, for all purposes. We've stated in our papers that that was not our belief that that was the intent or what actually happened by virtue of the assignment, because the actual lockup agreement says that Old GM would acknowledge the claims and agree to support the claims to the fullest extent permitted by law. And that when that document -- when that lockup then gets assigned to New GM, that's all that happened, is that New GM will advocate and support their position to the fullest extent permitted by law. We believe that preserved the right for the committee to raise the objection and do what they

are trying to do now.

We also believe that the noteholders' position is the correct position, but the issue was still for Your Honor to determine, and no one was trying to, in effect, have claims allowed of a billion dollars, by virtue of designating it in a long list of executory contracts after the sale order.

I think all of the Rule 60(b) issue is whether there was a greater ramification for the assumption and assignment order other than what I've just said, which is that we wanted to take on the cooperation covenant, but it wasn't a deemed allowance for purposes of the bankruptcy case.

If that is litigated, because the noteholders will want to articulate their position, the committee will take whatever their position is, I've already articulated what New GM's position is -- and Mr. Karotkin is in court, I bet you he will agree with me on what Old GM's position is, because we've talked about it before -- then Your Honor could have that issue teed up without discovery. Because there's nothing, really, I think, more behind the Rule 60(b) relief. And then one material issue that's involved in this case from New GM's perspective, would go away. And a very big issue from a public perception, that the committee is trying to undo a portion of the sale order for protective basis.

And you couldn’t -- if Your Honor didn't see the issue without me articulating it, it's because the committee

never articulated what their real reason was. And they framed -- they didn't say what part of Rule 60(b) that they were moving under. And they came up with the notion, which I've never heard of before, is I'm moving on a protective basis.

THE COURT: Pause, please, Mr. Steinberg. If you could agree in paper by a stip or consent order or something like that with the creditors' committee in this case and with debtors' counsel, Mr. Karotkin or his designee, to confirm and memorialize your understanding of the limited significance of the assignment, then I need your help on a related standing issue. What standing do other individual parties in the case, most obviously bondholders, have to quarrel with the confirmatory understanding between the two sides of the assume and assign relationship?

MR. STEINBERG: Your Honor, if they wanted to argue that it had a greater ramification, I think they should be free to argue that, if they seriously want to argue that. All I can articulate was why New GM designated the assignment as part of the list of executory contracts and what it was trying to accomplish and what it was not trying to accomplish. And I think it's that concern of the deemed allowance of these claims which underlies the Rule 60, and I think you don't need discovery on that issue.

You can easily have the parties -- or Your Honor could decide that issue. We can stipulate as to what New GM's

intention was. Old GM could stipulate what its intention was. And then the issue is teed up. And if I'm correct, the Rule 60(b) relief of this entire motion goes away.

Now, I'll go through my entire presentation, but the committee counsel can say whether I'm correct as to what that basis of the 60(b) relief --

THE COURT: Well, it wouldn't be fair to any lawyer in the country to make him respond on his feet to that. But obviously some of the questions that I ask are intended to provide food for thought for lawyers in the days that follow a hearing.

MR. STEINBERG: Okay. The second reason why, Your Honor, as to why we have -- why we are trying to weigh in on this matter, is that we -- our reading of the lockup agreement is that if there is a disgorgement, if there's a requirement to repay the consent fee, that that would have ramifications to the intercompany claims that have been released, and would have real ramifications to GM Canada. And therefore, in order to protect an asset that we purchased, we believe we have to weigh in.

And that dovetails to the third point, which is that in the sale order itself, we protected ourselves so that the committee couldn't do what they're trying to do, because we bought the avoidance power claims between the estates. That was part of the list of assets that went over. It was not

based on the lockup agreement, it was based on the sale order. And therefore, the ability to get a disgorgement of the consent fee, which has ramifications on GM Canada, is something that we made sure would not happen by virtue of the terms of the sale agreement.

And so the third point is that they are looking to build a case based on assets which are not part of this estate. Voiding power claims were sold. Accounts receivable -- so the intercompany claim between GM and GM Canada -- were sold to New GM. In fact, cash above 950 million dollars was all swept by New GM. So if there was more cash in this estate, that would have been swept to New GM as well too. They are trying to, in effect, to pick a provision of the sale order -- forget the lockup agreement -- that they say, you know what, that's a benefit that was there that I'd like to have back.

The fourth element, Your Honor --

THE COURT: Well, is the creditors' committee's position -- and maybe Mr. Fisher is the better guy to ask than you -- but is the creditors' committee's position that they want to recover 360,000 dollars worth of -- 360 million dollars worth of cash, or rather simply that they want to get -- have the estate get credit for the 360 million dollars that was laid out as part of that consent fee?

MR. FISHER: It's the latter, Your Honor.

THE COURT: Yeah.

MR. STEINBERG: It may be the latter, but I think they wrote --

THE COURT: Go on, Mr. Steinberg.

MR. STEINBERG: -- okay. It may be the latter now, but I think their papers actually have the former.

Your Honor, the next thing -- and by the way, that's why I think a motion practice would narrow the gap here. But if their ability is based on avoiding power claims, then we weighed in because we wanted to make sure that everybody understood that we bought avoiding power claims which dealt with transfers from Old GM to its subsidiaries.

The fourth thing, Your Honor, is that they have talked about the swap liability claim, which is a claim that is asserted by New GM against the Nova Scotia trustee, which is part of their claim. And in the context of objecting to their claim, they have used language like "nefarious conduct" and stuff like that. So to the extent that the conduct of New GM was being weighed in on, we thought we needed to respond. To the extent that they're talking about --

THE COURT: Well, wait, Mr. Steinberg. At the time that all of this went on, I didn't think there was a New GM.

MR. STEINBERG: There wasn't. But they just picked us because --

THE COURT: Well, I --

MR. STEINBERG: -- but they wrote it --

THE COURT: -- does protecting you against accusations of nefarious conduct require any more than me saying, I understand that there wasn't a New GM when this went on?

MR. STEINBERG: Well, that's fair, Your Honor, and I appreciate that. It's just that until you said it, all I had was a naked allegation by a committee that didn't want to attack its own estate, because they were the representative of the estate. So I figured I had to say something. And I appreciate Your Honor's remark.

But counsel misstated that the lockup agreement is where the swap liability claim was transferred. The swap liability claim was transferred as part of the sale order. It is another asset that is embedded in the sale order. So a good portion of the underpinnings of the committee's objection is based on assets that were sold pursuant to the sale order, totally without regard to the lockup agreement.

And therefore, I believe that since I'm firmly convinced that I'm right on these issues, that we might as well have motion practice to confirm that I'm right and see what's left of their complaint, and how they want to articulate their complaint, based on what the provisions of the sale order are.

And, Your Honor, just two -- one other thing. Your Honor had said that they're not articulating that in the dead of the night the lockup agreement was; that it was open and

notorious and you should be able to evaluate the claim. In counsel's opening presentation to Your Honor he said that we tried to -- someone, I don't know who -- tried to keep the lockup agreement away from the Court's scrutiny. So there was the element, in even the presentation heard this morning, that there was an element that this was hidden from somebody.

And that's why you've got me saying what I did in our papers, and why the noteholders went through a long list of disclosures that were made with regard to this lockup agreement. And these disclosures were things that the committee knew. At the bottom line, at the end of the day, from New GM's perspective, we would love to exit the case, love this to be a strip-down objection between the committee and the noteholders and the Nova Scotia trustee as to whether these claims should be allowed or not allowed. If we are a fact witness in connection with the lockup agreement, then we will have to bear the consequences. It's probably the Old GM people who would be the fact witnesses. But we stand and rise because, A) --

THE COURT: Well, the Old GM people are for the most part New GM people, aren't they?

MR. STEINBERG: That's correct, Your Honor. And that's why I'm able to make the statements I made as to what was intended, is because I spoke to the people who are in New GM who were involved in the transaction for Old GM.

But until Rule 60(b) relief goes away, until I'm sure that GM Canada is not going to be impacted by this proceeding by virtue of anybody arguing that there's a damage to the lockup agreement, until I can confirm that no one is trying to use assets that we purchased as part of the sale agreement as a basis for any type of claims, then I feel I was compelled, at least in the first instance, to raise those issues and point them out to Your Honor. Thank you.

THE COURT: All right. Mr. Fisher, would you like to reply? Well, before you do, Mr. Fisher, Mr. Karotkin, I assume you have no dog in this fight right now?

MR. KAROTKIN: That's correct, Your Honor. We view this as an intercreditor dispute. And consistent with what you said earlier, our interest is in getting this resolved expeditiously and economically.

THE COURT: All right. Mr. Fisher?

MR. FISHER: Your Honor, I certainly won't address all the arguments on the merits. But I did not mean to leave out from my opening remarks a discussion of 60(b). Because I recognize that that request for relief has been something of a lightning rod, and we certainly did not intend it to be that. And in fact, that's why we used this peculiar word "protective". So I want to explain what it is that we mean with respect to our 60(b) relief and how I think the best way to approach that particular request is.

We've learned that the lockup agreement was assumed by Old GM and assigned to New GM. And we see now from the papers that were filed on Monday what we expected to see, which is that at least some of the parties are arguing that the assumption of the lockup agreement by Old GM means that there was a judicial finding that the lockup agreement was a reasonable exercise of the debtors' business judgment.

They're trying to use the assumption itself to bootstrap arguments on the merits and to argue that the lockup agreement in its entirety is insulated from review. And so to the extent that the sale order and the assumption order can be construed to be a judicial finding to that effect, we might need relief from such an order. I don't think we will, because I'm hopeful that Your Honor will -- again, I think that this is factual as well -- but I think that once it's established that despite what the 8-K said, because the disclosure actually was not as complete as counsel would suggest, the creditors' committee did not know when and whether this contract was being assumed and assigned, and it could not have appreciated what the full consequences of that assumption and assignment were.

And so it's possible -- one way to have gone would have been to seek 60(b) relief from every aspect of the sale order that we thought we needed to in order to preserve maximum flexibility to challenge the lockup agreement and then press forward with that motion. But I think that that would have

been a very aggressive and unsettling approach. And I think that as discovery progresses it's quite possible that we can narrow the extent to which we need 60(b) relief, if at all; which is yet another reason why, as opposed to the suggestion of New GM, I think the better approach is to let everyone learn what the real facts are here before we come to this Court and ask for rulings. Because if our hand is forced, we end up having to ask for rulings that are more definitive and perhaps broader than would be necessary if discovery were permitted.

And when I say that the 8-K -- first, I think Your Honor is correct that even if -- that it's our position that even if this agreement had happened in the Macy's department store window, it would still be inequitable. But it's also the case that we are complaining about the lack of sunshine and that there was not sufficient disclosure about what the true implications of this agreement were and who it benefited and why it benefitted them.

So we need discovery with respect to all of that. You heard New GM's counsel say that the only reason that the lockup agreement was assumed was because they wanted to make sure that Old GM couldn't take pot shots at the lockup agreement. That's the -- the euphemism is the cooperation covenant. But in substance, that's what it means. And I guess it means that that was the only remaining portion of this contract that required performance on the part of Old GM. And

it's Old GM's requirement to keep its sock in its mouth that makes this contract executory and even capable of being assumed.

But if that's the meaning of assumption, if the only meaning is that Mr. Karotkin and Weil Gotshal is not allowed to say anything bad about the lockup agreement, I think we can live with that. But that's not what they're going to argue the only meaning is. They're going to argue that the meaning of the assumption is that this was a reasonable exercise of Old GM's business judgment. And we certainly can't accept that there's already been a judicial finding as to that, since the creditors' committee and Your Honor was never apprised of what the consequences of this assumption and assignment were.

On the topic of delay, I'll simply point out again, we served discovery requests in August. If we had just been engaged in discovery during this period of time, I think we would be quite far along. And we're only now hearing that in two weeks, claimants are prepared to make summary judgment motions. And as I pointed out at the outset, I think that the proposal by claimant's counsel is actually not going to achieve the objective that they seem to want, which is the more expeditious resolution of this case.

Your Honor is also correct that the distributions that are being held up are not distributions to all creditors, it's only distributions to GM Nova Scotia Finance bondholders.

And there's a reserve that's been established to ensure that if we're wrong, no one is prejudiced by whatever delay is occasioned by the full and fair litigation of this objection.

THE COURT: All right. Everybody sit in place.

(Pause)

THE COURT: All right, ladies and gentlemen. The notion that I would allow summary judgment motions before giving the creditors' committee a fair opportunity for discovery is unthinkable. And I'm not going to permit summary judgment motions under those circumstances without determining the extent, if any, to which I would permit them thereafter.

It's unthinkable under Rule 56(f) of the Federal Rules. It's unthinkable as a matter of basic fairness to the creditors in this case -- the nonbondholder creditors in this case. I wouldn't do it in a baby 11 and I'm sure not going to do it in an 11 of this size, where there are thousands of nonbondholder creditors who have a legitimate interest in the fair prosecution of this litigation.

At the risk of stating the obvious, I express no view as to the ultimate merits of the creditors' committee's position on these issues. But these are, as the exchange of briefs on both sides makes clear, serious claims, factually complicated claims, which deserve and indeed require judicial scrutiny, as to the facts as well as the law underlying the claims that the creditors' committee wishes to pursue, and not

in a factual vacuum, or under which I or any higher court would be required to analyze them with knowledge of less than all of their relevant facts.

I am painfully aware, as my earlier remarks telegraphed pretty clearly, of the reality that intercreditor disputes are very expensive. Nevertheless, there are some intercreditor issues that can't be swept under the rug and ignored or be given expedited shorthand attention. As much as I have probably articulated by words or body language my frustration with the disputes between the asbestos claims creditors' committee and the general creditors' committee, I would not have suggested and I don't suggest to this day that those parties are entitled to a judicial determination of their respective rights. And I feel no differently with respect to this issue.

So we're going to do it by the book, folks. We're going to do it by the way that this court -- and by this court, I mean not me alone but the judges in the United States Bankruptcy Court for the Southern District of New York -- have done by our local court rules which is summary judgment motions may be made after a pre-motion conference under which the Court can consider whether or not the green light for filing such a motion should be given. But that pre-motion conference will be taken after most or all of the discovery has been taken, not now, and certainly not today.

I express no view as to whether or not I would later grant or deny or, as I so often do, grant but with a message "I think you're wasting your time", if such a request were made down the road. Just as it would be irresponsible for me to do anything else at this point in time, it would be irresponsible for me to make a prediction with respect to that issue at this point in time. So I'm not going to do it.

Now, with that said, I do believe that the discovery has to be handled in a sensible way. First, I don't remember how often I've had to address this since the request is made increasingly rarely, but I hate interrogatories, except on the most basic statistical and numeric information. Or, like we used to do under the old MDL rules, before Rule 26 was amended, interrogatories can be used to identify the names and locations of witnesses. But I don't want them used for anything other than that.

Document production is authorized. And lay witness deposition testimony will be authorized. But you've got to come back to me for permission to use interrogatories. And the presumption is going to be that there are other and better ways of getting information of that character.

Whenever you're talking about discovery of governmental witnesses -- and I assume for the purposes of this discussion that I should treat the Canadian government with the same respect that I would treat our own -- you tend to involve

more complicated issues of internal deliberations, deliberative privilege. I haven't dealt with these issues in years. I'm not sure if I have my arms around them other than recognizing that they exist. But that's going to have to be done with the consent of the government; or if there is an agreement to disagree, you're going to have to give me an opportunity to understand what kinds of discovery of the government are appropriate and what are not.

At least seemingly, if the government discusses things with outsiders, like bondholders or their lawyers, that well might not be privileged or subject to the protections which we, as citizens and judges, accord to the federal government and its personnel. But you've got to be careful in that area. And I'll be available if you have to agree to disagree.

You are to do your discovery quickly, cleanly; and I'll be available, as I always am, in the event of discovery disputes, after the usual meet-and-confers. But I need you to redouble your efforts to make sure that the discovery is efficiently handled, cooperative and clean.

You are to prepare a stip or consent order embodying the request for discovery. As is apparent, discovery is presumptively a two-way street. I recognize that the creditors' committee is likely to have less in the way of information that's relevant than maybe other parties, but it is

not, just because it's the creditors' committee, exempt from discovery. And after you have some kind of stipulation or consent order with as much as you can paper, you're to submit it to me for judicial approval. If it's reasonable, that judicial approval will be granted.

All right. Not by way of reargument, do we have open issues? All right. Hearing none -- am I correct, Mr. Karotkin, we have no further business as well?

MR. KAROTKIN: That's correct, Your Honor. Thank you.

THE COURT: All right. We're adjourned.

(Whereupon these proceedings were concluded at 3:26 p.m.)

I N D E X

R U L I N G S

I N D E X, cont'd

R U L I N G S

DESCRIPTION	PAGE	LINE
Parties directed to prepare stipulation or consent order re discovery requests for judicial approval	58	21

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

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

Lisa Bar-Leib

Digitally signed by Lisa Bar-Leib
DN: cn=Lisa Bar-Leib, o, ou, email=digital1@veritext.com, c=US
Date: 2010.12.16 12:08:47 -05'00'

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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: December 16, 2010