AKIN GUMP
STRAUSS HAUER & FELD LLP
Attorneys at Law

SEAN E. O'DONNELL
212.872.1093/fax: 212.872.1002
sodonnell@akingump.com

July 19, 2011

VIA ECF AND UPS

Hon. Robert E. Gerber
United States Bankruptcy Court for the Southern District of New York
One Bowling Green
New York, New York 10004-1408

Re: *In re General Motors Corp., et al.*, 09-50026 (REG): Official Committee of Unsecured Creditors' (the "Committee") First Amended Objection to Claims filed by Green Hunt Wedlake, Inc. and Noteholders of General Motors Nova Scotia Finance Company and Motion for Other Relief (Docket No. 7859)

Dear Judge Gerber:

On behalf of Green Hunt Wedlake, Inc., the trustee of General Motors Nova Scotia Finance Company (the "Nova Scotia Trustee"), we are writing pursuant to Local Bankruptcy Rule 7007-1(b) to request a conference with the Court regarding a discovery dispute between the Nova Scotia Trustee and the Motors Liquidation Company GUC Trust (the "GUC Trust"). Pursuant to section 6.2 of the confirmed plan, the GUC Trust is now prosecuting the objection to the Nova Scotia Trustee's claim which had formerly been prosecuted by the Official Committee of Unsecured Creditors (the "Committee"). The Nova Scotia Trustee and the GUC Trust have met-and-conferred regarding the discovery dispute, but have been unable to reach any resolution.

BACKGROUND

The Litigation At Bar

On November 25, 2009, the Nova Scotia Trustee filed a proof of claim (claim no. 65814) against Motors Liquidation Company in an amount not less than $1,607,647,592.49. On November 30, 2009, the Nova Scotia Trustee filed an amended claim (claim no. 66319), providing additional detail regarding its claim. Relevant to the instant dispute, the Nova Scotia Trustee's claim is, in part, comprised of amounts owed under a currency swap agreement with General Motors Co. (the "Swap Liability").

One year later, on November 19, 2010, the Committee filed its First Amended Objection (the "Objection") to the Nova Scotia Trustee's claim, as well as the claim of certain noteholders of General Motors Nova Scotia Finance Company (the "Noteholders," and together with the

Committee and the Nova Scotia Trustee, the "Parties"). This dispute arises out of the litigation concerning the Committee's Objection.

The April 15, 2011 Telephonic Conference

In connection with the litigation, this spring, each of the Parties produced certain documents. A dispute arose between the Committee and the Noteholders, requiring this Court to conduct an informal telephonic conference on April 15, 2011 (the "Telephonic Conference").

One of the primary questions addressed at the Telephonic Conference was the Committee's request that the Noteholders produce documents from June 1, 2008 through July 2, 2010. *See* Letter from Eric B. Fisher to Hon. Robert E. Gerber, dated March 29, 2011 at 2 [Dkt. No. 9940] (the "March 29 Letter"). The Nova Scotia Trustee had previously agreed to produce documents for this period, and therefore the dispute over the time frame was entirely between the Committee and the Noteholders.

During The Telephonic Conference, The Committee Made Various Representations To The Court Concerning The Nova Scotia Trustee's Production

At the Telephonic Conference, the Committee made various representations to this Court in support of its argument that the Noteholders should be required to produce documents dating back not only to June 1, 2008, but now through December 31, 2010 as well. Specifically, at the Telephonic Conference, counsel to the Committee made the following representations to the Court concerning documents the Committee had purportedly reviewed in the Nova Scotia Trustee's initial production:

- "[T]here are emails saying that [the swap] claim may be overstated. And when I stay [sic] overstated, not by a trivial amount, but by an amount in excess of 100 million dollars." Telephonic Conference Tr. 7:9-11, Apr. 15, 2011, attached as Ex. A to the Nova Scotia Trustee's document requests which are attached hereto as Ex. 1.
- "[R]ight up through the end of 2010, there are communications between the GM Nova Scotia Finance trustee and the noteholders and other bondholders about filing claims in the Nova Scotia proceeding that relate to – the same claims the various – in the Old GM case." *Id.* at 7:18-22.
- "[We have] already seen communications going until the end of 2010 that bear on how [the swap] claim ought to be properly calculated and whether or not it be allowed." *Id.* at 8:21-23.

- "[W]ell into 2010 there is discussion whether those swaps are being properly calculated for purposes of the claim in this case." *Id.* at 20:14-16.

(the "Representations.")

After hearing these Representations and other arguments from the Committee, the Court ordered that the Noteholders produce responsive documents through December 31, 2010. *Id.* at 21:2-3. Shortly thereafter, the Committee approached the Nova Scotia Trustee and demanded that it too produce documents through December 31, 2010. Not wanting to further burden the Court, the Nova Scotia agreed to produce these documents, despite its belief that the documents would be irrelevant to any issue raised in the Committee's Objection. On April 29, 2011, after many hours of additional document searching and review, the Nova Scotia Trustee made a supplemental production of documents responsive through December 31, 2010 to the Committee.

The Nova Scotia Trustee Propounded Document Requests To The Committee Related To The Representations

After the Telephonic Conference, the Nova Scotia Trustee's counsel thoroughly searched its production and could not find any documents supporting the four Representations made to the Court by the Committee. As a result, on May 19, 2011, the Nova Scotia Trustee served the Committee with four discrete document requests asking the Committee to identify all documents and communications in its possession, custody, or control, as of the date of the Telephonic Conference (April 15) that supported the four Representations made to this Court (the "Requests").

In the interests of resolving the issue quickly, the Requests allowed the Committee to simply identify the Bates numbers of any responsive documents in its possession, custody or control as of April 15, 2011, including those in its own production and those it received from the Noteholders, or if no such Bates numbers existed, to produce a copy of the document(s) itself.

The GUC Trust Has Unreasonably Refused To Produce Or Identify the Requested Documents

On June 20, 2011, the GUC Trust served its Responses and Objections to the Document Requests (the "Responses and Objections"), pursuant to which the GUC Trust categorically refused to identify any of the documents relating to the Representations it made to this Court. A copy of the GUC Trust's Responses and Objections is attached as Ex. 2. In support of its position, the GUC Trust argued, among other things, that the Requests: (i) were served after the

parties purported January 11 deadline to serve all document requests; (ii) seek information that is obtainable from the Nova Scotia Trustee itself; and (iii) are actually "contention interrogatories" which are "in excess" of the discovery obligations allowed by your Honor and not permitted under Local Rule 7033-1(c). Each of these arguments is in error.

ARGUMENT

THE GUC TRUST SHOULD BE INSTRUCTED TO COMPLY WITH THE REQUESTS

The Federal Rules Provide For Expansive Discovery

The GUC Trust should be directed to comply with the Nova Scotia Trustee's Requests. Federal Rule of Civil Procedure 26, made applicable to this case by Federal Rule of Bankruptcy Procedure 7026, provides that "parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense . . . ." Fed. R. Civ. P. 26(b)(1). "All agree that the rules of discovery are to be applied broadly." *In re Six Grand Jury Witnesses,* 979 F.2d 939, 943 (2d Cir. 1992); *see also Jackan v. New York State Dep't of Labor,* 205 F.3d 562, 568 n.4 (2d Cir. 2000) ("Once the litigation has begun, the [parties] can utilize the liberal discovery procedures of the Federal Rules of Civil Procedure, including interrogatories, depositions, and document demands . . . ."). This broad application of discovery rules makes litigation more efficient. "'[L]iberal discovery rules and summary judgment motions allow the parties 'to define disputed facts and issues and to dispose of unmeritorious claims.'" *In re Tamoxifen Citrate Antitrust Litig.,* 466 F.3d 187, 231 (2d Cir. 2006) (citing *Swierkiewicz v. Sorema,* 534 U.S. 506, 512 (2002)); *see also Four Star Capital Corp. v. Nynex Corp.,* 183 F.R.D. 91, 99 (S.D.N.Y. 1997) ("Rules governing discovery should be broadly construed to . . . enable the parties to obtain factual information in preparation for trial.").

The GUC Trust Has Failed To Produce A Single Document Responsive To The Nova Scotia Trustee's Discovery Demands

Although the Nova Scotia Trustee has complied with each of the Committee's overly broad discovery demands and produced nearly 7,000 pages of responsive documents, the GUC Trust has refused to produce even a page of materials responsive to the Nova Scotia Trustee's Requests.

The Nova Scotia Trustee's Requests are entirely reasonable and should be honored. The Requests merely seek to have produced or identified certain documents the Committee referred to at the Telephonic Conference. Those documents relate to core issues in this litigation: (i) the

value of the Swap Liability (allegedly overstated by $100 million), and (ii) discussions of the calculation of the Nova Scotia Trustee's claim. If the GUC Trust was to simply produce or identify the documents sought in the Requests, the purpose of the liberal application of discovery rules would be served: "to define disputed facts and issues and to dispose of unmeritorious claims." *In re Tamoxifen Citrate Antitrust Litig.*, 466 F.3d at 231; *see also Hines v. City of Albany,* 542 F. Supp. 2d 218, 230 (N.D.N.Y. 2008); *Condit v. Dunne,* 225 F.R.D. 113, 115 (S.D.N.Y. 2004) ("The discovery provisions of the Federal Rules of Civil Procedure are designed to achieve disclosure of all the evidence relevant to the merits of a controversy.") (internal citation omitted).

The GUC Trust's Objections To The Requests Are Meritless

The GUC Trust's stated objections to the Requests are meritless. First, its argument that the parties previously agreed to serve all document requests by January 11, 2011 is nonsensical because the Committee's Representations to this Court were not made until April 15, 2011. Arguing that a party should be required to request documents based on an event that has not yet occurred is untenable. Furthermore, we are still in the early stages of this litigation. Depositions have yet to be scheduled and no evidentiary hearing has been calendared. In other words, there is absolutely no prejudice to the GUC Trust if it were compelled to produce or identify the responsive documents—particularly since it has (presumably) already identified these documents prior to making the various Representations to the Court.

Second, the GUC Trust's objection that responsive documents are already in the possession of the Nova Scotia Trustee is unpersuasive, because the Nova Scotia Trustee has already searched its files and cannot locate such materials. Moreover, even if the GUC Trust ultimately does identify documents within the range produced by the Nova Scotia Trustee, precedent from this Court supports production of such documents. "Nothing in Fed. R. Civ. P. 26(b)(1) precludes a party from seeking to determine what documents an adverse party has even though the party seeking the discovery may prove to have some or all of them." *In re Chadborne Indus., Ltd.,* 71 B.R. 86, 89 (Bankr. S.D.N.Y. 1987).

And finally, the GUC Trust's objection that the Requests are nothing but "disguised interrogatories" in violation of this Court's practices and Local Rule 7033-1(c) is off base. First, the Requests are document requests which call for the identification or production of documents. Second, even if the Requests were interrogatories (which they are not), they would still be in keeping with this Court's preference that such interrogatories be limited to "the most basic statistical and numeric information." *See* Pre-Trial Conference Hr'g Tr. 57:11-12, Dec. 15, 2010, attached as Ex. B to the Responses and Objections. In fact, these Requests seek only basic information—the identification of Bates numbers, or in the alternative, production of documents

concerning only the four Representations made by the Committee to this Court. Further, Local Rule 7033-1(c) is inapposite because these Requests cannot be considered "contention interrogatories" under any reasonable interpretation of that phrase. Contention interrogatories are geared towards understanding a party's legal theory of a case and are "distinct from those that request identification of witnesses or documents that bear on the allegations." *Strauss v. Credit Lyonnais, S.A.*, 242 F.R.D. 199, 233 (E.D.N.Y. 2007) (internal citation omitted). Here, the Requests are not designed to uncover the GUC Trust's legal theories or contentions, but merely to identify the documents its counsel referred to when it made the four factual Representations to this Court.

Accordingly, we respectfully request a conference with the Court to address the GUC Trust's refusal to comply with the Nova Scotia Trustee's Requests.

Respectfully,

Sean E. O'Donnell

cc: Daniel H. Golden, Esq.
Eric B. Fisher, Esq.
Kevin D. Finger, Esq.

EXHIBIT 1

AKIN GUMP STRAUSS HAUER & FELD LLP
One Bryant Park
New York, New York 10036
(212) 872-1000 (Telephone)
(212) 872-1002 (Facsimile)
Daniel H. Golden
Philip C. Dublin
Sean E. O'Donnell

Counsel for Green Hunt Wedlake Inc.,
Trustee of General Motors Nova Scotia Finance Company

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*,	:	Case No. 09-50026 (REG)
The Nova Scotia Trustee.	:	(Jointly Administered)

FIRST SET OF DOCUMENT REQUESTS OF GREEN HUNT WEDLAKE INC., TRUSTEE OF GENERAL MOTORS NOVA SCOTIA FINANCE COMPANY, TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, as made applicable herein by Rules 7026, 7034, and 9014 of the Federal Rules of Bankruptcy Procedure, Green Hunt Wedlake Inc., in its capacity as trustee for General Motors Nova Scotia Finance Company (the "**Nova Scotia Trustee**"), hereby requests that the Official Committee of Unsecured Creditors of Motors Liquidation Company f/k/a General Motors Corporation (the "**Creditors' Committee**") in the above-captioned matter produce the documents and materials described herein for inspection and copying at the offices of Akin Gump Strauss Hauer & Feld LLP, attention: Sean E. O'Donnell, One Bryant Park, New York, New York 10036, by June 20, 2011.

DEFINITIONS

As used herein:

1. "***And***" and "***or***" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these requests any information that might be deemed outside their scope by any other construction.

2. "***Any***" means one or more.

3. The "***April 15 Oral Argument***" refers to the telephonic hearing conducted by the Court on the morning of April 15, 2011 in connection with a discovery dispute between the Creditors' Committee and the Noteholders in this matter.

4. "***Communication***" means any verbal, written, or electronic exchange of information and includes, but is not limited to, discussions, negotiations, correspondence, faxes, telegrams, telexes, memoranda, notes, conversations, speeches, meetings, conferences, remarks, questions, answers, panel discussions, and symposia, whether written or oral. The term includes both communications and statements which are face-to-face and those which are transmitted by media such as intercom, telephone, televisions, radio, modem or electronic mail.

5. The "***Court***" means Judge Robert E. Gerber, United States Bankruptcy Judge in the United States Bankruptcy Court for the Southern District of New York.

6. "***Creditors' Committee's Production***" means those materials produced by the Creditors' Committee to the Noteholders and the Nova Scotia Trustee in this matter in response to any discovery request issued by either the Noteholders or the Nova Scotia Trustee.

7. "***Document***" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), including, without limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate document within the

meaning of this term. "Document" includes any Communication and all other writings, drawings, graphs, charts, photographs, sound recordings, images, and other data stored in any medium from which information can be obtained.

8. The term "***Identify***," with respect to a Document or Communication, requires that you state the Bates number associated with the Document or Communication, or if no such Bates number exists, that you produce a copy of the Document or Communication itself.

9. "***Noteholders***" means Appaloosa Management L.P., Aurelius Capital Management, LP, Elliot Management Corporation, and Fortress Investment Group LLC.

10. "***Noteholders' Production***" means those materials produced by the Noteholders to the Creditors' Committee and the Nova Scotia Trustee in this matter in response to any discovery request issued by the Creditors' Committee.

11. "***Nova Scotia Trustee's Production***" means those materials produced by the Nova Scotia Trustee to the Creditors' Committee and the Noteholders in this matter in response to any discovery request issued by the Creditors' Committee.

12. "***Transcript***" refers to the transcript of the April 15 Oral Argument attached hereto as Exhibit A.

13. "***You***" and "***Your***" mean the Creditors' Committee and any member or employee thereof, its agents, attorneys, accountants, advisors, representatives, experts, and consultants, and all other persons acting or purporting to act on behalf of or under the control of the Creditors' Committee, whether current, former, or potential.

INSTRUCTIONS

1. You are required to obtain and furnish all information available to You and to any of Your representatives, agents, employees, and/or attorneys, and to obtain and furnish all

information that is in Your actual or constructive possession, custody, or control, or in the actual or constructive possession, custody, or control of any of Your representatives, agents, employees, accountants, or attorneys.

2. Each document request is continuing and requires You to supplement Your responses to the fullest extent required by any applicable law or rule.

3. If information is withheld under a claim of privilege, immunity, or otherwise, identify in writing the basis upon which the asserted privilege, immunity, or other reason for non-disclosure is claimed, in accordance with the terms and conditions of the protective order agreed to among the parties and entered by the Court in this matter.

4. Each paragraph and subparagraph herein shall be construed independently and not with reference to any other paragraph or subparagraph for the purposes of limitation.

5. References to the singular include the plural, and references to the plural include the singular as needed to construe these requests in their broadest form.

6. References to the past tense shall be construed to include the present tense, and references to the present tense shall be construed to include the past tense.

DOCUMENT REQUESTS

1. Identify all Documents and Communications in the Nova Scotia Trustee's Production, the Noteholders' Production, or the Creditors' Committee's Production in your possession, custody, or control as of April 15, 2011, that support your contention made to the Court at the April 15 Oral Argument that "there are emails saying that [the swap] claim may be overstated. And when I stay [sic] overstated, not by a trivial amount, but by an amount in excess of 100 million dollars." *See* Transcript 7:9-11.

2. Identify all Documents and Communications in the Nova Scotia Trustee's Production, the Noteholders' Production, or the Creditors' Committee's Production in your possession, custody, or control as of April 15, 2011, that support your contention made to the Court at the April 15 Oral Argument that "right up through the end of 2010, there are communications between the GM Nova Scotia Finance trustee and the noteholders and other bondholders about filing claims in the Nova Scotia proceeding that relate to – the same claims the various – in the Old GM case." *See* Transcript 7:18-22.

3. Identify all Documents and Communications in the Nova Scotia Trustee's Production, the Noteholders' Production, or the Creditors' Committee's Production in your possession, custody, or control as of April 15, 2011, that support your contention made to the Court at the April 15 Oral Argument that you have "already seen communications going until the end of 2010 that bear on how [the swap] claim ought to properly be calculated and whether or not it be allowed." *See* Transcript 8:21-23.

4. Identify all Documents and Communications in the Nova Scotia Trustee's Production, the Noteholders' Production, or the Creditors' Committee's Production in your possession, custody, or control as of April 15, 2011, that support your contention made to the

Court at the April 15 Oral Argument that "well into 2010 there is discussion whether those swaps are being properly calculated for purposes of the claim in this case." *See* Transcript 20:14-16.

Dated: New York, New York
May 19, 2011

Respectfully,

Daniel H. Golden
Philip C. Dublin
Sean E. O'Donnell
AKIN GUMP STRAUSS HAUER & FELD LLP
One Bryant Park
New York, New York 10036
(212) 872-1000 (Telephone)
(212) 872-1002 (Facsimile)

EXHIBIT A

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026(REG)

- -x

In the Matter of:

MOTORS LIQUIDATION COMPANY, et al.,

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

Debtors.

- -x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

April 15, 2011

8:47 AM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

Telephonic Hearing re Discovery Dispute.

Transcribed by: Penina Wolicki

A P P E A R A N C E S : (TELEPHONICALLY)

GREENBERG TRAURIG, LLP
Attorneys for The Noteholders
77 West Wacker Drive
Suite 3100
Chicago, IL 60601

BY: KEVIN D. FINGER, ESQ.

GREENBERG TRAURIG, LLP
Attorneys for The Noteholders
MetLife Building
200 Park Avenue
New York, NY 10166

BY: BRUCE ZIRINSKY, ESQ.

BUTZEL LONG, P.C.
Attorneys for Official Committee of Unsecured Creditors
380 Madison Avenue
22nd Floor
New York, NY 10017

BY: ERIC FISHER, ESQ.

ALSO PRESENT: (TELEPHONICALLY)
DENNIS A. PRIETO, Aurelius Capital Management

P R O C E E D I N G S

(Audio begins mid-sentence)

THE COURT: -- on the phone, please?

MR. FISHER: Good morning, Your Honor. This is Eric Fisher from Butzel Long for the creditors' committee.

THE COURT: Okay.

MR. ZIRINSKY: Bruce Zirinsky and Kevin Finger, Your Honor, from Greenberg for the noteholders.

THE COURT: Fair enough.

All right, gentlemen, I've read your letters. I gather from the Akin Gump letter that that issue is now off the table. But I sense that unless you've resolved something since the time of Mr. Fisher's March 29th, letter, we still have four of the five remaining issues.

Mr. Fisher, I'll hear from you. You can assume familiarity with both your letter and Mr. Zirinsky's or Mr. Ticoll's letter.

MR. FISHER: Thank you, Your Honor. I appreciate that the Court does not enjoy having to get involved in discovery disputes. And we've been working hard -- I think all sides have been working hard to try to at least narrow the dispute. And so I think that as opposed to four issues to present to Your Honor, I can narrow it down and say that we have two and a half issues to present.

So to quickly jump right in, the first issue is a

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question about the relevant time period for responsive documents to be produced by the noteholders. The noteholders' position is that they only need to give up documents that relate to a seven-month period, from January 2009 to July 2009. And the stated rationale for that is that the lockup agreement was entered into in June, and they insist on restricting discovery to a pretty narrow band of time just right around the lockup agreement.

And we think that that's too narrow. And the time frame that we propose is that it ought to go back to June 2008. And Your Honor, although my letter says that it ought to go to July 2010, based on documents that we've seen even just in the past few days, we actually think that the time period ought to go to the end of 2010.

And the reason for our time frame is as follows. First I want to explain why I think it needs to go beyond July 2009, why the end date, that's too restrictive. There are very significant events that happened after July 2009 that relate directly to our objection. For example, a key event here is GM Nova Scotia Finance's own filing for insolvency proceedings in Nova Scotia. That didn't happen until October 2009. Part of why that didn't happen until October 2009, is because they were strategizing around when that filing would take place, and the noteholders wanted to time that filing in order to insulate as best they could from some actions in Nova Scotia, a 369 million

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dollar consent fee that they were paying in mid-2009. So we think that October 2009 is a relevant event.

December 2009, we've now seen e-mails between and among the noteholders and the trustee that seem to suggest that there's concern that the swap claim, which is an important part of the claim that we're disputing, is overstated. The swap claim, Your Honor, is 564 million dollars worth of claims asserted in the Old GM bankruptcy case. And in December 2009, there are e-mails saying that that claim may be overstated. And when I stay overstated, not by a trivial amount, but by an amount in excess of 100 million dollars.

It's not until November 2009 that the actual claims that we're disputing were filed in the Old GM bankruptcy case. Talking about the 2010 period, for just a moment. In September 2010, we've seen correspondence between New GM and noteholders in which there's disagreement about what the lockup agreement means and the extent to which it does or does not allow claims in the Old GM case. And into 2 -- right up through the end of 2010, there are communications between the GM Nova Scotia Finance trustee and the noteholders and other bondholders about filing claims in the Nova Scotia proceeding that relate to -- the same claims the various -- in the Old GM case.

So we've seen -- we've already seen documents, I think, that indicate very clearly that the relevant time frame, at least, you know, in terms of the end date, should extend

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until the end of 2010. It --

THE COURT: Pause, please, Mr. Fisher.

MR. FISHER: Yes, Your Honor.

THE COURT: I see, based on what you argued, why it should go at least through October 2009, but help me better understand why it should go through either July 2, 2010 or to the end of 2010. Which of the events that you described would cause me to want to extend it to any of those later dates?

MR. FISHER: Well, in terms of an actual event, Your Honor, November 2009 is when the claims were filed in this case. What I described happening in 2010, the events I would describe are the filing claims in the GM Nova Scotia Finance proceedings that relate to the notes and the same claims that are before Your Honor in the Old GM proceeding.

But then we've also seen already, because we have the benefit of the trustee's production, extensive communications in 2010 about the -- between and among the relevant parties, about the calculation of the swap amount, certain claims in the Nova Scotia proceedings, whether or not the swap was properly terminated and if so, how to calculate the swap amount. So we've already seen communications going until the end of 2010 that bear on how this claim ought to properly be calculated and whether or not it be allowed.

THE COURT: All right. Continue, please.

MR. FISHER: In terms of why we think the time frame

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ought to go back to June 2008, the lockup agreement that is at the heart of our objection is an agreement that settled litigation that had been commenced by the noteholders in Canada. And they commenced the litigation in March of 2009. But the litigation concerned transfers that had happened between GM Nova Scotia Finance and GM Canada, as far back as May 2008. And so, we'd like to -- the notes here were purchased -- most of them were purchased in 2008. Some notes were purchased before then. We'd like to go back to that period of time in order to find out what it is that these noteholders knew about those transfers at the time that they purchased the notes. And we think that that's relevant.

In sensing whether lockup agreement was truly an arm's-length and fair settlement of the Nova Scotia litigation, we need to get to the bottom of the merits of that litigation. And that litigation, again, concerns May 2008 transfers, and the notes were purchased in 2008. So we think it's fair to go back to June 2008 as a starting period of time.

THE COURT: All right. Continue, please.

MR. FISHER: Okay. That's issue number one, Your Honor, the time period.

Issue number two is, we've sought documents concerning the noteholders' decision to purchase the notes. What did they know about Nova Scotia Finance at the time that they purchased the notes? How did they analyze this investment? How did they

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imagine this investment playing out? What were their expectations? What did they expect to realize on this investment? We think that those questions are critical to determining whether they behaved equitably here. And we think that at least some of the noteholders are poised to get more than a hundred percent recovery.

And so we think the circumstances of the purchase of the notes as an investment decision is just critically relevant. And I appreciate that they consider that commercially sensitive information. And that's why we have a protective order. And we think that we're entitled to that information. We're not asking for information about any notes or any investment decisions other than the decision to purchase the very notes that are at issue in this case.

THE COURT: Pause, please, Mr. Fisher. Because what you just said seems to be a potential narrowing of your contentions from your earlier letter. At this point you're only looking for stuff on the buy side, you're no longer looking for stuff on the sell side?

MR. FISHER: Your Honor, I think that what -- in reading the noteholders' response, when it comes to calculating their profits, I think that based on publicly available information and 2019 statements, that they're correct, that it would be possible for us to calculate profits, in other words, to look at the sell side, based on that kind of information.

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So, yes, we're focused on the buy side, Your Honor.

THE COURT: All right. Continue, please.

MR. FISHER: Issue number two, which I would just describe generally as the decision to purchase these notes. And then what I've described as the half issue is we'd like to know what other Nova Scotia unlimited liability company investments these noteholders have made, because at this point, this is a niche investment strategy. This is something that this group of noteholders is not just doing in this case, but has done in multiple cases. And we'd like to understand how -- what positions they've taken in other cases that are similar to this one to determine whether those positions are consistent or inconsistent.

And we appreci -- we're not looking to open up discovery and take discovery about all the documents that have been exchanged in all those other proceedings. We just want -- we just ask for a list of those other ULC investments. We would use the list to probe, you know, publicly available information, to look at dockets. And then if there were further information that we thought we needed, we would try to ask for that in a very focused way.

But that's why I describe it as a half issue. Because we're not even asking for the production of documents. We're just asking for them to identify other unlimited liability company investments that this group of noteholders have been

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involved with.

THE COURT: All right. Now, pause, please, Mr. Fisher. The way I heard that, that seems to be either exactly the same or pretty much the same as what you were asking for in your letter. Am I correct in that understanding?

MR. FISHER: Yes, Your Honor.

THE COURT: Okay. All right.

MR. FISHER: And, Your Honor, the fourth issue in our letter relates to documents that support the 2019 statements that have been filed by Greenberg with respect to the noteholder group. And having thought about it further and having read Greenberg's letter, we have no reason to doubt the integrity of those filings. And for that reason, I don't think that there's discovery that we need with respect to the backup to the 2019 statements. And since submitting the letter, I think we've decided to back off of that particular request, which is why I said at the outset that I only have two and a half issues to present to Your Honor.

THE COURT: Okay. Anything else, Mr. Fisher?

MR. FISHER: Unless the Court has questions about the letter.

THE COURT: No, you took care of them as we went along.

Mr. Zirinsky?

MR. ZIRINSKY: Yes, Your Honor. Your Honor, I'd like

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to introduce my partner, Kevin Finger, who has been handling the discovery on behalf of the noteholders.

THE COURT: Okay.

MR. ZIRINSKY: And he will respond and argue whatever points need to be argued and to answer any of Your Honor's questions.

THE COURT: Okay. Mr. Finger?

MR. FINGER: Good morning, Your Honor. It is Kevin Finger. It's my pleasure to appear before this Court for the first time.

With respect to the discovery that's been ongoing, with respect to the objection, as the Court is aware, the discovery rules dictate that the discovery must be relevant to the issues presented in the litigation. In this case, in this contested matter, it's the committee's objection to the noteholders' claims. And in that objection, the committee describes the basis for its objection as related to the circumstances surrounding a lockup agreement.

And they claim -- the committee claims that the noteholders have acted inequitably with respect to that lockup agreement. And I think, and a fair inference is, that the committee is alleging either some sort of coercion by the noteholders with respect to the negotiations with Old GM and their counsel, Weil Gotshal, or some sort of collusion with them; and that that somehow renders this apparently arm's-

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length negotiated transaction somehow unfair.
And as we've said in our letter, clearly this was a hard-fought negotiation conducted by very sophisticated parties with incredibly competent counsel. And the result was the lockup agreement and ultimately the bankruptcy petition filed by Old GM. And the discovery issues that we're discussing today, Your Honor, are completely unrelated to the fundamental premise of the objection, the lockup agreement.
And I should point out that the letter lists on page 3 and going on to page 4, a number of significant substantive areas for which the noteholders agreed to produce all relevant documents, including the lockup agreement, the litigation that was commenced in Nova Scotia in 2009, documents relating to those transfers, and a variety of other topics that ultimately led up to the negotiations of the lockup agreement and the filing of a bankruptcy petition by Old GM.
So when Mr. Fisher asks for information going back before 2009, that's at odds with the allegations in the objection. Paragraph 26 says quite clearly, "During 2009, the lockup noteholders became concerned about collecting the principal amount of the notes upon maturity." That's absolutely accurate. And that is basically the premise of the objection and that's what caused us to expand the time frame, not just beyond May of 2009, but going all the way back through January 1st, all the way through July 31st, to pick up anything

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that may have transpired in that time frame that ultimately led to the lockup agreement.
That would be, the noteholders have agreed to produce thousands and thousands of pages of information from this time frame that's related to all those subject matters listed on page 3 and 4 of the noteholders' letter.
THE COURT: Keep going.
MR. FINGER: There's nothing about the purchase decision to buy those bonds that informs the negotiations about the lockup agreement. And the committee can't point to anything that's presented in the objection that renders it so other than just some sort of interest in that information. But there's nothing tied to the objection as required by the discovery rules.
The time frame after July 31, 2009, again, we view, June 25th, really is the -- June 25, 2009, is really the last act with respect to the lockup agreement, but expanded it beyond June to be overly broad, in fact. Nothing really in the objection -- there's a heading called "post-petition implementation of the lockup agreement". They talk about the June 25th date, and they don't know there's an agreement by that date. Even the assumption by New GM of the lockup agreement is in July of 2009. And the only reference to something after that time period is, in fact, the filing of the claims in this particular case.

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So there's no real basis here to contest the fundamental issue, which is the committee claims that a lockup agreement is unfair, and somehow the noteholders acted inequitably and somehow old GM was not fairly represented by counsel and didn't negotiate properly. Nothing after the July 31, 2009 time frame informs any of that issue in this case. And the noteholders submit that they've agreed to produce, in an overbroad way, as much information as possible to permit the committee to pursue its objection and contest the claims if there's any grounds to do so.
Going beyond that time frame would impose a significant burden on the noteholders. There's a lot of information. These -- particular financial institutions watch this industry, watch GM. Going back to collect all its information and sift the chaff from the wheat is a time-consuming, costly and burdensome exercise that frankly, without any relation to the objection, is unfair to the noteholders to have to go through this.
And again, as cited in the letter, nothing about what the committee has claimed, really informs their objection. Unless the Court has questions on that particular issue here of the time frame, I can move to the noteholders' decision to purchase.
THE COURT: Go ahead.
MR. FINGER: Your Honor, nothing about their decision

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to purchase, again, informs the objection. It's -- there's no allegation in the objection that says the noteholders knew something or knew something special that wasn't otherwise available to anyone in the market about this particular issue. The noteholders' specific rationale for purchasing is going to be different for each one. It's going to be highly proprietary. It goes to the heart of any financial institution's decisions to invest.
To the extent that the committee claims that the profit and loss information somehow informs that, as Mr. Fisher has said, that's already available to them. That's presented with publicly available information as well as the information present in Greenberg Traurig's 2019. So nothing about profit and loss informs that issue.
And again, the fundamental issue here is, the noteholders have publicly defined rights as provided by the offerings circular set forth in their memo which has been produced. And whatever rights either party has are clearly set forth in documents. And what the noteholders' subjective belief about those rights vis-a-vis what GM Canada or GM Nova Scotia's subjective belief about those rights is, is irrelevant.
Further, Mr. Fisher, in this call as well as in his letter, said that he's trying to get to the bottom of or get to the merits of the litigation in Nova Scotia, and frankly cites

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Canadian law on various issues regarding that. And notwithstanding our disagreement as to what the Canadian law actually holds, asking this Court to retry or to relitigate the Nova Scotia litigation, simply has no place here. The litigation was filed. The information that was discussed or contemplated in the first half of 2009 about that litigation will be provided to the committee. But trying to relitigate that case is, I think, beyond the bounds of what this Court has been asked to do with respect to the objection.

What the noteholders' belief about what those rights were that ultimately led them to file that proceeding, is not relevant to the proceeding, which is clearly set forth in the pleadings that were filed and the motions that were filed and contested by both sides.

Again, the fair inference of the objection is that there's some sort of coercion or collusion with respect to the lockup agreement. None of that is informed by whatever the noteholders believed at the time that they purchased the notes.

THE COURT: All right.

MR. FINGER: If the Court has no further questions on that, I can move to the ULC investment issue.

THE COURT: Go ahead.

MR. FINGER: Similarly, there's nothing about the decision to purchase -- to make investments in other vehicles that relates to the decision -- to the issues related to the

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lockup agreement. So it's even one step further removed. We're not even talking about a decision to invest in the GM Nova Scotia notes, we're talking about some other vehicle which is -- in Mr. Fisher's letter, it's clearly -- he has an idea of what those are, because he identifies docket entries. But to go back and ask the noteholders to review prior investments that may involve ULCs for the purpose of this, has no rational connection to this objection. This is simply another burden that the noteholders shouldn't have to bear in his case.

THE COURT: All right. Anything further, Mr. Finger?

MR. FINGER: No, Your Honor.

THE COURT: All right. Mr. Fisher, do you want to reply?

MR. FISHER: Yes. Just briefly, Your Honor. If -- Mr. Finger referred to the page 3 of the noteholders' letter to the Court. And I indicated that there are a whole bunch of bullet point categories where the noteholders have agreed to produce documents. What I think is -- we're not quite complete about that presentation, is that with respect to many of those topics, the relevant time frame is before the time frame being proposed by the noteholders and goes later than the time frame being proposed by the noteholders.

And so if -- it's not quite right to say that they've agreed to provide us with all relevant documents about these topics. There are very significant exclusions that are built

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into their position. And just by the way of example, the second bullet point refers to all documents concerning the litigation commenced in Nova Scotia against Old GM and certain subsidiaries. Well, that litigation was commenced in March 2009, but it concerned events that happened in 2008.

All documents concerning any transfers referred to in the Nova Scotia proceeding. Those are 2000 -- those are May 2008 transfers that we're talking about. So I'm certainly going to be deprived of relevant information if I'm not getting information before January 2009.

All documents concerning currency swaps between Nova Scotia Finance and Old GM. Well, the swaps weren't assumed until August 2009, which is after the time frame that's proposed by the noteholders. And as I indicated, well into 2010 there is discussion whether those swaps are being properly calculated for purposes of the claim in this case.

All documents concerning intercompany loans from Nova Scotia Finance to GM Canada. That's not a 2009 event. That's a 2008 and earlier event. All documents concerning a potential reorganization or bankruptcy insolvency liquidation or winding up event of Nova Scotia Finance or GM Canada. That didn't happen, Your Honor, until October 2009.

So there's a list of categories, and the noteholders are telling the Court that they've agreed to give up all documents concerning those categories. But that sort of evades

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the fundamental issue, which is, what's the relevant period of time in order for the committee to be sure that it's getting the relevant documents concerning those topics. So that's why I think the time frame is such a critical issue here.

Issue number two, which is the noteholders' decision to purchase notes. All we're trying to see is whether discovery bears out our theories of the case. But if it doesn't then we're not going to be able to press those theories. But based on what we know about what happened here, when the noteholders purchased these notes in 2008, they knew about the intercompany transfers that they then later, in March 2009, challenged in litigation commenced in Nova Scotia.

So essentially, when they purchased their notes, they were buying an oppression claim against Nova Scotia that they were then going to use for maximum leverage to try to get as much as they could on these notes. And so, you know, I don't -- the committee does not believe that this is a campaign that started sometime in 2009. This is a deliberate investment strategy that started in 2008 when they purchased the notes and thought through how they could take advantage of the ULC structure and projected distress for GM and its Canadian subsidiaries.

With respect to the list of the ULC investments, again, I think how they are able to gain the ULC structure in order to maximize their return on investment is a relevant part

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of the puzzle. But I'm mindful of the burden, and therefore we've restricted it to a list.

And on the topic of burden, Your Honor, in the noteholders' letter, they talked about -- they quote Rule 26(b)(2)(B). And this to suggest that this information is not reasonably accessible to them. And that's just not true. Not reasonably accessible is, of course, a term of art, and it refers to electronic data that is not searchable, that exists in backup servers that are difficult to access. I have every reason to believe, and I have not been told to the contrary, this is all live electronic data that can be collected, searched and produced.

So I do appreciate that it's more data that needs to be collected, searched and produced. But I don't think it's fair to say that it's an unreasonable burden. We tried to restrict the time frame to that time frame that we think is necessary to give us information that is going to lead to admissible evidence in the ultimate hearing on this objection, Your Honor.

THE COURT: All right. Gentlemen, everybody sit in place. There's going to be a few moments of silence, of dead air. So don't be surprised or upset if don't hear anything for a couple of minutes.

(Pause)

THE COURT: All right, gentlemen. On the remaining

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issues before me, the documents will be produced for the period from June 1, 2008 through the end of 2010. The documents in the second category will be produced to the extent they deal with the decision to purchase, but the request is denied without prejudice with respect to documents that solely relate to sell or hold decisions. It being understood, of course, that if a document refers to both, or some combination of those three things, it still has to be produced. And the request that a list be provided with respect to investments in other ULCs is granted. My bases for the exercise of my discretion follow.

First, in my view, after hearing argument from both sides, it's no big deal to add a few months on each end to the requested time coverage of the discovery request. There has been no real showing of burden other than the ipse dixit claim that adding these few months of discovery on each end is significant.

The requested expansion of the time coverage for the request does not require production of documents of a different character. And frankly, gentlemen, we're talking about a claim which, at least by some people's count, is 2.67 billion dollars -- perhaps I should say claim or aggregate claims. And when you're trying to get that much money from an estate, to which of course you may be fully entitled, but the incremental cost of a little extra production and a few extra months,

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cannot be considered unfair or oppressive in the context of the extraordinary amounts of money for which recovery is sought.

Then, gentlemen, that while I express no view on the merits of the case or even whether anything that the creditors' committee wishes to obtain is ultimately going to be admissible, everybody knows what the standard is for discovery vis-a-vis it being reasonably calculated to lead to admissible evidence or potentially admissible evidence. And I think that the request easily passes muster on that standard.

At this stage in the case, I'm not going to let either side's views as to the merits or what its views are concerning what the legal issues are to be determinative of the scope of discovery. Each side is going to be allowed to make its best case based on evidence that may turn out to be relevant with respect to issues as to the merits which have yet to be decided.

The creditors' committee has made a number of claims or contentions vis-a-vis the Nova Scotia noteholders, including, without attempting to characterize either side's positions inappropriately or to bind either side to the contentions, that the Nova Scotia noteholders had created a cottage industry to get increased distributions, and to confer an advantage over other creditors. They've used the expression "to buy oppression claims". And they've made accusations of gaming the system.

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I don't know if those allegations are true or not. I don't know if even if those allegations are true, there's necessarily anything wrong with it, or if there is something wrong with it, if whatever's wrong with it is legally actionable or legally cognizable as a basis for relief. But we're going to get to the facts. We're going to get the facts. And I won't decide the ultimate issues in this case in a factual vacuum.

It is for that reason -- or those reasons -- that I think the requests in both category number 2 and number 3 are appropriate, subject to the limitations that I articulated before. While I think that those limitations' rationale is obvious, I think I can and should clarify why I think the purchase decisions are relevant, but that decisions as to sell and hold should be denied without prejudice at this time.

The various contentions that the creditors' committee made, make buy decision, purchase decisions, plainly relevant. But at least on this state of the record, the amount of money that various Nova Scotia noteholders might be making off this investment, is not now relevant, if it ever will be. The issue isn't so much how much money they're going to make off this. I think it may be argued or inferred that they wouldn't have made the investment unless they wanted to make a profit. But the issue isn't so much -- at least on this state of the record -- exactly how much of a profit they're going to make, it's much

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more the underlying rationale and the effect on the creditor community and the various other allegations which provide the basis underlying this controversy.

Lastly, gentlemen, for the avoidance of doubt, anything produced will be at least initially subject to coverage under a confidentiality order. And to deal with an issue which probably didn't need stating, but I will, only documents that actually exist or are known need to be produced.

All right, gentlemen, not by way of reargument, are there any open issues?

MR. ZIRINSKY: Your Honor, it's Bruce Zirinsky.

THE COURT: I'm sorry, I couldn't hear that.

MR. ZIRINSKY: I'm sorry, Your Honor. It's Bruce Zirinsky. I have a frog in my throat. I was just clearing it.

I don't think it's relevant to today's discussion, but I did want to inform the Court and Mr. Fisher that we were informed this week that two of the noteholders we represent have sold their claims and are no longer creditors of GM. It's our intention to file an amended 2019 statement as soon as we can obtain the relevant information. And we'll attempt to file it by next week.

THE COURT: Very well. Anything else, anybody?

MR. FISHER: Your Honor, this is something I'll take up with Mr. Zirinsky, certainly. But I just want to ensure that Your Honor's discovery rulings would apply to discovery of

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information in the files of those two noteholders that seem to have withdrawn from Mr. Zirinsky's group.

MR. ZIRINSKY: Well --

THE COURT: Well, the issue, at least warrants an opportunity for Mr. Zirinisky or Mr. Finger to be heard before I express a view on that.

MR. ZIRINSKY: Understood, Your Honor. Your Honor, I would suggest that we have a conversation with Mr. Fisher and attempt to work things out. And if we can't, we'll come back to Your Honor on that.

It is our clients' understanding that they are still going to have to produce discovery. Whether that's in the capacity, now, as a party or as a third-party witness, it may be a distinction without a difference. But they do understand that they will be required to produce discovery.

THE COURT: Well, I think you may be right, Mr. Finger. And that's my tentative. But I like the idea of you having a dialogue with Mr. Fisher on that. And if you later somehow can't come to an agreement, you can call me up again.

MR. ZIRINSKY: Thank you, Your Honor. It's Bruce Zirinsky, by the way, that made that comment.

THE COURT: I'm sorry. That's fine.

MR. ZIRINSKY: That's okay. Thank you, Your Honor. We appreciate your time.

THE COURT: All right, gentlemen. Have a good

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weekend. We're adjourned.

MR. ZIRINSKY: Thank you, Your Honor. We appreciate it.

(Whereupon these proceedings were concluded at 9:28 AM)

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I N D E X

RULINGS

CERTIFICATION

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

_____

PENINA WOLICKI
AAERT Certified Electronic Transcriber CET**D-569

Veritext
200 Old Country Road
Suite 580
Mineola, NY 11501

Date: April 18, 2011

EXHIBIT 2

DICKSTEIN SHAPIRO LLP
Barry N. Seidel
Eric B. Fisher
Katie L. Cooperman
1633 Broadway
New York, New York 10019
Telephone: (212) 277-6500

Special Counsel to the Motors Liquidation Company GUC Trust

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11 Case
MOTORS LIQUIDATION COMPANY, *et al.*,	:	Case No. 09-50026 (REG)
Debtors.	:	(Jointly Administered)

GUC TRUST'S RESPONSES AND OBJECTIONS TO FIRST SET OF DOCUMENT REQUESTS OF GREEN HUNT WEDLAKE, INC.

Pursuant to Rules 7026, 7033 and 7034 of the Federal Rules of Bankruptcy Procedure ("**FRBP**"), Rules 26, 33 and 34 of the Federal Rules of Civil Procedure ("**FRCP**"), and the Local Rules for the United States Bankruptcy Court for the Southern District of New York ("**Local Rules**"), the Motors Liquidation Company GUC Trust ("**GUC Trust**"), by and through its Special Counsel, Dickstein Shapiro LLP, hereby responds and objects to the First Set of Document Requests of Green Hunt Wedlake Inc., Trustee of General Motors Nova Scotia Finance Company ("**Nova Scotia Finance Trustee**"), to the Official Committee of Unsecured Creditors, dated May 19, 2011 ("**Requests**"), as follows:

GENERAL OBJECTIONS

The GUC Trust incorporates the following general objections into each response as if fully set forth therein. The assertion of same, similar or additional objections with respect to any request, or the failure to assert any additional objection to any request, does not waive any of the GUC Trust's general objections. Any objection or limitation, or lack thereof, made in these responses and objections shall not be deemed an admission by the GUC Trust as to the existence or nonexistence of information sought in a particular request.

1. The GUC Trust objects to the Requests, and the definitions and instructions set forth therein, to the extent that they seek to impose discovery obligations or demands in excess of those required by the FRCP, the FRBP, the Local Rules and/or any other applicable authority. The GUC Trust will not respond or produce or otherwise perform any act demanded in the Requests except insofar as required by the FRCP and other applicable authority.

2. The GUC Trust objects to the Requests to the extent that they seek information or call for the production of documents subject to the attorney-client privilege, work-product doctrine, or any other applicable privilege or immunity from discovery. The GUC Trust will not provide any information protected by such privileges or immunities, and inadvertent disclosure of such information shall not be deemed or constitute a waiver of any such privilege or immunity.

3. The GUC Trust objects to the Requests to the extent that they seek documents or information already in the possession, custody or control of the Nova Scotia Finance Trustee, or which are available to the Nova Scotia Finance Trustee, formally or informally, from public sources, on the grounds that such requests for documents are duplicative, overly broad and unduly burdensome.

4. The GUC Trust objects to the Requests to the extent that they seek documents or information outside of the GUC Trust's possession, custody, or control, on the grounds that any such requests are overly broad and unduly burdensome, seek to impose discovery obligations in excess of those imposed by the FRCP and other applicable authority, and would subject the GUC Trust to unreasonable burden and expense.

5. The GUC Trust objects to the Requests to the extent that they seek documents or information that are neither relevant to any claim asserted in this action nor reasonably calculated to lead to the discovery of admissible evidence.

6. The GUC Trust objects to the Requests to the extent that they contemplate the production of duplicate copies of a document.

7. The GUC Trust objects to the Requests as untimely in light of the parties' agreement that the deadline to exchange document requests was January 11, 2011, as set forth in Exhibit A attached hereto.

8. The GUC Trust objects to the Requests to the extent that they seek to impose discovery obligations in excess of those permitted by Judge Gerber who stated, at the December 15, 2010 pre-trial conference, that "interrogatories can be used to identify the names and locations of witnesses. But I don't want them used for anything other than that." *See* transcript from the December 15, 2010 pre-trial conference at 57:14-16, attached hereto as Exhibit B.

9. The GUC Trust reserves the right to assert additional general and specific objections that may become apparent as additional information is learned through the course of this litigation.

SPECIFIC RESPONSES AND OBJECTIONS

The GUC Trust expressly incorporates the general objections in each specific response to the particular request set forth below, as if fully set forth therein.

DOCUMENT REQUEST NO. 1: Identify all Documents and Communications in the Nova Scotia Trustee's Production, the Noteholders' Production, or the Creditors' Committee's Production in your possession, custody, or control as of April 15, 2011, that support your contention made to the Court at the April 15 Oral Argument that "there are emails saying that [the swap] claim may be overstated. And when I stay [sic] overstated, not by a trivial amount, but by an amount in excess of 100 million dollars." *See* Transcript 7:9-11.

Response:

The GUC Trust objects to Request No. 1 on the grounds that it is untimely and seeks information that is obtainable from the Nova Scotia Finance Trustee itself. The GUC Trust further objects to Request No. 1 on the grounds that it is a disguised "contention" interrogatory, which is not permitted under Local Rule 7033-1(c). The GUC Trust will not produce documents responsive to Request No. 1.

REQUEST NO. 2: Identify all Documents and Communications in the Nova Scotia Trustee's Production, the Noteholders' Production, or the Creditors' Committee's Production in your possession, custody, or control as of April 15, 2011, that support your contention made to the Court at the April 15 Oral Argument that "right up through the end of 2010, there are communications between the GM Nova Scotia Finance trustee and the noteholders and other bondholders about filing claims in the Nova Scotia proceeding that relate to – the same claims the various – in the Old GM case." *See* Transcript 7:18-22.

Response:

The GUC Trust objects to Request No. 2 on the grounds that it is untimely and seeks information that is obtainable from the Nova Scotia Finance Trustee itself. The GUC Trust further objects to Request No. 2 on the grounds that it is a disguised "contention" interrogatory, which is not permitted under Local Rule 7033-1(c). The GUC Trust will not produce documents responsive to Request No. 2.

REQUEST NO. 3: Identify all Documents and Communications in the Nova Scotia Trustee's Production, the Noteholders' Production, or the Creditors' Committee's Production in your possession, custody, or control as of April 15, 2011, that support your contention made to the Court at the April 15 Oral Argument that you have "already seen communications going until the end of 2010 that bear on how [the swap] claim ought to properly be calculated and whether or not it be allowed." *See* Transcript 8:21-23.

Response:

The GUC Trust objects to Request No. 3 on the grounds that it is untimely and seeks information that is obtainable from the Nova Scotia Finance Trustee itself. The GUC Trust further objects to Request No. 3 on the grounds that it is a disguised "contention" interrogatory, which is not permitted under Local Rule 7033-1(c). The GUC Trust will not produce documents responsive to Request No. 3.

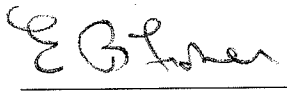
REQUEST NO. 4: Identify all Documents and Communications in the Nova Scotia Trustee's Production, the Noteholders' Production, or the Creditors' Committee's Production in your possession, custody, or control as of April 15, 2011, that support your contention made to the Court at the April 15 Oral Argument that "well into 2010 there is discussion whether those swaps are being properly calculated for purposes of the claim in this case." *See* Transcript 20:14-16.

Response:

The GUC Trust objects to Request No. 4 on the grounds that it is untimely and seeks information that is obtainable from the Nova Scotia Finance Trustee itself. The GUC Trust further objects to Request No. 4 on the grounds that it is a disguised "contention" interrogatory, which is not permitted under Local Rule 7033-1(c). The GUC Trust will not produce documents responsive to Request No. 4.

Dated: June 20, 2011
New York, New York

DICKSTEIN SHAPIRO LLP

By: 

Barry N. Seidel
Eric B. Fisher
Katie L. Cooperman
1633 Broadway
New York, New York 10019
(212) 277-6500

Special Counsel to the Motors Liquidation Company GUC Trust

Exhibit A

BUTZEL LONG
ATTORNEYS AND COUNSELORS

a professional corporation

Katie L. Cooperman
212 323 8608
cooperman@butzel.com

22nd Floor 380 Madison Avenue
New York, New York 10017
T: 212 818 1110 F: 212 818 0494
butzel.com

December 23, 2010

VIA HAND DELIVERY

Honorable Robert E. Gerber
United States Bankruptcy Judge
United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, NY 10004-1408

Re: ***In re General Motors Corporation, et al., 09-50026 (REG): Official Committee of Unsecured Creditors' First Amended Objection to Claims Filed by Green Hunt Wedlake, Inc. and Noteholders of General Motors Nova Scotia Finance Company and Motion for Other Relief*** **(Docket No. 7859)**

Dear Judge Gerber:

We represent the Official Committee of Unsecured Creditors of Motors Liquidation Company f/k/a General Motors Corporation with respect to the above-referenced objection. At the status conference held on December 15, 2010, Your Honor directed the parties to submit a proposed scheduling order. On December 22, 2010, we spoke with counsel for the Trustee of General Motors Nova Scotia Finance Company ("GMNSF") and counsel for certain holders of the GMNSF notes about scheduling matters. The parties have agreed to exchange document requests by January 11, 2011, and to meet and confer on January 14, 2011 to discuss the overall discovery schedule. We hope to submit a consensual scheduling order to the Court sometime soon after our anticipated January 14, 2011 meeting.

We thank the Court for its attention to this matter.

Respectfully,

Katie L. Cooperman

cc: Akin Gump Strauss Hauer & Feld LLP
Daniel H. Golden, Esq. (via e-mail PDF)
Attorney for Trustee of GMNSF

Greenberg Traurig, LLP
Bruce Zirinsky, Esq. (via e-mail PDF)
Attorney for Certain GMNSF Noteholders

Exhibit B

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026(REG)

- -x

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

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: December 16, 2010