1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 Case No. 09-50026(REG)
4 (Jointly Administered)
5 - x
6 In the Matter of:
7 MOTORS LIQUIDATION COMPANY, ET AL.,
8 f/k/a General Motors Corp., et al.,
9 Debtors.
10 - x
11 ADV. PROC. NO.: 14-01929 (REG)
12 STEVEN GROMAN, ROBIN DELUCO,
13 ELIZABETH Y. GRUMET, ABC FLOORING, INC.,
14 MARCUS SULLIVAN, KATELYN SAXSON, AMY C.
15 CLINTON, AND ALLISON C. CLINTON, on behalf
16 of themselves, and all others similarly situated,
17 Plaintiffs,
18 v
19 GENERAL MOTORS, LLC,
20 Defendant.
21 - x
22 U.S. Bankruptcy Court
23 One Bowling Green
24 New York, New York
25

1 July 2, 2014

2 9:46 AM

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4 B E F O R E :

5 HON ROBERT E. GERBER

6 U.S. BANKRUPTCY JUDGE

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1 "No Stay Pleadings" filed in connection with Scheduling
2 Order Regarding (I) Motion of General Motors, LLC Pursuant
3 to 11 U.S.C. Section 105 and 363 to Enforce the Court's July
4 5, 2009 Sale Order and Injunction, and (II) Objection Filed
5 by Certain Plaintiffs in Respect Thereto, and (III)
6 Adversary Proceeding No. 14-01929 (ECF 12697)
7
8 Motion of General Motors, LLC to Establish Stay Procedures
9 for Newly-Filed Ignition Switch Actions, filed by General
10 Motors, LLC (ECF 12725)
11
12 In re Motors Liquidation Company, et al., Case No. 09-50026
13 (REG): Motion of General Motors, LLC Pursuant to 11 U.S.C.
14 Section 105 and 363 to Enforce Sale Order and Injunction
15 ("Motion to Enforce"), filed by General Motors, LLC (ECF
16 12620, 12621)
17
18 Motion for Leave to Pursue Claims Against General Motors,
19 LLC and, Alternatively, to File a Post-Bar-Date Proof of
20 Claim in the Motors Liquidation Company Bankruptcy, filed by
21 Roger Dean Gillispie ("Gillispie Motion") (ECF 12727)
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25 Transcribed by: Sherri L. Breach

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1 P R O C E E D I N G S
2 THE COURT: Good morning. Have seats, please.
3 All right. We're here on a continued conference
4 and motion return date in Motors Liquidation, General
5 Motors.
6 As I understand it -- and I want to thank you for
7 the agenda letter. Now you know why we require agenda
8 letters in this Court. We have five matters on the table,
9 four of which are contested.
10 Here's what we're going to do. I'm going to grant
11 the uncontested motion; that being the one for what I'll
12 call tag-along matters, and then I'm going to take
13 discussion on the most important, or at least effecting the
14 most people matter, the scheduling order. And then I'll
15 hear the Phaneuf no-stay motion, the Elliott's issue, and at
16 the end -- and people can leave if they're not interested in
17 that -- the Gillispie malicious prosecution claim issue.
18 I know a lot of you. I certainly know Mr.
19 Steinberg, Mr. Weisfelner, Mr. Inselbuch, Mr. Esserman and
20 Mr. Flaxer. But even if I know you, I'm going to need you
21 to identify yourselves as you come up so that we get a good
22 recording and transcript.
23 Unless somebody needs to say anything, the tag-
24 along stay motion is granted and, accordingly, when we get
25 to the Elliott matter, which will be later in the morning,

1 I'll want to hear discussion as to the extent to which I
2 should consider the Elliotts along with the other 87 actions
3 on the one hand or whether I should hear it as a tag-along
4 matter on the other, and subject to the mechanisms that I'm
5 approving today vis-à-vis that motion.
6 On the main show make your points as you see fit,
7 but before you're done I would like you to address the
8 following questions and concerns that I have as a result of
9 reading your papers. I've read them all, including the
10 redlines of the counter-orders as you prepared them, for
11 which I'm grateful. The blacklines made it much easier for
12 me to see the differences in your perspective.
13 But there's some underlying conceptual matters
14 highlighted by Mr. Flaxer's letter and by the GUC trust
15 letter which I would particularly like you to address. And
16 it seems to me there are two conceptual matters where I need
17 your help.
18 The first is that I'm sympathetic to points that
19 were made by Wilmington Trust that the threshold issues, if
20 I were to limit them to a single one, would be unduly
21 narrow. I will understand the desire to consider the fraud
22 on the court claim separately, or at least the additional
23 management issues that are associated with the consideration
24 of that issue.
25 But I am interested in your views as to the best

1 time to decide that and the extent to which that issue would
2 or could be expected to go away on the one hand or would be
3 lingering on the other. And I would like your help on what
4 you perceive to be the management issues associated with
5 dealing with a claim of that character.
6 I also wonder whether or not just the first or
7 even the second, as might be read from the GUC trust and
8 perhaps the Groman issue -- letters which suggest the second
9 being what I'll call the remedies issue, whether the last
10 one dealing with the extent to which any of these claims, if
11 they're not assertable against new GM or might still be
12 assertable against old GM, should also be considered to be
13 threshold issues because the thing I would like you guys to
14 focus on is in that last connection if, as Mr. Steinberg is
15 likely to argue, plaintiffs can't go against new GM, whether
16 that means they can't go against anybody, which strikes me
17 as counter-intuitive subject to your rights to be heard.
18 I think, folks -- I certainly want to hear your
19 views. But, ultimately, I will decide, of course, what the
20 threshold issues are, whether the threshold issues should
21 include not just number one being the due process issue, but
22 number two or (b), I guess, the remedies issue and (d) the
23 issue as to whether it can be asserted against anybody else.
24 Subject to your rights to be heard, it seems to me
25 that the bigger issue in determining what are threshold

1 issues is not whether you write an additional section in
2 your brief, but whether you have the need to address it by
3 discovery. And if you think that instinct is wrong, I would
4 certainly hear that view. But my tentative is to ask you
5 folks to brief as much as you can without the need for
6 material discovery or any discovery and to defer only those
7 matters that require discovery to a later time, if we can
8 accomplish that.
9 Obviously, I need the ability to do my job and I'm
10 disinclined to look at the issues with blinders.
11 The second point that I understood Wilmington
12 Trust and/or the Groman plaintiffs to have addressed in
13 their competing orders and their associated letters is when
14 and how we should deal with any discovery. And my views are
15 less crystallized in that regard and I want your input in
16 that respect.
17 It seems to me that in a way I'm faced with a
18 gamble because it may well be that we can't deal with this
19 stuff, or at least the entirety of this stuff, without
20 discovery. But the discovery has such great potential for
21 slowing things down that I want your input on that, and when
22 and how I should determine the need for additional
23 discovery.
24 I expressly disclaim any knowledge, belief or
25 expectation as to what that discovery would show, and I

1 assume each of you has your own view of the world in that
2 regard.
3 So with that I'll hear from you. First from you,
4 Mr. Steinberg, and before you deal with the deeper stuff I
5 would appreciate an update from you and then perhaps you
6 yielding temporarily to Mr. Weisfelner, Mr. Inselbuch or Mr.
7 Esserman for them to supplement or correct anything you
8 might stay vis-à-vis what you've accomplished since we were
9 here last on what I think was May 2nd, so I can get a lay of
10 the land in terms of where we are.
11 Obviously, folks, I want to get this right. But I
12 also have an obligation to the system and to Judge Furman to
13 keep this train moving on schedule and to try to reach an
14 expeditious resolution here. And our challenge is going to
15 be finding the sweet spot where we accomplish both goals.
16 So, Mr. Steinberg, may I hear from you first,
17 please?
18 MR. STEINBURG: Good morning, Your Honor. Arthur
19 Steinberg from King & Spalding, and I'm here with my
20 colleagues, Scott Davidson from King & Spalding and Richard
21 Godfrey from Kirkland & Ellis.
22 Your Honor, with regard to what has been
23 accomplished since the May 2 hearing, we actually did a
24 pretty good job getting voluntary stay stipulations signed
25 and we had the cooperation of the designated counsel in the

1 context of doing that. So if there were 88 ignition switch
2 actions that had been identified, 87 have signed voluntary
3 stay stipulations. Phaneuf being the only one who had filed
4 a no-stay stipulation.
5 THE COURT: Mr. Steinberg, I'm going to sound like
6 a broker record, but I would appreciate you pulling the
7 microphone closer to you and speaking a little louder,
8 please.
9 MR. STEINBURG: Okay. I apologize for that.
10 THE COURT: Now you sound pretty good.
11 MR. STEINBURG: Okay. I'm usually loud enough and
12 I --
13 THE COURT: Yeah. I know that, but we have a full
14 courtroom and the sound system isn't what it used to be. So
15 try to find that sweet spot again between being loud enough
16 for me to hear you without screaming at me.
17 MR. STEINBURG: I certainly will try not to scream
18 at you, Your Honor.
19 With regard to the other major activity that was
20 done, we went through the exercise of trying to agree as to
21 factual stipulations that would be the given record for
22 purposes of resolving the threshold issues. And the
23 exercise proved to be a little more difficult than
24 envisioned, at least envisioned by myself.
25 And we gave a little more time for a plaintiff's

1 group to gather together their questions. And this would be
2 my own perspective of what occurred, and I share it with you
3 and I know that counsel will follow me and if I say
4 something that they think should be modulated, they
5 certainly will do that.
6 But when you're dealing with a large group and
7 you're just trying to accumulate the types of factual
8 stipulations that you want people to agree to, sometimes you
9 function with the lowest common denominator, which means if
10 someone wants to raise it, we'll throw it in. And the end
11 result was, with regard to factual stipulations, we got 112
12 pages from the designated counsel with 713 requests plus
13 subparts. We got 47 pages from the GUC trust with 166
14 requests. We got only 4 pages from the Groman plaintiffs,
15 but after we had our first meet and confer they wanted to
16 add another 60.
17 THE COURT: 6-0 or 16?
18 MR. STEINBURG: 6-0.
19 THE COURT: Uh-huh.
20 MR. STEINBURG: So -- and then we responded to
21 what we thought would be the right way to go. And what you
22 have as the byproduct of that exercise is the difference is
23 in what we had proposed in conjunction with the designated
24 counsel and what the GUC trust has proposed and, separately,
25 what the Groman plaintiffs have proposed.

1 There's a desire on everybody's part to get the
2 train moving, right? We were stuck in neutral. We have an
3 MDL. There's a report that's due on August 11th. The
4 voluntary stay stipulations have a September 1 date before
5 someone can petition Your Honor to modulate the voluntary
6 stay that they had agreed to.
7 And so the question was, after having gone through
8 this exercise, what do we think that we can accomplish
9 without much controversy and move the matter along in a
10 significant way. And I think going through the exercise we
11 realized that we probably can get to the procedural due
12 process issue without discovery. We -- it was certainly our
13 position that you didn't need discovery. I think the
14 designated counsel came along with that provision and,
15 basically, they wanted to set it up which is that if we
16 can't agree with something at the end of the day, we'll
17 brief the issues before Your Honor and we'll do it fairly
18 quickly.
19 And after Your Honor gets it presented and it
20 turns out like in a summary judgment motion there was a
21 material fact in dispute, at that point in time you would be
22 able to tailor the discovery so that we can complete the
23 issue.
24 And that was the reason why you see us identifying
25 the procedural due process issue and not contemplating

1 discovery. Frankly, it almost is six of one, half a dozen
2 of another because we still have to do the factual
3 stipulations with whatever threshold issues emerges from
4 today, but certainly procedural due process. And we gave
5 ourselves our deadlines to do so.
6 And if it turns out that even though we thought we
7 would be successful, we turned out to be less than
8 successful and what we have outlining to you today doesn't
9 really make as much sense as we think it does right now, we
10 scheduled a status conference for August 5th to come back to
11 Your Honor after we had undergone that factual stipulation
12 exercise to see if we got it wrong. And then we would
13 modulate the briefing schedule if we had to, but the
14 intention was to tell everybody and to commit ourselves not
15 to do that, to go forward on a briefing schedule and at
16 least be able to accomplish that issue.
17 So why didn't we tackle the other threshold issues
18 that are outline in the May 2nd order? On the remedy
19 section, I think the answer to us is clear. If you can
20 agree to do the remedy section without any discovery, I
21 don't think anybody is -- has a problem with briefing that
22 issue and including that as a threshold issue.
23 I -- to some extent there was a thought process
24 that everything flows from the procedural due process issue,
25 so that if it turns out that new GM -- a position was

1 validated and that there was no violation of procedural due
2 process, the issue of the remedy, which assumes that there
3 was a violation, would not have to be addressed.
4 Similarly, fraud on the court is the same way
5 because as we go through our discussions the factual
6 predicate for which they want to argue fraud on the court is
7 the same allegations that are in the procedural due process.
8 And there was a recognition that if new GM's position was
9 correct on procedural due process, the remedy section and
10 the fraud on the court section probably drops out.
11 And so the thought was we have one issue that's
12 fairly clear. The other two issues may go away, but if not,
13 they may very well engage and require discovery, sufficient
14 discovery that will slow down the process, that the judgment
15 was made that we should do what we can do without discovery.
16 If it turns out that we could do more going through the
17 factual stipulations, I think everybody will want to do
18 more. And this is where you are the byproduct of what
19 happened.
20 Having gone through a number of meet and confers
21 and having confronted with the large number of requests that
22 we had and, frankly, our response which was that so much of
23 that you're asking for is not relevant and their response
24 is, well, you're not going to decide relevance. The judge
25 is going to decide relevance.

1 We then had sort of narrowed it down to what we
2 thought we could do in due process, but we ran out of time
3 in getting it precisely right, and there was a concern, I'm
4 guessing on the plaintiff's part, that they didn't want to
5 rush this aspect. They wanted to make sure that they got it
6 right. They were really ready to start again, but it wasn't
7 starting from square one. We had accomplished enough to
8 know that within this time frame we were fairly comfortable
9 that we could complete the role.
10 But if -- Your Honor, if you'll notice -- and I
11 apologize that -- I was debating writing a speaking piece as
12 to why you have these two stipulations, and I figure that my
13 speaking piece would invite a whole bunch of other speaking
14 pieces and I might as well do it better here.
15 If you notice the remedy section and how we dealt
16 with the discrimination issue which was the letter (d).
17 They have taken that issue off the table; that they have
18 agreed that they are not going to press claims based on the
19 discrimination issue, discrimination issue being defined as
20 that if new GM decides that it's going to pay prepetition
21 accident victims which would otherwise retain liabilities,
22 that that didn't create a new obligation for new GM. It
23 would be allowed to do that.
24 They've agreed that that is off the table. But if
25 you notice that there's a caveat and that was -- that was

1 based on trying to accommodate the concerns raised by one of
2 the identified parties that said the fact that you may be
3 voluntarily paying what was otherwise a retained liability
4 pursuant to the Feinberg protocol that was announced on
5 Monday of this week should be relevant towards the remedy
6 section. As to there's a procedural due process issue,
7 someone believed as part of that group it's relevant to the
8 remedy section.
9 I didn't believe it was relevant to the remedy
10 section, but I sit on this side of the table and I'm not the
11 judge. So at some point in time the back and forth ended
12 and I had to let them say whatever it is that they want to
13 say as to why it's relevant, and I reserved the right to say
14 why it wasn't relevant if anybody decided that they actually
15 wanted to brief that issue as part of the 1(b) remedies for
16 a violation of procedural due process.
17 But subsumed in that issue, which is that new GM
18 voluntarily is agreeing to pay a prepetition accident
19 victim, that is a post-sale conduct issue. And the concern
20 was is that someone had decided that procedural due process
21 has a whole bunch of equitable concepts. And because of
22 that, they could raise a whole bunch of events that took
23 place after the sale which should be relevant for your
24 determination of what the appropriate remedy would be.
25 If that was true -- and I don't think it should be

1 true, but I'm not here to try to advocate the position. If
2 that was true, then we have a whole bunch more factual
3 stipulations that could get messed up and into the process
4 and maybe potential discovery issues as well, too. And the
5 though process after, I think, we heard it and the
6 designated counsel heard it, was let's not try to bite that
7 off. Let's not try to do it. We already had a failed
8 exercise. Face reality. We're not going to be able to
9 accomplish that.
10 What you get is the difference between what we
11 proposed and what the others have proposed, is that we've
12 decided that we can't do something and we want to accomplish
13 what we think we can do. There actually was a proposal,
14 Your Honor, made by designated counsel which we supported,
15 which was if we all agree that we could do something without
16 discovery we'll add it to the threshold issue. But if
17 there's --
18 THE COURT: Pause, please, Mr. Steinberg, because
19 that was what I almost interrupted you to ask about.
20 You acknowledged -- I think probably everybody in
21 the room would acknowledge that, ultimately, the materiality
22 call is mine, the relevance call is mine vis-à-vis any
23 particular fact. But it seems to me that if parties can
24 agree upon it, it's no harm, no foul, and then you can
25 reserve your respective rights to argue whether any

1 particular fact is relevant or not down the road.

2 The corollary of that would seem to be agree on as

3 much as you can and sooner or later it will be useful, or it

4 -- if worse comes to worse you'll have agreed on something

5 that doesn't matter.

6 Do I sense a consensus on that?

7 MR. STEINBURG: Yes.

8 THE COURT: Okay.

9 MR. STEINBURG: The issue is, is that while we can

10 agree to that, it may not stop with just an agreement as to

11 whether this fact occurred. There may be an issue as to

12 whether there's discovery that's needed to evolve more

13 facts. And I think that was the underlying issue between

14 the designated counsel and the Groman plaintiff with regard

15 to fraud on the court.

16 There was a recognition that you probably needed

17 to take discovery because fraud on the court has the

18 potential of a mens rea element, and there was a -- there

19 was a concern that I don't want to do this halfway. If I'm

20 going to brief this issue, I want to get everything out and

21 if I get everything out, I'm in a much longer discovery

22 plan.

23 And recognizing that it all derives from the

24 procedural due process issue, recognizing that the MDL has a

25 report and hearing on August 11th and the September 1 stay

1 stipulation would otherwise allow people to make further
2 applications. The goal was to do something concrete,
3 significant, material to move this forward. And the
4 question was how much more can we do to move forward.
5 To be candid, Your Honor, I could live with the
6 other stipulations as well, too, right? I mean, all that
7 the other stipulations say is that we may want to -- going
8 through this exercise we may want to take discovery. And we
9 may want to be able to add threshold issues on. I could
10 have the same discussion with you now -- as I'm having now
11 on August 5th and I could respond and say, no, because it's
12 going to slow down the briefing schedule, but I will have
13 had the benefit of the meet and confer and the back and
14 forth on the factual stipulations.
15 I could say nothing about it, but I've set up a
16 status conference and I can't prevent someone from writing
17 letters to you asking to add something to a status
18 conference.
19 We are literally fighting about a concern that may
20 or may not occur. That's the only difference that happens
21 here. Threshold issues may be added and someone will
22 consider adding it if there is no discovery or there's
23 limited discovery. Designated counsel believes that that's
24 a fool hearty's errand. We had to pick a horse, right? We
25 had three people going in different directions here. We had

1 to pick the horse where the issue of procedural due process
2 mattered the most. The designated counsel represents the
3 super majority of the plaintiffs. They know what they think
4 they can accomplish better than I know what I think they can
5 accomplish.
6 If that's what they're telling me as to what makes
7 the most sense under the circumstances, and I need to come
8 to Your Honor with something because I had committed to
9 actually do more than what we're doing now, that's what we
10 chose. That is the thought process that new GM had and that
11 was what was behind the stipulation at least from our
12 perspective.
13 I think this is probably a good point where I
14 concede the platform to the remaining designated counsel who
15 can speak on the issue.
16 THE COURT: Okay. Is that going to be you, Mr.
17 Inselbuch?
18 MR. INSELBUCH: Yes.
19 THE COURT: Come on up, please.
20 MR. INSELBUCH: Good morning, Your Honor. Elihu
21 Inselbuch from Caplin & Drysdale with Mr. Weisfelner and Mr.
22 Esserman, designated counsel.
23 First, as a preliminary matter, Your Honor has
24 noted that Judge Furman has been designated by the
25 (indiscernible) panel. He has appointed temporary lead

1 counsel. They are with us today and I would like to
2 introduce them to the Court. Mark Robinson, Steven Berman
3 and Elizabeth Cabraizer (ph).
4 UNIDENTIFIED: Good morning, Your Honor.
5 UNIDENTIFIED: Good morning, Your Honor.
6 THE COURT: Folks.
7 UNIDENTIFIED: Good morning.
8 MR. INSELBUCH: Now turning to the issues Your
9 Honor has raised and Mr. Steinberg's points, I think it's
10 important for the Court to understand that there was a C-
11 change in the facts on the table between the time we were
12 here last time and even between the time we presented our
13 first set of stipulations and today.
14 On -- our stips were due on May the 28th, and as
15 Mr. Steinberg has reasonably described, we presented an
16 enormous number of stipulations anticipating that there
17 would be a need for some considerable discovery on all of
18 these issues. The best we could, the stipulations were
19 derived from documents that the -- that GM had provided to
20 the United States Congress, testimony that General Motors
21 personnel had produced in various pieces of litigation.
22 But what happened was on June the 5th General
23 Motors delivered a report prepared on their behalf by Mr.
24 Valukas to the National Highway Transport Safety
25 Administration. They immediately put it on their website.

1 The report was delivered to the congress and in their
2 testimony of their chief -- the chief executive of General
3 Motors I promised that we would conduct a comprehensive and
4 transparent investigation into the causes of the ignition
5 switch problem. I promised we would share the findings of
6 the report with congress, our regulators, NHTSA and the
7 Courts.
8 That report in hundreds of pages detailed many of
9 the facts that -- if not all of the facts that we believe
10 will be relevant to any consideration of threshold issue
11 (a), the due process issue.
12 Having seen that report, which we saw very soon
13 after or about the time we had the -- just before we had the
14 meet and confer on the first set of stipulations, it
15 occurred to us that there -- it would be much more
16 profitable to try and go forward in the absence of discovery
17 using that report, the facts propounded in that report as
18 our basis for a record.
19 We discussed that at that meet and confer and
20 while there's no agreement about whether or not the report
21 itself would be admissible into evidence, I think there is
22 agreement with General Motors that to the extent that that
23 report describes facts that occurred during the periods in
24 question, that we may produce -- present those facts by way
25 of stipulation and they will consider those.

1 So for that reason, we were of the view that we
2 could go forward quickly to an -- to frame the issues before
3 Your Honor without discovery on that limited subject. That
4 limited subject, of course, is the threshold for everything
5 else that may be before the Court here.
6 If this Court were to decide that issue against
7 us, presumably we wouldn't have to reach the remedy issues.
8 And if the Court were to decide that there were -- had not
9 been a denial of due process, it's extreme -- we would view
10 it as extremely unlikely that the Court would then find that
11 there had been fraud on the Court. There might still be an
12 issue before Your Honor under (e) of whether or not there
13 would be any remedy available to the claimants, but that
14 would be a much more limited and presumably an issue that
15 would be based on briefing alone.
16 Yes, sir.
17 THE COURT: Pause, please, Mr. Inselbuch, because
18 the converse isn't necessarily true. Let me just make up
19 facts and state once now and if I need to repeat it at the
20 end I'll state it again. I have no basis for knowing them.
21 I'm just talking about strictly hypothetical facts.
22 Suppose it were the case that those who might file
23 claims associated with ignition switches didn't get notice
24 back in June and July 2009 or before the bar date of their
25 potential claims. And, by the way, I don't make any

1 distinction now or conclusion now as to which date matters.

2 You might argue, you and your colleagues might

3 argue that that by itself constitutes a due process

4 violation. Mr. Steinberg would -- or might disagree, and

5 then that issue would be teed up for a determination.

6 But it's also possible that not only didn't they

7 get due process if that -- or notice, which you would argue

8 is a failure to provide due process, that when Fritz

9 Henderson (ph), the CEO back at the time was testifying

10 before me he knew about the ignition switch problem and was

11 intending to keep that from me. The latter, if it were so,

12 might constitute or be argued to constitute a fraud on the

13 Court and an offense beyond the mere failure to give notice.

14 I assume that your guys would want to reserve all

15 of their rights at both levels and I assume that Mr.

16 Steinberg would want to reserve his rights to resist at both

17 levels. But it seems to me that the failure to provide due

18 process and fraud on the Court are not necessarily

19 congruent. Is that the way you see it as well?

20 MR. INSELBUCH: Yes. But one is -- but the due

21 process issue we believe now is available to us on facts

22 that we believe can be stipulated or proven to the Court

23 without discovery.

24 As you hypothesize, to get the proof that the

25 chairman of the company knowingly mislead the Court would

1 require at the very least discovery and probably discovery
2 at the highest levels of General Motors.
3 Bear in mind that General Motors is a large public
4 company now facing a grand jury investigation, many state
5 prosecutorial investigations, a congressional investigation
6 and an SEC investigation. And the idea that we could go
7 forward and just assume that we would have easily -- easy
8 access to discovery in that context is also, I think,
9 perhaps not realistic. So that the idea that we could now
10 call Mary Barra (ph) to testify in our case here without
11 objection by General Motors I think -- I'm not asking Mr.
12 Steinberg to comment on that, but I think it's ill-advised
13 to think that we could have an easy path to discovery in the
14 short term. That's why -- among the reasons why we focused
15 on the due process issue.
16 The remedies issue, I was interested to hear Mr.
17 Steinberg discuss the remedies issue. Our problem with the
18 remedies issue is not what we would argue with the Court.
19 We would argue to the Court that if you find that there has
20 been a violation of due process, the simple answer to their
21 motion, which is to enforce their sale order and include an
22 injunction, would be just to deny that motion and the
23 parties would be free to proceed to seek their remedies in
24 the state courts, you know, on successor liability claims or
25 whatever they might be.

1 We doubt very much that General Motors will
2 concede that that's the remedy that would be dictated here.
3 They would want to argue, and we're not sure what they would
4 want to argue, excuse me, that for some reason or another
5 that shouldn't follow; that some view should be taken to the
6 remedies that would otherwise be available, how that might
7 go, arguments about whether that would implicate claims
8 against the GUC trust or not. We don't know where that's
9 going to jump, and it -- and, thus, we wouldn't know how now
10 to try and prepare a stipulated record or even a discovery
11 record to identify what those facts might be.
12 We thought in the context of what is a complex set
13 of situations that if we could move one ball forward and --
14 an important ball forward and get it resolved, that would be
15 the best course to take.
16 I might say that we have been reasonably
17 successful, but not as successful as we might have been in
18 keeping the rest of the constituency advised as things
19 develop. It's difficult for us, but we are making an effort
20 to do that with Judge Cyganowski and others.
21 Now --
22 THE COURT: Mr. Inselbuch, sooner or later I'm
23 going to be an ex-judge, too, but everything in this Court
24 has to refer to her as Ms. Cyganowski.
25 MR. INSELBUCH: I beg your pardon. I didn't hear

1 that.

2 THE COURT: I'm going -- the rules going to apply

3 to me when I'm an ex-judge also. But in this courtroom

4 you've got to refer to her as Ms. Cyganowski.

5 MR. INSELBUCH: Yes, Your Honor. I stand

6 corrected.

7 THE COURT: We have rules applicable in the

8 Federal Courts that apply --

9 MR. INSELBUCH: I stand --

10 THE COURT: -- to current judges and ex-judges

11 alike.

12 MR. INSELBUCH: I stand corrected, Your Honor.

13 Your Honor commented in your opening statements

14 that you would lean toward moving forward in a context where

15 there would be a lack -- there would not be a need for

16 discovery. We believe that, too. Our instructions from our

17 clients are, after all, to see whether we can resolve the

18 bankruptcy court issues as quickly as possible. We don't

19 see how that can be done with discovery. We don't see any

20 point in kicking forward to August 8th a further argument

21 that maybe we could take some discovery. We don't think

22 discovery -- that there's any limited amount of discovery or

23 limited amount of time within which discovery has been --

24 would be available.

25 Moreover, no one has suggested to us what that

1 discovery might look like, what issues the other parties
2 might -- think they might take by way of discovery. We
3 don't know what they are. As I've said before, we don't
4 even know what the issues might be on the remedies side.
5 So with that, Your Honor, unless my colleagues --
6 I would pass the baton.
7 THE COURT: I think I would -- well, the baton to
8 Mr. Weisfelner or the baton to Ms. Rubin or Mr. Flaxer.
9 MR. WEISFELNER: I just wanted to add a couple of
10 --
11 THE COURT: All right. Come on up to the main
12 mic, please.
13 MR. WEISFELNER: Three points, and as quickly as I
14 possibly can.
15 Mr. Inselbuch made reference to a game changer in
16 the context of the issuance of the Valukas report and I
17 agree wholeheartedly. That report is chock full of
18 information that in the process of coming up with
19 stipulations for Your Honor to try any issue, but in
20 particular due process issue is critical.
21 Add to that record the fact that just before the
22 issuance of the Valukas report, as Your Honor may or may not
23 be aware, General Motors entered into a consent order with
24 NHTSA, you know the one pursuant to which they paid their
25 maximum fine --

1 THE COURT: I think I can get what that acronym --
2 is that the Highway Safety Board or whatever it's called.
3 MR. WEISFELNER: Correct.
4 And in the context of that consent order there are
5 many iterations of the facts as they developed, a chronology
6 of events that occurred. But understand that pursuant to
7 that consent order you have an acknowledgment by GM that the
8 ignition switch defect constituted a safety issue and should
9 have required a recall. So we think that's important as
10 well.
11 Again, it was put on the table in the midst of our
12 stipulation and meet and confer process.
13 The other factor that came to light during the
14 meet and confer and stipulation process was the
15 congressional testimony that was given both by Ms. Barr (ph)
16 and by Mr. Valukas. And remember that testimony takes two
17 forms, as I'm sure Your Honor knows: One is the prepared
18 statements that go into the record and the other is the
19 questions and answers.
20 And we believe that there was a lot of material
21 relevant portions of the bare testimony in particular that
22 bear, if one looks at the penology of threshold issues, with
23 particular reference to the due process question.
24 THE COURT: I hear you, Mr. Weisfelner, but I have
25 more difficulty understanding what you're telling me now

1 that adds in any material respect to what Mr. Inselbuch
2 already told me.
3 MR. WEISFELNER: Just --
4 THE COURT: I -- hear me out, please.
5 MR. WEISFELNER: Yes, sir.
6 THE COURT: I'm assuming that you and your
7 colleagues and the tort lawyers who are behind you are going
8 to take whatever facts you can and whatever resources you
9 can to maximize the extent to which you develop a factual
10 record that supports what you want to show, and that's fine.
11 But I don't see today's hearing as arguing -- as the place
12 to argue the merits of things that you may eventually argue
13 to Judge Furman or to a jury or juries. And what I am
14 focusing on today is case management issues.
15 How does what you're saying change what Mr.
16 Inselbuch already told me?
17 MR. WEISFELNER: Your Honor, it wasn't intended to
18 change or get beyond the focus on case management. I
19 thought Your Honor wanted to address of all of the threshold
20 issues and in particular as between 1(a) and 1(b), should
21 we, could we move forward just on 1(a) to the exclusion of
22 1(b) or for that matter any other of the listed threshold
23 issues.
24 And what I thought I was emphasizing was the point
25 that Mr. Inselbuch made very well and that was that having

1 gone through the process of meeting and conferring over
2 proposed stipulations which were voluminous and came from
3 every different angle, and to which GM was unable to
4 stipulate, having gotten this material it became clear to GM
5 on the one hand and the designated counsel on the other hand
6 that the right way to proceed from the perspective of
7 advancing the process and the MDL proceedings was to do what
8 we could do effectively and efficiently without unnecessary,
9 if any discovery, and that is focus on 1(a).
10 Your Honor, the only other two points I wanted to
11 make, not that they weren't covered, but I want to
12 underscore them, is why do 1(a) to the exclusion of 1(b) for
13 now. And the other factor I think, as Your Honor will
14 agree, is that the bankruptcy process favors compromise
15 wherever parties can get there.
16 In our considered judgment, one of the other
17 benefits of doing 1(a) first and then, if necessary, moving
18 to 1(b) is we believe a finding that we think is going to
19 result from a focus on 1(a) will put the parties not only in
20 a better position to brief anything else Your Honor wants us
21 to brief or that the parties think have to be briefed, but
22 may very well put us in a better position to reach a
23 resolution without judicial interference.
24 The last point I wanted to make, and it's a
25 correction to a question that you posed to Mr. Steinberg and

1 I thought I misheard him or he may have misinterpreted what
2 Your Honor was asking.
3 One of the things that the designated counsel on
4 the one hand and GM on the other hand offered to Mr. Flaxer
5 on behalf of the Groman plaintiffs and Ms. Rubin on behalf
6 of Wilmington Trust, when we understood what the differences
7 were between our respective orders was, look, let's finish
8 up this stipulation process. Let's focus both on 1(a) and
9 1(b) with regard to the stipulation and meet and confer
10 process. We believe that we're going to suffer and run into
11 the same brick wall on 1(b) that we did before and we're not
12 going to have a sufficient enough record to move forward on
13 1(b) at the present time.
14 But if we're wrong and we collectively come to the
15 consensus that we've gotten far enough despite our views
16 that we may not get there, and we, in fact, overcome the
17 1(b) problem with regard to agreed upon stipulations or, for
18 that matter, narrow enough discovery that it makes sense to
19 slow down the train and brief both topics at the same time
20 or seek some limited discovery, then if we all agree then
21 we'll come into court and tell Your Honor we've all agreed
22 to expand the brief to include 1(a) and 1(b).
23 That offer did not meet consensus which I thought
24 was where there was a disconnect between you and Mr.
25 Steinberg. We had proposed it, together with GM. It was

1 rejected by Ms. Rubin and Mr. Flaxer on behalf of their
2 respective clients. So I just wanted the record to be clear
3 on that point.
4 THE COURT: Okay. Thank you.
5 Mr. Flaxer, next, then Ms. Rubin, and then Mr.
6 Golden. Is he here?
7 MR. GOLDEN: Yes, Your Honor.
8 THE COURT: Oh, I'm sorry. If you need to add
9 anything to what Ms. Rubin says.
10 MR. FLAXER: Good morning, Your Honor. Jonathan
11 Flaxer of Golenbock, Eiseman, Assor, Bell & Peskoe on behalf
12 of the Groman plaintiffs.
13 I would start by observing that the differences
14 between the positions in these proposed orders are narrow.
15 And what we're really talking about is after we complete the
16 stipulation process which has been difficult, but we're
17 still working at it, but not nearly as easy as maybe some
18 had hoped it would be, there would be an opportunity for
19 parties with the knowledge of what we learned in the process
20 of trying to arrive at stipulations to ask the Court to
21 consider whether or not we should at that point expand the
22 issue -- the threshold issues from 1(a) to include 1(b) and
23 in our view to also consider -- only consider -- in
24 including 1(c) the fraud on the Court issue as well.
25 THE COURT: For those who don't have the old

1 order in front of me (sic), 1(b) is procedural due -- 1(a)
2 is procedural due process; 1(b) is what we can call remedy;
3 1(c) is fraud on the court; 1(d) now being off the table;
4 and 1(e) is whether any of these claims are claims against
5 the old GM estate or the GUC trust subject to their rights
6 to argue that it's too late to make such claims, if I
7 understand these issues.
8 MR. FLAXER: Correct, Your Honor.
9 THE COURT: All right. Then continue, please.
10 MR. FLAXER: I'm going to try to provide at least
11 our perspective on sort of where these issues breakout
12 without advocating or being argumentative to the best I can.
13 The 1(a) issue (indiscernible) revolves around
14 juris prudence that we're all in the bankruptcy world very
15 familiar with this notion of whether a creditor at the time
16 -- at the relevant time is a known -- I'll put that in air
17 quotes -- a known creditor.
18 Our view is that the law is not such that we need
19 to prove that very senior executives at the company knew at
20 the time. I would say on the other hand, though, that if to
21 take Your Honor's example that, you know, Fritz Henderson,
22 in fact, knew and concealed it from the Court, putting aside
23 whether or not that would establish fraud on the Court, I
24 think it would clearly end any dispute over whether or not
25 there had been a due process violation.

1 So what we're struggling with is even with the
2 benefit of the Valukas report and, as we all know, there are
3 more items coming out seemingly every day in the press from
4 various government investigations and other events, we --
5 it's not so clear and I'm not sure the stipulation, you
6 know, process is going to produce facts -- stipulated facts
7 about senior level knowledge.
8 And, again, I'm very open to continuing the
9 process and we'll work at it and work at it hard, but it may
10 be a decision point when we're back here in August whether
11 or not on the plaintiffs' side and on the GUC trust and
12 Wilmington side we're comfortable that there's enough of a
13 record to give Your Honor what we think should be a full
14 enough record, and that some limited discovery may be
15 necessary to test out how senior the knowledge goes without
16 conceding whether or not we're required to show it.
17 With respect to the remedy and the due -- and the
18 fraud on the Court issue, again, from the perspective of the
19 Groman plaintiffs we see them as somewhat similar in terms
20 of the record that Your Honor, we think, ought to have to
21 decide those issues which is that we think it does expand
22 the inquiry in two ways, two basic ways.
23 One is that it implicates -- how shall I say --
24 well, to use Mr. Steinberg's term, mens rea. You know, how
25 bad was this. I'll just leave it at that.

1 We think it expands in another way which is now
2 you -- there really is a need, we think, to get into new
3 GM's conduct, what -- how new GM reacted to treated this
4 ignition switch defect issue.
5 So we think when it comes time to consider the
6 remedy and time to consider maybe fraud on the Court that
7 you have two issues that, in a way, go together. So that is
8 why the only area where we have any difference with the GUC
9 trust and Wilmington is whether or not we should leave open
10 for consideration adding in fraud on the Court at a later
11 time, again, subject to everybody else's comment and subject
12 to the Court's ultimate, you know, decision.
13 Other than that we completely agree with
14 everything that Ms. Rubin put in her letter and thought that
15 it was very eloquently stated.
16 THE COURT: Maybe I should have heard from Ms.
17 Rubin first.
18 (Laughter)
19 MR. FLAXER: I just would like -- and I have a few
20 more observations that I think are germane to the issues
21 that the Court asked us address us at the beginning.
22 The -- again, we remain hopeful that the
23 stipulation process will work, but one issue that's emerged
24 in my mind is that these are not the type of facts that
25 easily lend themselves to the stipulation process. This

1 isn't stipulating, for example, to a long series of
2 transactional documents. This is very subtle, multi-layered
3 facts about not only who knew what when, but how much they
4 knew, what inferences they should have drawn from what they
5 knew, who else at the company knew that with the silos, if
6 you will -- to use a term that's come up and I'm not
7 conceding it, but I'll use it for convenience -- how much
8 cross-communication was there among the silos. A series of
9 committees considered these issues; who was on those
10 committees. We don't have, for example, the full membership
11 of each of the various -- I think there were at least five
12 committees within GM that considered these issues.
13 Again, I'm just trying to layout for the Court (a)
14 what some of the difficulties are and (b) where it may be
15 possible, if necessary, to have fairly limited discovery to
16 try to nail down some of the factual issues that may not be
17 able to come through in the stipulation process.
18 Let me try to cut through as much as I can here.
19 I mean, I'll just observe that what we're
20 balancing here is, you know -- well, let me state it a
21 little differently.
22 We all want to expedite this process. Everybody
23 agrees on that. Our concern is if discovery is going to
24 ultimately be necessary, the way to expedite matters is to
25 start the discovery sooner rather than later and don't keep

1 delaying it only to start the longest piece at a later time
2 rather than a sooner time.
3 And with that I think I'm prepared to do maybe
4 what I should have done the first time, which is to cede to
5 Ms. Rubin.
6 THE COURT: Well, certainly, I want to hear from
7 Ms. Rubin.
8 MR. FLAXER: Thank you, Your Honor.
9 THE COURT: Come on up, please.
10 MS. RUBIN: Good morning, Your Honor. I'm Lisa
11 Rubin of Gibson, Dunn & Crutcher and I have with me my
12 colleagues, Keith Martorana, who you know, and my colleague,
13 Adam Offenhartz as well.
14 Your Honor, you've heard from everyone this
15 morning that there is a need for speed and the GUC trust and
16 the unit holders, we are all for that. The question before
17 Your Honor is how to achieve the efficiency that everyone in
18 this courtroom desires.
19 As an initial matter, I want to just preface for
20 Your Honor we see the 1(a) issue differently than it was
21 originally conceived in the May 16th scheduling order. In
22 all of the orders presented to Your Honor yesterday, that
23 issue is slightly reworded and I want to explain to Your
24 Honor why.
25 You'll see that the 1(a) --

1 THE COURT: Would it help, Ms. Rubin, if I pulled
2 out your counter-order or Mr. Flaxer's, or should I just
3 listen to you?
4 MS. RUBIN: Or Mr. Steinberg's because it has the
5 same formulation. I just want to make sure that we focus
6 the Court on this because it's an important issue to the GUC
7 trust and the unit holders, and I want to make sure that the
8 Court appreciates it.
9 What is defined as the due process violation
10 threshold issue, Your Honor, and our counter order and also
11 I believe in the one that Mr. Davidson submitted to the
12 Court yesterday is whether plaintiffs' procedural due
13 process rights were violated in connection with the sale
14 motion and the sale order and injunction or, alternatively,
15 whether plaintiffs' procedural due process rights would be
16 violated if the sale order and injunction is enforced
17 against them.
18 And the reason, Your Honor, that we have pressed
19 for that formulation is because there are two very different
20 versions of events unfolding here. You have designated
21 counsel and the Groman plaintiffs on one hand advancing a
22 version of events in which old GM fraudulently and knowingly
23 concealed from the public and from this Court what happened
24 with the ignition switch and why it was defective.
25 And on the other hand you have new GM, through the

1 Valukas report, saying this is just a sad confluence of
2 events through which people in GM operating in silos failed
3 to connect the dots. And that's why we want to formulate
4 the issue this way for Your Honor because whether the
5 violation was knowing and these people could have been
6 identified and should have been given actual notice at the
7 time or whether, conversely, there was a failure to
8 appreciate the connection between the ignition switch defect
9 and the safety concerns that have now come to light, there
10 still may be a due process violation if Your Honor were to
11 enforce the sale order and injunction against these
12 plaintiffs.
13 So with that as a preface, Your Honor, I would
14 like to turn to some of your questions, if I might.
15 THE COURT: Yes. But I would like ask you to
16 pause for a second, Ms. Rubin --
17 MS. RUBIN: Sure.
18 THE COURT: -- before you get onto them.
19 Would the corollary of what you're saying,
20 therefore, be that to the extent that the matter is close I
21 should provide for a broader ability on the part of the
22 various parties to address issues that they think are
23 important to them?
24 MS. RUBIN: Yes. I believe so, Your Honor.
25 THE COURT: All right. Continue, then.

1 MS. RUBIN: Okay.
2 Your Honor, with respect to the schedule, as
3 everyone that has come up to the podium this morning has
4 told Your Honor, the process to date has been contested.
5 While I appreciate that all of the parties are operating in
6 good faith -- we had an in person meet and confer session,
7 Your Honor, for example, that lasted nearly an entire day.
8 And I take to heart Mr. Steinberg's concession that the
9 parties are not going to dispute relevance or materiality of
10 the facts anymore, which has been a significant impediment
11 to our reaching agreement. We will try, Your Honor, with
12 all of the other parties to reach agreement on a set of
13 stipulated facts. But based on the process to date, we're
14 not particularly hopeful that we're going to get there,
15 notwithstanding Mr. Weisfelner and Mr. Steinberg's
16 representations to Your Honor.
17 So all we want to do is the following, Your Honor.
18 We want two reservations before this August 5th status
19 conference. We want to be able to tell Your Honor that we
20 believe it is not in the interest of efficiency to separate
21 the violation from the remedy, and we want to ask Your Honor
22 -- want to reserve for ourselves the right to ask Your Honor
23 for discovery.
24 Now when I say that, I don't have any particular
25 discovery in mind that the GUC trust or the unit holders

1 want at this juncture. All we're saying is based on the
2 process to date and based on the conversations that I've
3 seen unfolding between some of the other parties, it's hard
4 for me to anticipate that we're going to come back before
5 you in August with a set of stipulated facts that allows the
6 parties even to brief the isolated issue of the due process
7 violation alone.
8 If in the event the parties believe they need
9 discovery on the violation question, it makes no sense to us
10 to decouple that from the remedy. In our view we don't
11 necessarily think that there's a lot of discovery that's
12 needed on 1(b), and the parties who have appeared at the
13 podium this morning already haven't conceptualized for you
14 what discovery would be needed on 1(b) alone.
15 Instead, what they've said to you is we should
16 brief, and then after that briefing if Your Honor feels that
17 there's discovery that's germane to the issues before you
18 that haven't been addressed by whatever fact stipulations
19 we've been able to reach, then and only then should
20 discovery occur. It's hard for us to understand how that
21 serves the twin values of efficiency and judicial economy,
22 as well as respect for the parties' resources and
23 conservation of those resources.
24 In fact, Your Honor, the discovery provision that
25 appears in the order we submitted to you yesterday, that

1 language came from a version initially circulated to all
2 parties by GM and designated counsel. Why they took that
3 out of the order they submitted to Your Honor I have no
4 idea. But it seems to us to make perfect sense to try and
5 agree on a stipulation of facts, and then if we can't, to
6 come back before Your Honor and explain why discovery is
7 needed. The discovery that would be needed on violation
8 seems to us to also be relevant to the question of remedy
9 and to serve everybody's interest in speed.
10 Your Honor asked some questions about some of the
11 other issues and I would like to address those.
12 With respect to the fraud on the Court issue,
13 while I appreciate Mr. Flaxer's points, to us, as you've
14 noted already, it's not congruent. And it likely would
15 require discovery and discovery separate from any discovery
16 that's implicated on the 1(a) and 1(b) issues. My
17 understanding of the law of this circuit is that a fraud on
18 the Court claim requires some proof that an officer of the
19 court and not a witness or someone else involved in the
20 proceedings has defrauded the court knowingly with the mens
21 rea that Mr. Steinberg noted. You noted the Mr. Henderson
22 example.
23 And that that fraud is against the Court alone and
24 not the general public or one's litigation adversaries. It
25 would inherently expand the inquiry to brief the 1(c) issue

1 at that time and it's hard for me to see how that doesn't
2 necessitate some discovery.
3 Your Honor also asked the parties to address why
4 we couldn't brief 1(e) now. Your Honor, there are a couple
5 of reasons why we don't believe that that makes sense.
6 For one, I believe all the parties are in
7 agreement that the due process issue and along with it the
8 remedy will likely dispose of some of the issues before Your
9 Honor.
10 But even putting that aside, there are nearly 90
11 ignition switch complaints that are before the MDL. It
12 makes no sense to litigate whether those claims articulate
13 assumed liabilities under the master sale and purchase
14 agreement, or retain liabilities under the master sale and
15 purchase agreement without giving the plaintiffs a full and
16 fair opportunity to amend and consolidate that complaint.
17 It's senseless and a waste of resources to try and litigate
18 that issue on some 90 odd complaints now consolidated before
19 the MDL.
20 The bigger issue --
21 THE COURT: Pause, please, Ms. Rubin.
22 MS. RUBIN: Sure.
23 THE COURT: Because we have parallel proceedings
24 in the District Court on the one hand and in this Court on
25 the other. And I think you would understand and respect

1 that each Court's instinct at least would be to try to
2 minimize the extent to which it steps on the toes on the
3 other and, also, to try to make things as easy as it could
4 for the other.
5 I would have thought that the ability to amend
6 complaints might be more appropriately decided by Judge
7 Furman if there are complaints in actions before him which
8 parties might want to do or not do or ask or not ask, where
9 he might say okay or not okay in the context of an
10 understanding of what needs to be proven and what may be
11 proven as a matter of federal bankruptcy law.
12 MS. RUBIN: I understand, Your Honor.
13 THE COURT: That would suggest that I try to do as
14 much as I can to help him, but that I not take away his
15 ability to make judgments that might turn on the outcome of
16 matters that I've decided.
17 MS. RUBIN: I understand, Your Honor, and
18 certainly I don't mean to speak for or purport to speak for
19 plaintiffs and what judgments they have about what would be
20 appropriate in that proceeding or in this proceeding. All I
21 am saying, Your Honor, is that it would seem to us that
22 before we litigate which claims are properly against the GUC
23 trust versus new GM. It would seem to me to be
24 administratively difficult to do that in the current
25 composition of these actions. There are some 90 odd

1 complaints.

2 Let me get to the more important point, Your

3 Honor, if I may.

4 As Your Honor noted at the May 2nd hearing,

5 whether or not these claims are or are not against new GM

6 versus the GUC trust, that would not resolve the issue of

7 whether the plaintiffs have excusable neglect under the

8 Pioneer standard and, conversely, whether those claims are

9 equitably moot. Both of those determinations, Your Honor,

10 as you well appreciate, are inherently fact dependent.

11 So it's hard for us to see how litigating 1(e)

12 makes sense now for a variety of reasons. We simply see it

13 differently.

14 Your Honor, the last thing I want to address is

15 Mr. Weisfelner's point about the veto and the offer that he

16 made to all parties. We appreciate the offer that Mr.

17 Weisfelner made to try and narrow the issues between the

18 parties and to ensure that if we went forward on 1(b) it

19 would only be based on a unanimous decision of all parties.

20 But we can't agree to that now without seeing how

21 the fact stipulation process unfolds, without seeing whether

22 the parties actually need discovery to even resolve the

23 narrow issue, and Mr. Weisfelner and Mr. Steinberg have told

24 you could proceed expediently.

25 We don't understand why there's such resistance,

1 Your Honor, to letting us put in papers before you at the
2 end of July as contemplated in the draft order we submitted
3 yesterday. All parties are in agreement that we should come
4 back before you on August 5th for a status hearing. To set
5 in motion now a process to brief whether or not there needs
6 to be additional threshold issues considered and whether or
7 not there needs to be discovery simply seems to us to be a
8 matter of convenience and expediency for the Court.
9 And with that, Your Honor, I would be happy to
10 address any questions.
11 THE COURT: No. You kind of covered them as we
12 went along. Thank you, Ms. Rubin.
13 MS. RUBIN: You're very welcome.
14 THE COURT: Mr. Golden, do you have any need to
15 supplement anything Ms. Rubin said?
16 MR. GOLDEN: No. No, I don't.
17 THE COURT: Okay. Is there any need by anybody --
18 oh, Mr. Inselbuch, I assume you want to reply, but --
19 MR. INSELBUCH: Yes.
20 THE COURT: -- I don't know if Mr. Steinberg wants
21 to --
22 MR. STEINBURG: Yeah, I do.
23 THE COURT: -- also.
24 MR. STEINBURG: I do briefly.
25 Your Honor, I think you have a sort of a microcosm

1 of why our meet and confers take a day when we're
2 essentially fighting over whether we should take an issue
3 off the table or preserve it, to be able to take it off the
4 table or not take it off the table a month from now where
5 the major exercise being whether we're going to go through
6 factual stipulations.
7 I just want to say two things, and I know this is
8 a procedural hearing.
9 New GM could brief the 1(e) issue, the -- whether
10 it's a retained liability or an assumed liability. They
11 could do that now. The problem is, is that while we say we
12 could do it now without discovery, others say it's a much
13 more complicated issue. Maybe the complexity is something
14 that I don't see. Maybe I have tunnel vision. But it just
15 seemed to us that if everybody wanted to take it off the
16 table for now, then I didn't want to fight that momentum.
17 The other thing, I just want to say that as the
18 focus is on whether there was a procedural due process
19 violation, I just think it needs to be made clear that we
20 have a very strong view about that issue that old GM and new
21 GM, as the purchaser, are different people with different
22 responsibilities, et cetera. And the whole part of the
23 discussion today has been GM with regard to the procedural
24 due process. And I wanted to just make sure that at least
25 at one point in the record I stood up and said that new GM

1 is a separate entity who bought, with government finance
2 money as a good faith purchaser and that we view the issues
3 differently, including the remedies as to what should be
4 applicable to that type of entity.
5 Thank you.
6 THE COURT: Thank you.
7 Mr. Inselbuch.
8 MR. INSELBUCH: Listening to Ms. Rubin and Mr.
9 Flaxer I'm not sure they really understand what our reason
10 is for going ahead with 1(a) alone.
11 We are no more or less sanguine now that we will
12 have agreed stipulations that will take care of all of the
13 facts. What we believe today, however, is that we will be
14 able to present a record to you irrespective of whether GM
15 stipulates to it that you will accept as factual basis and
16 sufficient factual basis to go ahead and decide issue 1(a).
17 That record will not be sufficient to satisfy 1(b) under any
18 circumstances, particularly as I've said, we don't know yet
19 what the issues will be under 1(b).
20 We heard Ms. Rubin describe that a particularly
21 fact sensitive question of whether or not new GM or the GUC
22 trust should on the one hand or the other hand be responsive
23 if Your Honor were to decide there was a need to respond.
24 As -- we agree that would be a very fact sensitive question.
25 We don't know what the facts that would be relevant to that

1 -- those issues might be until they are framed.

2 Mr. Flaxer described the confluence between (b)

3 and (c) by saying, well, what new GM knew at various levels

4 like its chairman, what level they might have known at, what

5 old GM -- I'm sorry -- what old GM knew at its various

6 levels with its chairmen, what new GM might have known. All

7 of those are fact sensitive questions that are involved in

8 both (b) and (c).

9 We agree that may be true. That's why we do not

10 believe there is any possibility of going forward on a

11 record without discovery except on (a). We think it's

12 eminently practical to do that and that's why we suggest

13 that's where we go and not distract ourselves with trying to

14 come up with other approaches that we can do -- deal with

15 later after there's been a decision on 1(a).

16 THE COURT: All right. Thanks.

17 Has everybody had a chance to speak their peace on

18 the scheduling matters?

19 All right. Evidently, yes.

20 We're going to take a ten-minute recess or to put

21 it more exactly, I would like you all back in ten minutes

22 after which I'm going to give you an interim ruling on the

23 matters that we've addressed so far. And then we'll talk

24 about the implementation of that ruling and then we'll get

25 onto the other issues.

1 We're in recess until -- let's make it until ten
2 after eleven on the clock.
3 (Recess taken at 10:57 a.m.; resumed at 11:21 a.m.)
4 THE CLERK: All rise.
5 THE COURT: Have seats, please.
6 THE COURT: Ladies and gentlemen, though I don't
7 agree with anyone who's spoken in full, my views after
8 hearing your respective positions are closer to those
9 articulated by Mr. Flaxer and Ms. Rubin and I'm ruling that
10 the issues to be briefed as threshold issues should be
11 broadened without prejudice to parties' rights to argue on
12 August 5th or at a later time that issues can't be justly
13 resolved without one kind or another of discovery.
14 All agree, or at least all have heard or who
15 have spoken on the subject agree, on the need to find that
16 sweet spot between fairness and getting to the right result
17 and achieving efficiency and speed. And I am of the view
18 that a variant of what each of you have recommended in terms
19 of the way to achieve that is the best way to achieve those
20 somewhat conflicting goals.
21 I'm ruling that you're to brief as threshold
22 issues Issue 1(a) which has been colloquially referred to as
23 the due process issue, 1(b) which has been colloquially
24 referred to as the remedies issue and E, whether any or all
25 claims asserted in the additions which actions or claims

1 against the Old GM bankruptcy estate and/or the GUC trust.
2 So the latter without now addressing and while maintaining
3 reservations of rights with respect to issues such as
4 Pioneer (ph) Alliance, timeliness and equitable willingness
5 (ph).
6 I'm going to come back to the former issue, 1-C,
7 on the fraud on the court threshold issue momentarily
8 because, as you'll hear at that time, I wonder if there's a
9 way you can make progress on that as well. All of that is
10 without prejudice to your respect rights to argue with
11 respect to any of them that the consideration of such an
12 issue is, in whole or in part, premature or that you need
13 discovery of some kind to address it. No reservation of
14 rights may be more significant in connection with issues B
15 and D than it is with the 1(a) issue where you figure to
16 have consensus, that you could make a lot of progress on
17 that right now.
18 But the bases for the exercise of my discretion in
19 that regard, to the extent they weren't telegraphed in the
20 back and forth I had, each of you will follow. When it was
21 his turn to speak, Mr. Inselbuch then explained how the
22 terrain with respect to the litigation of these issues had
23 evolved. It at least seemingly is the case that it's easier
24 to agree on facts now after the issuance of the Valukas
25 report and that that report provides a basis either by

1 intentions that it's an admission, a matter as to which I
2 make no finding today, or, based upon the fact that if he
3 found those facts, others could as well.
4 When Mr. Weisfelner spoke, the ones he made didn't
5 change that or materially add to that except by underscoring
6 that there may be even greater basis for more materials to
7 use for reaching agreements, stipulated facts. Those
8 opportunities presented by the matter, the Valukas report
9 that Mr. Insulbuch discussed and anything else that might be
10 of similar value that Mr. Weisfelner discussed provide
11 opportunities that are too good to ignore and provide a
12 reasonable move even if it's not an expectation that
13 stipulated facts are going to be both achievable and provide
14 an opportunity for avoiding the discovery that all agree or
15 should agree would materially drag down this process. Those
16 matters, collectively, coupled with the progress you made on
17 stipulated facts so far give me some optimism that I can
18 give you lien forbearance (ph) based upon facts as to which
19 you have been able to reach the necessary stipulations.
20 I think that doing as much as we can on stipulated
21 facts is hugely important because, as I indicated, deferring
22 these matters to rate discovery would materially,
23 dramatically, seriously keep adding adverts. I think it's
24 all really bad, slowed things down before me and, as a
25 corollary, before Judge Fuhrman. So we're going to do as

1 much as we can to keep things moving forward as quickly as
2 possible consistent with getting the result that's just.
3 And it's also so because it's possible -- I'm not
4 signing it now but it's at least possible -- that for
5 reasons that Mr. Flaxer and Ms. Rubin discussed, the 1(a),
6 1(b) and 1(e) issues may be hard to separate. With that
7 said, if any of you think that they can and should be
8 separated, you're free to do that in your briefs and, as I
9 said, if you think something requires discovery, you're free
10 to make that point to me, definitely.
11 Coming back to the fraud on the court issue, I
12 wonder -- I'm not ruling today but I'm raising as an issue
13 for you ultimately to meet and confer, whether getting as
14 much done as possible to meet my needs and needs of, I
15 suspect, Judge Fuhrman might have as well, suggest that if
16 we can make any progress on the fraud on the court issue, we
17 should at least try and I want you to meet and confer after
18 today's hearing on whether it would be possible to brief
19 this legal standards applicable to fraud on the court. Then
20 to be matched up against any facts that might later be
21 developed if and when determining that becomes necessary.
22 There's reference onto that relatively briefly in
23 her remarks today. I don't know if everybody's going to go
24 and agree with her view of the legal standards but I think
25 that if a fraud on the court ultimately needs to be

1 determined, determining the legal issues that provide to any
2 such determination or the legal principles that apply to any
3 such determination might make her strong too and merely
4 determining or briefing the legal principles would, by
5 itself, not necessarily require discovery but, of course,
6 whenever you're talking about next questions of fact and law
7 and you're measuring facts against the underlying law,
8 sometimes they're hard to separate and I express no view as
9 to whether the being confirmed is yet to be successful but I
10 want you guys to think about it and at least try any such
11 agreement or ruling by me on the legal standards. I don't
12 expect you to agree on the legal standards. I expect you to
13 agree or agree to disagree on whether it would be useful to
14 also brief the legal standards, would have the potential of
15 shaping any discovery that might thereafter be necessary --
16 not saying it would be -- and it's at least possible that
17 there could be unintended consequences of premature briefing
18 on the subject. I want you guys to think about it, talk to
19 each other and see if it would be productive. The
20 underlying goal, once more, is and I want to keep things
21 moving forward as efficiently and quickly as I can
22 consistent with the adjustments.
23 UNIDENTIFIED MALE SPEAKER: Okay.
24 THE COURT: I do, however, want you to report to
25 me on whether you have a consensus on that at the earliest

1 practical opportunity and if there's something to argue
2 about, I wonder if we could deal with it as well on moment
3 to moment.
4 I've already discussed discovery in substantial
5 part. I don't want to decide too much on further discovery
6 now without determining how much progress we can make
7 without it. Mr. Inselbuch's remarks gave me some comfort
8 that we do have the ability to make a lot of progress
9 without discovery and I don't want to let that opportunity
10 slip beyond my fingers. So for the reasons last stated, I'm
11 affirming the general shape above the order that was
12 initially presented as modified by thoughts advanced by Mr.
13 Flaxer and Ms. Rubin that I've endorsed in the ruling today.
14 To the extent nothing required a black line
15 change, it's approved. I want the three principal parties
16 who -- or constituencies who spoke coupled with any of the
17 other -- what's the word that Barkley used to describe the
18 family, not the designated counsel, the certain counsel or
19 --
20 UNIDENTIFIED MALE SPEAKER: Not the parties, the
21 parties --
22 UNIDENTIFIED MALE SPEAKER: Counsel for the
23 identified parties.
24 THE COURT: Counsel for the identified parties to
25 see if you can consensually agree upon weaving into one

1 point of the order or another. It looked to me like from
2 the document managing members and then oh, it all started
3 with the same document that you just marked it up to see if
4 you can give me a jointly-submitted revised order that
5 embodies the portions of Flaxer/Rubin positions that I
6 endorsed and, of course, consistent with the greater detail
7 that I gave you in the ruling just now and if anybody wants
8 any and all reservations of rights that I said you can have
9 and I don't want you to have to work over the Fourth of July
10 weekend but if you can get it to me sometime relatively
11 early next week, I would appreciate that.
12 Anything else on this before we move on to the
13 next issue? I see both Mr. Steinberg and Weisfelner rising.
14 First you, Mr. Steinberg, then Mr. Weisfelner.
15 MR. STEINBERG: Your Honor, just from a
16 housekeeping viewpoint, we'll prepare the draft of Your
17 Honor's ruling circulated to the parties. I'm pretty sure
18 we'll get a consensus on it and we'll red line it off the
19 draft that we submitted if that's okay so at least you can
20 see where the basis of comparison is.
21 I understand, Your Honor, about not changing the
22 parts that we had agreed to. I had not, obviously, spoken
23 to the other counsel yet but we had envisioned a different
24 type of briefing so we had a briefing schedule that's set up
25 if there would be a modest tweaking to reflect the fact that

1 we'll be briefing more issues and if we could all agree that
2 that's a fair amount of tweaking, I would hope that Your
3 Honor would consider that when we present --
4 THE COURT: That's agreeable in concept. You
5 know, I'm giving you authority to make those changes now.
6 If I think anything's out of the realm of reasonableness,
7 I'll let you know but I'm giving you and the other parties
8 flexibility now.
9 MR. STEINBERG: And since I've gone through this
10 experience before with Your Honor, it would seem to me so
11 that we meet your expectations as well, we'd like to -- I'd
12 like to be able to consider page limitations for the briefs
13 with my other counsel if they want to consider it but then
14 Your Honor will understand the type of briefing that we
15 expect to give to you and if Your Honor thinks that that is
16 killing too many trees or something like that, you'll be
17 able to modulate how we should write a brief but I think we
18 probably need page limitations or suggestions or we may need
19 to modify your rules on this.
20 THE COURT: Given the importance of the issues,
21 I'm going to cut you some slack on this but we properly
22 sensed that about halfway through my judicial term, I had
23 started to impose page limits because things were getting
24 out of hand. One thing you can do -- and I think my task
25 here is a little easier because practically all of you are

1 real litigators and not just bankruptcy lawyers, you can
2 save a lot of paper by writing the briefs like litigators
3 do, like that, because lawyers do, especially when you're
4 talking about a lot of the wordiness that bankers and
5 bankruptcy lawyers make when they're describing legal
6 documents and addressing your relevant facts.
7 MR. STEINBERG: The only other thing, Your Honor,
8 is that -- well, the only other thing, Your Honor, that I
9 have and then I'll yield the platform, you had talked about
10 reporting to Your Honor on the after the meet and confer as
11 to whether we think it'd be appropriate to brief the legal
12 standard on fraud on the court and if we would be able to
13 take up the issue if there's not a full consensus on it at
14 the August 5th status conference. Would it be helpful -- it
15 would be helpful probably to us in order to see what kind of
16 consensus we can get if you tell us when you would like to
17 get that report. If we gave it to you two weeks before the
18 August 5th status conference, would that be sufficient time
19 to -- that will give us -- we will have met and conferred a
20 few times on the factual stipulations and we will have
21 fairly well baked in whether we could do something or not.
22 THE COURT: I want to get others' views on whether
23 they concur with that proposal and I guess my dream scenario
24 would be if, as you guys sometimes can do, you can give me a
25 joint letter saying you've agreed on this or we don't agree

1 on this, our consensus is on this, we couldn't reach
2 consensus on that so that I -- minimizing the extent of the
3 papers that need to be done on it. If you think after
4 you've talked it requires more extensive discussion on that,
5 I would be inclined to have a note in mine but I don't want
6 to sign off on this issue, thus, until I've heard them.
7 MR. STEINBERG: Right. Your Honor, just so it's
8 clear, we're amenable to whatever date there was. I just
9 understand that when we did the last scheduling order, we
10 were supposed to deliver things to Your Honor on July 1 and
11 Your Honor was getting papers and we appreciate it very much
12 at 5:00, 6:00, 7:00 o'clock this even -- yesterday evening
13 and sometimes we can do better if we had a deadline so that
14 Your Honor could have papers in a more orderly fashion. So
15 that's the only reason why I suggested it.
16 THE COURT: Well, that -- I well understand how
17 hard you guys are trying on this. I'm not criticizing
18 anybody for what happened yesterday but, yeah, if you can,
19 that would be helpful.
20 MR. STEINBERG: Okay.
21 THE COURT: Mr. Edward Weisfelner.
22 MR. WEISFELNER: Your Honor, with great
23 trepidation, I rise to ask Your Honor for a 15-minute
24 adjournment. I have a limited number of questions and
25 requests for clarification with regard to your order. I

1 don't feel like eating my shoe and since I have the lead MBL
2 counsel sitting right here in court and my other co-counsel,
3 I'd like 10 or 15 minutes to make sure that the points of
4 clarification I seek are ones that are shared across the
5 board with the MBL lead counsel and the other designated
6 counsel.
7 THE COURT: If there are matters of clarification
8 that's contrasted to re-arguing anything, I've decided you
9 can have that 15 minutes so we'll reconvene and we'll --
10 MR. WEISFELNER: And, Your Honor, may we use the
11 conference room?
12 THE COURT: That will be --
13 (Asides.)
14 THE CLERK: No.
15 THE COURT: Well, why not?
16 MR. WEISFELNER: Well, I'll use any conference
17 room.
18 THE COURT: Yeah, you can use my conference room
19 after I and my (indiscernible) and if you'd come in through
20 the back door, you can come in?
21 MR. WEISFELNER: Thank you, Judge.
22 THE COURT: We're in recess.
23 THE CLERK: All rise.
24 (Recess taken at 11:44 a.m.; proceedings resume at
25 12:07 p.m.)

1 THE CLERK: All rise.

2 THE COURT: Have a seat, please.

3 Mr. Inselbuch, you're rising.

4 MR. INSELBUCH: Yes, sir. One point, briefly. We

5 understand your ruling, Your Honor.

6 With respect to 1(b), as I indicated to you

7 earlier, we are at a loss to know how to go forward to

8 produce factual stipulations or a record on 1(b), because

9 what we have, by way of a record here, is a motion by New GM

10 simply to stay these lawsuits. Could we have a direction

11 from you that New GM tell us, within the next week or two,

12 if they were to lose on 1(a), what they would be arguing the

13 remedy would be under 1(b) so that we could understand what

14 factual basis, if anything, in addition would be necessary

15 to go forward without discovery?

16 THE COURT: What is the hole (sic), Mr. Inselbuch?

17 I got the impression from the colloquy that I heard

18 beforehand that the array of facts as to which agreement was

19 solicited was so enormous that the real issue was the extent

20 to which they might turn out to be irrelevant rather than

21 even more facts for which you would want stipulations?

22 MR. INSELBUCH: I don't think that's correct,

23 Your Honor. The debate on the early set of stipulations was

24 much improved by the delivery of the Deluco report. What we

25 are focusing on here is we had the same issue without the

1 Deluco report. We can't know, as we sit here today, what
2 issues, what factual matters we might need to respond to an
3 argument if we don't know what it would be about what New
4 General Motors might say the relief ought to be if they lose
5 and Your Honor holds that there was a violation of due
6 process. And we think that, if we're to try and move
7 forward on this in some reasonable way, we need to have that
8 to scope out what we need to do.
9 THE COURT: Let me hear from you, Mr. Steinberg.
10 MR. STEINBERG: Your Honor, the 1(a) issue, the
11 procedural due process issue, is their defense to my motion
12 to enforce. They then will have to tell Your Honor what the
13 remedy they should be asking for in light of having won the
14 first issue, if we have to deal with that. I'm struggling
15 to try to figure out what it is that they expect me to say
16 when it's their defense that they now have to postulate the
17 remedy.
18 The real practical answer is is that we have set
19 up an opening delivery of factual stipulations by either
20 Monday or whatever date that we agree on should be relaxed
21 because of the additional issues. We then have two weeks to
22 then try to figure out how to get a bundle of factual
23 stipulations.
24 We will have delivered what we thought should be
25 done on the 1(b) issue on the day that we're exchanging

1 factual stipulations, and we'll have 12 or 15 days to try to
2 figure it out. I'm not exactly sure why they think they
3 need to impose other requirements on their affirmative
4 defense.
5 THE COURT: Is your position, in substance, likely
6 to be that, whether or not you win on a 1(a) issue, you
7 still don't have to pay?
8 MR. STEINBERG: That's correct, because the
9 obligation is Old GM who committed the procedural due
10 process violation, and we're the good faith purchaser for
11 value and that we're entitled to the protections that the
12 courts have affirmed. That would be our position. I think
13 I've said it to them.
14 THE COURT: Without ruling on the merits of the
15 position, I can't say that what you just told me came as a
16 surprise to me.
17 MR. STEINBERG: Right, and it doesn't come as a
18 surprise to them. I've said it every chance I have.
19 THE COURT: Mr. Inselbuch, I don't see the need to
20 be as significant as you do. If any further clarification
21 of what Mr. Steinberg just told me is practical, give it to
22 Mr. Steinberg. To the extent that you've pretty much said
23 it all, then work with that, Mr. Inselbuch.
24 MR. INSELBUCH: Yes, I think we have their
25 statement. We don't need a ruling from Your Honor. Thank

1 you.
2 THE COURT: Okay.
3 Now, Mr. Weisfelner, did your issues drop out, or
4 do you still need stuff from me?
5 MR. WEISFELNER: Our issues did, in fact, drop
6 out, but I appreciate the opportunity.
7 THE COURT: Okay. Good.
8 All right. Then am I correct -- directing this
9 question at those who weighed in in the first phase of
10 today's hearing -- that we're done with that and I can turn
11 to Phaneuf? If I'm mispronouncing the name, I apologize.
12 MR. WEISFELNER: Your Honor, I think you can so
13 long as Your Honor's prepared to dismiss those of us that
14 have other places to go and don't need to sit through the
15 balance of Your Honor's (indiscernible - 1:39:01).
16 THE COURT: Yeah, sure.
17 I asked my law clerks to inquire of you all as to
18 whether you have a preference, now that it's about quarter
19 after 12:00, to go straight through. My tentative is to go
20 straight through, but, if anybody has a different view, I'll
21 hear it.
22 MR. STEINBERG: No, I have a very strong personal
23 view to go straight through. I have an obligation to meet a
24 family member who's going through some testing in the
25 afternoon. So, if I can in any way be able to try to

1 accommodate, I'd like to.

2 THE COURT: So you'd like to keep going, too?

3 MR. STEINBERG: I would, yes, Your Honor.

4 THE COURT: Okay.

5 Let's go -- Ms. Rubin?

6 MS. RUBIN: Your Honor, I --

7 THE COURT: Pull a mike close to you so I can hear

8 you, please.

9 MS. RUBIN: Oh, I'm sorry, Your Honor. I would

10 just ask that, pursuant to Mr. Weisfelner's request, the

11 briefing schedule for the Gillispie matter concerns the GUC

12 Trust as well. I believe that we have a resolution of that

13 and can report to Your Honor in short order. If we could

14 turn to that, that would allow Mr. Weisfelner's request that

15 the rest of us be dismissed as well.

16 THE COURT: Let's do it this way, folks. Anybody

17 who wants to leave right now who doesn't care about the

18 Phaneuf, Elliott, or Gillispie is free to do that.

19 Then I'm going to put your matter up next,

20 Ms. Rubin, and I sense that you're basically giving me a

21 report on what your deal is, assuming I'm okay with the

22 deal.

23 MS. RUBIN: Yes, Your Honor.

24 THE COURT: Good. Okay.

25 (Pause)

1 MR. STEINBERG: Your Honor, if I could just say
2 quickly about Gillispie so that I think Ms. Rubin would like
3 to then depart as well. We have spoken with counsel for
4 Mr. Gillispie. We agreed on a briefing schedule.
5 THE COURT: By the way, is he here in the
6 courtroom or on the phone?
7 Evidently, not.
8 MS. RUBIN: It's my understanding that Mr. Owens
9 intended to be on the phone.
10 Mr. Owens, are you on the phone?
11 THE COURT: Mr. Owens?
12 Is that Mr. Gillispie's counsel?
13 Are you on the phone?
14 I sense not, but, if you're reporting on something
15 where he might sign a stip. or consent order, why don't you
16 go ahead, you and Ms. Rubin, please?
17 MR. STEINBERG: Your Honor, we agreed, both the
18 GUC Trust and New GM, to respond to his motion on
19 August 18th. He would file a reply on September 18th, and
20 then, the Court would schedule an oral argument, to the
21 extent the Court figured that oral argument was necessary.
22 We're prepared to put this into a stipulation so it is of
23 record, but those were the dates that have been --
24 August 19th instead of August 18th. So it's August 19th,
25 September 18th, and we'll put that into a briefing schedule.

1 THE COURT: Do you have a desire to be heard
2 beyond that, Ms. Rubin?
3 MS. RUBIN: No, Your Honor.
4 THE COURT: Okay.
5 Then, that's fine, but especially since that
6 attorney isn't here, put it in the form of a stip. or a
7 consent order, and I'll so order it once I know that he's on
8 the same page as the two of you guys.
9 MR. STEINBERG: All right. Thank you, Your Honor.
10 MS. RUBIN: Thank you, Your Honor.
11 THE COURT: Okay. And you can take off, if you
12 care to, Ms. Rubin.
13 Can I hear from counsel for Phaneuf now? Would
14 you come up, please?
15 And let me get appearances. Because, while I know
16 some of the old timers in this court, I don't know
17 everybody.
18 MR. BLOCK: Good afternoon, Your Honor. Jeffrey
19 Block, with the Block & Leviton firm, for the plaintiff
20 Phaneuf, and you were pronouncing it correctly, yes.
21 THE COURT: Okay.
22 MR. GARBER: Todd Garber, from Finkelstein,
23 Blankinship, Frie-Pearson & Garber, for Phaneuf.
24 THE COURT: Okay.
25 MR. FLEMING: Joel Fleming, also of the Block &

1 Leviton firm, for --
2 THE COURT: Okay.
3 Am I going to hear mainly from you, Mr. Block?
4 MR. BLOCK: Yes, Your Honor.
5 THE COURT: Okay.
6 Have a seat, though, please.
7 And, of course, I know Mr. Steinberg.
8 Make your arguments as you see fit, but I would
9 like both sides to be brief, because I have read the papers,
10 and I don't think the issues here are as difficult or
11 complicated as those that we heard before.
12 The issue, it seems to me, Mr. Block, is that, on
13 this lay of the land, there is a basis for considering your
14 client or clients any differently than those in the other 87
15 actions that are before me. On page 12 of his answering
16 brief, in particular. Mr. Steinberg contends that at least
17 one of the vehicles -- or page 11 and 12 -- in question is a
18 2006 Chevy, which, as its name would suggest, was a vehicle
19 manufactured by Old GM, and, if New GM did something bad, a
20 matter which I don't decide, it at least seemingly walks,
21 talks, and quacks, like a lot of the stuff that was done
22 that was bad, took place before the July 2009 sale.
23 There is also an issue in this and other cases
24 before me as to whether if New GM or if Old GM or any GM did
25 something bad, it related to an ignition switch that was

1 installed in a vehicle and that it's at least arguable that
2 liability for constructing or designing of bits which would
3 be associated with the designer/manufacturer of that switch,
4 both matters which, if true, are established would suggest
5 that the 363 sale order applies in the first instance to any
6 liabilities that are asserted. Apart from that, I have some
7 difficulty seeing the prejudice to your client if I were to
8 reach preliminary injunction analysis doctrine as to how you
9 would be harmed in any material respect, if at all, when
10 you're treated like everybody else, and at least most judges
11 are not of a mind to manage litigation for the benefit of 1
12 out of 88 constituencies.
13 I sense from your papers, both your original
14 motion and your letter, that you're relying on the fact that
15 one or more of your plaintiffs might have acquired their
16 vehicles after the sale order, but I need to know the extent
17 to which either any of the assumptions I made before might
18 be matters as to which you're disclaiming a basis for
19 liability or whether we have a situation which I may have to
20 deal with later, because I'm confident that there are at
21 least 1 of the other 87 litigants who have the same
22 situation where they're hanging their head on both pre and
23 post-sale liability, but Mr. Steinberg may contend -- I'm
24 not reading his mind. I haven't spoken to him, but he may
25 contend that the fact that part of the liability is premised

1 on prepetition or presale acts -- affects the analysis.

2 So I need help from you as to why I should treat

3 your case different than any of the others. As you can

4 sense from what I said, my tentative, subject to your right

5 to be heard, is to treat you like the other 87. So come on

6 up, please.

7 MR. BLOCK: Thank you, Your Honor, and I

8 appreciate your comments, and obviously, I'll try and be as

9 brief as possible.

10 First, all of our clients, not just one, but all

11 of them purchased their vehicles post-bankruptcy. So none

12 of our purchasers are pre-bankruptcy purchasers, and we

13 think that's what makes our claims different than the other

14 87, and my understanding is the other 87 have both pre and

15 post. So they're a common nature.

16 So our view is that, when you have people who

17 bought post, as we put in our papers, we view ourselves as

18 what are the future claims. So none of our clients had any

19 claim against Old GM at the time of the bankruptcy, and, to

20 us, we view the case exactly, even stronger, but exactly

21 like the Grumman Olson case that we cited in our papers, and

22 that was a case before Judge Bernstein, and that was a truck

23 component that was manufactured.

24 The manufacturer of the truck component filed for

25 bankruptcy. Another company, Morgan, purchased all the

1 assets through a 363(f) sale. After the bankruptcy, a
2 plaintiff was injured and brought a product liability suit
3 against Morgan. Morgan said your claims were released as
4 part of the sale, as part of the bankruptcy. Can't bring a
5 claim.
6 Judge Bernstein ruled no, because a constitutional
7 due process issue. If he didn't have a claim at the time of
8 the bankruptcy, the claim cannot be released, and, also as
9 part of the bankruptcy code, which is since you did not have
10 a claim at the time of the bankruptcy, again, it cannot be
11 released, and that decision was affirmed by the district
12 court.
13 We know that we haven't found a case in which any
14 Court, a bankruptcy Court, has ruled that a future claimant
15 -- their claims can be released through a bankruptcy, and I
16 know this is a question that the Second Circuit did not
17 address in the Chrysler case. So it is an open question,
18 but that's why we view ourselves in a different situation
19 than the others, because all of our purchasers were post-
20 bankruptcy. So we don't think that there are any claims
21 that they have against New GM that can be released, because,
22 like I said, they never got notice of the bankruptcy, and
23 they could not have because they were not claimants at the
24 time.
25 So that's why we think our case and our claim is

1 different from all the other 87, which is why and the only
2 reason why we did not agree to the sett. (sic). I also
3 think, Your Honor, that in his order from, I think it was,
4 last week, Judge Furman in talking about the organization of
5 the cases, notes that there are issues in the bankruptcy
6 court, and I think a read of his order is he is looking for
7 guidance from Your Honor as far as what is going to happen
8 with the claim.
9 We think it would be beneficial to the district
10 court if we're right, and, if I assume I'm right, that folks
11 who purchased after bankruptcy who never got notice of the
12 bankruptcy, could not have gotten notice because they didn't
13 have a GM car, therefore, didn't have a claim -- they're
14 future claimants. Their claims could not be released. I
15 think that would be helpful to the district court in
16 organizing the cases and determining how the cases go
17 forward.
18 If I am wrong and future claims can be released
19 through the bankruptcy, then I think obviously that point to
20 be made to Judge Furman doesn't need to be made, but that's
21 our view, and that's why we think we're different. And
22 there are two groups of folks that we have here.
23 We have people who purchased their cars, new cars,
24 from New GM after the bankruptcy. We have a second group of
25 people who purchased used cars after the bankruptcy.

1 THE COURT: Purchased used cars after the
2 bankruptcy but that were manufactured before the bankruptcy?
3 MR. BLOCK: Yes, Your Honor, yes.
4 THE COURT: And I take it that there are more
5 variants even than those that you mentioned such as those
6 that might have parts in them that were made before the
7 bankruptcy but were either old cars, on the one hand, or new
8 cars, on the other. There's a whole bunch of different
9 combinations and permeations, I take it, that's self-
10 evidence to all of us?
11 MR. BLOCK: Absolutely, Your Honor, but we also
12 think, if you go back to the Grumman Olson case, what
13 Judge Bernstein found where there was no dispute that the
14 part issued or the product at issue was manufactured,
15 designed and manufactured by the bankrupt entity, and the
16 bankrupt entity was -- all the assets were purchased in the
17 sale by the new company. Judge Bernstein still ruled it
18 doesn't matter.
19 That claim cannot be released, because you were
20 not a claimant at the time of the bankruptcy. So that was
21 completely irrelevant to his decision and completely
22 irrelevant to the district court when the district court
23 affirmed.
24 THE COURT: Do you agree that there may or may not
25 be an overlap between what you said and the fact that,

1 whether or not it's a claim that could have been asserted in
2 the bankruptcy, there is an analytically distinct issue,
3 possibly with the same conclusion, possibly with a different
4 conclusion, as to whether New GM assumed any particular
5 claim?
6 MR. BLOCK: Well, you could go through an analysis
7 as far as whether or not New GM assumed the claim, but I
8 think the way we're also looking at this is I don't even
9 think you need to reach that level of analysis, because I
10 think, again, the Grumman Olson case turns on the simple
11 question that because you did not have a claim at the time
12 of the bankruptcy, you could not have gotten notice of the
13 bankruptcy, and therefore, any claim that you have could not
14 have been released. So you are the future claimant, and
15 future claims cannot be released through --
16 THE COURT: I understand that argument, Mr. Block.
17 MR. BLOCK: Okay.
18 THE COURT: The question is when and how that
19 argument should appropriately be determined. I take it you
20 were sitting through the very lengthy proceedings that
21 preceded your argument?
22 MR. BLOCK: I was, Your Honor.
23 THE COURT: And you heard the lawyers. I think we
24 call them the designated counsel, who were speaking for
25 ignition switch action plaintiffs. I take it you shared my

1 view that they're pretty good lawyers?
2 MR. BLOCK: They're excellent lawyers, Your Honor.
3 THE COURT: And one of the things that might
4 inform the exercise of my discretion, if I were to consider
5 it merely a matter of discretion, is whether they might be
6 thinking of some of the very same arguments you're making,
7 and they may be making the same arguments you're making,
8 albeit better or worse than you're making them.
9 MR. BLOCK: I would venture to guess they may make
10 them better than I'm making them. Hopefully, I'm as equal
11 to them.
12 THE COURT: Well, you've already proven that
13 you're a capable lawyer, but the underlying point, of
14 course, is a different one.
15 MR. BLOCK: Well, --
16 THE COURT: Which is whether I should be deciding
17 issues of the character that you are raising before I give
18 all of the other 87 lawyers a chance to do their thing
19 because I haven't spoken to them any more than I've spoken
20 to Mr. Steinberg, and I'm thinking merely in terms of that
21 which is foreseeable, but I think it's foreseeable that
22 they're going to be making an argument that has some
23 similarities, at least, to the one you're making.
24 MR. BLOCK: Well, I think they -- I would suspect
25 they will, Your Honor. What I would just say in response to

1 that is obviously, we are responding to Your Honor's
2 May 16th order that we received opposing the stay, and those
3 are the reasons why we, for our case, oppose the sett.
4 (sic), and procedurally, that's how we got here and the
5 timing of how we got here.
6 Number two, I don't know why nobody, in my view,
7 nobody has raised what I think is a very straightforward
8 threshold question as far as whether folks who bought after
9 the bankruptcy who I'm calling the future claimants should
10 be part of the determination as to whether the release
11 applies to them or the injunction applies to them because
12 our view is we think the case law is very clear that it
13 doesn't. I think if Your Honor were to agree with me and
14 were to issue that ruling, I think it would be highly
15 beneficial to the designated counsel. I think it would also
16 be very helpful to Judge Furman as he decides how the cases
17 should be organized and moved forward, and obviously, that's
18 going to be up to Judge Furman to decide.
19 THE COURT: Okay. Anything further?
20 MR. BLOCK: No, unless you have anything else,
21 nothing else.
22 THE COURT: No, you kind of helped me as you went
23 along.
24 MR. BLOCK: Okay. Thank you, Your Honor.
25 THE COURT: Thank you.

1 Mr. Steinberg?
2 MR. STEINBERG: Yes, Your Honor. I think your
3 questioning put your finger on a lot of the issues. One is
4 counsel admitted that, as part of the 87 litigation, there
5 are clearly people who have asserted that they bought a car
6 post-sale that was a prepetition car, and therefore, --
7 THE COURT: Pause, please, so I keep up with you.
8 This one of the permeations is a post-sale by but a presale
9 manufacture?
10 MR. STEINBERG: That's correct. So, of the 87
11 actions, probably 83 are class actions. Many of them define
12 the class that includes the 2010 Chevy Cobalt, which, by
13 definition, was after the sale, but understand this as New
14 GM's position, and I'm trying to be very careful not to make
15 substantive arguments, but I think I need to illustrate --
16 THE COURT: That's especially important in light
17 of all the people who have already left the courtroom today.
18 MR. STEINBERG: That's correct, Your Honor. New
19 GM's position -- and it's stated this many, many times
20 publicly as well, too -- is that New GM has never
21 manufactured a defective ignition switch. The reason why
22 that the defective ignition switch had stopped being
23 manufacturing prior to the sale.
24 The reason why the 2010 Chevy Cobalt was recalled
25 was that there was a concern that a car with a good ignition

1 switch may have been repaired with an old GM defective part
2 by a dealer or someone else, and, to be on the safe side,
3 they recalled a million cars when they have always said that
4 the likelihood that any of them actually had this repair is
5 very small, but they didn't know which were the cars that
6 potentially had it. So they withdrew them all. So our view
7 is that every post-sale vehicle has an old GM part and
8 implicates the sale order.
9 The second thing is, as a practical matter as you
10 sort of struggle as to why they are different or not, the
11 Phaneuf litigation is part of the MDL, and yesterday you got
12 a letter from counsel suggesting that Judge Furman's letter
13 indicated -- and I'll use the --
14 THE COURT: By that, did you mean his --
15 MR. STEINBERG: His July 1 --
16 THE COURT: -- his order of June 24?
17 MR. STEINBERG: Yes, Judge Furman's letter of
18 June 24th, which was attached to our submission yesterday.
19 But counsel, Todd Garber, submitted a letter on behalf of
20 Phaneuf, and, in the third paragraph, it said, "The district
21 court's June 24th, 2014 order, attached to GM's letter as
22 Exhibit B, made clear that the district court contemplates
23 the possibility of separate litigation tracks for pre and
24 post-bankruptcy purchasers." The fact of the matter is is
25 that there's nothing in Judge Furman's order that actually

1 says anything remotely close to that.

2 THE COURT: Your position, I take it, is that the

3 order speaks for itself?

4 MR. STEINBERG: That's correct.

5 THE COURT: And that I can and should simply read

6 it?

7 MR. STEINBERG: That's correct, Your Honor. I

8 know that I couldn't find it, and, when I asked counsel

9 before, he pointed to a provision that he was relying on,

10 but that provision, in no way, says anything about presale

11 versus post-sale. So, if I'm correct, then they're in the

12 MDL. They're going to move at the pace that the MDL moves.

13 They're not going to move separately, even if Your Honor

14 said they could move separately.

15 All that would happen would be that process here

16 would be discombobulated and the process before Judge Furman

17 would get further confused because, in every voluntary stay

18 stipulation that was agreed to, there was an agreement that

19 New GM made that, if someone was allowed to get out ahead,

20 everybody would have the right to come to Your Honor and say

21 I want to go at that same pace. So, to let the pimple on

22 the tail wag the dog here where 1 out of the 88 says I

23 should be able to move forward in what, at the end of the

24 day, is an MDL, it could potentially upset the other 87, and

25 whatever we decided earlier today about threshold issues and

1 an orderly way of presenting these issues will very well go
2 by the boards.
3 Other thing is is that, when you read their papers
4 and when you actually listen to their argument -- and
5 Your Honor was right about this, the Grumman Olson case is
6 the procedural due process case that every designated
7 counsel is going to argue. We have a response to it. If
8 the counsel couldn't find cases that support our position,
9 they'll see that in our threshold brief, but there was
10 actually a case out of Chrysler that supports our position
11 and distinguishes Grumman Olson.
12 I say that, Your Honor, not to try to argue
13 Grumman Olson before you, only to illustrate that the people
14 who walked out of this courtroom are going to argue the
15 effect of Grumman Olson. Half of that argument, half of
16 their papers is a procedural due process argument.
17 The other half of their argument is the (1)(e)
18 issue that we talked about before. Was this a liability
19 that was assumed by New GM? They take the position that
20 clearly it's not. We're going to take the position clearly
21 that they didn't -- I'm sorry. They're going to take the
22 position that we assume this liability. We're going to take
23 the position that we clearly did not.
24 Interpretation of the asset purchase agreement,
25 the MSPA -- it's all going to be for Your Honor's review,

1 but those are the threshold issues.
2 THE COURT: And either you or your opponents or
3 both are going to address decisions like my Castillo
4 decision?
5 MR. STEINBERG: Yes.
6 THE COURT: Where I dealt with somewhat similar
7 issues?
8 MR. STEINBERG: That's correct. The other thing
9 that Your Honor was correct also in pointing out to our
10 brief where we reviewed the complaint, we reviewed the
11 allegations. It's clear that what they're alleging is Old
12 GM's conduct as it relates to the potential liability for
13 what they -- for the vehicles they bought -- successor
14 liability, because that word is actually in their complaint
15 a couple of different occasions -- Old GM vehicles and Old
16 GM parts, and that, by definition, implicates the sale order
17 and injunction.
18 And, once the sale order and injunction is
19 implicated, they never should have brought their action, but
20 they now have brought their action. It's up to Your Honor,
21 as the person who had exclusive jurisdiction, to determine
22 how these claims are to be resolved.
23 This morning's hearing was how these claims are
24 going to be resolved, by bifurcating and dealing with the
25 threshold issues. They are not anywhere different than

1 anybody else.

2 I have, Your Honor, reasons to say why I believe

3 that substantively they're wrong, but I'm going to adhere to

4 the admonition that you gave me already, which I had tried

5 to check myself, which is I'm not going to try to argue the

6 substance as to why this was a retained liability versus an

7 assumed liability. Only that ignition switch was mentioned.

8 If you look at the plaintiff Lisa Phaneuf, she has

9 got a 2006 Chevy Cobalt. It was bought from a non-GM

10 dealer, and they're alleging liability to us under the

11 rubric of language that includes successor liability, and we

12 think that implicates the sale order. They could disagree.

13 I know that people are not going to agree to

14 everything that I say, but that's the process. The process

15 is I'm going to have an ability to argue that. Someone

16 else, including them, will argue all of these issues,

17 procedural due process, whether it's an assumed liability,

18 retained liability, and we're going to have that issue

19 resolved by Your Honor, and we're prepared to take that

20 issue on.

21 It would be a mistake if Your Honor allows them to

22 take this on a different track when so many of the other

23 plaintiffs have the same claim and have defined their class

24 to include post-sale classes, and especially because they

25 want to be able to make the arguments. And subsumed in what

1 we were talking about before was these arguments. Subsumed
2 in the exchange of factual stipulations are some of the
3 things that are recited in the complaint.
4 they will have their time. They will have their
5 day in court. We will have the opportunity to defend it.
6 But to allow them to go forward when they're similarly
7 situated to everyone else, especially when they're part of
8 an MDL where they can't move it in any different way, would
9 be a mistake for what we're trying to accomplish here.
10 THE COURT: All right. Thank you, Mr. Steinberg.
11 Mr. Block, I'll take a reply.
12 MR. BLOCK: Thank you, Your Honor. Just a couple
13 of brief points.
14 First of all, I know Mr. Steinberg is talking
15 about retained versus assumed liability, who manufactured
16 the parts. Our view is -- and we think, under the Grumman
17 Olson case, it's clear -- none of that matters. The
18 question is did folks who purchased cars after the
19 bankruptcy -- can their claims be released when they are
20 future claimants. We think the law is clear the answer is
21 no. So we don't think that really matters.
22 Second, as far as allowing us --
23 THE COURT: Pause, please, Mr. Block.
24 MR. BLOCK: Yes.
25 THE COURT: And I must confess that I read your

1 brief and your letter, and maybe I should have picked it up.
2 But do you have a punitive damages claim in addition to a
3 compensatory damage claim?
4 MR. BLOCK: I don't believe we do, Your Honor.
5 THE COURT: Okay. Continue. Thank you.
6 MR. BLOCK: Okay. Second, as far as the argument
7 of us getting out ahead of everybody else, I don’t really
8 think that that is a valid argument.
9 MR. STEINBERG: May I just show him where he has
10 punitive damages?
11 MR. BLOCK: We do? Okay. Then we do have
12 punitive damages.
13 THE COURT: Okay.
14 MR. BLOCK: He remembers my complaint better than
15 I do.
16 As far as getting out ahead, Your Honor, I think
17 our view is that, right now, there are two stays in place.
18 There is a bankruptcy court stay, which we don't think
19 applies to our claims, and there's a district court stay
20 pending the organization.
21 If Your Honor agrees with me, we are still stayed
22 by Judge Furman, and Judge Furman will decide whether, in
23 essence, we get out ahead or we don't, and he's going to
24 organize the cases, and we just think it would be beneficial
25 for him in terms of organization, in terms of scheduling as

1 to whether or not our view is the correct view. And, if
2 it's not the correct view, then it doesn't matter.
3 Third, just very briefly, as far as the letter,
4 Your Honor, I'm sure you're going to read Judge Furman's
5 decision. We clearly were not trying to mischaracterize
6 what he said. Our just view of the letter was he notes that
7 there could be certain claims that are now pending that can
8 go forward or that cannot go forward, depending on how
9 Your Honor rules, and that's the only point we were trying
10 to make, that this would be beneficial for him.
11 THE COURT: Okay.
12 MR. BLOCK: Unless Your Honor has anything
13 further, I'm done.
14 THE COURT: No, thank you.
15 MR. BLOCK: Thank you, Your Honor.
16 THE COURT: Sit in place for a second, gentlemen.
17 I don't need to take a recess.
18 (Pause)
19 THE COURT: Mr. Block and Mr. Garber, I'm ruling
20 that the stay should remain in place, subject to the usual
21 right to ask that I revisit the issue after September 1st
22 that all of the other tort litigants have and that your
23 claims will be treated the same as the other 87, and I'm
24 going to summarize the reasons for that orally.
25 What I would like you to do -- and I'm not going

1 to put a gun to your head to give you a deadline to do it,
2 but I would appreciate an answer as soon as practical, and
3 you should advise my chambers with a copy of your
4 communication to Mr. Steinberg and all of the parties who I
5 heard from today as to whether you would like to take an
6 appeal. If you do, I will write an opinion on it, but, in
7 the nature of the way that I have to triage my matters, I've
8 found that, very often, when I summarize a ruling orally,
9 that it's sufficient, except for an appellate record, and
10 then, I'll decide whether I need to write to assist an
11 appellate Court.
12 I am ruling more specifically that the sale order
13 now applies, though it's possible, without prejudging any
14 issues, that, after I hear from the other 87 litigants, I
15 might ultimately rule that it does not apply to some kinds
16 of claims and that, even if the sale order didn't apply,
17 that New GM would be entitled to a preliminary injunction
18 temporarily staying the Phaneuf plaintiffs' action from
19 going forward, pending a determination by me on the other 87
20 litigants' claims under the standards articulated by the
21 circuit in Jackson Dairy (sic) and its progeny (sic).
22 My findings of fact, conclusions of law, and bases
23 for the exercise of my discretion will be summarized now and
24 more fully set forth if you decide you want to take an
25 appeal. All of the facts with respect to the Phaneuf

1 plaintiffs' claims have not been fleshed out, and I make
2 findings today for the purpose of this analysis based solely
3 on undisputed ones. It is said to me -- and I have heard
4 not dispute -- that Ms. Phaneuf, Lisa Phaneuf, purchased a
5 2006 Chevy, which was a vehicle manufactured by Old GM.
6 Page 1, excuse me, of your complaint, alleges that
7 the ignition switch action is brought against New GM,
8 successor and interest to Old GM. On page 12 of the
9 opposing brief, New GM points to 6 matters alleged in your
10 complaint, speaking of events that took place in February
11 2005, April 2005, June 2005, March 2005, April 2006, and in
12 2003. Each of those circumstances is, to state the obvious,
13 an event that took place before the formation of New GM.
14 Those allegations, if proven, might have relevance
15 to a punitive damage claim, which we've now agreed has been
16 asserted here, but they do not describe events taken place
17 by New GM. I do not make any finding as to the extent, if
18 any, to which New GM assumed such liabilities, but I do find
19 them sufficient for me to form a view that they raise at
20 least serious issues as to whether there is material
21 reliance on matters that took place before the sale order.
22 Putting it another way, the applicability of the
23 sale order has been established in the first instance, at
24 least for the purposes of your clients' claims. For the
25 avoidance of doubt, I make no finding as to the extent to

1 which these allegations or any others would be probative or
2 relevant in any of the other 87 litigations.
3 That is not to say, of course, that what the sale
4 order says now will be the end of the inquiry, either in
5 your case or in the case of the other 87 actions, but what
6 the matters that I discussed before show is that the sale
7 order applies in the first instance. By reason of the due
8 process contentions the other litigants want to make or
9 otherwise, the sale order may turn out to self-destruct, a
10 matter as to which I make no finding today, but, for now,
11 it's in place, at least vis-à-vis your clients.
12 (Pause)
13 THE COURT: Then I am required to consider or
14 should consider, not so much as a matter of law, but as a
15 matter of my discretion, whether I should make an exception
16 for your clients, notwithstanding the prima facie
17 applicability of the sale order, on the one hand, or whether
18 I should treat them with those who are or who are likely to
19 be similarly situated, on the other. I think that making an
20 exception for your clients would be monumentally bad case
21 management, from my perspective.
22 You heard for a period of about three hours a back
23 and forth as to what makes the most sense, case management-
24 wise, for some very complicated issues, which it would be
25 manifestly inappropriate for me to make findings on, pro or

1 con, for or against any party. To step out of that template
2 and make early findings without giving them the opportunity
3 to be heard and where the issues are of the complexity that
4 people argued in good faith from many different approaches
5 would be extraordinarily ill-advised. To the contrary,
6 every principal of case management that judges are taught
7 causes them to, on the one hand, try to deal with issues
8 where all concerned have the ability to be heard and also to
9 prevent one client or one group of litigants to get ahead of
10 the rest in a way that has the potential for prejudicing the
11 remainder.
12 Just as Mr. Steinberg tried to avoid making
13 statements in this proceeding after so many of the other
14 affected lawyers left, the same principles that underlie
15 that decision, which if he hadn't done it voluntarily, I
16 would have asked him to do, underscores that one client
17 shouldn't be -- or litigant group -- shouldn't be making
18 arguments ahead of everybody else. And that's so, in this
19 court, even without considering whether Judge Furman might
20 have the same view as to those matters that I do or not.
21 Finally, I determine that, even if my earlier
22 order hadn't been entered, it would be appropriate to enter
23 a preliminary injunction, limited in duration until I've
24 ruled, preventing the piecemeal litigation of the Phaneuf
25 plaintiffs' claims now ahead of all of the other lawsuits

1 that are similarly situated. While I don't have a complete
2 record, it's foreseeable, if not obvious, that at least a
3 subset of the 87 other litigants are going to present the
4 same issues, and that's the exact reason why the MDL action
5 came into being where the cases before Judge Furman were
6 determined by the MDL panel to be sent to a single judge for
7 pretrial matters and explains how they originally came to be
8 before Judge Furman.
9 When issues raise overlapping -- excuse me. When
10 actions raise overlapping issues, even if they're not wholly
11 congruent, coordinated disposition is essential, and I don't
12 rule out the possibility -- in fact, I assume it to be true
13 -- that the facts you present, Mr. Block and Mr. Garber, may
14 not appear in every one of those 88 cases, but the chances
15 that they're not going to be present in at least some of
16 them are remote. While I well-understand the desire of
17 litigants both to get their cases moving as quickly as
18 possible and -- though I don't know if it's your desire here
19 -- to put yourself in a desirable a position ahead of others
20 -- might occasion your desire to get this relief, they are
21 insufficient to trump the normal case management concerns
22 that I and most other judges would have.
23 With respect to the applicability of the sale
24 order, I find, for reasons I articulated before, that New GM
25 has raised serious issues going to the merits. I don't need

1 to, nor do I, find that New GM has a likelihood of success
2 on anything else. In fact, I don't want to make such a
3 finding, because it would prejudice the litigants in the
4 other 87.
5 But, as we know, under the standards of Jackson
6 Dairy and its progeny, the standards for a preliminary
7 injunction in the Second Circuit require irreparable injury
8 and a likelihood of success or, once irreparable injury has
9 been established, serious issues going to the merits and a
10 tipping of the equities or the hardships decidedly in favor
11 of the party that's seeking the injunction.
12 Here, the irreparable injury, in terms of the case
13 management concerns and the prejudice to the litigants in
14 the other 87 actions, has been plainly established, and,
15 because, as is apparent from Judge Furman's order of
16 June 16th, including, among other things, that he's trying
17 to put his cases in an orderly way, just as I am, and that
18 he provided in his paragraph 16 on page 14 of his order,
19 that he would be doing a stop, look, and listen to await --
20 or at least to consider -- any rulings by the bankruptcy
21 court or any higher court exercising appellate authority
22 over the bankruptcy court. The chances of him wanting to
23 proceed in a piecemeal manner with respect to only one
24 litigant and to exempt that litigant from other matters that
25 he prescribed in his order have not yet been shown to me, if

1 they ever will be.

2 So, for all of these reasons -- and, no offense.

3 I'm not doing anything to you, other than saying that you're

4 going to be treated like everybody else. The Phaneuf action

5 will not be proceeding ahead of the other 87. I'm so

6 ordering the record, but I am expressly giving you an

7 extension of the time to appeal for my oral order until I

8 enter a written one.

9 I am going to ask you, as I indicated early on, to

10 think about whether you want to take an appeal, because I

11 don't want a clock to start running against you on the

12 appellate time instantly. I want to give you the

13 opportunity to think about it, and, though I don’t know if

14 anything I say comes as much of a surprise to anybody, if

15 you do take an appeal, I may wish to confirm and amplify

16 upon some of the points I made.

17 Lastly, vis-à-vis Grumman Olson, I've read and I

18 think I understand Grumman Olson, but I want to minimize the

19 extent of the findings that I make with respect to it now.

20 For now, I want to limit it to say that, with lawyers of the

21 quality who argued before me this morning, it is

22 inconceivable to me that they won't be raising Grumman Olson

23 as well and that Mr. Steinberg will wish to be heard with

24 respect to Grumman Olson as well and that fairness to the

25 entire plaintiff community requires that I not deal with

1 Grumman Olson issues piecemeal. Just as you wanted to argue
2 it, I think it's at least foreseeable, if not certain, that
3 they will as well and that I don't want to make any rulings
4 based on Grumman Olson without giving them a fair
5 opportunity to be heard with respect to it also.
6 So, not by way or reargument, do we have any
7 questions or matters that I need to clarify?
8 MR. BLOCK: Not from us, Your Honor.
9 THE COURT: Okay.
10 Mr. Steinberg:
11 MR. STEINBERG: No, we're good.
12 THE COURT: Thank you.
13 Then, Mr. Block, you and Mr. Garber are free to go
14 or stay, as you prefer. I think I have one other matter,
15 which is the Elliott plaintiffs. I'm going to deal with
16 them now.
17 So come on up, please, folks.
18 MR. STEINBERG: Thank you, Your Honor.
19 THE COURT: And I can make a guess as to who you
20 are, but maybe I can get a formal appearance.
21 MR. HORNAL: Daniel Hornal, representing the
22 Elliott plaintiffs.
23 THE COURT: Right. I had suspected as much.
24 Thank you, Mr. Hornal.
25 And, Mr. Steinberg, again, I assume?

1 MR. STEINBERG: That's correct.
2 THE COURT: Gentlemen, I have a tentative here,
3 and I want to share it with both of you.
4 My tentative -- and this gores your ox a little
5 more than Mr. Hornal's, Mr. Steinberg -- is that I well-
6 understand that the Elliott plaintiffs, when they weren't
7 represented by counsel, entered into a stay stip. under
8 which they were part of the other 87, but historically, I've
9 had a sensitivity to the needs and concerns of pro se
10 litigants and the fact that they sometimes screw up.
11 Frankly, in this case, I think that, although they
12 may have screwed up by voluntarily entering into this stip.
13 without the benefit of legal counsel, it's giving away ice
14 in winter because of the Phaneuf ruling that I've just
15 issued, but my tentative, subject to your rights to be
16 heard, is to relieve them of the stip. temporarily to treat
17 your case, Mr. Hornal, as a tag-along action of the type
18 which I approved in the very first uncontested motion today
19 and to give you the opportunity, if you can, to show that
20 your action is any different than the other 87, including
21 now Phaneuf and to consider my ruling that I just issued in
22 Phaneuf to be stare decisis, that is a precedent, vis-a-vis
23 your effort to get them special treatment but not res
24 judicata or collateral estoppel.
25 I do want you to think about whether you want

1 special treatment after the ruling that I just dictated,
2 because frankly, I think that you'd have to throw a hail
3 Mary -- throw and complete a hail Mary, Joe Montana style,
4 if you're old enough to remember him -- to succeed when the
5 able counsel for the Phaneuf plaintiffs failed. But that's
6 the way I see it, gentlemen.
7 Frankly, if your clients hadn't been pro se at the
8 time, I would hold them to the stip., but, under the
9 circumstances, that's the way I see it, and I'll give each
10 of you an opportunity to be heard in opposition to my
11 tentative. Either way, I assume that, by the time you're
12 done, each of you will be heard.
13 Come on up, please, Mr. Hornal.
14 MR. HORNAL: Thank you, Your Honor. Just to
15 clarify, so our client -- we have submitted a request to
16 amend the complaint with the district court.
17 We are fine with this procedures going forward,
18 and I appreciate the opportunity to develop our no-stay
19 arguments formally, but we want to make sure that the no-
20 stay arguments will be not due until after the district
21 court accepts the amended complaint, because it's going to
22 be very difficult to try to argue based on the pro se.
23 THE COURT: I see that as an issue that would be
24 decided by Judge Furman rather than me. And I say, Judge
25 Furman, by the way, and not the D.C. Court because I cannot

1 for the life of me see what the D.C. Court can properly be
2 doing in a situation like this.
3 But, again, that may be a Judge Furman issue and
4 not mine. So, if what you're asking is, would I permit, my
5 approval wouldn't necessarily be the only approval
6 necessary. Would I permit you to amend the complaint and
7 then ask Judge Furman for permission, I -- my tentative is
8 to say that from perspective, that's okay but I want to hear
9 Mr. Steinberg's view so I (indiscernible).
10 MR. HORNAL: I'm a bit confused. I -- perhaps I
11 can clarify with some of the procedural things that have
12 happened so far which is --
13 THE COURT: Put that mic close to you, please,
14 Mr. Hornal.
15 MR. HORNAL: Oh, of course.
16 My -- I believe that prior to us being retained as
17 counsel, a motion was made to add the Elliotts to the MDL
18 and the MDL panel rejected it. That's why it's currently
19 and still in the D.C. District Court.
20 THE COURT: Did it state the reasons for the
21 rejection?
22 MR. HORNAL: It simply said it is not appropriate.
23 I don't believe it issued a lengthy opinion. Since that --
24 THE COURT: And you're theorizing that it might be
25 because the way the Elliott plaintiffs had originally

1 drafted it, it was so unintelligible that it might not have
2 reflected the commonality of issues that would be a normal
3 requirement for sending a case on an MDL basis somewhere
4 else?
5 MR. HORNAL: I certain wouldn't characterize my
6 clients' complaint as unintelligible but it certainly was
7 difficult for some people to understand and it's very
8 possible that the -- I can't -- I should speculate on the
9 MDL Court's reasoning. I only know that they sent it back.
10 Since that time, we have made a motion to amend
11 our complaint. There is a motion to dismiss pending from
12 the defendants. The -- and I believe just last night the
13 -- GM has moved to pull us back into the MDL based on the
14 amended complaint even though the amended complaint hasn't
15 been accepted.
16 Basically, all I'm asking, Your Honor, and since,
17 at this point, procedurally the amendments in front of
18 Judge Jackson in D.C., whether or not she will accept the
19 amendment, it seems the most sensible thing to do would be
20 for us to file our no stay papers soon after Judge Jackson's
21 accepts the amendment to the complaint, assuming she does,
22 which I -- we believe she will.
23 THE COURT: If you got leave to file the amended
24 complaint, would you then be filing no stay papers or would
25 you be satisfied with the treatment that the Phaneuf

1 plaintiffs got?

2 MR. HORNAL: Your Honor, our legal theories are

3 considerably different from the Phaneufs and the other 87

4 plaintiffs and I believe we would be filing a no stay.

5 THE COURT: You think you thought of something

6 that 87 other lawyers didn't?

7 MR. HORNAL: I'm quite confident we did, Your

8 Honor.

9 THE COURT: Okay. Mr. Steinberg, your

10 perspective, please.

11 MR. HORNAL: Thank you, Your Honor.

12 MR. STEINBERG: Your Honor, to some extent, this

13 case is an easier case for you to stay than the Phaneuf

14 case. The Elliott car is a 2006 Chevrolet Cobalt and a 2006

15 Trail Blazer. So they're both --

16 THE COURT: But they have two cars.

17 MR. STEINBERG: They have two cars.

18 THE COURT: Both of which were manufactured prior

19 to 2009?

20 MR. STEINBERG: That's correct. So he may have a

21 theory but it's -- the predicate is an old GM car and the

22 issue is whether, under the MSPA, new GM assumed whatever

23 his theory is.

24 The second thing is to clarify, I've been told by

25 my colleague, and it's in our papers, that the clerk of the

1 JP MAL (ph) did not accept the Elliott pro se action to be
2 part of the MDL because it was a pro se action. That's our
3 belief. It was a pro se action and the clerk didn't really
4 understand and therefore didn't tag it.
5 We filed out motion and they will have 21 days to
6 oppose it, if they want, but we think, clearly, when you
7 review the amended complaint, it's ignitions -- I can find
8 the word ignition switch on almost every page of a 53 page
9 complaint.
10 The third thing is, we should actually be clear as
11 to what is going on here. This is not a situation where
12 they're just amending a complaint to make it clearer from a
13 pro se viewpoint. And this wasn't excusable neglect.
14 When counsel came onboard, he had conversations
15 with my co-counsel at Kirkland and Ellis and they filed the
16 request to amend the complaint anyway, instead of coming to
17 Your Honor. As they say, they probably should have gone and
18 dealt with this as a no stay pleading or move to vacate the
19 stay stipulation.
20 That complaint that they filed was not a
21 clarification of what the Elliotts did. It was a request to
22 turn that into a class action. The Elliotts didn't file a
23 class action. Counsel decided that he wanted to do that.
24 Counsel is advertising the ability to sue GM on his email
25 and he writes on his website, if you're registered on one of

1 the following GM cars in the District of Columbia, or if you
2 commute to work to the District of Columbia, you may be
3 entitled up to fifteen hundred, even if GM fixes your car.
4 Then they cite to the GM recall lawsuit and they
5 refer to the fact that, due to the ignition switch defect,
6 GM has recalled, and then it lists the car that were
7 recalled and then it says, the defect causes the ignition
8 switch to move into the accessory position shutting down the
9 engine, power steering, and power brakes and sometime
10 causing problems to lose control of their cars. The same
11 allegation that everyone in the 87 plaintiffs says.
12 The ignition switch can be moved to the accessory
13 or off position from anything from a bump in the road to a
14 heavy keychain. This has caused many deaths, serious
15 injuries; so often these bumps occur immediately before a
16 major accident, and upon impact the airbag does not deploy.
17 GM has already acknowledged that you were aware of
18 the defect for a decade but didn't tell the public until
19 recently. Even if you have not been injured, you may be
20 entitled to up to fifteen hundred dollars. To evaluate your
21 claim, contact, essentially us.
22 So this wasn't excusable neglect to amend the
23 complaint. This was purposeful. This was turning this into
24 a class action and this is a fee opportunity for them. They
25 may have a theory but, believe me, it's no different than

1 any other theory that has been asserted by any of the 87
2 plaintiffs. It actually is the same 1(e) issue that we had
3 before, which is if they want to claim that the new GM is
4 responsible for something that happened relating to a 2006
5 vehicle, even if it doesn't involve an ignition switch, it's
6 -- if it's the compressor or something else like that, which
7 is also in their complaint.
8 So maybe the MDL takes it or maybe it doesn't.
9 But it implicates the MSPA. It's implicates your sale order
10 injunction. It's a pre-petition vehicle and old GM's view
11 and I say it, I say it with the same caveat I had before,
12 the MSPA listed three categories for which we assume
13 everything else we didn't assume. This doesn't fall into
14 any of the three categories.
15 I won't argue anything more than that other than
16 that I'm happy for them to treat this as a no stay pleading.
17 I'm happy to make the same arguments that I did in the
18 Phaneuf action. I actually think they should be withdrawing
19 their class action complaint. If they actually want to re-
20 file an Elliott complaint that is specific only to the
21 Elliotts and not new parties and clarifies what a pro se
22 plaintiff would do, I probably would consent to do that as
23 well, too, so that there's a clear pleading onboard.
24 But I'm not consenting for them to go forward,
25 make this a class action, come ahead of everybody, and

1 assert causes of action that everybody else and the 87
2 plaintiffs were prepared to do. I'm not prepared to concede
3 that.
4 THE COURT: All right. Mr. Hornal. Before you're
5 done, I want you to know whether you admit or deny what
6 Mr. Steinberg argued viz-a-viz now seeking to represent
7 people beyond the Elliotts and whether this is not beyond
8 protecting the interests of the pro se plaintiffs.
9 MR. HORNAL: Your Honor, we are soliciting clients
10 for other cases. Those cases have nothing to do with the
11 Elliotts. The Elliotts filed pro se. We had no contact
12 with them when they filed pro se. We -- as I mention in the
13 papers that were filed with this Court, we were retained in
14 mid-June by them. We did contact them after we saw that
15 they had filed pro se because we figured they needed help.
16 But that's the -- I was actually sort of boggled that that
17 would even -- that our law firm's actions outside of, you
18 know, in soliciting clients in accordance with D.C. law
19 would have anything to do with the Elliotts' claim.
20 I don't want to spend too much time on the merits
21 of whether or not we should have a no stay. I simply -- I
22 feel the need to respond simply because there was such an
23 extensive presentation by GM.
24 THE COURT: Well, you may need to do a little,
25 Mr. Hornal, because doctrine in the Southern District of New

1 York, and the Second Circuit, says that to be relieved of a
2 default, and that's in substance what you're asking me to
3 give you relief from, because you're asking for relief from
4 a stip that your client signed, requires both excusable
5 neglect and the showing of the meritorious claim or defense.
6 I well understand the point that we don't like to
7 beat up on pro se's and that might provide the basis for the
8 excusable neglect prong. But the meritorious defense or
9 claim part would, at least seemingly, require, unless you
10 can show me some case law authority to the contrary, that
11 you have some plausible argument for being excused from the
12 sale order or for contending that it doesn't apply.
13 MR. HORNAL: Absolutely, Your Honor.
14 I'm sorry. I was looking through the complaint
15 right now to find the specific quotations trying to help
16 with that.
17 THE COURT: I mean, if we are talking about
18 vehicles that were manufactured in about 2006, I am
19 scratching my head to see how you're going to do that.
20 MR. HORNAL: Your Honor, our primary claim is
21 based on the Consumer Protection Procedures Act which is a
22 District of Columbia law.
23 THE COURT: Is that what?
24 MR. HORNAL: The Consumer Protections Procedures
25 Act. It is a District of Columbia law.

1 All of our claims is -- are -- very explicitly
2 disclaim any liability based on successor liability or
3 anything based on the purchase. Rather, we're only looking
4 to hold GM liable for its own actions and
5 misrepresentations, the new GM, since its inception. We do
6 intend to introduce evidence about what happened in old GM.
7 We only -- to prevail in our legal theories, we only need to
8 show that new GM knew about the problem and failed to
9 disclose it. That's the basis for our claim.
10 In our complaint, we specifically say, plaintiffs
11 are not making any claim against the old GM whatsoever and
12 plaintiffs are not making any claim against the new GM based
13 on having purchased its assets from old GM or having
14 continued the business or succeeded old GM. Plaintiffs
15 disavow any claim based on the design or sale of vehicles by
16 old GM or based on any retained liability of the old GM.
17 Plaintiffs seek relief from new GM solely for
18 claims that have arisen since October 19th, 2009, and solely
19 based on actions and omissions of the new GM.
20 So I don't -- once again I would appreciate an
21 opportunity to develop this more fully on papers but that's
22 a -- an idea, basically the idea of what we're trying to do
23 and the basis of our claim, which is, in our opinion, quite
24 clearly, quite different from the claim you've -- or the
25 notes that you argued on earlier today, or that you ruled on

1 earlier today, excuse me.
2 As to the procedure going forward, you know, our
3 client did enter into this stipulation. Our client didn't
4 know what it meant. The stipulation specifically says it
5 was a -- negotiated between counsel for both sides, which
6 he wasn't represented by counsel. And, furthermore,
7 Judge Jackson rejected the stipulation. So I actually -- I
8 argue we're not in default in any way. We file -- my client
9 agreed to file a stipulation. It was filed and it was
10 rejected.
11 My client doesn't have the option of simply
12 stopping to litigate the claims particularly when GM has a
13 pending motion to dismiss. So we had to deal with that when
14 we came into the case and it was clear from talking to our
15 client what the proper form of relief was and the proper
16 complaint would be and that's what we have asked the
17 District Court to accept as an amendment.
18 We do not intend to do any sort of any end run
19 around the procedures here. We do not intend to, you know,
20 try to engage in early discovery or something like that.
21 Rather, we simply want an opportunity to, based on the
22 complaint, assuming it is accepted for filing, to file a no
23 stay pleading and have our -- be heard.
24 THE COURT: Mr. Steinberg.
25 MR. STEINBERG: Your Honor, we attached his

1 amended complaint to our letter of July 1 and if you look at
2 paragraph 37, 38, 39 -- I'm sorry, start with paragraph 40.
3 It's the paragraph that starts with: class action
4 allegations.
5 So I know counsel really didn't answer your
6 question when you had asked him, but he filed a class action
7 complaint and the original action brought by the Elliotts
8 was on behalf of the two individuals.
9 Paragraph 41 of his amended complaint lists the
10 cars that are implicated as to the defined affected vehicles
11 and you can see you have Chevrolets, Pontiacs, Saturn,
12 Buicks -- all -- Cadillacs, all involving pre-petition
13 vehicles and some post-petition vehicles. But mostly pre-
14 petition vehicles. That's his affected class.
15 Our argument is that this class action can't go
16 forward. This will end up being in the MDL. We're
17 confident that that will be the case. But it all is because
18 he took an action with knowledge of the sale order
19 injunction and we believe for the reasons that you gave on
20 the Phaneuf action that the sale order injunction was
21 implicated, he was required to come here and that was the
22 practice that he should have followed and he didn't do that.
23 And Justice Jackson rejected the stipulation and said file a
24 motion instead, that's our practice. And we prepared the
25 motion for him to deal with it.

1 First of all, the stay stipulation applies whether
2 it's filed with a Court or not. So, the pro se client was
3 actually bound by it just as a technical matter.
4 The second thing is the stay stipulation requires
5 them to do those acts that are necessary to implement the
6 stay stipulation which meant that they were required to
7 consent to the motion. We prepared the motion. We gave
8 them the motion. He refused to comment on the motion.
9 Instead filed the complaint before Justice Jackson and is
10 now soliciting clients to try to sue new GM with respect to
11 pre-petition vehicles.
12 That's what's happening here. I agree with Your
13 Honor insofar that if the tentative said he wants to file a
14 no stay stipulation in view of the Phaneuf ruling. Fine.
15 Let him do it. Let him articulate what his theory is and
16 we'll respond. But don't, in effect, take advantage of the
17 fact that you violated the sale order and injunction, give
18 something and then say, that's why I want to announce the
19 truce. He should be required to withdraw that action and I
20 said before, if he wants to clarify an individual action on
21 behalf of the Elliotts, let him do that. I think we would
22 consent if this was an individual action on behalf of the
23 Elliotts. It will say ignition switch on almost every page.
24 That's what this complaint says as well, too.
25 THE COURT: All right.

1 MR. HORNAL: Your Honor, if I may, I --
2 THE COURT: No. I've heard plenty, Mr. Hornal. I
3 don't know if I gave you two or three opportunities to be
4 heard but every argument must come to an end.
5 MR. HORNAL: We did consent on the motion I just
6 wanted to say.
7 THE COURT: Forgive me, Mr. Hornal.
8 MR. HORNAL: I apologize.
9 THE COURT: I don't get cranky about a lot of
10 things but I really get cranky about getting interrupted.
11 MR. HORNAL: I apologize, Your Honor.
12 THE COURT: When I have the fuller, factual
13 exposition that I got by reason of oral argument, I see that
14 my tentative was only partly correct and I'm going to amend
15 it.
16 The rationale for my tentative was driven by my
17 normal desire to avoid penalizing pro se plaintiffs for
18 inartful pleading and to allow them to keep alive claims
19 that, while they might have dubious merit, at least against
20 new GM, under principles similar, if not identical to those
21 in the Phaneuf ruling, might warrant giving them a day in
22 Court. But it was that alone and for that reason I'm going
23 to allow the Elliotts' complaint to be considered as a tag-
24 along action for the purpose of protecting those two pro se
25 individuals only but no more than that. And, therefore, for

1 the avoidance of doubt, when we settle an order to this
2 effect, which I'm going to ask Mr. Steinberg to draft, it
3 may provide, as Mr. Steinberg argued that the two Elliott
4 plaintiffs get the benefit of the ability to make the
5 further arguments that consideration as a tag-along action
6 would allow them to make. But no more than that.
7 So we're going to give the Elliotts, themselves,
8 relief from the stipulation that they entered into, but
9 nobody else. Therefore, if you want to proceed for their
10 benefit as a non-class action, as what in substance is an
11 individual action, you can do that, Mr. Hornal.
12 But when a Judge, like me, excuses somebody from
13 the legal consequences of what he's done, there is no basis
14 in law or logic for then opening up the doors to anything
15 more than that which is necessary to protect the pro se
16 plaintiff.
17 Mr. Steinberg, you're to settle an order in
18 accordance with that. You may include such matter as you
19 regard appropriate so long as it's not inconsistent with
20 anything I've said.
21 MR. STEINBERG: your Honor, I wanted to make sure,
22 if I can include that counsel be directed with the
23 withdrawal his class complaint that he seeks to amend and
24 that if he wants to amend it, to limit it only to the
25 individuals and thereupon he will be stayed until his no

1 stay action will be ruled upon.

2 THE COURT: Yes, you may. That's implicit in what

3 I said, but if you want to make it explicit, you may.

4 MR. STEINBERG: Thank you, Judge.

5 THE COURT: All right. There be no further

6 matters with respect to Motors Liquidation. I'm on the

7 bench for a long time. We adjourned.

8 (Chorus of thank you.)

9 THE COURT: Wait. Is somebody on the phone who

10 has some other matter?

11 MR. KANOVITZ: Yes, hi. This is Mike Kanovitz. I

12 represent plaintiff Gillispie.

13 THE COURT: You're not very audible but I sense

14 that you're counsel for Mr. Gillispie?

15 MR. KANOVITZ: That's correct, Judge.

16 THE COURT: Were you able to hear when I called

17 your matter earlier this morning?

18 MR. KANOVITZ: No. What I heard was you would

19 take us up at the end of the day. I've been sitting on the

20 phone.

21 THE COURT: Okay.

22 MR. KANOVITZ: I apologize if I somehow missed

23 that.

24 THE COURT: All right. Well, no apology is

25 necessary or at least I'm going to excuse you from not being

1 around earlier.

2 Basically, what was said with respect to your

3 matter was that an agreement had been reached for a briefing

4 schedule to address your client's concerns, which was to be

5 papered in a stipulation or consent order to which you would

6 be a signatory along with the others. And, assuming that

7 the schedule for addressing those matters as in the written

8 stip, which I gather reflects an agreement with you, is

9 satisfactory, I'm going to so order the stip or enter the

10 consent order.

11 MR. KANOVITZ: (Inaudible), Judge. That all

12 sounds correct. We've reached an agreement on schedule by

13 emails back and forth and I know that will get reduced to

14 stip.

15 THE COURT: Okay. Are you on a landline because

16 I'm having a lot of trouble hearing you?

17 MR. KANOVITZ: Yeah. I actually am on a landline.

18 I've been in my basement this morning listening -- I don't

19 know how it is that I missed the call but, yeah, I got off a

20 couple times when you said we were taking a break but --

21 anyway. Yes, I am on a landline.

22 THE COURT: Okay. Well, that disposition should

23 cause you no prejudice. When you get the stip, look at it,

24 make sure it fairly reflects your deal and when you counter-

25 sign it, along with the other parties, I'll so order it.

1 MR. KANOVITZ: Will do. Thank you very much,

2 Judge.

3 THE COURT: Okay. Anybody else now? All right.

4 Then we're adjourned.

5 (Chorus of thank you.)

6 (Whereupon the proceedings were adjourned at 2:59 p.m.)

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1 I N D E X

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3 RULINGS

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5	"No Stay Pleadings" filed in connection with		
6	Scheduling Order Regarding (I) Motion of		
7	General Motors, LLC Pursuant to 11 U.S.C.		
8	Section 105 and 363 to Enforce the Court's		
9	July 5, 2009 Sale Order and Injunction, and		
10	(II) Objection Filed by Certain Plaintiffs		
11	in Respect Thereto, and (III) Adversary		
12	Proceeding No. 14-01929 (ECF 12697)	55	21
13			
14	Motion of General Motors, LLC to Establish		
15	Stay Procedures for Newly-Filed Ignition		
16	Switch Actions, filed by General Motors,		
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18			
19	In re Motors Liquidation Company, et al.,		
20	Case No. 09-50026 (REG): Motion of General		
21	Motors, LLC Pursuant to 11 U.S.C. Section 105		
22	and 363 to Enforce Sale Order and Injunction		
23	("Motion to Enforce"), filed by General Motors,		
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3 RULINGS

		Page	Line
4			
5	Motion for Leave to Pursue Claims Against		
6	General Motors, LLC and, Alternatively, to		
7	File a Post-Bar-Date Proof of Claim in the		
8	Motors Liquidation Company Bankruptcy, filed		
9	by Roger Dean Gillispie ("Gillispie Motion")		
10	(ECF 12727)	116	2

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

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3 I, Sherri L. Breach, CERT*D-397, Nicole Yawn and Penny Shaw

4 certified that the foregoing transcript is a true and

5 accurate record of the proceedings.

6

7

8 Sherri L. Breach

9 AAERT Certified Electronic Reporter & Transcriber

10 CERT*D-397

11

12

13 Nicole Yawn

14

15

16 Penny Shaw

17

18

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21 Suite 300

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24 Date: July 3, 2014

25