UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026

- -x

In the Matter of:

GENERAL MOTORS CORPORATION, et al.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

July 2, 2009

9:02 AM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

HEARING re Motion of the Debtors for Entry of Order Pursuant to 11 U.S.C. § 363(b) Authorizing and Approving Settlement Agreements with Certain Unions

HEARING re Debtors' Motion Pursuant to Bankruptcy Code §§ 105(a), 361, 362, 363, 364 and 507 and Bankruptcy Rules 2002, 4001 and 6004 to Amend DIP Credit Facility

HEARING re Continuation of GM 363 Sale Hearing

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P R O C E E D I N G S

THE COURT: Good morning, folks.

MR. MILLER: Good morning.

THE COURT: Have seats, everybody. Come on up, please.

MR. WEISS: Good morning, Your Honor. Robert Weiss of Honigman Miller Schwartz & Cohen, special counsel for General Motors Corporation.

THE COURT: Right, Mr. Weiss.

MR. WEISS: When we ended last evening, I indicated that we had arrived upon a stipulation order resolving objection to sale motion with regard to GECC and some equipment leases that are critical to the sale of the company should it proceed based upon this Court's order.

I'm pleased to advise the Court that we have come to a final resolution in the form of a stipulation and order resolving objection to sale motion. We have consulted with counsel for the creditors' committee whose input is incorporated within the final terms of the stipulation.

Your Honor, just very briefly, if I may, the subject of the leases are very substantial equipment for both manufacturing and assembly that's included in a number of different General Motors facilities. The stipulation is only effective if the Court approves the sale and the sale closes. In that period of time, the debtor has not yet elected whether

it will assume or reject these leases. This stipulation permits the use of this equipment post closing in the period before a decision is made as to whether to assume and assign or reject these leases. All rights and interests of the parties are protected and we believe that this is a stipulation that is very much in the interest of both constituents. I would ask that the Court approve it.

THE COURT: Okay, Mr. Weiss. Anybody else want to comment? Mr. Schmidt, creditors' committee?

MR. SCHMIDT: Good morning, Your Honor. Robert Schmidt, Kramer Levin, on behalf of the committee. Your Honor, Mr. Weiss presented the stip to me a little while ago. He's represented that one of my colleagues has signed off on it. I have no reason to not believe that but I just want to take a quick look at it and we'll advise the Court at a break.

THE COURT: I'm going to be tied up for the next hour or two --

MR. SCHMIDT: I suspect we'll have plenty of time to read it.

THE COURT: Fair enough. Mr. Weiss, would it be helpful more than just that? Would it be necessary -- would you like an order entered on that today assuming the creditors' committee is so (indiscernible)?

MR. WEISS: Yes, we would, Your Honor. And I can represent to the Court that, as Mr. Bacon can attest to, we had

a number of different conversations with Adam Rogoff. And he has, in fact, signed off on the stipulation in the form in which we're going to present it.

MR. BACON: And by email as well.

THE COURT: Sure. The practical problem that a lot of parties are having in this case is that this is a complicated case. You can't do it with one lawyer. And people have to kind of have enough time to talk to each other when they're so busy on other things.

MR. WEISS: Sure.

THE COURT: So that's fine. Mr. Schmidt, could I simply ask you if either you or Mr. Rogoff or somebody communicate with my chambers perhaps by lunchtime just to give me comfort that you guys are okay with it?

MR. SCHMIDT: Absolutely, Your Honor.

THE COURT: Thank you. Thank you.

MR. WEISS: Your Honor, shall I --

THE COURT: Yes, Mr. Weiss?

MR. WEISS: Would you like me to present to the Court a copy of the stip and order at this time?

THE COURT: Well, actually, giving it to me is not going to be that helpful right now. So, yeah, you can give it to me but I won't really be able to look at it until next recess at the earliest or maybe after we're done today.

MR. WEISS: May I approach the bench?

THE COURT: Oh, sure. Sure. Thank you.

MR. WEISS: So just so I understand, assuming that the creditors' committee confirms that the form of the order is satisfactory to them, we need to appear before the Court again on this matter?

THE COURT: I wouldn't think you need to.

MR. WEISS: Okay. Thank you, Your Honor.

MR. SCHMIDT: Thank you, Your Honor.

THE COURT: Thank you. Do we have other housekeeping matters before -- yes?

MR. WARREN: Good morning, Your Honor. Irwin Warren, Weil Gotshal & Manges, for the debtors. Two housekeeping matters. On the record yesterday, I believe it was, there was discussion about provisions of the loan security agreement between the Treasury and the debtors, in particular with respect to the question of what collateral did or did not have liens. Going to Mr. Parker's question, we advised the Court we would provide a letter with the relevant sections. And if I may hand that up to Your Honor, we have done that. We've provided it to Mr. Parker and to all other counsel for the objectors. The particularly important provision is the exclusion of collateral which is in here and the definition of excluded collateral basically says it's any property to the extent that the grant of a lien on it would give rise to a lien under any other document. So it's sort of elegant in its

simplicity of addressing the question of whether a lien has been granted. If it would grant a lien and it would have done what Mr. Parker says, the government doesn't have it.

If I may hand up that letter?

THE COURT: Yes, Mr. Warren. Thank you.

MR. WARREN: The second housekeeping matter, Your Honor, is Mr. Bressler had indicated that rather than putting a witness on for certain of the questioning, he would designate certain testimony from the depositions and Your Honor had said we should counter designate by this morning. The IUE also chose to designate not just with respect to Mr. Henderson but with respect to Mr. Raleigh. We have put together our counter designations. Those will be filed but Your Honor had asked that marked copies of the transcripts be provided color-coded to indicate who are the objectors.

THE COURT: I say color coded. I simply meant so that I could tell whose is what.

MR. WARREN: We figured the easiest --

THE COURT: Black and white, that's equally satisfactory.

MR. WARREN: We thought color might work. We have taken the liberty of taking all of the objectors designations and put them in yellow. Ours are in pink. And if I may hand those up to Your Honor, these are the Henderson and Raleigh transcripts. Hopefully, this will be of assistance.

THE COURT: Okay. And I assume all of your opponents also have.

MR. WARREN: Yes. They all have been provided copies and they'll have the designations which are filed. Thank you, Your Honor.

THE COURT: Thank you, Mr. Warren.

MR. JONES: Sorry, Your Honor. Very quickly. David Jones.

THE COURT: Mr. Jones?

MR. JONES: Let me note that on the Wilson designations, we're in the process of doing the same thing. We don't have it in hand yet. The designations are filed and we'll provide it as soon as possible.

THE COURT: Okay.

MR. LEHANE: Good morning, Your Honor. Robert LeHane, Kelly Drye & Warren, on behalf of the debtors' landlord and its Roanoke, Texas distribution facility.

THE COURT: Good morning, Mr. LeHane.

MR. LEHANE: Your Honor, we filed a limited objection that raised three issues: cure, adequate assurance and the debtors' ability to remain in the premises prior to a designation of the lease. The parties have, we believe, arrived at a business decision, a business settlement. There's a lease amendment that has yet to be executed. But the settlement involves the debtor confirming for the record, one

of the issues raised in the adequate assurance objection. Your Honor, the debtors agreed to assume the lease and assume the lease at closing and that in connection with the assumption of the lease, the debtor agrees that it will assume all of the obligations to indemnify the landlord whether or not those relate to incidents that may have occurred pre-closing or pre-petition. The debtors also agreed to pay all tax obligations under the lease. Specifically, in Texas, the real estate taxes are billed at the end of the year and they may relate to periods pre-petition and pre-closing and the debtors agreed that it would confirm for the record that it has agreed to assume all of those obligations. If debtors' counsel would simply confirm that for the record, we can --

THE COURT: Okay. Anybody have any problems with what Mr. LeHane said. Mr. Smolinsky?

MR. SMOLINSKY: Good morning, Your Honor. Joe Smolinsky, Weil Gotshal & Manges for the debtors. Your Honor, we have a number of contract resolutions, of cure disputes, that are on the calendar today. We were hoping to do it in a streamline fashion, so as not to cause a stampede, one at a time. We are in the process of working out with LBA the terms of a modified lease amendment. I think the statements that were made are accurate to the extent that there's an unknown indemnity event that occurs prior to closing that that -- to the extent it's covered any indemnity agreement under the

lease, the purchaser is assuming that liability.

I didn't want to upset the flow of this hearing today. And to the extent that we want to deal with these issues now or deal with them later, we can.

THE COURT: You know, you're reading my mind, Mr. Smolinsky. And, frankly, I didn't know what Mr. LeHane was coming up to say. That's fine, Mr. LeHane. I think you've got it done, though. But, folks, what we have here now, which is what appears to be a line of people who want to get up on relatively minor matters, important to you all, of course, but smaller in the scheme of things, it raises the risk of really spiraling out of control and undercutting, if not undoing, everything I've been trying to accomplish in the last couple of days in terms of triaging these matters and dealing with the most important issues first.

Unless there are any other things of major importance, such as modifying any of the arguments that I've already heard, I'm going to ask all of the people who are on line to speak to sit down until I can hear from Mr. Richman and Mr. Parker and reply by the movants. And then rest assured that before I leave today, we will have dealt with everybody. Okay, folks.

MR. SMOLINSKY: And, Your Honor, I think I could later present a streamlined approach to the cure objections so that we can make sure we cover everybody's concerns in the

fastest possible way.

THE COURT: Sure. Thank you, Mr. Smolinsky.

MR. SMOLINSKY: Thank you.

THE COURT: All right. Mr. Richman, I think you're up.

MR. RICHMAN: Good morning, Your Honor. Your Honor, Michael Richman, Patton Boggs, for the unofficial committee of family and dissident GM bondholders. Your Honor, our principal argument, which I'm going to focus on this morning, is that the debtors have not satisfied their burdens to demonstrate the right to use Section 363 to effectuate a sale of substantially all their assets in the first month of the case.

After the briefing and the evidence, a related and central question that seems to be unique to this case is where the government seeks to rescue a failing company through a corporate restructuring under Chapter 11 of the Bankruptcy Code may have circumvent the Code's various creditors' rights and protections by labeling its restructuring a sale and then conditioning its rescue on a quick sale to itself.

We understand the argument that but for the government's rescue effort, we and many other stakeholders would have nothing. And so, we should be grateful for receiving anything. But that is not the way that bondholders and other creditors and stakeholders look at what is being proposed. Instead they ask why is a financial rescue under

Chapter 11 not according equal and ratable treatment to different groups of claimants whose claims are legally similar. They do not understand how our legal system can permit the government to resort to Chapter 11 and yet choose to favor some constituencies over others.

The government's answer is that it is purchasing the best assets under Section 363. So it has the right to take what it wants, leave what it doesn't want and make special deals by allocating its equity in order to take care of the constituencies that it needs to operate the new company. The new company doesn't need the old company's bondholders. It doesn't need or want a lot of other things. Provisions of Chapter 11 that might require a restructuring to recognize that the value of New GM belongs to all of Old GM and its estates to be allocated in a more equal and ratable way are simply inconvenient.

The debtors argue that this Court has the power to authorize this transaction if it finds that there is an articulated business justification. The business judgment must be reasonable and the purchaser must have good faith. This derives from Lionel and its progeny.

But, Your Honor, I submit that assumes a genuine sale. That assumes independence between a purchaser and a seller. That assumes that a debtor has a real choice other than to bend to the will of its lender and its purchaser

whereas here, the record shows an utter dominance of the debtors including the fact that the principal negotiators for the debtors are also to be the principal managers of the new GM negotiating with the owner of New GM, the protestations of arm's length negotiations and good faith are simply irrelevant. The absence of real choice and the dominance of the government creates an environment unique in this case in which those factors that are required for a 363 sale cannot credibly exist.

Indeed, the testimony was that the sale price was not so much negotiated as derived on the basis of asset values, but was rather derived on the basis of the minimum amounts needed to settle the claims of the favored constituencies. That this later turned out to be supported by a fairness opinion is irrelevant to the fact that it wasn't negotiated as any real sale of assets would be. Your Honor asked yesterday why there was a fairness opinion at all if there were no other bidders. It's clear from the response that the fairness opinion and the liquidation analysis was window dressing for the board, and maybe for the Court.

In this case, no one came to the company offering to buy any assets. The government came to GM with financial rescue, not to buy assets. The government then came up with a restructuring plan with union and bondholder settlements. But it concluded that implementing it through a Chapter 11 plan would give rise to potential rights and uncertainties and the

possibility of longer time than if it could be implemented as a sale. So they made a conscious strategic decision to label their restructuring a sale and a conscious strategic decision to bypass and circumvent the Chapter 11 plan process.

The evidence shows that Treasury's lawyers presented to Treasury alternative means of restructuring the company including through a Chapter 11 plan and that 363 was chosen for strategic purposes.

THE COURT: Pause, please, Mr. Richman. You've been around the block a few times. To what extent either in this court or Delaware or anywhere else in the country have you ever seen a Chapter 11 case? Put aside a large one like this, even medium size one, even cases in the fifty million dollar, hundred million dollar range -- that has ever gone from filing to confirmation within a period of ninety days.

MR. RICHMAN: Well, Your Honor, what we mention in the briefs is pre-packs and pre-negotiated plans certainly have been confirmed very rapidly. And this restructuring plan was fundamentally a pre-negotiated plan. There were agreements in place with the union, important agreements in place with some of the senior bondholders. This could have been filed as a pre-negotiated plan and put on an accelerated time frame.

Not only that, Your Honor, if the business objective here, both on the --

THE COURT: Pause. Forgive me. Can you give me any

more specificity than that? Ninety days is a very short time. A pre-negotiated plan, by definition, is, aside from the fact that you haven't solicited your votes from the disclosure yet, I get so-called pre-negotiated plans all the time where there have been pre-negotiated secured debt or with major elements of the unsecured creditor community. But when they've been filed that way, I can't count the number of times, even in my pre-packs, where one issue or another comes up and -- I'm trying to think of any specific example to any you know which have been able to meet that time frame. We have testimony, as I understand it, from Mr. Wilson that he had gone to -- and I'll have to look at the record for the number -- any number of people experienced in Chapter 11. And the view was unanimous, subject to me checking the record, that it would be suicidal to expect it to be completed in that period of time.

MR. RICHMAN: There were two alternatives. Well, first, let me respond to that, Your Honor. I have complete confidence that, with the resources available here, that (a)a pre-negotiated plan with the agreements that are in place and sought to be approved with the sale could have been filed on June 1st; and that Your Honor, upon cause shown, would have accelerated the timetable and all of the objections and issues and creditors' rights issues and many of the things that we're hearing today in a truncated way could still be determined by Your Honor, could still be determined on a fast track. Just

consider the extraordinary manner in which these hearings have been held in the last couple of days, discovery over the weekend, shortened times for everything. The same thing could be done in an accelerated plan if the same arguments were being made but creditors' rights would be accorded to that.

I can't tell you standing here right now of a specific case where I know that that was done. Honestly, I haven't had time to look for that. We did cite cases where the record showed confirmation within so many days of filing all of which were within thirty, sixty, ninety days, some of which were a couple of days. Most of those were pre-packs; some were pre-nego -- I believe some were pre-negotiated plans. I'd have to check and we could submit something afterwards, if Your Honor wishes.

But the other thing that I think is a useful response to Your Honor, if the goal here that everybody says they want is to create spinoff New GM, and it has to be done quickly because that'll get it out of the bankruptcy environment and allow public to understand that there's a new GM in place, that could have been done without allocating the equity. The company could have spun off the assets into a New GM. It could do so today. It could do so under 363. But it could retain the equity so that all the equity -- all the interest holders in this case would still have a stake in it and that equity allocation could then be done later pursuant to a plan so that

full creditors' rights are protected. And that would achieve all of the objectives that the government and the debtors claim that they have to achieve. It would be outside the bankruptcy environment but instead of the government holding the equity and determining how it gets allocated, the debtors would hold the equity until a plan could determine how it should be allocated.

Your Honor, the evidence shows that Treasury's lawyers presented various alternative means of effectuating the restructuring including through a plan and that 363 was a deliberate strategic choice. It was only at that time, after they decided to effectuate the restructuring through 363, that the format of a sale was devised with a shell company and the sale format was plugged in to fit the strategy. Once Treasury mandated a restructuring using a 363 sale strategy, the script was written in order to make that work. The company and its advisors analyzed only two options: the sale or a liquidation. They conspicuously failed to analyze or to present to the board the possibility of spinning off GM's best assets to a new GM, as I just indicated, or in an accelerated plan process.

The evidence shows that the government decided to use 363 not for any goal that a real purchaser would have but as a restructuring tool. The government doesn't want to buy, own or operate a car company. That's been said many, many times on the public record. But if the Court allows this restructuring

under 363 then the government can take control more easily, quickly and without providing value or distributions of a type or amount that conceivably otherwise would be required in a Chapter 11 plan.

It's a good strategy. We understand why they did it. They have nothing to lose. They told the public, as did the White House, that they hope to emerge from Chapter 11 in sixty to ninety days. So if this Court decides that in the unusual circumstances of this case including very distinguishing factor from Chrysler, the absence of any independent third party purchaser whose commercial needs are driving the deadlines, if this Court decides that there is insufficient support under Lionel and Chrysler to restructure under 363, the government and the debtors can easily spin this as a temporary setback but still well within their initial time frames. This case tests the very meaning of Lionel and its limits.

These were the very concerns that the Second Circuit had in articulating the Lionel guidelines, a balancing of tensions between the need to preserve a business and the need to protect creditors' rights. Lionel gave us six nonexclusive factors for evaluating the propriety of 363 sales to dispose of substantially all of the debtors' assets. But just before reciting those factors, the Second Circuit cited to the Supreme Court opinion in Committee for Independent Stockholders of TMT Trailer against Anderson for the proposition that, and I quote,

"The need for expedition is not a justification for abandoning proper standards." The president of the United States made a similar statement in his inaugural address which we quoted in our brief. In essence, we should not compromise our principles for the sake of expediency.

Then the Second Circuit had to say, in words that apply fully to the situation we face today, and I quote, "A bankruptcy judge must not blindly follow the hue and cry of the most vocal special interest groups; rather, he should consider all salient factors pertaining to the proceeding and, accordingly, act to further the diverse interests of the debtor, creditors and equity holders alike."

As the case law has subsequently developed and as reflected in these hearings and the arguments, the criteria considered most important are a sound business judgment and the question whether the assets in question are declining in value. The need to preserve value, particularly where there is evidence of deterioration, is often argued and cited to support unusual speed, particularly when the sale is sought so early in the case as it is here.

The only evidence before the Court demonstrates that since filing Chapter 11, GM's assets are not wasting. They are not deteriorating; they are not melting. Chapter 11 has apparently, so far, stabilized the company and sales have increased over the pre-bankruptcy period. Therefore, the

asserted need to effectuate a new GM very quickly or at least by July 10, is not supported by evidence of declining value. Indeed, it's clear from the testimony of both Mr. Henderson and Mr. Wilson that the debtors' and the government's first day fears about the negative effects that Chapter 11 would have on GM were greatly exaggerated and unsupported at least over the first thirty days. And we presume over the first sixty to ninety days that they predicted that the case would last and inform the public that the case would last. What we see in the evidence is that because the parties attempted at all cost to justify the need for a fast track sale, there were a number of conclusory statements and predictions of dire consequences that turned out not to be true.

Mr. Henderson's first day affidavit in evidence as Debtors' Exhibit 15 states at paragraph 82 that "The value of and consumer confidence in the GM brand and its products and support systems are fragile and will be subject to significant value erosion unless they are expeditiously transferred to New GM and its operations start fee from the stigma of bankruptcy. Any delay will result in irretrievable revenue perishability and loss of market share to the detriment of all economic interest. It will exacerbate and entrench consumer resistance to General Motors products." Mr. Wilson said that his concerns about timing were informed by articles from commentators who predicted GM could not survive Chapter 11.

But as we have seen from the evidence, these first day predictions turned out not to be true. It is evidence and not prophecy on which this Court should rely.

Though GM's overall financial performance was in decline over a long period of time and clearly it is today on a year-over-year basis below what it was a year ago, it enjoyed improved performance in the first month of bankruptcy over the month of May. Some of this may be attributable, as Mr. Henderson testified, to the government backstopping of warranties which occurred earlier and independently of any bankruptcy filing. Some of it may also be attributable to business strategies that Mr. Henderson and his team pursued more recently. So the assets are not wasting or spoiling or deteriorating.

Now, echoing his first day fears when he testified, Mr. Henderson said that he thought one reason why the business was doing better than expected in June was customer expectation that the bankruptcy process would go quickly but he later conceded that that was pure conjecture. Indeed, it became clear from Mr. Henderson's testimony, as well as Mr. Wilson's, that the fears of business decline that they said motivated their desire for a fast track 363 as distinct from any alternative were based on worries over a prolonged case -- "prolonged" was a word in the testimony -- one where the company "languished" in Chapter 11. Mr. Wilson said Treasury

was concerned about a "traditional" Chapter 11 process.

Mr. Miller spent argument time warning of dire consequences as well, not in the record of evidence but in Mr. Miller's opinion, and concluded with the point that a Delphi-like case would be bad for the business. That's not really debatable but it's not the point.

The debtors argue that this transaction is the only alternative to a liquidation but is it fair to say that there is no viable alternative to a sale where you deliberately limit your alternatives? I understand an aversion to a traditional plan process. But here, where there was already the equivalent of a pre-negotiated plan, an accelerated plan process could have been and could yet be attempted. But no advisors were asked to consider that or value it or present it as an option to the board. Mr. Repko agreed that the value of a new GM under a plan could be comparable to the value under the 363 transaction.

Now, Mr. Miller said that our suggestion of a Chapter 11 process that could be concluded within ninety days was magical. Yet, as I indicated before, and I'd be prepared to supplement the record with some further research, we know that many cases with pre-packs and pre-negotiated plans have been completed in that time frame without magic. And there is no doubt that the debtors and the government have the resources to do that here, to at least try that here. Perhaps the magic

that he was referring was making creditor objections disappear. And if that's what he meant, then I agree that you couldn't do that in a plan process. But this Court could have easily dealt with as easily such issues in an accelerated plan time frame as the Court demonstrated it could do with these hearings especially in an extraordinary case like this. If there was any magic here, it was the debtors and the government taking a magic wand to a restructuring and saying poof, now you're a sale. And with that, creditors' rights and plan protections disappeared.

Since the evidence does not establish that the business is deteriorating, the debtors' business judgment, if it actually has any judgment of that sort in a case like this, is narrowed to its asserted belief that the business opportunity, if what the government is offering could even be characterized as a business opportunity, is limited and perishable. The government's offer of financing will expire on July 10. If the debtors do not comply with the government's dictates, liquidation will inevitably follow. The important question is whether this Court has any power to disbelieve that. From the debtors' perspective, we completely understand the argument that they have to try this. They have to advocate it and believe it. It's not business judgment, though, because there's no real choice involved. It's inconceivable that any company would choose to liquidate in the face of such a

government offer. Simply inconceivable. And we're not criticizing the fact that the debtors have chosen this course. And we're not criticizing the fact that they sensibly decided not to liquidate. We're objecting to the form of the transaction.

Even though the debtor had no choice, this Court does. This Court can look through the form to the substance, through the evidence to the truth and through the magic in order to stand for the Chapter 11 process.

Now yesterday, Your Honor commented about our familiar experiences with overbearing lenders. I believe the comment was that lenders frequently overreach. In many such situations the debtor, in dire need of financing, is in no position to negotiate effectively. As here, the debtor is given no real choice. Where the debtors' will is overborne, the Court can and does step in. We see that all the time with DIP financing and purchase -- 363 purchase provisions. Desperate debtors agree to things demanded of them because they have to. But the Courts will not hesitate to push back and tell the lenders, sorry, I'm not approving those provisions.

THE COURT: I've done this a few times, Mr. Richman. When you say we don't hesitate, I think that understates it a little. Every time a judge rules on a DIP, he's rolling the dice that he's going to crater the whole case if he messes around with economic terms. If you give them extra time to do

investigations so they can bring their avoidance actions, we make individualized adjustments as to whether 506(c) labors are appropriate or handing over the proceeds of avoidance actions are appropriate. But I cannot think of a single time in the nine years I've been on the bench or the nearly four years I've been doing this where I've ever told -- seen a judge tell a lender that he has to agree to different deal terms.

MR. RICHMAN: I wasn't suggesting that, Your -- I actually agree with Your Honor up to that point in the sense I wasn't suggesting that you tell what the deal should be. But Courts do and Your Honor has pushed back on provisions that Your Honor was being told we're absolutely required by the purchaser with the DIP lender. And Your Honor has said and other judges have said, I want to prove those even though there was the threat, difficult threat to deal with that the party would walk away because the Court stands for the law and the parties understand that they have to follow those dictates if they want to do a transaction under Chapter 11. My only point, which I think Your Honor was agreeing with, is that it's not uncommon. When the debtor doesn't have the ability or leverage or the independence of will to be able to fight back over onerous provisions or even a mandated sale, the Court still has the power and authority to do so.

Bankruptcy courts call the bluffs of billing lenders and purchasers all the time. And that brings me to footnote 15

of Judge Gonzales' opinion in Chrysler In Chrysler, as here, the main argument was that the debtor had no viable options but a sale or a liquidation. Now, in that footnote, the Court commented on a third option raised by dissenting creditors. And I quote: "Based upon the U.S. government's substantial interest in preserving the automobile industry, jobs and retiree benefits, the intimation is that the government was bluffing when it indicated that it would walk away from exploring other options if the Fiat did not close quickly." The proposed third option is that the debtors could have refused to accede to the government's terms in the hope that the government would capitulate and agree to consider other alternatives. The Court concludes that gambling on the possibility that the government was bluffing and listing the potential for a lesser recovery in a resulting liquidation would have been a breach of the debtor's fiduciary duty.

Judge Gonzales did not, however, say that he or any other judge would be without power to call such a bluff. We are not challenging the debtors' choice which was a non-choice to proceed with the strategy. But we do say that in the circumstances of this case, the Court has the power and authority to push back. Many people say that Chrysler is the blueprint for GM and that the cases are the same. They are not. And they are completely distinguishable in the most fundamental of ways. The deadline pressures in Chrysler were

in the main driven by the commercial needs of an independent purchaser. The business opportunity was legitimate, commercial and limited. By contrast, there is no real purchaser in this case. The government is not setting any deadlines with reference to commercial exigencies of the automotive marketplace; it has no experience running a car company. The deadlines were set to support the strategy of a 363 restructuring.

If you go to a Broadway musical, you expect an orchestra. For a 363 fast track sale, you need a drop dead date. It's part of the scenery; part of the show.

As distinct from the dissenters in Chrysler, we are not suggesting that the debtor should have refused to attempt the 363 transaction. We don't see how they could have. They had no choice. As the evidence has showed, and as other parties have argued, the principal decision makers and senior management were not acting with any independence. They were across the table from their new employer. They were arguing with their new owner.

But this Court can push back. This Court can call the bluff in the overriding interest of upholding the Chapter 11 process. Consider: the government has repeatedly said it will not allow GM to fail. It has said it is committed to creating New GM. It has already invested 19.4 billion dollars pre-petition and perhaps as much as thirty three billion

dollars including DIP lending. It told the public it was on a sixty to ninety day track. Like any powerful lender or purchaser, it says, my way or the highway.

Mr. Wilson said that if the sale order was not approved, Treasury would cut its losses. Now, I submit that Mr. Wilson's credibility was open to question on some points. His demeanor was markedly different from the other witnesses. He's smart enough to know what findings the Court needs to make to approve the transaction and I believe and I submit that he answered some questions in ways designed to serve the end. For example, he said that his understanding of the term "languishing" meant anything more than thirty to forty days. Most of his testimony was carefully couched in terms of present intentions and beliefs.

But while the drop dead threat is out there, there is nothing that binds the government to abandoning GM and the government can and will react to a decision here, a decision of law by this court, in a manner that is both politically and economically sensible. Their agreement on funding administrative expenses was limited to 950 million dollars. But we heard Mr. Koch testify that he had a feeling or a belief that they would step up and do something more. It wasn't in writing but there may be a number of unwritten understandings here as part of the strategy of how the parties are going forward. And the clear impression from the sixty to ninety day

pronouncements from both GM and the White House is that while Treasury may not be obligated to fund beyond July 10, they will step up and do so if they have to. They have to threaten to cut off financing.

THE COURT: Pause, please. Can you repeat that? And say a little slower. And if you had a particular reference to something, I ask you to repeat that as well.

MR. RICHMAN: Yes, Your Honor. I said the clear impression from the sixty to ninety day pronouncements, which we quoted in our brief from the outset of the case, is that while Treasury may not be obligated to fund beyond July 10, they will step up if they have to. And to expand on that, it's inconceivable to me that the White House press secretary or GM's CEO would be telling the public sixty to ninety days if they didn't have some assurance of financing beyond July 10th.

THE COURT: Okay. You preceded the words about clear impression. It's an inference you want me to draw --

MR. RICHMAN: Yes.

THE COURT: -- or, in fact, is it something somebody said?

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

THE COURT: Okay. Continue.

MR. RICHMAN: The government has to threaten to cut off the financing in order to limit the debtors' options and perhaps those of this Court as well. But I don't think and I

don't believe this Court should believe that the government is now going to abandon GM if this Court merely says that the use of 363 is not legally supportable in this case. Do it another way. It's not credible to think that the White House will say tomorrow, we've now decided to let GM fail because we don't want to follow the law. We didn't get our way in court on an attempted fast track sale so we're going to give up -- sacrifice three-quarters of our investment and flush GM away and the thousands of jobs with it and the dealer network and the dependent suppliers and so on and so on. All the same considerations that the debtors have argued are important reasons to approve the transaction are at least equally important reasons why the government will obey the law if Your Honor determines that the law is that 363 can't be used on a fast track under these circumstances.

Now, there was a related power or leverage threat that seemed to come through in the hearings, something like an additional drop dead threat that might be added, pressure for approval of the transaction. And that was the suggestion that the UAW agreements to modify their collective bargaining agreement were in some way conditioned upon and could be rescinded or undone by a failure to approve the sale order by July 10. And I thought that's what Mr. Curson said in his testimony.

Your Honor, we checked the documents that were

submitted in evidence in the records and we could not find anything in writing in the evidentiary record which conditions the collective bargaining agreements in any way. And both Mr. Henderson and Wilson testified that those amendments were already in effect and that the amended bargaining agreement is now governing.

In particular, we looked at the amendments that the UAW filed. We just didn't see anything which provided that if the sale order wasn't approved by July 10 that those amendments would be rescinded.

Now, the agreement to fund the VEBA, which we ask questions --

THE COURT: Pause, please. Can you slice and dice that piece of information? If I heard you right just a second ago, you said by July 10. Would you mean to include or exclude by that whether you had a view as to whether the union would continue to perform this day to day stuff if it didn't get its VEBA funding, new VEBA funding, one way or another or if you're back to square one?

MR. RICHMAN: I do have a view of that, Your Honor. My view on that is that the collective bargaining agreement is a binding contract. And it's in effect and it's operative now regardless of what happens to the VEBA at least as I read the record and the evidence. The VEBA deal, I think, is a separate deal. And I understand if it is, at least again as I

understand the record, it makes sense to me because one could argue that the overall settlement in terms of the amendments to the collective bargaining agreement are an asset of the estate and that the VEBA deal is part of a consideration that should actually go to the estate. But if you keep them legally separate such that the VEBA is not inextricably intertwined then maybe you create a better argument that the VEBA is like the equivalent of giving stock to somebody by the purchaser and isn't really consideration for the modification and then the assumption and assignment of the collective bargaining agreement.

THE COURT: Help me on that a little more, because I thought the duty to the UAW's VEBA was in the ballpark of twenty billion bucks and it was a liability rather than an asset.

MR. RICHMAN: Your Honor, all I can say is we didn't find any linkage that would cause that to fail in any way. And in any event --

THE COURT: Your basic point is that, if you read the documents, you're questioning whether Mr. Curson's right in his view that he's got a package deal here.

MR. RICHMAN: Exactly. It goes to the question of whether there's some further dire consequence that Your Honor should consider would result if Your Honor did not approve this transaction by July 10. And I submit that it's not a dire

consequence because of the lack of linkage. And if there's a separate agreement on the VEBA, that separate agreement, I don't know that it's conditioned on a July 10 approval, but presumably that would still be in play for a plan process.

THE COURT: Go on, please.

MR. RICHMAN: As we've seen from the hearings, there are many other questions and issues that a plan process could better address: Why is the government getting full credit for prepetition loans that could be challenged as equity? Doesn't that call for more cash to be put into any deal, whether under 363 or a plan? Other counsel have raised serious questions about the bypassing of rights under Section 1114 of the Code and of attempts to shed successor liability. And we've also raised other arguments in our brief, to which we continue to adhere, including that the transaction should also be rejected as a sub rosa plan.

THE COURT: Okay. Pause, please. On the recharacterization point, are you contending that not only the pre-petition secured debt ballpark or nineteen billion bucks -- I'd have to check, or maybe it's thirteen billion, I'd have to check the exact figure on that -- should be recharacterized? Are you also contending that the thirty-three billion bucks of U.S. and Canadian DIP financing also has to be recharacterized?

MR. RICHMAN: Only the pre-petition debt, Your Honor. I think that in a case that wasn't moving at quite this

lightning speed where parties had a real opportunity to negotiate allocations and distributions, that there would be greater focus on the priority of that pre-petition loan as compared to other creditors. I partic --

THE COURT: But stick with me for a second. Suppose the U.S. government had only bid thirty-three -- credit bid thirty-three billion instead of fifty-nine billion. I'm not aware of there being any bids in the wings that could have trumped a credit bid if it was low as thirty-three billion -- as low as.

MR. RICHMAN: And we know, we know, as a fact that --

THE COURT: -- as thirty-three billion as well.

MR. RICHMAN: We know as a fact that there weren't. I think that the way I would answer that is if the debtors have produced a fairness opinion that indicates that the fair value for the company is 90 billion dollars or 70 billion dollars, and then you back out 19.4 billion dollars, it suggests that the consideration is short by 19.4 billion dollars and that there either has to be a reallocation of the equity or the infusion of additional funds in order to meet the fair price.

But I agree with Your Honor that had this gone differently as a real transaction might have gone -- remember, this wasn't negotiated as a sale of assets. This was a determination of how much money it would take to reach settlement agreements with the favored constituencies, and

everything else was backed into that. And then, so, a price was derived on the back end.

We also argued, Your Honor, that the transaction should be rejected as a sub rosa plan. I'm not going to spend a lot of time on that. The debtors' answer to that is that it doesn't predetermine a plan because, the way this transaction is designed, the 10 percent of stock and the warrants to acquire another 15 percent and, I guess, the 950 million dollars for administrative expenses is being left behind to be distributed in the normal course.

But, Your Honor, if you engage in a transaction which removes from the plan matrix an important class of creditors and give them favored treatment outside of the plan process, that's as much predetermining the plan as leaving them in the plan process. You are still predetermining and creating the construct of a plan but you're doing it through extra plan provisions. So I don't think -- just because this doesn't dictate distributions to every class doesn't mean that somehow it's not a sub rosa plan.

I want to be clear about an important point, and it's another distinction from the Chrysler case, particularly in respect of parties who stand in the position of bondholders, as our clients do. We've never argued, and we don't contend, that GM should liquidate. We support the creation of a New GM. We think it's a fine idea and we defer to the collective judgment

of the professional advisors on that issue.

And we appreciate that GM would already be liquidated if the government had not come in late last year to provide financing that no one else could provide. We wouldn't be here discussing this today if the government wasn't committed to saving GM. But that does not earn the government an exemption from the law. Our gratitude to the government rescue does not include sacrificing our legal principles. Perhaps the government could nationalize GM, and we would all be left with nothing, but they chose Chapter 11. And once you choose Chapter 11, you should comply with all of Chapter 11. The government should not be permitted to cherry-pick which provisions of Chapter 11 it will use and which it will not use.

Right now, the value of New GM rightfully belongs to the estates and all of its creditors. New companies are spun off through Chapter 11 reorganizations all the time. In that normal process, all of the major constituencies participate in negotiations concerning overall value and allocations of that value. The final results are accompanied by full disclosure. Parties-in-interest have protection against oppressive results through Section 1129. These negotiations would determine how much equity in New GM the Old GM should award to the government or the union or to other parties. That's the essence of the Congressionally-mandated corporate reorganization process of Chapter 11.

By taking what would otherwise be a deliberative reorganization involving all major parties on an accelerated basis and calling it a sale that must be completed by June 10 to avoid dire consequences, the debtors and the other favored parties in the allocation of values are engaged in a fiction, in a pretext, in a subterfuge to avoid a plan process in which the allocations of value might be determined differently.

We get their arguments. If you accept that this transaction is a legitimate sale, then of course the purchaser can choose to divide up the ownership any way it likes. And therefore, of course, its arrangement with the UAW and the Canadian and Ontario governments, parties who are providing unique present and future value to the new business, is its prerogative. But if it's not a legitimate sale, or if the other tests of 363 are not met, then these important allocation decisions would not be the purchaser's to make.

If this Court does not have the freedom to push back, if any distressed company can be diverted into Section 363 in order to avoid plan confirmation requirements by overbearing lenders or purchasers setting arbitrary deadlines or, more importantly for the facts of this case, by an overbearing government, then the Court does not truly have discretion.

We have seen before in our history how in times of stress and extraordinary circumstances government asserts itself on more grand and powerful scales than before. In

substance, this appears to be an historic first attempt at a Chapter 11 nationalization. GM has no ability to resist that power. In our system of government, it is the judicial system which is the primary check on that power. This Court can and should draw the line and hold that this transaction goes too far. Doing so is consistent with Lionel and with Chrysler. Such a holding which recognizes the important distinctions between this and every case that has gone before sends a powerful message that even in the bankruptcy courts of the nation's commercial capitol there are limits and that due process and creditors' rights are important values not to be sacrificed in the interest of expediency. Thank you, Your Honor.

THE COURT: Thank you. Thank you, Mr. Richman.

All right, Mr. Parker, I'll hear from you. Mr. Parker, on anything that Mr. Richman addressed, I'll ask you to limit yourself to anything where you think Mr. Richman failed to do an adequate job.

MR. PARKER: Okay, Your Honor. If I may, may I begin by asking the Court to -- for time reasons, and because I think certain things have been adequately argued already, I'm not going to argue some points that I've raised in my objections, but I'd like to preserve those points.

THE COURT: Of course. Anything anybody said in a brief or in a pleading is deemed to have been asserted. I

mean, the purpose of oral argument, in my court, is not to repeat or to have to say again what you said in your papers. It's to give me orally anything which helps me better understand the papers or answer things where you're plugging the holes.

MR. PARKER: Okay. So I'm not waiving anything, any points --

THE COURT: Right.

MR. PARKER: -- by not mentioning it.

THE COURT: That's what I said.

MR. PARKER: I know, I'm just clarifying for myself. I'd also like to also incorporate by reference the arguments of Mr. Kennedy and of --

THE COURT: To the extent you need to, it's done.

MR. PARKER: Okay, and also my immediate predecessor up here.

THE COURT: Same.

UNIDENTIFIED SPEAKER: Mr. Richman.

MR. PARKER: Mr. Richman, right.

Thank you, Your Honor. Your Honor, basically I want to address four points, if I may, four points that I don't think have been addressed. One I wish to address very, very briefly, and I'll begin it with apologizing to the Court for my less-than-stellar performance on Tuesday. But I think that less-than-stellar performance is at least partly the result

of -- I object to the process, and I've objected in my objections, to the process chosen by the debtor. This is not a criticism of the Court or of yourself; this is a criticism of the process they chose.

I don't believe that there has been adequate time to prepare a response to their motion. For example, and after making the example I'll move onto another point, for example, they criticize, or in their oral argument to the Court they have emphasized, that they're the only ones who've provided any valuation scenarios for General Motors. Well, of course, they had several months to prepare those valuation scenarios. We've had less than thirty days. The time frame -- I mean, I filed my objection on June 19th, so I've basically had eleven days. In eleven days you can't find an expert, have an expert get access to the records and create a valuation report. I don't think it can be done. So I'm objecting on those grounds.

But I'll move on. One of the things I'm objecting to, and I believe I'm the only one who's objecting on this, is the limitation-on-liens argument. The -- I rest upon two documents -- well, three documents: first, the 1995 indenture, which I believe is Debtors' Exhibit 10 in evidence, if my notes are correct. Section 1408 provides that it's governed by New York and is to be interpreted by New York law. Section 406 contains a limitation-on-liens provision, which I think the Court can read; I don't think the Court needs me to repeat it.

In addition, there's Parker's Exhibit 1 in evidence, which I believe is my only exhibit, which is a prospectus supplement dated June 26, 2003 for six and a quarter Series C convertible debentures due in 2033, with an attached prospectus dated June 19th, 2003. If you look at page 23 of the June 19th prospectus, the one that's attached to the supplement, you'll find that the identical limitation-on-liens provision is found in that prospectus and that it applies to my bonds. The prospectus also states that my bonds are issued under the 1995 indenture.

Now, the third document that I'm relying upon is -- I believe it's Debtors' Exhibit 6. Again, back there it's difficult to keep track of which exhibit is which, but it's the loan and security agreement dated December 31st, 2008. And if you'll give me one second to get the agreement. Here we go. If you go to page 35 of Exhibit 6, which -- and I'm using the numbers on the top right-hand corner --

THE COURT: Go on.

MR. PARKER: Do yours have the same pagination? Otherwise, I'll use the pagination from the original document.

THE COURT: Why don't you speak to it, because it'll take me a little bit of time to find it. But --

MR. PARKER: Sure, if I may.

THE COURT: -- I'll assume, unless somebody disagrees, that you're accurately reading to me. And I'm

familiar with the issue. What I want you to focus on is excluded assets within the meaning of the December 31st, 2008 agreement.

MR. PARKER: Yes, sir, I know, I'm getting there. Paragraph -- or I should say section 4.01(a) creates a lien on all real and personal property wherever located, except where excluded. Okay, section -- subsection - sub-subsection (a)(6) provides a lien on all personalty; it gives a nonexclusive definition of personalty, including equipment and instruments.

Section 4.02 provides that General Motors is to provide UCC filings in order to perfect the government's liens on all equipment. And there's a schedule of all the properties where equipment is located that UCC liens are to be filed for; that's section .402 (sic) on page 36. And, again, I'm using the pagination 36 of 111 in the top right-hand corner.

Section 6.09 has excluded collateral, and it refers one to schedule 6.29. It states that section 6.29 is a complete and accurate list -- by the way, that's 6.29, I'm sorry, not 6.09. Section 6.29, which is on page 51 of 111, states that, on excluded collateral, "See, set forth on Schedule 6.29, is a complete and accurate list of all excluded collateral of each property." When you go to schedule 6.29, you get a blank page. It says "Schedule 6.29, Blank". So apparently there is no excluded property.

It then goes on --

THE COURT: Mr. Parker, are you going to eventually get to subsection v --

MR. PARKER: Yes, yes.

THE COURT: -- romanette v, one of the definitions of excluded collateral?

MR. PARKER: Yes, sir, but -- okay. I am eventually. My point about what I -- to summarize, I was going through the documents to show you -- I realize that there is a subsection v on -- bear with me a second -- section 4.01, subsection v, defines excluded -- has a definition of excluded property but says "any property, including any debt or equity interest, any manufacturing plant or facility which is located within the continental United States, to the extent that the grant of a security interest therein to secure the obligations will result in a lien or an obligation to grant a lien in such property to secure other obligation". I understand that that's there. What I'm trying to show the Court is that even though that's there they still went and filed liens on property. And I don't think you can file liens on property and get an excuse for it by saying oh, well, I filed someplace else a statement that if I did it I didn't mean it.

The documents show that -- I might add, if you go to section 6.30, Mortgaged Real Estate, that's actually the only section that I've been able to find where they have language that says we do not have a lien on mortgaged real estate if the

lien would give rise to a lien in favor of a person as set forth in schedule 30 hereto. By the way, schedule 30 hereto is also blank.

It seems to me that they have, whether they were allowed to or not, and whether they've excused themselves from doing it or not, filed liens on two classes of property that I would like to bring to the Court's attention. The first class of property is listed in schedule 6.25, which is the UCC filings. They have filed the UCC filing -- lien on the following -- on the manufacturing and equipment of the following localities: the Doraville Assembly Center, the Janesville Assembly Center, the Moraine Assembly Center, the Massena Castings, Pittsburg Metal Stamping, Grand Rapids Metal Stamping, Spring Hill Manufacturing Campus, Wilson Run (ph.) PDC, Latsina (ph.) PDC, Pontiac North Pitt 17, Pontiac North PC, Yps -- I can't even pronounce it -- Ypsilanti Vehicle Center, Beavertown PDC, Grand Blanc Metal Center, Former Cherry Town Assembly, Former Validation Center, Former Lansing Plants 1, 2, 3, and 6.

Finally, Your Honor, under schedules 1.1 and 1.2, they've made it clear that among the assets that have been liened are Saturn. Saturn is -- at least according to the testimony of Mr. Fritz Henderson, Saturn is the only manufacturing -- American manufacturing subsidiary of General Motors. They've liened that. And indeed, because they liened

that, I believe that Saturn is a -- has an accompanying bankruptcy proceeding that's consolidated with this one.

Now, I realize they say they gave themselves an escape clause and if we lien something and we shouldn't have it as liened. But in point of fact, they did lien it. And the escape clause shows that they knew that they had obligations not to lien it. And when they liened it, when they liened these facilities and when they liened Saturn, under the terms of the bond indenture, the 1995 bond indenture, the bondholders acquired liens equal and ratable to that of the government.

THE COURT: Mr. Parker, do you think that if Mr. Schwartz had come in to me and said I got a lien on that stuff and any other party-in-interest in the case showed me romanette v he wouldn't have been left out of court?

MR. PARKER: I don't know, Your Honor. I do know that they attempted to perfect a lien on these assets even though they were prohibited from doing so. And, Your Honor, if nothing else, I believe that that goes toward the issue of bad faith. I believe -- which, by the way, gets us to the next issue that I wish to discuss.

THE COURT: Good time to do it.

MR. PARKER: Pardon?

THE COURT: Go ahead, please.

MR. PARKER: Give me a second to get there.

In order to approve a 363 sale, the government must

allege and prove good faith. In looking at good faith, the Court, I believe, needs to take a look at the totality of the circumstances concerning not only the sale but of the events leading up to the sale under the arrangement between the lender and the debtor. Even if they did not succeed in acquiring liens on the properties -- on that long list of manufacturing equipment that I listed -- and on Saturn, the only -- to the best of my knowledge, and according to Mr. Henderson's testimony, the only manufacturing subsidiary of GM, they attempted to acquire liens. They made UCC filing statements. Schedule 6.25 shows the places where they scheduled and what they -- the places where they liened the equipment and what they liened. Doing so, attempting to do so, Your Honor, is an attempt to violate the covenants of our indentures.

In addition, the further evidence of bad faith is found in the fact that their 363 sale procedure is tantamount to a distribution plan which discriminates in favor of certain favored creditors against others, as has been previously argued by others. Also, their 363 plan, as argued by Mr. Kennedy, is designed to avoid a Section 114 hearing and the effects of the 114 hearing.

THE COURT: 114?

MR. PARKER: 1114, I'm sorry. 1114. Further, Your Honor, as ably argued by --

UNIDENTIFIED SPEAKER: Mr. Richman.

MR. PARKER: Mr. Richman, sorry. You can obviously tell there's not been much coordination between us. As ably argued by Mr. Richman, there is no real purchaser. There is no real -- there's been -- there's no real purchaser, there's been no real negotiation. This is basically the government selling GM to itself.

Furthermore, Your Honor, and I guess this gets me to my next point, I've argued in my objection that the government is not authorized to purchase General Motors under EESA, that is, the Emergency Economic Stabilization Act, or under TARP, the Trouble Assets Recovery Program. The -- as Mr. Wilson testified, the loans that were given to General Motors were given from TARP funds. I have argued -- and I'm not going to repeat the arguments here, I'm going to rest upon the argument in the objection -- I have argued that the government is not authorized, was not authorized to make those loans under TARP. Making loans that it is not authorized to make is also evidence of bad faith.

I realize that there is some question of whether I have standing to raise this issue, and I'd like to address that very briefly. I do not believe that I have standing to challenge the use of TARP money for the DIP lending, for the DIP loans. I believe you entered an order authorizing DIP financing back on June 25th. I had no standing to object because I was not harmed by that action. Because I did not

have standing to object, I didn't object. However, I am harmed by the government's proposed sale procedure, and because I am harmed -- if they are going to use a credit bid of roughly forty-nine billion dollars of TARP money to purchase GM. So they are using TARP money to make a purchase.

If my argument, as set out in the objection, is correct, they are not authorized to use TARP money. They may use TARP money to buy a bank; they may use it to buy all sorts of financial institutions. But whatever else General Motors may be, it is not a financial institution. The use of money to do something that they are not authorized to do is evidence of bad faith.

Finally, Your Honor -- further, Your Honor, on bad faith, I have argued in my brief that there are Constitutional probl -- that there are Fifth Amendment taking problems with the proposed proceeding. I'm not going to repeat those arguments here. But, again, those concerns are evidence of bad faith.

Which gets me to my final point. I'm trying to go as quickly as possible; I'm trying not to use too much time. My final point, Your Honor, if I can find it -- oh, yes. I need to refer to one more exhibit, if I may. Here we go. My final complaint, Your Honor -- and by the way, I -- my final complaint refers to the scheme of distribution, the distribution of the sale proceeds of this 363 proceeding. Now,

I want to make clear, I'm not objecting to the sale price. As I understand it -- and I'm referring now to the declaration of Stephen Worth, Debtors' Exhibit 3, Exhibit F, page 15. I don't know what exhibit number Stephen Worth -- I don't know what exhibit number it is, but his declaration is in evidence -- he testified -- Exhibit F, page 15. It is an analysis of the proposed transaction. It shows that the United States Treasury is paying 104.5 billion dollars. By the way, I'm using the lower numbers in these calculations. There's a difference; he gives a range of -- it's usually only two to three billion dollars different; I'm using the lower number. You can redo the calculations with the larger number if you prefer.

He gives a bid of 104.5 billion dollars. That's what, according to him, the Treasury is paying for General Motors. I think that's a fair price for General Motors; I'm not quibbling over that. According to him, the way that the government is paying it is they're making a credit bid of 48.7 billion dollars of secured lending. Now, I don't think he quite explained to you how that number comes about, so I'd like to explain it to the Court, if I may. The total secured indebtedness, excluding my argument about bonds, the total secured indebtedness is approximately fifty-six billion dollars. The way you get that number is you take the 19.4, you take the 33.3 and you add on the 6 billions that are owed to previously secured lenders. You add all those numbers up; you

come into approximately fifty-six billion dollars.

The government is taking back a loan, a secured loan, from General Motors, the New General Motors, of approximately seven billion dollars. They're also taking back two billion dollars in preferred stock. If you take those two numbers out, you come up with the 48.7 billion dollars that is listed here on page 15 of Exhibit F of Stephen Worth's declaration.

Now, I fully recognize that secured lenders should be paid first. So out of the 104 billion dollars they should get their 48 billion. The problem is that when you look at the sheet you realize that he -- that the other way, the other consideration given, is that -- and if you look at the second column -- the government is assuming and paying in full, or agreeing to pay in full, 48.4 million (sic) dollars of unsecured debt, which, by the way, according to the testimony of everybody who's been up here, does not include the debt of the UAW VEBA.

Now, personally, I find that testimony to be -- I question the testimony. It seems to me that if the UAW VEBA is getting 20.5 million dollars and is releasing its claim of 20. -- did I say million? I meant billion -- 20.5 billion dollars and releasing its claim of 20.5 billion dollars in the estate, that seems to me to be a payment.

For the purpose of this argument at the moment though, I'm not going there. I've argued that in my objection;

I will -- obviously have argued that here. I agree with that argument. But I'm arguing something slightly different. If you take -- since the 20.5 billion is gone, according to this sheet the total indebtedness for General Motors, that is, I guess, real indebtedness, not just pro forma indebtedness, is roughly 104.5 billion dollars, excluding the -- no, that's not right, it's 48 and 48 makes 96; 97 plus 35 makes -- roughly 132 billion; I may be off by a billion or two because I did a fast calculation in my head. The real debt in General Motors is 132 billion, excluding the 20.5 billion that's owed to the VEBA. The government's getting 48.7 billion to pay off secured lenders. That leaves 83.4 billion dollars in unsecured debt that needs to be taken care of. 48.4 billion is being paid 100 percent on the dollar; 35 billion, including the 28 billion in bonds -- and by the way, they keep saying it's 27, but when you do the math with interest to June 1st or May 31st, take your pick, 2009, it actually comes to 28 billion. The 28 billion dollar debt is getting 7.4 billion dollars; roughly 20 cents on the dollar.

So under the sale procedure, some unsecured creditors, favored unsecured creditors, and we're not talking about the VEBA now, are getting a hundred cents on the dollar while others are getting twenty cents on the dollar. My objection is let's take the purchase price but let's treat all the unsecured creditors equally and ratably. And if you do

that, they would all get sixty-six cents on the dollar.

Furthermore, Your Honor -- so, Your Honor, that, I believe, is my final point. The government is not only showing favoritism with regard to the VEBA; they're showing favoritism with regard to other unsecured claims. In a Chapter 1129 proceeding, those unsecured claims would be treated like all other unsecured claims. And this, by the way, gets back to good faith. In order for the government to be showing good faith, they must be treating all unsecured creditors fairly.

Now, allegedly they have a good business reason for treating the VEBA differently. I don't buy it; you may. I'm not arguing that for this second. I don't agree with it. I've argued otherwise in my objection. But putting that to one side, they still have an obligation to treat all the remaining creditors fairly, and they're not doing so. They're picking winners and losers. And they've given no business justification for these other winners that they've picked.

And for these reasons, Your Honor, I would urge you to reject the sale. And I will make clear, I want General Motors to reorganize. It is not in my interest or any bondholder's interest to see General Motors liquidated, although we have not had time to make a liquidation analysis. All we want is an opportunity to negotiate in good faith with the government to come up with a plan that is fair, fair to all unsecured creditors.

With that, thank you very much, Your Honor, and I want to thank you for your indulgence over the past three days.

THE COURT: Very well. Thank you.

All right, Mr. Bernstein?

MR. BERNSTEIN: I'll try to be brief, Your Honor.

THE COURT: Yes, I understand the issues. The main thing I want to hear from you on is whether there's recall authority supporting the idea that the consent decree obligation is something other than a monetary obligation.

MR. BERNSTEIN: Yes, Your Honor. First thing that supports it is that -- may I approach the bench, Your Honor?

THE COURT: Yes, sir.

MR. BERNSTEIN: Nolan entered a joint stipulation, modified the consent decree and then entered the pack of them as a final judgment of the United States District Court for the Southern District of Indiana.

PENINA 1:24:32

THE COURT: Is this new evidence, or is this --

MR. BERNSTEIN: I believe you can take judicial notice of this. We found this last night in response to Your Honor's question, and you'll see the second as the final judgment, Your Honor. It was entered by Judge Nolan under 54(b).

THE COURT: All right. Pause, please, Mr. Bernstein. Mr. Miller, do you object to me considering this?

MR. MILLER: No, Your Honor.

THE COURT: Okay.

UNIDENTIFIED ATTORNEY: I'm sorry, Your Honor, we don't have a copy of the judgment --

MR. BERNSTEIN: I can give you -- I have extra copies for you, I'd be glad to provide them. Here's the stipulation and order, and let's see if I have copies -- and here's an extra copy of the final judgment.

The second point, Your Honor, the legal context is set by the Supreme Court of the United States. One of the leading cases is Rufo v. Inmates of Suffolk County Jail. The citation is 502 U.S. 367. And the relevant citation is at page 378: "There's no suggestion in these cases that a consent decree is not subject to Rule 60(b)." I have Rule 60(b) as a rule for modifying judgments.

THE COURT: Right. And --

MR. BERNSTEIN: Right. "A consent decree, no doubt embodies an agreement of the parties, and thus in some respects is contractual in nature. But it is an agreement the parties desire and expect will be reflected in and be enforceable as a judicial decree that is subject to the rules generally applicable to other judgments and decrees."

The case counsel cited was one of these cases involving an interpretation of the language of a consent order or a consent decree, and yes, to that narrow context, the

courts look to contractual reasons, because the judgment reflects an agreement of the parties. But in terms of enforcement, a leading case in the Second Circuit is Badgley v. Santa Croce -- I'll spell out the name, because I'm making a hash of pronouncing it, I think. It's B-A-D-G-L-E-Y v. S-A-N-T-A C-R-O-C-E. And in that case, the Second Circuit reversed a decision of the district court denying the enforcement of contempt proceedings in a civil consent decree context.

"The respect due to the federal judgment is not lessened because the judgment was entered by consent. The plaintiff's suit alleged denial of their Constitutional rights. When the defendants chose to consent to a judgment rather than have a district court adjudicate the merits of the plaintiff's claims, the result was a fully enforceable, federal judgment, that overrides any conflicting state laws or state order. The --"

THE COURT: I hear you, Mr. Bernstein. But where I need help from both sides --

MR. BERNSTEIN: Yes, sir.

THE COURT: -- is whether when a federal court proceeding gives rise to a judgment, consent or otherwise, that creates a monetary obligation --

MR. BERNSTEIN: Yes, sir.

THE COURT: -- where the monetary obligation is a

discharge of a debt?

MR. BERNSTEIN: I misunderstood the question that you raised yesterday. I thought you were raising the question whether this was a mere contract or whether it was --

THE COURT: That was, for better or for worse, another way of saying the same thing. And if I didn't say it as well as I should have, I owe everybody in the room an apology. But as I understand the issue, a consent decree issued by a federal court required the debtor to pay money.

MR. BERNSTEIN: That is correct, Your Honor.

THE COURT: And the question that I need help in is, is this like a lot of the other -- the debtors' other contractual debts which, at least, seemingly fall within the unsecured creditor community, or whether there's something special about a monetary obligation that's been created by a federal court decree that makes me analyze it in a different way?

MR. BERNSTEIN: I would answer it this way, Your Honor. This is a judgment, and the deliberate refusal by General Motors to honor that judgment was inequitable conduct, indeed conduct potentially punishable by civil contempt. And therefore the Court has good grounds to modify on an equitable basis, the sale agreement to provide for the small adjustment we requested. And of course, Mr. Wilson yesterday testified it was unlikely that the transaction -- the financing would be

affected by that.

THE COURT: Okay.

MR. BERNSTEIN: Thank you.

THE COURT: Thank you very much. All right. Yes?

MS. WICKOUSKI: Your Honor, I'm Stephanie Wickouski --

THE COURT: Well, I need you to come to a microphone, please. I take it you're coming up because you wanted to argue on any of the issues we have before us.

MS. WICKOUSKI: Um --

THE COURT: And that your predecessors haven't done it adequately.

MS. WICKOUSKI: -- yes, Your Honor. And my name is Stephanie Wickouski. I'm here on behalf of two of the indenture trustees on certain leverage lease transactions, manufactures and Traders' Trust Company and Wells Fargo Bank Northwest. We filed objections to the sale, but through, I think, innocent inadvertence on the part of debtors' counsel, they were not addressed in the omnibus objection by oversight.

This came to our attention on the eve of the hearing, and we've had subsequent discussions that I think have partially resolved and expect to resolve over the next week, our objections. So I wanted to indicate what has been discussed. I'm also here with counsel --

THE COURT: Tell me, Ms. Wickouski, I'm wondering how

much this is consistent with what I said before. If you have a deal, and you're telling me that you're working it out, this isn't the time that I wanted to deal with matters of that character. And I don't want to be a jerk or a martinet, but I am trying very hard in a case with 850 objections, to deal with them in a way so that I can triage the matters before m.

MS. WICKOUSKI: I understand, Your Honor. And I apologize. It was my misunderstanding that the indenture trustees were not being heard at this time.

THE COURT: Well, if you're saying you've got a lien and that your lien has to be addressed, and you've either got to get satisfaction of the lien or a carry-through on the lien, or something like that, that doesn't strike me as rising to the level of controversy as a lot of the other matters that I have.

Now, if I'm understating your legal concerns, and you want to argue a legal point, I'm not going to but a sock in your mouth. But if you're telling me that you and the debtor are having a dialogue that lenders and debtors have all the time to address issues of this character, I applaud that, and I simply say, if you want to confirm your understanding at the end, when I deal with other similar confirmations, I'd be happy to hear that.

MS. WICKOUSKI: Yes, Your Honor. And my apologies. I misunderstood in terms of the course for proceedings, and I --

THE COURT: I understand that I don't always speak with perfect clarity. And no offense intended. But certainly I want to deal with it, Ms. Wickouski.

MS. WICKOUSKI: Understood, Your Honor. Thank you.

THE COURT: Thank you. Okay. Do I have any other substantive objections that are actually being argued that I haven't heard yet? Mr. Schulman? Mr. Mayer?

MR. MAYER: Yes, Your Honor. If I may. Well, this - -

THE COURT: Oh, another asbestos objection.

MR. REINSEL: Your Honor, Ron Reinsel on behalf of Mark Buttita. I will try not to rehash anything Mr. Esserman said or anything the very eloquent Mr. Jakubowski said. I want to make just a couple of points and a clarification.

We have objected on a number of grounds, including sub rosa plan, and the extent to which the requested sale extends pat the bounds of 363, specifically to claims, and most importantly to future claims; that they are not interests in property, and a certainly that future claim that has not come into existence, has not arisen, goes so far beyond the pale of an "interest in property" even if that is permitted. But I want to concentrate on just a couple of points that distinguish this case both from Chrysler and TWA, and also the White Motor case that the debtors have relied on.

Contrary to Chrysler, Judge, and contrary to TWA,

this isn't a sale of assets that will meld assets into an existing business. It is, instead, a standalone, complete continuation of the exact same business enterprise. It is the same products; it is the same employees; it's the same management; it's the same marketing; it's the same logos. And to accomplish what the debtor and Treasury has indicated they want is "a seamless transition in the eyes of consumers." In other words, New GM is just the same Old GM.

Yet, they want to escape the strictures of potential continuation of liability as a successor of existing GM. They look -- in the order that they're going to present to you, while we haven't seen any final order yet, but we've seen what they're looking for. And that is complete, but not just an approval of a sale, but protection from specific factual findings that may lead subsequent state courts to find that there is continuation of liability under relevant state law; despite the fact that many of those findings fly specifically in the face of the evidence that we heard here, that could well lead a state court to find such continuing liability.

Secondly, Judge, as you noted yesterday also in that order, they're looking for an injunction. And you asked if that injunction didn't kind of sound like a duck -- like the injunction under 524(g). Well, Your Honor, it not only sounds like a duck, it quacks like a duck, it walks like a duck, it flies like a duck, and leaves feathers behind it like a duck.

It is completely the injunction as to future asbestos liability that was provided for in Section 524(g).

Now, aside from the discriminatory treatment that's provided here, they're trying to get protections under the code without complying with the code's requirements. Now, Mr. Miller pointed out that this is not an asbestos case. This is not an asbestos-driven case, and that they're not seeking relief under -- they're not including Section 524 treatment here. All of that is absolutely true. The point is, however, they're trying to get equivalent relief without complying with the statutory requirements. And that goes both to the ability to even give the relief, as well as the effective notice and due process requirements that are required in order to get that relief.

Let's distinguish some of those cases -- the other cases. White Motors, it acknowledges, found that 363 did not provide a basis to sell assets free and clear of claims. And it went on to find that in order to do that, however -- this is certainly beyond the express statutory language -- the statue says "free and clear of interest in that property."

Now, whether or not claims become interest in property, cited in other cases. But it found that 363 didn't provide that basis. We had to look to Section 105 of the code, the Court's general equitable powers to make things happen --

THE COURT: Yes, I know. We went through that with

Mr. Jakubowski.

MR. REINSEL: All right. But here's where I wanted to get with that, Judge. White Motors was decided in 1987. In 1994 Congress enacted Section 524(g). Section 524(g) provides a comprehensive design by Congress for dealing with asbestos claims specifically, both present, and more importantly, future claims; looking at the unique situation that that kind of injury entails, particularly that it's an insidious product, it went into commerce, and it has a very long latency period, such that from exposure to actually manifesting a disease, finding out that you have a claim, is a matter of decades. Ten, twenty, thirty, forty years. Such that those folks who will develop disease, who will become claimants, are not presently claimants. In fact, the nature of their potential future illness is specifically excluded from the definition of a claim under the Bankruptcy Code. And in fact, under 524(g) it's referred to a demand.

The problem of recognizing of how to give adequate due process to those future potential claimants, those demand holders, and how to give adequate notice, because you can't give them notice -- in fact, we asked Mr. Henderson -- one of the few questions I asked here, was, you gave broad notice of these proceedings in order to give everyone notice of their rights were at issue and could be affected. But he recognized that GM has 650 million dollars-worth of projected asbestos

liability going out over a period of at least ten years, and that many of those claimants, many of those potential claimants, don't presently have a disease, don't know they have a claim, and that whatever publication notice was given to them, wouldn't have reached them and would have done them no good whatsoever.

In Chrysler, they kind of gave that notice issue fairly short shrift. There's one -- they deal with it in about two sentences on page 111 of that decision, simply holding that "With respect to potential future tort claimants, their objections are overruled, as those issues have been discussed. Notice of the proposed sale was published in newspapers in very wide circulation, and the Supreme Court has held that publication of notice in such newspapers provide sufficient notice to claimants 'whose interests or whereabouts could not be with due diligence, ascertained'", citing to the Supreme Court's decision in Mullane v. Central Hanover Bank.

Mullane was a trust fund case. You either held funds in a trust or you didn't. This --- we're not presented here with a question of we can't ascertain the location of folks; we can't, with reasonable due diligence send them a specific notice, such that the publication even becomes sufficient. We're dealing with individual whose claim doesn't yet exist, who don't know that they have rights that may be affected, and won't know that for years. That's why Congress, in Section

524(g), provided mechanisms to provide due process to those folks, by the creation of a specific representative in the court.

Last week you were asked to appoint someone -- a futures representative to look out after the interests of those future folks. You declined. You said we may look at that later. But the point is, there is no one here looking out for their interests today. They didn't get notice of this proceeding. You can't give effective notice of this proceeding. And no one is representing them here. I want to be clear, I am representing a single current asbestos claimant. Mr. Esserman was representing single current asbestos claimants. We're not advocating -- other than saying they're not here, Judge, we're not here in a position where we can reasonably represent their interests in this case.

But let me be clear about the impact of 524(g) here. As we said, this is not an asbestos-driven case. There is no requirement that the debtor use 524(g) here. However, the point is, if they don't -- if they don't employ the processes that Congress designed in that section of the code to provide adequate notice, adequate due process to claimants, then you don't get the protections that that section provides. You don't get the injunction that they're looking for, at least as to asbestos claimants. You don't get the removal of future successor liability as to those asbestos claimants. It's a

question -- it's up to the debtor, and in this case, and the buyer, to decide if they want to include those sorts of relevant protections. If they don't -- protections for the claimants and future claimants. However, if they don't the point is, they take their chances, and you, Judge, can't give them the same protections as that specific statute would under the Court's general 105 equitable powers. That's all, Your Honor. Thank you very much.

THE COURT: Thank you. Mr. Mayer?

MR. MAYER: Thank you, Your Honor.

(Pause)

MR. MAYER: Excuse me, Your Honor. I need thirty seconds to decide -- to figure how much of what we talked about last night can be put on the public record at this moment. Is it possible to take a five --

THE COURT: How much time to you need?

MR. MAYER: -- take a short recess, perhaps?

THE COURT: Actually, since we've been going so long, let's take a ten-minute recess.

MR. MAYER: Okay. Thank you, Your Honor.

THE COURT: See you back in ten minutes, folks.

(Recess from 10:47 a.m. until 11:10 a.m.)

MR. MAYER: Thank you, Your Honor. And good morning. Again, Thomas Moers Mayer for Kramer Levin Naftalis & Frankel, counsel to the official committee of unsecured creditors.

First, a housekeeping item. I'm pleased to report that we can't confirm that we are fine on the GE matter; I think that may be a typo. My partner at Waldorf was actually with his wife at a medical facility and was able to get to us and tell us he had this --

THE COURT: That's fine.

MR. MAYER: The committee is prepared to withdraw its limited objection to the sale motion subject to the following:

First, individual committee members have forcefully advocated certain of the arguments advanced in the committee's limited objection, and the committee's withdrawal of its limited objection is without prejudice to any position taken by those individual committee members on their own behalf.

Second, the committee's withdrawal of its limited objection is subject to the completion of the wind-down budget and the sale order to the committee's satisfaction. And in that connection, Your Honor, I'm pleased to report that in literally the last sixteen hours, in a meeting that went until I think 2 in the morning and resumed at 7, and it was handled primarily for the committee by FTI's Conner and Anna Phillips and two partners from my firm who are not here today, Amy Caton and Bob Schmidt. Actually, Bob is here, I apologize.

We were able to close the substantive gap on the wind-down budget. My understanding, which I would ask the government to confirm is that the total amount of the facility

being provided to cover wind-down expenses has been upsized such that the government is going to make available financing in the amount of 1.175 billion dollars, Your Honor.

In addition, there is an agreement that asset proceeds which have previously been dedicated to the repayment of the government's facility will be available to fund additional expenses if needed.

The government has agreed that asset sale proceeds that were previously dedicated to the repayment of the government's wind-down facility will now be available for the payment of wind down expenses if needed.

MR. JONES: Also correct, Your Honor. And I should make clear that the funding facility is on a non-recourse basis, as has been the case throughout these discussions.

MR. MAYER: The details are still being fine tuned, but those are the highlights. We also had useful discussions with AlixPartners on its administration of the wind-down, again, details will be forthcoming. But we believe we have an agreement in principal on certain elements on that that are important to us and will be disclosed at a later time when Alix is prepared to come forward with its application.

With respect to corporate governance, there are two time periods. There's a period between now and confirmation and -- strike that. Consummation. And there's a period between consummation and final distribution. And to be precise

we talked in this proceeding, Your Honor, about a sale consummation, that's not what I mean here. I mean, there's a period between the sale and the consummation of a Chapter 11 plan. And then there's a period after consummation of a Chapter 11 plan. And we have agreements in principle for the most part on both periods. One is ready for publication.

During the period from the sale until consummation of a plan of reorganization, it is our understanding that the board of directors of this debtor will be composed of one designee from Alix, one designee from the creditors' committee. And there's a third individual who the parties have agreed on, but I'm not entirely sure he has agreed on it, so perhaps I should keep his name confidential for the moment. But we have an agreement on a person that would be acceptable to both of us. And actually is quite a good pick.

And, again, the permanent board -- the board for the post-consummation, GM -- Old GM will be in a plan of reorganization and disclosure statement, itself, but we have the outlines of an agreement on that as well.

Based on those agreements and one or two other things, there was an issue that came up yesterday, about workers' compensation claims in connection with the State of Michigan. Our understanding is that the order or relevant documents will be changed so as to have New GM bear responsibility for Michigan Workers' Comp claims. Old GM will

not bear responsibility for Michigan workers' comp claims. Does that need to be amplified.

MR. JONES: No amplification needed, Your Honor. That description is correct so far.

THE COURT: Am I right in assuming Michigan has the most workers and potentially the most workers' comp?

MR. MAYER: Mr. Henderson is nodding yes.

Finally, the committee reserves its rights with respect to the master sale and purchase agreement and related documents. As indicated by the narrative as to how late we went last night, these things are still being machine, as is not uncommon. And we intend to continue to work with Treasury and the debtors. They fully involved us last night, we appreciate that. We look forward to working with them to reach a consensual resolution on these documents and we expect that we will reach some if for some unforeseen reason there's an issue of such moment that compels us to come back to the Court we will let Your Honor know. But this is in the nature of negotiating documents that we expect to reach an agreement on and one that does not affect what I have said previously.

And if the Court has any questions, I'm happy to answer them.

THE COURT: Just a couple. If I heard you right the creditors' committee is withdrawing it's limited objection and it is no longer taking the position one way or the other on the

tort and asbestos issues that at one time the creditors' committee as a whole were taking. As of now you're just leaving that to the individual advocates on both sides.

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

THE COURT: I sense that you folks are working very hard to further narrow issues. But this is an ongoing process. Is it possible for you, in consultation with other parties, to figure out a mechanism to keep me informed over the next several days, even though it's a holiday weekend, so that I can keep my arms around where you are in that. Obviously, I don't want to be ex parte. You have to figure out a mechanic to notify me. Not on what's going on but when issues are buttoned up, just like you reported to me now.

MR. MAYER: Yes, Your Honor. I think together with the debtors and Treasury we can definitely do that.

THE COURT: Okay. Anything else at this point, Mr. Mayer?

MR. MAYER: Well, we are withdrawing our objection so we are no longer opposed to this transaction going forward.

THE COURT: Okay.

MR. MAYER: Thank you.

THE COURT: Thank you very much.

MR. MAYER: I don't want to leave any confusions. The committee's papers were originally not in opposition to the transaction going forward. The committee remains in support of

the transaction going forward. The particular objections that we had to features of the order, those are withdrawn, and so you can view the papers that we have filed the withdrawal of those objections as being in support of the transaction.

THE COURT: Okay.

MR. MAYER: Have I neglected to -- about members in the audience, people we negotiated with, if I misstated or omitted anything. Thank you, Your Honor.

THE COURT: Thank you. Forgive me, which indentured trustee do you represent, Mr. Feldman.

MR. FELDMAN: I represent Wilmington Trust Company, the indentured trustee under the 1995 indenture and 1990 indentures, with bondholdings in the aggregate of more than twenty-three billion. So we are the principal indentured trustee in the case, with it's clear to say the largest unsecured creditor constituency that will remain with Old GM in this case.

Wilmington Trust Company also serves as the chairman of the creditors committee. I will note there's been much said about the equities of this case and the various parties involved in the case, and about the importance of employees, the importance of customers, the importance of dealers, the importance of tort victims.

GM is an interesting case. Typically, when I stand up here on behalf of bondholders, I'm standing up on behalf of

major financial institutions. GM bondholding are widely distributed among thousands of mainstream Americans as well as those financial institutions. So it was with -- in consideration of our entire constituency. Some subset of our constituency is represented by separate counsel. Paul Weiss represents as stated in their 2019, approximate twenty percent of the bondholding class. Mr. Richman according to his 2019 represents three bondholders -- I think three bondholders aggregating, about two million of the twenty-eight billion bondholders. And Mr. Parker has indicated that he is in his individual capacity a bondholder.

We stand up here and we filed our papers on behalf of those without a voice in the case. Wilmington Trust as an indentured trustee believes it's his job to preserve and protect the claims of the bondholder community that it represents. And it is with that fiduciary duty in mind that we carefully considered the transaction that was presented. Wilmington Trust was not part of the team negotiating the transaction. We came to this party and we got a chair at the table, frankly, after the deal had been cut. And we were presented with a binary choice, which is to support the sale or to seek to object to the sale. And effectively as has been dictated earlier, to potentially role the dice and hope upon an objection to the sale that a debtor recovery for bondholders was forthcoming. We took that obligation and that concern very

seriously. We had extensive discussions with the debtors' advisors, with the committee's advisors, with the committee members themselves, and with the ad hoc bondholder advisors. And when I say the ad hoc bondholders I'm talking about Paul Weiss and Houlihan. We reviewed the papers of substantially all the parties in this case, with particular attention to the papers filed on behalf of bondholders which are within our constituency. And based on all of that information available to us, we were of the view, and as our joinder indicates, that based on all the facts available we felt that under the current facts and circumstances that the sale appeared to be in the best interest of the bondholders.

We did, however, have some particular concerns with the transaction, not seeking to, frankly, to derail the sale from going forward. But to ensure as Mr. Miller indicated in his comments, that the sale creates a pie and it creates a universe of people who are going to fight over that pie. We understood that was the game when this case filed. What's going to happen post-closing was there was going to be a numerator and that is stock and warrants that the bondholders and the other unsecured creditors are going to have discussion and potential litigations over, how big the denominator was. What we were fundamentally concerned with at the outset, was that the size of the pie was set. We have heard today that the wind-down budget issue, we had heard on the eve of this

hearing, that the wind-down budget was insufficient. And we were concerned if the wind-down budget was insufficient that it would eat into the stock and the warrants that had been set aside as testified by various witnesses, was designed to be set aside for unsecured creditors. We were concerned that that wind-down budget would gain access to that stock and warrants. And we've been told based on the representations today in Court that that wind-down budget has been increased by 225 million dollars. Plus the proceeds of any asset sales. And we are comforted by that fact.

We reserve our rights to review the definitive documentation in connection with that issue, and we will work alongside the committee, as we have throughout this process to streamline the process.

But with that in mind, Your Honor, and in closing -- and I think that Mr. Richman on behalf of his three individual creditors and Mr. Parker on behalf of himself, they have the ability to make informed decisions by themselves as to whether or not they would like to roll the dice and potentially seek alternative outcome. Unfortunately, we as -- fortunately unfortunately, as a fiduciary for all these bondholders, our job is to preserve and protect the value that is available to bondholders under the deal. What we don't see and notwithstanding Mr. Richman's very eloquent presentation, what I haven't seen yet is a clear articulation of what happens if

this sale doesn't go forward, and, in fact, we got to planned process. I think on behalf of Wilmington Trust I would say it's not at all clear to me that on behalf of all the bondholders that we represent that a plan process and the delay attended to that plan process, would be designed to enhance the recovery. Or would, in fact, enhance the recovery to bondholders under this case. Frankly, it made the delay. And the other issues that may be attended to a plan process could very well diminish the recovery to bondholders. It's a risk on behalf of our twenty-three plus billion dollars worth of constituents we're not willing to take. And with that, Your Honor, we withdraw our joinder subject to the reservations I've indicated.

THE COURT: Thank you. Ms. Christian, you're the other indentured trustee?

MS. CHRISTIAN: Yes, Your Honor.

THE COURT: Come on up, please. Is Law Debenture Trust your client?

MS. CHRISTIAN: That's correct, Your Honor. Jennifer Christian of Kelley Drye & Warren for Law Debenture Trust Company of New York as proposed successor indentured trustee for the holders of eight series of GM's bonds.

Your Honor, Law Debenture fully confers with the committee and with Wilmington Trust, and is prepared to withdraw its joinder to the committee's limited objection

subject to the conditions that have been outlined and with eh full reservation of our rights. Thank you.

THE COURT: Okay. We up to --

MR. FRANKEL: Good morning, Your Honor. It's Roger Frankel from Orrick Hamilton. I represent the GM National Dealer Counsel and the committee that is formed. We also represent Paddock Chevrolet that's a member of the official committee.

I wanted just to state for the record we had filed a limited objection, reservation of rights. We had been working with the debtors and have been satisfied since we filed that and even before we filed that that certain concerns that we had have now been resolved.

This committee is comprised of dealers that were elected by the entire dealer body as well as three members of the National Automobile Dealers Association. The National Automobile Dealers Association is also an ex officio member of the committee. And we think it's important for the dealer voice to be heard here and we are supportive that his transaction move forward and move forward as quickly as possible.

The one thing that I would add, Your Honor, I just heard yesterday for the first time, the recommendation of the privacy ombudsman, briefly looked at the report this morning, and I would hope that GM would incorporate and Treasury would

incorporate the recommendations of the privacy ombudsman in the sale order. Thank you, Your Honor.

THE COURT: Okay, thank you.

MS. TAYLOR: Good morning, Judge. I'm Susan Taylor, I'm an assistant attorney general for the State of New York and I represent the interest of the Department of Environmental Conservation here today.

We filed an objection separate and apart from that as to which Ms. Cordry has been speaking. And I am here to tell the Court that we are not in the same category as many of the objectors. Mr. Miller very nicely articulated the difference between the State of New York and many of the objectors here. We are not here about money. We are here because we are concerned that there appears to be an attempt in the proposed order to impair the police and regulatory powers of the State of New York. And we are here to ask you not to let that happen.

The department has an interest in being able to enforce the state's environmental laws in order to protect the public health and safety. That interest is not an interest in property within the meaning of Section 363. And it cannot be extinguished or impaired through the means of a 363 sale. The whole statutory scheme and many cases make clear that regulatory and police powers do not give way to the important interest protected by bankruptcy law. To the extent that there

are provisions in the order that are still overly broad, and one of those is still, in for instance, paragraph T, although I confess that I have not this morning seen what may be an order that has changed. But to the extent that there is still language in there that appears to extinguish or impair the right of the state, to enforce its regulatory and police order, we ask the Court not to let that happen.

In the State of New York two sites are not being transferred, are not going with New GM. One of them is Messina GM, which is a national priorities list superfund cite in the northern part of the state. It is adjacent to tribal land. It has serious contamination and has in place consent and administrative orders of the Department of Environmental Conservation. It came to our attention only on Friday that there appears to be another site that has contamination that may also be excluded. It's a little unclear from the schedule, we've been unable to get clarification as to whether that site is, in fact, not being transferred. And we are very concerned about the department's abilities to continue to protect the health and safety of the people of New York through consent orders, administrative orders, and the ability to impose injunctive relief, with respect to those and other sites.

If you would like to argue that the state's interests are not interest in them I would be happy to do that. I think that is clear. But to the extent that the Court?

THE COURT: You have a brief on file, don't you?

MS. TAYLOR: We do have a brief on file and I would refer to the cases cited in the brief on that. If you disagree, however, we would ask you to condition a sale pursuant to 363(e) in order to protect the state's ability to enforce its police and regulatory powers. And we have language that we have circulated to GM and its counsel over the past few days that we would like to see added to the order. I would be happy to submit that to the Court anytime today if you would like that.

Essentially, it would provide "that nothing in the order would release, nullify, enjoin, or otherwise affect the police and regulatory authority of any governmental unit or its ability to enforce." And, of course, being lawyers it goes on, but that is its essence.

THE COURT: If it's consensual by all means. If I have differing proposal on that, I need to get yours in writing and the debtors' perspective and argument. The debtors' perspective as to the language they think makes the most sense in writing if it's different than what I have now. And if you're not in consensus obviously you need to get argument on both.

MS. TAYLOR: Happy to do that, Judge. At this point I cannot represent that it is consensual. If you don't have any questions, I will rest on our papers.

THE COURT: Thank you.

MS. TAYLOR: Thank you.

THE COURT: Okay. Mr. Roy, you're coming up.

MR. ROY: I'm coming up in thirty seconds, Your Honor.

THE COURT: Okay.

(Pause)

MR. ROY: Your Honor, for the record, Casey Roy from the Texas Attorney General's Office on behalf of the State of Texas.

We filed a limited standalone objection. We've reached an agreement with the debtors, subject to entry of that agreement on the record, we will be prepared to withdraw.

THE COURT: Okay.

MR. ROY: Thank you, Your Honor.

THE COURT: Thank you.

MR. MOTIF: I'm not an attorney. I'm coming to you --

THE COURT: Just a minute. Is there -- I announced earlier in the hearing that I wasn't going to hear oral argument on all the objections. Come up, tell me your status so I can make a judgment as to whether you should be resting on your papers.

MR. MOTIF: My name is Normaji, last name is Motif.

We bought GM's bonds, 400,000 paying the same amount.

And I --

THE COURT: Sir, you're a bondholder?

MR. MOTIF: Yes, sir. Unsecured.

THE COURT: Unsecured bondholder. Do you have any points that weren't made by either Mr. Richman, Mr. Parker or the two indentured trustee?

MR. MOTIF: That's correct.

THE COURT: And you filed a written objection.

MR. MOTIF: I did, but I want to make this.

In the master purchase and sales agreement they never really splintered the phrase going concern. As a grave concern this needs to be sorted fast enough so that the value doesn't go down. I'm not sure whether they're talking about the legal term of grave concern or the accounting term of grave concern. No matter whether we go on the legal term or the accounting term, that phrase cannot be used. GM operations like the (indiscernible) cooperation which I read the (indiscernible) very frequently they use of the word grave concern. They took operations and cooperated in Delaware. And Delaware's (indiscernible) law with regard to the cooperation applies. Even if this case is filed in New York State I would like the Court to take analyze that usage of the going concern as a property of (indiscernible). I can understand that it's an operating concern, they will be borrowing money and running the business. But definitely it is not a grave concern whether it

is a legal usage or accounting usage.

The (indiscernible) cooperation -- I mean, the GM cooperation whether you want to use the title GAAP. GAAP means the general acts of accounting principals, or you want to use the fair market values of some of the methodology that you use. The corporation became insolvent three year ago. And since then especially with the loan agreement signed by the Treasury it seems that even though they have created documents stating that this is the loan agreement, actually nobody, if especially, if the government is going to be approving commercial businessman would never lend money. So the expectation was a situation created and not a reality. And you have seen what Mr. Henderson and Mr. Wilson and others saying that if the loan never came through then GM could not have functioned, like what happened in the case of Chrysler.

Now, there are rules in the corporation's law of Delaware saying that at a particular stage if the money was lent not as a businessman but for other reasons, and especially if control of the corporation has been taken over indefinitely, then that entity should be treated as insiders. And so, therefore, the loans must be subordinated to the equity and to the unsecured bondholders. Because it would not be treated as a loan as a creditor, but would be treated as insider, and so therefore it is a capital contribution.

The important reason for that is if that is the

capital contribution and not a law then --

THE COURT: The recharacterization subordination points were made in many briefs, I understood them.

MR. MOTIF: I'm ready to come to the other important point.

If the Court determines that it is a capital contribution and not a loan per se, then the participation fails because in the proposals out of 19.4 billion dollars that was the pre-petition advances made, two million dollars worth of (indiscernible) being taken by the New GM with approximately about eight billion dollars of (indiscernible) and so that leaves about nine million dollars as the big money so there will be a shortage in the bid amount, even if you include the DIP money less the other things. I believe that this money was given here, that the total purchase price of the total value was between fifty and sixty billion dollars. If that is the case then it is my submission that the Treasury bring down that nine million dollars and give it to the Old GM as part of the purchase price. Plus also the eight billion dollars for eight million dollars of the note, plus two billion dollars that also must come for a total of 19.4 billion dollars, must come to the Old GM.

Now, the other argument is that --

THE COURT: Are you getting near the end, sir?

MR. MOTIF: Yes, give me five minutes.

THE COURT: Five more minutes.

MR. MOTIF: Yes. Because this is a very crucial case and I need to explain that clearly. May I proceed?

THE COURT: Yes.

MR. MOTIF: Now, I raised an issue that as an unsecured bondholder there is a breach of contract by GM when they --

THE COURT: GM has breached its contract to everyone of its twenty-eight --

MR. MOTIF: I know, I know. But I'm coming to the final points, Your Honor. There were secured bondholders and there were unsecured bondholders, you've got two categories before September 31 of 2008. I do not know that the secured bondholders are fully secured or partially secured. And I have no idea as to what properties are fully secured, or partially secured by the secured bondholders. Now, when they borrowed 13.4 billion dollars from the Treasury they put a first lien on the property, which is not covered by the secured bondholders. And with regard to the secured bondholders property they put a second lien. The document indenture of 1995 is clear that the moment a lien is put then the unsecured bondholders must be repeated on par with the --

THE COURT: Is that the exact point Mr. Parker made?

MR. MOTIF: No, I'm going to go further, Your Honor. He made one point, but he did not elaborate more.

Accurately, he admitted in his brief that they realized this lien problem. So if you read the brief he acknowledges my brief --

THE COURT: I did read his brief.

MR. MOTIF: Pardon?

THE COURT: I did read his brief.

MR. MOTIF: Yeah. And he acknowledges that he got the idea from me.

THE COURT: Okay.

MR. MOTIF: Here is the question. I read the Chrysler opinion by Judge Gonzalez. He said with regard to the unsecured creditors the takings clause -- and I think he said might apply because they don't have a lien. But if this Court were to decide that the fact that a lien was put on that and that automatically triggered the other problem which is that the unsecured bondholders also has liens on par with the treasury, both with regard to the first lien that decided with regard to the other property, and the second lien that decided on the secured bondholders' property. Then we have a right to argue that the takings clause under the Fifth Amendment do apply.

So with that, Your Honor, thank you very much.

THE COURT: Thank you. Now, putting aside deals on the record and so forth, which we can deal with later, is there any other substantive argument of a non-duplicative nature to

be heard? Sir?

MR. CHEEMA: Your Honor, good afternoon. Bik Cheema, Baker Hostetler on behalf of the Bureau of Ohio Workers' Compensation.

THE COURT: Ohio Workers' Comp.

MR. CHEEMA: Yes. It's OBWC. We filed a limited motion, we don't oppose the sale. The limited motion was the OBWC reads the sale motion as indicating that New GM intends to assume all the debtors' Ohio workers' compensation obligations.

In the last few hours we've reached an agreement on some clarifying language with the U.S. Treasury, and we wish to just offer that clarifying language for the record. It will literally take thirty seconds.

THE COURT: Thirty seconds, it will take longer for me to tell you to sit down and comply with what I said before. So go ahead.

MR. CHEEMA: "Pursuant to the master sale and purchase agreement, New GM is assuming all of Old GM's liabilities and obligations, under the workers' compensation laws, rules and regulations of the State of Ohio. OBWC reads the provision to include the assumption by New GM of Old GM's obligation to provide and to continue to provide security for the payment and performance of all obligations under the workers' compensation laws, rules and regulations of the State of Ohio owed by Old GM. New GM will be required to apply for

status as a self-insuring employer in the State of Ohio. If it seeks such status and nothing in the Court's order approving a sale shall exclude New GM from satisfying all requirements and conditions, including any requirement to provide security of the OBWC to grant self-insuring employer status under applicable Ohio law, rules and regulations."

THE COURT: Okay.

MR. CHEEMA: Thank you, Your Honor.

THE COURT: All right. Mr. Miller, are you ready for -- sir, is this an objection, further argument, non-repetitive argument?

MR. KANSA: This is a non-repetitive very brief argument, Your Honor.

THE COURT: All right, come on up.

MR. KANSA: Good morning, Your Honor. Kenneth Kansa, Sidley Austin on behalf of the TPC Lender Group.

The TPC Lender Group is a consortium of nine commercial lenders with first priority liens on two of the debtors' facilities, one in White Marsh, Maryland and the second in Memphis, Tennessee.

Your Honor, we filed a limited objection to the sale transaction. We are in the process of working on language that we hope will resolve that objection, but we haven't dotted the I's and crossed the T's yet. The only point I would raise in addition to our papers, Your Honor, is in rebuttal to some of

the points that the debtors have made in their reply about our limited objection, which really seeks to characterize this as a garden variety secured creditor 363(f)(3) issue; where on the one hand you have is it the value of the collateral, on the other hand, is it the face amount of the lien. We think in this context, Your Honor, that misses the point. There is only one value on the table here today. That is the amount of the lender's allowed secured proof of claim on file at 90.7 million dollars. The debtors have stated that they will settle for a purchase price in excess of the value of all liens on the property, that's their obligation under 363(f)(3), and that's the subsection they rely on to sell the facilities. Our point is simply in response, no purchase price has been specified, no value has been allocated. The only value that is out there is the value of the claim in our secured proof of claim. And the only value out there is --

THE COURT: You're saying that if you say that your collateral is worth a certain amount it's binding on the world?

MR. KANSA: I'm not saying it's binding on the world, Your Honor. I'm saying if they are going to rely here today on 363(f)(3), saying that they are selling in excess -- for our purchase price, in excess of the value of our liens, that is what the value of the liens is. Today there is no other competing value out there. There's nothing in the record.

THE COURT: You'll agree that sometimes there is a

difference between the amount that people claim in their proofs of claim as secured claims, and the value of their collateral. And that the actual value of the secured claim is measured by the value of the collateral and the remainder is unsecured, I assume.

MR. KANSA: No disagreement, Your Honor.

THE COURT: Okay. So basically the issue to the extent there is an issue, is that you're claiming an amount which the debtor and other parties in the case, probably every single other party in the case, might have a difference in perception from you and might say that your secured claim is measured by the value of your collateral. But the remainder of your claim is unsecured.

MR. KANSA: That's true, Your Honor. But the point is there is no -- no one has articulated their belief as to the other value here today.

THE COURT: I understand your argument.

MR. KANSA: Thank you, Your Honor.

THE COURT: All right. Are we now ready for Mr. Miller? No, one more.

MR. WISLER: Good morning, Your Honor. Jeffrey Wisler on behalf of Connecticut General Life Insurance Company.

Your Honor, I have a non-resolved, non-cure executory contract objection. Would you like to hear that now, Your Honor.

THE COURT: If it's an objection I think I would.

MR. WISLER: Understood. Your Honor, Connecticut General Life Insurance, also known as CIGNA provides a range of healthcare administrative services to GM and administers GM's self-insured employee healthcare benefits plan for thousands of its employees.

CIGNA's objection isn't just critical to CIGNA, it's critical to GM, New GM and it's employees because we want to make sure that the debtors attempt to assume and assign the arrangement it has with CIGNA gets the job done and assures that the employees of New GM will have the benefits that they currently have now with Old GM. So while we do have a cure objection I understand that will be deferred.

Today's objection is more fundamental. And that is that the debtor has not given CIGNA or this Court what is necessary for this Court to approve the assumption and assignment of agreement. And there's three fundamental problems, Your Honor. First is, the debtor in its contract notices identified what appeared to be eight separate contracts relating to CIGNA, but with no detail that we can comprehend. It simply has vendor numbers, contract numbers, row numbers, I don't know what those are. CIGNA has looked at these, they're sophisticated business people, they don't know what these are. And we haven't received any clarification on what they are. Except that GM intends to assume and assign all of the CIGNA

contracts. Well that's meaningless also because we need to know what they are, we need to make sure what we think is all and what they think is all, is the same thing. Because, in fact, CIGNA's position is that there is one overriding contract, it's an administrative services contract. And under that are addendums, and riders, and amendments that encompass all of what CIGNA does for GM and its employee benefit plan.

So to warrant this Court's approval of the assumption and assignment of that agreement, the debtor needs to formally and unequivocally identify that contract and say to the Court and to CIGNA, this is the contract we intend to assume and assign.

THE COURT: Pause please, Mr. Wisler. What extent did you or any of your guys pick up the phone and have a dialogue with the debtor to kind of exchange information and get answers to each of those concerns?

MR. WISLER: Both sides have done that, Your Honor, it is not yet resolved.

THE COURT: And help me understand the problem, because this stuff is done all the time. I didn't hear you accusing the debtor of cherry picking or trying to split apart the master agreement, am I right that that's not your concern?

MR. WISLER: Given the debtors' statement that it wasn't to assume all of our contracts, I will assume that is not the case.

THE COURT: All right. Forgive me, but I know a little bit about this area, and I still can't understand the problem.

MR. WISLER: Well, Your Honor, if a debtor comes to the Court and does not identify the contract it wishes to assume and assign, I don't think the Court can permit that assumption and assignment.

THE COURT: Assuming arguendo that you're right, I mean after you had the dialogue with them you're saying they didn't tell you what contracts they wanted to assume and assign?

MR. WISLER: Not to any specificity that anyone could use to identify these agreements.

The fundamental problem, being number one, that we think there's one agreement and they think there's more than one.

THE COURT: But if the agreement with all of them what difference does that make?

MR. WISLER: If two parties don't agree what all means or, more specifically, if one party believes there's one and one party believes there's multiple agreements, I don't think there's a meeting of the minds, Your Honor. And I'm certainly not standing up here saying this is not a resolvable problem. Today's the day for the sale hearing, today's the day we have to present our objection. We've attempted to come to a

resolution, we may actually be close to a resolution. But because we're not at a resolution I need to present this objection to the Court.

THE COURT: Okay. Make your remaining points.

MR. WISLER: Understood, Your Honor.

THE COURT: And then I'll hear your adversary.

MR. WISLER: Secondly, Your Honor, there are two bank accounts that make this plan work for GM and its employees. And these bank accounts have authorization approvals between GM and CIGNA. And there has been no confirmation and no reference to it in the APA or the form of order and the motion that those authorizations will continue. If they do not continue the self-insured plan that CIGNA administers will not work because there will be no money passing from one account to another to pay employee benefit claims, employee healthcare claims.

So, again, until that is unequivocally and formally confirmed we don't think any contracts, any of this particular contract that CIGNA has with GM can be assumed and assigned.

And, third, Your Honor, and very importantly, nowhere in the APA or the proposed form of order, or the motion, is there confirmation that New GM will be responsible for claims -- healthcare claims -- employee healthcare claims that were incurred prior to closing but will not be processed and paid until after closing. That's very important because as claims come through a system they come through at different

times. If someone goes to the doctor last week, the doctor may take some time to submit the claim to the insurance company, the insurance company has to process it. If it's approve it's then paid. That takes time. There is no way to draw a bright line on a closing date and say hey, these claims are not going to be paid, these claims aren't. It's not a cure issue, it's a question of is New GM going to take responsibility for paying those claims that were incurred prior to closing.

My understanding with the discussions with the debtor is yes, they are. But, again, that ahs not been --

THE COURT: I've encountered this issue over the years. Whether you have to slice and dice whether a claim is a pre-petition claim or post-petition claim. But I've never encountered it with the context of the assume and assign, because it envisions a smooth transition. Has your dialogue led you to believe that there's some difference in perception on this one?

MR. WISLER: No, Your Honor, that's what I was just saying. My dialogue with the debtor indicates that this -- that it is New GM's intent to just continue to pay claims in the ordinary course of business regardless of when they were incurred. But, again, that has not been formalized, it has not been unequivocally stated. Today's the day I have to present this objection. If it's not formalized or unequivocally stated, we have a problem is we go into closing and we don't

know the answer to that question. So our simple request for relief is, Your Honor, do not approve assumption and assignment of the CIGNA agreement until the debtor formally and unequivocally clarifies those three points.

THE COURT: Thank you, Mr. Wisler.

MR. WISLER: Thank you, Your Honor.

THE COURT: Mr. Smolinsky, you're rising. Is this just to respond to what Mr. Wisler said?

MR. SMOLINSKY: Yes, it is.

THE COURT: Sure, come on up.

MR. SMOLINSKY: Your Honor, again, Joe Smolinsky from Weil Gotshal.

I'm not sure if Mr. Wisler is in communication with his client. We are aware of the CIGNA situation. Seth Drucker of Honigman Miller has been working with Janice Heulig, who is the head of HR at GM. I've received no fewer than a dozen e-mails over the last forty-eight hours specifically with respect to CIGNA. We are assuming the CIGNA contracts. We have provided them with the -- with a lot of information. In fact, Jay Manor, an employee of GM who is on vacation this week, came back to the office to put together the documents that CIGNA has requested. There are bank accounts that need to be moved, the company is in the process of moving those bank accounts.

As I understand it, CIGNA has requested execution of a variety of documents. Consent agreements and other documents

which other of our suppliers, such as Medco who provide a similar service, has not requested. I haven't reviewed those document yet to the extent that they are not problematic we will provide them with the assurances they need. But to the extent that CIGNA does stand in our way of closing and transferring the employee benefits we will be back in front of you, Your Honor.

THE COURT: All right, thank you. Okay. Can I now get to debtor reply.

MR. MILLER: I hate to disappoint you, Your Honor, but the U.S. Attorney has asked to go first.

THE COURT: Sure, Mr. Jones.

MR. JONES: Thank you, Your Honor. We thought it appropriate to let GM have the last word, and so we'll have a short summation first.

First, Mr. Schwartz is going to address, particularly, Your Honor's consent decree question, and then I'll have remarks on additional issues.

THE COURT: Sure. Mr. Schwartz.

MS. CORDRY: Your Honor?

THE COURT: Ms. Cordry?

MS. CORDRY: Yes, sir. Karen Cordry from National Association of Attorneys Generals.

We've been working with the debtors late into the night and this morning, and all this time. I think we're at

close to an agreement. But the discussion we've been having with them when we had the terms in the order we would be able to say we have a resolution that I am still in the process of getting all the attorneys general to sign on to that. If it didn't then we would be in position to weave our objections on the record, if the order is not done. I didn't realize I was momentarily distracted, we got it in of everybody else there.

I think we are very close to having that. I guess I would just like to reserve my right to state where that whole position is. I don't want to necessarily hold up all this. And I don't think anything I would say with that would necessarily require them to have any different rebuttal than they would have.

THE COURT: What's your recommendation, Ms. Cordry, do I let Mr. Schwartz or Mr. Miller speak? Maybe you'll have the answer again. Otherwise, I assume that on issues that haven't been resolved to your satisfaction I have your papers. But I also sense that you're so close to the go line that you're saying it might help me to do my job if you have some news to report to me.

MS. CORDRY: Yes. I think in the same way that you were saying that other people were trying to work towards reporting, I hope I'm going to be in that position as soon as I hear back their last couple of words or two on that page.

THE COURT: Let's agree that as of this point the

train hasn't left the station. If you need to be heard after everybody else is done, I'll give you that chance, subject to anybody else's rights to express a different view if you need to.

MS. CORDRY: Okay. And when I do that I would certainly keep in mind Your Honor has heard a great deal on a great many topics that we had in our papers.

THE COURT: Yes. I've also heard capable arguments.

MS. CORDRY: Exactly, every capable arguments, far beyond what I was probably planning on doing. So anything that I would say would be specifically on very short points and other issues that people definitely have no raised to this point. So thank you, Your Honor.

THE COURT: Okay.

MR. MILLER: Your Honor, there will be one other speaker. I understand that the UAW would also like to speak.

THE COURT: Is this a good time, or would the UAW be speaking after the U.S. and the debtor?

MR. MILLER: After the Treasury, Your Honor.

MR. SCHWARTZ: Why don't I make my remarks which will take about a minute, and then Mr. Jones and Mr. Bromley can discuss their order.

I just wanted to address -- Matthew Schwartz for the United States, the questions Your Honor asked about environmental consent decrees because, of course, we're here

representing the United States, including the Environmental Protection Agency.

Your Honor asked two specific questions, I'd like to quickly provide answers and then suggest why it is you don't have to answer those questions yourself today on this motion.

First, I heard the Court ask yesterday whether an environmental consent decrees is a contract -- an executory contract that can be rejected by a debtor in bankruptcy. As Mr. Bernstein said, a consent decree has features of contract and features of order. But I think the law is relative clear that they are not executory contracts that can be rejected. I would point you to Judge Coudle's (ph.) opinion in New York v. Mirant. That's at 300 B.R. 174 at page 181.

The further question that Your Honor asked today, I think the important question, is whether a consent decrees is, therefore, enforceable against the debtor. And as Your Honor said that turns on whether the consent decree creates a monetary or injunctive obligation. Whether it embodies a claim within the meaning of the Bankruptcy Code that's Chateaugay in the Second Circuit, Trouweko in the Third Circuit. That is a remarkably fact-intensive inquiry. And the fact --

THE COURT: Depends on what the decree actually says.

MR. SCHWARTZ: That's right. And I've only skimmed the consent decree that Mr. Bernstein was speaking to, but I'll make the general comment that simply because the obligations of

the debtor under a consent decree are to pay money does not necessarily mean that it is a claim within the meaning of the Bankruptcy Code. I think that's enough for today's purposes. Because ultimately the objection that Mr. Bernstein raised is not an objection to the sale. His consent decree is either enforceable against GM or it isn't. So that obligation will either be treated as an unsecured claim, or it will be enforceable and so they will have to pay in full. But either way, the claim is against OldCo. The claim is not against NewCo. There's no basis, as Mr. Bernstein suggests, to go into the MSPA and rewrite excluded liabilities to add his consent decree. That's the only issue on today's record. And so Mr. Bernstein's objection should be denied and we can take up the more substantive issues on a --

THE COURT: To be denied without prejudice to his raising it in a different context against OldCo.

MR. SCHWARTZ: Against OldCo, correct.

THE COURT: Okay.

MR. SCHWARTZ: Against NewCo it's just essentially the successor liability issue.

THE COURT: Okay. All right, Mr. Jones?

MR. JONES: Thank you, Your Honor.

Your Honor, the government simply is not sacrificing principles for expediency as it has been accused of doing. Far from it. We are using established law to purchase assets full

stop. Specifically, the government sponsored purchasing entity is purchasing the pieces necessary to operate the strongest possible New GM. This is a liquidating estate, there's no dispute about that. There is no alternative and no scenario in which this bankruptcy proceeding ends in anything other than some form of liquidation. And as in any liquidation proceeding, the goal is to maximize recoveries and distributions to the estate and its creditors.

So what is before the Court today is simply an asset sale. It's not a plan. What is before the Court does not dictate anything about the treatment of any creditor going forward in the bankruptcy proceedings which will remain in place. The evidence is clear that this sale achieves far and away the highest possible recovery for the assets being sold. And as is salient for legal purposes, vastly in excess of their liquidation value which is the only legally relevant or possible alternative scenario.

The evidence also shows that the opportunity to achieve value through the sale is fleeting. And that the achievable value of this -- of any portion of General Motors is fragile and soon will be lost if not seized now.

There will be a plan as this case progresses. Again, the case will go forward and there are mechanisms to ensure the estate will remain administratively solvent and funded through an orderly wind-down process. And the Court's well established

procedures under the Bankruptcy Code will provide the framework for determining the respect of recoveries for all parties-in-interest

Your Honor, the evidence is unambiguous and unrebutted that the government has no intention of funding this deal if an order is not in place by July 10th. Mr. Richman speculates that the government doesn't really mean it, and that the government will fund beyond that date if Your Honor just calls our supposed bluff. But, Your Honor, speculation does not trump evidence. There is no evidence of bad faith and there is no evidence undermining what the government has plainly stated in Court during these proceedings.

To the contrary, Mr. Wilson was extraordinary forthright and he explained compellingly and without hesitation what steps the government has taken in regards to General Motors so far. And the reasons for those actions. And its plans for its future actions with regard to New GM.

Your Honor, the gamble that Mr. Richman asks the Court to take would be extraordinarily risky and contrary to the best interest of the estate. In fact, he concedes that the risk he asks the Court to take today would, in fact, breach the fiduciary duty if undertaken by GM itself. It is clear that the Court cannot require a lender to lend. It is clear that the Court cannot compel a buyer to buy.

This transaction is certain. It is here today. It

is extraordinarily favorable, and it is the only one insight. The purchase fully complies with all applicable law, including Section 363 of the Code. The Second Circuit just recently in Chrysler heard these issues squarely, and intensively argued to it in an appeal from Judge Gonzalez's decision which also fully considered the very arguments here today. And of course Judge Gonzalez explicitly adopted and followed TWA, the Third Circuit's decision in TWA and has, in turn, been affirmed by the Second Circuit for the reasons Judge Gonzalez stated. That TWA order, just as the Chrysler order, expressly affirmed a sale free and clear of claims, both known and unknown, and it further enjoined claims in the future being brought against the purchaser of the assets.

Your Honor, the -- I know Your Honor's made reference to reading the transcript of arguments before the Second Circuit, and I will not undertake here a detailed exegesis of the interlocking provisions of the Bankruptcy Code. But I will note that Fiat's counsel did an extraordinarily abled job of doing just that in arguing before the Second Circuit. So, for my purposes today, Your Honor, I'll limit myself to saying the case law is very clear and establishes that exactly what is happening here today is permissible and entirely authorized by Section 363.

So -- and, Your Honor, in addition to being law, case law that, at a minimum under principles of stare decisis,

supports the relief sought today, the ruling was correct on its own terms, as shown in ours and GM's papers, and that ruling simply controls here.

Your Honor, I won't elaborate, although -- and go into --

THE COURT: That ruling being Chrysler, you're saying?

MR. JONES: I'm sorry?

THE COURT: That ruling being Chrysler?

MR. JONES: Correct, Your Honor. And through Chrysler, because it expressly adopted TWA, TWA's analysis as well.

THE COURT: Um-hum.

MR. JONES: Your Honor, I'm not going to go into detail on objections. I expect that Weil will address those very ably, more than ably. I want to take a moment to thank the extraordinary assistance provided throughout these proceedings by the Cadwalader who is not authorized to represent the government in court but has done a fantastic job of supporting us in our endeavors and in serving the government as a whole. And, Your Honor, in closing, let me simply urge the Court that for the reasons stated and supported by the evidence presented to the Court over these three days, the Court should grant the 363 sale motion. Thank you.

THE COURT: Thank you.

Sure, Mr. Schein, come on up.

MR. SCHEIN: Yes, Your Honor. So that Mr. Miller can have his final comment, I'm not adding any further comments as to Export Development Canada's position. First of all, for the record, Michael Schein, Vedder Price, on behalf of Export Development Canada for the governments of Ontario and Canada.

I just want to clarify one legal point that was raised yesterday by Mr., I believe, Jakubowski with respect to an argument that he said was that if the DIP lenders exercise their rights under the loan agreement come the July 10th milestone, not defer their fund, he made a statement that that would be an implied breach of covenant of fair dealing and good faith and that maybe that would give rise to a contract claim by the committee.

I'd just like to give the Court a cite that expressly rejects that argument so the Court's aware that if that right is exercised. Specifically, Your Honor, it is Mirax Chemical Products Corp. v. First Interstate Commercial Corp., and Eighth Circuit Court of Appeals Case, 950 F.2d 566. And just one statement. The Court said that that duty, which was the duty of good faith and fair dealing, however, cannot be breached by actions that are specifically authorized in an agreement. That's just the one clarification, Your Honor. Thank you.

THE COURT: Thank you.

Mr. Bromley?

MR. BROMLEY: Thank you, Your Honor. James Bromley of Cleary Gottlieb on behalf of the UAW. Just want to make one particular point before I ceded to Mr. Miller, which is, to address Mr. Richman's issue as opposed -- as it relates to the linkage between the collective bargaining agreement and the VEBA. Mr. Richman made a fair amount of hay out of a lack of linkage, as he said, in the documents and in the evidence. But I think it's important to look at the evidence. What we have here is testimony from Mr. Henderson that if there was no VEBA there would be no collective bargaining agreement, and with no collective bargaining agreement there would be no workforce.

We have testimony from Mr. Wilson, again, saying if there was no VEBA there would be no collective bargaining agreement and, again, without a 1collective bargaining agreement, no workforce.

Mr. Curson's declaration said exactly the same thing. The exhibits to Mr. Curson's declaration, the ratification summary at Exhibit 1 -- Exhibit A, I'm sorry, at page 1 and page 11 made it crystal clear that when the UAW membership was voting, they were voting on both the VEBA and the collective bargaining agreement. And as Mr. Curson said unequivocally, it was a single vote, up or down, for both.

Exhibit B to Mr. Curson's declaration is the white book, the white book which contains the amendments to the collective bargaining agreement. It makes absolutely clear

that the VEBA and the modifications are part of the collective bargaining agreement that appears at page i, which says that the ratification is on the terms of the ratification, that single vote up or down.

And the addendum relating to the changes to the VEBA appears at page 169 of that white book, and it is indeed part and parcel of the amendments to the collective bargaining agreement.

And this shouldn't come as any surprise to the objectors. It's not new. Indeed, of all the information that's been provided to the Court, this is probably the least new because there is a full paragraph in the Chrysler opinion going directly to this point where Judge Gonzalez found that there is unequivocal evidence presented in the Chrysler trial by Mr. Curson as the witness that there was direct linkage, there was clear and unequivocal value being presented to the new company and that the value of the VEBA was receiving was not being received by the old company but indeed by the new company.

In addition, the UAW is an express third-party beneficiary of the master sale and purchase agreement. That agreement requires that the collective bargaining agreement be assumed and assigned. It requires that the VEBA be entered into by the new company. These are unwaivable conditions to closing.

In addition, Section 7.4(h) of the DIP says that unless by July 10 the agreement, the master service sale and purchase agreement, is approved, that there'll be an event of default under the DIP. That includes all of the related documents, and the UAW retiree settlement agreement in Schedule 1.1(e) to the DIP is one of those agreements.

So, Your Honor, I think that the record is replete with evidence of linkage between the UAW's collective bargaining agreement and the VEBA. And there shouldn't be any doubt or any concern that a showing's been made on that front. And it's very important to keep in mind that that showing is being made by the UAW on behalf of the 475,000 individuals who have either worked or depended on those who've worked for General Motors, as well as the 61,000 active employees. There are over half a million individuals who are dependent on this transaction closing, and closing quickly. And I think we need to look through the shorthand that is being used as timing. If a little more time is given, everything will be fine, nothing will change. But that's shorthand for if there's a little more time, I can get a little more, maybe a lot more. And it would fundamentally change all of the carefully constructed arrangements that have been put in place and, indeed, would go directly to the problem that both Treasury and General Motors have pointed out, which is the damage that would be done to this business in connection with a long-term contested Chapter

11 proceeding.

So for those reasons, Your Honor, the UAW strongly urges that the Court approve the sale transaction.

THE COURT: Okay.

MR. BROMLEY: Thank you.

THE COURT: Thank you.

Mr. Miller?

MR. MILLER: Good afternoon, Your Honor. Harvey Miller on behalf of the debtors. First, Your Honor, one overarching comment. I was brought up in the school that closing arguments should be confined by the record that was made before the Court. As I sat here and listened to the closing arguments, Your Honor, many of the closing arguments made no reference to evidence which is in the record in these cases. Rather, we heard opinions as to what could have happened and not references to evidence that's in the record. So I just make that as an overarching comment.

I want to note that none of the objectors has suggested to the Court that it wants to see a liquidation of the assets of GM. Rather, each of the objectors reiterates that it should not be affected by the 363 transaction and, therefore, it will receive more consideration than what otherwise will be recoverable from the Old GM pursuant to the plan of liquidation which will follow the consummation of the 363 transaction.

Every objector recognizes that a liquidation will result in no recovery to general unsecured creditors. So what has happened? By objecting to the 363 transaction, the objectors are exercising what they perceive to be their leverage. Certain of the objectors are asking the Court to conditionally allow the 363 transaction by laying down terms and conditions that the purchaser would have to comply with or walk.

To paraphrase the words of Mr. Jakubowski, Your Honor, they want you to enter the negotiations and bargain with the purchaser. Indeed, Mr. Jakubowski suggested that the debtors and the purchasers should have come to you as soon as they knew you were assigned to the case to negotiate the terms and conditions of the sale before finalizing the master purchase agreement. I suggest that the role that Mr. Jakubowski has tailored for you is inconsistent with your role and your responsibilities as a judge.

The essence of what the objectors want, as pointed out by my predecessors, is that you should gamble the preservation of the value of the GM assets, the hundreds of thousands of jobs involved, the welfare of the communities they rely upon in an ongoing automotive industry as well as incur the risk of the probability of systemic failure in the hope that the undisputed testimony of the Treasury's representative is a lie and that the Treasury will not exercise its rights to

cease financing the debtors.

This is an awesome gamble. It ignores the interests of all other economic stakeholders, including the over 60,000 UAW active employees as well as the approximate 500,000 retirees and dependents represented by the UAW, as well as the bondholders who have supported the 363 transaction, the suppliers and their industry and the states and communities who will be severely prejudiced if the gamble is lost. Essentially, the objectors ask Your Honor to play Russian Roulette.

Now, Mr. Richman referred to footnote 15 in Judge Gonzalez's decision, and he read to you a portion of it, but he did not read the last sentence. He read the sentence, "The Court concludes that gambling on the possibility that the government was bluffing and risking the potential for a lesser recovery in a resulting liquidation would have been a breach of the debtor's fiduciary duty." The next sentence is the key sentence, Your Honor: "This was simply not a viable option."

So what Judge Gonzalez held and used as a material point in his decision, he could not take that option of the financing disappearing and risking and bluffed -- that the U.S. Treasury was bluffing.

In effect, the objectors are saying if I can't get my pound of flesh, then let GM go down in flames and everybody lose and the devil take the hindmost. It is not a rational

avenue for the Court to go down in the face of the record in these proceedings. Liquidation or the risk of liquidation is too great a danger to imperil the many beneficiaries of the 363 transaction. A transaction, Your Honor, that squarely complies with the applicable principles of law, no objector questions the business rationale articulated by GM in support of the sale. No evidence was presented to Your Honor, through testimony or otherwise, that the business rationale to reconstitute these assets and make them the foundation of a viable automotive manufacturing company -- there is no contrary evidence in the record. Rather, the complaint is that the pie is not big enough to satisfy the particular needs of each objector and, therefore, the 363 transaction cannot be approved. That is not a legally sustainable objection.

Mr. Bressler, representing the tort victims, or some tort victims who have actual claims has argued that this clients are entitled to extra indulgence. He cites no legal proposition or authority for that proposition -- I'm sorry, no legal authority for that proposition. Of course everybody empathizes with his clients, but as stated, bankruptcy is a zero-sum game. And if GM is liquidated, his clients will receive no recovery.

He described the purchase as an extraordinary transaction because the government is not the usual purchaser. But as Mr. Jones has pointed out, Your Honor, the United States

Treasury, in the perspective of this case, is a creditor; it is a secured creditor. It can stand in the position of any secured creditor that appears in the bankruptcy proceeding.

From that conclusion, he jumps to another and more far-fetched contention that the purchase is a result of a conspiracy among the Treasury, General Motors, and I guess the UAW, to deprive his clients of their right to trace the assets to New GM. He argues that New GM must assume the potential liabilities due to his clients because there was no independent purchaser of the GM assets. Yet, the record is devoid of any evidence to establish the facts that would support a finding and conclusion of the existence of a conspiracy directed at all product liability claimants. It's just not in the record, Your Honor.

So Mr. Bressler argues that there are no similar situations where a pre-petition lender has been the purchaser and the DIP financer and pre-petition creditor. I suggest that Mr. Bressler is on weak ground. The concept of loan-to-own has permeated bankruptcy practice throughout this decade. An example is In re Radner Holdings Corporation, 353 B.R. 820, a bankruptcy case in Delaware before Judge Walsh. In that case, Tennenbaum Capital Partners was a substantial investor. It continued to finance the debtor as its fortunes declined and acquired more and more collateral security in substantially of the debtor's property. When the debtor's revolving lenders

threatened to cut off funding, the company commenced a Chapter 11 case.

TCP, Tennenbaum, agreed to purchase the assets under Section 363 and credit bid its 128.8 million dollar pre-petition date claims. That was challenged, Your Honor, as not an independent purchaser, was challenged in the context of recharacterization and equitable subordination.

In another case, Your Honor, of that -- and I didn't have a chance, Your Honor, to do a great deal of research, but another case is In re Medical Software Solutions, 286 B.R. 431, a bankruptcy case out of the district of Utah.

THE COURT: Before you go on to the second one, the Software Solutions, you told me the contention rendered. Judge Walsh rejected the contention and he said that the lender did in fact have the ability to --

MR. MILLER: Yes, Your Honor.

THE COURT: -- take it over?

MR. MILLER: And he approved the 363 sale, and in a long opinion, Your Honor.

THE COURT: With the same types of protection on 363?

MR. MILLER: Yes, Your Honor.

THE COURT: Um-hum.

MR. MILLER: In the Medical Software case, Judge Thurman held that there was a sound business reason that existed for the sale of the Chapter 11 debtors outside the

ordinary course of business and outside of the plan based chiefly upon the lack of funds for continued operations and the narrowing window for the sale of assets before they significantly declined in value.

THE COURT: The Judge Thurman, is that Bill Thurman out in Utah?

MR. MILLER: Yes, sir. A corporate insider that had provided both pre- and post-petition financing for the operation of the debtor's business had a valid security interest in the assets being sold and could credit bid its secured claim. An insider qualified as a good-faith purchaser, and the Court approved the sale as being for a fair and reasonable price and supported by sound business reasons.

There are -- I'm sure, Your Honor, with additional time, we can find many more cases that follow in the concept of loan-to-own.

So, turning to the concept that this was not an independent transaction, the record demonstrates, Your Honor, that there were strenuous arms'-length negotiations. There were differences of opinion. There were requests made by GM; they were either rejected by Treasury or they were negotiated. And one example, Your Honor, is that GM tried to, in respect of the seven-plus billion dollars of retiree benefits, it tried to keep the cut down to sixty-two percent, but the Treasury came back and said no, it's got to be sixty-six and two-thirds.

There was a negotiation over that, and that's just one little item, Your Honor, of what was negotiated during the course of this somewhat complex proceeding.

In terms of independence, Your Honor, a great deal of moment is given to the fact that Mr. Henderson will be the CEO of New GM. Other executives will be employees of New GM. And because of that, this is a tainted transaction. But as Your Honor knows, there are many cases in the bankruptcy court where an acquirer of a business will take that business with its employees. And when you think of this behemoth that is Old GM, a purchaser would not be in its right frame of mind if it did not take the employees who know the business, at least initially, to allow the stabilization of the business while other events may unfold. The testimony is clear, Your Honor, Mr. Henderson doesn't have an employment contract, he has no employment contract with the purchaser, and none of the other executives have employments contracts.

And in terms of independence, Your Honor, what's happened to the stockholders of Old GM? They're being wiped out, Your Honor, because of the financial condition of the estate. New GM will have new stockholders. In addition, New GM, Your Honor, will have an independent board of directors. Five independent directors from Old GM, people of great repute and great business experience, are moving over to New GM. Mr. Henderson is moving over to New GM. But there will be

seven other directors. And Mr. Edward Whittaker, the former CEO of AT&T, has already been designated to be the chairman of the board of directors.

That board of directors, Your Honor, will decide the role in the future -- I mean the future role that Mr. Henderson and other executives and other employees of Old GM will occupy in the operation of New GM. There has been full disclosure, Your Honor, in this record of what the relationships are between the parties and which, I submit to Your Honor, clearly established the independence of the parties.

Mr. Bressler also complains that the UAW VEBA is just too good a deal to be approved. He ignores the fact that it is the purchaser who made the deal with the VEBA in its interest of getting employees to operate the business and enhance the recoveries and the general unsecured creditors who will receive equity securities as part of this transaction. One objective of this transaction, Your Honor, is to enhance the value of the equity securities. And that enhancement obviously requires the employment of the UAW and the other employees. There would be no business without that. And as Mr. Curson testified, Your Honor, and notwithstanding Mr. Richman's statements, the record is clear there is only one witness -- and he testified, and he's a union officer -- that the ratification of a modified collective bargaining agreement and the VEBA was one ratification. And if the VEBA is not approved, all of the

modifications to the collective bargaining agreement are rescinded and we're back to where we were before with work conditions, wage rates, et cetera, which are not tenable in an automotive industry that is in such severe crisis as this automotive industry.

The argument, Your Honor, that another potential 900 million dollars of liabilities, irrespective of the asbestos liabilities, assuming the asbestos liabilities, and another 300 million-plus dollars of liabilities in connection with retiree benefits, is insignificant. And, therefore, the purchaser should be required to assume those liabilities.

The objective of the purchase, as I said, Your Honor, is to acquire the assets and assume only those liabilities that will contribute to the success of the purchaser. You take 900 million, 300 million, another 600 million, and pretty soon you're in the area where Senator Dirksen said you're talking about real money.

The purchaser has drawn the line as to what it is willing to pay for the assets in the context of its credit bid and its assumption of liabilities and the voluntary contractual obligations that it has made to the UAW VEBA.

Now, Your Honor, turning to Mr. Jakubowski, Mr. Jakubowski made an impassioned argument. Essentially he told the Court that it should forget about being in the Second Circuit and it should ignore the Court's stated principle of

consistency in the decisions of the bankruptcy court in this district. Mr. Jakubowski speaks of Judge Posner in the Seventh Circuit as if he is immortal and infallible. I have great respect for Judge Posner and for his colleague Judge Easterbrook, but neither is infallible and particularly conversant with bankruptcy in Chapter 11. I once debated Judge Easterbrook at a University of Pennsylvania Business and Law Forum. He argued that persons in businesses should be allowed to contractually waive the benefit of the right to seek bankruptcy protection. He posited the argument on the basis that the contracting parties had equal bargaining leverage and could freely negotiate that provision. I asked Judge Easterbrook if he had ever studied a credit card agreement and tried to change the terms of that printed agreement or borrowed money from a financial institution while in financial distress. He replied in the negative and then said he would have to rethink his position.

As for Judge Posner, Mr. Jakubowski never named a particular case that he was talking about yesterday and stating that it was in conflict with TWA. Let us not forget, Your Honor, that the Seventh Circuit is the circuit that is the Chicago school of finance, and it is the circuit that is the least receptive to business reorganizations. A circuit, Your Honor, that is so unreceptive that it does not endorse the critical vendor situation that is so important in most

reorganizations. But --

THE COURT: Or NOL protection.

MR. MILLER: Or NO -- exactly, Your Honor. But be that as it may, Mr. Jakubowski argued that the jurisdiction of this Court is extremely limited and unless you are able to find specific words in the Code you are acting beyond your power. He invites you to teach a lesson to the Second Circuit and tell the judges of that court that they don't really understand statutory construction. Yet, his idol Judge Posner, in a case called FutureSources LLC v. Reuters Limited at 312 F.2d 281, 283, a 2002 case, Judge Posner criticized a district court for relying on an unreported opinion from another circuit and for one of the parties to rely upon it in his argument. Judge Posner said that while, and I'm quoting, "The reasoning of a district judge is of course is entitled to respect, the decision of a district judge cannot be controlling precedent. The law's coherence could not be maintained if district courts were deemed to make law for their circuit, let alone for the nation, since district courts do not have circuitwide or nationwide jurisdiction." Notwithstanding those piercing words of Judge Posner, Mr. Jakubowski wants you to take on the Second Circuit judges and, in effect, suggests to them that they really ought to act a lot more like Judge Posner. I don't believe that Your Honor has a death wish.

Last week in the argument on the effect of the

Sprague Sixth Circuit decision, Your Honor unequivocally stated that Sprague was never binding on you -- was not binding on you and that your obligation is to follow the directions of the Second Circuit and to maintain consistency of bankruptcy court decisions in this district in the absence of clear error. And as Your Honor stated yesterday, you don't view Judge Gonzalez's decision as clear error. And right now, Your Honor, the law of this circuit is the decision of the Second Circuit affirming the Chrysler decision on the basis of the reasoning that Judge Gonzalez used in his opinion. That's the law in this circuit which I believe Your Honor is required to follow.

Mr. Jakubowski alluded to stare -- I'm sorry, Your Honor, alluded to stare decisis and the peril of the Court to fill in gaps in the statute. Mr. Jakubowski argued that 363(f) subject to the plain meaning rule and must be construed narrowly based upon a whole host of Supreme Court decisions that he cited generally involving Chapter 7 or Chapter 13 cases. Bankruptcy courts deal with business reorganizations as situations which require flexibility and the exercise of reasonable judgment by a bankruptcy court. Courts need to fit the requirements of the case in achieving the objectives and policies of the Code. A perfect example of the kind of role that must be played by bankruptcy courts is demonstrated with the situation that arose as a result of the Supreme Court's decision in Hartford Accident and Underwriters v. Union

Planter's Bank at 530 U.S. 1, a 2000 case. As Your Honor undoubtedly knows, the case involved the construction of Section 506(c) of the Bankruptcy Code and whether the Hartford Accident and Underwriters could present a case for administrative expenses under 506(c) when the language of the statute read that only a trustee could do that.

And the Supreme Court, in applying what essentially, I think, was Judge Scalia, the plain meaning rule, said the statute says the trustee can only do that, therefore Hartford could not step into the shoes of the trustee, could not qualify under 506(c), and that's what the statute says and that's what courts have to pay attention to. So -- and they cite the Ron Pair case and some of the cases that were cited by Mr. Jakubowski.

So what followed after Hartford? In 2003, a case came to the Third Circuit, Cybergenics case at 130 F.3d 545, a 2003 case. This was an en banc --

THE COURT: You're talking about Cybergenics before or after the first en banc?

MR. MILLER: I'm talking about the en banc decision, Your Honor. The issue in Cybergenics involved Section 544(b) of the Bankruptcy Code and that's the section, part of the avoidance powers where a trustee may prosecute actions based upon nonbankruptcy law to recover preferences, fraudulent transfers, et cetera.

The language of the statute is almost precisely the same as Section 506(c) of the Bankruptcy Code. And when the case was heard before the Third Circuit on appeal from the bankruptcy court and the district court, a three-judge court in the Third Circuit reversed the lower courts on the basis of the Hartford Accident case, a pure case of statutory construction as far as the three-judge court was concerned. That decision was withdrawn as a result of the granting of a motion that the case be heard en banc.

When it was heard en banc, the issue of the creditors' committee prosecuting avoidance actions under Section 544(b) was upheld by a majority of the en banc court. The Third Circuit decision, the en banc decision, reflects a court recognizing the needs of the case and the necessity of making the statute work. And, if I might find -- let me just get that decision.

THE COURT: You're talking the second Cybergenics decision, the en banc one that --

MR. MILLER: Yes, I am. As Your Honor does with great frequency, first you look at the statute. And they looked at the statue. And -- can you hear me? How's that.

First the Court noted that statutory construction is a holistic endeavor, citing the Timbers case. And then, Your Honor, in reviewing what had occurred, the Third Circuit noted that the fact that the language does not authorize derivative

action in the first instance, should be recognized. But that there was a missing link. And where there was a missing link the Court said we believe that the missing link is supplied by bankruptcy court's equitable powers "to craft flexible remedies in situations where the Code's causes of action failed to receive their intended purpose."

The Third Circuit went on to say, Your Honor, "that the Supreme Court has long recognized that bankruptcy courts are equitable tribunals that apply equitable principals in the administration of bankruptcy proceedings." And it noted, Your Honor, that the Court in the 105(a) has the power to issue any orders, process or judgment that is necessary or appropriate to carry out the provisions of this title. No provisions of this title providing for the raising of an issue by a party-in-interest shall be construed to preclude the Court from sua sponte taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

So what that -- those decisions say, Your Honor, is where there is a statutory provision that doesn't comport with a holistic interpretation of the Bankruptcy Code, and the objectors and policies of the Bankruptcy Code, the bankruptcy courts have the equitable power to construe that statute to accomplish those objectives and purposes of the Bankruptcy Code.

And in connection with Section 363(f), Your Honor, Mr. Jakubowski says you can't give it effect. It cannot -- it just doesn't cover claims. Claims are not included in the statutory language and, therefore, this Court is without power to issue an order that provides free and clear of all liens, claims and encumbrances.

Now, if you think about Mr. Jakubowski's argument, Your Honor, what he is basically saying that every single unsecured claim carries over, that 363(f) is totally inapplicable, that it doesn't work. That, Your Honor, is not a principal statutory construction. Courts are under the duty, I believe, Your Honor, to give effect to the words of a statute, and to harmonize a statue so that it is effective. And for many, many years, Your Honor, courts have issued 363(f) protections in connection with the 363(b) transaction. And the law in this Circuit, based upon Judge Gonzalez' order, is that this Court -- the bankruptcy court has the authority to issue a free and clear order as requested by the debtors in this action, which is almost identical to the order that was entered in the Chrysler case.

The scope of the power of the bankruptcy court under Section 363 Your Honor once referred to in the Magnesium Corporation of America case. And you said in that case on June 13, 2002 "I believe Judge Walsh got it exactly right in TWA. I am not going to burden this already very lengthy decision by

telling you all of the reasons I believe Judge Walsh is right. But I have rarely seen on my time on the bench a decision that was as closely relevant and directly on point" -- and this was in connection with a 363(b) sale, "and as well thought out as his decision. At the risk of appearing less than thorough I am going to adopt his analysis by reference."

THE COURT: That is the same TWA but before it was affirmed all the way up to the Third Circuit?

MR. MILLER: That's correct, Your Honor. Your Honor also referred to the Leckie Smokeless Coal Company case at 99 F.3d 573. Your Honor said that Leckie -- that you interpreted the Fourth Circuit as saying "That Congress did not expressly indicate that the language of 363(f) was intended to limit the scope of its application to in rem interest."

If Mr. Jakubowski's argument was taken and adopted by Your Honor it would mean, Your Honor, that 363(b) is out of the statute, and there can never be any sales of assets if they're always going to be subject to the claims, the unsecured claims, of the debtor. Even outside of selling substantially all of the assets every single sale under Section 363(b) would be impaired by the fact that the purchaser is assuming or is going to be responsible for claims that may drift or migrate with the assets that are being sold. That, Your Honor, cannot be the law. Common sense says that you cannot effect that kind of a ruling in the face of what has transpired in bankruptcy courts

through thirty years since the adoption of the 1978 code. And, again, Your Honor, as I said before, the law in this circuit is clearly Chrysler.

Now, Mr. Jakubowski also, like a true plaintiff's lawyer, immediately jumped up and said if the government doesn't go through with this acquisition or finance this acquisition it will be a clear breach of contract. And he turns to the creditors' committee and says I hope you're drafting a complaint against the government.

Counsel referred to a case right on point and in Willis on Contracts under the title Express Conditions "assume liabilities and express conditions in a contract, where there are express conditions in a contract, where there are milestone that have to be accomplished, such as there are in this financing, if there is no order of approval on September 10 and there is no wavier on the part of the U.S. Treasury, the U.S. Treasury has the absolute right to terminate. And that does not give rise to a breach of contract. And it is not subject to a commercially unreasonable actions."

In connection, Your Honor, to the arguments that Mr. Jakubowski made that the treasury is not -- if it wants to act like a commercial bank it should be treated like a commercial bank. I would submit to Your Honor that the commercial bank analogy is inappropriate. We are not just talking about a JPMorgan or a Citibank, we are involved with a federal

department that is attempting to salvage an industry and all it represents, as well as protect the taxpayers' money. The Treasury hired an extremely abled cadre of experienced persons to discharge this function. They have made -- the Treasury has made a decision that a prompt approval of the 363 transaction is a condition precedent. If there is no sale order there's no more financing. And, Your Honor, there is no evidence to the contrary in respect of that.

Mr. Richman raises for the first time the credibility of Mr. Wilson. Mr. Wilson testified yesterday candidly and at length. And there is nothing in his testimony which would establish that he was lying, falsifying any respect whatsoever. And counsel for the treasury has reiterated the position that Mr. Wilson testified, and there's nothing else in the record, Your Honor.

The Court must accept that undisputed evidence and take it into account the consequences of non-approval. So in connection with Mr. Jakubowski's argument, both the statutory construction, I would submit to Your Honor that this Court has ample power under its equitable powers to construe a statute so that it may implement and further the interests of bankruptcy reorganization and bankruptcy law under the bankruptcy code.

And in the context of stare decisis, again, Your Honor, the Chrysler case is the decisional authority in this circuit. And, certainly, the TWA case is very persuasive, both

on bankruptcy court level and on the Court of Appeals level.

So then, Your Honor, I turn to Mr. Esserman. And in connection with that I will also deal with all the asbestos claimants. The argument is made, Your Honor, that somehow OldCo should comply with 524(g). 524(g), by it's very language, refers to the confirmation of a plan of reorganization that would discharge asbestos claimants. There is not going to be any discharge here, Your Honor. OldCo is in liquidation, there will be no discharge of liabilities. 524(g), by its very terms, could not be complied with because fifty percent of the equity of the so-called surviving corporation is not available. So 524(g) is not a player in this scenario, Your Honor. And Judge Gonzalez, again, Your Honor, specifically held that 524(g) did not apply to the Chrysler 363 transaction. There is no discharge and there is no channeling order requested. What we have said to Your Honor in the course of these proceedings, this will be an issue that Old GM, OldCo, will have to deal with. That the creditors' committee will have to deal with in structuring a plan of liquidation for OldCo. How existing asbestos claimants are going to be treated to the extent they have allowed claims, and potential future claimants may be treated is an appropriate subject for OldCo. And it would not be different from some other cases where, in the situation of a liquidation, a specific fund is created to deal with future claimants. But

that's an issue to be determined, Your Honor, after the sale is consummated.

THE COURT: Mr. Miller, there's no channeling order, but there is an injunction requested. And the two lawyers who were raising asbestos issues pointed out that if you did give personal notice and applied it to every state in the United States you wouldn't be able to do much with it because they wouldn't know that they've contracted asbestos.

Now, I have an interesting twist here. Both of those folks represent existing asbestos claimants who analytically in the Jakubowski situation. But I also believe that this issue was raised that hasn't been discussed in the Second Circuit argument in the (indiscernible) appeal. To what extent would it be proper or improper in Your view if words were added to any approval order that said to the fullest extent constitutional principal?

MR. MILLER: Just speaking for myself, Your Honor, without consultation for client, I don't have problem with that language. But I would, again, note, Your Honor, that Judge Gonzalez dealt with the issue of notice and I do not recall the colloquy between Judge Sack and Mr. Esserman, and I'm not sure that colloquy related to injunctions or the ability to sue. All I'm saying, Your Honor, there is going to be an estate. And estate which we believe will have significant value.

Part of the claimants who will have rights against

the property of that estate will be asbestos claimants, current and future. And that estate, as part of its plan of liquidation can provide a mechanic to deal with future claimants. That's not unheard of, Your Honor, the creation of a fund or putting aside assets, so when the disease manifests itself and there is an actual claim there will be a source of recovery. That can be done within that context. And there is no discharge in connection with that, Your Honor.

And besides, Your Honor, I think it was Mr. Koch testified it will be three or five years, the asbestos situation has been going on now, Your Honor, for I think pretty close to thirty-five years. GM has not been using brake linings with asbestos for a long time. If and when these claims manifest and whether they're allowable or not, Your Honor, is another issue that has to be dealt with. But as far as 363(f) is concerned, as Judge Gonzalez held, and the specific provision in the order is I would construe it as a very broad provision. And you have to assume, Your Honor, that in the appeal in Chrysler it was considered as Your Honor may have noted in the colloquy, there was a discussion of it.

THE COURT: Oh, there was definitely a discussion of it.

MR. MILLER: And also, Your Honor, I think we have to refer to the per curiam decision of the Supreme Court in connection with the application for a stay. While the Supreme

Court said that it wasn't ruling on the merits, it did say that the applicant, the Indiana Pension Funds, had failed to demonstrate: 1) a reasonable probability that four justices would consider an issue sufficiently meritorious to grant certiorari, or to no probable jurisdiction. Now, in reaching that conclusion they had to evaluate what was decided by Judge Gonzalez. 2) a fair prospect that a majority of the Court will conclude that the decision below was erroneous; and 3) a likelihood that an irreparable harm would result from the denial of the stay. So while it's not a ruling on the merits, Your Honor, it does say something about the Supreme Court's view of Judge Gonzalez's decision.

So coming back, Your Honor, into the context of stare decisis, again, this is the law in the Second Circuit, and this is the law that should be followed in connection with this transaction that is so important to so many people.

Now, Your Honor, turning to Mr. Kennedy who made, likewise, a very impassioned and emotional argument, and likewise, I and everybody here, Your Honor, empathizes with his clients and wished that there was a way to assuage his emotion as well as his client's. But alas, I can't do it, Your Honor. He took issue, Your Honor, with a statement I made in connection with my initial closing argument referring to his papers as construing that there was a conspiracy, a conspiracy among GM and the Treasury to deprive the splinter union

retirees of their benefits.

There is nothing in this record, Your Honor, that would support a determination of a conspiracy and all of the elements that would constitute a conspiracy. Indeed, the record goes the other way, Your Honor. Mr. Henderson testified that up until the very end of May, there was the hope of GM that the bond exchange offer would be successful. And if the bond exchange offer would have been successful, there would have been no impact on the retirees.

And further, Your Honor, in Mr. Rory's deposition, which has been designated to Your Honor, at page 44 -- I'm sorry, page 43, Your Honor, he refers to an exhibit which is really Exhibit 9, which is in the record. And he was directed his attention to the first page of that exhibit. And there's a line in this exhibit, and the title of this exhibit, Your Honor, is History of OPEB Defeasement - IUE. And in the middle of the third bullet point, it says, "2006, IUE resisted mitigation VEBA concept - reluctant to bargain retiree VEBA for large population from legacy operations (e.g. Frigidaire) not represented by active members - relatively small active population to generate wage and COLA deferrals."

So what does that demonstrate, Your Honor? That in 2006, GM was in actual negotiations with the IUE about creating a VEBA, a VEBA that would have provided the health and medical benefits, and yet the union resisted that. That VEBA could

have been set up in 2006, Your Honor, and it would have been active.

In addition, Your Honor, Mr. Kennedy is an excellent lawyer, and he knew how to play the strings on numbers. He talked about the 26,000 retirees of the splinter unions who will be deprived of retiree benefits. And actually, as he spoke, Your Honor, he went on to say that approximately 20,000 of those retirees are already post-sixty-five, so they're on Medicare. And under the proposed retiree benefits that had been offered, all benefits cease from the VEBA or General Motors at the point that you go on Medicare. So basically, Your Honor, we're talking about 6,000 retirees, who right now, are getting their retiree benefits.

Unfortunately, as OldCo goes into liquidation, there's no way that you can sustain paying 26 million dollars a month for retiree and medical benefits. The exhibit -- I forget the number, Your Honor -- of the statement made by Mr. Henderson, clearly demonstrates that there was an effort to try and find a way, a means, to assist the splinter union retirees and the maintenance of benefits for those retirees. There's nothing else in the record, Your Honor, except that what happened at the end of May when a decision was made that there had to be a transaction, there had to be something to regenerate and maintain the going concern value of these assets, and that the 363 transaction was the best way to do

that, that this sale was finalized.

That doesn't give rise, Your Honor, to a conspiracy to deprive these retirees of their benefits. As Mr. Wilson testified, Your Honor, the guiding principle of the Treasury was to acquire the assets and assume the liabilities which were necessary and incidental to the creation of a commercial success; a commercial success, Your Honor, which would inure to the benefit of OldCo and the creditors of OldCo.

This morning Your Honor heard of a potential compromise with the State of Michigan on Workman's Compensation, where NewCo or New GM has agreed to pick up the Workman's Compensation obligations. Now, why was that done? That was done because if GM -- New GM did not do that, the State of Michigan was not going to allow New GM to be a self insurer, which would have cost New GM an enormous amount of money; and which would come out of its cash flow. By assuming that liability, it is now going to be allowed to be a self insurer.

Essentially, Mr. Kennedy, in his impassioned plea, is arguing something which is novel. He is basically saying, Your Honor, that Sections 1113 and 1114 are effectively in the same status as liens on the land. They run with the assets. That you cannot transfer assets of a unionized business without dealing with obligations under 1113 and 1114. There is no legal authority that supports that proposition, Your Honor.

There is no requirement that before you transfer assets, you must reject the collective bargaining agreement, if that's the condition. There is no requirement in connection with a 363 sale that you must comply with 1114. OldCo --

THE COURT: Can I assume that there will be compliance by OldCo with 1114?

MR. MILLER: Until such time as Your Honor may rule on an 1114 motion. Yes, sir. Right now, today, all of the IUE retirees are still receiving the full benefits under that program. That's what's costing -- and I'm including all the splinter unions, Your Honor -- that's what's costing approximately twenty-five- to twenty-six million dollars a month.

Now, as OldCo goes into its liquidation phase, obviously that is not a sustainable benefit in a liquidation scenario, nor is it a sustainable benefit in the context of New GM, Your Honor. Are we going to inflict upon New GM some of the problems that contributed mightily to the demise of Old GM. The concept of having job banks of thousands of employees who sit around and don't do anything except paychecks with no benefit to the ongoing operations, work rules, et cetera, and conditions under collective bargaining agreements. What has happened here, Your Honor, is the Treasury, a government sponsored purchaser, who has had to make an agreement with the UAW because otherwise there would be no employees. And it's

unfortunate that the IUE has basically no active employees. Not necessary to the operation of the plants that are being acquired by the purchaser. And there has to be a line of commercial reasonableness in terms of what New GM is going to assume in connection with a sale.

Mr. Kennedy also criticized me because I used the word jealousy in respect of the discussions or descriptions that have been made in connection of the UAW recoveries through the purchaser. I withdraw the word jealousy. Nonetheless, through half this case I have heard repeated over, and over again, that the UAW is getting too much and that it's just unfair. Well, it's the economic circumstances, Your Honor, that resulted in the UAW situation. The proposal by Mr. Jakubowski that Your Honor an order of conditional approval just doesn't work, it's not acceptable to the purchaser. It doesn't benefit the New GM and it doesn't benefit the Old GM. Because the conditional approval will have a terrible negative effect on consumers. Everything that this company has been fighting for the last thirty days to make it clear to the consumer that it's not going to be entangled in a bankruptcy case, that these assets which will form a foundation of a new OEM will be there free of the entanglements of bankruptcy will dissipate.

And Mr. Richman, again, raised the issue in his closing argument well, GM is really doing well in Chapter 11,

look at the month of June. It was only thirty-three percent below June of 2008. And as Mr. Henderson testified lead sales were down by an even greater margin. And if Your Honor happened to read this morning's New York Times it shows the relative figures between Chrysler, Ford and GM. And what you have to surmise out of that or infer out of those discussions, Your Honor, that Ford's market share is rising. And where is that market share coming from. As we sit here today -- stand here today, GM's market share is our owee. And the longer it's in this process the more that will happen.

And Mr. Henderson testified that GM will not make money in 2009, which means that somebody has to finance these operations going forward. And not one objector has brought forth a financier. Not one objector has brought forth an alterative -- a viable alternative other than, Your Honor, you should deny this application, we'll play poker or Russian roulette with the government. And if the government walks, well, we'll just have a Chapter 11 case and see what happens.

Well, what does that mean, Your Honor? Without financing it would be the obligation of Old GM to close every factory, to terminate every employee except those that are needed to preserve and protect the properties. The results will be catastrophic, Your Honor, and irreversible. So we're be brought back again, Your Honor, to the bluff game.

But there's nothing in the record that says that the

Treasury is bluffing. And I take the representation of counsel for the United States that that representation is made on information furnished to him by his client, the U.S. Treasury. But again we hear the argument, Your Honor, that this was all a -- this is not a true sale, and part of that also relates back to this infamous document, Bondholders' Exhibit 2 from the Cadwalader firm, about the use of Section 363. I would venture to say, Your Honor, if anybody goes to a CLE program on bankruptcy, they will get this slide show without the names. I don't want to demean Cadwalader, Your Honor, but I think that this is in general circulation.

Now, looking at that exhibit, Your Honor, and looking at the record as to what GM did, if the board of directors of GM did not consider the various alternatives, that board of directors might have been remiss in its duties. It had an obligation to consider all alternatives and to rely upon the advice of its professionals and advisors. That's what the board of directors did, and that's what the exhibits establish. Clearly, there were presentations to the board as to what bankruptcy provides for, what happens in a bankruptcy. Otherwise, the board of directors could not be discharging its fiduciary obligations.

I just want to see where I am in this, Your Honor.

Now, if I might, Your Honor, I would turn to Mr. Richman's comments. Last evening, Your Honor, Mr. Richman

asked for more time to prepare his closing arguments so that he could address the evidence in the record. I listened carefully to Mr. Richman's argument. There were no references to the record other than his claim that Mr. Wilson is not credible. During the course of these proceedings, he put on no evidence, no witnesses, no declaration of fact, no expert witness. In fact, he didn't do very much other than work off what was in the record.

All of the others' evidence shows good-faith bargaining, good-faith business judgment. And he concedes that it's in the best interest of all parties that the GM assets be sold. His cross-examination of Mr. Wilson certainly did not shake Mr. Wilson's credibility. What he's doing, Your Honor, he's asking you to take his opinion and speculate on the future and not refer to the evidence that has been sworn to in these cases -- in these proceedings. And basically he says, Your Honor, oh, Chapter 11 is an easy process, given a few days parties can agree on various things and in ninety days we can be out of Chapter 11. I would just say, Your Honor, just taking these three days of hearings as an example of what happens in a Chapter 11, the concept that you could file a Chapter 11 plan, and he doesn't even describe the Chapter 11 plan that you would file on the first day, but any Chapter 11 plan that you file that had open ends to it would involve the appointment of creditors' committees, disclosure statements,

arguments over valuation. The concept that a case of the size and complexity of GM would move through some accelerated basis so that you can have a confirmation in ninety days, I think, Your Honor, is not credible. It just doesn't happen.

I refer to the Delphi case. The Delphi case was supposed to move on a fast track. That track seems to have disappeared. And in July -- later this month, I should say, Your Honor, Delphi will either have a resolicited plan of reorganization or will have a 363 sale with substantially less recoveries for the creditors and basically no recoveries for the unsecured creditors.

The problem with long term bankruptcies -- and I don't mean long term to be years, Your Honor -- is that things happen in bankruptcy cases. People come into the court with all kinds of motions, applications, and various moves to get leverage. We spent three days on this proceeding. Think of the days that would be spent in valuation discussions; the possibility of the appointment of an examiner; fights between ad hoc committees and independent committees. And all during this process, Mr. Richman never refers to who's going to finance it. Where's the money going to come from while everybody's having fun in the courtroom.

Mr. Jones says don't look at the Treasury. We've got to protect the taxpayer's money and we're not going to put good dollars after bad dollars. And while this is happening, Your

Honor, the consumer is scratching his or her head and saying is there going to be a GM that's going to produce good vehicles, reliable vehicles that I know I can service? What are the dealers going to say, Your Honor, when this process goes on with no plan other than "We're going to stiff the Treasury and we're going to make the Treasury put in more money." That is an awful gamble to play in this case when you're dealing with -- and I sympathize with Mr. Kennedy and his 26,000 retirees, but we're talking about the UAWs with almost 600,000 retirees and active employees, 235,000 GM employees worldwide.

Yesterday, I think, Your Honor, Lear, a supplier to GM, commenced bankruptcy, Chapter 11 cases. In the past month I think there have been three or four suppliers. If this case doesn't come out the way it has been programmed, with a 363 transaction, there will be chaos in the supplier industry. Systemic danger is all over the horizon, Your Honor.

So what do we get down to, Your Honor? We get down to a situation in which there is no palatable alternative. No financier has shown up, and I think it is very significant, Your Honor, that notwithstanding all the notoriety about GM pre-Chapter 11 and post-Chapter 11, nobody -- no hedge fund, no private equity fund, no foreign investor has come along and said gee, I really would like to take a look at GM and maybe I would like to buy it or parts of it. Not one party has been interested. Not one party has been willing to sign a

confidentiality agreement to get into the data room and look at it for the purposes of considering a bid. There hasn't been one expression of interest.

So we have a situation, Your Honor, where the only offer at all for these assets is the government-sponsored purchaser, the only entity that will be able to get financing and make these assets into a valuable original equipment manufacture. The only other option is to commence the liquidation process because this company cannot survive without financing, and there is no financing. And when that becomes public knowledge, that's the end of its ability to really sell cars. Then you are in the liquidation and no consumer, unless he gets a terrific discount and takes his chances or her chances, will buy a GM vehicle.

There has to be a cutoff and a creation of certainty as to the future of these GM assets. And the fact, Your Honor, as I alluded to before, that GM management is moving over, doesn't make it a nonsale. It's a sale. There's a real purchase price that's being paid here. There is an independent company that is buying these assets and will be an independent company going forward, and hopefully in a very short period of time, a publicly owned company for the benefit not only of shareholders of this company but the whole automotive industry.

Mr. Richman said that the White House will not allow GM to fail. I haven't heard anything come out of the White

House recently about these cases, but I recall President Obama's speech that either Chrysler finds itself a purchaser by May 1 or April 30 or there will be no further financing. And if GM doesn't come up with a viable plan by June 1st, that's the end. And I believe the President meant it. And clearly, the Chrysler people believe that he meant it, even though it must have given Fiat some bargaining leverage. There is nothing on the record -- I keep repeating this Your Honor -- that there will ever be additional financing.

I believe all of the objectors agree that if Your Honor found that this is a legitimate sale, then the transaction should be approved. Delaying the transaction so that various parties can try to exercise leverage by being ad hoc committees in a Chapter 11 or attempting to be additional committees only means further delay in the conservation of a plan, a delay that cannot be borne by this company.

Mr. Richman's closing argument, Your Honor, as I said, had nothing to do with the record that was made before Your Honor in the past two days. It was his ipse dixit as to what he thinks could happen in a Chapter 11 case. With no expert testifying, there's no other person offering any support for that position. He offers nothing in the way of a purchaser. He offers nothing in the way of a financier.

I believe, Your Honor, Mr. Richman's closing argument was just his opinion and his advice to you that you should take

up the purported bluff of the U.S. Treasury and that's an awesome responsibility that he wants to impose on your shoulders.

With respect to, Your Honor, to Mr. Parker, we have submitted, Your Honor, and I'm not going to speak further on it, the statements and the arguments made by Mr. Parker with respect to the equal and ratable clauses in the indentures, are just not accurate. Mr. Parker has not established and he's not produced any certifications or a record of any lien filings with respect to the excluded assets, and the agreements are quite clear that if there were no liens granted to the federal government, the U.S. Treasure in connection with the security agreement of 12/31/08 that was subject to those indentures.

THE COURT: Let me go back to the Secured Financing 101. UCC-1 perfects the security interests but the security interest has to -- it's separately granted, am I correct?

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

THE COURT: And romanette v says that (indiscernible) will be granting the security interest?

MR. MILLER: I'm sorry, sir?

THE COURT: And romanette v says, in its excluded assets -- or excluded liens provision, that there isn't a grant of security?

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

THE COURT: Okay.

MR. MILLER: And Mr. Henderson testified at length, Your Honor, that there were no liens granted in violation of the indentures.

Bad faith. Mr. Parker says that the purchaser has not acted in good faith. Yet the record is to the contrary. The record establishes the extent and nature of the negotiations, how they were conducted, and that they were consistent with the standards of good faith under the cases.

The TARP argument. Again, Your Honor, that argument was raised in Chrysler, and Judge Gonzalez ruled on that. It involved the DDSA and TARP, and that argument was not successful and was continually raised by the Indiana pension plans that you can't use TARP money for these purposes. And in this circuit, Your Honor, at least, that is not an argument that can stand.

Mr. Parker also complains about the scheme of distribution. And again, the basis of his argument on the scheme of distribution is the UAW is just getting too much, while the record is replete with the rationalization and reasons why the UAW ended up in that position. There are sometimes, Your Honor, when union membership is a good thing. Sometimes not. But these active employees are critical to this transaction. If we did not have these employees, there would not be a 363 transaction. And more importantly, Your Honor, the consideration that is being given to the UAW VEBA is coming

from the purchaser and not from OldCo.

And if this deal is not approved and this transaction doesn't go forward, and Mr. Curson's testimony demonstrates, the UAW claims, the VEBA claims will be reasserted in the OldCo case so that you will be adding on an additional twenty plus billion dollars of liabilities which will substantially dilute the position of the bondholders and other creditors.

I am not going to deal with Mr. Bernstein's argument, Your Honor, as to the consent decree and the effect of that. That's an issue that can be determined in the future. My colleague, Mr. Karotkin, said I should refer to the case of In re Rochnunis (ph.) and say pay the 62,000 dollars. I'm not going to do that.

As I understand it, Your Honor, the indenture trustees are no longer objecting. Mr. Reinsel, I think his name is, made the same arguments as Mr. Esserman in respect of asbestos claimants, and I think I've dealt with that.

So Your Honor, we get down to the basic issue. And in connection with --

THE COURT: Before you wrap up, do you want to comment in any way on Ms. Taylor's point that I should have language in the approved order that says, in substance -- I don't know if she's saying just that nothing in this order affects the government's ability to use its police power or if she's looking for more than that. And I don't know if what she

says has controversial implications that I'm not sensitive enough to.

MR. MILLER: I would just note, Your Honor, that the proposed sale order in paragraph 55 states, "Nothing contained in this order shall in any way: 1) diminish the obligation of the purchasers to comply with environmental laws or 2) diminish the obligations of the debtors to comply with environmental laws consistent with their rights and obligations as debtors-in-possession under the Bankruptcy Code." I would submit to Your Honor that is fairly broad language that imposes on the purchaser and the debtors as debtors-in-possession. And there is no intent to circumvent or evade the environmental laws. To the extent that New GM is acquiring plants that may have environmental problems, they will be responsible for that. To the extent --

THE COURT: Kind of like in Magcorp.

MR. MILLER: I'm sorry?

THE COURT: Kind of like in Magnesium Corporation of America.

MR. MILLER: That's correct, Your Honor. And to the extent that OldCo retains plants that haven't -- I mean, the whole controversy, Your Honor, about the wind-down budget only related to environmental claims. As the analysis of the environmental claims and the potential exposure there went up, the committee, justifiably, said we need more in the wind-down

budget to cover environmental claims. So there is no intent -- and I would submit to Your Honor the language is sufficiently broad, and if the New York State Attorney General has a problem with it, we'd be happy to work that language out with her.

THE COURT: Okay. Continue.

MR. MILLER: So Your Honor, we come down to the final aspect, I hope, of this proceeding. The record, Your Honor, I believe is abundantly clear. The business justification has been articulated. Mr. Richman referred to the Lionel case and the various factors in the Lionel case. And in the Lionel case, as Your Honor may recall, the sale was disapproved. It was disapproved and reversed by the Second Circuit because it was being done at the insistence of the creditors' committee who wanted a cash distribution as part of a subsequent plan of reorganization. And the issue was their electronics, the common stock of that partially owned subsidiary. But in the Lionel case, Your Honor, there was no danger of diminution in value. Dale Electronics was an independent company listed on the New York Stock Exchange. The value of that stock was not diminishing. And as it turns out, three years later or two years later it was at the same value.

We have a different case, Your Honor. And as pointed out by the Second Circuit in Lionel, the most important factor is the potential diminution in the value of the assets. This record establishes that if this transaction is not approved,

the value of the GM assets will deteriorate and may deteriorate at a much more rapid pace than either you or I or Mr. Richman understands. The fact that GM did better than its downside projections in the month of June doesn't establish anything when the month of June was thirty-three percent below the same period in 2008, and a decline of forty-three percent in fleet sales. And then we have Mr. Henderson's testimony, even going forward GM will lose money in 2009. If we don't start -- if the purchaser doesn't start using these assets as part of a new GM, a new, leaner, more competitive, more efficient GM, the downward cycle will be irreversible.

So we fit right within Lionel and its progeny. We have -- I will have to call it, Your Honor -- I don't want to call it a melting ice cube because I got criticized for that once before -- a wasting asset. These are assets that will deteriorate in value. And that deterioration will be felt by all of the stakeholders, including the stakeholders that oppose this transaction.

The bottom line, Your Honor, is that there is no viable alternative. And that's the kind of situation that Section 363 was enacted for, to deal with a situation where there had to be a relatively quick sale of assets. And fortunately, we've had thirty days to see if there's anybody else in the market for these assets. What we have done, Your Honor, is establish the value of these assets. We've also

established that nobody's interested in buying them other than this purchaser.

And the fact that it's the government, Your Honor, doesn't detract that it is a purchaser. It's voluntarily doing this, Your Honor. One, to protect the taxpayer's monies in the hope that it will recover a portion of the taxpayer's monies. And two, to try and salvage an industry. But there are limits to that, Your Honor, and the government has clearly said what the limits are.

So we are in a situation where we can do this transaction, we can create a new GM. Yes, we're going to use the same name, but we're only going to have four brands, Your Honor. We're going to have Cadillac, Chevrolet, Buick, and GMC. A leaner, more competitive GM that will benefit the domestic industry, that will provide more value to the economic stakeholders than any other alternative that has been proffered, and no alternative, unfortunately, Your Honor, has been proffered to date.

So on behalf of the debtors, Your Honor, we submit that this case fits squarely within the four corners of 363(b). There has been an articulated business reason for this sale. It is reasonable business judgment. The board of directors of GM discharged their fiduciary obligations in considering the alternatives and going forward with this Section 363 sale. And the purchaser, the government-sponsored entity, has acted in

good faith in negotiating this transaction, as demonstrated by the negotiations that have gone on to this very hour. There has been no bad faith as Mr. Parker alleges.

To allow these assets to go through a process of liquidation would be horrific, Your Honor, a situation that Your Honor should not allow. And Your Honor should approve this transaction. Thank you.

THE COURT: All right. Thank you. All right. Ladies and gentlemen, this hearing is now closed. We're going to take a lunch break for an hour, and then if you have any deals to announce to me or any housekeeping matters, I'll hear them an hour from now. However, there will be no further argument on today. If it turns out that there are no additional deals to announce or understandings to confirm, it will be very short an hour from now. The purpose of this, among other things, is to give you a chance to talk to folks to ascertain whether or not you need or want to put anything on the record. And there may be other people similarly situated. I also will need to talk to at least one person of medium or higher level seniority from each constituency to discuss getting the transcript and exhibits to make sure that I have a full set and the like. This matter is taken under submission and at this point we're in recess. Thank you.

(Recess from 1:42 p.m. until 2:54 p.m.)

THE COURT: Okay, folks, I need to get to work. And

we said that we would set aside some time for you folks to put deals on the record and deal with housekeeping matters, and I have one or two of my own.

Mr. Karotkin or Ms. Cordry, who would like to take the lead on taking care of some of those things?

MR. KAROTKIN: Your Honor, I believe we have reached an understanding with Ms. Cordry as to the proposed terms and provisions of a proposed order to address the concerns she has raised.

THE COURT: Okay.

MR. KAROTKIN: Is that correct?

MS. CORDY: Yes.

MR. KAROTKIN: Okay. And the one -- so I think that addresses those issues. If I might, Your Honor, the Attorney General from the State of Texas would like to leave to catch a plane.

THE COURT: Sure.

MR. KAROTKIN: So I --

THE COURT: Would you like to say something before you have to go?

MR. KAROTKIN: He had asked me if I would read into the record --

THE COURT: Oh, okay.

MR. KAROTKIN: -- three paragraphs which would address his concerns as well.

THE COURT: All right.

MR. KAROTKIN: These would be three paragraphs that would be inserted into the proposed order:

"Entry by GM into the Participation Agreements with Accepting Dealers is hereby approved, and that the offer by GM and entry into the Participation Agreements was appropriate and not the product of coercion. The Court makes no finding as to whether any specific provision of any participation agreement governing the obligations of Purchaser and its Dealers is enforceable under applicable provisions of state law. Any disputes that may arise under the Participation Agreements shall be adjudicated on a case-by-case basis in an appropriate forum other than this court."

THE COURT: Mr. Roy, did he get it right?

MR. ROY: He got the first paragraph right, Your Honor.

THE COURT: Still didn't express your last implication there?

MR. KAROTKIN: This is very stressful for me, Your Honor.

THE COURT: Okay.

MR. KAROTKIN: The next paragraph would be, "Nothing contained in the preceding two paragraphs shall impact the authority of any state to regulate Purchaser subsequent to the closing."

And the final paragraph is as follows: "This Court retains exclusive jurisdiction to enforce and implement the terms and provisions of this order, the MPA, all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith, including the Deferred Termination Agreements in all respects, including but not limited to retaining jurisdiction to: (a) compel delivery of the Purchased Assets to the Purchaser; (b) compel delivery of the Purchase Price or performance of other obligations owed by or to the Debtors; (c) resolve any disputes arising under or related to the MPA, except as otherwise provided therein; (d) interpret, implement and enforce the provisions of this order; (e) protect the Purchaser against any of the retained liabilities or the assertion of any lien, claim, encumbrance or other interest of any kind or nature whatsoever against the Purchased Assets; and (f) resolve any disputes with respect to or concerning the Deferred Termination Agreements.

"The Court does not retain jurisdiction to hear disputes arising in connection with the application of the Participation Agreements, which disputes shall be adjudicated as necessary under applicable state or federal law in any other court or administrative agency of competent jurisdiction."

THE COURT: Okay, I'll try to -- again, Mr. Roy, did he get it right this time?

MR. ROY: He got it all right this time, Your Honor.

THE COURT: Okay. Fair enough.

MR. KAROTKIN: I believe, with that, this gentleman is prepared to withdraw the --

MR. ROY: Yeah, Your Honor, with the agreement that that language is going to be in the order that the debtors submit as a proposed sale order, and with the understanding that there's no objection from any other party, including Treasury, the State of Texas is prepared to withdraw its objection.

THE COURT: Okay, Mr. Schwartz?

MR. SCHWARTZ: That's correct, there's no objection. We had a small tweak to add the federal government's ability to continue to regulate the purchaser. I'm not sure if these folks have signed off on it.

THE COURT: In other words, you're proposing that there be an even more regulatory environment than what Mr. Roy was asking for?

MR. SCHWARTZ: Exactly right.

MR. ROY: So I'm getting more than I asked for.

THE COURT: It sounds to me like you wouldn't care if they got that, Mr. Roy.

MR. ROY: No, not at all. This -- I believe that this protects the state's ability to enforce its regulatory scheme.

THE COURT: Okay. Well, fair enough. I assume that

takes care of your needs and concerns then, Mr. Roy?

MR. ROY: It does, Your Honor.

THE COURT: Have a good flight.

MR. ROY: Thank you so much.

THE COURT: Thank you.

MR. ROY: It's been a privilege.

THE COURT: Thank you.

Ms. Cordry?

MS. CORDY: Having come here and sat here through the last couple of days, I did want to indicate for the record the basis on which the states were finding a resolution of their objection. And I will be very brief, but I do want to, sort of, lay out what is in here and what the basis was for pulling what we had filed.

Certainly this is an extraordinary case; I think everyone agrees on that. On the other hand, in some ways it's also like every other Chapter 11 case in that it has to follow the Bankruptcy Code. The Supreme Court has told us that the uniformity clause sets aside bankruptcy from every other portion of Congress's powers. So it's for those reasons that the states initially analyzed this case under their view of what the Bankruptcy Code says without a special exception for the mega auto bankruptcy problems.

We had a number of problems with the order with respect to clarity in a number of respects, with taxes,

environmental law, other provisions. We had concerns with the substance of the terms in terms of what was being assumed, what was not being assumed. The treatment of these dealer agreements was a major issue for the states, and I'll get to that in just a moment, and then some of the terms of the order in terms of the way it was phrased about successor liability, which was some of the questions I asked yesterday.

We have worked very hard since the beginning of the case with debtors' counsel initially, with Treasury counsel, almost everybody in this room at some point or another, it feels like. And I think a great number of improvements have been made in this agreement over that time period. The first was the assumption of the future product liability claims. Obviously, we -- you know, in a perfect world, we would not be distinguishing between those two categories, but certainly that's better than none of them. And it certainly goes a ways to addressing issues that were raised by the state Attorney Generals. And by the way, I am speaking strictly on behalf of the forty-five-Attorney-General-objection that's there.

With respect to the dealers, you heard yesterday, one set of dealers talked to you about the process of being required to sign on to those. And there was a statement that while 99.6 percent of the people signed it, so it must have been a great deal. I -- as a matter of reality, I think most things that you get 99.6 percent of people signing on are

probably not the greatest deal in the world; they're just better than something really awful. But we're leaving aside that concern.

There was a second concern that the ongoing terms of those agreements that we were being asked to sign had provisions that could be substantively unlawful under state law. And we do not understand that anything that is said with respect to rejection can carry over to the notion of saying that if you assume a contract you can thereby assume some terms that violate state law on a going-forward basis, any more than if someone could make you sign a contract that said I'll take less than the minimum wage and then assume that contract and make you take less than the minimum wage.

So that was a concern on the dealer agreements. And what you just heard read into the record dealt with that by leaving us free to -- and the jurisdictional piece as well, taking the jurisdiction to enforce ongoing agreements between nondebtor parties, post-closing, that could not affect the estate in trying to leave them in this bankruptcy court's jurisdiction.

THE COURT: Let me interrupt you --

MS. CORDY: Sure.

THE COURT: -- for a second, Ms. Cordry. When Mr. Roy was standing up next to Mr. Karotkin, they were talking about the things in the context of resolving Mr. Roy's

objections. That was -- he was standing there and you weren't, but that was part of a dialogue to which you were also a part.

MS. CORDY: Right. Yes, and that is part of the overall package that is here. He spoke to it simply because he had the separate objection on it. But, yes, that is one of the pieces that went into this overall deal here.

So we were very concerned about that treatment of assumed contracts, and that agreement works on that part. We also wanted to be sure that lemon laws were covered under the notion of warranty claims, but they did not specifically refer to state lemon laws, and that coverage is being picked up.

Privacy, we had no idea what they were going to do with privacy. We've read the consumer privacy ombudsman's report. We couldn't talk to them directly, but we did try to give some input. And what I've seen from his report appears to be constructive and useful. And there is some language in the agreement right now that was drafted without seeing his report. It's pretty much consistent with what the report recommends, perhaps not completely consistent. That's, I think, up to Your Honor to decide with the debtor what they'll require for that. We had signed off on the other language before we saw what the consumer privacy ombudsman said.

On taxes, we clarified that the taxes in the first-day order are all being assumed by the purchaser. We clarified a number of other pieces of language; some of them are in with

the environmental piece.

THE COURT: Time out, Ms. Cordry.

MS. CORDY: Yes.

THE COURT: I thought I authorized taxes to be paid under the first-day order.

MS. CORDY: Yes.

THE COURT: Your point being that, to the extent they haven't been paid, they'll be assumed?

MS. CORDY: Well, that the -- the assumption was clarified, which was somewhat unclear in the order, that the provision for assumption of taxes is congruent with the kind of taxes that were covered by the first-day order so that if they are the kind of taxes that were being picked up under the first-day order, they will be the kind of taxes that will be assumed, either that there -- there may be some that have just not been paid yet or a dispute or an audit, an ongoing assessment, any of those kind --

THE COURT: One way or another, they'll get paid --

MS. CORDY: Right.

THE COURT: -- at some point in time?

MS. CORDY: Right, and that so they're going to be assumed. And similarly with the environmental liabilities, we clarified that the New GM intends to be fully liable for environmental liabilities of its transferred facility.

So all of these were matters that were very important

to us.

The other piece we talked about, obviously, was the successor liability. And the basic construct we dealt with was this notion that I raised yesterday of what is -- assuming you can sell free and clear of liability on a claim or on something, what is the scope of that? And we came to an agreement that we would limit it to a bankruptcy claim, a 1015 claim. So the language on that is all in the agreement.

On the TWA issue, I can only say our view remains as to what it is of the proper construction of law. But we also recognize that there's been a little water under the dam and a lot of people have structured deals based on what they believe the law to be, and certainly this case is an example of that.

So for all those reasons, after exhaustive, literally of course, negotiations, we have reached agreement with the debtor, with Treasury on the terms of the order that I have recom -- well, when we say "we", mostly me. I've recommended to the AGs; I have talked to the staff, counsel, contacts, the ones I could gather last night at 10:00. We have sent it around. We have made the request to all the Attorneys General to sign off on this, which they started getting that request at about 9:30 this morning. As of now, I've been told there are forty-five -- the final total, I believe, was forty-five Attorney Generals on the brief. At this point I've been told, I think, that the last count of approvals so far is twenty-

seven. I'm reasonably optimistic that we will continue to get the rest of them signed on over the course of the day or so.

At this point, my view would be I believe that we have an agreement. I don't believe we're going to have dissent that would overturn the agreement, but the last position, I understood, with the debtors and Treasury, was simply that if for any reason we -- if the other fifteen AGs come back and say no, no, over our dead bodies, that we would just say the deal's off, the order goes back to what you were doing before you had the agreement without us, and we'd just stand on our objections. But as of now, we think this agreement is going to hold and we think it is a preferable agreement for the Attorney Generals. We also think it's preferable for all the other parties as well in not having the Attorney Generals seek to overturn this transaction.

THE COURT: All right, thank you.

Mr. Karotkin?

MR. KAROTKIN: Thank you, Your Honor. With respect to Ms. Cordry's colloquy and commentary, I don't know if that was meant to be interpreting what the order said or embellishing what the order said. As far as we are concerned, the agreement we have reached is in the order. And we are not necessarily agreeing that how she described it or how she interpreted it is accurate or inaccurate. It is what it is.

THE COURT: If I approved the motion and entered the

order in the form as modified, the order would say whatever it says?

MR. KAROTKIN: Correct.

THE COURT: Okay.

MR. KAROTKIN: For example, to the extent she was referring to how environmental laws are being treated under the order, they are being treated as they are being treated.

THE COURT: You're saying the order has them in support of sales.

MR. KAROTKIN: Exactly, sir.

THE COURT: And that what she's saying isn't like a presidential signing statement or --

MS. CORDY: I would stipulate to that, Your Honor. If I get to be president, then I'll determine what kind of authority I have at this point. But --

THE COURT: Okay.

MS. CORDY: -- I was simply attempting to deal with the fact that we did deal with issues regarding environmental laws and made some improvements in that area that I think are --

THE COURT: Okay.

MS. CORDY: -- hopeful and satisfactory to my clients. Thank you.

THE COURT: All right. Fair enough.

MR. KAROTKIN: Thank you, sir.

THE COURT: To what extent do we have other things that people want to note on the record?

Mr. Smolinsky, I see a few people coming up. You want to, kind of, help coordinate that, if you can?

MR. SMOLINSKY: Sure, Your Honor. Let me at least try. Your Honor, there are approximately 600 objections related to what I would call contract issues, and they continue to come in. So I thought, to try to head off everyone coming up and making reservation of rights, that I would describe to Your Honor the process that we're undergoing and perhaps that satisfies everyone's concerns, and we could make -- shorten the time here.

Your Honor, in connection with the sale, the purchaser has identified over 700,000 contracts for probable assumption and assignment. We've done everything in our power to manage the process focused on three goals: First, to have the ability to update the reconciliation process as new invoices come in from the pre-petition and post-petition period; two, allow the purchaser to continue its due diligence with respect to the contracts; and, finally, to try to not bog down this Court's docket with multiple objections.

The company, together with AlixPartners, developed a fully trackable system to allow counterparties to see online their contracts which are scheduled for assumption, as well as backup on how cure amounts are derived.

You've heard a little bit about the call center. The call centers set up in Warren, Michigan have been fielding calls, have been proactively reaching out to all parties who have filed objections, and have also handled over 6,600 calls from other parties that are making inquiries as to their supplier agreements.

Your Honor, when we filed our initial reply last Friday, we attached to it a schedule of those parties that filed objections with respect to contract disputes. And on Monday when we filed our supplemental brief, we attached a new Schedule J, which had three schedules in it, creatively named J-1, J-2 and J-3.

I just want to walk Your Honor through these schedules. And let me just update that, Monday night after we had made further progress on the contracts, we filed a supplemental schedule and I think we made some significant progress. And if Your Honor would allow, I'd like to hand up a copy.

THE COURT: Sure.

MR. SMOLINSKY: I have taken the liberty of highlighting for you the few changes that have been made since then. Your Honor, if you turn to Schedule J-1, which is about six pages long, that is a schedule of withdrawn objections. Now, just to make clear for the record, that doesn't mean that each and every counterparty on the schedule has agreed that

there are no reconciliation issues. Either they've been withdrawn because the reconciliation issues have been resolved, or they signed trade agreements which elected into the alternative dispute resolution to the extent a reasonable resolution can't be obtained simply by talking to the call center and working out their differences. And we've had significant progress there.

The only changes I just want to note for the record, on page 1, Cellco Partnership d/b/a Verizon Wireless is going to be moved to J-2; the same for Fiat on page 2. On page 3, Hitachi Cable Indiana, Inc. and Hitachi, Limited will be moved to J-2. Isuzu Motors will be moved to J-2; LMC Phase II to phase (sic) 2. On page 4, Progressive Stamping Company, Inc. moved to J-2. On page 5, Interpublic Group of Companies Inc. to page 2 -- to J-2, as well as Toyota Motor Sales U.S.A. And on the last page, the two Verizon contracts will be moved to J-2.

Other than that, Your Honor, we believe that the remaining objections can be marked off calendar.

We have provided, in consultation with the creditors' committee, to include in the order that if a contract was withdrawn and then there's still a basis for coming back to the Court, that both parties can do so on no less than fifteen days' notice in case there are any further mistakes or omissions. What we'll propose at the end is to file a final

schedule and then to provide Your Honor's chambers with a list by docket number rather than alphabetically so that the matters could be marked off calendar.

Your Honor, Schedule J-2 is a schedule of objections that have been limited to cure disputes, and they are subject to adjournment. And we have included in the order a request for a hearing date around the third week of July for Your Honor to carry these objections while we continue to try to resolve them and get them off the Court's docket.

We have been having open dialogues with each of these parties; we have delivered documents to them. We have worked with them on finalizing a list of contracts and cure amounts. And we've dealt with a number of them in stipulations, which I'll get to in a moment.

So the only changes to Schedule 2 is on page 2. Behr-Hella Thermocontrol has filed a withdrawal, and that could be moved to J-1, along with, on page 3, the Hewlett Packard three objections can be moved to J-1 as well.

Your Honor, Schedule J-3 is a schedule which has gotten shorter and shorter, which deals with objections that we have not been able to resolve, some of which we have been now able to resolve, and I just want to walk through a few of them and then we can give the other parties an opportunity to speak today if they still have ongoing objections. To the extent that they don't, I would suggest that we move them to J-2 and

adjourn them along with the others as a holding date while we continue to reach out for them.

So if you turn to --

THE COURT: I sense the way you did it, Mr. Smolinsky, that these deal with something different than cure amounts?

MR. SMOLINSKY: It's unclear, Your Honor. We've looked at all of these objections and we believe that most of them, even though they may raise adequate protection -- adequate assurance issues, they -- I believe they're all quintessentially cure objections, with the exceptions of the ones that I'm going to walk through.

THE COURT: Okay.

MR. SMOLINSKY: The first one that I'd like to speak about is Hertz Corporation. Your Honor will recall that Mr. Henderson testified that some of the fleet customers are not purchasing vehicles from General Motors because they have issues, internal issues. Hertz is a prime example. They have securitizations. And if their contracts are not assumed by a certain date, then they have to provide additional collateral into their securitizations, which is an anti-competitive issue for them.

So we have entered into discussions with Hertz. We have agreed to assume their contract now with the understanding that they have no objection to the assignment of that contract

to New GM upon the sale closing. They acknowledge in the stipulation they're not aware of any cure amounts that are outstanding, and we do not believe that there are any either. We've discussed this with U.S. Treasury, we've discussed this with the committee, and they have no objection.

THE COURT: Okay. Continue, please.

MR. SMOLINSKY: Okay. Your Honor, the next contract, Kolbenschmidt Pierburg AG, that could now be moved to J-2. LBA Realty Fund -- I think you heard from counsel to LBA this morning.

THE COURT: Mr. LeHane?

MR. SMOLINSKY: That's correct, Your Honor. And, again, I could put it on the record, but I think you heard the agreement that we intend to assume at closing, to the extent that we finish our amendment discussions, or modification discussions, and the indemnities will follow through with respect to any claims that arise or become known after the closing.

Pratt & Miller Engineering & Fabrication can be moved to J-1. They withdrew their objection.

Royal Bank of Scotland, these contracts -- there are four contracts that relate to the Lordstown plant. Subject to closing, GM has agreed to assume those contracts and we agreed to work cooperatively with RBS to make sure that we deal with any transfer documents that are necessary and any third-party

consents.

Last one, Trafasee (ph.) Marketplaces Inc., that could be moved to J-2 as well.

So, Your Honor, we did our best in these schedules to reflect the desire and intention of the parties. We're also working with the committee to add language to the order to make it clear as to what the cure resolution process is and to preserve everyone's rights while we work it out.

We're not currently intending to bar any reasonable late objections. We understand the process was quick. We're -- ultimately our goal is to try to reconcile all the claims to the satisfaction of all parties. Of course, if there's an unreasonable delay, then we'll bring it to Your Honor.

We intend to send notice; we propose in our order within two business days of the entry of the order. We would send out notice to each of the parties in here notifying them of the adjourn date for their objection or, if their objection has been withdrawn, notifying them as to why it was withdrawn and giving them the opportunity to come back and explain if there was an error.

Turning to stipulations -- and many of these stipulations, I don't believe, require the signature of Your Honor; we're simply to going to file them -- we have received the stipulation from approximately 115 suppliers who have

agreed to withdraw their objection and to appear on Schedule J-1 and defer into the alternative dispute resolution process so that we don't have to deal with them further in the bankruptcy process.

We have some additional stipulations, one with International Automotive Components Group, one with Dell and one with Timken that likewise withdraw their objection, but they have not agreed to the ADR process. They have agreed to work with us to try to reconcile, and if they can't reconcile then we would use the procedure that I explained before that on fifteen days' notice we can come back to Your Honor and litigate the objection.

Your Honor, like Hertz, Avis is another fleet customer. They're having a similar issue, but they don't have the same timing issues that Hertz has. So they've entered into a stipulation, again, acknowledging that they're not aware of any cure amounts under the agreements. But we have agreed to assume and assign those contracts upon the closing. So, unlike Hertz, which happens immediately, the Avis will happen upon the sale. Again, we shared that stipulation with the committee and the Treasury and they have no problem.

Cigna, Your Honor, I think, we talked about earlier. We continue to work with Cigna to try to get their comfort level up on the assignment of those employee benefit-related contracts. And, again, we wouldn't expect to be back before

Your Honor unless there's a problem in assigning those contracts.

Equipment lessors. I just want to put on the record that Manufacturers and Traders Company, as well as Wells Fargo Bank, have equipment leases with the company. They've filed objections. There are additional indentured trustees related to those that have objections. And we've agreed to put on the record that all those contracts are still in the undetermined bucket, meaning that they haven't been noticed out for assumption and assignment. Everyone reserves their rights. We reserve the right to assume and assign those contracts. They reserve the right to object. And we're going to work with them over the next week to enter into an adequate protection stipulation with respect to the use of that equipment as we go through the transition of closing the sale. So we'll be back before Your Honor on that.

Your Honor, I think that's the end. Of course, people may want to make statements, and I'm happy to come back and explain any clarifications that are necessary.

THE COURT: Okay.

People can now come on up, and those who I sent back can now come up again.

Go ahead.

MR. BACON: Good afternoon, Your Honor. Doug Bacon with Latham & Watkins for GE Capital. We spoke at the end of

yesterday's hearing and this morning and tendered a proposed stipulation and order that has been underway for about the last five days, about twenty hours a day. And Mr. Weiss, who had to depart but left his colleague here and his special counsel to the debtor, we have been successful in getting the creditors' committee's support, or lack of objection.

Mr. Mayer -- this is the stipulation that Mr. Mayer confirmed that indeed they're fine with and Treasury's counsel is not opposed to. And we -- this bears the signature of the debtors' special counsel and me as counsel for GE. Mr. Weiss explained it to some degree earlier. We can certainly go into more detail. There's a great deal of money involved and hundreds of millions of dollars' worth of equipment, which is why both sides have put a lot of energy into this.

We tendered this earlier today, Your Honor. And since then, the only change that has been made is to change the name of the purchaser. And I'm hoping Your Honor, under the circumstances, will just indulge us in interlineation.

THE COURT: I would if it weren't for the fact that it has to be electronically entered. I guess it can be scanned. Otherwise, if I could ask somebody to -- do you have a floppy disk with the underlying document?

MR. BACON: I can arrange to have that down here this afternoon, Your Honor.

THE COURT: Can you have it e-mailed to my chambers?

MR. BACON: Easily, Your Honor.

THE COURT: Okay. My law clerk can help you as to how to do that. And I'm glad -- it's just as well that a new one's coming, Mr. Bacon, because I think you did hand me up something, or did you?

UNIDENTIFIED SPEAKER: Yes.

MR. BACON: We did.

THE COURT: I don't know if you saw how much paper was on this thing just --

MR. BACON: I understand, Judge.

THE COURT: So e-mail it when it's finalized to the Gerber chambers. Charlie will give you the exact e-mail address. And on the transmission for the e-mail, note that this is the one that Gerber said that he would enter today. And we'll take care of it today.

MR. BACON: Thank you, Judge. Thank you very much. May I approach Charlie?

THE COURT: Yes.

MR. BACON: Thank you.

THE COURT: Who's on deck?

MR. DUETCHE: I think I am, Your Honor.

THE COURT: Sure. Come on up, please.

MR. DEUTSCHE: Good afternoon, Your Honor. Benjamin Deutsche, Schnader Harrison Segal & Lewis on behalf of New United Motor Manufacturing Corp., commonly referred to as

NUMMI. NUMMI is a joint venture between Toyota and GM. We had -- we received a notice to assume and assign. Based on the notice and based on the Web site, we simply can't tell what contracts GM is talking about. We're trying to work it out. I believe -- I thought -- I spoke to Mr. Smolinsky earlier. I thought we were going to have a stipulation, basically push this over, give the parties a chance to figure out which contracts they're talking about and then mark this down for something later in July.

THE COURT: I think Mr. Smolinsky's being pulled in more than one direction at the same time.

MR. SMOLINSKY: Your Honor, I believe we've been having communications with Foley & Lardner, who are representing Toyota in this matter. And we've agreed that we're going to work together to resolve all these contracts.

MR. DEUTSCHE: Yeah -- I represent NUMMI and, obviously, my clients instructed us to get resolution. I don't represent Toyota --

THE COURT: Who does Foley represent?

MR. DEUTSCHE: I believe the Toyota part of NUMMI.

THE COURT: And who are the agreements with?

MR. DEUTSCHE: I believe with NUMMI. But, yeah, I'm sure they're contracts --

MR. SMOLINSKY: We'd be happy to involve them in the discussions.

THE COURT: Yeah, why don't you just turn it into a three-way conversation so nobody's toes get stepped on.

MR. SMOLINSKY: Certainly makes sense, Your Honor.

THE COURT: Okay.

MR. DEUTSCHE: Thank you, Your Honor.

THE COURT: All right.

MR. QUIGLEY: Good afternoon, Your Honor. Sean Quigley from Lowenstein Sandler on behalf of Group 1 Automotive Inc., a company owning approximately seven dealerships in Texas. Your Honor, we filed a limited cure objection. Subsequently, however, we recently learned from the debtors that the Group 1 dealers were sent either participation agreements or wind-down agreements. Certainly, we don't object to the sale, Your Honor, but --

THE COURT: Some have one type and some got the other?

MR. QUIGLEY: Correct, Judge. Certainly, we don't object to the sale, but to the extent there are any cure amounts or other payments due under these agreements, we simply want to reserve our rights.

THE COURT: Okay.

Would it help, folks, if I said that, unless there's some reason why I shouldn't, Mr. Smolinsky or Mr. Schwartz, that everybody who wants a reservation of rights on this stuff can have it? Or is it more complicated than that?

Got an affirmative nod from the government.

Mr. Smolinsky, that's okay with you too?

MR. SMOLINSKY: We have no problem, Your Honor.

THE COURT: Okay, good. So anybody who wants to just take a reservation of rights doesn't have to, unless they want to. You certainly have one, Mr. Quigley.

MR. QUIGLEY: Thank you, Judge.

THE COURT: Mr. Sullivan?

MR. SULLIVAN: Thank you, Your Honor. James Sullivan of Arent Fox, counsel for the Timken Company and Superior Industries International Inc. Two things, Your Honor. First, I had some communications with counsel for the debtor. We were able to get the debtor to agree to some language added to the sale order, and that's the reason why I didn't come up and actually argue anything. Assuming that the language of the sale order remains as has been represented to us, we would not be pursuing any objection. I just wanted to reserve our right to perhaps send -- or comment on the form of order that is finally submitted to Your Honor.

THE COURT: That's a big problem, Mr. Sullivan. You better get your comments in on the form of the order before the proposed form of order is sent to me, because I can't have hundreds of parties waiting for somebody to comment on the form of the order.

MR. SULLIVAN: Your Honor, as far as I know, I think

the changes have already been included, although I've not been able -- counsel for the debtor has not been willing to circulate the current form of order to all the parties.

THE COURT: I would agree upon the language, Mr. Sullivan, but I think I made my position on that clear.

MR. SULLIVAN: Okay, I'll discuss it with counsel for GM.

THE COURT: Okay.

MR. SULLIVAN: The second thing, I just wanted to correct something. I think Mr. Smolinsky made a comment on the record about the Timken Company, about the ADR procedure. I don't believe that they've opted out of that procedure. I believe that they are in fact -- agreed to that procedure. So I don't think that needs any further comment.

MR. SMOLINSKY: Your Honor, I think I said that the 3 parties that have not agreed to the ADR are subject to separate stipulations from the 120 that did.

THE COURT: Okay. All right. Thank you.

Next.

MR. BEELER: Good afternoon. Martin Beeler of Covington & Burling, on behalf of Union Pacific.

THE COURT: Okay, Mr. Beeler.

MR. BEELER: Union Pacific provides rail transportation services to the debtors under various executory contracts. We filed a limited objection to the sale, noncure

or adequate assurance-related limited objection, for the avoidance of doubt, simply seeking language in the sale order clarifying the setoff and recoupment rights of nondebtor executory contract parties for nonassumed and assigned contracts, similar to language that was included in the Chrysler order for the same purpose.

And our understanding of the MPA is that receivables related to those nonassigned contracts would stay with the debtors and, consequently, setoff and recoupment rights would be unimpaired. In discussion with debtors' counsel and in reviewing the MPA provisions with debtors' counsel, we are confirmed in that understanding and prepared to withdraw the objection.

THE COURT: Okay. Pause, please, Mr. Beeler.

Mr. Smolinsky?

MR. SMOLINSKY: Your Honor, I just wanted to be clear on this. I reviewed the language in the Chrysler order. Frankly, I really didn't understand it but -- on this point, but what the MPA says, and I'm only paraphrasing, is that receivables related to excluded assets, assets which aren't going to NewCo, are excluded assets themselves. And so I asked counsel to simply rely on that language. I didn't want to paraphrase it in the order or change the subject matter of the contract by adding language to the order.

But I think that he has reviewed the contract and is

now comfortable that the contract protects his client's rights.

THE COURT: All right.

Anything further, Mr. Beeler?

MR. BEELER: No, that's fair enough.

THE COURT: Okay, good.

MR. BEELER: Thank you.

THE COURT: Mr. Brozman?

MR. BROZMAN: Thank you, Your Honor, and good afternoon. Andrew Brozman, Clifford Chance, for the Royal Bank of Scotland, ABN AMRO and RBS Citizens. Your Honor, the agreement that I think we've arrived at with the debtors involves a structured lease transaction for the supply of energy to the Lordstown, Ohio plant. The record should note the exact contracts that the debtors have agreed to assume and assign, since the Web sites did not correctly list them and I'd like to be clear on that. There is a lease dated July 17, 2003 between ICX Corporation, which is an affiliate of RBS Citizens, as assignee of Kensington Capital Corp. and General Motors. There is a tripartite agreement of the same date among Lordstown Energy LLC, ICX, again as assignee of Kensington, and General Motors, together with the two sets of schedules pertinent thereto.

We have agreed to the assumption and the assignment. There is no dispute, to my knowledge, raised by the debtor with respect to cure amounts, if any. And the debtors, since this

is a structured lease transaction, have agreed with us to grant us further assurances in the filing of safe harbor documents in connection with the transfer of the assets.

And I think that accurately states our agreement, and I appreciate Your Honor's time.

THE COURT: Okay.

Mr. Smolinsky, do you need to be heard on what Mr. Brozman just said?

MR. SMOLINSKY: I agree, Your Honor.

THE COURT: Okay. Fair enough.

Who's next? Ms. Taylor?

MS. TAYLOR: Yes. Judge, I just wanted to report back -- Susan Taylor from the Attorney General's Office -- that we accept Your Honor's offer for a reservation of rights. And I want it to be clear that New York's objection had two parts: the part we discussed this morning, and it appears that acceptable language may be being inserted in the final order. But I don't currently have authority from my client to withdraw our objection to that portion.

And in addition, in our papers we submitted we have a successor liability -- part of our argument turns on successor liability. That part we didn't argue because it has been very competently argued. And I just wanted to be clear that we are not withdrawing the objection as to that portion either and it is now before the Court.

THE COURT: Okay.

MS. TAYLOR: Thank you very much.

THE COURT: Thank you.

Did I take care of everybody?

Mr. Bromley?

MR. BROMLEY: Your Honor, James Bromley of Cleary Gottlieb on behalf of the UAW. This is not with respect to an objection by any stretch; this is just a cleanup from earlier. I had not realized that when we were submitting our designations with respect to depositions that we also needed to submit marked copies separately to the Court. So I just have them here. We submitted them online before noon, but we have the marked ones here, so I'd like to just hand them up.

THE COURT: That's not a problem. You can give them to Charlie.

MR. BROMLEY: Thank you very much.

THE COURT: I appreciate that.

Okay, to what extent do we have anything else, folks? All right, I think -- I thought we were done but I see some folks have now come back into the courtroom.

MR. SMOLINSKY: Your Honor, just -- I'm not sure I said it, so I wanted to make clear on the record. There have been a number of objections that have been filed since we filed our last reply. We would propose to just carry those along with all the others until the holding date, July --

THE COURT: These are executory contract objections?

MR. SMOLINSKY: Cure objections, sorry.

THE COURT: Cure? Okay.

MR. SMOLINSKY: Thank you.

MR. KANZA: Good afternoon, Your Honor. Ken Kansa of Sidley Austin on behalf of the TPC lender group. We have agreed language for the order with the debtors and the purchaser that resolves the TPC lenders' objections. And so on reliance on that language, we withdraw the objection.

THE COURT: Okay.

Anybody else?

Going once. All right, I see no response.

MR. SMOLINSKY: Your Honor, we've been working on a term sheet for a resolution of the Michigan workers' compensation issues. I think everyone is agreed in principle. We just revised the term sheet over at Kinko's. And we would just need everyone to sign off, but we think that everyone is in agreement on the terms.

MS. PRZEKOP-SHAW: Good afternoon, Your Honor. My name is Susan Przekop-Shaw. I'm an assistant attorney general for the state of Michigan.

THE COURT: Forgive me again. You're last name, please?

MS. PRZEKOP-SHAW: Przekop-Shaw.

THE COURT: Okay.

MS. PRZEKOP-SHAW: It's spelled P as in Peter, R-Z-E-K-O-P, hyphen, S-H-A-W. On behalf of -- I'm here on behalf of the Attorney General of Michigan, Mike Cox, who represents the Michigan Workers' Compensation Agency and the Funds Administration. And we were compelled to file an objection in this matter to resolve the issue of New -- NGMCO's ongoing workers' compensation obligations in Michigan. And as promised by NGMCO's counsel yesterday, negotiations were held between the State of Michigan and, in fact, they were pursued by the Treasury in regards to resolving this workers' compensation issue. And these discussions culminated in the terms that were necessary for the Michigan Workers' Compensation Agency director to grant NGMCO self-insured status as an employer in Michigan when it begins its operations.

What's left is that there's -- as Mr. Smolinsky indicated, that there's ongoing steps being taken to incorporate those terms into a binding agreement that the appropriate parties, after they are identified, can sign on behalf of NGMCO.

The representation was made today that such an agreement will be finalized and signed at the end of today. And on that basis, we feel that that addresses a major concern for Michigan, who really wants to have a seamless transition for GMCO to come into there.

There were several other legal issues that were

presented based upon the proposed order that was filed. Paragraph 52 on the new one that Ms. Cordry worked with on behalf -- with counsel to culminate in has a paragraph that discusses NGMCO's assumption of these workers' compensation obligations. And we have been advised by Old GM's counsel that they will appropriately amend the master sale and purchase order to reflect that provision.

And we also observed that proposed order paragraph 41, which was dealing with preventing a state to essentially implement its statutory and regulatory system, that this provision will not apply if there's a stipulation on the record that it will not apply to the circumstances. And here, the Michigan Workers' Compensation Agency --

THE COURT: Time out. What do you mean by that, that if there's an individual stip it'll trump the moot stip?

MS. PRZEKOP-SHAW: From my understanding of paragraph 41, as provided, that effective upon the closing and except as may be otherwise provided by stipulation filed with or announced to the Court with respect to a specific matter, that that provision would -- and the following terms would not apply. And in regards to that provision, Michigan Workers' Compensation Agency and the Funds Administration, in order to operate its regulatory scheme and enforce the self-insured process in Michigan, will need to have that stipulation made on the record, and I understand counsel are prepared to do so

today.

MR. SMOLINSKY: Your Honor, I think the agreement, with respect to paragraph 41, and just to make sure that we're all clear, is that the stipulation that we're entering into allows the Workers' Compensation Board to do their business, to actually take the permit, the application that's proposed to them, to make sure they have all the documents available and to grant their license and then to regulate New GM going forward. And so the agreement that we reached is that that paragraph will not interfere with the Workers' Compensation Board exercising their regulatory duties.

Is that accurate?

MS. PRZEKOP-SHAW: In regard -- yes.

In that regards, to its ongoing regulatory obligations to meet the Workers' Compensation Agency's -- the acts requirements and the rules that apply to that.

THE COURT: Mr. Jones, you heading up?

MR. JONES: Yep. Yes, Your Honor. Thank you, Your Honor. I just need to note, the Treasury fully agrees to the agreement as -- with the agreement as described. I just do need to note for everyone that the signatory we need for the actual stipulation may not be available today, although we're trying to get that person. Failing that, we expect the person to sign tomorrow.

THE COURT: Okay.

MR. JONES: Thank you.

THE COURT: All right -- I'm sorry, go ahead.

MS. PRZEKOP-SHAW: No, thank you.

THE COURT: Thank you.

Mr. Schmidt?

MR. SCHMIDT: Yes, Your Honor. And I apologize, one point harking back to the TPC matter that you heard a few minutes ago. I just received a note from one of my colleagues that we hadn't seen that language in the order yet, and we'd just like to take a few minutes to look at it.

THE COURT: Okay. Can somebody get the creditors' committee the language they need to satisfy themselves?

MR. SCHMIDT: Thank you, Your Honor.

THE COURT: Sure.

All right, what else do we have, folks?

Mr. Karotkin?

MR. KAROTKIN: Your Honor, I think, as to the sale motion, there is nothing else, unless I'm mistaken.

THE COURT: I have one or two things. I'm not going to prejudge the motion. But I gather you have been, and may even now still be, doing a lot of work on the order that you would want me to enter, if I approved it, which, among other things, requires you to implement a lot of understandings that you have been working on even up to this minute. Am I correct in assuming that there is going to be a revised proposed order

that's going to be sent to my chambers sometime when you've been able to embody all of your deals, Mr. --

MR. KAROTKIN: Yes, sir.

THE COURT: Do you have some sense as to how long it's going to take you to -- believe me, you don't have to worry about it not getting here in time if it's going to take more than twenty-four hours, but -- or even more, but what's your sense as to how long it's going to take you to embody all of your stuff so that something comes to me?

MR. KAROTKIN: I think, actually, we've made a lot of progress. It's our intention to go back tonight, revise it, circulate it to the parties this evening and hopefully get their comments tomorrow morning, and hopefully get it to you either sometime tomorrow night or Saturday, if that's fine with you.

THE COURT: Yeah, that'll be fine.

Now, to what extent do parties have transcripts -- paper transcripts of the last three days?

MR. KAROTKIN: Excuse me, sir.

(Pause)

MR. KAROTKIN: We only have June 30 in the afternoon. There was the problem in the morning with the microphones. We don't have the other two days, but we're arranging to get those as soon as possible.

THE COURT: Those have been ordered?

MR. KAROTKIN: Yes.

Have they been ordered?

Yes.

THE COURT: On expedited --

MR. KAROTKIN: Yes, sir.

THE COURT: -- request? Okay. As soon as you or any of your colleagues -- by that I mean the Treasury, creditors' committee, other parties-in-interest, anybody gets them, I would like to have them e-mailed to the chambers e-mail address.

MR. KAROTKIN: Yes, sir.

THE COURT: All right. I think that takes care of the housekeeping matters I had, Mr. Karotkin. Do you have other stuff?

MR. KAROTKIN: There are two other items on the calendar for this afternoon.

THE COURT: Go ahead.

MR. KAROTKIN: I believe the first item, Your Honor, relates to a motion by the debtors seeking authority and approval of certain settlement with four different unions. This was noticed on shortened time pursuant to an order of your court.

This motion, Your Honor, involves a settlement with four of what, over the last few days, you've come to know as the splinter unions. They --

THE COURT: These are both non-UAW and --

MR. KAROTKIN: Non-I --

THE COURT: -- nonobjecting unions, or at least for not presently objecting unions, not the IUE steelworkers, and I forgot the third.

MR. KAROTKIN: Correct. That's correct. They encompass about 1,050 retirees and 150 active employees. There are four different settlement agreements annexed to the motion, each of which is substantially identical. And they basically provide, Your Honor, that the unions, as the 1114 representative of the covered groups, as defined in the settlement agreements, have agreed to the retiree -- the modified retiree benefits that, again, you heard about over the last few days, of the same nature that were offered to salaried employees and the same that were offered to the objecting parties as well.

But these four unions have agreed to that. Two of the unions have -- that have the active employees have also -- the debtor has also agreed to modify collective bargaining agreements with those two unions. And all of this is conditioned on approval and consummation of the sale.

And, again, like the UAW, in connection with each of these agreements, they've agreed to waive their claims for the retiree health and life benefits as against the debtor company.

THE COURT: Okay.

Any desire from the creditors' committee to be heard on this?

All right.

MR. KAROTKIN: Now, if I --

THE COURT: Normally -- I think the deadline for objections has passed, but considering the short notice, is there anybody who wants to be heard in the way of objection to that settlement?

Record will reflect no response.

MR. KAROTKIN: If I could interrupt for one second?

THE COURT: Yes.

MR. KAROTKIN: I'm sorry. If Your Honor's inclined to grant the relief in the motion, I would suggest that -- we don't have a proposed form of order with us. It was -- the form that we had was incorrect in a few respects, and we haven't had time to change it. My suggestion is if we could send it down to chambers over the next day or so.

THE COURT: I'm going to approve the motion, and your mechanics are okay with me, Mr. Karotkin. When you do that, I want your -- either your letter transmittal or your e-mail message accompanying any attached proposed order to be able to give me a representation of counsel for all of the objected unions and the creditors' committee and the U.S. government are satisfied with the form of the order as consistent with reflecting the deal as everybody understands it to be.

MR. KAROTKIN: Very well, sir.

THE COURT: Okay. Thank you.

What else do we have?

MR. KAROTKIN: The other item on the calendar is the approval of the wind-down facility. Now, I think that, based on the current state of play and all the negotiations that, again, you heard about earlier today with respect to that facility, I think the current state we're in right now is that the document is still in somewhat of a state of flux, although there is an agreement in principle as to the terms and provisions of the wind-down facility. Of course, the amount of the wind-down facility, as Your Honor heard this morning, would be 1.175 billion dollars.

I think all of the substantive terms have been agreed to. The document has not yet been finalized. We do have a proposed order that we will be in a position to submit later today or early tomorrow, which, as I understand it -- the terms of which have been substantially agreed to by both the debtors, the U.S. Treasury, the creditors' committee and the Paul Weiss firm representing the ad hoc committee of bondholders.

I don't -- there was some suggestion, Your Honor, that if we could take a short recess, perhaps we might even have a form of document down here. But --

THE COURT: That's not necessarily a problem, but before we get that far, I want to give Treasury and especially

the creditors' committee a chance to be heard if either of them wants to be.

Ms. Caton?

MS. CATON: Good afternoon, Your Honor. Amy Caton from Kramer Levin Naftalis & Frankel, on behalf of the creditors' committee. The wind-down credit facility has been a -- the product of a lot of negotiation by the creditors' committee. This is a very important document to us because it's going to govern how these estates run after the sale closes.

I believe we are satisfied largely with the resolution on the credit facility and the loan that Treasury is making. And there are a few nits that we still had to the credit agreement, but I think those will be worked out.

The one substantive comment that we have to the form of order that we're still trying to work out is corporate governance and how Old GM will be governed after the sale closes and the board leaves. I believe we have a proposal right now on the table, which is that two -- there will be a five-member board, two members of which will be proposed by the creditors' committee, nominated by the creditors' committee, and basically go through the same board approval.

THE COURT: Time out, Ms. Caton.

MS. CATON: Yes.

THE COURT: Is this an evolution since what I heard

this morning on that? I thought I heard of a three-person board, and now it sounds like it's up to five.

MS. CATON: Yes. Yes, Your Honor, it is.

MR. ECKSTEIN: There has been developments --

THE COURT: Evolution.

MR. ECKSTEIN: There has been evolution. A lot of parties have been put into this issue, and we have been trying to deal with changes as they've been evolving.

THE COURT: I understand. Okay.

MS. CATON: I apologize. I forgot about the representations that were made this morning.

THE COURT: No, that's fine. I am really trying to pay attention to what people tell me.

MS. CATON: That's good. That proves -- that definitely shows you're paying attention.

THE COURT: Is this like the guy who gets credit for having given another litigant an idea, or --

MS. CATON: Your Honor, I believe that the proposal on the table is acceptable to the creditors' committee and Weil, but we still need -- and the debtors, but we still need Treasury's acceptance of that, and that's what we're waiting on.

With that, I believe that we'll be prepared to have the order entered. And if Your Honor has any questions about the credit facility, we or Weil or anyone is happy to answer

them.

THE COURT: Well, I understand it in general terms. I'm sure I don't have the detailed understanding that the parties do, but certainly the concepts are fine with me.

Okay, anything else from your perspective, Ms. Caton?

MS. CATON: No, Your Honor.

THE COURT: Okay, Mr. Schwartz or Mr. Jones, either of you want to comment?

MR. SCHWARTZ: Not particularly. I think that was an accurate description in that we were comfortable with what was announced this morning. There have since been some proposals that we're working through, as well as the form of the order.

THE COURT: All right.

Mr. Karotkin, I'm not going anywhere this afternoon, but I'm not sure, from what I heard, whether you're going to have an order that's ready for me anytime that quickly.

MR. KAROTKIN: You read my mind. It's kind of like what you say. I suggest, Your Honor, since everyone pretty much has agreed on the substance, that rather than sticking around, we'd just submit an order to Your Honor after we've circulated it.

THE COURT: That's agreeable. And the drill is going to be the same. When I get it sent to me, I need a representation from whoever's sending it to me that it's been run past the people who are the principal ones who need to be

heard on it; I think that's Treasury and creditors' committee and the estate and Canada.

UNIDENTIFIED SPEAKER: Yes, Your Honor.

THE COURT: Right.

Okay. Mr. Schein, are your folks putting money in this deal too?

MR. SCHEIN: Your Honor, Canada is not actually funding this. But since it does change the rights of the existing DIP facility, it's conditioned upon certain provisions allowing the closing to happen. That's why we are concerned.

THE COURT: Sure.

Okay. Mr. Rosenberg?

MR. ROSENBERG: Good afternoon, Your Honor. Andrew Rosenberg, Paul, Weiss, Rifkind, Wharton & Garrison, on behalf of the ad hoc bondholders. I did -- actually, I think I was the second person or so to speak the first day. I didn't intend to be just the last person to speak on the last day, but I guess that's the way -- I just wanted to mention that when Your Honor was mentioning who needed to be served or passed by in terms of the documents, the Paul Weiss firm obviously has also been involved in looking at the sale order and the DIP order and the credit agreement. We just want to make sure also that we're staying in the loop and are going to see all drafts of those documents.

THE COURT: By all means.

Okay, Mr. Karotkin, I'm going to look to you to focus more than I focused on who needs to look at the paper you send me.

MR. KAROTKIN: Yes, sir.

THE COURT: And if you can give me a representation both that you've gotten the okays and that you've consulted everybody who has expressed the interest or need to be consulted, that'll be good enough for me.

MR. SMOLINSKY: Thank you, sir.

THE COURT: Okay.

And to what extent do we have anything else?

All right, I think we're done.

And you can get me your proposed orders by e-mail. I'm going to ask Mr. Pollack, Charlie, to hang around in case anybody needs details of e-mail addresses and things of that sort.

We're adjourned. Thank you.

MR. SMOLINSKY: Thank you, sir.

(Proceedings concluded at 3:57 PM)

I N D E X

R U L I N G S

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

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

Lisa Bar-Leib

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