

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026

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In the Matter of:

MOTORS LIQUIDATION COMPANY, ET AL.,

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

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

November 5, 2009

9:50 AM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

1 HEARING re Motion for order approving assumption of agreement
2 for engine Maintenance services for Gulfstream 350 aircraft.

3

4 HEARING re Motion for entry of order authorizing rejection of
5 agreement for engine maintenance services for Gulfstream V
6 aircraft.

7

8 HEARING re Motion of the Bank of New York Trust Company, N.A.,
9 as resigning indenture trustee, for entry of an order
10 appointing Manufacturers and Traders Trust Company as successor
11 indenture trustee

12

13 HEARING re Motion for relief from stay filed by Walter J.
14 Lawrence.

15

16 HEARING re Motion for relief from stay pursuant to 11 USC
17 Section 362 re: Bonnie J. Reynolds and Garland Reynolds, Jr.

18

19 HEARING on Limited contract objections.

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21 HEARING re Debtors' eighth omnibus motion pursuant to 11 USC
22 Section 365 to reject certain executory contracts and unexpired
23 leases of nonresidential real property.

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25 Transcribed by: Penina Wolicki

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MR. LEDERMAN: Good morning, Your Honor. Evan Lederman, Weil, Gotshal & Manges for the debtors.

THE COURT: Good morning, Mr. Lederman.

MR. LEDERMAN: Good morning, Your Honor. If I may approach, I'd like to hand Your Honor a chart that outlines the status of our cure objection resolutions and also an agenda for this matter, so that Your Honor, to the extent you don't have one in front of you, can follow along.

THE COURT: Sure. I had an agenda, and since I misplaced it, I'd appreciate that, Mr. Lederman. Thank you. Okay.

MR. LEDERMAN: Your Honor, if it pleases the Court, I'm going to go ahead and deal with the first matter which is not a contested matter, but rather we're just going to provide you with a brief status update on our progress resolving outstanding cure objections. After that I propose to run through quickly the uncontested matters and those matters where we have agreed to stipulations with the other parties. Following that, Mr. Karotkin will handle the contested matter regarding the lifting of the automatic stay.

THE COURT: Sure. Before you begin, Mr. Karotkin, I'll have a couple of comments to help focus the discussion. But why don't you proceed for now, Mr. Lederman.

MR. LEDERMAN: Thank you, Your Honor. Again, the

1 first matter on the agenda regards our cure objection
2 resolution process. And we appeared before Your Honor before
3 and updated you on our progress. As Your Honor is aware, cure
4 objections filed prior to June 30th numbered well over 600.
5 Since that time the debtors have worked very hard and
6 expeditiously with the objectors to try and resolve those on a
7 consensual basis.

8 We're happy to report at this time we are down to
9 thirteen remaining cure objections before the Court. Of those
10 thirteen, ten we have an agreement in principle. We're just
11 waiting on final documentation. And three others, we're still
12 in the process of trying to reach a consensual resolution, and
13 we're hopeful that we'll be able to do so. We propose, at this
14 point, adjourning those objections that are still on file with
15 the Court to a future hearing date while we try and finish up
16 our resolution of these objections.

17 THE COURT: So without you making any promises, Mr.
18 Lederman, I can be reasonably confident that we're down to
19 about three?

20 MR. LEDERMAN: That's correct, Your Honor. With
21 respect to the ten where we have an agreement in hand, some of
22 those parties have been a bit unresponsive in getting us the
23 final papers and also officially filing a notice of withdrawal
24 to officially remove their objections from the docket. If we
25 cannot get in touch with those parties and get those papers, we

1 may file in the coming weeks, a proposed order, on notice, of
2 course --

3 THE COURT: Of course, they want to get money from
4 you, right, on these cure objections?

5 MR. LEDERMAN: They've already -- the cure amount has
6 already been paid. So we're literally just waiting for the
7 final documentation and --

8 THE COURT: Oh, just to paper the amount that was paid
9 is the proper amount?

10 MR. LEDERMAN: Exactly, exactly. And then have them
11 officially withdraw their objection to clear the docket. If we
12 can't get those agreements in hand, we'll file a proposed order
13 on notice to all those parties asking Your Honor to overrule
14 the remaining objections so that we can have a clear docket and
15 a written order resolving those objections.

16 THE COURT: Okay.

17 MR. LEDERMAN: Thank you, Your Honor.

18 MR. LEWIS: Your Honor, may I be heard?

19 THE COURT: Sure.

20 MR. LEWIS: Good morning, Your Honor. Kenneth Lewis,
21 Teitelbaum & Baskin. We're attorneys for Johann Hay GmbH & Co.
22 KG, which is one of the cure amount objectors. I guess we're
23 one of the thirteen that is remaining. The reason I'm here --

24 THE COURT: One of the thirteen but not one of the
25 last three?

1 MR. LEWIS: I believe that --

2 MR. LEDERMAN: Not one of the last three.

3 MR. LEWIS: -- not one of the last three. Okay. The
4 reason I'm here this morning, Your Honor, although the parties,
5 I think, have agreed all along with respect to the cure
6 amounts, with respect to, I believe, it's seven agreements that
7 have actually been assumed, the problem that we ran into was
8 that the debtor was seeking to effectuate a setoff or an offset
9 of, I believe, approximately 254,000, either dollars or euros,
10 with respect to an agreement that was not actually being
11 assumed. It was an agreement that was already expired.

12 Putting aside whether or not they can even do that, my
13 client had provided documentation to the debtor a while back
14 with respect to that offset, if you will, in essence proving up
15 our claim, and in essence demonstrating to the debtor that, in
16 fact, they owe us money as opposed to my client owing the
17 debtor money. We have had numerous discussions and
18 communications with Mr. Lederman as well as Mr. Adams. We
19 believe that we were very close to getting the offset removed
20 and so, in essence, we could get paid, which is really the
21 bottom line here.

22 We thought in mid-October it was going to get
23 resolved. It still wasn't. And in fact, as of last night it
24 still wasn't resolved, and that negative number was still
25 appearing on the web page. I'm pleased to report that on my

1 way in this morning, I received an e-mail from Mr. Adams
2 indicating that his client has now finally agreed to remove
3 that offset. But again, I'm here because it's still not done.
4 I just want to keep this on a short leash, because obviously,
5 until it's done, the client doesn't get paid.

6 THE COURT: So you're asking me to do just what for
7 today?

8 MR. LEWIS: I'm not asking for any relief, I just --
9 since it's a status report as to where we are, I just wanted to
10 make sure that it does get kept on a short leash. This way, if
11 in fact, in thirty days from now it's still not done and we
12 still haven't been paid there will be a hearing because
13 we're --

14 THE COURT: Well, continue your dialogue with Mr.
15 Lederman. If you wish, you and Mr. Lederman can go across the
16 hall with Ms. Blum, my courtroom deputy, to get another date as
17 a holding date at which you can either report to me or we can
18 figure out what we should do next, if you guys agree to
19 disagree.

20 MR. LEWIS: That would be great. And as I said, I'm
21 confident that it will finally be resolved, but we --

22 THE COURT: Well, nothing would please me more if you
23 can resolve it. And if you can't resolve it, we'll add it to
24 the pile of the things that I'll do.

25 MR. LEWIS: Thank you very much, Your Honor.

1 THE COURT: Okay.

2 MR. LEDERMAN: The debtors will certainly continue to
3 work with Mr. Lewis to resolve his objection. And as he
4 reported, we think we are in the final stages. And of course,
5 we'll go after the hearing to schedule a holding date to the
6 extent we can't finalize documentation.

7 THE COURT: Okay.

8 MR. LEDERMAN: Moving along, Your Honor. The next
9 item on the agenda as far as uncontested matters are two
10 motions: one regarding the assumption of a Gulfstream V
11 aircraft, and the other regarding the rejection of a G-350
12 aircraft. These both relate to agreements regarding the
13 turnback of engine maintenance services regarding aircraft that
14 were rejected at the beginning of the case. We're happy to
15 report that we have an agreement and a stipulated order that
16 we've entered into with the counterparty, Jet Service
17 Maintenance Corporation, which we will hand up and present to
18 Your Honor. So these have both been consensually resolved on a
19 joint order.

20 THE COURT: Time out, Mr. Lederman.

21 MR. LEDERMAN: Sure.

22 THE COURT: And I have to confess to you that I didn't
23 focus on stuff that was unopposed. I thought that the company
24 got rid of all of its corporate aircraft. And I would have
25 thought that to the extent that any corporate aircraft were

1 needed, they'd be needed by New GM and not by Motors
2 Liquidation.

3 MR. LEDERMAN: That's exactly correct, Your Honor.
4 This has to do with contracts for the maintenance of those
5 aircrafts. So the one that is being assumed and assigned over
6 to New GM --

7 THE COURT: Oh, it's assumed and assigned?

8 MR. LEDERMAN: -- exactly. There were two separate
9 agreements for maintenance services, one of which is being
10 assumed and assigned over to New General Motors, the second of
11 which will remain and is being rejected by the debtors for
12 exactly that reason. We have no use for the contract anymore,
13 because we no longer have any corporate aircraft. And so --

14 THE COURT: It's none of my business, but why does New
15 GM require maintenance services for private aircraft?

16 MR. LEDERMAN: I believe that they may still have some
17 aircraft, or there was offsets that were entered into based
18 upon the timing of when the jets were returned. Because this
19 was for service and maintenance relating to those jets, and I
20 believe there may be some positive treatment and money that is
21 going to be paid over to New GM under that contract.

22 THE COURT: But the important thing from my
23 perspective with Motors Liquidation being on my watch is that's
24 what's been assumed and assigned, it's neutral to this estate?

25 MR. LEDERMAN: It is neutral to this estate. And in

1 fact, Your Honor, with respect to the rejection, part of the
2 agreement is that there will be no rejection damages claims
3 brought against the estate. And that's part of the order.

4 THE COURT: Sure. Good. Okay.

5 MR. LEDERMAN: So it's a clean rejection.

6 THE COURT: That's fine. So you can just continue.

7 MR. LEDERMAN: Thank you, Your Honor.

8 THE COURT: Pause, please, Mr. Lederman.

9 MR. LEDERMAN: Sure.

10 MR. PLOTKO: This is Gregory Plotko on behalf of the
11 official committee of unsecured creditors.

12 THE COURT: Forgive me, your name again?

13 MR. PLOTKO: Plotko, Gregory.

14 THE COURT: Okay. Your last name is Paco?

15 MR. PLOTKO: Plotko, P-L-O --

16 THE COURT: Oh, P-L-O. Okay.

17 MR. PLOTKO: -- T-K-O.

18 THE COURT: Okay.

19 MR. PLOTKO: Just for the record, we've reviewed both
20 the rejection motions and the assumption motion as well, and we
21 were comfortable with the stipulations.

22 THE COURT: Fair enough. I appreciate that, Mr.
23 Plotko, thank you.

24 MR. LEDERMAN: And I should have added, we worked with
25 the creditors' committee on this resolution, and we appreciate

1 their assistance and help.

2 Moving on, Your Honor, the next item on the
3 uncontested matters is the motion of Bonnie Reynolds and
4 Garland Reynolds for relief from the automatic stay. We have
5 also reached a stipulated order with those parties. If Your
6 Honor would like us to run through the stipulated order, I have
7 my colleague Ms. Benfield here who negotiated such order and
8 she can present it to you. If not, we can hand it up after
9 court.

10 THE COURT: Ms. Benfield, briefly, it would be very
11 helpful.

12 MS. BENFIELD: Thank you, Your Honor. Brianna
13 Benfield from Weil, Gotshal & Manges on behalf of the debtors.
14 The Reynolds filed a motion to lift the automatic stay to
15 proceed with an appeal pending before the Eleventh Circuit.
16 General Motors Corporation MLC commenced the appeal to appeal a
17 judgment entered against them in a products liability action
18 for 3.5 million dollars. In commencing the appeal they had to
19 post a supersedeas bond of 4.5 million that was backed by
20 Travelers' Casualty and Surety Company.

21 The debtors have agreed to stipulate to lift the stay
22 because if they prevail in the appeal and the judgment is
23 overturned, there is no loss to the estate and the estate may
24 regain the 4.5 million dollars in collateral backing the bond.
25 If the debtors do not prevail in the appeal, the bond is

1 already fully collateralized, and there will be no loss to the
2 estate.

3 THE COURT: And the reason why relief from the stay
4 makes sense under the facts of your case is because you guys
5 had to post a supersedeas bond tying up collateral of this
6 estate?

7 MS. BENFIELD: That's correct.

8 THE COURT: I understand. That's fine. And that's a
9 sufficient explanation for me. I appreciate that.

10 MS. BENFIELD: Thank you.

11 THE COURT: Thank you.

12 MR. LEDERMAN: Moving along, Your Honor, the sixth
13 item on the agenda under uncontested matters is the debtors'
14 eighth omnibus motion to reject certain executory contracts and
15 unexpired leases of nonresidential real property. Your Honor
16 there were three objections filed. At the current time we have
17 adjourned those objections and are working with those parties
18 to resolve them. We believe we'll be able to in the next
19 coming days. If we cannot, we will set a mutually agreed upon
20 time to have a hearing on those objections at a future date.

21 Regarding the rejections that remain, they relate to
22 mobile equipment leases, certain office park space that was
23 leased by the debtors that is no longer needed in the wind-down
24 of their operations, and also a warehouse lease that is also no
25 longer needed in the continuation of the debtors' business and

1 their wind-down.

2 THE COURT: Fair enough.

3 MR. LEDERMAN: We would ask for Your Honor to approve
4 that order with respect to the nonobjecting counterparties'
5 executory contracts --

6 THE COURT: Sure.

7 MR. LEDERMAN: -- and nonresidential real property
8 leases.

9 THE COURT: You got it.

10 MR. LEDERMAN: Thank you, Your Honor. There is one
11 other item that I'd like to bring up to the Court that is not
12 on the agenda. It has to do with Karmann, in which we had
13 filed an assumption and rejection motion. It was heard and
14 argued, it was on a contested basis before Your Honor on August
15 3rd. You may remember --

16 THE COURT: I remember that, and I think I dictated a
17 decision on that.

18 MR. LEDERMAN: That's right, Your Honor. You ordered
19 the rejection, but as far as the assumption, Your Honor was not
20 sure at that point, without hearing more evidentiary evidence
21 and a hearing, if the contract was indeed assumable and was
22 executory in nature. We're happy to report --

23 THE COURT: Pause, please, for a second, Mr. Lederman.
24 I see Mr. Kukla on my phone list. Are you on the line, Mr.
25 Kukla?

1 MR. KUKLA: Yes, I am, Your Honor.

2 THE COURT: Okay. Thank you. Continue, please, Mr.
3 Lederman.

4 MR. LEDERMAN: Sure. We're happy to report -- Your
5 Honor said either the parties should work to reach an agreement
6 and work it out or else we'd have to set a hearing date to go
7 through with the trial regarding the assumption. We're happy
8 to report that since the weeks of that hearing, we've been able
9 to work with Mr. Kukla to resolve both the assumption and
10 rejection, and we have a stipulated agreement and order that
11 we'll hand up to Your Honor after the hearing. If Your Honor
12 would like to know the resolution, I'm happy to quickly walk
13 you through it. If not, Mr. Kukla --

14 THE COURT: If you have a stip, I don't think you even
15 need to do that. But I will, since he's on the phone, give Mr.
16 Kukla a chance to be heard if he wants to be.

17 MR. KUKLA: No. That's fine, Your Honor.

18 THE COURT: Okay. Very good. All right. If you and
19 Mr. Kukla have reached the understanding that's now papered in
20 a stip, I can't imagine why I wouldn't approve it.

21 MR. LEDERMAN: Thank you, Your Honor. With that, that
22 concludes my presentation. I'll now turn over the podium to
23 Mr. Karotkin.

24 THE COURT: Okay. Mr. Karotkin, come up to the main
25 lectern. But as I understand it you're on defense, and the

1 movant is Mr. Lawrence. Are you on the phone, Mr. Lawrence?

2 MR. LAWRENCE: Yes, I am, Your Honor.

3 THE COURT: Okay. I'm going to wait for Mr. Karotkin
4 to get up to the lectern here. And I just have a couple of
5 preliminary comments, because while I've reviewed your papers,
6 Mr. Lawrence, it seems to me that you've spent an awful lot of
7 time arguing the merits in matters that are not particularly
8 relevant to the narrow issues that a bankruptcy judge would
9 decide.

10 I want both sides to focus on the Second Circuit
11 Sonnax factors. And except for the minimal amount necessary to
12 understand the issues that are up for determination, in either
13 the Middle District of Florida or before me, I don't want
14 discussion of the merits of the controversy. Subject to your
15 rights to be heard, Mr. Lawrence, it looks like this is a
16 classic core matter of allowance of a claim. And I want you
17 folks to address that in the context of the other Sonnax
18 factors discussion that we're talking about.

19 Mr. Lawrence, I'll hear from you first, and then I'll
20 give Mr. Karotkin a chance to respond. I'll give you a brief
21 opportunity, after Mr. Karotkin's heard, to reply. And I'm
22 going to give Mr. Karotkin a brief opportunity to surreply. So
23 Mr. Lawrence, go ahead.

24 MR. LAWRENCE: Thank you, Your Honor. May I start out
25 with what my obligation is with the burden of proof under 11

1 USC 362?

2 THE COURT: I know the law, Mr. Lawrence. What I
3 really need for you to do is to talk about how the facts
4 attempt or have the effect on my exercise of discretion in a
5 matter of this character. Mr. Lawrence, of course, you don't
6 appear before me all the time, for that matter, neither does
7 Mr. Karotkin, but the fact is that I get motions for relief
8 from the stay to continue litigation in other forums pretty
9 frequently, like three or four a month. So I understand the
10 law in this area.

11 MR. LAWRENCE: Yes, Your Honor. There's one thing
12 that I don't understand based on the contentions of the debtor.
13 Their contention is that they need the GM/UAW pension plan
14 income to be used by them to effectuate its effective
15 reorganization of the corporation or of the debtors. Now, the
16 debtor has no equity in the GM/UAW pension plan. Now, while
17 the debtor may want to include within the zone of equity that
18 which can be used to effectuate an effective reorganization, it
19 can only use the equity that it has, an unfettered guarantee of
20 command and control, and has admitted that -- and I'd direct
21 the Court's attention to item number 5 of their reply which is
22 at page 3, they have admitted that -- to paraphrase it, I'm not
23 reading the whole thing in the interest of brevity -- they have
24 admitted there that they took these funds and assigned them to
25 the IRS, to the government.

1 It's hard for me to see how that which they have no
2 control and command over, because as they alleged, they
3 transferred these monies over to the government, how these
4 funds can be used by the debtor to effectuate an effective
5 reorganization of the debtor, when they have relinquished
6 unfettered command and control of these monies over to the
7 government.

8 So based on that, my burden, as I understand it under
9 11 USC 362, is limited to the equity. And since they have no
10 equity in the plan, because they have transferred it, number
11 one, and number two, I would direct the Court to this Court's
12 case of In re Handel (ph.) 300 B.R. 421, where Judge Drain
13 stated in 2003 that -- and I quote very briefly: "In Patterson
14 v. Shumate the Supreme Court resolved a conflict between the
15 circuits over which a debtor's interest in a corporate pension
16 plan that satisfied all applicable requirements of ERISA and
17 qualified for favorable tax treatment under the Internal
18 Revenue Code, was excluded from his estate under 541(c)(2) of
19 the Bankruptcy Code. The Court noted that" -- and this is the
20 Court still speaking here, "The Court noted that 29 USC
21 1056(d)(1) requires that each pension plan shall provide that
22 benefits provided under the plan may not be assigned or
23 alienated."

24 The GM pension plan, notwithstanding the notice of
25 levy, is not property of the estate. It cannot be used,

1 therefore, as equity for an effective reorganization of the
2 debtor. Because it can't be used and it's not equity, and I
3 believe that I've presented my contention to show how and why
4 under applicable bankruptcy law that it is not equity that can
5 be used, then all other issues under 11 USC 362, the burden of
6 proof is on the debtor to prove that.

7 Now, I can go into a whole litany of cases, but I, in
8 the interest of brevity of time, I'll not do that. But I'd
9 like to add one other thing, too. In their motion, they have
10 characterized -- in their reply, excuse me -- the debtor has
11 characterized me as an unsecured creditor. On October the 5th
12 2009, I filed a secured proof of claim by sending it to Garden
13 City Group at 5151 Glacier Parkway, Suite A, Dublin, Ohio. And
14 it has the claim number of 5569. Somehow it was duplicated
15 again on October the 4th, 2009, with a claim number of 8909. I
16 have -- according to the rules, Bankruptcy Rules, I attached to
17 that a secured proof of claim a copy of the GM UAW pension plan
18 agreement, which is the contract that I based -- used as the
19 legal basis for my secured claim against General Motors. So
20 for whatever that's worth, I just wanted to bring that to the
21 attention of the Court.

22 And one other thing, too. I made a mistake when I
23 mailed out my documents. And under the Court's case management
24 order I failed to include the disks with the two documents that
25 I had filed. And I so what I did was tried to take care of

1 this oversight and accident on my part, yesterday, I mailed out
2 a copy of the disk which includes my motion and my surreply.
3 So I apologize if this caused the Court any inconvenience.

4 THE COURT: No apology is necessary. I have at least
5 one disk in my file, and if that disk relates to an earlier
6 filing, I'm sure the other one will come in. Just please
7 continue, Mr. Lawrence.

8 MR. LAWRENCE: Okay. So based on the fact that they
9 have no equity in that, and based on the fact that that GM UAW
10 pension plan is a qualified plan and the debtor has received
11 favorable tax treatment because they have included within the
12 terms of the plan the anti-alienation clause, they have no
13 equity in that GM pension plan payments. And therefore,
14 because they have no equity, the burden, under 11 USC 362 now
15 shifts to the debtor on all other issues. So I'm just trying
16 to be as brief as I can, in the interest of brevity. And I'll
17 just rely on my documents that I filed with the Court.

18 And also, I believe you asked me to address myself to
19 Sonnax factors. I think the most important Sonnax factor that
20 I've addressed myself to, and if I'm repeating what was in
21 there, then I apologize. But I'm not going to read to the
22 Court, I'm just going to go off the top of my head of what I
23 believe that I set forth in that document. The most important
24 thing is, is this. This Court is burdened with the largest
25 bankruptcy case in this country, as I understand it.

1 THE COURT: I think it's the largest industrial
2 bankruptcy case in this country. I think there's one or two
3 others that may be ahead of it. But I take your point.

4 MR. LAWRENCE: Okay. So given that, whether it is
5 first, second or third, this Court -- in the district court
6 case -- I'm not going to argue the merits there -- like you
7 said, you told me -- instructed me not to argue, and I'm not
8 going to argue the merits. I'm not even going to come near it.

9 But procedurally, for purposes of the Sonnax factors,
10 there have been pro hac vice motions filed in the district
11 court by the attorneys out of Michigan. There have been
12 attorneys that have made appearances out of Tampa, Florida
13 coming to Ocala to represent the debtor in that case. I
14 checked the dockets in this case. There are many, many motions
15 for pro hac vice attorneys. I don't think, Your Honor, that
16 you need any more. Because if this case is retained and the
17 stay isn't lifted for the exclusive purpose of continuation to
18 judgment in the district court case, this case is going to be
19 further burdened by more motions for pro hac vice attorneys to
20 come in here and try to hear issues before this Court that have
21 already been heard by the district court judge in Ocala,
22 Florida, the magistrate judge in Ocala, Florida, the attorneys
23 out of Michigan, the attorneys out of Tampa and myself. For
24 them to come back into this Court now, and I'm sure you've
25 heard this argument many, many times, but you instructed me

1 follow the Sonnax factors, and I believe that my study and
2 review of the case law suggests to me that this is the most
3 important factor.

4 Because it would be much easier on this Court if it
5 would be -- if you would limit and lift the stay, modify the
6 stay to allow this case to proceed to judgment in the district
7 court. I understand -- I could understand and be empathetic.
8 There are a lot of attorneys out there that might want to make
9 money off this case. And maybe rightly so. It's not for me to
10 say. But I think in the interests of the limited judicial
11 resources and administrative resources of this Court, I think
12 it would be much easier on this Court if you were to lift the
13 stay strictly on a limited basis.

14 Now, number two, I've attached a copy of an order.
15 They suggested -- stated in their motion -- the debtor has,
16 that if this case were to go back to the district court that it
17 would take more discovery and more time. Not true. The
18 magistrate judge entered an order that I am not entitled to any
19 further discovery. For me to fly in the face of that court
20 order would place me subject to criminal liability under 18 USC
21 401. And that, I am not going to do. I'm going to abide by
22 that order, I would expect the debtor to do the same. That
23 issue is res judicata. Both parties were there. The plaintiff
24 and the defendant in that case, here -- although I carry
25 another name, movant rather than plaintiff, and General Motors

1 carries the name of debtor instead of defendant. The parties
2 are still the same.

3 No discovery can be had. So that -- and if this case
4 were to proceed here, then the possibility could exist for more
5 discovery. That I don't know. There's maybe an adversary
6 proceeding. That I don't know yet. But to get back there,
7 right on this doorstep, the district judge is right on the
8 doorstep of resolving this case. Okay? And I filed -- and it
9 was lingering there. And because it was lingering, it denied
10 me access to the courts. And I filed a writ of mandamus with
11 the Eleventh Circuit. The Eleventh Circuit came back and said
12 the relief that I'm seeking could be obtained from the district
13 court. And I think although I'm most -- surely, this Court is
14 quite intellectually and legally capable of handling all these
15 issues, it would be much easier on this Court if the stay was
16 lifted only on a limited basis, given that General Motors has
17 no equity in the GM pension plan; and given that it's not
18 property of the estate, it would be better off -- and therefore
19 the Court doesn't have subject matter jurisdiction over here,
20 as I've argued in there. I think it would be much easier on
21 the Court if you were to send this case back to the district
22 court by lifting the stay. Thank you, Your Honor.

23 THE COURT: Okay. Thank you. Mr. Karotkin?

24 MR. KAROTKIN: Thank you, sir. Steven Karotkin, Weil,
25 Gotshal & Manges for Motors Liquidation Corporation.

1 I think, Your Honor, that in your opening remarks, you
2 put your finger on this. This is a classic core matter dealing
3 with the allowance of claims. With all due deference to the
4 moving party, Mr. Lawrence, I understand he's pro se, and may
5 not have all of the familiarity with the statutes and how the
6 automatic stay works. But I think that his argument with
7 respect to equity in the assets of the pension fund really is
8 not relevant for this discussion. It has to do with a creditor
9 asserting a secured claim.

10 Although I haven't seen the claim that he filed, I
11 don't think that there is any basis for a secured claim. What
12 he has is some claim against the General Motors pension fund,
13 and not a secured claim against the estate of Motors
14 Liquidation Corporation. So all of his arguments with respect
15 to equity in the collateral are irrelevant, and he has simply
16 not carried his burden.

17 The simple fact is, Your Honor, that this is a garden-
18 variety prepetition litigation claim against the debtor. And
19 the fact that there are summary judgment motions pending does
20 not change the analysis, particularly where the plaintiff has
21 indicated in his pleadings and the record in the district court
22 action demonstrates, that despite the fact that he was enjoined
23 from proceeding further pending the disposition of the motions
24 for summary judgment, he's filed, as I understand it, no less
25 than six motions since that time. And we can certainly expect

1 that if the stay is modified, the debtors will be back in court
2 addressing more motions, having to appear, having to spend
3 money, having to incur costs, exactly what the automatic stay
4 is designed to protect against.

5 And I think, Your Honor, the key point here -- and I
6 will address the other Sonnax factors as well -- the key point
7 here, Your Honor is that there is a simple resolution for Mr.
8 Lawrence. All he has to do is sever Motors Liquidation
9 Corporation from the district court action, address whatever
10 claims he has against the debtors in this court -- he already
11 has filed a proof of claim -- and pursue whatever rights he has
12 against the pension fund. That's the real party-in-interest.

13 THE COURT: Your point being that he doesn't lose any
14 substantive rights, he just litigates one of them in one place
15 and one of them in the other?

16 MR. KAROTKIN: I believe that's correct. Really, what
17 he's asserting is that -- as I understand it -- is that the
18 pension fund inappropriately recognized a garnishment of the
19 IRS and that monies were paid to the IRS. Monies that were
20 otherwise payable to him from the pension fund assets on
21 account of his pension rights, were paid to the IRS, and that
22 that was inappropriate. Let him chase the pension fund for
23 that. He hasn't. He has a remedy. And he can sever, as I
24 said, Motors Liquidation from the lawsuit, and proceed.

25 Your Honor indicated that you see three or four

1 motions to modify a stay every month.

2 THE COURT: Oh, I see many more than that. I see
3 three or four motions to modify the stay to allow litigation to
4 proceed in another forum that frequently. I'm not counting the
5 usual motions for relief from the stay to repossess a car or to
6 take somebody's apartment or house or something like that. But
7 Sonnax motions are not an uncommon type of motion in this
8 Court.

9 MR. KAROTKIN: No. And I think, Your Honor, following
10 through on that, if you were to grant the relief that Mr.
11 Lawrence is requesting here, rather than seeing three or four
12 of those a month, I think you're going to see three or four a
13 day in this case. I think that will open the floodgates.
14 There are thousands of litigation claims that are going to be
15 filed in this case. And to grant the relief requested here
16 will open the floodgates and will again, totally obviate the
17 purpose of the automatic stay. And as we've indicated in our
18 responsive pleadings, courts in this district have recognized
19 that as a basis to deny the relief.

20 Turning to the Sonnax factors, Your Honor, and we have
21 listed them on page 9 of our responsive pleading, the first
22 factor, whether relief would result in a partial or complete
23 resolution of the issues, clearly not. There are motions for
24 summary judgment pending, as I indicated. We are quite certain
25 that Mr. Lawrence will be filing other motions. If those

1 motions are not disposed of favorably to the debtor, we will be
2 involved in ongoing litigation with Mr. Lawrence. You can be
3 sure of that. And moreover, Your Honor, the motions for
4 summary judgment have been sitting for a year and a half before
5 the district court. So who knows how long it will take the
6 district court to decide those motions if the stay were
7 modified. And again, during that period, there is no doubt we
8 will be required to appear -- or counsel for Motors Liquidation
9 will be required to appear and expend monies in the district
10 court action.

11 The lack of any connection with or interference with
12 the bankruptcy case, I've already alluded to. It will cost
13 money. It will divert resources. And as we've indicated in
14 our responsive pleading, Your Honor, these debtors are in a
15 liquidation mode and have limited resources to address what
16 they are doing going forward. This is not New GM. This is Old
17 GM, with a limited staff.

18 This does not involve the debtor as a fiduciary.
19 There is no specialized tribunal involved with any particular
20 expertise to hear the cause of action in the district court.
21 In fact, there is nothing to indicate in the district court
22 action that they have any additional familiarity with the case
23 or any special expertise that you, Your Honor, do not have. I
24 think, as Mr. Lawrence indicated, you are more than capable of
25 adjudicating in the claims resolution context whatever claims

1 he asserts against the debtors.

2 There is no insurance involved here. The action, to
3 some extent, does involve third parties. And as I've said the
4 proper -- I think the proper approach for Mr. Lawrence is to
5 sever the debtors and proceed against the pension plan. The
6 litigation --

7 THE COURT: Am I correct, Mr. Karotkin, that if there
8 was a wrongful turnover of funds to the IRS when the IRS levies
9 were honored, the money was paid out of the GM pension plan
10 rather than what is now Motors Liquidation?

11 MR. KAROTKIN: That's my understanding, sir.

12 THE COURT: Okay.

13 MR. KAROTKIN: Continuing. The issue of equitable
14 subordination is really not applicable here. The ninth factor
15 as to whether a judicial lien avoidable by the debtor would
16 arise, is not applicable here. The interest of judicial
17 economy and the expeditious economical resolution of
18 litigation, really is not applicable here, as I've addressed,
19 because there's no indication as to when the summary judgment
20 motions would be addressed, and again, we are sure there would
21 be ongoing litigation, despite those motions.

22 The parties -- not much has proceeded in the district
23 court action, Your Honor. There really has not been any
24 discovery. It's not ready for trial, again, addressing the
25 eleventh Sonnax factor. And I think I've already addressed the

1 impact of the stay on the parties and the balancing of harms.
2 The balance of harms here clearly weighs in favor of
3 maintaining the imposition of the automatic stay, Your Honor.
4 As I said, Mr. Lawrence can feel free to pursue the pension
5 plan, the other defendants, and I believe that would be more
6 than an adequate remedy for him.

7 And on that basis, we don't believe, Your Honor, that
8 he has sustained his burden. He has not even sustained his
9 burden of going forward. And in addition to that, applying the
10 Sonnax factors, we believe, militates clearly in favor of
11 denying the motion and continuing the stay.

12 THE COURT: Very well. Thank you. Mr. Lawrence,
13 reply?

14 MR. LAWRENCE: Thank you, Your Honor. Counsel states
15 that equity is not relevant here. Under 11 USC 362(g)(1),
16 equity is relevant, because I, as a party that is requesting
17 the relief, I have the burden of proof on the issue of debtors'
18 equity in property. And so I believe I have met that by
19 showing that once -- notwithstanding the fact that the issue of
20 the proof of levy contains the applicable -- procedures
21 applicable to that levy, and it does not apply to the GM
22 pension plan, and notwithstanding the fact that the GM pension
23 plan is not property of the estate, it's hard to see how they
24 can say that it's equity that would be effective to their
25 reorganization, when they have absolutely no control -- command

1 or control, or no guarantee of any command or control, over the
2 GM pension plan payments that could be used to effectuate an
3 effective reorganization.

4 As far as the number of motions that may arise out of
5 or arise from this particular motion, if the Court were to
6 either grant or deny it, that's pure speculation, Your Honor.
7 And this Court doesn't have subject matter jurisdiction to rule
8 on speculative matters. So I think that the debtor's off base
9 on that point.

10 And not only that, if this motion were denied, it's my
11 understanding of the law that this Court would be further
12 inundated with more papers, because I'm most assuredly going to
13 take an interlocutory appeal to the Second Circuit if the
14 motion is denied. And I have a right to do that.

15 And they stated that General Motors, the debtor, is
16 not a fiduciary. Under the Secretary of Labor's definition of
17 fiduciary set forth in the regulations that I've cited in my
18 documents, any person who exercised control or demand over
19 these funds is considered a fiduciary. So given that debtor
20 has either, whether it's lawful or unlawful, exercised
21 authority over these funds, they are a fiduciary.

22 But the most important factor is, if I came in here
23 before this Court and the stay is denied and I do what the
24 debtors suggested, proceedings to sever, imagine how much more
25 time it's going to take up by this Court. Let make me go

1 straight back to the district court and let the district court
2 rule on that motion. I am not trying to state a claim right
3 here, as stated in my paperwork. They may want to try to
4 characterize it as that, but -- you may too -- but that's not
5 what my intention is here to state a claim.

6 I'm here to do one thing and primarily one thing, and
7 that's to meet the Sonnax factor test and to show -- meet my
8 burden of proof that the debtor has no equity. And where --
9 showing that the debtor has no equity, which I believe I have
10 done. And I believe that the stay should be lifted and allow me
11 to go back into the district court and pursue this matter.

12 And I'm not going to repeat all the other time that's
13 going to be necessary, taken up with this Court with other
14 matters and -- you know, I know -- I've been at these
15 procedures, and I know, that given -- and I don't intend to
16 dispute this with Your Honor, not at all. I would never do
17 anything to be disrespectful. But I know that attorneys in
18 general do not like pro se litigants. I know that. But that's
19 beside the point. I have an opportunity to be heard. You've
20 given me that opportunity. I've tried to make the most of it
21 and tried to respond with all the evidence -- admissible,
22 credible evidence to support my position. And I would ask that
23 the Court grant my motion on a limited basis, as I set forth in
24 my proposed order that I attached to my motion for lifting the
25 stay and allow this matter to proceed in the district court.

1 Thank you, Your Honor.

2 THE COURT: Very well. Thank you. Mr. Karotkin, any
3 surreply?

4 MR. KAROTKIN: No, sir.

5 THE COURT: All right. Everybody sit in place for a
6 moment.

7 (Pause)

8 THE COURT: All right. Ladies and gentlemen, movant
9 Walter Lawrence moves -- Section 362(d)(1) of the Bankruptcy
10 Code for an order modifying the automatic stay to permit Mr.
11 Lawrence's motion for summary judgment and other motions that
12 he has pending in the Middle District of Florida, which covers
13 the Tampa and Ocala, Florida vicinity so that those motions may
14 be determined.

15 Mr. Lawrence's motion is denied and the following are
16 my findings of fact, conclusions of law and bases for the
17 exercise of my discretion in connection with this
18 determination.

19 As facts, I find that Mr. Lawrence is a former
20 employee of General Motors, now called Motors Liquidation
21 Corporation or Company, who had rights to recover a pension and
22 to receive pension payments from a qualified pension plan that
23 had been set up by General Motors. The way a qualified pension
24 plans work is that a separate entity, kind of like a trust,
25 exists to pay those benefits and that the funds in the trust

1 are managed by a plan administrator. There may be an issue of
2 fact as to who the proper plan administrator is or was and to
3 what extent GM had the responsibility for that or a separate
4 entity or a subcommittee of its board or others, but that's
5 ultimately not relevant to this controversy.

6 The underlying dispute arises because the GM pension
7 trust honored some levies by the IRS which then resulted in Mr.
8 Lawrence not receiving pension payments that he contends that
9 he was entitled to. The debtor states that the plan sent
10 his -- sent these payments to the IRS in response to an IRS
11 notice of deficiency in levy against Mr. Lawrence's pension
12 payments because allegedly Mr. Lawrence had failed to pay his
13 income taxes in eleven different years. And that the plan was
14 obligated to give the IRS -- benefits to the IRS to satisfy the
15 tax levy because that's what's required under law. That too I
16 don't decide on the merits but state merely to describe the
17 nature of the controversy that is now pending in the Middle
18 District of Florida.

19 Other facts that are relevant to the exercise of my
20 discretion I'll deal with when I get into the legal discussion
21 and bases for the exercise of my discretion so I don't need to
22 repeat them twice.

23 Now turning to the applicable law, because the issue
24 of subject matter jurisdiction was raised first, I'll address
25 it first. The subject matter jurisdiction of this Court comes

1 from 28 USC 1334, which is one of the several sections of the
2 Judicial Code, not the Bankruptcy Code the Judicial Code, Title
3 28 that govern the subject matter jurisdiction of the federal
4 courts.

5 1334 follows the more commonly referred to other
6 subject matter jurisdiction provisions, such as 1331 and 1332
7 which deal with a federal question jurisdiction and its
8 diversity jurisdiction, it's another kind. And bankruptcy
9 courts have jurisdiction, in addition to cases like the Motors
10 Liquidation case, proceedings which arise under the Bankruptcy
11 Code arise in cases under the Bankruptcy Code or are related to
12 cases under the Bankruptcy Code.

13 Ultimately what we're talking about here is a claim
14 against the estate. A claim against the estate is one of those
15 relatively rare cases where there is subject matter
16 jurisdiction under each one of the three provisions because a
17 creditor has an expressed right to file a claim against the
18 estate, a claim arises in connection with -- excuse me, arises
19 in a case under the code because there would be no occasion to
20 file a claim if there weren't the related bankruptcy and it
21 also invokes related to jurisdiction because it has an effect
22 upon the bankruptcy estate.

23 So there can be no serious question that there is
24 subject matter jurisdiction over Mr. Lawrence's claim. By the
25 same token, the Court also has subject matter jurisdiction vis-

1 a-vis efforts to enforce the automatic stay or to seek relief
2 from the automatic stay, that's a federal right under 362 of
3 the Code. And there would be no occasion to invoke the stay
4 unless there were a case under the Code and it also invokes the
5 related to jurisdiction.

6 Now a separate matter that's sometimes discussed in
7 connection with bankruptcy jurisdiction is an analytically
8 distinct matter which involves the power of a bankruptcy judge,
9 as contrasted to a district judge, to decide matters that arise
10 before the bankruptcy judge, matters that are governed by a
11 separate section of the Judicial Code, Section 157. Now that
12 isn't, strictly speaking, the subject matter jurisdiction
13 provision. It is rather, as I said, a provision that deals
14 with the power of a bankruptcy judge as contrasted to a
15 district judge to decide certain kinds of controversies.

16 In this case the matter of a claim is what we call a
17 core matter that a bankruptcy judge can decide because under
18 the Judicial Code, 157, under (b)(2)(B), matters involving the
19 allowance or disallowance of claims against the estate are a
20 core matter. Additionally, to the extent it's relevant, under
21 (b)(2)(G), motions to terminate or annul the automatic stay are
22 likewise core matters. So this matter is properly before me
23 and likewise so is the claim properly before me and a core
24 matter as well.

25 These are very, very fundamental aspects of bankruptcy

1 law but since the movant is pro se and since he's expressed a
2 desire to take any adverse decision up on appeal, a matter that
3 I note parenthetically would, if and to the extent it's proper
4 will all go to the district court rather than the Second
5 Circuit, at least in the first instance, I say these things
6 merely as a matter of introduction or as a primer to bankruptcy
7 subject matter jurisprudence.

8 Now turning to the apparent difference in perspective
9 between the movant and the estate vis-a-vis the standards that
10 one applies on a 362(d)(1) motion. Matters for relief from the
11 stay can be of different types because the automatic stay
12 applies to different kinds of things.

13 The automatic stay applies to people's efforts to
14 assert interests in debtor property, most commonly by
15 attempting to enforce security interests or to grab assets of
16 the debtor's property. When the effort is to go after debtor
17 property then the debtor's equity in its property or its
18 ownership of the property can, and often does, make the
19 critical difference. But the automatic stay applies in
20 addition to efforts to enforce debt or to collect on alleged
21 debts, matters that don't involve property to the same extent
22 and, as relevant here, to continue with litigation against the
23 estate.

24 And when you're talking about requests to continue
25 litigation against the estate, that doesn't invoke the same

1 considerations as efforts to grab debtor property do. Instead,
2 it invokes what we call in the Second Circuit the Sonnax
3 factors, named after a decision of the Second Circuit, which
4 lay out standards by which we bankruptcy judges determine, in
5 the exercise of our discretion, whether that litigation should
6 be allowed to proceed or not.

7 Now as nobody can seriously dispute the Sonnax
8 decision lays out twelve factors or standards to assist a
9 bankruptcy judge in the exercise of his or her discretion on
10 whether or not to allow litigation against the estate to
11 proceed.

12 So again, as to not be duplicative, I'm going to deal
13 with the various Sonnax factors and the facts related to them
14 in a single discussion, without laying out all of those factors
15 and then coming back to repeat them to talk about how they
16 apply or don't apply. The Sonnax factors can be found at 907
17 F.2d 1286 and these are factors that we bankruptcy judges use
18 over and over again in deciding motions of this character.

19 The Sonnax factors are not exclusive but most of the
20 time, by relying solely on the Sonnax factors, using the listed
21 factors are sufficient to skin the cat. Whenever you have
22 listed factors that are applicable to a broad array of
23 circumstances it's common that they apply in greater or lesser
24 degrees, and I will deal with them as we go forward.

25 In my experience the most important of the factors, as

1 a general rule, are factors 2, 7 and 12. Number 7 is whether
2 litigation in another forum would prejudice the interests of
3 other creditors. That is important because when managing a
4 bankruptcy case a bankruptcy judge has to consider everybody I
5 the case, including the universe of unsecured creditors and
6 where applicable secured creditors, and has to address the
7 needs and concerns of the movant in the context of the needs of
8 all of the other creditors in this case.

9 As the debtor has properly recognized, allowing
10 litigation in the Middle District of Florida to proceed and to
11 require the debtor to have to devote the resources to address
12 that litigation, would require the debtor to write out checks
13 in postpetition dollars for the lawyers and other defense costs
14 associated with the defense of that case, which would raise the
15 risk, if not the certainty, of taking money out of all of the
16 other members of the unsecured creditor community who have an
17 understandable desire that the estate shepherd its resources to
18 the maximum extent possible to deal with the claims against the
19 estate in the most economical fashion available.

20 Likewise when we talk about factor 2, lack of any
21 connection with or interference with the bankruptcy case, the
22 estate's use of its resources to defend litigation in the least
23 economical fashion, again, interferes with the case. I do not
24 suggest that we're talking about asset grabbing of the estate
25 by the movant. In essence what the movant is asking me to do

1 is to permit his claim to be liquidated in another forum. But
2 it has the consequences of requiring the estate to defend the
3 claim in an inefficient fashion.

4 In my experience, impact of the stay on the parties
5 and the balance of harms, factor number 12, is one of the most
6 important. Here nobody is going to be depriving Mr. Lawrence
7 of his day in court. The issue, rather, is which court will
8 decide the issues.

9 As we've now established I have subject matter
10 jurisdiction to decide a routine matter of claims allowance and
11 to address all of Mr. Lawrence's needs and concerns insofar as
12 he's looking for relief from this debtor. Frankly, based upon
13 my understanding of the nonbankruptcy law, if and to the extent
14 he has claims, they're more likely to exist against the
15 separate defendant, the trust, rather than this debtor but I'll
16 give him a fair day in court to decide these issues if he
17 wishes to proceed with them in the claims context.

18 Bankruptcy litigation is typically as efficient or
19 more efficient than litigation in the district courts in
20 connection with plenary litigation. And the very reason that
21 we have a claims allowance process is to deal with these
22 matters, subject to rights of appeal of course, in the most
23 economical way possible.

24 Conversely, if the estate has to go through the burden
25 of litigation elsewhere and the estate is paying full

1 administrative expense, one hundred cent dollars, to defend a
2 claim that may be satisfied in the range of ten cents on the
3 dollar, that is something that is harmful to the estate and to
4 the remainder of the creditor community.

5 Now I'm going to talk about the other factors, just to
6 touch the bases. Factor number 1 is whether relief would
7 result in a partial or complete resolution of the issues. It
8 is theoretically possible that Mr. Lawrence could win on
9 plaintiff's summary judgment on this matter. But it is more
10 likely that he will either lose on summary judgment and not --
11 and have summary judgment entered against him. Or, perhaps,
12 the most likely of all the facts being that the Middle District
13 of Florida court, if it got around to deciding this, at such
14 time as it could it having its own burdens, would merely find
15 that they're issues of fact. The chances that this motion is
16 going to result in partial -- complete resolution of the issues
17 is remote. So that's not likely to happen and if it does, of
18 course, is merely going to liquidate the claim for allowance
19 back here.

20 Factor number 3, is whether the other proceeding
21 involves the debtor as a fiduciary. Here there is a double
22 entendre. If a debtor is merely holding property as a
23 fiduciary and it doesn't have an effect on creditors, in those
24 relatively uncommon cases that is an argument for relief from
25 the stay because it doesn't impact the remainder of the

1 creditors in the case. But that, of course, is not the
2 suggestion here. If and to the extent the properties being
3 held by a fiduciary in that sense its being held by the trust
4 which is not the debtor. Whether or not the debtor has
5 fiduciary duties in connection with its having an influence on
6 the activities of the trust is a different kind of fiduciary
7 relationship and is not a meaningful factor in this
8 determination.

9 Factor 4 is whether a specialized tribunal, with the
10 necessary expertise, has been established to hear the cause of
11 action. The middle -- that factor, when it exists, militates
12 in favor of relief from the stay but it's not applicable here
13 because the district court in the Middle District of Florida
14 has no particular expertise in that regard that I don't have.

15 Factor number 5, whether the debtor's insurer has
16 assumed full responsibility for defending it is a factor that
17 when present we weigh to grant relief from the stay because
18 it's no harm no foul on the debtor's estate or more importantly
19 on the interests of the other creditors. But here that factor
20 doesn't warrant relief from the stay so it's either a negative
21 factor or at best a wash and a factor that's neutral.

22 Whether the action primarily involves third parties,
23 involves the consideration of whether the third parties are
24 going to be the principal focus of the litigation and the
25 debtor can participate merely as a hanger-on. Or conversely,

1 whether you have the option, which is plainly present here, of
2 allowing the litigation to proceed against the third parties,
3 against whom it's primarily asserted. And it's no big deal to
4 allow the debtor to be severed and to allow the litigation to
5 proceed in the other forum against the remaining parties.

6 Here I still think that having the debtor participate
7 would have the burdens that I articulated previously. And the
8 second way of looking at it favors opposition to the
9 debtor's -- excuse me -- Mr. Lawrence's motion. His principal
10 target should be, if it's anybody, the trust. But if he wants
11 to proceed against the debtor, that's his right. But what he
12 should do is simply continue his litigation against the trust
13 and if he wishes to proceed with his claim here.

14 Whether the judgment claim arising from the other
15 section is subject to equitable subordination is factor 8, it's
16 simply inapplicable here.

17 Factor 9, whether movant's success in other proceeding
18 would result in a judicial lien avoidable by the debtor isn't
19 applicable here.

20 Factor 10, the interest of judicial economy and the
21 expeditious and economical resolution of litigation warrants
22 and weighs in favor of denial of the motion Mr. Lawrence
23 brought here. The economical way of doing it is dealing with
24 it by the claims allowance process, as all of the other
25 thousands of claims against this estate are. And in this

1 connection, in connection with several of the factors, I do
2 have to note that if I were ever to allow relief from the stay
3 on a garden variety claim of this type there would indeed be
4 the risk, if not the certainty, that every other party who
5 thinks he or she has a good claim against the estate pending in
6 another jurisdiction would be asking me to defend -- to provide
7 relief from the stay and require the debtors to be litigating
8 claims of this character all over the country. The floodgates
9 concern that the estate articulated is indeed a very serious
10 one.

11 So for the foregoing reasons the motion is denied.
12 The debtors are to settle an order in accordance with the
13 foregoing. The order should not attempt to encapsulate
14 everything I said in this lengthy, dictated decision. It
15 should merely provide that for the reasons set forth in this
16 decision the motion is denied.

17 Not by way of reargument, do we have anything that I
18 failed to address? Mr. Lawrence?

19 MR. LAWRENCE: Yes, Your Honor.

20 THE COURT: I can't allow you to reargue the motion or
21 to debate my decision except by taking it up on appeal, but I
22 will allow you to tell me if you think I have any business that
23 I didn't address today.

24 MR. LAWRENCE: Any what, sir?

25 THE COURT: Business.

1 MR. LAWRENCE: Any what?

2 THE COURT: Business.

3 MR. LAWRENCE: I don't understand your question.

4 THE COURT: All right. Well, frankly, I think that I
5 determined the issues that are before me and I know you'll
6 likely disagree with that decision. I dealt with your motion,
7 am I correct?

8 MR. LAWRENCE: I don't believe -- I think you missed
9 the point of the equity part.

10 THE COURT: Well, with respect sir, that goes to the
11 merits. And if you think I misunderstood the distinction
12 between a Sonnax type of motion and a motion to proceed against
13 property, that's something that you'll need to deal with on
14 appeal.

15 Mr. Karotkin, did I cover what I need to cover?

16 MR. KAROTKIN: I believe so, Your Honor. If I just
17 may point out one thing. I think you missed item 11 in the
18 Sonnax factors.

19 THE COURT: Oh yes, you're quite right. I did indeed.
20 Factor number 11 is whether the parties are ready for trial in
21 the other proceeding. And that factor, when present, militates
22 in favor of relief from the stay but it doesn't do so here
23 because this case is in the earliest stages.

24 MR. KAROTKIN: Thank you, sir.

25 THE COURT: All right. Very good. All right. Folks,

1 were adjourned. Have a good day.

2 MR. KAROTKIN: No, I'm sorry. Before --

3 MR. LAWRENCE: Thank you for your time, Your Honor.

4 THE COURT: I'm sorry; Mr. Karotkin?

5 MR. KAROTKIN: Not relating to Lawrence, but can I
6 raise another matter?

7 THE COURT: Yes. Mr. Lawrence, you may either stay on
8 the line or hang up, as you prefer.

9 MR. LAWRENCE: I will get off the line. Thank you for
10 your time, sir.

11 THE COURT: Okay. Very good. Mr. Karotkin.

12 MR. KAROTKIN: Thank you, sir. This relates to the
13 bar date, which is November 30th, in the Motors Liquidation
14 case. And really by way of housekeeping, and I won't impose on
15 the Court. A few of the issues of bonds issued by the former
16 General Motors are bearer bonds and held widely in Europe by
17 individual retail holders. There is not an indentured trustee
18 for those bonds to file the proof of claim. Various financial
19 institutions overseas, through their counsel in the United
20 States, have reached out to us and we have agreed to
21 stipulations which would allow global proofs of claims to be
22 filed on behalf of customers by certain financial institutions
23 who will be acting for them. And we would like to accommodate
24 them, we certainly don't want to impose on the individuals.
25 And we would propose to submit -- right now we have two

1 proposed stipulations which we would like to submit to the
2 Court. It's very administrative, its' not substantive. But it
3 does act to preserve the rights of those people who obviously
4 are concerned about their ability to file proofs of claim. And
5 I think that from the estate's perspective and the Court's
6 perspective it is an administrative convenience for everybody.

7 What we would propose to do, Your Honor, if it's okay
8 with you, is run those stipulations by the creditors' committee
9 rather than notice them for hearing, if we could just submit
10 them to the Court with the consent of the creditors' committee.

11 THE COURT: My tentative, subject to people's rights
12 to be heard, that is if I've got a no object from the
13 creditors' committee that I should do that. Can I get the
14 creditors' committee perspective?

15 MR. PLOTKO: Our perspective is we agree with that
16 proposed procedure. We would take a look at it and I think we
17 would accommodate it. We also get numerous telephone calls
18 from European bondholders with similar questions.

19 THE COURT: I take it, then, on a matter like bonds
20 the last thing you want to do is shut the door on bondholders.

21 MR. PLOTKO: Absolutely, sir.

22 MR. KAROTKIN: Exactly.

23 THE COURT: I agree with both of you.

24 MR. KAROTKIN: Thank you.

25 THE COURT: Just give me a letter transmittal

1 confirming that, with a copy to the creditors' committee --

2 MR. KAROTKIN: Uh-huh.

3 THE COURT: -- that you've run it by the creditors'
4 committee and they've authorized you to say that they don't
5 object or anything stronger in support and I'll sign the order
6 without further hearing or notice.

7 MR. KAROTKIN: thank you, sir. I appreciate it.

8 THE COURT: Okay. Very good. Have a good day, folks.
9 We're adjourned.

10 (Proceedings Concluded at 11:04 a.m.)

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

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

Penina Wolicki

Veritext

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Date: November 6, 2009