UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026(REG)

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In the Matter of:

MOTORS LIQUIDATION COMPANY, et al.

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

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

November 22, 2010

9:51 AM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

HEARING re Debtors' Motion for an Order (i)Approving Notice of Disclosure Statement Hearing; (ii)Approving Disclosure Statement; (iii)Establishing a Record Date; (iv)Establishing Notice and Objection Procedures for Confirmation of the Plan; (v)Approving Solicitation Packages; and Procedures for Distribution Thereof; (vi)Approving the Forms of Ballots and Establishing Procedures for Voting on the Plan; and (vii)Approving the Form of Notices to Non-Voting Classes Under the Plan

HEARING re Order Pursuant to Bankruptcy Rule 2004 Authorizing the Official Committee of Unsecured Creditors of Motors Liquidation Company to Obtain Discovery from (i)the Claims Processing Facilities for Certain Trusts Created Pursuant to 11 U.S.C. § 524(g); (ii)the Trusts; and (iii)General Motors, LLC and the Debtors

Transcribed by: Lisa Bar-Leib

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P R O C E E D I N G S

THE COURT: Okay. GM. Motors Liquidation. We have a couple of matters on the calendar for today. Mr. Karotkin, you want to take the lead and give me an update on where we are and what we need to do?

MR. KAROTKIN: Good morning, Your Honor. Stephen Karotkin, Weil Gotshal & Manges, for the debtors. There are, I think, only two matters on the calendar today. One is the adjourned hearing on the disclosure statement and the other relates to the 2004 examinations requested by the unsecured creditors' committee.

With respect to the disclosure statement, I think I can be fairly brief. I think we are well on the way to resolving all of the issues and getting an amended disclosure statement out for review. There are, however, two fairly significant open issues that the parties are discussing at length. And that relates to the -- primarily to the budgets for the various trusts to be created under the plan. And the unsecured creditors' committee, the Treasury and ourselves have been involved in those discussions. And at least I am hopeful that in the next week or so, we can reach a consensus, but that's not necessarily guaranteed.

My suggestion, Your Honor, subject, of course, to your schedule is that we further adjourn the hearing to -- I think you have a date with us on the 2nd, if you could

accommodate us then. It is my hope, and maybe I'm being optimistic, that we can be finished by then.

(Pause)

THE COURT: Okay. That's Thursday the 2nd?

MR. KAROTKIN: Yes, sir. I guess at 9:45?

THE COURT: All right. We'll add it to the list. Yep.

MR. KAROTKIN: 9:45?

THE COURT: Um-hmm. Mr. Jones?

MR. JONES: Your Honor, thank you. David Jones from the U.S. Attorney's Office. This is a matter of importance to us so I'll just speak briefly, if I may, although the requested scheduling change --

THE COURT: Can I ask you to come to the main lectern and replace Mr. Karotkin, please?

MR. JONES: Yes, Your Honor. Thank you. Sorry, Your Honor. Again, David Jones from the U.S. Attorney's Office. We do consent to and agree that this request at extension makes sense. We very much hope that all matters can be resolved and the disclosure statement can be approved as of that date. Treasury has been talking and had a constructive conversation with the committee, particularly last Friday, and received additional information that we had long been seeking last night to sort of corroborate and provide a firmed-up estimate of hours to be spent by professionals in the post-effective date

period. We are working very hard to be able to reach agreement on something the Treasury agrees is reasonable. And I won't go into details of the discussions at all. But the main thing I want to rise to say is that we've been a bit frustrated at the pace of progress lately which has been too slow but we think we're in a position to push. And we hope that all parties will join us in making a concerted effort so that we can get final approval next Thursday.

THE COURT: Okay. Mr. Mayer?

MR. MAYER: The committee also has no objection to moving the hearing -- the status conference to December 2. We have our own frustrations. Your Honor, I think, without getting into details, we have differences with Treasury on a number of different items. And as -- we are hopeful that if we cannot compromise on principles, we will at least compromise on numbers and that will avoid us having to come to this Court for decisions on principles. But if we can't reach agreement on December 2 or shortly thereafter, if it doesn't look like it's going to happen, I anticipate at some point in the near future, we will ask Your Honor for some court time in January to deal with the issues of principle that divide the parties. And that's all I wanted to say.

THE COURT: All right. I see no useful purpose in saying anything more than that. Why don't you guys redouble your efforts to put these issues to bed. I have a memory that

we had actually talked about getting this plan confirmed or at least the disclosure statement approved back in April or something like that. The difficulties you all are reaching or disclosing to me, some of which were mentioned, some of which -- can I have quiet on the phone, please -- some of which haven't yet been addressed but I'm going to hear later this morning are a source of some frustration to me.

What's our next matter? Asbestos?

MR. MAYER: Your Honor, may those of us who were here just for the disclosure statement be excused?

THE COURT: Sure.

MR. MAYER: Thank you.

MR. KAROTKIN: Yes, Your Honor. I think it's the committee's 2004 examination and the objections raised by, I believe, the attorneys for the various claimants.

THE COURT: All right. Then I'll hear brief argument on those. I'm going to need pretty compelling reason to divert from my earlier rulings on the subject. They are not res judicata or collateral estoppel but there sure as heck stare decisis. And at the risk of stating the obvious, just as I believe in following the opinions of my brother and sister judges in this district, my brother and sister bankruptcy judges, I follow my own rulings. I'll hear from anybody who wants to raise any different concerns or can convince me very briefly how I blew it last time.

(Pause)

THE COURT: I think it's the last two times to be more exact. Go ahead.

MR. SIMON: Thank you, Your Honor. My name is Jeffrey Simon. I'm with the law firm of Simon Eddins and Greenstone. We represent several claimants that the UCC has sought to subpoena submissions to bankrupt trust facilities. I'm here on their behalf as well as present and future mesothelioma clients of ours who I would like to show the Court would be substantially and irreparably harmed by disclosure of the trust information to Bates White in particular.

In my review --

THE COURT: Pause, please, Mr. Simon. I understand how you can speak for present clients. How are you speaking for future clients?

MR. SIMON: Because the information that I believe will be used to negatively affect my clients in the tort system will be used by Bates White through its dual identity of Litigation Resolution Group both now and in the future. It's simply -- that's simply the point I'm trying to make. It's a problem that will continue rather than simply be --

THE COURT: Do you represent them now or don't you?

MR. SIMON: I don't -- I don't actively represent future clients, of course.

THE COURT: But why do you say "actively"?

MR. SIMON: I anti --

THE COURT: I need straight answers from you, Mr. Simon. I understand you may be appearing before me for the first time but this is at least the third, perhaps the fourth, hearing I've had. And if you haven't appeared before me before, you can explain away bad facts but I need you to be precise and not cute when you're describing the facts. Once we have the facts under our belts then we'll argue about what's appropriate policy. But first, I'm told, that you don't actually represent them. And then there was another qualification. I need statements that I can rely upon without trying to ascertain what you're leaving out between the lines. Do I make myself clear?

MR. SIMON: Yes, Your Honor.

THE COURT: Then continue, please.

MR. SIMON: I represent mesothelioma clients today some of whom have filed claims against GM, some of whom haven't. What I contend is that the information from the trust, if disclosed to Bates White in the manner that I understand it is to be disclosed, will negatively affect my clients who have mesothelioma who are currently in the tort system. The reason that I contend that is that, from my review of the record, I don't believe that anyone adequately disclosed to Your Honor the depth of the real conflict of interest of Bates White, that Bates White seeks to be an active defendant

in the tort system through its other identity in the litigation, Litigation Resolution Group. A principal of both Bates White and Litigation Resolution Group is Dr. Charles Mullin. What Dr. Charles Mullin advertises on the web is that they have expertise in not only estimating the liabilities of solvent tort defendants but providing a mechanism wherein they provide those defendants with financial certainty by acquiring those liabilities and handling the defense of asbestos cases for them.

Dr. Mullin testified in the Leslie Controls bankruptcy proceedings how the kinds of information that is contained in the trusts would benefit him in his cause of assisting defendants in the tort system, specifically, that one of the features of information in trust information is where certain products were used; specifically, products which were manufactured or sold by entities now in bankruptcy. And that with that information, he would have a resource to go to defendants and say, I am aware of where the proverbial bodies are buried insofar as I know what you may not know about the fact that Owens Corning products were used here and Johns Manville products were used there. And I can assist you in the defense of your claims in several ways. One is is that I can tell you what the likely outcome, the likely settlement dollars, as it were, for bankrupt trust facilities would be based on information about what kinds of claimants can get how

much money from the different trusts based on the nature of their exposure and where they were. Secondly, I have access, in this hypothetical now, to tell you how much money they're likely to get which, in comparative fault schemes where there are settlement credits, is a crucial piece of information.

In the Leslie Controls bankruptcy, Dr. Mullin testified specifically that anything that affects the end game affects settlement. And two things that he defines as affecting the end game are knowing how much money a claimant is likely to receive from trust facilities whether they actually have filed the trust submissions or will in the future; and secondly, how to develop the alternative exposure theories that the so-called chrysotile defendants seek. For example, Owens Corning Kaylo, a pipe insulation, contained amosite asbestos as well as chrysotile. One of the common themes of defending asbestos cases around the country is to contend as a defense that a gentleman or woman's mesothelioma was caused not by the chrysotile containing asbestos product but rather by some amosite or crocidolite, another kind of asbestos-containing product. Sometimes, through all their diligence, they don't find such exposure, either because they can't or it doesn't exist.

Giving them information that this job site and that job site and the other job site are Kaylo sites, according to the work of some plaintiffs' firm that has developed evidence

to that effect allows them to, simply through the mechanism of the GM bankruptcy, know there is an alternative exposure theory that we can now, actively handling the defense of the case, go after. We can develop the witnesses if there's information to that effect because sometimes that kind of information is available. But it simply tells them where to look, how to look for it and affects the tort system by providing them defenses that the work of a simple discovery in a simple case did not provide. And I believe that the extent to which they are interested in this very proposition was not brought to the Court's attention with sufficient clarity.

We are left in the position that if the subpoenas are to go forward, we'll have to move to disqualify Bates White -- I don't know, obviously, with what outcome, but we'll feel compelled to do that.

THE COURT: You mean, before me or some other litigation where that other court is the battleground at the time for the asbestos wars?

MR. SIMON: Admittedly, I don't have the precise answer to that. And I'm deferring to Mr. Swett on that point. I don't know the procedural components about how that should be pursued. I'm simply saying that it seems to us that the conflict of interest is one that we simply need to try to illuminate in whatever means of -- the process provides.

THE COURT: Isn't a traditional means of illuminating

conflicts of interest by cross-examination?

MR. SIMON: The problem is, is that the disclosure itself is what gives them what they want. In other words, assume just for the sake of discussion, if I might, Your Honor, that down the road they're asked in cross-examination, well, how is it you now know that the so-and-so site is an Owens Corning site. And how is it you now know that claimants like that typically, over the broad section of 7500 claimants whose trust matters you've subpoenaed are going to get that much money from the bankruptcy system? The answer I would expect, which would be similar to an answer that was provided by Dr. Mullin in the Leslie Controls bankruptcy deposition, would be, gee, over the vast data sources that I have and the experience that I have and all the things I bring to bear in reaching my opinions, I don't know what the individual data source was. But I'm sure I learned it from lots of places and all of them are wholesome.

What I contend, Your Honor, is that even though the confidentiality order is precise and clearly drafted with care, it's not just that a confidentiality wall can't be effectively put in the mind of Dr. Mullin. Even with Dr. Mullin's best efforts and best intentions, if we simply grant them, down the road he really may not know exactly how it is he knows this information which is affecting the current tort system. But he'll know it just the same. And he'll use it just the same.

I have nothing further to add unless I can otherwise confer for just a moment to make sure that is so.

(Pause)

MR. SIMON: Thank you, Your Honor.

MR. PHILLIPS: Your Honor, Robert Phillips at the Simmons firm on behalf of the objecting claimants.

THE COURT: Your name again, please?

MR. PHILLIPS: Robert Phillips, Your Honor.

THE COURT: Phillips?

MR. PHILLIPS: Phillips, like the gas station chain.

THE COURT: Okay.

MR. BENTLEY: Your Honor, I'm sorry to interrupt. But the Phillips firm and the Simons firm from whom you just heard together filed a single pleading. I'm not sure it's appropriate for two of them to be arguing seriatim.

THE COURT: Mr. Bentley, have at any time in the history of the General Motors case, have I ever said that because Mr. Mayer speaks, you can't speak or because Mr. Miller speaks, Mr. Karotkin can't. I'm not going to take repetitive argument. But I'm not going to hoist lawyers around in that fashion.

MR. BENTLEY: Okay. Fair enough, Your Honor. I apologize.

MR. PHILLIPS: Well, I certainly won't cover the ground covered by Mr. Simon and I wanted to keep myself very

brief here. There's also -- there's the granular issue is a word thrown around in the pleadings and in the discussions about this. But there's also an overarching issue. One unique facet which is alluded to in the reply by the unsecured creditors' committee to our objections is there's a relatively concentrated aspect to asbestos tort litigation. There's a limited number of law firms out there prosecuting claims on behalf of claimants. There's a relatively limited number of defense firms compared to the larger landscape of law firm practice everywhere in product liability.

What that means, Your Honor, is that information is especially at a premium because information disclosed about one or other parties or groups of parties has a significant impact because of the concentrated nature. For example, my firm was subpoenaed with roughly 1300 claimants out of the 7,000. I think it was 1296 sticks in my mind. I haven't looked at the number this morning -- which is a significant number of the number of claimants we've represented over the years. A large number of them have had settlements against GM, one might infer from that.

For that reason, Your Honor, if the UCC, and specifically Bates Whites that we're worried about here, is given information about our clients and certainly about such a large number and a large proportion -- and we represent approximately twenty percent of the mesothelioma clients in the

litigation. If he's given that information and will have substantial impact on the settlement process today with our claims and, as Mr. Simon and your colloquy mentioned earlier, it will have an effect in the future because there will be a substantial fill-in of the information gap which exists -- many of the exhibits attached to various pleadings in this matter are articles written by either Charles Bates or Charles Mullin about the asbestos tort system. There's one called "Show Me the Money". There's another one, "Having Their Cake and Eat it, Too" is a very close paraphrase of the title, in which Bates Whites has attempted to close the circle on information and say this is what we think the average asbestos mesothelioma claim is worth in the tort system. And they go through and they look at SEC reports and they rely on the information they know from the clients they represent despite the fact that presumably that information is confidential. But they use it for purposes of preparing these articles. The big gap in their information, Your Honor, is the bankruptcy trust. And they say as much expressly in these articles. And what this is today, the concentrated effort by Bates Whites and the people they represent to close that gap of information, square the circle and find out what people make -- and as I said, Your Honor, it makes a difference to know about firms and about types of claims because they want to know ideally what do Simmons firm clients get because they're twenty percent of the litigation.

If we know that this is what they're getting, combined with what we already know, we're going to be in a substantially improved position to negotiate with them. If we know what the Simon Eddins firm, Mr. Simon up here earlier, which is prone to take verdicts more often than many firms, they're going to be in a substantially improved position to know whether or not to risk verdict. That has to do with the law firms, Your Honor.

And as was alluded to by Mr. Simon, there's an issue about types of claimants. One of the things that's being talked about in litigation now is perhaps a slight shift from the welders and insulators and heavy industry workers of the first wave of litigation with a lot of take-home cases, construction trade cases and such that are becoming more prevalent in the litigation. For that reason, knowing the kind of trust claims being made by categories or buckets of people -- the average take-home woman gets this; the average insulator who still exists in litigation gets that. And Your Honor may say that the confidentiality protocol that's been agreed to by the parties that were here earlier in the case seems to protect against that. I would say it does not, however, Your Honor, because while certain steps and better steps can certainly be taken to protect the information at a very, very low level, granular level, nothing can erase, could possible erase, from the minds of Charles Mullin and Charles Bates, big picture items about firms and how well they do or

about buckets of categories. You know, one would say there's a half dozen to ten different types of general buckets of claimants who come across the desk of defense firms' litigation, remembering, well, this group gets this much money and this group knocks the ball out of the park with regard to the trusts is crucial information and will have a substantial impact, Your Honor, on the tort system. It will affect settlement, it will affect the number of trials because if the plaintiffs' firms face increased resistance by defense firms and by companies' litigation based on this sort of information, it will force the hand of plaintiffs' firms to fight back, to try more cases and all we hear, Your Honor, is about the overburden tort system and the needless use of trials in these matters and forcing firms to go to trial over and over and over to counteract the disclosure of information that, in this case, isn't going to be proven relevant 'cause it's not admissible at trial anyway -- but I won't relitigate the 408 arguments, Your Honor -- seems like a pointless and dangerous tact to take. Given the fact that Bates Whites has never done an estimation with this sort of information, there's been no track record of it even being useful, I fail to understand why Your Honor is risking the opportunity to substantially impact the tort litigation and to change the landscape of asbestos tort litigation for the sake of this argument. Thank you, Your Honor.

THE COURT: All right. Are there any other objectors? Mr. Swett?

MR. SWETT: Your Honor, may I be heard?

THE COURT: Yes.

MR. SWETT: Good morning, Your Honor. Trevor Swett, Caplin & Drysdale, for the official committee of asbestos claimants. Your Honor, I have two propositions. One is that if we took ourselves back to August 9th of this year when you first heard argument on the 2004 application, the revelations that have come to light about Bates Whites entrepreneurial branch, as I would characterize it, the Litigation Resolution Group, would have cast a different light on the stated need for the information, on Your Honor's evaluation of the balancing of all the factors that go into delineating the proper scope of discovery for the aggregate estimation particularly under the time constraints that the debtor is operating under and that the rest of us are straining to meet. It would have introduced a factor completely different than any other expert in that the Litigation Resolution Group had an undisclosed active interest in seeking out asbestos liabilities to take upon itself, in order to speculate, that the values will come down and it would be making money between the bid and the ask in the tort system. That's a material fact that wasn't in your view, it wasn't in my view, perhaps wasn't in Mr. Bentley's view when those issues were first aired. And I contend that

they would have had a significant impact.

Second, asbestos in this case is not the factor that it is in most cases where there are significant estimation proceedings. In this case, there are twenty-seven billion dollars of bond debt. The asbestos liability is certainly not the 800 pound gorilla in the room. And yet, for reasons that remain obscure to me, the UCC has lent its case, in effect, to Bates White for Bates White's quest to create an unparalleled unique fund of information bearing on the tort system.

This is not the appropriate case in which to experiment with radical innovations in the methodology of asbestos forecasting and estimation in the aggregate for plan formulation purposes. This is a case where that process, as Mr. Karotkin has continually urged, should be straightforward. It should be a matter of informed expert testimony within the limits of reasonably available information.

Another reason why it shouldn't be necessary in this case is that it is an aggregate estimation. We shouldn't trigger the due process rights of individuals to come in and concern themselves with this process. And it is, I think, clear from the arguments made by the tort counsel that, unwittingly, Your Honor's 2004 application does threaten significant impact on the tort litigation which is diametrically the opposite of what you set out to prevent when you ruled on August 9th that you would entertain procedures for

ensuring that the claimant specific information that would come forth in this case for estimation purposes not leak out into one on one claim liquidation proceedings, be they in other bankruptcies, in this bankruptcy or in the tort system. That's the goal you set. It does reflect you appreciation of the fact that the bankruptcy process is not supposed to distort the applicable nonbankruptcy law. So it is a fundamental structural point and it's an important one. And it has warranted Your Honor's patience with these proceedings 'cause the issue is complicated and it affects many people who are not in this courtroom or who have appeared in this courtroom only pursuant to the limited opportunity to argue to you about their view that the protections that you have tried to carefully design are not sufficient for the purpose. Given that one -- the party that is to receive the claimant specific information has an active interest in opposing those claims in the tort system for its own financial gain which puts it in a position completely unlike that of any other expert. It's not a mere expert; it is a venturer in the tort system and its venture was not previously disclosed.

I assure Your Honor that if -- moving now from August 9th to October 22nd -- had I known that Charles Mullin, who was in the courtroom and prepared to testify why the anonymity protocol that we had proposed involving a neutral which would have prevented Bates White from receiving claimant specific

information and given them only anonymized information at an aggregate level, he was prepared to testify to you why that would have crippled his estimation process. Now, Your Honor, by that time, was signaling some impatience, understandably, with the details of this issue. And the combination of those two things persuaded me to accept a compromise under which -- under the present anonymity protocol, the claimant specific details will go to that very Charles Mullin who is the chief entrepreneur of the Litigation Resolution Group --

THE COURT: Pause, please, Mr. Swett. Refresh my recollection as to the deal points of the final compromise. Is that what you were about to do before I interrupted you?

MR. SWETT: Let me see if I can recite, Judge. Under the anonymity protocol as agreed, and I would argue as agreed under false pretenses, the trusts are to produce the claimant specific information pertaining to each GM mesothelioma claimant who appears in their respective databases as a claimant against the several trusts. That information, in its raw form, within the agreed limits of the data fields that are to be produced, goes to Bates White. Bates White, under that anonymity protocol, which I'm not calling into question, has the privilege of linking that data to any other data set it has and is available for its use in order to build more data concerning the same claimants. At that point -- that is supposed to be a separate and discreet database combining all

this what we'll call matched data. At that point, it's supposed to put aside the raw production of the claimant specific trust details. And Your Honor ruled that that production would not be subject to subpoena by any other persons for any other reason. It would just sit there available to Bates White and the other experts to defend their matching process or to attack some other expert's matching process if they went through that sort of thing. And then the other discreet matched database would be stripped of certain identifying details and the experts' analyses for the substantive purposes of the estimation and their reports and their exhibits would be generated based upon that anonymized data set.

Now, I must tell you that that was not, even at that time, a happy result for us because the experts were clear that in the right hands with the right computers and the right algorithms, they could easily reverse engineer and figure out exactly who those supposedly anonymized data points pertain to, at least within the contours of certainty that would suffice for their purposes. But we had to accept that compromise because of the lay of the land as it then stood including the fact that Dr. Mullin, with his undisclosed commercial interest in exploiting this information for other purposes, was prepared to come and testify to you putting on his hat as an expert why it would distort his methodology not to give him this claimant

specific information even though Bates White has made innumerable estimations on behalf of bankruptcy parties and on behalf of financial reporters with SEC obligations that have never concerned themselves with this level of claimant specific detail over the course of a couple decades.

This is an innovative push on their part and it didn't stop here. And this, too, I think would have put a different light on matters back in August had you been made aware of them. Bates White has persuaded other cooperating bankruptcy parties citing your August 9th decision as precedent to issue 2004s in their own cases seeking the entire databases, lock, stock and barrel, of every asbestos trust ever created. That's going on in the Bondex case and that's going on in the Garlock case, both Chapter 11 asbestos driven bankruptcies unlike this one.

Now, I am not suggesting to you that you should concern yourself with whether or not those applications get granted. However --

THE COURT: You mean, in Bondex and Garlock?

MR. SWETT: In Bondex and Garlock. We understand you're dealing with your case. But your precedent has been cited there and it does illustrate two things: the spillover effects from your decision which I would contend was made without the benefit of some material disclosures that should have been made; and second, the ambitions of the Bates White

firm vastly exceeding anything that any other expert has ever attempted to do in terms of gathering in one place the universe of claimant specific information about asbestos claimants.

Now, Dr. Mullin and Dr. Bates have specifically noted in their publications that in the tort system, everyone, plaintiff and defendant, operates under limits of information. Nobody has the full picture. The plaintiffs' lawyers know what they get for their clients from particular defendants. Those defendants know what they pay. They jealously guard their settlement information from all other defendants. It is a pervasive practice in the tort system that the settlements are confidential. The only way the settlement numbers come forth is when a defendant takes a verdict and then says I'm entitled to measure my offsets. And at that point, in a one-off, case by case basis, the plaintiff is obliged under local practices that vary throughout the country to come forth with the amount of money he's received from settling defendants so that that defendant doesn't pay more than its share. That's a discreet narrow window and very, very few asbestos cases go to trial, less than one percent. It's a settlement system; it's not a trial system. And the settlement system has as one of its fundamental facts the disadvantage to all that they operate without complete information as to what the other guys is paying.

Now, if in the tort system, General Motors had said,

General Electric, Georgia Pacific, Foster Wheeler, Union Carbide, you solvent asbestos defendants, here's a subpoena, give me all your settlement information. Well, why? Because I want to know it when I decide how much to pay for a claim. That would have been laughable in the tort system. It wouldn't have been entertained for a moment. Yet, these trusts stand in for former defendants. They are, in effect, co-defendants. And the substance of GM's demand, through the UCC, lending its good offices to the ambitious Bates White/Litigation Resolution Group firms is precisely that. Give me all your settlement information so I can decide how much I would pay if I were still in the tort system. Perversely, we are required in this case, as a matter of doctrine, to estimate what it would cost General Motors to resolve all its asbestos claims in the tort system were there no bankruptcy. That's the mission for plan formulation purposes, to decide how much of the estate goes to the trust. Well, in order to do that, based upon their ostensible needs, without disclosure of their ulterior commercial interests, they have persuaded the Court to give them discovery that they could never get in the tort system, that they have complained in print is not available to parties in the tort system, and where they have an active interest in cultivating a position as a defendant in the tort system. They are seeking to create unilateral advantage. No one else has it. And they are seizing on the bankruptcy cases for that

purpose. I submit that is a fundamental perversion of the bankruptcy process.

And it cannot be prevented, despite all due care, through the confidentiality agreement or the anonymity protocol. Because you can't lobotomize Dr. Bates and Dr. Mullin when they see the patterns, when they work with the data, when they form their impressions. So that when Dr. Mullin, in his other capacity, should he get a book of business of asbestos claims to manage for his own firm's profit, sits down with a plaintiff's firm to negotiate a settlement, nothing in the anonymity protocol or the confidentiality agreement will prevent him from using in his mind and in his strategy and in his approach to the settlement, the information and the patterns emerged from it, and the knowledge gained from it, all as a result of GM's liquidation. What an ironic, perverse situation to have created through a bankruptcy.

It wasn't your intention. And I contend that had the matter been fully spread on the record before you in August, based on full and fair disclosure, and all of the other considerations being brought to bear, you would have come out differently. There's another reason I say that.

We have had, over the last month, a hearing in Garlock that has involved testimony by the experts, as a preliminary matter, to decide how that case would be administered from the standpoint of the asbestos claims. Quite

unlike that case -- I should say, quite unlike this case, that is a bankruptcy driven entirely by asbestos. There are essentially no commercial creditors.

Now, Dr. Bates took the stand and testified on a couple of different occasions. And in the end he gave what I consider to be a very important admission for Your Honor's purposes. And I define that as figuring out what the heck to do to push this estimation forward within the limits of the available time here, with fairness to all parties.

And this is his admission: For the purposes of aggregate estimation, as opposed to figuring out, as he wants to do in Garlock, which claimants are old and stale and have abandoned their claims or never had one in the first place, and so they really shouldn't vote -- as opposed to that claimant's specific inquiry, for the purposes of aggregate claim estimation for plan formulation purposes, a sample is enough.

Here is the testimony. It appears on page 848 of the transcript of October 28th in the Garlock case. He first -- when first confronted with the question on sampling he referred to the question of whether the information is expensive to obtain. He then proceeded to say the following in response --

THE COURT: Mr. Bentley, you're standing without saying anything. What do you want?

MR. BENTLEY: Could I ask to have a copy of the transcript that counsel is reading from, Your Honor?

MR. SWETT: You can, but I don't have it at the podium. I'll show you briefly.

MR. BENTLEY: Your Honor, this is a little unfair. I haven't had a chance to read it. This is a little unfair to go into this --

THE COURT: The facts -- Mr. Bentley, I'm going to give you a chance to be heard. But the facts that are -- I'm hearing about for the first time today, are a matter of concern for me. Maybe there's a satisfactory answer for it. But there -- fairness issues go in both directions, and they're of many different types. And I'm looking forward to your explanation as to how I didn't hear about this guy investing in this litigation, if those allegations are true.

MR. BENTLEY: I'm looking forward --

THE COURT: Now, what your opponents say is not testimony. But I assume that when lawyers make representations to me I'm getting accurate facts. If I have to have an evidentiary hearing, I will. But I got a problem here, Mr. Bentley. So don't talk to me about fairness unless we talk about the totality of the fairness.

Read it. Mr. Swett is going to finish. Then he's going to hand you that transcript. And then you can make such points as you see fit. And if you need a continuance to respond, then I'll do it. But I got to tell you, this is a matter of concern to me. Do I make myself clear?

MR. BENTLEY: You do, Your Honor. And I'm looking forward to responding, because I think what you've heard rests on a lot of inaccuracies.

THE COURT: Very well. Give him -- read the transcript; give it back to Mr. Swett; and then when Mr. Swett is done, he's going to give it to you and I'll take a recess to enable you to read it more thoroughly if you find that necessary or appropriate.

MR. SWETT: Thank you, Your Honor. In Garlock, the Bates White firm is the proponent of large data-gathering exercise that the committee that I represent opposes. And two rationales are given for it, one of which is irrelevant to this case, the other of which is quite directly relevant to this case, and that is the issue of when co-defendants settle, do they have a fair approximation in mind of what their several share of the asbestos liability is, given that most of the claimants have claims against many different defendants.

On that particular issue, at page 848 of the transcript of October 28th, counsel for the legal representative of future claimants asked this question: "Right. But forgive me, what information you get from the trust and what you do with it isn't an issue. We are focused now on the proof of claim and whether you can ask for a limited sample, rather than requiring 15,000 claimants to give detailed information. And as I understand your testimony, that is

something you could do, correct?"

Here's the answer: "From a valuation standpoint on the aggregate class, yes." Then he goes on to say, "From the standpoint of knowing which individual claims would have -- I mean, I think it would certainly help. A sample could be used to help resolve the issue over how many were stale claims and how many weren't. It would bring forth information on how many wouldn't, but I don't know how you resolve the information through that sample on which claims are which."

He's referring there to the issue that's not relevant to GM, which is supposedly old, cold, stale, invalid, non-malignant claims, as opposed to the estimate of the aggregate liability for mesothelioma, for which he says, from a valuation standpoint on the aggregate class, which is what we're concerned with in this case, Judge, yes, sampling suffices.

Now, the reason that matters is because as part of their 2004, you may remember, one branch was addressed to the trust and another branch was addressed to New General Motors. And Bates White drew a statistical sample of 650 litigation files. And New GM called upon all that defense network out there to muster their resources and pull those 650 files and give them to Bates White for whatever purposes it wants to use them for. And it has those files and has had them now for months.

Moreover, the legal representative has drawn a

similar sample, also of 650 litigation files. We, the asbestos claimants' committee, regard the individual files as completely irrelevant to the aggregate estimation, so we haven't drawn one. But they're welcome to use those for the sampling purposes and statistical extrapolation that is consistent with the purposes of an aggregate estimation. Had we gone that route exclusively, we wouldn't be here today having triggered the due process rights of many, many thousands of individual claimants who now must concern themselves with this proceeding.

Now, given that sampling is adequate by Dr. Bates' own admission, for an aggregate estimation; given that sampling would not require the production from third parties as opposed to from GM of vast amounts of confidential settlement information that wouldn't be available to GM in the tort system, it seems to me, especially when weighed in the context of the desired timeline in this case and the need to have an estimation quickly, one of its virtues being that it can be done quickly and thus can prevent unreasonable delays in plan formulation, we ought to go there.

And had you had Dr. Bates' admission in front of you in August instead of hyperbolic contentions about the great need, the indispensable need, for this claimant-specific information that Dr. Bates never got over twenty years of making estimations, including for investors to rely upon in the capital markets, well, I think we would have gone there. I

believe it would have presented itself to you in a different light.

Now, to save time, as the ACC regards this all as a great fuss; inevitably has to be fought through if the program doesn't change; there must be appeals; there will be stay requests. And we have also --

THE COURT: Appeals of what? Stay requests of what?

MR. SWETT: Your Honor, the committee feels constrained to take this issue up if we are unsuccessful in persuading Your Honor that the 2004 and the anonymity protocol should be --

THE COURT: What issue up? A discovery dispute?

MR. SWETT: The fundamental question of whether the discovery here improvidently affects the tort system. But I don't wish --

THE COURT: I lost you, Mr. Swett. I've been a judge for ten years and I've been a lawyer for forty. I've never known an appeal of a discovery dispute.

MR. SWETT: Your Honor, my contention is that this particular discovery dispute, relating as it does to the Bates White firm's goal of tilting the table in the tort system, contrary to your stated goal, is something more than an ordinary discovery dispute. But I accept the difficulties of the situation, if we come to that.

My effort now is to persuade Your Honor that you

didn't have in front of you the full information you needed to make the right call here. But there is still an opportunity -- first let me explain that we have found it necessary, if we're going to face this claimant-specific information in the hands of Bates White, for the purpose of their arguing that the dominant factor in the tort system that explains GM's claim values and the pattern that emerges over the last few years outside of the bankruptcy court in GM settlements, is the onset of trust settlement payments -- that's one of the rationales you were given. If we're going to be forced into that artificial debate, as though the whole tort system could be reduced to the dynamic between one defendant's settlements and the resumption of pennies-on-the-dollar payments from trusts standing in for formerly paying but now bankrupt defendants, then we need to expand the lens.

And in that scenario, we would press for the settlement data of solvent co-defendants to examine those patterns in a more realistic way. We don't want to go there. We don't think it's the right thing to do. But we must meet what they are permitted to do. Now --

THE COURT: Let me get this straight. And you're the guy who's standing up there. Bentley's going to be standing up in a minute, and I have equal problems from both of you.

I have thousands of innocent GM creditors who are waiting for their distributions, and this is not an asbestos-

driven case. And this effort by the two of you to move the asbestos wars into my courtroom and to fight your respective agendas here, and then to take the results of them elsewhere, has the potential, if not the certainty of delaying distributions to literally thousands of innocent creditors.

What am I missing?

MR. SWETT: Your Honor, we don't want that to happen. And I'm about to offer an alternative. I've offered the alternative of sampling, which they already have the means for already in the discovery that they have received from General Motors. You could direct Bates White to conduct its analysis, to the extent it feels the need to descend to the level of claimant-specific information. It can do that based on the sample, subject to the constraints of the confidentiality agreement and order, and to the extent applicable, the anonymity protocol.

But in addition, precisely because we do not want to be in the position of standing in front of an oncoming train freighted by many thousands of innocent creditors who just don't happen to be asbestos creditors, but have their entitlements too -- we don't want to be in that position -- and regard this discovery as completely beside the point, so here's what we offer. We would offer a stipulation that every General Motors mesothelioma claimant, full stop, has received or would be entitled to receive, from each of the respondent trusts, the

published average compensation for mesothelioma as set forth in that trust's trust distribution procedures, which are a plan document approved in their respective bankruptcy cases.

Now, to unpack that a little bit. Dr. Bates has taken to offering opinions in the tort system on what particular tort claimants would receive from trusts should this defendant take a verdict so they can compute offsets that way. Those reports haven't yet been received in evidence. No court has granted them. But that's their methodology now.

THE COURT: Say that slower, please, Mr. Swett.

MR. SWETT: Okay. Dr. Bates offers in the tort system an opinion as to what particular tort claimants will receive from various bankrupt trusts. Here's how he does it. He takes the discovery material --

THE COURT: Particular tort defendants?

MR. SWETT: I'm sorry -- a particular tort plaintiff would receive by way of compensation from the different bankruptcy Section 524(g) settlement trusts. He wants the defendant to be able to go in front of the jury and say, this claimant isn't deserving of any further compensation; he has received a million dollars from a combination of trusts or will receive in the future.

I footnote, no court has been willing so far to accept that testimony, but he writes these reports.

THE COURT: No bankruptcy court with the estimation

power or no court in any plenary litigation?

MR. SWETT: No tort suit, Judge. No court presiding over a tort suit, which is where these opinions are offered.

Now, we will give him the substantial equivalent. Because what he does there is he takes the discovery documents from the particular case and he says, well this guy worked at such and such a place and he was a pipefitter, and he changed jobs and worked for these other employers at these other locations. And we know from the published approved site lists that some defendants who are bankrupt put out on their trust website, we can link him to those people's products at these various sites, and that'll give him a claim against these trusts. And we will assume that he will get the scheduled value which is set forth in the trust distribution procedures. And he'll add them all up, and he'll say, this fellow would receive 850,000 dollars all in from the other trusts before the jury even considers what this tort defendant should now pay him.

Well, we offer to stipulate for the purposes of saving time and narrowing the issues, and solely for the purposes of the estimation proceeding in this case, a stipulation. Bates White can assume for purposes of its aggregate estimate that every one of the 7,400 mesothelioma claimants who sued GM had other exposures for which these respondent trusts are now responsible. He can assume that.

And he can also assume that each one of them received the average mesothelioma payment, which is a scheduled amount that the trusts set forth in their respective trust distribution procedures.

That is a number that the trusts set as their goal for ensuring that whether a claimant submits his claim for expedited review, as it's called, where there are certain presumptive criteria, and if you meet them you get X dollars; or individual review, where you say, no, no, my claim is worth more than X dollars, I want you to look at the particulars of my claim trust, and if I win, I want you to pay me more than X.

Well, the trust, because of that variable, the unknown as to how those individual reviews are going to come out, sets itself the goal, it must not pay in the aggregate more than the average mesothelioma value that it publishes in its TDP, lest it run out of resources to pay other people fairly.

THE COURT: Pause, please, Mr. Swett. Because I understand the higher and lower aspect of what you just told me. But where I'm confused is getting my arms around the uncertainty as to which the universe of GM asbestos claimants would have claims from all, none, or something in between of the various trusts out there.

MR. SWETT: You can only determine -- no one knows that answer. You can only determine it by the kind of

discovery he now wants that he doesn't get in the tort system. Because in the tort system, he's left to draw inferences based upon evidence. Here he wants something no tort defendant has ever gotten, he wants the co-defendant settlement information. And he will draw inferences from that.

Well, we're making it easy for him. He can assume product exposure on the part of every GM mesothelioma claimant with respect to each defendant for which these trusts now stand in. He can bring to bear the --

THE COURT: Whether or not they in fact worked for a, or were present at a facility, where that trust might be within the target zone?

MR. SWETT: We give him that stipulation to narrow the issues. It is something that we intend to be binding only here. It's simply a concession to the shortness of life and to the need to get on with this estimation. It's an econo -- he doesn't concern himself in the end with the nitty-gritty individual details. He's told you that himself. He is driving here towards an aggregate estimate. We disagree with the emphasis he places on the granular details. But we'll give it to him in the form of an issue-narrowing concession, that he can draw the economic inferences on the basis that every GM claimant had exposure to these other defendants' products and would get what those trusts can only pay on average. If they paid more than that, they'd go bust too. And their own plans

of reorganization and their mandatory provisions of their TDPs prevent it.

That's as good as it gets for Charles Bates in the context of this estimation; in the context of this liquidating 11 where asbestos is not the major factor and shouldn't consume inordinate amounts of time.

I submit to you, Your Honor, that if that concession isn't satisfactory, it only serves to underscore ulterior purposes on the Bates White's firm part. I also submit that it would be far better to finesse these complicated disputatious, contentious and time-consuming issues in this case, and let them fight it out in Bondex. Let them fight it out in Garlock, where they seek the whole universe of trust databases. It's not an appropriate fight to consume resources and time in this case.

In short, Your Honor, I contend that had you known what was out there, unbeknownst to us, when you made your original 2004 ruling, and when you accepted the compromise that we made on the anonymity protocol, conceding the key point that the nitty-gritty client-specific information would go to Bates White, albeit under restrictions -- we gave that up, because Charles Mullin was here to testify to you, without having disclosed to us his ulterior purposes. That's not a fair position for us to be in or for you to be in.

There's a cure for it. Because these issues are

really collateral in this case. And there is a shorter, more direct path to the estimation that everybody wants to conclude here.

Now, I would, if Your Honor would entertain it, I would like to file a brief tomorrow to put these things in writing, by way of seeking reconsideration and allowing opposing counsel the opportunity to respond if they care to do so. And I would be at their disposal in terms of how long they needed to fairly evaluate those issues. I'm not trying to ruin their Thanksgivings. We'll cooperate with them on matters of scheduling. But you need to see this stuff laid out in the light of day. And we are offering our efforts to put it before you.

Now, I should mention one thing that eluded my mention up to now in this discussion. This outfit, Litigation Resource (sic) Group, according to Dr. Mullin's recent testimony, doesn't presently have a book of business. But he also testified that they're out there looking and they hope to be successful. So it is no less material from that standpoint than it would be if they were already managing a portfolio of asbestos liabilities to take advantage of what they hope will be the decline in values. That is their aspiration. It is their commercial purpose. We submit it's what drives this agenda, which otherwise is completely perplexing to us in the context of this case, so remote is it from the issues you

really have to concern yourself with.

And we hope that the combination of Dr. Bates' concession in sworn testimony that I will give to Mr. Bentley, that for aggregate estimation a sample is enough; and the fact that he has already drawn a sample and already has those materials; and the fact that we offer in any event the stipulation that would take this issue completely off the table for the limited purposes of this estimation, should point the way to a better path towards a swift estimation so that we are not put in the unhappy position of having to insist on our clients' rights in the face of the oncoming train, of a much desired conclusion to this case. Thank you, Judge.

Unless you have questions for me, I'll stand down.

THE COURT: No.

Mr. Esserman, are you rising?

MR. ESSERMAN: Yes, I am, Your Honor. May I approach?

THE COURT: Yes.

MR. ESSERMAN: Sandy Esserman, for the record. I have nothing to add. I just wanted to make sure that I put my marker in. I'm generally supportive of what I heard today; a little surprised by some of it. And we look forward to reviewing any proposed stipulation in writing. Thank you.

THE COURT: What does that last thing mean, Mr. Esserman? Does that mean that if, although the asbestos

committee were prepared to agree with it, the future claimants would not?

MR. ESSERMAN: I suspect we would, Your Honor. But I've got to run it by my expert. I haven't seen the proposed stipulation. It sounds like it probably would be something that we would agree to. But I do have a different expert, and he's not in the courtroom today, and I suspect he'll be fine with it also. But I just need to make sure that he is.

THE COURT: All right.

MR. ESSERMAN: Thank you.

THE COURT: Have I heard from everybody on the claimants' side?

Mr. Karotkin, I very much want to hear what you're going to have to say, but I think I want to hear from Mr. Bentley first.

MR. KAROTKIN: That's fine, Your Honor. I was hoping to go last anyway.

THE COURT: All right.

MR. SWETT: Mr. Bentley, I've got the transcript.

MR. BENTLEY: I'll look at it latter, thank you.

Your Honor, Mr. Swett has made a lot of very strong allegations. We -- let me say at the outset, we very strongly dispute them. And I'm going to attempt to show Your Honor that they rest on a lot of distortions if not outright inaccuracies. I take very seriously what he said. And I'm frankly a little

bit shocked by some of the things he said.

I believe the things he said, the principal points that we'd like to respond to, each of which we think is deeply inaccurate, fall into about four categories, depending on how you count. The first, he actually used the word "false pretenses"; that Bates White came to this court with false pretenses and snookered -- not his word, but a fair paraphrase -- snookered this Court, snookered him and his clients. That is absolutely untrue. And I'd like to address that first.

Just to preview the other points, he also says that Bates White is unlike any other expert in that they have a financial stake. This is also untrue, Your Honor. In fact there are other parties involved in the asbestos litigation who have a much greater financial stake, who regularly have access to highly confidential information which they use in exactly the same way that he is accusing the Bates White firm of using it. That will be point two, Your Honor.

Point three is the suggestion that the anonymity protocol that the ACC negotiated -- and I would say with full knowledge of Bates White's business activities, which have always been public, have never been concealed; they're on the website. They regularly --

THE COURT: They haven't been public to me, Mr. Bentley.

MR. BENTLEY: Yes. And my apologies for that, Your Honor. But let me explain why. This is a -- this relates to a company known as Litigation Resolution --

THE COURT: Resources Group?

MR. BENTLEY: -- Resolution Group or LRG.

THE COURT: Litigation Resolution Group?

MR. BENTLEY: Correct, Your Honor. That is a company in which a couple of Bates White personnel have an interest. Charlie Bates, the lead person in this engagement and the person who I believe signed the retention application in this case, is not involved with LRG. That's why it didn't show up in our retention application in this case. Charlie Bates is not involved with LRG.

The lead person at LRG is Charlie Mullin -- there are two Charlies, Your Honor. Charlie Mullin has never appeared and may never appear as an expert witness in this case. And if he ever does, you can be sure we will disclose this and any -- every other pertinent matter in connection with his testimony. And if he were to put in an expert report, you can be sure, this would be in the report. So that is one reason we didn't disclose it.

Another reason, Your Honor, is that -- I have to use strong words, Your Honor, because Mr. Swett used very strong words -- there has been a serious mischaracterization of what LRG does. And the suggestion -- it has been said that they

have an undisclosed commercial interest that is somehow different from interests held by other experts. That's not true, Your Honor. LRG is a startup company, as I think has been accurately stated. The hope of LRG is that they will be able, in some case, to find a party that has capital. They do not have capital, Your Honor. They do not put their own capital into deals. The suggestion was that they did. It wasn't stated, but that was the suggestion. They do not.

They receive a fee -- or their hope, if they ever do a deal -- they've never once done a deal, Your Honor. This is a startup that's hoping to do business. If they ever do a deal, the structure that's contemplated is they would receive a fee, much like any estimation expert receives a fee, when it does due diligence with respect to a proposed, say, merger or transaction involving a company with asbestos liabilities. The estimation expert would then be paid, perhaps hourly and perhaps also a success fee, if the transaction closes, for vetting the asbestos exposure of the company that's being looked up.

That's the sort of fee. That is exactly the sort of fee that if LRG ever got business, it would receive. That is no different, Your Honor, from the sorts of fees that the other experts in this case -- I can't say every single one of them, but certainly an awful lot of estimation experts regularly do this sort of due diligence work, and they're not just paid

hourly; they receive a success fee. So that's the only --

THE COURT: How is success measured?

MR. BENTLEY: Well, I believe -- when they're doing due diligence, I believe the standard practice is, it hinges on whether the transaction closes or not. And in LRG's case, it would simply hinge on whether the party that's coming in and supplying the capital in fact closes on the deal. They would then receive a fee -- a flat fee for putting the deal together. They are something as a broker. That's the way Dr. Mullin has described it to me. So that's quite different, Your Honor, from what I think was suggested to this Court.

And if one wants to ask, are there parties in this litigation world that in fact have a financial interest --

THE COURT: I still don't understand, Mr. Bentley. As I discussed in my recent published decision in Chemtura, so-called success fees can be of many different types. They're almost always relevant to the credibility of witnesses. The more difficult issue is whether they rise to the level of disqualifying the witness. And in Chemtura I said, I've been around the block a few times. I know enough about it, and it's enough for me to cause everybody to take a hit against credibility.

But one of the success fees was if that guy's constituency got more. Another guy's success fee was if the plan got confirmed. Another was if a plan satisfactory to the

creditors' committee got confirmed. The contingent interest in a constituency's recovery, I found to be the most egregious. But I further ruled that if, as I assumed, the success fee for a plan being confirmed or a satisfactory plan being confirmed wasn't simply a disguised way to pay investment bankers more, that that was another kind of incentivization.

Now, within those confines or otherwise, help me better understand the role of this guy's success fee. What is the event that measures success, and what is the guy doing, and what is the nexus between the two of them?

MR. BENTLEY: The most important point, I think, Your Honor, is in this case, in connection with Bates White's services in this case, there's no success fee whatsoever.

THE COURT: That isn't what I understood the allegation against Mullin to be. The allegation was that he was gathering up data to use in a private enterprise, unrelated to this case, in which he would be making a profit. Now, if that is an incorrect understanding of what I heard from Mr. Swett and from the two tort lawyers, correct me. But please tell me the facts as you understand them.

MR. BENTLEY: And first, Your Honor, what you just summarized, I think, is an accurate summary of what you heard from Mr. Swett. So I may have not been fully clear. I'm trying to distinguish between two things, Your Honor: first, is he receiving any success fee from the creditors' committee

in this case --

THE COURT: I understood that from the get-go, but that wasn't --

MR. BENTLEY: Okay. The answer is no.

THE COURT: -- the allegation that was being made either.

MR. BENTLEY: Okay. So let me turn to that, Your Honor. And I'm pausing a little bit, because the allegation is about transactions that haven't yet occurred. And so we are, all of us, speculating as to what the fee might be. But what I can represent to Your Honor, is what Dr. Mullin has represented to me about what he contemplates the success fee would be if LRG were to ever get business. And his contemplation is that if a deep-pocketed institution comes to him and essen --

THE COURT: An institution that is going to fund him or an institution that's the target of litigation?

MR. BENTLEY: The basic model, Your Honor, is if you have a defendant that say, is in bankruptcy -- or might be outside of bankruptcy, that the basic idea is that they would offload their asbestos liabilities to Warren Buffet, just to pick a name as an example -- to Warren Buffet or some other financial insti -- an institution run by him or some other financial institution. And this institution, let's call it Warren Buffet, would essentially insure the asbestos liabilities.

Very different from most asbestos insurance which was granted way back before people knew there was an asbestos problem. This is asbestos insurance offered right in the middle of the asbestos litigation. So it obviously would be much pricier than insurance purchased before people knew that it was a problem.

THE COURT: Kind of like a credit default swap for asbestos defendants?

MR. BENTLEY: I'm not sure if that's the right analogy, Your Honor. But it's essentially a new defendant -- I'm sorry -- a new party coming in and saying whatever the liability is, we'll be on the hook for it. And you -- say, GM or W.R. Grace -- let's say W.R. Grace -- you, W.R. Grace, will pay us X billion dollars. And in exchange, whatever the hit turns out to be, we'll be good for it. And the financial institution would be hoping that the liability would come in at less. And the financial institution would be looking to Dr. Mullin and LRG for the advice on which it made that financial bet.

THE COURT: And your opponent alleges or at least implies that Mullin getting the data which he's going to use to advise people in making those financial bets, takes the data to which Bates White is being given access to a new purpose or a new level that facilitates the efforts in the asbestos wars, unrelated to the needs and concerns of this case.

MR. BENTLEY: That is the allegation, Your Honor. And there's a number of big flaws in that allegation. I'm pausing for a second to think which I should address first.

THE COURT: Well, why don't you try addressing them all.

MR. BENTLEY: Certainly, Your Honor. Maybe let me just tick off the broad topics and then I'll turn in detail to whichever one Your Honor would like me to start with.

One problem is the suggestion that Bates White actually could do that. And we believe it's very clear that the confidentiality order that was heavily negotiated by the ACC and the trusts, and the anonymity protocol that Your Honor will recall was heavily negotiated by the trusts and Mr. Swett in the hallway of this courtroom -- that those would make it virtually impossible for Bates White to do what they're saying. And I'll explain.

But if I may, let me just mention the several other huge flaws here, so Your Honor gets the big picture as we see it. The other -- another huge flaw, Your Honor, is that the ACC, when they negotiated those protections that I just mentioned, that they didn't know that Bates White is engaged or hopes to be -- I'm sorry; strike that -- that LRG, in which one Bates White senior person, Dr. Mullin, and a few of his junior colleagues are principals -- that LRG -- I'm sorry, I lost my thread, Your Honor.

My point was that ACC was -- the ACC was well aware of the connection between Bates White and LRG at the time it negotiated these protections. And I say that for a couple of reasons, Your Honor. One is, Your Honor may be aware, there are regular conferences sponsored by HB and others -- it used to be Mealey's --

THE COURT: Who is HB?

MR. BENTLEY: HB is the successor to Mealey's. Does Your Honor remember the Mealey's Litigation Reporters? They sponsor conferences.

THE COURT: Mr. Bentley, since August 9th, I had a major contested confirmation hearing with a four-day trial, and I've had six billion dollar cases. You better refresh my recollection on the things that have transpired since August in the vocabulary and jargon you use --

MR. BENTLEY: Okay, I'm sorry, Your Honor. I know there is a lot of jargon in this case.

The point is not the name of who sponsors the conference, but there are regular conferences that are regularly attended by Bates White, by Dr. Peterson, by Joe Weiss, by lots of the major players in the asbestos litigation. They occur, you know, ten, twenty times a year. Bates White has been disclosing for many months, going back long before this summer, its -- the LRG business that some of its people are engaged in. Frankly, it's been pitching that business at

these conferences, attended by all the ACC's clients, and frankly, I would venture, attended by members of Caplin & Drysdale, because they regularly appear at these conferences.

Mr. Karotkin appears at these conference. I sometimes appear at these conferences. These are regular things and everybody goes. And Bates White has been regularly disclosing this.

In addition, something that Your Honor can take judicial notice of, is if you Google Charles H. Mullin -- I did that this morning -- the third hit you'll see is Charles H. Mullin/LRG. And if you click on the link, you get to one of the exhibits that's annexed to the Motley Rice/Peter Angelos objection. That's the objection that addresses these issues.

One of their very exhibits is pulled of the LRG website. And you or I or anybody can easily find it just by Googling Dr. Mullin. And if Your Honor likes, I'm happy to hand up -- I actually printed --

THE COURT: Mr. Bentley, do you understand how judges do their jobs? They don't go out Googling to find out information that might be discerned if any of the litigants before them chose to say something in court or in a brief. We're not free-roving inquirers to find out stuff that might be potentially relevant to the rulings we issue. In fact, some might regard that as textbook violation of due process.

MR. BENTLEY: Your Honor, my apologies if I wasn't

clear. I didn't mean to suggest for a moment that this is something Your Honor or your chambers should have done. But my point was that the ACC clearly put a lot of work -- you'll remember in August all the briefs that were filed -- clearly they and their counsel and the trusts' many counsel did a lot of work here. And it was the simplest of things for them to discover these facts, if they hadn't already known them from these conferences.

That was my point, Your Honor. Not to suggest that Your Honor should have discovered it, but that it is very clear that this is public information to which the ACC had ample access, and in fact, which they'd heard about directly at these many conferences and which they could have found on the web. That was my --

THE COURT: To what extent is Mullin walled off from access to this under the existing confidentiality stay?

MR. BENTLEY: He is a member of the team, Your Honor. But let me tell you how he's walled off --

THE COURT: The team that going to be appearing in the GM case?

MR. BENTLEY: The team that's doing the work that will support Dr. Bates' expert report and Dr. Bates' testimony.

But if I may, Your Honor, I'd like to tell you how he's walled off from the data that the ACC is concerned about. And there -- and my starting point, Your Honor, was, when the

ACC negotiated the protective order and the anonymity protocol, they were aware of this issue and they addressed it. And the anonymity protocol makes it essentially impossible for Dr. Bates or Dr. Mullin or anybody else to use the confidential information in the way they're suggesting.

And let me remind Your Honor what the basic provisions are that I'm referring to. First off, they make a commitment that they won't use any of the confidential data obtained in this case in any other capacity. So first off, we're trusting that they will honor their commitments. And a point I made a month or a few months ago is, there's never been any suggestion that they have ever done anything other than that -- that they've ever breached any commitment.

But beyond that, let's assume hypothetically -- and I do want to stress hypothetically -- that one didn't trust Bates White. Now, I know that the ACC is vociferously untrusting of Bates White. We think that's entirely unwarranted. We think there are reasons for that which I can mention if Your Honor wants to go there. But my point is, let's assume hypothetically that they were untrustworthy and that there were a reason to believe they wouldn’t honor their commitments.

They couldn't use this data. And the reason is, there's a very rigorous process that was worked out and that's embodied in the stipulation that Your Honor so ordered back on October 22, last month, when we were last here before you. And

that provides that the individual specific data, names and Social Security numbers, is used only for one very limited purpose, and that is the matching of data concerning a claimant from one dataset with the data concerning that claimant from another dataset.

It's used -- the sensitive information, the name and the Social Security number, is used only for that purpose. Once the matching is completed, then the name and the Socials are stripped away. And they're put in a vault, essentially. And from then on, Dr. Mullin, Dr. Bates, everybody else, is working off what we call an anonymized database, which gives rise to none of the concerns that we're talking about.

So if we pause for a moment and imagine, this fantasy -- and I think it's just that, Your Honor, it's a fantasy. What would they have to do -- you know, if you couldn't trust them to honor their commitments, what would they have to do to breach their commitments? They'd have to memorize Social Security numbers and memorize the specific -- claimant-specific information to which it relates. And we're talking as to seven and a half thousand individuals. It's nuts, Your Honor. It's a complete fantasy. And there's -- it's completely unrealistic.

Let me turn Your Honor to a related point, and that is Dr. Peterson, the plaintiff's expert, regularly has access to data that's just like this, and he's under much less

stringent constraints. And he regularly admits that he uses that data in performing his estimations. That's something you didn't hear from the ACC, and that's a huge distortion in the picture that was presented to Your Honor.

Dr. Peterson, as was stated in his retention application to this Court, which I can hand up if it's helpful to Your Honor -- Dr. Peterson disclosed in his retention application that he's a consultant to twenty-six of the biggest asbestos trusts: Johns Manville -- practically every large asbestos trust that's been created in an asbestos-driven bankruptcy. He's a consultant to the trust.

As such, he has access to all the data we're talking about -- all the most sensitive data. He's not subject to any anonymity protocol. He then goes on and puts in his expert reports, he's going to put in an expert report in this case, and all these special advantages you heard that Bates White has -- this is perhaps the biggest fallacy of all, Your Honor -- there's no special advantage. Bates White is getting nothing that Dr. Peterson and the other experts in this case don't have. All of these experts routinely appear and estimate asbestos liabilities. They also routinely do due diligence works as to a company's asbestos if it's outside of bankruptcy.

In that capacity, they're exposed to all this data, Your Honor. And they're not subject to the stringent orders that, at Your Honor's insistence, were negotiated here. And

they go on and they use them in other cases. So Bates White is far more constrained than any of the other experts in this case.

And, Your Honor, if we're talking about financial incentive, this was another huge misimpression that was provided to the Court. Who has the real financial incentive here? The plaintiffs' law firms. As Your Honor knows, they're regularly exposed to all this data. They'll negotiate on behalf of hundreds if not thousands of claimants against, say, Owens Corning or W.R. Grace or any other defendant you can name. In each settlement, they're bound to not disclose the amount of the settlement. It's confidential. Just as the data here is confidential.

They then go on to negotiate settlements on behalf of other clients of theirs for which they receive a contingency fee of a third or sometimes thirty-five percent or more, for other clients. And just as you heard -- you know, Dr. Bates can't blot out of his mind what's he's learned, these plaintiffs' firms are bound to not use what they learned when they go on and negotiate settlements with the same defendant on behalf of other plaintiffs. But of course they can't blot it out of their mind. And of course, it's enormously valuable, because they know what each defendant's proclivities are, what each defendant is willing to pay. That's a financial incentive, Your Honor. They get thirty-five percent or thirty-

three percent of the take.

Bates White doesn't get anything remotely like that. They get paid -- I'm sorry. LRG, this bogeyman you've heard about, they don't get anything remotely like that. As I said, they don't have a direct financial stake. At most they get this flat fee for putting a transaction together. So the real party that has the financial stake is the plaintiffs.

Now, Your Honor, we haven't sought to disqualify anybody. We haven't said Dr. Peterson can't appear hear because he has access to all this confidential information, subject to much less constraint than Bates White; because we're content to assume that Dr. Peterson won't violate the terms of the confis that he's agreed to.

And if we turn back, Your Honor, to August, that was one of the central points Your Honor made. Your Honor said, for hundreds of years, a basic premise in the litigation system is people agree to confis, even when it's the Coke secret formula that's involved. We don't deprive them of getting the data. We assume that they'll honor their confi.

So we're prepared to follow that rule with respect to Dr. Peterson. And we submit that that in itself would be sufficient to alleviate any concerns that have been raised with respect to Bates White. But as I mentioned a moment ago, at Your Honor's insistence we've gone way beyond that. And we've entered into this elaborate anonymity proposal that strips them

of the ability to misuse this information.

Your Honor, if I may, I have one or two other points, if you can give me a moment to look at my notes?

THE COURT: Yeah.

MR. BENTLEY: Well, my final point I'll go into if Your Honor wishes, but I won't if Your Honor would prefer to move on. You heard extensive reargument --

THE COURT: Well, you can say what you want. What I mainly care about is hearing what Mr. Karotkin has to say, because perhaps, of the various parties in the room, his interests might be closest to mine in terms of getting on with an expeditious hearing and getting money into the pockets of creditors of all persuasions.

MR. BENTLEY: Okay. Well, let me be very brief, and then I'll cede the podium to Mr. Karotkin.

We share, by the way, his interest in moving this along quickly. And we were distressed by what we heard from Mr. Swett and by the filing they made, I think it was last week, in which they sought additional discovery which would exponentially slow down this proceeding.

We think that what's happened, Your Honor, is they are very, very distressed by the prospect of having to turn over this information. Mr. Swett argued there's no relevance. I can state the relevance of it very briefly and succinctly if Your Honor wishes. But the basic -- Your Honor, their central

contention back in August when they said this is not relevant, was they said the amounts that were paid by the trusts and co-defendants are not relevant because they were baked into the amounts that GM paid to the plaintiffs prior to its bankruptcy.

Our central contention, Your Honor, is a factual one, and that is, no, they weren't baked in. Because GM didn't know the payments that these plaintiffs were getting and GM didn't know the exposure allegations that these plaintiffs were making to the various trusts, which were inconsistent with the disclosures that were being made to GM.

And that -- if Your Honor -- if we get the discovery we want, if it shows that, that will have a fundamental impact on this estimation. It also explains, I think, why the ACC is so determined to not let us get this information and why, Your Honor, Mr. Swett didn't mention a few weeks ago, they actually made a motion in front of Judge Fitzgerald down in Delaware, in which they sought an order that by its terms would actually bar the discovery that Your Honor has granted.

We filed a big objection saying this is inconsistent.

THE COURT: We, on behalf of whom?

MR. BENTLEY: Sorry, we? The unsecured creditors' committee in this case -- we filed an objection before --

THE COURT: In Judy Fitzgerald's case?

MR. BENTLEY: We, as the creditors' committee in GM filed an objection to what Caplin & Drysdale had filed before

Judge Fitzgerald, saying that this order that they're asking her to enter would bar the discovery that Your Honor has permitted. That it's an attempt to collaterally attack Your Honor's ruling, which you'll recall, back in August, counsel for the trusts represented they would not do. This order, by its terms, would have that effect.

Now, to be fair, Your Honor, they didn't serve this order on us. I don't know if that was deliberate or not. And after we filed our objection they called us up and they said oh, we're not trying to do that, and we'll negotiate a modification of the order that will make that clear. But this was an order that by its terms would have had that effect.

And that's just an example, Your Honor, of how there's a lot more going on here than confidentiality. They're concerned that this is going to have a big impact on how they conduct litigation. And that, I submit, is what's behind everything you heard from Mr. Swett.

And by the way, there were a lot of other misrepresentations or inaccurate statements that I won't go into unless Your Honor wants me to, like that this is discovery that's not available in the tort system. We addressed that in our briefs before Your Honor in August and then again in October. And it's just not true. But I don't think we need to go there.

I'm happy to yield to Mr. Karotkin at this point,

Your Honor.

THE COURT: Before you do, Mr. Swett said listen, he'll just stipulate that you get the credit for the average amount that was dished out by each of those trusts. You want to comment on the strengths and weaknesses of that? It sounds to me like -- I wondered, and sometimes my wondering doesn't turn out to be justified or not -- that he's sufficiently upset about Mullin getting this stuff, that he's willing to give you credit for the average amount in each of those other cases and give to you kind of what you're looking for.

MR. BENTLEY: And, Your Honor, I've just been handed a note, because we've been trading e-mails with Bates White about the proposed stip. And I think the short answer, Your Honor, is we would like to consider that. The stip falls far short of the relevant information that we'd be getting through the discovery. It doesn't tell us about variation law firm by law firm, state by state. It doesn't tell us what exposure allegations were made to the various trusts, which is relevant for the reason I mentioned a few minutes ago.

Neverthe -- so we think it's a pale substitute for the discovery we'd be getting. Nevertheless, it's a substantial proposal. It's a significant one. We're prepared to consider it. And I'd prefer not to do it on one foot, so to speak.

THE COURT: I understand.

Mr. Karotkin, can I get your perspective, please?

MR. KAROTKIN: Thank you, Your Honor. Stephen Karotkin for the debtors.

I would like to think my interests are always closest to yours, Your Honor, in these cases. I think -- you know, Your Honor, I think you put your finger on it, I think it was at the beginning of Mr. Bentley's comments, that asbestos -- this is not an asbestos-driven case, not even close -- not even close. And what was supposed to be a minor sideshow has now, unfortunately, in my view and I think perhaps in the Court's view, becoming a main event and threatening to hold up distributions with respect to, you know, let's say thirty-five billion dollars of other claims.

And I think what has happened here, Your Honor, is that the novel approach that the unsecured creditors' committee, the Bates White firm, has taken in this case, to how the estimation process ought to take place, has driven us in that direction. And I think that what Mr. Swett indicated in his comments are very telling and very true. This has never been done before.

I know that Mr. Swett has been involved in a lot more estimation proceedings than I have. We have spoken with our expert. And this information and this approach has never been used before in estimating asbestos claims, in real asbestos cases. And what has happened here is we have embarked --

THE COURT: In real asbestos cases, you mean asbestos-driven as --

MR. KAROTKIN: Yes.

THE COURT: -- Chapter 11s?

MR. KAROTKIN: Yes. And for example, I do have some experience. I was involved in the original EaglePicher case, which was the first 524(g) injunction after the statute was enacted. I represented the debtor there. Many of the same experts were involved -- not the Bates White firm. This information was not -- the trusts didn't exist back then, but no one embarked on this type of path. In Armstrong I represented the debtor, Your Honor. And the estimation proceeding was rather straightforward.

And it's interesting to note what's occurred here. And it all occurred based upon the initial 2004 examination sought by the creditors' committee, which goes back, I believe, to August. And that's what has turned this into a real -- in my view, a real donnybrook. And let's sort of put that in perspective.

They made their motion back in August. The result of that was Your Honor granted certain relief. The original confidentiality order, Your Honor, that was negotiated in that case, the confidentiality provisions, took over a week to negotiate. It was the most incredible process in which I've ever been involved. All of the lawyers involved in that

process were on the phone for countless hours every day negotiating what I would have thought was a simple confidentiality agreement. That cost the estate several hundred thousand dollars, just that one agreement.

And it's interesting. None of these firms have a financial stake in this. Unfortunately, it's all being funded out of the estate -- it's really all being funded by the United States government. They have no financial stake to drag this out and to use this for whatever leverage they have.

The anonymity protocol, I am sure, cost another several hundred thousand dollars. Your Honor, I'm sure you are aware of the many pleadings that were filed, the letters you received, the number of hours and time that was spent in court and then negotiating that document in the conference room. Now we have the objections today. And it goes on and on.

And Mr. Bentley alluded to the 2004 requests that the asbestos committee recently served. I don't know if you've had a chance to look at that. But that's entirely -- entirely prompted, as Mr. Swett indicated, by what is going on here with the unsecured creditors' committee. Now that they've embarked on this escapade, the asbestos committee is now moving forward and asking Your Honor to approve their escapade, because they've got to combat or allegedly combat whatever Mr. Bates is doing and his firm is doing and Mr. Mullin or whatever they're doing.

And you will see, Your Honor, in that motion, they're seeking discovery from New GM. They're seeking discovery from Old GM. There are I believe thirty-seven different document requests -- that doesn't include the subparts. And of course we'll address that in a responsive pleading. Document discovery, depositions. But let's not leave it at that. It also asks you to permit discovery from sixteen -- sixteen other co-defendants in the system, including not just document requests, but deposition testimony.

I don't even think they were served with this 2004 request, the other sixteen defendants. Perhaps Mr. Swett knows. I don't know. But I don't think so.

And again, solely in response to the unsecured creditors' committee's unique approach to an estimation -- an aggregate estimation. And as I said, none of it is necessary. And I said that initially, Your Honor. Our concern with this was that this whole process -- embarking on this process was going to delay these cases unnecessarily, and that if there were going to be an estimation hearing, it can be a traditional estimation hearing.

And all of the experts -- all of them -- have the information necessary to do the same type of estimation that's been done in every other case. They have the entire database. They've had it for months. The asbestos committee was granted some additional discovery on a consensual basis. Everybody has

everything they need. And we have proposed to Your Honor an estimation motion and a schedule to move forward on a rather expedited basis. But again, people can do that now. People can prepare their expert reports now. And we can move forward and we can get this finished. And we can get this finished, obviously subject to your schedule, in January or early February.

An estimation hearing, Your Honor, is not really difficult. Again, I know it's going to encompass a lot of your time. It can be done in one day. It's four experts testifying. It's relatively simple. That's all it is. And I've been through them; they've been through them. And it takes a day or two to get finished with it.

And I will assure you, Your Honor, if you stop this process now, and let the parties proceed like they've always proceeded, we will get a consensual resolution of this mighty quickly, and we will be done with this, and you won't have that hearing. And that's our interest. We're not interested in spending any more money on this. I'm sure the Treasury's not interested in spending any more money on this.

I hate to tell you what the fees have been running with the various experts in connection with this proceeding. And we have the classic tail wagging the dog. And, Your Honor, I agree with Mr. Swett. I think it's time to put an end to it. I frankly was surprised by the Bates White and Mr. Mullin's

relationships. I think that the offer that Mr. Swett made, in terms of his proposed stipulation, was entirely reasonable. I believe that he said, with that being done, they don't have the need for any further discovery. And I think no other party will have the need for further discovery. And we can move on and we can get this case finished. Thank you.

THE COURT: All right.

MR. BENTLEY: Your Honor, thirty seconds, before --

THE COURT: If you can honor that promise, Mr. Bentley.

MR. BENTLEY: Even if Your Honor were to permit the trust discovery, there's an order that Your Honor already entered that will enable the discovery to be completed in a timely fashion.

THE COURT: Well, the implicit assumption under which I've heard argument for the last almost two hours is that the combination of the failure to disclose to me the interests of Mullin and the Litigation Resolution Group and the points that Mr. Karotkin made, collectively provide a basis for Rule 59 -- Bankruptcy Rule 9024 relief. So yes, I understand that I have an existing order.

MR. BENTLEY: I was --

THE COURT: But the reason I've heard so much argument is because I'm trying to get my arms around whether that earlier order, in light of new facts I have, and the way

you guys are going at it hammer and tong, has made that order one for which relief under Rule 59 doctrine is appropriate

MR. BENTLEY: I was actually referring to a different order, Your Honor. I understand that Your Honor has issues before you that you need to consider. I was making a different point -- trying to make a different point.

THE COURT: Go ahead.

MR. BENTLEY: And that is, Your Honor will remember, you entered an order on October 22 -- a stipulated order that implemented the anonymity protocol. There was a provision in there about timing.

THE COURT: About what?

MR. BENTLEY: Timing. Specifically it said -- the ACC agreed that under -- and it's put into the order -- that initial expert reports will be filed six weeks after the trust production will be made. Under the prior order, the trust production will be made seven weeks after Your Honor rules on the meso claimant objections.

So my point is simply, that order is in itself a ground for Your Honor to say to the ACC, you can't take new discovery now, you've waited too long to do it, if the new discovery would delay the January 10 deadline. If Your Honor were to enter an order today or later this week resolving the meso claimant objections, then under the October 22 order, initial expert reports would be due January 10. We're locked

in. The ACC agreed to that. Your Honor so ordered it.

They've now waited three and a half months to make this latest discovery request. Your Honor would have ample grounds to say, ACC you agreed to this expert report deadline and the implicit notion that discovery -- fact discovery would be completed weeks in advance of that. You can't now change course and ask for discovery that would delay that deadline. We have a deadline that's already in place. That was simply my point, Your Honor.

THE COURT: All right. I'm going to take a ten -- Mr. Swett?

MR. SWETT: Yes, sir.

THE COURT: What is it?

MR. SWETT: Well, I have some points. I don't want to belabor it or test your patience. But I have some points in response --

THE COURT: Well, you're not the first guy in this room who's tested my patience. I'll give you the same amount of time I gave Bentley just now.

MR. SWETT: First, with regard to the deadline that Mr. Bentley refers to, that was part and parcel of the compromise anonymity protocol which was negotiated with Dr. Mullin in the room, with his being the ultimate arbiter for the UCC of whether or not particular provisions were acceptable, and with his insistence on matching the individual claimants

from the trust data to his other data sources. Had I known -- and I did not -- of Dr. Mullin's mixed capacity, I would not have agreed to that anonymity protocol. And that's part of the issue that you will need to consider under Rule 59.

Now, in the Delaware proceeding that the -- some trusts and trust advisory committees have --

THE COURT: Which -- this is the one before Judy Fitzgerald?

MR. SWETT: Yes, it --

THE COURT: Which case is that, by the way?

MR. SWETT: -- it's a new adversary proceeding filed in the Bondex case and in the other bankruptcy cases from which the trusts emerged. It has no reference to General Motors. We recognized that this case was too far along. And we didn't bring them in. And when they misunderstood what we were trying to do, and filed an objection, we promptly called them up and said that is not our intention. We will give you a stipulation that keeps you out of this.

We are respecting the separate track that this case is on and the separate and very important timetable that it's on. So I just wanted to clarify that.

Dr. Mullin's business model in the LRG group -- and I should say, it's not just Dr. Mullin. The website lists three key people for LRG: Dr. Mullin, Andrew Evans and Peter Kelso. They all work on the UCC's team in this case. They're all time

keepers in that engagement. And they're listed on the website as the key people for LRG.

LRG's website also explains its business model. It says that through capped indemnification, the client tenders claims to LRG; LRG handles the litigation, pays claims, manages liability, and pursues any applicable insurance. And in his testimony, in the Leslie Controls case, which was where that -- when that deposition was brought to my attention, is where I've learned of these matters -- he was asked this question: "Are you buying the liabilities from them? Is that what you're doing? Or are they selling you the liabilities, I should say?"

He says, "Neither is exactly right." He goes on to say that it depends on what the company's needs are. He does testify that the idea is they take the financial risk off of the customer, and they're the ones who gain if the cases are settled cheaply or lose if the claim values rise.

And that is also set forth in website material that includes, for instance, this statement: "Assuming LRG is able to manage the litigation successfully, residual funds are released to us and our investors. If instead there are adverse developments in the litigation, LRG and its investors lose some or all of the additional assets contributed." They are speculators in the management and resolution of the asbestos liabilities.

That was entirely unknown to me. It should have been

in the retention application, in which case, both the Court and the ACC would have had it right in front of them. But the inferences that Mr. Bentley is trying to raise about how this was open and notorious, if that's true, it wasn't so open and notorious as to come to my attention when I'm busily working on a case.

Now, Dr. Mullin and Dr. Bates are very closely tied. They are the co-authors of virtually all of the publications that Bates White has put out on asbestos litigation. And they are not readily divisible.

Consider the scenario that I described to you before, where Dr. Mullin puts off his Bates White hat, dons his LRG hat and sits down to negotiate the resolution of a bunch of asbestos claims with a particular law firm. Assume also -- say it's the Simmons firm; 1,300 GM mesothelioma claimants in that data. And Dr. Mullin's insisted on the trust production including the law firm that represents the individual client. So when they do whatever they do with that data by way of matching and analyzing and slicing and dicing, he's going to form impressions of how the Simmons firm has fared in the negotiation of resolutions with other defendants.

He may not remember that, You know, JQ -- John Q. Public got X dollars on a particular date, but he will certainly remember that the Simmons firm produced results within a given range, according to certain factors. And he

will bring that knowledge with him to the table when he sits down with the Simmons firm or some competitor of the Simmons firm, to play out the hand in negotiating the resolution of a book of business that he has acquired, he hopes, from a solvent tort defendant. And that's going to affect the negotiation. And that's going to affect the outcome.

And you set the goal at the first hearing, Your Honor, when you were inclined to grant the 2004, that that sort of thing not be permitted. And there's simply no practical way that the anonymity protocol and the confidentiality agreement can protect that, can prevent that from happening, because in the end, they insisted and we knuckled under, not knowing of Dr. Mullin's conflicting interests, to the direct production of the claimant-specific information from the trusts, to Dr. Mullin and his Bates White colleagues who also work in LRG.

So we feel very strongly that the order should be revisited. We are prepared to make that motion at the earliest date.

THE COURT: Mr. Bentley, I've heard enough.

We're going to take a recess. And I want everybody back by noon.

(Recess from 11:42 a.m. until 12:06 p.m.)

THE COURT: Have seats, please. I gather from my chambers folks that you reached some agreement that would obviate the need for me to rule?

MR. BENTLEY: Correct, Your Honor, should I --

THE COURT: Yes.

MR. BENTLEY: -- go to the podium?

(Pause)

MR. BENTLEY: For the record, Philip Bentley. Yes, Your Honor, I'm glad to say that -- here's the understanding and the agreement that we've reached.

We, the unsecured creditors' committee -- I'm sorry. I, as counsel to the unsecured creditors' committee, am going to recommend to our client -- we need to get the client's approval -- but I'm going to recommend to them that they accept the stipulation that Mr. Swett offered in court today.

One additional wrinkle. And that is, we had some discussions, myself, Mr. Karotkin and Mr. Swett, about what impact does this have on the pending -- the ACC's pending Rule 2004 request. And the agreement we came to is that assuming my committee approves this stipulation, the ACC will withdraw its Rule 2004 application as to all parties other than the debtors and New GM. And as to the request to take discovery from the debtors and New GM, both the ACC and the debtors and New GM reserve their respective rights.

THE COURT: Um-hum. Mr. Swett first, then Mr. Karotkin. Did he get it right?

MR. SWETT: He was correct as far as it went, but he neglected to mention that his subpoenas will be withdrawn. We

would ask, in addition, that the ruling pursuant to which they were issued in the first place be vacated. He hasn't agreed to that. We'd tender it to Your Honor.

But we will withdraw the 2004 subpoenas issued to third parties other than New GM. We will meet and confer with the Weil Gotshal folks over whatever discovery's been directed to the debtors; likewise New GM, in an effort to come to agreement on what work remains to be done in the discovery mode there. We're not looking to expand it or protract it.

So there's the stipulation that we offered on the record earlier. There is the withdrawal of the subpoenas all around as they relate to third parties other than New GM. We withdraw ours against solvent defendants. They withdraw theirs against the trusts.

And in addition, outside of the bargain, we would ask Your Honor to indicate on the record that you consider the prior rulings vacated, so that they will not have the spillover effects that we fear. Thank you, Judge.

THE COURT: All right. Mr. Karotkin?

MR. KAROTKIN: Yes. I think it's accurately stated. As to the pending 2004 requests, hopefully we can work that out with Mr. Swett. If not, we'll be back here on December 2nd, which is the return date. And we all reserve our rights. And my only hope, Your Honor, is that this proposed stipulation does not take nearly the amount of time to draft as the

confidentiality agreement.

THE COURT: Um-hum. Mr. Bentley, do you have any problems with what Mr. Swett said?

MR. BENTLEY: Everything he said was accurate. Your Honor, I did omit to mention that we certainly -- pursuant to this deal, we certainly would be withdrawing our subpoenas.

THE COURT: All right. Nothing that was said as the deal points of the prospective stip or consent order is offensive to me.

I was very near issuing a ruling on what I heard today which, under the circumstances, I will not deliver, except to the limited extent of saying that the concerns that Mr. Karotkin articulated were a matter of substantial concern to me, and ultimate agreement with the most important points that Mr. Karotkin made, which I understood to be that we cannot allow this process to continue in the way that it's been going, with the associated expense and delay and prejudice to the creditor body as a whole in the GM case.

When the two committees go back -- when counsel for the two committees go back to their respective committees to get whatever ratification they perceive to be necessary or appropriate, I want both counsel to share with their committees the substance of what I said, and as important as the words that I said on the record, the body language, which I'm sure both sides saw.

We worked so hard in this case to get to the point where we are now, that it's a matter of substantial frustration to me that we're not over the goal line yet. And I think we need to redouble our efforts to remember why we're all here.

All right. Am I correct that we have no further business?

MR. KAROTKIN: Yes, sir.

THE COURT: All right. We're adjourned.

MR. KAROTKIN: Thank you, sir.

(Whereupon these proceedings were concluded at 12:13 p.m.)

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

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

Lisa Bar-Leib

Digitally signed by Lisa Bar-Leib
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LISA BAR-LEIB

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Date: November 23, 2010