

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: . Case No. 09-50026-mg
. Chapter 11
. .
MOTORS LIQUIDATION COMPANY, . (Jointly administered)
et al., f/k/a GENERAL .
MOTORS CORP., et al, . One Bowling Green
. New York, NY 10004
Debtors. .
. Friday, May 25, 2018
. 10:05 a.m.

TRANSCRIPT OF CASE MANAGEMENT CONFERENCE REGARDING PROPOSED
SETTLEMENT BETWEEN THE GUC TRUST AND SIGNATORY PLAINTIFFS
(RELATED DOCUMENT(S) 14292, 14294, 14293, 14298)
BEFORE THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY COURT JUDGE

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1 (Proceedings commenced at 10:05 a.m.)

2 THE COURT: -- 09-50026. We're here in connection
3 with the order I entered scheduling the case management
4 conference regarding proposed settlement between the GUC Trust
5 and the signatory plaintiffs. The scheduling order is ECF
6 Docket Number 14298. I have the list of appearances in front
7 of me.

8 Obviously, in addition to entering the order
9 scheduling the case management conference, I entered a separate
10 order regarding the proposed settlement. And that was entered
11 -- raising some questions, that was entered on May 10th. In
12 response to that order, I received the May 22, 2018 letter from
13 Mr. Weisfelner, attaching a proposed amended settlement
14 agreement and notice procedures, and I've obviously received
15 several letters from New GM's counsel.

16 Mr. Basta, I guess this is your first appearance in
17 the case. Is that right?

18 MR. BASTA: Happy to be here, Your Honor.

19 THE COURT: Were you involved at Weil when the case
20 was first filed? Were you involved in GM?

21 MR. BASTA: At Weil?

22 THE COURT: Weren't you at Weil at some point?

23 MR. BASTA: I was at Weil, and then I was at
24 Kirkland. I think my involvement with GM at Weil had to do
25 with the spinoff --



1 THE COURT: Were you there when GM filed?

2 MR. BASTA: No, I was not. I was at Kirkland at that
3 time.

4 THE COURT: Okay. All right. Thank you. Well,
5 welcome.

6 Before we get into the conference, I have some more
7 comments just generally I wanted to raise and maybe frame some
8 of the discussion today. So obviously I scheduled today's
9 conference because it appeared likely to me that there are
10 fundamental disputes between the plaintiff and the GUC Trust on
11 the one hand and New GM on the other hand, whether the proposed
12 settlement construct is workable. And I didn't want -- I do
13 not want to approve the notice procedure and have \$6 million
14 spent on giving notice if the proposed settlement could not be
15 approved as a matter of law.

16 I entered the May 10, 2018 order raising questions
17 about the proposed settlement in part because of concerns
18 whether the settlement was illusory, and I will listen to what
19 counsel has to say today to address those concerns. But it
20 does seem to me that the changes made in the proposed
21 settlement go a long way to addressing the concerns I expressed
22 in raising those questions. And I want to explore today
23 whether there are any gating issues that the parties and the
24 Court should address before proceeding with notice.

25 So New GM, in its various filings so far, raises



1 important questions whether a settlement can be approved
2 without utilizing Rule 23. And I'm not going to decide that
3 issue today, but I would like to hear the parties' views on
4 that issue. I am inclined to order briefing on that issue
5 before approving a schedule for all three motions.

6 I also have questions about how many personal
7 injury/wrongful death claims have been filed and whether more
8 such claims are anticipated before the end of May. If more
9 claims are filed, will those plaintiffs agree to proceed under
10 the terms of the proposed settlement? I read in one of the
11 papers, and I don't remember whose paper it was, that more late
12 claims are expected to be filed by May 31.

13 So in thinking about the issue, whether the proposed
14 settlement construct can work without using Rule 23, let me ask
15 the following question: Is what the settlement proposes any
16 different than a debtor scheduling claims of all purchasers of
17 vehicles that were subject to recalls and listing the amounts
18 of the claims as unliquidated? If that was done, wouldn't that
19 avoid the Rule 23 issue? There would be many millions of
20 unliquidated claims for which estimation under Section 502(c)
21 would appear to be a perfectly appropriate method for trying to
22 resolve the claims.

23 If -- I'll refer to them as the "recall claims." If
24 the recall claims were scheduled as unliquidated and actual
25 notice was given to the claimants, wouldn't the claimants be



1 bound by the Court's estimation whether or not the claimants
2 appeared in the bankruptcy cases? This issue of being able to
3 bind people who aren't here today, I don't see how that's any
4 different. If proper notice is given, people are bound by what
5 happens in a bankruptcy case.

6 And I have a few other questions. Well, I'll just
7 put them out there now. They're sort of unrelated to what I've
8 asked so far, but first, with respect to the personal
9 injury/wrongful death claims. What, if any, proof of causation
10 and damages would be required to estimate those claims? Could
11 the Court estimate those claims without evidence of causation
12 and damages? As part of a settlement, could the plaintiffs and
13 the GUC Trust agree on simplified criteria for the Court to
14 apply in determining causation and damages and estimating the
15 personal injury/wrongful death claims? Would New GM have
16 standing to object to those criteria? These are claims against
17 Old GM in the former GUC Trust, not against New GM.

18 Then, switching to the economic loss claims, in order
19 to estimate the economic loss claims in the aggregate, must the
20 parties and the Court apply the law of each state in which the
21 owners purchased cars? For settlement purposes, can the
22 parties agree on one state's law or legal principles to apply
23 in an estimation proceeding? With respect to determining
24 choice of law or applicable law, parties often stipulate to the
25 applicable law to apply. Can the plaintiffs and the GUC Trust



1 agree on the principles on governing law by settlement? Would
2 New GM have standing to object?

3 So those are the -- you know, in thinking some more
4 before today's hearing, those are some additional questions I
5 have. It's my hope we're wrapping up no later than noon, so
6 this is not going to be a particularly -- I'm not -- we're not
7 going to go beyond then. But I'd like to come out of today
8 with either directing briefing on gating issues, if I conclude
9 after listening to people that's the appropriate thing to do.

10 I also -- Mr. Basta, in your latest letter, you
11 complain about the schedule that the moving parties have
12 proposed for various things, discovery and other things, and my
13 reaction to that is you need to go and try and work out an
14 agreed schedule for all of those things. I'm not going to pose
15 that schedule today. The only question in my mind is, is the
16 start of that schedule going to await me getting some briefs on
17 gating issues or not. But, you know, quibbling whether it's 10
18 or 20 days or 30 days for this, that, or the other thing, you
19 ought to be able to work that out, and maybe you've already sat
20 down and tried to hammer it out. I'm not going, today, to go
21 through and throw darts and pick the number of days for the
22 various steps along the way.

23 Now, I know you also filed the stay motion, and the
24 plaintiffs and GUC Trust certainly can respond to that when or
25 if that motion is going to be heard. And when I say "if," I



1 may decide it without a hearing, but if I have a hearing, when
2 that will be remains to be seen, as well. I guess you did file
3 your objection to the notice -- the motion for the form of
4 notice. I have that, so that's done. I did want to see that.
5 I went -- I didn't read it. I read it through very quickly. I
6 didn't study it. I think it's likely we're not going to go
7 forward with that notice procedure motion on the date that it's
8 been scheduled for, I think, but we'll come to that. I do want
9 to hear the parties.

10 So, Ms. Going, do you want to start?

11 MS. GOING: Sure. Thank you, Your Honor. Kristen
12 Going, Drinker, Biddle & Reath, on behalf of the GUC Trust.

13 Your Honor, I -- in light of your questions, I
14 thought I would dive right in, and I feel that I at least can
15 answer the first question that you posed.

16 THE COURT: I'd better look at my questions again and
17 make sure I see which was first because I said a lot.

18 MS. GOING: And this is something that we wanted to
19 raise with Your Honor anyway, and that is that nothing in
20 502(c) provides that the Court must estimate a proof of claim.
21 It actually contemplates that the Court estimate a claim, and
22 as you know, that is simply a right to payment. I think if
23 you, in fact, look at 502(a) and contrast that language against
24 502(c), you will see that Congress, in fact, intended that
25 estimation would not be applied to proofs of claim, but it



1 would be applied to claims generally, whether or not a proof of
2 claim had actually been filed because you can see 502(a) says:
3 A claim or interest, proof of which has been filed under
4 Section 501 of this title. So in 502(c), if the Congress had
5 intended that estimation -- that the Court's were obligated to
6 only estimate proofs of claim, it would have utilized that same
7 language. And it's for that reason, Your Honor, we are asking
8 this Court to estimate the claims -- not the proofs of claims,
9 but the claims -- of the economic loss and the personal injury
10 plaintiffs.

11 THE COURT: Okay.

12 MS. GOING: I'm looking at your questions now.

13 And so picking up on that, that the settlement as you
14 know contemplates that notice is given to all possible personal
15 injury and economic loss plaintiffs because it's contemplated
16 that the notice would be given to all individuals that were
17 subject to the recalls that are part and parcel of the
18 settlement. So they would receive notice. They would have an
19 opportunity to come in and object to the settlement. And then,
20 those claims are what we would be asking this Court to
21 estimate. And we do believe that that would bind all of the
22 parties because of the broad notice that's being provided.

23 Unless you have any questions about that, I think I'm
24 going to cede the podium on your questions about causation and
25 damages.



1 THE COURT: Well, let me just -- address specifically
2 why you believe it's unnecessary to certify classes under Rule
3 23 in order to proceed with this settlement.

4 MS. GOING: Well, I think --

5 THE COURT: Or if you want one of the other counsel
6 to address it, that's fine with me, too. I don't know how you
7 decided to divide things up, but --

8 MS. GOING: Sure. Mr. Weisfelner's going to address
9 Rule 23 class certification specifically, but on that point,
10 the GUC Trust would just want to point out that we're a little
11 surprised that this issue is being raised now, and --

12 THE COURT: But they raised it at the -- before you
13 came into the case, when I had the trial about whether the
14 original proposed settlement was binding or not, that certainly
15 was one of the main arguments that New GM made, that this
16 settlement could not be -- that settlement -- little different
17 -- couldn't be approved anyway because it didn't follow Rule --
18 didn't provide for class certification, essentially.

19 MS. GOING: Right.

20 THE COURT: So that's not a new issue in the case.

21 MS. GOING: Well, Your Honor, I'm actually going back
22 farther. And this is in the context of -- I think we can all
23 agree that New GM's goal here is delay. And so my point is
24 when you entered your order to show cause back in December of
25 2016 and you identified the late claims process and



1 specifically said that issues regarding class certification
2 would be addressed at a later time and you asked parties to
3 object or raise issues with the schedule, they didn't raise it
4 then. And so they've allowed this process to play out for 18
5 months.

6 THE COURT: Well, we didn't go forward with that
7 threshold issue about late claims. That got put on the back
8 burner, so it's not as if -- the Court has not resolved that
9 issue.

10 MS. GOING: Okay.

11 THE COURT: I mean, do you disagree?

12 MS. GOING: I don't, but I think that if New GM's
13 position was always going to be you had to have a certified
14 class before you filed the proofs of claim, which seems to be
15 what they're saying today, they should have articulated that to
16 Your Honor.

17 THE COURT: So why isn't it necessary -- or is Mr.
18 Weisfelner's the one --

19 MS. GOING: Yes.

20 THE COURT: -- who's going to -- I'll leave this to
21 Mr. Weisfelner. Thank you very much, Ms. Going.

22 MS. GOING: All right, thank you.

23 MR. WEISFELNER: Good morning, Judge.

24 THE COURT: Good morning.

25 MR. WEISFELNER: I do want to take an opportunity to

1 address each and every one of the concerns that Your Honor
2 raised at the outset of this status conference. If Your Honor
3 will permit me a point of personal overview, I don't know if
4 Your Honor shares the sense of irony we, on this side of the
5 courtroom, feel about New GM placing itself in the position of
6 being the champion of the rights of the plaintiffs, their
7 victims. They're stepping into the shoes to make sure that
8 Your Honor is aware of what their rights are and how to best
9 protect those rights. And frankly, Your Honor, I find that
10 just a bit ironic.

11 Getting to your specific points, we're all familiar
12 with Your Honor's decisions in -- I think it was both MFG and
13 in the BCI case, where Your Honor, in a different context, had
14 settlements of class claims. And I think, if I remember both
15 decisions, the classes there were certified for settlement
16 purposes, and the class certification was approved
17 preliminarily and then finally simultaneously with the
18 consideration of the settlement. And we can see any number of
19 cases that predate and postdate Your Honor's own decisions,
20 WorldCom included, where the process is sort of in a two-step
21 stage.

22 I think Your Honor may be familiar with the
23 modifications to Rule 23, which now provide that, once adopted,
24 will provide that courts no longer need to go through this
25 two-step process of, first, preliminarily certifying a class in



1 order to give them notice, and then finally certifying a class
2 in connection with the ultimate settlement. It's now pretty
3 clear that it's contemplated that to the extent that a class
4 needs to be certified at all for settlement purposes, it can be
5 done at the same time as the settlement and notice, so long as
6 it comports with the necessary notice -- best notice in a class
7 context -- can go forward. So it's a couple of important
8 things, I think, to note. And whether Your Honor wants this
9 briefed or not, we're --

10 THE COURT: That part, I don't need briefed.

11 MR. WEISFELNER: Okay. So what we have here is a
12 situation where --

13 THE COURT: Well, let me ask. Even with the proposed
14 amendments, the Court -- I would be very reluctant to order
15 \$6 million to be spent for notice if what was being -- the
16 settlement that was being proposed, on its face, could not be
17 approved. Okay. I'm not making -- I don't contemplate making
18 ultimate determination until notice has been given to everybody
19 whether I can approve what you do. But as a threshold issue,
20 it does seem to me, I don't want to see \$6 million spent for
21 something that, you know, isn't going to work.

22 MR. WEISFELNER: Understood. And, Your Honor, again,
23 from the perspective of, quote, "whether a settlement works,"
24 putting aside some of the jurisdictional concerns and the due
25 process concerns, on the face of it, in terms of whether the



1 settlement reaches or meets or exceeds the criteria of 9019,
2 within the issues that are being settled, the GUC Trust takes
3 the position that you can satisfy the criteria for
4 certification of a class for settlement purposes. Plaintiffs
5 take the position -- economic loss plaintiffs take the
6 position, of course, we can. And we all know what the four
7 criteria are.

8 And, Your Honor, intended, as part of the settlement,
9 to brief you on why it is that if Rule 23 is applicable -- you
10 just heard Ms. Going indicate that from the perspective of the
11 GUC Trust, and we share her perspective, the analogy that Your
12 Honor gave was to, you know, schedule claims, small C, in an
13 unliquidated disputed amount that then get estimated, and
14 there's nothing about the constitutional documentation that
15 formed the GUC Trust that requires them to ask for an
16 estimation of claims only if they're part of a proof of claim
17 and only if that proof of claim -- if it's a class claim, first
18 get certified. They're entitled to ask for estimation of
19 claims, lowercase C.

20 But more importantly, again, if you look at what the
21 standards are that the Court would be required to apply in a
22 Rule 23 setting, remembering that this is certification for
23 settlement purposes and not for trial purposes, the issues, the
24 criteria, quite frankly, the standards are easily met here.
25 And we intend to brief that and have Your Honor satisfy that to



1 the extent there are any open issues regarding certification
2 for settlement purposes, they've been more than met and as part
3 of your approval of the settlement could find that coextensive
4 with compliance with Rule 9019, we've got compliance to the
5 extent it's applicable with Rule 23 class certification for
6 settlement purposes.

7 THE COURT: I didn't articulate this before, but the
8 Rule 23 issue raised the question in my mind about, you know,
9 in a (b)(3) class, there's a right to opt out, okay. In
10 bankruptcy, there's no opt out on claims, and the court,
11 whether you show up or -- if you've gotten notice, the court
12 resolves it and it's binding.

13 MR. WEISFELNER: Well, two things --

14 THE COURT: There's no opt out.

15 MR. WEISFELNER: -- two things to say about that. I
16 agree completely that the bankruptcy context doesn't permit for
17 or deal with opt outs, but it does permit for people to show up
18 and respond to the notice and state their objections and have
19 their objections dealt with in whatever way is ultimately
20 appropriate.

21 THE COURT: Let me just say, I mean, it's one of the
22 -- like what I've just said about the collective nature of a
23 bankruptcy proceeding and the preclusive binding effect of a
24 bankruptcy court order. That's fundamentally different than
25 what Judge Furman is being asked to do in certifying a Rule 23



1 class.

2 MR. WEISFELNER: For trial purposes.

3 THE COURT: Yes.

4 MR. WEISFELNER: Your Honor, more to the point, even
5 if one were to be boxed in to a narrow interpretation or the
6 procedural posture that this settlement is put in and view it
7 from the perspective of Rule 23 and the opt-out issue, let's
8 remember that this is the paradigm of a limited fund. At the
9 end of the day, Your Honor could determine that the claims of
10 the plaintiffs, writ large, is worth \$40 billion. It doesn't
11 ultimately lead to any more than 30 million shares of New GM
12 stock being proffered as a true up to their purchase price. So
13 it is a limited fund, and we think on application, if we were
14 required to comply with all of Rule 23 criteria and avoid the
15 opt out, it's because we have a limited fund.

16 THE COURT: But the notice would look different,
17 though, Mr. Weisfelner.

18 MR. WEISFELNER: The notice may very well look
19 different. The other thing I want to emphasize here is that --
20 and as Your Honor may imagine, we had many, many, many hours of
21 discussion -- I won't say debate, but discussion among the
22 plaintiffs, the GUC Trust, both before they were adequately
23 represented and now that they're adequately represented, and
24 most importantly with the unitholders about Rule 23. And the
25 concern we all had was a practical concern, that in a typical



1 Rule 23 context, even for settlement purposes, what you are
2 telling the beneficiaries of your activities, the members of
3 the classes, what this settlement means to you in dollars and
4 cents. That, we can't do. We don't have a res to point to and
5 say, this is the res that you're going to get to share, and
6 here's what we think your pro rata participation in that res is
7 going to mean by way of a check that gets cut in your name.

8 So for all those reasons --

9 THE COURT: Wouldn't that be true in any limited fund
10 case, though?

11 MR. WEISFELNER: Well, yes and no. I mean, if we had
12 a limited fund and there was X numbers of dollars, there are Y
13 number of potential participants, and dividing it up, at a
14 minimum, you could say X over Y, subject to whatever criteria
15 gets you into the Y category. Here, we have no idea what the X
16 is. And as a consequence, it is virtually impossible to let
17 anybody know what it is you're going to receive but for the
18 following, which we think the notice has made clear.

19 In giving the waiver and the release, that's your
20 cause. You get the benefit, if any, associated with an
21 estimation proceeding that results in the accordion being
22 triggered and some adjustment shares being available. There
23 will then be a process, subject to court approval, where
24 everyone has a clear understanding of what they're going to get
25 out of that process.



1 So you have to waive. You have to balance, rather.
2 On the one hand, you've got a little over \$400 million worth of
3 GUC assets that are currently available. You can make a claim
4 against the GUC assets. You can attempt to overcome the
5 Pioneer factors, the waiver, the laches, whatever other
6 arguments the GUC Trust could and historically did raise with
7 regard to your entitlement to any portion of those funds.
8 Beyond that, you may have an ability, on your own dime, to go
9 chase the unitholder beneficiaries and seek a clawback of prior
10 distributions.

11 Or you can give a waiver under all these for the
12 opportunity to be part of an estimation procedure that gives
13 rise to adjustment shares that then potentially is a
14 billion-dollar recovery that's reserved for you and your
15 cohorts, as opposed to take a shot at 400 million, maybe have
16 to share it with the unitholders, maybe you get first dibs at
17 it, maybe you get the clawback.

18 And I think the notices in this case clearly point
19 out to everyone what their options are and afford them an
20 opportunity to show up, not once but twice. Show up in
21 connection with the settlement -- three times. Show up in
22 connection with the estimation, show up in connection with the
23 approval of what we refer to as the David Trott distribution
24 procedures by analogy to what some of us are more familiar with
25 in the asbestos arena.



1 The other thing I want to say about Rule 23, and I'll
2 do it quickly, and I think it bears emphasizing. Throughout
3 GM's paperwork, in its effort to be the champion of the
4 victims, their own victims, we keep hearing that, judge, don't
5 knock yourself out. Judge Furman is geared up to and is about
6 to make rulings on class certification.

7 THE COURT: So I understand that the briefing isn't
8 even done until --

9 MR. WEISFELNER: Well --

10 THE COURT: -- October sometime.

11 MR. WEISFELNER: Not only that, Your Honor, but let's
12 get real and let's be forthright and let's be transparent.
13 What's going on in front of Judge Furman is GM perfectly well
14 noticed its consideration of class certification on a
15 bellwether basis. Unless I'm mistaken, there are three
16 jurisdictions that the Court is giving consideration to as part
17 of the bellwether briefing and the bellwether hearing that
18 takes place. Frankly, we don't think they could possibly take
19 place before April of next year, forget about November of this
20 year.

21 Whatever determination the Court makes is, A, subject
22 to appeal by other party up to the Second Circuit. Whether the
23 Second Circuit takes cert on those issues or not, those appeals
24 will take a long time. But let's assume that everyone's
25 perfectly happy with the Court's decision on certification. It



1 only applies to three bellwether cases. We then have the
2 second part of the exercise, which by the way, we've seen this
3 movie before, where the parties then attempt to agree on
4 whether or not those determinations impact anything other than
5 those three bellwether jurisdictions, or whether or not you've
6 got to then consider the law of other jurisdictions for
7 certification purposes.

8 And when I say we've seen this movie before, we saw
9 this movie before in connection with the damages theory that
10 was being proffered by the plaintiffs that went to the economic
11 loss theory benefit of the bargain. There were bellwether
12 cases. The Court made its determination that in some
13 jurisdictions, manifestation is a pre-condition to benefit of
14 the bargain theory, said to the parties, now, go ahead and meet
15 and confer and see whether or not my ruling applies to any
16 other jurisdictions.

17 The plaintiffs, in good faith, said, you know what,
18 we think it does apply to at least another five, six, or seven
19 jurisdictions. I can't remember. GM said, doesn't apply to
20 any other jurisdiction, manifestation is a requirement in every
21 single jurisdiction. And now, Judge Furman's going to have to
22 try that beyond the bellwether cases he established, my point
23 being that GM is disingenuous when it suggested --

24 THE COURT: Mr. Weisfelner, your motions that I have
25 before me proceed with a construct for settlement that does not



1 require Rule 23 class certification. That's what's pending
2 before me, and that's what I contemplate going ahead and
3 deciding. And when I said at the outset that I contemplated
4 getting -- because I think that's -- it's raised as a gating
5 issue to at least preliminarily decide that issue before \$6
6 million is spent giving notice.

7 If the issue was whether classes should be certified,
8 economic loss classes should be certified, and that issue is in
9 the process of being briefed in discovery or whatever before
10 Judge Furman, I'm strongly disinclined to try and jump the gun
11 and decide the issue before Judge Furman does.

12 New GM argues that those issues are before Judge
13 Furman, he's going to decide them. Judge Furman and I had a
14 brief telephone conversation this week. We did not discuss the
15 merits of any -- and we have -- in any of the prior discussions
16 we've had, we have not discussed the merits. He knows that
17 this hearing is going forward today. I believe one of his law
18 clerks was going to have the opportunity to listen in. Whether
19 she's there or not, I don't know. He decides what he has to
20 decide. I'll decide what I have to decide. I want to be
21 careful not to take and decide any issues that he has before
22 him. You may not like the schedule by which it's being done.
23 He's got massive cases, and he's been proceeding in a very
24 orderly fashion.

25 But when I took your -- the three motions, say, as we



1 don't believe that Rule 23 class certification is required.
2 That's not the construct by which -- you may be able -- if you
3 had to, you may be able to satisfy the Rule 23 requirements
4 through -- this will be for settlement purposes, not for trial.
5 Those issues would be different than what Judge Furman is being
6 asked to decide; class certification for trial. Okay. But at
7 least on the pleadings that I have before me, that's not the
8 direction -- that's not the structure of the settlement that's
9 been negotiated. Okay.

10 So in terms of will I go ahead and decide these
11 issues that are raised by your motions, I want to see -- you
12 know, with respect to the form of the notice, I started to read
13 New GM's brief, but it fundamentally raised the Rule 23 issue.
14 You know, in terms of who are you going to give notice to, the
15 postcard procedure, all that, I don't have a problem with that.
16 You know, I'm not deciding it today, but fundamentally, with
17 11.4 million people or something, I don't have a problem with
18 it. Okay.

19 MR. WEISFELNER: Let me move on and address -- I'm
20 going to skip over your question about causation of damages
21 because I think that's more directed towards personal injury.

22 THE COURT: Sure.

23 MR. WEISFELNER: But I do want to address your
24 concern about whether or not, in performing an estimate, Your
25 Honor has to give consideration to state-by-state analysis,



1 choice of law issues, that sort of thing.

2 THE COURT: And I've read Judge Furman's decisions,
3 you know, deciding on -- for those states that he has decided.
4 One, I read the -- his decision on reconsideration as to New
5 York. And so, you know, I'm generally familiar with it.

6 MR. WEISFELNER: Sure.

7 THE COURT: But for settlement purposes, I don't
8 know. What is it you're contemplating?

9 MR. WEISFELNER: Well, I'll tell you -- I'll give you
10 an example of where, you know, I would suspect it might be
11 relevant to Your Honor. So we've got, a rough estimate,
12 11.4 million cars at issue. Now, if one were to back out of
13 11.4 million cars, cars that were sold in jurisdictions where
14 manifestation is a precondition -- don't hold me to the exact
15 numbers, but I think we're down to -- instead of 11.4 million
16 cars, we're down to nine-and-a-half-million cars. Well, I can
17 imagine that as part of the trial on what an appropriate
18 estimation would be, it would be overreach for the plaintiffs
19 to ask you to apply an estimation to 11.4 million cars as
20 opposed to nine and a half million cars.

21 Likewise, any other rulings that have been issued by
22 Judge Furman that has an impact on damages or damage theories,
23 state by state or otherwise, are going to be built into the
24 estimation proffer that we give you. And if we're stupid
25 enough not to do that, I would assume someone withstanding is



1 going to point out those defects.

2 So generally speaking, we don't think that an
3 estimation hearing, given the law of estimation, which is very
4 much akin to the standards of the courts to apply in a 9019 --
5 you're estimating, you're not trying these cases -- that we
6 will gear ourselves towards an appropriate presentation on the
7 appropriate estimation with consideration -- due consideration
8 given to everything that Judge Furman has done to date.

9 The other thing I want to point out, because I think
10 it's reflective, going back again for a second to the Rule 23
11 9019 debate. We need to understand, as I'm sure Your Honor
12 does, the difference between the case that's pending in front
13 of Judge Furman and the bankruptcy issues that are presented to
14 Your Honor through the three pending motions. The three
15 pending motions deal with claims that could've been asserted
16 against the debtor in possession.

17 By and large, with one exception, the claims that are
18 pending in front of Judge Furman are so-called "independent
19 claims" asserting independent liability of New GM relating to
20 cars that were sold after the sale date in this case. Now, the
21 one exception is successor liability, and successor liability
22 is, for lack of a better term, up in the air in front of the
23 district court. Some preliminary rulings, whether they apply
24 across the board, whether they're going to be reconsidered is
25 up for grabs



1 THE COURT: That's not an issue for me.

2 MR. WEISFELNER: Okay. Because I think, again, it's
3 an issue, if any, as to what, if any, credit New GM may be
4 entitled to in front of the district court.

5 THE COURT: And that's for Judge Furman to decide.
6 Not for me.

7 MR. WEISFELNER: As far as the scheduling of
8 discovery, Your Honor, we are more than happy to sit down with
9 General Motors and the other parties on the plaintiffs' side
10 and try and work out discovery.

11 But I think in that context, Your Honor ought to be
12 aware of just a couple of salient facts. It's not as if
13 there's been no discovery. In fact, there's been fulsome
14 discovery, albeit at the MDL level. As of mid-March, the
15 parties have conducted 643 depositions: There have been 361
16 depositions of plaintiffs and other case-specific witnesses,
17 especially in the injury and wrongful death actions; 102
18 depositions of current or former GM employees; 84 expert
19 depositions; 96 depositions of named plaintiffs in the economic
20 loss aspect of the case.

21 GM has produced about four million documents,
22 23 million pages. And I don't have a figure for how much
23 documents and pages we've submitted. But all plaintiffs have
24 likewise completed and turned over to GM fact sheets and
25 produced documents. So I think that's going to be relevant



1 when the parties sit down and attempt to work out a schedule
2 for discovery and depositions and fact discovery and expert
3 discovery.

4 THE COURT: I'm assuming that the parties will agree
5 that any depositions that have been taken in the MDL can be
6 used here.

7 MR. WEISFELNER: The other, and I think final comment
8 unless Your Honor has any other questions for me, is with
9 regard to the -- that aspect of the notice motion that asked
10 New GM to turn over information. And I'm not sure --

11 THE COURT: Their latest objection was to how many
12 days you were giving them to turn it over.

13 MR. WEISFELNER: And again --

14 THE COURT: You're going to work that out.

15 MR. WEISFELNER: We will do our best to work that
16 out.

17 THE COURT: You're going to work it out.

18 MR. WEISFELNER: It seems to me that there are -- it
19 seems to me that there are three areas of information that
20 we're looking for. On either end of the spectrum, give us the
21 names, addresses, and identifying information with regard to
22 original vehicle purchases. As far as I can tell from review
23 of the applicable federal law in this area, that's a
24 "push-a-button exercise." You're obligated to maintain those
25 records.



1 THE COURT: I read the briefs on that.

2 MR. WEISFELNER: Okay.

3 THE COURT: So I understand that.

4 MR. WEISFELNER: The only --

5 THE COURT: I didn't see any argument from New GM
6 that they don't have the information. What about used car
7 purchases?

8 MR. WEISFELNER: Well, that was the middle part of
9 the two ends of the spectrum. So they have to have the
10 information regarding car purchasers. They have to have the
11 information regarding who they send their recall notices to.
12 The only thing that's left is, in the middle, to the extent the
13 car's changed hands, which information, we understand from our
14 experts, is available, although potentially at a price through
15 services such as Polk, and how long it would take to get that
16 information and de-duplicate the stuff so people aren't getting
17 massive numbers of the same notice.

18 THE COURT: I'm assuming that with pre-2009 cars,
19 most of them have been sold, have been turned over.

20 MR. WEISFELNER: Yeah. But again, we're talking
21 about 2014 being the recall.

22 THE COURT: Yeah. I don't know what happens when,
23 you know, somebody trades a car, whether GM -- and if they
24 trade it for a new GM car, whether the dealer who took the
25 trade would have the records, and whether -- therefore GM --



1 New GM would have the records of who traded their vehicle and
2 purchased a new --

3 MR. WEISFELNER: What I'm advised is those records
4 are, in fact, maintained. They're maintained for a purpose.
5 And that is, should there ever be a subsequent recall you have
6 to know where the car is today as opposed to who originally
7 sold it. You have to know where the car is today.

8 The automobile manufacturers, unlike with regard to
9 original purchases or who you gave recall notices to, don't
10 necessarily have to maintain the records of the stuff that
11 transpired in between. But it is available through a service.
12 GM, you know, uses that vendor, has used that vendor in the
13 past to do the recall notices. But in any event, we will
14 attempt to work it out as best we can with the parties.

15 But I just want to make sure that Your Honor doesn't
16 get sidetracked on this used car issue. Understand that the
17 theory of liability that we will attempt to establish in
18 connection with the estimation is with regard to the number of
19 vehicles at issue, regardless of the number of owners, so that
20 if the 11.4 million cars has now been reduced to nine and a
21 half million cars by virtue of the manifestation rulings, it's
22 those nine million cars that the damage experts, you know, will
23 attempt to convince Your Honor is equal to X number of dollars
24 of claims.

25 THE COURT: Are there still additional states as to



1 which Judge Furman has motions still pending or scheduled to be
2 filed dealing with the manifestation issue?

3 MR. WEISFELNER: Absolutely. Again, the current
4 state of affairs is -- I think the parties have only agreed and
5 -- again I apologize, and I don't want to be held to these
6 numbers. I think the parties have -- we have conceded, and/or
7 the judge has ruled that there's a grand total of, I think it's
8 seven jurisdictions where manifestation is a prerequisite to
9 benefit-of-the-bargain damages. The parties have been unable
10 to agree on the application of manifestation as a prerequisite
11 in anything other than those seven jurisdictions. And the
12 party keeps on going.

13 THE COURT: Well, let me ask -- can the parties here
14 in bankruptcy court, in the context of the 9019 and an
15 estimation procedure, agree as to what rules should apply as to
16 -- that should be applied to determine economic loss claims,
17 where the car -- whatever state the car is. I don't know.

18 MR. WEISFELNER: Well, Your Honor, we can certainly
19 put forward, and do intend to put forward as part of our
20 briefing on the estimation itself, just what it is Your Honor's
21 being asked to estimate, and what elements of our claims we
22 think have survived Judge Furman's rulings to date, and
23 therefore ought to be part of your calculation on estimation.

24 I'll give you one bad example because, again, I'm not
25 the expert on damages on our side. But let's take a



1 jurisdiction where Judge Furman has ruled that manifestation's
2 a prerequisite to finding economic loss. Okay. That's the law
3 as determined by Judge Furman, subject to any appeals that
4 economic loss side may tend to take. Let's say that state was
5 Michigan, just to pick a state. Well, that still doesn't
6 prevent a calculation or an estimation of damages that includes
7 a Michigan resident who in point of fact does have
8 manifestation.

9 So all of these factors will be taken into
10 consideration when it comes time for our side to prove up just
11 how high of an estimate we think Your Honor ought to be giving
12 us. And, Your Honor, unless you have any other questions --

13 THE COURT: I'm looking back to see whether I have
14 any questions for you, Mr. Weisfelner. No, that's fine. Let
15 me hear from -- Mr. Hilliard, are you going to -- who's going
16 to address the personal injury/wrongful death?

17 MR. WEISFELNER: Thank you, Judge.

18 THE COURT: Thank you very much.

19 MR. HILLIARD: Good morning, Your Honor.

20 Bob Hilliard. With the Court's permission, just --

21 THE COURT: I was going to allow you to appear by
22 telephone so you didn't have to come from Memorial Day weekend
23 here, but, you know --

24 MR. HILLIARD: I appreciate that, but I'll tell you
25 why I'm here in just a minute. It's not for Mr. Weisfelner's



1 wedding. But on a personal note, I want to just congratulate
2 him on the record. We've become friends since we've started
3 this process, and I know the bankruptcy community's tightly
4 knit. And it's quite remarkable to me that he's spending the
5 morning with you and then the evening with his new bride.

6 Judge, I think I want to address what you've asked.
7 But first, when you sent your order out asking for
8 clarification, we took it very seriously because as you know,
9 and as I've tried to make clear, and I think the Court
10 appreciates and respects, this could be the only mechanism by
11 which people who were hurt or killed ever get value for their
12 loss.

13 And so you said I could appear by phone, but because
14 of the Court's order, we met last night. Because we had no
15 hard line in the sand about how to do this. We just want to
16 make it non-illusory. We want to make sure that this
17 settlement works.

18 THE COURT: Look, I'm all in favor of settlement. I
19 ask the questions because when I read -- several times I read
20 the proposed settlement. I obviously had questions. I was
21 concerned that, well, what are you really accomplishing if
22 you've got to wait five or six, seven years before anybody gets
23 anything?

24 MR. HILLIARD: Absolutely. And your questions were
25 taken to heart, and we've hopefully addressed as many as we



1 can, and we're still willing to continue to make sure that this
2 settlement does --

3 THE COURT: Are there going to be more personal
4 injury/wrongful death claims this week?

5 MR. HILLIARD: So I have a bet with Mr. Golden about
6 that. I don't think so, Judge. I think that you have the
7 universe of personal injury/wrongful death, and here's why. So
8 the earliest an accident could've happened is June '09, the
9 earliest. And then it goes back another 14 or 15 years, and
10 they've yet to appear in any related action because General
11 Motors reports to Judge Furman about all state court related
12 actions. They have yet to appear in front of Your Honor.

13 And perhaps if notice does go out to every customer
14 that had a vehicle, they might remember that there was an
15 accident. And GUC's intent is to buy its full peace, which I
16 appreciate, but I'm not sure that there is much more peace to
17 buy, except for those that are here.

18 THE COURT: How many personal injury/wrongful death
19 claims, late claims are now filed here, or believed to file
20 late claims?

21 MR. HILLIARD: Right. We have approximately 200.
22 One is the core recall group, and the other is the second
23 recall group that GUC is going to include in the settlement
24 that Mr. Weintraub's going to address in particular in just a
25 minute. There's a group out -- another group out of Texas, I



1 think, that has 400.

2 So I believe -- unless for strategic reasons some
3 other law firm has been holding onto their cases and have never
4 made an appearance despite the Court's notice of deadline for
5 late filing, I don't think we're going to see many more.

6 But to one of the questions you asked in regards to
7 damages and causation, I was trying to, as a practical matter,
8 go through in my head, how will that hearing occur. If we have
9 families who were killed, does the Court expect -- and I hope
10 I'm not presumptive, but I don't believe the Court would expect
11 that we would have testimony every single -- in every single
12 case. But I believe that there would be a way to develop a
13 protocol of the injury or death, the medical costs, the loss,
14 the beneficiaries, some comments about, you know, the mental
15 anguish and the soft side of the damages, and present those to
16 the Court for every case on the damage side.

17 THE COURT: Is it 200 or 600 cases? You said --

18 MR. HILLIARD: So my firm and my co-counsel's firm
19 has approximately 200.

20 THE COURT: Okay.

21 MR. HILLIARD: There's another firm that I do not
22 represent, I think that's on the line, that has approximately
23 400.

24 THE COURT: Okay.

25 MR. HILLIARD: And -- but that firm represents the



1 universe --

2 THE COURT: So let me ask this. And they can speak
3 for themselves, but I have this new proposed settlement. I say
4 new because you modified it after I issued your questions. And
5 so are the lawyers on behalf of 600 plaintiffs in agreement
6 with the proposed settlement that I now have before me?

7 MR. HILLIARD: And I believe that every one of the
8 particular and individual clients have signed off on it as
9 well, yes.

10 THE COURT: Okay. So -- because -- you know, they're
11 arguably consenting to give up very substantial rights to a
12 jury trial and -- substantial rights. And they're expressing
13 their willingness to throw in their lot with what this court
14 decides, subject to appeal. I'm not -- you know, no -- I'm not
15 suggesting that anybody should give that up, okay. But that's
16 -- you know, it's substantial rights, and I just wanted to be
17 reasonably clear that -- I didn't realize it was 600. In the
18 back of my head was the 200. But -- so it's 600. There are
19 600 plaintiffs with personal injury/wrongful death claims who
20 are in agreement to go forward on the basis set forth in the
21 most recent draft of the proposed settlement?

22 MR. HILLIARD: I will speak specifically to
23 Bob Hilliard and Tom Henry's docket of the 200. Each one of
24 the clients has agreed in writing to go forward, understanding
25 both the risk and what they're giving up. I believe Ms. Lisa



1 Norman, who's on the phone, and who has participated with his
2 in this process, I believe what she will tell the Court is the
3 same thing, but I'll let her speak for herself if the Court --

4 THE COURT: Ms. Norman, go ahead and identify
5 yourself for the record, and then let me hear from you.

6 MS. NORMAN: Yes. Thank you, Your Honor.

7 Lisa Norman. I represent approximately -- well, exactly 352
8 personal injury and wrongful death plaintiffs that have late
9 claims and motions pending because the Court, and who have
10 agreed to and are part of the settlement -- proposed settlement
11 agreement that's been submitted. The list of all of our
12 plaintiffs is attached thereto.

13 THE COURT: All right. Thank you. Anything else you
14 want to tell me, Ms. Norman, while you're speaking?

15 MS. NORMAN: Nothing further at this time, unless you
16 have any questions for me, Your Honor.

17 THE COURT: So on this issue of the agreement -- so
18 there's an agreement, as I understand it, between the personal
19 injury/wrongful death plaintiffs and the GUC Trust that -- to
20 consent to the Court estimating their claims for approval and
21 allowance and distribution.

22 MR. HILLIARD: Correct.

23 THE COURT: Okay. And -- give me a second. So 28
24 U.S.C. 157(b)(2)(B), which has the language about estimation,
25 not personal injured/wrongful death claims, the -- one of the



1 things that I'm trying to reconcile, 157(b)(5), which provides
2 that the district court shall order that personal injury, tort,
3 and wrongful death claims shall be tried in the district court,
4 et cetera -- so one of the little-observed aspects of *Stern v.*
5 *Marshall* is the statement by the chief justice that 157(b)(5)
6 is not jurisdictional. In *Stern v. Marshall*, it arose in the
7 context of the defamation claim asserted by *Marshall*. Then the
8 Court said, we don't have to decide whether it's personal
9 injury or wrongful death because he -- through his conduct in
10 the bankruptcy court, he consented, and 157(b)(5) is not
11 jurisdictional.

12 So I take from that, that if the personal
13 injury/wrongful death plaintiffs and the GUC Trust consent to
14 the procedure, if the Court approves the settlement and the
15 estimation procedure, that I have the authority to do that. If
16 you disagree, tell me, but --

17 MR. HILLIARD: It seems that would be the
18 distinction, Judge. As you were reading that, though, I
19 confess, I'm not specifically familiar with the rule you found,
20 but I will tell you that by agreement -- and my response was
21 going to be, by agreement we have decided to come to you and
22 deliver these plaintiffs and their claims to be estimated.

23 THE COURT: Okay. So if any of the bankruptcy
24 lawyers want to be heard on that point, I'm certainly prepared
25 to hear them on it. But that was -- you know, I was concerned



1 about this issue of what the Court's authority was, and that
2 was one of the concerns I had in reading the original
3 settlement, because they were -- all the plaintiffs were
4 reserving their right to go to the district court, which they
5 had the right.

6 Go ahead, Ms. Going.

7 MS. GOING: And so just to --

8 THE COURT: Just identify yourself for the record.

9 MS. GOING: Kristen Going, Drinker, Biddle & Reath,
10 on behalf of the GUC Trust. And just to clarify, Your Honor,
11 so between Mr. Hilliard and Ms. Norman, they're both
12 signatories to the amended settlement agreement. And one of
13 the things that the GUC Trust required from the signatory
14 personal injury plaintiff firms was an affidavit from counsel
15 delineating that their clients had, in fact, affirmatively
16 consented to the terms of the settlement agreement, and that
17 affidavit included a list of all of the personal injury
18 plaintiffs.

19 So I can tell you that we have, you know, that full
20 volume of -- and universe of numbers. And so we do believe
21 that that is the universe of personal injury/wrongful death
22 plaintiffs, and that they have, in fact, consented to give up
23 their jury trial rights.

24 THE COURT: Okay. Not only have they consented to
25 give up their jury trial rights, but to have the bankruptcy



1 court, as opposed to a district --

2 MS. GOING: Estimate.

3 THE COURT: -- court make the determination.

4 MS. GOING: That's correct.

5 THE COURT: Okay.

6 MR. WEISFELNER: Your Honor, it occurs to me -- and I
7 don't want to take up too much more of your time. There were
8 two other issues --

9 THE COURT: Just identify yourself for the record.

10 MR. WEISFELNER: Certainly. I apologize. It's
11 Ed Weisfelner, Brown Rudnick, for the economic loss plaintiffs.

12 Your Honor, there were two other questions that were
13 raised, one of which was raised in your May 10th letter, that I
14 thought important to address. And Your Honor asked the
15 question as to whether or not mediation would be appropriate.

16 THE COURT: Because in one of my conversations with
17 Judge Furman, he gave me the two order numbers where mediation
18 had been --

19 MR. WEISFELNER: Sure. And, Your Honor, we did get
20 what I perceived to be New GM's position on this in one of the
21 letters Mr. Basta sent to you. And that is that -- and it's
22 consistent with the position New GM has taken in mediation
23 under Judge Furman's auspices that New GM takes the position
24 that mediation with economic loss plaintiffs would be -- I
25 forgot the terminology -- un-useful, unwarranted, they're not



1 prepared to do it until and unless three things happen: Their
2 final determinations of class certification, which we think
3 would take until June of next year, if not longer. There are
4 final determinations with regard to Daubert challenges, which
5 could take quite a while, especially since Judge Furman
6 indicated in his last status conference in March that he may
7 want to hire his own expert; and then there was a third
8 condition. I don't know that I'm -- oh, their summary judgment
9 they're eventually going to file.

10 So what GM is saying is mediation, sure. Not now.
11 And what we've said with regard to mediation is we've always
12 been happy to mediate in the district court level, at this
13 court's level. Don't see how we're going to get anywhere given
14 New GM's position that they're not prepared to mediate with us.

15 THE COURT: Well, let me put it this -- and I'll hear
16 what Mr. Basta has to say about mediation. A couple of general
17 comments. I would've thought that New GM would frankly be
18 enthusiastic about resolving all claims or potential claims for
19 pre-closing accident plaintiffs and economic loss plaintiffs,
20 and would probably, no doubt, negotiate very hard about the
21 terms of -- you know, this term of the settlement, that term of
22 the settlement, what the criteria are for estimation versus
23 what the plaintiffs want. I would fully expect that.
24 But from the day you presented the first proposed settlement,
25 the approach of New GM is not now, never, never with



1 exclamation marks at each point in the process. If it takes
2 ten years, so it takes ten years. We'll see whether the
3 Plaintiffs can last that long.

4 So, you know, they're entitled to that position if
5 they want to take it. But I'm surprised by it, that the
6 bankruptcy is a collective proceeding. This is not of New GM's
7 making. It was -- you know, Judge Gerber found a due process
8 violation and the Second Circuit found a due process violation.
9 The consequences of it were established by the Second Circuit.
10 Yes, there are recalls that are a part of -- that here has been
11 acknowledged and was going acknowledged at the last hearing,
12 that there has never been a determination, and it's being
13 proposed to be settled as to whether there was a due process
14 violation as to certain of the recall, subsequent -- very soon
15 thereafter recalls.

16 Okay. All right. Settlement, that's what
17 settlement, you know, to resolve those issues. So yeah, I'm
18 surprised, okay? But if -- and I'll say this, if -- I would
19 urge New GM, as we go forward with this process here, to
20 discuss mediation sooner rather than later. I can tell you, if
21 I approve the 9019, they're going to mediate. Okay? The
22 question is are they going to mediate before then? I won't
23 order it before then. I will order it -- if I approve the
24 notice and the 9019, they will mediate.

25 MR. WEISFELNER: Your Honor, the last --



1 THE COURT: And they'll mediate in good faith. I
2 don't have any doubt about that. If they go to mediation, but
3 why they want to wait for that -- okay. That's -- I'm not
4 going to force mediation before that. I will force mediation
5 if we get -- if notice goes out, and I approve the 9019 before
6 we get to an estimation proceeding. They've settled so many
7 claims in the District Court, I guess some without mediation,
8 some with mediation, okay, those may be the personal
9 injury/wrongful death claims, okay, and here we're dealing with
10 the alleged millions of recalls, economic loss claims.

11 Okay. I understand, different -- presents different
12 issues. That's my little speech on this point. It's not going
13 to affect how I decide on any of the issues, Mr. Basta, but
14 that's, you know -- go ahead, Mr. Weisfelner.

15 MR. WEISFELNER: The last thing I wanted to comment
16 on was the question of New GM's standing. And, you know, it
17 can be viewed at very many different stages with, you know,
18 some slicing and dicing within those stages. I am ultimately
19 struck by the way the standing issues were handled by this
20 Court when we were dealing with the enforceability of the prior
21 settlement agreement, and frankly Your Honor handled it the way
22 we were hoping you would handle it. We didn't want to just --

23 THE COURT: You mean I got something right here?

24 MR. WEISFELNER: You got more than something right.
25 We didn't want to hand New GM another appellate issue that



1 would hold up the ultimate determination on the merits, nor did
2 we want standing to serve in the same capacity. So ultimately,
3 you know, we're sitting here with the realization that standing
4 issues ought to be resolved at the end and afford the people
5 the opportunity to participate. And I guess the operative word
6 would be "up to a point."

7 Again the irony of having New GM step into the shoes
8 of the champion of the unwashed masses and making sure that the
9 rights of the Plaintiffs are properly protected both
10 procedurally and substantively makes those of us on this side
11 of the equation a little sick. Nevertheless, I offer Your
12 Honor whatever briefing Your Honor thinks is necessary or
13 appropriate on standing, and we can take it from the ridiculous
14 to the sublime as --

15 THE COURT: Well, let me say, it -- so there's -- I
16 pondered what's the effect of the side letter between the GUC
17 Trust and New GM. Okay. In light of that side letter, does
18 New GM have standing to object to the allowance of claims?
19 Look, they're -- it's their money you want, and so I'm not
20 saying -- only if we get to the estimation, but certainly an
21 estimation -- you know, they're the ones with the dog in this
22 hunt, right? As to how much the GUC Trust -- I'm not
23 suggesting the GUC Trust was just -- be just willing to roll
24 over and have the billion dollars, but they have the economic
25 stake in this, and at that stage I have no question about it.



1 I do have a question as to, you know, earlier stages,
2 as to -- particularly because of the side letter. In the
3 absence of the side letter, I think it might -- the issues
4 might be different, but what did they agree in that side
5 letter? I think I'm clear about what I'm talking about.

6 MR. WEISFELNER: Well, I think I -- well, I know
7 exactly what you're talking about, and I think the GUC Trust
8 has a definitive response to it. And putting aside the side
9 letter in terms of when it is that the GUC Trust may properly
10 trigger the call for an estimation, which the GUC can respond
11 to the contentions that GM has raised. I think of issues like,
12 you know, this whole deal where you're allocating all of the
13 adjustment shares just to the Plaintiffs and you're leaving all
14 of the remaining GUC Trust assets to the beneficiaries
15 constitutes --

16 THE COURT: I was waiting for Mr. Golden to have a
17 position --

18 MR. WEISFELNER: Well, you can rarely motivate him to
19 stand up and take a position on anything in open court as
20 opposed to in a conference room.

21 THE COURT: He wasn't hesitant to express his
22 position at the earlier trial, but go ahead.

23 MR. WEISFELNER: And he knows I'm only kidding.

24 THE COURT: Well --

25 MR. WEISFELNER: My point is this: When GM complains



1 that embedded in the settlement is an impermissible plan
2 modification because we are improperly discriminating against
3 creditors, what -- where do they have standing to raise that
4 issue? And that's just an example. So, Your Honor, we will
5 abide by whatever direction you give us. Understand that with
6 the exception of participation in the estimation, we could take
7 a very formalistic view that GM has zero standing across the
8 board, save maybe for the side letter issue. I'm not sure that
9 it behooves us, more importantly, Your Honor, to debate that
10 issue, as I think I know how Your Honor is likely to deal with
11 it, but we're at your disposal.

12 THE COURT: All right. Mr. Basta?

13 MR. BASTA: Your Honor --

14 THE COURT: Oh, I'm sorry, Mr. Weintraub. Way to
15 have spent -- Mr. Basta, let Mr. Weintraub -- I'm sorry.

16 MR. WEINTRAUB: May I cross in front of Your Honor?
17 It would save some --

18 MR. BASTA: Anybody but Mr. Weintraub, Your Honor.
19 Anybody.

20 MR. WEINTRAUB: I get no respect, Your Honor. Good
21 morning, Your Honor. I just wanted to clarify two things, and
22 I'll be brief. There will be a supplemental late claims
23 motions filed, probably later today. We'll be going to trial
24 before May 31st, but I think I can accelerate that to just
25 enhance everyone's weekend. So we will get that done today.



1 THE COURT: How many more claimants?

2 MR. WEINTRAUB: That will be for 69 claimants who
3 are, in fact, signatory Plaintiffs to the original settlement
4 agreement, so these are not people that are just
5 materializing --

6 THE COURT: And they've agreed to the modifications?

7 MR. WEINTRAUB: Yes, they have, Your Honor. And the
8 other point I just wanted to revisit shortly is, you know, Your
9 Honor's reference to 157(b)(5). That was referenced in the
10 original settlement agreement, and that was taken out in
11 response to one of Your Honor's concerns as to whether or not
12 people are trying to preserve jury trial rights in district
13 court. In connection with the settlement, all of the
14 Plaintiffs are prepared to have their claims estimated in this
15 court, and have waived any rights to a jury trial in connection
16 with the settlement and any procedures relating to the
17 settlement.

18 THE COURT: Thank you.

19 MR. WEINTRAUB: Thank you.

20 THE COURT: Thank you very much.

21 All right. Mr. Basta?

22 MR. BASTA: Your Honor, I was joking with
23 Mr. Weintraub. We go way back.

24 Paul Basta from Paul, Weiss, representing New GM.
25 What I thought I would handle today is to maybe do a little



1 reverse order, and start with mediation and then move to this,
2 whether they've consented, the mechanism for consenting to have
3 their claims estimated in Bankruptcy Court, and then I wanted
4 to give the Court our overview of how we see the settlement,
5 and how we see how the three parts of the settlement work
6 together, and what our concerns are, and then I'm going to
7 caucus with my colleagues and make sure I've answered and given
8 you our perspective.

9 To start, you know, I don't think Mr. Weisfelner --
10 and by the way, congratulations on your wedding.

11 MR. WEISFELNER: Thanks, Paul.

12 MR. BASTA: I don't think his characterization of our
13 motivation to just delay, delay, delay and never settle is the
14 correct description. We want to settle, and we're prepared to
15 mediate, and we're prepared to mediate all of the issues. And
16 we would like to get this resolved. I think when you say,
17 well, what are we mediating? If we mediated tomorrow, what are
18 we mediating? And there could be three things that we're
19 mediating. We could mediate how to figure out how to move the
20 whole case forward and settle, and even if you can't settle
21 actual claims, maybe we could settle a process that we would
22 all agree on. We could settle wrongful death and personal
23 injury claims, and we're prepared to do that. As Your Honor
24 noted in past success in doing that in the NDL, and the key to
25 that is that we would like to mediate the specifics of actual



1 claims, for which there needs to be information. And that
2 information is rolling, and we're expecting it very soon, but
3 we're prepared to sit down and mediate those things.

4 And when it comes to economic loss, the way that I
5 understand it is that there was a mediation session in the NDL,
6 and no, it wasn't GM alone who said that we don't want to
7 mediate. Both parties said that Judge Furman is addressing
8 gating items that are going to inform where the parties are
9 going to settle, and there should be more progress on those
10 gating items. We are prepared to sit down and try to mediate
11 it again, but the idea that we're just going to not be
12 constructive and just be obstructionists, in my experience,
13 since I've been working with this client, is not the direction
14 that we've received.

15 THE COURT: When did you get retained?

16 MR. BASTA: We would like to clear -- I got retained
17 the first of April.

18 THE COURT: All right. So since the first of April,
19 there's been no effort of obstruction.

20 MR. BASTA: Not since I've been involved, Your Honor.

21 THE COURT: Okay.

22 MR. BASTA: What is our motivation for the big
23 picture, Your Honor? We're under a -- we have a sale
24 agreement, and the sale agreement says we have to issue
25 adjustment shares, if the Court estimates allowed general



1 unsecured claims at above the threshold. And we have a
2 fiduciary duty to our own constituencies to make sure that that
3 standard, if it's going to be triggered, is the right rules
4 apply to triggering that standard. And we have a very strong
5 interest to use whatever arguments that we have, and that we
6 have proper standing to assert to make sure that we get the
7 best outcome that we can for our organization that complies
8 with the rules.

9 And, you know, I've been in many cases with
10 Mr. Weisfelner to expect shock and awe that we would actually
11 assert arguments that help us -- you know, that we are under
12 some duty to not assert argument --

13 THE COURT: Mr. Basta, Mr. Weisfelner has been before
14 me enough that I have sometimes heard his --

15 MR. BASTA: I love it when he does --

16 THE COURT: -- righteous indignation in what --

17 MR. BASTA: I love -- I love it -- I don't think the
18 righteous indignation is appropriate where our constituency,
19 that we're just trying to get the best outcome --

20 THE COURT: Mr. Basta -- excuse me, Mr. Weisfelner --
21 the righteous indignation is not what's having an effect on --

22 MR. BASTA: All right. But I wanted to --

23 THE COURT: -- on me.

24 MR. BASTA: So on mediation --

25 THE COURT: But at every step of the process before



1 me, New GM has done what it's entitled to do, assert every
2 conceivable argument and right that it could possibly assert.

3 MR. BASTA: Okay. But I think -- let me --

4 THE COURT: If they continue doing that, that's New
5 GM's right to do that, but --

6 MR. BASTA: But, Your Honor, I think that what New GM
7 feels, I'm going to get to this in my comments, I want to cover
8 the consent to jurisdiction for a minute, but what New GM is
9 looking at is seeing what the movants are doing is to set up a
10 process where the estimation of the claims isn't going to be
11 based on actual claims, which we think under the contract we're
12 entitled to make sure that the estimate covers actual claims.
13 And faced with that threat, I think New GM is reacting to the
14 threat that the other side is taking an action that's not
15 consistent with the agreement, and I'll explain why we think --

16 THE COURT: Let me just --

17 MR. BASTA: -- it's inconsistent --

18 THE COURT: Let me just say -- let's take, for
19 example, the personal injury/wrongful death claims.

20 MR. BASTA: Yes, sir.

21 THE COURT: If -- let's assume for a minute that the
22 Court approves the 9019 and we go forward with an estimation.
23 And as you well know, the Court has great flexibility in
24 setting the ground rules for an estimation proceeding.

25 MR. BASTA: Right.



1 THE COURT: And what I -- with dealing with those
2 claims alone, I would fully expect that you or other counsel on
3 behalf of New GM would negotiate with Mr. Hilliard, Mr. Norman
4 -- Ms. Norman, and any other lawyers for the personal injury
5 plaintiffs. What are the criteria that should be applied in
6 estimating personal injury/wrongful death claims? And that was
7 why I asked specific questions about it before because it seems
8 to me, you know, causation and damages are going to be an issue
9 with respect to every one of them.

10 I don't know how many of those accidents happened in
11 comparative fault states, whether that is an issue as to some
12 of them, or contributory negligence states, as a complete
13 defense. The rules, you know, are going to differ by the state
14 where the accident occurred, and what I would -- if we get to
15 that stage, I'm not saying we will, but if we get to that
16 stage, and there's no reason to wait to get to that stage, is
17 that you begin the process promptly of trying to reach an
18 agreement with the lawyers for the personal injury/wrongful
19 death plaintiffs as to what criteria -- assuming the Court
20 proceeds to estimate the claims, what criteria the Court should
21 apply.

22 You know, I'm now being told that there are likely to
23 be 660 personal injury/wrong -- pre-closing personal
24 injury/wrongful death claims; 200 from Mr. Hilliard, 400 from
25 Ms. Norman, and Mr. Weintraub tells me there's going to be



1 another 60 or so, and so, you know, 660. There's not going to
2 be full-blown trials, and I don't think -- and estimation
3 doesn't require full-blown trials, but New GM is entitled to
4 propose procedures that ought to apply to that estimation.

5 MR. BASTA: Your Honor, I understand, and this
6 process is going to go forward, and we're going to assert our
7 rights. We're going to try to convince the Court we think the
8 settlement should not go forward for Rule 23 reasons, but as
9 this progresses and we need -- if it's --

10 THE COURT: What's your position on the consent
11 issue?

12 MR. BASTA: Sorry. Sorry, Your Honor. So the way
13 the estimation order works and the settlement order works is --
14 on the personal injury/wrongful death, is that even if someone
15 is not represented here, that if they suffered an injury, that
16 claim is going to be allowed under the settlement.

17 THE COURT: No, I don't think so.

18 MR. BASTA: I believe that's the way it works, Your
19 Honor, is if Your Honor looks -- and let me tell you why I
20 think that's the way it works is that, if you look in their
21 letter, they say that in order to receive a distribution, that
22 someone will be deemed to consent under 157(b)(5). And that
23 dovetails with the definition of plaintiff in the settlement
24 agreement, which includes all plaintiffs, whether named or
25 unnamed, and it goes on to include them.



1 So there's two pieces here. To the extent they
2 actually have a written consent from someone that says I
3 consent under 157, I understand that.

4 THE COURT: Well, let me ask, do you -- what is your
5 position if the order of the Court says that the only personal
6 injury/wrongful death claims that the Court will estimate are
7 on behalf of those plaintiffs who have filed a motion to allow
8 a late claim? Because that's -- I have 600, and will have 660.
9 So that -- because I wasn't sure -- it seemed to me that I was
10 being told -- we'll see whether anybody comes out of the
11 woodwork before the end of the day, but as of now I'm being
12 told there is nobody else. Okay? They're all represented by
13 the Plaintiffs' lawyers that we know. Does -- would -- does
14 that obviate your concern as to people -- anybody else coming
15 in and having a right?

16 MR. BASTA: Well, Your Honor, if Your Honor orders
17 that, the way they proposed the settlement agreement is not the
18 way it's going to work, and it's only people that are
19 represented in here, obviously, that fixes the issue. And it
20 would remove the provision in their letter where there's a
21 deemed consent in exchange for getting a distribution. So that
22 would take that away, but I -- when I read Your Honor's order
23 to show cause, and Your Honor questioned the illusory nature, I
24 thought one of the things that Your Honor was asking in the
25 numerical examples was, well, what happens if I allow a claim



1 for \$10, and then there's subsequently a jury trial, and in
2 that subsequent jury trial it comes in at \$17. How do I do
3 that?

4 THE COURT: That's exactly -- yeah --

5 MR. BASTA: Okay. And so I don't know that they've
6 addressed that --

7 THE COURT: I think they did. The issue -- and I
8 thought they addressed it very clearly that by consenting to
9 this Court estimating the claims for distribution, they've
10 agreed if I -- in the aggregate estimate personal
11 injury/wrongful death claims at \$50 million, they can't say we
12 think we're entitled to \$50 million and \$10, that they're --

13 MR. BASTA: May I try to explain my point, Your
14 Honor?

15 THE COURT: Sure.

16 MR. BASTA: The -- this is all getting into what it
17 means when the Court enters an order allowing it because -- for
18 distribution purposes because the way the settlement structure
19 works is that we get to an estimation hearing, Your Honor
20 enters an order, it allows for estimation, it estimates for
21 allowance and distribution, and then there is a subsequent
22 process that's the real allowance process.

23 And in that subsequent process, a claimant -- the way
24 we read it, a personal injury claimant who has filed a claim
25 against New GM and has a jury trial against New GM, there's



1 nothing that -- they're not waiving the right to a jury trial
2 against New GM and there's nothing that says that that
3 plaintiff can't take what comes from New GM and come in and ask
4 the Court to say, Judge, that previous allowance of my claim
5 that you had? That's not what I should get. I should get --

6 THE COURT: Well, look, I can't decide --

7 MR. BASTA: -- that other --

8 THE COURT: -- and I don't intend to decide whether
9 plaintiffs are permitted to assert claims against New GM if
10 claims are estimated and provided for distribution here.
11 Before you came into the case --

12 MR. BASTA: Yes, Your Honor.

13 THE COURT: -- I recall reading a filing by Kirkland
14 & Ellis where they took the position before Judge Furman that
15 if late claims are allowed in the Bankruptcy Court, they don't
16 -- they're not entitled to assert claims against New GM. I
17 don't have a -- that's not for me to decide. I fully -- so
18 yes, the -- this settlement preserves their rights to argue
19 before Judge Furman --

20 MR. BASTA: Right.

21 THE COURT: -- that whatever this Court -- whatever
22 the Bankruptcy Court decides doesn't effect what they can
23 assert against New GM. I have nothing to say about that, and
24 I'm -- you know, because I already saw the argument made by
25 New GM many, many months ago that if they get claims allowed in



1 the Bankruptcy Court against Old GM, they have no claims
2 against New GM, and I fully expect -- and Judge Furman will
3 decide those issues.

4 MR. BASTA: And, Your Honor, that is going to be our
5 position.

6 THE COURT: I --

7 MR. BASTA: Because I think that's what the law
8 provides, but what --

9 THE COURT: But I can't --

10 MR. BASTA: -- that -- what you --

11 THE COURT: You're not arguing that I can have any
12 say in that, do you?

13 MR. BASTA: I'm not arguing that --

14 THE COURT: And their reservation of rights doesn't
15 do anything to do --

16 MR. BASTA: Well, Your Honor, I'm trying to make a
17 more narrow point. And the point that I'm making is, if you
18 look at the settlement construct, this is what happens. Their
19 proposed order on the estimation says you're allowing -- you're
20 entering an order allowing for distribution purposes,
21 estimating for allowance and distribution, and in that you're
22 estimating based upon summary process that's been articulated
23 here.

24 When the actual distribution is made, all the work as
25 to whether or not the claim is what I'm going to call a real



1 claim, for example, if you look at the criteria on the
2 allocation methodology, which will define your actual
3 distribution, that -- it could be very different than what
4 happens in the --

5 THE COURT: It's not likely though. With personal
6 injury/wrongful death claims, I find it extremely unlikely that
7 that would occur because, like it or not, I think I'm forced to
8 go through whatever the summary criteria that are applied, you
9 know, determined to be applicable, what each personal
10 injury/wrongful death claim is worth. It isn't going to be 660
11 full trials, but in a sense there are going to be summary --
12 you know, Mr. Basta, when I'm speaking, and you're up --

13 MR. BASTA: I'm sorry --

14 THE COURT: -- you shouldn't be conferring with your
15 co-counsel.

16 MR. BASTA: I apologize, Your Honor.

17 THE COURT: What's your next point? You weren't
18 interested in what I had to say so I'm going to stop.

19 MR. BASTA: Your Honor, I was listening to what
20 you've said. I was trying --

21 THE COURT: No, you did not. You were -- it's rude
22 to the Court to do that. Counsel do not do that in my
23 courtroom. For future reference, be aware of that.

24 MR. BASTA: Sorry, Your Honor.

25 THE COURT: What's your next point?



1 MR. BASTA: Your Honor, what I was trying to point
2 out is that in the criteria that they have in this later
3 allocation methodology --

4 THE COURT: I haven't decided on an allocation
5 methodology.

6 MR. BASTA: Okay.

7 MR. WEISFELNER: Your Honor --

8 THE COURT: You will be heard on that.

9 MR. WEISFELNER: -- it occurs to me --

10 THE COURT: No, Mr. Weisfelner, let me hear from
11 Mr. Basta. Go ahead.

12 MR. BASTA: So, Your Honor, let me outline a few
13 points that we -- the way we see the different elements of the
14 settlement working and why we don't think it should be
15 approved. And I'm going to start with Rule 23, which Your
16 Honor again --

17 THE COURT: And I think with respect to that, I'm
18 going to ask -- I'll let you make some summary comments on it,
19 but I am going to ask both sides to brief this issue because I
20 do view it as a gating issue, and I'm going to ask for
21 simultaneous briefs, and when we stop, you can agree on what's
22 a date for submitting those. So -- but go ahead, if you want
23 to make some summary comments on it. I understand -- I read
24 your -- I read that much of your papers to know, and it's been
25 an issue before you came into the case. I understand that.



1 And, you know, I don't want to see \$6 million spent on notice
2 without deciding that issue.

3 MR. BASTA: Your Honor, this is why we think the
4 Rule 23 issue is so pervasive. And for -- the first is it ties
5 to the contract, because the contract refers to the allowance
6 of claims --

7 THE COURT: And provides for estimation of claims.

8 MR. BASTA: Estimation of claims, and then the
9 question becomes, if you're going to estimate, what are you
10 estimating? For it to estimate, it actually has to be a claim,
11 and a claim is not some amorphous concept. And for a class
12 claim --

13 THE COURT: If GM had given due process notice to
14 everybody whose vehicle was recalled, they could have scheduled
15 unliquidated claims for everybody who bought a vehicle with --
16 that was subject to a recall, and there would be no Rule 23.

17 MR. BASTA: But they --

18 THE COURT: The Court would be -- and they could ask
19 for an -- there's 11 million of those, or 9 and a half million
20 of those, and the Court should estimate the claims, and it
21 would take forever to resolve 11 million claims. There would
22 be no Rule 23.

23 MR. BASTA: Your Honor, if GM had -- if Old GM had
24 done that, and under penalty of perjury they had taken a
25 position on all of these claims and had a specific view as to



1 all of these claims, and then we had an ability to come in and
2 test the schedules and look at the person who scheduled the
3 claim and saw what was the basis for that claim, then that
4 could happen. But in this case, and in many Rule 23 cases,
5 they haven't been scheduled by the debtor, and then the
6 question becomes you have this amorphous class of potential
7 claimants, and how are you going to --

8 THE COURT: It's not amorphous. There are 11 and a
9 half million people who bought cars that were subject to recall
10 where there was no disclosure of the defect.

11 MR. BASTA: And how do we know which of those claims
12 have a commonality among them so that, with the purposes of
13 estimation, you can figure out what exactly you're estimating?
14 And Rule 23 is the constitutional way to figure out --

15 THE COURT: Not in --

16 MR. BASTA: -- the groupings.

17 THE COURT: -- Bankruptcy Court. Not in Bankruptcy
18 Court. Because in a collective proceeding in bankruptcy, there
19 are other -- estimation is not an -- only single individual
20 claim, as when I've read the estimation of asbestos claims, for
21 example, it's not done necessarily on a claim-by-claim basis.

22 MR. BASTA: And let me explain, I've been involved in
23 many of those cases, and why I think that's different than what
24 you have here. There are cases where I'm trying to get a
25 company out of bankruptcy that's got a mass tort problem. And



1 I need to create a plan, and I need to figure out how much I'm
2 going to reserve in the plan for those claims. And in that
3 context, we can have competing experts and we can figure out,
4 in order to get that company out of bankruptcy, how much we're
5 going to put in that reserve. And that would be an estimation
6 for reserve purposes. But the contract doesn't provide for
7 that. The contract provides that we need --

8 THE COURT: I don't see the word, capital C, "Claims"
9 in the contract, only where proofs of claim have been filed.
10 Are those words a defined term in the contract?

11 MR. BASTA: The word "claim," like only where proof
12 of claim --

13 THE COURT: Yes.

14 MR. BASTA: -- has been filed?

15 THE COURT: Yes. Is that in the contract?

16 MR. BASTA: The word "claim" has before it the word
17 "allow," and before that --

18 THE COURT: So if --

19 MR. BASTA: -- an estimate.

20 THE COURT: So if a claim had been scheduled --

21 MR. BASTA: But it had not been --

22 THE COURT: -- and no objection was made to it, it
23 would be deemed allowed. It wouldn't -- no proof of claim
24 would be required.

25 MR. BASTA: Unless it was scheduled as disputed.



1 But, Your Honor, I don't believe that in a case in which no
2 schedules have been filed and no proof of claim has been filed,
3 that Your Honor can treat it as a claim for the purposes of
4 estimation.

5 THE COURT: Mr. Basta, let's -- here's what we're
6 going to do, because I'm going to order -- I want briefs on the
7 Rule 23 issue, whether that's required.

8 MR. BASTA: We will comply with that.

9 THE COURT: So go on to your next point.

10 MR. BASTA: Mr. Weisfelner pointed out all the
11 discovery that's already occurred in the MDL. A lot of the
12 discovery still has not occurred. There have been no fact
13 sheets on pre-sale. There's been no discovery on pre-sale
14 personal injury claimants. And so Your Honor suggested that if
15 we get to that stage, we're going to have to work out the
16 estimation procedures. We think that the estimation procedures
17 that they're proposing are so summary that what they reveal to
18 us is that they're trying to have the Court estimate claims
19 based upon really inadequate information and inadequate process
20 and then backfill all the really diligent work to determine
21 whether the claims really exist.

22 And we believe that if Your Honor is going to trigger
23 the adjustment shares, that the process that the Court has to
24 undertake to decide whether those thresholds have met need all
25 the work that's in the backfill part of what they're doing --



1 not all of it, but it really needs to be a detailed basis so
2 we're not in a situation where not -- where we're estimating
3 based upon what we believe to be unreal claims. And so we will
4 get to that part.

5 Mr. Weisfelner talked about standing. We think that
6 one ramification of this construct is that there's no adversary
7 if the standing rulings are sustained.

8 THE COURT: I'm mindful of that, Mr. Basta, and --

9 MR. BASTA: Yeah.

10 THE COURT: Let me just -- I'll just stop there. I'm
11 mindful of that. I think -- I do have a question whether under
12 the side letter -- the effect that that has on -- at least as
13 to the GUC Trust decision, enter into a settlement to allow
14 claims not in a specific amount. Because your -- because New
15 GM's economic interests are at stake on the additional
16 allocation shares, I agree that it will have standing -- full
17 standing at any estimation proceeding, subject to whatever
18 ground rules are set forth for the estimation. I fully
19 contemplate you have the greatest interest in opposing the
20 estimation.

21 MR. BASTA: I appreciate that, Your Honor. And
22 just -- you know, just to -- I know you probably don't want to
23 hear more of this, but just one part about the construct I
24 wanted to point out, because it goes to when in the sequence
25 you're really allowing claims, is that at the settlement phase,



1 the GUC Trust is released. It gets a full release.
2 Mr. Golden's clients go off into the sunset. They no longer
3 have any beneficiaries to who they report. There's no
4 obligation on them. So whatever interest they have to actually
5 perform the function of saying this is a real claim and this is
6 not a real claim, they don't -- they're gone. They don't have
7 any incentive, so -- and then --

8 THE COURT: I'm not questioning --

9 MR. BASTA: But then what --

10 THE COURT: -- that new GM is the one to say this is
11 a --

12 MR. BASTA: But --

13 THE COURT: -- real claim, this isn't a real claim.

14 MR. BASTA: But -- and just -- this is the point I'm
15 trying to get to in an inartful way. When that's all done and
16 Your Honor has now issued the adjustment shares, there's a
17 switchback. Because now that the asset is in the estate, all
18 of a sudden they spring to life and they've got a very
19 significant interest in which of them get the recovery and --

20 THE COURT: Who's the "them"?

21 MR. BASTA: Which of the signatory plaintiffs, the --

22 THE COURT: Oh, sure.

23 MR. BASTA: And so they have this whole process.

24 They say, for example, we're going to factor in whether a claim
25 is late filed in figuring out whether somebody gets a



1 distribution or not. And so what's happening is if you have
2 like different phases -- we have the notice procedure phase and
3 then you have the settlement phase and then you have the
4 estimation. And then this -- in this estimation, we like put
5 our blinders on. There's nobody really incented to drill down
6 from the due process perspective as to what the actual claims
7 are. Once Your Honor issues the share, then everybody's
8 economic interest comes up and says, well, your claim is not so
9 good, you're not going to get the full amount, and your claim
10 is late and you should have known, you got the recall, and you
11 have all of this.

12 So what is happening is Your Honor's get -- being
13 given a snapshot at the estimation phase that is incomplete.
14 It's incomplete, and the reason --

15 THE COURT: Mr. Basta, there aren't going to be
16 11.5 million trials. Okay? Get real.

17 MR. BASTA: Yeah. But I'm not suggesting that.

18 THE COURT: Get real.

19 MR. BASTA: What I'm suggesting is that --

20 THE COURT: Yes, you are.

21 MR. BASTA: I'm not --

22 THE COURT: You know, this is the same tune that New
23 GM has been singing throughout litigation since 2014 when
24 recalls were first disclosed. Okay? Change the tune.

25 MR. BASTA: The tune you're --

1 THE COURT: I am determined that New GM will get due
2 process in any estimation proceeding. It has the financial
3 stake in determining which are real claims, which are not.
4 I've encouraged not waiting and begin discussing and
5 negotiating what criteria will apply to economic loss claims,
6 what criteria will apply to personal injury/wrongful death
7 claims. New GM will be very happy to have 660 personal injury
8 trials that take ten years. That is not -- if the settlement
9 is approved, which I'm not assuring it will be, if the
10 settlement is approved, that's not what's going to happen,
11 Mr. Basta. That's not what's required in an estimation
12 proceeding.

13 I will be sure, if it's approved, that the estimation
14 proceedings provide due process to New GM and an ability to
15 filter out claims that aren't real. Okay? But there aren't
16 going to be 660 personal injury trials. There aren't going to
17 be 11 and a half million economic loss trials, and so that 20
18 years from now, several of successors of mine will have the
19 opportunity to go back and review it. It has already been nine
20 years since the bankruptcy. Okay?

21 MR. BASTA: Your Honor, I'm not --

22 THE COURT: Regrettably, the claims have gotten
23 pretty stale. And for the personal injury and wrongful death
24 claimants, to the extent they do have valid claims for
25 pre-closing injuries and deaths, nine years have gone by and



1 they're not going to have to -- if the settlement's approved,
2 they're not going to wait another nine years to see what
3 happens. So what you ought to be doing is trying to work out
4 criteria that protect New GM in the way it should be protected
5 and not in insisting on 11 and a half million economic loss
6 trials and 660 personal injury trials.

7 Any other points you want to raise?

8 MR. BASTA: Yes, Your Honor.

9 THE COURT: Go ahead.

10 MR. BASTA: I was not intending to suggest that
11 11.4 million -- we were only intending to suggest that Rule 23
12 is the way to cull it.

13 THE COURT: You didn't brief that. Okay?

14 MR. BASTA: Yeah.

15 THE COURT: And I have --

16 MR. BASTA: And we will do that.

17 THE COURT: I have my questions about whether the
18 Rule 23 construct is the only one that can be applied in a
19 collective proceeding in bankruptcy. But go ahead. That's --
20 don't address that any further now.

21 MR. BASTA: Okay. Thank you, Your Honor. One
22 second, Your Honor. Can I consult with my colleagues?

23 THE COURT: Go ahead.

24 MR. BASTA: Yeah.

25 (Counsel confer)



1 MR. BASTA: Your Honor, the sequence of events, the
2 way I understand it, is that Rule 23 will be a gating issue
3 before the notice goes out. And then if the notice goes out,
4 then there will be a settlement hearing.

5 THE COURT: That's correct.

6 MR. BASTA: And there are other arguments in addition
7 to Rule 23 that we respectfully suggest are also gating items.
8 And so the question I have --

9 THE COURT: Tell me what they are.

10 MR. BASTA: Well, Your Honor, what I'd like to do
11 if --

12 THE COURT: No. Tell me what they are. You say
13 there are other gating issues. Tell me what they are.

14 MR. BASTA: I think another big gating issue is
15 issuing releases pursuant to a 9019 that blocks people who
16 are -- from going after and enjoining them from going against
17 other assets.

18 THE COURT: What's your standing to raise that issue?

19 MR. BASTA: Your Honor, if --

20 THE COURT: That's not a New GM issue, is it?

21 MR. BASTA: I believe it is, Your Honor.

22 THE COURT: Why?

23 MR. BASTA: Well, we're the economic interest holder
24 and we're the one funding the plan.

25 THE COURT: That's not a gating issue. Next? You



1 can take it up with -- you can -- if we get to the 9019
2 hearing, you'll take that one up then. Okay? I don't view it
3 as a gating issue.

4 Go ahead. What's next? What are the other gating
5 issues?

6 MR. BASTA: Your Honor, we believe that the way --
7 without Rule 23 and the way this --

8 THE COURT: You've raised Rule 23.

9 MR. BASTA: No.

10 THE COURT: How many times do I have to tell you no
11 more Rule 23 today? You're going to brief it. What other
12 gating issues other than the Rule 23 issue are there?

13 MR. BASTA: There's a representational authority
14 issue, and the representational --

15 THE COURT: You'll raise it at the 9019. I don't
16 view it as a gating issue.

17 MR. BASTA: All right.

18 THE COURT: Not with -- if their construct works --

19 MR. BASTA: Right.

20 THE COURT: -- it's not an issue in my view. If the
21 construct doesn't work, it's a different question. Okay?

22 MR. BASTA: Right.

23 THE COURT: What's next? Any other gating issues?

24 MR. BASTA: Give me one second.

25 (Counsel confer)



1 MR. BASTA: No further -- nothing further, Your
2 Honor.

3 THE COURT: Okay. Ms. Going, briefly?

4 MS. GOING: Thank you, Your Honor. Kristin Going on
5 behalf of the GUC Trust. Your Honor, I apologize, but you
6 started speaking about the side letter after I had --

7 THE COURT: Yes.

8 MS. GOING: -- taken my turn, and so I wanted to
9 raise something associated with that as one thing that we
10 believe is a gating issue. And I know we've been talking about
11 it in terms of New GM's standing, and perhaps we should think
12 about it slightly different. And I would maybe even
13 characterize it almost as a motion in limine to address, I
14 think, the issue that you were identifying, which is the impact
15 of the side letter and whether or not New GM has already agreed
16 that the GUC Trust has every right to seek an estimation of
17 claims whenever it wants. And that's --

18 THE COURT: It read that way.

19 MS. GOING: I'm sorry?

20 THE COURT: I said it read that way.

21 MS. GOING: Yes. That's right, Your Honor. So that
22 is the gating issue that --

23 THE COURT: It's not a gating issue. Raise it at the
24 9019 stage. Okay?

25 MS. GOING: All right. Thank you, Your Honor.



1 THE COURT: All right. Any other gating -- anything
2 else that you think is a gating issue? I don't view that as a
3 gating issue. You know, I pondered the side letter, and it
4 really reads like New GM has already appeared -- it left it in
5 the hands of the GUC Trust.

6 MS. GOING: And, Your Honor, the only reason we
7 thought it was a gating issue was, because of the discovery
8 that they have intimated that they would be seeking of the GUC
9 Trust with regard to the settlement and, you know, whether or
10 not we exercised our obligations under the side letter. But
11 they're obviously reading the side letter very selectively, so
12 we were trying to avoid getting into a discovery dispute,
13 but --

14 THE COURT: Well, if there's a discovery dispute,
15 you'll raise it with me.

16 MS. GOING: Okay.

17 THE COURT: And I think everybody is aware with
18 respect to discovery disputes, the parties meet and confer and
19 try and resolve the issues. If they can't, they arrange a
20 conference call with the Court -- very rarely people come in --
21 and I try and resolve it. Usually it's a day or two -- within
22 a day or two after the discovery dispute, and I don't have
23 motions to compel or anything like that, I'll try and resolve
24 it very promptly. At most I ask for letter briefs on it. So
25 that's the cart before the horse. Okay?



1 MS. GOING: Absolutely.

2 THE COURT: All right.

3 MS. GOING: Thank you, Your Honor.

4 THE COURT: Mr. Weisfelner, very briefly?

5 MR. WEISFELNER: Judge, yeah, very quickly because I
6 wanted to address procedures. While I'm not often inclined to
7 do this, I thought it might help the New GM side think through
8 these issues and help Your Honor --

9 THE COURT: They may be skeptical that you're trying
10 to help them, but --

11 MR. WEISFELNER: Your Honor, we all appreciate the
12 fact that there's a number somewhere between zero and 30
13 million shares that are at issue. You can't get beyond
14 30 million shares. As a consequence, it may behoove the
15 Plaintiffs, for example, to focus their attention first and
16 foremost on those claims that, to the extent possible, are not
17 susceptible of individuality or individual proof like, for
18 example, economic loss versus personal injury. And we could
19 certainly sit down with New GM, if they were inclined, and talk
20 about what is it about anything Judge Furman's done, is about
21 to do, may do in the future, that ought to impact an estimation
22 of economic loss claims.

23 Your Honor, if and only if we haven't hit the
24 bull's-eye, you know, where you're in the carnival and you hit
25 it and the thing goes up and hits the bell, if you haven't hit



1 30 million shares by then, then you have to consider trotting
2 in personal injury/wrongful death claims and figure out a
3 methodology for how you start estimating those claims.

4 THE COURT: Okay. I think we're -- you know, your
5 suggestions are -- I'll use the word "intriguing" to me, but I
6 think what -- I come back to what I said before with respect to
7 the mediation issue. I would strongly urge, first try and see
8 what you can agree on in terms of procedures, the order in
9 which things will go forward here -- you don't even need
10 mediation for that -- and then try and move forward with
11 mediation to the extent that makes sense and not wait for a
12 9019 approval hearing because it may change the dynamics of it.

13 In a lot of ways, it's what I said before. I think
14 New GM fundamentally ought to be pleased that this provides a
15 mechanism, if it's approved by the Court, to resolve lots of
16 claims that would take years of litigation in two different
17 courts at least -- actually, a lot more courts than that -- to
18 resolve. So really you really ought to be trying to do it
19 sooner rather than later.

20 Let me ask this so we can send you off to your
21 wedding, and with congratulations from the Court as well.

22 MR. WEISFELNER: Thank you, sir.

23 THE COURT: How much time do you all want? I want
24 simultaneous briefs on this gating issue of whether Rule 23 has
25 to be applied to any proposed settlement presented to the Court



1 or whether the construct that the plaintiffs -- I'm not
2 articulating it very well, but I think you all get the clear
3 picture. New GM's position is very clear. At least the
4 written motions I think are clear as to what's being presented.
5 And so tell me how much time you want.

6 MR. WEISFELNER: Your Honor, I would think, given
7 that we've --

8 THE COURT: I saw somebody raising three fingers, but
9 I --

10 MR. WEISFELNER: Yeah. But, you know, those
11 people those people were wrong. We think two weeks is more
12 than enough time.

13 THE COURT: Don't you want to go on a honeymoon?

14 MR. WEISFELNER: Not that. It's just that, as Your
15 Honor indicated before, we've had a lot of people waiting a
16 long time.

17 THE COURT: Yeah.

18 MR. WEISFELNER: So I think two weeks to get briefing
19 on this since I think we've heard New GM's position. This is
20 the fourth law firm that's articulated it, so I think we're
21 pretty clear on what their position is.

22 THE COURT: How much time do you want, Mr. Basta? Is
23 two weeks okay? Two weeks and three days. I don't want to
24 interfere with anybody's Memorial Day weekend. Mr. Basta?

25 MR. BASTA: That's fine.



1 THE COURT: Okay. All right.

2 MR. WEISFELNER: The other thing I think we need to
3 work out -- not now, because I assume this means that the
4 June 4th hearing is going to be put off --

5 THE COURT: Is going to be put off. That's correct.

6 MR. WEISFELNER: Right. But I do want an
7 opportunity --

8 THE COURT: That's why I wanted -- I apologize we had
9 to do this on the Friday of Memorial Day weekend, but I
10 couldn't do it earlier this week and I wanted to make sure we
11 got it before the --

12 MR. WEISFELNER: I would like to work with Mr. Basta
13 and Mr. Steinberg, whoever needs to be part of the
14 conversation, to work out -- well, maybe we'll wait to get to
15 the 2004 -- the motion on notice, but I want to understand, you
16 know, what the timing issues are were Your Honor to direct them
17 to turn over the information we want --

18 THE COURT: Yeah.

19 MR. WEISFELNER: -- that isn't the subject of just
20 push a button and deliver it takes any time, and how much time
21 are we talking about.

22 THE COURT: Okay. For the briefs, I am adding three
23 days, so Tuesday, June 12th.

24 MR. BASTA: Your Honor, one round of briefing, right?
25 No replies, right?



1 THE COURT: Correct.

2 MR. BASTA: Okay. And then with respect to
3 Mr. Weisfelner's comment about the timing, if the notice were
4 to go out, we'll work with him --

5 THE COURT: Could you work --

6 MR. BASTA: -- and convey -- and compare notes.

7 THE COURT: I don't doubt that you'll be able to --

8 MR. BASTA: Right.

9 THE COURT: You may disagree, but I think you're
10 going to be able to come to --

11 MR. BASTA: Right.

12 THE COURT: -- an agreement about it. Okay. When I
13 see the briefs on the 12th, I'll decide whether I need to have
14 another hearing or not. I probably won't set a hearing, but I
15 want to see the briefs first. Okay.

16 Anything else for today? All right. So the hearing
17 on the notice motion is adjourned. Everybody enjoy the holiday
18 weekend, but really then -- as soon as that's over, could you
19 really try and work out a schedule for things and really talk
20 about whether it's the personal injury/wrongful death -- those
21 classically work for medication. I mean, you know -- and, yes,
22 and whether it's formal or informal, there's certain
23 information you're going to want to see. You've got a lot of
24 experience with those cases before Judge Furman, and the
25 Plaintiffs have got a lot of experience with it as well. You



1 want to be able to work out an agreement on what information
2 will be exchanged and when it will be exchanged and go forward.

3 And I'm going to write -- you know, whether you want
4 to use the mediator that Judge Furman has already approved -- I
5 guess he's a former district judge, I can't remember his
6 name -- or someone else, that's fine with me, but, you know,
7 I'll leave it to you to try and work it out. Please let's try
8 and get these worked out. And if it starts out with 660, if
9 you could settle half of them, that would be great. Okay? But
10 we're not going to -- there's not going to be 660 full-blown
11 trials here. Okay?

12 Anything else for today? All right. We're
13 adjourned. Everybody have a good holiday weekend.

14 MR. WEISFELNER: Thank you, Judge.

15 MR. BASTA: Thank you, Judge.

16 (Proceedings concluded at 11:56 a.m.)

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

I, Alicia Jarrett, court-approved transcriber, hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Alicia J. Jarrett

ALICIA JARRETT, AAERT NO. 428 DATE: May 29, 2018
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I, Ilene Watson, court-approved transcriber, hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Ilene Watson

ILENE WATSON, AAERT NO. 447 DATE: May 29, 2018
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