

U.S. Dep't of the Treas. v. Black
No. 1:12-mc-00100-EGS

Pet. Renewed Mot. Quash

Ex. 2A

60521.txt

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1
2 UNITES STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 -----
5

6 IN RE
7 Chapter 11
8 Case No. 09-50026 (REG)
9

10 GENERAL MOTORS CORP., et al.,
11
12 Debtors.
13 -----
14

15 DEPOSITION OF HARRY WILSON
16 HIGHLY CONFIDENTIAL
17 MONDAY, JUNE 29, 2009
18 11:00 A.M.
19
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23
24
25

Reported by: Joan Urzia, RPR

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8
9 June 29, 2009
10 11:00 A.M.
11 New York, New York
12

13 Deposition of Harry Wilson, held
14 at the offices of Weil, Gotshal & Manges
15 LLP, 767 Fifth Avenue, New York, New York,
16 pursuant to Notice, before Joan Urzia, a
17 Notary Public of the State of New York.
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1
2 A P P E A R A N C E S:
3
4 WEIL, GOTSHAL & MANGES LLP
5 Attorneys for General Motors Corporation
6 767 Fifth Avenue
Page 1

60521.txt
7 New York, New York 10153
8 BY: MARGARET HOPE ALLEN, ESQ.
9
10 U.S. DEPARTMENT OF JUSTICE
11 US ATTORNEY'S OFFICE
12 Southern District of New York
13 86 Chambers Street - 3rd Floor
14 New York, New York 10007
15 BY: JEFFERY OESTERICH, ESQ.
16 MATTHEW SCHWARTZ, ESQ.
17 MARGARET GRAHAM, ESQ.
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19 KENNEDY, JENNIK & MURRAY, PC
20 Attorneys for Splinter Union IUE-CWA
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23 New York, New York 10003
24 BY: JOHN F. HOFFMAN, ESQ.
25 ELIZABETH C. KENNEDY, ESQ.

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18 Attorneys for Individual Member of Official
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4 KRAMER LEVIN NEFTALIS & FRANKEL, LLP
5 Attorneys for Official Committee of
6 Unsecured Creditors
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12 Attorneys for United States Treasury
13 One World Financial Center
14 New York, New York 10281
BY: PETER FRIEDMAN, ESQ.

15 60521.txt
15 JOHN RAPISARDI, ESQ.
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19 UNITED STATES DEPARTMENT OF TREASURY
20 1500 Pennsylvania Avenue NW
21 Washington, DC
22 BY: JOSEPH SAMARIAS, ESQ.
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25

♀

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1
2 (Appearances Continued)
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6 Committee of Unsecured Creditors Wilmington
7 Trust
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12 PATTON BOGGS, LLP
13 Attorneys for Unofficial Committee of Family
14 and Dissident Bondholders
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16 Washington, DC 20031
17 BY: MARK A. SALZBERG, ESQ.
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19 SCHNADER HARRISON SEGAL & LEWIS LLP
20 Attorneys for The Ad Hoc Committee of
21 Consumer Victims
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25 RICHARD A. BARKASY, ESQ.

♀

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2 (Appearances Continued)
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4 CLEARY, GOTTLIEB, STEEN & HAMILTON, LLP
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15 Chicago, ILL 60601
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18 60521.txt
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2 (Appearances Continued)

3 CAPLIN & DRYSDALE
4 Attorneys for Mark Buttita (Committee
5 Member)

6 One Thomas Circle, NW
7 Suite 1100
8 Washington, DC 20005
9 BY: RONALD E. REINSEL, ESQ.
10 RITA C. TOBIN, ESQ.
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12 STATE OF NEW YORK
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14 ANDREW M. CUOMO
15 The Capitol
16 Albany, New York 12224-0341
17 BY: MAUREEN F. LEARY, ESQ.
18
19
20
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1
2 H A R R Y W I L S O N, called as a
3 witness, having been duly sworn
4 by a Notary Public, was examined and
5 testified as follows:
6 (Time noted 10:56 a.m.)

7 EXAMINATION BY

8 MR. HOFFMAN:

9 Q Good morning, Mr. Wilson.

10 A Good morning.

11 Q My name is John Hoffman. I just
12 introduced myself. I represent the IUE
13 and other splinter unions here.

14 I'll be asking you some
15 questions this morning.

16 Have you had your deposition
17 taken before?

18 A Yes.

19 Q And so you understand that if
20 you don't understand a question I ask, you
21 have the right to ask me to rephrase it,

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22 and I'll try and do so?
23 A Yes.
24 Q And we'll do that today?
25 A Yes.

10

1 WILSON - HIGHLY CONFIDENTIAL
2 Q Okay.
3 MR. HOFFMAN: I wanted to make a
4 statement before we went on the
5 record.
6 Mr. Schwartz has informed us
7 that the U.S. Attorney's Office will
8 allow the witness to answer questions
9 about discussions with GM and others,
10 but not internal discussions at the
11 Treasury Task Force, based on the
12 governmental deliberative process
13 privilege.
14 We've agreed to that without
15 waiving our right to pursue that
16 further determination on that
17 privilege in the future.
18 Is that fair, Mr. Schwartz?
19 MR. SCHWARTZ: That's fair. My
20 understanding is that everyone here
21 who has asked for a deposition has
22 agreed to participate under the same
23 terms.
24 MR. HOFFMAN: Okay.
25 BY MR. HOFFMAN:

11

1 WILSON - HIGHLY CONFIDENTIAL
2 Q Mr. Wilson, could you give us a
3 better idea of the date when you joined
4 the task force?
5 A Yes. It was approximately the
6 first week of March, 2009.
7 Q Okay.
8 And the date when you became
9 head of the effort with respect to GM, as
10 I understand it.
11 So could you give us an idea of
12 the date, as you say in your affidavit,
13 you became the head of the effort with
14 respect to GM?
15 A Sure.
16 My responsibilities were broad
17 throughout my time on the task force, but
18 it was relatively early on that I spent
19 this portion of my time on General Motors.
20 Q And you've characterized that, I
21 believe, as being the head of the effort
22 with respect to GM; is that correct?
23 A I believe I said on a day to day
24 basis or something along those lines, but
25 yes.

12

1 WILSON - HIGHLY CONFIDENTIAL
2 Q Fair enough.
3 And that started when?
4 A Sometime in March.
5 Q Sometime in March.
6 Could you mark as Exhibit 1 the
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7 affidavit that Mr. Wilson has filed in
8 this case.
9 Exhibit 1 is the affidavit of
10 Harry Wilson that's filed in the case.
11 (Whereupon, Affidavit of Harry
12 Wilson, was marked as Wilson Exhibit 1
13 for identification, as of this date.)
14 MR. SCHWARTZ: Do you have some
15 extra copies?
16 MS. KENNEDY: We typically pass
17 them around. How many copies would
18 you like passed up to you?
19 MR. SCHWARTZ: At least three.
20 MS. KENNEDY: Okay. Here is a
21 third.
22 BY MR. HOFFMAN:
23 Q Mr. Wilson, in paragraph 12 --
24 MR. HOFFMAN: well, let me
25 strike that and ask another question.

13

1 WILSON - HIGHLY CONFIDENTIAL
2 BY MR. HOFFMAN:
3 Q Prior to your joining the task
4 force, had you had any experience
5 negotiating with organized labor?
6 A Limited experience, but some.
7 Q What experience had you had?
8 A There were two or three
9 investments that I was involved at a
10 previous firm in which organized labor was
11 a part of the matter.
12 Q Had they involved Section 363
13 sales under the Bankruptcy Code?
14 A There was one matter which was
15 not consummated through my time at my
16 previous employer that there was
17 discussion around a 363 sale, but that
18 wasn't concluded before I had left that
19 firm.
20 Q So you came to the task force
21 with at least some knowledge of the
22 Section 363 of the Bankruptcy Code; is
23 that fair?
24 A Yes.
25 Q Okay.

14

1 WILSON - HIGHLY CONFIDENTIAL
2 In paragraph 12 of your
3 affidavit you say that, "Although it was
4 not Treasury or GM's first choice, it
5 ultimately became clear that the only
6 viable course for GM to pursue" -- I'm
7 going to skip a little bit there -- "a
8 transaction under Section 363 of Chapter
9 11 of Title 11 of the United States Code."
10 Do you see that?
11 A Yes.
12 Q When did that become clear?
13 A Well, like all matters, it was a
14 deliberative process, but we weighed the
15 alternatives on a regular, frequent basis
16 over the course of March, April and May.
17 But as we pursued, as the

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18 company pursued the exchange offer and it
19 became clear the exchange offer was not
20 going to succeed, then we were really left
21 with no alternative.

22 Q Was the exchange offer the
23 preferred method for consummating this
24 transaction?

25 A We were skeptical that it would

15

1 WILSON - HIGHLY CONFIDENTIAL
2 succeed, frankly, but the ability to kind
3 of keep the company out of bankruptcy as
4 long as it achieved the company's primary
5 goals and the Treasury's primary goals of
6 having a viable GM would have been
7 preferable.

8 Q Based on your discussions with
9 GM, what was their preferred method?

10 A Their preferred method was
11 certainly an out of court process.

12 Q Okay.

13 MR. HOFFMAN: Let me mark this
14 as Exhibit 2.

15 BY MR. HOFFMAN:

16 Q Once the decision was made to
17 pursue a Section 363 sale, you've
18 described in your affidavit negotiations
19 between GM and the Treasury in paragraph
20 15 concerning the master sale and purchase
21 agreement?

22 A Yes.

23 Q And who was Treasury negotiating
24 for in that negotiation?

25 A Could you clarify your question?

16

1 WILSON - HIGHLY CONFIDENTIAL

2 Q Yeah.

3 Was it negotiating for Old GM or
4 New GM?

5 A For New GM.

6 Q And who was GM management
7 negotiating for in that discussion?

8 A In our view for Old GM.

9 Q For Old GM.

10 And who were the principal
11 negotiators for GM management in that
12 discussion?

13 A It was a broad list of folks,
14 including the CEO Fritz Henderson, Ray
15 Young, the chief financial officer; Walter
16 Borst, corporate company's treasurer.
17 They were the principal actors.

18 Q Okay.

19 And with respect to those
20 actors, was it anticipated at the time
21 that they would be joining New GM?

22 A In all likelihood, yes.

23 Q And in roles roughly similar to
24 those they held at Old GM?

25 A That's correct.

17

1 WILSON - HIGHLY CONFIDENTIAL

2 Q And so in negotiating this

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15 assumed, right?

16 A This is so dated but --

17 Q I agree it's dated, but it goes
18 through an analysis of the cash flow
19 favorable or unfavorable effectively?

20 A Okay.

21 Q Again, this is what

22 Mr. Henderson testified to yesterday.

23 And if you look at the
24 litigation you see that 916 is being left
25 in OldCo.

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1 WILSON - HIGHLY CONFIDENTIAL

2 A Okay.

3 Q And you look at the cash flow
4 effect of the full 916 and you see that
5 it's really only \$100 million a year in
6 terms of favorable effect on the company
7 of the elimination of those liabilities.
8 A It's hard to understand how that
9 can be right when the company spent, I
10 believe, over 200 million dollars in 2008
11 on product liability including defense
12 costs.

13 So it's hard to see how that
14 could be accurate. I don't know that 2008
15 was any form of an anomaly. I remember
16 being told that the product liability and
17 asbestos annual costs were in the zip code
18 of about \$300 million with roughly two
19 thirds being product liability and
20 one-third being asbestos.

21 So, perhaps, that's inaccurate,
22 but that's my recollection.

23 Q Okay.

24 A That's very different from these
25 numbers.

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1 WILSON - HIGHLY CONFIDENTIAL

2 Q Do you have any analyses like
3 this that are current that you had worked
4 off of with the company?

5 A No, because our working
6 assumption was that all of it would go
7 away.

8 Q Okay.

9 A At least at this point in time,
10 and so we didn't have -- you don't need to
11 assume a cost for something you're not
12 going to be liable for.

13 So I guess one thing, a
14 fundamental issue is you're looking at it
15 from a supposition of what's the
16 incremental cost of assumption and what
17 did you assume you're saving and all that
18 sort of stuff, and we looked at it as
19 there's no reason to buy this and there's
20 no reason to factor this into our analysis
21 and analyzing it.

22 Q Okay. I understand your
23 rationale, but it's changed -- I would
24 think it would have changed as a result of
25 fact that you have chipped away at the

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1 WILSON - HIGHLY CONFIDENTIAL
2 number of product liability claims and
3 when --

4 A It has changed, and I think the
5 reality of it is two-fold; one, we did
6 what we felt we had to do; and two, we
7 haven't had the time as we would like to,
8 given everything else that's going on,
9 back and forth, and analyzing this as
10 in-depth a fashion as we would like to.

11 MR. SCHWARTZ: You need to wrap
12 it up in the next five minutes.

13 MR. JAKUBOWSKI: Yeah, we will.

14 BY MR. JAKUBOWSKI:

15 Q On the May 7th chart -- do you
16 have the May 7th chart there, the one that
17 segregates the asset and liabilities --
18 was the understanding that you --

19 Well, first, you were the
20 primary person responsible for determining
21 liabilities that would be assumed and not
22 assumed with respect to the purchaser,
23 right

24 A Yes.

25 Q And after you came up, after you

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1 WILSON - HIGHLY CONFIDENTIAL
2 had your meeting on May 1, you came up,
3 you asked them what the sensitive
4 liabilities are and you asked them to
5 identify them, right?

6 A That's correct.

7 Q And you went through the chart,
8 you said there were on balance liabilities
9 of 3 and a half million and on balance
10 liabilities of about two and a half
11 billion, and the total 6 billion of
12 liabilities were liabilities that you
13 effectively wanted to, the purchaser was
14 not interested in assuming with minor
15 exceptions, correct?

16 A That's correct, I think it's a
17 little higher than that, but basically
18 about right.

19 Q But it was agreed that the
20 parties would analyze each of those
21 liabilities to determine the sensitivity
22 of them from a political perspective and
23 how they would ultimately be handled in
24 the final sale, right?

25 A And predominantly the economics

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1 WILSON - HIGHLY CONFIDENTIAL
2 of it, the commercial realities of it.

3 Q And so no decision had been made
4 as of May 7th, and that decision was
5 really deferred pretty much until the end
6 of the month, right?

7 A That's correct. I mean I think
8 it was -- what we did beginning on that
9 first week of May is really kind of launch
10 a process of discovery and discussion to

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11 understand the issues, to understand the
12 economics of it, to understand the right
13 commercial decision -- it was late in the
14 process, as a result, and that's something
15 we had to wrestle with.

16 Q But it was agreed that, one,
17 that decision is made as to what those
18 liabilities are and how they're going to
19 be segregated, with respect to that 6
20 billion if there were subsequent changes
21 to the deal as a result of that because
22 additional political pressures were
23 brought to bear, that the purchase price
24 would not change?

25 A Well no.

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1 WILSON - HIGHLY CONFIDENTIAL

2 Q Correct.

3 A I think a couple of issues with
4 that. First is the analysis wasn't around
5 political pressure being brought to bear.
6 The question was other politically
7 sensitive issues.

8 Q You're right, and I apologize
9 for that. I didn't mean to -- I shouldn't
10 have put it that way.

11 So put aside the questions of
12 people and political powers and think
13 about just sensitivities of the issues
14 from the purchaser's perspective, from the
15 seller's perspective.

16 Isn't it the case that once that
17 decision was made on May 31st as to how
18 those liabilities were going to be
19 segregated between OldCo and NewCo, it was
20 agreed that if the purchaser ultimately
21 changes its mind in some way with respect
22 to any of those liabilities, that they're
23 not going to be able to go back to the
24 buyer, to the seller and say I'm going to
25 demand a chain in the purchase price?

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1 WILSON - HIGHLY CONFIDENTIAL

2 MR. SCHWARTZ: Objection.

3 Q Correct?

4 A Again, I will respond with two
5 points. The first point is that, again,
6 the metric or the approach we used in
7 determining whether we would accept or
8 reject these had nothing to do with the
9 little sensitivity of it at all, including
10 political pressure, and also just simply
11 whether it was sensitive or not, because
12 once they're identified as sensitive --

13 Q Uh-huh?

14 A -- that's what culminated in the
15 document that follows the asset and sale
16 purchase agreement on June 1st.

17 Q But with respect to those
18 liabilities that were identified as
19 sensitive, isn't it the case that it was
20 agreed that as of May 31st that number
21 would be determined as to each bucket in

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22 terms of what was being left at NewCo and
23 what was being -- excuse me, what was
24 being left at OldCo and what was being
25 assumed by NewCo, right?

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1 WILSON - HIGHLY CONFIDENTIAL

2 A Yes, but the expectation, you
3 have to understand going into that was
4 that we would make no changes whatsoever
5 so the MSPA, that it is what it is and we
6 were done. And, frankly, in retrospect
7 now it seems to be a mistake to have made
8 the one change we made on product
9 liability because it seems like everyone
10 is using that as an example of why we
11 should be willing to make additional
12 changes.

13 Q I'm not, except as to the
14 present claims.

15 MS. LEARY: I am.

16 BY MR. JAKUBOWSKI:

17 Q But I'm not, my clients aren't
18 doing that.

19 A I think you said you are with
20 respect to the present claims.

21 Q Just the present claims.

22 A Well, that's --

23 Q That's because they're all in
24 the same bucket.

25 A Well, I don't begrudge your

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1 WILSON - HIGHLY CONFIDENTIAL

2 desire and responsibility to --

3 Q Let me ask you a question, let
4 me ask you a question, because this is
5 still a deposition. Let me ask you a
6 question?

7 MR. SCHWARTZ: Last question.

8 MR. JAKUBOWSKI: I'm going to
9 reserve the right to agree to that,
10 but I may have one more, but I want to
11 wrap up this topic --

12 Q I'm going to ask it again
13 because we ended up talking too much about
14 other things, isn't it the case that as of
15 May 31 a decision, everyone understood
16 that as of May 31 as a result of the board
17 meeting and the filing and the decisions
18 that were made that the liabilities with
19 respect to these sensitive topics would be
20 fixed?

21 A That the liabilities would be
22 fixed, yes.

23 Q And it would be decided as of
24 the close of the board meeting and as the
25 filing of the case what liabilities would

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1 WILSON - HIGHLY CONFIDENTIAL

2 be assumed from those sensitive
3 liabilities and what liabilities would
4 not, correct?

5 A That's correct.

6 MR. SCHWARTZ: I gave you an
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7 extra one.
8 BY MR. JAKUBOWSKI:
9 Q It's the continuation of it --
10 and isn't it the case --
11 MR. SCHWARTZ: That's enough.
12 BY MR. JAKUBOWSKI:
13 Q -- that the parties agreed that
14 if there was a change as to those
15 sensitive liabilities by the purchaser,
16 that it could not go back and demand a
17 change in the purchase price, and I ask
18 you to look at the bottom of page 8 of the
19 Power Point to confirm that point.
20 MS. LEARY: Wilson Exhibit 7?
21 MR. JAKUBOWSKI: Yeah.
22 A The -- I would say this bullet
23 point couldn't possibly be binding on a
24 document that was prepared on May 7th.
25 Q Okay, but I will represent to

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1 WILSON - HIGHLY CONFIDENTIAL
2 you that the board received that exact
3 same page when it made its decision on May
4 30 to go forward with the bankruptcy.
5 A I can't speak to what was
6 represented to the board.
7 Q So are you saying that you had
8 the right to go back and change the
9 purchase price if there was some change to
10 the bucket that you decided to make as a
11 result of your decisions on this bucket of
12 liabilities as to what would be assumed?
13 MR. SCHWARTZ: Objection.
14 A I think in any transaction if a
15 buyer changes what they're -- in any
16 transaction, if a buyer changes what
17 they're taking on as part of the
18 transaction they have a right to recut the
19 deal.
20 Q That wasn't my question.
21 My question was: Did you have
22 an agreement with GM that prior to the
23 filing that with respect to these certain
24 liabilities that were deemed sensitive,
25 that if the purchaser made a change as to

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1 WILSON - HIGHLY CONFIDENTIAL
2 them, that there would not be a change in
3 the purchase price?
4 A No.
5 Q Okay.
6 But when you went back -- but
7 you changed your deal on the future
8 claims, right?
9 A That's correct.
10 Q Did you go back and change the
11 purchase price?
12 A Not at this point.
13 Q Okay.
14 Well, do you intend on changing
15 the purchase price?
16 A We may.
17 MR. JAKUBOWSKI: Okay. All

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18 right. Thank you.
19 MR. SCHWARTZ: Do we still have
20 someone on the phone?
21 (No questions).
22 MR. SCHWARTZ: Everyone is done
23 asking questions. I have about two or
24 three questions just to clarify some
25 of your earlier remarks.

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1 WILSON - HIGHLY CONFIDENTIAL
2 BY MR. SCHWARTZ:
3 Q I want to go back to the
4 wind-down budget. We've talked about 950
5 million dollars. As I understand, that
6 number is not fixed?
7 A That's correct.
8 Q Whatever the number turns out to
9 be if the budget is not fully expended in
10 the wind-down of the estates what happens
11 to the balance?
12 A Any remaining cash would revert
13 back to New GM.
14 Q So that cash is not available to
15 pay unsecured claims?
16 A That's correct.
17 Q In your view, is that wind-down
18 money part of the consideration in the
19 deal?
20 A Well, its consideration in the
21 context of allowing for the orderly
22 wind-down of OldCo, but it's not, which
23 would otherwise have been funded by the
24 sale of stock, held by OldCo, but it's not
25 consideration in the context of an asset

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1 WILSON - HIGHLY CONFIDENTIAL
2 they have dominion over.
3 Q Very early in the day when you
4 were discussing the decision that Treasury
5 and GM made to pursue a 363 transaction as
6 opposed to a prepackage plan or other plan
7 of reorganization you said that the
8 parties made a strategic decision to
9 pursue a 363 transaction.
10 Do you remember that?
11 A Yes.
12 Q Could you explain what you meant
13 by a strategic decision?
14 A Sure, that as I testified
15 earlier, that there are three primary
16 considerations, one was certainty, second
17 was speed and the third was the ability to
18 leave behind certain liabilities and that
19 the commercially reasonable necessary
20 approach was to go down that path for all
21 three reasons.
22 Q So when you said it was a
23 strategic decision, you meant it fit with
24 those principles?
25 A Yes, those commercial

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1 WILSON - HIGHLY CONFIDENTIAL
2 principles.

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MR. SCHWARTZ: Thank you. I do
want to note for the record that we're
going to mark this as subject to the
protective order.

(Time noted: 7:40 p.m.)

HARRY WILSON

Subscribed and sworn to
before me this day
of , 2009.

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I N D E X

WITNESS	EXAMINATION BY	PAGE
HARRY WILSON		
	By Mr. Hoffman	9
	By Mr. Salzberg	141
	By Mr. Parker	189
	By Mr. Reinse	257
	By Ms. Leary	288
	By Mr. Jakubowski	353

EXHIBITS

WILSON	FOR ID.
1 Affidavit of Harry Wilson	12
2 Memorandum headed Cadwalader, dated April 2, 2009	19
3 Deck of Power Point slides headed Cadwalader	22
4 Document Bates stamped GM 158617	25
5 Power Point slides, covered by an Page 164	28