1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 Case No. 09-50026(REG)
4 - x
5 In the Matter of:
6
7 MOTORS LIQUIDATION COMPANY,
8
9 Debtor.
10
11 - x
12
13 U.S. Bankruptcy Court
14 One Bowling Green
15 New York, New York
16
17 December 13, 2012
18 9:49 AM
19
20 B E F O R E :
21 HON ROBERT E. GERBER
22 U.S. BANKRUPTCY JUDGE
23
24
25

1 Hearing re: Doc #12201 Motion for Objection to Claim(s):
2 Motors Liquidation Company GUC Trusts Supplemental Objection
3 to Proof of Claim No. 65807 Filed By Rolls-Royce Corporation
4
5 Hearing re: Doc #8840 Debtors' 159th Omnibus Objection to
6 Claims (Contingent Co-Liability Claims)
7
8 Hearing re: Doc #8843 Debtors' 161st Omnibus Objection to
9 Claims (Claims Assumed by General Motors LLC)
10
11 Hearing re: Doc #10089 220th Omnibus Objection to Claims
12 (Contingent Co-Liability Claims)
13
14 Hearing re: Doc #12053 Motion for Objection to Claim(s)
15 Number: 50945 filed by Tia Gomez
16
17 Hearing re: Doc #12175 288th Omnibus Objection to Claim(s)
18 - 2 (Contingent Co-Liability Claims)
19
20 Hearing re: Doc #12180 289th Omnibus Objection to Claims
21 (No Liability Claims)
22
23
24
25 Transcribed by: Jamie Gallagher

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1 P R O C E E D I N G S
2 THE CLERK: All rise.
3 THE COURT: Good morning. Have seats, please.
4 Okay, we're here on GM Motors Liquidation. I want
5 to deal with the preliminary and easy matters first,
6 although I'm not persuaded that Rolls-Royce is all that
7 difficult either. Let me start with the preliminary
8 matters. Do we have those?
9 MR. WU: Good morning, Your Honor. Edward Wu,
10 Weil, Gotshal & Manges for the GUC Trust.
11 THE COURT: Good morning, Mr. Wu.
12 MR. WU: Good morning.
13 Your Honor, if it's okay with the Court, we would
14 like to begin with just several of the uncontested matters
15 which Dickstein Shapiro will be presenting. So, if it's
16 okay with the Court, I'll present it -- I'll hand it over to
17 Colleen Kilfoyle.
18 THE COURT: All right. Ms. Greer, do you want to
19 come on up? I'm sorry.
20 MS. GREER: I've given it over to my colleague
21 today.
22 THE COURT: Okay. Forgive me. I know Ms. Greer
23 pretty well. I think I've seen you before and I've
24 forgotten your name, I apologize.
25 MS. KILFOYLE: It's Colleen Kilfoyle with

1 Dickstein Shapiro on behalf of the GUC Trust, Your Honor.
2 THE COURT: Okay.
3 MS. KILFOYLE: Today we had one uncontested
4 omnibus objection. It's the 289th omnibus objection to
5 claims. Because the liability associated with the claims,
6 if any, is that of new GM, all three claims on this omnibus
7 objection are going forward. And unless Your Honor has any
8 questions, we can submit an order to chambers on this later
9 today.
10 THE COURT: No, that's fine. Is there some reason
11 when they heard that there were liabilities of new GM, they
12 didn't say groovy, and just say we're not going to proceed?
13 MS. KILFOYLE: No, I don't know. I'm not aware of
14 why they didn't, but --
15 THE COURT: Okay. Well, your motion to disallow
16 is granted, and just deal with the paperwork at your
17 convenience.
18 MS. KILFOYLE: Yes, Your Honor.
19 THE COURT: Thank you.
20 MS. KILFOYLE: Additionally, we have an
21 uncontested objection to a claim filed by Tia Gomez. It's
22 claim number 50945.
23 As set forth in our papers, Ms. Gomez alleges that
24 she was involved in a car accident while driving her
25 Cadillac Escalade in October of 2006. It's the GUC's -- GUC

1 Trust's position that the claim is barred by the applicable
2 statute of limitations, which expired prior to the
3 commencement of the bankruptcy.
4 I don't believe Ms. Gomez is on the phone today.
5 So, given that, would the Court like me to explain the basis
6 for the objection further? Or would you prefer to -- we
7 rest on our papers?
8 THE COURT: Not really. My phone log doesn't
9 reflect any of the claimants, as far as I'm aware. Didn't I
10 deal with exactly this issue earlier in this case?
11 MS. KILFOYLE: You did. The Juanita Pickett (ph)
12 claim, which you entered an order, I believe, on
13 June 5, 2012, on the same basis.
14 THE COURT: Right. And I'm going to sustain your
15 objection on the same basis.
16 For the avoidance of doubt, just in case this
17 matter, like the Pickett matter, goes up on appeal. For a
18 claim to be allowable in the Bankruptcy Court, it has to be
19 allowable under non-bankruptcy law. Where, as in Pickett
20 and here, a claim was barred by the statute of limitations
21 before the case commenced, it's no more allowable in
22 Bankruptcy Court than it would be allowed in State Court or
23 in District Court.
24 For those reasons, your objection's sustained.
25 MS. KILFOYLE: Thank you, Your Honor. And if it

1 works for the Court, we'll submit an order on this one to
2 chambers later today as well.
3 THE COURT: Right. Certainly.
4 MS. KILFOYLE: Thank you.
5 THE COURT: Thank you. Okay.
6 Mr. Wu, do you have anything further?
7 MR. WU: As far as the uncontested matters go,
8 Your Honor, we also have the 289th omnibus -- excuse me, the
9 288th omnibus objection to claims, also on the basis of
10 502(e)(1)(b). And with respect to that particular omnibus
11 objection, no responses were received.
12 So, unless Your Honor has any questions, we would
13 ask that the claims on that omnibus objection be expunged.
14 THE COURT: No, for the non-objectors, your
15 objections are sustained.
16 MR. WU: Thank you, Your Honor.
17 THE COURT: Okay. Are we now up to Rolls-Royce?
18 MR. WU: Yes.
19 THE COURT: Will you be arguing on behalf of the
20 estate on that?
21 MR. WU: Yes, I will, Your Honor.
22 THE COURT: All right. Mr. Strickon, good
23 morning.
24 MR. STRICKON: Good morning.
25 THE COURT: All right, gentlemen, make your

1 arguments as you see fit. I've read the papers.

2 Mr. Strickon, I need help from you on this in two

3 respects. First, I would like you to confirm my

4 understanding that your only basis for your contention that

5 502(e)(1)(b) doesn't apply is the co-liability prong, and

6 that you do acknowledge that the Allison engine claim, the

7 Rolls-Royce claim, is contingent. I'd like you to confirm

8 my understanding that except to the extent that you've

9 shelled out the -- roughly $217,000, no amounts have been

10 spent by your client with respect to the claim, and also

11 that you're acknowledging that it's for reimbursement or

12 contribution.

13 My second question to you is are you asking me to

14 disregard the two decisions that I, myself, had written in

15 Lyondell Chemical and Chemtura, where I expressly rejected

16 the rationale of that district judge in Allegheny, and all

17 of the other cases that have likewise rejected the Allegheny

18 rationale. I was surprised, to be honest, by the failure of

19 your firm to address in its brief Cottonwood Canyon, which

20 is the granddaddy of the cases that have rejected Allegheny

21 and upon which the other cases rejecting Allegheny all have

22 relied.

23 Mr. Wu, when it's your turn, I want you to confirm

24 to me that the estate or the GUC Trust is not objecting to

25 the component of the Rolls-Royce claim in the ballpark of

1 $217,000 with respect to amounts that were previously
2 expended. I think it's clear from the earlier case law that
3 such amounts are allowable. And I want both sides to help
4 me understand why amounts from the time of the filing of the
5 proof of claim, to the date the objection's being heard,
6 which is today, were taken away from Rolls-Royce's ability
7 to recover seemingly, by stipulation, when in the past, I've
8 allowed amounts actually expended right up to the date of
9 the argument.
10 Under the circumstances, I think I should hear
11 from you first, Mr. Strickon.
12 MR. STRICKON: Thank you, Your Honor. I'll
13 address your second point first.
14 What happened here is that an objection was filed
15 to the original claim, and the objection was never received,
16 or if it was delivered, it was misdirected. And we had
17 discovered months after the fact that an order had been
18 entered expunging the claim. We had contacted Weil Gotshal,
19 now approximately a year ago requesting that they vacate the
20 default and reinstate the claim, which they refuse to do.
21 We spent about seven or eight months trying to
22 negotiate a settlement of the amount of the claim, which
23 would be encompassed in a stipulation vacating the default.
24 We never were able to reach an agreement.
25 So, the compromise was that they would stipulate

1 to vacating the default only if we agreed to two conditions.
2 One, that the claims would be allowed as of the date of the
3 original hearing on the objection. And number two, that
4 they claim would be capped at $9 million. And since we had
5 assessed at that time that it was unlikely that the claim
6 would exceed $9 million even if allowed, we had decided that
7 the differential between the day of the original hearing and
8 what was expended up until the date of the renewed hearing,
9 was outweighed by the cost that we would have had to expend
10 in order to move the Court to vacate the default.
11 THE COURT: Uh-huh.
12 MR. STRICKON: Okay. With respect to the
13 allowance of the claim, we submit that this is
14 distinguishable from all of those cases.
15 These -- this property was purchased in 1993. And
16 as part of the purchase agreement, General Motors at that
17 time, which was apparently already in the process of
18 remediating the environmental contamination, had
19 contractually agreed that it would remediate the condition
20 until it was -- until the EPA and other governmental
21 agencies would sign off that the problem had been
22 remediated.
23 For approximately 16 years, General Motors was on
24 the site, which had been purchased by Rolls-Royce to
25 conducting the remediation process through contractors that

1 it had hired to do the work. When the case was filed,
2 General Motors promptly walked off the site and said to
3 Rolls-Royce, it's -- it's your problem now.
4 So, the position we're taking is that this is not
5 a claim for indemnity or contribution that would be
6 disallowed under 502(e), but it's a breach of a contractual
7 obligation to remediate the process. This would have been
8 no different if we were dealing with an unrelated party that
9 had contractually agreed to remediate the environmental
10 hazard. It was just a question of, you know, who had
11 contractually agreed to remediate the problem.
12 Through that 16 year period, approximately, GM was
13 supervising, incurring the costs, and paying the costs of
14 the remediation as they were obligated to do under the
15 contract in which they sold the property.
16 And it was -- this is not a question of a --
17 indemnity or contribution, which is what exists in the other
18 cases. And it's not a question of co-liability. Neither
19 the EPA, nor the Indiana Department of Environmental
20 Management, have filed claims in the case with respect to
21 remediating this property. It's solely the problem of
22 Rolls-Royce.
23 So, we believe that the other cases are
24 inapplicable. Those cases involved adjacent property owners
25 whose properties were allegedly contaminated by the property

1 of the debtors, and were seeking contribution from the
2 debtor, or indemnification from the debtor for the cost of
3 the remediation. But this was very different.
4 The problem was there. Rolls-Royce did now own
5 the property at the time. It purchased the property under a
6 contract, by which General Motors contractually agreed to
7 clean up the mess. And that's why we claim that this is not
8 a claim to be disallowed under 502(e).
9 As far as the contingent nature of the claim, we
10 have now almost 20 years of history as to what the cost of
11 the remediation would be. At the present time, there's no
12 active remediation going on. It's merely ground water
13 monitoring.
14 And based upon the reports that we have obtained
15 in the last two years that Rolls-Royce has been supervising
16 the remediation, as well as reports that were provided by
17 General Motors previously, and reports that we have
18 requested as part of the document request, we can establish
19 that this process will take approximately another 30 years
20 to complete.
21 And on the condition that all the EPA will
22 requires is ground water monitoring to make sure that the
23 natural attenuation will clear up the proxis, it's going to
24 take 30 years. And the cost is not going to go down. The
25 cost is going to stay the same or go up.

1 So, we've taken the most conservative approach
2 here, on the assumption that the EPA is not going to require
3 any more active remediation of the problem. It was -- the
4 amount of the claims was challenged because we haven't
5 discounted it to present value. We agree that the claim has
6 to be discounted to present value.
7 But we also submit that there's an inflation
8 factor here, that the costs are going to go up with natural
9 costs of inflation over the next 30 years, and we decided
10 that the cost of the -- increased costs over the years, is
11 probably equal to what would be an appropriate discount
12 factor. So, we've used raw numbers. We've extrapolated
13 them out to 30 years, and came up with a claim of
14 approximately, I think $6.5 million based upon the present
15 costs.
16 THE COURT: Uh-huh. All right. I'll give you a
17 chance to reply. Mr. Wu.
18 MR. WU: Your Honor, first with respect to the
19 past environmental remediation costs, you're certainly
20 correct that the amount that we provided in our reply, that
21 we're willing to allow for the claim incorporates the
22 217,000 which Rolls-Royce has expended. We're certainly not
23 challenging that.
24 As to your second question regarding why the
25 disallowances as of the date of the original objection

1 hearing date, rather than today, Mr. Strickon is essentially
2 correct that there was a dispute between the parties as to
3 whether notice was properly received by all the parties.
4 The parties essentially agreed that rather than go
5 forward with a motion to vacate the prior order, that the
6 parties would agree to a stipulation with certain
7 conditions. One was that the claim would be capped at
8 $9 million, that the claim would be limited to the
9 environmental remediation in the products liability portion
10 of the claim, and certain other conditions. And one of the
11 other conditions was that the disallowance would be as of
12 the original objection date.
13 THE COURT: Okay. Now talk about what
14 Mr. Strickon said where he contends somewhat differently
15 from his papers, I certainly think, that the other cases are
16 distinguishable more so than Allegheny is right or wrong.
17 MR. WU: Well, Your Honor, I'm not quite sure that
18 I see that through Mr. Strickon's comments. I will say that
19 at the heart of the case, we do have property that's
20 contaminated. Both parties are liable for the remediation
21 costs. And as Rolls-Royce acknowledges in its response,
22 it's statutorily liable for the cleanup as the successor
23 owner of the property. Rolls-Royce also indicates in its
24 response that it's negotiating with the EPA as to corrective
25 measures for the remediation.

1 By filing a claim against the debtors, essentially
2 Rolls-Royce seeks payment to minimize its own liability
3 exposure. And the more the debtor is paid, the less Rolls-
4 Royce has to pay, which is, as this Court has said in these
5 cases, and also in Lyondell and Chemtura, the essence of co-
6 liability.
7 And I think contrary to -- it's a little bit
8 difficult for me to address how I see Allegheny as contrary
9 to the positions that Rolls-Royce has presented --
10 THE COURT: No, he's relying on Allegheny. And if
11 I said it otherwise, I'm misstating it. What he's saying is
12 that all the other cases that have criticized Allegheny are
13 distinguishable here, and that Allegheny's on point.
14 MR. WU: Right. Your Honor, I certainly wouldn't
15 agree with that position.
16 I think the jurisdiction -- this particular
17 jurisdiction has already adopted the line of cases from
18 Cottonwood Canyon, which expressly rejects the Allegheny
19 holding that -- where a claimant, before there's remediation
20 for itself, that that would be a direct claim.
21 Certainly this jurisdiction and other courts
22 around the country have adopted the position that, in
23 essence, where remediation is being performed and the
24 claimant seeks to just limit its liability by having the
25 debtors pay more, than that is a situation in which we're

1 talking about co-liability and reimbursement, and
2 indemnification for the costs.
3 THE COURT: Okay. Anything else before I give
4 Mr. Strickon a chance to reply?
5 MR. WU: No, Your Honor.
6 THE COURT: Okay. Mr. Strickon, reply.
7 MR. STRICKON: Just very quickly, Your Honor.
8 In both Lyondell and Chemtura, there were allowed
9 -- the EPA had allowed claims in the case. And the whole
10 notion of 502(e) is to eliminate paying twice on the same
11 liability. We don't have that here.
12 As I said, we're reiterating the fact that our
13 claim is in fact a breach of contract claim for failure to
14 live up to its obligations to remediate the problem. It
15 wasn't just the mere indemnification. In some of the cases,
16 even in the Allegheny case, my recollection is that the
17 property was purchased subject to an indemnification
18 obligation that was given by the seller to the buyer, and
19 the buyer was seeking indemnification.
20 But we're here seeking, you know, a claim for
21 breach of an actual contractual obligation to remediate the
22 problem.
23 THE COURT: Mr. Strickon, didn't contractual
24 indemnification provide the basis for co-liability in each
25 of Cottonwood Canyon and in Chemtura, with respect to the

1 LPRSA members?
2 MR. STRICKON: Yes, it was. But there was an
3 indemnification against the out of pocket losses that
4 resulted from the contamination.
5 Whereas in our case, we have a separate
6 contractual obligation to actually remediate the problem.
7 Rolls -- General Motors agreed that it would actively
8 remediate the problem. It paid the costs. It supervised
9 the remediation. And it did so for a period of some 16
10 years before it filed its bankruptcy petition. That's very
11 different than any of the other cases which, at best, had
12 indemnification provisions.
13 And even in the Allegheny case, it was only an
14 indemnity that was given. There was no contractual
15 obligation on the seller to actually remediate the problem.
16 Here, General Motors apparently was remediating
17 the problem, or actively remediating the problem before they
18 even sold the property to our client. So, it's clearly --
19 it's clearly distinguishable from Chemtura and Lyondell, and
20 even distinguishable from the holding in Allegheny, to the
21 extent that Allegheny didn't even have a contractual
22 obligation to remediate the problem. It merely had an
23 indemnification.
24 THE COURT: Uh-huh. Anything else?
25 MR. STRICKON: No, Your Honor.

1 THE COURT: All right. We're going to take a
2 brief recess. Be back here by 10:25. I can't guarantee you
3 that I'll be ready by then, but please do that.
4 MR. STRICKON: Thank you, Your Honor.
5 (Recess at 10:10 a.m.)
6 THE CLERK: All rise.
7 THE COURT: Have seats, please.
8 Gentlemen, in this contested matter in the Chapter
9 11 case of reorganized debtor, Motors Liquidation Company,
10 formerly known as General Motors, and typically now referred
11 to as old GM, the GUC Trust, the entity formed for the
12 benefit of old GM's unsecured creditors, moves under Section
13 502(e) of the Code to disallow elements of the claim filed
14 by Rolls-Royce Corporation, the purchaser of old GM's
15 Allison engines division.
16 After discussions between old GM and Rolls-Royce
17 that have narrowed the controversy, the remainder that's at
18 issue involves claims for environmental remediation and
19 monitoring, principally the latter, that is estimated to be
20 required over the next 30 years as contrasted to amounts
21 already expended to which the GUC Trust understandably
22 raises no objection.
23 As I conclude that this matter does not differ in
24 any legally cognizable respect from the subjects of my
25 earlier ruling in Lyondell Chemical, Chemtura, and this

1 case, Motors Liquidation, and the earlier decisions in other
2 case law on which I relied, most significantly Cottonwood
3 Canyon, discussed below, the claim will be disallowed under
4 Section 502(e).
5 My findings of fact and conclusions of law in
6 connection of this determination follow. There is no
7 material dispute as to the underlying facts.
8 Many years before the filing of old GM's Chapter
9 11 case, back in 1993, old GM sold its Allison gas turbine
10 division to an entity that later became part of Rolls-Royce.
11 Under the sale agreement, old GM agreed to address
12 environmental issues with respect to the property it sold,
13 including as relevant here, real estate in Indianapolis.
14 Among the obligations old GM undertook was a duty
15 to undertake and complete any cleanup, remediation, and/or
16 other actions that were required to be conducted under
17 applicable environmental law. It appears that old GM did so
18 for a period of about 16 years.
19 In addition, old GM undertook to indemnify its
20 purchaser for damages incurred by the purchaser, which is
21 now Rolls-Royce, "as a result of any investigation,
22 proceeding, claim, suit, or action threatened or brought by
23 a governmental agency or other third party," based on or
24 related to an environmental condition that existed prior to
25 the closing of the sale agreement.

1 Old GM later rejected this sale agreement, giving
2 rise to claims exposure in favor of Rolls-Royce to the
3 extent otherwise allowable under the claim. Upon its
4 rejection of that agreement, old GM stopped performing the
5 remediation and monitoring activities that had taken place
6 for the earlier 16 years.
7 Without dispute, Rolls-Royce expended about
8 $217,000 for remediation or monitoring costs, and old GM has
9 acknowledged the allowability of the Rolls-Royce claim to
10 that extent. But I emphasize that the amount here,
11 $217,000, which is concededly due, or at least due as an
12 allowed claim, is for amounts Rolls-Royce actually shelled
13 out.
14 In addition, and this is the essence of the
15 controversy, Rolls-Royce also seeks allowance of a claim for
16 an additional amount of approximately 6.1 million, which
17 Rolls-Royce estimates that it will have to pay at various
18 times over the next 30 years.
19 I emphasize that none of this estimated $6 million
20 has been paid, nor has Rolls-Royce introduced any evidence
21 assuming that it would be relevant, even that Rolls-Royce
22 has contractually obligated itself to pay it. In that
23 connection, Rolls-Royce acknowledges that it hasn’t
24 discounted future losses to present worth but asserts that
25 inflation will match the discount rate that would otherwise

1 apply, fully offsetting Rolls-Royce's failure to discount.

2 While I have some skepticism as to this

3 coincidence, I don't need to address it now by reason of the

4 legal conclusions that follow.

5 Turning now to my conclusions of law. I've

6 personally dealt with these same issues at least three

7 times, disallowing similar claims under Section 502(e) in

8 reliance on the overwhelming bulk of authority in the cases

9 that preceded me. I'm not persuaded that this case is in

10 any legally respect different from those other cases, or the

11 cases on which I relied.

12 Section 502(e) of the Code provides in relevant

13 part, and I'm quoting, "(e)(1), not withstanding subsections

14 a, b, and c of this subsection in paragraph 2 of this

15 subsection, the Court shall disallow any claim for

16 reimbursement or contribution of an entity that is liable

17 with the debtor on or has secured the claim of a creditor,

18 to the extent that," and I'm leaving stuff out, "(b), such

19 claim for reimbursement or contribution is contingent as of

20 the time of allowance or disallowance of such claim for

21 reimbursement of contribution."

22 Thus, under Section 502(e)(1)(b) of the Code,

23 three elements must be met for a claim to be disallowed

24 under Section 502(e)(1)(b). One, the party asserting the

25 claim must be liable with the debtor on the claim of a third

1 party; two, the claim must be contingent at the time of its
2 allowance or disallowance; and three, the claim must be for
3 reimbursement or contribution.
4 I've issued three decisions on Section
5 502(e)(1)(b) in the last two years or so. Two formally
6 published ones in Chemtura, 436 BR 286 in 2010 and Lyondell
7 Chemical, 442 BR 236 in 2011. Also, one dictated one in
8 this very case, Motors Liquidation, involving similar claims
9 by an entity called RELCO.
10 In these decisions, I addressed each prong of
11 Section 502(e)(1)(b) in turn, but here I need to address
12 only the first requirement, since Rolls-Royce seems to
13 concede, and in any event, I conclude, that its claim for
14 amounts that it hasn't spent and may never spend is
15 contingent and that its claim is for reimbursement or
16 contribution. The latter is the exact purpose and effect of
17 the contractual provisions on which Rolls-Royce relies.
18 So, Rolls-Royce's only contention, as stated at
19 pages four to five of its objection, is that "it was never
20 and is not in fact co-liable with General Motors for
21 remediation of this site." I must disagree.
22 I start, as usual, with textual analysis. The key
23 statutory language is "an entity that is liable with the
24 debtor on… such claim." The statute does not specify the
25 legal theory on which both must be liable, nor does it

1 provide that the legal theory must be the same. From a
2 textual analysis perspective, at least, it can be for any
3 reason. And that conclusion is both consistent with and
4 required by the case law.
5 As held by the Sixth Circuit and Eagle-Picher, 131
6 F.3d at 1190, and in Drexel Burnham in this district, 148 BR
7 982 at page 987, and each case citing in the earlier case of
8 Baldwin-United out of the Southern District of Ohio, 44 BR
9 at 890, the phrase, "an entity that is liable with the
10 debtor 'is broad enough to encompass any type of liability
11 shared with the debtor, whatever its basis.'" The co-
12 liability requirement does not require that the debtor and
13 the claimant be subject to a common civil proceeding or
14 agency action. In fact, it can be on two entirely different
15 grounds as Eagle-Picher held. See 131 F.3d at 1190, where
16 the Court said that so long as debtor and claimant "are both
17 potentially responsible for environmental cleanup costs of
18 the Blanchard Street property, the legal theory underpinning
19 that shared responsibility is irrelevant."
20 Thus the fact that Rolls-Royce's claim against old
21 GM arises from contractual indemnification isn't
22 determinative of the co-liability requirement because the
23 underlying liability on which Rolls-Royce will have to spend
24 whatever it ultimately spends, will be one that it has in
25 common with old GM.

1 Both have a statutory duty to remediate. The GUC
2 Trust is right when it says at page 10 of its opening brief,
3 citing Judge Gropper's decision in GCO Services, 324 BR at
4 366, that "indemnification by its very nature presupposes
5 co-liability." As the GUC Trust properly observes, the
6 claim here is premised on the theory that if the GUC Trust
7 doesn't pay for cleanup -- future cleanup costs at the
8 facility, Rolls-Royce will be required to pay more. As I
9 held earlier in this Motors Liquidation case with respect to
10 the RELCO claim, that "is the very essence of co-liability."
11 Here, Rolls-Royce acknowledges that by operation
12 of law, as the successor owner of the facility, it became
13 statutorily liable for the remediation of the facility which
14 it acquired. See it's response at page 4, where it
15 acknowledged that Rolls-Royce is exposed on the amounts it
16 fears it may have to pay in the future, because it's a PRP
17 under Cercla, which imposes liability on present owners or
18 operators of sites, like Rolls-Royce, and their past owners
19 or operators, like old GM.
20 As the current owner or operator of the facility,
21 Rolls-Royce is statutorily liable for environmental cleanup
22 costs, just as old GM as the former owner and operator is.
23 As its sole authority and support of its position, Rolls-
24 Royce cites the decision of a district judge in In re
25 Allegheny International, 126 BR 919, back in 1991. That

1 decision has been repeatedly criticized and/or rejected in
2 this district and elsewhere, see In re Cottonwood Canyon,
3 146 BR 992 at page 996 (Bankruptcy District of Colorado,
4 1992); In re Drexel Burnham, 148 BR 982 at page 998
5 (Bankruptcy Southern District of New York, 1992); In re
6 Eagle-Picher, 164 BR 265, at page 271(Southern District of
7 Ohio, 1994); In re Hexcel Corporation, 174 BR 807 at page
8 813 (Bankruptcy Northern District of California, 1994);
9 Lyondell Chemical, 442 BR at 253, and Chemtura, 443 BR at
10 622. Drexel Burnham, Eagle-Picher, Hexcel, Lyondell
11 Chemical, and Chemtura noted that Allegheny had been
12 criticized and chose to follow Cottonwood Canyon instead.
13 I discussed the reasons that Allegheny had to be
14 rejected in each of my lengthy decisions in Lyondell
15 Chemical, 442 BR at page 253 and the pages following, and
16 Chemtura, 443 BR at page 622 and the pages following. In
17 each of which, I expressly stated that "I must join the
18 other Courts that have disagreed with the Allegheny
19 decision." Lyondell Chemical, 442 at 253.
20 I won't repeat that discussion at comparable
21 length here. As I explained in Chemtura, and I'm quoting,
22 "the Allegheny Court acknowledged that its decision not to
23 disallow the claimant's claim under Section 502(e)(1)(b)
24 left the debtors vulnerable to multiple recoveries." And I
25 then continued, and this is most important to what we have

1 here, "what the Allegheny Court failed to realize, however,
2 is that this risk of duplicative recoveries arose because
3 the debtors and claimant were co-liable." Emphasis on
4 because, emphasis in original. And I went on to say that
5 for that reason, several cases, as I've previously noted,
6 had rejected Allegheny -- Allegheny's logic.
7 I noted that in Cottonwood Canyon, for instance,
8 the Court stated that the fact that the Allegheny Court
9 found it necessary to establish a trust showed that the
10 debtor and the claimant shared a common liability against
11 which the claimant sought to protect itself. See Cottonwood
12 Canyon, 146 BR at 996.
13 To my surprise, Rolls-Royce did not substantively
14 address or even mention Cottonwood Canyon, or any of the
15 other cases that had rejected Allegheny's logic. For the
16 same reason, by the way, I have to reject the logic in
17 Harvard Industries, 138 BR 10, bankruptcy case back in 1992,
18 which Rolls-Royce also did not cite but which follows
19 Allegheny's logic.
20 Here, I have a contention that the cases which
21 I've previously noted that reject Allegheny are
22 distinguishable by reason either of the contractual
23 obligation or the fact that pursuant to the contract old GM
24 had performed for a long time, here 16 years, or both. But
25 I find these facts to be insufficient to provide a legally

1 cognizable basis for disregarding all of the authority that
2 I've previously stated. Or, more importantly, the
3 underlying principals on which those other cases rested.
4 Contractual indemnifications provided the basis
5 for co-liability in Cottonwood Canyon, see 146 BR at pages
6 993 to 994, and Chemtura with respect to the portion of that
7 decision that dealt with the LPRSA members, see 443 BR at
8 627. Indeed, Cottonwood Canyon noted that, "the facts in
9 Allegheny are for purposes of this discussion nearly
10 identical to the present case." 146 BR at 996. Similarly,
11 the fact that old GM complied for 16 years does not make it
12 in any way distinguishable from earlier authority.
13 In Cottonwood Canyon, for instance, there had been
14 performance of a prepetition cleanup obligation by the
15 debtor for a period of 8 years, see 146 BR at pages 993 and
16 -- to 994. Likewise, there was a prepetition compliance by
17 the debtor of its cleanup obligation, also through a period
18 coincidentally of 8 years in Hexcel, 146 BR at pages 808 to
19 809.
20 Indeed as I've noted previously, I believe, but in
21 any event I will note now, Hexcel had double-barreled
22 obligations -- excuse me, Cottonwood Canyon had double-
23 barreled obligations to clean up and indemnify. Also, as
24 held in Wedtech, Chemtura, Cottonwood Canyon, and this case,
25 Motors Liquidation in May of this year, Section 502(e)(1)(b)

1 is applicable whether the underlying claimant files a proof
2 of claim or not. Double recovery is an important
3 consideration, but it is not the only one.
4 As I indicated at the outset, it's at best
5 debatable that the rate of inflation would exactly offset
6 the appropriate discount rate to be used in determining the
7 present value of 30 years of future estimated cleanup costs.
8 Even if costs estimated, but not actually incurred, could
9 provide for a basis of liability, and even if they didn't
10 otherwise take into account inflation, but I don't need to
11 address that issue now, as the claims for reimbursement here
12 must be disallowed as a matter of law.
13 For these reasons, Rolls-Royce's claims must be
14 disallowed under Section 502(e)(1)(b). The GUC Trust is to
15 settle an order consistent with these rulings. The time for
16 appeal from this determination will run from the time of
17 entry of the ensuing order and not from the time of this
18 dictated decision.
19 All right, gentlemen, not by way of re-argument,
20 anything further?
21 MR. WU: Thank you, Your Honor.
22 There are just two other matters in the contested
23 matter section of the agenda. One is the debtor's 161st
24 omnibus objection to claims. And this is on the grounds
25 that the claims have been assumed by new GM. The omnibus

1 objection is going forward as to Carrier Corp. Carrier Corp
2 did not file the formal response to the omnibus objection,
3 and for quite some time we've been trying to reach the
4 claimant through phone calls, and actually through letters
5 as well, to advise them of the hearing and to get a sense of
6 what their basis of their objection is to our omnibus
7 objection. And we haven't been able to get in contact with
8 them at all, unfortunately. We feel they've been ignoring
9 us.
10 THE COURT: Pause. There had been earlier back
11 and forth and then they just stopped?
12 MR. WU: Yes, Your Honor. And --
13 THE COURT: What's the time period between the
14 time that the back and forth went on and the time that you
15 got radio silence?
16 MR. WU: I would think it's roughly -- it could
17 stretch as far as, I think, seven months or so -- or --
18 THE COURT: And what didn't they respond to?
19 Phone calls? Emails? Both? What?
20 MR. WU: And letters as well.
21 THE COURT: I'm sorry.
22 MR. WU: And letters as well -- physical letters
23 mailed to their address.
24 THE COURT: Were there efforts to call them as
25 well?

1 MR. WU: A reference to call -- sure, our numbers
2 were listed on the letters that we sent to them.
3 THE COURT: So, wait, a lawyer from Weil did pick
4 up the phone and said, so what's going on, guys? Or try?
5 MR. WU: Yes, Your Honor. I personally called
6 them -- tried to call them almost every day for a month.
7 THE COURT: Okay. Settle a separate order
8 disallowing that claim. Let's see if they wake up. And if
9 they don't, respond under the usual time for notice of
10 settlement, which will be two business days notice by hand,
11 fax, or email. Add a week if you use snail mail. I'll
12 enter that order.
13 Normally, once a dialogue continues, I expect
14 debtors and claimants to either agree or agree to disagree,
15 just like you did with Mr. Strickon. And if they don't
16 respond after the process starts, there comes a time when
17 you've got to grant the relief of the type you're talking
18 about. But if they were awake enough to contact you at one
19 point, I want to be sure that they've abandoned this claim.
20 MR. WU: Okay, Your Honor. Yes. I'm not sure
21 whether they were actually paid by new GM and maybe that's
22 the reason why they're -- you know, they feel they no longer
23 need to speak to us. But we'll see whether they actually --
24 THE COURT: Well, it may well be that if they
25 decide to fight you, you're going to win then. Or they may

1 have no reason to do it. I'm annoyed that they wouldn't
2 have the courtesy to return your calls also, but I can't
3 yell at them in your absence. Or I guess I can, but you get
4 the point.
5 MR. WU: Okay. Thank you, Your Honor.
6 And the last matter -- the last contested matter
7 is the 220th omnibus objection to claims. And this is also
8 on the grounds of 502(e)(1)(b). The omnibus objection is
9 going forward as to the claim Foster Townsend.
10 Foster Townsend did file a formal response to the
11 omnibus objection. And I think the call log reflects that
12 counsel is not here today. Foster Townsend is actually the
13 counsel to an individual by the name of Arthur Parrot (ph).
14 Arthur Parrot was involved in a motor vehicle
15 accident where he allegedly struck another individual while
16 operating a vehicle manufactured by the debtors. The
17 individual that was struck by Arthur Parrot subsequently
18 filed a negligence action against both Arthur Parrot and the
19 debtors in the Ontario Superior Court of Justice. And in
20 that litigation, Arthur Parrot did file a claim for
21 contribution or -- and/or indemnification against the
22 debtors. And that's also the basis of its proof of claim
23 against the debtors.
24 Foster Townsend filed a response, but the -- the
25 response filed by Foster Townsend is not substantive, and it

1 only reiterates the basis of the claim, and doesn't provide
2 any legal or factual basis as to why the omnibus objection
3 and 502(e)(1)(b) does not apply to the claimant. For that
4 reason, we would ask that the omnibus objection be granted
5 with respect to the claim.
6 THE COURT: GM and -- old GM and the claimant were
7 both sued as a consequence of this car wreck, and we're
8 talking about a cross-claim over?
9 MR. WU: That's right, Your Honor.
10 THE COURT: All right. Objection's sustained.
11 MR. WU: Thank you, Your Honor.
12 THE COURT: Does that take care of it?
13 MR. WU: Yes. That's it, Your Honor.
14 THE COURT: All right. Anything further, anybody?
15 I hear nothing. We're adjourned.
16 (A chorus of thank you)
17 (Whereupon these proceedings were concluded at 11:04
18 AM)
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1 I N D E X

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3 RULINGS

Line no.	Ruling	Page	Line
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8	Number: 50945 filed by Tia Gomez		
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10	288th Omnibus Objection to Claim(s)	7	14
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12	Motion for Objection to Claim(s):	28	14
13	Motors Liquidation Company GUC Trusts		
14	Supplemental Objection to Proof of		
15	Claim No. 65807 Filed By Rolls-Royce		
16	Corporation		
17			
18	Debtors' 161st Omnibus Objection to Claims	30	7
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20	220th Omnibus Objection to Claims	32	10

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

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3 I, Jamie Gallagher, certify that the foregoing transcript is

4 a true and accurate record of the proceedings.

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Veritext

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Mineola, NY 11501

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Date: December 17, 2012

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