

ROUGH DRAFT - COURT'S EYES ONLY

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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WOOD, ET AL.,      : 08-CV-5224(PKC)
    Plaintiffs,    :
                  :
v.                 : United States Courthouse
                  : Brooklyn, New York
                  :
GENERAL MOTORS     :
CORPORATIONS, ET AL., :
    Defendants.  : Tuesday, November 12, 2013
                  : 3:00 p.m.
                  :
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TRANSCRIPT OF CIVIL CAUSE FOR STATUS CONFERENCE
BEFORE THE HONORABLE PAMELA K. CHEN
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S:

For the Plaintiffs:

For the Defendants: [!FIRM2]
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Proceedings recorded by computerized stenography. Transcript produced by Computer-Aided Transcription.

1 (In open court.)

2 THE COURTROOM DEPUTY: Civil cause for status
3 conference, Docket No. 8-5224, Wood, et al., versus General
4 Motors Corporation, et al.

5 Will the parties please state their appearances for
6 the record starting with the plaintiffs. Please make sure to
7 speak into the microphone loudly and clearly.

8 MR. WOOD: Tzvee Wood.

9 MS. MALESTER: Andrea Malester.

10 THE COURT: Okay. Good afternoon to you both.

11 MR. LABONTE: Steve LaBonte, counsel for
12 defendants **Hempstead Lincoln-Mercury Motors** and John
13 Billard.

14 MR. RUBIN: Peter M. Rubin for Karp.

15 THE COURT: Okay. Good afternoon to you both.

16 We are here today, as I'm sure both parties know,
17 to talk about the status of this case and what should be
18 happening next to move this case along. As I'm sure the
19 parties are aware, this case has been languishing -- that's
20 the wrong word -- certainly been pending for the last five
21 years or so. So to briefly recap the most relevant history,
22 the case was filed in 2008 by Mr. Wood and Ms. Mal regarding
23 what they allege is a defective vehicle that they purchased
24 from KARP automotive and that was manufactured by other
25 defendants who are charged as parties in this case. There

1 was a motion to dismiss filed by the defendants and
2 Magistrate Judge Tomlinson issued a report and
3 recommendation that was adopted by Judge Bianco, who
4 previously presided over this case. And the report and
5 recommendation was filed in August 2010. So that was a fair
6 bit ago.

7 After Judge Bianco adopted, endorsed *a report and
8 recommendation which, among other things dismissed -- or
9 recommended dismissal but ended up resulting in the
10 dismissal of the two federal claims, the RICO claim and also
11 the Magnuson-Moss claim and also directed the plaintiffs or
12 actually granted leave for the plaintiffs to amend, and the
13 plaintiffs did amend, albeit untimely, but that was accepted
14 by the Court and submitted or filed about a hundred-page
15 complaint realleging the same exact claims as far as I could
16 tell, both their state and their federal claims. But I
17 presume attempting to make changes to comply with or to
18 respond to or address the deficiencies noted in Judge
19 Tomlinson's decision or opinion.

20 Now, that brings us to today. The amended
21 complaint was filed in January of 2011. We obviously now
22 are in November 2013. The case was handed off to me several
23 months ago, and then I issued the order that the parties
24 receive requesting I think I have two occasions status
25 reports about what was going on with the case and why it

1 wasn't moving forward.

2 So I have some questions for the parties. I
3 think, first of all, I want to note one other submission by
4 the defendants, Karp Automotive, which was submitted on
5 January 7th, 2011, soon after the filing of the
6 amended -- actually, just before the filing of the amended
7 complaint, which seems odd because it discusses how the
8 amended complaint does not really make any changes that
9 address the concerns about the federal claims in this case.
10 Although maybe somebody can explain the timing to me. But
11 now that I'm looking at it, your letter about the amended
12 complaint, Mr. Rubin, preceded the actual filing. But that
13 may have been a glitch because of the pro ses
14 being -- plaintiffs being pro se.

15 So I guess my question to the defendants are
16 whether or not you've analyzed the amended complaint and
17 determined if it really corrected or remedied the
18 deficiencies that were the basis for dismissal of the
19 original complaint and whether or not there actually are any
20 substantive changes or changes that are going to fix those
21 issues.

22 MR. LABONTE: We don't believe that there are any
23 substantive changes to the claims that have been made by the
24 plaintiff in the proposed amended complaint. The only thing
25 we believe it really does is just amend to add several

1 additional defendants to the matter. I don't believe it
2 corrects or remedies any of the issues that were brought up
3 by Magistrate Tomlinson in her report and recommendations.

4 THE COURT: What is your response to that,
5 Mr. Wood, or Ms. Mal about that?

6 MR. WOOD: So I think one of the key issues here
7 was that GM went bankrupt and dropped out of the lawsuit so
8 any time to join the dealerships with GM disappeared. So
9 potentially if any of the other parties are the correct
10 parties and can be joined with the dealerships, then the
11 premise that there's no jurisdiction may not hold up if the
12 parties are joined. And so it's a little bit difficult to
13 just look at the content of the amended complaint and say,
14 well, it's similar, therefore it doesn't change anything.
15 But if any of those parties should be present and aren't,
16 then may be allowed joinder with the dealerships. *

17 THE COURT: Are you saying because these are
18 foreign corporations?

19 MR. WOOD: No, because the -- although obviously
20 the dealerships are New York entities and General Motors was
21 not and some of those other entities are not, if they are
22 effectively on the same side of the dispute, then you can
23 have joinder.

24 THE COURT: Right. I guess let me break down my
25 question then.

1 Did you alter your complaint in any way to be more
2 specific with respect to the civil RICO and Magnuson-Moss
3 claims, which I think were 11 and 12 or somewhere there
4 about, did you amend them in any way to address the issues
5 that were raised in Judge Bianco or Judge Tomlinsons'
6 decision?

7 MR. WOOD: I haven't looked at both of them in
8 some time, but I'm pretty sure that at the time there was
9 some effort made to address the defects in more than just
10 adding parties. It may be minor and it may be subtle
11 changes, but I'm not -- there would have been some changes.

12 THE COURT: Right. I think the fundamental
13 problem, and this is just based on my casual perusal or
14 preliminary perusal, was that Judge Tomlinson found that you
15 had failed to comply with this particularity pleading
16 requirement. For example, you didn't specify which of the
17 many defendants named committed particular acts and that
18 that was a deficiency in the pleading and that prompted
19 dismissal.

20 It appears to me that the allegations in your 12th
21 claim, which is the civil RICO, are the same or that at
22 least on their face -- on the face of them, they appear
23 again to have the same problem, which is that they allege in
24 some general way that every defendant committed these
25 various acts that violate the civil RICO statute.

1 So I think that it's not apparent to me that there
2 were any changes made that get around the original problems
3 that prompted a dismissal. So I'm looking for some guidance
4 from you on how you changed it or corrected that problem.

5 MR. WOOD: Unfortunately, I don't have a copy of
6 that in front of me so I can't pinpoint you to an exact
7 place. But I do remember that there were some additional
8 details added. It may not be apparent because the document
9 is so long so if you insert a few line paragraph here or
10 there, it may not jump out at you, but there should be
11 details added about, you know, who had the dealership or who
12 at General Motors was doing what.

13 THE COURT: So let me ask the defendants. Did you
14 plan to file another motion to dismiss because one of the
15 questions today is the parties are either going to proceed
16 to discovery and move this case along or the defendants are
17 going to file a motion to dismiss the amended complaint.

18 MR. LABONTE: We would file another motion to
19 dismiss the amended complaint, Your Honor.

20 THE COURT: Okay. So why don't we set up a
21 schedule for that before we even set up a schedule for
22 discovery because, depending on the outcome, discovery may
23 or may not be warranted. And I appreciate the fact that
24 perhaps the defendants were wondering if Judge Bianco was
25 going to do something sua sponte. I did read something in

1 the procedural history that suggests that maybe he was going
2 to take a look at the amended complaint.

3 Does that ring a bell?

4 MR. LABONTE: The amended complaint had been
5 filed. He indicated that he was going to review the amended
6 complaint, but in the meantime the plaintiff was directed to
7 provide more information about the new defendants that were
8 being added. And that was January of 2012, and I have not
9 seen the plaintiff offer the Court or us any additional
10 information. And it's almost two years now.

11 THE COURT: It seems appropriate to restart this
12 process. We should begin with the motion to dismiss. And
13 if, as you say, there are really no differences, then
14 obviously much of your effort should be directed at
15 explaining why this new complaint does nothing differently
16 or more or better or more legally sufficient than the last
17 one. So perhaps in some way piggyback off the prior
18 decision and anything else you want to add once you've gone
19 through all hundred pages of it.

20 MR. LABONTE: Right.

21 THE COURT: What would be a reasonable amount of
22 time to give you? I'm not going to rush you on this given
23 how long this case has been pending. For our own scheduling
24 purposes, I would prefer that the final briefing not be done
25 until sometime in late March or early April so if that helps

1 you at all. Final briefing. So work backwards from there.

2 MR. LABONTE: So final briefing late March, early
3 April?

4 THE COURT: Yes. So you can even go into April
5 and then working backwards. You might want to start your
6 briefing in late January or something like that. So while
7 you're looking at dates, I'm just reminding the parties
8 that, as you know, the way it works is we bundle the motion
9 so that the defendants will serve their motion on you, the
10 plaintiffs, and then you'll serve your opposition on them.
11 And then the defendants will serve their reply. And only on
12 a reply date will everyone file their separate submissions
13 to the Court.

14 MR. LABONTE: Can we have a submission of the
15 motion to dismiss on the plaintiffs on February 18th?

16 THE COURT: That sounds fine.

17 MR. LABONTE And then their opposition will be
18 due --

19 THE COURT: How much time would you like your
20 opposition? A month?

21 MR. WOOD: Yeah, a month should be fine. I mean,
22 if there's any slight detail of the date, then we'll work it
23 out, I guess, between each other.

24 MR. LABONTE: March 18th for the opposition.

25 THE COURT: And both sides, if you need more time,

1 obviously confer with each other and if you can agree upon
2 an extension, just write me a letter. So March 18th.

3 And then how much time for your response?

4 MR. LABONTE: Do three weeks for a response, Your
5 Honor.

6 THE COURT: Sure.

7 MR. LABONTE So April 8th.

8 THE COURT: Okay. Good.

9 One other thing. I know you have a pending
10 motion, Mr. Wood and Ms. Malester, about service cost. Why
11 don't you when you file your opposition make whatever motion
12 you want to about that; in other words, cite whatever cases
13 you want to in support of your request to get the service
14 cost paid for by -- was it both defendants or one defendant?

15 MR. WOOD: Well, it's a combination of Hempstead
16 Lincoln-Mercury and John Billard.

17 THE COURT: Okay. Go ahead and put that in there.
18 And then obviously, Mr. Rubin, I guess you'll respond in
19 your reply to the service cost.

20 MR. LABONTE: That would be me.

21 THE COURT: Oh, so sorry. You're Hempstead.

22 I don't want to set up a separate briefing
23 schedule with it. If you need a couple extra pages, just
24 let us know.

25 MR. LABONTE: I'll tab to my reply, your Honor.

1 THE COURT: That's what I was saying makes sense.
2 But if you need more than ten pages to do both your reply
3 and your response to the service cost issue, just ask for
4 that in abeyance of submitting it. And the same for you,
5 Mr. Wood. If you need a few more pages then your 25 for
6 your opposition to address the service cost question, just
7 ask for that and that should be fine. I can't anticipate it
8 will be a very complicated argument.

9 MR. WOOD: No.

10 THE COURT: Okay. Does either side have anything
11 you need to raise with me?

12 MR. RUBIN: One thing if I may, Your Honor.

13 THE COURT: Yes.

14 MR. RUBIN The last conference we had with Judge
15 Bianco, plaintiff pro se was -- it was indicated that they
16 should address the Court as to how the Saab bankruptcy would
17 affect this particular case because there was a stay with
18 the General Motor bankruptcy and Judge Bianco was concerned
19 if the Saab bankruptcy had a similar stay which it does,
20 then the Court would have no jurisdiction to proceed and yet
21 we're still here six years later costing our clients lots of
22 money. And it's a concern to my client as to why we're
23 still back here again --

24 THE COURT: Okay.

25 MR. RUBIN: -- when certain things have not been

1 addressed as directed by the Court.

2 THE COURT: So let me make sure I understood. Was
3 the effect of the GM bankruptcy and any stay, was that
4 addressed before?

5 MR. RUBIN: That's been addressed, and I believe
6 plaintiff pro se had asked the Court on several occasions
7 for additional time to do research and address to see how
8 they could sue the new GM rather than the old GM. There has
9 been no theory forthcoming on that and then with the amended
10 complaint, the difference was that multinational
11 corporations were added to my recollection and Mr. LaBonte's
12 recollection, I think Your Honor's correct in her assessment
13 that there was no substantive changes whatsoever in the
14 entire complaint.

15 THE COURT: Okay. So do you understand the
16 question, Mr. Wood, that's being posed by Mr. LaBonte about
17 the Saab bankruptcy matter?

18 MR. WOOD: There are two issues. One was how new
19 GM dovetails into this and the second was about Saab's
20 bankruptcy staying the matter. Saab -- well, new Saab -- I
21 mean, not having the exact name in front of me -- but the
22 new entity separate from General Motors isn't actually named
23 in any current documents. I mean, they might have been
24 named in the amended complaint, but they have never been
25 formally brought in so I don't know if that would affect the

1 matter.

2 As to the new GM, at the time of the amended
3 complaint, nobody knew how claims were going to be handled.
4 The most recent case only came down in February or March of
5 last year, and it isn't entirely clear that that case is
6 really intended to apply to claims like this as opposed to
7 what it was primarily dealing with was people who acquired
8 new vehicles with warranties at some time after the
9 bankruptcy was filed but before the closing date of the sale
10 to new GM and so there's some gray area for those customers.

11 How that then translates to this isn't exactly
12 clear, but new GM wasn't willing to voluntarily appear as a
13 defendant here.

14 THE COURT: New GM wasn't what?

15 MR. WOOD: New GM was not voluntarily willing to
16 appear as a defendant here and wanted to use their shield of
17 bankruptcy to keep them out of this matter.

18 THE COURT: Can I ask you a really basic question
19 since I don't know the history as well as you all. Have all
20 these parties been served, all the defendants?

21 MR. WOOD: Well, in which --

22 THE COURT: For the amended complaint.

23 MR. WOOD: Okay. So for the initial complaint,
24 everybody was served with the exception of the two employees
25 because at the time GM would not provide -- they don't work

1 in an office. They are field employees.

2 THE COURT: Okay. So General Motors was served.

3 MR. WOOD: General Motors was served. They would
4 not provide a business office location for those employees.

5 THE COURT: Okay. But then now in your amended
6 complaint you have Saab for the first time, correct?

7 MR. WOOD: Right.

8 THE COURT: Were they ever served?

9 MR. WOOD: The amended complaint is noted as
10 proposed. I don't know if it was formally accepted so
11 that's where things perhaps stalled in the service.

12 THE COURT: Oh, I think that -- correct me if I'm
13 wrong -- I think the judge at some point said even though
14 filed late that he was accepting the complaint as being
15 filed.

16 MR. RUBIN: That's correct, Your Honor. However,
17 Your Honor is also correct in her assessment that we had
18 seen no filings of service on any of the parties and one of
19 the main cruxes of Judge Tomlinson's report was that there
20 was no federal jurisdiction. And if no one has been served
21 outside of our local dealerships in the new complaint, then
22 to ask us to even go to the trouble of making a motion to
23 dismiss when the plaintiff has yet to show how this court
24 acquires venue or jurisdiction to hear this matter is
25 perplexing. I think the Court being new to this probably

1 did not read the plethora of documents that have been
2 submitted to Judge Bianco, not that I complain in this
3 court.

4 One of the things that we said to Judge Bianco,
5 these are very sophisticated pro se plaintiffs. This is not
6 their first, second or third litigation involving both the
7 federal courts or state courts. We've identified
8 approximately a dozen lawsuits that they have started, and
9 we have a letter from them threatening us if the suit does
10 not succeed and if this Court dismisses the suit, then they
11 are going to sue us in state court unless we want to make an
12 offer to them.

13 So to us being the two plaintiffs -- two
14 defendants who are in the case, we consider this somewhat of
15 an extortionate position to take and now the Court is
16 directing us once again to have to submit briefs which are
17 going to cost our clients thousands of dollars more for
18 something which should not be here at this particular point.

19 THE COURT: The only part I disagree with you on
20 is that the way things were left when Judge Bianco was on
21 the case was that he granted your motion to dismiss and
22 finding lack of diversity but also dismissing the two
23 federal claims.

24 Now, he also allowed the plaintiffs to amend. And
25 the question before me is whether or not those federal

1 claims, I accept that maybe diversity hasn't been met here
2 and you can make that argument by saying there is no diverse
3 parties now that have been served, but there still are those
4 federal claims that in theory have been amended. And
5 unfortunately since the plaintiffs were permitted to amend
6 them, I do have to take a look at that and ask the parties
7 then if you want to move to dismiss them.

8 Whether it will cost you thousands of dollars, I
9 have no idea. It seems to me a simpler exercise the second
10 time around, but obviously I'm not the one writing the
11 brief. But like I said, from my perusal it doesn't appear
12 that there's substantive difference and it may just be a
13 matter of some paralegal comparing the paragraphs and saying
14 nothing has been changed in terms of satisfying the pleading
15 requirements and that could be a fairly simple submission.

16 That's what I'm saying on that. Because
17 unfortunately they could have jurisdiction based on these
18 federal causes of action. Forget about diversity, but on
19 those two.

20 MR. RUBIN: And would the Court allow us to apply
21 for sanctions?

22 THE COURT: You can apply for sanctions,
23 absolutely. Whether I'll grant them or not is a question.
24 You have mentioned some things historically that I'm not
25 privy to. I only have before me what's in this case. It's

1 not apparent that that this particular case is overtly
2 frivolous. I mean, certainly there's a defect in the car
3 that they are alleging. I have no basis to know whether
4 that's true or not. Whether they should have been brought
5 in federal court based on diversity or RICO claims, it would
6 not be the first time that plaintiffs have done that, even
7 those with lawyers.

8 So you can make your sanctions motion. It will
9 cost you a little bit of money, though, of course, but
10 that's up to you. I mean, I think the fact that these
11 plaintiffs may be repeat filers in different contexts, maybe
12 that -- it's certainly something I was not aware of until
13 you said that just now. So I'm not going to prevent you
14 from doing that, but I can't tell you how that will come
15 out.

16 MR. RUBIN: Thank you, Your Honor.

17 THE COURT: Let's address the service issue for a
18 moment because I think what the plaintiffs were saying is
19 that there was some uncertainty and for the moment I'll
20 accept the fact that they are pro ses who are not lawyers.
21 Maybe they are very experienced pro ses, but are you saying,
22 Mr. Wood, that you weren't sure after that entry by or that
23 order binding by Judge Bianco that he accepted the complaint
24 that you weren't then supposed to serve the complaint -- the
25 amended complaint I'm referring to?

1 MR. WOOD: We don't get the ECF notices --

2 THE COURT: That's not true. You get mailed
3 copies.

4 MR. WOOD: The court is generally good about
5 mailing copies, but I don't recall a letter that explicitly
6 said that that proposed complaint was formally accepted and
7 that could then be served. I know that, you know, somehow
8 new GM got ahold of a copy perhaps from one of the dealers
9 trying to invoke indemnity and they were concerned about
10 being brought in. But I don't recall the court formally
11 accepting it and saying, okay, go ahead and serve them.

12 THE COURT: All right. I'm looking at the docket
13 sheet right now. So Judge Bianco issued an order on January
14 18th saying he would accept the late-filed amended
15 complaint. And what I'm looking for now is an indication of
16 mailing. There was, though -- let's see. No, no, no.
17 Sorry. These entries for some reason are out of order.

18 It's not apparent to me that you were mailed a
19 copy of that particular order. Hang on one second.

20 (Brief pause.)

21 THE COURT: I just want to double-check with my
22 deputy to make sure that I'm reading this docket correctly.
23 If you look at the docket, unfortunately, some of the orders
24 are entered nonchronologically so, for example, the date he
25 issued his ECF order accepting the complaint is January

1 18th, but then right after that is an order that's dated
2 12-13-2011 so a month earlier.

3 So it's a little chaotic, but it doesn't
4 appear -- it appears that you may not have received a copy
5 of the order indicating that he had accepted the late filing
6 of the amended complaint. But unfortunately that being
7 said, this is the difficulty because you're not lawyers, it
8 would have behooved you obviously to contact the court to
9 find out what the status of your case was to move it along.

10 What I'll do is this: Since we have a fairly long
11 time frame in which these particular defendants can file
12 their motions to dismiss, I'll give you until the end of
13 December to serve these other plaintiffs -- I mean,
14 defendants, rather, and then once they get the complaint,
15 we'll notify them that if they wanted to file motions to
16 dismiss, they can do it as well by the February date that's
17 been set. It won't affect --

18 MR. RUBIN: Judge, this is somewhat disingenuous
19 this argument that he never received a copy that the court
20 accepted the amended complaint because he's had other
21 filings since that time and that would have to presuppose
22 that the case was going forward.

23 And for him to tell this Court that he had no clue
24 somewhat, I mean, I'm just astonished that after six years,
25 my client is still involved in this.

1 MR. LABONTE: There were several requests by the
2 plaintiffs during the last two years for additional time to
3 look up documents and to find things.

4 THE COURT: Well, it's interesting. It's hard for
5 me to tell since the substance of all these requests is not
6 clear, but it seemed to me that after the filing of the
7 amended complaint there wasn't a filing of an answer or
8 motion to dismiss, right, so that wasn't prompted because
9 everyone seemed to be waiting for Judge Bianco to maybe look
10 at the amended complaint, right?

11 MR. Rubin: Correct.

12 THE COURT: So I'm just saying -- I'm not actually
13 assigning any fault to anybody, but it seemed to me the case
14 fell into a bit of a slumber at that point. And I don't
15 know if, you know, the plaintiff was operating under the
16 misapprehension that Judge Bianco hadn't decided if it was
17 going to be accepted or not because he did suggest he was
18 going to review it to see if there were any differences.

19 These other requests, perhaps you can tell me.
20 There were requests for telephone conferences. Were there
21 phone conferences after the filing of the amended complaint
22 that the parties remember and some discussion about the
23 complaint actually being filed?

24 MR. RUBIN: I vaguely -- and perhaps plaintiff can
25 correct me -- I vaguely recall one suit -- one conference

1 dealing with the status of asking for additional time by the
2 plaintiff to try to resolve the issue between the old GM and
3 the new GM and the problem with the Saab bankruptcy, but I
4 cannot put a time frame on that, Judge.

5 THE COURT: I'm operating at a bit of a deficit
6 here. Here's my view on it: It doesn't necessarily
7 prejudice the current defendants if there are other
8 defendants who are going to potentially file a motion to
9 dismiss or defend themselves in this action, because
10 unfortunately for you, you're still in the position of
11 having to submit another motion to dismiss.

12 So the fact that he may end up serving some other
13 parties, the plaintiffs may end up serving other parties,
14 doesn't affect your posture one way or the other. You may
15 not be in the case anymore and who knows if these other
16 international groups are going to have to -- international
17 corporations are going to have to address the same issues
18 that you do, but you may have some allies sitting with you
19 at the table or nothing at the end of the day, but it's not
20 necessarily going to affect your position one way or the
21 other, it wouldn't seem to me. Tell me if I'm wrong.

22 Do you disagree with that?

23 MR. RUBIN: I do, Your Honor, respectfully.

24 THE COURT: How so?

25 MR. RUBIN: Because the fact that these other

1 corporations were named in order to try to override the
2 decision of Magistrate Judge Tomlinson that there was no
3 diversity of citizenship and thus no federal jurisdiction
4 also based upon the other two things which Your Honor
5 mentioned. Perhaps may I make this suggestion to the Court?
6 Rather than setting up a motion schedule, give plaintiff
7 time to serve the international corporations. If they
8 appear, then we can have a conference and if they don't
9 appear, then we can go back to a new motion schedule to
10 dismiss based upon the original opinions and ratification of
11 the opinion by the judges in Central Islip.

12 THE COURT: That's fine with me. If you're more
13 comfortable with that, I will give you until the end of
14 December to serve these other plaintiffs and then we'll see
15 where we are after that. And then if after those parties
16 are served you wish to file a motion, then submit a letter
17 requesting either a conference and if we have other parties
18 there, then we'll have the conference with everyone who has
19 been brought into the case at that time.

20 MR. RUBIN: Thank you, Your Honor.

21 THE COURT: Yes.

22 So December 31st is your deadline, plaintiffs, for
23 serving these other parties. So we're clear, though, I
24 think it includes every defendant save these two, although,
25 I don't know.

1 Did you previously serve Dave Nicholson*?

2 MR. WOOD: The two individual names are the
3 employees of old General Motors and there was no -- the
4 Court didn't have jurisdiction over all GM for a long enough
5 period of time before they went bankrupt to actually force
6 them to divulge where these people work.

7 MR. LABONTE: And Your Honor, not that I want to
8 represent General Motors in any way, but I believe these
9 people are being sued in their capacity as an employee
10 anyway so they should be dismissed from the matter at this
11 point.

12 THE COURT: It's sort of a nonissue. They haven't
13 been served is the bottom line?

14 MR. WOOD: Correct.

15 THE COURT: Dan Kiperd has not?

16 MR. WOOD: Correct.

17 THE COURT: How about John Longo?

18 MR. WOOD: I don't know if he was in the original
19 or only the amended.

20 THE COURT: Well, he's not in the original as far
21 as I could tell. But bottom line is I guess you serve
22 everybody that you have not previously served with the
23 amended complaint with the original complaint, serve them
24 with the amended complaint. And do so by December 31st, if
25 necessary.

1 MR. RUBIN: So if I'm correct then, we're doing
2 nothing pending plaintiff's opportunity to effectuate
3 service and perhaps then get this done, we will have a
4 status conference?

5 THE COURT: Yes. We'll either have a status
6 conference or if you want to file a letter saying you want
7 to file your motion to dismiss. Let's suppose nobody gets
8 served, you can just say you'd like to file a motion to
9 dismiss; you don't have to come back in. Just set forth the
10 briefing schedule.

11 MR. RUBIN: Thank you, Your Honor.

12 MR. WOOD: Just one other thing since it makes
13 sense I think to reduce everybody's costs. I think the
14 issue of the service cost is going to cost the opposing
15 counsel more than what is being claimed. I don't know if
16 there is some way -- I did speak to Mr. LaBonte to try to
17 resolve that mutually. Nothing came of it.

18 I don't know if there's some other way to do it
19 rather than wasting time on motion papers.

20 THE COURT: That's really up to you guys.

21 MR. LABONTE: If he wants to submit to me a copy
22 of the waiver form to make sure it was done properly, then
23 I'll take it under consideration. But I'm going to need a
24 copy of the waiver forms and everything that he did to try
25 to submit it.

1 THE COURT: Okay. However you want to resolve
2 that, but otherwise, you can write about it. Thank you all
3 for coming in.

4 If we can do these things by phone, I will. I
5 appreciate that the case got transferred to Brooklyn and
6 that it's probably an inconvenience for everybody. So if
7 there are things we can resolve by phone, we're perfectly
8 fine with accommodating that. All right. Thank you,
9 everyone.

10 (Time noted: 3:42 p.m.)

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