

Exhibit 1

1 NEW MOTOR VEHICLE BOARD
1507 - 21ST Street, Suite 330
2 Sacramento, California 95811
Telephone: (916) 445-1888
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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD
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11 In the Matter of the Protest of
12 WEST COVINA MOTORS, INC., dba
13 CLIPPINGER CHEVROLET,

14 Protestant,

15 v.

16 GENERAL MOTORS LLC,

17 Respondent.

Protest No. PR-2348-12

**ORDER ESTABLISHING
BRIEFING SCHEDULE RE:
RESPONDENT'S MOTION TO
DISMISS**

**ORDER OF TIME AND PLACE
OF TELEPHONIC HEARING**

18 To: Michael J. Flanagan, Esq.
19 Gavin M. Hughes, Esq.
Attorneys for Protestant
20 LAW OFFICES OF MICHAEL J. FLANAGAN
2277 Fair Oaks Boulevard, Suite 450
21 Sacramento, California 95825

22 Gregory R. Oxford, Esq.
Attorney for Respondent
23 ISAACS CLOUSE CROSE & OXFORD LLP
21515 Hawthorne Boulevard, Suite 950
24 Torrance, California 90503

25 L. Joseph Lines, III, Esq.
Attorney for Respondent
26 GENERAL MOTORS LLC
Mail Code 482-026-601
27 400 Renaissance Center
P.O. Box 400
28 Detroit, Michigan 48265-4000

1 PURSUANT TO STIPULATION OF COUNSEL for the parties, the following briefing schedule
2 is established regarding Respondent's Motion to Dismiss:

3 1. Respondent's Motion to Dismiss shall be transmitted by e-mail to Protestant and the Board
4 no later than Tuesday, January 27, 2015, at 4:30 p.m. (Pacific Time).

5 2. Protestant's Opposition to the Motion to Dismiss shall be transmitted by e-mail to
6 Respondent and the Board no later than Monday, February 9, 2015, at 4:30 p.m. (Pacific Time).

7 3. Respondent's Reply to the Opposition to the Motion to Dismiss shall be transmitted by
8 e-mail to Protestant and the Board no later than Tuesday, February 17, 2015, at 4:30 p.m. (Pacific
9 Time).

10 The Board's e-mail address is nmvb@nmvb.ca.gov. In addition to the e-mails, the pleadings, with
11 proofs of service shall be sent by United States Postal Service to the Board with copies to opposing
12 counsel on the dates stated above.

13 SO ORDERED.

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16 IT IS HEREBY ORDERED that a telephonic Hearing in the above-entitled matter will take place
17 before Administrative Law Judge Anthony M. Skrocki of the New Motor Vehicle Board, State of
18 California, commencing on Thursday, February 19, 2015, at 10:00 a.m. (Pacific Time), or as soon
19 thereafter as may be heard by the Administrative Law Judge.

20 Participation in the telephonic hearing is mandatory. **Counsel for the parties shall call (877)**
21 **336-1828 and enter access code no. 654272 to join the telephonic conference.**

22 If the Hearing is not completed on February 19, 2015, the parties will be equally responsible for
23 the court reporter appearance fees, the delivery fees and any other costs, and the Board's cost of the
24 hearing transcript for each day thereafter. (13 CCR § 551.7) The Board will make the necessary
25 arrangements for the court reporter service and the parties will be billed directly as indicated above.

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28 ///

1 Government Code Section 11435.60 provides as follows:

2 Every agency subject to the language assistance requirement of this article shall advise
3 each party of the right to an interpreter at the time that each party is advised of the
4 hearing date...Each party in need of an interpreter shall also be encouraged to give timely
5 notice to the agency conducting the hearing...so that appropriate arrangements can be
6 made.

7 A copy of the applicable hearing procedure is available upon request.

8 SO ORDERED

9 DATED: January 20, 2015

NEW MOTOR VEHICLE BOARD

10 By



11 WILLIAM G. BRENNAN
12 Executive Director
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Exhibit 2

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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

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In the matter of the Protest)
of)
WEST COVINA MOTORS, INC., dba)
CLIPPINGER CHEVROLET,)
Protestant,)
vs.) Protest No. PR-2348-12
GENERAL MOTORS LLC,)
Respondent.)

REPORTER'S TRANSCRIPT OF HEARING
BEFORE ADMINISTRATIVE LAW JUDGE SKROCKI
TELEPHONIC HEARING

DATE: Thursday, February 19, 2015
REPORTED BY: Kathryn S. Swank, CSR 13061

APPEARANCES

For the Protestant:

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For the Respondent:

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ADMINISTRATIVE LAW JUDGE:

ANTHONY SKROCKI
NEW MOTOR VEHICLE BOARD
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(916) 445-1888

NEW MOTOR VEHICLE BOARD SENIOR COUNSEL:

ROBIN B. PARKER, ESQ.
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Sacramento, California 95811
(916) 445-1888

ALSO PRESENT:

NICOLE ANGULO, Legal Analyst, NMVB

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1 ADMINISTRATIVE LAW JUDGE SKROCKI: Okay. Let's
2 go on the record. This is the time set for the hearing
3 before the New Motor Vehicle Board. My name is
4 Anthony M. Skrocki. I'm an administrative law judge for
5 the board.

6 I have some pleadings on the file in front of
7 me. The specific pleading that I'm looking at now is a
8 motion to dismiss protest for lack of jurisdiction filed
9 by General Motors, a LLC, and the caption is, in the
10 matter of the protest of West Covina Motors, Inc., dba
11 Clippinger Chevrolet, Protestant, versus General Motors
12 LLC, Respondent. And I have filed also in response to
13 the motion to dismiss a pleading that has two protest
14 numbers: Protest No. 2348-12 and PR-2213-10, whereas
15 the motion only had one protest number, PR-2348-12.

16 And this pleading filed by Protestant is
17 captioned "Protestant's Request that the Board Exercise
18 Its Continuing Jurisdiction over the Confidential
19 Stipulated Decision of the Board Resolving Protest,"
20 singular.

21 Then I have a third document that was filed by
22 Respondent General Motors, again, with a single protest
23 No. PR-2438-12 and its caption, "Reply memorandum in
24 Support of Motion to Dismiss Protest for Lack of
25 Jurisdiction." The caption titles are the same: West

1 Covina Motors, Inc., dba Clippinger, versus General
2 Motors LLC, in all three of the pleadings, regardless of
3 whether we got a single protest caption or a dual
4 protest caption.

5 So I think what I will start with now is have
6 Counsel identify themselves and I will start with moving
7 party General Motors.

8 MR. OXFORD: Yes, Your Honor. Greg Oxford for
9 General Motors LLC, Respondent.

10 ADMINISTRATIVE LAW JUDGE SKROCKI: Thank you.

11 And for Protestant?

12 MR. FLANAGAN: For Protestant, Michael J.
13 Flanagan and Torin M. Heenan of the Law Offices of
14 Michael J. Flanagan.

15 ADMINISTRATIVE LAW JUDGE SKROCKI: Okay. Thank
16 you.

17 All righty. Then preliminarily, maybe for the
18 record, we ought to first have Counsel state what
19 potential problem there might be, if any, when we have a
20 motion to dismiss a singular protest and it has, in
21 response to it, a sort of different request adding
22 another protest number, adding 2213-10. And so I'm not
23 sure which side I would be better off starting with.
24 Either of you have something very definite at your
25 command that you could summarize what difference there

1 might be, if any, involving the fact that I've got two
2 protest numbers involving one motion?

3 MR. FLANAGAN: This is Mike Flanagan for
4 Protestant. I will start. I paused to see if
5 Mr. Oxford wanted to say anything.

6 But what we have said in the text of our
7 response -- or, I'm sorry, yes, our request, that the
8 board exercises continuing jurisdiction, is essentially
9 that as a matter of mechanics, legal mechanics, or
10 whatever might be of a more suitable terminology, at the
11 last moment, we have a withdrawal of the protest that
12 was set for --

13 ADMINISTRATIVE LAW JUDGE SKROCKI: Withdrawal
14 of the protest, Mr. Flanagan?

15 MR. FLANAGAN: I'm sorry. A withdrawal of the
16 Notice of Termination that was pertinent to Protest
17 No. 2348-12.

18 We thought it was necessary to say to Your
19 Honor and the board that, you know, given the withdrawal
20 of the Notice of Termination, it is clear that there
21 isn't any need to protest. It's more or less the case
22 that we won protest of 2348, but in GM's withdrawal of
23 notice.

24 The problem with leaving it there is that all
25 of that action on the part of GM, all -- not just the

1 last-minute withdrawal of the Notice of Termination, but
2 all of its motions and pleadings and arguments the
3 bankruptcy court -- were premised on the idea that the
4 first protest was terminated.

5 The second protest, 2348, was, in fact, only
6 filed because there was a second Notice of Termination.
7 While the first protest, 2392-14 -- no, I'm sorry. It's
8 PR-2213-10. The first protest was being considered or
9 was pending still before the board. It was under an
10 automatic stay and GM moved to lift that stay. It is
11 GM's position that the Court lifted the stay and, in
12 doing so, terminated the franchise. That's the gist of
13 their position.

14 MR. OXFORD: No, it's not.

15 ADMINISTRATIVE LAW JUDGE SKROCKI: Go ahead,
16 Mr. Flanagan.

17 MR. FLANAGAN: You were asked if you wanted to
18 sum this up.

19 MR. OXFORD: I'm sorry.

20 MR. FLANAGAN: The fact is that it's our
21 contention that, in fact, the Court has ultimately
22 decided that it doesn't -- first of all, it's not
23 necessary for that issue to be before it in order to
24 determine whether the stay is lifted; and, secondly, in
25 the second or last order, most recent order, that it

1 doesn't have jurisdiction and abstains from resolving
2 the matter of whether or not West Covina Motors still
3 has a Chevrolet franchise. That's the matter before the
4 board so far as we can see it, and that's why you have
5 what you have before you.

6 MR. OXFORD: If I could respond briefly, Your
7 Honor.

8 ADMINISTRATIVE LAW JUDGE SKROCKI: Yes, sir.

9 MR. OXFORD: What we have here, basically, is
10 two parties who agree that the current pending protest,
11 2348-12, is outside the board's jurisdiction and ought
12 to be dismissed. The parties agree on that. And, in
13 fact, the paper filed by Mr. Flanagan is not in
14 opposition to our motion to dismiss Protest 2348 and
15 expressly states that, you know, Protestant doesn't
16 oppose that motion. So instead of filing opposition,
17 they filed this document which, as I understand it,
18 attempts to go back in time and ask the board to invoke
19 its jurisdiction over the stipulated decision that was
20 entered in Protest 2213-10, back in 2010, and is set
21 forth in the moving papers, and I won't go through it
22 all right now.

23 The terms of that stipulated decision of the
24 board were that if the certain events didn't occur,
25 specifically if a proposed buy-sell transaction was

1 proposed and approved by GM and not closed within a
2 specific period of time, the dealer agreement would
3 terminate automatically, and such a buy-sell was
4 approved by GM and not timely closed back in 2012.

5 Now, what happened then was, on the 29th of 30
6 days of the closed buy-sell, the Protestant filed
7 initially a chapter 11 bankruptcy, and we went in not to
8 get the stay lifted, but to obtain adjudication that the
9 stay didn't apply because the dealer agreement had
10 terminated under the terms of the board's stipulated
11 decision automatically, due to the passage of time.

12 And of course, the bankruptcy court agreed with
13 us and granted our motion, and in order to determine
14 that the automatic stay didn't apply in the first
15 instance, had to determine whether or not the
16 Protestants of the debtor's interest in the dealer
17 agreement was, quote, unquote, property of the estate.

18 And in order to decide that issue, the
19 bankruptcy court had to, and clearly had jurisdiction,
20 to decide the statewide issue of whether or not the
21 dealer agreement had terminated under the express terms
22 of the stipulated decision incorporating section 2.6 of
23 the settlement agreement.

24 So that is -- and, of course, in the meantime,
25 while all that was pending, we had filed a back-up

1 termination notice which the parties have now agreed --
2 had been withdrawn and deprived the board of
3 jurisdiction of, I will call, the second protest, the
4 one we're here on today.

5 Now, that takes me to the issue of how we deal
6 with this request, I think is what Mr. Flanagan's office
7 calls it. The first point I would make is that it isn't
8 disputed that the chapter, now Chapter 7 bankruptcy
9 proceeding of West Covina Motors is still pending and
10 that Mr. Gill continues to serve as the trustee. Civil
11 law, based on those undisputed facts, cited in the
12 moving papers, holds that only the trustee has the right
13 to assert claims on behalf of the debtor, or not to do
14 so, against third parties like GM. In this case, it's
15 undisputed. In fact, it's in the sworn declaration of
16 Protestant's own bankruptcy, Counsel, that Mr. Gills, as
17 the trustee, has decided not to challenge the now
18 two-year-old termination of the dealer agreement before
19 the board.

20 West Covina Motors is the debtor out of
21 possession, self-described, and that means exactly what
22 it says. It doesn't have ownership; it doesn't have
23 possession; it doesn't have control of any claims at all
24 against GM. And it's my understanding, basically
25 deprives the board of jurisdiction to consider this

1 request, whether it's properly filed in this protest or
2 some other protest. So the board simply should not
3 consider it.

4 Even if the trustee were to reverse his
5 decision not to challenge the two-year-old termination
6 of the dealer agreement before the board, there are
7 three bankruptcy court rulings that have clear
8 collateral estoppel effect that would bar him from doing
9 so. And that would be, even if there were some factual
10 or legal basis for Protestant or the trustee to contest
11 the conditions set forth in section 2.6 didn't occur,
12 and, in two years of litigation, not one word has
13 crossed the lips of either Mr. Flanagan or bankruptcy
14 counsel representing his client, indicating there's any
15 factual or legal basis to doubt that the conditions set
16 forth in section 2.6 of the settlement agreement did not
17 occur.

18 So it would be GM's position that the order of
19 the board ought to be that this protest is dismissed,
20 and the board ought to also order that it will not
21 consider any requests such as contained in the document
22 filed by Mr. Flanagan unless and until there's some
23 indication that the trustee of the bankruptcy estate,
24 who has exclusive power to file such a request, is
25 actually willing and able to do so.

1 ADMINISTRATIVE LAW JUDGE SKROCKI: Okay.

2 MR. FLANAGAN: Your Honor?

3 ADMINISTRATIVE LAW JUDGE SKROCKI: Let me say
4 something before I lose some of my train of thought
5 here, which I tend to do when I get something this
6 complicated.

7 I have read everything that was submitted, and
8 I believe I understand the gist of what every -- both
9 sides were saying to me here, and a lot of the tracks --
10 my notes that I had made to myself, especially involving
11 Mr. Gill as the trustee and the fact that this is a
12 debtor out of possession, because some of my notes
13 include that. And if we did consider this, and reached
14 a decision, the board reached a decision, that the
15 franchise agreement had not yet terminated, for some
16 reason or another, then that would just put this right
17 back in the lap of Mr. Dill, the trustee in bankruptcy.
18 And where would that -- what good would it do us?

19 So that's part of my concern, and so I was just
20 having this circular reasoning problem. But again, I
21 think that what you started out with here as well,
22 Mr. Oxford, is how do we handle these. What I was
23 trying to get the two of you to give me some guidance on
24 when I said, explain to me why I have two protests here
25 before me and only one real motion, and the other one, a

1 request pertaining to a different protest.

2 And so I think your suggestion is dismiss
3 2348-12 and decline to -- decline to request to
4 reconsider 2213-10, and your statement about the fact
5 that Protestant hadn't raised any factual issues, I
6 believe, as I recall, anyway, that in their request on
7 page 2, they say Protestant does not dispute the
8 bankruptcy court's findings, but, rather, the
9 interpretation by the Respondent of those findings.

10 And so I am beginning to wonder just what there
11 is that I can address today that would be of any help to
12 either side, I guess. But anyway, Mr. Flanagan, go
13 ahead. I've got more things to ask you two about, but
14 go ahead, Mr. Flanagan.

15 MR. FLANAGAN: Well, in response to your last
16 stated concern, I think what the -- what the bankruptcy
17 court said -- first of all, it said it in the beginning.
18 It said it in one of the first orders, if not the first
19 order of issue, that it's not necessary to determine the
20 termination or non-termination of the dealer agreement
21 in order to reach the conclusion it's going to reach,
22 which ultimately was that GM was not barred from, you
23 know, pursuing its actions against WCM, West Covina
24 Motors.

25 In the most recent order, it makes it clear

1 that it was not changed in any of those orders, that it
2 has superceded the jurisdiction of the New Motor Vehicle
3 Board. Rather, it doesn't want to get involved in New
4 Motor Vehicle Board matters, and it says so. It says
5 there's an entire section entitled "Abstention."

6 So it's our position that whether or not
7 Mr. Gill was trustee for WCM as the debtor out of -- or
8 in possession or out of possession, makes no difference.
9 I'm counsel for WCM before the board regarding the
10 protest that the bankruptcy court had no jurisdiction to
11 ultimately decide any issue pending before the board,
12 over which the board has primary jurisdiction.

13 MR. OXFORD: Well, first of all, Mr. Flanagan I
14 don't think accurately quoted what the -- what the
15 bankruptcy court said in the first sentence of his
16 argument. The board -- the bankruptcy court did not say
17 it wasn't necessary to determine whether the dealer
18 agreement had terminated in order to determine the
19 property of the estate and automatic stay issues.

20 In fact, it said precisely the contrary three
21 times, and the attempt to paraphrase what the board
22 said, I think, you know, the order --

23 ADMINISTRATIVE LAW JUDGE SKROCKI: The order of
24 the bankruptcy court.

25 MR. OXFORD: The bankruptcy court, Your Honor.

1 Excuse me.

2 What the bankruptcy court actually said was, it
3 was not necessary to determine the precise nature of the
4 debtor's interest in the dealer agreement because, as a
5 consequence of section 2.6 and the failure of
6 conditions, any interest that the debtor had in the
7 dealer agreement, you know, terminated. So, you know,
8 it wasn't necessary to decide, you know, what the exact
9 nature of the interest was before the termination,
10 because after the termination, zilch was left.

11 And the -- you have to be a little bit careful
12 about what the bankruptcy court said about abstention.
13 What the bankruptcy court said is, I had two motions
14 brought before me, said Judge Robles, in which in order
15 to determine bankruptcy issues, I had to interpret
16 issues of state law which the bankruptcy court has power
17 to do according to its core jurisdiction.

18 When we went back on the third motion and asked
19 him to actually enjoin Mr. Flanagan from proceeding
20 before the board, what he said was, there's no
21 bankruptcy issue before me and I've already said what
22 I've said several times as of the effect that it has
23 and, you know, the board can decide for itself whether
24 or not there's a, A, standing, or, B, whether there's a
25 bar of collateral estoppel with respect to this issue.

1 But Judge Robles was absolutely clear that he did reach
2 the issue of the termination of the dealer agreement
3 under state law and did decide that issue.

4 And so the issue here is not an issue of the
5 bankruptcy court usurping the board's jurisdiction.
6 It's question of the bankruptcy court exercising its own
7 jurisdiction and adjudicating an issue of state law, and
8 the cases are absolutely clear that such an adjudication
9 of an issue that is clearly necessary to the decision of
10 the bankruptcy law issue has collateral estoppel effect
11 and precludes someone like Mr. Flanagan's client from
12 coming back and trying to get a third bite at an apple
13 on an issue on which they have already lost three times.

14 ADMINISTRATIVE LAW JUDGE SKROCKI: Okay.

15 MR. FLANAGAN: My response to that, Your Honor,
16 is, I think plain in our papers. But just to review it,
17 we don't believe that the issue pending before the
18 bankruptcy court ever included whether or not the GM
19 franchise agreement was terminated. And the Court
20 finally said, in its last order, that it's not going to
21 get involved in those things that are left to the board
22 to decide.

23 I can read to you exactly from the order what
24 has been said on that. It's at page 14 of 48, Exhibit R
25 to Respondent's --

1 ADMINISTRATIVE LAW JUDGE SKROCKI: Let me find
2 my copy. It's way down on the bottom, as I recall.
3 It's the last exhibit.

4 MR. OXFORD: It's the last one, Your Honor.

5 ADMINISTRATIVE LAW JUDGE SKROCKI: Pardon?

6 MR. OXFORD: It's exactly the last one.

7 ADMINISTRATIVE LAW JUDGE SKROCKI: It's the
8 last exhibit in my stack here.

9 What page are you on, Mr. Flanagan?

10 MR. FLANAGAN: I'm on page 14 of 48.

11 ADMINISTRATIVE LAW JUDGE SKROCKI: Got it.
12 What paragraph?

13 MR. FLANAGAN: The last -- the section number
14 is 2 down at the bottom of the page.

15 ADMINISTRATIVE LAW JUDGE SKROCKI: Abstention.
16 Okay. Go ahead.

17 MR. FLANAGAN: To be brief I will simply read
18 the last -- I will read the whole thing into the record,
19 if you don't mind. It's not that long.

20 ADMINISTRATIVE LAW JUDGE SKROCKI: Go right
21 ahead.

22 MR. FLANAGAN: (As read) The Court notes that
23 there is significant procedural history before the NMVB.
24 The parties have not clearly set forth that procedural
25 posture (or has set forth conflicting accounts of that

1 procedural posture). With the exception of clarifying
2 its orders to the extent stated above, and setting forth
3 the basis for its jurisdiction to make those
4 determinations, the Court will abstain from citing the
5 other issues raised by the parties. To the extent that
6 GM effectively seeks to enjoin proceedings now pending
7 before the NMVB, based on this board's order, this Court
8 finds no authority to do so.

9 And that is the gravamen of our argument.
10 We're simply saying that the Court itself recognizes
11 that there is no injunction to proceed before the New
12 Motor Vehicle Board. It doesn't have jurisdiction to
13 issue such an injunction, and it won't. To the extent
14 that GM wants some relief from the New Motor Vehicle
15 Board concerning those matters over which the board has
16 jurisdiction, then it has to go to the New Motor Vehicle
17 Board.

18 MR. OXFORD: Not so, Your Honor.

19 And I just want to go back to page 13 of
20 Exhibit R, the page before what Mr. Flanagan read.

21 ADMINISTRATIVE LAW JUDGE SKROCKI: This is
22 Judge Skrocki. Let me interrupt.

23 Mr. Flanagan, I understand your issue. But
24 that's under -- I think we're going to have pointed out
25 to us here by Mr. Oxford under "Abstention," but it's

1 got nothing to do with findings of fact and conclusions
2 of law in paragraph 1 and the paragraph directly above
3 "Abstention," which I think we're now going to hear from
4 Mr. Oxford about.

5 MR. OXFORD: Yes, Your Honor.

6 If you go back to page 13, and it's said a
7 couple times, but the second paragraph under
8 interpretation of our order says, (As read), This Court
9 has issued two lengthy decisions regarding the dealer
10 agreement and concluded twice that it terminated
11 pursuant to its terms."

12 And if you go to -- back to Exhibit J, and I'm
13 just reading this excerpt which is quoted in our papers,
14 it says, (As read), It is undisputed that WCM did not
15 satisfy the conditions set forth in section 2.6 of the
16 settlement agreement, which provides that Debtor will
17 voluntarily and without protest terminate the dealer
18 agreement.

19 It then goes on a few pages later and says, (As
20 read), the Debtor and GM mutually and voluntarily
21 entered in the settlement agreement by which Debtor's
22 failure to satisfy the condition of 2.6 triggered a
23 termination of the dealer agreement. For these reasons,
24 the Court finds that the dealer agreement terminated
25 upon dealer's failure to close the buy-sell transaction

1 and hereby grants GM's motion.

2 That's one of the findings that, you know,
3 Mr. Flanagan's paper says his client doesn't dispute.

4 MR. FLANAGAN: Well, in response to that it's
5 perfectly -- two things are perfectly clear. One, as
6 Counsel has already recognized, the bankruptcy was filed
7 on the 29th day out of 30 under the agreement. The
8 effect of the bankruptcy court's orders, let's say all
9 three of them at this point, is simply to say, I'm not
10 enjoining the New Motor Vehicle Board proceedings or any
11 party from pursuing them.

12 Well, I am concluding that under some terms,
13 having read the stipulated decision and order, the
14 dealer agreement has terminated. The fact -- the
15 problem with that is that the board -- even the
16 bankruptcy court seems to have finally gotten around to
17 realizing it doesn't have jurisdiction to hold that, to
18 make that finding.

19 And that, I think, is what it's saying in its
20 abstention paragraph on page 14 of this document.
21 That's what I am saying. Two things: One, the stay was
22 in place on the 30th day, which would have been the last
23 date to perform. And so bankruptcy court couldn't have
24 decided that the dealer agreement is terminated because
25 the stay was in place before the date of performance

1 arose; and secondly, jurisdiction can be raised at any
2 time, in any matter, which is a long established tenet
3 of law. And what we're saying is that the bankruptcy
4 court finally got around, in its third order, to saying
5 it's abstaining from those matters that are rightfully
6 before the board.

7 MR. OXFORD: Your Honor, we have to be very
8 careful about distinguishing the stay was in place and
9 was lifted, which is not what occurred. What the
10 bankruptcy court did say was that the stay never
11 applied. That was the whole point of the ruling,
12 because the passage of time eliminated the interest in
13 the dealer agreement.

14 ADMINISTRATIVE LAW JUDGE SKROCKI: Thank you.
15 I follow you a hundred percent there. I thought he
16 would make a reply there, that there was never a stay in
17 place and what your contention is and the bankruptcy
18 court. So now because the dealer agreement had already
19 terminated -- and that gets me right back to the fact
20 that when a bankruptcy was first filed, there was debtor
21 in possession, there was Chapter 11, and why it was
22 converted to Chapter 7, because of the motion by the
23 city of West Covina. And then we had Mr. Gill appointed
24 as the trustee, and the bankruptcy court saying that
25 there is no value whatsoever in the franchise, and it's

1 not part of the estate, anyway, and if it were, it would
2 be under the control of Mr. Gill.

3 And so here I am, sitting here and still asking
4 myself the initial question. No matter what happens
5 here, if we rule that the franchise is still in
6 existence, what good does that do anybody? What is it
7 your client is asking or hoping to go get, Mr. Flanagan,
8 out of a favorable ruling from the board? And if the
9 board accepts your argument?

10 MR. FLANAGAN: There are a number of things
11 that would be impacted by the finding by this board's
12 franchise agreement continues to exist. And it starts
13 with the initial decision and order of the board, which
14 was adopted when all this started in 2010. We attached
15 an index to our pleading.

16 ADMINISTRATIVE LAW JUDGE SKROCKI: You did, and
17 I found that very helpful. Thank you.

18 MR. FLANAGAN: Okay. In any case, so
19 there's -- the chronology is there. Basically, in
20 answer to your question, so what, in essence. What if
21 you order that the franchise agreement continues to
22 exist?

23 The straightforward answer is that that means
24 that the franchisee has whatever rights it has against
25 GM. At this point, I would argue that that includes

1 contending that it should be -- it should be permitted
2 to go forward and require GM to prove good cause to
3 termination. It includes the right to take into court
4 or before the board any other actions seeking remedy
5 appropriate to whichever venue, and it includes the
6 right for something you haven't heard about, we haven't
7 discussed in these papers, but under the grouping of
8 whatever rights it has, it turns out that during --
9 while the parties have been grappling, if you will, with
10 all of these pleadings in two different venues, GM went
11 ahead and established a Chevrolet franchise within a
12 range of the WCM dealership, which would have been, and,
13 we contend, was protestable, but WCM never got a notice,
14 it never had an opportunity to protest it. And that
15 dealership is up and running and has been for a month,
16 it's my understanding. So an awful lot of things will
17 occur if we still have a franchise.

18 ADMINISTRATIVE LAW JUDGE SKROCKI: All those
19 may or may not occur, but if the board says that,
20 hypothetically, GM did not establish good cause to
21 terminate the franchise, what's going to be the effect
22 of that? Can your client reestablish its dealership at
23 the location it was at before? How long has your client
24 been out of business?

25 MR. FLANAGAN: My client has not been operating

1 a dealership since sometime in -- I guess Mr. Oxford can
2 help us, but I think it's 2010.

3 MR. OXFORD: Yeah, I mean -- I mean, the lights
4 have been on but nobody's been home for a long time.
5 And after that, there's just nothing going on there at
6 all.

7 I might just say, the issue of good cause, I
8 think, has come and gone. Remember, in the 2010
9 protest, which was compromised and severalled and, you
10 know, morphed into the stipulated decision, the
11 Protestant waived its right to require a showing of good
12 cause and, instead, agreed to be governed by the
13 stipulated decision. So the issue of good cause is the
14 ship that's sailed and never come back. That's what I
15 would say about that.

16 MR. FLANAGAN: In response to that, I would say
17 that on the face of the stipulated decision and order
18 itself, it says that any disputes, contentions, or
19 disagreements between the parties, that the board
20 reserves jurisdiction to determine.

21 And that's where we would be if the bankruptcy
22 court hadn't seemed, at the time, to say that there
23 wasn't any deal or agreement.

24 MR. OXFORD: Well --

25 MR. FLANAGAN: We're now in the position where

1 it's clear that the bankruptcy court didn't have any
2 business in saying that.

3 ADMINISTRATIVE LAW JUDGE SKROCKI: I disagree
4 with that, Mr. Flanagan. Your characterization of what
5 the bankruptcy court said or didn't say, I am inclined
6 to follow Mr. Oxford's interpretation more so than
7 yours. I will tell you that up front.

8 I see the difference between the bankruptcy
9 court saying that there is no franchise in existence for
10 bankruptcy court purposes. But whether the bankruptcy
11 court is going to issue an order enjoining the board
12 from considering whatever it is before the board of
13 which the bankruptcy court says the board doesn't have
14 much knowledge, that they are going to abstain from
15 issuing such an order, and the bankruptcy court has took
16 great pains to separate those two issues in its
17 discussion.

18 MR. FLANAGAN: If I haven't been clear, I would
19 not dispute your summary, Your Honor.

20 ADMINISTRATIVE LAW JUDGE SKROCKI: Oh, okay.

21 MR. FLANAGAN: I think earlier on, much earlier
22 on this morning, I said that the bankruptcy court has
23 said it was not necessary to determine the termination
24 of the franchise in order to render its order. And I
25 apologize if I sounded like I'm arguing otherwise now.

1 So that leaves your question, what if the
2 franchise is not terminated? And what if this board
3 issues an order saying that it still exists and the
4 Protestant has a right to pursue it and GM has the
5 burden of proving that either the stipulated decision
6 and order was not executed, or that our client,
7 Protestant, did not complete the requirements of it, or
8 prove good cause for some other reason to terminate the
9 franchise or what -- what they play here is all the
10 rights the franchise -- franchisee, rather, has and
11 would have had, if we hadn't been through this rather
12 involved bankruptcy/New Motor Vehicle Board dispute for
13 these past five or four years.

14 ADMINISTRATIVE LAW JUDGE SKROCKI: Okay. Tell
15 me again, Mr. Flanagan, why the 2010 settlement
16 agreement and stipulated decision and order of the board
17 doesn't resolve all of the 2010 protest.

18 MR. FLANAGAN: Because -- let me find it here
19 in my chronology. It starts by saying that in addition
20 to saying that there's an automatic termination for
21 noncompliance, one, as it's pointed out, the date of
22 compliance is one of those conditions. It hasn't even
23 been reached when bankruptcy was filed.

24 Two, the stipulated decision and order goes on
25 to say that the board retains -- and I haven't found it

1 yet so I'm not quoting it. Let me find it first. The
2 gist of what I am looking at, or about to tell you and
3 read from the order, is that the board retains
4 jurisdiction to resolve any disputes or contentions or
5 whatever the verbiage is in the order itself.

6 And that has never happened. GM never went
7 back to the board -- neither did Protestant -- after
8 bankruptcy court said whatever it said, and after the
9 effect of that was interpreted by one party or the
10 other.

11 So when -- when you say, Your Honor, that you
12 are inclined to agree with Mr. Oxford's interpretation
13 of the bankruptcy court's involvement in this and its
14 orders, our only contention has been that the bankruptcy
15 court kind of went beyond and eventually realizes that
16 it went beyond its own jurisdiction or was being
17 misunderstood, one or the other, if anyone thought it
18 was saying that it was usurping the primary jurisdiction
19 of the board to determine whether the franchise -- that
20 was terminated.

21 We have the right, and GM has the right, and
22 probably the obligation, given the circumstances,
23 meaning that the stay was still in place when the
24 bankruptcy was filed, to come back to the board and say,
25 "Look, here's what we've got. Here's the bankruptcy

1 order." Do we need to do anything else or is this
2 protest dismissed? It didn't do that.

3 MR. OXFORD: Well --

4 MR. FLANAGAN: And one other thing. I'm sorry,
5 Greg.

6 MR. OXFORD: No. Go ahead.

7 MR. FLANAGAN: This matter of Mr. Gill and
8 representing the trustee or -- I am counsel of record in
9 the New Motor Vehicle Board matter. And this Court has
10 ultimately said that it isn't going to enjoin anybody,
11 including the board, from pursuing whatever rights or
12 remedies are available to the board.

13 ADMINISTRATIVE LAW JUDGE SKROCKI: Okay.
14 Doesn't the board order conclusively resolve the 2010
15 protest? Not the bankruptcy court. The board's
16 stipulated decision, which is accepted and issued, an
17 order of the board, that said this is all over. If
18 there's a complaint or beef about the conditions as to
19 whether they have occurred or not, and that the board
20 will resolve those.

21 But what is there in that stipulated decision
22 and order of the board that is factually at issue that
23 you disagree with, given the fact that in your pleading,
24 you said that you agree with all of the bankruptcy
25 court's findings? And you agree that the conditions did

1 not occur that were required to occur in the board's
2 order based upon a stipulated decision. What is there
3 left for the board to decide that wasn't already
4 resolved by the 2010 order of the board?

5 MR. FLANAGAN: Whether or not the time had run
6 on the -- on one of the terminating conditions as --

7 ADMINISTRATIVE LAW JUDGE SKROCKI: That's
8 already been decided. It had not run.

9 MR. FLANAGAN: I'm sorry?

10 ADMINISTRATIVE LAW JUDGE SKROCKI: That's
11 already been decided. It had not run but it has now.

12 MR. FLANAGAN: It has now. But the board has
13 done nothing.

14 ADMINISTRATIVE LAW JUDGE SKROCKI: Wait a
15 minute. You don't dispute that as of now, the time has
16 run. You don't dispute that the bankruptcy court
17 findings are accurate.

18 What is there about that stipulated decision
19 and order of the board that is a claim that has to be
20 resolved to make it effective or ineffective?

21 MR. FLANAGAN: That, in fact, time never ran
22 because it was stayed.

23 ADMINISTRATIVE LAW JUDGE SKROCKI: How was it
24 stayed?

25 MR. FLANAGAN: By the automatic stay in the

1 filing of the bankruptcy.

2 ADMINISTRATIVE LAW JUDGE SKROCKI: There was
3 never an automatic stay. That's been said three times,
4 and I've told you, I'm accepting that statement as
5 accurate.

6 MR. FLANAGAN: Well, if you have accepting that
7 as accurate, then so be it.

8 ADMINISTRATIVE LAW JUDGE SKROCKI: But do you
9 have any authority to cite why it is not accurate?
10 Didn't the bankruptcy court say that franchise is no
11 longer in effect and, therefore, there was never a stay
12 as to the franchise?

13 MR. FLANAGAN: Well, the stay occurs upon the
14 filing of the bankruptcy.

15 ADMINISTRATIVE LAW JUDGE SKROCKI: Unless
16 there's an exception. Unless this is no valid contract.

17 Mr. Oxford, you know more about this than I do.
18 I don't want to be arguing your case. Tell me whether I
19 am right or wrong.

20 MR. OXFORD: No. I think you are right, Your
21 Honor. I mean, basically, obviously, every bankruptcy
22 causes an automatic stay to be put in place. And what
23 we litigated before the bankruptcy court was whether the
24 stay applied to prevent the passage of time that caused
25 the failure of the 2.6 condition and caused the dealer

1 agreement to terminate.

2 ADMINISTRATIVE LAW JUDGE SKROCKI: Okay. So I
3 am a little bit wrong, aren't I?

4 MR. OXFORD: No. If so, I am missing it, Your
5 Honor.

6 ADMINISTRATIVE LAW JUDGE SKROCKI: That the
7 stay never applied. And you said, yes, it did.

8 MR. OXFORD: No. I'm saying it never applied
9 to stop the termination based on the running of the time
10 under 2.6. In other words, it was -- the bankruptcy was
11 filed the 29th day. Okay? The 30th day came and went.
12 Okay? The condition under section 2.6 was not
13 satisfied. Therefore, the dealer agreement terminated
14 by its own terms.

15 ADMINISTRATIVE LAW JUDGE SKROCKI: That's what
16 took it out of the ambit of the automatic stay?

17 MR. OXFORD: That's what took it out of the
18 category of property estate, which is all that the
19 automatic stay applies to.

20 ADMINISTRATIVE LAW JUDGE SKROCKI: Okay.

21 MR. FLANAGAN: And all I'm saying is what I
22 think Mr. Oxford said at the beginning, that you caught,
23 which is that the stay happens of and by itself and that
24 happened on the 29th day, before the 30th day for
25 performance. And nothing valid has occurred to change

1 that situation.

2 ADMINISTRATIVE LAW JUDGE SKROCKI: How about
3 the running of the time? Why didn't that occur?
4 Because that was a term, running of time is not a
5 condition. It's bound to happen. And therefore, it's a
6 term of the agreement, and by its own terms, the
7 agreement terminated. That's why the stay no longer
8 applied.

9 MR. OXFORD: And that's what the bankruptcy
10 court has cited in its orders say; the bankruptcy and
11 the stay do not stop the passage of time.

12 ADMINISTRATIVE LAW JUDGE SKROCKI: And so what
13 is there left for the board to decide if the board takes
14 a look at the request that's made by Mr. Flanagan to
15 continue to exercise jurisdiction over the order of the
16 board?

17 MR. FLANAGAN: This is Mr. Flanagan.

18 To determine whether or not GM's unilateral
19 conclusion that the terms of the agreement had not been
20 met is, in fact, accurate.

21 ADMINISTRATIVE LAW JUDGE SKROCKI: But don't
22 you agree -- didn't you say that you agreed that the
23 conditions of that stipulated decision and order of the
24 board had not been met?

25 MR. FLANAGAN: They have not. They haven't

1 been met as we sit here today. But the fact is that the
2 bankruptcy court was -- I'm sorry. The bankruptcy was
3 filed on the day before completion of the time within
4 which the order could have been complied with.

5 ADMINISTRATIVE LAW JUDGE SKROCKI: True. And
6 if the board says that it will consider whether the
7 franchise has terminated, and if the board concludes the
8 franchise had been terminated, it's all over. There's
9 no longer a right to protest.

10 If the board concludes the franchise had not
11 been terminated, why doesn't that go back to the
12 trustee?

13 MR. FLANAGAN: The board concludes -- why
14 doesn't it go back to the trustee?

15 ADMINISTRATIVE LAW JUDGE SKROCKI: Yeah.

16 MR. FLANAGAN: The trustee --

17 ADMINISTRATIVE LAW JUDGE SKROCKI: -- bankrupt
18 estate again.

19 MR. FLANAGAN: The trustee, as Mr. Oxford has
20 said, has already declared no interest in pursuing a
21 protest.

22 ADMINISTRATIVE LAW JUDGE SKROCKI: Right. But
23 don't we agree that any right to enforce the contract,
24 if it exists, is a right of the trustee and no longer
25 the right of West Covina Motors, Inc., because they are

1 no longer debtor in possession?

2 MR. FLANAGAN: Well, that's not the way I see
3 it. I think before the bankruptcy occurred, we were a
4 franchisee, WCM, Inc., dba Clippinger Chevrolet.

5 ADMINISTRATIVE LAW JUDGE SKROCKI: Before you
6 filed for bankruptcy, that's true. After you filed for
7 your Chapter 11, you still were franchisee, but once
8 it's converted to Chapter 7, and a trustee is appointed,
9 don't all of the rights then become subject to the
10 trustee's prerogative, and your client no longer has any
11 protectable interest in that because they are all part
12 of the estate. Once they are out of the estate, then
13 that's different. But if they are out of the estate
14 they are out because there's no contract. If they are
15 out because there's no contract, there's no franchise.
16 If they are in, then you still don't have standing to
17 bring it before your client because only the trustee and
18 bankruptcy can exercise that right.

19 Mr. Oxford, is that correct, by your
20 interpretation?

21 MR. OXFORD: Yes, Your Honor.

22 ADMINISTRATIVE LAW JUDGE SKROCKI: Educate me.

23 MR. OXFORD: No. That -- that's exactly right.
24 You said it a little differently than I said in my
25 papers, but it's the same point. You know, if there's

1 an interest in the contract, it belongs to the trustee.
2 If there isn't an interest in the contract, then, you
3 know, game over.

4 ADMINISTRATIVE LAW JUDGE SKROCKI: Okay. The
5 other problem I've got is the rationale for the good
6 cause factors and the burden of proof upon the
7 franchisor to establish good cause. I know the language
8 in the contract -- the statute says franchise cannot be
9 terminated.

10 But the whole purpose behind that, and the good
11 cause factors, are to protect the consuming public that
12 has the advantages and benefits of competition and
13 service in the community and all of the benefits that
14 enure from a very sizable investment of the franchisee.

15 And when you've got a situation where the
16 dealership has been closed for five years, in this case,
17 and there is little likelihood that the dealership will
18 be reopened at the exact location, although I don't have
19 any fact to support that, it just seems to me that in
20 order to go through the process of having a full-blown
21 hearing, whether there's good cause to terminate an
22 issue and order that says, you can't terminate the
23 franchise because we want to protect the consuming
24 public's right to have access to that dealership, they
25 haven't had access to that dealership for five years

1 already.

2 And so the harm that the statute is intended to
3 prevent, and the interest that the statutes are intended
4 to protect, can't be accomplished under these particular
5 somewhat peculiar circumstances.

6 And so I guess it boils down to, I think this
7 issue has been raised: Mootness. That the mere passage
8 of time here and the circumstances means the statute
9 cannot accomplish its intended purpose twofold -- a
10 protection of the public, assets, rights of the
11 individuals, employees' earnings, tax base, competition
12 in the market -- all of those interests have been long
13 gone, and nothing the board can do with a statute that
14 says, thou shall not terminate until there's a hearing,
15 because they want that business to keep functioning
16 during that time period, and the benefits continuing to
17 exist under the status quo being maintained.

18 But the status quo here is just the opposite.
19 There's no business to protect. There is no dealership,
20 the loss of which is going to occur because the
21 franchise has been terminated.

22 Whatever the reasons for the cessation of
23 business may not really matter insofar as the protest
24 rights are concerned. Maybe this is a case where you
25 should be in superior court, period, and saying that you

1 have exhausted your administrative remedies, there's
2 been an unlawful claim termination by General Motors.
3 It's caused all sorts of financial hardship and let's go
4 to superior court and duke it out, or federal court or
5 whatever.

6 But the board's function here, I see, is one
7 that has been met already been virtue of a stipulated
8 decision and order on the first protest filed in 2010,
9 that there's little dispute as to the facts that, after
10 five years, this is a little too late to be something
11 before the board under its usual standards for
12 evaluating should this dealership be closed, because the
13 dealership is already closed. And the formalities of
14 whether there's an existing written document or not are
15 not really in dispute. I'm sorry. The -- whether there
16 is a written document in existence and still has a legal
17 effect is still in dispute, but it won't matter insofar
18 as the good cause factors are concerned.

19 I guess that's part of what I am getting at
20 here is that I'm just uncomfortable with saying that
21 this should be considered by the board even if there
22 were any merits to having it considered. I haven't made
23 my mind up yet as to whether there are merits that have
24 to be considered or not, whether the franchise has
25 already been terminated. I'm leaning toward the fact

1 that it has, and that even if it hasn't, it's moot
2 because it's been too long. The interest can't be
3 protected anymore by board action. And the extent that
4 the franchise still exists, your guy doesn't have any
5 standing, anyway.

6 So those are the things that are rattling
7 around in my head. I've got to sort of slow down and
8 put them on paper and sort them out and take a look
9 again at all of your pleadings. I've already read
10 thoroughly, and tried to digest, and so other issues
11 that have popped up, I've got some notes on but I don't
12 want to raise them now because I've got too many things
13 to worry about right now.

14 Anyway, where does that leave us now as to what
15 your agreed upon resolutions should be or could be,
16 starting first with 2348-12? The suggestion was made
17 that the motion to dismiss should be granted because of
18 agreement of Counsel.

19 Mr. Flanagan, do you agree with that?

20 MR. FLANAGAN: I agree with it simply because
21 once the notice is withdrawn, as it was belatedly, in
22 this case, it would seem to us that we don't have
23 anything to prove. The Respondent has the burden of
24 proof in the first place.

25 ADMINISTRATIVE LAW JUDGE SKROCKI: I heard you

1 say that you consider that to be the fact that you won
2 because General Motors, when it withdrew its notice of
3 intention, meant that they were conceding that they had
4 no cause to terminate. I don't think Mr. Oxford is
5 going to be saying that's why GM withdrew its notice of
6 termination. I think his contention is because there's
7 no franchise to terminate.

8 MR. OXFORD: I think, Your Honor, that we could
9 argue about why we withdrew it or what it means, but the
10 bottom line is, I think we both agree, the board doesn't
11 have any jurisdiction over that protest and it ought to
12 be dismissed, period, the end.

13 MR. FLANAGAN: I think what we need to agree,
14 give the withdrawal of the notice, is that that protest
15 has been resolved in favor of Protestant and is no
16 longer under contention.

17 MR. OXFORD: No.

18 ADMINISTRATIVE LAW JUDGE SKROCKI: Again, in
19 agreement on that -- and I don't know if that should be
20 in my order one way or the other. I was hoping that we
21 could stop it with the period, the way Mr. Oxford
22 suggested, that the motion to dismiss should be granted,
23 period. Agreement of Counsel, period.

24 Why it should be granted, that's going to be
25 something you two are never going to agree upon.

1 MR. OXFORD: I think that's agreeable, Your
2 Honor.

3 MR. FLANAGAN: Well, I don't see -- just to
4 make sure the record is clear, if Respondent filed a
5 notice of termination, issues that provided the copy to
6 Protestant and the board, as it should, and it did, and
7 Protestant filed a protest, that the code takes over
8 then in terms of what else should happen, meaning that
9 the requirements of the Respondent proving good cause or
10 the requirements of the section that governs stipulated
11 decisions and orders should be resolved.

12 And just parenthetically, Your Honor, but
13 emphatically, I don't agree with your interpretation
14 that simply because the public cannot, or has not, been
15 served over the last five years, you know, game over.
16 There's seven good cause factors that the board is
17 mandated to consider. What we are saying about protest
18 2348 is that the board isn't mandated to consider those
19 at all now because we're not being accused of any
20 wrongdoing under that. GM has withdrawn its notice.

21 So there isn't any -- there isn't any protest.
22 In fact, you put an issue in order dismissing that
23 protest because the grounds upon which the notice of
24 termination were issued and the notice of termination
25 itself has been withdrawn. That resolves 2348.

1 ADMINISTRATIVE LAW JUDGE SKROCKI: Well, the
2 problem with 2313-10 is there is a stipulated decision
3 and order of the board. The order of the board
4 specifically said these conditions must occur. If they
5 don't, there will be a termination. There's no dispute
6 the conditions did not occur, whether they are told for
7 beyond the 30-day period initially, or not, I don't
8 think matters, because the time has already expired and
9 there's no way to unwind the time.

10 And so as to 2313-10, I have a major problem
11 with the fact that that's been resolved by the
12 stipulated decision and order of the board. 2348-12, I
13 hear both of you saying the board has no jurisdiction.
14 You are saying that for different reasons. But I don't
15 need to incorporate in my order or my recommendation
16 what your reasons are.

17 I think Mr. Oxford suggested we don't need
18 that, and I don't think I'm going to get your agreement
19 as to the reasons. But if you both agree there is no
20 jurisdiction and jurisdiction can be raised in the issue
21 of jurisdiction at any time, and the issue of
22 jurisdiction, I guess, could therefore be resolved at
23 any time, I could take the position that Protestant says
24 there's no jurisdiction, Respondent said there is no
25 jurisdiction. You disagree as to whether there is no

1 jurisdiction. I don't care why they disagree. I agree,
2 there is no jurisdiction, and, therefore, there is no
3 jurisdiction.

4 Therefore, 2348-12 is dismissed for lack of
5 jurisdiction, and what is the significance of what the
6 reasons were for the lack of jurisdiction from the
7 board's perspective if the board has no jurisdiction, no
8 power to resolve it? I can't see any reason for it.

9 MR. FLANAGAN: Well, I don't -- I don't think
10 the board even ought to get into that. If you withdraw
11 a notice of termination, then the dealership, in effect,
12 isn't even required to protest anything.

13 ADMINISTRATIVE LAW JUDGE SKROCKI: Right.

14 So what I am trying to get at is, how do I
15 address this to the board? Do I have to submit this to
16 the board for their formal action as to dismissal of
17 Protest 2348-12? Or can I issue an order protest
18 dismissed by agreement of Counsel that the board lacks
19 jurisdiction? And it never gets to the board. If it
20 gets to the board, then one of you or both of you or the
21 board members may say, explain this lack of a
22 jurisdiction thing for us.

23 MR. OXFORD: We could do it all over again,
24 then, Your Honor.

25 MR. FLANAGAN: Well, I don't know why we would

1 have to do it in the first place.

2 The lack of jurisdiction, as far as I can
3 determine, is not really the issue. I mean, if the
4 Protestant had abandoned the protest, that wouldn't
5 affect jurisdiction of the board to have heard it,
6 absent the Protestant's withdrawal of the protest. The
7 board clearly has jurisdiction. It's just that GM has
8 withdrawn the notice so there's nothing to protest.

9 ADMINISTRATIVE LAW JUDGE SKROCKI: I could have
10 sworn you said the board has no jurisdiction at least
11 three times already.

12 MR. FLANAGAN: I don't know. It may be --
13 well, the record will help us with that. But --

14 ADMINISTRATIVE LAW JUDGE SKROCKI: But I don't
15 want to be now relying upon something that you now
16 disagree with. So if there's a disagreement as to what
17 your position is regarding 2348, I'm not going to be,
18 you know, saying, well, that's not what you said before
19 and now you can't change your mind. If you are
20 consistent and you are solid, and you say there is or
21 there is not jurisdiction, then I can handle it from
22 there. But I don't want to be writing something up
23 where I'm uncertain as to what you said or you are
24 uncertain as to what you meant when you said it.

25 MR. FLANAGAN: Well, let me put it this way: I

1 think I argued from the beginning that because the
2 notice of termination was withdrawn, there's nothing to
3 protest. That is all that I have meant throughout. If
4 I happened to use the word "jurisdiction"
5 inappropriately, then that's on me, and I would withdraw
6 the remarks about jurisdiction. The board clearly did
7 have jurisdiction and it invoked it.

8 MR. OXFORD: Well, but the point is that the
9 jurisdiction is dependent on the existence of the notice
10 of termination. And once it's withdrawn, all of the
11 board generically has jurisdiction, obviously, over
12 protests -- if the termination notice is withdrawn
13 there's nothing to protest, then the board's
14 jurisdiction goes away over that particular proceeding.

15 MR. FLANAGAN: That is simply not correct.
16 Lots of notices of termination are issued; not all of
17 them are protested. The board's jurisdiction is
18 dependent upon the filing of a timely protest.

19 MR. OXFORD: All right. But if the -- you
20 know, if the protest becomes moot because the
21 termination is withdrawn, then the jurisdiction over
22 that protest initially occurring has to disappear. I
23 mean, the board doesn't have jurisdiction over nothing.

24 MR. FLANAGAN: The board has jurisdiction, as I
25 think you just acknowledged, to determine mootness or

1 non-mootness.

2 ADMINISTRATIVE LAW JUDGE SKROCKI: Mootness and
3 jurisdiction, there may be some distinction there, and
4 so would it be acceptable to say that both sides agree
5 that Protest 2348-12 does not need to be decided because
6 all issues, if they exist, are moot?

7 MR. FLANAGAN: No. I think it's simpler than
8 that. The Protest 2348 doesn't need to be decided
9 because there is no longer an effective notice of
10 termination, so there's nothing to decide.

11 MR. OXFORD: I'm on board with that.

12 ADMINISTRATIVE LAW JUDGE SKROCKI: All right.
13 All right. 2348, Counsel, may be dismissed. Does
14 Counsel agree? Say it again, Mr. Flanagan.

15 MR. FLANAGAN: That the notice of termination
16 has been withdrawn and there is, therefore, nothing to
17 decide, given that Respondent, who withdrew the notice
18 of termination, has the burden of proving good cause.

19 MR. OXFORD: I move to strike the end of
20 Mr. Flanagan's remark as nonresponsive, Your Honor.

21 ADMINISTRATIVE LAW JUDGE SKROCKI: All of this
22 is on the record. Somebody is going to be reading this
23 and wondering what in the world are these people doing
24 up there in Sacramento?

25 Notice of termination has been withdrawn and,

1 therefore -- go ahead Mr. Flanagan, stop early. Don't
2 put on the last part because you are not going to get
3 agreement on it. Therefore there's nothing -- there's
4 no issues to be decided.

5 MR. FLANAGAN: That's what I said.

6 ADMINISTRATIVE LAW JUDGE SKROCKI: That's what
7 you said. All right. Let me say this again. And
8 Counsel has agreed that the notice -- that because the
9 notice of termination has been withdrawn, there are no
10 issues to be decided. Is that what you are both
11 comfortable with? Or do you want to go off the record,
12 the two of you put your heads together and submit
13 something to the board, and you agree upon it. And it
14 looks good to me and the board, the board staff and we
15 don't have to submit it to the board for formal meeting;
16 it will be a lot more effective and more efficient,
17 rather, and decided that way, rather than have the board
18 have to have a formal meeting on it and vote to discuss
19 it in executive session.

20 MR. OXFORD: You know, I think we ought to
21 settle this right now, Your Honor. I heard Mr. Flanagan
22 say something that I agreed with, until he put on the, I
23 think unnecessary --

24 ADMINISTRATIVE LAW JUDGE SKROCKI: I think
25 that's what why I tried to get it back to keep it short.

1 MR. FLANAGAN: I feel a little bit wronged
2 here. I mean, I stopped speaking when I first said
3 something and when I separately said it, I explained it,
4 and my explanation is irrefutable. The Respondent does
5 have good cause to -- does have the burden of proving
6 good cause under section 3051 and since he no longer has
7 an effective notice of termination, there's no --
8 there's nothing for the board to determine.

9 ADMINISTRATIVE LAW JUDGE SKROCKI: Two ways to
10 approach it. You two can put your heads together and
11 submit something to me, and I will work with it, or you
12 can leave it up to me and I will decide it and I will
13 come up with my own vocabulary.

14 MR. OXFORD: Let me try, Your Honor, in the
15 interest of peace here, over something that we really
16 shouldn't be fighting about.

17 Counsel agree that General Motors filed a
18 notice of termination that resulted in the filing of
19 Protest PR-2348-12. If the protest had gone to hearing,
20 General Motors would have had the burden to show good
21 cause exists -- existed for termination because General
22 Motors withdrew the notice of termination prior to
23 hearing. There are no issues for the board to decide,
24 and Counsel, therefore, agree that the protest may be
25 dismissed.

1 ADMINISTRATIVE LAW JUDGE SKROCKI: I'm almost
2 there at the end. Because General Motors withdrew its
3 notice of termination -- now say that last part again.

4 MR. OXFORD: Counsel agree that there are no
5 issues to be decided in this protest and it therefore
6 may be dismissed.

7 MR. FLANAGAN: I don't want to be part of an
8 agreement that says that "therefore may be dismissed."
9 If you put a period after, there are no issues to be
10 decided then the board can make its own order.

11 MR. OXFORD: I'm fine with that, Mike.

12 ADMINISTRATIVE LAW JUDGE SKROCKI: And
13 therefore they agree protest should be dismissed.

14 MR. FLANAGAN: No. That's what I just said.

15 ADMINISTRATIVE LAW JUDGE SKROCKI: You said
16 may. You said you didn't like "may."

17 MR. FLANAGAN: No. What I just said was, I
18 don't want to be a party to an agreement that said --
19 that says the protest may be dismissed. I think the
20 board should order what the consequences are of the
21 notice having been withdrawn.

22 MR. OXFORD: And again, Your Honor, I'm not
23 going to quibble. I mean, that the obvious consequence.
24 If he wants to leave out the last little bit there, I'm
25 just fine because I know what Your Honor is going to do.

1 MS. PARKER: Judge Skrocki, this is Robin
2 Parker.

3 ADMINISTRATIVE LAW JUDGE SKROCKI: Yes.

4 MS. PARKER: If we don't get a request for
5 dismissal, or a stipulation to dismiss it, then you will
6 have to make that decision and that will have to go
7 before the board.

8 ADMINISTRATIVE LAW JUDGE SKROCKI: Thank you,
9 Robin. That's what I was afraid of. And that's what I
10 was trying to get parties to agree, that they are both
11 jointly requesting a dismissal.

12 MS. PARKER: If they don't jointly request it,
13 we have no notice of termination that can be withdrawn,
14 but that doesn't mean the case goes away unless the
15 board orders it to go away or Protestant requests
16 dismissal of the matter.

17 MR. FLANAGAN: We haven't requested dismissal
18 and we don't want to agree that it ought to be
19 dismissed. I think we go as far as the facts take us,
20 which is, the notice is going to be withdrawn.

21 MS. PARKER: And it's going to have to go to
22 the March 25th general board meeting in Sacramento.

23 MR. OXFORD: Mike, I'm looking at your paper.
24 You say page 2, line 8, (As read), Protestant does not
25 oppose Respondent's motion to dismiss protest for lack

1 of jurisdiction, per se, in light of its 11th hour
2 withdrawal of its notice of termination.

3 Then you go on to say something, you know,
4 about the other protest. I don't understand, you know,
5 how it is that you can say you don't oppose the motion
6 to dismiss and then not agree to its dismissal to save
7 everyone flying an unnecessary loop into the month of
8 March before the board.

9 MR. FLANAGAN: I said I don't oppose it, per
10 se, and then went on to explain in the rest of the
11 papers what we -- what our position was.

12 MR. OXFORD: All right. Your Honor, I've tried
13 hard to be helpful and agreeable here, but I'm done.

14 ADMINISTRATIVE LAW JUDGE SKROCKI: Okay. I
15 also have some problem with your language you were
16 proposing, and I'm not sure that you would have really
17 wanted it in there, whether I would have put it in there
18 because I'm not sure I agree with it. And that is that
19 you said that Counsel agreed that General Motors filed a
20 notice of termination that resulted in the filing of
21 protest 2348-12.

22 If that protest had gone to hearing, General
23 Motors would have had the burden of proving good cause
24 for termination. Is that true or would you only have
25 had to have proven that there was no compliance with the

1 prior stipulated decision and order of the board?

2 MR. OXFORD: Well, on -- there are two separate
3 issues here, Your Honor. The one is, the second protest
4 basically was not subject to a settlement agreement.

5 ADMINISTRATIVE LAW JUDGE SKROCKI: Right. But
6 the first one was.

7 MR. OXFORD: The first one was.

8 So you know, I was just thinking, you know,
9 obviously, if that protest was moot, you know, section
10 3060 and 3061 would have applied to that protest but not
11 to the issue in -- you know, in the stipulated decision.

12 But as I understand it I now, Mr. Flanagan
13 isn't willing to agree to anything, so I'm going to
14 withdraw my offer anyway.

15 ADMINISTRATIVE LAW JUDGE SKROCKI: I don't want
16 him to be characterized as not agreeing to anything.
17 I'm sure he'd agree to something.

18 MR. OXFORD: Yeah, Your Honor, I would. But if
19 he's -- you know, if he's not going to agree to, in
20 effect, take this off the board's calendar for its
21 meeting on March 25th, then I think we're all wasting
22 our breath.

23 ADMINISTRATIVE LAW JUDGE SKROCKI: I think we
24 might be too. But last-ditch effort here: Nothing is
25 going to prevent the two of you, after this call is

1 over, after this hearing is over, to put your heads
2 together and draft some language that you are
3 comfortable with, rather than try to do it on the fly
4 like we are now. Very dangerous to do this.

5 MR. OXFORD: Well, I'm certainly open to
6 talking with Mr. Flanagan, if he's open to talking with
7 me.

8 ADMINISTRATIVE LAW JUDGE SKROCKI: I'm sure he
9 would be.

10 MR. FLANAGAN: I am. And I have, though I
11 maybe not have said it clearly on the record, I have the
12 same concerns Your Honor does. We're sitting here
13 arguing positions back and forth, and then, in essence,
14 trying to, on the fly, as you put it, come to some
15 language which will be described as agreed upon
16 language, and I'm not comfortable with that.

17 ADMINISTRATIVE LAW JUDGE SKROCKI: I'm not
18 either. It's too dangerous. It's too complicated, too
19 dangerous.

20 The two of you put your heads together. I'm
21 going to take this under submission, if you come up with
22 some language and I haven't issued a recommendation or
23 an order or whatever it is I've got to do here, then you
24 submit what you've got to the board and they will get it
25 to me, and if that's what you have agreed upon, then we

1 can avoid having this put on the formal agenda, fine.
2 If not, we'll put it on the agenda and let the board
3 members consider it and let them resolve it. It's just
4 going to be more cumbersome and more expensive for your
5 clients to be doing that. But that's what we're here
6 for. Is to resolve disputes. All right.

7 MS. PARKER: Judge Skrocki, this is Robin
8 Parker again. Can I talk about the board meeting just
9 so the parties know what our deadlines are?

10 ADMINISTRATIVE LAW JUDGE SKROCKI: Yes. Go
11 ahead. If you want to tell them. Is that what you
12 mean?

13 MS. PARKER: Yes, please.

14 ADMINISTRATIVE LAW JUDGE SKROCKI: Go ahead.

15 MS. PARKER: Okay. The board meeting is
16 March 25th in Sacramento. It's tentatively set for 2:30
17 in the afternoon. The agenda and materials will need to
18 be mailed by March 12th. So that's -- your time frame
19 is prior to that if you are going to want something to
20 be considered in that mailing to the board members. And
21 we can certainly submit something to them after the fact
22 without mailing out the materials.

23 ADMINISTRATIVE LAW JUDGE SKROCKI: Okay.

24 MR. FLANAGAN: Thank you, Ms. Parker.

25 ADMINISTRATIVE LAW JUDGE SKROCKI: That took

1 care of the easy one.

2 Now we got the more difficult one. What do we
3 do with the 2213-10, which is not part of the motion
4 that was filed by General Motors, but is part of
5 Mr. Flanagan's request that the board exercise its
6 continuing jurisdiction? Is this something that has got
7 to be treated separately and referred to the board,
8 possibly, or is there something that we can do today, or
9 is it something that maybe ought to be addressed by a
10 separate motion, by Mr. Flanagan, with separate briefing
11 being done, to explore what 2213 is?

12 MR. OXFORD: Your Honor, for our part,
13 Mr. Flanagan raised that issue in this proceeding. We
14 don't object to it being considered in this proceeding,
15 and I think the last thing we need, at this point, in
16 the five-year history of this dispute, is to start
17 another proceeding and another briefing schedule.

18 I think the parties have made clear to Your
19 Honor what their positions are in the papers and at
20 length this morning. And I think, you know, obviously,
21 there are issues with respect to the capacity of
22 Mr. Flanagan and his client to even make the request.
23 There are issues about the collateral estoppel effect.
24 There are issues of what I would characterize as
25 equitable mootness. There's actually a fair amount of

1 bankruptcy case law on the issue of equitable mootness
2 which comes down to the question of, you know, for
3 example, if someone executes a section 363 sale, as
4 happened in the GM bankruptcy and there isn't a timely
5 motion for stay and there's an appeal, whether the
6 appeal basically gets dismissed on the grounds of
7 equitable mootness because the passage of events
8 prevents the bankruptcy court, and, in this case, it
9 would be the board, from granting effective relief.

10 I think all those issues, you know, could be
11 considered by Your Honor in this proceeding in an
12 appropriate order. I don't obviously think that's going
13 to result in any agreement of Counsel that's going to
14 preclude it from being, you know, agendaized before the
15 board.

16 MR. FLANAGAN: I don't either. And just to put
17 it on the record, this stipulated decision and order
18 contains, at paragraph 4.6, concerning the first
19 protest, the following language: (As read) Subject to
20 the following provisions of this section and only in the
21 event that the board issues the confidential stipulated
22 decision, GM and WCM agree to submit to the board for
23 final and binding determination, upon either parties'
24 written notice, any and all findings, disputes, and
25 controversies between them arising under or relating to

1 this agreement and its negotiation, execution,
2 administration, modification, extension, or enforcement,
3 (collectively "claims"). Such determination shall be
4 made by an administrative law judge appointed by the
5 board in accordance with its customary features as it
6 may exist from time to time. Under no circumstances
7 shall any claim be combined with, joined with, or
8 adjudicated in a common proceeding with claims involving
9 persons in addition to the parties.

10 And it goes on, etc. Let me take a look and
11 see if there's anything pertinent to the rest of it.

12 ADMINISTRATIVE LAW JUDGE SKROCKI: That raises
13 another issue in the back of my mind, and I made some
14 reference to it earlier. Could you educate me,
15 enlighten me, Mr. Flanagan, just what are the claims or
16 issues that are in dispute relating to the board's
17 stipulated decision and order issued in regard to
18 protest 2213-10?

19 MR. FLANAGAN: It would be contractual, Your
20 Honor, and quite probably consist of impossibility of
21 performance due to actions that GM is responsible for,
22 and related claims. That, in essence, if the board is
23 to look at the facts standing barely before them --
24 B-A-R-E -- they would conclude or could conclude,
25 perhaps, that there has been -- not been compliance.

1 But as with any contract, there are defenses to the
2 contract. An impossibility is one, and we reserve the
3 right to invoke any others. And in that case we have
4 the right to bring this matter before the board.

5 MR. OXFORD: I might also just add from the
6 standpoint of what I had to say about equitable
7 mootness. Whatever issues Mr. Flanagan has in mind are
8 not issues that are borne of anything that's happened
9 recently. His client, while still operating as debtor
10 in possession, could have raised these disputes, if
11 there are any, you know, before the board, back in the
12 first two months of 2013, and it didn't do so. So I
13 mean, I think that bears upon, you know, the issue of --
14 bears upon the equitable part of the, you know, doctrine
15 of mootness.

16 ADMINISTRATIVE LAW JUDGE SKROCKI: That leads
17 me back to my same question as to whether I can write
18 some sort of a proposed recommended decision for the
19 board, saying that they ought to exercise or continue
20 jurisdiction at the request of Protestant to resolve
21 unidentified issues. Or do I need to have them
22 specifically identified? And a statement from General
23 Motors either saying why they should not be addressed
24 for all sorts of reasons, including equitable mootness?
25 I don't know what that would be here.

1 MR. OXFORD: I don't think it's a threshold
2 issue that maybe pre-permits the need to do any of that,
3 Your Honor, which is, it isn't disputed that we have a
4 Chapter 7 bankruptcy estate with a newly appointed and
5 acting trustee who's vested exclusively of any right to
6 bring any claim against General Motors, and, as a
7 result, Mr. Flanagan's client, you know, lacks standing
8 and the board lacks jurisdiction, you know, unless and
9 until the trustee comes forward and says, you know, I'm
10 going to pursue this or I'm going to authorize
11 Mr. Flanagan to pursue it, or something that would
12 provide, you know, Mr. Flanagan and his client with
13 authority to do anything before the board against
14 General Motors, which currently they don't have that
15 right.

16 MR. FLANAGAN: What Mr. Oxford is now arguing
17 that what the bankruptcy court decided, it decided in
18 deference to the stipulated decision and order and its
19 interpretation of noncompliance by Protestant. But the
20 document on its face provides for written notice to the
21 board about any disputes, contentions, controversies
22 between them.

23 MR. OXFORD: But if there aren't any, you know,
24 certainly General Motors didn't have the authority to
25 bring what it thought at the time were nonissues. And

1 if Mr. Flanagan's client thought that there were issues
2 at that time. The obligation or the opportunity would
3 have been upon his client, two years ago, to raise all
4 of these issues. So to come back now, after GM has
5 appointed a replacement dealer, and relied upon the
6 unappealed three orders of the bankruptcy court to
7 conclude that this dealership agreement terminated under
8 the express terms of a board stipulated decision is
9 simply beyond the pale.

10 MR. FLANAGAN: Well, I think we've argued it
11 enough. I think the Court made it clear that it wasn't
12 acting instead of the New Motor Vehicle Board. The
13 parties can do what they chose (verbatim) to do before
14 the board. And the stipulated decision and order has
15 spelled out what the parties can do, and it doesn't give
16 any provision for a time frame.

17 ADMINISTRATIVE LAW JUDGE SKROCKI: I'm still
18 back to my problem, that all I have before me is a
19 motion to dismiss in regard to 2348-12. And I've got a
20 request that raises the issue of 2313-10, and, in my
21 mind, it is not specific enough to grant that request
22 because I have no idea what it is about that stipulated
23 decision and order that is going to be at issue, because
24 I think that is what the basis is initially for you,
25 Mr. Flanagan, as to what the board must consider, as to

1 whether that stipulated decision and order did or did
2 not end up in a termination of the franchise.

3 And I'm putting aside the other issue of
4 standing, that if it did terminate the franchise, it's
5 all over. If it did not, then the right to enforce the
6 franchise belongs to the trustee in bankruptcy. That
7 would be another way to resolve it without needing a
8 specific listing of what it is you are asking for and
9 your request to have the board resolve all of the
10 matters that you say have to be resolved in regard to
11 2213 and a stipulated decision and order.

12 MR. FLANAGAN: You know, the provision in the
13 stipulated decision and order simply says, upon either
14 party's written notice, the board retains its
15 jurisdiction --

16 ADMINISTRATIVE LAW JUDGE SKROCKI: Okay. So if
17 the board has jurisdiction, then what is the board going
18 to be addressing?

19 MR. FLANAGAN: Well, that's what's going to
20 come before the board, when the board understands that
21 it now has written notice that we have claims to dispute
22 the controversy.

23 ADMINISTRATIVE LAW JUDGE SKROCKI: Okay. So if
24 this discuss we're having today results in a ruling in
25 your favor from the board or me, it will be essentially

1 saying, okay, Mr. Flanagan, you have got a right to do
2 it, now go do it and bring us something. What are you
3 going to have to file? Another request for
4 consideration of the following issues? A, B, C, D?

5 MR. FLANAGAN: I would be happy to do that.
6 I'm perfectly willing to listen to what the board's
7 instructions are concerning that. But this certainly
8 satisfies its written notice of claims, disputes, and
9 controversies.

10 ADMINISTRATIVE LAW JUDGE SKROCKI: I am reading
11 Vehicle Code 3050.7(b), as in boy. There's some
12 language in there that may not need to be addressed, but
13 it reads in the middle of the paragraph, or below --

14 MR. FLANAGAN: Your Honor, you're at 3050.

15 ADMINISTRATIVE LAW JUDGE SKROCKI: 3050.7(b) as
16 in boy.

17 MR. FLANAGAN: Okay. I'm sorry. Gotcha.
18 Stipulated decision and order.

19 Mr. Oxford, do you need time?

20 MR. OXFORD: It will take me just a minute to
21 pull it up, Your Honor. I'm sorry.

22 ADMINISTRATIVE LAW JUDGE SKROCKI: 3050.7.

23 MR. FLANAGAN: I'm sorry. You are right.

24 ADMINISTRATIVE LAW JUDGE SKROCKI: 3050.7.

25 MR. OXFORD: Okay.

1 ADMINISTRATIVE LAW JUDGE SKROCKI: B as in boy.

2 MR. OXFORD: I actually know what you are
3 talking about. I've forgotten the number. Give me one
4 second here.

5 ADMINISTRATIVE LAW JUDGE SKROCKI: That's all
6 right. It doesn't belong way in front. It belongs in
7 the back.

8 MR. FLANAGAN: It is entitled "Stipulated
9 Decision and Order."

10 ADMINISTRATIVE LAW JUDGE SKROCKI: How dare
11 they be so obvious about it. Got it?

12 MR. OXFORD: Not yet but I'm almost there.
13 Okay. Got it.

14 ADMINISTRATIVE LAW JUDGE SKROCKI: A little
15 more than halfway down. (As read) If the stipulated
16 decision and order provides for a determination of the
17 franchise, condition upon the failure of a party to
18 comply with specified conditions, the franchise may be
19 terminated upon a determination according to the terms
20 of the stipulated decision and order that the conditions
21 have not been met.

22 MR. FLANAGAN: You said about halfway down. I
23 followed what you said.

24 ADMINISTRATIVE LAW JUDGE SKROCKI: A little
25 more than halfway down. A little more than halfway

1 down.

2 MR. OXFORD: Are you in A or B?

3 ADMINISTRATIVE LAW JUDGE SKROCKI: B as in boy.
4 B as in boy.

5 MR. FLANAGAN: I'm sorry.

6 ADMINISTRATIVE LAW JUDGE SKROCKI: I should
7 have said baker, maybe, or something. I don't know. I
8 thought boy would be shorter. Bravo.

9 MR. FLANAGAN: Okay. I got you. If the
10 stipulated decision and order -- okay. That's where you
11 were. Right.

12 ADMINISTRATIVE LAW JUDGE SKROCKI: Right. (As
13 read) For the termination of the franchise conditioned
14 upon the failure of a party to comply with specified
15 conditions.

16 I think that applies to an order that the board
17 issued.

18 (As read) The franchise may be terminated upon
19 a determination according to the terms of the stipulated
20 decision and order that the conditions have not been
21 met.

22 So to me, that sentence applies to the
23 stipulated decision and order of the board, that the
24 threshold has to be, have the conditions been met, or
25 not been met.

1 MR. OXFORD: Not been met. In this case, the
2 undisputed facts of the section 2.6 conditions have not
3 been met.

4 ADMINISTRATIVE LAW JUDGE SKROCKI: That's what
5 I am wondering. All right? If it's undisputed that
6 they have not been met, and they are unexcused failure
7 to meet the conditions, then why doesn't that sentence
8 have an effect upon one side or the other here?

9 So I don't know if you want to address that now
10 or not address it at all or leave it up to me to worry
11 about after we're done here, when it starts time for me
12 to put some ink to the pen or my key strokes to the
13 computer, or whatever you do nowadays.

14 MR. OXFORD: Well, Your Honor, I think that
15 obviously Your Honor is going to do that. But I mean,
16 there's no dispute here that these conditions were not
17 satisfied. And there was the determination, three times
18 by the bankruptcy court, not opposed by the Protestant,
19 that those conditions did not occur. There's been a
20 period now of two years in which, you know, the
21 Protestant has not brought to the board, you know, any
22 claim to the contrary.

23 So I mean, to me, you know, no matter how you
24 get there, the condition was not met, it's not disputed
25 the condition was not met, and therefore, it shouldn't

1 be disputable that the dealer agreement terminate.

2 MR. FLANAGAN: Well, two things. And I'm not
3 trying to drag this out longer than it needs to be, but
4 there's some important distinctions that need to be
5 made. One of the use is the word "may." The franchise
6 may be terminated. And it goes on to say, (As read),
7 Upon a determinations according to the terms of the
8 stipulated decision and order, that the stipulated
9 conditions have occurred.

10 But -- not but, but in addition to that, you
11 have to give meaning and deference to paragraph 4.6 of
12 the stipulated decision and order, which says that,
13 neither party can give written notice, that the matter
14 of compliance ought to be determined for the board for
15 final and binding determination.

16 So I -- you know, I think we've worn it out, or
17 I have, anyway.

18 MR. OXFORD: I'm worn out.

19 ADMINISTRATIVE LAW JUDGE SKROCKI: I'm not. I
20 just wanted to raise that, let you know that I've been
21 thinking about it.

22 And then I'm not going to raise the other one.
23 Either side have anything further that they want to
24 reinforce statements, summary, wind-ups?

25 MR. OXFORD: Only one thing, Your Honor. I

1 think one way out of this quagmire, and, indeed, I think
2 it's almost compelled, you know, this debtor out of
3 possession is trying to say it's in possession, but,
4 actually, has no authority to bring these claims before
5 the board. And I think we could wrap it up with period,
6 the end, right there.

7 ADMINISTRATIVE LAW JUDGE SKROCKI: All right.
8 That's one other thing I was going to ask Mr. Flanagan.
9 Have you made a specific response to that position just
10 articulated again by Mr. Oxford?

11 MR. FLANAGAN: I thought I did earlier when I
12 said that I am representing the company before the
13 board, and according to the stipulated decision and
14 order entered on the first protest, the matter that I
15 was representing WCM in was to be determined upon the
16 terms of that stipulated decision and order.

17 ADMINISTRATIVE LAW JUDGE SKROCKI: Right.

18 But is it not correct or -- that the stipulated
19 decision and order of the board, any issues pertaining
20 to it are issues addressable by West Covina Motors,
21 Inc., the debtor no longer in possession, and,
22 therefore, the trustee alone can raise those matters
23 before the board and not your client.

24 MR. FLANAGAN: The trustee, as I understand
25 it -- and I believe I have some record of it deep in the

1 files. The trustee indicated no inclination to pursue
2 the dealer agreement dispute, but that does not mean
3 that it's precluding anyone else to pursue it on --

4 ADMINISTRATIVE LAW JUDGE SKROCKI: Is there a
5 requirement that the trustee must assign, delegate,
6 appoint, whatever might be the appropriate term?

7 MR. OXFORD: Yes, Your Honor. And you know,
8 the cases that we cited basically say it's the trustee's
9 right exclusively. And, you know, of course, you know,
10 Mr. Flanagan's client made an attempt to, in effect,
11 obtain an assignment. The bankruptcy court said it
12 couldn't.

13 So I mean, the point here is that all of the
14 property of the estate, unless assigned, unless
15 abandoned with court approval, to a punitive, if you
16 will, S&E, is property and remains property of the
17 estate under the possession and control of the trustee
18 who has the exclusive power to do anything with respect
19 to that property, including rights of action.

20 So unless and until there is some, if you will,
21 legal transfer of that right, from the bankruptcy estate
22 to Mr. Flanagan's client, Mr. Flanagan's client has the
23 right to do absolutely nothing in terms of bringing a
24 claim against General Motors.

25 MR. FLANAGAN: Based on the Court's ruling, we

1 believe the bankruptcy estate has no further interest in
2 the matter before the bankruptcy court and the trustee
3 has no objection or has posed to objection to WCM
4 pursuing any other remedies.

5 ADMINISTRATIVE LAW JUDGE SKROCKI: It's not a
6 question of objection. I heard Mr. Oxford say the
7 trustee has exclusive right.

8 MR. OXFORD: That's what the cases say, Your
9 Honor.

10 ADMINISTRATIVE LAW JUDGE SKROCKI: That's what
11 I heard you say.

12 MR. FLANAGAN: You have got a collision between
13 that and the primary jurisdiction of the board.

14 ADMINISTRATIVE LAW JUDGE SKROCKI: I don't see
15 it, because, again, the primary jurisdiction of the
16 board would go to whoever has the contract right, and
17 the only person with the contract right, if it exists,
18 is the trustee in bankruptcy, because they represent the
19 corporation, who was the franchisee.

20 MR. OXFORD: Look, let's suppose we have a
21 Chapter 7 bankrupt estate. It's a dealership and let's
22 assume it's an operating dealership, and General Motors
23 comes in and drops an add-point notice. In that
24 circumstance, the trustee would have the exclusive right
25 to file a protest, and that's essentially analogous to

1 the situation here.

2 ADMINISTRATIVE LAW JUDGE SKROCKI: I follow
3 you.

4 MR. FLANAGAN: Well, all right. I wasn't going
5 to raise this because it was, in my judgment, probably
6 something that we should have included in our papers,
7 but I belatedly received -- I have been gone through the
8 last few days on depositions and I belatedly received a
9 copy of a letter previously written to me by
10 Mr. Tedford, who was, at that time, the bankruptcy
11 lawyer for David Gill, the trustee. And I can send you
12 both a copy of it.

13 The paragraph that's important is, (As read),
14 based upon the court's ruling, we believe the bankruptcy
15 estate has no further interest in the matter and the
16 trustee has no objection to WCM pursuing any remedies it
17 believes it has before the NMVB. Any such remedies
18 should be pursued solely on behalf of West Covina
19 Motors, Inc., not the trustee.

20 MR. OXFORD: That isn't a transfer of any
21 interest that would give rise to a power. You know, I
22 mean, Mr. Tedford is cutting through, is saying, you
23 know, look, don't bother with this anymore. We're not
24 going to do anything. If you think you have a right to
25 do something, you can go and do it. But that is

1 different than assignment of a right that belongs to
2 Mr. Tedford's client, the trustee. And what
3 Mr. Flanagan just read is not an assignment.

4 ADMINISTRATIVE LAW JUDGE SKROCKI: Okay.
5 Mr. Flanagan, you are free to submit that as you wish,
6 and so thank you.

7 One more question. And if Ms. Parker is still
8 with us, if I could get her attention for a second.

9 MS. PARKER: I'm here, Judge Skrocki.

10 ADMINISTRATIVE LAW JUDGE SKROCKI: Oh, thank
11 you.

12 All right. Now, what do you see as the
13 suggested manner of getting the issues raised by
14 Mr. Flanagan pertaining to PR-2213-10, and the
15 stipulated decision and order of the board before the
16 board, if it has to go to the board at all?

17 MS. PARKER: I'm not sure I see any pleading
18 asking the board to do anything with regards to that
19 protest. Everything that we've done has dealt with
20 PR-2348-12. There's nothing before the board. That's
21 still a closed protest, even though the board may retain
22 jurisdiction under its decision. But the way we treat
23 any matter is that you need to file a motion, there
24 needs to be briefing, there needs to be hearing on it.
25 If Mr. Oxford is willing to waive any type of briefing

1 and you have enough information to go forward to the
2 board, then that's your call.

3 MR. OXFORD: I think, in substance, I said
4 earlier that I don't think we need to fly another loop
5 and the parties positions have been made clear, to the
6 extent they can be made clear, to Judge Skrocki, and we
7 would be comfortable in him deciding how to proceed in
8 accordance with the board's normal procedures.

9 ADMINISTRATIVE LAW JUDGE SKROCKI: Well, the
10 board doesn't have a normal procedure, that I'm aware
11 of, for something as complicated as this.

12 And so my -- I have, in my own mind, what I
13 would do, how I would proceed. But I'm not sure that
14 that's the proper way to get this on the board's agenda
15 as to focusing them upon the issues raised by
16 Mr. Flanagan's request inserted into the middle of a
17 motion unrelated to his request.

18 MS. PARKER: Right. And Judge Skrocki, this is
19 Robin Parker again. Proposed stipulations, decisions,
20 and orders and any disputes with regards to them are
21 assigned to the merits administrative law judge. They
22 are not treated as law in motion. They are treated as
23 merit. This motion to dismiss came under law and
24 motion, and it's clearly improperly before you. The
25 issue of compliance or noncompliance or failure to meet

1 a condition and stipulated decision and order, that
2 should probably go back before a merit judge.

3 ADMINISTRATIVE LAW JUDGE SKROCKI: Eventually
4 that would probably be what would have to occur. But
5 somehow it got insetted into this law and motion, one as
6 a ancillary companion case, whatever you want to call
7 it, initial journal as to what triggered all of this.
8 So that was part of my concern when I asked the
9 attorneys how they wanted to proceed with identifying
10 the specifics that are buried in this request to
11 continue exercising jurisdiction.

12 And again, they may decide that they don't want
13 to do that, but I'm still uncertain how I am going to
14 get it on a board agenda and make a recommendation, if
15 anything, that, A, it be rejected, or, B, it be allowed
16 to proceed and turned over to a merits hearing ALJ.

17 MR. OXFORD: Just from my part, the last thing
18 we need to do at this point -- and I'm respecting the
19 board's procedures, but from a practical standpoint, the
20 last thing we need to do now is write another set of
21 papers and start over with another judge.

22 ADMINISTRATIVE LAW JUDGE SKROCKI: I agree.
23 And I'm not sure -- I just heard Ms. Parker say that
24 that's the usual procedure before the board. If I can
25 come up with some way to make it meatier, more

1 palatable, less burdensome, and not have to submit -- I
2 was reading these papers last night about 11 o'clock.
3 So somebody else who have to go through this again,
4 especially board members, who are very dedicated as to
5 what they are doing, but we'd be asking several of them
6 to do what I did last night. And I thought I would make
7 their lives a little easier here, and I'm not too sure I
8 can with this one. But if you want me to try, I will
9 address both of them and make a recommendation to the
10 board as best I can.

11 MR. FLANAGAN: I'm certainly grateful for your
12 efforts and your time this morning, Your Honor. I just
13 wanted to briefly respond to Ms. Parker's concerns. We
14 have, admittedly, in an unusual case, and in an unusual
15 manner -- the board does have before it a clear request
16 for the board to exercise continuing jurisdiction over
17 2213, and that fits, as far as I'm concerned, the
18 provisions of section 4.6 of the stipulated decision and
19 order in that case.

20 MS. PARKER: That's fine, Mr. Flanagan, except
21 that that goes down a different path than we're
22 currently on.

23 MR. FLANAGAN: I understand that part. Thank
24 you.

25 ADMINISTRATIVE LAW JUDGE SKROCKI: And again,

1 when you say it's a clear request, even though you told
2 me what might come up, I find it difficult to say that
3 it's clear to me what's in your request, as to what has
4 to be considered by the board, regarding the stipulated
5 decision and order. That the way I read the stipulated
6 decision and order, that they had found the termination
7 should occur unless those alternative conditions
8 occurred within the time frame. There's a dispute as to
9 whether the time frame was told or not. But there's no
10 dispute as to whether those conditions occurred or not.
11 And, therefore, to me, it's a very narrow set of facts
12 until you started talking about impossibility and things
13 like that, that certainly are not in -- what you
14 submitted.

15 MR. OXFORD: Well, there's no impossibility
16 exception to the board's stipulated decision.

17 ADMINISTRATIVE LAW JUDGE SKROCKI: Well, it
18 could be as to whether the condition was impossible to
19 have it occur because of whatever allegations were made
20 and GM prevented its occurrence by whatever. And so I
21 think that's what he was alluding to, was that the
22 condition could be waived due to impossibility or found
23 to have not been enforceable or stricken or whatever the
24 appropriate approach would be, that he would use in his
25 wording.

1 Neither side wants to submit anything further
2 at this point? I've asked you three times and I think
3 the answer has been the same three times. I don't want
4 to do it again.

5 MR. OXFORD: Going, going, gone.

6 MR. FLANAGAN: I think that the provisions of
7 4.6 are clear, and I think they have been met. All it
8 requires is written notice, and there's no time limit on
9 it.

10 ADMINISTRATIVE LAW JUDGE SKROCKI: Okay. All
11 righty. Let's go off the record.

12 (Proceedings concluded at 11:47 a.m.)

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CERTIFICATE OF REPORTER

I, KATHRYN S. SWANK, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing hearing was reported in shorthand by me, Kathryn S. Swank, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of March 2015.

Kathryn Swank
KATHRYN S. SWANK, CSR
Certified Shorthand Reporter
License No. 13061

