

E8BJGMC Conference

1 UNITED STATES DISTRICT COURT  
1 SOUTHERN DISTRICT OF NEW YORK  
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4 IN RE: GM IGNITION SWITCH LITIGATION 14 MD 2543  
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9 August 11, 2014  
9 11:10 a.m.

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Before:

HON. JESSE M. FURMAN,

District Judge

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1 E8BJGMC PM Conference

2 AFTERNOON SESSION

3 2:00 pm

4 (Conference resumes)

5 (In open court)

6 THE COURT: You may be seated. Welcome back. Thank  
7 you guys for being here, or most of you at least for being here  
8 promptly.

9 Let's swiftly pick up where we left off because we  
10 have a lot to get through, and I will say in that regard that  
11 either our list was inaccurate or people have changed their  
12 minds and we are now up to 40 lawyers who wish to be heard on  
13 their applications, which is fine. I want to give everybody an  
14 opportunity to be heard, but I think I am actually going to cut  
15 back the amount of time allotted to each candidate to four  
16 minutes so we can try to get through everybody and still end at  
17 a decent hour.

18 I am taking some pity on the Court Reporter who is  
19 suffering through this on his own.

20 Let's pick up on the preservation protocol issue. To  
21 some extent that was mooted by the joint motion and the order  
22 that I filed this morning that I checked during the lunch break  
23 has not yet hit the docket, but I assure you I have signed it.  
24 I take it there are remaining issues on the front to be  
25 discussed, but we're in the process of discussing them.

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1           Is that correct?

2           MR. BERMAN: That's correct, a number of issues.

3           Number one, the other addition switch, the 10.8  
4 million I alluded to, we have to deal with that. We have to  
5 deal with the parts in the Andrews case and two other issues I  
6 raised with GM at the break which we have agreed to talk about.

7           I will mention them to you so you have them on your  
8 radar, the first is preservation of documents in the hands of  
9 third parties. So, for example, I was reading an article  
10 yesterday where apparently rental fleets like Enterprise and  
11 Thrifty, because they have such a high volume of cars, they  
12 noticed some issues with the airbags and ignition switches and  
13 they notified GM and asked GM to investigate. We want to  
14 preserve whatever documents they have. Even if you don't let  
15 discovery go forward, at least let us serve a subpoena and tell  
16 them don't destroy what you have. We have agreed to  
17 meet-and-confer on that process.

18           The second issue that affects the lives of the  
19 plaintiffs that often happens in these auto cases, is that when  
20 the plaintiffs are out there making everyday decisions like  
21 selling a car, like going to a dealer, they're creating  
22 evidence. We don't want to get accused of spoiling evidence.  
23 We need to come up with a protocol of how plaintiffs who sell  
24 their vehicles or take them into get serviced, how those  
25 records are preserved.

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1 For example, in Toyota, Toyota said we can't control  
2 the dealers, but the court ordered Toyota to send out specific  
3 guidelines for how to deal, for example, what if someone comes  
4 in with an ignition switch complaint, and we are trying to  
5 track the frequency of those, there has to be a process that  
6 evidence is preserved. We want to get that protocol in place  
7 as quickly as possible. Those are two issues.

8 THE COURT: But I take it those are all subject to  
9 further meeting and conferring. You're flagging them as issues  
10 that are to be discussed.

11 MR. BERMAN: The plaintiff preservation issue is  
12 something we would like to have entered by the time of our next  
13 conference.

14 THE COURT: Mr. Godfrey.

15 MR. GODFREY: We will work with them. I think we'll  
16 be able to work most if not all of these out. If not, we will  
17 alert the court. The only other mechanical issue I raise with  
18 the court --

19 THE COURT: Keep your voice up.

20 MR. GODFREY: -- I think there will be a series of  
21 preservation orders for you. If you want, you can number them  
22 1, 2, 3, 4. As we identify them and learn more about the parts  
23 being recalled, and they arrive, we'll have another  
24 preservation order about certain kinds of parts. There will be  
25 a series of these. We'll work with plaintiffs' counsel and

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1 work most if not all out. There will be a series of these 35  
2 to 40 days.

3 THE COURT: That is good. We will number them 1, 2,  
4 3, 4. It is too late to start with No. 1. We can go from  
5 there. In advance of our next conference, whenever that is,  
6 and that will be discussed shortly. This should be obviously a  
7 topic of discussion between counsel, and either to the extent  
8 you can resolve these things between yourselves, and that is  
9 certainly the best course, not just because it saves me the  
10 trouble of doing it, but because you're in the best position to  
11 balance the interests that are at stake, and there are real  
12 interests on both sides. So ideally you can resolve them and  
13 will resolve as much as you can. If not, you should also  
14 discuss a process whereby the two sides can be heard on any  
15 issues that are subject to disagreement.

16 Turning to the next issue, motions and a briefing  
17 schedule, there are a few motions or motion-type things that --  
18 hang on one second. There seems to be feedback. Let's figure  
19 out what that is.

20 (Pause)

21 THE COURT: The motions I am aware of out there in  
22 Order No. 1, I did deny all motions in transferred cases  
23 without prejudice to renewal just as a way of simplyfing  
24 matters. Since then there is a motion to remand that was filed  
25 in the Summers case. There is a motion for leave to file an

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1 omnibus complaint, that I don't know if that is in the form of  
2 sort of reserving rights, and it may be mooted by the  
3 discussion we had earlier regarding the consolidated filing.

4 There is the notice of appeal that was filed with  
5 respect to the Phaneuf order that Judge Gerber ordered last  
6 week. I don't know if that has been yet documented in this  
7 Court and whether or not it has or not, it hasn't been formally  
8 assigned to me. I can give you a heads-up it is in all  
9 likelihood going to be assigned to me.

10 I guess more generally just whether there are any  
11 other motions that counsel is aware of that may be filed  
12 including again potentially any motions for preliminary  
13 injunction or provisional class certification along the lines  
14 of what had been filed in Benton and Kelly.

15 Let's take those in that order at least and we can  
16 talk more generally about motions. With respect to the motion  
17 to remand, I guess the question I have is, is this a one-off  
18 motion that is unlikely to present itself in other cases, in  
19 which case we can brief that motion in the normal course and I  
20 will decide it, or is this an issue that is likely to occur in  
21 other cases and we need to figure out a process to resolve it  
22 more globally. I don't know if defendants have a view or a  
23 sense of that.

24 MR. GODFREY: I guess I would want to know whether the  
25 motion is going to be trumped by the answer in the consolidated

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1 complaint, it has any impact on it.

2 THE COURT: Keep your voice up.

3 MR. GODFREY: I am not accused of speaking softly, so  
4 this is actually nice.

5 I don't know whether the master consolidated complaint  
6 will trump this issue with respect to the Summers case. That  
7 is a question for the plaintiffs' temporary lead counsel and  
8 their colleagues. If it is not, I think in many MDLs the court  
9 tends to wait a bit to determine how many there are so it can  
10 resolve them at an appropriate time after the answer and  
11 consolidated complaint and schedule and doesn't find itself in  
12 a position of doing a series of seriatim rulings at the start.

13 Our suggestion would be later after answer and  
14 consolidated complaint. We have a schedule. Not now. It has  
15 continued relevance. I don't know the answer to that.

16 THE COURT: Ms. Cabraser.

17 MS. CABRASER: The Summers complaint is not a class  
18 complaint. It is an individual injury complaint, and in our  
19 proposal the consolidated complaint will focus on the class  
20 claims and not include personal, individual personal injury or  
21 death claims.

22 In that respect, it needn't await the filing of a  
23 consolidated complaint. We also note that at least the current  
24 panel, the current recommendation from the panel in the FJC, as  
25 embodied in the pamphlet, "10 Steps to Better Case Management,

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1 a Guide for Multidistrict Transferee Judges," which is Appendix  
2 B to the Annotated Manual for Complex Litigation, includes a  
3 recommendation, Roman V, 5 of the 10 steps, to rule promptly on  
4 remand motions. We are not aware of any other remand motions  
5 that have been filed. This is discretionary with your Honor in  
6 terms of timing.

7 There doesn't seem to be anything that counsels  
8 against delay at this point.

9 THE COURT: Am I correct that when you say you're not  
10 aware of any other than have been filed, I have not been aware  
11 of any that have been filed. Are you aware of any likely to be  
12 filed in other cases?

13 MS. CABRASER: I am not. GM might know better. With  
14 respect to the Texas MDL, those cases are going forward in  
15 state court. The other cases mentioned this morning as  
16 coordination opportunities are going forward in state court.  
17 So we are not aware of any influx of incoming removal cases  
18 that would be subject to these motions.

19 THE COURT: Mr. Andrews, counsel who filed that  
20 motion, are you present in court?

21 MR. SCHMIDT: Yes, your Honor.

22 THE COURT: Do you wish to be heard on this?

23 MR. SCHMIDT: Sure.

24 THE COURT: The question I am most interested in is:  
25 One, are you aware of any other cases where a motion

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1 of this sort is likely to be filed; and

2 Two, do you agree with Ms. Cabraser that your motion  
3 is unlikely to be mooted by any consolidated class complaint?

4 MR. SCHMIDT: I have to apologize. I didn't file --  
5 Andrews?

6 THE COURT: No.

7 MR. SCHMIDT: I apologize. I misheard. We are the  
8 ones that raised the issue about Andrews should be consolidated  
9 with the other, with the ignition switch plaintiffs' claims.

10 THE COURT: Can you identify yourself.

11 MR. SCHMIDT: Alexander H. Schmidt. (Inaudible)

12 THE COURT: I am looking for the Michael Andrews who  
13 is a lawyer who filed the motion in the Summers case. Is he  
14 present?

15 (Inaudible)

16 MR. MILES: Your Honor, I am W. Daniel "Dee" Miles  
17 from the Beasley Allen firm in Montgomery. We are co-counsel  
18 on the Sumner case. The only thing I would want to the court  
19 to hear from us, we agree with what Ms. Cabraser has  
20 represented to the court.

21 THE COURT: All right. I am inclined to agree.

22 It sounds like it may be a one-off thing, and I do  
23 think there is an interest in resolving jurisdictional issues  
24 sooner rather than later. That motion was filed on July 29th.  
25 Under the local rules, defendants would have, GM would have two

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1 weeks plus I think a few days to file their opposition. Since  
2 we had this conference to discuss it, I think what I'll do is  
3 give you two weeks from today to file your opposition and one  
4 week to file your reply. Does that sound good?

5 MR. GODFREY: Absolutely. There are three other  
6 pending remand motions though not yet before this Court, but  
7 depending on what the JPM rules, they may give you -- I can  
8 give you the names.

9 THE COURT: Yes.

10 MR. GODFREY: One is Boyd, from the Eastern District  
11 of Missouri. One is a case called K A N D A D O R I, from the  
12 Eastern District of Wisconsin. One case is Phillips, from the  
13 Southern District of Texas.

14 THE COURT: Would a ruling in Summers have any bearing  
15 in those cases or are they all factually distinct?

16 MR. GODFREY: I thought two of them. I can't say  
17 Sumner will determine one way or the other. There is certain  
18 facts, but I can get back to your Honor. I don't know the  
19 answer.

20 THE COURT: I am not sure it matters, that is to say,  
21 I don't think it alters the way we should handle it.  
22 Opposition is due two weeks from today and reply one week  
23 thereafter.

24 I am turning to the motion for leave to file omnibus  
25 complaint -- thank you, Mr. Miles. You can return to your

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1 seat. That motion, is that motion mooted by the discussion of  
2 the consolidated complaint that we have already had or is it  
3 distinct?

4 MS. CABRASER: Your Honor, I don't think it is mooted.  
5 The omnibus complaint is not a class complaint. There are no  
6 class allegations in it. It appears to be a joinder mechanism  
7 for multiple plaintiffs, over a hundred plaintiffs in that  
8 complaint.

9 I think the motion is simply for this Court to allow  
10 the filing in that format. We don't have any recommendation  
11 against that. In mass tort claims, the death and injury claims  
12 tend to be informed by plaintiffs' fact sheets and other  
13 informal discovery rather than formal discovery. It doesn't  
14 appear to present any particular case management difficulty at  
15 this point.

16 Again it wouldn't be superseded or mooted by the  
17 consolidated complaint which is going to focus on all of the  
18 economic loss-related claims against the various entities by  
19 the classes.

20 THE COURT: Mr. Godfrey.

21 MR. GODFREY: I think I've just learned that the  
22 consolidated master complaint that is being contemplated does  
23 not address and will not address what we call the mix of  
24 complaints which have an economic claims plus personal injury.

25 I think that in terms of the omnibus complaint, we

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1 would like five days if we were to oppose it. We probably  
2 won't. I haven't studied it. I assume there will be a  
3 consolidated complaint for all plaintiffs. Now, I know they  
4 won't have it for personal injury plaintiffs. I would like to  
5 take a look at that again and see if they we have any objection  
6 to omnibus if that is agreeable.

7 THE COURT: Ms. Cabraser.

8 MS. CABRASER: I apologize for not making that clear.

9 We are keying off your Honor's tentative Order No. 7  
10 with respect to the idea a consolidated complaint will probably  
11 not be worthwhile for the death and injury claims. We agree  
12 with that approach. If there are mixed complaints -- and there  
13 are a few of them -- the economic loss claim, to the extent it  
14 replicates the claim that arises in a class complaint that  
15 would be in that complaint, my understanding of the omnibus  
16 complaint is it was personal injury only.

17 MR. GODFREY: That is fine. In five days we'll either  
18 object or not. I probably won't object, but I would like to  
19 take a look again.

20 THE COURT: Let me know by next Monday whether you  
21 intend to oppose or have no opposition. If you do intend to  
22 oppose, I will give you the same deadline, two weeks from today  
23 to file your opposition. And any reply -- Mr. Hilliard is the  
24 driving force on that one -- any reply would be due one week  
25 after, but it may be there is no dispute there.

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1           The third is notice of appeal from the Phaneuf ruling  
2 of Judge Gerber and any further notices of appeal that may be  
3 filed, for example, by Mr. Peller in connection with any order  
4 with respect to the Elliott or Sesay plaintiffs. I don't know,  
5 it may be we don't need to discuss that now, and when those are  
6 docketed, counsel should discuss a briefing schedule. I would  
7 think that the three of those at least probably raise  
8 similar-enough issues that they can and should be consolidated  
9 in some fashion if the timing permits.

10           Mr. Godfrey, do you have any views on that?

11           MR. GODFREY: We should have a discussion among  
12 counsel and work out a schedule. I tend to think it would be  
13 after Judge Gerber makes his decision on the threshold issues,  
14 but I can see a point of resolving it sooner rather than later  
15 as well. Why don't we meet with plaintiffs' state counsel and  
16 work out a schedule.

17           THE COURT: I am not sure that plaintiffs' lead  
18 counsel is the relevant constituency there since Mr. Peller is  
19 making arguments that are distinct from those made by lead  
20 counsel or designated counsel in the bankruptcy proceeding.

21           What I will do is, I don't know what the timing or  
22 substance of any ruling on the Sesay plaintiffs matter will be.  
23 It would wait for you to confer with relevant counsel, whether  
24 that is Mr. Peller or lead counsel, I don't know, and propose a  
25 briefing schedule that would address any and all appeals on

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1 those related issues.

2           Assuming that doesn't unduly delay things, and I don't  
3 think we should wait on those until after a ruling on the  
4 threshold issues because some of the arguments that Mr. Peller  
5 is making are related to the subject matter jurisdiction of the  
6 bankruptcy court, and in that regard I think I ought to deal  
7 with them sooner rather than later.

8           I would ask you to confer and submit a letter with a  
9 proposed briefing schedule with respect to those appeals and  
10 any related appeals as well.

11           MR. GODFREY: We will do so. The only point of  
12 departure for me, we do think we need to involve lead counsel  
13 only so we have coordination between lead counsel and non-lead  
14 counsel. I didn't mean to exclude Mr. Peller and other  
15 counsel. I do want to coordinate with lead counsel so we come  
16 to the court with a unified view or the court understands there  
17 are differences of opinion.

18           THE COURT: I didn't mean to suggest you shouldn't.

19           Going forward lead counsel should be involved in  
20 really everything of substance that comes to me. Mr. Peller  
21 will presumably have -- you'll need to confer with him as well.

22           What about preliminary injunction related-type  
23 motions?

24           MR. BERMAN: I think my position on that, I brought  
25 that motion, I think I need to consult with lead counsel and

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1 see if it will be pressed. Ms. Cabraser was not part of that.  
2 It seems to me that has to go first through lead counsel and  
3 then present it to the defendants for briefing schedule.

4 THE COURT: I think that is right and more generally  
5 should be the process going forward for any and all substantive  
6 motions.

7 I think going forward it would be helpful to have, and  
8 I think having lead counsel will do this in part, but it would  
9 be helpful to have some process in place to distinguish  
10 essentially motions that apply more broadly to some significant  
11 portion of the MDL or MDL as a whole from those like the  
12 Summers motion that may pertain to an individual case, on the  
13 theory if it is just a one-off motion or deals with an  
14 individual case, there is no reason to delay briefing.

15 If it is something that has more global significance,  
16 we should figure out a process to adjudicate those issues in a  
17 manner that would let everybody be heard and also deal with  
18 them in an appropriate fashion. That is something I just think  
19 counsel should be attentive to and we can discuss later on.

20 I remind you to look back at Order No. 1 has some  
21 guidance with respect to those motions that do require  
22 pre-motion approval and the manner in which you get that  
23 approval and those that don't and just remind you to look back  
24 at that before filing any motion going forward.

25 Item No. 13 is settlement. My inclination and

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1 understanding is it is premature to get into anything of detail  
2 on this front except to underscore and reemphasize my view at  
3 the end of the day it would be in everybody's interest to  
4 resolve this through settlement rather than having one or many  
5 trials. You guys are in a much better position to figure out a  
6 fair and appropriate outcome than either any judge or jury is  
7 likely to be.

8 To the extent we can get there, it would be in  
9 everybody's interest. That being said, I think we are not  
10 there yet. My sense is that until we have some resolution of  
11 the threshold issues before the bankruptcy court, a  
12 consolidated complaint and a lot of the moving parts come into  
13 place, we really can't engage in meaningful settlement  
14 discussions.

15 I want to flag this as an important issue, an issue I  
16 will return to on a regular basis, something I expect counsel  
17 will discuss and sooner rather than later. I do want to have a  
18 discussion what process we should put in place to have those  
19 discussions, and if there are any documents or materials or  
20 depositions that would be helpful to do sooner rather than  
21 later to facility meaningful settlement discussions.

22 I suspect meaningful discussions will have to await  
23 some of those things happening, but there is no reason not to  
24 think in advance of those things happening about the best way  
25 to proceed once they do so you can proceed swiftly once they

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1 do. The rest of the litigation will proceed as swiftly as  
2 possible once all those things fall into place as well.

3 Is there anything anyone needs to say beyond what I  
4 just said?

5 MR. BERMAN: We agree.

6 MR. GODFREY: We agree.

7 THE COURT: The last item, regular conferences or  
8 communications. There is a balance here. I am all in favor of  
9 information, but there is a risk of getting too much  
10 information and being overloaded. I am in favor of  
11 communication and having conferences to ensure we are all on  
12 the same page and dealing with things in a prompt and efficient  
13 manner, but I am also mindful of the fact regular conferences  
14 entail costs, and one of the tasks of Rule 1 is to minimize the  
15 expenses involved in resolving this.

16 In order to strike a balance, my inclination would be  
17 to have regular conferences on some schedule, maybe more  
18 frequent in the beginning than later on, on the theory there is  
19 more to work through and resolve now, and regular  
20 communications, status letters, joint or otherwise, in addition  
21 to those and maybe in advance of each of the conferences.

22 if it turns out there is no need for a conference, it  
23 is easier to cancel a conference than put one on everyone's  
24 calendars in a litigation of this sort.

25 One, I agree; and, two, what are the views on

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1 regulators?

2 MR. ROBINSON: At the break we met with Mr. Godfrey.

3 THE COURT: Keep your voice up.

4 MR. ROBINSON: We met with Mr. Godfrey at the break,  
5 and we worked out exactly the type of schedule that the court  
6 just talked about.

7 MR. GODFREY: We agree with what direction your Honor  
8 outlined. We have a very specific schedule to propose, subject  
9 to your Honor obviously agreeing to it or modifying or  
10 rejecting it. For the first three months, we should have a  
11 status roughly every 30 days.

12 Second, we think after that, assuming basic structure  
13 of the MDL is established and things are going well, it strikes  
14 us a status roughly every two months would be appropriate. We  
15 may need, or your Honor may want to revisit that after the end  
16 of the third status. For planning purposes, that is what we  
17 thought made some sense.

18 We thought, third, 10 days after your Honor appoints  
19 lead counsel, whenever that is, we would have to have our  
20 meet-and-confer. If your Honor appointed lead counsel, say,  
21 Friday, we would have our first meet-and-confer to address some  
22 of the discovery issues and some other topics we discussed here  
23 today, and then we thought that because we don't know how that  
24 will turn out, whether we have all the issues we need to raise  
25 with the court, if the court had available September 4th, in

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1 the morning, for what hopefully will be a short status, but  
2 maybe not so short, depending on what is unagreed or what are  
3 the topics the court needs to be advised about, that made sense  
4 to us given our schedules. Again it is subject to the Court's  
5 schedule.

6 It is a suggestion for possible calendaring purposes.  
7 We understand the court has its schedule, which controls. We  
8 thought every two weeks new GM would file an update similar to  
9 our August 5th letter, not argument, just updating the court on  
10 additional cases, any discovery issues that have come up of  
11 significance. By that I mean, the type of thing that your  
12 Honor would expect us to notify the court about that might  
13 interfere or cause the court concern about your management of  
14 this litigation, we would share that, of course, in advance  
15 with the plaintiffs' lead counsel.

16 It will be a joint letter, but we take the burden on  
17 ourselves since we tend to have information sooner than the  
18 plaintiffs do about someone suing us that is maybe not in the  
19 MDL yet. Then we thought before any status, finally the joint  
20 letter of July 28th the court asked us to provide on PTL No. 1  
21 work well.

22 Temporary lead counsel got us a third draft. We got a  
23 hard copy in advance. We worked it out, no arguments about  
24 doing it. We thought about it. Five days before every set  
25 status over whatever schedule, we should do the same. Whatever

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1 issues, it should be limited to five single-spaced pages  
2 because if we have more than five single-spaced pages, because  
3 we have so many issues, things are needing a lot more judicial  
4 supervision than the court would want.

5 We would want and hope this will be a fairly smooth  
6 and efficient MDL. That is our specific suggestions we agreed  
7 on over the lunch hour, obviously subject to your Honor views  
8 and ultimate decision. That is something we think we can live  
9 with.

10 MR. ROBINSON: That is what we agreed to.

11 THE COURT: That sounds great to me.

12 In fact, I am open and free on the morning of  
13 September 4th, I will put that down now and we'll start a  
14 little earlier to ensure we can get through everything we need  
15 to get there. Let's plan to start at 9:30.

16 I am hoping and guessing it will be in this courtroom,  
17 but have to confirm its availability. I will provide further  
18 guidance on that, and in whatever order I issue after this  
19 conference, I will look at my calendar for dates thereafter.  
20 The earlier I can schedule things, the better it is for  
21 everybody to have maximum attendance or maximum opportunity to  
22 attend. I will try to set those in the next order on the set  
23 of schedule you have proposed.

24 That covers all the items in the agenda. I did  
25 indicate at the outset in Order No. 7 that I would give

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1 opportunity for other plaintiffs' counsel to be heard on those  
2 issues if they felt that they should be heard. I know that one  
3 or two mentioned to my intern before the break that they wished  
4 to be heard on some issues.

5 If you do wish to be heard, why don't you come and  
6 essentially line up at the back of the well and I will hear  
7 from you one at a time. Just as a reminder, please state your  
8 name and spell it for the record and then you can proceed.

9 MR. HILLIARD: Bob Hilliard from Texas.

10 I appreciate the court's willingness to let me  
11 supplement somewhat my co-temporary lead counsels' information  
12 to the court in regards to specifics on your order. I think  
13 because I have lived with this litigation since January, I can  
14 provide the court with additional information. You seem  
15 willing and eager to have as much as possible. I will be very  
16 brief. I took notes on what some of your inquiries were.

17 The first question you asked that needed a response is  
18 what is the reason there are so many cases in court and not Ken  
19 Feinberg's compensation fund. The fund is limited by GM to the  
20 definition of eligible vehicles. The fund is only available to  
21 the first two recalls. The subsequent recalls, which are  
22 approximately 15 million, many involving ignition switch  
23 issues, those victims cannot file into the fund, so they must  
24 come into the MDL.

25 The second thing I would suggest to the court under

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1 the theory that flexibility is the sure sign of intellect, and  
2 that is the discovery issue in regards to the documents  
3 produced to Congress and to the Senate are already Bates  
4 stamped. They are put on the Congressional web site, not all  
5 of them, but Congress puts the documents they choose and they  
6 have GM Bates stamps.

7 Given the amount of time in this, I have done this  
8 type of litigation before, sooner rather than later if there is  
9 a temporary agreement no documents will be disclosed while  
10 they're being reviewed, I would encourage the court to consider  
11 allowing us to start looking at them, for the sole purpose of  
12 it will take a lot of manhours. I would represent to you more  
13 than likely they're on a thumb drive. The ones presented to  
14 Congress and to the Senate can be produced immediately if the  
15 court allows or orders that to be done.

16 One thing that concerned me, I heard GM's counsel also  
17 say that some of the Valukas information may not be available  
18 any more. They looked at boxes, looked at documents, and with  
19 all due respect to GM counsel, the red flag in my mind said  
20 let's stop getting rid of documents now. I am sure they have.

21 THE COURT: I don't think he said gotten rid of, but  
22 in boxes, and somebody would have to the time to go through  
23 them again.

24 MR. HILLIARD: I don't mean to imply otherwise.

25 The last thing to point out the court, the most

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1 important thing, I didn't know that the court was going to rule  
2 on the preservation order. It was on the agenda today. In  
3 regards to the ignition switches when a customer comes into GM,  
4 and I would ask the court to consider maybe over the evening  
5 hours a stay of that order, and here's why. I read it this  
6 morning twice, and I have some concerns about the person who  
7 takes their car into the dealership tomorrow.

8 That car has a defective ignition switch. Under this  
9 order, GM does not have to advise the customer that they're  
10 going to get rid of the ignition switch. GM doesn't have to  
11 advise the customer that if that customer wants to have the  
12 ignition switch preserved, that customer has to advise both new  
13 GM and the dealership prior to the repair. Effective what that  
14 will do, that will stop the preservation of any ignition switch  
15 devices today.

16 The 20 percent or less they have in storage will not  
17 increase because, quite frankly, someone goes in based on the  
18 recall letter and says I want mine replaced, probably doesn't  
19 know, with all due respect, this exists or this MDL exists, but  
20 may one day. You may one day send that case back to their home  
21 court.

22 THE COURT: Is there any reason to think those  
23 ignition switches, there is something unique about them that  
24 the statistical sample provided by the 20 some-odd percent  
25 already in GM's possession would not provide?

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1 MR. HILLIARD: Perhaps what if the statistical sample  
2 are not defective? They have been replaced. They haven't been  
3 identified as actually being defective. I have a suggestion.  
4 I am offering this for what it is worth.

5 If you stay it until permanent lead counsel and the  
6 executive committee are in place, an easy way to fix this is to  
7 work with GM, and every time a customer comes in to get that  
8 part replaced, they're simply told that if you want this  
9 preserved during the course of this MDL, you have to advise us  
10 now. That is the only way they would ever know that they have  
11 that option or that right.

12 Otherwise, effectively they all go away and it seems  
13 like what GM wants to do is be sure they're not spending money  
14 to preserve ignition switches. What I am speaking to is the  
15 consumer suddenly is faced with an ignition switch litigation.

16 THE COURT: That is it for you?

17 MR. HILLIARD: That is it for me.

18 THE COURT: Next, sir.

19 MR. KAPLAN: Robert Kaplan, Kaplan Fox & Kilsheimer,  
20 LLP. I was lead counsel in the Bank of America litigation, a  
21 multidistrict litigation in this courthouse which had a lot of  
22 similarities.

23 There was a Congressional investigation, government  
24 investigations, and Judge Denny Chin, shortly before he went up  
25 to the Second Circuit, issued an order along the lines of what

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1 your Honor had in Order 7, ordering Bank of America to produce  
2 right away all documents it had produced in government  
3 investigations.

4 I would be happy to make copies of those orders  
5 available to your Honor. I think it is a good template of what  
6 should occur here.

7 THE COURT: Okay. Thank you. I'll address all --

8 MR. KAPLAN: Your Honor, would you like me to submit  
9 these orders?

10 THE COURT: Not right now, but thank you. Yes, sir.

11 MR. SCHMIDT: Alexander Schmidt, of Wolf Haldenstein  
12 Adler Freeman & Herz. We are co-counsel along with Golenbock  
13 Eiseman Assor Bell & Peskoe, to the Growman plaintiffs who are  
14 one of the identified parties in the bankruptcy proceeding.

15 I would like to discuss trying to clarify and perhaps  
16 formalize the procedure for the discussion of consolidating or  
17 not consolidating the Andrews complaint that Mr. Berman  
18 mentioned he would be willing to do at this point in time.

19 It is an issue to us that seems very important for the  
20 ignition switch plaintiffs. It is whether or not to  
21 consolidate has tremendous consequences not only for the  
22 longevity of the litigation and the cost of the litigation, but  
23 for whether or not a class can be certified.

24 We have been asking for this discussion since the  
25 panel of multidistrict litigation initially identified Andrews

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1 as a conditionally transferred case.

2 THE COURT: Let me interrupt you for a second.

3 I don't mean to say that you're never going to have  
4 that discussion. It strikes me as one that is worth having.  
5 As I heard Mr. Berman, it may be in the discussions within the  
6 plaintiffs' counsel community, that some of the differences may  
7 be ironed out or disappear altogether based on whatever theory  
8 of damages is advanced and whatever the consolidated complaint  
9 ends up looking like, all of which is to say I'm inclined to  
10 just recognize that we may well need to have this conversation,  
11 have it, defer it until after there is an opportunity for that  
12 to happen and after the filing of any consolidated complaint  
13 when you will have ample opportunity to be heard if you still  
14 have complaint.

15 Is there any reason that would not suffice?

16 MR. SCHMIDT: Yes, your Honor. That is because under  
17 the law of the circuit, in the Literary Works case in the  
18 Second Circuit, in the Ortiz v. Fiberboard case in the Supreme  
19 Court, the potential, I'll call it, is fundamentally at odds in  
20 theory between the Andrews case and the initial ignition switch  
21 plaintiff cases has an implication for leadership structure.

22 We would like to advance -- Mr. Berman made a  
23 recommendation to discuss this issue. My suggestion is that we  
24 advance that discussion before the 45, make sure as soon as  
25 lead counsel is appointed, we have this discussion because it

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1 is fundamentally important how this case will proceed in the  
2 future.

3 THE COURT: All right. That is fine. I would  
4 encourage you to flush that out. To the extent it may require  
5 discussion of a theory of damages, it would be in everybody's  
6 interest to advance it in that 45 day period. It doesn't mean  
7 we need to have that conversation now. I have already ruled on  
8 the structure of plaintiffs' counsel. I am not revisiting or  
9 reconsidering that. You haven't provided any reason for me to  
10 do that right now.

11 You may have views that you want to articulate with  
12 respect to the composition of the leadership. I already heard  
13 those in your letter and I will take them under advisement. We  
14 have heard enough on this.

15 MR. SCHMIDT: Thank you.

16 THE COURT: Next, Mr. Peller.

17 MR. PELLER: I appreciate the court's sensitivity to  
18 the variety of claims before the court and the court's  
19 sensitivity to the issues I raised earlier.

20 I want to speak now about a distinct issue, and that  
21 is the public safety, we believe, emergency that consists of  
22 millions of drivers today continuing to be driving cars that  
23 many of the plaintiffs' counsel have alleged are imminently  
24 dangerous to their life or to cause serious injury.

25 I have been on the ground with the people who have  
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1 contacted me trying to get them loaners according to the GM  
2 Loaner Program. Sometimes that process has been successful.  
3 Your Honor, oftentimes GM has resisted the provision of safe  
4 interim transportation until the cars can be repaired.

5 I have repeatedly had to threaten temporary  
6 restraining orders, and those threats have to date been  
7 effective, but I anticipate the need to actually file and  
8 appeal to some judicial authority to get an individual, not  
9 class, not class relief, but individual who is driving an  
10 identified dangerous car, interim relief.

11 I tend to represent low-income plaintiffs who cannot  
12 themselves afford to go rent the cars and wait till the time  
13 that GM gets around to repairing the cars. The recalls have  
14 taken months and months, and new recalls are being announced  
15 every day. The Elliotts' second car was just recalled a week  
16 ago.

17 They're stuck in this dangerous car and GM is not  
18 providing relief. I am not asking the court to rule on these  
19 individual questions, but the court is interested in whatever  
20 motions might be made. I have been advised by the, I have been  
21 advised by the temporary leadership group it is inappropriate  
22 to bring those individual applications before this Court, and I  
23 respect that, but GM has gone around the country threatening  
24 anyone who brings any new action against it, they're engaging  
25 in contemptible behavior under the 2009 sale order.

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1           The situation is that there is a public safety  
2 emergency, according to the allegations that most of the  
3 plaintiffs' groups have made, and yet no judicial forum to hear  
4 those emergencies except GM says the only available forum is  
5 the bankruptcy court. I wanted to alert the court to the  
6 possibility that we will be moving for a declaration to open  
7 up, from you, your Honor, as to the matter of the pending  
8 public emergency with regard to the unsafe cars.

9           THE COURT: I am duly advised. I think it relates to  
10 the matter I discussed with Mr. Berman that he said would be  
11 discussed within the plaintiffs' leadership when appointed. I  
12 appreciate the heads-up. Next.

13           MS. SYVERSON: Patricia Syverson. I want to speak  
14 briefly on Issue 5. I represent the Stevenson and Jones  
15 plaintiffs who are alleging a separate electronic power  
16 steering claim in that case. The EPS claims of ignition switch  
17 claim are separate, distinct defects.

18           The EPS defect issue impacts over 1.3 million  
19 vehicles, and there have been accidents and injuries  
20 specifically attributed to the EPS defect itself. We think as  
21 a result, that EPS defect cases are significant. They're  
22 distinct and they will be subject to different documentary  
23 evidence, witnesses, technological issues and expert testimony.

24           While we are mindful of the court's desire for this  
25 case to be litigated efficiently, we are concerned the cases

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1 addressing defects wholly unrelated to ignition switch issues  
2 may get lost in the larger MDL action predominantly concerned  
3 with ignition switch defects. If that happens, the EPS cases  
4 could be delayed significantly by virtue of having the same  
5 common symptom; the power steering shuts off.

6 Any delay can be seriously detrimental to EPS claims.  
7 That is especially considering that the governmental emphasis  
8 and publicly available information has focused primarily on  
9 ignition switch issues and not the EPS issue. To address our  
10 concerns, we would propose either the court sever the Jones and  
11 Stevenson case entirely, or if inclined to have the EPS defect  
12 addressed in the consolidated complaint, that these two cases  
13 be allowed to proceed on a separate scheduling track so that  
14 the litigation is not delayed based on any ignition switch  
15 issues.

16 Under either scenario, we respectfully request my firm  
17 be appointed as liaison counsel for the EPS issues to assist  
18 lead counsel in coordinating efforts as much as possible as  
19 there are admittedly many crossover issues.

20 THE COURT: Is it your view those two cases are  
21 properly part of the MDL?

22 MS. SYVERSON: We think they are properly related, but  
23 they are distinct in terms of the type of defect that they have  
24 at issue. There are various differences that make them --  
25 there is crossover, but they should also be treated separately.

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1 THE COURT: Thank you. Next.

2 MR. TROPIN: Your Honor, Harley Tropin.

3 My comments are provoked by the news that we have the  
4 11 personal injury cases that have traveled to you, and I have  
5 a modest suggestion, and it relates somewhat to what we are  
6 going to be doing later this afternoon.

7 That is the personal injury cases and the ignition  
8 switch defect cases are we call it PI and economic loss cases  
9 are very different in terms of how they're going to be pushed.  
10 In other words, the PI cases will want to go for a quick trial.  
11 The settlement issues are different as opposed to economic loss  
12 cases.

13 This was the subject of quite a bit of motion practice  
14 before the Judge Selden did in the Toyota cases. People raised  
15 issues of conflict. We don't propose to do that here at all.  
16 I have a constructive tweak to the proposed order that you  
17 have, and it is simply this.

18 Because I think that the goals of those plaintiffs are  
19 different, I would have your lead counsel for the economic loss  
20 plaintiffs be denominated that way and for the PI plaintiffs be  
21 denominated another way. That is what Judge Selden did. He  
22 said in this order, and it is just two sentences:

23 "Part of the concern regarding potential conflicts is  
24 addressed by the court's determination not to appoint the same  
25 counsel to a leadership position involving more than one type

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1 of claimant. Each group of claimants will have adequate  
2 representation in the leadership."

3 So rather than rehash all of that, that is a quick  
4 summary, and I think that when you have leisure, you might look  
5 at that. That is a way of solving this issue.

6 Thank your Honor.

7 THE COURT: Thank you. Last, but not least Melanie  
8 Cyganowski.

9 MS. CYGANOWSKI: Your Honor, I am currently at --

10 THE COURT: Would you spell your last name.

11 MS. CYGANOWSKI: C Y G A N O W S K I. Your Honor, I  
12 am currently with Potter & Otterbourg, PC.

13 I was formerly a bankruptcy judge for 14 years and sat  
14 in the Eastern District. In keeping with the words of the  
15 court at the beginning of striving for swift and speedy and  
16 just resolution throughout the case, I wanted to bring to the  
17 court's attention some precedent in other cases including agent  
18 orange where from time to time when the issues so presented,  
19 the court can actually sit concurrently with the bankruptcy  
20 court.

21 For example, an issue perhaps of subject matter  
22 jurisdiction comes to mind where you're looking at it from one  
23 perspective and the bankruptcy court is looking from another.  
24 In such event, obviously it would present a direct appeal to  
25 the Second Circuit, but I think it may help this process

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1 particularly because the MDL is going to be so intimately  
2 intertwined with bankruptcy court throughout the proceedings.

3         The second suggestion is with respect to mediation.  
4 There is the ultimate resolution of the case, but I would urge  
5 the court to do what we often do in bankruptcy is appoint one  
6 or more mediators who at the beginning of the case then can be  
7 there so that the court and the parties can use them not only  
8 in the MDL, but perhaps with respect to the bankruptcy court.  
9 Specifically, we have the possibility of the Delphi issues  
10 reminiscent of what is happening now before Judge Gerber.

11         It may be that that issue is appropriate for  
12 mediation, the point being that there are smaller issues along  
13 the way that might be dealt with by a mediator being in place.

14         Thank you.

15         THE COURT: Thank you very much.

16         Let me just respond to a few of those things. For the  
17 most part, I appreciate everybody's helpful suggestions and  
18 information. It doesn't for the most part cause me to revisit  
19 anything I have decided or said, but I think a lot of these  
20 issues should be discussed sooner rather than later when there  
21 is a leadership team in place on the plaintiffs' side of things  
22 and in the meet-and-confer process with defendants, and that  
23 includes, for example, setting up a mediation process, which I  
24 certainly think would be helpful sooner rather than later as  
25 well as some of the discovery issues.

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1 I am not going to revisit my decision with respect to  
2 the documents provided to Congress or government agencies. I  
3 do anticipate that that is a category of documents GM will be  
4 directed to turn over rather swiftly, and again I think I put  
5 Mr. Godfrey on fair notice about that so that between now and  
6 September 4th they can and should take whatever steps are  
7 necessary to make sure that that can be done soon thereafter,  
8 in anticipation that they will have to do it soon thereafter.

9 I think the better course is to wait until there is a  
10 leadership team in place so that any wrinkles and issues in  
11 that regard can be discussed and worked out and disagreements  
12 identified.

13 The one issue I do want to hear from temporary lead  
14 counsel and defense counsel on is Mr. Hilliard's comment about  
15 the preservation order I signed this morning. I guess the most  
16 immediate suggestion he had was just amending it to indicate  
17 that any person who has an ignition switch replaced is given  
18 notice and an opportunity to request that ignition switch be  
19 maintained. Mr. Godfrey or Mr. Robinson?

20 MR. ROBINSON: I will let Mr. Berman respond.

21 THE COURT: Mr. Berman.

22 MR. BERMAN: We think that is actually an excellent  
23 idea.

24 THE COURT: All right. Mr. Godfrey?

25 MR. GODFREY: I think it depends on the practical

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1 nature of it. We have 589,000 ignition switches. As I listen  
2 to --

3 THE COURT: Speak up.

4 MR. GODFREY: -- take him literally now when he asked  
5 whether 589,000 is a representative sample and whether it is  
6 likely that none of them will be defective.

7 And so if we are talking about, as we agreed, if a  
8 named plaintiff wants -- if I am a plaintiff and I want it  
9 preserved, we'll preserve it with notice.

10 To every consumer, I want to preserve it whether  
11 they're a plaintiff or not, that doesn't solve our problem. If  
12 we have another 200,000, where are we going to put them? If he  
13 wants to pay for the storage costs, that is a serious issue.  
14 With sophisticated, experienced plaintiffs' counsel, this is a  
15 statistically significant sample. Mr. Hilliard suggests it is  
16 not when we already have approaching 600,000. I find that to  
17 be -- I don't understand it.

18 THE COURT: All right. Here is what I will do. I  
19 will not revisit it right now, on the theory that -- I won't  
20 revisit it right now or stay the preservation order I signed  
21 this morning. I want you to discuss this between now and the  
22 next conference in addition to the other preservation issues  
23 subject to discussion.

24 It may be I'll modify it at some later time, and I  
25 recognize that between now and then that means a few

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1 individuals may have ignition switches where they're not  
2 provided that notice, but I am fairly confident even if that  
3 were the case, we'll end with a statistically significant  
4 sample if we don't already have it. It pays to have you work  
5 that through and discuss it in the context of the other  
6 discussions you're already having.

7 With that, I want to turn to the appointments of  
8 counsel. As I indicated, I will give each person who has  
9 requested leave to speak four minutes to make their best case  
10 to me why they should be appointed to a leadership position. I  
11 will keep things moving and I am going to cut you off if you go  
12 over your four minutes. Keep in mind the ability to  
13 economically use your time is going to be a factor I consider  
14 in making my decision. I also indicated that there will be no  
15 prejudice --

16 MR. GODFREY: I have one question. Some of my  
17 colleagues I think we don't really -- I will stay -- some of my  
18 colleagues would like permission to leave since they're not  
19 going to be involved, with the Court's permission?

20 THE COURT: Sure. Let me give my preliminary remarks.

21 As we await the first person, I will give anybody who  
22 wants to leave the right to leave without insulting me.

23 MR. GODFREY: Thank your Honor.

24 THE COURT: I want to reiterate if you choose not to  
25 speak, it will not prejudice your application in any way. It

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1 won't hold it against you. You are welcome to rest on your  
2 written submissions.

3 I want to say the letters were submitted to me in that  
4 regard were extremely helpful in one respect in the sense they  
5 provided me with a lot of information. They were less helpful  
6 in another respect, which is that I have an overwhelming choice  
7 to make, which is to say there are many more competent counsel  
8 in the mix here than there are positions for me to appoint them  
9 to. I will have some difficult choices to make in the next few  
10 days.

11 So that is also by way of saying if you are not among  
12 those that I end up selecting, I would say don't take it  
13 personally. I am sure you will, but just recognize that there  
14 are many, many more competent and really very experienced  
15 counsel I was able to choose, and that is both reassuring to me  
16 and also, you know, makes my job a little harder.

17 I have already articulated some of the criteria I will  
18 use to make my choices, but let me just underscore and note  
19 among the more important is the demonstrated ability and  
20 resources to handle litigation of this nature and complexity,  
21 the demonstrated ability to cooperate and work well with other  
22 counsel.

23 Teamwork in this sort of litigation is absolutely  
24 essential, which is not to say dissenting voices shouldn't be  
25 heard. If you are a dissenting voice, you should make yourself

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1 heard, but at the same time the ability to work together and  
2 work through disagreements constructively is absolutely  
3 important and essential. I intend to ensure that the  
4 leadership team represents the diversity of plaintiffs in this  
5 litigation both geographically and in terms of the different  
6 kinds of claims. Some of the differences have already been  
7 flagged in the course of our colloquy today.

8 Having said that, I am inclined to agree with  
9 temporary lead counsel appointments should not be made based on  
10 particular legal theories. Some people may wish to be heard on  
11 that. I am inclined to agree that that would involve  
12 prejudging the viability or lack thereof of certain theories,  
13 and the flexible committee structure I have adopted is adequate  
14 to deal with those issues as they arise. I am going to ask you  
15 to just touch on a few things in your four minutes:

16 Number one, just to make sure we are all on the same  
17 page, confirm what position or positions you're applying for  
18 and also where your office is located;

19 Number two, identify the types and numbers of cases  
20 and clients that you have in the MDL as well as any cases and  
21 clients that you have related that are not part of the MDL  
22 pending in state court or haven't yet been filed. When I say  
23 "type," I want you to identify whether they're economic loss  
24 claims, personal injury or wrongful death claims, whether they  
25 implicate the ignition switch defect or others and that sort.

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1 Those may factor in the decisions that I make on these issues;

2 Three, and many of you did address these things in  
3 your letters, so I have a lot of this information. Some of you  
4 were a little bit more ambiguous about this, and I want to flag  
5 these things. Third is whether you have any prior court  
6 appointed leadership positions in MDLs. I am not interested if  
7 you were in an MDD. I want to know if you were appointed by a  
8 court to a leadership position;

9 Fourth, any and all experience trying or prosecuting  
10 automotive vehicle defect related cases; and

11 Fifth, other commitments of significance at this time.  
12 If you are co-lead in another MDL, for example, I would like to  
13 know that, and if you want to comment on what the status of  
14 that litigation is, basically resolved or not, that may have  
15 some bearing as well.

16 Those are issues I would like you all to touch on as I  
17 hear from you.

18 The first person on our list is Mary Alexander. As  
19 she comes to the podium, if anyone would like to leave at this  
20 time, you are more than welcome to do so and I will not be  
21 insulted, as I said.

22 (Pause)

23 THE COURT: I am going to keep the time on my iPhone  
24 here. That is not a product placement for Apple. What I don't  
25 know is if I can change the setting to be anything other than

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1 an alarm. That will have the beneficial effect of alerting  
2 you, and I will ask you to step down. My Deputy has indicated  
3 she can show me, but I am not going to change it. When you  
4 hear the alarm, I will ask to step down.

5 You may proceed.

6 MS. ALEXANDER: The alarm on my phone is a rooster.

7 THE COURT: You have to wait and see what mine is.

8 MS. ALEXANDER: I would like to address the points you  
9 have made and also add a few things to my papers.

10 First of all, I have been involved with the mass torts  
11 and particularly the automotive cases for the last 32 years of  
12 my career, and that is starting with the Bronco way back in the  
13 early 80's moving up to the Explorer and other cars.

14 Also the mass torts of particularly the pharmaceutical  
15 cases and was on the executive committee of what we call Fen  
16 Phen II in California and tried a Fen Phen case in California.

17 I would like to also point out that the executive  
18 committee, which is what I am applying for, has one woman on  
19 it. Since 50 percent of the population are women driving the  
20 families in these cars, I would like to bring that perspective  
21 to the executive committee.

22 I would also throughout my career have been involved  
23 with long-lasting cases that have taken tenacity, most recently  
24 the lead paint case in California. We sued the lead paint  
25 companies to prevent lead poisoning in children, a 14-year case

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1 so far and we tried that last summer with a \$1.5 billion  
2 verdict. I hold that up not because it was an MDL, but just to  
3 show I am willing to put in the time and the effort and  
4 resources to these cases.

5 Finally, I'd like to mention what I did not in my  
6 papers, which is when I was President of the Association of  
7 Trial Lawyers of America, now AJ, American Association for  
8 Justice, 9-11 happens, we went to Congress and said if you are  
9 willing to set up a compensation system, we will do that pro  
10 bono, and so I was in the leadership in setting that up  
11 nationwide with hundreds of lawyers and representing the  
12 approximately 3,000 victims and helping set up compensation  
13 system with Ken Feinberg, working directly with him and even  
14 presenting one of my cases before him here in New York. I had  
15 an office here in New York and went back-and-forth.

16 I use that as an example of my ability to work in a  
17 leadership position and work with other lawyers on complex  
18 issues and getting them resolved. There are many type of  
19 lawyers for you to choose from, many of which are my great and  
20 good friends, and I appreciate my consideration.

21 Thank you.

22 THE COURT: Before you step down, and I appreciate  
23 your economic use of time. Can you just tell me the cases you  
24 have in the MDL, how many cases or plaintiffs you have.

25 MS. ALEXANDER: In this case, I apologize, I have the  
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1 Grover Marion case, a 2013 car, and was filed originally in  
2 Central District of California. I removed here. That is the  
3 case that is the first one to bring in the key as part of the  
4 ignition. We brought that in, the first one to expand it to  
5 the key for the April 10th, 2014 recall.

6 It actually has been severed with part of it still in  
7 California because there is also the Cruz is recalled for the  
8 axle issue, the axle breaks, and the court left the axle issue  
9 in California and sent the ignition here.

10 THE COURT: Economic loss claims?

11 MS. ALEXANDER: Economic loss. There was an accident  
12 on the top of the hill in San Francisco when it quit working.  
13 There was a crash.

14 THE COURT: Thank you. The next two, and I will ask  
15 the person on deck to get in the on-deck circle right at the  
16 back there.

17 Benjamin Bailey, who is also I think speaking on  
18 behalf of Eric Snyder and Dawn Barrios, if you could come up,  
19 please.

20 MR. BAILEY: I am Ben Bailey. I am not Mr. Andrews,  
21 in answer to your questions. We applied to be on the executive  
22 committee. My firm's client, Stephanie Cardone, is one of the  
23 named plaintiffs in the first Ramirez case we filed along with  
24 Ms. Cabraser. We have 30 other plaintiffs and different cases  
25 that we have filed with that group, interrelated groups of

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1 people. Those are all economic loss cases. I am looking at a  
2 handful of personal injury cases which we haven't decided what  
3 to do with yet, including a couple involving the Cadillacs that  
4 were recently subject of a do not sell order. One of those is  
5 a death case in Virginia that nobody has heard about yet.

6 The other one is a car owned by my 89-year-old father  
7 who is not driving it, thank the Lord.

8 My prior experience in these cases, mine personally is  
9 in Toyota. The first time I ever got involved in one of these  
10 was five years ago when my firm undertook one of the first  
11 personal injury cases against Toyota, a death case in Flint,  
12 Michigan, and that is what I have spent have the last four  
13 years of my life doing.

14 Mr. Snyder is in the same body. We also have folks in  
15 our firm, like Bob Lory named in our submission, spent a decade  
16 defending cases before he saw the light and left the dark side.

17 Other commitments actually we always have. One of the  
18 advantages of having founded the firm, I can have people cover  
19 for me. In the last two or three weeks, I am involved in a  
20 large case on behalf of the FDIC against Bank of America, which  
21 I think is going to be settled, as you read about maybe in the  
22 newspapers.

23 We were supposed to be trying the next Toyota  
24 bellwether case during the two weeks, but we are engaged in  
25 settlement talks. I have twelve personal injury and death

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1 cases to settle, will go away. Personally, I have the time and  
2 can make the commitment, the resources and the teamwork. In my  
3 submission, you can see how many thousands of hours and  
4 millions of dollars my firm spent on Toyota. We are prepared  
5 to do that again.

6 I want the court to know just briefly that we don't  
7 apply for MDL positions lightly. I don't go to all the MDL  
8 panel hearings, and the last one of these I personally appeared  
9 in front was Judge Selden last time. We are here because we  
10 think we have something to contribute. I have a complex  
11 litigation practice. I represent plaintiffs and defendants. I  
12 do a lot of white collar criminal defense. We are used to  
13 handling cases that require millions of documents and lots of  
14 hours and lots of time.

15 In this case, in the Toyota case, for example, we are  
16 still dealing today with some of the confidentiality issues,  
17 access to court issues that you talked about earlier in your  
18 prefatory remarks to this hearing. We would like to have the  
19 opportunity to do this again. That is my practice. My people  
20 are young, all younger than I am. That is one of the beauties  
21 of starting your own firm.

22 They behave naturally the way Section 10.21 of the  
23 complex litigation manual requires them to act. I don't know  
24 if that is because that is the way they are or because that is  
25 the way we practice law in Charleston, West Virginia where our

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1 mother ship is. If you a jerk to somebody today, you hear  
2 about it tomorrow. We try to practice law the way the rules  
3 want us to and the way you would. Should you appoint us to  
4 this committee, we will lead as we always do, by example, by  
5 inclusion and by hard work. You have a hard decision in front  
6 of you. Thank you for the time.

7 THE COURT: All right. The only thing I can comment  
8 on, in New York if you're a jerk to someone today, you hear  
9 about it today.

10 MS. BARRIOS: I am Dawn Barrios, attorney from New  
11 Orleans. I have applied for the position of state-federal  
12 liaison counsel, and I have been so nominated by the temporary  
13 lead counsel. I hold that position now and three MDLs in  
14 Toyota, in Actos and in Chinese drywall. Toyota is in the  
15 process of settling the personal injury cases, as Mr. Ben  
16 Bailey just remarked, and I am assisting with the state counsel  
17 to get them coordinated and moving through the federal MDL  
18 settlement.

19 I have been lead counsel before. I have been on many  
20 plaintiffs' steering committees. I do have the time and money  
21 to be able to afford to do this work. I would like to comment  
22 that I appreciate your early recognition of the need for  
23 federal-state coordination by your Order No. 1. I also  
24 appreciate GM, as defense counsel, providing the names of those  
25 cases.

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1           This would be, if I were chosen to be federal-state  
2 coordinator here, this would be my first case in 7 cases that  
3 the defendant has given us the information that we requested.  
4 The federal-state coordination comes from your Honor, comes  
5 from leadership. There are so many different things you could  
6 do. Someone had remarked about you're sitting with the  
7 bankruptcy court judge to hear various issues.

8           You could do that with a state judge on some issues  
9 like in Daubert. I recommend you open up the dialogue with  
10 state court judges as early as possible. They are, by my  
11 count, 14 or 15 right now, and I believe the state court judge  
12 will more readily accept cooperation if the federal judge  
13 reaches out to him or her.

14           I provide to the state court judges all the orders  
15 that your Honor would hand down. I encourage them to accept  
16 the same orders particularly at the front end of the litigation  
17 on preservation and various other matters, protective orders,  
18 plaintiff fact sheets so GM doesn't have different obligations  
19 in various different venues. I do a newsletter to all counsel  
20 outside of the MDL to let them know what is going on.

21           I provide your Honor every month or every status  
22 conference with a CD with all of the important information on  
23 state court cases. We like to keep track of when discovery is  
24 cut off. We like to keep track of when expert reports are due  
25 and, of course, trial dates. I do help with a webinar. We did

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1 this in Toyota. We planned a webinar for state court cases so  
2 they could understand what is going on.

3 The most important thing I left for last, and that is  
4 the coordination of discovery. There should be one depository.  
5 Everyone should have access to it, and this is something that  
6 is easy to do on the front end and becomes more difficult as  
7 you go on. I believe that your Honor has recognized that fact,  
8 and I appreciate it, and I would look forward to the  
9 opportunity to serve your Honor in the position of  
10 federal-state liason counsel.

11 THE COURT: Can you tell me what kinds of cases and --

12 MS. BARRIOS: I filed one case in the MDL, Karen  
13 McCarthy. It is a 2011 car and it is economic loss. I am  
14 evaluating personal injury cases and other economic loss cases  
15 in my office.

16 THE COURT: Thank very much.

17 Mr. Becnel, I neglected to call you up to the on-deck  
18 circle before, if you can make your way up.

19 Mr. Berman, you're on deck.

20 MR. BECNEL: Daniel E. Becnel, Jr. I have been  
21 practicing law for 46 years. I won one of the first million  
22 dollar verdicts in the United States my first year out of law  
23 school.

24 Since that time I have been involved in most of the  
25 major MDLs over the years. I usually have the lead plaintiff.

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1 I usually file the first MDL petition. I have argued probably  
2 more cases than almost anybody in this case for MDLs starting  
3 with swine flu, which involved the government and  
4 Guillain-Barr Syndrome.

5 I have a firm -- we filed three cases with Ken  
6 Feinberg -- I have a firm that involves lawyers that work -- my  
7 daughter-in-law works for the Senate of the United States for  
8 six years. My son has worked for the House for three years.  
9 My daughter-in-law was an Assistant U.S. Attorney for 9 years.  
10 My brother is a lawyer. His wife is a lawyer. My wife is a  
11 judge. I have a son who works for the President of the United  
12 States and has been so for the last six and a half, seven  
13 years. The last case he tried with me was with Kirkland &  
14 Ellis, which we received a \$95 million verdict on. He decided  
15 to go into public service and he has been doing that ever  
16 since, coordinating, for example, all of the G8, the G20,  
17 multiple trips to Afghanistan and Iraq for the president and  
18 vice president.

19 Just in the last four weeks he organized for the  
20 President of France and the President of the United States the  
21 coordination of the Normandy Invasion Celebration. He spent  
22 two weeks in China with Michelle Obama, coordinating that with  
23 her. He went with President Clinton last week to the AIDS  
24 conference in Australia, and the president just asked him to  
25 coordinate the G8 conference Wales, which will be this coming

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1 month.

2           In addition to that, I represented 61,000 people pro  
3 bono in the levy failure cases. That means filling out 61,000  
4 proof of claims, Form 95s. I didn't see very many lawyers  
5 doing it even if they thought they could make some money.  
6 Well, I lost a lot of money and I am still in litigation in  
7 that case.

8           I have an appeal in the Fifth Circuit Court of  
9 Appeals. Last week I got 26 boxes from the U.S. Attorney's  
10 Office, U.S. Army Corps. of Engineers. I have done almost  
11 every kind of case there is. I usually have the Chinese  
12 drywall, which is a case I started, I had the lead plaintiff,  
13 the Sean Peyton, the Coach of the Saints. I tried a case for  
14 Drew Brees, quarterback of the Saints in a few weeks. I will  
15 try and leave this Court today to go to Puerto Rico to do 10  
16 days of depositions in a case that had a very similar problem  
17 that you face.

18           We were stuck with one of the companies going bankrupt  
19 here in New York for four years and we couldn't do anything  
20 with it. I have taken depositions all over the world. I  
21 helped write the product liability law in 1995 for Japan, at  
22 the request of the Japanese government.

23           I teach at the Technical Institute of Vienna and  
24 Austria on product liability and product failure. I have the  
25 highest verdicts still for 77 death cases from an admiralty

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1 case, the largest chlorine case in the country.

2 THE COURT: Mr. Becnel, you have got the alarm. What  
3 kind of cases in the MDL?

4 MR. BECNEL: I filed two of the first cases and argued  
5 the case, and then I put three in the Feinberg settlement  
6 program, but we got 50 referrals from around the country.

7 THE COURT: At the moment in the MDL do you have  
8 economic loss? Personal injury?

9 MR. BECNEL: No economic loss. Personal injury and  
10 death cases all going to Ken Feinberg.

11 THE COURT: Thank you.

12 Mr. Berman is up next and Jeffrey Block is on deck.

13 MR. BERMAN: Good afternoon, your Honor.

14 I seek a lead position. I have 7 cases in the MDL  
15 with 35 class representatives covering 24 different states. My  
16 clients include the ignition 2.1, the ignition 10, I'll call  
17 them, and non-ignition switch cases as well.

18 The third question you asked is my MDL experience.  
19 I'll just mention, electronic books here in front of Judge  
20 Cote, average wholesale price which I actually tried, the Enron  
21 ERISA case, largest ERISA case in U.S. history.

22 Let me start with something Judge Cote asked me. She  
23 said you're in Seattle. Although I have offices in 9 cities, I  
24 am based in Seattle. I 65 lawyers. I have a partner in New  
25 York working daily on the bankruptcy matters.

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1           Why should I appoint you? It is a New York case. I  
2 said, your Honor, the consumers at the end of the day don't  
3 care where a lawyer is based; they care the result. That is  
4 all they care about. When people in the average wholesale  
5 price case got three times their damages, they didn't ask where  
6 I was from. When millions of people got a brake override in  
7 Toyota, they didn't where I was from.

8           You want to pick the best lawyer. I suggest I have  
9 unique experience that distinguishes me from all this talent in  
10 the room, and that is Judge Selden called the Toyota settlement  
11 and the class lawyers extraordinary. Although I work for Mr.  
12 Robinson daily and Ms. Carbraser, I was the lawyer responsible  
13 for economic loss case primarily.

14           I spent 2.5 years of my life doing one thing; dealing  
15 with the same issues we are going to deal with here, choice of  
16 law, the laws of 50 states, class certification, manifestation  
17 of defect issues and damages, which is a very tricky issue.

18           Why wouldn't the class be best served by a lawyer who  
19 has just done it and produced the biggest result in U.S.  
20 history auto defect case. I bring more experience than just  
21 that. Because I have been in so many MDLs, I was able to  
22 streamline for Judge Selden.

23           In the AWP, Average Wholesale Price case, I suggested  
24 we do a one-state test case. I brought that concept to Judge  
25 Selden when the defendants wanted to brief motions to dismiss

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1 in all 50 states which would have overwhelmed the court, and I  
2 suggested a test case approach. She adopted. I suggested a  
3 test class case approach, which she adopted. That led to an  
4 efficient MDL which resolved itself in almost a record 2.5  
5 years.

6 The last two points:

7 One, a lot of times class action lawyers get  
8 criticized because they don't know their clients. They have no  
9 real client. My firm has personally interviewed 500 class  
10 members. We have, as I mentioned, 35 class reps and I -- and I  
11 didn't see this in anyone's application -- I have actually sat  
12 in this class, been in my clients' homes so I can understand  
13 what they're going through. This isn't some trick for me to  
14 get my name in the newspaper. It is real to me.

15 You asked about other commitments.

16 Once I was appointed in Toyota, it was such a big case  
17 that was it, I had other MDLs and other cases, but it became my  
18 case. My firm put in 34,000 hours, and that is what I plan on  
19 doing here. In Toyota, other cases came up like BP, and people  
20 ran around to try the next biggest case. I didn't. Mr.  
21 Robinson didn't. We stayed. When the federal government came  
22 out and said you have no case, NASA says we can't find anything  
23 wrong with these cars, we stayed in. This is what you want in  
24 lead counsel.

25 The last point, the three of us worked marvelously

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1 together in the Toyota case. We know each other's strengths.  
2 We have been able to demonstrate the short time leading --

3 THE COURT: Mr. Berman, your time is up. Mr. Boies is  
4 up next after Mr. Black. Please step up to the on-deck circle.

5 Mr. Block.

6 MR. BLOCK: Jeff Block from Boston. My firm is Block  
7 & Leviton. We represent the Phaneuf plaintiffs in the MDL.  
8 That is the only case we filed in the MDL, and have 8  
9 plaintiffs, all of whom purchased their cars after GM emerged  
10 from bankruptcy.

11 We are seeking a position on the executive committee,  
12 and we represent economic loss plaintiffs. As far as MDL  
13 experience, I put that in a letter, the few cases I have been  
14 involved in. Right now I am currently involved in the BP  
15 litigation scheduled to go to trial in May of next year. I  
16 have been involved in MDLs involving Fannie Mae, which was  
17 another large case pending down in Washington, D.C.

18 Our request to be appointed to the executive committee  
19 turns on what we've done to date, which we think is to advance  
20 the interests solely of the post-bankruptcy purchasers. We  
21 think that when you look at the Second Circuit's decision in  
22 Literary Works, the court there talks talked about having  
23 independent counsel for claimants in the class who have  
24 different legal claims with different strengths.

25 There on an objection, the settlement was overturned

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1 on appeal. I know your Honor has talked about settlement,  
2 which I would be surprised if this case did not settle. Judge  
3 Gerber has brought up settlement.

4 Our point, we think having independent counsel  
5 involved in the case early on solely to look out for the  
6 interests of the respective different strengths of the  
7 claimants post-bankruptcy we think would make sense and would  
8 address the concerns that the Second Circuit spoke to about  
9 structural defects. Unless your Honor has any further  
10 questions, I have nothing further.

11 THE COURT: Thank you very much.

12 After Mr. Boies is Ms. Cabraser. After Ms. Cabraser,  
13 we going to take a brief break to spare the Court Reporter and  
14 then resume.

15 MR. BOIES: David Boies, Boies Schiller. Our  
16 plaintiff is an economic loss plaintiff, Elizabeth Johnson. We  
17 are applying for lead counsel, or in the alternative, the  
18 executive committee.

19 I should say at the outset that my application is not  
20 intended in any way as any criticism of the temporary co-lead  
21 counsel. I know two of them very well, one by reputation.  
22 They all are excellent lawyers with great experience. We offer  
23 our services because we believe we can make a contribution for  
24 three reasons:

25 First, we think that the record that I have and the  
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1 record that my firm has in accomplishing fast, efficient, low  
2 charge recoveries for plaintiffs generally in class actions and  
3 in MDLs is unparalleled.

4 We know how to do those cases. We know the  
5 technology. In the vitamins MDL 16, 17 years ago by Judge  
6 Hogan in the District of Columbia, we pioneered a wide variety  
7 of electronic discovery mechanisms that are used today. We  
8 have taught other law firms how to use that technology. We  
9 have had very large recoveries for very low cost and we have  
10 done that in many cases extraordinarily fast.

11 We do that in part because the defendants know that we  
12 have the capability of taking cases to trial. We have 220  
13 litigation lawyers, 260 lawyers in the firm, 220 litigation  
14 lawyers. We have the capacity and the resources to thoroughly  
15 staff and understand these cases.

16 Second, while I agree completely with Mr. Berman that  
17 the job the court has is to pick the best lawyer, I do think  
18 that there is merit in having at least one co-lead counsel be  
19 from the area, the venue where the case is pending. I do not  
20 agree with the practice in some districts of picking most or  
21 all of the co-lead counsel from that venue.

22 I agree completely with Mr. Berman on that issue. I  
23 do believe that there is merit in having one co-lead counsel  
24 that is primarily from this area, regularly tries cases here  
25 and in the bankruptcy court and has that experience.

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1           The third reason is that Boies Schiller & Flexner's  
2 profile in terms of prospective, personnel, experience is  
3 different from co-lead counsels'. If I thought there are  
4 three firms like mine, I don't think I would recommend that you  
5 pick all three of them because I think having a difference in  
6 perspective, a difference in outlook, a difference in personnel  
7 can contribute.

8           I think that this is an important case. It is a high  
9 profile case. It is important to get the very best lawyers.  
10 It is not a time for false modesty. I suggest to you that one  
11 relevant question to ask yourself as you consider this choice  
12 is if you were the plaintiff yourself, if it was your case and  
13 you had to pick three lawyers from this room, would one of  
14 those three be myself and my firm. Thank you.

15           THE COURT: Thank you very much.

16           Ms. Cabraser, and we'll go to our break.

17           MS. CABRASER: Thank your Honor. Elizabeth Cabraser,  
18 from the firm of Lieff, Cabraser, Heimann & Bernstein.

19           In this MDL we represent over 50 class representatives  
20 from 46 states, most of whom are gathered in the Ramirez  
21 complaint originally filed in the Central District of  
22 California. Other complaints followed including Louis Miccici,  
23 Sauer and Ross in various districts across the country.

24           We do represent personal injury and wrongful death  
25 clients, approximately 150 at this time, many of them we hope

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1 will be compensated through Mr. Feinberg's resolution protocol.  
2 One is the named plaintiff as part of the Texas MDL. Our  
3 clients and their complaints include both pre and  
4 post-bankruptcy cars, both pre and post-bankruptcy incidents,  
5 and focus on the independent, post-bankruptcy liability of  
6 MDL -- I am sorry -- new GM.

7 I am not going to repeat my application. My firm has  
8 offices here in New York and in San Francisco. Collectively,  
9 we have served as lead counsel in many, many MDLs. Those in  
10 which I personally served in a lead role are listed at least in  
11 part in my application, over 30 of them across the country and  
12 over the years starting in 1981, and while those cases had  
13 their ups and downs, I am pleased to report all of them  
14 eventually, often after trial, often after many years of  
15 appeals, resulted in positive outcomes, compensation and  
16 prophylactic relief for the class members, and I would bring  
17 that tenacity to bear in this case.

18 We don't know in what direction this case will turn.  
19 I think your Honor would be well-served to have in service to  
20 you in the case and the plaintiffs a variety of plaintiffs'  
21 counsel with an arrays of views and perspectives.

22 I have spent many years trying to gather some wisdom  
23 at least from experience learning usually the hard way what can  
24 work and what can't work in an MDL, but mostly I want to take  
25 this opportunity to thank the court for the opportunity to

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1 serve as a temporary co-lead.

2 I work with our clients every day, try to get them  
3 through the recalls. We get them loaners, listen to their  
4 stories, those who have been victims of crashes are  
5 particularly difficult to work with, and so the opportunity to  
6 do useful work, to bring some organization, to bring some  
7 progress to this litigation has been a joy to me, including  
8 working with so many experienced, insightful counsel on both  
9 sides of the V.

10 If appointed to serve on an ongoing basis in a co-lead  
11 position, I would continue to bring my energy and efforts to  
12 listen to all, to work with all, to try to achieve consensus  
13 wherever possible and to advance the common benefit of all of  
14 the plaintiffs through this litigation. Thank you.

15 THE COURT: Just one point of clarification. I take  
16 it in the MDL, you have only economic loss plaintiffs, that  
17 your personal injuries plaintiffs are either in state  
18 litigation or in the Feinberg process?

19 MS. CABRASER: That's correct. Maybe I, as you heard,  
20 am not eligible for Feinberg protocol because we represent  
21 clients in all the recalls. If the protocol is expanded, we  
22 will be filing some of those cases here.

23 THE COURT: You're not involved in the Andrews  
24 litigation, ignition switches cases. Is that correct?

25 MS. CABRASER: Yes and no. We are not involved in the  
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1 Andrews cases. We have ignition switch cases, but we have  
2 cases involving all of the subsequent recalls which would  
3 include the Camaro recall, some of the recalls GM is currently  
4 considering the ignition switch.

5 THE COURT: We are going to take a break. We are  
6 going to resume promptly in 10 minutes, which means I want all  
7 of guys back here in 8 minutes so you're ready to go, and in  
8 particular Jane Conroy is up next, and she should be ready to  
9 go and resume in 10 minutes.

10 (Recess)

11 THE COURT: You may be seated.

12 All right. Picking up where we left off with Ms.  
13 Conroy on deck. Mr. Cooper, if you can make your way to the  
14 on-deck circle, please. You may proceed.

15 MS. CONROY: Good afternoon. Jane Conroy, C O N R O  
16 Y, from Simmons Hanly Conroy here in New York City.

17 I have two cases filed in the MDL. Both are economic  
18 loss cases, both involve the ignition switches. I have 131  
19 clients from 33 states. I applying for a lead position and I  
20 am flexible and I will serve at the court's pleasure.

21 You have my application. It answers many of the other  
22 questions you had earlier, but I would like to provide you with  
23 some additional thoughts particularly given the recommendations  
24 of the three temporary lead counsel for leadership.

25 Sadly, I was not included in their recommended slate.

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1 That, as I will explain, is deja vu all over again for me. As  
2 you can see from my qualifications, not only have I been in  
3 almost every major pharmaceutical MDL in a leadership position  
4 in the last decade or so, most significantly in 2010 I was  
5 appointed to the lead counsel committee by Judge Selden in the  
6 Toyota economic loss case.

7 Judge Selden made that appointment after a hearing  
8 much like this hearing today. At that hearing, it was despite  
9 the fact that the three temporary lead counsel that you see  
10 here today had recommended slates that did not include me.

11 Despite that, Judge Selden rejected those slates and  
12 apparently based on my experience in automotive products  
13 liability, class actions and in complex nationwide litigations,  
14 he found me well suited to represent Toyota owners in a  
15 leadership position, and he was correct to do so because my  
16 firm and I performed admirably in that litigation.

17 In fact, Mr. Berman himself appointed me as allocation  
18 counsel after working with me for a couple of years to the  
19 settlement process. It is not just me bragging about it. My  
20 expertise, my dedication was proven by the now ironic fact that  
21 Mr. Robinson, Mr. Berman, Ms. Cabraser themselves  
22 recommended -- and, most importantly, Judge Selden agreed --  
23 that my firm should receive the highest lodestar multiplier of  
24 any other firm other than four out of the five leadership firms  
25 in Toyota.

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1 I was also a rarity among the group because my firm  
2 paid 100 percent of the requested assessments in Toyota. Even  
3 one of the three temporary lead counsel firms was found to be  
4 in arrears of close to half a million dollars at the end of  
5 that case. Because access to significant resources is just a  
6 practical reality of the type of work we do in cases of this  
7 magnitude, it is noteworthy my firm has recently merged, and I  
8 am a named partner in a nationwide plaintiff law firm that has  
9 resources and personnel to rival any other plaintiffs' firm  
10 here before you today.

11 We have over 70 lawyers, 150 support staff, six  
12 offices around the country, and I and my partner here in New  
13 York -- and in particular Paul Hanly, who you have his  
14 qualifications, we shared an application -- are highly  
15 respected and long-standing members of the Bar of this Court.

16 THE COURT: You have about five seconds, Ms. Conroy.

17 MS. CONROY: I will be very quick then because I want  
18 to tell you why I think I was not recommended.

19 An analysis of --

20 THE COURT: Ms. Conroy, I will have to cut you off  
21 there out of fairness, and I appreciate it. I also say I put  
22 the lead counsel in a difficult position. They have a  
23 difficult position because they have a difficult choice and,  
24 indeed, I put them in awkward position of having choose amongst  
25 their colleagues, and I appreciate the efforts they made. I

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1 recognize I put them in a little bit of a spot and I appreciate  
2 their recommendation and will consider them for whatever  
3 they're worth. I appreciate your comments and thank you.

4 MS. CONROY: I have to just tell you, I also feel like  
5 I was in a little difficult spot because I work with them as  
6 well.

7 THE COURT: Understood. Everybody going forward can  
8 work well collectively in whatever positions I put them in or  
9 do not put them in, as the case may be.

10 Mr. Cooper is up next and Mr. Cuneo is on deck.

11 MR. COOPER: Thank your Honor. Good afternoon, Lance  
12 Cooper from Marietta, Georgia.

13 I am here on behalf of a number of plaintiffs, in  
14 particular the Mosel and Saklo economic class action cases  
15 filed in California. I also represent the Van Pelt Family, a  
16 catastrophic injury case pending before your Honor.

17 Ms. Van Pelt was 16-year old young girl when she  
18 suffered traumatic brain injury result of switch defect failure  
19 and air bag non-deployment. I am a trial lawyer. I try cases  
20 for a living, primarily automobile cases. I have tried cases a  
21 number of times also against foreign automotive manufacturers.

22 I have extensive trial experience both at the trial  
23 and appellate court, appellate court level. I also represent  
24 Ken and Beth Melton in the Melton case pending in the State  
25 Court of Cobb County. I am lead counsel there.

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1 My commitment to this case is this: No law firm has  
2 been more committed to this litigation over the last four years  
3 than our law firm. We are asking your Honor to appoint us to  
4 an executive committee position. We have been nominated by  
5 temporary co-lead counsel for that position.

6 Simply put, our firm knows more about the key system  
7 defects in this case than any firm in the country. I say key  
8 system defects because as we allege in the Mosel and Saklo and  
9 Van Pelt complaints, this isn't just an ignition switch  
10 problem, it is key system problem we have alleged that needs to  
11 be discovered, uncovered and ultimately addressed by GM.

12 We are also using what we learned in the Melton case  
13 and in other cases since then to assist temporary co-lead  
14 counsel and education temporary co-lead counsel about the key  
15 system defects, including GM's knowledge of these defects for  
16 over 10 years and their concealment of these safety defects.

17 Given our previous work, we have a team of experts in  
18 place. We have already spent hundreds of thousands of dollars  
19 on experts to assist co-lead counsel in prosecuting this case.  
20 If appointed to an executive committee position, our firm would  
21 be in a position to coordinate with other counsel, to  
22 efficiently and effectively represent the interests of all  
23 clients, both economic class and personal injury and wrongful  
24 death clients.

25 I have never applied for an MDL position before. Our  
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1 firm has no prior experience as lead counsel, court appointed  
2 in MDL cases. We have handled cases in MDL, but we have lived  
3 this case the last four years, and since we respectfully submit  
4 we uncovered these key system defects, we would like an  
5 opportunity to be part of a leadership team that finishes what  
6 our firm started. Thank you.

7 THE COURT: Thank you very much.

8 Mr. Cuneo is up next and Ms. Cyganowski.

9 MR. CUNEO: Jonathan Cuneo from Washington, D.C.

10 Perhaps the most attractive feature of my application  
11 is our our firm's application is four and a half pages, double  
12 spaced, and what we are trying to do is to ask for a special  
13 designation as Washington counsel.

14 As this Court has noted, in just as recently as this  
15 morning, there is an ongoing public debate about GM's safety.  
16 I think if the court acknowledges the need for a counsel, then  
17 our firm is second to none. Specifically, I wanted to note my  
18 named partner Pamela Gilbert has a family illness that has  
19 prevented her from doing some things in the past week.

20 Since graduating till today from NYU, she devoted her  
21 life to public interest work, plaintiffs' work, safety work.  
22 She was executive director of the Consumer Products Safety  
23 Commission under President Clinton. She led the Obama  
24 transition team. That is all in the application.

25 Why a specialist designated Washington? Three

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1 reasons:

2 One is identifiability. Congressional staffers come  
3 and go. People there need somebody who is the point person;

4 Two is authority. They need to know that they're  
5 dealing with someone who is actually in touch with lead  
6 counsel;

7 Third is accountability to this Court.

8 How did I get into this case? I got into this case  
9 initially because Mr. Berman had the foresight to retain us,  
10 understanding that or bringing us into his complaints,  
11 understanding that there was going to be a need to do things in  
12 Washington. Subsequently in terms of teamwork, we have shared  
13 the benefits of what we have collected and interacted  
14 extensively with both the Cabraser firm as well as Mr.  
15 Robinson's firm. We have all been working on the DC aspect of  
16 this together.

17 Now, in terms of teamwork, I spent 28 years running  
18 trade associations for members of the plaintiffs' bar. I know  
19 them. I know it isn't always like a Quaker meeting group, your  
20 Honor, but I know how to get along with them. I am not looking  
21 for a position of authority. It is more of an ambassadorial  
22 post and in the name of my partner who will be filing a pro hac  
23 vice application here within the next 24 or 48 hours. I am  
24 happy to answer any questions the court might have.

25 THE COURT: Number of cases? Number of plaintiffs?

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1 Kind of claims?  
2

3 MR. CUNEO: In addition to the ones I have with Mr.  
4 Berman, which are economic loss cases, I have our own case  
5 which is an economic loss case in here. In terms of MDLs, I am  
6 currently lead, co-lead in four MDLs. I have done that over  
7 the years. Our firm has tried cases. We can do all of those  
8 functions, but it is not that function we are pushing for. It  
9 is the function of doing the public safety aspects of this in  
10 Washington.

11 Ms. Gilbert has worked extensively not only on public  
12 safety, but on automotive safety. She led the charge on  
13 Capital Hill in order to prevent the GM bankruptcy from taking  
14 away all claims. She has worked on the Kelly-Hawk Rental Car  
15 Bill, which would require rental car companies, in order to  
16 make the changes before --

17 THE COURT: Thank you very much. Your time is up.

18 I will ask counsel, as you speak, if you can just  
19 touch on at least the question I asked about how many clients,  
20 how many cases, and what types of claims you have at the very  
21 beginning of your remarks and then proceed to whatever else you  
22 want to say will ensure I get that information.

23 THE COURT: Ms. Cyganowski, please. Up next after  
24 that is Mr. Miles.

25 MS. CYGANOWSKI:

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1 MS. CYGANOWSKI: Melanie Cyganowski, C Y G A N O W S K  
2 I, a partner at Otterbourg, PC., which has offices and its only  
3 offices here in New York City.

4 I am applying only for the position of plaintiffs'  
5 liaison counsel with the bankruptcy court. I served as  
6 bankruptcy counsel and co-counsel with Harvey Tropin and Adam  
7 Moskowitz, and together with their co-counsel, we represent 135  
8 ignition switch economic loss plaintiffs in 33 states.

9 Prior to becoming a judge, I was a commercial and  
10 securities lawyer at Sullivan & Cromwell and Milbank Tweed.  
11 While I was at Sullivan & Cromwell, I was part of the team that  
12 was the defendant's liaison in a case called the Baldwin United  
13 MDL case, which much like this case involved an intertwined web  
14 of commercial litigation and bankruptcy court. I am a member  
15 of this court. I then became a bankruptcy judge from 1994 to  
16 2007. I was granted reappointment, and declined it to return  
17 to private practice for personal reasons.

18 I have been practicing as a bankruptcy lawyer, and in  
19 that capacity was appointed by the special master in the  
20 Dibendo Security litigation by Judge Shira Scheindlin, one of  
21 your colleagues. I also serve as a mediator and consequently  
22 believe in the theory and process of consensus, which I believe  
23 will be instrumental to the plaintiffs' liaison counsel as you  
24 have defined it.

25 I am also an adjunct professor at St. John's, teaching  
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1 bankruptcy ethics. During the course of my appointment, Judge  
2 Gerber was also my judicial colleague, if you will, from across  
3 the river. In approximately 6 or 7 of my years, we know and  
4 respect each other quite a bit.

5         Shortly after the filing of the case in the bankruptcy  
6 court, Judge Gerber directed the plaintiffs' bar to get  
7 together and coalesce, and it was at that meeting on April 28th  
8 that so-called designated counsel, as we refer to them in  
9 bankruptcy court, was appointed. At that meeting I was also  
10 appointed as the bankruptcy liaison counsel and have served in  
11 that capacity since that time. Together with my colleagues at  
12 the firm, two-thirds of which are engaged solely in bankruptcy  
13 and litigation, we have interfaced with other plaintiffs'  
14 counsel, we have dealt with the designation counsel, we have  
15 appeared at the hearings. We have done what liaison counsel is  
16 expected to do.

17         I believe in the applications you have received, mine  
18 is the only one that truly has the bankruptcy experience that  
19 you're looking for in this position and I respectfully request  
20 that you appoint me to it. Thank you.

21         THE COURT: Thank you very much.

22         Mr. Miles is up next and sticking with the problematic  
23 alphabetizing, Mr. Pribanic, who I understand will be speaking  
24 on behalf of Mr. Doeblor, D O E B L E R, and Pribanic next.

25         MR. MILES: May it please the court, my name is Dee  
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1 Miles from Montgomery, Alabama and I am applying for a position  
2 on the executive committee. I have to answer your inquiry  
3 earlier. I am involved in six class actions in this MDL. Most  
4 of those are with Ms. Cabraser -- and that is not your alarm?

5 THE COURT: I forgot to reset it.

6 MR. MILES: Six class actions and we have, my firm has  
7 two cases currently that are personal injury wrongful death  
8 cases, the Van Pelt case in conjunction with Mr. Cooper, who  
9 already made his presentation as well as the Summers case which  
10 I hope will not be in this case for very long because there is  
11 remand pending. I come to this and have listened to you this  
12 morning with your instructions to not repeat and read your  
13 orders.

14 So I have read your order and I will not repeat what  
15 is in the submission. I will point out a few things for you.  
16 One I am honored to have been recommended to you by the three  
17 co-leads, and I understand the predicament they were in making  
18 those recommendation, but I am honored because we all worked  
19 together in the Toyota case and all reached a very successful  
20 result in that case. We all work together as a team and it  
21 work wonderfully.

22 My firm was involved in a Toyota case, the Book Out  
23 case. In the Book Out case, that was the only case successful  
24 for a plaintiffs' verdict and and the only one tried, and some  
25 believe was the impetus to the settlements in both the class

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1 side as well as the personal injury side.

2 My firm is involved in the Melton case with  
3 Mr. Cooper, so we bring to this Court a unique perspective of  
4 both the economic loss and the wrongful death personal injury  
5 cases to this Court, and we will certainly balance those  
6 priorities, and we want to make very clear to this Court that  
7 our law firm will completely cooperate with discovery in both  
8 the Georgia case as well as the MDL, and that is our goal.

9 Your Honor, I do not need the additional time.  
10 Everything is in my submissions, and I appreciate the time.

11 THE COURT: Thank you. Mr. Pribanic, you may  
12 approach. Up next next is Mr. Michael Donovan.

13 MR. PRIBANIC: Victor pRIBANIC from Pittsburgh,  
14 Pennsylvania. I have one wrongful death and survival action  
15 filed that is encompassed in this MDL on behalf of a widow and  
16 five children, whose husband and father respectively was killed  
17 last November in a 2006 Saturn Ion.

18 I do not and will not be representing any economic  
19 loss plaintiffs. Our firm has not applied for a leadership  
20 position in an MDL. Formally, I frankly wish my client's case  
21 was not in this one. I would like to seek a position on the  
22 executive committee to make sure that they can get discovery  
23 rapidly through this case and that they don't get buried under  
24 what we've talked about for 99.9 percent of the time today, it  
25 seems, that is, the economic claims which are important to be

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1 sure, but the needs of those people are different than the  
2 needs of victims of tragic deaths and injuries.

3 I think so far of all the applicants I've seen, I am  
4 the sole person who has only an injured or deceased client's  
5 interest at heart. With all due respect to the court, the  
6 needs to try that kind of case, the needs to settle or conclude  
7 one of the cases for economic loss are radically different, I  
8 would say.

9 Mr. Cooper's good work has already unearthed probably  
10 enough or nearly enough evidence to go try a very damning  
11 products liability and negligence action against General Motors  
12 for any post-closing cases. I have heard stories as I have sat  
13 here of people being involved in MDLs for 10 years or 14 years  
14 or 15 years. I have children from 3 to 12, orphans two of  
15 them, literally orphans and a widow who can't wait 10 or 14  
16 years because they're the tail of this economic loss juggernaut  
17 that appears to be emerging from this thing.

18 I think, frankly, that I or somebody like me or  
19 perhaps more than one of us ought to be on the executive  
20 committee at least to make sure that the needs of those people  
21 are addressed as promptly and as appropriately as can be. We  
22 have acted as lead counsel in injury cases in state courts and  
23 I have had many cases in MDLs, but have never applied and  
24 perhaps never will apply for a leadership position again, but I  
25 think it is appropriate in this case.

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1 THE COURT: Thank you.

2 After Mr. Donovan will be Don Downing.

3 MR. DONOVAN: May it please the court, Michael Donovan  
4 from Philadelphia.

5 Your Honor, we have one class action that was filed in  
6 the Middle District Of Pennsylvania on behalf of three class  
7 representatives, the McCanns, Mr. Polastro and Mr. DePalma. They  
8 are all economic loss claims representing different iterations  
9 of the ignition switch.

10 I am applying for a position on the executive  
11 committee. I think I can bring something unique to benefit the  
12 class here, and that is that among all of the very, very fine  
13 lawyers, all of whom I respect here, I stand out in having  
14 tried two auto defect class actions, two juries for successful  
15 results, not to take anything away from Mr. Robinson.

16 But they were recent auto defect class actions, and  
17 class action jurisprudence has changed a lot in the last  
18 several years. The trick with having tried an auto defect  
19 class action in the two trials I did were against Kia Motors  
20 over a brake system defect. The trick with trying those cases  
21 is they're not all that different from trying a regular case  
22 except when you get on appeal. The trick with trying a class  
23 case is trying to keep your class when you get to the appellate  
24 court, and I have successfully defended those two class actions  
25 on appeal.

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1           There are written appellate decisions. Many of those  
2 appellate decisions are referred to constantly in class cert.  
3 positions. Most recently in the class briefing in the washer,  
4 moldy washer cases that relied in part on the class decision in  
5 my Samuel Bassett V. Kia Motors case came out of the  
6 Pennsylvania Supreme Court, and U.S. Supreme Court denied cert.

7           I also tried a wage and hour class action against  
8 Wal-Mart. It resulted in a fantastic result. I won't tell you  
9 the number because I don't want to brag. The reality of it is,  
10 that, too, was affirmed on appeal, and the trick with keeping  
11 those, you have to deal with Dukes, Comcast and a host of other  
12 appellate decisions, all of which go to Rule 23, and you have  
13 the 23 (f) issues which we may have here. Your Honor, I don't  
14 know what is going to happen in this case. Likely the case  
15 will settle, no doubt about that.

16           However, it has been my experience it is better to  
17 proceed with a case as if you're going to try the case, and  
18 that is what I have done throughout my career, treat a case as  
19 if it is going to go to trial. If it happens to settle, you  
20 end up with a better result, and I think I can bring that to  
21 the team here.

22           The other point I would like to make is that you  
23 cannot really say, although I am in favor of private ordering  
24 for the selection of class counsel, the dilemma with that  
25 concept, and it often works, and I have no problem with it, but

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1 the dilemma with that is the optics are sometimes not optimal.

2 There are other cases that can affect the private  
3 ordering mechanism, and nobody is every going to know the  
4 answer to that. For that reason, I would submit that it is  
5 good to have other executive committee members, perhaps ones  
6 that weren't recommended by counsel whom I am very friendly  
7 with as we are in other cases.

8 So I would just recommend to the court to examine that  
9 and to examine my qualifications which are set out in the  
10 letter. The last point, I am not currently lead in any case.  
11 We are in a number of MDLs, but not in an executive capacity.  
12 My view, if I were selected to be on the executive committee,  
13 would be to distribute the work.

14 Thank your Honor.

15 THE COURT: Thank you very much.

16 After Mr. Downing is Mr. Eidson.

17 MR. DOWNING: Don Downing, D O W N I N G, with the  
18 Gray Ritter Graham firm in St. Louis. We have two economic  
19 loss class actions cases in the MDL. We also have one very  
20 serious personal injury case in the MDL, and we represent five  
21 other injured victims with physical injuries.

22 I have applied for the position of co-lead counsel or  
23 alternatively for a position on the executive committee. I  
24 have been recommended by co-lead counsel for a position on the  
25 executive committee and would be honored if the court were to

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1 appoint me to the executive committee.

2 Your Honor, I spent the last 30 years representing  
3 plaintiffs, defendants and governmental entities in complex  
4 litigation, including MDLs and class actions. As Chief Deputy  
5 Attorney General for the State of Missouri, I enforced Missouri  
6 consumer protection laws for three years and was involved in  
7 promulgating regulations under those laws.

8 I also work with state attorney generals from across  
9 the country on multistate consumer fraud actions to enforce  
10 laws in other states. I personally have litigated when I was  
11 at the A.G.'s Office numerous complex cases including the two  
12 largest consumer fraud recoveries in the state's history at the  
13 time.

14 As an attorney representing plaintiffs for just the  
15 last 10 years, I have been co-lead counsel in cases which have  
16 resulted in \$1.5 billion in settlements during that time  
17 period. I have had the opportunity to work with extraordinary  
18 lawyers across the country, many of whom are in this room, and  
19 I have, I believe, I have demonstrated my ability to work  
20 cooperatively not only with co-counsel on the plaintiffs' side,  
21 but also with defense counsel.

22 I have learned over the years that if you work  
23 cooperatively, you get things done for your clients in a more  
24 efficient and expeditious manner. I sincerely believe that my  
25 ability to work cooperatively with co-counsel is one of my

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1 strengths that I bring to the table.

2 To tell you a little bit about my style, I am a  
3 hands-on litigator who is willing to work 24/7 to get the best  
4 possible result for my client in the genetically modified rice  
5 litigation, in which I currently serve as co-lead, but that  
6 case is winding down, and I do believe I have more than a  
7 sufficient amount of time to work on this case if appointed,  
8 your Honor, but in that case I took 35 of the 167 depositions  
9 taken around the world. I was the lead trial counsel in the  
10 three bellwether trials each of which resulted in a successful  
11 plaintiffs' verdict. Then I was the lead negotiator on a \$750  
12 million settlement for rice farmers around the country.

13 My firm, Gray Ritter & Graham, has a very deep talent  
14 pool. We are well known throughout the midwest as one of the  
15 best brief-writing firms in that region of the country, and  
16 half a dozen of my colleagues have spent the last two decades  
17 in large part doing product defect automobile liable cases and  
18 trying those cases to verdict. All those six lawyers I  
19 mentioned in my paper all have received multiple awards for  
20 that work.

21 I commend our co-lead counsel for recommending as  
22 members of the executive committee firms like ours that have a  
23 significant depth and breadth of practice in the areas that are  
24 raised here, and I also have to say I want to commend them for  
25 working with all of plaintiffs' counsel to try to forge a

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1 consensus on the important issues that have arisen so far both  
2 in this litigation and also in the bankruptcy court as a  
3 co-lead counsel, myself and two other MDLs in the last five  
4 years.

5 I understand the difficulty working with plaintiffs'  
6 lawyers and trying to forge consensus, but in my opinion, they  
7 have done a great job doing that.

8 THE COURT: Mr. Eidson. After Mr. Eidson is Mr.  
9 Flaxer, F L A X E R.

10 MR. EIDSON: I feel very inadequate after listening to  
11 all these presentations, so I'll make this short.

12 My name is Mike Eidson from Coral Gables, Florida. We  
13 filed one economic loss action with many plaintiffs in many  
14 different states. I have no other serious commitments right  
15 now that would prohibit me from working on this case. I am  
16 applying for the executive committee.

17 I have been working on products liability automotive  
18 cases since one of the first Ford Pinto cases verdict I got in  
19 1975. That is 39 years. I have been dedicated to handling  
20 product liability cases the entire time except for one year  
21 when I was president of ALA.

22 I have testified before Congress. I have worked with  
23 NHTSA and I work with lawyers, helping them learn to try  
24 product liability cases and was one of the founders of the  
25 Attorneys Information Exchange Group, which shares information

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1 about products liability cases with lawyers all over the United  
2 States.

3 I have been working on this case since the outset and  
4 I know the technical issues in it. I was appointed by Judge  
5 Sarah Barker in a case that I think is the most similar to this  
6 case to be lead counsel, beginning as co-lead counsel for four  
7 years, and lead counsel for four years in India in the  
8 Firestone litigation which involved hundreds of depositions,  
9 preparation of expert witnesses, weekly meetings with the judge  
10 on discovery issues like this. I know the administrative part  
11 of this case from the class action side and I know the  
12 substantive case from handling 40 years worth of products  
13 liability cases.

14 I have tried cases against practically all the  
15 automobile companies over these years and I handled cases  
16 against all the manufacturers except Kia. That is the only one  
17 I can't think of. Not only in this country, but overseas.

18 I am committed to work on this case. I love all three  
19 of your temporary lead counsel. I have no problem whatsoever  
20 with them. I work well with them. I was on the Toyota PSC  
21 with them, and they did an outstanding job, and I am sure  
22 they'll do an outstanding job here. I respectfully request an  
23 opportunity to serve the plaintiffs in this case on the  
24 executive committee. Thank your Honor.

25 THE COURT: Thank you very much.

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1 Mr. Flaxer is up. After Mr. Flaxer is Ms. Greenwald,  
2 G R E E N W A L D.

3 MR. FLAXER: Thank you for the opportunity. I am a  
4 member of Golenbock Eiseman Assor Bell & Peskoe, a New York  
5 City law firm with 55 lawyers.

6 I had the bankruptcy practice at that firm and also a  
7 member of our complex business litigation group. I am not a  
8 class action lawyer. I picked up on your Honor's comment in  
9 Order 5 for the need on the executive committee of someone to  
10 serve as bankruptcy coordination counsel. I believe, based on  
11 what we have heard in the court today, that there will be a  
12 very substantial need for that expertise.

13 I with co-counsel, Mr. Schmidt, have filed three  
14 cases, economic loss cases, two in New York, and we filed the  
15 adversary proceeding before the bankruptcy court seeking relief  
16 from the court's sale order that in essence got the ball  
17 rolling in the bankruptcy court, and shortly thereafter GM  
18 filed their motion to enforce the sale order.

19 I am one of the two law firms, my firm is one of the  
20 two law firms that has been appointed by Judge Gerber to serve  
21 as representatives of the plaintiffs before him. So as a  
22 result, I have been intimately involved in this process that  
23 you've heard a lot about this morning about arriving at  
24 stipulations of fact to submit to Judge Gerber which have now  
25 been submitted and dealing with issues of whether or not there

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1 should be discovery before the bankruptcy court in the entire  
2 group of issues before the bankruptcy court.

3 As a result, I have been intimately involved in  
4 Reading the Valukas Report more times than I care to remember,  
5 and I have been involved in basically every aspect of what has  
6 been happening before the bankruptcy court. My experience  
7 includes, as I mentioned in my letter, a case called 1031 Tax  
8 Group. We represented a Chapter 11 trustee.

9 As part of bringing about a successful result, we  
10 entered into what I think is a unique cooperation agreement  
11 with the pending class action seeking similar damages, and we  
12 worked very closely with the class action lawyers and achieved  
13 and extraordinarily good result for the victims of the truly  
14 heinous Ponzi scheme.

15 Obviously, I have no other MDL cases that would be a  
16 conflict. That is not what I do for a living. I think it  
17 would help the process to bring my perspective, which would be  
18 a little bit different to the executive committee.

19 I would also note that I am on the panel of mediators  
20 in the Southern District of New York Bankruptcy Court and serve  
21 as mediator frequently, which I think was going to become very  
22 important here, and I think understanding of the bankruptcy  
23 process will be essential in forging a settlement that takes  
24 into account all issues. Thank your Honor.

25 THE COURT: Thank you. Ms. Greenwald.  
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1 On deck is Mr. Hilliard.

2 MS. GREENWALD: Good afternoon. Robin Greenwald. I  
3 am applying for the position of plaintiffs' liaison counsel or,  
4 in the alternative, executive committee. I am with the firm of  
5 Weitz & Luxenberg, with offices in New York City.

6 Let me address your first question about cases in the  
7 MDL. Our firm has filed eight cases together with some of the  
8 firms you have heard from today, all in the MDL. 17 of those  
9 class representatives are our clients. We have claims both  
10 based on successor liability and also claims uniquely against  
11 new GM.

12 For example, we filed a case, the Sauer case. Our  
13 client, which involves solely the 2010 to 2014 Camaro case, all  
14 involving cars, vehicles that were put together, were  
15 manufactured after July of 2009 which is after the pertinent  
16 bankruptcy case file.

17 We also have approximately a thousand economic loss  
18 clients representing in 50 states. They obviously have cars in  
19 all of the recalls, not only the original February and March  
20 ignition switch recall cases, but all of the cars that have  
21 been recalled by GM to date. We have about 300 clients who  
22 have had accidents. About hundred of those are personal injury  
23 or wrongful death actions. We haven't yet filed those cases in  
24 this Court. We haven't filed them anywhere except for one case  
25 in Kentucky where our client had been sued by the vehicle with

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1 which she had an accident.

2 She actually passed away, and her estate was sued, so  
3 we made a motion to intervene in that case. Other than that,  
4 we have awaited filing our personal injury claims in part to  
5 see what happened with the Ken Feinberg fund and also to see  
6 how the personal injury wrongful death cases played out in this  
7 MDL.

8 As to MDL experience, I may be unusual in this case.  
9 In this matter I have spent about 22 years of my career with  
10 the federal government as a prosecutor and a few years as a  
11 professor of law. So most of my career was with complex  
12 litigation, but actually not MDLs. Since I joined Weitz and  
13 Luxembourg, however, I have been exclusively working on MDLs.

14 My first position was MDL 1358 before Judge  
15 Scheindlin, a case against 50 oil companies for contaminating  
16 the nation's ground water with a chemical that impacted  
17 drinking water. Following that, when that case settled and  
18 wound down, I was appointed in the Eastern District of  
19 Louisiana, where I served with Ms. Cabraser on the plaintiffs'  
20 steering committee.

21 That case, similarly winding down, we tried that case  
22 last year and we are awaiting a decision. My time on that case  
23 has substantially reduced to maybe 10 percent of my time a  
24 week. I basically have been spending the majority of my time  
25 on the GM case since February when the first information about

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1 the recalls occurred.

2 A lot of my work actually has been in bankruptcy. I  
3 have been working with Mr. Berman and Mr. Robinson's firm on  
4 behalf of Elizabeth's firm as one of the three lawyers working  
5 with designated counsel. I guess I was part of the group that  
6 managed to successfully put these stipulations together that  
7 you've heard about, your Honor. While they're not controlling  
8 in this MDL, there is a specific provision they're not binding  
9 on this MDL proceeding, and they're basically designed to focus  
10 on the issues in the bankruptcy and not the issues actually  
11 before your Honor.

12 We hope they will in some ways shape and inform the  
13 court as we go forward. Last, other than that, I have  
14 everything in my application. The only other thing I want to  
15 mention is I know a lot of people in this room. I have  
16 actually worked with counsel for GM for years.

17 THE COURT: Thank you, Ms. Greenwald.

18 MS. GREENWALD: Thank you.

19 THE COURT: Next is Mr. Hilliard. After Mr. Hilliard  
20 is Mr. Kaplan.

21 MR. HILLIARD: Good afternoon, Judge.

22 Your Honor, I am seeking a position as co-lead counsel  
23 with primary responsibility for injury and wrongful death  
24 cases. Per your court's order, we have filed directly into  
25 this MDL 622 cases. Of those 622, there were 28 deaths and 592

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1 injuries. These cases are all post-bankruptcy. There is no  
2 bankruptcy defense available.

3 I would represent to this Court this MDL will be  
4 robust, it will be mostly about the death and injury cases. To  
5 be sure, the bankruptcy is not an issue. We have also filed  
6 with this Court a motion for leave to add an additional 156  
7 cases, 20 deaths and 136 injuries, all occurring  
8 pre-bankruptcy.

9 We represent in our filings that we are aware of Judge  
10 Gerber and respect what he is doing and will agree to the  
11 stay. It is important I believe for Judge Gerber to know that  
12 this is not just an economic loss case, but there are deaths  
13 and injuries that have to defeat the bankruptcy defense in  
14 order to prevail or they won't get their day in court. We have  
15 additionally 40 state cases to be filed in Detroit, Michigan,  
16 the home town of GM. Those will be filed in the next few  
17 weeks.

18 Judge, the appointment I am seeking as co-lead counsel  
19 will do a number of things for this MDL, and that is since  
20 January I have spent 95 to 99 percent of my time on these cases  
21 without an appointment, just working on the cases from clients  
22 who have hired me. I have met them personally, most the death  
23 cases for weeks and weeks. As my wife says, at the end of the  
24 day you look like you have been to seven funerals. I know  
25 their stories and I know that I am trusted by them.

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1           There is one day when this case settles they are going  
2 to look to me for advice and counsel about what to do. I think  
3 objectively not only does my application provide the court with  
4 enough to put me as co-lead counsel, my relationship and my  
5 client base will help to assure that the information required  
6 from these folks, all of which my staff knows personally, talks  
7 to daily and have relationships with, will be gathered  
8 promptly, gathered quickly, and the resolution when it does  
9 occur will go off hopefully without a hitch.

10           I have been on the plaintiffs' steering committee for  
11 Judge Engelhart in the FEMA litigation. Judge Engelhart will  
12 speak to my ability to cooperate both with my co-lead counsel  
13 in that case and my fellow plaintiffs' steering committee  
14 members. I have a firm with my best friend from college we  
15 started two years ago, Hilliard & Shadowen. We currently enjoy  
16 six co-leadership positions in MDLs, including one in the  
17 Southern District of New York.

18           Judge, we had the first hearing in the Southern  
19 District of Texas where we attempted to get a park it now  
20 order. Given the type of defect this was, it could occur at  
21 any time with no warning. It could affect the people in the  
22 car and the people coming the other way. We wanted a federal  
23 Judge Gonzalez Ramos to order GM to spend notices to their  
24 clients to park it now until the defect is repaired.

25           Mr. Dryer, GM counsel here, and I spent more than half  
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1 of a day putting on live testimony. I would think that  
2 Mr. Dryer will also tell you that though he is GM counsel, I  
3 have tried at least 15 automobile design cases against his  
4 firm, two jury verdicts, and regardless of what the verdict is  
5 in court -- is that my bell?

6 THE COURT: That is your bell. Two very quick  
7 questions of clarification. One, you don't have any economic  
8 loss, just personal injury?

9 MR. HILLIARD: Two income economic loss cases and I am  
10 in relationship with Gerard Gibbs out of San Francisco in  
11 regards to those cases.

12 THE COURT: And you're only applying for lead counsel,  
13 not executive committee. Is that correct?

14 MR. HILLIARD: That's correct.

15 THE COURT: Thank you very much. Next up is  
16 Mr. Kaplan, and after that is Mr. Levitt, L E V I T T.

17 MR. KAPLAN: Robert Kaplan, applying for the executive  
18 committee or liaison counsel. My office is in New York,  
19 although my firm has offices in other places in the country.  
20 We have two economic loss cases. I have been lead counsel in  
21 dozens of MDL litigations throughout the years.

22 I clerked in this courthouse. I tried three cases in  
23 this courthouse. In October 2012 in the Bank of America  
24 litigation I mentioned earlier which was trial ready, we  
25 settled three weeks before trial for two billion 425 million

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1 dollars. The case was before Judge Castel at that time.

2 I took the deposition of Brian Moynihan, who is CEO of  
3 Bank of America. I took the deposition of Tim Maopolis, former  
4 general counsel, now the head of Fannie Mae.

5 In October 2013 we had a three-day class certification  
6 trial in the Eastern District of New York in the Air Cargo  
7 Litigation which included 20 hours of expert testimony. That  
8 case is still going on. We have to date there are about \$900  
9 million in settlements. I've put on two programs for the  
10 Federal Bar Council this year on class actions, one with Judge  
11 Lohier, L O H I E R, the other with Judge Koontz.

12 My firm has specialized in class actions and expert  
13 damages. In this case for economic loss, there is going to be  
14 a need to be expert testimony with regression analyses. That  
15 is what was done in Toyota.

16 With a lot of different factors to affect prices, we  
17 are capable to do that, would be a great addition to the  
18 litigation team with our expertise in class actions in  
19 econometrics with experts. We are brought into other cases by  
20 other firms to do the expert work.

21 We work on a cooperative basis. I get along with  
22 co-counsel. I get along with defense counsel. We have the  
23 resources to prosecute this. We have had cases with millions  
24 of dollars of expenses that the firm has put out. We're  
25 committed to this case. We would like to do it. We think we

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1 would be a positive addition to the executive committee or  
2 liaison counsel.

3 Thank your Honor for your time and patience today.

4 THE COURT: Mr. Levitt is up next followed by Levy, L  
5 E V Y.

6 MR. LEVITT: Good afternoon, your Honor. Adam Levitt.

7 Very quickly, I occasionally stutter when I speak.  
8 If anything I say in my four minutes isn't 100 percent clear,  
9 please let know know. I will go right back over it.

10 I am applying for a position on the executive  
11 committee. I am chair of the Consumer Practice Group at Grant  
12 & Eisenhofer. I am based in Chicago. Grant & Eisenhofer is  
13 here in New York and Wilmington and Washington, one of the  
14 largest, most successful and full resourced law firms in the  
15 United States.

16 To go to your point on the ability for us to expend  
17 resources, we pay the freight, we work on cases. If we don't  
18 file cases, we don't work. If we don't file cases, we won't  
19 try. I was honored to be recommended by the temporary lead  
20 counsel in this case. We have been working with them and the  
21 Weitz & Luxenberg firm and the Roland Tellis firm and Lance  
22 Cooper on the bankruptcy fact stipulations from the very  
23 beginning. We were actually retained and funded by one of the  
24 three bankruptcy designated counsel, Mr. Esterman. We have  
25 been working on that since the outset.

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1           In terms of the cases we filed on the economic loss  
2 side, Mr. Tellis, Mr. Cooper and I and our team of lawyers  
3 filed the Maziel case, which was the first case to have the key  
4 system allegation in it as well as the expanded recall period.  
5 We have in that case 39 named plaintiffs, 30 subclasses, a  
6 combination of that case and the Saklo case.

7           We also filed the Sauer case with Mr. Cooper, Mr.  
8 Tellis, the Cabraser firm and Weitz & Luxenberg and others.

9           In terms of the personal injury cases, we have a very  
10 large number of individual injury cases and wrongful death  
11 cases. We have not filed any of them yet in the MDL. We  
12 anticipate using, working with our clients through the Feinberg  
13 protocol in the first instance.

14           With respect to your Honor's question about MDL  
15 experience, it is Footnote 8 in my application. I have been  
16 and I currently serve as lead in more than a dozen MDL cases,  
17 including in re genetically modified rice litigation with Mr.  
18 Downing, where we recovered in excess of \$750 million; in re  
19 Porsche, which was an automotive case we settled recently for  
20 approximately \$45 million. Also we have been lead with the  
21 Cabraser firm. I have written on MDL practice extensively. I  
22 have written on class action practice extensively including in  
23 the Yale Law Journal Online.

24           In terms of automotive litigation experience, I'll put  
25 my own automotive experience and my firm's automotive

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1 experience up against the experience of anybody in this room.  
2 We are currently or have been lead in eight automotive cases  
3 including the Ford MFT case with the Hagens Berman firm and Mr.  
4 Tellis, the Porsche cooling pipes case, the NAVISTAR litigation  
5 with the Lief Cabraser firm, Ford unintended acceleration with  
6 approximately 15 or 16 firms in this room, Ford EPAS with Mr.  
7 Tellis, Ford EcoBoost with Mr. Berman, and Mercedes Benz case  
8 currently pending in New Jersey and Ford tailgate litigation.

9 My firm also has recovered --

10 THE COURT: And now you have to stop. I have your  
11 application. Thank you very much.

12 THE COURT: Mr. Levy is next. Then Mr. Kelly.

13 MR. LEVY: Good afternoon, your Honor. I amount  
14 Lester Levy. I am applying for a position on the executive  
15 committee. I am chairman of the firm of Wolf Popper, which has  
16 been established 45 years. I have personally over 40 years of  
17 experience in prosecuting class actions. We have filed two MDL  
18 actions for 10 plaintiffs. They're economic loss cases.

19 I want to highlight a case not in my written  
20 application. It is a case in which I have prosecuted General  
21 Motors in a class action over faulty caliber pins. Kirkland &  
22 Ellis was on the other side. They fought the case vigorously.  
23 The case is Garcia against General Motors, the consolidated  
24 class action. They opposed class certification, and we  
25 obtained a national class.

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1           They moved for summary judgment. We defeated that.  
2 They appealed. Defeat was affirmed. We have had many  
3 depositions and experts, and we ended up with a significant  
4 cash recovery in that case. I want to highlight that one  
5 because it is not in my application.

6           Perhaps the best indication of how my appointment  
7 would aid the leadership of this class action is how other  
8 federal judges have remarked on class actions in which I have  
9 been lead counsel, including MDL class actions.

10           In the TJX Securities Breach MDL class action, Judge  
11 Young in the District of Massachusetts commented on the end of  
12 the case what a wonderful job we did for the class. Judge  
13 Palmere in the Northern District of Illinois said we did a  
14 great, very professional job and said the litigation before her  
15 was extremely professionally handled.

16           Judge Reese in the District of Vermont noted how we  
17 were willing to stick with the class through thick and thin and  
18 the class was very professionally handled. Judge Kaplan in  
19 this Court stated recently that we had diligently prosecuted  
20 the interests of the class through the more than three years  
21 the case was before him.

22           I expect that if appointed to the executive committee  
23 by this Court, your Honor will be similarly pleased in how we  
24 handle the litigation. Thank you.

25           THE COURT: Thank you very much.

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1           After Mr. Kelly will be Roger Mandel, M A N D E L.

2           MR. KELLY: Thank your Honor. Michael Kelly, K E L L  
3 Y. I practice with Kirkland & Packard in Los Angeles. I have  
4 been with the firm 35-plus full years. I have one case in the  
5 MDL, an economic loss case involving ignition switch. I have  
6 no other present commitments or appointments that would  
7 prohibit me from putting whatever time and energy I needed to  
8 into this case.

9           I have significant class action experience. I have  
10 served as lead or co-lead or on-lead counsel committees in a  
11 number of MDLs. I won't repeat those. They're in my  
12 application.

13           I have also litigated in the MDL setting since 1978  
14 significant complex product cases involving automobiles and  
15 aircraft, both general and commercial aviation.

16           The bulk of my practice has been as a trial lawyer  
17 involving complex product defect cases. My most recent  
18 experience was a member of the lead counsel committee in the  
19 Toyota case. I was selected by Judge Selden, I am pretty sure,  
20 because of my background in product liability. I work  
21 cooperatively with all the temporary lead counsel here and I am  
22 not offended I didn't make their nomination list. It was a  
23 very tough decision, I am sure.

24           Thank your Honor.

25           THE COURT: Thank you. After Mr. Mandel will be  
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1 Mr. Michaels, Jonathan Michaels, M I C H A E L S.

2 MR. MANDEL: Your Honor, my name is Roger Mandel. I  
3 am a partner with the law firm of Lackey Hirshman, LLP based in  
4 Dallas, Texas, but also has a Manhattan office. I am applying  
5 for a position on the executive committee.

6 I have four economic loss class actions in this MDL  
7 with over 45 plaintiffs and 26 states. I am in a group with  
8 temporary lead counsel Elizabeth Cabraser and a number of other  
9 firms in those cases. I also have -- and this will be  
10 important in a few minutes -- the only case, class action and  
11 economic loss case filed in the State of Oklahoma.

12 I also have in Oklahoma along with my co-counsel,  
13 Mr. Ed White, eight personal injury clients signed up, and I  
14 anticipate that those will be filed in the MDL.

15 I am also co-counsel with Ms. Cabraser and others in  
16 the Sauer case, which is the 2010 to 2014 Camaro litigation,  
17 and I have clients signed up here willing to be class  
18 litigation in some of the later GM recalls like the Impalas and  
19 the Cadillacs.

20 It is important for the court to consider whether  
21 counsel has reason to be sensitive to the needs of these  
22 various different groups in that it should be in someone's  
23 favor if their are representing them. I have every incentive  
24 for the people who have non-bankruptcy claims to get to  
25 discovery as soon as possible as well as to resolve hopefully

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1 successfully the Bankruptcy Bar as to the pre-bankruptcy  
2 claims.

3 I have over 27 years of commercial litigation  
4 experience, including MDLs and class actions. My most  
5 significant MDL experience was as co-lead counsel in the in re  
6 USF Antitrust Litigation, and I am also currently on the  
7 plaintiffs' steering committee in the in re Oreck sales and  
8 marketing litigation practices. None of that will prevent me  
9 from devoting as much time as necessary to this case.

10 More importantly than the MDL is I have independently  
11 pursued class actions as co-lead and lead and liaison counsel  
12 and have probably recovered on my career over a billion dollars  
13 worth of value to class members. I have been recognized in the  
14 field.

15 THE COURT: You have to slow down even though you  
16 don't have a lot of time.

17 MR. MANDEL: I have been recognized in the field as  
18 co-chair of the American Association of Objectors Class Action  
19 Litigation Group, and I have been honored by a number of  
20 organizers as one of the top class action lawyers in Dallas,  
21 Texas and in the United States.

22 I am equally proud of my firm. We have 26 lawyers  
23 devoted exclusively to complex commercial litigation, which I  
24 think gives us as many qualified lawyers to work on this case  
25 as some of the much larger cases. The equity partners

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1 specifically voted and made the commitment to devote the time  
2 and money necessary to pursue this case with full knowledge of  
3 the extent of the costs and the labor involved. My colleagues  
4 have racked up two of the top 100 plaintiffs' verdicts in the  
5 country in the last five years, one in 2009 and one in 2013.

6 On the defense side, we represented a hedge fund  
7 complex that was caught in the fallout of 2008 and 2009 and  
8 faced literally billions of dollars in claims from the largest  
9 banks in the world and large investors, and that client has  
10 eliminated most of those claims by summary judgment and  
11 dismissal, settled others favorably and is alive and thriving  
12 today. We are ready to go on, "Bet your company, bet your life  
13 litigation."

14 I think the thing that most hopefully makes my  
15 application stand out is that I have a depth of knowledge of  
16 the law and strategic thinking I think highly needed in this  
17 case. I am board certified --

18 THE COURT: Your time is up. Next is Mr. Michaels,  
19 and after Mr. Michaels we will go to Mr. Moskowitz.

20 MR. MICHAELS: Jonathan Michaels of MLG Automotive  
21 Law. The position for which I am applying is the executive  
22 committee. Our office is located in Newport Beach, California.

23 To address a couple the questions the court raised,  
24 what type of cases do we have? Our office is one of the first  
25 firms to file a class action case for economic damages. That

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1 was the March 21, 2014 case of Pons versus GM. We have also  
2 filed the Hertz versus GM class action case, both of which are  
3 pending in this court also for economic damages. Third, we are  
4 one of the few firms that represents a wrongful death case.  
5 That is Heir versus General Motors, filed on May 21, 2014.

6 As it relates to the question the court raised about  
7 significant experience, I believe our office has one of what I  
8 believe is one of the most significant cases, Spitzer Motor  
9 City versus United States. In 2012, my office filed a case  
10 against the United States of America on behalf several  
11 terminated Chrysler dealerships. The theory is the closing of  
12 their dealerships in 2009 was a wrongful taking, in violation  
13 of the U.S. Constitution.

14 The case is currently pending in Washington, D.C. It  
15 just went up on interlocutory appeal where the Court of Appeals  
16 ruled in our favor, indicated we are making new law, reversed  
17 and remanded it back down to the trial court. That case will  
18 undoubtedly result in Supreme Court review. It has over a  
19 billion dollars of economic damages at issue.

20 Your Honor said at the outset of this discussion here  
21 for all of the counsel there are many competent counsel and it  
22 is a very difficult decision. I couldn't agree more. So the  
23 question becomes what distinguishes us? What distinguishes me  
24 from all these talented lawyers standing before you. I believe  
25 we have a skill set that no other law before you can bring;

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1 that is, we specialize in automotive law. The name of our firm  
2 is MLG Automotive Law. Our exclusive practice in litigated  
3 cases is against literally every major manufacturer in the  
4 United States.

5 I have had over a dozen cases against General Motors,  
6 got a multi-million dollar jury verdict against GM and  
7 currently have a case with General Motors pending in the 9th  
8 Circuit Court of Appeals. I have authored 52 front page  
9 articles for the prestigious Los Angeles and San Francisco  
10 Daily Journal. I serve as general counsel for the automotive  
11 manufacturer of Salinas. In that capacity, I routinely deal  
12 with NHTSA. We deal with recall issues, consumer issues, and I  
13 manage all of the company's litigation throughout the United  
14 States.

15 Because of our experience, I am frequently hired as  
16 special litigation counsel for bankruptcy proceedings related  
17 to automotive issues.

18 As it relates to this case, my office has been  
19 involved in this case from day one. We have been living and  
20 breathing this case since the earlier part of this year. I  
21 have written about it extensively in the Los Angeles Daily  
22 Journal. I travel from Newport Beach to Washington to  
23 personally appear at the Congressional hearings where Mary  
24 Barra testified and David Friedman from NHTSA testified. it was  
25 important for me to do so for this case.

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1           Because of that, we were one of the first firms to  
2 file, which is the Pons case, and in thinking about this,  
3 obviously this is an important decision for the court. It is  
4 important for a number of reasons. I ask you, is there another  
5 lawyer that can stand before you that can make the claim of  
6 they represent someone with economic loss in this class action?

7           They represent someone who is in a wrongful death  
8 capacity. They are someone who practices exclusively and  
9 predominantly in the area that this case resolves in,  
10 automotive liability. I believe we deserve and we would be  
11 very complimentary to the executive committee position.

12           THE COURT: Thank you very much.

13           Mr. Moskowitz. After that is Ms. Nast, N A S T, and  
14 then we'll take a last break of the day and then power through  
15 to the end.

16           MR. MOSKOWITZ: I will take one minute. I am applying  
17 for the executive committee. Our group with my partner Harley  
18 Tropin and Judge Cyganowski, we joined the twelve other firms  
19 and currently have 135 clients, six complaints, clients in 33  
20 states. They're all economic loss clients. I have been  
21 teaching class action litigation at the University of Miami  
22 School of Law for 17 years. I run a law firm class action  
23 practice and I love class actions.

24           Most of my time in the last four years was in a series  
25 of cases that I started called forced place insurance cases and

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1 are able to help millions of homeowners across the country  
2 charged these unreasonable fees. We stopped those practices  
3 and collected a billion dollars for the homeowners, and most of  
4 those cases are being settled now.

5 Prior to that my firm was co-lead counsel in in re  
6 Managed Care Litigation, where we basically reformed the  
7 managed care practice, and in my practice Harley Tropin was the  
8 co-lead counsel in the country. I would look forward and I  
9 spent all of my time focusing on this case if I have the honor  
10 to serve on the executive committee.

11 Thank you.

12 THE COURT: Thank you very much. Ms. Nast is up next,  
13 and because Mr. Moskowitz was so economical, we'll take Ms.  
14 Oliver after Ms. Nast.

15 MS. NAST: I feel like almost good evening, your  
16 Honor. Given the fact we have twelve letters left in the  
17 alphabet to go, I will be succinct and I will be answering the  
18 questions you asked today. Of course, if you then allow me to  
19 stand on my application.

20 I am seeking a position on the executive committee. I  
21 am -- my office is in Philadelphia. It is the Nast Law Firm.  
22 We are on Market Street in Philadelphia. There was a letter  
23 submitted to the court which used the name of my predecessor  
24 firm which was Rhodin Nast, but NastLaw and has been now for  
25 some time.

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1           We have one case filed and about 155 clients who are  
2 under fee agreement. About a third of those are personal  
3 injury cases. The remainder are economic injury cases.

4           I am currently lead counsel in two cases, neither one  
5 of which is active. One is settled or everything has been  
6 dismissed and the second one has been stayed. I am on the PSE  
7 of a number of cases. Your Honor asked how many cases we have  
8 been lead counsel, appointed lead counsel in, and I realized I  
9 never counted. A quick count today, I think I have been lead  
10 somewhere around 15, 17 cases, antitrust, pharmaceutical,  
11 automotive and consumer primarily.

12           I have been on approximately 40 to 50 PSE executive  
13 committee court appointments, but again I realized I never  
14 counted those, either. One other thing I wanted to mention  
15 which I think underscores one of my strengths -- and I think we  
16 all have different obsessive strengths -- I have been appointed  
17 chief mediator by Judge Collier in Tennessee to settle a  
18 somewhat difficult, very difficult patent antitrust case, and  
19 that was resolved just recently.

20           I have been appointed to multiple fee committees which  
21 as your Honor knows are contentious and difficult. Two are  
22 also contentious Third Circuit task forces to make  
23 recommendations, and I think these are in recognition of a  
24 skill that I seem to have been gifted with, which is to help  
25 bring very disparit positions together and closure.

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1 I would add that other things that I at least enjoy if  
2 I am not really good at, and I hope I am, is oral and written  
3 advocacy. Procedurally, I love the interplay of the federal  
4 rules, and I am one of those nerdy law students that loved the  
5 UCC. I find it just very interesting with the rules.

6 Finally, I would say I am good at thinking out of the  
7 box, finding new ways to resolve problems that have been around  
8 for a long time, but always been difficult to resolve.

9 Thank you.

10 THE COURT: And you're just applying for the executive  
11 committee?

12 MS. NAST: Executive committee.

13 THE COURT: Ms. Oliver, please.

14 Ms. Oliver appears not to be here, so we'll go to Mr.  
15 Pitre.

16 MR. PITRE: Frank Pitre, P I T R E. Burlingame,  
17 California is the office in which I practice. The firm is  
18 Cotchett Pitre & McCarthy. We also have an office here in New  
19 York, just down the street on Worth.

20 I am seeking a position as a member of the executive  
21 committee because frankly, your Honor, as Mr. Boies said  
22 earlier, if I was a plaintiff and I had the opportunity to pick  
23 three people to lead this, I'd pick the three people who are  
24 sitting in front of me. I say that because I had the pleasure  
25 of working with them in the Toyota case. I also served as

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1 co-lead counsel at that time.

2 Just to come back to the court's questions, I have two  
3 cases. They're class action cases. They encompass six  
4 vehicles and they are based on economic loss only. I didn't  
5 file a whole bunch of more cases because when I looked at the  
6 docket, there was enough to go around. I am sticking with my  
7 two.

8 In terms of prior experience, I have been privileged  
9 to have 25 years of MDL experience serving in lead positions as  
10 either lead counsel or as an executive committee in auto defect  
11 cases, in airline defect cases, in sales and marketing practice  
12 cases, in a variety of others.

13 What I will say is we have heard a lot about trial  
14 lawyers and verdicts. I am privileged to be a member of the  
15 American College, International Academy, the International  
16 Society of Barristers, the American Board of Trial Advocates.

17 I have been around the block trying cases and I have  
18 been privileged to get elected to those organizations because I  
19 think I have two qualities: One, I think I know my way around  
20 a courtroom; Number two, they recognize that civility is an  
21 important part of this practice we call the practice of law.

22 I bring that to this case. More important, your  
23 Honor, you are looking for unique people, and I would like to  
24 at least say what I bring to this case is yes, this is a class  
25 action case, but it seeks damages for economic loss, meaning

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1 that somebody suffered a diminished value to their vehicle.

2 In today's day and age, one of the big issues I am  
3 sure we are going to hear in this case is how do you prove  
4 class-wide damages for the various vehicles that are involved?  
5 And there are a number of challenges. We heard Mr. Kaplan talk  
6 about regression model. I know a little bit about regression  
7 model. Mr. Berman and I are the people who put together the  
8 regression model for the Toyota case.

9 It was 66 different regression equations dealing with  
10 at least two dozen different vehicles, all that suffered  
11 different damages, and the key to that was, your Honor, after  
12 going through that and having to understand the challenges on  
13 how you have to put something like that together to prove  
14 damages, it is a major task. It takes people who have been  
15 through that before to be able to understand how to do that in  
16 a case like this.

17 I will tell you that because of all that works, we  
18 were able to use that model as the basis to resolve the claims  
19 for diminished value that were part of the ultimate settlement.  
20 There were three lawyers that were involved in the economic  
21 loss, co-lead counsel, Mr. Berman, myself and Mr. Seltzer who  
22 is in the back who you will hear from.

23 I was involved in all of those settlement discussions.  
24 I focused along with Mr. Berman on the diminished value concept  
25 of that which was a very important part. When we come together

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1 and take a look at this and say what is going to be the key  
2 issues, where --

3 THE COURT: Thank you very much. Give me one moment  
4 to consult with the Court Reporter and my Deputy.

5 (Off-the-record discussion)

6 (Recess)

7 THE COURT: You may be seated.

8 Almost there. I know it has been a long day. Believe  
9 me, I know it has been a long day.

10 MR. PRIETO: Peter Prieto, P R I E T O.

11 We have filed two cases, two both economic loss claim  
12 cases. I was the first to file in Florida and first around the  
13 country to allege a RICO claim against GM because we knew early  
14 on about the applicability of that statute to GM's long term  
15 wrongful conduct.

16 I am applying for both a co-lead position, or  
17 alternatively, for a position on the executive committee. I  
18 have been recommended to your Honor for a position on the  
19 executive committee, and I would be honored to serve in that  
20 capacity if so chosen.

21 First I want to thank the temporary co-lead counsel  
22 because without any guarantees, this being a permanent  
23 appointment, they have been doing an admirable job of  
24 shepherding together a group of lawyers around the country,  
25 which is sometimes not a very easy task. We are all

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1 hard-headed. We all have our own opinions how cases should be  
2 prosecuted and litigated, and they have done an admiral job of  
3 taking us this far.

4 I am with the Potter Law Firm in Miami. You may not  
5 have heard of the firm. Since 1967 it has focused exclusively  
6 on mass tort aviation cases, mass tort product liability cases  
7 and class actions. We are involved in some of the biggest MDLs  
8 in the country. We are involved in the NFL concussion injury  
9 litigation, overdraft litigation in South Florida with which we  
10 have reached a settlement in excess of a billion dollars on  
11 behalf of the class.

12 I personally I am the on the steering committee in the  
13 Chinese Drywall Manufactured litigation in New Orleans. I also  
14 serve as the chief of the experts committee in the antitrust  
15 Blue Cross Blue Shield litigation in Birmingham. I also have  
16 been the point person in the checking overdraft in my firm, for  
17 my firm where my firm is on the steering committee.

18 In addition to the MDL experience, I have trial  
19 experience. As a former Assistant U.S. Attorney in the  
20 Southern District of Florida, we call it the Southern District.  
21 Since I am here, I will call it the other Southern District.

22 THE COURT: Good call!

23 MR. PRIBANIC: I tried cases as an Assistant U.S.  
24 Attorney and private practitioner. I have tried 30 cases to  
25 verdict or judgment, and a lot of those cases was because I

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1 served as Deputy Chief of the Economic Crime Section with fraud  
2 cases.

3 I know we spoke a lot about product liability cases,  
4 but trying fraud cases and litigating fraud cases is a big  
5 component of this MDL. Virtually every component in the MDL  
6 has alleged fraudulent concealment. I have tried fraud cases.  
7 In the last two years I spent a month in court trying two  
8 securities fraud cases, where the argument was there were  
9 failure to disclose pre-merger discussions.

10 In addition to the trial experience, I also have the  
11 ability to get along with people. When I say that, I don't  
12 mean just the ability to go along. We had some discussions and  
13 disagreements concerning the nature of this process. To the  
14 credit of temporary co-lead counsel and our credit, we were  
15 able to reach conscientious on an appropriate process. I very  
16 much appreciate their ability to cooperate with us as well as  
17 our ability to cooperate with them.

18 The ability to cooperate and get along with folks in  
19 an MDL is probably a close second to competence. Some MDL  
20 judges believe it is probably the first requirement of an MDL  
21 apointee. I have managed lawyers. I managed a hundred lawyers  
22 when I was the executive partner of the Miami office of the  
23 firm, and I managed 400 lawyers when I was also the chair of  
24 the nationwide litigation department of Holland & Knight.

25 I also bring one more unique aspect to the case. I am

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1 the only federal, former federal prosecutor recommended for the  
2 steering committee.

3 THE COURT: Thank you.

4 Mr. Rice, R I C E, is next followed by J. Douglas  
5 Richards of the Cohen Milstein firm.

6 MR. RICE: Joseph rice with Motley Rice out of  
7 Charleston, South Carolina. I am applying for membership on  
8 the executive committee, and I thank my colleagues that are  
9 serving as temporary lead, as they have suggested I be one of  
10 the members of the executive committee.

11 I believe I was one of two or three that had not had  
12 any experience in the Toyota case. We have offices in South  
13 Carolina, New York, DC, Connecticut, Rhode Island West Virginia  
14 and New Orleans. We have 80-plus lawyers and 250 support  
15 staff. We have over a 30-year history of dealing in complex  
16 litigation, including class action, mass torts and securities.

17 In this particular MDL, we have filed two cases in the  
18 MDL, the Bedford Auto Wholesalers, a class action filed in  
19 April in Michigan on behalf of auto wholesalers, whole fleets  
20 of these automobiles. We filed the Turbin case here in New  
21 York, which is an individual class action for economic loss.

22 We also represent the City of Providence, where that  
23 has not at this time been filed. My experience in these types  
24 of litigation goes back to being class counsel in M. Kim and  
25 Ortiz, two of the largest class actions that created a lot of

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1 law in the area. I also served in, do continue to serve on the  
2 longest MDL running as co-chair in the asbestos MDL 875,  
3 probably the longest MDL. I served on the committee in the BP  
4 MDL. I served on a number of PSE and class actions, including  
5 9/11 cases in front of Judge Hellerstein here in New York.

6 I think the reason I bring a different view is I do  
7 resolution. My experience in the last 25 years has been in  
8 trying to bring parties together in resolution. I was lead  
9 negotiator for the states in the tobacco litigation. I was  
10 co-lead negotiator in the BP litigation, lead or co-lead  
11 negotiator in about 20 of the asbestos bankruptcies, so I have  
12 a lot of experience in working bankruptcies, in Chapter 11  
13 reorganization as well as bringing them back into the tort  
14 system.

15 I had the pleasure in working against Mr. Godfrey and  
16 Mr. Bloom in the BP case, and we were successful after about  
17 145 days of meeting face-to-face over about a year and a half  
18 period of time of reaching resolution in the largest economic  
19 and property damage class that has ever been certified, pending  
20 now in the U.S. Supreme Court on cert.

21 I know how to close a deal and I know how to bring  
22 parties together, and I think that is one of the unique things  
23 I bring to this process. I foresee some issues that your Honor  
24 is going to have to deal with. You have got a bankruptcy that  
25 is going to go to the district court. Somebody is going to

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1 take it to the Second Circuit, somebody is going to seek appeal  
2 or cert. to the Supreme Court.

3 At the same time, you have a lot of cases that are not  
4 going to be tied up with that bankruptcy ruling. This matter  
5 is going to be complex to resolve and it may take multiple ways  
6 to resolve it. I believe I bring the uniqueness of being able  
7 to have a creative think-out-of-the-box approach that allows me  
8 to bring people together and close deals.

9 Thank your Honor.

10 THE COURT: Thank you very much. Is mr. Richards here  
11 or someone from Cohen Milstein?

12 In that case, we'll proceed to Mr. Robinson, followed  
13 by Mr. Schmidt.

14 MR. ROBINSON: Your Honor, after listening to all of  
15 these people present, I can see why Judge Selden finally didn't  
16 appoint three co-lead counsel, she appointed five. I am  
17 applying for the position of lead. I have seven Toyota cases.  
18 One is the State of California case, it is a police power  
19 prosecution case against the town.

20 Mr. Berman is on that one with me, as is Andrews and  
21 several of the others. Some are my clients and some are his.  
22 Prior MDLs you heard about, Toyota, Ford Explorer, I have been  
23 on many, I think maybe as many as 15, maybe not as many as  
24 somebody back here, but I've handled maybe 500 automobile  
25 product cases over my life. That is maybe something good, I

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1 don't know.

2 I have had verdicts against Ford, General Motors,  
3 Hyundai, Honda, Nissan at one time or the other. I was maybe  
4 twice I guess I had the highest verdicts in the country, but  
5 then someone else erased that.

6 In Toyota, my firm worked with Mr. Berman, Ms.  
7 Cabraser, Mr. Pitre and also Mr. Seltzer. Seltzer, Berman and  
8 Pitre did the damages part, and Ms. Cabraser and I did the  
9 liability, the individual cases.

10 My firm put 43,000 hours on that case, which is more  
11 than any other firm. I had the most of anybody on any of the  
12 committees, 5100 hours. Out of the 284 days of depositions, my firm  
13 took 175 days of those depositions. Frankly, I did 46 of those days  
14 myself.

15 So I don't think I was ever in arrears. I don't know  
16 what that was about. We did pay 5.4 million in costs. We  
17 would be able to fund this case. I think basically the mesh  
18 Mr. Berman talked about, his application between himself and  
19 myself on that case he did, he worked on the damages and I  
20 developed the liability case.

21 What do I bring to this case? I have dealt with  
22 General Motors for 35 years, both their in-house counsel and  
23 their outside lawyers. I have dealt with Ford as well. I  
24 spent a lot of time in Detroit. Frankly, I think I understand  
25 the inner workings as well as anybody can from the outside of

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1 General Motors. I have dealt with the people that are famous,  
2 people are infamous there.

3 Frankly, at one point that verdict for \$4.8 billion  
4 that we got in L.A. was the larger verdict against General  
5 Motors. They cut it way down. I never collected it.

6 Anyway, your Honor, I think that is what I can bring  
7 to this case. I can bring the technical part, the experts,  
8 developing the liability case. I understand I have done class  
9 action work. I just tried a three most class trial this last  
10 year. So I understand that. I think we divided it up very  
11 well in Toyota and we can do it again there.

12 Ms. Cabraser, Mr. Berman, Mr. Pitre and also actually  
13 Mark Seltzer, he did a great job as well. I thank you for your  
14 attention.

15 THE COURT: Thank you very much.

16 Mr. Schmidt, and then after that Mr. Seltzer, S E L T  
17 Z E R.

18 MR. SCHMIDT: Hello again, your Honor.

19 My firm, Wolf Haldenstein Adler Freeman & Herz, is 60  
20 lawyers, most of whom are based in New York. We represent  
21 eight plaintiffs in three ignition switch actions as well as in  
22 the adversary proceeding filed in the bankruptcy court. We  
23 represent, along with our co-counsel, the Golenbock firm, Mr.  
24 Flaxer, the greater number of plaintiffs in that firm.

25 For better or worse, our strategy and our tactics, our  
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1 thinking has driven this case since March of this year. We  
2 have devoted almost two thousand hours to the prosecution of  
3 this case, including working daily in the bankruptcy court to  
4 advance the plaintiffs' cause.

5 We are applying for a position to represent the  
6 original admission switch plaintiffs. 99 percent of the  
7 plaintiffs in this case and 99 percent of the cases involve  
8 allegations of ignition switch defects in the six original  
9 recalled cars.

10 Given the overwhelming proportion of plaintiffs  
11 involved in the case, we think it is really imperative and a  
12 very good idea for the class to have leadership position  
13 devoted to a firm that represents exclusively ignition switch  
14 economic loss plaintiffs, whether that be as co-lead plaintiff  
15 counsel or executive committee member. We don't think it  
16 matters. We would be pleased and honored to served in either  
17 capacity.

18 Certainly we think those plaintiffs need to have their  
19 voice heard on every unique and discrete issue that arises as  
20 to which their unique interests may be individually affected.

21 We filed the first two cases in the Southern District  
22 of New York. We filed the bankruptcy proceeding. We were the  
23 only group of plaintiffs that advocated in front of the panel,  
24 MDL panel that the cases be sent here. We were the only  
25 plaintiffs he believed at least initially the Judge Gerber was

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1 in the best position.

2 Maybe one other firm, Mr. Berman as well, was in the  
3 best position to be appointed, and frankly the best judge to  
4 make the decision because unlike every other judge in the  
5 country, he doesn't have to worry about offending another  
6 judge. We also were the only plaintiffs that believed this  
7 district court should supervise the bankruptcy court and should  
8 supervise this MDL because it can administer the bankruptcy  
9 appeals and otherwise supervise the bankruptcy court, and we  
10 were the only plaintiffs that specifically asked for this  
11 Court.

12 So I guess we can say we were the only ones that had a  
13 hundred percent success in front of the panel.

14 THE COURT: You're the only ones I have to thank for  
15 having it!

16 MR. SCHMIDT: I was taking my chances. We have been  
17 pretty consistently right on tactics, pretty consistently right  
18 on strategy, and we think being consistently right in devoting  
19 a lot of time that ought to count for something.

20 We currently are lead or co-lead or have an executive  
21 position in three MDLs. My firm has been practicing class  
22 action litigation for 40 years. Mr. Krasner, who heads the  
23 firm, has been practicing for 50 years, since the amendments in  
24 1966 that allows damages actions to be tried as class actions.

25 We do have consumer cases and we have products

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1 liability cases, and we have experience in both areas. We  
2 don't have the resume that a lot of these firms have in those  
3 areas, but this case is exclusively about products liability.  
4 It is about fraud, ferreting out fraud. We think we do that as  
5 well as anybody in the country. We recovered \$7 billion on  
6 behalf of plaintiffs.

7 THE COURT: Thank you.

8 After Mr. Seltzer will be Mr. Stueve.

9 MR. SELTZER: Mark Seltzer. Thank you for the  
10 opportunity to address the Court this afternoon.

11 I am the head of the LA Office of the Susman Godfrey  
12 firm, and we are seeking a position on the executive committee  
13 or co-lead position if the number of co-leads were to be  
14 expanded by the Court. We have three economic loss class  
15 action cases pending on behalf of twelve plaintiffs, residing  
16 in 10 states, and they are ignition switch cases.

17 We have applied to be on the executive committee  
18 because we think we can lend some special strengths to the  
19 case. I have over 40 years of experience in class action  
20 litigation, representing both plaintiffs and defendants, and  
21 that experience has given me a broad knowledge about how to  
22 effectively litigate these cases.

23 We also have in our firm a philosophy about litigating  
24 in a lean and mean fashion. We are specialists in innovative  
25 techniques to reduce the expense of litigation. We have a

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1 strong New York presence. There are partners and associates  
2 listed in our application who are ready and able to participate  
3 actively in this case, were we to be selected. We engage  
4 bankruptcy counsel who have been engaged actively in the  
5 bankruptcy process, including working on the stipulations of  
6 fact that were referred to earlier today in the morning.

7 THE COURT: Mr. Seltzer, can I interrupt you for a  
8 moment. You referenced your New York partners. To my  
9 knowledge, I have never met you and have no connection to you,  
10 but as you may know, I am fairly close friends with a partner  
11 of yours in New York by the name of Jacob Buchdahl, D A H L,  
12 with whom I have been friends since law school and since  
13 serving in the U.S. Attorney's Office here. As I understand  
14 it, Mr. Buchdahl is not involved in this litigation in any way,  
15 shape and form.

16 MR. SELTZER: Absolutely correct.

17 THE COURT: Am I reasonable in assuming if you were  
18 appointed to a leadership position in this case, he would not  
19 be involved and would be walled off from this case.

20 MR. SELTZER: That is exactly correct, he would be  
21 walled off from the case if I were appointed.

22 THE COURT: You may proceed.

23 MR. SELTZER: As has been noted, I was one of the  
24 three co-lead counsel in the Toyota case, representing the  
25 class plaintiffs along with Mr. Berman and Mr. Pitre. In that

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1 role I gained intimate knowledge and familiarity with the  
2 issues that are likely to be litigated in this case; for  
3 example, the choice of law issue mentioned by Mr. Berman.

4 I was involved in the negotiation of the settlement.  
5 The historic settlement, as Mr. Pitre noted, resulted in a \$1.6  
6 billion result. I also stayed with the case when others were  
7 dropping off because there are adverse developments. When NASA  
8 and NHTSA said they couldn't find the defect in the  
9 electronics, a lot of people thought the case was too risky to  
10 stick with. We devoted thousands of hours of our firm's time  
11 to the case and advanced \$4.2 million in costs to litigate the  
12 case.

13 We have the kind of resources if necessary and if  
14 appointed that could really support the ongoing litigation in  
15 this case. The court asked about other MDLs. They're  
16 mentioned in our papers. I serve as co-lead counsel in the  
17 Korean Air antitrust case which settled for approximately \$86  
18 million. Was also co-lead counsel in the USF case that was  
19 tried to a verdict. That was the MDL case in Kansas. We have  
20 been involved in other auto safety defect cases. I was  
21 plaintiffs' counsel in two of those class action cases.

22 The court also asked about other commitments. I have  
23 a trial set for September 9th, a three-week trial. I have no  
24 other trials set this year or next year or the year after. If  
25 appointed, I can assure the court we would dedicate, I would

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1 dedicate myself to devote whatever time is necessary to  
2 successfully prosecute the case.

3 Toyota has been cited as an example, as a precedent.  
4 In the Toyota case, I occupied the same position together with  
5 Ms. Cabraser and Mr. Berman that the temporary lead counsel do  
6 today. We made recommendations to Judge Selden about who  
7 should be appointed as part of the leadership in the case. He  
8 accepted some of our recommendations. He rejected others and  
9 made his own appointments from the applications submitted. I  
10 hope your Honor would keep that precedent in mind in making  
11 your decision in this matter.

12 THE COURT: Thank you very much. Mr. Stueve and Mr.  
13 Tellis, T E L L I S.

14 MR. STUEVE: Your Honor, I am from Kansas City. We  
15 have two economic loss class actions, the Cox and Witherspoon  
16 lawsuits. We have no personal injury cases that we filed in  
17 this case.

18 This process reminds me of my former life as a partner  
19 in the largest firm in Kansas City, where we have asked in the  
20 year present why we should get paid as much as we were asking  
21 for. The point is the temporary leadership committee was put  
22 in a very difficult position. I think they have done an  
23 excellent job of nominating the folks on the executive  
24 committee. I think they're all well deserving of it.

25 Hopefully, the court will expand on the number of

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1 folks on the executive committee. We have had leadership  
2 positions on several MDLs. They're set out in our submission.  
3 I have been more specifically lead counsel in three product  
4 defect economic loss cases that are also set forth in our  
5 brief.

6 I think my particular expertise that I could add to  
7 the executive committee would be on developing the economic  
8 loss damages models. I have actually litigated that issue up  
9 through appeal in the Blue Bell v. Merck case. That is a Court  
10 of Appeals decision in the State of Missouri. I am ready and  
11 willing to serve in whatever capacity you or the leadership  
12 committee gives me and my firm. Thank you.

13 THE COURT: Thank you very much.

14 Mr. Tellis followed by Mr. Tropin, T R O P I N.

15 MR. TELLIS: Thank you very much for the opportunity  
16 to introduce myself. My name is Roland Tellis. I am with the  
17 law firm of Baron and Budd. Baron and Budd is headquartered in  
18 Dallas, Texas, where it was founded some 40 years ago, and I  
19 manage the firm's Los Angeles office.

20 I am applying for a position on the executive  
21 committee and was grateful to have received a recommendation  
22 from the temporary lead counsel for that position. I represent  
23 approximately 38 plaintiffs from 30 states in three cases in  
24 this MDL, all of which seek economic losses. Two were filed in  
25 California, with Cooper & Levitt and one was filed in New

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1 Jersey along with Elizabeth Cabraser and Robin Greenwald and  
2 others.

3 We are also representing some injury clients in cases  
4 that have not been filed but are working their way through the  
5 Feinberg protocol.

6 My written application answers all of your questions  
7 about the prior leadership positions I have held in large scale  
8 auto cases like this, including a co-lead position with Steve  
9 Berman in a large scale Ford case involving millions of  
10 defective vehicles. What I'd like to do here is use my time to  
11 emphasize two points:

12 The first has nothing to do with me. I am committed  
13 to working with any group of lawyers that your Honor appoints,  
14 but I would urge the court respectfully to remove the  
15 "temporary" label from these three lawyers sitting up here.  
16 They're extraordinarily talented, tenacious litigators, and the  
17 class is in very good hands.

18 The second point I would like to make is I did not  
19 apply for this position without full appreciation for the  
20 professional and financial commitment it would take, and I  
21 assure the court if I am selected, I will make this case my  
22 highest priority. This commitment isn't given to you in a  
23 vacuum. I am one of a small handful of lawyers to date that  
24 has spent meaningful time and money developing the class claims  
25 and addressing General Motors' bankruptcy filings.

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1           We have retained engineering experts who discovered  
2 this issue. We have filed some of the first class cases. We  
3 sought to expand the scope of recalled vehicles, sought to  
4 expand the scope of defendants. We sought expedited discovery.  
5 We retained what has now become designated counsel in the  
6 bankruptcy court to address the bankruptcy filings.

7           Bankruptcy counsel has cost my firm and our co-counsel  
8 over half a million dollars that we have spent for the benefit  
9 of the plaintiffs' group. I tell you this not to pat myself on  
10 the back, but to demonstrate a real commitment that I've made  
11 to this case. I think my efforts have earned the trust of the  
12 plaintiffs' temporary lead counsel as well as the other  
13 plaintiffs in this case.

14           In short, I was there from the beginning and I very  
15 much want to be there at the end. Thank you.

16           THE COURT: Thank you. Mr. Tropin, followed last but  
17 not least by Ms. Wolfson, W O L F S O N.

18           MR. TROPIN: Thank you, your Honor.

19           Harley Tropin. Your Honor, I am Harley Tropin. I am  
20 applying for lead counsel. I am based in Miami. I have a 28  
21 lawyer litigation boutique with a specialty in these kinds of  
22 cases, complex commercial litigation with a subspecialty in  
23 bankruptcy. This case is right within our wheelhouse. Like  
24 some of the speakers before you, we have made a commitment to  
25 this case economically and in terms of time and it is not a

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1 commitment that we would make lightly.

2 We have 135 plaintiffs with our co-counsel which  
3 include 13 law firms in 33 states. These are solely economic  
4 loss plaintiffs. My MDL experience, your Honor, is listed in  
5 the application, but I want to focus on one case in particular  
6 because I think it is relevant to some of the challenges that I  
7 think you and we and the defendants and the mediator or special  
8 master that you're going to appoint will face as we go forward  
9 on this case.

10 Judge Federico Moreno, Chief Judge Federico Moreno,  
11 from the Central District of Florida inherited the managed care  
12 litigation in 2000, a case brought against all the HMO's by  
13 700,000 physicians, 23 medical societies, the AMA, New York  
14 Medical Society, Georgia, Florida and so forth, alleging that  
15 the managed care companies, in other words, Humana, Aetna,  
16 Cigna and so forth had systematically cheated the doctors over  
17 the years by bundling and through their computers cheating the  
18 doctors.

19 This was at the time the largest class action in the  
20 United States. It was 700,000 doctors. The patients brought  
21 their own class action, which the judge found could not be  
22 certified, but I was lead counsel for the doctors, co-lead  
23 counsel for the doctors.

24 At the end of the day we certified a class, we were  
25 able to withstand four or five appeals in the 11th Circuit,

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1 which was not a particularly hospitable venue, and we ended up  
2 settling the case and bringing the doctors hundreds of millions  
3 of doctors in cash and billions of dollars in relief.

4 The case is important because I think it calls upon  
5 the kinds of virtues and needs that we are going to have here.  
6 I think it calls upon the judgment that we are going to need to  
7 know what is worth fighting about, what isn't worth fighting  
8 about, what you heard about before, which is cooperating with  
9 people and in order to force things to a conclusion.

10 I think if you spoke to the judge or even the  
11 defendants or the mediator in those cases, I think they would  
12 speak to that, the tenacity and also the ability to step back  
13 and work with people. In these kinds of cases, we can be, the  
14 lawyers can be our own worst enemies and we need to have the  
15 ability to step back and decide what we really need to fight  
16 about.

17 In my judgment, the GM case is a case about corporate  
18 wrongdoing on a huge scale. We need to wrap our arms around  
19 the facts, need to fight this case and force this case to a  
20 conclusion, and I think those attributes we are going to need.

21 THE COURT: Thank you very much.

22 Last not least, Ms. Wolfson.

23 MS. WOLFSON: Good afternoon, your Honor. I am Tina  
24 Wolfson, and I am here too ask the court for the opportunity to  
25 serve the plaintiff class as a member of the executive

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1 committee.

2 I am a founding member of the firm of Ahdoot and  
3 Wolfson, A H D O O T. We are based in Los Angeles with offices  
4 in New Jersey, but we specialize in consumer class actions and  
5 we litigate cases all over the country. In this MDL we  
6 represent 10 consumer plaintiffs in seven different states.  
7 These are all economic loss cases, your Honor.

8 My application was filed under Docket 176 and sets  
9 forth the criteria that your Honor outlined in your Order No. 5  
10 and why I am qualified to served on the executive committee in  
11 this case.

12 In summation, I have almost 20 years of consumer class  
13 action experience, and I dare say I know what I am doing,  
14 although I am still learning. I have very strong relationships  
15 with many counsel in this room and, in fact, whether they are  
16 official MDLs or other cases, more often than not we work with  
17 other counsel, and I pride myself on my reputation of producing  
18 excellent work product and being able to cooperate with other  
19 counsel.

20 In terms of current MDLs we are involved in, I do not  
21 have the privilege of having an official position in any MDL at  
22 the moment. However, in both the Target data breach litigation  
23 which is pending in Minnesota District Court and the Monsanto  
24 GE relitigation pending in Kansas, I do have active roles in  
25 those litigations, but they would not prevent my full and

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1 utmost commitment to this case were I to be appointed.

2 In sum, I have zero reservation I have the requisite  
3 knowledge and experience to serve on the executive committee  
4 and that were I given the opportunity, I would dedicate the  
5 necessary time, zeal and resources to serve the class  
6 adequately.

7 I want to address one area you touched upon in your  
8 Order No. 5. You highlighted the idea of diversity. Your  
9 order limited it to geographic diversity. I would encourage  
10 the court in making its final decision to expand that  
11 definition. Our clients here, your Honor, are a very vast  
12 class of consumer litigants, and I think it has been well  
13 recognized in our society that diversity is an important asset  
14 in business hiring. It is said that you hire the marketplace  
15 to serve the marketplace, that big companies have a competitive  
16 edge if they exercise that practice. Here the marketplace are  
17 the consumer class, and they're diverse in many, many ways.

18 Personally, I think what makes me unique and brings an  
19 interesting perspective is my personal experience of having  
20 grown up in a totalitarian regime, the Soviet Union, and come  
21 here as political refugee, and I am now having the honor to  
22 serve the judicial system as an agent of justice. I think you  
23 should consider a very broad definition of diversity tie-in  
24 applying to the membership, a leadership position among the  
25 many qualified applicants in front of you.

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1 THE COURT: Thank you very much.

2 I have A couple of closing very quick closing remarks.

3 Number one, I warned lead counsel and defense counsel  
4 that I would look to you to submit a proposed order. I will  
5 ask you to do that slightly tall order, no pun intended, to do  
6 that by noon on Thursday, leaving Item No. 1 blank for  
7 appointment of counsel. My sincere hope is I will make those  
8 appointments by the close of this week. That is certainly my  
9 plan.

10 Number two, I want to just thank everybody, specially  
11 the Court Reporter and my Deputy, who have stayed beyond their  
12 usual hour, for your patience. This is a long conference.  
13 Maybe the first thing I learned is an MDL is to start earlier  
14 in the day. I thank you for your patience during a long but  
15 helpful day.

16 I especially want to thank temporary lead counsel and  
17 defense counsel for that matter for your taking the lead and  
18 other lawyers who have contributed as well, but principally you  
19 for taking the lead on helping us get to where we are today and  
20 helping me figure out the best way to structure both this  
21 process and identify the issues we should deal with at the  
22 front end of this very important and very complicated  
23 litigation.

24 I know I put you guys in an awkward spot both in  
25 having to take the laboring oar, not knowing whether you will

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1 get a permanent position. I hope, whether you do or not --  
2 well, that I appreciate what you have done whether you are  
3 permanently appointed or not.

4 I also note, as I said before, that I put you in a  
5 difficult position having to make choices among your esteemed  
6 colleagues, and if anything, the presentations today have made  
7 clear why that must have been so difficult and put you in such  
8 an awkward position. I appreciate the efforts you made.

9 I do not intend to blindly accept the recommendations,  
10 but I will take them seriously and do my best to figure out the  
11 best team to handle this litigation going forward. Not  
12 everyone will be happy. That is the nature of my job in these  
13 things, but I assure all of you I will do my best to come up  
14 with what I think is a fair, effective and aggressive team.

15 With that, I look forward to seeing the proposed order  
16 on Thursday, and I will get you my actual order shortly  
17 thereafter, I hope, and I will see you all on September 4th.

18 We are adjourned. Thank you very much.

19 (Court adjourned)  
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