

1 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
2 -----x

3 GM IGNITION SWITCH MDL  
PLAINTIFFS,  
4  
5 Plaintiffs,

6 v.

14 MD 2543 (JMF)

7 GM IGNITION SWITCH MDL  
DEFENDANTS,  
8  
9 Defendants.

9 -----x

New York, N.Y.  
September 4, 2014  
9:30 a.m.

11 Before:

12 HON. JESSE M. FURMAN,

13 District Judge

14 APPEARANCES

15 HAGGENS BERMAN SOBOL SHAPIRO LLP  
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1 APPEARANCES (Continued)

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1 (Case called)

2 THE COURT: All right. Good morning, to all of you  
3 and thank you for being here and allowing us to start on time.  
4 Welcome to my courtroom.

5 I will ask that everybody who speaks today, just the  
6 acoustics in here -- it is a beautiful courtroom but the  
7 acoustics can be a little bit challenging and I want to make  
8 sure that everybody can hear, so I would just ask you to speak  
9 loudly, clearly and into one of the microphones that you'll  
10 find on the tables in front of you. I appreciate your  
11 cooperation in that regard.

12 MR. BERMAN: Your Honor, can I ask one question?

13 THE COURT: Yes.

14 MR. BERMAN: We set up a dial-in. Has that been  
15 initiated?

16 THE COURT: That was my next question. I hope and  
17 assume it has. Hang on.

18 (Pause)

19 THE COURT: Forgive us. We overlooked that. We'll  
20 take care of that right now.

21 (Pause)

22 THE COURT: All right. I think we now -- hang on one  
23 second.

24 (Pause)

25 THE COURT: I am not sure what happened with that

E94AAGMI1

Conference

1 call-in but at least we have squared it away. In any event,  
2 hopefully everybody who is online or wants to be online is with  
3 us. Thank you. Thank lead counsel for setting up the call-in  
4 number. I am actually in the process of arranging for piloting  
5 some sort of system that I gather other courts use, but  
6 heretofore the Southern District has not used that will enable  
7 us to set up a call-in number pretty easily going forward.  
8 I'll let you know when that is in place and if it will be a  
9 viable system for us until I tell you otherwise, I would ask  
10 and appreciate if lead counsel could do the same thing with  
11 respect to future conferences that you did for today, set up a  
12 call-in number and file a letter indicating what that number is  
13 and the participant code and so forth.

14 Per my endorsement of yesterday, my plan is to largely  
15 track the joint letter proposing an agenda that lead counsel  
16 and defense counsel submitted. There is one modification or  
17 one way in which that memo endorsement was modified or  
18 superseded that you may or may not have seen this morning which  
19 is I entered an order or again a memo endorsement on the letter  
20 I had received from Mr. Peller in reference to the Sesay  
21 action, the proposed amended complaint in that he submitted a  
22 letter yesterday.

23 I know he's not here but just to let you know where  
24 that stands, I entered an order indicating that the plaintiffs  
25 in that action may proceed and file their amended complaint but

1 that the defendants need not answer otherwise responded to the  
2 complaint unless and until I order otherwise and that is  
3 something that we can and should address I don't think after  
4 the consolidated class action complaint is filed which is to  
5 say I think we do need to talk about and think through whether  
6 and to what extent defendants need to respond to individual  
7 pleadings once the consolidated class action complaint is filed  
8 and the process for making any objections to that consolidated  
9 complaint runs its course. In the meantime, candidly, I don't  
10 see any reason not to let him file the complaint. It'll be on  
11 the docket and basically will just sit there. So that is the  
12 one way in which my order yesterday has been superseded or  
13 modified.

14 All right. Turning then to the agenda, the first item  
15 on the agenda was the initial discovery plan to produce  
16 relevant non-privilege documents previously introduced to  
17 Congress and NHTSA. The agreed upon proposal is generally  
18 signed by me but I had a handful of questions about first I  
19 wanted to find out what the status was with respect to the  
20 negotiations over the two orders that are in essence conditions  
21 precedent to that production. Namely, the order regarding  
22 confidentiality and privilege and the order regarding the  
23 production of documents and electronically stored information.  
24 So where do those two orders stand?

25 MR. HILLIARD: Your Honor, good morning.

1           So the protective order issue is being negotiated  
2 right now between Mr. Godfrey and lead counsel. The issues  
3 that are on the table are that there is a protective order in  
4 place in the Georgia state court action called Melton that we  
5 believe since GM has agreed to it once, they should agree to it  
6 again subject to the addition of a 502(d) clause so they can  
7 cull back anything they want. GM has proposed what we viewed  
8 as a more protective protect order. In talking to Mr. Godfrey  
9 we've agreed that we can advise the Court no later than next  
10 week as to either resolution or need for assistance because we  
11 can't get any further.

12           THE COURT: OK. Mr. Godfrey.

13           MR. GODFREY: Thank you, your Honor.

14           Generally, I agree with that description but I want to  
15 put a marker down. The points of disagreement stem from one  
16 central concept. Do I have to negotiate separate orders with  
17 various state courts with various members of the plaintiffs'  
18 bar who are appearing before your Honor including a member of  
19 the executive committee seriatim or do I consistently with the  
20 manual from Complex Litigation Fourth Edition have the one MDL  
21 order with the 502 provision that governs everything? We want  
22 to do this one time. We don't want to have seriatim  
23 negotiations. We don't want to be told the MDL is the MDL and  
24 the state court of Georgia is something different. And the MDL  
25 order by definition has to have differences in an order from

1 several years ago in Cobb County, Georgia. Whether we can work  
2 through that issue, I don't know but we are going to get to  
3 that Item 11 later today because I think the Court needs to  
4 fully appreciate the risks to this MDL and its ability to  
5 coordinate.

6 If members of the MDL who are appearing before this  
7 Court feel unconstrained about proceeding separately in  
8 contrast to this Court's orders in the state courts that's the  
9 point of departure on the protective order. I think  
10 Mr. Hilliard and I will get most of the way there. I can't  
11 tell you at this time point that we'll get all the way there.

12 THE COURT: OK. It sounds like you have some further  
13 discussions to do and will have something to do on the issue of  
14 coordination when we get to that number 11. My initial  
15 reaction here is that, I mean I think that Mr. Godfrey makes a  
16 good point in the sense that to the extent that the MDL can  
17 serve as the sort of -- for lack of a better term -- bellwether  
18 for all of the litigation relating to the ignition switch and  
19 whatever else is involved here. I think it can and should.  
20 And in that regard, I wouldn't put too much stock in an order  
21 that was previously entered in a single one off litigation.

22 That being said, obviously, it can't serve as a  
23 benchmark for negotiations because I am trying to say that you  
24 might want to view this as setting the standard or model. And  
25 to the extent through the coordination model or otherwise, it

1 can then serve as a single order that applies to all these  
2 cases that would probably make things easier for everybody it  
3 would produce the possibility of inconsistent rulings and just  
4 reduce the transaction costs all around. So that is my two  
5 cents at the moment but I think you guys should continue to  
6 discuss it.

7 MR. HILLIARD: We agreed with Mr. Godfrey and the  
8 Court that the MDL order should be the order that everyone  
9 looks to. We are simply discussing with GM whether the meat of  
10 Melton order makes sense as a template for the MDL order, not  
11 that we have to renegotiate it state by state because,  
12 ultimately, we don't disagree the order that this Court enters  
13 will ultimately be the benchmark basically around subject for  
14 GM. That's simply the meat of the order.

15 THE COURT: Well, why don't you guys continue to  
16 discuss that. My concern is particularly so far as it may be a  
17 condition precedent to sort of initial rounds of document  
18 production that this not take too long. So I guess my  
19 inclination is to give you some sort of deadline by which you  
20 need to submit a proposed order or submit dualing proposed  
21 orders with some sort of letter brief that I then can choose  
22 between the two. And I would think that that should be done  
23 sooner rather than later to ensure that you can proceed based  
24 on other stuff.

25 Mr. Godfrey.



1           MR. GODFREY: On the better news front we received  
2 last night the markup of the ESI order. I think that we'll  
3 reach closure of that were rather quickly. I don't see the  
4 same issue at the moment.

5           Then secondly, we've notified lead counsel of this  
6 along with certain other counsel of the plaintiff's bar. New  
7 GM has already uploaded 457,684 pages of the documents into the  
8 document depository. We are working to provide people with the  
9 access codes. So we are not sitting around waiting, your  
10 Honor, for a protective order. These are nonconfidential  
11 documents that they could access today or tomorrow if they  
12 wanted or to or if their systems are setup. So we are moving  
13 as quickly as we can to advance the production on a rolling  
14 basis as the Court indicated as was expected last time.

15           THE COURT: That is good.

16           MR. HILLIARD: I think Mr. Godfrey and I have agreed  
17 that by the end of business Monday we can advise the court  
18 where we are and if we need to turn it over to you if that  
19 timing works for the Court.

20           THE COURT: That's fine. If you have not agreed then  
21 I want you to put in whatever letter you submit telling me you  
22 have not agreed proposing to me how you think I should resolve  
23 the disagreement. My inclination would be to have you each  
24 submit your respective proposed order along with maybe a five  
25 page letter brief indicating why you think that is the

E94AAGMI1

Conference

1 preferred approach, then I'll decide. But why don't you give  
2 some thought and discussion with one another if you think that  
3 is the way to go. And if so, propose a deadline but I think it  
4 should be sooner rather than later to ensure that to the extent  
5 there are documents that New GM does not want to put in the  
6 suppository until that is in place.

7 MR. GODFREY: I would suggest, your Honor, end of the  
8 day Monday we submit a joint letter notifying the Court that we  
9 are in agreement or not. And then Friday at noon eastern time  
10 of next week we submit a five page letter brief with our  
11 proposed order. I would hope we could avoid that but I don't  
12 know. So that, to me, I think would be sufficiently expedited  
13 from our perspective.

14 THE COURT: That's fine with me.

15 MR. HILLIARD: We would agree we think sooner rather  
16 than later is good.

17 THE COURT: OK. So that is how we will handle that.

18 Going back to the agreed upon proposal with respect  
19 Item Number One, the letter indicates that New GM and Delphi  
20 have agreed to use their best efforts to substantially complete  
21 the relevant production by October 2. I was a little bit  
22 concerned by the wiggle room that some of those words leave and  
23 I just wanted to figure out what "best efforts" and  
24 "substantially complete" meant so that we're all on the same  
25 page there. And I don't want this to be something that drags

1 on.

2 So, Mr. Godfrey.

3 MR. GODFREY: For us it is simply depending upon how  
4 the confidentiality negotiations go in terms of some of the  
5 issues we have how documents are produced to NHTSA and Congress  
6 whether we can, if we will have to remark them, we'll remark  
7 them. As I explained to Mr. Hilliard this morning, for NHTSA  
8 there is something called CBI, Confidential Business  
9 Information. And if we have to remark some of those the  
10 manuals ask that we mark them. We couldn't get that done by  
11 October 2 but if we have certain kinds of confidential -- then  
12 we can revisit it. We'll get it done by October 2. So we  
13 built in some wiggle room only because we are not sure how our  
14 protective order language is going to read and whether it's  
15 going to be physically possible for bodies to actually do some  
16 of designations or intent is to get them all produced. That is  
17 why we gave the 457,000 already done. But it's simply looking  
18 at the number of man hours, it would take depending upon the  
19 terms of the protective order. That's why we built in the  
20 wiggle room.

21 THE COURT: All right. I appreciate that. My  
22 inclination is to make it more definitive and say that document  
23 production shall be completed by October 2. If it turns out  
24 that there are issues that arise that simply make that  
25 impossible, then you can submit a letter motion to me

1 requesting some sort of appropriate extension and explaining  
2 with the situation is that warrants it and what you have done  
3 to get it done. And I think it's better that we go that root  
4 and put the burden on you to seek an extension if it turns out  
5 it be necessary rather than having some sort of vague, we'll  
6 try our best to.

7 MR. GODFREY: We can live with that, your Honor. My  
8 intent is to get it done.

9 THE COURT: All right.

10 MR. GODFREY: Thank you.

11 THE COURT: We'll you'll have to live with it whether  
12 you like it or not.

13 MR. SCHOON: I am not anticipating any problems on our  
14 end. We have fewer documents to produce. The only thing that  
15 does come up and this is not a complaint at all against GM or  
16 the leadership, we're perfectly happy to let them negotiate  
17 orders and things and allows us -- I think I speak for  
18 Continental on this -- sometimes we are under very compressed  
19 timeframes to get our comments. So I don't anticipate a  
20 problem but I just wanted to make that known to the Court.

21 THE COURT: All right. Listen, my intent is to keep  
22 this whole litigation moving and moving as quickly as I can  
23 make it move while also being a reasonable person. So I do  
24 think it makes sense to have a definitive and clear deadline  
25 and no ambiguity about what is to be done by that date. At the

E94AAGMI1

Conference

1 same time, if things arise and you have a good reason that you  
2 can't meet that and you explain it and you demonstrate that you  
3 have exercised due diligence in trying, I will be a reasonable  
4 person and give you a reasonable amount of time. But I want  
5 you to understand that if I set a deadline it is a deadline  
6 unless and until I say otherwise and the burden is on you to  
7 try and meet it.

8 To that end, I certainly think, obviously, I'm keeping  
9 you all moving. I haven't had a whole lot of time to prepare  
10 myself. It is what it is. Obviously to the extent that we're  
11 dealing with different counsel here the more time that each of  
12 you gives the others, the better for both the others as well as  
13 the end product. So do your best on that front as I am sure  
14 you will.

15 All right. There was an issue that was raised I think  
16 at the initial pretrial conference with respect to the text  
17 search-ability of the documents that are going to be included  
18 in this production. Has that issue been resolved or is that an  
19 issue that we need to discuss?

20 MR. GODFREY: I don't think that's an issue, your  
21 Honor. I think we discussed using share of posted documents.  
22 Plaintiffs suggested there -- I think we've resolved that  
23 issue.

24 THE COURT: Great. Ms. Cabraser.

25 MS. CABRASER: I think that's essentially correct,

1 your Honor. We have to work with a selected vendor on our side  
2 to deal with some technical issues, make sure we have  
3 confidentiality for our own work product and we have to discuss  
4 and resolve the cost issue for the depository with GM.

5 THE COURT: All right. Very good. But at least  
6 you're dealing with that.

7 All right. Then the question that I suppose relates  
8 to a couple items on the agenda, obviously, Item Number 11 in  
9 particular, how does this production dovetail with whatever  
10 production is happening in the Melton case in which I take it  
11 to be the case that is sort of furthest along that is not part  
12 of the MDL? Is that correct, Mr. Godfrey?

13 MR. GODFREY: Correct. And what we have proposed and  
14 I think is acceptable thus far that the MDL document depository  
15 will be the location of one which all documents produced in any  
16 case. So whether it's Melton or Smith or Beckwith or the MDL  
17 will all be put there so that anyone who signs the order  
18 subject to the MDL depository has equal access. We don't have  
19 to then worry about, oh, something was produced in Melton that  
20 wasn't produced in the MDL. In our view they're going to be  
21 complementary productions. So that if something is produced to  
22 Melton it'll be posted on the MDL website. If something is  
23 produced in the MDL the Melton lawyers who are MDL lawyers  
24 subject to this Court's jurisdiction will have access to it.  
25 And seems to us to be a very efficient and an inexpensive way

1 to proceed and avoids any dispute about all Case A document  
2 didn't have document one or Case B didn't have the --

3 THE COURT: That makes good sense to me. I guess I  
4 was looking for a little bit more in the weeds. I know that  
5 there was a document production or some sort of production as  
6 of Tuesday in the Melton matter and then there are additional  
7 documents to be produced or all documents to be produced by  
8 October 2. But I was wondering as to what extent that overlaps  
9 with the agreed upon production in Item Number One here.

10 MR. HILLIARD: That's right, judge. So October 2 is  
11 the production date for Melton. And we've invited Mr. Cooper  
12 who is on the executive committee to appear today to discuss  
13 the details either of production if the Court seems interested  
14 in hearing from him, as well as the coordination on Number 11.  
15 But it's my understanding that the complete Melton  
16 production -- correct me if I am wrong, Mr. Cooper -- is on  
17 October 2.

18 THE COURT: All right. And I take it that is beyond  
19 whatever documents within the scope of the agreed upon  
20 production in Item Number One here?

21 MR. HILLIARD: It is. It is a full discovery request  
22 for production and it's pretty robust.

23 THE COURT: All right. And did I understand  
24 Mr. Godfrey correctly that whatever documents are produced  
25 whether that is within the scope of the agreement in Item

1 Number One or not would be done but through the --

2 MR. GODFREY: Yes, your Honor. It is unclear to us,  
3 although, we hope to get clear within the next few days whether  
4 Mr. Cooper will agree to use share vault. I don't think he  
5 said no but I don't think he said yes. So, but in fairness to  
6 him we have not yet concluded those discussions. I think the  
7 concept of MDL state coordination case that you have a single  
8 document depository that serves for all. But the answer as far  
9 as pure MDL, if we're producing it Melton is going to the share  
10 vault MDL counsel, all MDL counsel have had access to it.

11 THE COURT: All right. And consistent with my remarks  
12 before I think to the extent that document depository counsel  
13 whereas a single depository for all actions whether here or  
14 elsewhere I think that is certainly within everybody's  
15 interests and hopefully we can get there. We're jumping a  
16 little ahead but I will tell you I have left a message for the  
17 judge in the Melton matter. I tried to reach her yesterday but  
18 didn't get her hoping to touch base with here sooner rather  
19 than later so that we can, I can introduce myself and we can  
20 discuss some of these issues. But again, we'll get to that a  
21 little bit later.

22 Mr. Schoon.

23 MR. SCHOON: On behalf of Delphi I don't think this  
24 will become an issue but I want to qualify what Mr. Godfrey  
25 said as to us if that we are not a defendant -- we're a



1 defendant in only a very small number of the state cases.  
2 We're perfectly -- at least in principle, I don't have an issue  
3 with having our documents be available to plaintiffs in other  
4 cases but that would be subject to any kind of protective  
5 orders that we think are necessary as well there. So I don't  
6 want to us get completely bound up with whatever GM commits to  
7 in that regard.

8 THE COURT: All right. I am assuming that those sorts  
9 of nuances can be worked out either with respect to the  
10 language of whatever protective order is entered so that it  
11 deals with that scenario or I don't know enough about the share  
12 vault myself. But share vault I would think that there's a  
13 technical solution to that problem as well and maybe possible  
14 to give access to have different levels of access or something.  
15 But I'll leave you guys to discuss that and hopefully work that  
16 out but, obviously, let me know sooner rather than later if  
17 there are issues on it.

18 Anything else to be said on Item Number One?

19 Very good. Until Item Number Two we've also already  
20 addressed and have a plan in place to resolve any disagreements  
21 that you can't resolve yourself.

22 Item Number Three we've I think largely also addressed  
23 the creation of single document depository. I guess the only  
24 question I have on that front is what the status of any  
25 discussions are with respect to the sharing of costs and also

1 whether that is an issue vis-a-vis counsel in related cases who  
2 are not part of the MDL which dovetails with some of the other  
3 issues we'll discuss later. But if you want to discuss that  
4 now is that an issue you are discussing and on top of or  
5 something I don't need to involve myself or something we should  
6 be discussing?

7 MS. CABRASER: Your Honor, we need to complete our  
8 discussion on that. So I don't think it's something your Honor  
9 needs to be involved in now. We're typically able to work  
10 those things out. It's going to be an ongoing process with  
11 respect to the counsel in the state courts. But once a  
12 depository is established and documents are there and the  
13 protective orders are in place, usually it's not an issue to  
14 enable counsel from the state courts to participate in that.  
15 Indeed that is typically the function, the level of  
16 coordination between the federal and state courts that takes  
17 place and we can discuss that later on when we get to  
18 coordination.

19 THE COURT: All right. And in terms of sharing costs  
20 between plaintiffs and defendants, I take it you are discussing  
21 that.

22 MS. CABRASER: We will be discussing that, your Honor.  
23 We are going to need some information on that. We're,  
24 obviously, sensitive to the cost issue and want to make sure  
25 that we can work something out that's equitable. We'll also

E94AAGMI1

Conference

1 want to test it against other vendors to make sure nobody's  
2 overpaying.

3 THE COURT: OK. Very good. So continue to discuss  
4 that. Hopefully you can work it out but, obviously, let me  
5 know if there are any issues that you need me on.

6 All right. Turning to the Item Number Four document  
7 discovery beyond the initial disclosures in Item Number One, I  
8 guess the question I have, obviously, I am aware of your  
9 respective positions on that as reflected in the letter. There  
10 are two categories of documents or materials that I think are  
11 at issue. The first is the dispute over whether document  
12 discovery issue proceeding for all personal injury and wrongful  
13 death cases involving post-sale accidents and all economic loss  
14 MDL cases involving post-sale New GM vehicles. The second is  
15 in essence the sort of ongoing safety issues or repair issues  
16 and the like. Let's take those separately.

17 With respect to the first I guess the question I have  
18 for I think maybe best directed to Mr. Godfrey is, to the  
19 extent that those cases, the case that are referenced there are  
20 not subject to any motions to enforce before the bankruptcy  
21 court and will inevitably go forward regardless of what the  
22 bankruptcy court's ruling is, what is the argument for not  
23 proceeding on those now? I recognize that it, obviously,  
24 substantially overlaps whatever discovery might be ultimately  
25 be done in the cases that are subject to your motions to

1 enforce if those motions are denied in whole or in part.

2           But my question is to the extent that those cases are  
3 going to proceed no matter what, what is the reason to delay?  
4 I would think that there is an interest. Everybody has an  
5 interest in ensuring that documents are gathered both to ensure  
6 the documents and materials don't disappear or get lost, to  
7 ensure that custodians who have information about where things  
8 are identified and those things can be tracked down. And also  
9 to ensure that when the time comes to begin depositions in this  
10 matter which we'll talk about at some point that we don't need  
11 another six 12, 18 months to gather documents and we're taking  
12 advantage of the time now while a bankruptcy litigation is  
13 ongoing to do what we can on that front.

14           So, putting the question to you, what is the argument  
15 against proceeding now? And I guess related to that, the  
16 letter indicated or proposed or raised the question of whether  
17 these issues should be briefed. I could see a reason to brief  
18 the second category which I'll come to shortly but I am not  
19 sure what issue there is to brief on this category. That is to  
20 say is it a legal issue or is it more just a practical and case  
21 management issue about burden and costs and the like in which  
22 case I am not sure what is to be gained by briefing. So let me  
23 turn to you first.

24           MR. GODFREY: Your Honor, it's both a legal issue and  
25 it is a practical issue. Statistically, the vast majority of

1 plaintiffs and vehicles at issue are presale. That's just the  
2 fact. In this court, for example, there are 1145 vehicles that  
3 are identified. The presale models at a minimum are  
4 83 percent. 6.5 additional percent are this 2009 models. We  
5 can't tell whether they're presale or post-sale. Another 41 we  
6 can't tell at all. But probably 90 to 95 percent if you get  
7 down to the facts are all presale which means that Judge  
8 Gerber's rulings are going to determine whether the number of  
9 plaintiffs and the number of vehicles in the 90 percent plus  
10 range have a claim to proceed against New GM at all.

11           Second, generally speaking but not always the case and  
12 I recognize that but generally speaking, until there's a master  
13 consolidated complaint filed and motion practice takes place to  
14 tell us what is at stake having broad undefined discovery are  
15 not the most efficient process and it's also many of the claims  
16 they want discovery dismissed it's unnecessary and it's really  
17 not appropriate. Those are the legal reasons.

18           As a practical reason the discovery that they seek for  
19 the few cases -- and I'm not suggesting that to the individual  
20 plaintiff they aren't important cases -- of course, they're  
21 important cases to victims or individual plaintiffs. We  
22 recognize that. But to the extent that you allow discovery for  
23 the individual plaintiffs in a personal injury case it is  
24 unbounded and it is telling us that essentially everything is  
25 open because the personal injury cases, if you look at the

1 complaints post-sale all depend upon presale facts, presale  
2 discovery, presale information. There's no bounding the  
3 discovery.

4           So as the practical matter while it sounds simple, all  
5 just the post-sale cases, you are talking about opening up  
6 discovery, document discovery across the board, which by the  
7 way, we don't even have a document request in this case to know  
8 how to define it or how to respond but we'll set that aside.  
9 It is unbounded discovery. It is essentially saying we are  
10 starting discovery now, at least with respect to the documents.  
11 That is the practical problem as well. And again, if we're  
12 right in front of Judge Gerber and I hope we're right but Judge  
13 Gerber is going to determine what that means. If we're right  
14 the vast majority of cases and plaintiffs before you have no  
15 claim against us. We'll have engaged in all this work and all  
16 this discovery for no purpose. That's the answer to your  
17 question.

18           THE COURT: Well, my question or problem is with the  
19 very last thing you said, the no purpose part, because let's  
20 you say you aren't right and let's say 90 percent of those  
21 plaintiffs proceeding here disappear overnight by virtue of  
22 whatever ruling is made and presumably affirmed. Obviously,  
23 we're all speculating in the bankruptcy matter. That still  
24 leaves five to ten percent of the plaintiffs proceeding. And  
25 if the discovery to be done is going to be needed in those

1 cases regardless, then what's the point in holding off? Now  
2 maybe there are middle grounds here and I don't know to what  
3 extent the items that you've identified as being willing to  
4 produce on some sort of reasonable schedule present that middle  
5 ground but -- I mean I recognize that this does amount to  
6 essentially proceeding to a full document discovery but the  
7 purpose of my question is why not do that if we're ultimately  
8 going to need to do that any way?

9 MR. GODFREY: Generally my experience as an MDL is  
10 that if you have 100 plaintiffs you don't let one or two or  
11 three dictate the pace of the other 77. Judge Gerber has  
12 identified.

13 The second point is until we see the master --

14 THE COURT: But that is true. Judge Gerber is right  
15 in the sense that subject to the sale order and injunction but  
16 there are indisputably cases and five to ten percent of the  
17 large number is still a large number that you are not even  
18 arguing or making any motion before the bankruptcy court and  
19 don't as you represented to me at the initial conference don't  
20 have any intention of doing so. The question is if that  
21 discovery is ultimately going to be -- as to those plaintiffs  
22 any way and doing it now would benefit the other categories of  
23 plaintiffs in the event that you lose before the bankruptcy  
24 court in whatever way, shape or form you lose, then why not  
25 proceed now?

E94AAGMI1

Conference

1 MR. GODFREY: Right.

2 THE COURT: I am not sure I am seeing the reason other  
3 than the fact that it will involve work but it's work that need  
4 be done any way is the premise of the question. Maybe I am  
5 wrong. I don't know.

6 MR. GODFREY: There is no question that the Court is  
7 correct that as to an individual plaintiff is not subject to  
8 the bankruptcy bar that we separate overall MDL concepts from  
9 that that plaintiff is, there was a similar plaintiff in this  
10 court, similar case, the discussion would be on a legal basis  
11 should we have discovery before we test the litigating  
12 plaintiff or after? That would be the issue. I don't think  
13 that that is the most efficient way to procedure, particularly,  
14 since we're talking here about a relatively short period of  
15 time between now and when Judge Gerber rules.

16 THE COURT: That's already been pushed back from what  
17 it was originally and I am not in a position to know when Judge  
18 Gerber will issue a ruling. As I understand it it'll be fully  
19 briefed sometime in January. It may well be a complicated  
20 issue. He has other cases to decide. For all I know it will  
21 take him a little while to decide and my concern is that we're  
22 delaying for six months or a year when we could productively  
23 use that time, might not be the best use of everybody's time.

24 MR. GODFREY: I understand the Court's point. I was  
25 referring to the other points that MDL -- a few months here or



E94AAGMI1

Conference

1 there to me is not a lifetime of MDLs. I hate to say that to  
2 the Court. My first MDL after 15 years.

3 Look, I think for the legal reasons they articulated I  
4 think the practical reasons, but I agree with your Honor if you  
5 look at the single plaintiff or small group of plaintiffs we  
6 have 13 or 12 PI cases and this case, several which are  
7 post-sale. They are overlapping. There is no question that if  
8 they were standing alone it would be a different answer.

9 THE COURT: OK. Let me ask a very pointed question.  
10 Assume you win on everything before Judge Gerber and all those  
11 plaintiffs disappear, how does discovery change vis-a-vis the  
12 remaining cases as to which you are not making any motion  
13 before the bankruptcy court? In other words, what impact does  
14 that have on the scope, timing or nature of the discovery?  
15 Does have any or would it be the same?

16 MR. GODFREY: It will have some because several  
17 plaintiffs are claiming that they are not subject to the  
18 bankruptcy court sale order. And his ruling would determine  
19 whether that's true for them. But there is a category of  
20 plaintiffs that we would agree are not subject to Judge  
21 Gerber's ruling. So then you revert to my first point is which  
22 is let's get the consolidated complaint on file, test the  
23 validity of it and then you can decide what remains.

24 THE COURT: All right. Mr. Hilliard.

25 MR. HILLIARD: Mr. Berman and I are going to address

E94AAGMI1

Conference

1 two issues. Mr. Berman the safety issue and I want to address  
2 the personal injury and death cases.

3 MR. BERMAN: Let's me start with the economic loss  
4 cases, not the safety issue. Mr. Godfrey has a different view  
5 of the size of the class cases that are out there that are  
6 post-sale cases and post-sale vehicles. So we have, just to  
7 give you a few examples, we have 790,000 ignition switch  
8 vehicles that were post 2010. We have switch defects of  
9 another hundred thousand. We have ten million, ten million  
10 cars that are in the Andrews defects that we think are  
11 post-sale. So all of those vehicles are post-sale vehicles.  
12 They are not subject to the sale order we think discovery  
13 should go toward.

14 With respect to Mr. Godfrey's point that we should  
15 wait for the complaint, we want to get the MDL at the  
16 bellwether getting ahead of any other state court cases on  
17 discovery. One way to do it is to order the production of  
18 documents related to these vehicles now. We don't think that  
19 we need to wait for the complaint. The complaint is going to  
20 take a while for your Honor to resolve it. It's not due till  
21 October. We haven't talked about a briefing schedule but I  
22 imagine it is going to take some time to get that done. So  
23 we're talking maybe January until we get a ruling.

24 So we found the Toyota case is we're going to get that  
25 case done in two and a half years because Judge Selma ordered

E94AAGMI1

Conference

1 the start of document production quickly. The sufficiency of  
2 the complaint -- it's hard to imagine when GM has admitted that  
3 these vehicles were defective when they were sold, that we're  
4 not going to be able to state some cause of action. We may not  
5 agree over every cause of action we agree but when you have the  
6 admitted defect it's hard to imagine that we have to really  
7 wait around to see whether we have cause of action. So for  
8 those reasons on the post-sale vehicles that are at issue in  
9 any of the complaints before you, we think discovery should go  
10 forward.

11 THE COURT: All right. Mr. Hilliard.

12 MR. HILLIARD: Your Honor, this is what we've called  
13 intentional chomping at the bit issue and you hit it on the  
14 head. And right now you've accepted into the MDL over 600  
15 post-injury and death cases. The deadlines for GM to object to  
16 those MDLs has passed and they did not object. 600 that they  
17 admit are not subject to bankruptcy. We have discovery ready  
18 to go now and I don't see it as a 15 year MDL, judge. My hope  
19 is that this Court will pick a case and set it for trial within  
20 12 months and to do discovery has to commence. The other point  
21 that you made, your Honor, is that no matter what Judge Gerber  
22 rules there may be an appeal. It may be interlocutory --  
23 appeal. We could actually do full discovery which keep in mind  
24 dates to 2002. So again, you hit it on the head when you say  
25 there are witnesses that we have to go find from 2002 internal

E94AAGMI1

Conference

1 to GM and I've inquired about those because some have retired  
2 already. You can't take depositions until you get the  
3 documents and you can't get the documents until you submit a  
4 request for production. Back in my office in Corpus Christi I  
5 have a set of request for production I can send to them Monday  
6 morning. If this Court rules that discovery is to proceed  
7 immediately unfettered just like any other case because  
8 bankruptcy simply by the sale agreement itself does not affect  
9 post-sale injury and death cases and you have 600 of them in  
10 front of you. So my point is that we should proceed.

11 THE COURT: Let me be make sure I understand when you  
12 say "unfettered" you are meaning with respect to whatever cases  
13 are part of the MDL that the subject to the motion to enforce  
14 before the bankruptcy court?

15 MR. HILLIARD: Correct. And the point that I read GM  
16 making is, yeah, but that would benefit folks who may not be in  
17 the MDL because of the bankruptcy issues. With all due  
18 respect, that's a "so what" response because there are almost a  
19 thousand folks who will be here at the end of the day waiting  
20 to either go to trial or get this case resolved.

21 THE COURT: OK. Mr. Godfrey, you want to say anything  
22 further on this?

23 MR. GODFREY: I can think of no better way to  
24 interfere with Judge Gerber management than to open discovery  
25 here because we all know this is going to happen. Bankruptcy

E94AAGMI1

Conference

1 lawyers are controlled by lead counsel. We are going to find  
2 some document that they say creates new issue. That is how  
3 this is going to play out. Now my own view is Judge Gerber  
4 ought to be allowed to do what he needs to. I take it for --  
5 it's obvious that it is subject to the stay in ordinary cases  
6 that is not an MDL that are -- case making discovery now. But  
7 I think that I can think of no better way, that's why Judge  
8 Gerber said no discovery. But what's going to happen. We  
9 might as well face up to the fact if we with open discovery  
10 Judge Gerber is going to get briefing after briefing after  
11 briefing. And the six months your Honor is concerned about,  
12 that's the least of our concerns.

13 THE COURT: All right. I think I am not entirely  
14 persuaded by that. I am going to reserve judgment on that  
15 issue. I'll tell you what my inclination is to proceed now  
16 with document discovery as to any cases that are part of the  
17 MDL that are not subject the motion to endorse before Judge  
18 Gerber. But what I am going to do in the mean time is speak  
19 with Judge Gerber and make sure as far as he is concerned that  
20 I'm not stepping on his toes in some fashion. And I'm also  
21 going to give defendants an opportunity if you want to submit a  
22 letter within, let's say I'll give you until a week from today  
23 to submit a letter very specifically on whether and to what  
24 extent either motion practice with respect to a consolidated  
25 class action complaint or a ruling by the bankruptcy court

E94AAGMI1

Conference

1 would have an effect on the scope and nature of the timing of  
2 discovery with respect to the cases that are not subject to the  
3 motions to endorse, all right. Because ultimately again my  
4 view is a little bit of if that is ultimately going to go  
5 forward regardless, then we may as well get it done now because  
6 it will not only be necessary to those cases because it will  
7 benefit whatever cases remain after the bankruptcy court ruling  
8 is made.

9 So if you want you can, let me say by the close of  
10 business next Wednesday, then by Friday I'll give lead counsel  
11 an opportunity to respond to that and then I will properly make  
12 a decision on that and if I am ordering discovery I will  
13 indicate that you guys should confer about deadlines and scope  
14 and the like, all right.

15 Turning to the sort of ongoing safety issue question.  
16 I mean, I suppose in some respects maybe it should just be  
17 addressed in connection with in this with the same process but  
18 there as I understand it there is a little bit more of a legal  
19 issue, namely, New GM is in the position that in essence NHTSA  
20 has exclusive jurisdiction or authority over these issues and  
21 that this is not the proper forum in which it should be  
22 addressed. That's a legal issue and a legal issue on which I  
23 can't say I have any experience but I don't know if there are  
24 other issues beyond that that the decision would turn on.

25 MR. BERMAN: We have a briefing schedule to suggest to

1 your Honor.

2 THE COURT: OK.

3 MR. BERMAN: Plaintiffs will file their opening on  
4 September is 15. GM, New GM would respond on September 25.  
5 And the plaintiffs would reply on October 1.

6 THE COURT: All right. That would be by normal  
7 motions basically or --

8 MR. BERMAN: We are thinking of a letter.

9 THE COURT: All right. In any page limits  
10 anticipation?

11 MR. GODFREY: Ten pages. I can't imagine being more  
12 than that.

13 THE COURT: Ten pages, all right. So ten pages for  
14 the two initial letter briefs and five pages on reply and that  
15 briefing schedule is fine by me. Are there issues there other  
16 than the legal question of whether I have authority or this is  
17 within the purview of NHTSA? That is to say to the extent  
18 there are -- I just want to make sure that everybody's aware of  
19 what the issues are and the briefing is directed towards those  
20 issues. Is that the only real dispute there?

21 MR. BERMAN: That's the only dispute that GM has  
22 raised with us.

23 MR. GODFREY: I think, your Honor, that's the legal  
24 question. We, of course, have some concern about how they  
25 define the document selection we are looking at but that could

1 be looked at. In the event the Court allowed discovery we  
2 would probably work that out. So I don't see that as an issue  
3 we need to brief. It's fine but I think that's secondary  
4 issue.

5 MR. BERMAN: That's a fair point. We were thinking  
6 that we would actually attach our document requests with our  
7 letter briefs so that they know precisely what we're looking  
8 for.

9 THE COURT: Why don't you do that. Then, obviously,  
10 that wouldn't be within the five page or ten page limit but if  
11 there are any issues raised by that hopefully you can work them  
12 out and first steps should obviously be to confer rather than  
13 raise them with me but if you can resolve them obviously raise  
14 them with me.

15 All right. Couple of discovery questions I have I  
16 think that address the issues that reference and discussed in  
17 the letter. One is maybe I'll just raise this as an item that  
18 you should I think about and we discuss the pending I suppose a  
19 little bit on the ruling I make with respect to the first issue  
20 we just discussed which is notwithstanding my view that  
21 depositions should be defer whether we should allow or I should  
22 allow depositions with respect to the custodians whether  
23 there's a need for that and in essence whether that's an issue.  
24 So I guess my inclination is to let you think about that  
25 discuss with one another and maybe there's an issue we can and



1 should address at the next conference depending on whether or  
2 not ruling I make on the full-blown discovery question. But  
3 anyone think otherwise?

4 MR. BERMAN: I think the next conference will be --

5 MR. GODFREY: I agree with that, your Honor. It  
6 occurs to me that we have had the discussion about opening up  
7 document discovery in that respect to New GM v. Plaintiffs.  
8 But defendants joined us in their letter, so I don't know  
9 whether they have anything to add to this but I assume the  
10 letter briefing would apply to them as well whether they want  
11 to do that. I want to put that on the table.

12 (Continued on next page)

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E94SGEN2

1           MR. SCHOON: That is what I would expect, your Honor.  
2 I don't expect our position would be any different from GM's.

3           THE COURT: I wouldn't think so. I guess to make it  
4 concrete, I think you should plan on filing a single letter  
5 brief on behalf of all defendants and you can coordinate the  
6 briefing to that.

7           MR. SCHOON: I can think of one issue that may touch  
8 us a little bit differently. With the court's permission, if  
9 we find that it is necessary, if we can have two pages to  
10 address that potential issue? I don't want to get ahead on the  
11 issue.

12          THE COURT: Meaning you don't want to tell me what it  
13 is?

14          MR. SCHOON: I would tell you, your Honor, but I don't  
15 want to tell them. It just has to do with their issue as to  
16 the speed of production parts and supply parts. Again, I am  
17 really not, at this point, having a problem with that.

18          THE COURT: Why don't we leave it as a 10-page limit,  
19 and if it turns out that that is an issue and you can't fit it  
20 within the 10 pages you're allotted, which I am sure you can,  
21 you can make an application to me for two additional pages by  
22 letter motion, and I am happy to consider that.

23           The last question I have on the discovery, and maybe  
24 this is also an issue that I just raised and we can discuss it  
25 at the next conference is, we haven't really discussed or

E94SGEN2

1 addressed the distinction between class-related discovery  
2 versus merits discovery. I don't know if that is something we  
3 should be discussing and to what extent it bears on the issues  
4 that we did just discuss. I would raise that.

5 Mr. Berman.

6 MR. BERMAN: So far we haven't had any discussion  
7 whether discovery being produced is supposedly class or  
8 supposedly merits. I could tell you, I am sure counsel would  
9 agree with me, it is always our view that with all these  
10 distinctions, it creates more headaches for the courts and the  
11 parties. You are constantly fighting over is this for class or  
12 is this for merits. Typically, in my experience, most courts  
13 let discovery go forward without putting labels on it.

14 THE COURT: Tell you what, obviously it is not  
15 something that you guys have discussed. Why don't you put that  
16 in the bucket of things to discuss after I resolve the scope of  
17 discovery issue and we can address it at the next conference.  
18 I am mindful of the fact that, as the Supreme Court's decision  
19 in Dukes made clear, even at the class certification stage,  
20 there are issues related to the merits that may be relevant.

21 In that regard, I am inclined to agree that there may  
22 be less of a distinction here than either there used to be or  
23 one might think.

24 Mr. Godfrey.

25 MR. GODFREY: It would come as no surprise, I would

E94SGEN2

1 suspect the court would say -- I am not sure I agree with the  
2 general broad statement Mr. Berman made, but I recognize the  
3 Dukes opinion. We will work through this I think given the  
4 position here.

5 At the October 2 conference, we will tell the court  
6 we're in agreement as to the appropriate scope or, at a  
7 minimum, I would hope for an agreement for these issues, but  
8 not for this smaller, discrete set of issues; that your Honor  
9 could then just direct us accordingly so that your Honor is  
10 comfortable with the general statement of we agree or disagree.  
11 I would like to advance this so we at least know where we stand  
12 on things.

13 THE COURT: Discuss that. It will be on the agenda  
14 for the October conference.

15 Turning to item number five, unless there is anything  
16 further on item number four? Doesn't look like there is.

17 Item number five is third-party document discovery and  
18 preservation, which obviously overlaps a little bit with the  
19 issues that we just discussed. The question I have is, is  
20 there any distinction between that issue and the issue we just  
21 discussed, in which case I will reserve decision on it, subject  
22 to my talking with Judge Gerber about it and also seeing  
23 whatever is filed by defendants. I guess I should say, that  
24 letter should be filed on behalf of all defendants as well.

25 Is there anything in particular or specific to this

E94SGEN2

1 issue that we ought to discuss?

2 MR. BERMAN: Well, this issue is really our concern  
3 about preservation. There is third parties out there that have  
4 relevant information. What we really want to do now is to just  
5 be able to serve a document request on them, and perhaps not  
6 even collect the documents, but just have them, take the steps,  
7 so that if things do go forward, the documents are maintained.  
8 It is a very precautionary measure we are trying to take here.

9 THE COURT: How would you envision that actually  
10 working? In other words, you would serve a document request  
11 with an indication that there is no need to produce them yet?

12 MR. BERMAN: Yes. We would have an agreed letter that  
13 we would work out with GM and Delphi and submit to the court  
14 this is a typical letter we are going to send. We would serve  
15 the subpoena with the letter and go from there.

16 THE COURT: Mr. Godfrey.

17 MR. GODFREY: I have said before to lead counsel, your  
18 Honor, I have no problems, much less any concern, with steps  
19 taken to preserve evidence. If the proposal is they want to  
20 somehow notify third parties, whatever format they choose, here  
21 are the types of documents and evidence you need to preserve.  
22 I have no concerns about that. That is something we could  
23 agree to. Again, this is what you're entitled to how much  
24 discovery you have. As I understand the proposal, it is to  
25 preserve evidence. That is not something I am concerned about

E94SGEN2

1 with respect to third parties.

2 THE COURT: Mr. Schoon.

3 MR. SCHOON: Our position is the same. We understood  
4 your Honor's previous order as directing us to give notice to  
5 third parties, which we have complied with. To that extent, I  
6 think we are already a little bit ahead on that.

7 THE COURT: It doesn't sound like there is a whole lot  
8 of daylight between the parties' position on this. I think it  
9 does make sense to take reasonable steps to ensure third  
10 parties are preserving whatever ultimately or could ultimately  
11 be within the scope of document discovery requests here.

12 I am going to direct you guys to try to work that out.  
13 I don't see why I would care whether that is done in the form  
14 of an actual discovery request along with a letter that says,  
15 while this is a discovery request, you have no need to respond  
16 to it unless you are directed to do so. We are putting you on  
17 notice of things that need to be preserved, or if it is done in  
18 some other fashion. I am not sure that there is a meaningful  
19 distinction between those two.

20 It seems like you guys should be able to work this  
21 out. I don't know if I need to set a deadline for to you do  
22 so, or I can just rely on you to do it. If there is any  
23 disagreements, I'll rely on you to promptly bring them to my  
24 attention.

25 MR. BERMAN: That is okay with us, your Honor.

E94SGEN2

1           MR. GODFREY: We agree, your Honor. There may be some  
2 third parties that would cause us concern. If there is, we'll  
3 bring it to your attention. I think we will be able to work it  
4 out the next week or so.

5           THE COURT: The question of whether that stuff can or  
6 should be produced and on what schedule we will table to  
7 consider in connection with larger discovery questions. I  
8 think that exhausts number five.

9           Let's turn to number six, which is documents relating  
10 to the Valukas report. As I understand it, New GM has agreed  
11 to produce a log of any privileged documents cited in the  
12 Valukas report by October 2, which is fine with me.

13           As I understand it, New GM has also agreed to produce  
14 any nonprivileged documents cited in the report to the extent  
15 that those are in New GM's possession, custody, and control,  
16 and were not produced to Congress or NHTSA. I assume that  
17 means that those are being produced in connection with item  
18 number one. It wouldn't be necessary to produce them  
19 separately here, or otherwise publicly available as well.

20           My question on that category is what the timing is  
21 there. I am not sure that the letter included any sort of  
22 deadline or schedule for that.

23           MR. GODFREY: By October 2, your Honor.

24           THE COURT: Great. That makes sense.

25           MR. GODFREY: We are not certain there are any

E94SGEN2

1 documents that weren't in the NHTSA or Congressional  
2 production. We haven't found them yet. If they exist, what we  
3 said in our letter, we will produce them.

4 I could represent to counsel that they were all  
5 covered by NHTSA or not. I think they are. Either way, we  
6 will get them by October 2.

7 THE COURT: Excellent. Obviously, there are other  
8 disputes that are potentially lurking here. I take it from the  
9 proposed agenda letter that lead counsel agrees to defer to  
10 those later. I think that probably -- Mr. Hilliard is  
11 suggesting, which maybe suggests maybe that is not right.

12 MR. HILLIARD: It is right. I apologize for standing  
13 just to confirm that judge.

14 THE COURT: Let me say my piece and then you can stand  
15 again.

16 I think that does make sense. I think we will have a  
17 better sense of the issues, if any, and you may be able to  
18 resolve or narrow the issues after some of these earlier and  
19 initial productions and maybe even after the filing of the  
20 consolidated complaint and other developments.

21 Having said that, I am inclined to think that when the  
22 time comes -- and you should ponder this and discuss it with  
23 one another -- that my inclination is to think that there are  
24 probably different categories of materials or documents or  
25 information that are within the scope of this Valukas report



E94SGEN2

1 materials and, for example, obviously things as to which New GM  
2 invokes privilege and that itself might be different categories  
3 of things, including witness interviews and the like.

4 I will look to you to make a suggestion of the best  
5 and most efficient way to litigate those issues. I would think  
6 there may be discrete categories that you could identify, and  
7 legal issues as to each of those categories, we could brief on  
8 the category level. Then after I issue rulings on those, you  
9 can then figure out what impact that has on the production and  
10 specific materials. Does that make sense?

11 Mr. Hilliard, now you can stand up.

12 MR. HILLIARD: Thanks, Judge. We have confirmed and  
13 that is right. This issue will be paramount, ultimately, with  
14 the court because of the documents that are collected but not  
15 cited. GM knows our position. We know theirs. I think the  
16 court's suggestion is exactly right. We will just need to  
17 proceed with formal briefing on the categories as documents are  
18 identified and let the court make those decisions based on any  
19 privilege that GM brings up.

20 THE COURT: Very good. My guess is the same applies  
21 to the next category, which is the documents provided by New GM  
22 to government agencies other than NHTSA, including DOJ, which  
23 lead counsel also agreed to defer. Is there any reason to deal  
24 with that separately? It seems to be in the same general  
25 category.

E94SGEN2

1           MR. HILLIARD: There is not. Again, we conferred on  
2 that and are simply identifying the agencies that they have  
3 produced to and it will go along the lines of the Valukas  
4 documents, Judge.

5           THE COURT: Obviously, I would encourage you to do  
6 what it sounds like you are already doing, at a minimum,  
7 getting your head around what these categories involve, which  
8 is to say figure out what the universe is and then identify  
9 whatever legal issues may be lurking there so that we can  
10 figure out the most efficient way, when the time comes, to  
11 address any disputes that arise.

12           Yes, Mr. Godfrey.

13           MR. GODFREY: Depending upon the category, there may  
14 be a need for in camera submission or hearing. I assume your  
15 Honor is already ahead of us on that. I want to make sure it  
16 does not come as a surprise.

17           THE COURT: Understood. I appreciate the heads up.  
18 We will deal with that if and when it arises.

19           Number eight is the ESI order, which I understood from  
20 Mr. Godfrey's remarks earlier, you're pretty close to  
21 finalizing. I guess, just to give you a little bit of a  
22 deadline to do so, why don't I say that either you will submit  
23 something to me by the close of business on Monday, which is  
24 the deadline for the other order that you are discussing, or if  
25 there aren't any disagreements, you will basically follow the

E94SGEN2

1 same schedule that we said earlier. Does that make sense?

2 MS. CABRASER: Yes, your Honor. We will do that.

3 MR. GODFREY: It might not happen until the end of  
4 business Tuesday, one day with the various things we have going  
5 on, if that is agreeable.

6 THE COURT: I think that is agreeable, as long as we  
7 keep the Friday at noon deadline for any submissions.

8 MR. GODFREY: That is fair.

9 THE COURT: We will modify that deadline for the one  
10 earlier and set the same deadline for this one.

11 Having said that, if you manage to agree sooner,  
12 obviously it is in everybody's interest to submit an  
13 agreed-upon order sooner than that. That is just an outside  
14 deadline.

15 Item number nine is additional preservation protocols.  
16 I already did sign an agreed-upon preservation order, number 2,  
17 which I saw was docketed earlier this week. I take it you're  
18 discussing others. In light of that, I am inclined to think  
19 that you should continue those discussions and raise issues  
20 with me if, as, or when you need to do so. Does that make  
21 sense?

22 MR. GODFREY: Yes, your Honor.

23 MR. BERMAN: Yes, your Honor.

24 MR. GODFREY: The approach we are taking is,  
25 essentially, the largest recalls to the smaller recalls makes

E94SGEN2

1 the most sense with respect to preservation. Working through  
2 the list, and I anticipate several more of these. It's been a  
3 cooperative process. We appreciate what lead counsel has done  
4 working with us on that.

5 MR. BERMAN: The one issue that we still haven't  
6 really made much progress on that may be subject to briefing  
7 is -- we had this come up in the Toyota case as well -- whereas  
8 class members who are out there reporting a safety concern,  
9 let's say with an ignition switch, the report goes to the  
10 dealer. We want the dealer to be preserving those records. We  
11 think that we may be asking the court to order GM to tell its  
12 dealers that the court wants those records preserved and/or  
13 order the dealers to preserve the records.

14 We don't have yet, and we hope that we will get, a  
15 contract between GM and its dealer to see if GM has the power  
16 to make such requests or orders of the dealers that we think  
17 they probably do. This is an issue that we are trying to work  
18 through.

19 THE COURT: Does that not fall within the scope of the  
20 issue we discussed a few minutes ago about communicating and  
21 requesting that third parties preserve whatever materials are  
22 in their possession?

23 MR. BERMAN: I think this is beyond that. I am not  
24 sure these are, quote, third parties. I don't want to have to  
25 go and subpoena however many hundreds of dealers there are. I

E94SGEN2

1 think GM has the power to force them to preserve such  
2 documents. That's what we are trying to address right now.

3 THE COURT: I will note that item number five related  
4 to third-party production. You include dealers among the  
5 things that you took a position on. There is a little  
6 inconsistency here.

7 Yes, Mr. Godfrey.

8 MR. GODFREY: The dealers are independent. There is  
9 probably more dealer-reporting cases than there is any other  
10 type of litigation of with a franchisor or franchisee. The  
11 preservation orders that we have thus far are preservation  
12 provisions in terms of reimbursable assets and --

13 THE COURT: Keep your voice up.

14 MR. GODFREY: We have different rights with respect to  
15 that, but a general right of the type that we control our  
16 dealers, there is thousands of cases every year about how  
17 independent the dealers are.

18 This is a discussion. It is an open discussion. We  
19 have asked to see the work orders. We referenced several  
20 times, we haven't been provided them yet. We have a general  
21 reaction that says that it is not going to work. May we have  
22 been provided that. I haven't seen it myself. I speak for  
23 myself. This is an open discussion not yet resolved. Whether  
24 it comes to the court by way of briefing or not, I don't know.

25 THE COURT: I appreciate the heads up. It sounds

E94SGEN2

1 premature for me to do anything about it and I would encourage  
2 you to continue your discussions.

3 I do think it may be that it is an issue that relates  
4 as well to the third-party preservation letter or whatever it  
5 is that you decide to do on that. I would encourage you to  
6 bring it within the scope of that discussion as well.  
7 Hopefully you can work it out. If not, obviously we can  
8 discuss how to deal with it at some later date.

9 Item number ten is the protocol for inspection of  
10 plaintiffs' vehicles. It sounds from your letter as if you  
11 were supposed to memorialize the protocol and expected to do  
12 so, I guess, in advance of the next conference. If that is  
13 correct, in which case there is no reason to discuss it further  
14 today.

15 MR. BERMAN: We sent the protocol over quite some time  
16 ago. I am not sure where we are actually. We haven't gotten a  
17 response.

18 THE COURT: Just one reminder. Please, all of you,  
19 speak loudly and clearly and directly into the microphones.  
20 The court reporter is here trying her best to record everything  
21 that we say but, again, the acoustics are a little challenging.

22 Mr. Godfrey, tell me where that protocol stands.

23 MR. GODFREY: Yes. One, I believe we will be able to  
24 work this out, but two, we have sent it to General Motors for  
25 the reason that it does require some technical advice. Whether

E94SGEN2

1 there are issues that are fundamental, I don't yet know. We  
2 are working on this.

3 It is not something, though, that I think will require  
4 a fundamental series of intervention by the court. I think if  
5 we can't work something out, we will be very precise, I  
6 suspect, on a technical basis, our technical people will work  
7 with their technical people and figure out a solution. I think  
8 in general terms though, we have made good progress.

9 THE COURT: Put that on the agenda for October. I  
10 think if it hasn't been resolved by then, we should discuss a  
11 process to resolve whatever disagreements were made on that.

12 MR. GODFREY: I would hope it is resolved well before  
13 that time, your Honor. I think that the issues that we are  
14 looking at are rather discrete. We will be in a position to  
15 discuss this with them next week, I think.

16 THE COURT: I would hope soon as well. Very good.

17 We are up to the big item, number 11, coordination  
18 with other actions. Let me start by just asking if there are  
19 any updates on this front beyond the updates that were in the  
20 letter of August 29, which is docket number 271 in the MD  
21 docket. That is with respect to either the bankruptcy case or  
22 the related cases in other courts.

23 MS. CABRASER: Your Honor, Elizabeth Cabraser for the  
24 plaintiffs. One matter that wasn't addressed or included in  
25 the letters was specific contact information for the judges who

E94SGEN2

1 were assigned to the various state court cases. Our  
2 federal-state liaison counsel has obtained those and is  
3 prepared to submit them to your Honor either this morning or  
4 later on in chambers to enable your Honor to communicate, if  
5 you wish, with the state court judges vis-a-vis the  
6 coordination. We understand you have already started that  
7 process with respect to the judge in the Melton case.

8 THE COURT: I actually think the phone numbers were  
9 included in Exhibit B of the letter. That is the phone numbers  
10 for all judges, except for my own. I don't know why that is.

11 I have those, but what I was going to suggest, on that  
12 score, given the number of judges involved, my tentative  
13 inclination is actually that, at least in the first instance,  
14 it may make sense, except with respect to maybe some of the  
15 more significant cases like the Texas MDL and since there are a  
16 number of cases there, and the Melton matter, since it is the  
17 furthest along, that my current thinking is that I might make  
18 initial contact, if you will, by electronic means by some sort  
19 of e-mail and maybe propose a conference call with any judges  
20 who want to participate.

21 In that regard, it would be most helpful, to the  
22 extent you could obtain them, to give me e-mails for each of  
23 these judges. What I was going to ask is that you exercise due  
24 diligence to find that out, through whatever means you can, and  
25 submit to me, not as part of the public docket -- I don't think



E94SGEN2

1 that information needs to be on a public docket -- submit to me  
2 by e-mail a list of the e-mail addresses of all the other  
3 judges, and then I can do my best to make contact with  
4 everybody, if that makes sense.

5 MS. CABRASER: We will take care of that, your Honor.  
6 My apologies, the federal-state liaison counsel's contact list  
7 contains some updates and corrections from the list you have.  
8 We will further make sure that is complete by having the e-mail  
9 addresses added as well.

10 THE COURT: Great. Since it sounds like you have  
11 phone numbers as well, maybe they differ from the ones that are  
12 in Exhibit B, why don't you just include that in the list as  
13 well that is e-mailed to my chambers.

14 I know that the JPML issue, conditional transfer order  
15 for 13. There are a few cases on that. Is there an update  
16 with respect to other cases that may be coming to me as part of  
17 the MDL, or where do things stand on that front? Mr. Godfrey,  
18 do you know anything about that?

19 MR. GODFREY: I don't think there is an update since  
20 our letter on the 29th. I don't think a conditional transfer  
21 order has come out since then. We will confirm that with the  
22 court, but I think they come out approximately once every  
23 10 days. I think you have the last one that was issued.

24 There are a number of challenges to the conditional  
25 transfer orders. There is an Orange County case that

E94SGEN2

1 Mr. Berman and Mr. Robinson are the lead counsel on that is  
2 challenging the conditional transfer order. That is not before  
3 your Honor yet, but we believe eventually it will get here,  
4 once that is worked through. There is a number that falls into  
5 that category, and I think we have listed most of them, except  
6 for the Orange County case, in the letter that we submitted on  
7 the 29th.

8 THE COURT: Excellent. Just going back to the list of  
9 e-mails and contact information, Mr. Cabraser, is it reasonable  
10 to ask for your liaison counsel to submit that within a week,  
11 just so I can get the ball rolling on that?

12 MS. CABRASER: Yes, your Honor.

13 THE COURT: Obviously, if you can do it even before  
14 then, that would be even better. I recognize the work involved  
15 in that.

16 Turning to the bigger picture issues, namely this  
17 disagreement over the proposed coordination order. I guess my  
18 inclination is to defer decision on those pending my  
19 discussions, or at least until I have spoken to a critical mass  
20 of the judges in the related actions. That is the case for a  
21 couple reasons.

22 Number one, their views may well inform my decision,  
23 because ultimately I think there are comity issues here and  
24 that may have a bearing on which path to take. Number two, I  
25 think the effectiveness of the proposed order is directly

E94SGEN2

1 proportional to the number of other judges who would like to  
2 sign onto it.

3 In that regard, having some sort of sense of where  
4 those judges stand and their willingness to sign onto the  
5 orders that I may enter would obviously have some bearing on  
6 what I want to do here. That is my inclination. I am happy to  
7 hear from you on that, if you have a different view, and I am  
8 not sure you will persuade me to do otherwise.

9 Ms. Cabraser.

10 MS. CABRASER: Your Honor, that makes absolute sense.  
11 We appreciate that. I think the state court judges will too.  
12 You might have noted a little inconsistency between the fact  
13 that both sides were submitting versions of a proposed  
14 coordination letter order to you, but that plaintiffs were also  
15 questioning whether a standalone coordination order is  
16 appropriate.

17 I think your Honor's decision to discuss the matter  
18 with other judges largely eliminates that concern, but I wanted  
19 to unpack it for you, just to take a second to do that. The  
20 order that New GM used as its model is from the Canadian cars  
21 MDL or the grey market MDL from 2004, which predated the Class  
22 Action Fairness Act. In that MDL, which was essentially now a  
23 trust case, there were state court cases in the repealer states  
24 brought as class actions. It was an MDL of class actions with  
25 related class action cases.

E94SGEN2

1           Since that time, since 2005, we don't have those types  
2 of MDLs anymore. If they're class actions, they're removed.  
3 As you see here, all of the class actions, I think, that have  
4 been brought against GM, either are here or are on the way to  
5 coming here as part of the MDL. The State court cases are  
6 individual personal injury wrongful death cases.

7           In recent years, the type of coordination that occurs  
8 in those MDLs, mass tort MDLs versus tort state court cases,  
9 tends to look more like the orders we submitted from Vioxx and  
10 Actos, where there is not a formal standalone coordination  
11 order, but they are orders that coordinate through the doorways  
12 of discovery and documents, which of course we endorse and  
13 support.

14           We are not saying that we oppose, per se, the use of a  
15 coordination order here. If the court considers that to be the  
16 most convenient approach and judges will sign onto it, we were  
17 just concerned that effective coordination depends on tone and  
18 approach, and that a persuasion and comity is much more  
19 effective in enabling judges to decide to coordinate with each  
20 other, and it is just a better way to get there. Your Honor,  
21 you have already embarked on that approach.

22           THE COURT: I don't think I need to resolve it now.  
23 Again, I think that is an issue that I will consider after  
24 touching base with some of these other judges. I am quite  
25 sensitive to the issues of tone and approach here and will be

E94SGEN2

1 sensitive to them. My inclination is, unless for some reason  
2 the other judges recoil at the idea, is that it is in  
3 everybody's interest to have a coordination order entered.

4 I think it can probably only help matters not just  
5 here, but in front of whatever judges are willing to sign onto  
6 it. I think I am inclined to go that path. The devil may be  
7 in some of the details, but I will table that for now.

8 Mr. Godfrey.

9 MR. GODFREY: Your Honor used a wonderful word I  
10 haven't heard for a while and that is the big megillah. This  
11 issue is the big megillah.

12 THE COURT: You haven't spent enough time in New York,  
13 my friend.

14 MR. GODFREY: My son lives here. He hasn't used the  
15 word. I will ask him about that tonight.

16 I would like to make a few basic points to the court.  
17 One, statistically, this is an overwhelmingly federal case.  
18 The vast, vast majority, 90 percent plus, of the vehicles  
19 involved and the plaintiffs are in the federal courts. Two,  
20 this court does not have an MDL federal-state coordination  
21 problem. It has an MDL lawyer problem.

22 Why do I say that? No one can argue with  
23 Ms. Cabraser. I would be the first to agree with her that it  
24 depends upon tone, it depends upon style, it depends upon the  
25 court's word comity. But what we have here are the cases where

E94SGEN2

1 discovery is being pressed by an executive member of the MDL's  
2 steering committee and by another law firm.

3 Two lawyers in a law firm and another lawyer in this  
4 case are pressing all of the state discovery issues. Your  
5 Honor ruled last time no deposition discovery. We have gotten  
6 a letter of Mr. Cooper, who says that Melton is independent.  
7 He is not controlled by the MDL. He wants depositions at the  
8 end of October, beginning of November.

9 It will not work if MDL lawyers, subject to the  
10 jurisdiction of this court, when the court rules and sets a  
11 schedule that we all have to live with, feel unconstrained and  
12 unbounded because they can go off to their own state court.  
13 That will not work. This is not a state court problem. This  
14 is not Judge Tanksley in Cobb County, Georgia, who is setting  
15 the schedule. It is Mr. Cooper and the Beasley Allen firm.  
16 The same in the Smith case. The Beasley Allen firm in Alabama.  
17 The same with the Cole case in Tipton County, Indiana. It is a  
18 small group of plaintiffs' lawyers who have between them seven  
19 or eight cases in this MDL.

20 So we have not a state-federal coordination problem.  
21 This isn't the type of thing that I have seen before, where you  
22 have lawyers not involved in the federal MDL who are proceeding  
23 in front of their own state with the state court judges setting  
24 the schedule. The accounts from the plaintiffs in the Melton  
25 case said it is the most important thing in the GM litigation.

E94SGEN2

1 This case will not take the center stage in the GM litigation.

2           The question, quite frankly, as we said in our letter  
3 is, who is going to control the vast, vast majority of the  
4 cases, the federal MDL or the state court of Cobb County? It  
5 is not even the state court. That is unfair to Judge Tanksley.  
6 It really is. It is the lawyers for a family that previously  
7 got a substantial payment and is now settling damages because  
8 they are claiming discovery fraud. I understand their claim.  
9 GM does not agree with the claim. It is a fundamental problem  
10 for this court, as illustrated by the request for deposition.

11           The 15 people, you would recognize the names of those  
12 people, given what you know about the case so far. These are  
13 not inconsistent or insignificant people. So then what  
14 happens? They get shot one in Melton, they get shot two in  
15 Smith, they get shot three in the MDL? These are lawyers  
16 subject to this court's jurisdiction.

17           The next point I would make is we picked the Judge  
18 Norman order because of a reason, a very special reason. Those  
19 were indirect purchaser cases which the federal courts cannot  
20 hear. So on that case, the state court plaintiffs had causes  
21 of action that the federal court could not resolve. The case  
22 lasted from '03 all the way to '09.

23           The state courts all went through, and the MDL was all  
24 controlling because the discovery was overlapping and it made  
25 no sense. At the end, the State of California, after class

E94SGEN2

1 cert was denied, it was reversed in the First Circuit and  
2 denied in the State of California, proceeded on its own. The  
3 coordination worked fabulously. I have never been in an MDL.  
4 I have never been in an MDL where the state courts dictate the  
5 schedule for the federal, particularly where it is the same  
6 lawyers.

7 Your Honor says in the very first order, we should  
8 look at manual complex litigation. That is what we are relying  
9 upon. This isn't some other era. Kaplan didn't change the  
10 state-federal state issues. It certainly didn't address an MDL  
11 lawyer coordination. This court has unique power over that.  
12 It certainly didn't restrict this court's power under the  
13 Anti-Injunction Act.

14 It seems to me that we start with a simple premise of  
15 the lawyers before this court, with cases in this court, should  
16 adhere to the procedures set forth by this court. The court  
17 may disagree with me. Mr. Godfrey, we are going to do A, B, C.  
18 I will do A, B, C, and as the court said, I will live with it.  
19 But the point being, we can't have a system, it will not work,  
20 it will fail at the inception if this court says, no  
21 deposition, and 10 days later we are saying here are the  
22 depositions we want because Melton, we don't see as being bound  
23 by the MDL. It is the same case, the same issues.

24 My suggestion, which I had raised with plaintiffs'  
25 counsel before, lead counsel before this was, we each set forth



E94SGEN2

1 our position, we each set forth our orders, and each submit it  
2 at noon Eastern time next Friday, one-page brief, no replies,  
3 let the court decide. To us, this is a fundamental issue of  
4 coordination of the MDL counsel for the MDL case.

5 I don't blame any state court judge here. This is not  
6 Judge Tanksley in Cobb County, this is not the judge in Smith,  
7 this is not the judge in Cole. They are enacting the demands  
8 of the plaintiffs' counsel appearing in this court. We think,  
9 until this court rules and decides the issue, and I encourage  
10 the court to make the calls for Ms. Cabraser, we have no  
11 problem with that, that is standard operating procedure, that  
12 the Melton plaintiffs and the Smith plaintiffs are the same  
13 lawyers in this court, they wait for this court to tell them to  
14 proceed. They are the ones pushing the agenda. It is not the  
15 state courts pushing the agenda.

16 Thank you.

17 THE COURT: I hear you. I heard you loud and clear  
18 last time on this issue, and it is something that I am  
19 sensitive to and mindful of. I certainly think that the MDL  
20 does make litigation in these sorts of cases more efficient.  
21 That is somewhat undermined or defeated, if we have even a  
22 handful -- but here more than that -- state cases that are sort  
23 of proceeding on their own track.

24 That is to say, I am sensitive to what you are saying  
25 and will be mindful of it going forward. I am not, in the

E94SGEN2

1 first instance, going to start issuing injunction to the state  
2 courts. I think whatever path I ultimately take, the first  
3 step is to reach out and figure out if there is some way to do  
4 this, that is, coordinating dates things in a more orderly  
5 fashion. I will say, leave it there and I will take the steps  
6 that I said I would take, mainly reach out to some of these  
7 other judges and discuss these issues and figure out what  
8 bearing that has on what we do here.

9           The only other thing I will say is that I think there  
10 is a little bit of tension between the remarks that you just  
11 made and your position on the question of when and how quickly  
12 we proceed on discovery, because I haven't yet spoken to the  
13 judge in the Melton matter. I imagine, if she hears that we  
14 are proceeding with discovery, she may be more inclined to sign  
15 onto whatever orders and schedule that we have here, on the  
16 theory that it won't unduly delay her case and that other  
17 judges may well be inclined to do the same.

18           If they feel that everything is on hold here, and it  
19 may be on hold indefinitely here, and therefore they are  
20 essentially signing onto something, and by virtue of that, are  
21 converting what would a one or two year case for them into a  
22 15-year case. I suspect they are not going to be as inclined  
23 to coordinate voluntarily.

24           There is no need to discuss it further, except to say  
25 that I think there is a little bit of tension there. There may

E94SGEN2

1 well be another reason to proceed in some fashion on broader  
2 discovery at this point. We will table this for further  
3 discussion. I will give it a lot of thought, obviously.

4 Having said that, I am not sure what the one-page  
5 briefs by next Friday, what you're proposing. I think I have a  
6 sense of your respective positions on that issue from the  
7 letter that you submitted and the proposed alternative orders.

8 MR. GODFREY: I think the concept, your Honor, was  
9 that because this is so central to the effectiveness of the  
10 MDL, the parties lay out their positions, they lay out the  
11 powers of the court, I respectfully do not see the tension that  
12 your Honor does for this reason. Judge Tanksley set a schedule  
13 which is a two-year schedule. The deadlines we are facing now  
14 are being pushed by the lawyers.

15 As I said, this is not a state-federal coordination  
16 issue in our view. It is a lawyer issue. Counsel for them,  
17 which has been perfectly polite and professional in his  
18 position with us, he sees the world differently than we do. I  
19 think it is fair that we bring that to the court's attention.

20 My fear is playing out in realtime, is that if that  
21 continues, no matter what this court rules, certain plaintiffs'  
22 lawyers subject to this court can, if they desire to do so --  
23 thus far they have indicated more than a desire to do so -- go  
24 to a state court and file their motion papers, take the  
25 position and tell the court the MDL is irrelevant to them or

E94SGEN2

1 suggest that it doesn't bear on their cases, and then we have  
2 complete chaos in terms of proceeding going forward.

3 I thought the way to tee this up was to just brief at  
4 one time, have the parties state their position, take their  
5 best shot. Then in the meantime, at the court's convenience,  
6 contact the state court judges. But I don't think we should  
7 wait to brief this issue, have another status conference, and  
8 then say, well, now I want some briefs on it. I think it would  
9 be helpful to get our positions out there. Maybe the court  
10 thinks it knows our position. There is nothing more to be said  
11 and that is fair. I think this is a counsel-coordinating  
12 issue, not a state-federal coordination issue.

13 THE COURT: What is it precisely that you would have  
14 me do? Would you have me enter an order directing any counsel  
15 in the MDL may not do X,Y,Z in any other case. I don't know  
16 who the other counsel are in the Melton matter. I understand  
17 Mr. Cooper is in both. Is every counsel on the Melton case in  
18 the MDL? And if not, how does that affect whatever order I  
19 would enter here? What exactly is it that you would propose  
20 that I do?

21 MR. GODFREY: In reverse order, my understanding --  
22 and I can be corrected by the plaintiffs, I don't understand  
23 all of the relationships on the plaintiffs' part. My  
24 understanding is that the counsel in Melton and the counsel in  
25 Smith and the counsel in Cole are all counsel, or their law

E94SGEN2

1 firms are counsel, in this case.

2 Secondly, what I would have the court do, what I would  
3 ask the court to do, is simply direct counsel to say, until we  
4 have worked out the state-federal coordination, unless there is  
5 a court-imposed deadline, not one that you sought, but a  
6 court-imposed deadline in the next month, that nothing takes  
7 place further in the case until I can work with the state court  
8 judges to develop a rational approach so that we do not have  
9 chaos developing in the MDL.

10 That is not going to change the schedule particularly.  
11 It is not going to have any impact upon anyone that is  
12 negative, but it will allow this court to have a balanced,  
13 thoughtful approach from the state court judges. As I said, I  
14 don't view this as a county judges' problem or the Smith in  
15 Alabama judge's problem. I view this as a fundamental question  
16 of how the MDL should proceed. That is why I don't think we  
17 need to go to the Anti-Injunction Act. All the counsel are  
18 here.

19 If you tell me, Mr. Godfrey, I don't want you to do  
20 something, you don't need to issue an order. I am not going to  
21 do it. If you tell me to do it, I am going to do it.

22 THE COURT: I am concerned about a situation where I  
23 say Mr. Godfrey, you may not do X. Another judge says,  
24 Mr. Godfrey, your deadline to do X is Y, and the possibility of  
25 inconsistent direction in that kind of situation.

E94SGEN2

1           MR. GODFREY: I am not worried about that. I am not  
2 worried about those deadlines in the sense that the deadlines  
3 that we are aware of, there is no deposition deadline that says  
4 we have to start depositions in Melton the first week of  
5 November.

6           THE COURT: Let's get a little more concrete here.

7           MR. GODFREY: Sure.

8           THE COURT: I take it you're not raising this with  
9 respect to the document production in Melton?

10          MR. GODFREY: No.

11          THE COURT: You're dealing with that?

12          MR. GODFREY: Yes.

13          THE COURT: This is really about the depositions, and  
14 those are set to begin in the end of October?

15          MR. GODFREY: Mr. Cooper asked for them. Many of  
16 these employees do not work for us. We are trying to figure  
17 out what to do about that. He has asked and he has expressed  
18 his intent to push forward depositions to the last week of  
19 October, first week of November. That is the time frame we are  
20 looking at.

21                 Then you say, well, there is no court order that says  
22 that. Well, I suspect he will get a court order if we refused.  
23 Then you say, well, is that deposition at the end? We would  
24 say no, that is the Melton case. What about these people, they  
25 get another crack at the same witnesses? We do this again in

E94SGEN2

1 Smith, we do this again in Cole, we do this again in the  
2 Zirman(ph) case, we do this again in the Orange County case.  
3 You can see how this unravels.

4 All we are saying is these issues of coordination,  
5 particularly when they are driven by counsel, should get work  
6 out at the front done. The court may disagree with me and say,  
7 here is what we are going to do. I just think that, in  
8 fairness to this court, this is the thing to do.

9 I have never been in a situation, in all the MDLs I  
10 have had for 35 years, where at the start of the case, there  
11 has been such a patent problem that is developing, that is  
12 emerging, between state courts driven by counsel. Not by  
13 judges of state courts, but driven by counsel and the federal  
14 MDL. I think it is something that causes a significant concern  
15 and should be addressed right now.

16 THE COURT: Mr. Cooper is standing. My inclination is  
17 to take up your positions in simultaneous letter briefs on  
18 these issues by next Friday, namely, whether I should take any  
19 of the steps that Mr. Godfrey mentioned with respect to counsel  
20 in these other cases. Ultimately, I think a lot of this may  
21 fall by the wayside, depending on what happens in my  
22 conversations with the other judges and what I decide to do on  
23 the broader coordination front.

24 It doesn't sound like the deadline to resolve this is  
25 imminent, in the sense that we are talking about depositions at

E94SGEN2

1 the end of October, beginning of November. I recognize that  
2 there is some interest in resolving this sooner rather than  
3 later. I don't think I need to make a ruling on that today, is  
4 that correct?

5 MS. CABRASER: That is fine for plaintiffs, your  
6 Honor. I will let Mr. Cooper speak if he needs to. I am happy  
7 to do the short brief. We would note it is not uncommon for,  
8 as the manual recognizes for state courts, to be ahead on  
9 discovery because they were active prior to the organization of  
10 the MDL, and that is simply what happened here.

11 The trial date was set before your Honor's status  
12 conference or before the appointment of counsel. Our agenda  
13 concerns, as lead counsel, we don't want to see coordination  
14 used for the purposes of moving backward on any of the cases  
15 that are sought to be coordinated.

16 THE COURT: I hear you and I agree with that as well.  
17 I was actually trying to find the reference in the MCL that  
18 said that state cases can actually be the standard bearer for  
19 the MDL. I couldn't find it.

20 MS. CABRASER: Section 20.213, your Honor.

21 THE COURT: There you go.

22 MR. GODFREY: I don't think, your Honor, you will find  
23 a reference that says that federal MDL lawyers can use the  
24 state cases to trump the federal MDL.

25 THE COURT: I got it, Mr. Godfrey.



E94SGEN2

1 MR. GODFREY: Thank you.

2 THE COURT: Mr. Cooper, do you wish to be heard? If  
3 so, would you come to the podium here where there is a  
4 microphone?

5 MR. COOPER: Thank you, your Honor. I understand that  
6 you have heard all you want to hear on this issue. I just  
7 wanted to have the opportunity, when this is briefed, to tell  
8 our side of the story in Melton and why we are pursuing what we  
9 are pursuing and how we have complied with every order to date  
10 by your Honor, how we are working with lead counsel on document  
11 production and the protective order. We are doing everything  
12 we can to assist the plaintiffs in this case to move the case  
13 forward.

14 What I would like to do -- not today, I understand  
15 that time is short -- is to explain to your Honor why Melton is  
16 unique, why we are where we are, and why we were pursuing the  
17 discovery we are pursuing. This is no lawyer problem. This is  
18 simply lawyers in a case pursuing a matter in state court.

19 If your Honor would like me to do that today, or I can  
20 certainly submit a letter brief. I don't want to take any more  
21 of your Honor's time, if you don't want me to.

22 THE COURT: I appreciate that. I didn't hear  
23 Mr. Godfrey suggest that you have done anything in violation of  
24 an order. He is just asking me to issue a new order. I think  
25 my having taken up the invitation of briefing would allow you

E94SGEN2

1 to make whatever arguments and tell whatever story about that  
2 that you want.

3 By next Friday at noon, simultaneous letter briefs,  
4 not to exceed five pages for me to sign, single brief on each  
5 side, should address specifically what steps, if any, or what  
6 orders, if any, I should enter with respect to the lawyers in  
7 Melton or any other related case. Either temporarily or  
8 permanently and more broadly, to the extent that you think  
9 there is anything further to be said on the coordination order,  
10 if any, to be entered that you didn't already say in the joint  
11 letter that you submitted at the end of last week. I think  
12 five pages would suffice for that. If it doesn't, for some  
13 reason, just let me know. I will be reasonable on that front  
14 as well.

15 Mr. Cooper, I assume that you can work with lead  
16 counsel to address the issues that you discussed today.

17 MR. COOPER: Thank you, your Honor.

18 THE COURT: Anything further on those issues?

19 In those letter briefs, I want to make sure that I  
20 understand the disagreement and relative positions on these  
21 issues. What I understand is the difference is essentially  
22 what the default would be with respect -- well, I think there  
23 are two issues. One is defendant's invited me to hold over the  
24 head of state courts the prospect of enjoining them if they  
25 don't sign onto an order. There is that. Then, just with

E94SGEN2

1 respect to the order itself, that the difference in language in  
2 paragraphs 5 through 8, 17 and 23, are the relative ones. It  
3 is essentially what the default would be, whether the burden  
4 would be on the plaintiffs to essentially get leave on a  
5 showing of good cause if they want to pursue this or separate  
6 discovery that should not or would not otherwise be done in the  
7 MDL or whether the burden would be on GM to seek a protective  
8 order with respect to any discovery sought in those actions.

9 Is that a fair summary of the relative positions,  
10 Mr. Godfrey?

11 MR. GODFREY: I think that captures it, although we  
12 would phrase the one as whether the court acts to protect its  
13 own prerogative. I think that is the essence of the Act is to  
14 protect the court's own orders. I have been in nonMDL cases  
15 with competing orders and competing jurisdictions, and in some  
16 of my colleagues would admit were quite nightmare scenarios.  
17 You have one court that says yes and one court that says no,  
18 and some of the issues are going to be teed up. 502(d), is it  
19 going to apply or not apply, agree or to not agree, privilege.  
20 These issues are cross-jurisdictional.

21 To the extent we can coordinate it and avoid  
22 conflicting inconsistent rulings that apply to each of the  
23 parties, we are better off for it, I think.

24 THE COURT: To the extent we can, I agree. The big  
25 question is what that extent is. We will discuss that further.

E94SGEN2

1           Having said everything I just said and heard, let me  
2 just make a few comments and questions regarding the proposed  
3 order.

4           First, as a procedural matter, the way in which you  
5 present it and submit the respective orders was great for my  
6 purposes, which is to say it should serve as a benchmark going  
7 forward. If there are disagreements over other proposed  
8 orders, namely, where you each attach your proposed order and  
9 provide a red line which shows the differences between the two,  
10 it is just very helpful and would be very helpful to me in  
11 drawing my attention to the issues that are actually in  
12 dispute. I thank you for that, and would ask you to do the  
13 same going forward.

14           A few other comments. First, to the extent that the  
15 model for the proposed order was one that was about 10 years  
16 ago or even a few years ago, I am not sure that the proposal  
17 makes adequate use of modern communications, technology, which  
18 is to say that there are references to faxes and other means of  
19 communication among far-flung and many counsel. I would think  
20 there are better forms of technology and communications out  
21 there that you could make more creative use of, whether it be  
22 websites or listservs or even something like Facebook, I hate  
23 to say. That wasn't intended as product placement, but I would  
24 just think that there are to be more efficient means of  
25 communication out there than you have identified in this order.

E94SGEN2

1           I'm not really in a position to tell you what those  
2           are, what they should be. I am asking to you give them some  
3           thought and maybe involve your 20-something-year-old associates  
4           in discussing them, on the theory that they know better than  
5           all of us. I would ask you to go back to the table on that and  
6           give it some discussion and thought and propose some changes  
7           along those lines.

8           Second, this also relates to the proposed order  
9           regarding common benefit work and the like, which I will  
10          address in a moment or discuss in a moment. I would think that  
11          a coordination order, if one is entered, should be clear with  
12          respect to whether and to what extent counsel in related cases  
13          can qualify for common benefit work. For one thing, I think  
14          the MCL also actually says this itself. Judges in related  
15          cases may well be more likely to sign on if they are confident  
16          that work done by counsel in their cases will be -- that is, to  
17          the benefit of the MDL plaintiffs -- could conceivably be  
18          compensated for any common benefit fund.

19          Relatedly, we discussed this earlier, I don't know to  
20          what extent whether and to what extent counsel in related cases  
21          should bear costs of things like the document depository and  
22          the like. I think that should also be addressed in here or  
23          should be made clear in some fashion. So those are other  
24          things that I think you should give some thought to and  
25          contemplate whether the order should be modified to address.

1           Third, regarding depositions, obviously it may well be  
2 premature here, but to the extent that depositions, for  
3 example, do start with respect to document custodians,  
4 something I raised earlier, or if they do end up beginning in  
5 state cases like Melton and maybe less premature, number one, I  
6 am concerned about the number of lawyers that could conceivably  
7 be attending these things and contemplated in the proposed  
8 order that you submitted. I don't have a sense of whether that  
9 would be an unreality or unmanageable number, but just flag  
10 that.

11           Number two, I just wanted to raise the question of  
12 whether a coordination order should include more specific  
13 guidance with respect to the conduct of depositions. I am not  
14 saying substantively saying along the lines, if you look at the  
15 orders that were submitted and to me in the Vioxx and Actos  
16 litigation, they involve very specific guidance and rules with  
17 respect to the conduct of depositions in terms of the schedule  
18 and breaks and so forth.

19           Again, I recognize that we are not there yet here, but  
20 query whether the order should anticipate are getting there and  
21 include guidance of that order or if that is something you want  
22 to defer to a later date. That is something that I thought I  
23 would flag and, perhaps, you could discuss.

24           There are a couple instances in the proposed order  
25 where it indicates that a party could raise objections or

E94SGEN2

1 disputes with the court, with me in particular. For example,  
2 paragraph 18 -- I think that is in the defendant's numbering,  
3 it is around 18 -- and then there is a paragraph regarding  
4 discovery dispute resolution, which is an issue that I will  
5 have more to stay about in a moment.

6 I think it would be sensible and prudent to make clear  
7 in any order that before raising an issue with me, or any other  
8 court for that matter, if they sign onto this, that counsel  
9 have to first confer in an effort to resolve the matter among  
10 themselves and in good faith. And then only if that  
11 meet-and-confer process fails does an issue get raised with the  
12 court. I would imagine and assume that would happen in the  
13 normal course anyway. I don't see any reason not to make it a  
14 formal prerequisite to raise it with the court. Obviously, if  
15 there are circumstances that don't allow for that, that is a  
16 different story. As a general model, as I have indicated  
17 before, I think conferring in an effort to resolve or narrow  
18 disputes is always the better course.

19 That one "buried in the weeds" comment -- again, I  
20 think this is paragraph 18, and I think again that is in the  
21 defendant's numbering -- it seems to be limited to regarding  
22 the need to show good cause to redepose witnesses who were  
23 deposed in related cases where counsel is on notice of those  
24 depositions. The paragraph, as written, seems to be limited to  
25 the MDL plaintiffs. I wasn't quite sure why that would or

E94SGEN2

1 should be the case. It strikes me that it should apply to all  
2 parties in the MDL, which is to stay, if they're on notice, I  
3 think ideally all depositions should be taken once. That is  
4 true no matter who was seek to take them. I would be inclined  
5 to broaden that and have it apply to all parties.

6 Those are just some specific comments with respect to  
7 the proposed order, since obviously we have briefing by the end  
8 of next week. I will be discussing these issues with the other  
9 judges. It will be sometime before we enter an order anyway.  
10 I would ask you to go back to the table and discuss those  
11 issues, and any other issues that come up with one another,  
12 with an eye toward revising the proposed order, and that I can  
13 enter when I resolve which path I will take.

14 I am happy to give you a deadline for that, but I  
15 think as long as you aim to do that in the next couple weeks,  
16 that would probably conform to the timing it will take me to  
17 decide what path I am taking. Does that make sense,  
18 Ms. Cabraser?

19 MS. CABRASER: Yes, your Honor. That is fine. We  
20 might be able to get it into you by the same time as the brief  
21 next Friday. Either way, if we have 10 days, a couple weeks, I  
22 am sure we can do this. I think we have got ready templates  
23 from other recent orders.

24 THE COURT: Excellent. If you can do it by next  
25 Friday in conjunction with those briefs, all the better. I



E94SGEN2

1 will set a specific deadline in a moment. Obviously, if I have  
2 resolved the bigger picture issues, I am prepared to enter an  
3 order that does not have resolved language on these issues or  
4 any other issues. That won't be a problem. Keep that in mind.

5 Anything else on that issue that we should discuss  
6 today?

7 Very good. Turning to the next issue on the agenda,  
8 namely, lead counsel's submission or proposed order regarding  
9 leadership roles and fees and the like. The proposed order  
10 that was submitted looks okay to me. I guess, number one, I  
11 wanted to check with defendants to the extent that they have  
12 any dog in this fight, if you have any comments or views.

13 MR. GODFREY: I don't know that we have a dog or cat  
14 in the fight. I got it last night and have not had a chance to  
15 review it. I was going to ask the court to give us to next  
16 Friday to state whether we have any concerns or we have no  
17 concerns. In theory, we shouldn't have concerns with a  
18 standard form. I haven't had a chance to review it in light of  
19 the hearing this morning.

20 THE COURT: That is fine. Why don't you tell me by  
21 noon next Friday if you have any issues. If you do, discuss  
22 them first with lead counsel, since you may well be able to  
23 work through them, and just submit an agreed-upon proposed  
24 order.

25 MR. GODFREY: Thank you, your Honor.

E94SGEN2

1           THE COURT: Also, just query whether that order  
2 should -- I raised earlier that the issue of whether and to  
3 what extent we should clarify whether counsel in related cases  
4 can qualify or do what would be designated as common benefit  
5 work -- I don't know if that should be done in this order or in  
6 the coordination order. It is something that you ought to  
7 maybe just think about and may warrant changing this order as  
8 well.

9           MS. CABRASER: We will certainly take a look at that,  
10 your Honor. We appreciate the direction to do that. My  
11 initial thinking is that it probably belongs in the  
12 state-federal coordination, but we will get this order too and  
13 make sure that the two would work together.

14           THE COURT: I don't think there was anything in there  
15 that discussed communications either. Keep my comments earlier  
16 in mind on that as well. I will expect to hear from one or  
17 both of you next Friday by noon on that issue, and hopefully we  
18 can get an order in place sooner rather than later.

19           One issue just on counsel rules that I thought I would  
20 raise and should be memorialized in some order, whether in that  
21 order or in the order following this conference, I don't really  
22 have a view on it, I think it would makes sense for all us to  
23 be on the same page who can speak at conferences going forward.

24           What I would propose is that, in general, lead counsel  
25 and defense counsel should take the lead, as they have here

E94SGEN2

1 today, and in general will be the ones doing the speaking. I  
2 am mindful there may be circumstances -- and Mr. Peller's  
3 letter of yesterday is an example of this -- where plaintiffs'  
4 counsel in particular feel that there is an issue that lead  
5 counsel is not adequately representing them on. On the one  
6 hand, I want to give everybody an opportunity to be heard and  
7 an outlet. On the other hand, I want to prevent this from  
8 descending into chaos.

9 I am assuming that it wouldn't, but what I would  
10 propose is that, in order for someone to speak at a conference,  
11 obviously a scenario like Mr. Cooper rising, I am always happy  
12 to -- there may be circumstances where I call on somebody to  
13 speak. If somebody wants to raise something in a conference, I  
14 think it would make sense for, basically, you cannot speak  
15 unless you are on the proposed agenda that is submitted in  
16 advance of each conference or you have leave of court to do so.

17 With respect to the latter, it would make sense, if  
18 someone is not on the proposed agenda -- and just use  
19 Mr. Peller as an example -- again, if he wants to raise an  
20 issue, obviously, in the first instance, he should bring that  
21 to the attention of lead counsel. To the extent lead counsel  
22 can represent the plaintiffs on that issue, then they can and  
23 should. To the extent that Mr. Peller, or any other lawyer  
24 raising an issue that is in a different position and ultimately  
25 feels the need to be heard individually, then you can consider

E94SGEN2

1 putting it on the proposed agenda. What I would say is that if  
2 somebody is not on the proposed agenda, that they need to file  
3 a letter motion before me within 24 hours of the letter  
4 proposing the agenda being filed basically seeking my  
5 permission to be heard at the upcoming conference. That would  
6 be the sort of safety valve, if you will, for anyone who  
7 doesn't get on the agenda.

8 I think the bottom line is, what I want to avoid is  
9 people popping up willy nilly and raising issues, particularly  
10 issues that I do not have any notice about and therefore  
11 haven't had an opportunity to give any thought to. While at  
12 the same time, giving an opportunity to be heard to people who  
13 may feel that their issues are not being adequately  
14 represented.

15 Does that process make sense?

16 MR. GODFREY: Yes, your Honor.

17 MR. BERMAN: It does.

18 THE COURT: I'll leave to you whether or not you want  
19 to memorialize that in the order with respect to the roles of  
20 the leadership positions or in a separate order to be entered  
21 after this conference. One way or the other, we should  
22 memorialize that.

23 The last item on the proposed agenda was the Sesay  
24 amended class action complaint. I have already addressed that,  
25 so there is no need to discuss it further.

E94SGEN2

1           Let me turn to a few other issues of business, if you  
2 will. First, there is nothing we need to discuss on this, the  
3 Sumners motion to remand, as far as I know, will be fully  
4 briefed as of tomorrow. I will try to rule on that  
5 expeditiously.

6           Number two, I guess I wanted to raise or ask about the  
7 bankruptcy appeals. I don't know what the status is on those,  
8 in terms of where they stand, and the timing and briefing  
9 schedule and the like.

10           Does anybody here know the answers to those things?  
11 Mr. Godfrey is laughing.

12           MR. GODFREY: Well, I will say our position, and then  
13 Mr. Hilliard can.

14           We think that they should wait to consolidate the  
15 complaint. It makes the most sense to us, from an efficiency  
16 standpoint. I won't comment further on what the plaintiffs  
17 involved in those cases might think.

18           THE COURT: I am not inclined to get into the nitty  
19 gritty here, in part, because I think Mr. Peller indicated in  
20 his letter that he may have some views on this. And in the  
21 absence of him being here, or others involved in this, maybe  
22 this isn't the time or place to discuss it.

23           Is it something that is being discussed. Are there  
24 efforts under way to work out a schedule? That is my question,  
25 Mr. Hilliard.

E94SGEN2

1           MR. HILLIARD: Thank you, Mr. Godfrey. There are. We  
2 are talking about the schedule getting it done, Judge. I can  
3 get into the weeds of it this afternoon and let you know  
4 through a quick letter as to what it is specifically. I don't  
5 know it specifically, but I know that there is discussions. I  
6 am happy to follow up and get it answered.

7           THE COURT: Why don't you just continue your  
8 discussions. I don't feel the need for any update, unless  
9 there is something that you think requires my involvement or  
10 anyone, including lawyers in those cases who are not here.

11           The bottom line is that everybody knows how to reach  
12 me. If it comes to a point where I need to be involved, just  
13 let me know. Obviously, if there is a resolution, let me know.

14           MR. HILLIARD: I will.

15           THE COURT: Next item of new business is on the  
16 subject of conferences. On reflection, I am inclined to think  
17 that we should have a December conference on the schedule. I  
18 am mindful of the fact that the consolidated complaint is due  
19 to be filed in mid October. The briefing on any objections to  
20 that complaint will take place over the following couple weeks.  
21 I am concerned that if we don't have a conference between  
22 November and January, that there may be a bunch of issues that  
23 are raised in the course of that and that we ought to have  
24 something on our calendars now.

25           (Continued to next page)

1           THE COURT: So in light of that, I am going to put out  
2 the schedule, the conference for December 15 beginning at 9:30  
3 and then the other conferences that I've previously set will  
4 remain in place.

5           Next item of new business is discovery disputes.  
6 Obviously, if it turns out that there are many I may need to  
7 rethink this approach and among other things may need to  
8 consider whether it would be appropriate to appoint a third  
9 discovery master or privileged master or the like. That's  
10 something that I intend to raise with you is something that we  
11 may want to -- Well, I think that may depend a little bit on  
12 the decisions that I make about discovery whether and when we  
13 raise those issues. But my inclination is unless and until it  
14 turns out to be too much for me to handle that I should handle  
15 any discovery disputes in the way that I will have normally  
16 handled these things and will in any case before me. And that  
17 process is spelled out in my individual rules and practice for  
18 civil cases as well as in paragraphs of the standard case  
19 management plan, both of which are on the Court's website.

20           To give you a general description, basically, there's  
21 a meet and confer requirement before raising any issue with me.  
22 Meet and confer in a good faith in an effort to resolve it  
23 yourselves. But if you do that and there remains issues in  
24 dispute, either side can submit a letter to me not to exceed  
25 three pages seeking a discovery conference as a technical

1 matter. The other side has three days in which to respond in  
2 similar fashion and then I will resolve the issue promptly  
3 either by written order or in some form of a conference or if I  
4 felt that a more substantial briefing was required would direct  
5 that.

6 So I'd be inclined to follow the same path here unless  
7 and until that proves to be unmanageable for me or for you for  
8 that matter. And to that end, would just think that that  
9 should be memorialized in the order as well and would direct  
10 you to look to the language in the case management plan on the  
11 website as a template. Does that make sense?

12 MR. BERMAN: We would be inclined to agree with you,  
13 your Honor, rather than going to a special master.

14 THE COURT: That's certainly my inclination. Now I am  
15 just saying that if at some point it just becomes too much for  
16 me to handle it's in everybody's interest to figure out other  
17 ways to resolve things. But my hope and intention is to do as  
18 much of this as I can myself.

19 Yes, Mr. Godfrey.

20 MR. GODFREY: I think your Honor is correct and I  
21 think uniquely in this case given the amount of documents that  
22 were produced to Congress and NHTSA that there will be some  
23 discrete issues for the Court to decide perhaps but I think the  
24 Court's already figured out most of those issues and so those  
25 are categorical in nature, not individual in nature. And so



1     therefore, I don't anticipate, perhaps naively, but I don't  
2     anticipate a lot of discovery disputes. I anticipate discrete  
3     issues that your Honor will probably decide regardless. So I  
4     think that makes the most sense what your Honor proposes.

5             THE COURT: And I should say you have all been  
6     extremely helpful in identifying some of those categorical and  
7     discrete issues to the extent would encourage you to keep out  
8     that and if you discover others, if they come up, if you think  
9     there are alternative means to address them aside from this  
10    sort of three page letter briefing process along the lines of  
11    the process that we just adopted for the NHTSA safety issue,  
12    then just make the proposal to me. If you guys agree on a  
13    sensible way to proceed I am happy to consider your proposal  
14    and most likely would follow your lead on that.

15            All right. Last item of new business is a question of  
16    settlement. I noted after my conference last time that the  
17    lead story seemed to be the -- settlement that struck me as  
18    oddly urgent in that case. So go figure. But in any event, I  
19    take it from the discussion last time that it's obviously  
20    premature to really get into that but my intention is to raise  
21    the question of settlement on a pretty regular basis just to  
22    make sure that you all are doing what you can to engage in  
23    whatever discussions you would have on that front. So unless  
24    somebody tells me otherwise that there's a reason for me to  
25    involve myself in one form or another, I am going to assume

1 that you guys are doing or not doing as the case may be  
2 whatever should be done on that front.

3 In terms of next the conference, the agenda for the  
4 next conference, obviously, you should follow the process that  
5 I set up.

6 Well, actually, before I get to that, are there any  
7 additional issues that anyone wants to discuss today?

8 MR. BERMAN: One housekeeping issue, your Honor. That  
9 is how we contact the Court on very ministerial matters, for  
10 example, when we wanted to get you the phone number. In many  
11 MDLs we have someone who we could e-mail that information to.  
12 How do you want us to do stuff like that? Write a letter like  
13 I did or I just want to make sure that we efficiently  
14 communicate with you and your staff.

15 THE COURT: I think it probably depends on what the  
16 issue is. If it's something that should be part of the public  
17 record then you should file it on ECF as you would in the  
18 normal course. If it's really just a logistical question or  
19 ministerial thing, that is not something that needs to be or  
20 should be on the public record. I guess you have the contact  
21 information from my law clerk, Ms. Garcia, whose been helping  
22 me in this litigation and I would certainly encourage you to  
23 contact her or my deputy, Ms. Barnes.

24 Ms. Garcia is regrettably leaving in a few weeks as  
25 Ms. Hackney who is also here today will be taking her place as

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Argument

1 law clerk managing this. So you should certainly feel free to  
2 communicate with her.

3 On that score, what might be helpful to me is my  
4 understanding you all being who you are is sometimes I think my  
5 law clerk is sometimes trying to reach you to ask you a  
6 question or communicate with you and found it difficult because  
7 you are traveling or what have you. It may be helpful if  
8 there's somebody, a designated person and this may be more of  
9 the plaintiff's side than the defense side but I don't know  
10 if -- but if we are clear on who we can communicate with and  
11 address questions to or if that should be done by e-mail or by  
12 phone that might be helpful. So maybe that's something I'll  
13 leave for you to communicate directly with my law clerk about.  
14 But obviously, the better communication on both sides the  
15 better for all of us.

16 Mr. Hilliard.

17 MR. HILLIARD: Housekeeping too, judge. Just the  
18 comment that your staff has been extremely helpful according to  
19 the folks in my firm who deal with this. They're very, very  
20 helpful when we do call and I'd just like to give them a nod.

21 Laptops. So we have many folks behind me that are  
22 taking copious notes making sure that what you have said needs  
23 to be done, gets done. Would the Court be inclined to give us  
24 permission to bring in our laptops in order to conduct more  
25 efficiently what we need to do at these hearings?

1           THE COURT: The short answer is yes. I've actually  
2 signed a handful of electronic --

3           MR. HILLIARD: We got the phone permission but --

4           THE COURT: That was on you in the sense that that  
5 order is the order to be used for I think it's general  
6 computing devices. I can't remember what phrase the standing  
7 order uses but the bottom line is I think it would be totally  
8 appropriate to have -- I am happy to give you permission to do  
9 that. You just need to submit that order and specify who it is  
10 and what they want permission to bring in. And what I've done  
11 is as you've seen, I think is endorsed them making clear that  
12 this applies to all conferences in the MDL. I want to be clear  
13 I am sure to reiterate on the orders themselves, this does not  
14 give you permission to bring whatever devices I am giving you  
15 permission to bring in for the MDL into the court house in  
16 other cases if you come to watch other cases. You need to  
17 follow the standing order in the local rules to get permission  
18 in those cases but I want to avoid a situation where I get  
19 orders from you before every conference and I think it just  
20 more efficient to give you blanket permission with respect to  
21 the appearances in the MDL if there are particular people and  
22 they need on that score I think it certainly does make sense to  
23 submit the order to me. I am happy to sign it.

24           MR. HILLIARD: Being from Texas you are the sole  
25 reason we come up here. There is no other judge we use the

1 order.

2 THE COURT: Well, I thank you.

3 All right. Any other items to discuss today  
4 otherwise, I'll turn to agenda items for the next conference?

5 So we've already flagged a few. Obviously, you guys  
6 should be discussing issues that we need to discuss and should  
7 follow the process that I set up in Order Number Eight to  
8 submit a joint letter with the proposed agenda as I did before  
9 this conference and thank you again for that. It was obviously  
10 extremely helpful to me.

11 One reminder, per section 4B of my Order Number Eight,  
12 you should indicate in the first paragraph of that letter  
13 whether I should allot more than three hours for the conference  
14 and also whether there's a need -- and I am guessing the answer  
15 will be no -- a need for me to use an oversized courtroom or  
16 have an overflow courtroom available hoping and assuming now  
17 that the leadership structure is in place that we can use my  
18 regular courtroom. But there may be conferences where that  
19 isn't the case and you should just flag that. So why don't I  
20 actually modify that and just expect you will tell me in that  
21 order if there's a need -- sorry -- in that letter if there's a  
22 need for an overflow courtroom or oversized courtroom. Unless  
23 you indicate such a need I'll assume that this courtroom will  
24 suffice and that there's no need for overflow.

25 Other issues that you should discuss and that we may

1 want to discuss at the October conference are whether there is  
2 a need for discovery or privilege master. Obviously, that may  
3 depend on whatever ruling I give on the broader discovery  
4 question and it may well be that as Mr. Godfrey indicated the  
5 issues here are less likely to be kind of broad-brushed  
6 categorical ones that I can address as legal matters in which  
7 case I wouldn't see any need for it, but if we get a situation  
8 where there are hundreds of documents in the related to the  
9 Valukas Report or otherwise and there are separate a very fact  
10 specific issues that need to be decided for privilege and so  
11 forth, I can imagine a scenario where it would make sense to  
12 have the magistrate judge involved or some sort of master but  
13 just flag that as an issue that maybe we should discuss in  
14 October or just want to discuss at some point in the future.

15 Second, and just along the same lines, an issue that I  
16 want to make sure you begin to think about so that we can talk  
17 about it at some point is the structure and process for motion  
18 practice. At some point I assume that there will be motions  
19 filed beyond the summary motion which I already have. And I  
20 want to make sure that there are some ways that you can avoid  
21 and minimize the burdens on me but also on you which is to say  
22 to avoid duplicative motions, to avoid duplicative briefs, I  
23 would think and like to think that you could figure out a way  
24 to ensure that similarly situated parties file single briefs  
25 even if those have to be longer, so be it. But rather than

1 have duplicative briefing or duplicative motion practice and  
2 lead counsel may well be able to play a gatekeeping role on  
3 this front or I think the order, proposed order contemplates  
4 that. In any event, I don't have the answers now but I think  
5 that we should probably discuss that and have some sort of  
6 process in place when the consolidated class action complaint  
7 is filed and more substantial motion practice may begin on that  
8 score.

9           Lastly, per Order Number Eight, I looked and will  
10 expect from you guys a proposed order memorializing any action  
11 I took and rulings that I have made today and you should follow  
12 the process set forth in Order Number Eight on that.

13           That exhausts my agenda today. I thank you guys both  
14 for being here promptly and enabling us to start on time but  
15 for the little phone glitch. And number two, for your  
16 pre-conference submissions which were extremely, extremely  
17 helpful. And number three, for really doing what you can to  
18 resolve issues that you can resolve amicably between you and  
19 really identifying the issues that need my involvement. That  
20 is obviously I think the best model going forward and the most  
21 helpful to me and best for you as well.

22           Anything else before we adjourn for the day?

23           MR. GODFREY: Not from us. Thank you very much.

24           MR. HILLIARD: Nothing from us, judge.

25           THE COURT: All right, Mr. Schoon.

1 MR. SCHOON: Thank you, your Honor.

2 THE COURT: In that case we are adjourned. Thank you  
3 very much.

4 (Adjourned)

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