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1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK
2 -----x
2 IN RE: GENERAL MOTORS LLC
3 IGNITION SWITCH LITIGATION
4 -----x

14 MD 2543 (JMF)

New York, N.Y.
January 20, 2015
9:30 a.m.

6 Before:

7 HON. JESSE M. FURMAN,

8 District Judge

9 APPEARANCES

10 HAGGENS BERMAN SOBOL SHAPIRO LLP
11 Attorneys for Plaintiffs
11 BY: STEVE W. BERMAN

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17 Attorneys for Defendants
17 BY: ANDREW B. BLOOMER
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18 R. ALLAN PIXTON

19 LAWRENCE LINES
20 GM In-house counsel

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1 (Case called)

2 (In open court)

3 MR. BERMAN: Good morning, your Honor. Steve Berman
4 for plaintiffs.

5 MS. CABRASER: Good morning, your Honor. Elizabeth
6 Cabraser for plaintiffs.

7 MR. GODFREY: Good morning, your Honor. Rick Godfrey,
8 Kyle Dreyer, Andrew Bloomer, Joseph Lines and Allan Pixton for
9 New GM.

10 THE COURT: Good morning to all of you. Welcome back.
11 I hope you had a nice holiday season. I did get Mr. Hilliard's
12 letter indicating that he was detained, if you will, in
13 Minnesota, so he will be missed today. Obviously, the Delphi
14 folks' ranks are thinning, at least for today.

15 All right a few matters. First the preliminary
16 matters. We should be up and running on Court Call, as with
17 the last couple conferences, and just another reminder that
18 there may be judges and staff from related cases on the line,
19 so I just want to remind you of that, and relatedly remind you
20 to just speak into the microphones to ensure the folks on the
21 line can hear everything that you say.

22 As in the past, my plan is largely to track the
23 proposed agenda that you submitted. I do not have any
24 additional items to add by way of endorsement this time, so
25 that will basically be our agenda for today.

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1 Before doing that, however, just a couple of things.
2 First, I did want to comment on the letters that I received
3 from Mr. Cooper and Mr. Godfrey shortly before the new year.
4 If I recall, I did read them; I didn't bother to endorse them
5 or comment upon that. I think upon reflection, and upon
6 reading Mr. Cooper's reply brief that he submitted to Judge
7 Tanksley, that there was some misunderstandings on both sides,
8 and perhaps even on my part, insofar as he adopted the brief
9 submitted by lead counsel in this case.

10 In any event, it's neither here nor there at this
11 point, and I don't intend to revisit it or do anything further
12 with it, except to say that I'm confident that going forward
13 that all counsel will act professionally and conduct themselves
14 honorably to one another, so I will leave it at that.

15 Before getting into the agenda items, the letter
16 indicates an interest in discussing the schedule for future
17 conferences. I am inclined to start there, because to the
18 extent that we change it -- and I don't know if that's the
19 subtext behind that line -- it may have some bearing on
20 deadlines as we go through the agenda. So, why don't we start
21 with that issue. I don't know who wants to take the lead on
22 that.

23 MR. BERMAN: I think I will, your Honor. Steve
24 Berman. We have talked. The next scheduled conference is
25 February 11, which is only two weeks away. We are suggesting

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1 that we not have a status conference in February and that we
2 have our next one on the scheduled March date, if that's OK
3 with the court.

4 THE COURT: All right. Anyone at the back table?

5 MR. GODFREY: We agree with that suggestion, your
6 Honor.

7 THE COURT: All right. I think that probably does
8 make sense. Because we moved this one later in January,
9 obviously it sort of snuck up on the February date. So, as
10 long as you think that is appropriate, and given everything
11 going on, I think that probably is adequate.

12 So, we will cancel the February 11 conference, and our
13 next conference will be March 13 and April 8. We should, I
14 would think, at that March 13 conference schedule the
15 conferences after April 8. So, why don't you discuss whether
16 you think it continues to make sense to have monthly
17 conferences, or if we can go to an every other month or every
18 month and a half kind of thing. I will give that independent
19 thought, but obviously I'm eager to hear your thoughts on that
20 issue, and we should schedule them at that March 13 conference.

21 All right. So, going to the agenda letter, item one
22 is the document depository. I don't think we actually even
23 need to discuss that. As I indicated at the last conference,
24 as far as I'm concerned there is a document depository up and
25 running, and unless and until one side or the other has an

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1 application, there is no need for it to be put on the agenda or
2 for us to discuss it.

3 And as I understand it from the letter, there is no
4 sort of application at this point. So, if you want to continue
5 discussing things, that's fine. Just bring it to my attention
6 if or when there is anything to be said or done about it.

7 Moving on to the second item, which I think is a
8 slightly bigger ticket item, the coordination with related
9 actions. The first question I have is whether there are any
10 updates. Obviously there haven't been many days since the
11 January 16 letter I received from GM, but the first question is
12 just whether there are any further updates beyond what was in
13 that letter.

14 MS. CABRASER: Elizabeth Cabraser, your Honor. I
15 don't think we have any specific updates, just a note that
16 coordination is a work in progress. Our federal/state liaison
17 counsel, Ms. Barrios, is doing exemplary work I think in that
18 regard interface withing the state court plaintiffs' counsel,
19 and there are other works in progress that relate to
20 coordination, such as the common benefit order, which is under
21 discussion with those counsel. So, I think we will see
22 coordination in earnest when we get to the common depositions
23 phase of the litigation later this spring.

24 THE COURT: OK. Mr. Godfrey?

25 MR. GODFREY: Thank you, your Honor. I think I would
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1 like to have Mr. Dreyer to my left address this in some detail
2 when your Honor is ready. In general terms the federal/state
3 coordination has worked extremely well, and we thank the court
4 liaison counsel for the plaintiffs for assisting us in that.
5 It has worked very, very well.

6 There are four cases, one in particular, which are
7 emerging problems, particularly the one in Pennsylvania -- or
8 challenges, I should say.

9 THE COURT: Is that the Satowski case?

10 MR. GODFREY: Yes. And Mr. Dreyer, who handles the
11 personal injury at the state level for GM, has been in those
12 courts, and I think is prepared to address the court's
13 questions on that.

14 The Felix case is the other case that is potentially
15 an issue or a challenge, although there has been no ruling in
16 that case yet. But when your Honor is ready, I think
17 Mr. Dreyer can fill you in on both the arguments and provide
18 some detail as to what has happened in these other matters at
19 the state level.

20 THE COURT: OK. I did want to discuss Satowski. That
21 is my primary concern right now, but I'm certainly happy to
22 hear about the other three cases as well.

23 Mr. Dreyer, why don't we deal with the three perhaps
24 easier ones at the moment. Mr. Godfrey only mentioned one, the
25 Felix case. If I remember correctly, there is a motion to

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1 change venue issue in Felix as well?

2 MR. DREYER: Yes, your Honor, there was an original
3 motion to transfer venue that was filed in the Felix case.
4 Felix involved additionally 16 separate accidents that were
5 combined into one lawsuit in St. Louis City. A motion to
6 transfer under Missouri law was filed for those 16 cases.

7 Subsequently, and after the hearing on the motion to
8 transfer venue, the plaintiffs amended their complaint to add I
9 believe 16 or 17 other accidents to that singular lawsuit, and
10 we filed an amended or an additional motion to transfer venue
11 under Judge Dowd's order earlier this year, and the plaintiffs
12 have yet to file a response to that motion to transfer.

13 At the same time that we held the hearing on the
14 motion to transfer originally before Christmas, we also had the
15 hearing on the motion to adopt the joint coordination order,
16 and Ms. Barrios appeared with me at that hearing. We both made
17 arguments to Judge Dowd about that. And if the court will
18 recall, Judge Dowd called the last time we were in conference,
19 and I believe the court was going to reach out to him.

20 We have not seen an order from the judge in Felix on
21 the motion for coordination, nor have we seen an order from him
22 on the motion to transfer venue at this point in time. We are
23 sort of anticipating it at any time.

24 Depending on what that order is, I guess we would have
25 to reach back out to the court, or maybe we don't. If he

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1 adopts the coordination order, then I think that we will be
2 able to work with Mr. Langdon and his firm and cooperate in
3 terms of depositions and discovery. If it doesn't, then I
4 think we will be faced with immediate deposition notices for a
5 lot of different GM people. That's my understanding from
6 Mr. Langdon's office. So, Felix right now we're just on hold,
7 and we haven't heard from Judge Dowd in response to that.

8 THE COURT: All right. I did speak to Judge Dowd,
9 just to make that clear and put it on the record. I spoke to
10 him after the conference in December and talked about the
11 coordination, my view. And for that matter, I have
12 communicated this I think to all the judges who are on the list
13 of related cases and the like that the coordination so far has
14 worked pretty well, and encouraged people to consider signing
15 the coordination order and communicating and staying in touch
16 with me. So, I have done that with him. I'm not privy to what
17 he plans to do, and obviously we will wait and see and deal
18 with it as needed.

19 Now, what are the other two cases before we get to
20 Satowski?

21 MR. DREYER: Another one is a case called Mathis, and
22 it is on our list of cases that we submitted with the January
23 16 letter. It is a case that was originally brought where
24 there was an air bag nondeployment in a 2002 Chevrolet Impala,
25 but there was no ignition switch claim that was made a part of

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1 that case.

2 During the conduct of discovery in that case, the
3 plaintiff's lawyer in that case decided to send a deposition
4 notice to GM to take the deposition of a corporate
5 representative from GM on the quote unquote Lucus report. In
6 response to that -- because the issue didn't involve anything
7 to do with the Lucus report -- GM filed a motion for protective
8 order in that case. The motion for protective order is set for
9 hearing on February the 9th.

10 Recently, Mr. Turner, the plaintiff's lawyer,
11 indicated that was going to amend his complaint now and make an
12 allegation that the ignition switch was the reason for the air
13 bag nondeployment.

14 We conferred with Mr. Turner recently, as recently as
15 last week, through a phone call and also through a series of
16 e-mail exchanges about his decision to amend his complaint. We
17 indicated to him that we didn't have an objection to his
18 amending the complaint, and we asked him to participate in the
19 coordination order because phase one discovery in this court
20 revolves around and includes documents and information related
21 to the 20002 Chevrolet Impala.

22 In response to our request for the coordination order,
23 he said that he was not interested in participating in any
24 respect in the MDL because he had been doing MDL work in prior
25 cases, and he didn't think it was beneficial to him.

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1 Therefore, we intend to file a motion to adopt the
2 coordination order. We are communicating with Ms. Barrios
3 about her potential attendance in anticipation of having that
4 motion to adopt the coordination order heard before the judge
5 in that case, Victor, Judge Ludwig, in Virginia on February the
6 9th.

7 So, we anticipate that hearing going forward on
8 February the 9th, and then there would be a ruling at some
9 point thereafter. So, that's another one.

10 THE COURT: All right. And that comports with my
11 understanding based on your letters. I guess the question I
12 have is, first of all, at the moment has the complaint in fact
13 been amended to add the ignition switch?

14 MR. DREYER: My understanding is that he submitted the
15 amended complaint yesterday, and under Virginia practice, if we
16 have agreed to it -- which we have -- it's a regular course; he
17 doesn't have to get leave of the court; it will be allowed.

18 THE COURT: All right. But you have not yet filed the
19 motion with respect to the coordination order.

20 MR. DREYER: We have not, your Honor. We just
21 communicated with him on I believe it was Thursday or Friday of
22 last week where we had the exchange of e-mails with Mr. Turner,
23 where he confirmed that he didn't have any interest in
24 participating in the coordination order.

25 THE COURT: And do you have any concrete reason to
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1 believe that that issue would be heard at that February 9th
2 hearing as well?

3 MR. DREYER: Our understanding from our counsel in
4 Virginia is that if we get the motion on file -- and I believe
5 it's anticipated we will file it Wednesday or Thursday of this
6 week -- that if we get it on file, it will be heard on February
7 the 9th. And we have also talked to Mr. Turner about having it
8 heard at the same time.

9 THE COURT: All right. Very good. What's the last
10 case?

11 MR. DREYER: The last case that we have that's of
12 issue is a brand new case that's been filed in state court, and
13 it's been filed again I believe it's in the City of St. Louis,
14 it's a case called Lindsay. It's brand new.

15 We have already reached out -- and I believe
16 Ms. Barrios has reached out -- to the lawyer about joining the
17 coordination order. He has indicated that he doesn't have any
18 willingness to join the coordination order, because he thinks
19 that the City of St. Louis can handle his case. So, we will be
20 filing the motion to adopt the joint coordination order in that
21 case. That's not set for hearing, your Honor.

22 THE COURT: And I don't recall that being in any of
23 your letters. Is that brand new, meaning it's not in the
24 letters?

25 MR. DREYER: I think it's in the January the 16th
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1 letter; it's towards the end. We have had conversations with
2 the plaintiff's counsel in connection with that case. That's
3 called Lindsay, I believe. Mr. Pixton tells me it is in there,
4 page 15 of Exhibit B.

5 THE COURT: I see. But it wasn't flagged in the
6 letter.

7 MR. DREYER: Correct, your Honor.

8 THE COURT: All right. And it doesn't sound like
9 there is much --

10 MR. DREYER: Just putting it on the court's radar.
11 It's not as urgent as the others. Obviously, I have taken them
12 in descending order, Satowski being the most urgent, your
13 Honor.

14 THE COURT: When you have any sense of timing, if
15 there is a hearing or motion practice and the like, you should
16 obviously let me know that, as well as the name and contact
17 information for the judge, whom I probably have not contacted
18 or spoken to, unless --

19 MR. DREYER: That's correct, you have not. It's brand
20 new, your Honor.

21 THE COURT: All right.

22 MR. DREYER: For the court's benefit, just to give the
23 court some perspective -- I know we have talked about issues we
24 have had at this point in time -- the coordination order has
25 been entered in a total of about 18 or 19 cases, and it's

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1 pending before courts in two other cases where there is an
2 agreement to the coordination order, which would bring the
3 total to 20 cases where the coordination order will have been
4 entered.

5 Then there are right now four cases that are pending
6 where Ms. Barrios and my office have communicated with the
7 plaintiffs' counsel. We have agreement to the coordination for
8 most every lawyer that's involved, and most significantly the
9 plaintiffs' lawyers, and we are just in the final stages of
10 submitting those to the court.

11 So, the ones that I have discussed with the court at
12 this point in time are the only ones that are out there that
13 present some difficulty for purposes of moving forward in a
14 coordinated fashion.

15 THE COURT: Which brings us to Satowski, where
16 obviously Judge Vough I gather denied the motion to enter the
17 coordination order, and there have been notices of depositions.
18 So talk to me about that and what impact it has here.

19 MR. DREYER: Your Honor, it was actually the motion in
20 Pennsylvania, and the Pennsylvania law was titled as a motion
21 for protective order, and part of the motion for protective
22 order was a request that the relief sought was the entry of the
23 coordination order. Judge Vough's order denied that motion for
24 protective order, and immediately thereafter, on I believe
25 January the 3rd, we were served with four deposition notices

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1 for former GM people, and then a deposition notice that
2 included two topics for a corporate representative deposition,
3 those depositions to begin sometime in February. I believe the
4 first date is February the 12th. Then they are served for
5 every two days thereafter, so it's February 12, 14, 16, 19 and
6 so on, the idea being, and indicated from the plaintiffs'
7 lawyers, that they wanted at least two days to take depositions
8 of those individuals. We have told them that the four people
9 are former GM employees. We have not commented with respect to
10 that issue at this point in time, but we have let them know
11 that.

12 Immediately thereafter, in fact the following
13 Monday -- the 3rd was a Saturday -- on Monday we got a letter
14 from them saying give us all the documents that have been
15 produced in the MDL, which is what their discovery request was.

16 In response to that, I had a series of discussions
17 with them, and said is there a way, given what you said in the
18 hearing, that you really wanted to coordinate with GM on
19 depositions and document discovery, and that was one of the
20 arguments that you made; you just didn't want the MDL
21 coordination order entered, is there a way to try to work
22 through this process so that we can present GM witnesses the
23 one time that the court's order says, so that we can cooperate
24 and coordinate with MDL lead and make this thing move smoother?

25 In that discussion that we had following those

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1 statements that were made, he said, yeah, you know, maybe there
2 is a way that -- I just want to have an active role in some of
3 the depositions; and maybe if I can coordinate with MDL lead,
4 we can get that handled; and, moreover, if you can get that
5 worked out for me, then I will go ahead and agree to this
6 court's confidentiality order regarding the documents and the
7 502(d) order for the documents.

8 I explained to him that the 502(d) order covers the
9 documents anyway and that the confidentiality order, we
10 believe, covered the documents. He said, well, that's what my
11 agreement is.

12 The next day I got a letter from him saying that in
13 exchange for agreeing to the confidentiality order and the
14 502(d) order, he wanted GM to produce witnesses in advance of
15 being produced in the MDL, so that he could have the
16 opportunity to take those depositions.

17 In response to that letter, Mr. Bloomer and Mr. Pixton
18 and I got on the phone with MDL lead and Dawn Barrios and said
19 we're reaching out to you guys to see if you all can
20 communicate with Mr. Casey, and see if there is a way to deal
21 with this issue, so that we don't have to do duplicate
22 discovery and things of that nature. They were kind enough to
23 say, yes, we will reach out to him.

24 I talked to Mr. Gonzales, Mr. Hilliard's partner this
25 morning, and Mr. Gonzales said he reached out to Mr. Casey, and

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1 Mr. Casey happens to be their cocounsel in another matter, and
2 they reached out to him, Mr. Gonzales did, and he got nowhere
3 with Mr. Casey. And he says in effect, you know, I've got my
4 order, and therefore I can just go ahead and proceed; why do I
5 need to agree.

6 So, right now we are in a position where we have not
7 yet filed a motion for reconsideration before the judge in
8 Luzerne County, Pennsylvania, nor have we filed a motion to
9 quash or for protective order with regard to those depositions,
10 and we have not filed any kind of a motion with the court with
11 respect to the production of documents, because our general
12 position is the documents that you asked for are in essence
13 covered by the confidentiality that this court has and this
14 court issued with respect to those documents. Those are things
15 that are potentially on the table.

16 I will add one other thing, and that is at the hearing
17 on the 22nd of December Judge Vough says that he was leaving
18 that position, that his last day in that position in Luzerne
19 County was the last day of the year. The way they do things in
20 Pennsylvania, when you file some motion, then it gets assigned
21 to a judge who will then be the discovery judge for that case.
22 We do not know right now whether if we filed a motion for
23 reconsideration it would go to Judge Vough, or whether it would
24 go to a whole new judge. We don't know the answer to that.

25 There are pressing needs because obviously there are
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1 these deposition requests that are out there, and we, on GM's
2 part, we want to be able to do this in a coordinated fashion,
3 without having to do duplicative things around the country. So
4 that's where we are, your Honor.

5 THE COURT: OK. So I guess the question I have is:
6 What would you have me do about it? And, in particular, what
7 would you have me do about it in the absence of any sort of
8 motion filed before Judge Vough or whoever has taken his place?

9 I guess I just don't know what to do with this
10 information. It causes me concern. I think I'm as concerned
11 as you are about it, and I didn't know about his ruling until
12 your January 16th letter, but it does have some impact here.
13 What would you have me do about it?

14 MR. DREYER: I think, your Honor, at a minimum -- and
15 Mr. Godfrey can speak to it even more than me from the
16 standpoint of coordination with the MDL proceedings -- but we
17 are going to be filing a motion for reconsideration. I
18 anticipate that that motion for reconsideration will be filed
19 probably on Thursday of this week. Then we will have a judge
20 who is assigned, and then we will advise the court obviously
21 who the judge is that will be hearing that issue, and maybe
22 that is a time for the court to weigh in on it.

23 But we certainly don't want to get so far down the
24 line with this that we end up in a predicament with having to
25 deal with potentially very inconsistent rulings, especially

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1 when we consider that these people, or some of them, are former
2 employees, and those are issues that I know that that issue
3 needs to be addressed with MDL and with this court.

4 THE COURT: OK.

5 MR. DREYER: I know that's going to happen, so ...

6 THE COURT: And any idea why Judge Vough ruled as he
7 did? His order doesn't --

8 MR. DREYER: It doesn't specify. You know, I have
9 lost sleep at night trying to figure out what it is that his
10 thinking was. I mean it very well could be, given the tenor of
11 the argument, it could be that he just didn't want to have his
12 lawyers cooperate.

13 There is some small chance that it could be related to
14 the fact that under Pennsylvania law that a motion for
15 protective order, it would not be necessarily the proper
16 mechanism to try to address this. But we don't think that's
17 what the issue was. We do think that his ruling was that he
18 would like for his lawyers to be able to proceed in the fashion
19 that they're proceeding.

20 THE COURT: All right. But, to your knowledge, Judge
21 Vough is no longer presiding over the matter.

22 MR. DREYER: He is not. But there is a peculiar rule
23 in Luzerne County. What we understand is that he is going to
24 one of two other positions, one would be to the criminal court
25 and one would be to the family court in a reassignment.

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1 There is a peculiar rule up there that talks about if
2 it's a true reconsideration, then Judge Vough could be the one
3 that could hear this motion. He could come off of his position
4 in the family law court or the criminal law court and go back
5 to hear the reconsideration of this issue.

6 We think that in light of a few things that have
7 transpired since the December 22 hearing, that we're going to
8 title this one a motion to adopt the coordination order and add
9 additional arguments, including, for example, the ruling that
10 was entered by Judge Janie Lewis in the Goynes case, which we
11 think is helpful. Obviously, if we get something from Judge
12 Dowd that is helpful, we will attach that as well, and almost
13 ask him to sort of consider it anew, and in that context it
14 could be considered by Judge Vough, or it could be considered
15 by some new judge. We're just not going to know, your Honor,
16 until that happens.

17 THE COURT: Are there means short of prevailing that
18 sort of motion to limit the inconvenience, if you will, of an
19 action that is not subject to the coordination order?

20 I'm just thinking out loud here. For example, I mean
21 I could imagine a judge saying I don't want to necessarily
22 adopt the coordination order but agreeing that, for example,
23 witnesses shouldn't be deposed more than once, and basically
24 entering some sort of protective order that ensures that the
25 depositions are delayed until such time that they're taken in

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1 the MDL or the like.

2 MR. DREYER: That is part of the argument that we
3 anticipate making, that very argument, that is, that something
4 short of -- if you are not going to adopt the full scope of the
5 coordination order, there was a couple of comments by the judge
6 and by counsel that suggested that, so we are going to include
7 that in our motion. And we have already reached out to them on
8 multiple occasions to try to get them to cooperate, including
9 trying to negotiate some time in depositions and things of that
10 nature.

11 THE COURT: All right. And in terms of order of
12 concerns, would the potential for multiple depositions be the
13 highest on your list?

14 MR. DREYER: It is a high one on my list, but the
15 other thing that's on our list is the issue with respect to the
16 production of the documents.

17 I think our position is -- and I think rightfully
18 so -- is that you have requested the documents as produced in
19 the MDL. That was the request. Those documents were covered
20 by an order from this court. So, if we are producing the
21 documents as produced in this court, they are subject to the
22 confidentiality that this court has entered.

23 We really don't want to have to be in a position where
24 we are fighting confidentiality issues that this court has
25 already addressed with respect to the same documents.

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1 Otherwise, we are in a position where we're having to
2 re-evaluate confidentiality protection under a Pennsylvania
3 rule or some other rule. That's an issue for us. To be
4 candid, we don't have the manpower and the resources right now
5 to be able to separate out a whole other set of document
6 production for purposes of trying to delineate confidentiality.

7 THE COURT: All right. And the 502(d) order I assume
8 is less of a concern because it does pretty clearly apply.

9 MR. DREYER: Yes, your Honor. I mean I don't have any
10 doubt about the 502(d) order applying to the documents, and
11 they are subject to the 502(d) order.

12 THE COURT: All right. Anything else you want to say
13 on this score?

14 MR. DREYER: I don't think so at this time, your
15 Honor. Thank you.

16 THE COURT: All right. Mr. Godfrey, did you want to
17 add anything?

18 MR. GODFREY: The only point I will add, your Honor,
19 is that from a sequencing standpoint, we will file the motions.
20 I think it would be appropriate if we can identify the judge
21 for the court to do what it has done in the past.

22 Mr. Dreyer has been working with Ms. Barrios, and they
23 have kept us advised of their efforts to try to reach
24 compromises that should at least in my view resolve this, but
25 we may end up in a situation where the state court does not

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1 reconsider for whatever reason. Right now we don't know the
2 rationale; we might going forward. I won't prejudge that.

3 The plaintiffs' counsel continues to take this
4 uniquely hard position, that is, antcoordination in every
5 sense of the word, in which case we will file a motion that I
6 know your Honor has not been reluctant to consider, but we will
7 file a motion under the All Writs Act, because it is an
8 interference with this court's jurisdiction to be sure, and I
9 am not as sanguine -- we have a debate internally, but I'm not
10 as sanguine about the 502(d) status. I know that the 502(d)
11 status -- and under federal law and congressional statute and
12 this court's ruling -- that it governs. But I have not
13 encountered quite such -- I have heard about it, but I have not
14 personally encountered such recalcitrance in terms of an
15 attempt to coordinate and cooperate, so I'm not quite sure
16 where this takes us.

17 Hopefully this will all go away and it's just a matter
18 of negotiation and misunderstanding, and that's my hope. But
19 I'm not sure. This one is a bit different and unique. So,
20 that's how we think about it, and I think if we get to that,
21 and if we have to file an all writs motion, we will file it,
22 with your Honor's permission. If your Honor doesn't want us to
23 do it because there are other alternatives, we will embrace the
24 other alternatives. If we can just avoid the risks that we
25 have identified.

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1 THE COURT: Well, my inclination for all sorts of
2 reasons is to exhaust most, if not all, other alternatives
3 before going there. In that regard my plan is to -- or what I
4 intend to do -- I will hear from plaintiffs' counsel in a
5 moment -- is to reach out to Judge Vough, if not to talk to him
6 about it, to find out who might be handling this. And if and
7 when you find out what judge is presiding over it, or will be
8 handling it, I would like you to let me know right away. And I
9 will do the same, either in an effort to figure out if there is
10 some way to get them back on the coordination train, if you
11 will, or short of that, if there is some way to coordinate in a
12 fashion that respects that court's jurisdiction and case
13 management but also doesn't undermine what we are trying to do
14 here.

15 Ms. Cabraser or Mr. Berman, I don't know if you want
16 to add anything here.

17 MS. CABRASER: Elizabeth Cabraser, your Honor. Just
18 that obviously our efforts will continue to achieve some form
19 of functional coordination in this case and in the few others
20 that may be problematic.

21 I think part of the resistance or reluctance on
22 certain plaintiffs counsels' part may be due to either
23 experience with pry MDLs or rumors about other's experience
24 with prior MDLs where the MDL discovery process moves more
25 slowly than can be achieved in state courts. Here I think the

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1 opposite is likely true. We are moving at a brisk pace, per
2 your Honor's orders, with discovery, and we have a personal
3 injury bell weather trial date, which is not the case in these
4 other actions. So the interest -- which is a legitimate
5 interest on all plaintiff's part -- in access to meaningful
6 discovery as quickly as practicable, is achievable and is being
7 achieved through the MDL here. Part of that may be a sales job
8 on our part, which we will continue. Certainly, Ms. Barrios
9 has been very effective in that regard. I think the last
10 resort of an All Writs Act is a nuclear option best avoided.

11 This keys into a later item on the agenda, the
12 deposition protocol order, which we will talk about when that
13 comes up, but I think the experience of participating in the
14 depositions, the common depositions under the coordination
15 order, may also evaporate some of these issues.

16 THE COURT: All right. And I take it there is no
17 trial date or the like in Satowski, that the court hasn't
18 gotten that far. All right, counsel is shaking heads no.

19 Very good. I will, as I indicated, reach out to
20 whoever is presiding over the matter in Pennsylvania. And if
21 you learn any information on that score, you should submit it
22 to me promptly.

23 I agree with Ms. Cabraser that this issue does relate
24 to the deposition protocols and scheduling for deposition. I
25 would say it relates to a number of things that are on today's

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1 agenda and more generally we are dealing with. In that regard,
2 I do just want to say I think it's incumbent upon all of us to
3 think things moving smoothly and to stick to the schedule that
4 we have set.

5 What I have tried to do -- I think I've tried to make
6 this clear, and probably have made it clear -- is to set an
7 aggressive but reasonable schedule, and to use that as a means
8 to persuade courts to sign on and essentially treat the MDL as
9 the lead case. In order to do that, it's incumbent upon
10 everybody here to do what needs to be done to make sure we
11 stick to that schedule, because if it falls by the wayside, and
12 if deadlines are missed -- which I will do everything in my
13 power to ensure they're not -- it becomes harder and harder for
14 me to persuade other courts to defer, if you will, to what
15 we're doing. So, that's just a word of caution.

16 All right. Let's turn to the plaintiff fact sheets.
17 Ms. Cabraser or Mr. Berman, I don't know if you have an update
18 on that, since the deadline was Friday.

19 MR. BERMAN: The update I can give you is 1058 fact
20 sheets have been completed and submitted to GM.

21 THE COURT: All right. Does anyone want to update me
22 on the database issues? I did receive and review your letters.
23 Because of some personal circumstances, I wasn't really in a
24 position to intervene at the time. On top of that, although
25 New GM raised some concerns about the database situation, it

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1 didn't propose any alternative, which didn't really put me in a
2 position to do much about it. So, I don't know if that's still
3 an issue, is a nonissue, or what the status is.

4 MR. BERMAN: From the plaintiffs' perspective, I
5 understand that we have offered to have a meet and confer on
6 Thursday with respect to any database issues that GM has with
7 the manner in which fact sheets have been produced, and we will
8 try our best to resolve those issues as promptly as possible.
9 But we are available on Thursday to address that.

10 THE COURT: All right. Mr. Godfrey?

11 MR. GODFREY: Thank you, your Honor. We are studying
12 as quickly as we can now the three submissions of plaintiff
13 fact sheets. The original was 1017, and then there was a
14 corrected submission, and then there was a supplement. We have
15 some issues that are emerging, but I think it's premature to
16 know how serious those are. Roughly there is a couple hundred
17 plaintiff fact sheets that seem to be missing some basic
18 information, but maybe that's because we don't quite know how
19 to read them yet.

20 So, I think that it's better that we wait until we
21 have finished our preliminary work. We have our meet and
22 confer on Thursday, and if there are serious problems, then we
23 will try to work them out and, if not, we will promptly let the
24 court know.

25 I am reluctant to say that there are serious problems.

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1 We have concerns, but until our people -- they have been
2 working since Friday around the clock to try to figure out what
3 we have and what the questions are -- I am reluctant to say
4 that these aren't problems that can't be solved, or that they
5 can't be at least identified in one or two buckets that if we
6 have to tee them up with the court, we can tee them up with the
7 court. I am just not in a position to say one way or the
8 other.

9 So, we have them. Whether they are complete or not,
10 we don't know. We have some questions about. Whether the
11 database will work, we have some questions about that. But
12 beyond that I may say Thursday night, if you were to ask me,
13 all is well, and we are progressing, or we have one issue and
14 we need the court's help, or we don't need the court's help
15 because we can solve it this way. That's as much as I can say
16 at this time.

17 THE COURT: I don't see any need to get into the weeds
18 given that. I just want to say a couple things.

19 We obviously have a set of deadlines, and my hope and
20 intention is that they will be met. In that regard, if there
21 are any issues that could potentially complicate that, I want
22 to hear about them sooner rather than later.

23 If I don't hear from you, I'm going to assume that
24 everything is honkey-dory and there are no issues. But if
25 there are any issues, and in particular any issues that could

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1 pose problems for our schedule, I want to hear about them
2 promptly, and it should be more than this is a problem; it
3 should propose a solution and what you want me to do about it.

4 Now, in that regard I also note that this is
5 potentially an issue that might cause me to revisit the
6 decision to cancel the February conference. I'm not saying
7 that if there was a need for a conference on this issue it
8 would be on that February 11 date, but I could foresee if this
9 is an issue having you guys back sooner. And in that regard,
10 if the meet and confer on Thursday doesn't resolve the issues,
11 you should again let me know what, if anything, you want me to
12 do, and among the things you should address is whether we ought
13 to have a conference as soon as maybe next week. I don't want
14 this to be an issue that remains unresolved and causes problems
15 for our schedule going forward.

16 I don't think we need to talk about the economic loss,
17 plaintiff fact sheets. The deadline for that is obviously set.
18 I am assuming everything will go smoothly with that, but
19 obviously if there are issues on that score, you should also
20 discuss them, and to the extent that you need my assistance,
21 let me know.

22 All right. Turning to the next item on the agenda.
23 Yes, Mr. Godfrey?

24 MR. GODFREY: I'm sorry, your Honor. Given the
25 magnitude of the plaintiff fact sheets, I think Thursday is

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1 probably the first of what might be one or two meet and
2 confers. So we have some preliminary questions now that will
3 help us. But if it turns out that our preliminary review is
4 correct, that questions 44 and 45, which are key questions
5 about did you have a stall, and if so, why do you think you had
6 a stall, etc., if it turns out there are a couple hundred
7 plaintiffs that just haven't answered the questions -- and I
8 don't know that for certain. We've had preliminary review, and
9 people are saying we can't find the answers to this, and my
10 response is, well, maybe we don't know where to look for the
11 answers in terms of the stuff because there's nothing uploaded,
12 etc -- but if it turns out there is data that is missing, then
13 we will identify that. But we are not going to know that for
14 certain by Thursday. We are going to have some preliminary
15 questions. We're working on it, so it may be another week or
16 so before we identify if there are other issues that are more
17 serious in nature that are not resolved on Thursday.

18 We understand the deadlines. We are focused on
19 keeping to the deadlines. We don't want to raise a red herring
20 that can't be quickly resolved. But given that we just got the
21 1,000 plus of these, and it's a fairly voluminous set of
22 information, I can't tell the court that on Thursday we will
23 have identified even all of the issues beyond the ones we have
24 identified thus far.

25 So, I just wanted the court not to be surprised if a
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1 week from now we say now we have figured out, we have solved
2 those issues, but there is a bigger issue over here. Hopefully
3 there is no issues. Hopefully we will work this through, and
4 we will be able to not bother the court with this. I am just
5 not in a position to say one way or the another at the moment.

6 THE COURT: Well, I hope there will be nonissues as
7 well. You have made your record. To the extent that you
8 ultimately seek relief, obviously whatever due diligence you
9 exercise between now and then will be a factor in whether it's
10 granted.

11 But again there are deadlines set. My hope and
12 intention is to stick to those deadlines. Again, as I said a
13 few minutes ago, it does have some bearing on my ability to
14 persuade other courts to defer to what we're doing here. And I
15 know that is a concern of yours as well. So keep all of that
16 in mind, and do what you need to do and as quickly as you can
17 do it.

18 All right. Turning to the phase one production
19 issues, this is one of the things I was alluding to a minute or
20 two ago when I said that it's incumbent upon everyone to make
21 sure things are running smoothly.

22 The two paragraphs under item 4 in the letter sound as
23 if they were written about different cases to me, namely, one
24 that seems to suggest that everything is going swimmingly and
25 the other which is raising some real concerns. So, I don't

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1 know what the story is here, if there is a way to bridge that
2 gap. But obviously it's a concern to me.

3 So, Mr. Berman.

4 MR. BERMAN: Yes, your Honor. GM wrote the first
5 paragraph, and obviously the plaintiffs wrote the second
6 paragraph.

7 THE COURT: I could figure that out myself.

8 MR. BERMAN: And so the concern we had in the second
9 paragraph is it would seem that the court would want a report
10 from GM as to where we are, because what we have received is,
11 yes, in the first paragraph there was a 4 million plus pages
12 produced, but they were largely Congressional material and the
13 Melton material which had already been gathered and produced
14 before we started this MDL.

15 So, in response to the phase one, we've gotten 120,000
16 pages, and so the question that I have, and I think the court
17 would want is: How much is left? When are we going to get it?
18 What kind of material was still out there?

19 The reason I think we want that answer is because, as
20 you know, for example, we are going to be serving a
21 consolidated document request on January 31, and we are asking
22 GM for other kinds of discovery. And what you noted in one of
23 your orders was that, you know, you are going to have to
24 balance all the other stuff that GM is doing to decide if we
25 have a dispute about further document requests.

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1 So, it seems like in order to know what is happening
2 and what may happen, we need to know how much is out there and
3 how much is really going to be produced, to gauge the burden on
4 GM as to further productions, and to get a feel if we are on
5 track on phase one.

6 THE COURT: All right, fair enough.

7 Mr. Godfrey, are we on track with phase one?

8 MR. GODFREY: Yes, your Honor.

9 THE COURT: Can you fill that in a little bit.

10 MR. GODFREY: I suspected you were going to ask that.
11 This is a good illustration of which end of the telescope you
12 are looking from, the beginning or the other side.

13 Mr. Berman is focused on phase one, the 47 technical
14 requests, which is a huge undertaking, and we are working
15 dilligently on that. We have made one production; we will make
16 more productions. We are going to have rolling productions, as
17 the order provides. We will essentially comply with the dates
18 set in the order. We have another production set for this
19 month.

20 I think from the New GM perspective though let's look
21 at what we have done since. We will set aside the initial
22 productions, which weren't just a simple repackaging. But we
23 have done a production on December 4 pursuant to order 23, two
24 productions on December 22 pursuant to orders 23 and 20.

25 THE COURT: Let me interrupt just because I think
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1 unless you are adding to what --

2 MR. GODFREY: Right. My point is that there have been
3 multiple productions that have been made pursuant to different
4 orders. Mr. Berman is focusing on one order, the 47 technical
5 requests in phase one, which we have made a production on; we
6 will make more productions on.

7 It's a large amount of material to collect and review
8 as technical material. This is not something lawyers can
9 easily identify and say, ah, say this is responsive or not
10 responsive. But the question your Honor is asking is: Will
11 there be rolling productions going forward? Yes. Will we will
12 be on track to satisfy the obligation we agreed to by May the
13 5th? The answer is yes.

14 THE COURT: Slow down. Go ahead.

15 MR. GODFREY: So, I don't have any concern about that
16 in terms of meeting the court's deadlines.

17 THE COURT: All right. I mean there is meeting the
18 deadline and then there is meeting the deadline. My concern is
19 that, you know, it is not a situation where you do one massive
20 document dump on May 4 and say we have met the court's
21 deadline.

22 In order for the schedule to work, and for everybody
23 to be able to do what they need to do -- and again that is part
24 and parcel of my ability to persuade other judges to sort of
25 sign on, if you will -- I think there obviously needs to be a

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1 kind of momentum here, and it can't be that kind of situation.

2 So, that I think is Mr. Berman's concern, and it's a
3 concern that I share, which is not to say that I think that's
4 what is going on or is going to happen. I just want to do what
5 I need to do to ensure that it doesn't.

6 MR. GODFREY: We understand rolling production to mean
7 not on May the 3rd. We understand it's rolling. So, we have
8 discussed this internally with General Motors, New GM. As we
9 find the documents, they will get processed, and they will be
10 produced. But it's a technical undertaking; it's not as simple
11 as some of the other document requests.

12 THE COURT: Do you have a sense of the universe, in
13 other words, how many documents we are talking about, and when
14 you would expect, if you are doing a rolling production this
15 month, what the quantity is there and so forth?

16 MR. GODFREY: I don't. I am sure someone on the team
17 does. I didn't ask that question in preparation. I mean I
18 know we have another production in January. I expect
19 productions in February, March, etc. But I did not drill down
20 to find out what we think the total quantity is or what we
21 think the dates will be. These are technical documents that
22 require a fair amount of work.

23 THE COURT: All right. Here is what I am inclined to
24 think and propose. Again, I just want to articulate my general
25 concern. I know you are not going to do one massive document

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1 dump on May 3, because I would not look kindly on that, and I
2 understand that you understand what rolling production means.

3 I don't think that I'm in a position today to get into
4 the weeds of this matter because it sounds like you are not
5 really in a position to apprise me; and I think the first step,
6 as with most things, is that you should discuss it with one
7 another. I think you should do that. And if there are
8 concerns, and there is a basis to seek my intervention, then
9 plaintiffs should do that and do that sooner rather than later.
10 Again, even if we need to schedule another conference, we will
11 schedule another conference.

12 But you should get into a detailed discussion about
13 what you think the universe of documents that remain to be
14 produced are, a general schedule of when they are going to be
15 produced on a rolling basis. And if there are issues, that is
16 to say issues that you think could impact the schedule and our
17 sticking with it, then again I want to hear about those as soon
18 as you can raise them.

19 Once again, I hope and assume that you will be able to
20 work these things out and it's just a matter of discussing them
21 and figuring out something that both sides can live with, but
22 you know how to find me if not.

23 Does that sound OK, Mr. Berman?

24 MR. BERMAN: Yes, your Honor. Thank you.

25 THE COURT: So, again, I do want to keep the momentum
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1 on. I also recognize that New GM, notwithstanding the fact
2 that it certainly has ample resources on the lawyer front, is
3 dealing with a tremendous amount here, so in that regard it's
4 not reasonable to expect them to produce everything tomorrow.
5 But mindful of those remarks, see if you can work it out and
6 let me know if there are issues that we need to revisit.

7 All right. Anything else on the phase one production
8 or general discovery issues? All right.

9 Item 5 is discovery related to post-recall repair
10 complaints. From my review of the letter, it doesn't seem like
11 there is anything to be discussed at this point, but Mr. Berman
12 has a knowing smile on his face which makes me think otherwise.

13 MR. BERMAN: Yes, your Honor. Two points. One, if
14 you recall, New GM was going to search the databases to find
15 out how many hits we got on the cars that have been repaired
16 and have reported new problems. And they reported to us that
17 number which is confidential; I'm not allowed to say that in
18 public. But we thought once there was a hit, that we would get
19 a production, not that there would be some new guidelines given
20 to us to work out which of those files would be searched. So,
21 we were a little surprised by this.

22 But I guess what we would ask, one, let's set a
23 timetable today so we get this done, for when we're going to
24 get that guideline. That's one thing I would ask.

25 Two, the final paragraph is just wrong, it's contrary
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1 to phase one. What I mean by that is GM has written that they
2 will provide counsel with a written description of the various
3 databases, and then they have the words "utilized in the
4 post-recall complaint discovery". Well, that's not what phase
5 one requires. What phase one requires is that New GM give us a
6 description of these databases, period, not just post-complaint
7 discovery.

8 The reason for that is the databases in car defect
9 cases like this are a critical source of evidence. For
10 example, the customer database is going to have we think
11 thousands of complaints that date back to 2002 or earlier, and
12 we want to understand how the database works so that we can
13 search it at a later date.

14 So, I don't know why this qualifying language was put
15 in there, but that qualifying language is not in the phase one
16 order, and it's not what we negotiated. So, I'm hoping it's
17 just a scribner's error by New GM, but I couldn't let it go by,
18 because that's not what we wanted or what we bargained for.

19 THE COURT: All right. So, Mr. Godfrey. Sorry,
20 Mr. Bloomer.

21 MR. BLOOMER: Yes, Andrew Bloomer on behalf of New GM.
22 I think to address the last point that our colleague across the
23 bar raised first, I don't think there was a limitation intent.
24 There is a description of the databases that New GM is
25 preparing. This is the customer assistance center database,

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1 the technical assistance database, and the warrantee database.
2 And there will be a description of those databases that we're
3 preparing that is to my understanding not limited in the way
4 that Mr. Berman is describing. These are the databases that
5 were searched for purposes of the post-recall repair document
6 requests. I think that was the intention of that language,
7 that since these were the databases at issue that were actually
8 searched, to try to locate these records, they would be getting
9 a general description of those databases and how they work.

10 There may be some detail that helps them understand
11 how they were used for this purpose. So, for instance, the
12 warranty database is a massive database that has all sorts of
13 records in it other than records about complaints on vehicles.
14 So, this was not an issue that was raised to my attention or to
15 our attention before hearing it this morning, so I'm not really
16 sure we actually have an issue. I'm more than happy to sit
17 down with Mr. Berman or others and make sure that we don't;
18 and, if we do, to work it through. That's the first point.

19 On the second point, the court, as the court knows,
20 endorsed the parties' October 7 letter, which described a
21 rather detailed process for how the parties had discussed and
22 agreed to searching for and producing these documents. So, as
23 the court I'm sure knows, any time you run search terms through
24 a database, you are going to have hits. And the parties agreed
25 to search terms. Those search terms were run, and the results

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1 were provided on the 11th.

2 The hits, however, don't indicate necessarily
3 responsiveness. And the parties understood and contemplated
4 that in our documents. They would identify potentially
5 responsive documents, but then when you look at the October 7
6 letter which the court endorsed -- I am just reading from the
7 bottom of the first page, your Honor -- the parties reported to
8 the court that "Following application of the search terms, New
9 GM will inform lead counsel the number of such documents that
10 have been identified as potentially responsible" -- which we
11 have done -- "and which will need to be manually reviewed for
12 responsiveness, privilege and processing under order numbers 10
13 and 11, and the parties will meet and confer regarding a
14 schedule for the actual production of responsive nonprivileged
15 documents on a rolling basis."

16 So, we have kept lead counsel apprised, but there does
17 need to be, as contemplated -- as there is really in all
18 electronic productions -- a manual review of the documents that
19 were returned as hits on search terms to determine their actual
20 responsiveness to the six specified conditions or complaints
21 that are listed in that letter.

22 So, to give you just a simplified example, one of the
23 issues is stalling of the vehicle. Well, a customer may say I
24 called the customer assistance center after I got my recall
25 repaired because my car stalled. The record may reflect the

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1 car stalled because the customer ran out of gas, meaning an
2 issue unrelated to the post-recall repair that was done.
3 That's just one simplified example.

4 But the parties I think understood this and discussed
5 it, and that process now needs to occur, and in fact is
6 starting. What we wanted to do as part of that is to -- and we
7 thought of doing this because we thought lead counsel may be
8 interested in it -- is to try and develop some basic criteria
9 for the responsiveness review that we would share with lead
10 counsel, to say basically here is how we are approaching this.
11 Similar to what parties do with search terms, they propose
12 search terms to get agreements so they are not fighting about
13 it on the back end, we had a similar thought in terms of the
14 manual review, to come up with some basic written criteria,
15 share with them, get some feedback on it, see if we could reach
16 agreement, so what we would hopefully avoid, to keep things on
17 track at the end of the day, is producing documents and then
18 having a fight on the back end about, wait a minute, how is it
19 that these documents were deemed responsive, etc.

20 So, from New GM's perspective, that's the answer to
21 those questions.

22 THE COURT: OK. So, taking number two first as well,
23 looking at the phase one discovery order, I certainly don't see
24 any limitation in paragraph 5, which covers the databases, that
25 would limit it to the post-recall complaints. I take it you

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1 agree with that, which is to say, that to the extent that that
2 paragraph in the recent letter indicates some sort of
3 limitation, that that's not actually a limitation you're
4 imposing on what you are proposing to provide.

5 MR. BLOOMER: That's my understanding, your Honor,
6 correct, yes.

7 THE COURT: So, it's sounds like it's a nonissue or a
8 resolved issue. Did I get that correct, Mr. Berman?

9 MR. BERMAN: I think we need to discuss this, because
10 I don't understand what that language in this letter means.
11 Perhaps we have a disagreement, perhaps we don't.

12 THE COURT: Once again, I don't want to assume a
13 disagreement where there may not be one, so why don't you make
14 that a subject of discussion sooner rather than later and let
15 me know if there is an issue.

16 MR. BLOOMER: Understood.

17 THE COURT: With respect to the manual review, number
18 one, looking at the letter that you brought to my attention, it
19 does certainly indicate that. Number two, I hear Mr. Berman
20 saying he was somewhat surprised but not really taking issue
21 with your plans to do that, but just wanting some sort of if
22 not deadline, at least a sense of how long the process is going
23 to take.

24 So any sense of that? I mean your letter indicates
25 that you expect to share the guidelines quote unquote shortly.

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1 I don't know what shortly means. And I don't know if this is
2 an issue just to leave to you to discuss in the first instance,
3 or if we should actually set deadlines. But once again I don't
4 want this to cause any of our generally set schedule to go off
5 the rails.

6 MR. BLOOMER: I understand. In terms of sharing the
7 guidelines, that would be a plan for us. Our plan is to do
8 that this week. We obviously don't want to start the manual
9 review and go too far down a path if lead counsel says we
10 disagree and we want to add another criteria, etc.

11 So, I can't tell your Honor standing here right now,
12 subject to agreement on the responsiveness guidelines, how long
13 it will take. That's something that I will need to confer with
14 my client more about in terms of manpower, etc., and would sit
15 down with Mr. Berman. I would think we would be able to agree
16 to a reasonable schedule to get that done. And if there is a
17 problem or an issue, or a dispute that arises, then it can be
18 brought to the court's attention. I think it's going to be a
19 process that will take some manner of weeks to go through the
20 number of hits and do that review.

21 THE COURT: Understood. But it shouldn't take some
22 number of weeks to settle upon the guidelines to do that.

23 MR. BLOOMER: Your Honor, I think that's something we
24 would like to get settled, if we can, this week.

25 THE COURT: OK. Can you make that one of the subjects
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1 you discuss on Thursday?

2 MR. BLOOMER: Well, I'm committing other people's time
3 here who are not here, who we need to rely on, because they are
4 technical engineers to help us. We will certainly do
5 everything in our power to do that. It may be it's a Friday
6 discussion. But I will ride point on that and try to make it
7 happen.

8 THE COURT: All right. Mr. Berman?

9 MR. BERMAN: Friday is fine.

10 MR. BLOOMER: I am just at the mercy of people who
11 have regular day jobs that work in this field, that we need for
12 their expertise to give me some guidance, and to work with us
13 on developing those terms, since they are the people who will
14 be doing the first-level reviews.

15 THE COURT: All right. Well, I'm sure you can
16 persuade them.

17 MR. BLOOMER: I will do my very best.

18 THE COURT: It sounds like this also fits within the
19 larger discussion to be had about the further production to be
20 done, so why don't you fold it all in and see if you can
21 resolve it, and again mindful that I intend to stick to our
22 deadlines. If there are issues that might complicate that, you
23 should reach out to me sooner rather than later. All right?

24 MR. BLOOMER: Thank you, your Honor.

25 THE COURT: Mr. Berman, anything further to be said on
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1 that?

2 MR. BERMAN: Nothing further. Thank you, your Honor.

3 THE COURT: All right. Next item is the deposition
4 protocol order. Two comments that I have on that, and then it
5 sounded from Ms. Cabraser's comment earlier that there might be
6 other issues to be discussed.

7 First, I did agree with New GM that there should be
8 some sort of limit placed on the depositions per month of GM
9 employees. At the same time, I did agree with the plaintiffs
10 that the limit proposed by New GM, namely of ten per month, was
11 too low in light of among other things the number of witnesses
12 who were interviewed as part of the Lucus investigation, which
13 is some measure, I suppose, of the number of witnesses that at
14 least GM itself thinks may be relevant here.

15 It was in light of those views that I adopted and put
16 in the number 16 per month rather than the ten that New GM had
17 proposed and essentially no limit that the plaintiffs had
18 proposed.

19 I am hoping and assuming that that will be sufficient,
20 but I did just want to raise this as an issue that I assume as
21 you get further along, and have a better sense of who actually
22 will be deposed, that may require revisiting, and I wanted to
23 indicate that I'm open to that, and obviously would require a
24 showing of good cause on whoever's part sought to revisit it,
25 but I did want to flag that, which is to say, I don't think

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1 some arbitrary number -- it's not an entirely arbitrary
2 number -- but I don't think a number picked at this point, with
3 only partial information, should necessarily limit either side
4 if circumstances change.

5 The second remark that I wanted to make is I
6 appreciate your flagging the conflict between the coordination
7 order and the deposition order that you flagged in your agenda
8 letter. It sounds like you are discussing that issue, and I
9 would obviously encourage you to continue discussing that and
10 try and resolve it.

11 I think I mentioned this in a prior conference, but I
12 just wanted to raise or mention that technology may in fact
13 afford options here. My understanding is that in other MDLs, I
14 think Judge Fallon, one of the MDLs he presided over, utilized
15 this sort of technology, if I remember correctly. There may be
16 a technology available that allows counsel to participate in a
17 deposition in real time but from a remote location, which is to
18 say some sort of online type system that would allow counsel to
19 pose questions or at least communicate in real time with the
20 lawyers who are actually in the room, which would essentially
21 enable more lawyers to participate in some meaningful fashion
22 but without obviously having to hold a deposition in Citi Field
23 or the like. I am not saying that you should or need to do it
24 that way here, but I just wanted to flag that as one way that
25 may satisfy multiple concerns.

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1 The third item I wanted to mention is in your proposed
2 orders you had indicated an intention to submit supplemental
3 protocols. I thought it made sense to impose a deadline for
4 those and, therefore, picked March 4. I candidly don't
5 remember why I picked that date, but I had a good reason at the
6 time. But I did just want to flag that and see if that is a
7 feasible or reasonable deadline, and, if not, give you an
8 opportunity to be heard. So, those are my three comments, and
9 I don't know if there is anything beyond that, but
10 Ms. Cabraser, let me start with you.

11 MS. CABRASER: Thank you, your Honor. I think the
12 March 4 deadline works for supplemental protocols, with the
13 caveat that as depositions become underway in earnest we might
14 have further running refinements to make the process work more
15 efficiently. We also appreciate the ability to submit a
16 supplement or amendment to the deposition protocol order, to
17 facilitate greater participation by attorneys in the state
18 actions.

19 And we apologize for creating the discrepancy. We
20 used a protocol language that had been used in other MDLs, but
21 after submitting it I realized that in those cases there had
22 been more prior coordination on the state side. And here we
23 want to avoid a situation where anyone in a coordinated action,
24 or anyone that we are trying to attract into coordination with
25 the MDL, feels that they have somehow been left out of the

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1 deposition process and there is not an avenue for them.

2 So, we had something that we were discussing with GM.
3 We will further refine that, because I think the technology
4 point is an excellent one, and we will submit that to your
5 Honor in short order.

6 THE COURT: All right, great. And to be clear, that
7 March 4 deadline, I agree, as you actually start to do these
8 things, I am sure there will be need to adjust here and there,
9 and in that regard I don't mean to suggest that if there are
10 improvements to be made you can't submit them after March 4.
11 But to the extent that there are concrete things that you at
12 this point know that you need to reduce to an order, then aim
13 to do it by that date.

14 And with respect to the last matter, I mean my sense
15 is that among the concerns that lawyers in related cases
16 have -- and by extension courts in those cases have -- is to
17 ensure that they are not left out in the cold, if you will,
18 with things like depositions, and so I think it is in
19 everybody's interest, therefore, to figure out some way for
20 those lawyers to participate in a meaningful way.

21 So, I appreciate your again flagging the conflict
22 between the two orders, and I apologize for my missing it, but
23 please do discuss it and figure out a good way to ensure that
24 people can participate in a meaningful way.

25 Anything else to be said on that score? Anything at

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1 the back table?

2 MR. GODFREY: No, your Honor. I think we will work
3 through the issues, and I suspect we will be able to work these
4 issues out. These are routinely worked out among counsel, and
5 I anticipate that to be the case here.

6 THE COURT: Great. And I assume, Ms. Cabraser, that
7 through liaison counsel, that you are obviously consulting in
8 some fashion with lawyers in these other cases, to get their
9 views on these issues.

10 MS. CABRASER: Yes, your Honor. And in fact
11 plaintiffs' federal/state liaison counsel has spent a
12 considerable amount of time and energy on this, has compared
13 the two orders in detail, and was one of those who brought this
14 to our early attention so that we could bring it to yours, and
15 I just wanted to express my appreciation for her efforts in
16 that regard.

17 THE COURT: Great. And I appreciate them as well.

18 Item 7 is electronically stored
19 information/preservation issues. It sounds like you are
20 continuing to meet and confer on these issues. But I am a
21 little bit concerned about the pace of that process, which is
22 to say that this is something I would think that we should
23 resolve sooner rather than later.

24 I am happy to just get your views as to what is going
25 on or an update on what is going on. I am also inclined I

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1 think to set a deadline for either the submission of an
2 agreed-upon order, or you know the process, competing orders
3 with supporting letter briefs.

4 I guess my proposal would be to set that deadline as
5 five days prior to the March conference date, but I'm happy to
6 hear from you if you think it should be sooner, later, or if we
7 should handle this in a different fashion.

8 So, Mr. Berman?

9 MR. BERMAN: Yes, your Honor. If you recall, GM filed
10 with the court a list of documents that it was not preserving,
11 and we sent that to our forensic experts, and they had some
12 concerns with what GM was not preserving, which we detailed in
13 an October 29 letter.

14 We do think it could be a serious issue. I don't
15 know. I have looked at the order that GM is proposing, and it
16 in my view contains the same deficiencies our experts
17 identified. So, we do need to tee this up, and from our
18 perspective if we can't reach agreement, submitting a letter
19 brief five days prior to the next status conference would be
20 fine.

21 THE COURT: I agree it should be resolved. Again,
22 assuming these are things that are not being preserved, and
23 there are any issues with that, we need to deal with that
24 sooner rather than later.

25 Mr. Godfrey, any objection to the process, procedure
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1 of doing it that way?

2 MR. GODFREY: No objection to the process, but we need
3 to be clear on the record. We filed on October the 1st an
4 inaccessible data order. We didn't say, oh, we're not
5 preserving. We said we're not going to search for.

6 In response three weeks, almost a month later, on the
7 29th, we got questions about preservation, almost seeking
8 discovery into preservation that General Motors had engaged in.
9 What we have now done is we have looked at the Toyota ESI
10 order, we have modeled it based on that, and because Mr. Berman
11 was involved in that case, we took that and a couple orders
12 from other cases, and we sat down with our experts, and we have
13 now proposed, so we should resolve it.

14 But it's not accurate to say that we sent a letter
15 saying we're not preserving a bunch of stuff. It's accurate to
16 say we said we're not searching through a bunch of stuff,
17 because we don't think it's likely to lead to relevant
18 information.

19 Mr. Berman then wrote a separate letter purportedly
20 responding to that but actually raising questions about
21 preservation. And that has now teed up a discussion about an
22 ESI order for preservation that we have circulated. We will
23 get together, and I don't have a problem with the court's
24 schedule, five days before March. I would think we would
25 resolve it before then.

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1 I just want to be clear on the record of exactly what
2 took place here. New GM understands its preservation
3 obligations, but I don't want to be two ships passing in the
4 night here. Mr. Berman has teed up a separate issue; we have
5 responded. We have a draft order, it's based on other orders,
6 hopefully we can reach agreement; if not, we will raise it with
7 the court.

8 THE COURT: All right, great. So, I will set a
9 deadline of five days prior to the next conference. That's an
10 outside deadline, which is to say obviously if you resolve
11 these issues sooner, or you are prepared to submit whatever it
12 is you ultimately submit sooner, then you are obviously welcome
13 to do so.

14 All right. Moving on to the next item, the website, I
15 don't think there is anything here to discuss. I will say that
16 I'm quite pleased with both the form and function of the
17 website, and also I am impressed with the speed with which it
18 appears to be updated.

19 I noted that the orders in the opinion that I issued
20 last week were pretty quickly added to it, frankly more quickly
21 than the court ever would have done on its own, so I feel
22 indicated in my view that you have done things better than we
23 would have. So, continue on that score. I assume there is
24 nothing you feel the need to discuss anything further on that
25 front.

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1 MR. GODFREY: The reason we are chuckling, your Honor,
2 is that someone on the teams is doing it, but actually I don't
3 think anyone of us here today would know who that is. I hate
4 to confess that, but I think that's the case.

5 THE COURT: That's fine, but whoever it is, you can
6 tell them I'm pleased.

7 MS. CABRASER: Your Honor, that would be my office,
8 which is odd, because I'm not known as a web mistress. But it
9 seems to be working. And the only thing that is website
10 specific today is the request that we take the February status
11 conference date off the calendar on the website. And if the
12 court reschedules it, we will have that up on the same day
13 basis.

14 THE COURT: Great. I certainly think you should do
15 that.

16 All right. Item nine is common benefit assessment
17 order. I guess the only question I have is what the status of
18 your discussions and the draft is. I think the letter refers
19 to drafts that have been circulated. And I also just want to
20 ensure that again through liaison counsel I presume that
21 counsel in related actions, etc., have an opportunity to be
22 heard and to weigh in on the proposed order.

23 Ms. Cabraser?

24 MS. CABRASER: Yes, your Honor, that is exactly the
25 process. The coleads are working with plaintiffs' liaison

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1 counsel and the federal/state liaison counsel to refine the
2 draft. It's being discussed confidentially with counsel in the
3 coordinated actions.

4 Obviously, the goal here is to create a common benefit
5 order that encourages rather than impedes coordination across
6 federal/state lines. We are trying to get the lowest
7 assessment consonant with equity, and we hope to have a draft
8 submitted. We have also had discussions with GM. Obviously,
9 this isn't in the first instance a GM issue, but GM would have
10 an obligation to withhold funds under this order, and so we
11 have been conferring with them as well.

12 Our plan now, given the March status conference date,
13 is to have a proposed order in to your Honor well in advance of
14 that date.

15 THE COURT: All right. And I would think that GM has
16 an interest here as well, again this being one issue that might
17 be of concern to counsel in related actions and therefore
18 courts in related actions and, therefore, might relate to their
19 willingness or interest in coordinating and deferring to what
20 we're doing.

21 I guess the question I have is obviously if you submit
22 an agreed-upon order, the parties here are onboard, is there a
23 need, and if so what process should be used to satisfy that
24 need, to give an opportunity to be heard to lawyers who might
25 not even be in the MDL but might ultimately be subject to this

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1 order? Which is to say -- well, that's the question.

2 MS. CABRASER: Your Honor, I think that that can only
3 be addressed when we have finalized the provisions in the
4 common benefit order that relate to its scope.

5 In other words, obviously it would apply to attorneys
6 before this court whose actions are part of the MDL. It would
7 also apply to attorneys who signed a voluntary participation
8 agreement. And then I think the more complex issue is to what
9 extent it would automatically apply in the coordinated actions
10 or whether those courts would be asked to enter it
11 independently. We are trying to come up with a process that is
12 both as simple as possible and as fair as possible.

13 So, we have a few details to work out on that, and I
14 think after we have finalized that, we will be in a better
15 position to advise the court on the process that you described.

16 THE COURT: All right. So, keep that in mind and do
17 let me know what, if anything, should be done on that score. I
18 would be concerned, I think, if the order applied in some
19 automatic or self-executing fashion to those who have entered
20 the coordination order. I wouldn't want them to feel as if
21 they have now been stuck with something that they didn't
22 necessarily know they were signing onto in the first instance,
23 and at a minimum give lawyers in those cases an opportunity to
24 be heard if they had objections or concerns about the proposed
25 orders.

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1 So, if it doesn't work that way, then obviously that
2 would be less of a concern, but I guess just keep that in mind.
3 And when you submit whatever it is you are going to submit,
4 give me a sense of how you think we should proceed on that
5 score.

6 MS. CABRASER: We will, your Honor.

7 THE COURT: Should we set a deadline for that? You
8 indicated well before the March conference, which certainly
9 satisfies me, but I guess I am always inclined to set a
10 deadline to ensure that you do that. If so, what deadline
11 would you propose?

12 MS. CABRASER: Two weeks before the status conference,
13 your Honor?

14 THE COURT: All right, that is acceptable to me, so we
15 will proceed accordingly.

16 All right. The next item on the agenda is
17 Mr. Peller's objections to and motion to reconsider order
18 number 29.

19 The letter indicates that you are awaiting my
20 instruction on a schedule for briefing and disposition of those
21 submissions. I must confess that I was a little puzzled by
22 that, simply because under the local rules parties have two
23 weeks to respond to motions and one week for a reply, and in
24 that regard I think the opposition should have been due or
25 would have been due today, with the three extra days that you

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1 are afforded under Rule 6(d). Having said that, we are now
2 here, and I take it that nobody is planning to file any
3 opposition today, so let's discuss.

4 My one view is that I think that any opposition should
5 presumably be consolidated, that is to say, respond to both the
6 motion for reconsideration and the objection. I think
7 Mr. Peller is not present today, is that correct? I don't see
8 him here. I don't know if he is listening in or not, but in
9 any event I do want to discuss the schedule.

10 I do think that it should be consolidated, although I
11 do also have the question of whether given the terms of order
12 number 29 there actually is any need to litigate the objection
13 itself, that is, as distinct from the motion for
14 reconsideration. And I guess the question is could I not just
15 reinstate the complaints that are at issue on the theory that
16 whether they will ultimately have any import or not will be
17 determined based on the amended consolidated complaints to be
18 filed later. And if that is the case, then maybe we proceed
19 with them being reinstated and essentially kick the can down
20 the road on that score. But obviously to the extent that there
21 is a motion for reconsideration of the order itself setting
22 forth the process, that's something that needs to be considered
23 sooner rather than later.

24 So, Ms. Cabraser?

25 (Continued on next page)

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1 MS. CABRASER: Yes, your Honor. And you're,
2 obviously, right. The local rules and responses would have
3 been due today. We have prepared one. We are ready to file it
4 this week. The reason that we didn't when we conferred on this
5 with GM was reference to order number 1 in the MDL with respect
6 to the Court setting briefing hearings, oral motions. We
7 didn't know which trumped which, and we should not have
8 presumed. But we're ready to file responses this week. Our
9 response will be a consolidated response. In fact, the
10 reinstatement remedy will be one of our suggestions in that
11 response. But we would also like an opportunity to respond to
12 some of the other issues in the motion for reconsideration, to
13 clarify for everyone, I think, the effect of a consolidated
14 complaint and the lack of prejudice to those in the underlying
15 actions, but we can do this on an expedited briefing schedule,
16 certainly.

17 THE COURT: All right. Mr. Godfrey or Mr. Bloomer.

18 MR. GODFREY: We, perhaps, mistakenly overlooked order
19 number 1. I apologize for that. I think if the Court could
20 give us some guidance going forward so we're not in the same
21 situation, where the Court is concerned, since we were looking,
22 perhaps, to the wrong order.

23 I think we are prepared to file shortly. I understand
24 the consolidation, we can change our papers around and do that.
25 Just set the date a week or so out, and that would be fine if

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1 that is agreeable to the Court or agreeable to lead counsel and
2 the Court.

3 In terms of reinstatement, it does kick the can down
4 the road. It is going to get decided by the June deadline one
5 way or the other when they file the amended complaint. I don't
6 like the reinstatement idea. There has been sufficient time to
7 make the final decision, but I think if the Court chooses to
8 kick it down the road, that is an appropriate exercise in the
9 Court's discretion under the circumstances. In other words, I
10 don't think there is anything inherently wrong with doing that.

11 THE COURT: First, let me start with the general
12 issue, which is to say, notwithstanding any language in order
13 number 1, I would say, unless I issue an order to the contrary,
14 you should presume that the briefing schedule set by the local
15 rules applies to any motions that are filed. If I want to do
16 things on a different schedule, either expedited or slower, I
17 will issue an order. If you think it is warranted, feel free
18 to submit a letter proposing an alternative briefing schedule.
19 In the absence of my ordering otherwise, the local rules should
20 be followed.

21 With respect to these matters, why don't I set a
22 deadline for the filing of any opposition, again consolidated
23 opposition to both the motion for reconsideration and, to the
24 extent that you think it is appropriate, the objection, a week
25 from today and then give Mr. Feller a week thereafter to file a

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1 reply. Since he is not present here, I will give him the full
2 week that he is entitled to. I will deal with that in due
3 course.

4 Anything else to be said on that score?

5 All right. The last item on the agenda letter is
6 confidentiality issues. It doesn't sound like there is
7 anything to be discussed or for me to address at this point,
8 though I must confess that I don't entirely even know what the
9 issues are that are being raised here, which is to say that we
10 obviously have orders in place addressing confidentiality. I
11 don't know. It sounds as if there may be need to address
12 issues beyond what those orders address. It sounds like that
13 also may be the subject of some disagreement.

14 If you can clarify it for me, or maybe we should just
15 defer this altogether. To the extent that you saw the need to
16 raise it, if you want to clarify it for me, you may. Or you
17 can also tell me that we can raise this and discuss it later,
18 as needed.

19 Mr. Berman.

20 MR. BERMAN: Yes, your Honor.

21 This is an issue that has been raised primarily by my
22 absent colleague to my left. Let the record reflect that I did
23 not take his chair. He was very concerned about that.
24 Perhaps, we should let him address this in further
25 meet-and-confers.

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1 THE COURT: That's fine by me. Again, you know how to
2 find me. To the extent that there is a need to meet before the
3 March conference date that is next on our schedule, then I'll
4 obviously consider that. So we will defer discussion on that.

5 All right. Any new items of business that were not on
6 the agenda letter?

7 MR. BERMAN: Nothing for the plaintiffs.

8 THE COURT: Mr. Godfrey.

9 MR. GODFREY: No, your Honor. Thank you.

10 THE COURT: All right. Our next conference is not
11 February 11th, but unless and until I order otherwise, it is
12 March 13th, at 9:30 in the morning.

13 There are a handful of issues that I could imagine
14 warranting seeing you before then, but I'm not going to assume
15 that that will be necessary, and I hope that you will be able
16 to work them out, and you know the drill for submitting a
17 proposed order memorializing what we have done today.

18 With that, I wish you all a pleasant day, and thank
19 you very much for your help.

20 We are adjourned.

21 (Adjourned)

22

23

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25

