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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 GM IGNITION SWITCH MDL  
4 PLAINTIFFS,

5 Plaintiffs,

6 v.

14 MD 2543 (JMF)

7 GM IGNITION SWITCH MDL  
8 DEFENDANTS,

9 Defendants.

10 New York, N.Y.  
11 December 15, 2014  
12 9:30 a.m.

13 Before:

14 HON. JESSE M. FURMAN,

15 District Judge

16 APPEARANCES

17 HAGGENS BERMAN SOBOL SHAPIRO LLP  
18 Attorneys for Plaintiffs  
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APPEARANCES (Continued)

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1 (In open court; case called)

2 THE DEPUTY CLERK: In re: General Motors, LLC,  
3 Ignition Switch Litigation.

4 Counsel, please state your name for the record.

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

7 MR. BERMAN: Good morning. Steve Berman for  
8 plaintiffs.

9 MR. HILLIARD: Good morning, Judge. Bob Hilliard for  
10 plaintiffs.

11 MR. PAPELIAN: Joseph Papelian for Delphi.

12 MR. SCHOON: Eugene Schoon for Delphi.

13 MR. GODFREY: Good morning, your Honor. Richard  
14 Godfrey on behalf GM, along with Mr. Bloomer, Mr. Brock and  
15 Mr. Steinburg.

16 THE COURT: Good morning to all of you. Welcome back.  
17 It's been a little longer than usual, but it is nice to see you  
18 all are having a good summer. I think you have been a little  
19 too busy to have a great summer and we'll leave it at that.

20 Just a couple housekeeping matters. Just a reminder  
21 to please speak loudly and clearly and slowly into the  
22 microphone so that not only everybody in the courtroom can hear  
23 you but also those listening in by telephone can. Second, I  
24 think you know that my law-clerk Ms. Adkins sadly moved on to  
25 other places, namely, another chambers. I think you have all

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1 met, at least by e-mail, her replacement on this case, Beatrice  
2 Franklin, but I wanted to make sure to introduce her. I am  
3 confident that she will equal Ms. Atkins in her ability to  
4 assist me in this matter. I look forward to working with her.  
5 I also want to welcome a special guest, Justice Marl Weinberg,  
6 who is joining us from the Court of Appeal of the State of  
7 Victoria in Australia just to watch today. I want to welcome  
8 him.

9           With that let's get to the actual business of the day.  
10 As you know I will follow the agenda letter that I endorsed  
11 earlier this week and have a few other matters just here and  
12 there. With that let's get to Item No. 1, which is the  
13 bankruptcy proceedings. I did receive the letters that were  
14 submitted to Judge Gerber in response to his order, and I  
15 understand there is some disagreement with respect to the  
16 issues that he should decide versus issues that some argue I  
17 should decide and so forth. I know that he has called a  
18 conference for Monday. I gather the bottom line is that I  
19 think those are issues for him to address at least in the first  
20 instance, though, obviously some things may come to me. We  
21 will see. I will pay close attention to the progress of that  
22 litigation and trust that between my communications with Judge  
23 Gerber and you that I will be kept sufficiently up to date,  
24 especially to the extent that it has a bearing on the  
25 Bellwether trial, which obviously is my biggest concern. I am

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1 also concerned about the impact of whatever rulings on the  
2 economic loss cases but the Bellwether trials are on a slightly  
3 more expedited schedule that everybody is certainly aware of.  
4 That is my biggest priority and concern. The bottom line is,  
5 as you have, make sure you up date me on any material  
6 developments in that litigation and suffice it to say I am also  
7 in communication with Judge Gerber directly.

8 I understand from your submission that the Second  
9 Circuit has calendared the motion for direct appeal for  
10 September 8th and that it is on submission, which I take to be  
11 a reasonably good sign. That is a good sign that they are  
12 likely to grant the motion, which is now unopposed, but that is  
13 obviously not up to me. Assuming the motion is granted and the  
14 Circuit accepts the direct appeal, I have no authority I am  
15 sorry to say over the Circuit itself and I cannot tell it how  
16 quickly to proceed. However, I do have authority over you  
17 since you are appearing in front of me and I would like you to  
18 make a motion to the Circuit requesting that the appeal be done  
19 on an expedited basis. That is to say, it is not up to me  
20 ultimately whether to grant that motion; but I am directing you  
21 to make the motion and to make clear my view that so long as  
22 bankruptcy issues are unresolved obviously I think hinders the  
23 ultimate resolution of the MDL and the proceedings before me  
24 and I think it would be in everybody's interests and my  
25 interests and the case management over the MDL for the

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1 bankruptcy proceedings to run their course as quickly as  
2 possible. So you are welcome to make my views known, not just  
3 welcome, in fact you are directed to make my views know by  
4 making a motion for expedited appeal. Obviously it up to the  
5 Circuit whether to grant that motion and ultimately up to the  
6 Circuit whether to grant that motion and then ultimately up to  
7 the Circuit in the first instance to take whatever time it  
8 needs to decide the appeals themselves.

9           Aside from that I don't think there is anything else  
10 that needs to be discussed on the bankruptcy front, but  
11 anything that I have missed or that we need to discuss,  
12 Mr. Hilliard?

13           MR. HILLIARD: Your Honor, Bob Hilliard. The  
14 microphone has been moved up and I have made use of the  
15 Criminal Code of Rules so you can hear me.

16           I need one clarification, your Honor, on the issue  
17 that you spoke of initially in regards to discussing Judge  
18 Gerber. The paramount hot topic right now is whether or not  
19 the post-accident complaints containing punitive damage and  
20 gross negligence language will go in front of Judge Gerber. Is  
21 that what the Court was acknowledging? If so, I can sit down.  
22 I just wanted to be sure.

23           THE COURT: I read your letters -- well, not your  
24 letter but I think it was Brown Rudnick. I read the letters  
25 that were submitted to Judge Gerber and copied to me. I have

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1 talked to Judge Gerber about this. I think there are three  
2 issues that I can think of that sort of directly implicate and  
3 relate to the Bellwether trials that I think everybody has an  
4 interest in resolving sooner rather than later. Who resolves  
5 those is a separate question. One is I think the elephant in  
6 the room, namely, the punitive damages question. The second is  
7 whether and to what extent the conduct of old GM employees can  
8 be imputed to new GM. That is, employees who worked for old GM  
9 and were hired by new GM. The third is essentially what  
10 effective, if any, his rulings have on the pleadings that are  
11 filed with respect to the complaints filed with respect to the  
12 early trial cases. Those are the three that struck me as most  
13 obviously relevant and necessary to resolve sooner rather than  
14 later for the Bellwethers. I think he is on the same page with  
15 respect to that. I know that there is a conference on Monday.  
16 I think he plans to address those. Again, I am going to leave  
17 it to him, at least in the first instance, to essentially  
18 decide sort of a process for resolving whether he is to be the  
19 person to decide those or I am. In any event, we'll sort of  
20 take it one step at a time.

21 MR. HILLIARD: I just wanted to be sure about the  
22 elephant in the room because that is the big one.

23 THE COURT: Yes. I think everybody is aware of that.  
24 Certainly I am and Judge Gerber is.

25 MR. HILLIARD: Thank you, Judge.

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1 THE COURT: Anything else on the bankruptcy front?

2 Very good. The second item on the agenda is  
3 coordination of related actions. I received new GM's most  
4 recent submission yesterday and I will say that I have a call  
5 into Judge Lopinot in Illinois, who has a hearing I gather  
6 scheduled for next week. It is an Austin matter. I don't  
7 think there is anything else that needs to be discussed on  
8 that, but is there anything? I can't imagine much has happened  
9 since yesterday. Does anybody need to be heard there?

10 Third is new GM's document production. I appreciate  
11 your update on that front. I assume that there is nothing we  
12 need to discuss there as well.

13 Excellent.

14 No. 4, fact witness deposition update. Let me address  
15 here the dispute over the scope of the deposition of  
16 Mr. Valukas. One question is: Can somebody remind me what the  
17 date of that deposition is? I just want to make sure I have it  
18 on my calendar.

19 MR. BERMAN: September 24th.

20 THE COURT: September 24th?

21 MR. BERMAN: Yes.

22 THE COURT: So first and foremost I do want to say  
23 that I wasn't thrilled with the plaintiffs' response to my  
24 August 11th order, namely, the communication that was sent to  
25 new GM with respect to the topics to be covered in the



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1 deposition. Certainly I don't think it complied with the  
2 spirit of my order. Whether it complied with the letter is a  
3 different matter. But a single sentence at that level of  
4 generality doesn't strike me as advancing the ball meaningfully  
5 here, but that obviously I think moots beyond that afterwards.

6 As far as I can tell I have reviewed your respective  
7 letter briefs and the exhibits to them, including the more  
8 detailed list of subject matters to be covered or proposed to  
9 be covered. I think they sort of fall into four categories.  
10 Let me just address them kind of at that level and I am hoping  
11 that this will more less resolve the matter and put most of  
12 these issues to rest but we'll see. I am not a big fan of  
13 hiding the ball so I will say that I am largely in agreement  
14 with the new GM on these issues, but I am not entirely. So let  
15 me specify.

16 Now, the first category is questions about the content  
17 of the report, for example, about the accuracy of facts  
18 disclosed in the report, recommendations made by the Valukas  
19 team disclosed in the report and conclusions drawn in the  
20 report. My view is that questions that touch on those do  
21 implicate the privilege and either would be a waste of time to  
22 the extent that they would ask or call upon Mr. Valukas to read  
23 what he stated in the report or would unjustifiably intrude  
24 upon the privilege or work product to the extent that it would  
25 call upon him to explain and justify his conclusions or his

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1 thought processes and the like. To the extent that the  
2 plaintiffs seek to question Mr. Valukas about the facts  
3 contained in the report, for example the cultural issues that  
4 contributed to the delayed recall of the design and development  
5 of the ignition switch, the knowledge or lack thereof of the  
6 various officers and executives. I just don't understand  
7 Mr. Valukas to have any personal knowledge of those facts and I  
8 think whatever knowledge he has of them he derived from his  
9 investigation and from the interviews. As you know from my  
10 prior rulings in this case, many of you believe that the  
11 interviews themselves are protected and therefore I think  
12 questions of that sort would intrude upon the privilege and  
13 work-product protection.

14           The second category is statements made by others with  
15 respect to the report, namely, about the accuracy of the report  
16 and the like. Again, I agree with new GM that that line of  
17 questioning is likely, if not inevitably, to intrude upon the  
18 privilege and work-product protection insofar as it would  
19 effectively force Mr. Valukas to disclose his opinions and  
20 thought processes. I don't know what the questions would be  
21 intended to do other than basically confront Mr. Valukas with  
22 the contrary opinions about facts set forth in his report and  
23 ask him if it changes his mind or the like, which I think  
24 essentially calls upon him to disclose his opinions and thought  
25 processes and/or the content of the particular witnesses'

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1 interviews, which again I have previously ruled are protected.  
2 So that line of questioning I think is also impermissible.

3 Third is a question with respect to Mr. Valukas's own  
4 public statements about the report, including his own written  
5 and congressional testimony. To the extent that it calls upon  
6 Mr. Valukas simply to essentially read what is in those public  
7 statements, I think that would indeed be a waste of time. To  
8 the extent it goes beyond that and develops into his thought  
9 processes and opinions and the like, I think again it would  
10 intrude upon the protections and privilege that I have already  
11 ruled about.

12 That being said, I don't entirely understand or know  
13 what the plaintiffs' intentions would be, what kinds of  
14 questions they are looking for. So I guess I am a little less  
15 inclined to rule on a blanket basis that those sorts of  
16 questions will be impermissible and I think I will just leave  
17 you with that general view and we can either follow up in a way  
18 that I will describe in a moment or deal with specific  
19 questions as they arise at the deposition in the event that  
20 there is an objection.

21 The last category that I see, which is what I  
22 described as process questions, namely, questions about how the  
23 report was created, that is, the attorneys who participated and  
24 Mr. Valukas's own role and the extent of that role and the role  
25 of King & Spalding as well as questions regarding Jenner &

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1 Block's representation of new GM more broadly with respect to  
2 the MDL with respect to other matters and the like. I do not  
3 think that those sorts of questions -- well, for the most part  
4 I don't think that those sorts of questions would intrude on  
5 privilege. New GM does argue that some of the questions might  
6 to the extent that they involve the disclosing of  
7 representation of other matters might conceivably implicate  
8 privilege with respect to those matters, but obviously as a  
9 general proposition the fact that a lawyer is representing a  
10 client in the matter that they are working on and the like  
11 doesn't necessarily intrude upon privilege. All of which is to  
12 say I think we will have to take those questions as they come  
13 and I am not going to sustain a blanket objection to that line  
14 of questioning.

15           Having said that I am not entirely certain what the  
16 relevance or purpose of those questions is or are. Some of  
17 this does go to my idea as how the plaintiffs propose and plan  
18 to use the Valukas report at trial. I suppose these sorts of  
19 questions could be used, for example, to explore the bias or  
20 impartiality of Mr. Valukas and maybe that would figure into  
21 some sort of argument at trial with respect to the report.  
22 Obviously to the extent that new GM has repeated represented  
23 that it does not intend to offensively use the report and to  
24 introduce it itself, I guess I am trying to figure out in my  
25 mind how exactly this would be relevant.

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1           Obviously one is always allowed to impeach one's own  
2 witness and in that regard I suppose even if the plaintiffs are  
3 the ones to offer the report and portions thereof I suppose the  
4 same principle would seem to apply there and maybe they can  
5 impeach the report even if ultimately this trial is not about  
6 the report but about the defects in the particular accidents or  
7 incidents involved. That is where I stand at the moment.

8           Here is what I am going to do: In light of those  
9 rulings and in light of my sense that the plaintiffs really  
10 have not articulated a particularly long list of subjects or  
11 questions that do not intrude upon the privilege, I am going to  
12 grant GM's request to limit the length of the deposition. I am  
13 going to grant plaintiffs three hours for the deposition unless  
14 a showing can be made, and it can be made on an ex parte basis,  
15 if doing so would require revealing deposition or trial  
16 strategy. That is a detailed showing of need for more time,  
17 and by "detailed" I mean a showing with specificity that there  
18 are questions or subjects that would not implicate the  
19 privilege and would require time beyond the three hours that I  
20 just set.

21           In light of fact that the deposition is scheduled for  
22 September 24th, I am inclined to say I will give you, let's  
23 say, two weeks, until September 11th to file that application.  
24 Again, if it does reveal deposition or trial strategy if you  
25 want for spell out the reasons and things like bias, etc., are

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1 relevant for you to explore, then you are welcome to do so on  
2 an ex parte basis. Obviously to the extent that you can share  
3 it with new GM or the public, which has an interest here, then  
4 I would ask you to do that and limit what needs to be filed on  
5 an ex parte basis. That is how we will proceed and then to the  
6 extent that we don't resolve things in advance of the  
7 deposition, I will certainly make sure that I am generally  
8 available on September 24th in the event that disputes arise as  
9 to particular questions.

10 One last thing. By prior order I indicated that any  
11 party that believed I had temporarily granted the request to  
12 file on a redacted basis, the submission order under seal of  
13 submissions that were made in connection with this dispute and  
14 I think my prior order I gave one week to any party that  
15 believes that that should be maintained to support that and  
16 argue and explain why that is consistent with the presumption  
17 in favor of public access. So obviously I will not rule on  
18 that. I remind you that you have a week from today in order to  
19 make whatever showing you deem is appropriate on that.

20 Any questions? Anything to discuss?

21 MR. GODFREY: Your Honor, assuming that there is a  
22 public filing or a redacted public filing, we might want a  
23 chance to respond. We can do it in five days if it is  
24 acceptable to your Honor. So we can do it by the 16th.

25 THE COURT: That seems only fair. So I will grant you

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1 that. Obviously if there is no public filing and it is only on  
2 an ex parte basis, then you will have nothing to respond to.

3 MR. GODFREY: Yes, your Honor. That part I figured  
4 out.

5 The second point is I think I should put a marker down  
6 so that our position is clear. We are going to get together  
7 later today to discuss some motion *in limine* issues.

8 THE COURT: Keep your voice up.

9 MR. GODFREY: One of the motions *in limine* we intend  
10 to file is the inadmissibility of the Valukas report. One of  
11 the challenges that we face, and I think one of the challenges  
12 that your Honor has faced in trying to define what the purpose  
13 of the Valukas deposition is from the plaintiffs' perspective  
14 is on the one hand much of the papers -- the statements made in  
15 the papers they have filed attack the validity of the report on  
16 the basis that it is bias and it is unreliable, etc. On the  
17 other hand, they seem to be saying they want to use it. Those  
18 are fundamentally inconsistent positions that we disagree with,  
19 that the report is bias. We don't think it is admissible under  
20 any exceptions of the hearsay rule. In terms of deciding what  
21 ultimately what questions can be asked, there ought to be a  
22 purpose for those questions. It seems to me it cannot be on  
23 the one hand they argue that it is bias, that it's got hearsay,  
24 that it's got all these problems; but on the other hand they  
25 want to argue it is admissible. Those are fundamentally

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1 inconsistent positions and we should not waste time in a  
2 deposition allowing them to pursue easily exclusively  
3 fundamental inconsistent positions. I put that down now  
4 because it will be part of the briefing we have on the motions  
5 *in limine* with respect to the Valukas report.

6 THE COURT: Well, I am not going to rule on that issue  
7 at this point. It sounds like it is coming down the pike. I  
8 think it is more properly raised by motions *in limine* and  
9 adequate briefing and the like. Obviously for the most part  
10 objections as to relevance and those sorts of objections are  
11 objections you can preserve at the deposition, but there are  
12 things that I necessarily need to rule on in the context of the  
13 deposition itself. Privilege, as you know, is a different  
14 animal and beast altogether. I appreciate the heads up on that  
15 issue. Though, I think I could have anticipated it myself.

16 Your letter indicated that you would be prepared to  
17 propose a briefing schedule regarding a dispute with respect to  
18 Category One, the deposition plaintiffs have requested. Can  
19 somebody elaborate and explain what that is? And if you have a  
20 proposed briefing schedule, I am all ears.

21 MR. GODFREY: Your Honor, we made progress on this.  
22 We don't have this issue quite resolved. I hope that we could  
23 have it resolved in the next four or five days. If not, then I  
24 would propose a brief -- one week from, I guess, Labor Day. So  
25 one week from next Tuesday I think simultaneous briefs on the



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1 issue, but we have made progress on this. Like many things  
2 once you put it in the status agenda letter and we are going to  
3 see you, we seem to have concentrated meet and confers. It is  
4 not quite done yet, but I am hopeful we can moot this issue. A  
5 week from this Tuesday simultaneous letter briefs of  
6 three-pages should be sufficient I think.

7 THE COURT: Given what you just said I am inclined to  
8 make you come see me more often. That's fine with me. I am  
9 not necessarily interested in ruining anyone's Labor Day  
10 weekend. So I am really happy to make the deadline the 8th if  
11 that makes sense given the schedule. You guys have a better  
12 idea of whether and to what extent there is urgency here and  
13 whether it will ruin your weekend.

14 Any objections to my making the deadline the 8th?

15 MR. GODFREY: No, your Honor.

16 THE COURT: The deadline for simultaneous letters not  
17 to exceed three pages if there is any dispute. If there is no  
18 dispute -- it doesn't sound like the sort of thing that I need  
19 to so order, but if there is anything that you need from me,  
20 you can and know where to find me.

21 No. 5 is Bellwether expert discovery update. I did  
22 receive your letter of August 26th and I so ordered it this  
23 morning. It should be docketed later today. That letter  
24 indicated that there was a dispute or that the parties were  
25 continuing to confer with respect to the two expert witnesses

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1 and suggested that you might reach agreement before today's  
2 conference, but I haven't heard anything or at least I don't  
3 think I have heard anything on that.

4 So does anyone want to update me on that front?

5 MR. HILLIARD: Judge, in reference to what Mr. Godfrey  
6 said once the status conference is set, it looks like we have  
7 begun to reach out again to our experts and give GM what they  
8 are requesting. I would be surprised if the dispute will  
9 continue running much past today. It is simply a scheduling  
10 issue and not length of time but consecutive-day issue. We  
11 understand it is our responsibility to try to convince our  
12 experts that given the truncated schedule that we're on, we  
13 have to make some concessions and we're working with basically  
14 Mr. Bloomer to be sure that they have a chance to take these  
15 depositions timely. Unless GM has a different position, I  
16 believe we have it at the front of our burner so to speak and  
17 we're working hard on it.

18 THE COURT: All right.

19 MR. GODFREY: I think that is an accurate statement,  
20 your Honor. I think we're down to one expert date and I have  
21 no doubt we'll be able to resolve this.

22 THE COURT: First, I appreciate your confidence and it  
23 does sound like the thing you don't need to bother me with; but  
24 why don't you put that in whatever letters are submitted on  
25 September 8th if you can't reach agreement before then. If you

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1 need an extra page to do that, I am happy to give you up to  
2 four pages for both those issues. I will hope and trust that  
3 you will be able to work that out.

4 I think Categories 6 and 7 can be and should be  
5 addressed together, namely, the Bellwether complaint, motion  
6 practice and then the Bellwether trial motions *in limine*,  
7 *Daubert* motions and a pretrial order. Actually, I should  
8 mention maybe I will cover Item No. 8, deadlines and scheduling  
9 for remaining Bellwether related trial cases as well and reveal  
10 to you that I have finally managed to go through my schedule  
11 and outline -- well, it is more than a proposed schedule for  
12 the earlier trial cases. It is a schedule unless and until I  
13 order otherwise. An order to that effect will be docketed  
14 today as well. I will give you that schedule now just so you  
15 have it, but they will be an order on the docket as I just  
16 mentioned.

17 Trial No. 1 is as we all know begins on January 11th  
18 and I think you have said that I should plan to lay out four  
19 weeks for that trial and three weeks for others. That seems  
20 fine by me. Obviously, it is not an exact science as we all  
21 know. The other trials will be scheduled as follows: Trial  
22 No. 2, beginning on March 14th through April 1st. Trial No. 3,  
23 May 2nd to May 20th. Trial No. 4 July 25th to August 12th.  
24 Trial No. 5 September 12th to September 30th. And Trial No. 6,  
25 November 4th to December 2nd. I know you requested not to

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1 schedule anything in July. I tried to honor that, but for  
2 various reasons I had to sort of eat into the last few days of  
3 July. As the order will state or does state that is the  
4 schedule unless and until I order otherwise. Obviously there  
5 may be conflicts or there may be other reasons that will  
6 justify moving things around so I want you to let me know  
7 promptly if there are such things. You should confer with one  
8 other and to the extent that you can make proposals for  
9 revisions if that is necessary. You should do that, but let's  
10 try to sort that out sooner rather than later.

11 We also do need to -- this relates to Item No. 7 --  
12 set pretrial deadlines for each of those trials and per the  
13 order I would like you to confer with one another and submit a  
14 hopefully agreed upon proposed order. I think it would make  
15 sense to set standard deadlines for each of the trials. In  
16 other words, X number of days or weeks prior to trial would be  
17 the deadline for a joint pretrial order, for motions *in limine*,  
18 for *Daubert* motions and the like. I didn't put this in the  
19 order but it does make sense, I assume that whatever rulings I  
20 make, for example, in connection with the first Bellwether  
21 trial -- I am thinking out loud here and it is a little  
22 dangerous -- I wouldn't think there is *res judicata* with  
23 respect to the subsequent trials since they involve different  
24 parties; but I do want to figure out some process to ensure  
25 that we don't have to relitigate the same issues over and over

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1 again. So maybe some sort of process where the losing party  
2 can show cause or the party that would be on the losing end of  
3 the subsequent trial involving the same issue could show cause  
4 why the ruling would not apply. Something of that sort would  
5 maybe make sense to spell that out in advance so that we can  
6 streamline this to the extent possible.

7 One further word on the early trials. I will tell you  
8 now that I am not committing myself to trying all of them  
9 myself. I may. Maybe I will decide that this is my lot in  
10 life. This case is not my only case as you probably know. I  
11 do have other trials and cases that I need to tend to and with  
12 all due respect I imagine that I might be both sick of these  
13 issues and sick of you by the time we get to the sixth trial.  
14 Maybe not. Maybe not. In any event, I may ultimately try to  
15 draft some of my colleagues to step in and try one or more of  
16 the cases. First of all, I am not doing that just yet. My  
17 plan is to try the first few so we can work most of the issues  
18 and kinks out as much as possible. I just want to give you  
19 fair warning it is possible that some of these cases may end up  
20 with other judges.

21 One last thing on that. Per Order No. 60, that is the  
22 order after the June pretrial conference, you were supposed to  
23 let me know whether entry of a supplemental Bellwether order  
24 for actions subject to recalls, other than the Cobalt and Ion  
25 ignition switch recalls, should be entered but your agenda

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1 letter was silent on that. I assume in light of that it is not  
2 time to do that, but I just want to make sure that that didn't  
3 fall altogether off the radar screen.

4 MR. HILLIARD: A little of both. I think we have  
5 addressed that. I think you are probably right. I would like  
6 a chance to focus on it with Elizabeth and Steve. I think your  
7 views are probably true and that is not going to need them, but  
8 quite frankly I just forgot about that one Judge. We can meet  
9 after this and let the Court and GM know quickly whether or not  
10 your inclination is right.

11 THE COURT: I think I have done what I need to do,  
12 namely, just putting it back on the radar screen so you can  
13 give it thought and make sure it is not forgotten. If anything  
14 is appropriate, you can let me know. I will assume if I don't  
15 hear back either before the next conference or in connection  
16 with the next conference that it is a nonissue for the time  
17 being. I will leave that up to you.

18 Going back to Item No. 6 and 7 and beyond what I just  
19 said. The complaints were due to be filed and I think were  
20 filed on August 7th. Answers are due by September 4th. Order  
21 No. 25 set deadline for motion practice with respect to the  
22 first Bellwether trial. That is I think the Shower case. The  
23 question I have with respect to Items 6 and 7 on the agenda  
24 list is just what else do you anticipate, and I think there was  
25 a suggestion that you might want to change some of the schedule

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1 that was set by Order No. 25, and so what are your thoughts?

2 MR. GODFREY: I will break them into two categories.  
3 As to the motion practice on the first Bellwether trial, our  
4 answer to the pleading is due the 4th. We agreed that if we  
5 file motions, and if it is agreeable to the Court of course,  
6 plaintiffs would ask three weeks to respond. We will take 10  
7 days to reply.

8 THE COURT: Do you anticipate at this time that you  
9 are filing a motion?

10 MR. GODFREY: I do. Although, some of it may be  
11 resolved. There is a choice of law issue that I think we have  
12 reached a resolution on this morning. We need to have a  
13 further question on that. If we resolve the choice of law  
14 issue then that will resolve certainly part of the motion.  
15 Right now I would say yes pending further discussions.

16 THE COURT: Why would the choice of law issue be--

17 MR. GODFREY: Well, if the plaintiffs agree that the  
18 law of the individual state applies to some of the laws they  
19 have pled, then those counts will have to be dropped or repled.  
20 In other words, for example, a person who has asserted choice  
21 of law in Michigan, we think Michigan law does not apply  
22 because we think the place of the accident applies. So if they  
23 agree with us -- I think Mr. Hilliard have an agreement in  
24 principle -- we need to look at the actual pleadings. Then I  
25 think that probably drops off. Otherwise, we'll brief the

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1 choice of law issue on each of the complaints. Each of these  
2 six complaints raises that issue for example.

3 THE COURT: Fair enough.

4 MR. GODFREY: The second category is Mr. Hilliard and  
5 I and Mr. Brock have worked out a proposed amendment. We  
6 didn't quite get it in time to circulate it before the hearing,  
7 but we would like to file later today. Basically it reasonably  
8 and aggressively moves some dates up and some dates back. Some  
9 of the dates that are under the Court's current order were  
10 things due December 4 or December 5, we have moved up into  
11 mid-November. Other dates, particularly the motions *in limine*  
12 and the *Daubert* motions, we have sequenced. So we have four  
13 different dates for motions *in limine* with the last date being  
14 December 4. The second to last date being November 10th, the  
15 current date. The two earlier dates and with stress provision  
16 in the proposed order that says, You cannot file anymore than  
17 one-quarter of your motions *in limine* on the last day. We're  
18 trying to sequence them because some of these are more  
19 challenging, if you will, in terms of the issues. So we want  
20 to file motions *in limine*, for example, on a consent decree.  
21 It should be admissible. We want to file a motion with respect  
22 to the admissibility of the Valukas report. So we've got a  
23 schedule worked out and the design is to be consistent with  
24 your Honor's front end loading as much as possible, but it is  
25 something that we think the parties both agree on. I am



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1 prepared to tender up a copy, but I think I would rather file  
2 it and have everyone look at it for your Honor's consideration.  
3 The plaintiffs have agreed with us. We've work this out. We  
4 finished it late yesterday. I think your Honor will see what  
5 we're trying to accomplish in terms of making it liveable for  
6 the Court but also on a rational schedule sequence.

7 THE COURT: Why don't I reserve judgment until I see  
8 your submission later today. I guess the only question I have  
9 with respect to the motion practice with respect to the  
10 complaint, I don't think in principle I will have an objection  
11 to the three weeks and 10 days for any opposition and reply but  
12 I do need a little bit of time to decide some of these motions  
13 and I don't want to run into trouble with the rest of our  
14 schedule or give myself unreasonable deadlines to decide  
15 things. To the extent you need decisions on certain things  
16 before you get to other things, I want you to keep that in mind  
17 and I would rather shorten briefing schedules accordingly if  
18 there is a need for rulings on certain things is what I am  
19 trying to say.

20 MR. GODFREY: Let me do this, let me go back. If we  
21 believe that one of the elements of the motion matures, a  
22 motion *in limine* or *Daubert* motion or something like that, in  
23 other words presenting problems for later sequence motions,  
24 we'll alert the plaintiffs and we will alert the Court and then  
25 we can discuss adjusting the briefing schedule accordingly. I

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1 don't anticipate that, but I need to go back and look at that  
2 because I think there is a fair point we need to consider.

3 THE COURT: The other thing I would be interested in  
4 knowing is if anyone anticipates the need for a *Daubert*  
5 hearing. It is one thing if there is just a motion that can be  
6 decided on the papers. If there is a need for a hearing and I  
7 don't know how substantial the issues are here or even what the  
8 issues are, then that is something that needs to be factored  
9 into the schedule and alike.

10 MR. GODFREY: It's a bit premature but we think there  
11 is a distinct possibility of that. As soon as we would believe  
12 that, we'll let the Court know. I had understood the request.  
13 It is an appropriate request from our perspective. We'll let  
14 the Court know as soon as possible.

15 I would like to raise two other issues. I think  
16 Mr. Hilliard and Mr. Brock -- Mr. Brock is leading the trial  
17 teams in products for us. I would like them to discuss with  
18 the Court two issues that are in the draft order. One is voir  
19 dire and the other is the jury questionnaire. I think you  
20 should hear our views on that as part of that. So you don't  
21 just get the draft order and say, Why do they have this in  
22 here.

23 THE COURT: Before you do that, Mr. Hilliard, anything  
24 you want to say with respect to the matters we just discussed?

25 MR. HILLIARD: There is. I think as the Court is

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1 probably aware the heavy judicial lifting in these Bellwethers  
2 is going to occur in this first trial. The general motion *in*  
3 *limine* that you are going to need to schedule and make time for  
4 between the *Daubert* motions as well as the general causation  
5 motions will not be reheard later. It will be specific  
6 causation motions. Just to advise the Court the time necessary  
7 as you've kind of caught onto is going to be significant as to  
8 very important issues. So since it is September already and we  
9 start our first trial in January, I think both sides need to be  
10 prepared to have the time necessary and give the Court the time  
11 necessary to make the general causation and first wave of *in*  
12 *limine* motions.

13 THE COURT: I agree. Also keep in mind the last days  
14 of December are probably not days that you should assume  
15 general availability on my part. Whether you guys are working  
16 or not is not my concern.

17 Mr. Brock.

18 MR. BROCK: Briefly, your Honor. The issues of the  
19 voir dire and jury questionnaire are linked, your Honor, and  
20 what we would like to propose to the Court is that the parties  
21 would jointly work out a questionnaire, a written questionnaire  
22 to be utilized with the jury panel. Our suggestion would be  
23 that once you know the panel that we will be picking from that  
24 we would let them fill out the questionnaire. It would have  
25 questions that we're interested in as well as the plaintiffs.

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1 It would be agreed upon. It would agreed upon what the  
2 questions should be. In the midafternoon or potentially even  
3 the morning of the second day if there are other things that we  
4 can be doing on day one, we would bring the jury back in after  
5 having a chance to review those questionnaires and we would ask  
6 that the Court permit some limited voir dire of the jury based  
7 on what we learn from those questionnaires. It is a process  
8 that has worked very well in other cases, especially cases that  
9 are prominent and where you have a lot of publicity as a way to  
10 get information from jurors. It is helpful to both sides. It  
11 is a pretty efficient way of doing it. I don't think it slows  
12 the process down significantly. I know it has been very  
13 helpful to both sides in other cases. That was the proposal  
14 that we would like the Court to think about at least.

15 THE COURT: This is something I also anticipated. I  
16 need to give it some thought. The question I have is I don't  
17 know what the proposed order says with respect to this, and  
18 before I commit to doing this I think I would want to know what  
19 the proposed questionnaire actually looks like. I will tell  
20 you that I am inherently skeptical of using questionnaires as  
21 part of voir dire notwithstanding what you just said. My view  
22 is it does tend to be inefficient and take a lot of time.  
23 Having said that I think it is appropriate in certain kinds of  
24 cases and given the nature of this case, it may will be  
25 appropriate here. I also want to give some thought if we are

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1 going to use it as to how it is done. I have never done it as  
2 a judge; but on cases I was involved in in my prior life  
3 involving a questionnaire, I think the general practice the way  
4 it was done, and maybe this is a general practice in this  
5 court, is to actually have the jury panel in on one day and  
6 fill out the questionnaire and then essentially come back a  
7 week or so later after the parties have had an opportunity to  
8 go through them and make challenges for cause and discuss with  
9 the Court issues that need to be followed up upon and so forth.  
10 That might make more sense than doing it on day two and expect  
11 that you all or I would have been able to process it. So I  
12 guess that is a long way of saying I think I want to know what  
13 the proposed questionnaire would look like, give it some  
14 thought and give thought to what impact that has and how it  
15 should be implemented with respect to the schedule. One option  
16 is to essentially move the beginning of one year for  
17 questionnaire purposes at least to the prior week, the week of  
18 January 4th, bring the jury in and have them fill out the  
19 questionnaire with the anticipation we will continue with voir  
20 dire on the 11th. I don't want to lose a week on the other  
21 side.

22 MR. BROCK: We've done it both ways. We have also  
23 done it in scenarios where the questionnaires have been mailed  
24 out to jurors and they bring it in with them. I think a week's  
25 lag where they are doing it sort of under the supervision of

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1 the Court after they have been in and they have been given the  
2 instructions not to investigate the case, that type of thing,  
3 in that week between the time they do the questionnaire,  
4 because they will know the general subject matter of the case,  
5 and when they return, it is very workable. I have found that I  
6 don't feel so good about it if we mail them out a month ahead  
7 of time. There is too much opportunity there for searching  
8 minds to think about what they might be doing when they get to  
9 court.

10 THE COURT: I will tell you I am not inclined to mail  
11 it out.

12 MR. BROCK: We don't think so either.

13 THE COURT: I think it will be important for me to  
14 have folks in here and give them general instructions and  
15 emphasize the need for discretion and what they can and cannot  
16 do.

17 I will look at your proposed order. I will speak to  
18 some of my colleagues who have done this in other cases and get  
19 a sense of what the most appropriate course would be. I don't  
20 know if the proposed order has anything in it with respect to  
21 when you would submit a proposed questionnaire, but again I  
22 think I would probably want to see it to figure out whether the  
23 questionnaire is appropriate. If it is not in the proposed  
24 order today, why don't you talk with one another and figure out  
25 when and how you could submit that to me.

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1           One another thing that you should just think about --  
2 again, thinking out loud which is dangerous -- but I know in  
3 other cases where questionnaires have been used, needless to say  
4 it is often in high profile cases and this is certainly one of  
5 those, the issue that arises is public access and press access  
6 to those questionnaires and you want to give some thought to  
7 that and think about it with respect to the questions you put  
8 on it.

9           MR. BROCK: So the process we have used in other  
10 matters, your Honor, is that we would be responsible for  
11 helping the Court with having the appropriate number of copies  
12 available for use by the Court for the jurors to fill out and  
13 then we would certify to either the destruction of those  
14 materials or a return of them to the Court after we have  
15 completed our use of the materials. Those questionnaires in our  
16 view would not be available for public view.

17           THE COURT: Well, the press may have a different view  
18 on that.

19           MR. BROCK: That would be up to you of course, yes,  
20 your Honor.

21           THE COURT: As with most things.

22           MR. BROCK: I just want to say I think there are  
23 things that we can do, whatever you decide, to have the  
24 appropriate protections for that if that is what you feel is  
25 the right thing to do.

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1           THE COURT: Obviously there are various interests  
2 including privacy interests of prospective jurors and I  
3 recognize that.

4           Mr. Hilliard, anything you want to add on this?

5           MR. HILLIARD: To weigh in from the plaintiffs' side,  
6 Judge, is in a case like this I think the questionnaire will do  
7 a number of things. It will save I think extraordinary time if  
8 the Court allows a pretty detailed questionnaire, which we used  
9 in the past, as has GM, and it will also allow the Court to  
10 consider strikes for cause. And there will be quick answers  
11 based on my experiences where you will be able to say, No  
12 question about it, and we can move through this process quickly  
13 without a potential answer from a potential problem issue  
14 coming up generally. Mr. Brock is right that the need to  
15 really be in tune I think on a case like this to jurors being  
16 straight up and clearly informed as to what their obligation is  
17 is paramount to both sides. Once the questionnaire is filled  
18 out -- well, I need one clarification. Is the Court  
19 considering giving the non-answered questionnaire out? I mean,  
20 the non-answered questionnaire would seem to be -- if the press  
21 wants to get it, I would assume that is an issue of not giving  
22 it. I agree with the Court's belief, you cannot give  
23 questionnaires out.

24           I am not sure it is so clear cut. Certainly the  
25 unanswered questionnaire I don't see any issues with and I



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1 think the press would be entitled to and the public would be  
2 entitled to it. I don't think it is so clear cut that they  
3 wouldn't be entitled to some portions of the answers. One,  
4 simply because my decisions as to who to strike for cause and  
5 alike are obviously based upon judicial documents. If there  
6 are privacy interests that would justify redacting and sealing,  
7 that is one thing. This came up. I was involved in the  
8 Ghailani prosecution where Judge Kaplan used a questionnaire  
9 and ultimately redacted versions of the jury's completed  
10 questionnaires were provided to the press sort of on that  
11 theory. I don't remember sitting here whether it was litigated  
12 or that was just sort of done by agreement. I am just flagging  
13 this as an issue that you might want to give some thought to.  
14 It might make sense to give some thought to it in connection  
15 with the design of the questionnaire so more private  
16 information can be more easily redacted if that is the  
17 direction that I ultimately go. I just wanted to flag it. I  
18 think you all know that public access is something that I do  
19 take pretty seriously and give a lot of thought to. Also,  
20 anticipate that the press when it comes to trial may make their  
21 voices heard if I don't do what they think I should be doing.  
22 Just flagging it as an issue.

23 MR. HILLIARD: Some clarification from the Court. In  
24 regards to numbers of jurors, I came in and watched your Heyman  
25 voir dire and I am very interested in how that ended.

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1 THE COURT: Defense verdict. I am assuming you want a  
2 different one here.

3 MR. HILLIARD: I watched how the voir dire was  
4 conducted in the questionnaire. I think maybe right now is not  
5 the time, but sooner rather than later maybe some discussion  
6 between the Court and the parties where we can start it and  
7 provide a view as to how we would foresee and propose the first  
8 number of potential venire that would come in and then how the  
9 actual inquiry would occur between the Court and the potential  
10 jurors.

11 The other question that is still on the table is: Do  
12 the parties get a chance for limited voir dire based on any  
13 answers to the questionnaires. We would join GM and like the  
14 Court to consider giving us permission for some limited  
15 opportunity to inquire of potential jurors on specific  
16 questions.

17 THE COURT: I will look for your proposed order later  
18 today and then this is obviously something we should discuss at  
19 greater length and nail down as much as possible. So to the  
20 extent that we don't do that before the October 9th conference,  
21 let's certainly make sure we discuss it then and continue to  
22 discuss it as much as needed.

23 I don't think I need to give you the answers on those  
24 issues now, but I would be curious to know, for example, how  
25 many people you think should be impanelled for voir dire. I

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1 will check with my colleagues and the jury folks to see if they  
2 have any thoughts but obviously that too is not an exact  
3 science. If you have thoughts, certainly I am open to hear  
4 them.

5 MR. HILLIARD: Do you seat eight with any alternates?

6 THE COURT: My typical practice in standard civil  
7 cases is to seat eight. In this case I would at least consider  
8 seating more than eight just on the theory that, number one,  
9 the trial is likely to be a little bit longer, on the longer  
10 end of things; and, number two, given the subject matter and  
11 the high profile nature of it and the fact that there is likely  
12 to be press coverage, I can imagine circumstances arising where  
13 jurors end up being excused during the trial and I certainly  
14 don't want to retry a case if we can avoid it.

15 MR. HILLIARD: The other thing that is brewing is as a  
16 practical matter there is a ton of documents that can be pretty  
17 sophisticated. IT folks from both sides the sooner we know  
18 which courtroom we are going to be in and what internal  
19 information or technology is available, they are asking from  
20 both teams and my hope is that we can share a lot of the IT  
21 between the parties. As soon as we know where we're going and  
22 what is available, the better.

23 THE COURT: That's a fair point. It is something I  
24 will think about sooner rather than later myself. So I will  
25 let you know. Again, I don't know we need to get into the

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1 other voir dire issues raised. I will tell you right now that  
2 I do not typically allow lawyers to conduct voir dire  
3 themselves. That is not generally the practice in this  
4 district. I think that is for all sorts of good reasons.

5 MR. HILLIARD: The process where he had a week between  
6 the preparation of the questionnaires and the selection or even  
7 just a few days, it would give us adequate time just to  
8 consultant a few questions that we might have and we would ask  
9 if that might be something the Court would consider?

10 On the issue of technology if we were to be in this  
11 courtroom or another courtroom, what we would probably like to  
12 do is have our tech people as well as the plaintiffs' tech  
13 folks actually come in. They don't need the lawyers for that.  
14 Just to see what the rules of process would be in terms of  
15 where tables can be, what your preference would be on  
16 electrical outlets and that type of thing. They can work most  
17 of that out. I am sure you have done that in other cases.

18 (Continued on next page)

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1           THE COURT: Yes, I have. In most cases, just the week  
2 before. Here, I think it probably does make sense for me to  
3 figure out what courtroom we will be in, to give you an  
4 opportunity to come in even before that.

5           My inclination is -- just, again, thinking out loud --  
6 not to try it in this courtroom, number one, because I would  
7 anticipate there might be a lot of folks who want to attend,  
8 and we have larger courtrooms; number two, as we all know, the  
9 acoustics in here are challenging. As beautiful as it is, as  
10 much as I love my own courtroom, I think my inclination would  
11 be to find a bigger courtroom, either downstairs in this  
12 building or even one of the ones across the street, where the  
13 acoustics are probably the best.

14           I don't know if you have any view on the size of the  
15 courtroom.

16           MR. HILLIARD: Again, as a practical matter, I  
17 envision there will be either introduced pieces of evidence or  
18 demonstrative evidence, given this is a car ignition cases,  
19 which would be fairly large. On wheels, it will need to be  
20 moved around fairly freely for the expert to look at it, the  
21 expert comes down and talks to the jury about it. So the more  
22 freedom around counsel table for bigger exhibits, given the  
23 type of case, probably the easier it goes.

24           THE COURT: You're not planning to bring a car into  
25 the courtroom; are you?

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1 MR. HILLIARD: Is that work product?

2 THE COURT: You don't need to answer that now.

3 I will start to think about this and talk to the  
4 relevant folks in the court about it.

5 Anything else we need to address on that front?

6 Okay. I appreciate your thinking these things through  
7 well in advance of the trial. Obviously, I really do want to  
8 sort as much out both legally and practically in advance of  
9 trial as we can. It is in everyone's interests. I want to  
10 ensure that when the trial actually starts and we have a jury  
11 in the box, we don't have to delay for any sorts of things like  
12 that. I really do appreciate your thinking these things  
13 through and bringing them to my attention well in advance and  
14 teeing them up for resolution.

15 Item number 9 is the motion to compel. I don't think  
16 there is anything we need to discuss on that. I granted the  
17 application for New GM and King & Spalding to file sur-replies.  
18 They are due by September 4th. I will do my best to decide the  
19 motion as quickly as possible.

20 Item 10 phase three discovery plan, I'm not sure there  
21 is anything for us to discuss there. My question is: Should I  
22 give you a deadline for any submissions on that?

23 MR. BERMAN: Perhaps the deadline should be five days  
24 before the next status conference.

25 THE COURT: Mr. Godfrey?

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1           MR. GODFREY:  October the 4th would be fine with us,  
2 your Honor.

3           THE COURT:  October 4th is a Sunday.  Let's make it  
4 October 2nd, to avoid the Sunday, and that Monday and Tuesday  
5 are Jewish holidays.

6           Item number 11, privilege challenges.  I would be  
7 curious to know what may be coming down the pike; that is to  
8 say, what kind of issues we're talking about, how many, and if  
9 you're in a position to make a proposal now about how I should  
10 resolve any disputes.

11          MR. GODFREY:  I think there are two buckets of issues.  
12 All of the parties have made progress on the meet-and-confers,  
13 not surprisingly.

14          One bucket relates to the privileged clawbacks.  We  
15 have narrowed the issues of the dispute.  We may be able to  
16 resolve that without the need of court assistance.  I think we  
17 would know that within a week.  If you say within a week we  
18 will know if we have a dispute that is worth fighting about,  
19 then maybe a week later, letter briefs on it.  That would work  
20 from our perspective if that works from the Court's  
21 perspective.

22          THE COURT:  I should alert you -- I assume you have  
23 systems in place to read everything that I write -- I'm  
24 kidding, you don't actually need to read everything I write --  
25 but a couple of days ago I issued an opinion in a case United

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1 States versus Wells Fargo -- if I remember correctly, the  
2 docket number is 12-7527 -- addressing an application in that  
3 case to clawback or for reproduction of documents that were  
4 clawed back by the plaintiff, by the government in that case,  
5 and I did rule on that. It may inform your discussions on the  
6 meet-and-confer on that issue. I would advise you to look at  
7 that.

8 MR. GODFREY: We are familiar with that matter.

9 As I say, we have narrowed the area of disagreement.  
10 I think it is going to end up by agreement, but we may want to  
11 amend current order 10. There's a dispute about  
12 interpretation. So the current discussions are centering on is  
13 a better way to solve this just to amend order 10 in a way that  
14 is mutually agreeable to the parties. That is one bucket.

15 The second bucket I'm less certain about the status.  
16 At various points in time, the plaintiffs have suggested that  
17 they would like to have what we would describe -- I don't mean  
18 to be pejorative about this -- categorical challenges. We  
19 think privileged documents need to be challenged  
20 document-by-document. They have raised the issue of  
21 categorical challenges. I'm not sure I fully understand. I'm  
22 not sure where this ends up. We're in the fairly early stage  
23 of discussion about this. Again, I would hope that we could  
24 either narrow it or resolve it. That is under discussion.  
25 That is a recent issue. That may be coming in a couple of



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1 weeks. We're working through that issue.

2 THE COURT: It sounds like you should continue to meet  
3 and confer on both issues, and it is in your interests to tee  
4 it up for me to resolve sooner rather than later if there are  
5 things that you can't work out.

6 With respect to the first thing, I already mentioned  
7 my opinion in Wells Fargo. With respect to the latter, I will  
8 just say, to me, it depends on how many documents we're talking  
9 about. If we're talking about 2,000 documents, I can assure  
10 you that I'm not going to go document-by-document for 2,000  
11 documents and make separate rulings. You need to figure out  
12 some process where you can pick some representative sample of  
13 the universe of documents, and I will give you rulings on  
14 those, and then you can apply those rulings to the rest of the  
15 documents. Or I expect you to organize them into categories  
16 that I can rule on them in a more categoric basis. If there  
17 are only 15 documents, it's a different story, I'm open to  
18 doing it on a document by document basis. It really comes down  
19 to the devil is in the details.

20 MR. GODFREY: In the past, we have done the former  
21 suggestion of your Honor, where we try to pick representative  
22 samples that would provide guidance that would be more broadly  
23 applied. That is both an efficient and I think instructive way  
24 to proceed. As I say, we're in the beginning stages of  
25 discussion; and hopefully, we will either resolve this issue

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1 centrally or have a proposal as to how the Court resolves it.

2 THE COURT: That's fine. There, too, you may want to  
3 look at the Wells Fargo case, where I have resolved a number of  
4 privileged disputes, and you may take some guidance there. I  
5 don't think there is a categorical approach to these things  
6 that should be applied in every case. It does depend on the  
7 particulars and the like. Be charitable to me.

8 All right. Anything folks at the front table need to  
9 say on that score?

10 I'm not going to set a deadline there. I think you  
11 should continue to meet and confer with the understanding that  
12 if you can't resolve something, it is in everybody's interests  
13 to raise it with me sooner rather than later.

14 Item 12 is settlement. I'm content to know that it's  
15 on the radar and that you are talking about. As I have said  
16 before, if there is any way that I can assist those discussions  
17 or whatever in this context, you should obviously let me know  
18 in whatever way would be appropriate.

19 All right. Other issues. I think it gets to the  
20 stuff in my endorsement. First, the dispute over  
21 Mr. Robinson's deposition. Having reviewed your briefs and the  
22 transcripts, I sustained GM's objections and instructions to  
23 Mr. Robinson not to answer the questions at issue,  
24 substantially for the reasons stated in New GM's letter.  
25 Although conversations between Mr. Robinson and his

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1 supervisor-to-be did not involve a lawyer, Mr. Robinson was and  
2 is not authorized to waive New GM'S privilege. And the  
3 questions asked ultimately, in my judgment, do call for him to  
4 divulge privileged and otherwise protected communications;  
5 namely, what he was asked by the Valukas team and what he said  
6 in the context of his interviews.

7 I did get requests to seal or redact some of those  
8 submissions. I think I'm in a position to rule on those. New  
9 GM's motion is granted in its entirety. Plaintiffs' motion is  
10 also granted, except that I don't see any reason or basis to  
11 redact the substance of footnote 1 on page 2 of plaintiffs'  
12 submission.

13 I don't know if anyone wants to be heard on that or  
14 explain to me why you think that that ought to be redacted if  
15 you have it in front of you.

16 MR. BERMAN: We're fine with the ruling, your Honor.

17 THE COURT: Very good. If you could refile by the end  
18 of Monday without that redaction, that would be great. If both  
19 sides can submit the sealed records by the end of Tuesday,  
20 copies of the unredacted memoranda and any exhibits that are to  
21 be filed under seal, that would be great.

22 All right. Next item is there are various motions to  
23 vacate or reinstate and motions to dismiss that are pending,  
24 and let me run through those and resolve those that I think can  
25 be resolved.

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1 First, there is a motion to vacate the dismissal in  
2 the Dowling case, that is 15 CV 2033, docket number 1230 in the  
3 MDL docket.

4 I take it, that is unopposed by New GM?

5 MR. BLOOMER: That's correct.

6 THE COURT: That motion is granted.

7 Second is a motion to vacate the dismissal with  
8 respect to Lisa Marino, in 14 CV 8385, that is docket number  
9 114 in the member case docket.

10 I take it that is also unopposed; is that correct?

11 MR. BLOOMER: I believe so, your Honor. That is not a  
12 name I had. I had three names. I'm guessing you're right, but  
13 if we could inform the Court later this afternoon whether there  
14 is any opposition, if that is acceptable to the Court, I would  
15 like to do that. I would like to check with our staff.

16 THE COURT: Sure. Let me know by letter later today,  
17 and I will defer decision until I hear from you.

18 All right. Next is New GM'S motion to dismiss with  
19 prejudice, at docket 1248. That is a motion to dismiss a few  
20 Plaintiffs' claims. One of those is the same Lisa Marino,  
21 actually, and she is the one plaintiff who has opposed that  
22 motion.

23 Now, I assume your letter today will speak to that  
24 issue, as well, obviously. If her motion to reinstate and  
25 vacate prior dismissal is granted, I would assume it moots the

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1 motion to dismiss with prejudice, but I will wait until I get  
2 your letter to figure out what the story is there.

3 MR. BLOOMER: We will address it in our letter.

4 THE COURT: A second plaintiff on that list, John  
5 Cameron, is the subject of a pending motion to withdraw by  
6 counsel that will be fully briefed on September 4th, docket  
7 1245.

8 My inclination and plan is to defer deciding the  
9 motion to dismiss with respect to him, out of an abundance of  
10 caution, until the time passes to brief the motion to withdraw,  
11 to make sure that he is given every opportunity and notice of  
12 the potential dismissal. I will defer that at least until  
13 September 4th, and then we can take it from there. If he does  
14 not appear in connection with either motion, then I assume the  
15 motion to dismiss will be granted, and that would moot the  
16 motion to withdraw, I think, but again, I will wait until  
17 September 4th.

18 That leaves a few other plaintiffs: Joseph Hamilton,  
19 Stephanie Hamilton, Galisha Hayes, and Darlene Robinett.

20 Mr. Hilliard, I don't know if you have any information  
21 concerning those plaintiffs or made any efforts to communicate,  
22 successful or otherwise. I guess I'm asking you that now.

23 MR. HILLIARD: As the Court knows from the letter we  
24 filed yesterday, we're in the process of reaching out to some  
25 of the clients. I apologize, your Honor. I can't give you

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1 specifics as to the names that you just mentioned. I am  
2 prepared to tell the Court that I will provide you specifics as  
3 soon as I can send an email or text right after this hearing.  
4 I simply don't have the information at hand with regards to  
5 those plaintiffs.

6 THE COURT: Why don't you let me know ideally by  
7 letter today but certainly no later than Monday, and I will  
8 defer decision on that motion until you make that submission.

9 I think Ms. Robinett is, actually, technically pro se.  
10 She is one of the plaintiffs who appeared pro se and was the  
11 subject of orders related to that.

12 In any event, I just advise you of that. If you look  
13 at New GM's motion, 1248, the exhibit to that motion should  
14 have the relevant list. And Ms. Marino and Mr. Cameron are in  
15 a separate bucket, but it is the other ones that you should let  
16 me know about.

17 MR. HILLIARD: I will, Judge. Thank you.

18 THE COURT: All right. The next motion is the motion  
19 to dismiss I think it is B. Sommerville -- I don't have the  
20 first name here -- without prejudice. That is docket number  
21 14 CV 691, and it appears at 1247 on the MDL docket.

22 She did file a certification that she had submitted a  
23 substantially complete plaintiff fact sheet, docket 1280.

24 Technically, New GM has until some time next week,  
25 until September 2nd, I think, to reply to that. But I guess,

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1 Mr. Bloom, if you're in a position now to indicate your views  
2 on that, we can perhaps resolve it, or I can give you until  
3 then.

4 MR. BLOOMER: We can check. How about if we just  
5 address it in the letter we submit this afternoon.

6 THE COURT: Great.

7 I think that that leaves only two motions: The motion  
8 to dismiss pursuant order number 50, at docket 1253, as to  
9 which any opposition is due today, and the motion to dismiss  
10 without prejudice at docket number 1234, which was opposed by  
11 several plaintiffs and as to which New GM is scheduled to file  
12 a reply, I think, also by today. So I will, obviously, await  
13 whatever submissions are made in connection with those motions.  
14 To the extent that in your submission later today you can  
15 address those, that would be great.

16 Two housekeeping things.

17 MR. BLOOMER: Your Honor, if I may. I mentioned there  
18 were three individuals that were, I think, mentioned in  
19 Exhibit A to Order 68, and you mentioned -- who had moved, that  
20 our records show had moved to vacate their dismissals in a  
21 timely manner. You mentioned Jamie Lee Dowling, and we agree  
22 that she has submitted a certification. There was also James  
23 Boyd and Debra O'Neill that our records indicate submitted  
24 timely certifications. And so to the extent that they have  
25 moved -- and I believe they have -- to vacate the dismissals,

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1 we have no oppositions to those.

2 THE COURT: Can you repeat those names?

3 MR. BLOOMER: Boyd, B-O-Y-D; Debra, D-E-B-R-A O'Neill,  
4 O--N-E-I-L-L.

5 THE COURT: Okay. I will take a look for that. What  
6 I think I will do is I will wait until I get your letters, but  
7 I will issue an order ruling on the various motions myself,  
8 which is to say you don't need to put that into the  
9 post-conference order. I will plan to do that, but I will  
10 await your letters, to make sure that everybody is on the same  
11 page.

12 Speaking of which, two housekeeping matters going  
13 forward with respect to these kinds of motions; namely, the  
14 motions to dismiss and motions to vacate or reinstate. First,  
15 just a reminder, it would be really great if everybody  
16 remembered to docket their submissions on both the MD docket,  
17 14 MD 2543, and whatever member case is implicated by the  
18 motion. At least one filing was docketed only in the member  
19 case, and it definitely makes it easier on our end if things  
20 are also docketed on the MD docket.

21 Second, because there are so many moving parts here  
22 and I want to make sure that, to the extent that these motions  
23 do, obviously, implicate the rights of litigants, I want to  
24 make sure the rulings are correct and we're keeping proper  
25 track and the like. I think it would be super helpful if both



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1 sides, with respect to any motions, if you're not going to  
2 oppose a motion, that you file something to that effect. If  
3 any plaintiff files a motion to reinstate or to vacate a  
4 dismissal and New GM agrees that is appropriate or is not  
5 opposing it, you should file a statement or something to that  
6 effect. Similarly, if New GM files a motion to dismiss, either  
7 without prejudice or with, I think it would be helpful if lead  
8 counsel, as it did back in June -- I think docket 1054, as an  
9 example -- if lead counsel could submit something indicating  
10 its lack of opposition and what efforts, if any, counsel has  
11 made to reach the relevant plaintiffs, that would be very  
12 helpful in just keeping track of these things.

13 Any questions on that?

14 Great.

15 Another housekeeping type issue similar to that is  
16 just a brief comment on applications to seal or redact  
17 submissions. As you have seen, I think we have more or less  
18 adopted a standard protocol for these sorts of applications,  
19 where a party moves to file something under seal or in redacted  
20 form, in light of the protective orders in place. My general  
21 approach has been to grant those applications at least on a  
22 temporary basis and then require any party who wishes for  
23 something to remain under seal or in redacted form to file a  
24 letter justifying doing so within a week of my ruling on the  
25 substantive issue.

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1           Now, I'm inclined to think it makes sense to just  
2 formalize that in an order. It can be in the post-conference  
3 order, as far as I am concerned, or in a separate order, but I  
4 think it would be helpful to me if I can, in granting those  
5 motions, say something to the effect of granted in accordance  
6 with order number whatever, and everybody would understand what  
7 that means, and follow a standard protocol for dealing with  
8 these things. I am inclined to formalize it in an order, and I  
9 think I would indicate that anyone who wishes to be heard with  
10 respect to an application to file something under seal should  
11 make themselves heard, I would say, within a week of my ruling  
12 on the issue. And by anyone, I mean if you support or oppose  
13 the application, that submission should be made in that week,  
14 and no replies unless I grant leave or order a reply.

15           To be clear, it will still be up to me whether things  
16 are actually filed under seal. I'm not granting you blanket  
17 approval to file anything under seal. Still do what you have  
18 done; namely, file those motions. But I think it would make  
19 things easier if I could reference sort of a standing order  
20 with respect to that process.

21           If you have any suggestions for how the process could  
22 be improved, I'm certainly open to those. Why don't you confer  
23 with one another, and if you're okay with the process that  
24 we've largely been following, you can submit a proposed order  
25 memorializing it. If you have any suggestions, you can make

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1 them by way of proposed order, as well.

2 Any questions there?

3 All right. Great.

4 Another housekeeping matter with respect to directly  
5 filed cases, I think that the process has worked reasonably  
6 well. As you probably know, counsel generally designates  
7 directly filed cases related to the MDL, assuming I agree, it  
8 is assigned to me, and I have been issuing the consolidation  
9 orders, essentially formally making it part of the MDL.

10 I do just want to say, there is always the possibility  
11 of a case falling through the cracks. I guess what I'm trying  
12 to say, if you learn of a case that is filed in this district  
13 and either is not acted upon, remains unassigned, and/or is  
14 assigned to a different judge or has not, for some reason,  
15 consolidated with the MDL, I would appreciate your letting my  
16 chambers know and directing our attention to it. It may be  
17 that something falls through the cracks, either in the Clerk's  
18 Office or -- I hesitate to say -- even in my chambers. So if  
19 you could just give us a heads-up, that would be great. I  
20 don't think that has happened, but better to say it anyway.

21 All right. That, I think, exhausts the things I have  
22 to talk about.

23 Our next conference is scheduled for October 9th, same  
24 time, same place, 9:30, and then we have a conference on  
25 November 20th. I guess my question is: Should we put a

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1 conference on the calendar for some time in December,  
2 recognizing, number one, we're getting closer and closer to the  
3 first Bellwether and, number two, schedules in December can  
4 become complicated?

5 MR. HILLIARD: Yes. Circling back, Judge, before we  
6 adjourn, regarding practical matters at trial, the need for  
7 daily copy. Some courts prefer that the court reporter be  
8 responsible, solely responsible, for daily copy. I don't know  
9 what your practice is. If it is not, we sometimes bring in  
10 independent court reporters to do daily copy.

11 I see head shaking. I don't want to step on anyone's  
12 toes. I am happy to do either one.

13 THE COURT: You should contact the Southern District  
14 of New York Court Reporters. They are superb at their jobs.  
15 They will provide daily copy. You just need to pay them. Talk  
16 to them. You can get things on a realtime basis, as well. You  
17 can sort it out with them.

18 MR. HILLIARD: We will.

19 THE COURT: I don't see any reason for you to bring in  
20 anyone else. Contact them, and I am sure they will answer all  
21 of your questions.

22 Before we talk about a December date, any other issues  
23 that we need to discuss?

24 MR. GODFREY: Two quickly, your Honor. I really  
25 appreciate your Honor's endorsement this morning on the expert

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1 change in schedule. Apparently, as we were having the  
2 conference, the parties agreed to have the last expert  
3 deposition three days later than the date proposed, on  
4 October the 2nd. If we could have the Court's permission to  
5 amend that endorsement to allow the last expert deposition to  
6 be taken on October 2nd, we would appreciate it.

7           Secondly, I neglected to mention this before -- it is  
8 not for decision today -- but I did think something the Court  
9 needs to be aware of, that I think at some point in a future  
10 status as we get nearer to trial Mr. Brock and Mr. Hilliard  
11 will probably need a discussion with the Court about how to  
12 handle privilege issues during the course of the trial. I'm  
13 not certain it is a motion in limine. Certainly, by that time,  
14 the Court already has issued a number of privileged rulings,  
15 the Court will probably issue a few more. So the parties will  
16 have guidance. I think you will see the issue in terms of when  
17 the witness is on the stand. I think that is an issue that the  
18 trial counsel, the lead trial counsel on each side, is going to  
19 have to work out with the Court so we don't have constant  
20 interference at side bars. I wanted to alert the Court to  
21 that. I wanted to raise that on the privilege issues. We have  
22 not had discussions about that yet.

23           Your Honor's rulings this morning are very helpful,  
24 will help fill in the gaps on some of this, but I do think this  
25 is a trial issue that at some future status conference or

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1 pretrial conference that will be subject to the parties  
2 discussing with the Court.

3 THE COURT: I appreciate that. I don't want to  
4 interrupt the flow of trial. I don't want counsel up sitting  
5 with the witness. I don't want repeated interruptions. And my  
6 goal, in any case, is to limit the number of side bars as close  
7 to zero as possible.

8 I do rely on counsel to spot issues before they arise  
9 and work as many of those kinds of issues out in advance as  
10 possible. I appreciate that. It is now on my radar. You  
11 should discuss it, and I agree we should try and resolve as  
12 much of that as possible in advance.

13 Anything else before we wrap up?

14 All right. So October 9th. Let's talk about a  
15 December date, and I will let you go.

16 Have you discussed potential December dates?

17 MR. HILLIARD: We acknowledge that giving the trial  
18 coming up, we needed probably the Court's time and attention in  
19 December, but we haven't checked each other's calendars or  
20 schedules.

21 THE COURT: All right. I think you're going to get  
22 more of my time and attention than you probably deserve. But  
23 how about Friday, December 18th?

24 MR. HILLIARD: No objection.

25 MR. GODFREY: Fine with us.

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1 THE COURT: Again, October 9th, November 20th, and  
2 December 18th are on our calendars.

3 Yes, Mr. Godfrey.

4 MR. GODFREY: That is the one status that I can  
5 envision taking longer than three hours. I don't know that,  
6 but in thinking about it, that is probably the last status  
7 before start of trial. I can see a whole host of issues that  
8 we want to raise. I can see that being more than three hours.

9 THE COURT: My guess is we would have a final pretrial  
10 conference with respect to the Bellwether specifically in early  
11 January, just so you know. That being said, I agree with you  
12 that there are likely to be more issues. Again, to the extent  
13 we can resolve things sooner than later, I'm a big fan of that.  
14 I will block out the whole day for you. To the extent you let  
15 me know how much time you think will be necessary, that would  
16 be helpful. We will go from there.

17 I told you, you should meet and confer with respect to  
18 a proposed order about pretrial deadlines for all the early  
19 trial cases. I would urge you -- in fact direct you -- to look  
20 at my individual rules and practices. I think paragraph 5  
21 concerns pretrial submissions, what I generally look for in a  
22 joint pretrial order, and other submissions. And I'm not  
23 saying you need to follow that precisely, but it will probably  
24 give you a good sense of what I look for and require in most  
25 cases. To the extent you can peg your proposed order off of

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1 that, that would be helpful.

2 I think you should think about deadlines that we might  
3 not have set yet for the first Bellwether, if there are any.  
4 When you look at that, you should propose those, as well.

5 All right. You know the drill with respect to the  
6 post-conference order. Again, I will issue an order. An order  
7 will go up later today with respect to the early trial  
8 schedule, so you don't need to include that. I will deal with  
9 the motions to vacate and the motions to dismiss by separate  
10 order, as well. Everything else should go in the  
11 post-conference order, as usual.

12 Anything else?

13 Great. Thank you, guys, as always for helping make  
14 this efficient and productive.

15 We are adjourned.

16 (Adjourned)

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