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1 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 In re GENERAL MOTORS LLC  
IGNITION SWITCH  
LITIGATION

14 MD 2543 (JMF)

4 -----x

New York, N.Y.  
October 9, 2015  
9:37 a.m.

5  
6 Before:

7 HON. JESSE M. FURMAN

District Judge

9 APPEARANCES

10 LIEFF CABRASER HEIMANN & BERNSTEIN LLP  
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21 BY: ANDREW B. BLOOMER  
22 RICHARD C. GODFREY  
23 ROBERT C. BROCK  
24 WENDY L. BLOOM  
25

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1 (Open court)

2 (Case called)

3 MS. CABRASER: Good morning, your Honor. Elizabeth  
4 Cabraser for plaintiffs.

5 MR. BERMAN: Good morning, your Honor, Steve Berman.

6 MR. HILLIARD: Good morning, Judge. Bob Hilliard.

7 THE COURT: Good morning to all of you. Welcome back.

8 MR. PAPELIAN: Good morning. Joseph Papelian, Delphi  
9 Automotive Systems, LLC.

10 MR. SCHOON: Good morning, your Honor. Gene Schoon on  
11 behalf of Delphi Automotive Systems, LLC.

12 MR. GODFREY: Good morning, your Honor. Rick Godfrey  
13 on behalf of New GM. With me is Mr. Bloomer, Mr. Brock and  
14 Ms. Wendy Bloom. Ms. Bloom has not appeared before your Honor  
15 before. She's here in case you have questions about certain  
16 topics.

17 THE COURT: Welcome, Ms. Bloom. Welcome to all of  
18 you, but the others are used to me by now. All right. Let's  
19 get to it. Welcome back. Good to see you all. Again, I think  
20 you know that CourtCall is in operation, and for all I know,  
21 some judges are listening in; so just a reminder about that,  
22 and the reminder to speak into the microphones, especially  
23 those of you who are on the tall end of the spectrum,  
24 Mr. Hilliard.

25 All right. Going through the agenda letter, the

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1 bankruptcy proceedings, thank you for the update, and I  
2 certainly appreciate that and would like you to continue to  
3 update me. I don't think there's a whole lot that we need to  
4 discuss here. The one thing I will say is to make sure that  
5 you keep me apprised on pretty much realtime basis if there are  
6 any developments that have a bearing on the bellwether trials  
7 and, obviously, the first bellwether trial in particular.

8 I think you can assume that Judge Gerber and I are  
9 communicating as well, and he will likely advise me if there  
10 are material developments, but no harm in your telling me as  
11 well. So please keep me in the loop, so to speak. Anything  
12 else we need to talk about on that front? Very good.

13 Second item is coordination in related actions. I  
14 have received New GM's letters. The most recent ones I think  
15 are September 25th and October 8th, as well as its sort of  
16 follow-up letter, if you will, regarding the Davidson matter.  
17 On that, I will tell you that I have spoken with Judge Corbin  
18 Johnson, who's presiding over that matter, and I am, let me put  
19 it this way, confident to the extent that her rulings may  
20 implicate issues that concern the MDL, she and I will be  
21 speaking further.

22 It might be helpful in that regard because I have not,  
23 I will confess, read all of the papers who have been filed in  
24 her actions, there are enough to read in my own actions; so it  
25 may be helpful for you to elaborate the ways in which you think

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1 her rulings could implicate the issues in the MDL and/or  
2 jeopardize things here.

3 I will say, in that regard, that my inclination thus  
4 far has been to coordinate with other judges on sort of  
5 procedural matters that could essentially disrupt the efforts  
6 that we're doing here, but to the extent that there are  
7 substantive issues that are raised that are specific to another  
8 case that -- you know, being sensitive to that judge's  
9 prerogative to decide substantive matters in their own cases.  
10 So I don't know who wants to speak to that, probably from the  
11 back table. Mr. Godfrey, I just remind you to speak slowly,  
12 clearly and into the microphone, please.

13 MR. GODFREY: Yes, your Honor. The Davidson case, in  
14 our view, poses a direct threat and risk to the Court's 502(d)  
15 order, and the Court's voluminous materials opinion. As we  
16 read the papers that the plaintiffs are seeking, including the  
17 underlying interview materials and this Court under 502(d) and  
18 the statute, the Court's ruling controls that. We filed  
19 yesterday a supplemental paper which outlines in some detail  
20 those issues, but the bottom line is it's, in addition to other  
21 privileged materials, the first and foremost is voluminous.

22 THE COURT: All right. So I was aware of that much,  
23 and so I think I am on top of it but just wanted to see if  
24 there was more than that. Well, let me put it this way. Of  
25 the others that are referenced in New GM's most recent related

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1 case update, I am inclined to think that the cases that perhaps  
2 call for my outreach, if you will, are Brochey, B-r-o-c-h-e-y;  
3 Mathes, M-a-t-h-e-s; Colarossi, C-o-l-a-r-o-s-s-i; and  
4 Petrocelli, P-e-t-r-o-c-e-l-l-i. I think two or maybe three of  
5 those have pending motions for entry of the coordination order  
6 and Mathes there's some separate issues.

7 Do you agree, and are there other actions that you  
8 would want to sort of highlight, and are there any updates to  
9 the most recent letter? Obviously, it's dated only yesterday;  
10 so I'm hoping not. Mr. Godfrey?

11 MR. GODFREY: I believe that your Honor listed every  
12 one on my list with the exception of the first item in  
13 yesterday's letter, which is Shell v. General Motors, LLC,  
14 which is pending in the City of St. Louis, Missouri. This is  
15 Judge Dowd again. I think you're familiar very much with the  
16 Felix matter and the related matters; so it's a similar issue.

17 THE COURT: I actually had that on my list, but  
18 somehow didn't mention it. All right.

19 MR. GODFREY: Thank you, your Honor. That covered my  
20 list.

21 THE COURT: All right. I assume no material updates  
22 since yesterday?

23 MR. GODFREY: Fortunately, not.

24 THE COURT: All right. Very good. Item No. 3 is  
25 document production. Again, appreciate the update. I take it

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1 that you are on track to complete discovery or meet the  
2 upcoming deadlines. Is that a fair assumption? Mr. Brock is  
3 nodding his head. So Mr. Godfrey?

4 MR. GODFREY: Yes, your Honor.

5 THE COURT: Excellent. I am, obviously, pleased to  
6 hear that.

7 On the deposition update, I also appreciate that  
8 update. It sounds like you guys are making considerable  
9 progress there, and presumably you're on track to meet those  
10 deadlines as well.

11 There are two disputes that are fully briefed and,  
12 therefore, presented ripe for me to decide. First is the  
13 dispute over plaintiff's desire to depose Amber Hendricks and  
14 Lisa Stacey. Upon review of the parties' letters, I will allow  
15 both depositions to go forward but with the understanding that,  
16 barring exceptional circumstances, that is going to be it for  
17 deviations from the existing schedule and deposition protocols.

18 Based on the plaintiff's proffers and their letter,  
19 there's no question in my mind that both witnesses are highly  
20 relevant. While it certainly sounds like the plaintiffs were  
21 aware of their existence earlier, it is entirely plausible to  
22 me, given the nature and scope of discovery in this matter,  
23 that as discovery progressed, the assessment of their relative  
24 importance shifted.

25 The bottom line is, given the nature of this case, it

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1 doesn't seem surprising to me that there would be some  
2 evolution, if you will, in the plaintiff's theory or desires of  
3 who should be deposed and when, and given everything that the  
4 parties and lead counsel have done to comply with the  
5 reasonable but aggressive schedule that I have imposed and  
6 fairly enforced, I think, I think it is unfair to argue that  
7 plaintiff has not been dually diligent.

8           Finally, the arguments that New GM makes about  
9 prejudice ring a little hollow to me, since the large number of  
10 depositions in the coming months are based, at least in part,  
11 on GM's own need to reschedule certain witnesses. The bottom  
12 line is, I will grant the plaintiff's request to do those to  
13 depositions and leave it to you guys to work out the scheduling  
14 issues.

15           The second dispute is the one between New GM and  
16 Delphi over New GM's 30(b)(6) notices, and there are two  
17 sub-disputes, if you will, there. On the first is whether  
18 Delphi needs to produce a 30(b)(6) witness to testify about  
19 communications with plaintiff's counsel in the MDL.

20           I agree with Delphi substantially for the reasons it  
21 sets forth in its letter yesterday. Put simply, I don't see  
22 how Delphi's communications with plaintiff's counsel are  
23 relevant to the issues in the MDL or to be tried. To the  
24 extent that they are relevant, I think that the disclosures  
25 that Delphi has made or will make, coupled with its offers in

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1 the letter to provide information more informally as well, that  
2 those are more than sufficient to provide New GM with what it  
3 needs. So I will sustain Delphi's objection to that aspect of  
4 New GM's notice.

5 On the second sub-dispute, however, I agree with New  
6 GM. Delphi may well be right that none of the boxes at issue  
7 contained materials relating to the ignition switch and,  
8 therefore, relevant to this matter, but in my view, New GM has  
9 at least a colorable basis to believe otherwise and is  
10 entitled, in my view, if it wants, to probe the issue with an  
11 appropriate witness. So I will overrule, if you will, Delphi's  
12 objections to that, and New GM may proceed with a 30(b)(6)  
13 deposition on that issue. Any questions? Anything else? Yes.

14 MR. GODFREY: Yes, on the first point, your Honor.

15 THE COURT: The first point being?

16 MR. GODFREY: The first point being the Delphi  
17 30(b)(6) communications with plaintiffs. A very precise issue.  
18 When a Delphi witness is being prepared jointly with a  
19 plaintiff lawyer or lawyers and a counsel for Delphi, we do not  
20 understand how that could be privileged. We assume that, at  
21 the depositions going forward, we will be allowed to ask  
22 questions about who said what, including what the Delphi lawyer  
23 said in the presence of the plaintiff's lawyer to the witness  
24 in preparation.

25 THE COURT: Mr. Schoon?



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1           MR. SCHOON: We don't disagree with that, but they've  
2 already deposed two Delphi witnesses, and we did not object to  
3 those questions. Where there were meetings with plaintiff's  
4 counsel, we agree those are not privileged, and if there are  
5 future Delphi depositions, we will not object on that basis.

6           THE COURT: Very good. Sounds like there's no issue  
7 there.

8           MR. SCHOON: May I just speak to the document issue  
9 for clarification? This came up in the context of New GM's  
10 rule 30(b)(6) Notice of Deposition. We simply do not have a  
11 witness who could respond to the topics as articulated in that  
12 notice. GM sort of shifted now to this Iron Mountain issue,  
13 and the documents that we admit were destroyed.

14           We understand your Honor's ruling that we should be  
15 producing a witness, but that's not the subject that was within  
16 the Notice of Deposition. So I'm assuming that what we should  
17 get from New GM is a new Notice of Deposition that would  
18 address that topic, and we will comply with your Honor's ruling  
19 in that regard.

20           THE COURT: All right. Well, why don't you guys  
21 discuss that. I agree, looking at the 30(b)(6) notice, that  
22 there was some imprecision, and I understand the argument that  
23 you were making that, in your view, because none of the boxes  
24 pertained to the ignition switch, ergo, you didn't have a  
25 witness to testify about it.

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1           But I think, technically, if I remember correctly, I'm  
2 having trouble finding it, the third paragraph of the notice  
3 presented the issue of the Iron Mountain boxes generally, and  
4 again, some imprecision to the side, I think it can, fairly or  
5 liberally construed, be read to basically test or probe the  
6 question of what was in those boxes. So why don't you guys  
7 discuss it.

8           MR. GODFREY: We will work that out.

9           MR. SCHOON: We'll do that.

10          MR. GODFREY: Among other things, we have the 2002  
11 PPAP packages, which is supposed to be maintained.

12          MR. SCHOON: That's a whole different issue. That's  
13 not even within this notice, and New GM has already admitted  
14 that in the deferred prosecution agreement that there's really  
15 no issue as to the approval of the switch in 2002; so that's  
16 really going beyond what this dispute is about.

17          THE COURT: All right. Again, I think to the extent  
18 that the issue is briefed to me, I think it's fair game for  
19 them to get further information and have a witness who is  
20 binding on Delphi to discuss what was in those boxes and  
21 whether it was or wasn't relevant or related to this case.  
22 I'll leave it to you guys to discuss the particulars, and if  
23 there are further disputes, obviously, you know how to raise  
24 them with me.

25          MR. SCHOON: Thank you, your Honor. We'll work it

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1 out.

2 THE COURT: Very good. All right. The agenda letter  
3 also referenced a dispute with respect to plaintiff's subpoena  
4 to Michael Millikin, the former general counsel of GM. It  
5 might be helpful if you gave me a preview of what the issues  
6 are there, and I'm open to setting a briefing schedule, but the  
7 question I have is, to the extent that that is a trial subpoena  
8 with respect to the bellwether trial, perhaps that's more  
9 appropriately raised in the motion in limine schedule that we  
10 currently have set. Mr. Hilliard?

11 MR. HILLIARD: It is a trial subpoena related to the  
12 bellwether, Judge. To remind the Court, Mr. Millikin is,  
13 basically, one of the ground zero witnesses in regards to  
14 information either provided to or kept from upper management.  
15 Again, just by way of refresher, cases that settle for under  
16 \$5 million do not have to go to his desk; others do. The  
17 Melton case in Georgia settled for that exact amount.

18 His deposition, he was produced in New York. He was  
19 served through his counsel with a subpoena by agreement that  
20 the counsel would accept the subpoena. I think that, in all  
21 fairness to GM, they said they were going to reserve the right  
22 to determine whether or not the service was valid in regard to  
23 Mr. Millikin, but factually, it was given to his counsel right  
24 towards the end of the deposition.

25 So it will need to be figured out before we start the

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1 very first bellwether trial, and I don't disagree with you that  
2 the motions in limine are one way to handle that and can be  
3 handled that way because if the subpoena is valid, then we need  
4 to work with his schedule somewhat because he will be a witness  
5 in August in our case of chief. I think I'm following your  
6 direction, but I felt myself meandering a little bit  
7 physically.

8 THE COURT: You do have a height advantage or  
9 disadvantage, depending.

10 MR. HILLIARD: Depending on the sport.

11 THE COURT: Mr. Brock?

12 MR. BROCK: Yes, sir, briefly. First of all, the  
13 location of the service of the subpoena is not determinative to  
14 whether or not the witness can be compelled to attend. This  
15 witness resides in Detroit. He's not subject to being  
16 compelled to appear in New York, but that would be the subject  
17 of a motion to quash.

18 Mr. Millikin's personal counsel is Jonathan Streeter,  
19 who practices with the Dechert firm, and in communication with  
20 him, he has asked for permission to file a motion to quash the  
21 subpoena at the time of close of discovery. But, you know, if  
22 your Honor wanted that done earlier, of course, we will comply  
23 with the request. But I think that primary motion would  
24 probably be coming from Mr. Streeter at the Dechert firm.

25 THE COURT: All right. I'm guessing that you all may

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1 know this, but I worked with Mr. Streeter for a number of years  
2 at the U.S. Attorney's Office, but I don't think that presents  
3 any issues here.

4 I mean, my general view, and this will be a theme in  
5 some of the other things that I say today, is the sooner we can  
6 resolve things, the better, and I anticipate in the lead up to  
7 the first trial, there are obviously going to be a slew of  
8 issues and the more we can handle in advance, the happier I  
9 will be and, therefore, the happier you will be.

10 In that regard, I'm happy to brief it more quickly.  
11 I'm happy to set a deadline sooner. You have a better sense of  
12 what you think is appropriate or reasonable or feasible in this  
13 case. I mean, any thoughts on that? I'm happy to leave it to  
14 the motion in limine schedule, but to the extent it implicates  
15 a third party, maybe it makes sense to set a separate briefing  
16 schedule.

17 MR. HILLIARD: I brought up the motion in limine  
18 because the Court suggested that, but I think that, given that  
19 we're creating both a theme and a witness list, the sooner the  
20 better. And we are sensitive to Mr. Millikin's position and  
21 schedule, and we'd like to have it resolved by the Court so  
22 that we can work with his counsel to be sure that he can make  
23 himself available and not have to come and sit through much  
24 testimony. But we'll tell him when he's going to testify, and  
25 on what day, should the Court determine that the subpoena was

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1 valid. So the sooner the better, but we're really flexible in  
2 regards to GM's desire and Mr. Millikin's availability at  
3 trial, should we prevail.

4 THE COURT: All right. Mr. Brock, any view on  
5 scheduling?

6 MR. BROCK: The only request that I have from his  
7 personal counsel is that he would like to do it at the close of  
8 discovery; so I'm sure that Mr. Streeter and Mr. Hilliard and I  
9 can get together and talk about a date. If that's not  
10 acceptable, then, you know, maybe we can talk about doing it a  
11 little bit earlier than that.

12 THE COURT: Again, I'll take you up on that. Why  
13 don't the three of you guys discuss it, and you can submit a  
14 letter proposing a briefing schedule to me. And assuming that  
15 it doesn't unduly delay things, then I'll probably bless it,  
16 but again, as a general matter, the earlier we can resolve  
17 things, if they are ripe to be resolved, then the better.

18 MR. BROCK: Okay.

19 THE COURT: All right. That brings me to the next  
20 issue, which is the bellwether expert discovery disputes. The  
21 first dispute referenced in the agenda letter was resolved by  
22 agreement and so ordered by me yesterday; so we don't need to  
23 discuss that.

24 As for the second, and sticking with the theme of  
25 ripeness, upon review of the parties' letters of yesterday, I'm

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1 inclined not to rule on the issue now. That is to say that I'm  
2 inclined to wait until New GM produces its expert reports, and  
3 I assume that the plaintiffs could quickly examine them and  
4 determine if they felt that rebuttal reports were appropriate  
5 or necessary, and then raise the issue with me after discussing  
6 it with New GM.

7 That view is informed by a few thoughts. First, I  
8 think the dispute right now is fairly abstract, and to the  
9 extent that there are arguments about need and prejudice, I  
10 think it is better to evaluate those arguments in the context  
11 of specifics rather than the abstract.

12 Second, it may become moot. That is to say, to the  
13 extent -- I mean, this is not a case where the issues were sort  
14 of unknown. I imagine that many of the things that will be in  
15 New GM's reports would have been anticipated in the initial  
16 round of reports, and in that regard, this may not be anything  
17 that is appropriate for rebuttal, or the issues that are  
18 appropriate for rebuttal may be sufficiently narrow that New GM  
19 consents and there's not an issue.

20 So on the theory, while as much as I am a fan of  
21 resolving things as soon as possible, I'm also a fan of not  
22 resolving things before they're ripe, and my inclination is to  
23 think that they're not, that this particular issue is not yet  
24 ripe and that it is better to give you a deadline shortly after  
25 the October 19th deadline for you to confer and then advise me

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1 whether there's agreement, or if there is not agreement,  
2 essentially supplemental arguments as to why I should or should  
3 not allow rebuttal reports or whether the topics on which the  
4 plaintiffs want to produce rebuttal reports are or not  
5 appropriate under the rules. Any thoughts on that?

6 MR. HILLIARD: Just a practical thought, Judge, and  
7 that is when the Court says a short time frame after the expert  
8 reports are produced, that's encouraging because we had already  
9 reduced the amount of time necessary in order to see if GM and  
10 plaintiffs could reach an agreement from 30 days to 25 days to  
11 get the rebuttal report in.

12 We've also agreed to reproduce any experts that GM,  
13 upon receiving the rebuttal reports, decides they want to  
14 redepose. So simply because of the constraints of the  
15 calendar, if we could have a pretty tight schedule from the  
16 Court on once plaintiffs get the expert reports, make a  
17 decision, brief it and get it in front of me by, you know,  
18 really days would be much better because if you do rule that  
19 there should be some sort of rebuttal, it's just going to be a  
20 process of getting the expert to generate it, producing it, and  
21 with everyone's calendars, the more time we have, the better.

22 THE COURT: I completely understand, and I will say if  
23 I do allow it, it will be on the truncated schedule that you  
24 have proposed. Again, I think the appropriate steps here are  
25 you get the reports, you look at them, you confer with one



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1 another to see if there are any issues in dispute, and then you  
2 can raise the issue with me again. I'm happy to do that as  
3 quickly as you want, and the 19th is a Monday. I'll turn to  
4 it. As soon as something is filed, you tell me what you think  
5 is a reasonable deadline for you to take all of those steps.  
6 What are your thoughts?

7 MR. HILLIARD: I think that's right; so we will huddle  
8 with GM immediately to determine once we get the reports, we'll  
9 try to agree to the amount of time we need in order to let them  
10 know that we do need rebuttal and why, and then we'll try to  
11 pre-agree to their response time and just get it in front of you  
12 on the schedule in case that schedule needs to be implemented.

13 THE COURT: Fine. But why don't I set a deadline  
14 where you have to report back to me either that you have  
15 agreed, or here are the reasons why, in light of developments,  
16 we should or should not, as the case may be, have rebuttal  
17 experts?

18 MR. HILLIARD: 25th?

19 THE COURT: 25th is a Sunday.

20 MR. HILLIARD: 26th.

21 THE COURT: I mean, I'm inclined to do it the same  
22 week as the 19th, which is to say maybe the 23rd, which is  
23 Friday. That way, I can review it over the weekend and,  
24 hopefully, give you an answer as early as the 26th.

25 MR. HILLIARD: We agree with that, Judge. Thank you.

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1 THE COURT: Mr. Brock?

2 MR. BROCK: Just as part of that schedule that we're  
3 making up, are we asking -- I should ask first. Are we asking  
4 the plaintiff to let the Court know or to let GM know by the  
5 end of that week if they want to call, or they want to file  
6 amended reports?

7 THE COURT: So the 23rd would be a deadline to report  
8 to me, either jointly or in separate letters if there are  
9 issues in dispute, and before you did that, you would have to  
10 confer with one another. So I think in those four days or  
11 four-plus days, plaintiffs would have to review the reports,  
12 figure out what, if any, topics they want to have a rebuttal  
13 expert on, confer with you, figure out if there are any issues  
14 in dispute, and if there are, submit it to me, and if there  
15 aren't, jointly submit a letter to me.

16 MR. BROCK: Okay. That sounds fine.

17 THE COURT: Okay. Very good. All right. Next issue  
18 is trial witnesses. Sounds like you guys are conferring on the  
19 issues raised there; so I don't think we need to say or do much  
20 on that, but, obviously, continue to. And to the extent that  
21 there are issues that need to be resolved sooner rather than  
22 later, obviously, raise them sooner rather than later.

23 I will say three things just by way of observation.  
24 First, it's obviously in everybody's interest -- actually, the  
25 first is what I just said. It's, namely, in everybody's

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1 interest to resolve things way in advance; so please do discuss  
2 these issues and raise them with me sooner rather than later.

3 Second, to the extent that all things being equal, I  
4 will tell you that I generally prefer live testimony, and I  
5 think that that's more compelling, if you will, to jurors. So  
6 I'll leave it at that, to the extent that that is helpful.

7 And, third, my general practice, which is reflected in  
8 the most recent version of my individual rules -- which, if you  
9 didn't know, I revised a couple of weeks ago; so you may want  
10 to take a look at them if you have not already -- is that  
11 witnesses who are listed by both sides should generally be  
12 called only once at trial. That is to say that counsel should  
13 confer on that, and I think it's more efficient to allow the  
14 defendant to go beyond the scope in its cross-examination, to  
15 do essentially what would have been done on direct rather than  
16 having to re-call witnesses.

17 So I realize that's not precisely the issue, or at  
18 least I don't think that's precisely the issue, that's under  
19 discussion but thought I would mention that and perhaps it will  
20 be helpful. Anything else to discuss there?

21 MR. HILLIARD: This is just to point out that this is  
22 just becoming a timing issue because if the Court does rule  
23 that live witnesses should be produced by GM, we're going to be  
24 perhaps already in November, which is so close to trial.  
25 Scheduling our own witnesses, making sure that we understand

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1 the witnesses GM has agreed to or been ordered to bring becomes  
2 an issue if it goes too deep into the late part of this year,  
3 and it's just now shifting from the legal arguments into the  
4 practical side of trying this case, once you have live  
5 witnesses who have their own lives that need to be considered  
6 and coordinated with.

7 So I would just point out to the Court that, as much  
8 as we can get this issue into our trial schedule and theme as  
9 early as possible, the better it's going to be to make sure  
10 that we understand how we're going to tell our story, and we  
11 understand when to tell our experts and other witnesses to  
12 appear.

13 THE COURT: Understood, and I think that basically  
14 reiterates my point that it's better to resolve things sooner  
15 rather than later. Yes, Mr. Brock?

16 MR. BROCK: Yes, your Honor. The one point I'd like  
17 to make is that GM in this case is defending. It is the first  
18 case in the bellwether program. Our decisions on which  
19 witnesses we will call live during our case is going to be  
20 dependent somewhat on what plaintiffs do. I think that there  
21 are witnesses that, by the time we get to, say, December, we  
22 will be very confident that they will be called, but I think we  
23 have other witnesses where it will be a judgment call based on  
24 the evidence that's offered by the plaintiff.

25 And I didn't know if the Court might consider possibly

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1 allowing the parties to submit a "will call" list and a "may  
2 call" list of witnesses. Those that we're very certain we  
3 would call; those that we might call depending on how the case  
4 unfolds. I just didn't know if you had an approach on that.

5 THE COURT: I honestly don't have a strong view. In  
6 cases that I've tried, parties have sometimes done that and  
7 other times have not. I think it probably depends on the  
8 circumstances, and it may well be appropriate here. Why don't  
9 you guys discuss it in the first instance as part of the  
10 ongoing discussions you're having regarding those issues, and  
11 if you're in agreement that that makes sense, that's fine with  
12 me, and if not, you can present that to me as one of the things  
13 that I need to decide.

14 MR. BROCK: Okay.

15 THE COURT: All right. Mr. Hilliard?

16 MR. HILLIARD: One more quick matter, Judge, and this  
17 is very unique to this case and to give the Court a heads up.  
18 In light of the deferred prosecution agreement entered into  
19 between the DOJ and GM, there are 115 stipulated statements of  
20 fact which cannot be controverted in any litigation. Many of  
21 the depositions of GM employees that we took, their testimony  
22 controverts some of those statements of fact.

23 And to give the Court just a heads up, we intend to,  
24 or may need to request that those witnesses be compelled to  
25 come and testify live so they can correct their testimony.

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1 Given the agreement that GM made and that GM did say in any  
2 litigation by any employees or attorneys, which I will concede  
3 it makes it very difficult for GM to try this case given the  
4 preexisting sworn testimony, but be that as it may, those  
5 witnesses -- this a heads up again because I know it's not ripe  
6 yet, but those witnesses may need to come and testify live,  
7 with the request of the Court or by agreement, or need to be  
8 re-deposed in order to understand that they have shifted their  
9 testimony.

10 Because right now, their testimony basically doesn't  
11 work. If we put a video on and they take the position that we  
12 know is not a position that GM takes in this trial, it fogs up  
13 the issue of the elements of proof necessary for the negligence  
14 claims.

15 THE COURT: All right. Well, I was planning to raise  
16 the statement of facts later when we got to that item on the  
17 agenda and just ask what the implications are for us, and I  
18 anticipated there might be some disputes or litigation over its  
19 admissibility and the like, and the effects it has on the  
20 trial.

21 I think you should basically just discuss that in the  
22 context of whatever you're talking about, but I guess my  
23 immediate reaction -- it's a little dangerous to share  
24 immediate reactions -- I don't necessarily see why that  
25 requires a witness to come to court and testify live. I mean,

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1 the statement of facts can either be introduced or not, as the  
2 case may be, or a stipulation to that effect, you know, can be  
3 introduced.

4 But I don't see why the jury can't just be instructed  
5 that, notwithstanding whatever one witness may have said, the  
6 parties agree on the following fact and that is binding on you,  
7 and I don't know why it necessarily requires the witness to be  
8 either re-deposed or to come to court. But I'll leave it at  
9 that for now, let you guys discuss it, and we can figure out  
10 how it will play out when the time comes. Anything else on  
11 that?

12 All right. Turning to the jury selection matters, and  
13 just a couple other sort of logistical or practical  
14 trial-related issues that I would raise at the same time.  
15 First, I shared my views, or at least preliminary views, in  
16 order No. 80; so I invited you to respond today and would like  
17 to hear your thoughts.

18 Obviously, the three issues I think I addressed in  
19 that order, aside from scheduling the final pretrial conference  
20 were, one, my thoughts about the size of the jury pool; two, my  
21 thoughts on the nature of the questionnaire, namely that it  
22 should be kept quite short and really limited to things that  
23 would result in the disqualification for cause of jurors  
24 without any real argument by either side; and, third, just a  
25 preview of the sort of timing and process that I thought should

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1 be used for purposes of the questionnaire.

2 That's based on the experience of the jury department  
3 in this court and my discussions with other judges that have  
4 presided over high-profile cases involving questionnaires. So  
5 your thoughts? Mr. Hilliard, do you want to start?

6 MR. HILLIARD: So I spoke with GM beforehand, Judge,  
7 and I lost the coin flip, or agreed to take it on the chin and  
8 ask the Court's permission to allow us to submit specific  
9 questionnaires, perhaps ten each at least, for your  
10 consideration and evaluation to determine if they would be  
11 appropriate for the questionnaire.

12 THE COURT: I'll allow you to submit it. I'm not  
13 saying that I'll --

14 MR. HILLIARD: But given your position, I wanted to be  
15 sure that we were on the same page, that it's coming and both  
16 sides would like a chance to -- and, you know, seriously,  
17 though, on cases like this, I found that the questions that we  
18 submit, we understand they need to be both objective and  
19 probing, and they are very helpful. If we could get some  
20 limited permission to do that, it would inform our selection  
21 process.

22 THE COURT: So here's what I would suggest and  
23 propose. I will tell you it is a very strong inclination on my  
24 part to keep the questionnaire very short and limited to sort  
25 of, again, questions that both sides would agree would require



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1 disqualification, and that is for a variety of reasons.

2           One, I think, and based on my conversations with other  
3 judges and my involvement in cases with questionnaires in the  
4 past, that the more detail that you elicit in those, just the  
5 more problems that arise, the more disputes that arise. I  
6 think sometimes, where somebody answers something, a follow up  
7 reveals that it's really a non-issue and, therefore, is sort of  
8 better addressed in open court.

9           I think there are public access and press access  
10 issues, and if it's kept relatively simple, those are either  
11 non-issues or nobody really wants them, or there are a variety  
12 of reasons where I think that is the better practice and it  
13 keeps it more realistic to keep things on a better tight time  
14 frame.

15           So it is a very strong inclination, and I will tell  
16 you that, but you're welcome to propose whatever questions you  
17 think are appropriate. What I would propose for those purposes  
18 is that you separate, maybe identify and, ideally jointly,  
19 questions that you sort of think fit in the categories that  
20 I've described, namely questions that are objective, simple,  
21 straightforward and would require disqualification for cause,  
22 and then, as a separate category, here are some additional  
23 questions that we think you should ask in the context of the  
24 questionnaire.

25           I'm not saying I will categorically reject all of

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1 those, but at least I will understand the ones that you agree  
2 upon or believe fit within the parameters that I'm describing.  
3 My intention is to ask all the prospective jurors questions  
4 that I think are necessary and appropriate to ask. The  
5 question is just whether it should be on a questionnaire, a  
6 written questionnaire versus done in oral voir dire in court.  
7 So it's not that those questions won't be posed. It's just a  
8 question of when and how.

9 MR. HILLIARD: You know, Judge, I've heard now for the  
10 last year this Court's views on public access and admire those  
11 and agree with them, and so the tension simply is based on both  
12 parties' sense of what needs to be gleaned from the panel, and  
13 perhaps the questions being asked by the Court will do it.

14 Both sides are cognizant of your reluctance and your  
15 unwillingness to keep things out of the public domain. With  
16 that in mind, again, we'll confer and perhaps give the Court  
17 even less questions than we thought we would, but we'd like to  
18 at least continue the conversation with the Court through the  
19 process.

20 THE COURT: I will be happy to continue the  
21 conversation. All right. Mr. Brock, anything to add?

22 MR. BROCK: I apologize for this. I couldn't find the  
23 number, but I do recall that your Honor had in mind summoning,  
24 I think it was, maybe in the range of 125 to 150 jurors. Was  
25 it in that range?

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1 THE COURT: I said 100 to 150.

2 MR. BROCK: 100 to 150. So I just was going to ask  
3 the question if we have, say, 100 jurors who are summoned, some  
4 number probably don't appear, but say we get 90, whatever  
5 number, they will all prepare the questionnaire. There would  
6 be a process, as you've outlined, for excusals for cause that  
7 could take place before we return the next week for jury  
8 selection.

9 Would you bring all of the remaining jurors to the  
10 courtroom for that, or would you then narrow again to, say, 40  
11 or 50 jurors after the excusal?

12 THE COURT: So this is all a work in progress.

13 MR. BROCK: Yes.

14 THE COURT: But the way I was thinking of it was the  
15 100 to 150, whatever the appropriate number is, would complete  
16 the questionnaire. You guys would get the questionnaire that  
17 Wednesday, confer, and jurors who the parties agreed should be  
18 excused for cause, you'd submit that list by, I think it was,  
19 Friday at 10:00, and those jurors would be told that they do  
20 not appear; that everyone else would appear on Monday, the  
21 11th, and I would basically give instructions to the entirety  
22 of that panel, and then proceed with jury selection.

23 The way I do jury selection -- this is outlined in  
24 some detail in my individual rules for trial, so would  
25 recommend that you look at those; I think Mr. Hilliard, either

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1 himself, I think, maybe sat through a painful example of it in  
2 a recent trial -- is I'll basically qualify some. I mean, I  
3 need to think of how many jurors I need to select here. My  
4 standard practice in a civil case is eight jurors. I think  
5 here I'd probably do ten or twelve.

6 So bottom line is I would qualify, of those who come  
7 to court on the 11th, whatever number of jurors I intend to  
8 select, plus six, namely the three that each side gets for  
9 peremptories, or if you think that more are necessary here, you  
10 can make that argument to me and go through a process to make  
11 sure that we have that number.

12 And then once we have that number, you'll exercise  
13 peremptories, and whoever is left over is the jury. But I  
14 basically would bring everybody here because, obviously,  
15 through the voir dire, more people will end up getting excused  
16 and I'll need to replace them from the pool as we go along.  
17 The ultimate objective being to have that number that I've  
18 described.

19 So that's a general description. So the short answer  
20 to your question is, I think everybody who is not excused by  
21 agreement of the parties that Friday would return on Monday and  
22 be present for oral voir dire and jury selection.

23 MR. BROCK: All right. Thank you. So our  
24 supplemental questions, I guess the one I was going to make our  
25 supplemental questions, other than the ones that would be

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1 strikes for cause, we'll try to propose them to you in a way  
2 that we are not asking for any personal information. This  
3 would be my view of what we would do, anyway, simple answers to  
4 questions, maybe even questions that could be answered "yes" or  
5 "no."

6 But it is hopeful to us, like when we start doing a  
7 voir dire and there's a large group of people and we're  
8 trying -- we do have questions that we're trying to keep up  
9 with all the answers, I do think it lends to the efficiency of  
10 the process a little bit; so we'll submit them. You might like  
11 them; you might not.

12 THE COURT: I don't want to get too much into the  
13 weeds, but it may be helpful, and maybe you know this and if  
14 not, it's helpful to clarify. My general approach, the way I  
15 do jury selection in motion cases -- and, again, Mr. Hilliard  
16 saw this -- I hand out to the pool a written questionnaire that  
17 has questions about knowledge of the case, knowledge of the  
18 parties, and so forth, all of which are phrased as "yes" or  
19 "no" questions. The "yes" answers are the ones that would  
20 require either excusal or follow up.

21 What I do then, at the end of those, there's a set of  
22 individual questions about where the person lives and what they  
23 do and what they read and all that. I go through the  
24 questionnaire with juror No. 1 and require everybody to listen  
25 as I go along and to circle the number of a question if the

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1 answer to the question is a "yes," and basically go through, in  
2 that manner, with juror No. 1, and then beginning with juror  
3 No. 2 basically say: Do you have any "yes" answers to any of  
4 the questions? And then only go through the "yes" answers that  
5 they may have. And that's my general approach.

6 So my intention here would be to follow that, which is  
7 to say that I would use a written questionnaire of sorts for  
8 purposes of oral jury selection, but I would differentiate it  
9 from the written questionnaire that we're describing that I  
10 would contemplate handing out to the larger pool of prospective  
11 jurors the week before, that they would actually write answers  
12 on the questionnaire.

13 So that might be helpful in the sense that the kinds  
14 of questions that you're describing, again, it's really not a  
15 question of whether I ask them or not, it's just when and in  
16 what manner. Maybe I need to look back at the order that I've  
17 entered on this, but what I was understanding is I think  
18 November 20th is your deadline to submit a proposed  
19 questionnaire. I think that is just the written questionnaire  
20 that jurors would complete themselves, and that is the one that  
21 I think should be kept very short and limited to questions that  
22 would require by agreement excusal for cause.

23 You should also be submitting proposed questions of  
24 the nature that I would ask in the oral portion of the  
25 voir dire that, again, I would actually have a written

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1 questionnaire that they would follow along, but I would pose  
2 those questions orally. I don't know if that clarifies or if  
3 that is helpful.

4 MR. BROCK: That is helpful.

5 THE COURT: And that's the context in which I'm okay  
6 with broader questions that would require follow up. That's my  
7 standard practice, and the way it should be done, I think.

8 MR. BROCK: Okay. Thank you for that.

9 THE COURT: If you have any questions, any issues,  
10 talk to each other and just submit something and I'm happy to  
11 clarify it as needed.

12 Again, not any other issues on the jury selection  
13 front? All right.

14 These aren't technically jury selection matters, but I  
15 said I had a couple other sort of logistical or trial-related  
16 things. First, on the jury instructions front, since you will  
17 be submitting proposed requests to charge, again, I think I  
18 revised my individual rules on this recently; so you should  
19 look at those.

20 But consistent with that, you really don't need to  
21 give me the kind of standard charges about burden of proof and,  
22 you know, what a preponderance means and so forth, unless you  
23 think that there is a particular reason to do so here. That is  
24 to say, I'm not prohibiting you from doing that, but it is  
25 sufficient for my purposes if you just say, you know, please

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1 provide your standard instructions on the following.

2 In all likelihood, I'm going to use my standard  
3 instructions on that; so I think your attention and focus is  
4 better spent, if you will, on the sort of substantive charges  
5 that are specific to this case. So I'll leave it at that for  
6 now.

7 Second, it is up to you to anticipate, let me put it  
8 that way, what your needs are with respect to sort of concrete  
9 things relating to trial. I already mentioned in order No. 80,  
10 I think it was, your need to and obligation to ensure that  
11 whatever technological needs you have are met and tested and  
12 the like well in advance of trial.

13 I will tell you, once I have a jury in the box, I  
14 don't want to delay and I don't want to waste their time. So  
15 it's up to you to make sure that everything is working and that  
16 you have backup plans in case they don't and so forth. But if  
17 you have other needs, I would imagine that you might be  
18 interested in having war rooms, if you will, in the courthouse.

19 Those are the sorts of things that if you can  
20 anticipate them and contact either the Court or chambers sooner  
21 rather than later, would be, obviously, extremely helpful.  
22 Forgive me one second. Yes, Mr. Brock?

23 MR. BROCK: One question on that. I believe we're  
24 going to conduct the trial on the 26th floor in the other  
25 building?



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1 THE COURT: Correct.

2 MR. BROCK: Would we coordinate a visit to that  
3 courtroom and coordination of technology with your office, or  
4 would there be someone at that courtroom who we should be in  
5 touch with about that?

6 THE COURT: That is a good question. Let me -- hang  
7 on.

8 (Pause)

9 So at least in the first instance, with my chambers.  
10 That courtroom belongs to another judge, Judge Duffy, who is  
11 kindly lending it to me for purposes of this trial; so I'll  
12 need to coordinate, or my staff will need to coordinate, with  
13 his staff if or when you want to visit and check things out.

14 So if you could get in touch with my chambers, maybe  
15 provide a few dates if the parties, either separately or  
16 ideally together, want to do a walk through or the like, we can  
17 help coordinate. And those are the sorts of things that the  
18 more advance notice we have, you know, the better we will be.  
19 And we'll figure out who we need to talk to, or who you need to  
20 talk to, and then we can deal with it appropriately.

21 MR. BROCK: Okay.

22 THE COURT: Again, something like a war room, I don't  
23 know, given the nature of this case, I imagine it might make  
24 sense if we have the space to provide you with rooms at 500  
25 Pearl Street. If you can let me know those sorts of things

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1 sooner rather than later, so we can do what we need to do, or I  
2 can contact folks. And you're all nodding, which suggests to  
3 me you're interested.

4 MR. HILLIARD: I tell you, speaking for both sides,  
5 the answer is yes. If there are war rooms available, both  
6 sides could certainly use them, and I don't know what the offer  
7 is but if there's more than one, we might could use two or two  
8 each. I just don't know what's available to us. I don't want  
9 to overstep the invitation, but I can tell you that that's  
10 quite rare and great that we have one in the courthouse itself.

11 THE COURT: Well, real estate is hard to come by in  
12 Manhattan, but we can try to see what can be done. I'll look  
13 into it. I don't know if you meant to suggest that one  
14 possibility is a single war room for both sides; that does not  
15 strike me as a good idea. So I'll look into whether --

16 MR. HILLIARD: We are getting along pretty well,  
17 Judge, but not that well.

18 THE COURT: I don't want to -- Yes, anyway.

19 MR. BROCK: There are some good broom closets over  
20 there that I think would be good for Mr. Hilliard's team.

21 THE COURT: And some bathrooms, I think.

22 MR. HILLIARD: Given the case, that's all we're going  
23 to need, Judge.

24 THE COURT: How many lawyers would you anticipate  
25 needing to fit into a room? Obviously, a lot of the documents

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1 here are electronic, not physical, but I mean, if you can give  
2 me a sense of what size rooms we're talking about, that  
3 might --

4 MR. HILLIARD: Again, without knowing what the options  
5 are, you know, the bigger the better. I would say it would be,  
6 during trial itself, at least five or six lawyers and staff in  
7 the war room, you know, listening through the realtime  
8 transcripts and bringing things over and coordinating, and then  
9 during breaks it would probably increase to 15 or 20, I would  
10 guess, for both sides. But again, Judge, you know, whatever we  
11 can get inside the courthouse itself, you know, we would be  
12 both happy to have and grateful to have.

13 THE COURT: All right. Mr. Brock?

14 MR. BROCK: It has worked in other cases, depending on  
15 availability, to have like a jury deliberation room or two  
16 available. Those are nice size. There's usually a table  
17 there, and that might be a possibility for this. I don't know  
18 if there is a -- like a mediation conference area in this  
19 courthouse. Some courthouses do have that, like attorney  
20 breakout rooms that could just be assigned for trial.

21 I think, you know, we're talking about really two  
22 primary needs, one is support staff for things that are  
23 happening during trial and then, of course, I'm sure most  
24 lawyers sort of follow this practice. It's probably easier to  
25 stay in the courthouse at the lunch break than it is to go out

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1 and come back. And maybe we don't even have a lunch break. We  
2 go 9:30 to 2:30 or something like that?

3 THE COURT: 9:00 to 2:30 with a half-hour break.

4 MR. BROCK: With a half-hour break, yes. So I think  
5 we're looking at primarily for support staff, but we bring  
6 witnesses over earlier or something like that, it would be nice  
7 to have a place. I agree with Mr. Hilliard, if there are a  
8 couple of rooms for each side that could be available, that  
9 would be great, but I think we could make do with one also if  
10 that's what it came to.

11 THE COURT: All right.

12 MR. HILLIARD: And while we're just talking about  
13 things on the practical list, we would bring in daily catering  
14 for witnesses and staff as well. I'm just not sure if we need  
15 a special permission to get that through security in order to  
16 have that ready during the 30-minute lunch break.

17 THE COURT: I will look into that. Those are the  
18 sorts of things that if you can anticipate and raise sooner  
19 rather than later, it would be super helpful, and I can figure  
20 out what we need to do or what you need to do, more likely. It  
21 would be helpful if that wasn't done in a scattershot manner.

22 Maybe talk within each side and to each other, and to  
23 the extent you can say, here's a laundry list of our wish list,  
24 if you will, of what we would love to have, and to the extent  
25 that I can accommodate you and make the trial easier, I'll do

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1 it. But, obviously, there are limits even to what I can do.

2 All right? Very good.

3 Next issue is the privilege disputes. I did receive a  
4 letter last night from plaintiffs about 9:00 raising or seeking  
5 a clawback or seeking five documents that GM had clawed back, I  
6 think. I guess my question is, is that the full extent of the  
7 dispute that is referenced in the letter? Mr. Berman is  
8 shaking his head no, which suggests that there's more  
9 potentially coming down the pike, and if there is more coming  
10 down the pike, should we set some sort of deadline?

11 I think these are the sorts of things that we need to  
12 resolve sooner rather than later, certainly with an eye on the  
13 fact that we have a trial date coming up. So we have those  
14 issues and then, obviously, also should we discuss New GM's  
15 response to the letter of last night? Mr. Hilliard?

16 MR. HILLIARD: Thank you, Judge. Mary Barra's  
17 deposition, the current CEO of General Motors, is currently  
18 scheduled for next week. There is a clawback issue relating to  
19 documents that we want to be able to use, if the Court should  
20 determine that we are allowed to, during her deposition. So  
21 that might need to have the Court's attention a little quicker.

22 THE COURT: And those are not the five documents  
23 discussed in the letter of last night, or they are?

24 MR. HILLIARD: They are.

25 THE COURT: Okay. And when is her deposition

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1 scheduled for?

2 MR. BERMAN: The 19th, your Honor.

3 THE COURT: So that's a week from next Monday? Okay.  
4 And are there additional disputes coming down the pike?

5 MR. BERMAN: We are working on additional discovery  
6 disputes, and given your comments about teeing things up  
7 sooner, we'll circle back, see where we are and try to get  
8 those tee'd up promptly.

9 THE COURT: Okay. Mr. Godfrey? Anyone? Mr. Bloomer?

10 MR. GODFREY: I think we need to get the documents.  
11 If there are documents unique to the Barra deposition, then we  
12 should tee it up quickly. We should get a briefing schedule so  
13 you could decide it next week, before the 19th.

14 THE COURT: I mean, it sounds like it was tee'd up by  
15 the letter that plaintiff submitted last night.

16 MR. GODFREY: Then we'll file our brief on Wednesday.  
17 Is that enough time on those documents?

18 THE COURT: How about Tuesday?

19 MR. GODFREY: Yes, that's what I was thinking, your  
20 Honor.

21 THE COURT: That's what I thought. I think you just  
22 misspoke. All right. We'll make it Tuesday, and I will  
23 resolve that promptly so that everybody is on the same page for  
24 the --

25 MR. GODFREY: I don't anticipate -- we've had a number

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1 of high-level depositions recently where we worked things out.  
2 I don't anticipate needing the Court's assistance during the  
3 deposition, but if we were, it's the 19th, it starts at 8:30.  
4 We're conducting it, for logistical reasons, in Houston.  
5 Mr. Hilliard has agreed she will not be served with a subpoena  
6 by showing up in Houston. So I don't anticipate needing the  
7 Court's assistance, but I do want to let the Court know that  
8 the 19th is the deposition date.

9 (Continued on next page)

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Fa9Wgen2

1           THE COURT: All right. I am here on the 19th. I will  
2 tell you I am starting a trial on that day, so in that regard,  
3 I will be a little less available than I would be if I were  
4 sitting in chambers. That being said, if there are disputes  
5 that require immediate attention, you should bring them to my  
6 attention and I'll do what I can do to resolve them. Please do  
7 discuss any other privilege issues, or for that matter, any  
8 discovery disputes so that those can get teed up sooner rather  
9 than later. The clock is ticking, so to speak.

10           Item No. 9 is the timing and scope of motion practice  
11 on the second amended consolidated complaint. GM is correct  
12 that I have, in fact, already ruled on this and my inclination  
13 is that there's no basis presented to me to reconsider the  
14 issue or revisit the issue at this point; that is to say, I'm  
15 not sure what has changed that would justify revisiting it.  
16 But perhaps Mr. Berman can elaborate.

17           MR. BERMAN: I'll give it a shot, your Honor. Our  
18 thinking is that there are clearly claims that involve just New  
19 GM vehicles and New GM owners. And the economic loss complaint  
20 is just held in limbo. I understand that part of that  
21 complaint is intertwined with what's going on in the bankruptcy  
22 court, but just take, for example, the RICO claim for a New GM  
23 owner. It's a clean issue. It's not tied up to anything in  
24 the bankruptcy court. If we're going to get a schedule going,  
25 I mean, look at it this way, why not have a motion practice on



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1 that RICO claim now and if new claims, new cars come back into  
2 the picture, we'll already have the benefit of that ruling; we  
3 will advance the case and be bound by it or not. So if we can  
4 get going on some clean claims, I think it will work toward  
5 advancing the schedule of the economic loss case.

6 THE COURT: As you know, I'm a fan of pushing things  
7 forward as much as we can. Having said that, I think that  
8 really is sort of rearguing the issue that I've already  
9 decided, and for a variety of reasons, I'm not persuaded. I  
10 guess I will say this. If my prior order on the subject didn't  
11 make it clear, I am at least for now inclined to proceed once  
12 Judge Gerber rules on the issues that are presented to him, and  
13 part of the reason that I'm not persuaded to revisit my prior  
14 ruling, I would assume, given his recall status, among other  
15 things, that he will be deciding those things as quickly as he  
16 can. To put it another way, I'm not inclined to wait until the  
17 appellate process has run its course and the circuit has ruled,  
18 and I would assume whoever loses in the circuit might seek  
19 cert, all of which is to say that even with an expedited  
20 schedule on the appeal, the appellate process may take a long  
21 time to run its course. I, at least now, would love to figure  
22 out a way to push things forward as much as possible after  
23 Judge Gerber rules on what is before him, recognizing that  
24 there may be some inefficiencies to that, but I think weighing  
25 the costs and benefits, there is an argument for doing it. All

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1 of that is to say I'm not persuaded that we should schedule it  
2 now, but those are my tentative thoughts. Obviously you will  
3 discuss further after Judge Gerber rules and you guys should  
4 confer on the issues once Judge Gerber rules and make whatever  
5 arguments and proposals you deem appropriate.

6 Anything else we need to talk about now?

7 Phase three discovery plan granting you an extension,  
8 I think at this point *nunc pro tunc*, is OK with me until the  
9 16th, but obviously I wanted to make sure that the train, to  
10 avoid car metaphors, continues to move forward. I think the  
11 phase two is scheduled to end, if I'm not mistaken, on October  
12 30 and I think it's in everybody's interests to ensure that  
13 there's a phase three plan in effect before that date so that  
14 things do keep moving forward. I'll give you until the 16th,  
15 but my hope is that we can deal with that shortly thereafter.

16 The last item on the agenda before just a couple of  
17 housekeeping matters is the question of the settlement  
18 category. Again, I'm content to know that you guys are talking  
19 about it, and as the letter regarding the settlement of 1,380  
20 cases suggests, obviously you are talking about it. And as I  
21 have said in the past, to the extent that I can provide  
22 assistance, you should let me know.

23 On the settlement of those cases, can you give me some  
24 sense of what the timing would be of the motion that you  
25 anticipate filing? And then also I'm assuming that there's no

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1 reason to think that nonsettling the plaintiffs, if you will,  
2 have any stake or interest, that is to say, that they would be  
3 prejudiced by the settlement. I'm guessing that the pool here  
4 is not limited such that they have a stake or interest in the  
5 matter.

6 MR. HILLIARD: That's correct. It's a finite, known  
7 number of cases and the discussion is continuing as to other  
8 pools of cases to keep the Court generally informed in that  
9 regard. Regarding the filings, my office and Ms. Williams  
10 specifically for Kirkland & Ellis have really been working  
11 daily to make sure that we effectuate the settlement as quickly  
12 as we can. I would turn this over to Wendy so she can give the  
13 Court the timetable on the filing; she's got her pulse on it a  
14 little more closely than I do.

15 THE COURT: By Wendy, I assume you mean Ms. Bloom.

16 MR. HILLIARD: Ms. Bloom. I apologize.

17 THE COURT: Ms. Bloom.

18 MS. BLOOM: Your Honor, we anticipate with respect to  
19 the aggregate settlement resolution of claimants that are  
20 represented by Mr. Hilliard and Mr. Henry to be filing a motion  
21 either today or on Monday, that would be to appoint two special  
22 masters, who will both be involved in working on the settlement  
23 framework that's particular to these claimants, and the number  
24 is now 1,382 who may be eligible to participate, all in the  
25 postbankruptcy grouping, and those two folks are John Perry and

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1 Daniel Balhoff. They both are mediators and special masters  
2 out of Baton Rouge, Louisiana, with special experience in MDL  
3 matters as special masters, so that would be the focus of the  
4 first motion, to allow them to engage with us in that manner.

5 The second motion that we would anticipate filing as  
6 well, next week sometime, is a motion to have the Court approve  
7 a qualified settlement fund with a trust agreement that would  
8 be attached. As your Honor may be well aware, there are, in  
9 certain cases, benefits to a QSF-type format. It allows the  
10 deposit of funds into the trust and allows claimants before  
11 they take receipt of them to make decisions around how they  
12 might want to receive those funds. It allows for lien payments  
13 to be made in an expeditious manner, and in order to have this  
14 QSF, there does need to be a court approval of one and then  
15 court supervision of a QSF. That would go along with a QSF  
16 administrator that the parties are proposing together by the  
17 name of Scott Freeman, who also has extensive experience in the  
18 area of QSF management. That would be what we anticipate at  
19 the moment and then I'll stop right there.

20 THE COURT: First, you should not presume a whole lot  
21 of knowledge or experience on my part with these matters.  
22 This, frankly, is uncharted territory for me, so in that  
23 regard, whatever education you can provide on those sorts of  
24 things would be helpful. Two questions. One, are you  
25 anticipating these to be joint motions?

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1 MS. BLOOM: Absolutely.

2 MR. HILLIARD: That's correct, Judge.

3 THE COURT: Is there anybody who needs to be heard in  
4 your view or be given an opportunity to be heard in opposition  
5 to motions? That sort of goes to the question that I posed.  
6 I'm assuming, based on my general sense of things, that this is  
7 not a limited pool such that settlement with these plaintiffs  
8 could prejudice or jeopardize the recovery of nonsettling  
9 plaintiffs. Is that correct?

10 MS. BLOOM: That's correct, your Honor. This is just  
11 a private settlement for these 1,382 folks, and in kind of  
12 anticipation of what your Honor has proposed and as  
13 Mr. Hilliard has indicated, GM, New GM is interested and  
14 willing to engage in further discussions with other groups.  
15 The nature of settlements that might be derived would be unique  
16 to those facts and circumstances, and we would certainly report  
17 back to the Court when there is news to report back with  
18 respect to other settlements, and we would certainly invite any  
19 lawyer or groups of lawyers who have postbankruptcy accident  
20 cases to engage with us and particularly reach out to the  
21 Kirkland & Ellis firm as we continue with those types of  
22 discussions.

23 THE COURT: All right. I'm sure to the extent those  
24 lawyers are not listening, lead counsel will convey that, if  
25 they have not already.

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1 Mr. Hilliard.

2 MR. HILLIARD: To give the Court some comfort, the  
3 structure that Ms. Bloom conveyed to the Court is really  
4 typical of settlements with larger groups of folks, and the  
5 process at this point is almost purely procedural in order to  
6 properly set up the QSF, and the appointment of the three  
7 individuals mentioned, both parties vetted them, interviewed  
8 them, were satisfied both with their experience and their track  
9 record on both sides, because both sides agreed to  
10 Messrs. Balhoff and Perry as the special masters and  
11 Mr. Freeman as the administrator of the QSF. Assistive to, if  
12 this is the Court's first one, we will continue to answer any  
13 questions, and there may be after this point some issues that  
14 we'll need your more specific focus, but right now, this is  
15 simply getting it set up.

16 THE COURT: And I assume the motion or agreement will  
17 address, for example, who is paying for the special masters and  
18 those sorts of matters.

19 MR. HILLIARD: Correct, as well as accounting of how  
20 they're going to charge their fees, and the key is  
21 transparency, so that type of relation will be set out and  
22 shared.

23 THE COURT: Is it contemplated that that would be  
24 something under my supervision or oversight, that I would have  
25 to approve fees or payments?

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1 MS. BLOOM: No. It's all set up through the private  
2 arrangement. There's no fee approvals that need to be  
3 approved.

4 THE COURT: All right. Very good. I'll await  
5 whatever filings you make. I appreciate the heads-up on those.

6 The other matter referenced in item 11 is the criminal  
7 settlement, and again I've already touched on this, but I would  
8 imagine that there may be some issues with respect to the  
9 statement of facts and its admissibility at trial and the like.  
10 Maybe not. I don't know. I'm not a fan of generating problems  
11 where there aren't, but to the extent that that is an issue, I  
12 want to make sure that it is on your radar, that it's briefed  
13 appropriately when there is a motion *in limine* or otherwise,  
14 and you have a better sense than I, frankly, of what effects or  
15 bearing that has and how that might affect things, so you  
16 should be talking to one another about it, and again, sticking  
17 with the theme, when it is ripe and as quickly as possible,  
18 assuming it is ripe.

19 Any comments on that?

20 MR. BERMAN: Yes, your Honor. Getting ready for the  
21 hearing today, I reread the crime-fraud briefs which are under  
22 submission, because I thought you might have questions. You  
23 may not, you obviously are prepared. And it occurred to me in  
24 reading those briefs, and we haven't raised this with GM yet,  
25 that the briefs are kind of stale because they take positions

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1 and make factual assertions that I think are contradicted by  
2 the DPA. So what I was alerting you to, I think we need to  
3 have a meet and confer with GM about either their retracting  
4 certain statements that are contradicted by the DPA that are in  
5 the opposition briefs or whether we need to do a quick round of  
6 very short supplemental briefs on how the DPA affects the  
7 crime-fraud issues.

8 THE COURT: All right. Mr. Godfrey.

9 MR. GODFREY: This is news to me that plaintiffs have  
10 that concern. New GM's position is it will comply strictly and  
11 appropriately and comply 100 percent with the DPA. If there is  
12 an issue or they think there's something in the brief that's  
13 inconsistent, point it out to us, we'll take a look at it and  
14 we'll form a judgment. The company is going to comply with the  
15 DPA. I was not aware of any suggestion that there was  
16 something in the crime fraud briefing, several weeks ago, that  
17 was inconsistent with that, and we'll listen and figure out  
18 what to do about it if there is something to do about it.

19 THE COURT: It is under advisement, so in that regard,  
20 I don't want you to spend a whole lot of time talking about it.  
21 I want you to report back to me sooner rather than later if you  
22 think that there are any supplemental submissions that are  
23 appropriate or necessary or it has some bearing on the issue or  
24 issues addressed in the brief. Why don't you talk about it,  
25 ideally frankly, today and if you can submit a joint letter to



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1 me on Tuesday indicating whether and to what extent you think  
2 additional submissions are appropriate and necessary and  
3 propose a time frame for those and a short time frame at that,  
4 then I'm open to it, but I want to make sure that that issue is  
5 resolved sooner rather than later. I'll put it that way.

6 MR. GODFREY: Very good.

7 THE COURT: Thank you.

8 MR. HILLIARD: As to those submissions and the Court's  
9 first comment regarding admissibility, the plaintiffs strongly  
10 believe these are direct admissions against a party opponent  
11 and will request that they be allowed to be part of the trial,  
12 but regarding the upcoming deposition of Ms. Barra, I would not  
13 be surprised if she's questioned pretty extensively about those  
14 115 statements of fact. To give the Court a heads-up, should  
15 she either be instructed not to answer or there be any  
16 objections to that line of inquiry, we would almost immediately  
17 seek to adjourn the deposition and contact the Court in regards  
18 to our right to probe through questioning in her deposition  
19 these 115 statements.

20 THE COURT: All right. That doesn't seem like  
21 something I need to get into now.

22 That exhausts the issues raised in the agenda letter.  
23 I have a few other issues, more of a sort of housekeeping  
24 nature than anything else. First, there are more than a  
25 handful, I guess, of pending motions for leave to amend. New

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1 GM filed a letter on October 1, docket No. 1446, proposing that  
2 motions in ten of those cases be stayed pending Judge Gerber's  
3 rulings, and there was no opposition to that proposal as  
4 contemplated or provided by my order, order No. 81. Between  
5 that and the fact that I agree that it makes sense to do that,  
6 I will stay further briefing on those motions pending further  
7 order, and per paragraph 4 of my order, New GM is to advise me  
8 within a week of Judge Gerber's rulings on the relevant issues  
9 and propose how to proceed.

10 New GM filed another letter two days ago, on October  
11 7, docket No. 1462, and proposing the same treatment; namely,  
12 to stay in five other cases other motions that were filed  
13 later. As a technical matter, I think under my order, the  
14 plaintiffs in those cases have until today to file any  
15 opposition. I don't know if any counsel here can speak to  
16 that. I'm assuming that they, too, may not oppose, but I don't  
17 know if you can speak to that. Mr. Hilliard is shaking his  
18 head.

19 MR. HILLIARD: I'm not comfortable speaking to it just  
20 off the cuff, Judge.

21 THE COURT: I will defer ruling until the time for  
22 those plaintiffs to be heard has passed and you should  
23 anticipate the ruling on Tuesday on those motions. Suffice it  
24 to say, again under paragraph 4 of order No. 81, New GM is  
25 required to submit a letter to me within a week of Judge

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1 Gerber's ruling. Now, to the extent, even if motions are filed  
2 at different times and are therefore subject to different  
3 timing on the front end, that is to say, the letter of October  
4 7 versus the letter of October 1, I think I'm contemplating a  
5 single letter that would be filed after Judge Gerber's ruling  
6 addressing any and all cases that have been stayed or are  
7 affected by it.

8 Second, there is one motion to vacate the dismissal,  
9 and this is in 15 CV 3229, filed by plaintiff Lisa King, docket  
10 No. 66 in that case. Technically, New GM's response to that  
11 motion isn't due until, I guess because of the holiday Monday,  
12 October the 13th, and I don't know if anyone is prepared to or  
13 can speak to it now. I'm happy to wait until that deadline to  
14 see what, if anything, is filed, or if you're able to speak to  
15 it now, maybe we can address that.

16 Mr. Bloomer.

17 MR. BLOOMER: Your Honor, I think we can submit a  
18 letter to the Court today letting the Court know our position  
19 on that, if that is acceptable.

20 THE COURT: That is indeed acceptable and you have  
21 until Tuesday to do that. Just a reminder to everyone that  
22 those motions, really all motions in member cases, should as a  
23 housekeeping matter be filed both on the MDL docket as well as  
24 on the member docket so we can keep track of everything that is  
25 filed.

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1           Relatedly or similarly, the deadline to reinstate the  
2 last round of economic loss claims that were dismissed pursuant  
3 to order No. 50, and I think these were referenced in New GM's  
4 letter at docket 1365, has passed without any motion or  
5 objection. Is there any reason I should not so order that  
6 letter?

7           MR. BERMAN: None that I'm aware of.

8           THE COURT: I will do that today.

9           Next, I think the one motion to dismiss that remains  
10 pending is the motion to dismiss with prejudice the claims of  
11 Mr. Cameron, John Cameron, docket No. 1248. I had, as you may  
12 recall, granted his counsel's motion to withdraw. Technically,  
13 he has until, I think, next Tuesday to respond to that motion,  
14 but I don't know if anyone has any update or any knowledge of  
15 where that stands or has communicated in any way with  
16 Mr. Campbell.

17           Mr. Bloomer, do you have any idea?

18           MR. BLOOMER: Your Honor, I do not, no.

19           THE COURT: We'll wait and see what, if anything, I  
20 receive on that. Obviously to the extent that he is I think  
21 technically at the moment proceeding *pro se*, it may be a few  
22 days after the deadline before I can comfortably assume that  
23 nothing has been filed.

24           A brief comment on sealing and redactions. Just  
25 really a reminder to adhere to the deadlines and the process

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1 set by my order, order No. 77; that is to show cause why  
2 something should remain redacted or sealed and if I've granted  
3 a motion to temporarily seal or redact something, after I have  
4 resolved the issue, and then to file whatever needs to be  
5 filed, whether in unredacted form on ECF or with the sealed  
6 records department after I have ultimately resolved the issues.

7 The bottom line is I don't want my clerk or staff to have to  
8 track you guys down to follow up on those things. My hope is  
9 that you can do what you need to do without our needing to  
10 bother you about it.

11 MR. SCHOON: Your Honor, may I just ask one question  
12 on that. If we don't intend to seek permanent sealing, should  
13 we notify your Honor?

14 THE COURT: I think that would be ideal just to be  
15 sure it doesn't escape our radar, but obviously the deadline  
16 for you to make the case for sealing or redaction is what the  
17 deadline is, so if you haven't been heard by that date I'll  
18 assume there is no party that believes it should remain under  
19 seal and will likely order it unsealed on that basis. But  
20 there are a lot of things going on in this case, so to the  
21 extent you can file something to make sure it's on our radar,  
22 that would be helpful.

23 MR. SCHOON: Thank you.

24 THE COURT: Speaking of radars, the next status  
25 conferences are November 20 and December 18, and per order No.

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1 80, the final pretrial conference for the first bellwether is  
2 set for January 6. I think really that will be limited to  
3 trial issues in that case and not a status conference for the  
4 MDL as a whole. I don't know if it makes sense at this time to  
5 schedule a status conference for the MDL for January or  
6 February. That might be a bit much given the trial, but if you  
7 have thoughts or you want to just discuss that, we can address  
8 that at the November conference. Maybe that makes more sense.

9 MR. HILLIARD: We'll be here anyway, so if something  
10 comes up for the subsequent trials, we can probably just advise  
11 the Court that we have an issue and perhaps just address it  
12 since all parties will be here then, instead of a specific date  
13 right now.

14 THE COURT: That probably makes sense. My inclination  
15 might be to put a date on for February, though, just to ensure  
16 that we keep things moving with respect to the MDL as a whole,  
17 but we can address that in November.

18 Mr. Berman.

19 MR. BERMAN: I think in terms of the next MDL status  
20 conference, the most important thing from what I'm hearing  
21 today from the non-PSI would be Judge Gerber's ruling and we're  
22 arguing that next week. We may have a ruling, he seems to be  
23 early prompt, by early November, so maybe a status conference  
24 in November might make some sense.

25 THE COURT: We have one scheduled for November 20. I

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1 think we have one on November 20 and one on December 18. I  
2 would think that that suffices for now. At the November  
3 conference, I may schedule a conference for sometime in  
4 February after the first bellwether would likely be over, just  
5 to give you a heads-up about that.

6 One thing to put on the radar for the next conference  
7 or conferences is the issue of public access with respect to  
8 trial. Obviously, there have been a number of filings and  
9 issues related to sealing and redaction in this case, and I  
10 just want to make sure to discuss in advance how they will play  
11 out at trial and to whatever extent things can remain under  
12 seal and remain confidential if they are used at trial, I think  
13 the presumption is probably not, but I want to make sure that  
14 we have thought that through to the extent that we can, and to  
15 the extent that we can and everybody's on the same page in  
16 advance of trial, and obviously members of the press, for  
17 example, may wish to be heard on that, I think it does pay to  
18 just make sure that we address it sooner rather than later. I  
19 don't know if it's appropriate to put that on the November  
20 agenda, but I just flag it as an issue that I can see coming  
21 down the pike and you ought to be discussing and discuss with  
22 me at some point.

23 Mr. Hilliard.

24 MR. HILLIARD: Yes to the observation that it should  
25 go on the November agenda, because again, there's competing

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1 scheduling issues. For example, we have an IT person, both  
2 sides do, that we're going to use to bring up documents, show  
3 the jury, show the Court, and in order to understand and there  
4 will be a screen that folks who are in the gallery can see as  
5 well, so in order to understand when to turn off what screen,  
6 we have to identify the documents, and given November is really  
7 the time that we're all drilling down to get the trial ready, I  
8 would request that we do address this and get some real clarity  
9 from the Court and understanding of GM's objections to it in  
10 November.

11 THE COURT: Sounds good to me. Why don't you talk  
12 about it and plan to put it on the agenda for November. It may  
13 be that members of the press wish to be heard on this issue as  
14 well.

15 Yes, Mr. Godfrey.

16 MR. GODFREY: We understand the Court's general views  
17 on this topic. We will see whether by November we can work out  
18 the protocol, if we can. I think it's best for us to work out  
19 what we can and then present to your Honor what we can't. I've  
20 never had a problem with the protocol on this issue and I  
21 anticipate we will do that here. If not, then your Honor will  
22 quickly decide, one way or the other.

23 THE COURT: That's fine. This is, needless to say, an  
24 area in which the parties' interests are sometimes different  
25 than the public's interests. In that regard, I'm not likely to



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1 simply bless something that you guys agree to.

2 MR. HILLIARD: Judge, the issue is not the protocol.  
3 We'll agree to the protocol. The issue is we're not going to  
4 agree what documents the protocol applies to. That's going to  
5 be the real issue. If there are clearly documents that the  
6 protocol should apply to, there's no doubt that the structure  
7 of the protocol could be agreed to, subject to the Court  
8 saying, You guys are nuts, we're not doing that. But the  
9 documents that we believe should be publicly viewed will be  
10 different entirely, I promise you, than what GM believes.  
11 That's going to be the issue more so than the protocol.

12 THE COURT: All right. You guys can discuss it. I  
13 would think that some sort of process to identify, and  
14 obviously there is already a process to identify exhibits and  
15 the like, but some sort of process to identify those that one  
16 side or the other thinks should somehow remain confidential in  
17 whatever fashion in an adequate amount of time to present  
18 disagreements to me and opportunity for members of the press,  
19 or anyone else for that matter, to be heard on those probably  
20 makes sense. But to the extent stick to the protocol to do  
21 that and then we're all in agreement that everything is public,  
22 then it won't be an issue, but why don't you discuss it.

23 MR. GODFREY: To be clear, your Honor, by protocol, I  
24 didn't mean some mechanistic "here's how the Court decides it."  
25 I was hoping we could cover document categories and types so we

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1 can just resolve this problem once and for all so we don't  
2 interrupt the flow of the trial. That's what I'm focused on.

3 THE COURT: That's precisely why I raised the issue.  
4 I do not want to interrupt the flow of the trial either and so  
5 I'm anticipating these sorts of things. I'm really very much  
6 relying on you guys to anticipate other things like that. My  
7 desire, once we start with the trial and have a jury in the  
8 box, is to proceed without interruption. Part of the reason I  
9 do the 9-to-2:30 schedule is so that we have adequate time in  
10 the afternoon to address issues, but I also have other cases  
11 that I need to attend to, so to the extent, not to sound like a  
12 broken record, but you can issue, spot and anticipate things in  
13 advance and raise them with me in an appropriate manner and  
14 certainly at the conferences in November and December, you will  
15 definitely make me a happier judge.

16 Anything else that I haven't covered that we need to  
17 address? No one looks like they want to say anything, so I'll  
18 leave you with a couple of things. One is obviously you should  
19 submit a proposed order memorializing what we have done today  
20 in accordance with order No. 8 and follow the same procedures  
21 for the agenda in November.

22 The last thing I want to leave you with is a literary  
23 matter, and I'll be deliberately oblique about this. I started  
24 reading Harper Lee's so-called sequel to "To Kill a  
25 Mockingbird" to my daughter, "Go Set a Watchman," and again I'm

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1 going to be deliberately oblique, and I'm not going to give a  
2 judicial recommendation or not about the book, but I recommend  
3 that you all read page 11. All right? Does everybody know  
4 what I'm talking about?

5 MR. HILLIARD: Riding in the GM.

6 THE COURT: I'm going to leave you with that. I wish  
7 you all a pleasant weekend, and thank you very much. We're  
8 adjourned.

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