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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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3 In Re: GENERAL MOTORS LLC
IGNITION SWITCH LITIGATION, 14-MD-2543 (JMF)

4
5 Conference
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6 New York, N.Y.
November 20, 2015
7 9:35 a.m.

8 Before:

9 HON. JESSE M. FURMAN,
10 District Judge

11 APPEARANCES

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1 (Case called)

2 THE LAW CLERK: Counsel, please state your names for
3 the record.

4 MR. HILLIARD: Good morning, Judge. Bob Hilliard for
5 the plaintiffs.

6 THE COURT: Good morning.

7 MR. BERMAN: Your Honor, Steve Berman for plaintiffs.

8 MS. CABRASER: Good morning, your Honor. Elizabeth
9 Cabraser for plaintiffs.

10 MR. SCHOON: Eugene Schoon, for Delphi Automotive
11 Systems LLC.

12 MR. GODFREY: Good morning, your Honor. Rick Godfrey
13 for New GM. With me is Mr. Bloomer, Mr. Brock, Mr. Dreyer, and
14 Ms. Bloom, and then, since we're about to start a trial, you
15 should meet the rest of the trial team. Mr. Fields, who I
16 think you've met before, and Ms. Wendy May in the back. Wendy.
17 We don't have enough chairs up here.

18 THE COURT: Yes, indeed. Good morning to all of you.

19 MR. HILLIARD: And, Judge, may I introduce Mr. Victor
20 Pribanic from Pennsylvania. One issue is his and so we invited
21 him, and he accepted our invitation to attend the hearing.

22 THE COURT: Yes. He went through the wrong door,
23 but --

24 MR. PRIBANIC: I did. I apologize for that.

25 THE COURT: -- he knows better now.

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1 All right. Welcome, Mr. Pribanic. Very good.

2 I have two preliminary matters. The first and most
3 important is, I want to give my congratulations to you,
4 Mr. Hilliard, on the birth of your seventh child, I think it
5 is, right?

6 MR. HILLIARD: It is, Judge. Thank you very much.

7 THE COURT: I don't know how you juggle everything,
8 and I hope you're being very nice to your wife. But in any
9 event, my congratulations to you and your whole family.

10 Second, I did want to just note for the record, I
11 think you all know there's an annual conference of MDL
12 transferee judges, which has, in my experience, actually been
13 incredibly helpful in my management of this case. At the most
14 recent conference last month, Ms. Cabraser was a guest and
15 spoke on a panel about MDLs from counsel's perspective. There
16 were representatives of I think two plaintiff's counsel and two
17 defense counsel. I think Ms. Cabraser would agree with me that
18 there was absolutely no discussion specific to this case. I
19 did say hello at some point, but we obviously did not talk
20 about anything relating to this case. I just wanted to
21 disclose that so there wasn't any suggestion or concern of
22 anything untoward.

23 All right. We are on CourtCall, as I think you know,
24 and I'll remind you again to just speak into the microphones.
25 And with that, we'll proceed to this month's agenda.

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1 The first item is the status of the bankruptcy court
2 proceedings. Obviously I've read Judge Gerber's November 9th
3 opinion. I don't know if there's any update on that front. I
4 know the parties were supposed to be discussing and negotiating
5 a judgment with respect to that opinion. Where does that
6 stand?

7 MR. BERMAN: We're having a call --

8 THE COURT: Microphone, please.

9 MR. BERMAN: There's a call today among the parties to
10 work on the judgment and we're proceeding to try to get that
11 done as soon as we can. It's a fairly complicated matter with
12 a lot of parties, so it takes a lot of work.

13 THE COURT: I can imagine. I guess the broader
14 question is what the opinion means for us and my purposes and
15 most urgently for the first bellwether trial. Obviously Judge
16 Gerber left some matters to be decided by the courts presiding
17 over those cases, and me in particular, and I imagine there may
18 be some issues that we need to deal with in connection with
19 that. Maybe we don't know what those are yet. I know that
20 obviously the pleadings are not fully in and the like, but does
21 anyone have a sense of that?

22 And then I hate to ask this question, but I assume
23 that once judgment is entered, it is an appealable judgment.
24 Is that an issue that we need to think through and might have
25 implications for us? Mr. Godfrey, or -- well, he tried to

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1 stand earlier and then sat down. I'll give him the first shot.

2 Go ahead.

3 MR. GODFREY: Thank you, your Honor.

4 In no particular order, one, New GM's motion in limine
5 no. 7, which was a contingent motion about punitive damages,
6 will be refiled by the 4th. We filed it because we didn't know
7 how Judge Gerber was going to come out, nor do we know when,
8 and therefore it occurred to us if he didn't rule before the
9 4th of December, we'd be precluded from filing it, so we laid
10 out our position, but if we're going to have to modify that, we
11 will do so by the 4th, if we have to amend that motion.

12 THE COURT: So I take it motion in limine no. 7 can be
13 denied without prejudice.

14 MR. GODFREY: Yes. If that's how the court prefers to
15 approach it, yes.

16 THE COURT: I think that makes sense, so that that is
17 one motion in limine I've decided.

18 Go ahead.

19 MR. GODFREY: Number two, we have reviewed the Scheuer
20 third amended complaint. That is the first bellwether trial
21 complaint. We think that it is technically not in compliance
22 with Judge Gerber's most recent opinion. However, we think
23 that the violations can be easily occurred and our proposal is
24 we will send the plaintiff's lead counsel a letter within a
25 week and we will work this out, since we don't think that the

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1 violations go to the heart of the counts. We think that there
2 are allegations in the pleadings that ought to be corrected,
3 but we don't think it goes to the heart of the complaint, and I
4 think it's easily curable. If we can't cure it, then we'll
5 promptly raise it with Judge Gerber or, depending upon the
6 issue, perhaps this court, but I think the parties can work
7 this out. I just thought I should at least tell you. We got
8 it the other day, we reviewed it, and that's how we recommend
9 approaching it, if that's acceptable to the court.

10 THE COURT: I think that makes sense. I read Judge
11 Gerber's opinion as basically saying: I don't need to say
12 anything more about this, I'm happy to leave the rest of this
13 to Judge Furman and other judges presiding over these cases. I
14 leave to you whether, if there are issues, they should go back
15 to him or --

16 MR. GODFREY: I think we'll work out all of these
17 issues so I don't think we have to cross that bridge, so to
18 speak.

19 THE COURT: All right. Let me just interrupt.
20 Somebody's phone or device just went off. If you could just
21 make sure your phones are off and certainly not in any mode
22 that would make a noise, I would greatly appreciate it. And if
23 you don't do that, I'll remove your device. So I suggest you
24 do that.

25 Yes, Mr. Godfrey.

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1 MR. GODFREY: I was just checking. It's not my
2 device, your Honor.

3 Third, I think that some of the issues in Judge
4 Gerber's opinion will get fleshed out when we file a motion for
5 summary judgment, which we will file in respect to the third
6 amended Scheuer complaint at the time set forth in order
7 no. 85. So I don't see a separate need for briefing at the
8 moment between our motion in limine no. 7 and our motion for
9 summary judgment from the New GM perspective. I believe that
10 the issues which we have concern with respect to punitive
11 damages and imputation, etc. will get fleshed out between those
12 two filings for the court.

13 And then finally, as to appeals, we've been told that
14 various plaintiffs intend to appeal the final judgment when it
15 is entered. I don't know precisely which groups will or will
16 not. I mean, we've been told this, but obviously it's going to
17 depend partly upon what the final judgment form looks like, I
18 suspect. What implications that has we could speculate on, but
19 I don't think it should be an impediment to going forward with
20 the trial. In other words, I don't think we should stop the
21 MDL and await the Second Circuit's decision on either of the
22 two appeals from our perspective. So if that was the purpose
23 of the court's question, I don't see that that would be a
24 workable solution unless the court wanted to put a stop to
25 everything, which it struck me is not consistent with how the

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1 court typically approaches this.

2 THE COURT: Suffice it to say I do not want to put a
3 stop to everything and I would very much like to proceed with
4 the trial, which has been long scheduled.

5 This was sort of implied in the comment you just made,
6 but is everybody in agreement that if there were appeals taken
7 from whatever judgment is entered in connection with the
8 November 9th opinion that they would go directly to the
9 circuit? I presume that would require Judge Gerber to certify
10 and the Court of Appeals to accept that, but I also think it
11 would make sense, to the extent that they are wrapped up with
12 the appeal that's already pending before the circuit.

13 MR. GODFREY: I don't believe a consensus has
14 necessarily been reached with all parties with respect to that.
15 I believe some parties are still discussing that, but what your
16 Honor says has a certain logic to it. But one way or the
17 other, if the point of your Honor's question, which I took it
18 to be should I do something different with respect to the
19 forthcoming bellwether trial no. 1 because of the likelihood of
20 appeal, based upon what we currently know, I would say the
21 answer is no, I don't see that it would change or derail or
22 modify the schedule. Now maybe something happens in the form
23 of order which causes us to revisit that, but I don't
24 anticipate that. I think the form of order is going to be
25 essentially as Judge Gerber's already written it in his opinion

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1 and it's just getting the consensus if we can or have Judge
2 Gerber enter the order that in his view accurately reflects
3 that what he decided. So I don't see this as having a
4 fundamental change in the direction or management of the MDL
5 from where we sit.

6 THE COURT: Okay. Mr. Hilliard.

7 MR. HILLIARD: So, Judge, the elephant in the room now
8 is what will we be able to show in regards to punitive damages
9 and gross negligence as it involves GM's ten-year conduct.
10 Given the motions in limine, we're going to -- and the court
11 should expect and perhaps schedule plenty of judicial assistant
12 time in regard to what comes in, how it comes in, and the
13 testimony that's going to be allowed. We're bumping heads
14 right now on the deferred prosecution agreement, does the
15 statement of facts come in as admissions versus the entire
16 document, and I think both sides, regardless of the appeal,
17 unless the Second Circuit stays that decision and says it
18 doesn't come in at trial, are expecting that the trial now will
19 be developed around, in no small part, the gross negligence and
20 the punitive damage part.

21 We are hopeful and we are prepared to go forward as
22 scheduled, but in all candor to you, Judge, we are going to
23 need your assistance before trial to be sure that GM is heard
24 on its objections. We understand our rights in regards to the
25 direction of the testimony and the admissibility of certain

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1 very important documents, in our view, and I would expect that
2 that pretrial hearing, because of who we're bringing and how we
3 want to lay out the case, if your schedule allows, should
4 happen sooner rather than later on the punitive damage/gross
5 negligence bookends, so to speak, how much comes in, what's
6 allowed, because, you know, as you now know from reading Judge
7 Gerber's opinion, it's extensive, the conduct. If we want to
8 bring it in --

9 THE COURT: Can you be a little less oblique and give
10 me a better sense of what exactly you're hinting at. I mean,
11 number one, Mr. Godfrey suggested that this would all be teed
12 up, from his perspective, in a motion for summary judgment in
13 accordance with the schedule that I've already set. Do you
14 agree with that? Are there other motions that you anticipate
15 will be filed that would flesh this out? You've sort of
16 suggested or alluded to the need for a hearing. I don't know
17 what you mean by that. Give me some better sense of what's
18 going on here. I have a lot of work to do between now and
19 January 11th. I'm well aware of that. And one of the goals
20 that I have today is to get a better sense of the work that's
21 coming down the pike in order to make sure that I can make
22 timely decisions and everybody is on the same page. But also,
23 I mean, I'm aware that there are plenty of decisions to be made
24 between now and then, and I will certainly do everything in my
25 power to ensure that they are made and made in a fashion that

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1 allows you to be prepared for trial.

2 MR. HILLIARD: So as nonoblique as I can, I don't
3 think the summary judgment would really address our right to
4 put on punitive damages and gross negligence conduct of GM. I
5 think that's addressed through their motions in limine and
6 their arguments about how much of the DPA, if any, gets to come
7 in.

8 THE COURT: But I would assume between the motions for
9 summary judgment and the motions in limine, all of that will be
10 teed up.

11 MR. HILLIARD: That's correct. And the reason I
12 shared it with you is because, as opposed to standard motions
13 in limine and standard summary judgments, you know, this now
14 opens up the, you know, the ground zero issue for us, which is
15 the gross negligence decades-long conduct, and though we're
16 working with GM to try to focus on what we can agree to and
17 what we can't agree to, the time necessary to present it to
18 you -- and it might not even need to be a hearing but it is now
19 front and center in my concern, if we're going to be able to
20 present it, is present to it in a flow, present it with the
21 court's prepermission and, you know, and allow the testimony to
22 come in and documents to come in, or not. But it just needs to
23 be addressed completely preliminarily. And I don't mean to
24 suggest in any way -- I mean, you're working as hard as we are,
25 Judge, and we're working, you know, diligently and

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1 cooperatively on this issue, but there's simply a difference,
2 strong difference in what gets to come in and how it comes in.

3 THE COURT: Again, I'm aware of that. I'm aware that
4 there are plenty of issues that I will need to decide. And I'm
5 prepared to do that as long as you guys tee them up for me in
6 the most appropriate fashion and consistent -- I mean, I guess
7 my question is, I've already given you plenty of deadlines for
8 the filing of motions in limine and motions for summary
9 judgment. I would think that that should suffice and that all
10 these issues will then be hashed out and I'll give you
11 decisions on all of them when things are fully submitted and
12 they're ripe for decision. Is there anything beyond what I've
13 already established in terms of the framework for teeing issues
14 up that we need to discuss or need to do? Do you anticipate
15 the need for an evidentiary hearing or are you alluding to, you
16 know, a desire to argue the issue? I mean, this is what I'm
17 trying to figure out, whether we need to plan any differently
18 than we've already planned.

19 MR. HILLIARD: The only thing the court could help us
20 with is, if there's going to be an evidentiary hearing on some
21 of the Daubert motions in regards to those issues, do you want
22 the experts to come in pretrial to testify on the court's
23 decision on the Daubert issue or are they going to be allowed
24 to testify, before they testify in front of the jury, in
25 regards to the validity or the right for them to give their

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1 opinions?

2 THE COURT: I mean, that's hard for me to answer in
3 the abstract. In my experience, whether a hearing is necessary
4 on a Daubert motion depends on the motion. I mean, obviously
5 sometimes it is necessary, in which case I would do that as
6 early as I can. That might be in the middle of trial, you
7 know, all while the jury has already been seated but the expert
8 is here, or ideally it would be before trial. But we also have
9 a lot of work to do between now and then.

10 MR. HILLIARD: Right. And I'm learning as I go in
11 regards to what the court prefers. You know, some courts say,
12 you know, I want the experts here at the Daubert hearing
13 pretrial and they'll testify. Some courts say, I'm not going
14 to make them do that, I'll bring them in later, and some courts
15 say, I don't need that, I'll decide it on the papers.

16 THE COURT: Some courts say that they need the papers
17 to make that decision.

18 MR. HILLIARD: Yes.

19 THE COURT: So --

20 MR. HILLIARD: Simply a conversation to be sure that
21 nothing is wasted and that we stay directed in regards to where
22 I sense you want us to go, and I didn't mean to suggest we need
23 more time with the court, but I do want to be able to point out
24 just generally that this issue is basic and it's going to take
25 some court time. And maybe you're right; maybe it's not going

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1 to take anything different than what we've already done, but --

2 THE COURT: All right. Well, why don't you guys
3 discuss whether there's anything beyond what we've already
4 done. I think I laid out a pretty elaborate schedule and one
5 that should enable you to raise any issues that you feel the
6 need to raise and certainly shouldn't prejudice you from doing
7 so. So I think it suffices. If you think that there's
8 anything on top of that that is necessary, then you're welcome
9 to propose it to me. I think you guys should also discuss when
10 you think makes sense in terms of the Daubert motions, and that
11 is one thing I plan to ask you about today is what I can expect
12 on that score, whether you anticipate the need for a hearing.
13 My preference is not to hold a hearing unless it is necessary,
14 unless there is a basis in the law to have a hearing, or I
15 can't decide something without having a hearing. I don't like
16 to hold hearings or conferences or anything of that sort just
17 for the sake of doing so. I'm not interested in that.

18 So talk to one another. You have a better sense than
19 I right now what the nature of those motions is going to be.
20 So if you guys both agree that there's a need for a hearing and
21 you think that it makes sense to do that before the trial
22 begins, then I'm not promising you I can do that but I will do
23 my best to accommodate that. If you think it makes sense to
24 hold the hearing during trial when the experts will be here --
25 I don't know when they will be testifying -- I'm always happy

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1 to do that. My trial schedule should enable us to take time in
2 the afternoon when the jury has been sent home to do certain
3 things like that. So I'm open to all sorts of things and I'm
4 happy to work with you, within reason. Within reason. So
5 discuss it with one another and you're welcome to propose it to
6 me, and we can take it one step at a time.

7 My bigger -- I know Mr. Berman just gave you a note,
8 so --

9 MR. HILLIARD: I was almost ready to sit down. And I
10 have round two now.

11 THE COURT: All right. My bigger question is, I mean,
12 putting aside the fact that there are a lot of issues to decide
13 and I will do my best, or I will decide them, quite simply, are
14 there bigger issues that could potentially make the trial date
15 problematic? And that's why I asked about the appeal question.

16 MR. HILLIARD: So, no. There are some things we would
17 like to, after the hearing, share with the court generally in
18 your scheduled conference, but it should not affect the trial
19 setting, but that will be at that time.

20 The note Steve, Mr. Berman passed to me was something
21 we talked about this morning, and that is, we're hoping to get
22 with GM and prioritize the motions in limine to make sure that
23 the ones that we all agree are the top ten have enough
24 attention to be addressed, just by way of a heads up.

25 THE COURT: All right. And I would invite you to

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1 submit a joint letter to me. I mean, I'm already making my way
2 through them and I will tell you that I anticipate rendering
3 decisions in short order. There's obviously the holiday next
4 week that will make it a little more difficult, but in short
5 order on the motion to compel, which has obviously been pending
6 for a little bit, as well as the first few motions in limine,
7 and I intend to continue to render decisions on a rolling
8 basis. But I think what would be helpful to me is if there are
9 motions that have the biggest impact in terms of your trial
10 preparation, I'm happy to have that information and take it
11 under advisement in terms of deciding what I should and
12 shouldn't prioritize. So if you want to discuss that with one
13 another and let me know, more information is always better than
14 less. Or not always true. But anyway.

15 MR. HILLIARD: And the other thing we discussed is,
16 depending on the court's ruling and timing of the crime fraud
17 issue, there will be documents that might be made available to
18 the plaintiffs that would necessarily need to be part of the
19 first trial, and again, just if there's a way to understand,
20 nonobliquely, the timing of that, it will factor into the
21 practicality of the schedule itself.

22 THE COURT: All right. I hope to get you a decision
23 on that, if not next week before the holiday, then certainly
24 early the following week at the latest.

25 MR. HILLIARD: Thank you.

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1 THE COURT: But to put the question bluntly to you, if
2 there are any appeals from Judge Gerber's judgment to be
3 entered, you do not anticipate that those would have a material
4 bearing or an impact on the trial, first trial.

5 MR. HILLIARD: I do not anticipate that, no, sir.

6 THE COURT: Okay. Very good.

7 Anything else to be said on this score?

8 Yes, Mr. Godfrey.

9 MR. GODFREY: In fairness to the court, I think the
10 one set of motions that will have a time component of
11 significance and that -- I'm hoping the motions will at least
12 elucidate the general guidelines, but that I think the court
13 will have us spend a certain amount of time at the start of
14 trial is with respect to what is the nature and quality of the
15 evidence and how it might be used with respect to punitive
16 damages. So I know your Honor is intimately familiar with what
17 Judge Gerber has written, but there is going to be a sharp
18 dispute amongst the parties with respect to the nature of
19 imputed knowledge and what can be said or not said about that.
20 We intend, as part of our amended motion in limine no. 7, to
21 seek rulings on that which then should be applicable to any
22 number of pieces of evidence, either keeping them out or
23 cabining their use, but that issue is not ripe for the court
24 currently until it's briefed in contemplation of the motion in
25 limine no. 7 revised and the summary judgment motion, but as

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1 the court knows, it will elucidate general principles that then
2 have to be applied to specific pieces of evidence, and so we
3 will try to identify as much of that in the motion as we can,
4 but it's going to be, I suspect, because of the parties'
5 differing views on this, a matter of sharp contention from the
6 very start of the trial and I want to alert you to that. I
7 don't have a solution other than we've got to start with the
8 motion papers, get a decision, and then try to apply it. But I
9 think if you think about ten documents that were all GM
10 documents, how they lay foundations, what are they going to use
11 it for, there's all kinds of basic questions, and we have a
12 view on it, based upon Judge Gerber's opinion. Your Honor may
13 or may not see the world the way we see it based upon that
14 opinion, and certainly the plaintiffs will not see the world
15 the way we see it, but that issue is going to be replicated
16 piece of evidence by piece of evidence, and I don't have a
17 solution yet other than the two motions to elucidate the
18 general principles or ruling from the court hopefully that
19 could be applied with the work of counsel so that we don't
20 interrupt the trial. But I wanted to identify -- if you wanted
21 to say one issue which has a time component that will be
22 continuous throughout the trial, that is the issue.

23 THE COURT: All right. I understand that. And I
24 think that is the elephant in the room that Mr. Hilliard
25 alluded to earlier.

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1 I'm just thinking out loud here, and maybe I'm off
2 base, and again, that can be dangerous, but I'm going to do it
3 anyway. One thing to think about here is what my role is
4 versus a jury's role. And I don't know the answer to that
5 right now, but Judge Gerber in his opinion was very clear that
6 the question of imputation has to be decided in context and
7 it's very fact specific and so forth and, you know, it may be
8 that it's my role to play in a gatekeeping capacity. He's
9 played his gatekeeping role. Now we're at the second gate.
10 And the decision is mine to make based on whatever factual
11 showings are made. Or I don't know. And maybe these aren't
12 mutually exclusive. Maybe the jury is to be instructed that it
13 can only consider, you know, knowledge, whether it's documents
14 or through particular witnesses, if they find X, Y, and Z, and
15 the question is how they should be instructed with respect to
16 that, and to the extent that there are fact disputes or not,
17 that the question is up to them to decide whether the
18 particular circumstances justify imputation. Again, I guess
19 thinking out loud just in the sense of identifying that as an
20 issue that I think you may want to give some thought to, and
21 maybe it's not an issue, but you may want to address.

22 MR. HILLIARD: On that issue, Judge, I mean, Judge
23 Gerber's decision was thorough and clear. To quote a respected
24 jurist, GM may not like that decision but it is what it is.
25 And we believe it's a weight issue, not an admissibility issue.

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1 And the second gatekeeper issue, as you pointed out,
2 doesn't seem to both make much judicial timing sense or have
3 any support, so the fundamental issue is going to be, given
4 Judge Gerber's decision, is the evidence now admissible and it
5 goes to the weight because the objections and the time that
6 we're going to spend now is, Judge Furman -- this is GM
7 talking -- Judge Furman, you need to be the gatekeeper. You
8 need to decide, based on a number of factors, whether any of it
9 comes in, and but for the rules of evidence in regards to
10 general admissibility, our dispute is -- sharp may not be the
11 strong enough word.

12 THE COURT: All right. Well, we don't have to argue
13 the merits of the issue now. It sounds like I didn't need to
14 alert you to that being an issue. It may be --

15 MR. HILLIARD: We're all sensitive to it, your Honor.

16 THE COURT: Yes. I do think the relevant question of
17 whether it goes to admissibility or weight is obviously one
18 that you should address and I will need to address.

19 All right. Anything else that we need to discuss on
20 the bankruptcy proceedings front?

21 Very good. Let's move to coordination of related
22 actions. One word on that. I obviously entered an order with
23 respect to GM's letter, and I don't want to run afoul of Judge
24 Gerber's ruling by saying GM. When I say GM in this context
25 it's New GM.

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1 With respect to GM's letter concerning the Prospere
2 matter, just to flesh that out a little bit, I'm obviously
3 acutely sensitive to the desire and advantages of coordination
4 here and I think I've gone to great lengths to promote
5 coordination with other courts presiding over similar cases,
6 but I guess to spell it out a little bit further, I see the
7 need for coordination where -- and maybe this is not an
8 exhaustive list, but where there's a danger of inconsistent
9 rulings on major or material issues, and mostly obviously if a
10 decision I've already made is binding under the law to where
11 there's a danger of inefficiencies and unnecessary expense,
12 that is to say that to the extent that we can coordinate to
13 minimize the cost for parties in the MDL and parties in
14 parallel actions, I think obviously steps should be taken to do
15 that; and, relatedly, to minimize or eliminate scheduling
16 conflicts on the theory that one person can't be in two places
17 at the same time. In my view it doesn't mean that anything and
18 everything relating to the General Motors in the United States
19 is something that I need to stick my nose into and intervene
20 in, and I'm not suggesting that GM has taken that approach, but
21 I guess with respect to Prospere, it just didn't strike me as
22 an issue that fell into any of the three categories that I just
23 mentioned. And I also think that the law can and does and
24 should tolerate some degree of judges reaching different
25 decisions on things; again, unless they're sort of material or

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1 significant or it's an issue that a decision has been rendered
2 on that is binding under the law.

3 So with those remarks, I don't know if anything
4 further needs to be said with respect to Prospere. I know that
5 there's a hearing this afternoon in that matter, but I'm happy
6 to give you an opportunity, Mr. Godfrey, and then ask if there
7 are any other updates that I should be aware of.

8 MR. GODFREY: Thank you, your Honor. I think the
9 fault lies with us for not spelling out our concern. When I
10 was preparing for the hearing, I realized that we did not lay
11 out precisely what the concern was with the Prospere case. And
12 also, unfortunately, I think it may be a bit premature, but
13 we're concerned about the camel's nose under the tent.

14 The concern about Prospere relates to the following:
15 There's a 30(b)(6) deposition notice with respect to the
16 Valukas report, and depending upon how the court rules, either
17 the deponent is going to be in a position of saying essentially
18 this is what the report said, that's what the company was told
19 by Mr. Valukas in the report, which is already a matter of,
20 under 502(d), public record, and that's pretty simple and
21 straightforward. It does not implicate the kinds of concerns
22 that this court has identified. Our concern was that if the
23 court interprets or enforces the Rule 30(b)(6) deponent that he
24 is supposed to know what Mr. Valukas knows and have access to
25 what Mr. Valukas had access to, then that will be squarely in

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1 violation of this court's January 15, 2015 Valukas materials
2 opinion, as well as this court's two August orders with respect
3 to the limitations on the Valukas deposition. So the question
4 is the interpretation by the court and what the plaintiff's
5 lawyer specifically is asking for vis-à-vis with respect to the
6 corporate knowledge of the corporate representative. If it's
7 the latter, then we've got a serious problem because it's just
8 a way of piercing and circumventing this court's correct
9 orders. If it's the former, then it was premature. But we
10 didn't spell that out, for which I apologize, and that was the
11 thrust of it. Our thought was, if the court had been
12 interested in -- and if we'd been clear in what we were
13 interested in having the court do -- having at least a
14 conversation with the state court judge to make sure which side
15 of the line the court was thinking here, was it just a 30(b)(6)
16 based upon whatever the Valukas report itself said and nothing
17 more, or are they expecting the corporate representative to
18 somehow know what Mr. Valukas and the Jenner & Block people
19 know, which is squarely in violation of what this court said
20 which is not going to happen because Mr. Valukas is not going
21 to share those materials.

22 So that was the point of Prospere. We otherwise agree
23 with your criteria. It makes sense to us. So that was the
24 gist of it. But we didn't spell that out and we should have
25 done that. So that was the concern we had.

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1 THE COURT: All right. That's helpful. Let me just
2 say one comment in response. I think that is a legitimate
3 concern if the deposition went in that direction as you
4 described. But there is a little bit of a nuance here. I
5 would not construe my rulings as saying that, for example,
6 inquiry or a deposition taken with respect to the corporate
7 culture at GM, I mean, the subject matter of the Valukas
8 report, my ruling should not be read as immunizing GM from any
9 discovery with respect to those issues either in the MDL or
10 elsewhere. Right? It doesn't mean that just because
11 Mr. Valukas interviewed witnesses and rendered a report with
12 respect to those issues that nobody is entitled to ask
13 questions about that stuff and so forth. I agree with you that
14 they can't get access to the materials, the underlying
15 materials, and in that regard it would be problematic if now
16 they or if any other court tried to do that or to demand that
17 Mr. Valukas share whatever information he got from those
18 witnesses beyond what's in the report and so forth. But I
19 don't think it means that a 30(b)(6) deposition can't be taken
20 with respect to matters that happened to be addressed in the
21 Valukas report. I assume you're not taking that position.

22 MR. GODFREY: No, your Honor. We are strictly
23 concerned with, looking at the rulings or the implications of
24 this court's rulings, whether or not they would be interfered
25 with by another court, and so as I say, on one level it was

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1 premature, but we usually try to head these things off at the
2 pass before we have to deal with an adverse ruling because we
3 really want to avoid putting this court in a position where it
4 essentially has to intervene affirmatively in a very dramatic
5 way in this context. So we are trying to head this off, and
6 that was the point of the letter. But again, we didn't spell
7 it out as we should have spelled it out, and I apologize. We
8 had similar earlier letters on this, and I think when we wrote
9 it, we just had assumed some facts that were not obvious to me
10 when I read the letter. So I understand why the court had the
11 reaction it did, but that was the explanation for the reason we
12 did it.

13 THE COURT: All right. Well, I appreciate that, and
14 that's helpful.

15 With respect to any other matters, obviously I read
16 the letter you submitted yesterday so I assume that's the last
17 word on this, but anything else that I should be aware of or
18 concerned about?

19 MR. GODFREY: No. We continue to have concerns about
20 the same familiar cases that you have heard about at every
21 status -- the Alden, Felix, and Shell cases in St. Louis -- but
22 they continue to hop along where those concerns have not yet
23 come to a sharp point where we actually need immediate
24 intervention. We will continue to advise the court with
25 respect to those cases. But those cases I think will continue

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1 to be on the list for some time, and we'll see how it plays
2 out.

3 THE COURT: And am I correct in recalling that those
4 cases are now in some sort of appellate posture?

5 MR. GODFREY: Yes. It's complicated.

6 THE COURT: All right. Why don't we --

7 MR. GODFREY: I could go into long detail where the
8 writ was denied when the writ was filed, but generally, yes,
9 it's a bit complicated from an appellate perspective at the
10 moment.

11 THE COURT: All right. Well, I think the keywords
12 were that I don't need to do anything yet, and I appreciate
13 your continuing to keep me under advisement, and you should
14 obviously not be shy and I imagine won't be shy if the time
15 comes when you think action is called for.

16 All right. I'm assuming that covers the related
17 actions topic and we can move on to the next, unless somebody
18 has anything else.

19 Very good.

20 Unless you have anything you need to discuss on the
21 document production or deposition update front, I think that
22 your letter is sufficient, and nobody is standing, so we can
23 proceed to the bellwether expert discovery question. And is
24 there anything to discuss on that?

25 MR. BROCK: Your Honor, just by way of brief update,

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1 we have received service of the plaintiffs' rebuttal reports
2 pursuant to your Honor's order. We are still in the process of
3 taking those depositions. We do believe that there are some
4 opinions that are outside the scope of proper rebuttal, but
5 we'd like to finish these depositions, and I think our approach
6 would be to bring forward issues related to the Scheuer case
7 first, since it's the one that we need to give some attention
8 to, and then as to the other cases, to the extent that we have
9 objections to the scope of the expert opinions, we would set up
10 a schedule for working those out as they come.

11 THE COURT: All right. And with respect to the
12 Scheuer -- is it "sure" or "shower"? Does anybody know?

13 MR. HILLIARD: We've been working on that, Judge. We
14 think it's like lawyer with an S, so it's "shoy-er."

15 MR. BROCK: It's Oklahoma, so it sounds a little
16 different.

17 MR. HILLIARD: Right next to Texas.

18 MR. BROCK: Yes.

19 THE COURT: With respect to the Scheuer matters, would
20 that be done by way of a motion in limine?

21 MR. BROCK: I think we would probably think about
22 these in the context of a motion in limine or maybe even
23 include it as part of motions that we might file in the Daubert
24 space, but I think that, you know, certainly we can have that
25 teed up in time for the court's status conference in December.

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1 THE COURT: All right. And I think the deadline for
2 those motions is the same anyway, so --

3 MR. BROCK: Yes, sir.

4 THE COURT: Very good.

5 MR. BROCK: Thank you.

6 THE COURT: All right. Mr. Hilliard, anything you
7 need to add on that?

8 MR. HILLIARD: No, Judge.

9 THE COURT: All right. Next item is purported other
10 similar incidents, and obviously this is raised to some extent
11 by GM's motion in limine no. 11, which I've taken a look at and
12 I think the opposition is due today, but I take it the issue is
13 raised because, as I understand it from GM's filing, their
14 concern is basically, unless they have a better idea about what
15 evidence the plaintiffs want to offer on this, that it's hard
16 for them to tee the issue up for me to decide any disputes. Is
17 that a fair statement, Mr. Godfrey? Microphone, please.

18 MR. GODFREY: That's a fair point one. Let me add a
19 little more color to it for the court. 31 of the 58 witnesses
20 plaintiffs listed on their witness list earlier this week are
21 purely OSI witnesses from other incidents. Are we really going
22 to have to take 31 depositions for seven or ten mini trials on
23 other incidents between now and December 15th? I mean, is
24 that a serious proposition by the plaintiffs, 31 of 58? Seven
25 to ten different accidents? Seven to ten different mini trials

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1 within mini trials? Talk about a diversion of jury resources.
2 We'll be here till June, and we won't be talking about the
3 Scheuer case.

4 Second, I think it would be helpful if we could get
5 promptly, within a couple days, who the real OSI candidates
6 are, both for purposes of briefing the remainder of the motion
7 in limine no. 11 but also, if we're going to really have to
8 address seven to ten accidents, this exhibit list we're putting
9 together is expanding massively, because we will defend those
10 cases, we will defend the facts. We will show what actually
11 happened. But that's a serious issue. I mean, our exhibit
12 list is due Monday, the 23rd. We're going to just have to be
13 doing massive dumps of exhibits, and we won't even have them
14 all by then, given this. So this is a serious issue that can
15 get fleshed out. It's got trial implications, both length of
16 trial and confusion and diversion of resources, and it has huge
17 resource issues. We could take the 31 depositions between now
18 and December 15th. That is not a problem for our side. But
19 is that really what people want us and need us to do? So I
20 understand that they want to put in OSI. We have a motion in
21 limine about that. We will continue briefing it. But I did
22 not expect to see 31 witnesses of the 58 in total dealing with
23 OSI on the witness list that we got, which implies seven to
24 ten, or maybe more than that. At some point I just said, okay,
25 I get it, this is basically trials within trials within trials.

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1 So this has got some serious implications, including burdens on
2 the court. So that's what this is about. That's our concern.

3 THE COURT: All right. Mr. Hilliard, again, I don't
4 really want to argue the merits now. You'll have an
5 opportunity to address those, and I'll consider them. I will
6 say that Mr. Godfrey's description gives me some pause. I
7 think you may be entitled to introduce some other acts
8 evidence, or OSI, as you guys called it, but at the same time,
9 under Rule 403, at some point enough is enough and it will be
10 cumulative, and in the interests of the jury and me and you,
11 I'm not going to let you -- I mean, the focus of this trial is
12 on Mr. Scheuer and what happened to him. That is the focus.
13 So, I mean, my concern right now is just making sure that
14 everybody has enough time to do what they need to do and
15 decisions are made in a timely enough fashion to allow you to
16 do that.

17 MR. HILLIARD: Pause was Mr. Godfrey's goal, Judge,
18 and with all due respect to this court, OSIs are admissible to
19 help prove causation. General Motors killed and injured a lot
20 of people. They have an absolute right to stand up and say
21 what the differences are, as do we have an absolute right to
22 put on a reasonable number of other similar incidents in
23 support of our burden and our responsibility to prove
24 causation. It is admissible directly in regards to that
25 responsibility.

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1 I agree with Mr. Godfrey that it will be trimmed down.
2 It historically starts with a larger number and gets trimmed
3 down. The courts have, in my personal experience at trials,
4 finally said, okay, pick your three or pick your four, whatever
5 it is, but I would really ask the court not to be dissuaded or
6 discouraged by, you know, the doomsday scenario that my friend
7 Mr. Godfrey just painted for you. These are individuals who
8 have -- without arguing the facts, Judge, we'll get into it,
9 but they are other similar incidents that we carefully picked
10 out that we have support and testimony for, and we would like
11 to have permission, ultimately, after the briefing and a little
12 more substantive evidentiary argument to the court, to put some
13 on.

14 THE COURT: Okay. And again, I'm not going to give
15 you a ruling on that.

16 MR. HILLIARD: I know.

17 THE COURT: And I read GM's opening brief and motion
18 in limine no. 11. I don't think they are taking the position
19 that you're not entitled to introduce any OSI. The question is
20 just whether it is properly admissible and at some point
21 whether it is cumulative, I think. I think Mr. Godfrey's point
22 is well taken that they need to have a sense of what they're
23 defending against in order to prepare for trial and take
24 whatever depositions need to be taken and the like, and I think
25 that is a fair point, and in that regard, I don't think it's

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1 fair to say, you know, here are 30 incidents and we don't know
2 which we're going to put on yet so you need to basically be
3 prepared for any and all.

4 So I'm open to suggestions about how to proceed here,
5 but it's November 20th and the deposition deadline is
6 December 15th and the motion deadline is December 4th and
7 trial date is January 11th, and that doesn't give you a whole
8 lot of time to flesh all this stuff out.

9 MR. HILLIARD: I understand and I hear you, Judge, and
10 what I'll do is, right after the hearing I was visiting with
11 Mr. Pixton about some of these individuals and who they are.
12 We'll take it as an indication from the court that we'll trim
13 it down and we will get to a workable list on our end and
14 present it to General Motors with, you know, this is our, you
15 know, cut-to-the-bone list, and then we can decide if they
16 still object to the number, independent of the right to bring
17 it in, but I hear what you're saying and I'll do that.

18 THE COURT: All right. Well, why don't you guys talk
19 about it today. You have more interest than I have in making
20 sure you talk about this and bring it to my attention swiftly.
21 So be mindful of the deadlines, and you need to do whatever you
22 need to do by those deadlines, so do what you need to do to
23 figure out as much of this as you can.

24 MR. HILLIARD: Okay.

25 THE COURT: Yes, Mr. Brock.

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1 MR. BROCK: Your Honor, assuming we get a small number
2 of names and complete some discovery on those issues, by the
3 time we do that, we are going to be outside the motion practice
4 deadlines that are in place, and I think what we would probably
5 like to do is, at some point, I'm not sure if it's the week
6 before trial, but at some point to actually have a hearing on
7 these matters to discuss, are they similar; if some evidence is
8 going to be admitted of the matter, in what form will it be;
9 will it be through a plaintiff from another case; would it be
10 an expert talking about it potentially; what's the form; and I
11 think also, to look at the issue of whether or not it
12 demonstrates the purpose for which it is being offered. So
13 we've identified these 31 names and referred to using the
14 evidence for various purposes, but we don't know which case
15 goes with which purpose. There's no way for us to discern that
16 at this point. So if we have an understanding of that, then we
17 can have a reasonable presentation to the court on our position
18 on those matters.

19 THE COURT: All right. Discuss it. I would say,
20 again, I don't like to have conferences or hearings for the
21 sake of having conferences and hearings, so I'm not persuaded
22 ex-ante that I'm going to need to have a hearing on this issue.
23 I think in my experience these types of things are usually done
24 on the papers, and if that can be done here, I would obviously
25 prefer to do that. It's in everybody's interests just from a

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1 time perspective. So talk about it. Maybe some of these
2 issues are going to go away. I'm not deciding anything now,
3 but I find it hard to believe that all OSI would be precluded
4 and I find it hard to believe that 31 witnesses relating to OSI
5 are going to come into this case. So somewhere in the middle
6 is going to be the sweet spot, and if you guys can get there on
7 your own without my assistance, that would certainly be ideal
8 and I think will facilitate doing everything that you need to
9 do. But if you need my assistance, then I'll make as quick a
10 decision on those issues as I need to, and if you need to take
11 depositions or raise issues out of time, then we'll deal with
12 that as it comes, but obviously I would like to keep to the
13 schedule as much as possible, as I think I have made clear.

14 All right. Anything else on that front? Very good.

15 Next is the proposed or the pretrial deadlines for
16 bellwether trial 1, for Scheuer. I think for the most part
17 that issue is being resolved through order no. 85, which I
18 thought it would be in everybody's interest to just put in one
19 order what all the relevant deadlines are. I think I got them
20 all, but maybe I missed some.

21 There is a question in here with respect to the
22 substance of pretrial memoranda, and let me comment upon that
23 in a moment. I'm not persuaded that you need to give me
24 pretrial memoranda. I think my rules basically allow for it
25 because there are cases in which it makes sense and is

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1 appropriate and there are legal issues that may need to be
2 addressed. I find it a little hard to believe, given that I am
3 likely to get somewhere in the neighborhood of 30 motions in
4 limine, summary judgments, and Daubert motions, that there is
5 going to be anything left to be said here. So I would
6 discourage you from filing pretrial memoranda unless you think
7 that there is something else that really necessitates it. What
8 I really don't want is a brief in which you regurgitate
9 material that appears elsewhere because I guarantee you, I will
10 read everything that you file, and I don't need extra pages of,
11 you know, the same stuff repeated. So take that under
12 advisement. Discuss with one another. Perhaps if you think
13 there are appropriate issues relating to the jury instructions
14 or the like, obviously, as I've tried to stress, to the extent
15 that we can resolve legal issues in advance, so that everybody
16 knows where things stand and is on the same page, that is
17 definitely my preference, and particularly with respect to
18 issues that are likely to impact openings or the presentation
19 of evidence, I think it's in everybody's interest to be on the
20 same page or for me to render and resolve any decisions. So if
21 you think that there is anything that needs to be vetted and
22 briefed beyond motions in limine, the joint pretrial order, the
23 jury instructions, the Daubert motions, and the motions for
24 summary judgment that you are already going to be filing, and I
25 doubt there is, then talk to one another and you can propose

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1 that. In fact, thinking out loud, what I'm going to say is,
2 I'm not going to allow pretrial memoranda unless you
3 demonstrate good cause for the need for it. So talk to one
4 another, and if you think there's anything else that needs to
5 be said, you can propose pretrial memoranda on that issue, but
6 I think you have ample opportunity to raise whatever you need
7 to raise.

8 I've already gotten some of this sense, but I
9 mentioned that I wanted to get a better sense of what's coming
10 down the pike so I can plan my time accordingly. I take it
11 from inquiries that my law clerk has made that both sides
12 anticipate somewhere between five and ten more motions in
13 limine before the December 4th deadline. Is that a fair
14 statement, Mr. Godfrey?

15 MR. GODFREY: Well, yes. I think we have a list of
16 six. Whether we file them all, I have to review them, and I
17 don't know that we'll file all of them, but whatever we have
18 left will be filed by December 4. But the maximum is six. I
19 hope to weed it down a little bit in terms of number, but I
20 have to review them, and I've only reviewed two so far, and one
21 of them may have been mooted by a motion they filed yesterday,
22 so we may be filing a response to something as compared to
23 filing a motion on something.

24 In terms of Daubert, we're looking at two or three, I
25 think, and when Mr. Brock and I have time, and Mr. Dreyer,

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1 we'll sit down, we'll figure out what we think about that, and
2 we may propose just a single brief that would reduce the number
3 of pages. Right now we have 15 pages per motion. We may have
4 something where we say we have fewer pages, in just one single
5 brief, because there are some unifying themes to that. I just
6 haven't had a chance to sit down with Mr. Brock and Mr. Dreyer
7 to go through in precise detail which ones we want to file and
8 the basis for it. So there will be Daubert motions, but we're
9 thinking of filing a single one with more than 15 pages but
10 less than we otherwise would do if we broke it up by witness,
11 and we don't yet have a number on that, but I think it's two or
12 three we're talking about at the current time.

13 THE COURT: Okay. And motions for summary judgment,
14 you've already indicated that you do intend to file something.
15 Can you give me a sense of what that is likely to look like.

16 MR. GODFREY: Well, it's a motion for summary judgment
17 so it will -- on the basis of the law and disputed facts --

18 THE COURT: I got that.

19 MR. GODFREY: I'm not really sure what you're asking,
20 your Honor. If you want a preview of it --

21 THE COURT: Is this a motion that, if granted, would
22 dispose of the case? Is this a motion to pare down the
23 evidence? Is this --

24 MR. GODFREY: It's a motion that, if granted, will
25 dispose of the case, but it also has specific elements for each

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1 count, so it's conceivable you could say, well, I'm going to
2 deny as to the case but I'm going to get rid of Counts 1, 3,
3 and 5, for example. There are element problems and there are
4 legal problems, and so it is a motion that can be both case
5 dispositive or count dispositive. At a minimum we believe it
6 should pare down the case substantially, but that's in the eye
7 of the beholder, obviously.

8 I apologize. I wasn't sure what you were asking me
9 for, your Honor.

10 THE COURT: I know what a summary judgment is. That
11 wasn't what I was asking.

12 MR. GODFREY: I could go into some detail what we have
13 in mind, but I didn't think you were asking for that either.

14 THE COURT: No. If I'm not mistaken, that motion
15 doesn't get fully briefed until I think December 21st.

16 MR. GODFREY: Correct.

17 THE COURT: That doesn't leave a whole lot of time for
18 me to decide it and you guys to deal with whatever the
19 implications of that decision are, and maybe that's just what
20 it is.

21 MR. GODFREY: I don't know how to accelerate that any
22 more than we are, but --

23 THE COURT: All right. Fair enough.

24 Mr. Hilliard?

25 MR. HILLIARD: I know we're getting closer to trial

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1 when things have to be taken somewhat with grains of salt here,
2 Judge, but for your benefit, we're filing no summary judgment
3 motions. We have approximately four Daubert motions we're
4 going to file. And we filed two motion in limines yesterday.
5 And that's kind of up to speed on where we are and where we
6 expect to go.

7 THE COURT: Meaning you don't anticipate filing more
8 before the December 4th deadline?

9 MR. HILLIARD: I sent a text right now to confirm
10 that, Judge. Subject to me standing up in ten minutes saying I
11 was wrong, I do not, but please allow me that option just in
12 case I've misspoken on that one issue. We have someone else
13 working on that detail.

14 THE COURT: All right. I'm not asking because I'm
15 limiting you to whatever you tell me now. I just --

16 MR. HILLIARD: I got you. I see.

17 THE COURT: So if you get more information, share it,
18 please, but --

19 MR. HILLIARD: No note this time. But at least two
20 more, Judge. He didn't have time for the note, and his writing
21 is illegible anyway.

22 THE COURT: All right. Okay. And why don't you guys
23 talk to one another about the Daubert motions. I think it
24 probably would make sense, just to eliminate redundancy, to
25 perhaps have both sides just file it in the form of a single

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1 memorandum, which obviously would need to be longer than the 15
2 pages that I've allotted, but maybe it's better to proceed
3 semiseparately. I don't know. You guys can talk about that
4 and discuss what you think makes sense, and I'm happy to
5 consider whatever proposal you have on that.

6 Mr. Brock.

7 MR. BROCK: Yes, your Honor. Just on the issue of
8 proposal, I was just thinking about the OSIs, if I could go
9 back to that for just a minute. It seems to me that it would
10 be beneficial for us, if we're going to deal with the issue on
11 the papers or at least have that as an option, that once we
12 have an understanding of the reasonable number of OSIs that
13 plaintiffs will advance, perhaps we should submit a briefing
14 schedule for that issue, and if it can be done with papers,
15 understood. If you thought a hearing would be beneficial, of
16 course we'd be open to that also. I'm just worried if we just
17 let this bump along and don't have a schedule for addressing it
18 that it's going to catch us at the very end.

19 THE COURT: All right. Tell you what. I want a
20 letter by Tuesday morning at 10 a.m. updating me on where your
21 discussions stand, whether and to what extent the list has been
22 pared down through agreement and discussion, and, to the extent
23 that there are any remaining disputes, proposing a method and
24 schedule to resolve it. All right?

25 MR. BROCK: Yes, sir.

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1 THE COURT: Going back to the motions in limine,
2 Mr. Godfrey already indicated that GM would be refiling a
3 version of no. 7 in light of the bankruptcy court's ruling.
4 Are there any others that have been mooted or materially
5 altered by that ruling, or by the amended complaint?

6 MR. GODFREY: No, your Honor.

7 Two additional points, though. One is, our original
8 motion in limine no. 2, which we withdrew, to make sure that we
9 weren't tripping over any issues with the DPA, we're not going
10 to need to refile that because Mr. Hilliard has filed a motion
11 to keep spoliation issues out, so that issue will be joined now
12 in response to Mr. Hilliard, so just so that the court is aware
13 that that's how that will get played out.

14 And then secondly, it occurred to me that we have
15 pending motion in limine no. 11 on the OSI. As part of this
16 discussion we're going to have with plaintiffs' lead counsel,
17 it may be the most efficient for the court that we somehow bind
18 this all in a series of briefs all related to motion in limine
19 no. 11. In other words, rather than two separate tracks, OSI
20 in general and motion in limine no. 11, and then the specifics,
21 there may be some logic to combining them all so the court only
22 decides this issue once with everything before it. Mr. Brock
23 and I were just discussing it, so we'll discuss that with them
24 as well. So in our letter on Tuesday, next Tuesday, we may be
25 proposing something about modifying the schedule on OSI no. 11

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1 if it makes sense to do so from an efficiency perspective. I
2 just don't have a judgment on that yet until we have further
3 discussions with the plaintiffs.

4 THE COURT: All right. Maybe I wasn't clear enough.
5 That is precisely the sort of thing I want you to discuss, and
6 if you think there is a better way to deal with it on a
7 separate briefing schedule, I mean, I read motion in limine
8 no. 11 as basically laying down a marker as to what kinds of
9 OSI you think are admissible and saying we need a better sense
10 of what plaintiffs are proposing, so in that regard I agree
11 with the latter, that you're now going to talk about it, and I
12 want to know by Tuesday where things stand and, to the extent
13 that you have identified issues that really do need to be
14 litigated, the best way to go about that. So in that regard I
15 think motion in limine no. 11 is almost moot in the sense that
16 whatever you propose on Tuesday will end up, you know,
17 addressing and encompassing what has already been briefed in
18 there. Does that make sense?

19 MR. GODFREY: It does. I just wanted to let the court
20 know that I think as part of our letter on Tuesday we should
21 say something about motion in limine no. 11 because otherwise I
22 think it will be unclear to the court, perhaps the parties, as
23 to what role that has in light of this morning's discussion, so
24 I think we'll bake that into the letter and figure that out.

25 And then on the spoliation issue, we may, in response,

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1 seek our own relief on that. I don't know because I haven't
2 had a chance to read much of their motion yet. But our no. 2
3 is now going to be part of this response to the plaintiff, even
4 if we have a cross-motion as part of it. But we'll figure that
5 out. But we have mirror image motions I guess is the way I'd
6 put it, at some level.

7 THE COURT: I got you.

8 Okay. Mr. Hilliard.

9 MR. HILLIARD: I have an updated number, Judge. I
10 think we have a total of five yet to be filed.

11 THE COURT: Okay. That includes Mr. Berman's two?

12 MR. HILLIARD: Yes, it does.

13 THE COURT: All right. Very good. So you'll let me
14 know by Tuesday at 10, and if you think I can deny motion in
15 limine no. 11 without prejudice to it being raised in whatever
16 way you propose, then that will make me happy. I'll get
17 another motion off my list, but not really.

18 All right. Anything else on that score?

19 MR. GODFREY: No, your Honor.

20 THE COURT: Very good.

21 Exhibit lists, demonstratives, deposition designation
22 procedures. What do we need to discuss on that front?

23 MR. HILLIARD: To keep the court updated and for the
24 staff too, we're intending to bring a part of a car as a
25 demonstrative exhibit, and we've talked to the courthouse in

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1 regards to the service elevator and the weight. It's going to
2 be cut in order to have the driver's seat, the steering wheel
3 as is in this make and model car. It couldn't come up this
4 elevator, but since I understand we're going to be next door,
5 that elevator is able to handle it, but I've been told by the
6 security fellows downstairs, you know, it's way above their pay
7 grade. I'm advising the court that we're hopeful to be able to
8 use that as a demonstrative exhibit at trial. We have logistic
9 issues about being sure that the security and maintenance and
10 administrative part of the courthouse is aware of it and we're
11 talking with them in realtime, but, you know, they always start
12 with, be sure your judge is aware of it. And it's not a whole
13 car, your Honor. That's the good news. But it's going to be a
14 piece of the Saturn Ion, the same make and model, and I think
15 that I need to let you know it's coming.

16 THE COURT: Okay. Couple things. One, I was planning
17 to discuss this in our session after the conference just
18 because it's more of a complication and not something that
19 there's any public interest in. It's not clear to me that the
20 trial is going to be across the street because there are a lot
21 of variables here, including your desires to have war rooms and
22 the like, and I will discuss the variables and the issues there
23 in our discussion later. But I just want to give you a heads
24 up about that.

25 MR. HILLIARD: That's good to know, because the size

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1 can be cut down to the elevator available, and this elevator is
2 much smaller, but we can still do it, but just so you know.

3 THE COURT: I guess the bigger question is, what's the
4 point of this? What do you get out of that as opposed to
5 bringing in however many pictures you want to bring in of the
6 car, other than the dramatic effect?

7 MR. HILLIARD: Well, it's not other than, Judge. It's
8 important, I think, to -- you know, part of this is the
9 ignition switch in relation to the plaintiff's knee. You know,
10 there's some issue about whether or not bumping of this key can
11 flip it to the auxiliary or off position. The predicate's
12 going to be this exact make and model car, this is the exact
13 seat in relation to the steering wheel, in relation to the key,
14 in relation to the stick shift, and everything else will be cut
15 away, and in order to more effectively talk about and
16 demonstrate the very core issue of this case, and that is the
17 location of the key in relation to the driver, in relation to
18 this specific man, you know, a picture is fine; a demonstrative
19 aid, if it's accurate and the exact make and model, in my view,
20 it's what demonstrative aids are meant to do, which is share
21 with the jury and give them the ability to really analyze the
22 issue. And I'm sensitive to the fact we're talking about a
23 car. I mean, I get it. I mean, it's clear to me -- that's why
24 I'm making you aware of it now, and it's clear to me that we
25 have to be sure that it's going to be on rollers, it's going to

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1 be easily moveable. We'll share it with GM timely pretrial so
2 they can comment on it. And I would at least like the
3 opportunity to keep moving forward with that idea before trial,
4 and if you decide to nix it the day before, that's fine. We'll
5 use pictures. I don't mind doing the effort and expense. I
6 think perhaps I'd like you to look at it if you're considering
7 not allowing me to do it and let me talk to you more about it.
8 Just initially, that's my offer.

9 THE COURT: All right. Well, I don't think it's ripe
10 to decide now, but I think there are limits, and you couldn't
11 bring a plane into the courthouse, and a car is closer to the
12 size of a bread box than a plane is, but it may be beyond the
13 capacity and reason of us to do, and you should be prepared and
14 have a backup plan, but it sounds like there's some work to be
15 done to figure out whether it's feasible and how difficult it
16 will be and the like.

17 Yes, Mr. Brock.

18 MR. BROCK: Of course we have one in development too,
19 so we'll have the same issue. And we think it could be
20 helpful. We have, you know, a different point of view in terms
21 of how it's helpful, but we have one in development also.

22 MR. HILLIARD: In that regard, if that's true -- and
23 we'll talk, you know -- perhaps we can agree to use one. I
24 don't mind. In past cases the manufacturer usually makes a
25 better exhibit than I do, and if it's fair and accurate, I'm

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1 happy to just share it. And we'll talk about it, Judge, as we
2 go forward.

3 THE COURT: Great. Why don't you guys discuss it.
4 And I'm a big fan of letting lawyers try their cases as they
5 would like to, and in that regard, if you think this is the
6 best way to present your case to the jury, I'm eager and would
7 like to accommodate it, but again, there are limits, so be
8 mindful of those and have a backup plan.

9 Any other issues on the exhibit list, demonstrative
10 and deposition designations front?

11 MR. BROCK: I have, your Honor, a comment and possibly
12 just in the form of a question, and that concerns the
13 deposition designation procedures. These will be coming in
14 pretty late in the process. I think, as your Honor is aware,
15 there have been about 85 or 87 company witness depositions that
16 have been taken to date, either present or former employees.
17 There are a few depositions -- it will be case-specific
18 depositions -- for which there will also be designations, I
19 anticipate. And I think one thing that I'm a little bit
20 worried about, and maybe this is where the question comes, the
21 testimony that the plaintiff will be permitted to utilize of
22 company witness depositions is largely going to be determined
23 by some of the court's rulings on motions in limine and that
24 type of thing. I don't know if their plan is to give us
25 designations on 50 witnesses or 20 witnesses or 10 witnesses,

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1 but I guess I was just wondering, is the court going to sort of
2 deal with tapes that the plaintiff might want to play in its
3 case in chief on a day-by-day basis in the course of the
4 trial -- I've tried cases where judges do that -- or are you
5 going to try to have it all sorted out before we start the
6 trial? Or is it something in between? I just didn't know, you
7 know, what the process would be for sorting out precisely what
8 would be played to the jury, precisely what exhibits might come
9 into evidence through those witnesses that are being presented
10 by video. That was basically my question.

11 THE COURT: So I'll have to answer in the abstract
12 once again, because I don't know what we're dealing with.
13 Obviously, all things being equal, my preference is to resolve
14 things in advance of trial rather than during trial, when it's
15 harder to adjust. So to the extent that things can be teed up
16 for me to decide and to the extent that I have enough time,
17 given everything else I need to do, not to mention my desire to
18 spend a little time with my family between now and
19 January 11th, then I'm happy to do that.

20 It sounds like this is another area where you guys
21 might want to talk and figure out if there's a rational way
22 forward. What I'd like to avoid doing is, if there are, you
23 know, hundreds of objections to deposition designations, I'm
24 happy to go through each and every one myself. I think what
25 makes more sense would be to sort of tee them up with sort of

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1 categories, you know, to the extent that there are categories
2 of issues that are implicated, that I could give you sort of
3 rulings with respect to those and then you could figure out how
4 they apply to the particular disputes.

5 The second concern I have is, in my experience,
6 parties often overdesignate, you know, out of an abundance of
7 caution and then things get pared down, and in that regard --
8 and I understand the reasons for that -- what I'm not
9 interested in doing is spending inordinate amounts of time to
10 resolve disputes over things that ultimately aren't going to
11 come in either. So I guess that is just by way of urging you
12 to really do your best to pare things down as much as you can,
13 mindful that the more you pare it down, the more likely you are
14 to get a ruling in a timely fashion from me.

15 So I don't know if I can give you anything more
16 specific than that at the moment, but I think to the extent
17 that you want to discuss and propose a procedure to resolve
18 those sorts of things, that would be helpful, and to the extent
19 that you're able to agree and minimize the number of issues for
20 me to decide, obviously that will make things easier as well.

21 MR. HILLIARD: It may be reversed, depending on the
22 court's ruling in regards to the DPA and some Valukas issues
23 will limit the amount of witnesses we might have to put on
24 through deposition, so we have page/line clips, and we're
25 mindful of the need to stay within the, you know, the trial

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1 days that the court wants us to, so we won't put on anything
2 extra, but some of the court's rulings to come will affect what
3 we're going to put on.

4 And the other issue, to give the court a heads up,
5 we've been talking with GM about our right to call live GM
6 witnesses. If they're going to call a live witness, we want to
7 have that witness available to us in our case in chief. And
8 they said no. So we're going to need to bring that up with the
9 court. I was told that kind of no. 9 is the time to give you a
10 heads up, that that issue is becoming ripe on whether or not
11 they're allowed to bring live witnesses without making them
12 available to us. Otherwise all of our GM witnesses will be by
13 deposition.

14 THE COURT: Okay. Well, we're not up to no. 9 yet,
15 but let me ask you, I encouraged you to submit a joint letter
16 sort of alerting me to which of the motions in limine you
17 thought were the biggest ticket items and would have the
18 biggest bearing on trial strategy and the rest of the things
19 that are coming down the pike. Is that something that you
20 think you can do by Tuesday at 10 a.m. as well? I recognize
21 not everything is filed.

22 MR. HILLIARD: That's all we're doing right now so the
23 answer is yes, and we appreciate you allowing us to do that,
24 Judge, because we know what we're giving you, it puts more on
25 your plate, just like us, so yes, the answer is yes.

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1 THE COURT: So in that letter by Tuesday why don't you
2 address that topic as well, and I can't guarantee that I will
3 decide it in the order that you all would like, but I'll
4 certainly do my best to help you out.

5 Anything else on item no. 8? Mr. Godfrey?

6 MR. GODFREY: Yes. On the exhibit list, your Honor,
7 in light of OSI discussions we'll be having, I'm assuming that
8 once we pare the list down, we'll be able to figure out what
9 exhibits are necessary because technically, under order 85,
10 paragraph 1(d), our exhibit list is due the 23rd unless good
11 cause is shown. I'm assuming good cause would be if we pare
12 down, because I don't want to have an exhibit list where we
13 just dump stuff on it because we don't know who's going to be
14 OSI or not on their list. So I'd like to have that
15 conversation, and once we figure out what witnesses they say
16 they need, then we can figure out what exhibits might relate to
17 those witnesses as compared to just having a list where we do
18 all this work and then find out that 80 percent of the work
19 we're doing is irrelevant and we've got a bunch of exhibits on
20 there that aren't necessary. So I flag that for the court
21 because the timing here is such that we're working on the
22 exhibit list but we don't have the OSI actual witnesses that
23 they say they're going to -- we haven't gotten that discussion
24 to pare it down yet.

25 THE COURT: Are you basically asking for permission

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1 to --

2 MR. GODFREY: Yes.

3 THE COURT: -- add later exhibits relating to the OSI
4 after that has been sorted out?

5 MR. GODFREY: After that's sorted out, yes.

6 THE COURT: All right. Mr. Hilliard? I don't have a
7 problem with that within reason. That is to say, depending on
8 what briefing schedule and the like you propose, I don't know
9 precisely when it will ultimately be nailed down. If they get
10 it down to, you know, a reasonable number but you think it
11 should be smaller, it may be that you should in fact add to the
12 exhibit list as to the larger number, even if ultimately it
13 gets pared down further, I guess is what I'm saying.

14 Mr. Hilliard.

15 MR. HILLIARD: In reading no. 8, Judge, we have also
16 asked GM for --

17 THE COURT: Can you just respond to Mr. Godfrey's
18 point. You weren't listening.

19 MR. HILLIARD: I was trying to listen, but I had to --

20 MR. BERMAN: I think Mr. Godfrey's point is well
21 taken.

22 THE COURT: Okay. Good. I should let Mr. Berman do
23 more of the speaking.

24 MR. HILLIARD: It went from a note to pulling my
25 jacket to just standing up.

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1 One issue, though, is important, Judge. In all
2 seriousness on this, we've asked for a meet-and-confer with
3 General Motors on the objections that they've made to documents
4 used during GM depositions. They've objected to the business
5 records of over a thousand documents, and under no. 8, we're
6 just advising the court that we're attempting to meet and
7 confer in order to be sure that we understand when that needs
8 to be in front of you, because some of those objections we feel
9 need to be either agreed to and withdrawn or addressed by the
10 court, especially as to some of the core documents.

11 THE COURT: And those are issues under order no. 52?

12 MR. HILLIARD: They are, your Honor.

13 THE COURT: Okay. And so where does that discussion
14 stand?

15 MR. HILLIARD: There's an outstanding meet-and-confer
16 request to General Motors right now.

17 THE COURT: I did take a quick look at order 52
18 yesterday, but I confess I don't remember what it says with
19 respect to the timing or manner in which to raise disputes with
20 me. Anyone --

21 MR. BROCK: I think there was a procedure in place --
22 and I'll defer to Mr. Pixton or Mr. Bloomer on this -- whereby
23 GM was to lodge objections to exhibits used in depositions
24 within a certain time frame after the deposition, and so we
25 have lodged objections to a number of exhibits that were used

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1 in deposition on business record grounds and other issues.

2 THE COURT: Okay. And I think that's something that
3 you guys do need to meet and confer about sooner rather than
4 later because order no. 52 contemplated some limited discovery
5 with respect to any documents or the like that were in dispute,
6 and to the extent that there is discovery that's needed in
7 connection with the first trial, again, the clock is ticking,
8 so I'm happy to add that to the Tuesday at 10 a.m. letter as
9 something that you need to discuss between now and then and
10 update me as to where it stands and if there's a proposal for
11 how to proceed and deal with any disputes. Does that make
12 sense?

13 MR. HILLIARD: It does. Thank you, Judge.

14 THE COURT: All right. Very good.

15 I think that probably exhausts item no. 8? No?
16 Mr. Brock?

17 MR. BROCK: I was just going to ask one question, and
18 that goes to the context of the trial as much as anything. One
19 of the issues that we are very interested in is ensuring that
20 when documents are presented to the jury that they're presented
21 through witnesses; that is, that there's not a moment in the
22 trial where plaintiff stands up and says, we offer these 150
23 exhibits into evidence, with no context, with no background,
24 with the jury having no understanding of what the document is,
25 what it stands for, what its context is. And I was looking at

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1 one of the orders. I took that your Honor wanted those, you
2 know, objections to exhibits worked out before the witness took
3 the stand so that we wouldn't have a delay in the process, but
4 I just didn't know if your Honor had a practice in that area as
5 to the requirement of a witness sponsoring an exhibit during
6 the trial with the jury versus something -- plaintiff has a way
7 of saying, we just want to offer all of these exhibits and
8 we'll talk about them later maybe in some context. If you
9 would permit some process like that.

10 THE COURT: Well, I mean, in my experience documents
11 usually do come in either through a witness or through
12 stipulation. Obviously there can be exceptions to that. It
13 sounds like you guys just need to talk this through, and we can
14 talk about it in more concrete terms with respect to specific
15 exhibits if there are any at issue. I agree, and I assume the
16 plaintiff would like the jury to understand its case. So I
17 guess I'm trying to say, I can't imagine that the plaintiffs
18 are intending to just dump 150 documents without any context
19 into evidence. It's in their interest as much as anyone's to
20 present them in context and make sure that the relevance is
21 understood by the jury. So rather than discuss it in the
22 abstract, let's figure out if there are any exhibits in that
23 category or in dispute and then we can go from there.

24 All right. Item no. 9, trial witnesses. Sounds like
25 there are two issues that I'm aware of. One is the live

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1 witness question that Mr. Hilliard alluded to a moment ago.
2 The second, I expected by this point to have a proposal with
3 respect to the Milliken subpoena and resolving that, but I
4 haven't heard anything.

5 MR. BROCK: It's been resolved.

6 MR. HILLIARD: We've agreed.

7 THE COURT: Fantastic. I love that. One less issue
8 for me to decide.

9 MR. BROCK: He will not be appearing at trial.

10 MR. HILLIARD: Wait. I thought he was.

11 I'm just kidding. We've agreed.

12 THE COURT: Okay. Do you want to talk about the other
13 issue? Or it sounds like it might not be ripe to discuss just
14 yet.

15 MR. HILLIARD: The issue on live witnesses?

16 THE COURT: Yes.

17 MR. HILLIARD: Not yet, Judge.

18 THE COURT: Okay. I will say -- I think I've said
19 this before -- that to the extent that there are witnesses who
20 appear on both sides' lists, my general practice and
21 preference -- and I think it's now memorialized in my
22 individual rules -- is not to have people called twice and to
23 allow the defendant to go beyond the scope of the direct in its
24 cross examination so as to cover whatever it would have covered
25 in its own direct, but I think it's in everybody's interest to

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1 just call witnesses once, and to the extent that that helps
2 inform whatever discussions you're having on that issue, then
3 let it be so.

4 All right. Anything else on the trial witness front
5 that we need to discuss at this time?

6 All right. No. 10, trial tech walk-through, I don't
7 really feel the need to discuss. I think I would rather leave
8 that to you and my staff and the courthouse staff. I just want
9 to reiterate my warning that you need to figure it all out in
10 advance and make sure you have tested things and everything is
11 good to go as far as you're concerned and also urge you, again,
12 to have a backup plan because in my experience technology
13 sometimes fails. But I'll leave it to you. And needless to
14 say I'm keeping tabs on that front and so I should be made
15 aware if there are any issues, and if there are any things that
16 you think I need to be made aware of, you know how to do that.
17 But my hope is that I can leave that to you guys to sort out.

18 Item no. 11. Confidentiality. Anyone want to address
19 that? I'm happy to discuss it now, I'm happy to discuss it
20 later. But I do think that we need to have some sense of where
21 things are on that before trial starts.

22 MR. GODFREY: So I think we have a collective
23 understanding of your Honor's view on what is appropriate to
24 seal and what is not appropriate to seal. We're going to get
25 the exhibit lists. We will go through that. And then my

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1 thought was that we would sit down with plaintiffs and find out
2 what, if anything, is worth fighting about. If there are
3 things worth fighting about, both sides may have similar
4 interest as to some documents, then there's a number of ways
5 potentially to handle it. One way would simply be to identify
6 for the court those documents that the parties want to maintain
7 confidentiality over and why. Another way is to have a hearing
8 on it, document by document, either in camera or, you know,
9 generically. I'm looking for an efficient resolution so we
10 don't have a waste of time during the trial itself. But I
11 think the starting point is to be the exhibit list that we
12 exchanged on Monday and then, working backward from that,
13 trying to figure out, you know, which documents are worth
14 fighting about, which documents can we agree on perhaps, etc.,
15 and we're not in a position to do that yet, but I would think
16 between now and the 18th of December, we ought to have a
17 process in place to avoid trial disruption, which I think is
18 what your Honor would tell us to do, so anticipating that, I'm
19 thinking we'll get agreement on as much as we can, and then if
20 there's discrete areas of disagreement, to try to categorize it
21 and then seek guidance from the court, either in letter briefs
22 or something else, but I'm not in a position to tell you when
23 we can do that precisely because I don't have the exhibit list
24 and we haven't exchanged them yet.

25 THE COURT: Okay. I think that does make sense. I

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1 guess I would add to what you described as the issues to be
2 discussed what it also would mean if I agreed that things can
3 remain confidential. Does that mean that they would be
4 redacted altogether, does it mean that the jury would be privy
5 to something that wouldn't necessarily be released publicly,
6 who can see what, and how that would sort of be implemented in
7 practice. This doesn't come up that often, but in the usual
8 course exhibits would be displayed on the screens to the jurors
9 and would also be displayed on a screen back there to the
10 public, and so I just want to make sure that we think all this
11 through in advance and have adequate procedures in place if
12 there's anything that we need to do.

13 MR. GODFREY: We will try to work -- look, there's a
14 number of ways, as the court, I'm sure, knows, of doing this.
15 One is that the public sees the redacted version but the jury
16 in a notebook has the full version. There are other times
17 where it's complete redactions because the things that are
18 confidential, either side thinks it is important for the jury
19 to actually have to see something. So it could be document by
20 document and categories of documents, and we'll try to work it
21 out, but I'm not in a position today, nor is the exhibit team
22 on our side in a position to know how broadly based the problem
23 is or to categorize it. So it will be part of our task between
24 now and the 18th of December to come up, I think, with a
25 procedure that makes sense to achieve your Honor's goals and to

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1 avoid trial disruption but also addresses the practicalities
2 that your Honor just identified.

3 THE COURT: All right. And I'm sure I don't need to
4 tell you this. It would obviously be my strong preference to
5 minimize the number of exhibits where there is any difference
6 between what the jury sees and what the public is seeing. So
7 if there are sensitive issues and they're not relevant to the
8 issues in the trial and everybody agrees they can be redacted
9 and in that regard what goes to the jury is no different than
10 what the public is entitled to, that would obviously be my
11 preference. But we'll take it a step at a time.

12 Yes.

13 MR. HILLIARD: It's almost impossible to do what GM's
14 proposing, and there are no trade secrets in these documents,
15 Judge. We've given them kind of the benefit of the doubt on
16 the confidentiality issue during discovery, but for example,
17 information that they simply don't want the public to know, if
18 they say we can't use it, then how do we do opening statement?
19 How do we do closing argument? How do we address a witness
20 when we're cross-examining him on a document if that's the
21 case? And GM is aware that we have a strong disagreement as to
22 any of these documents being confidential at the trial itself
23 because it's not a trade secret to what they do for a living.
24 It's simply --

25 THE COURT: All right. We'll take it a step at a

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1 time. I hear you. And I think you understand and know that
2 there is a strong presumption that everything that will come in
3 at trial is going to be public and there won't be any
4 limitations, and so in that regard, the burden will be on
5 whoever wants to argue to the contrary to demonstrate and show
6 me that that is actually necessary. But I think procedurally
7 it makes sense to proceed a step at a time and in the manner
8 that Mr. Godfrey has proposed.

9 All right. Let's turn to the order of the bellwether
10 trials. I guess the question I have for the plaintiffs is why
11 you would like to switch it up at this point, and then the
12 question I have for GM is what the prejudice is to GM, given
13 that it's just a matter of switching the ones that the
14 plaintiffs had the choice of ordering.

15 MR. HILLIARD: Let me start by answering the question
16 to GM first.

17 THE COURT: I don't think it was addressed --

18 MR. HILLIARD: There's no prejudice, Judge. The
19 Yingling case is the only death case. It was at number one and
20 it was moved. It will be prepared, ready to go. Mr. Pribanic
21 is anxious and eager to go. He would be trying the case. It
22 would give the trial team, you know, a little bit of a
23 breather -- I don't even know if it would be this court -- to
24 allow him to go number three; two trials in a row and then his.

25 Another issue, with your permission, I would like to

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1 discuss informally, after the hearing in chambers, and I've
2 visited with GM about that as to this issue.

3 THE COURT: Okay.

4 MR. HILLIARD: Thank you.

5 THE COURT: Mr. Godfrey, or Mr. Brock?

6 MR. BROCK: Yes, your Honor. I'll take this one.

7 So I think as your Honor is aware, there was a
8 fairly --

9 THE COURT: Can you move the microphone, please.

10 MR. BROCK: Yes, sir. I'm sorry.

11 -- fairly involved meet-and-confer process primarily
12 between me and Mr. Hilliard about a process for selecting the
13 bellwether cases and their order, and we made an agreement
14 about how we would do it. We submitted an agreed order of
15 trials in July. The plaintiffs came to us and asked to move
16 the Yingling case to the fifth case and to put Scheuer in the
17 first slot, and we were agreeable to that. We're not agreeable
18 to moving the Yingling case at this point. There are a few
19 issues involved here, including, as your Honor may recall, when
20 the plaintiffs moved to file rebuttal reports, we objected to
21 that. We objected to the timeliness of that. And your Honor
22 noted, in the order granting permission to the plaintiffs to
23 file rebuttal reports specifically as to the Yingling case,
24 that two of the experts appeared to relate only to the Yingling
25 trial, which is not scheduled to begin until September 12,

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1 2016, and we do have significant disputes within the expert
2 space in the Yingling case that we will need to sort out. We
3 believe that some of the rebuttal reports go way beyond the
4 scope of rebuttal. Additional tests have been performed, a
5 different theory has been advanced in terms of what happened
6 once the vehicle left the roadway, or in the accident sequence.
7 And so we think that the order of trials as agreed upon with
8 lead counsel is the right order for this sequence of trials.

9 THE COURT: Okay. But the third trial is not
10 scheduled until May 2nd, is that correct?

11 MR. BROCK: Third trial is scheduled for -- I don't
12 have the date here. I think that's right. I think it's May;
13 May or June.

14 THE COURT: So why would that not be ample time to
15 work out whatever issues there are with respect to the experts
16 in that particular case? I mean, given the amount of stuff
17 that we're going to need to resolve between now and
18 January 11th, it sort of pales in comparison to that.

19 MR. BROCK: It's possible that it could, but for
20 instance, on the issue of whether or not the reports go beyond
21 the scope of rebuttal, that will be an issue to be sorted out.
22 If your Honor permits the rebuttal reports and the additional
23 testing to come in, we may want to do additional testing at
24 that point. So I don't think it's as simple --

25 THE COURT: I understand all that, but what does that

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1 have to do with whether it's tried in May or tried in
2 September? I think in either case there's plenty of time
3 relative to the amount of time you have between now and January
4 to do everything we need to do for that trial.

5 MR. BROCK: I'm not saying that it couldn't be done.
6 If we were ordered to do it, we would. We prefer the sequence
7 that we've agreed to, and we do think that the time will be
8 helpful to us, depending on the rulings.

9 THE COURT: All right. I'm prepared to grant the
10 plaintiff's application and allow them to swap the order.
11 Mr. Hilliard, is there any reason I should hold off on doing
12 that?

13 MR. HILLIARD: There is not, Judge.

14 THE COURT: Does that moot whatever you need to
15 discuss with me?

16 MR. HILLIARD: It does.

17 THE COURT: Very good. So that application is granted
18 and Yingling will now be the third case. And Mr. Pribanic,
19 you've won, so you don't need to add anything on that.

20 MR. PRIBANIC: I do not. Thank you.

21 THE COURT: All right. Next time use the right door,
22 though.

23 Very good. Next issue is phase three plan for
24 discovery. Obviously some submissions on the CPO due on
25 Monday. Anything that we need to discuss on that for now?

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1 And we have a timetable for submissions on motion
2 practice. Anything to discuss?

3 MR. BERMAN: Yes, your Honor. I was asked by
4 Mr. Peller to raise two issues. One of the issues that we're
5 going to be discussing after we file the amended complaint is
6 whether or not there will be discovery on additional defects,
7 and you told us to meet and confer on the defects that we
8 propose and how the amended complaint and the motions play into
9 that need for discovery, which we will. Mr. Peller's advised
10 me that he wants to take discovery on additional defects that
11 we haven't asked for, and that's an issue out there. And he's
12 also advised me that he wants to amend his complaints, and I
13 guess -- so he asked me to raise both of those issues with you,
14 and I've done so.

15 THE COURT: All right. And amend his complaints in
16 light of Judge Gerber's ruling?

17 MR. BERMAN: No. To amend his complaints in light of
18 the fact that there have been additional defects with respect
19 to his plaintiffs' vehicles that have occurred since his
20 original complaints were filed and he somehow thinks those
21 affect the claims he has.

22 THE COURT: Okay. Am I wrong in thinking that he
23 would also need to amend in light of Judge Gerber's ruling?

24 MR. BERMAN: I can't speak to that.

25 THE COURT: I understand. You are not he. Yes.

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1 All right. Mr. Godfrey, Mr. Bloomer, I don't know who
2 wants to take this one. Anything you want to say on that
3 score?

4 MR. GODFREY: I was having a little trouble hearing
5 Mr. Berman, but Mr. Peller does need to amend his complaint in
6 order to comply with Judge Gerber's opinion, and Judge Gerber's
7 opinion was quite precise about Mr. Peller's complaints.

8 I don't know what it means to take additional
9 discovery that hasn't been asked for. That seems to be a
10 rather wide net. I mean, I think that we worked out with lead
11 counsel an approach here that makes sense to us, so perhaps we
12 should have some further discussions. I don't know what
13 they're asking for, and I'm not going to agree to some generic
14 request just to have additional discovery.

15 THE COURT: And I'm not going to grant it, so you
16 don't have to be worried about it.

17 MR. GODFREY: Great.

18 THE COURT: And I don't take Mr. Berman to be the one
19 asking. He's essentially representing that Mr. Peller is
20 asking. I mean, I think we can't do this in the abstract.
21 Obviously I've laid out a pretty carefully calibrated schedule
22 and process and so forth and so I think the burden is going to
23 be on him to show that we should proceed with anything beyond
24 that.

25 Taking these two things, I think it does make sense

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1 and he does need to amend, and it sounds like he may have
2 amendments beyond what he needs to do by virtue of Judge
3 Gerber's ruling, but I take it you have no objection to his
4 amending the complaints, and then we'll take it one step at a
5 time.

6 MR. GODFREY: I think the last time I made a Rule 15
7 motion was about 30 years ago, and that was a mistake. So I
8 don't think I can stop him from amending what he does. Whether
9 it's a valid amendment or not, whether it complies with Judge
10 Gerber's opinion or not, or whether it complies with this
11 court's rules, I don't know, but I don't think I can stop him
12 and I think it's not worth the candle fighting over it. We'll
13 see what he has in mind and we'll deal with it when it's done.
14 But he does need to amend in order to comply with Judge Gerber,
15 so we're going to hold him to that.

16 THE COURT: Is there any reason not to give him the
17 same deadline that I have set for the second or now third
18 amended consolidated complaint to amend those complaints?

19 MR. GODFREY: I can't think of any, your Honor. I
20 think that's fair.

21 THE COURT: All right. So I will do that. And you
22 can convey that to him and then convey to him that to the
23 extent that he thinks that he is entitled to or should be
24 granted discovery beyond what I have authorized thus far, that
25 he should discuss that with GM. And I'm not deciding it now,

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1 and he's not going to get it unless I grant permission, and
2 I'll obviously give him an opportunity to be heard if he thinks
3 that anything beyond what I've already done should be done. So
4 you guys can discuss that and figure out the best way to tee it
5 up if there's anything in dispute.

6 Anything else to be said on that?

7 MR. GODFREY: No, your Honor.

8 THE COURT: All right. Last item I think we're up to
9 is settlement? No, last item on your agenda and then we have
10 my additional items.

11 So I'm obviously going to hold the private conference
12 with counsel after this session and I'm going to leave my law
13 clerk, Ms. Franklin, to escort you to where that will be and
14 I'll meet you there and we'll discuss those issues further.

15 Just to be clear on the record, what I'm interested in
16 finding out is, number one, to the extent that it would be
17 helpful to discuss in a private session just sort of what
18 efforts, if any, are going on to resolve cases, I would like to
19 have a better sense, and most importantly, as I've made clear
20 from the first conference in this case, if there are any ways
21 that I could facilitate settlements of a subset or all cases,
22 then obviously I'd like to do that, so I think it might be
23 helpful to just have that conversation in an environment and a
24 setting where everybody can be more candid and there aren't
25 concerns about disclosures.

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1 MR. GODFREY: Your Honor, if I might ask a question?

2 THE COURT: Yes.

3 MR. GODFREY: Yes. On that score, we'd like to bring
4 back with us Mr. Gruskin, who's a deputy general counsel of New
5 GM, if that's acceptable to your Honor.

6 THE COURT: I have no objection at all.

7 MR. GODFREY: Okay.

8 THE COURT: I assume plaintiffs don't either.

9 MR. HILLIARD: Absolutely not.

10 THE COURT: All right. So Ms. Franklin will bring you
11 there.

12 MR. HILLIARD: I should say, I meant absolutely not,
13 no objection. Not --

14 THE COURT: I took that from your tone, but I
15 appreciate the clarification.

16 So Ms. Franklin will take you there. I should note at
17 the outset that we're here without Ms. Barnes, my deputy, and
18 there is a very good reason for that, which is that she got
19 married on Sunday, so next time you see her, you should offer
20 her congratulations as well. It's been a big month since the
21 last conference, for everybody. Well, not everybody, but for
22 some people.

23 On the settlement front, I don't think there's any
24 reason not to discuss this here. Two things relating to the
25 conference call that we had on October 20th concerning the

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1 motion for approval of a special master, number one, I think I
2 left it that GM was going to get back to me as to whether it
3 had views on whether the transcript of that proceeding could be
4 unsealed, and I haven't heard anything on that, so I think it
5 would make sense, if you can't give me an answer now, to give
6 you a date by which you need to let me know. To the extent
7 that it can be unsealed, I would like it to be, and if you
8 think there are any redactions that need to be made, you can
9 propose those. But those are the questions.

10 Second, in that discussion I was led to believe that I
11 would be receiving I think two more motions, at least -- a
12 motion with respect to the qualified settlement fund and the
13 liens -- and I sort of assumed I would have them already, but I
14 haven't gotten them. So I wanted to just get an update on
15 that. I think I made clear I wasn't going to act on the motion
16 that was already filed since I was expecting some additional
17 documents and motions, and I just wanted to figure out where
18 things stood.

19 MR. GODFREY: Ms. Bloom is going to handle the second
20 set of questions your Honor had about the motions. On the
21 first, we will get to that, and I think by Tuesday we'll get
22 you a letter whether we have issues and, if so, how we propose
23 addressing them, if that's acceptable to the court.

24 THE COURT: That is.

25 All right. Ms. Bloom? If you could just grab a

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1 microphone, though.

2 MS. BLOOM: Your Honor, you're right. There were two
3 additional motions that we had contemplated. One relates to
4 establishment of a QSF, qualified settlement fund trust, and
5 with respect to that motion, I would think that we'll file it
6 now Monday or Tuesday. We were needing to sign up a couple of
7 agreements that relate to that, and Mr. Hilliard and I and
8 Mr. Gruskin have our signatures on the pages now, and we need a
9 couple of other parties to sign them. So we'll be set with the
10 QSF motion.

11 With respect to the other motion I had mentioned,
12 there might be one related to the lien administrator. The
13 parties have conferred, and based on the terms of the
14 confidential MOU, we've determined that we don't need to file
15 that motion, so we'll save the court's time in that respect.
16 There will be nothing to consider other than just the one
17 additional motion.

18 And I think your Honor had also asked the parties to
19 provide the court with the special master contract. That one
20 also we've signed up this morning, Mr. Hilliard and myself, and
21 we're awaiting the signatures of the special masters, so I'm
22 confident as well that certainly by Tuesday at the very latest
23 we'll be able to file that under seal with your Honor as well.

24 THE COURT: Sure. That's fine. I know there was some
25 interest in, well, having some or all of this resolved before

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1 the end of the year. Does that require any particular timing
2 on my end? I guess that's a delicate way of asking how quickly
3 you'd need or want me to turn to this stuff.

4 MS. BLOOM: Your Honor, I don't believe so. Both the
5 special masters have begun their work and also the QSF
6 administrator, so the work of attempting to get to that, if
7 it's attainable, is under way, and so I don't believe so, but
8 rulings on the motions will certainly be helpful.

9 THE COURT: Okay. Sounds like you're presuming I will
10 grant the motion.

11 MS. BLOOM: I do take that back. As I think about it,
12 our QSF administrator would probably be anxious to get paid,
13 and a mechanism to getting payment made is establishment of the
14 trust, so at some point in time I'm sure he'd appreciate your
15 Honor's attention.

16 THE COURT: All right. And at some point in time and
17 maybe sooner rather than later you will get my attention.

18 All right. Anything else that we need to address on
19 that?

20 Very good. Turning to the additional items that I
21 listed, first, should we figure out a February conference?

22 MR. GODFREY: I'd propose March, your Honor.

23 THE COURT: Microphone, please. Okay. And why is
24 that? I mean, obviously some of us will be together for much
25 of the month of January and --

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1 MR. GODFREY: I think we'll all be seeing a great deal
2 of each other for January and part of February, and I suggest a
3 short break before having a conference, and early March makes
4 the most sense to us.

5 MR. HILLIARD: We disagree. Being together, it would
6 be a lot easier to visit about the second trial. I'm sure that
7 there's going to be, in preparation for the second trial,
8 issues that come up. There's two teams that will be working
9 simultaneously while we try the Scheuer case, and subject to
10 the availability of the court and both sides, I would think
11 February would be a way to address that to make sure that
12 nothing sneaks up on anybody.

13 THE COURT: All right. Well, I was going to propose
14 February 26th in any event, which is sort of splitting the
15 difference, so anyone have a problem with that date?

16 MR. GODFREY: No, your Honor.

17 THE COURT: And I assume we can wait at least until
18 December, if not January, to figure out whether and when to
19 schedule conferences beyond that, but if you think we should do
20 that now, I'm open to that as well.

21 All right. Let's wait.

22 Yes, Mr. Hilliard.

23 MR. HILLIARD: So the second trial begins on
24 March 14th, and the 26th, with the short February month,
25 would give us three weeks before that trial starts to have a

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1 status conference which might address some pretrial issues.
2 The day itself is fine, but perhaps, you know, a week or two
3 before that. I'd like to check with the team that's getting
4 ready. If I were them getting ready, I would get a little
5 anxious about not being in front of you until three weeks
6 before trial on any pretrial issues that may come up between
7 now and that February date. If you have a little leeway and an
8 inclination to move it towards the first of the year a little
9 more, I think I speak on behalf of that second team where it
10 would be appreciated.

11 THE COURT: I take it you disagree, Mr. Brock and
12 Mr. Godfrey.

13 MR. BROCK: No, I'm fine. I think having something in
14 mid February is okay with us, if that's what the court prefers.

15 THE COURT: The problem is, I'm not going to be here
16 the week before. It's Presidents Week, and I think by that
17 point I will need a break. And the court is closed on Friday,
18 the 12th, so I suppose we could do it on either that Monday,
19 the 8th, or Thursday, the 11th, but I'm also mindful that
20 trial number one may be, you know --

21 MR. BROCK: Closing.

22 THE COURT: I don't know precisely when it's going to
23 end, but --

24 MR. HILLIARD: I wasn't aware of that, Judge. Just
25 keep it where it is then, and I'll advise the second team of

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1 that, because --

2 THE COURT: All right. So we'll keep it the 26th,
3 and obviously we can always adjust things as needed as we get
4 closer, and we'll be spending a lot of time together as well.

5 Next item. Let me flip the order. The motions for
6 leave to amend the complaints. My proposal had been, rather
7 than staying them, which would keep active motions on my
8 docket, to just deny them without prejudice to renewal at the
9 appropriate time. Anyone have any objections to that and
10 anyone have any ideas as to just what the terms of that should
11 be?

12 MR. GODFREY: We have no objections, your Honor.

13 THE COURT: All right. And should it be without
14 prejudice to renewal within some amount of time after a stay is
15 lifted or should we just say without prejudice to renewal and
16 leave it open-ended?

17 MR. GODFREY: I would have it tied to the lifting of
18 the stay, but I don't know that it makes a huge amount of
19 difference, but I would certainly consider this as preferable
20 approach.

21 THE COURT: All right. So what I would propose is
22 that they all be denied without prejudice to renewal within
23 three weeks lifting of the stay under order no. 1, and
24 obviously, if something changes and anyone thinks a different
25 deadline should be set, we can always amend that at some later

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1 date. Does that make sense?

2 MR. HILLIARD: It does from the plaintiff's
3 standpoint, Judge.

4 THE COURT: All right. And what I would ask you to
5 do, just to facilitate things, is, in the order memorializing
6 what we're doing here today, obviously include a provision that
7 memorializes what I just did, but then at the very end, if you
8 can list the motions that should be terminated in light of that
9 ruling, that would help the clerk's office just keep track and
10 know precisely which motions are resolved by that ruling.

11 All right. So then I think the only remaining item on
12 the agenda is the attorney's fees question. And I'll be candid
13 in telling you where this comes from. I think it won't
14 surprise Ms. Cabraser in the sense that there was some
15 discussion about this at the conference, and it's just one
16 issue that I lay a little bit in fear of the day when I get an
17 application on this front and I regret not having some sort of
18 process in place to deal with things on a more ongoing basis,
19 and so I wanted to just raise it as something that's keeping me
20 up a little bit at night. So, Ms. Cabraser.

21 MS. CABRASER: Yes, your Honor. I can give you a
22 report on the procedure that we're using.

23 Pursuant to your order no. 13, among the co-lead
24 firms, my firm drew the short straw, so we took on the task of
25 receiving the monthly timekeepers' reports from the lawyers

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1 that are doing common benefit work, and those are almost
2 exclusively the members of the court-appointed leadership
3 structure -- for example, the executive committee and also our
4 designated bankruptcy counsel in the proceedings before Judge
5 Gerber -- so the number of firms that report in on a monthly
6 basis is a relatively small and manageable number, much
7 smaller, for example, than say the scores of firms that might
8 be reporting in a pharmaceutical or medical device MDL, where
9 this technique of timekeeping arose. And so what we do is, the
10 firms have been almost unanimously compliant in terms of
11 timeliness. There have been a few tardy firms. We remind
12 them. I have three folks at my firm who take care of this:
13 Annika Martin, who's a partner in the firm, is one of the GM
14 Ignition partners. You've seen her in the courtroom, and she's
15 quite familiar with the case and also works on discovery and
16 other administrative matters. Mark Macatee, who is an
17 administrator who is also a lawyer, again, familiar with the
18 case. And so as the reports come in, they are maintained in
19 their original form, they are audited with respect to the
20 appropriateness of task codes and primarily whether the work
21 has been authorized by a co-lead. If it does not appear to
22 have been authorized by a co-lead, we contact the reporting
23 firm, and usually the time is simply withdrawn or it's
24 determined that in fact the work was authorized. Other than
25 those basic parameters -- was the work authorized, which your

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1 Honor's order requires, and does it appear on its face to be
2 common benefit time related to the case -- we don't evaluate or
3 accept or reject time, because obviously that's for the court,
4 if and when it becomes relevant in connection with any
5 attorney's fee application.

6 We have had a number of discussions among co-leads
7 with respect to maybe one or two firms that were a little slow
8 in becoming compliant. I don't think we have any current
9 compliance problems of the sort that an outside CPA would be
10 useful in addressing. We did consider whether it makes sense
11 and whether it was cost effective to request the appointment of
12 an outside CPA by your Honor, and we determined that it wasn't,
13 for two reasons:

14 Number one, the number of timekeeping firms is a
15 manageable number. We can keep up with the submissions. We
16 have a program and a database in place so that when your Honor
17 requests reports from us, we can provide those in any format
18 you wish and with whatever level of detail you wish.

19 And number two, in this case we saw the utilization of
20 a CPA as actually creating additional cost and makework,
21 because the CPA would not be aware of whether or not the work
22 that is reported in was authorized and would have to ask one of
23 the co-lead firms. And so that would create an effort that we
24 just did not believe was either necessary or useful.

25 The other thing is that courts that have used a CPA

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1 firm have tended to use that firm over many, many years and
2 that firm has gained familiarity, if not with a particular
3 case, of the sorts of issues, the sorts of things for which
4 time is kept, and so that firm is able to issue spot. In this
5 case there isn't a firm that has familiarity with an MDL of
6 this sort. Such a firm would have to use this MDL to gain that
7 familiarity, and that's a cost to the parties that we, at least
8 in terms of our recommendations to your Honor, didn't believe
9 was warranted, since, among the co-lead firms, we know the case
10 very well. It's our job to do that. We are the ones that have
11 assigned common benefit work to the various firms and so we
12 know, when that time comes in, whether it appears to be
13 appropriate, whether it appears to be excessive, and whether it
14 in fact relates to unauthorized assignment. We would be the
15 first to report to your Honor any ongoing dispute with any
16 reporting firm about that because, again, attorney's fees
17 determinations are for your Honor to make. And I'm pleased to
18 report that we just have not had any such disagreement with any
19 of the firms that are doing the work and reporting it in.

20 We would appreciate it, I think, if in the near term,
21 when your Honor feels that you have the time and inclination to
22 do so, to submit an initial timekeeping report to you in
23 confidence, because it obviously contains lots of work product,
24 for you to get a feel for the scope, the magnitude, the amount
25 of work that's been done in the case thus far, and then provide

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1 us any ongoing guidance going forward.

2 Thank you.

3 THE COURT: All right. Thank you for that. That's
4 very helpful.

5 Notwithstanding I recognize you have some
6 self-interest in avoiding a CPA looking over your shoulders,
7 but I am persuaded by your description that it's probably not
8 necessary here.

9 The second issue pertains to just the interim
10 submission question and also whether I should review it or
11 appoint someone or refer it to the assigned magistrate judge or
12 the like for that purpose, and I do think something on that
13 score should happen. I just think that there are a variety of
14 issues that would be better to address sooner rather than
15 later. Obviously if there are concerns about the way things
16 are being billed -- block billing or vague billing or if
17 partners are doing work that is better done by associates, the
18 sorts of things that would result in a fee request being
19 knocked down -- I think it's better for you to know that sooner
20 rather than later and avoid sort of systemic issues,
21 notwithstanding the fact that we've already been at this for a
22 while. So I do think that would make sense. Why don't you
23 give some thought to how you think that that could and should
24 be done. I'm happy to work with you and figure out a sensible
25 procedure and way to do it. I just think it's in everybody's

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1 interest to make sure we're on the same page and root out any
2 problems earlier rather than waiting until the very end of
3 these proceedings, whenever that is. Having said that, I'm not
4 interested in getting anything between now and January 11th
5 on this. So there's no urgency in that regard, and I would
6 certainly not want anything before then. So --

7 MS. CABRASER: Okay. We'll confer and come up with a
8 proposal to get you something after that date, your Honor.

9 The one thing that I would say about the block billing
10 issue is that under your order, the timekeeping forms have
11 specific task codes and so we do not accept any time that does
12 not have a specific task code and does not appear to relate to
13 that task code, so we are able to send back anything that
14 appears to be block billing for correction and resubmission,
15 and I will say that's probably been the most active area of
16 firms, particularly at the outset of this process, learning the
17 system and learning to be very specific and to itemize their
18 time and not to combine time in the kind of block billing that
19 can be very difficult to review.

20 THE COURT: Great. Well, my hope is that the orders
21 that we entered early on in this case suffice to head off any
22 issues that could have arisen, but again, I think it might be
23 in everybody's best interest to just spot check or something
24 sooner rather than later.

25 Yes, Mr. Berman.

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1 MR. BERMAN: The only thing I was going to add, your
2 Honor, is that Ms. Cabraser and I basically once a month talk
3 about where we are, how much time has been spent, and so we're
4 on it, we're watching the firms. We have actually -- I
5 wouldn't use the word disciplined, but we've disputed firms
6 that we thought had too much time and we've reduced the amount
7 of time they were trying to submit. So we're cognizant of our
8 responsibilities in that regard and wanted you to know that we
9 have taken it seriously from the outset.

10 THE COURT: Great. I had no doubt about that, but I
11 appreciate hearing it.

12 All right. I think that exhausts the items for our
13 open session, unless there's anything else that you feel the
14 need to raise.

15 MR. BROCK: Your Honor --

16 THE COURT: Mr. Brock?

17 MR. BROCK: I had one final issue, briefly, and that
18 is that we do not have in place yet a schedule regarding
19 pretrial deadlines and procedures for MDL trials 2 through 6.
20 We have submitted a proposal to the plaintiffs, but I think in
21 terms of cleaning up some of the issues that we've been talking
22 about earlier today, this is one of those things about which we
23 should get to an agreement and get something in place. We
24 might need to make a couple of suggested changes to what we
25 have given them, and we'll do that promptly with regard to

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1 trial no. 3, which is now Yingling, just because I'm looking at
2 the schedule, and that sort of consistent with what we've been
3 doing, dispositive motions would need to be filed, for a early
4 May trial, March the 3rd, and --

5 THE COURT: Tell you what. Let me interject. Why
6 don't you confer and submit a proposed schedule, and I don't
7 know if we need to do it for 2 through 6 at this point, but
8 certainly I would think for 2 and 3, it's in everybody's
9 interest to figure out sooner rather than later, subject,
10 obviously, to amendment as needed at some later date, but why
11 don't you plan on submitting something to me by the date that
12 you have to submit your preconference agenda letter for the
13 December conference. Does that make sense?

14 MR. BROCK: That would be fine, yes.

15 THE COURT: I mean, if not sooner. If you're able to
16 submit it sooner --

17 MR. BROCK: I think it would be better to do it
18 sooner. Let's see if we can get it worked out, get it in
19 place.

20 THE COURT: I mean, no later than that date is what I
21 would propose.

22 Mr. Hilliard?

23 MR. HILLIARD: We're flexible with GM. We're happy to
24 meet and confer and work with them to get it to you as early as
25 they feel they need it.

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1 THE COURT: And obviously you should talk to --

2 MR. HILLIARD: We'll talk to Mr. Pribanic. And I
3 think it's the Soghoian (ph) firm who's going to help with the
4 second trial, so we'll coordinate that.

5 THE COURT: Very good. I'll expect something from you
6 guys on that no later than the deadline for the submission of
7 your agenda letter but perhaps sooner than that.

8 All right. With that, I think we're done.
9 Ms. Franklin will escort you to where you're going in a minute
10 and I'll join you there, and otherwise we're adjourned. Thank
11 you very much and have a pleasant weekend.

12 THE LAW CLERK: All rise.

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