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

3 In re GENERAL MOTORS LLC  
IGNITION SWITCH LITIGATION  
4 -----x  
5

14 MD 2543 (JMF)  
Oral Argument

6 New York, N.Y.  
November 10, 2016  
7 9:30 a.m.

8 Before:

9 HON. JESSE M. FURMAN,

10 District Judge  
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APPEARANCES

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1 (Case called)

2 THE DEPUTY CLERK: Counsel, please state your name for  
3 the record.

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

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

7 MR. HILLIARD: Judge, Robert Hilliard for plaintiffs.

8 MR. GODFREY: Good morning, your Honor. Richard  
9 Godfrey and Andrew Bloomer and Robert C. Brock for GM.

10 THE COURT: Good morning to everyone.

11 I realize we are hardly the most interesting thing  
12 happening this week but I feel like the number of people  
13 watching us has diminished by the day. Anyway, we have a  
14 relatively short agenda so I apologize for the fact that some  
15 of you had to travel here for this purpose, but the fact that  
16 it is short doesn't mean we don't have some important issues to  
17 discover. So, let's get through it.

18 I assume we are on Court Call so just a reminder again  
19 to speak into the microphones. Let me start by wishing  
20 congratulations on the wedding, Mr. Godfrey. I hope it was  
21 wonderful.

22 MR. GODFREY: It was very nice. It was more  
23 exhausting than any trial I have been through, but thank you,  
24 your Honor.

25 THE COURT: Well, you know? I can understand.

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1           Very good. Going through the agenda letter, the first  
2 two items -- well, the first item is bankruptcy proceedings.  
3 Anything to discuss there? I wouldn't necessarily think so.  
4 Very good.

5           The second item is coordination of related actions.  
6 Any updates? Anything you want to tell me?

7           MR. GODFREY: Yes. Two quick points, your Honor.

8           First, with respect to the Felix action, I have good  
9 news to report. There has been a settlement of a number of the  
10 cases that, at least for the most part, has removed the risk of  
11 potential conflict between the State Court and this Court. Not  
12 all cases have been settled, it is a settlement that's been  
13 reached, it is a term sheet that's going to be documented.  
14 But, in terms of the immediate issues that we had, I had placed  
15 a marker on the last item that the Court is familiar with,  
16 those are no longer extant at the current time so I think that  
17 is good news in terms of awaiting -- we have tried to avoid  
18 conflicts with the state court to the extent possible and I  
19 think we have succeeded, at least for the near term. I will  
20 keep the Court advised in that regard but we have made good  
21 progress in that docket. They're not all settled but we made  
22 very good progress. Ms. Bloom has been busy, as you will hear.

23           Secondly, again, while we think there are some  
24 potential conflicts that may very well arise in the Orange  
25 County case, they are not yet mature, and we have worked out

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1 many of these issues as we have in the past. So, we will  
2 monitor that and keep the Court advised if and when a conflict  
3 arises.

4 So, again, we have made pretty good progress, I think,  
5 at what your Honor has asked us to do in terms of trying to  
6 work things out before we bring them to your attention and will  
7 continue to try to do so.

8 THE COURT: Great. Anything else we need to discuss  
9 there?

10 All right. Now, the next item is the phase II  
11 bellwether replacement case issue. I did receive and review  
12 your respective briefs yesterday. Upon review, I am going to  
13 allow lead counsel to select two replacement cases. That is  
14 not to say that I don't find some of new GM's points well  
15 taken. I think some of them are and, to be candid, I am a  
16 little bit distressed at what I see is a delay, less than swift  
17 handling of some of these things. But, at the same time, I  
18 don't think that this is the ordinary sort of deadline that  
19 deadlines matter, and if you make a strategic decision you are  
20 stuck with it because I think we can't lose sight of what the  
21 bellwether process is ultimately about, which is to say it is  
22 not about resolving any one case, per se, it is about obtaining  
23 data from representative cases that both sides can use to  
24 facilitate settlements in other cases and, in that regard,  
25 whether or not new GM is right and the two cases -- the two GM

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1 picks that remain are representative of those in category C,  
2 whether or not that's right, I do think that -- I don't think  
3 the judgments in those two cases, if we were to try them, for  
4 example, would garner the same kind of respect with respect to  
5 the pool as a whole and with respect to all plaintiffs and  
6 plaintiff's counsel as two cases if one were selected by  
7 plaintiffs and one were selected by new GM.

8           So, much as I am a little bit frustrated by the need  
9 to adjust the calendar, I am going to allow lead counsel to  
10 select replacement cases and I agree with new GM that if I am  
11 going to let them select replacement cases, that the proper  
12 course is to select two rather than one and allow new GM to  
13 strike as it would have had in the first instance.

14           I don't know if you've had a discussion about a  
15 schedule in contemplation that I might rule in that way. I am  
16 certainly happy to let you discuss the implications and work it  
17 out. I would like to keep to the schedule as much as possible  
18 so I would think, given where we are, that this, whatever trial  
19 would result from these two picks, for example, could go in the  
20 ninth or tenth slot and while allowance must be made for  
21 discovery as to these two replacement cases, that the schedule  
22 as a whole could probably be retained and we could work  
23 backwards from there, but.

24           Mr. Hilliard?

25           MR. HILLIARD: Thank you, Judge.

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1           First, we will keep in mind the Court's frustration  
2 and try to stick to the schedule. Apologies in that regard.

3           Second, in anticipation of your ruling, we have a meet  
4 and confer scheduled today and given your comments just then,  
5 it is very helpful in regards to what do we do about the two  
6 new picks and where do we put them. The issue is GM wants to  
7 keep their picks on the current schedule which would allow  
8 their trials to go first and given your comments, I think that  
9 will be helpful during our meet and confer and I would expect  
10 to get you an agreement in the next couple days.

11           THE COURT: All right, Mr. Bloomer. Do you want to  
12 say anything?

13           MR. BLOOMER: I agree, your Honor, in general. The  
14 parties have been discussing this issue and I would anticipate  
15 that we will continue to discuss it and should be able to reach  
16 an agreement on schedule or, if not, the disputes would be  
17 fairly limited and we can raise them promptly early next week.

18           THE COURT: All right.

19           Do you want me to set a deadline, or I assume both  
20 sides have an interest in resolving these issues sooner rather  
21 than later?

22           MR. HILLIARD: The issue will be resolved or not  
23 resolved probably by today. If the Court sets, say by next  
24 Tuesday on reporting back to you, we should be fine.

25           MR. BLOOMER: Just one question, your Honor? Could we

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1 have until Wednesday?

2 Is that all right, Bob?

3 MR. HILLIARD: It is difficult to get agreements on  
4 all important issues; Wednesday is fine.

5 THE COURT: All right. I will give you until  
6 Wednesday but in the meantime, lead counsel should start the  
7 process of selecting the two replacement cases and not delay on  
8 that front end in the absence of a scheduling order. And given  
9 that the picks are made between now and Wednesday, you may as  
10 well start with discovery and whatever other things one can  
11 start with, again in the absence of a scheduling order sense  
12 you know what is coming, it is just the question of the  
13 deadlines that will apply to those things. All right?

14 MR. BLOOMER: Thank you.

15 MR. HILLIARD: Yes, sir.

16 THE COURT: Obviously, we will take these things as  
17 they come which is to say that if other bellwethers in phase II  
18 disappear, I'm not previewing now whether they would or would  
19 not be replaced. I think it will depend on time and  
20 circumstances and what's going on. But, I think it is  
21 important, and I want you to hear me loud and clear, that you  
22 deal with these issues promptly and to that end I want you to  
23 bring them to my attention promptly, which is to say I don't  
24 know if I just failed to appreciate that these bellwether cases  
25 had settled. I think with Davidson, for example, I'm not sure



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1 it was ever even brought to my attention but I think the answer  
2 is that if any bellwether cases or any cases within the  
3 bellwether system settled going forward, you should promptly  
4 notify me and indicate in a joint letter whether you think that  
5 a replacement can and should be selected, in which case we can  
6 take it as it comes.

7 Is that understood?

8 MR. HILLIARD: Understood, and will do.

9 THE COURT: All right. Very good. I don't think I  
10 need to set a deadline to do that but when I say prompt, I mean  
11 within a matter of days within a settlement.

12 And what is the status of the settlement in Davidson?  
13 I don't think any notice of dismissal or stipulation of  
14 dismissal has been filed.

15 MR. BLOOMER: I believe, your Honor, that the parties  
16 have a confidential settlement term sheet and are working on a  
17 final settlement agreement.

18 THE COURT: Should I enter what is known in this  
19 district as a 30-day order which dismisses the case with the  
20 right to reopen it within 30 days if the settlement is not  
21 consummated?

22 MR. BLOOMER: I think that's fine, your Honor.

23 THE COURT: Great. I will do that.

24 And are there other cases like that where there is a  
25 settlement in principal but the settlement hasn't yet been

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1 papered as to which I could also enter 30-day orders?

2 MR. BLOOMER: No, your Honor.

3 THE COURT: All right.

4 Next item is the Peller plaintiffs' request. I don't  
5 think there is anything to discuss there since I adopted the  
6 briefing proposal and said Mr. Peller did not need to attend.

7 The last item on your letter is settlement, and that  
8 dove tails with the first item on my supplemental list of  
9 issues, namely the status of the Hilliard Henry settlements and  
10 memorandum of understanding. I know I did so order the  
11 dismissal of 565 plaintiffs the other day. Where do things  
12 stand more broadly than that and what is coming down the pike,  
13 if anything?

14 MR. HILLIARD: Thank you, Judge.

15 On track you will get another motion to dismiss a  
16 large group of plaintiffs likely in the next week or two, if  
17 not before that. The details of specific cases are being  
18 worked on between GM and the settlement alliance and the lien  
19 company. Everyone is alert to and focused on finishing the  
20 entire group of the Hilliard Henry docket before the end of the  
21 year including payment to plaintiffs and it is on track.

22 THE COURT: And can you remind me about both the  
23 process and the schedule in terms of are there going to be  
24 cases where plaintiffs don't accept whatever the number is and  
25 when will we know that and what happens to those cases and so

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1     forth?

2                   MR. HILLIARD:  These are all settled cases where the  
3     plaintiffs have agreed to the amounts offered by the special  
4     master and signed the appropriate settlement and release  
5     documents.  The process now involves confirmation of the  
6     holdback for the unknown lien or confirmation of the known lien  
7     and triple-checking each one of those between the lien company  
8     and GM, and then there is about three other signoffs that have  
9     to go back and forth.  The procedure has been completed as to  
10    the 571 so we are both familiar with it and it is successful.  
11    It is cumbersome and takes closer to weeks than days but the  
12    second set is about to move into the payment process.  Prior to  
13    that starting you will receive the bulk motion to dismiss --  
14    agreed motion to dismiss on behalf of the remaining plaintiffs.

15                   THE COURT:  And the remaining being another 900 or so?

16                   MR. HILLIARD:  I believe 500-plus.  The total is 1,300  
17    so whatever the 571 is from that difference.  This is a second  
18    group.  It may not be the entire group.

19                   So, the way that this has worked as a practical matter  
20    is GM gets a tranche of cases ready to go, and they would have  
21    to review and make sure that their motion to dismiss is ripe.  
22    And then, as they're doing that, another starts to pile up on  
23    their bucket list and as soon as they get done with this, we  
24    file motions to dismiss, we turn our attentions to the next  
25    bucket.

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1           My belief in talking to Ms. Bloom at GM is that this  
2 next group is at least -- don't hold me to the exact number --  
3 but over 500.

4           MR. GODFREY: 670.

5           MR. HILLIARD: Thank you.

6           THE COURT: Am I right that the original number was  
7 1382 or something? So, if the first one was 565 and this one  
8 is 670, that still leaves a couple hundred.

9           MR. HILLIARD: There are some Court interventions  
10 necessary on guardian ad litem in death cases and probate  
11 matters that are also being handled simultaneously. I can  
12 report to the Court, if the Court so desires the status of  
13 those, but they are either set for a hearing or the information  
14 has been requested by the guardian ad litem in regards to  
15 liens or amounts to plaintiffs, and that is we are attempting  
16 to provide those but the process is active and occurring. But,  
17 those would make up the remainder, I believe.

18           MR. GODFREY: There is a 57-plaintiff delta between  
19 the 670 and 565 and the original number of 1382. I can't say  
20 all of that would fall under what Mr. Hilliard described but  
21 most of them do. We are on track, I think both Mr. Hilliard  
22 and I agree we are on track to conclude this as rapidly as  
23 possible.

24           THE COURT: Either my math skills are off or I am  
25 missing something.

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1 MR. GODFREY: 670 and 565 leaves you 1335.

2 THE COURT: Not in my math world.

3 MR. HILLIARD: Even an English major know that's not  
4 true.

5 MR. GODFREY: You are right; 147 difference. Can't  
6 read my own writing.

7 MR. HILLIARD: So, there is another group of cases  
8 that I will say generally, Judge, it is either -- there is an  
9 issue with the actual settlement itself and GM is waiting until  
10 the end of the process to decide if they'll agree to move  
11 forward with them, either missing or uncooperative spouses that  
12 are waiting to sign off on releases. So, there is a smaller  
13 final group that we are aware of but we are holding until the  
14 end and GM really has the ball in regards to what do we do with  
15 these.

16 THE COURT: Okay but it sounds like things are  
17 proceeding smoothly and on track. Do we expect any of these  
18 cases to reemerge and come back on the active docket?

19 MR. HILLIARD: Highly unlikely. GM has some  
20 proposals that they don't want to make official until after all  
21 of the settlements with those plaintiffs, who will sign off on  
22 the release will finalize and then we will deal with the last  
23 group, but those proposals do not include coming back and being  
24 on the active docket. One proposal does include coming back to  
25 you with force of assistance in that regard but not putting it

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1 on the active docket but. With your permission, we will wait  
2 and address that later.

3 THE COURT: All right. Sounds good.

4 Anything else on this front?

5 MR. HILLIARD: No, sir.

6 MR. GODFREY: Ms. Bloom has been busy with  
7 Mr. Dresskin outside of that. So, we have 1,382 on the  
8 Hilliard Henry docket. We now have reached agreements, I think  
9 the number is 1,452 of the MDL term sheets or otherwise and  
10 Ms. Bloom said I should let the Court know this morning -- she  
11 apologizes for not being here. She is hopeful another --

12 THE COURT: Speak up a bit.

13 MR. GODFREY: She is hopeful another 385 can at least  
14 reach term sheets by year end if things continue at pace. She  
15 is working through the docket assiduously and she is making  
16 good progress.

17 She is also, as I mentioned earlier to the Court, she  
18 and the GM team have settled a number of the state court cases  
19 including some of the Felix docket. So she has targeted, in  
20 addition to the 1,452, she has targeted another 385 in the MDL  
21 which she hopes to get closure on, if possible, by year end.  
22 If no closure, it is either for lack of time or we are not  
23 going to get closure but she is hopeful we can get closer on  
24 that in terms of resolution for the Court.

25 THE COURT: The 1,452 number is that there is a

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1 tentative agreement as to 1,452?

2 MR. GODFREY: Yes; that includes the Hilliard Henry  
3 1,382.

4 THE COURT: Okay.

5 MR. GODFREY: So, it is in addition on top of that but  
6 then we have another 385 she is making progress on now. The  
7 year is short in terms of the end of the year, at least term  
8 sheets have to be documented, but she's cautiously optimistic.

9 THE COURT: Gotcha. Okay.

10 That brings me to the next item which is on my list  
11 that I issued yesterday which is I am inclined, at some point  
12 and -- I am open to persuasion that now isn't that point -- but  
13 I am inclined at some point to set a deadline, at least --  
14 well, let me back up.

15 My inclination is to think that the purposes of the  
16 MDL has sort of been satisfied and run its course at least as  
17 to the cases that were within the scope of the phase 1  
18 bellwether process. Both sides have indicated that they don't  
19 believe that any more trials should be held in those cases, in  
20 which case unless there is something I am missing, I think the  
21 purpose of an MDL being to sort of deal with pretrial issues,  
22 that has probably been satisfied, and cases, at some point,  
23 should be remanded -- transferred -- transferred to courts for  
24 trials in cases that don't settle.

25 I have been okay with allowing both sides to work

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1 through these settlements recognizing that there are a lot of  
2 cases and it is complicated and for the time being it pays to  
3 sort of keep them consolidated and facilitates that but I am  
4 inclined to think that at some point you have had enough time  
5 to do that and in that regard that it might be helpful to set a  
6 deadline by which cases either settle or will be remanded, or  
7 at least I will issue a suggestion of remand to the panel.

8 Thoughts and thoughts about a process for that?

9 MR. HILLIARD: One important purpose that you have  
10 served, Judge, is facilitating settlement both with the  
11 availability of the magistrate that you appoint and also with  
12 your attention to it. The time is not ripe for remand yet  
13 because the cases are settling. You are going to be  
14 potentially seeing the whole pre-bankruptcy phase 1 group of  
15 cases coming back to your court if cert is denied in January  
16 and there are discussions about settlement there. I think that  
17 the remand now or before we have an opportunity to  
18 successfully, or at least explore whether it is successful the  
19 settlement of the pre-bankruptcy phase 1 cases, I think the  
20 remand would slow it down. I have talked to Mr. Godfrey about  
21 this this morning and we agree that we are not sitting on our  
22 hands in regards to settlement. Your presence and  
23 participation judicially in this MDL settlement process has  
24 been helpful and has expedited it and we would both encourage  
25 the Court to allow us, right now at least, an open-ended time



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1 to continue to work on it because we are doing that. And once  
2 we know the January decision of the U.S. Supreme Court, perhaps  
3 come back and say it is time for a deadline and here is what we  
4 think it should be.

5 THE COURT: All right. That seems reasonable to me.  
6 But, if the fact that I haven't raised this issue didn't convey  
7 it in itself, let it be known that I am getting a little antsy,  
8 which is to say I think it does make sense -- as long as it  
9 makes sense for these cases to remain here because it is  
10 facilitating settlement discussions and moving these cases  
11 forward, fine, but there does have to be an end to that process  
12 and everybody should be aware that at some point I will set a  
13 deadline so to that end you should be doing what you need to  
14 do. But, I think your point is well taken about the  
15 pre-bankruptcy block of cases and, at a minimum, we will know  
16 more about whether those cases are in fact ripe in a few  
17 months, I would imagine.

18 Mr. Godfrey.

19 MR. GODFREY: The fact that Mr. Hilliard and I agree  
20 on something like this should be a weighty consideration, I  
21 would submit.

22 Two additional points. One is, and I don't think  
23 Mr. Hilliard disagrees with me on this either, we continue to  
24 have concerns about risk of inconsistent rulings on core issues  
25 and the loss of primacy or control by the MDL. I have already

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1 identified at some point we think there is going to be  
2 inconsistent rulings. In California, for example, with respect  
3 to the devaluation theory and if you do this at a federal level  
4 you remand them back. I think it increases the risk of  
5 inconsistency.

6           Secondly, I actually was curious about your Honor's  
7 notes so I had someone yesterday go look to see how often  
8 federal courts actually remand. Not the option agreement, but  
9 actually remand. There is actually some data on this and the  
10 data is that of the current 127,704 cases in the MDL docket as  
11 of September 14 -- that's the most recent data -- only 478 or  
12 less than .4 percent, less than four one hundredths of a  
13 percent have been remanded -- and the theory behind it, and  
14 this was an article -- the theory is control, primacy, avoiding  
15 consistency and encourage and actually not impede settlement.  
16 And what Mr. Hilliard and I both see is that we have a better  
17 chance, we think, of settling here if we are going to reach  
18 settlements than if there is a remand.

19           So, I think we can have the discussion at a later date  
20 but I thought that some data -- I am kind of data driven -- it  
21 might help frame the issue in terms of standard considerations.  
22 It is certainly something the Court has the power and  
23 discretion we know to consider but I think it would be  
24 unhelpful here certainly at the current time in the near term,  
25 particularly given inconsistent results and settlement

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1     impeding.

2             THE COURT: Well, I am less concerned about being an  
3 anomaly than I am about helping resolve these cases and I am  
4 persuaded that for now at least keeping them here would be the  
5 right course. But, again, be aware that it is on my radar and  
6 I am getting a little bit more antsy than I used to be and you  
7 should plan to put it the on the agenda for conference  
8 immediately after we hear from the Supreme Court on the issue,  
9 that is, assuming that they deny cert. I suppose if they grant  
10 certificate then obviously the wait will continue.

11            The next item is absent class member communications  
12 and discovery.

13            First, with respect to communications, new GM, in its  
14 letter on this issue way back when, had voluntarily agreed to  
15 adopt certain safeguards, namely to identify themselves as  
16 representing new GM and to ask that any person that they speak  
17 with if they are represented and, if so, to speak through  
18 counsel.

19            I assume, Mr. Godfrey, that part of that you also  
20 would or would offer to make clear that the person is free not  
21 to speak with the caller?

22            MR. GODFREY: Of course.

23            THE COURT: With those representations, I am not going  
24 to restrict communications at this time. Obviously, if there  
25 are any signs of or a record of any sort of abuse or coercion

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1 or the like, I will consider imposing restrictions but absent  
2 any evidence of abuse or bona fide expectation of such abuses,  
3 I'm not going to interfere with the right of either side to  
4 communicate freely with unrepresented class -- absent class  
5 members.

6 With respect to the issue of discovery --

7 MR. BERMAN: Can I be heard on that one point, your  
8 Honor?

9 THE COURT: Sure.

10 MR. BERMAN: And the issue of communications with  
11 absent class members, we would ask -- I understand you didn't  
12 adopt our full safeguards but at least typically, when courts  
13 have allowed this, they have instructed the defendant to at  
14 least tell the absent class member that there is a class  
15 counsel should they wish to consult with them.

16 So, we would ask that GM, in addition to saying you  
17 don't have to talk to us, that there are lawyers representing  
18 you in the sense of represented class.

19 THE COURT: Well, strictly speaking, I don't think  
20 that you represent them because they're absent class members  
21 and there is no class yet.

22 MR. BERMAN: I understand.

23 THE COURT: But, Mr. Godfrey, before I opine, any  
24 reaction or thought?

25 (Counsel conferring)

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1           MR. GODFREY: Your Honor, I'm not quite sure what  
2 Mr. Berman is asking. I think we intended to tell the absent  
3 class member that there is a class action. This is a  
4 litigation that has been brought by GM that each individual  
5 class member is a putative member of a class but I'm not sure  
6 what he is asking. Is he asking me and they have to say and  
7 your counsel is because they're not counsel.

8           THE COURT: I think what he is asking to say is that  
9 there is a class action that's been filed. You are a  
10 putative -- although I would recommend using a different word  
11 that lay people are more likely I to understand -- putative  
12 member of the class. There are lawyers who are representing  
13 the named plaintiffs seeking who brought that lawsuit. I think  
14 that would be the point.

15           Is that correct?

16           MR. BERMAN: That's correct.

17           THE COURT: Ms. Cabraser?

18           MS. CABRASER: Yes, your Honor.

19           In fact, this situation arises most frequently in the  
20 pre-certification stage, and what Courts including MDL Courts  
21 typically do is provide, under Rule 23(d) which applies to the  
22 precertification stages, this a defendant communicating with  
23 the absent members of a putative class identify not only the  
24 existence of the proposed class action, which is simple enough  
25 to do here by docket name, and in this case they would refer

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1 the absent class member to the Court's website which is one  
2 stop shopping for all the information about this case and is  
3 available to the public but which these absent class members  
4 may not be aware of; and secondly, what Courts do is to simply  
5 identify those Court-appointed counsel such as lead counsel or  
6 co-lead counsel that have been appointed by the Court to serve,  
7 prior to the class certification decision, to coordinate the  
8 prosecution of the common claims which is exactly what's been  
9 going on here since the case went to your Honor, so that absent  
10 class members have a second source of information and they have  
11 counsel that have been appointed to represent their interests,  
12 at least generically, that they can consult with if they want  
13 to. It is obviously up to the person that new GM reaches out  
14 to.

15 But, we think those two sources, access to the Court  
16 website for all the information, and identification of the  
17 co-lead counsel appointed by the Court to represent the  
18 economic loss plaintiffs, would serve those protections.

19 THE COURT: Let me make a suggestion here. We are  
20 veering in the direction of my regulated communications in a  
21 way that I would rather not at this stage but, Mr. Godfrey, any  
22 objection to your voluntarily adding to the disclosures that,  
23 again, there is a pending lawsuit, that for more information on  
24 the lawsuit including the lawyers who are handling the  
25 litigation, you can visit the MDL website and leave it at that?

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1 I think the MDL website has information about plaintiffs'  
2 counsel and a person can obtain that information through that  
3 way.

4 MR. GODFREY: I have no concern about referring them  
5 to the MDL website. Beyond that, though, I think we are  
6 starting to regulate what we say and don't say and I think --  
7 but I have no problem with saying you can find out more  
8 information about the case on the website, here is the website.  
9 I have no problem with that.

10 THE COURT: I would recommend saying more information  
11 about the case including the lawyers who are handling the  
12 litigation.

13 MR. GODFREY: That's fine. That part is fine. What I  
14 don't want to get into is a discussion about who the lawyers  
15 are, the phone number. That then takes you down a discussion  
16 that is not particularly productive. They can figure out if  
17 they want counsel or not.

18 THE COURT: I think that directing them to the  
19 website, given that the website has information who the lawyers  
20 are is sufficient. And, for now, absent evidence of abuses or  
21 problems, I won't require more than what GM has agreed to do on  
22 the record here.

23 Turning to the issue of discovery from absent class  
24 members, I think that both sides have a point which is why I  
25 have struggled a little bit with this or wanted to think about

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1 it a little bit more. That is to say I think plaintiffs have a  
2 decent point that there are 200-some-odd named plaintiffs and  
3 that at a minimum, discovery ought to focus on them in the  
4 first instance and one would think that that is sufficient.  
5 But, I think new GM has a point in saying that the plaintiffs  
6 chose their named plaintiffs and shouldn't be allowed to  
7 cherry-pick, if you will, those that they think have the  
8 strongest or shouldn't be allowed to limit their, sort of  
9 testing class certification-related issues by going beyond the  
10 plaintiffs that they have selected to include in the complaint.

11 Given that, I think the answer is to allow some absent  
12 class member discovery but to essentially limit and structure  
13 it in an appropriate fashion and that that strikes the right  
14 balance.

15 So, I am inclined to allow it but to cap it in some  
16 way or adopt some sort of statistical sampling type of  
17 approach. In other words, I am not prepared to allow, without  
18 limit, unlimited interrogatories and depositions and so forth.  
19 I think that that would not be appropriate for any number of  
20 reasons.

21 So, I don't know if you have had a chance to discuss  
22 these issues. If there is a proposal, if you want time to  
23 discuss them, what your thoughts are.

24 MR. GODFREY: I have made a proposal. I don't think  
25 it was accepted but I don't know that for sure so I made a



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1 proposal: A maximum up to -- so this is the maximum, I am not  
2 saying we even need to do that, but up to 10 absent class  
3 members for each of the states that we have currently  
4 identified, that would be the eight jurisdictions in the  
5 original motion and then the additional eight jurisdictions and  
6 the one exception is California because of the size, up to 20.  
7 Whether we do all of that will remain to be seen in discovery,  
8 but that would be the maximum up to. We start with  
9 interrogatories and then we go with depositions and that would  
10 be a maximum. And whether we want additional states beyond the  
11 first 16 jurisdictions, we would like the opportunity to do  
12 that but we may -- I don't think we need to address that yet  
13 because of where we stand with the facts.

14 THE COURT: Mr. Berman?

15 MR. BERMAN: Yes, your Honor.

16 First of all, with respect to the notion and your  
17 comment that GM makes a fair point that we get to select the  
18 plaintiffs and therefore we have cherry-picked, if the cherry  
19 picking argument was adopted that would be true in any class  
20 action and I think we have given you the law that discovery of  
21 absent class members is generally not permitted unless there is  
22 a showing. The showing has to be more than cherry picking  
23 because, again, we always pick the plaintiffs.

24 So, here we are at a stage -- and I understand what  
25 your inclination is, but we are at a stage where they're going

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1 to take between 60 and 240 depositions. They haven't come in  
2 here and shown you one lick of specific need as to why they  
3 need more. So, I think it is premature, without some showing,  
4 which I think is clearly required in the cases we have given  
5 you, to order this discovery now.

6 Second, I think there is a basic dispute about what  
7 discovery, exactly, you are permitting. So, for example, when  
8 Mr. Godfrey gave us our proposal, he said interrogatories.  
9 Well, I don't see how you can order, in all due respect,  
10 interrogatories of absent class members. They're not parties  
11 and interrogatories are directed to parties. That's different  
12 than depositions.

13 So, I think we need to decide if there is discovery,  
14 what are the parameters. Interrogatories, we say absolutely  
15 can't have them. I am not aware of a case where  
16 interrogatories were sent. If it is depositions, you know, I  
17 think we need to think about the proposal which we just got  
18 this morning and there are two issues that I think we need to  
19 address; one is when and, again, I think there needs to be some  
20 furtherance of the actual depositions to address this issue.  
21 And then we will talk about the number that they propose.

22 THE COURT: Well, it sounds like to some extent these  
23 issues aren't ripe for me to step into but, Mr. Godfrey, do you  
24 have any authority for the proposition that interrogatories are  
25 appropriate with respect to non-parties?

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1           MR. GODFREY: Yes. We cited it in our letter of  
2 November 23rd, 2015, I think it is docket 1734. This issue  
3 that Mr. Berman is rearguing to the Court -- I don't know if I  
4 would call it tentative decision or inclination of the Court,  
5 but he is rearguing what the Court has decided. And we gave  
6 examples from this district, for example interrogatories were  
7 served as well as depositions.

8           So, I am happy -- I am not going to read our letter  
9 but we have indicated in the cases we cited. So, we have  
10 fundamental disagreement on our ability to do this and if the  
11 Court agrees with us, then we should proceed and then set --  
12 the Court's suggested limits, we raised that, we don't have a  
13 problem with that. But, what we just heard was essentially a  
14 reargument of whether we should get any absent class member  
15 discovery as compared to none, and we submitted a proposed  
16 order at the same time along with our letter of November 23rd,  
17 2015 which was the format by which we think it is appropriate  
18 to engage in discovery.

19           THE COURT: Let me ask you, just looking one step  
20 ahead, assuming that I allow you to serve interrogatories on a  
21 non-party and they don't respond, what happens then?

22           MR. GODFREY: I think at that point, I haven't looked  
23 at the case law on this, but I think at that point we have a  
24 couple of options. One is we then substitute in someone else  
25 that we serve the interrogatory on; secondly, that is a data

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1 point that people are not even interested in responding to.

2 This data point there is one can draw inferences from.

3 Let's face what is happening here. One of the issues  
4 is that we had some original class named representatives who  
5 dropped out. They don't want us to take those depositions  
6 either. We are trying to address here a cherry-picking problem  
7 with a huge, massive proposed class. We are seeking extremely  
8 limited discovery. And I don't know the answer under the case  
9 law because I haven't experienced it if someone says I don't  
10 want to participate I'm not going to give an interrogatory  
11 answer. I think Court has the power to compel that but I  
12 haven't faced that personally. So, I will take a look at that  
13 and see whether there is any case law on that point. But, make  
14 no mistake, what we are having discussion now about is not how  
15 many, it is about whether at all and they don't want us to.  
16 They are opposing us from taking any absent class discovery and  
17 that is the battle ground here because I made a proposal, they  
18 can think about it in terms of a reasonable number of capped  
19 individuals but that's not what the debate is really about.

20 MS. CABRASER: Your Honor, I think we just learned  
21 something about what the debate might really be about which  
22 hadn't surfaced before and just did which is, basically, what  
23 new GM may be intending to do is to get permission from this  
24 Court to serve interrogatories on nonparties. Absent class  
25 members aren't parties, the Supreme Court has been very clear

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1 about that, they're passive beneficiaries of the action. So,  
2 they want to not have to make the showing that the case law  
3 requires. They have totally ignored the Rule 26(b)(1)  
4 proportionality analysis which they're required to go through  
5 to show that this is necessary and promotional, and then what  
6 they want to do is serve interrogatories on nonparties which  
7 those nonparties have no legal obligation to respond to, and  
8 then use the fact of non-response as a data point to try to  
9 demonstrate something contrary to class certification probably  
10 under the Rule 23(a)(3) or (4) parameter.

11 So, it is a very slippery slope they want permission  
12 to go down. We are not aware of any case in which anything  
13 like that has been permitted, I think for obvious reasons,  
14 because the discovery becomes totally disproportional, it  
15 becomes totally -- they talk about regulation. It can't be  
16 regulated by the Court at this point. Then it gets used for  
17 improper purposes as some sort of data.

18 So, I think we are considering the proposal but I  
19 think, at a minimum, first the depositions of the actual named  
20 parties, the proposed class representatives, ought to be taken.  
21 That will illuminate the parameters of any real problem and any  
22 real need for absent class member discovery, and then some  
23 limited number of depositions under some court control process  
24 could be considered after that.

25 MR. BERMAN: Could I add one point to that?

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1           THE COURT: Hold on. Just first as to Ms. Cabraser  
2 and Mr. Berman, it seems odd to me that you would be arguing  
3 that -- I understand you are trying to resist any discovery as  
4 to absent class members but assuming I allow it, it seems odd  
5 to me to say that I should only allow depositions and not  
6 interrogatories. I would think interrogatories are less of a  
7 burden on absent class members than depositions and I am  
8 looking, for example, at one case cited by new GM in its letter  
9 Redman v. Moody's Investment Service by Judge Francis where he  
10 denies, at least in the first instance, depositions of absent  
11 class members but allows for interrogatories, presumably on the  
12 theory that that may provide the information or at least  
13 provide a basis for who then would be deposed.

14           So, I am a little struck. Number one, there does seem  
15 to be authority for the proposition that interrogatories can be  
16 served on non-party, absent class members; and number two, I  
17 would think that to the extent that that is within the scope of  
18 contemplation are place that it would make sense to at least  
19 allow that first before dragging people in for depositions.

20           MR. BERMAN: Well, first of all, the rule, whatever  
21 that case is, I think is an aberration to the cases we have  
22 cited because the Rule 33 talks about parties. As you pointed  
23 out, they're not parties. So, imagine this: You are an absent  
24 class member. You get an interrogatory in the mail. And you  
25 do what? Now, normally you would have a lawyer and the lawyer

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1 would say, well, that question is objectionable. These people  
2 don't have that so they're going to be answering, without the  
3 benefit of a lawyer. And that's just fundamentally unfair. At  
4 least in a deposition we would be there, we could object to the  
5 questions, we would actually be able to talk to the class  
6 member, and we would be able to make sure that the answers were  
7 given fully and fairly.

8 So, that's why we object to the interrogatories.

9 THE COURT: And it is not adequate for the  
10 interrogatory to include information concerning the fact that  
11 you're representing the named plaintiffs and they can seek your  
12 assistance if they want in connection with completing  
13 interrogatories?

14 MR. BERMAN: I guess if we could agree on a script up  
15 front that would say that, you know, normally parties answer  
16 interrogatories and normally parties have a lawyer. You should  
17 consider consulting the Court-appointed lawyers for the  
18 proposed class, that would be a minimum protection, and then I  
19 think there needs to be language indicating that you're  
20 answering these under oath, they can be used against you.

21 There needs to be, in our view, serious procedural  
22 protection here for these folks.

23 THE COURT: All right. Well, suffice it to say, to  
24 the extent I am going to allow it I would agree with that and  
25 certainly mandate those sorts of protections.

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1           Well, why don't you continue to discuss it, mindful of  
2 the fact that I am inclined to allow it at least on some  
3 limited basis. I am not intimating on you whether I agree with  
4 the numbers that Mr. Godfrey threw out or whether I think it  
5 makes sense to say only depositions or only interrogatories or  
6 only one before the other. But, my inclinations remain the  
7 same which is not to say that I have ruled and that's very  
8 different than -- in that regard I understand that they are  
9 resisting the ruling but I haven't made a ruling. So, they're  
10 not actually seeking reconsideration, they're seeking to  
11 persuade me that I shouldn't do down that path and I don't  
12 think that that is improper.

13           So, hopefully that can guide things and we can figure  
14 out a resolution here but, if not, I will resolve it once and  
15 for all in due course.

16           Yes, Mr. Godfrey?

17           MR. GODFREY: I was simply going to say to the Court,  
18 we made no secret of any of this, it was spelled out in our  
19 November 23rd letter including the principal topics that we  
20 seek both interrogatories and deposition discovery on. So, we  
21 have tried to be as transparent as possible. These aren't  
22 all-day depositions or things like that, these are discrete  
23 depositions. We have identified the principal topics. There  
24 may be one or two others depending upon the fact that's now  
25 been filed, but this is pretty discrete, precise discovery that



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1 we seek for the reasons that we have identified. There is  
2 nothing magical or secret about it.

3 THE COURT: Well, why don't you talk about it -- are  
4 you talking about that today as well? Can you report back to  
5 me on Wednesday on that front as well?

6 MR. BERMAN: Yes, we can, your Honor.

7 THE COURT: Great.

8 The next issue, which I actually didn't put on the  
9 order that I issued yesterday but wanted to raise, is the brand  
10 diminution issue. Without intimating any of you on whether I  
11 agree with new GM or not about whether my prior ruling was with  
12 or without prejudice, I think it would make sense to have more  
13 thorough briefing on whether the amendment, if I can call it  
14 that, on the issue of futility with respect to the actual  
15 allegations that are within the fourth amended consolidated  
16 complaint. Both sides -- I mean, new GM argues that amendment  
17 would be futile and lead counsel asserts that it wouldn't but  
18 neither side really addresses that issue, let alone with  
19 specificity, given the allegations that are actually made in  
20 the complaint. Again, I am not suggesting that I ultimately  
21 will decide on that ground, but I think it would be helpful for  
22 making -- for purposes of a record to have more thorough  
23 briefing on it. I am open to doing that -- well, I am hoping  
24 to have simultaneous briefing on it. I am open to doing it as  
25 part of the motion to dismiss briefing that we have already

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1 scheduled. I think new GM's brief on that is due, I think, on  
2 December 2nd, so in a matter of weeks. I am happy to let you  
3 guys think about it and discuss it because I didn't put it on  
4 the order yesterday so I am sure you have not thought or  
5 discussed it. But, open to your thoughts.

6 MR. GODFREY: I would propose simultaneous briefing  
7 and that we do it in short order, a week from Friday.

8 THE COURT: Mr. Berman?

9 MR. BERMAN: We would propose the opposite. It is  
10 their motion, we would like to respond to what they say. We  
11 can do it in short order. If he wants to go first we can  
12 respond 10 days later.

13 THE COURT: I'm not sure it is their motion in the  
14 sense that to the extent that it would require leave. It would  
15 be a motion for leave to amend and it would be your motion.  
16 But, on the other hand, allowing them to move first also gives  
17 them a reply, presumably.

18 So, what is the theory for doing it in that way?

19 MR. BERMAN: I don't want them to have a reply so I  
20 would go simultaneous then.

21 MR. GODFREY: I liked your Honor's suggestion but I  
22 think simultaneous, a week from Friday, that's eight days from  
23 now, makes the most sense.

24 THE COURT: Is that feasible on your end?

25 MR. BERMAN: That's fine, your Honor.

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1 THE COURT: Great. So we will have simultaneous  
2 briefs a week from Friday. Will 10 pages suffice?

3 MR. GODFREY: These are letter briefs, single-spaced,  
4 10 pages? Sure.

5 MR. BERMAN: Yes, your Honor.

6 THE COURT: Great.

7 MR. GODFREY: Thank you.

8 THE COURT: One other issue that I didn't put on the  
9 order yesterday but I wanted to raise is the Boyd case.

10 I had previously denied the motion and I know counsel  
11 for Boyd is not here, but I guess the question frankly doesn't  
12 really pertain to Boyd at any point is precisely that. I had  
13 denied the motion to essentially withdraw from the bellwether  
14 discovery process and lexicon objection for reasons to be  
15 stated and opinion to follow. The case has since been  
16 dismissed and in that regard I guess the question I have is, is  
17 it worth my time to write an opinion, to follow, explaining.  
18 If there is benefit, you think, to other cases in the MDL and  
19 an opinion could provide guidance, I am certainly happy to take  
20 time to do it but, as you well know, I certainly have plenty on  
21 my plate from this case and others and, and in that regard, if  
22 there is no point to it at this point, I am inclined to leave  
23 it where it was.

24 I will say that my reasoning is two-fold. Number one,  
25 that there was a deadline to assert a lexicon objection set

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1     forth in the bellwether order, I think order no. 25, and in  
2     that regard the issue was waived; and number two, that even if  
3     there was a valid lexicon objection, it wouldn't justify, to  
4     the extent that the cases are all consolidated before me for  
5     pretrial purposes I have full authority to pursue and order  
6     discovery, and even if there were valid lexicon objection it  
7     wouldn't justify withdrawing the case from the discovery  
8     process, it would only bear on where ultimately the case had to  
9     be tried. So, for both of those reasons I thought the motion  
10    lacked merit.

11             I am happy to write that out if there is anything to  
12    be gained but I am wondering if that is true at this point.

13             MR. HILLIARD: If it was just waiver, then no, but  
14    something we are faced with now and then is the sense by  
15    one-off attorneys who have a very small case, it gets removed  
16    and then tagged along without a remand order heard, and then  
17    gets selected and that is the value of the ultimate case is not  
18    worth, and the dismissal confirms it, it is not worth the  
19    hassle and the costs to those plaintiffs.

20             It will come up again. Your order will be important  
21    going forward to be able to show them if it is not just a  
22    lexicon waiver because the deadline was missed but procedurally  
23    and substantively the Court considers that they're here; it is  
24    unfortunate, maybe, but they're here and they're going to be  
25    part of the ride, it would be helpful to me, if I am dealing

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1 with certain one-off attorneys with smaller cases that I have  
2 the Court's order. Timingwise, if your plate is pretty full,  
3 there is not a -- it is not on the top of the holiday list so  
4 it can come later, but I would appreciate the Court considering  
5 writing it so we can have it for later.

6 THE COURT: All right.

7 Mr. Godfrey?

8 MR. GODFREY: I don't like imposing on the Court's  
9 time but I have a concern about your Honor taking the time and  
10 issuing the order.

11 I hail from the Seventh Circuit, Judges Posner and  
12 Easterbrook and I think -- I won't speak for them but I'm not  
13 sure the Court has jurisdiction to issue the order at this  
14 point because the case has been dismissed. The Supreme Court  
15 spoke to that in a case called Kokkomen --

16 THE COURT: Called what?

17 MR. GODFREY: I think Kokkomen, K-O-K-K-O-M-E-N, but I  
18 think Elizabeth knows -- Ms. Cabraser knows what I am speaking  
19 of where once a case is dismissed, the Court is, if there is  
20 not basically an injunction or consent decree retaining  
21 jurisdiction, the Court lacks jurisdiction.

22 I feel an obligation as a member of the bar the Court  
23 to -- I learned about this in an appellate argument some time  
24 ago many years ago, before one of the aforementioned judges.  
25 So, I feel obligation to raise that with the Court. I am not

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1 sure, unfortunately, that in light of the dismissal that the  
2 Court has jurisdiction to issue the opinion. So I have a  
3 concern in that regard. I don't want to proceed down a path  
4 where we unintentionally let the Court walk a bit into harm's  
5 way.

6 Maybe Ms. Cabraser has a different view, but I think  
7 suspect she thinks the same, perhaps.

8 MS. CABRASER: I think in terms, there definitely  
9 would be a utility on an ongoing basis in this MDL and others  
10 to have the Court's views on this on the record and publicly  
11 available, but I would submit that the discussion that we just  
12 had and your Honor's statements on the record, which will be on  
13 a transcript which will be on the website and will be part of  
14 the public record in this case and publicly available, may  
15 adequately serve that purpose. And I think that at any time  
16 that the Court has information or advice or thoughts that might  
17 be similarly useful about case management, having them stated  
18 publicly on the record in a status conference or hearing that  
19 is then available by transcript is of great, great value and  
20 utility when we come up against the same situation on a  
21 recurring basis because then we can show counsel this has  
22 happened before and it will happen again and here is what the  
23 Court had to say about it the last time it came up.

24 THE COURT: All right.

25 MR. GODFREY: I agree with that. Look, we are in

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1 favor of the ruling, obviously, but I have the concern I  
2 identified.

3 THE COURT: And I appreciate your candor as an officer  
4 of the Court.

5 It is sort of an interesting academic question. I am  
6 inclined to think that I would have jurisdiction to issue a  
7 ruling, if only in my authority overseeing the MDL as a whole  
8 and sort of providing guidance with respect to case management  
9 perhaps more by way of discussion and example of the Boyd  
10 ruling than necessarily providing my reasoning as to that  
11 ruling.

12 In any event, it is sort of an academic question. I  
13 think my inclination is not to spend the time on it and am  
14 certainly not going to prioritize it. Let me put it that way.  
15 And I will leave things where they are on the record of this  
16 proceeding with the further statement that my view is if the  
17 case is in the MDL, it is my task to do what I can to get the  
18 case across the finish line. Whether that finish line is with  
19 a trial or with a settlement is not my concern, but my task is  
20 consistent with Rule 1 of the Federal Rules of Civil Procedure  
21 and, as I think I emphasized in the first conference in this  
22 case, to try and resolve all of these cases in as a fast and  
23 most efficient way possible and if a case was filed and it is  
24 not worth a whole lot of money, that may factor into how the  
25 case gets managed. But, the fact of the matter is, ultimately,

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1 it does need to be resolved whether that's by trial or  
2 settlement and the value of the case would presumably inform  
3 the desirability of a settlement but if there is no settlement,  
4 then ultimately it will be tried whether it is tried here or in  
5 a transferror court.

6 So, I think I will leave it there for now but if these  
7 issues arise again, Mr. Hilliard or anyone else for that  
8 matter, you should bring them to my attention. If it would be  
9 helpful for me to spell that out in an order or some sort of  
10 opinion, I am happy to do so, obviously understanding that I  
11 can't issue an advisory opinion. But I, again, think that I  
12 have enough authority with respect to the management of the MDL  
13 that I can set forth those views if or when it is appropriate.

14 So, hopefully those remarks will suffice and for that  
15 reason I think I will probably not provide you with my eloquent  
16 prose and explanation for my ruling in Boyd. But, if these  
17 issues come up again, we will discuss them further.

18 The next conference is scheduled for December 14th at  
19 9:30. I don't think that we have scheduled one thereafter.  
20 Should we do so?

21 Do you have thoughts on when we would want to? What  
22 are your thoughts?

23 MR. HILLIARD: Judge, two thoughts. One is unrelated  
24 to scheduling and we had talked about it before the status  
25 conference began. It just slipped my mind. If the Court has



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1     been across the hall to the antitrust case we walked across and  
2     noticed the use of a big screen that was over this window  
3     during their trial and discussed with GM briefly about in July  
4     perhaps having the Court consider having us allowed to do it.  
5     While that trial is going on, if you have a moment just to go  
6     peek in and see if that is something you would consider  
7     allowing us to do for the July trial? I just meant to bring  
8     that to the Court's attention, unrelated to the next status  
9     conference.

10           As to the status conference, is there a reason to  
11     perhaps entertain skipping the December status conference?  
12     From the plaintiff's table we are fine with it, unless GM has a  
13     reason to. Mr. Godfrey?

14           THE COURT: I guess my inclination is not to do that  
15     now but as we get closer you should confer, and if there are  
16     relatively -- well, you should confer and let me know. I think  
17     it is just easier to take the thing and take a conference off  
18     the calendar on short notice than it is to add one on.

19           MR. HILLIARD: Agreed.

20           THE COURT: In that regard it may be better to keep it  
21     on and keep it on everybody's calendars. But, Mr. Godfrey?

22           MR. BROCK: Your Honor, Robert Brock, if I might.

23           I think it is a good idea to keep it on the schedule.  
24     Obviously we are using the scheduling conferences somewhat as a  
25     vehicle to bring issues to your attention as they bubble up --

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1 THE COURT: No pun intended.

2 MR. BROCK: Correct.

3 So, to the extent there might be discovery issues or  
4 that type of thing as the bellwethers mature a little bit in  
5 the discovery process, I think it is good to have it on the  
6 docket to have a way to bring those things to your attention in  
7 an organized way. And then, if we don't need it, of course we  
8 can revisit that later.

9 THE COURT: So, why don't we do that. To the extent  
10 that you are not aware of issues and want to free up your  
11 calendars, talk sooner rather than later but I don't think the  
12 time is ripe now to cancel it. So, I am certainly open to it  
13 if you don't think there is any reason or productive reason to  
14 have it. Having said that, should we put another date on the  
15 calendar for early next year and, if so, any thoughts as to a  
16 window of when we ought to do so? Maybe end of January or  
17 first couple weeks of February? What are your thoughts?

18 MR. HILLIARD: It would seem after the application for  
19 cert deadline passes, which I think is the 20th of January; is  
20 that right?

21 MR. BLOOMER: 13th.

22 MR. HILLIARD: 13th, so any time after the 13th.

23 THE COURT: That's the deadline for seeking cert.

24 MR. HILLIARD: Or Ruling.

25 MR. BLOOMER: No, no, no. That would be the deadline

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1 for filing, your Honor.

2 MR. HILLIARD: I'm sorry.

3 THE COURT: The last time I checked the Supreme Court  
4 doesn't impose deadlines on itself.

5 MR. HILLIARD: I was anxious in my own head to  
6 encourage them to rule. So, late January is fine with us, I  
7 would assume.

8 MR. GODFREY: That works for us I think as well, your  
9 Honor.

10 THE COURT: So, how about, Friday, January 27th?

11 MS. CABRASER: I have to be in Washington, D.C. on  
12 that date, your Honor.

13 MR. GODFREY: I have a conflict as well. Can we do  
14 the 26th, perhaps?

15 MS. CABRASER: I have the same conflict on the 26th  
16 and 27th. My apologies.

17 MR. GODFREY: Elizabeth, are you going to the  
18 inauguration?

19 MS. CABRASER: No.

20 MR. HILLIARD: All tickets cancelled.

21 THE COURT: How about a little bit later Friday,  
22 February 10th?

23 MR. GODFREY: That works, your Honor, for us.

24 MS. CABRASER: I think that works, your Honor.

25 MR. HILLIARD: It does.

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1           THE COURT: Great. So let's make that the next one  
2 and if we cancel the December one and you think we ought to  
3 move the one after that up, I am open to that. Obviously that  
4 is a little more complicated if everyone is not in the same  
5 room when we try and figure it out, but bottom line is let me  
6 know if you think that we ought to adjust things.

7           With respect to the TV idea, I am certainly open to  
8 it, I will take a look at Judge Schofield's courtroom. I will  
9 say that I think one reason she may have it is the courtrooms  
10 on that side of the building have still not been outfitted with  
11 the AV system that we have. So, my guess is that the parties  
12 set that up in the absence of what we have available. Having  
13 said that, I am certainly open to the idea of or interest in  
14 having a large screen and supplementing what we have here.  
15 But, we can discuss that between now and July.

16           Anything else? Any new business? All right. Thank  
17 you guys very much. If I don't see you in December, happy  
18 holidays to everyone. I guess happy Thanksgiving in the  
19 meantime.

20           MR. GODFREY: Thank you, your Honor.

21           MS. CABRASER: Thank you, your Honor.

22           THE COURT: Mr. Godfrey?

23           MR. GODFREY: I may have pictures next time when I  
24 come.

25           THE COURT: Excellent. I would like to see them.

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1 Thank you very much. Have a great day.

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