



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
IN RE:

GENERAL MOTORS LLC IGNITION SWITCH LITIGATION

14-MD-2543 (JMF)
14-MC-2543 (JMF)

This Document Relates To All Actions
-----x

ORDER NO. 14

JESSE M. FURMAN, United States District Judge:

[Regarding Discovery and New GM’s Proposed Gatekeeping Order]

In Section III of Order No. 12 (14-MD-2543, Docket No. 296), the Court directed the parties to brief whether, and to what extent, discovery should proceed with respect to “personal injury claims involving post-Sale accidents and economic loss claims involving post-Sale [General Motors LLC (“New GM”)] vehicles that are not the subject of New GM’s Motions to Enforce.” Upon review of the parties’ letter briefs (14-MD-2543, Docket Nos. 297-98), and after consultation with both Judge Gerber and a critical mass of the judges presiding over related cases in other courts (including Judge Tanksley, who is presiding over *Melton v. General Motors, LLC et al.*, No. 14-A-1197-4 (Ga. Cobb Cnty. Ct.)), the Court concludes that such discovery should proceed now, substantially for the reasons stated in Lead Counsel’s letter of September 12, 2014.

The Court finds New GM’s arguments unpersuasive in light of the fact that, whatever Judge Gerber rules in the bankruptcy proceedings and whatever this Court rules in the event that New GM files a motion to dismiss the Consolidated Class Action Complaint, the vast majority of the discovery sought will be necessary anyway. Moreover, delaying discovery would, in the Court’s view, reduce the willingness of courts presiding over related cases to coordinate their efforts with those of this Court and to defer to the schedule and orders adopted by this Court. That is, proceeding now with discovery on the claims not subject to New GM’s motions to

enforce — on a reasonable, but aggressive schedule — is the best way both to advance this litigation and to promote coordination with related cases, two of the primary goals of this Court.

New GM’s argument that plaintiffs “will seek to use” discovery obtained in the MDL “to reopen the laborious and protracted fact stipulation process” in the Bankruptcy Court is merely speculative. (14-MD-2543, Docket No. 297, at 5). Moreover, although plaintiffs may seek such relief from the Bankruptcy Court (a possibility that exists even without authorization of further discovery, given the initial discovery plan adopted in Order No. 12), it will be up to Judge Gerber to decide in the first instance whether to grant them such relief, mindful of the potential prejudice to New GM and the risk of delay. The Court is also unpersuaded by New GM’s suggestion that it defer decision until after Lead Counsel have prepared specific written discovery requests. (14-MD-2543, Docket No. 297, at 5). It is more efficient to allow Lead Counsel to proceed with discovery and for Defendants to raise specific objections with the Court (in accordance with the meet-and-confer process set forth in Section XIII of Order No. 12) in the event that they believe that any particular request is problematic — either because it is irrelevant to the claims not subject to New GM’s motions to enforce or otherwise.

In short, discovery may proceed with respect to cases and claims not subject to New GM’s motions to enforce. Per the Court’s prior rulings, such discovery should — for now — focus on, if not be limited to, document discovery; depositions should be deferred, except perhaps with respect to depositions of records custodians (or other witnesses relevant to the production of documents) or depositions needed to preserve the testimony of witnesses who might become unavailable. Lead Counsel and counsel for Defendants shall promptly confer in an effort to agree on a reasonable, but aggressive schedule for such discovery and should be

prepared to address the issue at the conference on October 2, 2014. Counsel should advise the Court in their joint agenda letter whether and to what extent they agree on a schedule.

By letter dated September 17, 2014 (14-MD-2543, Docket No. 308), New GM asked the Court to enter a proposed “Gatekeeping Order” requiring all attorneys and their law firms who have appeared in this multi-district litigation to follow certain procedures for discovery and pretrial proceedings in related cases. Upon review of New GM’s letter, and the letter of Lance A. Cooper dated September 18, 2014 (14-MD-2543, Docket No. 311), the Court concludes that the question of whether to enter the proposed order (or a version thereof) can and should be deferred until after Judge Tanksley addresses the issues that have been raised in *Melton* and this Court has entered a broader coordination order, which it anticipates doing in the next few days. Accordingly, New GM’s request is DENIED without prejudice to renewal after (1) the Court adopts a coordination order; and (2) New GM confers with Lead Counsel and Mr. Cooper.

SO ORDERED.

Dated: September 19, 2014
New York, New York



JESSE M. FURMAN
United States District Judge