



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)

ORDER NO. 22

This Document Relates to All Actions

-----x
JESSE M. FURMAN, United States District Judge:

[Regarding the November 6, 2014 Status Conference]

The Court, having held a Status Conference on November 6, 2014, and having given Lead Counsel for Plaintiffs (“Lead Counsel”) and counsel for Defendants an opportunity to be heard on the agenda items set forth in the Court’s November 3, 2014 Memo Endorsement (14-MD-2543, Docket No. 381), issues this Order to memorialize the actions taken and rulings made at the Status Conference.

I. MDL 2543 WEBSITE

The Court adopts the website created and proposed by Lead Counsel. The parties should meet and confer to discuss Defendants’ objections to the website’s existing content, as well as to discuss a protocol going forward for maintaining and adding content to the site. The website is to provide basic, neutral information and promote coordination with other courts and litigants. Specifically, the website should provide contact information, links to court documents, and other publicly available information in an objective and informative manner.

The parties should discuss whether the website will be maintained solely by one party, jointly by the parties, or by a neutral third party. No later than **November 26, 2014**, the parties must submit a proposed order memorializing the protocols moving forward (including details for

maintenance and development of the site), or if the parties are unable to resolve any disagreements, a joint letter (not to exceed five single-spaced pages) setting forth their respective positions.

II. MDL 2543 DOCUMENT DEPOSITORY

The parties should continue to meet and confer regarding issues related to the MDL 2543 Document Depository, including cost sharing and potential alternatives to ShareVault. The parties must provide the Court with an update on the status of these discussions at the December 15, 2014 Status Conference, if not earlier.

III. COORDINATION OF *MELTON II* MOTION TO COMPEL

The Court issued Order No. 21 (14-MD-2543, Docket No. 390) regarding coordination of the motion to compel filed by the *Melton II* Plaintiffs.

IV. CONSOLIDATED COMPLAINT BRIEFING SCHEDULE

Within **fourteen (14) days** of the Bankruptcy Court's ruling on New GM's pending Motions to Enforce, the parties shall submit a joint letter proposing how the Court should proceed with respect to Plaintiffs' Consolidated Complaint Concerning All GM-Branded Vehicles That Were Manufactured By Old GM And Purchased Before July 11, 2009 ("Pre-Sale Consolidated Complaint") (14-MD-2543 Docket No. 347). The letter should address how the Court should proceed with respect to the Pre-Sale Consolidated Complaint, including whether motion practice is necessary or appropriate, and to the extent that it is, propose a reasonable, but prompt briefing schedule.

The Court adopts the parties' proposed briefing schedule regarding the threshold issue of whether and to what extent motion practice should be deferred until after Judge Gerber decides New GM's Motions to Enforce with respect to Plaintiffs' Consolidated Complaint Concerning All

GM-Branded Vehicles That Were Acquired July 11, 2009 Or Later (“Post-Sale Consolidated Complaint”) (14-MD-2543 Docket No. 345):

- (i) Simultaneous initial briefs, not to exceed 20 double-spaced pages, by **November 25, 2014**; and
- (ii) Simultaneous responses, not to exceed 10 double-spaced pages, by **December 10, 2014**.

In their briefing of this threshold issue, the parties should specifically address whether there are any discrete issues on which motion practice can or should proceed with respect to the Post-Sale Consolidated Complaint, or whether motion practice should be deferred in its entirety until Judge Gerber rules on New GM’s Motions to Enforce.

In addition, by **November 25, 2014**, the parties should meet and confer and submit a joint letter containing an agreed briefing schedule or the parties’ respective positions with respect to scheduling (tied to the date on which the Court rules on the threshold issue referenced above) in the event that the Court agrees with Plaintiffs’ position that some motion practice should proceed with respect to the Post-Sale Consolidated Complaint. If the Court rules in favor of Defendants and postpones any motion practice on the Post-Sale Consolidated Complaint until after Judge Gerber rules, the proposed briefing schedule will be moot. In that event, the parties should address the Post-Sale Consolidated Complaint in the joint letter submitted to the Court with respect to the Pre-Sale Consolidated Complaint within 14 days of Judge Gerber’s ruling on New GM’s Motions to Enforce.

The parties shall continue to meet and confer regarding Defendants’ objection to Plaintiffs’ reservation of claims contained in both the Pre-Sale Consolidated Complaint and the Post-Sale Consolidated Complaint. The parties should discuss all related issues raised at the November 6 Status Conference, including any right to amend the Consolidated Complaints, the opportunity and

timeline for all Plaintiffs' lawyers in the MDL 2543 pool to assert objections, and the effect, if any, on Defendants' responsive pleadings. The parties must provide the Court with an update on the status of these discussions at the December 15, 2014 Status Conference. Until further order of the Court, New GM is not required to respond to either Consolidated Complaint.

V. PLAINTIFF FACT SHEETS

By **Friday, November 14, 2014**, the parties shall submit agreed-upon proposed Plaintiff Fact Sheets consistent with the Court's comments during the November 6 Status Conference. The parties should also address whether the *Lexecon* waiver should be incorporated into the Plaintiff Fact Sheets. If the parties are unable to reach an agreement, Lead Counsel and counsel for Defendants shall each submit a letter brief (not to exceed five single-spaced pages) setting forth their positions and attaching their proposed Plaintiff Fact Sheets, as well as a redline showing the differences between the competing fact sheets. Additionally, the parties shall meet and confer to discuss whether the Court should issue a separate order memorializing the Plaintiff Fact Sheets, apart from the forthcoming Bellwether Order, and should submit their thoughts (and/or a Proposed Order) in conjunction with their joint or proposed Plaintiff Fact Sheets.

The parties should also meet and confer to discuss the process by which the Plaintiff Fact Sheet will be deemed substantially complete or materially deficient. The process should also address those plaintiffs that fail to submit a fact sheet altogether. The parties should be prepared to discuss these issues at the December 15, 2014 Status Conference.

The parties should also continue to meet and confer regarding the use of modern technology to ensure that Plaintiffs' Fact Sheets (a) are provided to Defendants in digital format with extracted text; and (b) have built in mechanisms to prevent errors in VIN, Social Security Number ("SSN"), and other personal information.

The Consumer Economic Loss Plaintiff Fact Sheet is approved (subject to the Court's comments at the November 6 Status Conference) and should include the Plaintiffs' SSN, subject to Order No. 10 (MDL Doc. No. 44) [Protecting Confidentiality and Privileged Materials].

The Non-Consumer Economic Loss Fact Sheet is approved (subject to the Court's comments at the November 6 Status Conference).

VI. ECONOMIC LOSS BELLWETHER TRIAL

The parties should meet and confer to discuss whether a bellwether trial on the economic loss cases is appropriate in the context of MDL 2543, and if so, the anticipated timing for such a trial. The parties should be prepared to discuss this issue at the December 15, 2014 Status Conference.

VII. PERSONAL INJURY/WRONGFUL DEATH BELLWETHER TRIAL ORDER

By **Friday, November 14, 2014**, the parties should submit an agreed-upon proposed personal injury/wrongful death bellwether order consistent with the Court's comments during the November 6 Status Conference. If the parties are unable to reach agreement, Lead Counsel and counsel for Defendants shall each submit a letter (not to exceed five single-spaced pages) setting forth their respective positions and attaching their respective proposed orders, as well as a redline showing the differences between the two orders.

The first personal injury and/or wrongful death bellwether trial is currently set for **January 11, 2016**. The parties should meet and confer on intermediate deadlines, including but not limited to, submission of Plaintiff Facts Sheets, the selection process, specific bellwether case discovery, and deposition scheduling. The parties should be prepared to address these dates at the December 15, 2014 Status Conference. For purposes of efficiency and expediency, the parties are encouraged to propose a deadline for submission of Plaintiff Fact Sheets prior to the December 15, 2014 Status Conference.

Additionally, the parties should meet and confer as to whether there are better (*i.e.*, cheaper and more efficient) alternatives or additions to holding bellwether trials, including but not limited to, early neutral evaluation of individual cases and/or “summary” trials.

Finally, the parties should discuss whether it would be worthwhile and proper for the Court to speak to Kenneth Feinberg. No later than **November 13, 2014**, the parties shall submit a joint letter (not to exceed two single-spaced pages) to the Court addressing whether either side objects to the Court communicating directly with Mr. Feinberg.

VIII. PHASE II DISCOVERY SCHEDULE

The parties should begin to meet and confer regarding a proposed Phase II discovery schedule.

IX. DEPOSITION PROTOCOL ORDER

The parties should continue to meet and confer regarding the agreed-upon protocol governing depositions and be prepared to address this at the December 15, 2014 Status Conference. Additionally, the parties should consider the use of technology to allow for remote participation in all scheduled depositions.

X. ADDITIONAL PRESERVATION PROTOCOLS

The parties should continue to meet and confer regarding additional preservation protocols.

XI. PERMISSIBLE MODIFICATIONS AND ALTERATIONS OF DATA IN THE ORDINARY COURSE OF BUSINESS

The parties should meet and confer regarding any issues that may be raised by Lead Counsel with respect to permissible modifications and alterations of data in the ordinary course of business.

XII. “NOT REASONABLY ACCESSIBLE” DATA FILINGS

The parties should meet and confer to resolve issues raised in Lead Counsel’s October 29, 2014 memorandum to New GM and be prepared to raise any disagreement at the December 15, 2014 Status Conference.

XIII. REVIEW OF COMMON BENEFIT TIME RECORDS

The parties should meet and confer to discuss whether the Court should adopt some sort of process to audit and/or review Plaintiffs’ counsels’ fee records on a regular basis, including but not limited to, review by a third party (such as a certified public accountant) and be prepared to address this issue at the December 15, 2014 Status Conference.

XIV. COMMON BENEFIT ASSESSMENT ORDER

Lead Counsel should circulate to counsel for Defendants and submit to the Court any proposed common benefit assessment order in advance of the December 15, 2014 Status Conference.

XV. FUTURE STATUS CONFERENCES

The Court will conduct additional status conferences on **December 15, 2014; January 9, 2015; February 11, 2015; March 13, 2015; and April 8, 2015.** (The Court notes that the February conference date is **different from** the date of February 13, 2015 initially set by the Court at the November 6th conference.) Unless the Court indicates or orders otherwise, all Status Conferences will begin at **9:30 a.m.** and will be held in **Courtroom 1105** of the Thurgood Marshall United States Courthouse, 40 Centre Street, New York, New York.

SO ORDERED.

Dated: November 13, 2014
New York, New York



JESSE M. FURMAN
United States District Judge