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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 IN RE: GENERAL MOTORS LLC  
4 IGNITION SWITCH LITIGATION

14 MD 2543 (JMF)

5 -----x  
6 New York, N.Y.  
7 March 22, 2018  
8 9:33 a.m.

9 Before:

10 HON. JESSE M. FURMAN,

11 District Judge

12 APPEARANCES

13 HILLIARD MUNOZ GONZALES, LLP  
14 Lead Attorneys for Plaintiffs  
15 BY: ROBERT HILLIARD, ESQ.

16 AND

17 LIEFF CABRASER HEIMANN AND BERNSTEIN, LLP  
18 BY: RACHEL J. GEMAN, ESQ.  
19 ELIZABETH JOAN CABRASER, ESQ. (VIA TELEPHONE)

20 AND

21 HAGENS BERMAN SOBOL SHAPIRO, LLP  
22 BY: STEVE W. BERMAN, ESQ. (VIA TELEPHONE)

23 KIRKLAND & ELLIS LLP  
24 Attorneys for Defendants  
25 BY: RICHARD CARTIER GODFREY, ESQ.  
RENEE D. SMITH, ESQ.  
ANDREW B. BLOOMER, ESQ.

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1 (In open court)

2 (Case called)

3 THE COURT: You may be seated. Good morning and  
4 welcome, everybody. We're, obviously, here in connection with  
5 the General Motors ignition switch litigation. Counsel, why  
6 don't you state your names for the record.

7 MR. HILLIARD: Good morning, your Honor. Bob Hilliard  
8 for the plaintiffs.

9 MS. GEMAN: Good morning, your Honor. Rachel Geman  
10 for the plaintiffs.

11 MR. GODFREY: Good morning, your Honor. Richard  
12 Godfrey for New GM. With me is Mr. Bloomer, who is now back  
13 from Russia, and Ms. Smith. And we have a special guest -- at  
14 Kirkland, we believe in recruiting young -- Mr. Aaron Chaplin.  
15 He is the son of the Deputy General Counsel of General Motors  
16 here on spring break this week and I thought I'd introduce  
17 young, tender Mr. Chaplin to the Court, who also is a hockey  
18 player. So we're talking to him about the law, but he plays  
19 hockey as well.

20 THE COURT: All right. Well, welcome, Mr. Chaplin  
21 I'm not sure that this is the way I'd want to spend my spring  
22 break, nor do I necessarily think it will lead you to a career  
23 in law to be here this morning, but it's wonderful to see you  
24 and I hope you get something out of this and have a good break.

25 Mr. Bloomer, were you in Russia on vacation or?

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1           MR. BLOOMER: I was in Russia, your Honor, for my  
2 oldest daughter, who was playing in the United States under 18  
3 women's national team.

4           THE COURT: That's right. I think Mr. Godfrey had  
5 mentioned that. How did they do?

6           MR. BLOOMER: They won. Yes, won the gold, yes.

7           THE COURT: Congratulations.

8           MR. BLOOMER: Thank you.

9           THE COURT: That's amazing.

10           I'm glad to see everyone was able to get here,  
11 notwithstanding the weather yesterday. I hope you didn't have  
12 too much trouble. I say everyone. Obviously, Ms. Cabraser and  
13 Mr. Berman are not here. I take it that they're on court call;  
14 is that right? All right. The folks at the front table are  
15 nodding.

16           I think that they've been given speaking privileges on  
17 court call; so Ms. Cabraser and Mr. Berman, if at any point you  
18 have anything to share or say, certainly speak up. I would  
19 remind those here to speak into the microphone to make sure  
20 that the others on court call can hear.

21           I have two other things to say. One, is  
22 congratulations to Kirkland. I read in the New York Law  
23 Journal this morning that you are now the No. 1 largest law  
24 firm in the world by revenue; so I feel like everyone else in  
25 this courtroom should get a piece of that. That's great.

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1 MR. GODFREY: We have no official comment on that,  
2 your Honor, but thank you.

3 THE COURT: All right. My guess is there might be  
4 some impropriety in my getting a piece of that; so....

5 I also just want to note for the record that I had  
6 mentioned, I think in a telephone conference a while back that  
7 I was going to be on a panel at an MDL conference last week  
8 with Ms. Cabraser. That panel did, in fact, go forward, and I  
9 think it was helpful to those who were there and uneventful for  
10 your purposes, I think it's fair to say; so I just wanted to  
11 mention that.

12 All right. Let's get to the agenda. I'll track the  
13 agenda letter, for the most part. I do want to know what the  
14 status, if there there's any update on the trust settlement  
15 issue. I know you're not due to give a report to Judge Glenn  
16 until April 9th, but I don't know if there's anything you are  
17 at liberty to share at this point, or if we just need to wait  
18 on that.

19 MR. HILLIARD: Your Honor, Bob Hilliard. The  
20 disclosures made to the Court are exactly where we are.  
21 There's been no other non-disclosed communications. The GUC  
22 Trust presented the option to Judge Glenn that it wanted 30  
23 days in order to work on reviving the settlement agreement with  
24 the plaintiffs, and that's still where it is.

25 THE COURT: All right. Mr. Berman or Ms. Cabraser,

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1 anything you want to add on that, or otherwise we can move on.

2 MR. BERMAN: Your Honor, we're working diligently to  
3 resurrect the deal with the GUC Trust, and I remain optimistic  
4 that we will present something to the judge.

5 THE COURT: All right.

6 MS. CABRASER: As do I, your Honor. Elizabeth  
7 Cabraser here. Thank you so much for allowing us to appear by  
8 telephone this morning. Not so much flying. We just couldn't  
9 get across country.

10 THE COURT: She couldn't get across the country I  
11 think is what she said. All right. Understood, and certainly  
12 I think yesterday was not quite as dramatic as people were  
13 predicting, but certainly understand it made it hard to get  
14 here.

15 All right. The only other thing I have to say on this  
16 front is I am, obviously, aware that I have a number of  
17 bankruptcy appeals that have been pending before me for a  
18 while. I have prioritized other motions based on my belief  
19 that they were higher priority and that includes motions in  
20 other cases, which I do also have. But I am hoping to get  
21 rulings out on those in the near future. I'm not going to give  
22 myself any deadline, but I am working on them.

23 Anything else to discuss on items one through four,  
24 bankruptcy, coordination, document production or depositions?

25 MR. GODFREY: Your Honor, just in terms of the

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1 coordination and related actions, we have settled the last  
2 remaining State Attorney General case, that is, New GM has.  
3 That was in the State of Arizona. That has not had an impact  
4 yet on this Court, but as with the multi-state AG settlement,  
5 had we not been able to settle that, it would have taken up a  
6 certain amount of this Court's time.

7           And then I know we'll probably get to it later, but  
8 Ms. Bloom has been very busy since she was last here on January  
9 the 8th, and she's negotiated and included or in the process of  
10 including 331 settlements, of which 247 are in this MDL, that  
11 is a sizeable chunk that has now been settled. It's being  
12 papered right now. Ms. Bloom continues to do what she does,  
13 and she is not here today because she is otherwise committed on  
14 this case, but she's working away at addressing those matters  
15 that can be addressed.

16           THE COURT: All right. Great. Anything else on the  
17 first four items? All right. So let's get to Item No. 5,  
18 which I think is most of what we have to discuss today, namely,  
19 the sort of future of personal injury, wrongful death cases.

20           First, on the question of whether to require severance  
21 of all plaintiffs named in what I've called the consolidated or  
22 omnibus complaints, as you know, I've certainly come to believe  
23 that individual complaints are preferable, absent a valid  
24 basis for joinder under the federal rules. But that said, I  
25 wholeheartedly agree with lead counsel that it makes more sense

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1 to deal with that issue on a rolling basis, basically as cases  
2 are subject to things like order No. 140 or motions to withdraw  
3 or the like.

4 I just think it will be more of a headache and impose  
5 more burdens on me and the clerk's office to try to do it  
6 wholesale, and I worry that the cases would be lost in the  
7 shuffle. So as we're tracking the cases, subject to those  
8 sorts of things, I think, as we have been doing, we'll sort of  
9 take care of that but on a rolling basis.

10 On related subjects, there were two motions filed  
11 yesterday by the Toups -- T-o-u-p-s -- firm for leave to amend  
12 to remove wave one plaintiffs from consolidated complaints,  
13 where new severed actions have been filed in accordance with my  
14 order. That's in docket 15CV6990, docket 121, and 15CV9538,  
15 docket number 98. I don't know if those have gotten on the  
16 radar of anybody at the back table, but I don't know if you can  
17 tell me what your views are, or if you want to take a look at  
18 them.

19 MS. SMITH: I think, your Honor -- Renee Smith. I  
20 think, your Honor, we'll need to take a look at those. I  
21 apologize. I don't think we're prepared to address those this  
22 morning.

23 THE COURT: Okay. No apology necessary. They were  
24 filed yesterday. I didn't know if you had seen them. Why  
25 don't you take a look at them. If, indeed, all they do is

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1 remove plaintiffs that have been severed, obviously, I can't  
2 imagine you would object, but why don't you file a letter just  
3 confirming that so that I can then act on those.

4 Relatedly, I don't think those sorts of motions should  
5 be necessary and, indeed, I think they'll just be a burden on  
6 GM and on me. What I would propose, instead, is basically  
7 waiting until the various processes that we now have in place,  
8 order 140 motions to withdraw, et cetera, wait for those to run  
9 their course. When cases are dismissed with prejudice or, at  
10 the end of the day, if plaintiffs file new and severed actions,  
11 I think basically what I would do then is direct the clerk of  
12 court to terminate those plaintiffs from the consolidated  
13 complaint docket numbers. I think that's sort of more  
14 efficient than requiring or expecting or having counsel file  
15 motions for leave to amend that you then need to look at, I  
16 need to act on and so forth. Everyone seems to be nodding; so  
17 I assume you're all in agreement.

18 MR. GODFREY: Yes, your Honor. That makes sense to  
19 us.

20 MR. HILLIARD: We've been communicating with the  
21 plaintiffs as well. We'll let everybody know that they can  
22 stand down on filing those motions, too.

23 THE COURT: Great. I was planning to get to this  
24 later, but I do think that that underscores the need for some  
25 sort of regular kind of reporting process, where you submit an

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1 agreed-upon list of basically what cases are subject to which  
2 of these protocols and, more to the point, an actual list of  
3 plaintiffs that can be terminated, either all together because  
4 they're cases have been dismissed with prejudice or can be  
5 terminated from consolidated actions because they've filed a  
6 separate lawsuit. So we can talk about what that should look  
7 like or how often you should do that, but I think it  
8 underscores the need for that.

9 MR. GODFREY: Your Honor, on that point, we agree and  
10 embrace point one of your minute order of March the 20, which  
11 was a regular reporting process. What I was going to ask the  
12 Court to consider is in connection with the severance motion,  
13 we understand what the Court has said, but perhaps we should  
14 have a category of those cases that we think would be ripe for  
15 severance.

16 Because as we go through this culling process, it's  
17 not necessarily going to be obvious to the Court when, on a  
18 rolling basis as your Honor phrased it, severance will be  
19 appropriate. So that might be a category for us to consider,  
20 and I ask the Court to consider that in connection with our  
21 severance request.

22 THE COURT: I'm not sure I understand. These are  
23 cases that fall outside of the --

24 MR. GODFREY: As I understand the chart that the  
25 Court, or the regular reporting process that the Court has

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1 identified, it would categorize a number of cases, those  
2 motions to withdraw, those where we have a motion pending,  
3 those where the motion has been granted and they want to move  
4 to replead, or something like that.

5 In that process, I think a number of cases will arise  
6 where we will think it's appropriate at that point, on a  
7 rolling basis, to require a severance. What I was suggesting  
8 was that you could put that in as a category as well. I can't  
9 identify specifically because it will be case specific,  
10 obviously, but it just seemed to me that might be one way of  
11 addressing your Honor's ruling.

12 THE COURT: This is with respect to the severances?

13 MR. GODFREY: Yes, yes.

14 THE COURT: That's certainly fine with me. What I  
15 would say or propose is if you think, for whatever  
16 case-specific reason that there is a claimant or a plaintiff  
17 who it would make sense to require file a severed complaint,  
18 why don't you confer with counsel for that plaintiff. Perhaps  
19 you'll reach agreement, and if not, you can then raise it with  
20 me by letter and then explain to me what your reasons are and,  
21 to the extent you can do that, if you come up with a chunk of  
22 plaintiffs and can do that in a single letter, great. But I  
23 have no objection to that. But, obviously, if you can agree  
24 upon it in the first instance, that would be ideal. All right?

25 MR. GODFREY: Thank you, your Honor.

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1 THE COURT: Certainly, categorically, I don't think we  
2 should do it wholesale at this juncture.

3 All right. On the reporting front, I guess, again  
4 since I already raised it, what I was thinking is maybe in the  
5 monthly sort of status letter that you're currently submitting,  
6 I think the most recent of which was filed yesterday, that  
7 includes updates on related actions, as well as current numbers  
8 on settlements stuff with respect to each of the categories.

9 My proposal would be basically expanding that letter  
10 to address these issues also and giving me a breakdown of how  
11 many cases are subject to order 140 and the different  
12 categories there, how many cases are subject to the motion to  
13 withdraw, and ideally, even attaching a spreadsheet of the sort  
14 that you attach to your next-steps 140 letter that actually  
15 lists the cases, just to make sure that they don't fall through  
16 the cracks.

17 I think we've discovered in the last couple of days  
18 that it's hard to keep track of these things. Cases are  
19 getting filed and don't necessarily get on our radar  
20 immediately, and I think it would just make sense to have a  
21 regular sort of process of that sort. Does that make sense?

22 MR. GODFREY: It does, your Honor. And in preparation  
23 for today, I thought, if the Court would indulge me for a  
24 minute, I can give you an update to compare where we are today  
25 versus where we were on January 8th. If you agree with what I

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1 say, then I think this should be part of our letter going  
2 forward.

3 So today, for example, we now have 1,965 MDL claimant  
4 settlements. That's significantly more than we had when we  
5 were here in January. There are now 1,228 MDL unsettled  
6 claimants, but again, we have a moving target. I think that  
7 perhaps the good news is we've had 36 new claimants so far this  
8 year, and while that sounds like a lot, as the Court knows,  
9 that's much less than we had the last quarter or the quarter  
10 before that. So perhaps we're starting to see the end of the  
11 additional cases.

12 We've had 403, and we anticipate up to 450, cases that  
13 will be dismissed or counsel will have withdrawn, or some  
14 combination, as a result of motion or rule 140 process. So  
15 that the culling that we discussed and the efforts that the  
16 parties have engaged in, with the Court's assistance, to boil  
17 the case down to what's really left to be dealt with, has made  
18 significant progress in the last eight weeks, seven weeks, over  
19 almost 700 cases in total. More than 700 if you count state  
20 cases outside the MDL, but almost 700 in the MDL.

21 And I would think that maybe in every status, we  
22 should try to have a summary so the Court can, on a global  
23 basis, track these numbers over time to make sure that we  
24 continue to make progress that the Court has suggested it wants  
25 us to presently do.

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1           THE COURT: I think that would be a great idea.  
2 Again, I'm jumping ahead, but certainly I was quite pleased to  
3 see what, I gather, were the results of what we worked out in  
4 January. It seems to me that it has accomplished, at least  
5 initially, what we set out for it to accomplish, which was to  
6 try to cull the inventory and figure out what we really have  
7 here.

8           So I agree. I think that's precisely the kind of  
9 information that would be helpful for me to know in that  
10 letter, just to sort of keep things moving forward and figure  
11 out where we can push and so forth. I don't think we need to  
12 spell out precisely what that letter should look like, but I  
13 would think the information that you just described, some of  
14 which or much of which is in your next-steps order 140 letter,  
15 the first few pages of that. So sort of incorporating  
16 something along those lines in the letter with a spreadsheet  
17 would be helpful.

18           I think it would make sense to have a separate -- and  
19 talk to one another about this. When do you think it would be  
20 appropriate for the clerk's office to -- or maybe monthly, as  
21 well, but in a separate letter. I think it would make sense to  
22 submit an agreed-upon list of plaintiffs who should be  
23 terminated, either again all together because they've been  
24 dismissed with prejudice, although those might be taken care of  
25 in whatever dismissal with prejudice happens. So maybe that's

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1 not relevant, but maybe a monthly list of plaintiffs who have  
2 filed severed complaints and who should be terminated from the  
3 consolidated docket.

4 It would be helpful to have a list of those, and then  
5 I can just endorse it and direct the clerk to terminate those  
6 plaintiffs from the other action to make sure they're not  
7 appearing in two different dockets. Does that make sense?

8 MR. GODFREY: I think it does, your Honor. I'm  
9 wondering whether perhaps the parties should get together this  
10 week or next week, come up with a list of the topics or a list  
11 of the categories that would be addressed in this reporting  
12 letter, and then submit it to the Court to see whether we have  
13 captured what the Court believes important, and then if you  
14 think we've missed something, you can suggest adding another  
15 category or two.

16 I want to -- I'm sure both parties want to give you  
17 what you need to know or not more than you need to know, but  
18 certainly what you need to know and want to know. I think we  
19 have a pretty good sense, but maybe we do a dry-run draft,  
20 submit it to you and then you can say yes or close, but here  
21 are some changes.

22 THE COURT: So I think it certainly makes sense for  
23 you to get together and discuss it. I'm happy if you guys  
24 agree and think it would make sense for me to see a draft or a  
25 dry run or to give me a general description of what you think

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1 should be in an order, or simply through Ms. Loveland to ask  
2 me, you know, do you want this, yes or no? And we can do it  
3 that way, or frankly, if you come up with something that you  
4 think makes sense based on the letter that you submitted on  
5 March 16th, based on the monthly submissions, based on what you  
6 know is going on, I'm also happy to let you file something the  
7 next go-around and if I have a problem with it, I can tell you.  
8 So whichever way you want to proceed is fine with me.

9 MR. GODFREY: Thank you. We will discuss it with  
10 co-counsel and plaintiffs counsel and decide what makes sense.

11 THE COURT: Great. Thank you. All right.

12 Carrying on, the next item is update on wave one  
13 progress. As I noted in my order the other night, I indicated  
14 that you should be prepared to address whether additional  
15 claims should be added to wave one or, alternatively, whether  
16 we should begin wave two sooner than we had planned, in light  
17 of the number of cases in wave one that have been or are likely  
18 to be resolved.

19 Based on your letter, I take it that over half have  
20 been resolved or are likely to be resolved, but I'm not sure if  
21 that even includes the 15 claims that I dismissed without  
22 prejudice by order signed this morning. I doubt that order has  
23 hit the docket, but there were 15 plaintiffs who failed to file  
24 amended and severed complaints by the relevant deadline, and  
25 per order 141, I think it is, those claimants' claims were

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1 dismissed without prejudice, and they have 30 days or until  
2 April 19th to cure.

3 But some of those may disappear as well. All of which  
4 is to say, if I'm not mistaken, we have a few dozen cases and  
5 we have one, at this point, that are likely going to proceed.  
6 It strikes me that we should probably increase that number and  
7 either add to it or start wave two. Thoughts?

8 MR. HILLIARD: Your Honor, in discussing it with  
9 General Motors, I think our shared legal response is, we're  
10 good. Perhaps we'll revisit it at the next status conference,  
11 but we were looking at the amount of work that's about to begin  
12 on the depositions going forward, and while we all agree that  
13 it's worked on wave one and the numbers have been reduced, we'd  
14 like a little breathing room now before we move more numbers  
15 into wave one or refill wave two.

16 And I did visit with GM about this, and we both agree  
17 that, right now, if the Court's willing, I take it from your  
18 initial introduction that you want to have more in soon and  
19 maybe by the next status conference we'll be able to give you a  
20 number that should be moved in, maybe have reduced wave one  
21 even more. But if you're okay with it, if you'll just let it  
22 be for the next 30 days.

23 THE COURT: He says with trepidation. Yes?

24 MS. SMITH: Yes. Your Honor, we did have a very  
25 helpful discussion with Mr. Hilliard yesterday, and we are

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1 aligned on this point. And just to amplify it, I think we are  
2 all very pleased with the progress that we have had in wave  
3 one, but it's still very much playing out. Even if we stay  
4 where we are with the number of claims, we're looking at over a  
5 hundred depositions over the next month or so.

6 I know GM has engaged a couple of additional law  
7 firms, who will be sending some additional pro hocs to do those  
8 depositions. We, along with plaintiffs, are very very busy  
9 with the number of cases we have, and I think when we went into  
10 this process, we were cautiously optimistic that we were not  
11 going to work up all one hundred cases because we had hoped it  
12 would facilitate resolution, and I do think it has done that.

13 So we are where, in some ways, we had hoped to be, and  
14 I agree with Mr. Hilliard if we could have some breathing room.  
15 We're about to enter depositions. Let's see where this keeps  
16 going, and it will help us, A, maybe make a determination of  
17 what wave two should look like. It will help us learn more  
18 about wave two, and many of the claims that likely would go  
19 into wave two may end up getting resolved from wave one because  
20 they're represented by the same law firm. And if a whole law  
21 firm's docket is resolved through wave one, they won't even  
22 need to go into a wave two. So we are in united with  
23 Mr. Hilliard on this point.

24 THE COURT: All right. Well, I would note that when  
25 we adopted the wave one plan, you had every reason to expect to

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1 be proceeding to depositions on a hundred cases; so in that  
2 regard, you know, you have no right to complain about more work  
3 than the depositions you're about to head into.

4           Having said that, I recognize that you guys are  
5 working hard, not just on the wave one cases, but that there  
6 will be a decent amount of submissions coming down the pike  
7 with respect to the order 140 things that we're about to  
8 discuss. So I will heed your requests, your pleas and not add  
9 anything now.

10           Having said that, I think it does make sense to keep  
11 this on the back burner and radar and be prepared to discuss it  
12 at the next conference. Really at every conference, I think,  
13 discussing whether and how and when to push forward on cases  
14 that are not currently subject to discovery and what have you,  
15 would make sense.

16           I guess my current inclination is to think that it  
17 probably would make sense to begin wave two, at some point, on  
18 a staggered basis; that is to say, not wait until wave one has  
19 not run its course, given that the number of cases has reduced,  
20 and you'll learn some valuable lessons as you get into it. But  
21 for now at least, we'll hold off. So be prepared to discuss it  
22 at the next status conference, which isn't to say that I will  
23 make you proceed with wave two at the next status conference  
24 either, but I do think that we should keep it on the radar.

25           All right. Category C case selections. I saw your

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1 filings from the other day and anticipate your filings on  
2 Monday. Anything else to discuss on that front? I wouldn't  
3 think so.

4 MS. SMITH: Nothing from GM, your Honor.

5 MR. HILLIARD: No, your Honor.

6 THE COURT: All right. So then really the big-ticket  
7 item is the next steps for the plaintiffs, subject to order  
8 No. 140. Again, just to reiterate, I'm certainly happy to see  
9 how things have played out. I think that order has  
10 accomplished what it set out to do in large part.

11 Second, just as a preliminary, as I noted in my order  
12 the other night, I do agree with lead counsel that an order  
13 specific to these procedures and schedules that we're about to  
14 set should be entered and separate from the standard  
15 post-status-conference order. So if you could, obviously, pay  
16 careful attention to what we do and get me a proposed order  
17 sooner rather than later, that will be great.

18 All right. I've already discussed the need for  
19 regular updates; so we don't need to discuss that.

20 Let's talk about the issue of a consolidated  
21 opposition by plaintiffs to whatever motions are filed. Since  
22 that sort of crosses all the categories, I think it would make  
23 sense to talk about it in the first instance. I propose a  
24 middle ground. Basically, you know, on the one hand, as you  
25 might imagine, I really am not thrilled about the prospect of a

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1 consolidated motion from GM that has dozens, if not, you know,  
2 many dozens of oppositions filed by separate lawyers. That  
3 just strikes me as an enormous amount of duplicated work on the  
4 part of the lawyers, and then, more to the point, for me.

5 At the same time, I certainly understand lead  
6 counsel's objections or problems with requiring in all  
7 instances a consolidated opposition. I think there will be  
8 instances where there are case-specific arguments to be made,  
9 and there may be instances in which individual lawyers want to  
10 make arguments that lead counsel elects, for whatever reason,  
11 not to make.

12 So I propose the middle course compromise, which  
13 basically the default would be the consolidated opposition, but  
14 it would provide for a safety valve, if you will, for  
15 individual counsel to seek leave to file some sort of short  
16 supplemental submission.

17 As I've thought more about it, I think it would make  
18 sense, recognizing that this would require building in a little  
19 bit more time and it would cause a little bit of delay in that  
20 sense, I think what might make sense, in each instance where we  
21 have a briefing schedule, to basically have a deadline for GM's  
22 motion, followed by a deadline for consolidated opposition,  
23 followed by maybe a week later a deadline for any supplemental  
24 submissions by individual counsel so that they have an  
25 opportunity to basically see what the final brief is filed by

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1 the counsel, or something close to final, and time to seek  
2 leave to file something supplemental.

3 And then a deadline for a consolidated reply by GM,  
4 and if they need additional pages to respond to the additional  
5 submissions, then we can deal with that on an ad hoc basis. So  
6 that's my thought. Discuss.

7 MR. HILLIARD: Judge, there's about 223 different  
8 cases that would need a response. When I was listening to my  
9 team talk about the logistics of getting the responses, you  
10 know, what I started with, if I'm Judge Furman, I want a  
11 consolidated response, and that's what we have to give him.  
12 But this, when listening, I appreciate this is a hybrid. It  
13 really is, and my hope is that we can give the Court what it  
14 needs with some flexibility because the individual facts of  
15 each case are going to require some pretty detailed  
16 coordination with the firms, and in my experience and in my  
17 team's experience, some firms are very active with us and some  
18 are very less active.

19 THE COURT: Okay.

20 MR. HILLIARD: And my hope is that we can give you a  
21 consolidated response, and the Court allows us to meet and  
22 confer so that we do get some relief on GM's idea that we  
23 should do it in three weeks. I think that's their official  
24 request. I think they would be more flexible if we met and  
25 conferred with them on how much time we need.

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1           The other issue that I don't know that there is a way  
2 to alleviate, but I just want to put it on the table is, we are  
3 filing a consolidated response for plaintiffs that we do not  
4 represent, that we're preparing it, we're going to their  
5 counsel, we're working with their counsel. And I want to be  
6 very sensitive to their due process rights to be heard and to  
7 assert whatever claims they want and to be sure that their  
8 lawyers feel that they have that right and have they been  
9 heard, should they want to be heard, on their fact-specific  
10 reason why the ignition switch went back on to on, for example,  
11 and then the accident occurred because of the distraction in  
12 turning it on.

13           There are very detailed facts on each case and, you  
14 know, I'm proud of my team, that they have reached out to and  
15 have created relationships with these firms. And we can do  
16 what -- I would prefer to do all we can to get you a  
17 consolidated response, as much as possible, but I do stand by  
18 the label that it has to be a hybrid.

19           And they have to understand that, you know, we can  
20 only do as much as we know, and if we don't know what we don't  
21 know, to coin a phrase, it's fraught with potential legal peril  
22 that we may need to come back to you as to specific plaintiffs,  
23 like a group of plaintiffs that either were not responsive or  
24 that we cannot -- we don't feel comfortable filing a response  
25 based on the information we were not able to obtain. Keeping

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1 in mind the Court has, obviously, been sensitive to protect the  
2 rights of those who, for whatever reason, have not been  
3 represented or are pro se.

4 But other than that, I get that consolidated responses  
5 are probably best, most likely our obligation. We accept it,  
6 but subject to GM giving us time to really, as a practical  
7 matter, get it done and get it done properly and in a  
8 protective way for these plaintiffs. I think, you know, we  
9 started the process and we're willing to continue it.

10 THE COURT: All right. Is that a long of way saying  
11 that you think my proposal makes sense?

12 MR. HILLIARD: I know my team is listening, too. So  
13 I'm trying to prop them up a little bit on the phone saying we  
14 are going to do it, but I am standing with you to try to let  
15 the Court know that it is going to be difficult.

16 THE COURT: All right.

17 MR. HILLIARD: But, yes, it is a long way to do it.

18 THE COURT: All right. I hear everything you said,  
19 and suffice it to say, I haven't tallied the numbers, but the  
20 fact that you said 223, I think is the number you threw out, I  
21 don't want to read 223 opposition briefs. That's not a viable  
22 option for my purposes.

23 So I'll hear from GM, but I think it probably makes  
24 sense to adopt the structure along the lines of what I  
25 proposed, building in enough time for you to coordinate and

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1 communicate with all of the folks who have equities here, and  
2 also recognizing that, No. 1, if, as we go forward, you  
3 discover or believe that there's a better way to do this, you  
4 can always come back and we can modify the structure; and,  
5 No. 2, if in a one-off situation for some reason it's not  
6 working, you can always seek appropriate relief on a showing of  
7 good cause, I would think.

8           And I am quite concerned and have, I think, been  
9 careful to ensure that individual cases do get their day in  
10 court and their due process. That's the idea behind me having  
11 some sort of safety valve to assure that individual counsel can  
12 make whatever arguments that they feel is not being made by  
13 lead counsel, but that is the idea.

14           All right. Folks at the back table, any thoughts on  
15 that?

16           MR. GODFREY: First, we agree with your Honor's  
17 suggestion; and secondly, we've been able to work out most of  
18 these issues with Mr. Hilliard and his team. So if there's  
19 some individual issue that needs either additional time or  
20 working out, we'll endeavor to try to meet them halfway. I  
21 think that's what the Court expects, and that's what we'll try  
22 to do.

23           THE COURT: Thank you. I know how hard you guys work,  
24 and you have been very good at meeting deadlines; so when you  
25 say we need three more days or another week, I can't remember a

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1 time where I've said no. So I try to be reasonable on that  
2 front. Great. So that will take care of the general  
3 structure. Let's get into the particulars.

4 The first bucket listed in the letter is the air bag  
5 deployment claims. One minor confusion or clarification. Your  
6 letter says that there are 63 claims that are in dispute in  
7 this category, but then breaks it down into the three  
8 categories of deploy dispute, undisputed air bag deployment  
9 cases, and the EPS/ESC/BCM cases, but they total only 62. So  
10 there seems to be one missing

11 MS. SMITH: Your Honor, this is why it's so important  
12 I think to be doing the updated charts for you because every  
13 day these numbers change, as you have seen; so I noticed that  
14 this morning as well. So I'm not sure, honestly, if 63 is the  
15 right number or 62, but we will figure that out.

16 THE COURT: All right. Very good. It probably is of  
17 little consequence right now. Very good.

18 So first, as a general matter, this cuts across  
19 multiple categories as well. I agree with your view that the  
20 pro se claimants, whose claims were previously dismissed for  
21 other reasons, should not be subject to further briefing unless  
22 and until their claims are reinstated or that process runs its  
23 course.

24 I don't know how many, if any, of those claims will be  
25 reinstated, but it would certainly pay for you guys to talk to

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1 one another and think through how this process should play out  
2 with respect to any of those claims are reinstated so that when  
3 the time comes, we're in a position to sort of know how to  
4 proceed on that front. But, again, for today's purposes, I  
5 think those should be deferred to another day.

6 That presumably also goes with respect to claimants  
7 subject to a pending motion to withdraw as well, since I  
8 wouldn't expect counsel seeking to withdraw to respond to any  
9 of these motions. Nor would I expect plaintiff, who is subject  
10 to one of those motions, to have to respond on his or her own  
11 behalf.

12 All right. So first is the deployed dispute  
13 plaintiffs, of which there are apparently 13. My approach  
14 would be something of a hybrid of your two preferred  
15 approaches, but before I tell you what that is, let me ask one  
16 question. I was curious why I think both sides, but certainly  
17 GM, proposed as a first step -- actually, both sides proposed  
18 as a first step, that GM would file a list of claims that it  
19 believes should be dismissed, but you don't make that proposal  
20 with respect to the undisputed air bag deployment claims.

21 Now, maybe that's because there are only two or three  
22 of those, but I was wondering, there are only 13 of these,  
23 can't we skip that step, or is that necessary for some reason?

24 MS. SMITH: The only reason we proposed that step is  
25 because informally certain plaintiffs have approached us

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1 through Mr. Hilliard and said let us show you what evidence we  
2 think we have that does create a fact dispute, and if we look  
3 at that and say, oh, you know what, you're right, maybe this  
4 shouldn't be in this category, we wanted to identify what the  
5 true category of cases were here.

6 So we could either skip that step altogether and just  
7 only move on the ones that remain, whether it's 13 or 10, but  
8 that was the reason behind that step.

9 THE COURT: All right. So then I think it probably  
10 does make sense, since the next step would be for the  
11 plaintiffs to file notice, including the admissible evidence  
12 that they think creates a fact issue. I think if there's no  
13 reason to make the plaintiff do that if you would concede that  
14 there is a fact issue; so given that, you should file a list of  
15 those that remain at issue in that category.

16 So why don't you do that, or here's my proposal, that  
17 GM does that by Monday, by March 26th. I think you had  
18 indicated you were prepared to do that two days ago; so I would  
19 think that Monday you could do that.

20 By April 6th, I think this splits the difference a  
21 little bit, each plaintiff on the list would have to file a  
22 notice including admissible evidence that he or she believes  
23 creates a dispute of fact. Plaintiffs who fail to do that  
24 would have their claims dismissed without prejudice, as  
25 proposed by lead counsel, and if they then failed to cure and

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1 move to vacate that dismissal without prejudice, it would  
2 become a dismissal with prejudice, or New GM could move to  
3 dismiss with prejudice after 30 days and basically follow the  
4 sort of protocols that we have used on that score elsewhere.

5 Let me lay out my proposal, and then I'll hear from  
6 you. As to the plaintiffs that do file the notice with  
7 admissible evidence, I agree with GM that GM should be  
8 permitted to proceed with a motion, if it thinks that there is  
9 a valid motion to be brought. I trust that New GM is not going  
10 to move with respect to any plaintiff that it believes I could  
11 not grant the motion.

12 That is to say, I trust that if there is a disputed  
13 material fact that you're not going to file a motion and waste  
14 my time, let alone yours. But on the flip side, if there is  
15 any information that is not currently available, the plaintiffs  
16 can always file an affidavit under rule 56B, and I think it  
17 would make sense to proceed.

18 So to that end, I would propose that GM file its  
19 consolidated motion by -- and these are dates that I think we  
20 should probably use across the categories; so I'll preview  
21 that -- file its motion by April 27th. I had originally  
22 proposed May 18th for a consolidated reply opposition by lead  
23 counsel, but heeding Mr. Hilliard's comments, I would propose  
24 adding a week to that; so consolidated opposition by May 25th.  
25 Then, supplemental oppositions by individual claimants, again,

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1 on leave of Court, would be due by June 1st, and a consolidated  
2 reply by June 15th.

3 Discuss.

4 MR. HILLIARD: Those dates are okay, Judge. It goes  
5 back to the discussion we had about consolidated responses, as  
6 long as it's kind of a rolling consolidated response that we  
7 can get to the Court. Are these hard dates where the  
8 consolidated response will be in total? Maybe I'm just  
9 misunderstanding what --

10 THE COURT: I'm misunderstanding the question. The  
11 May 25th deadline would be the deadline for lead counsel to  
12 file a consolidated response, and then individual lawyers could  
13 seek leave and obtain permission to file short --

14 MR. HILLIARD: Got it.

15 THE COURT: -- and I emphasize short -- supplemental  
16 submissions within a week of that date; so by June 1st.

17 MR. HILLIARD: That was on me. I got it. Thank you.

18 THE COURT: All right. Let me say, I mean, obviously,  
19 if you have views on these dates now or think we should  
20 structure this differently, you should speak now. But at the  
21 same time, I guess what I'm trying to say is when you submit  
22 the order memorializing all of this, you guys talk amongst  
23 yourselves and think, you know what, it makes a little more  
24 sense to alter these dates a little bit here and there, as  
25 you've done in the past with these kinds of things, if you

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1 submit that in a proposed order and if it's not unreasonable,  
2 I'll certainly entertain it. Ms. Smith, did you have anything?

3 MS. SMITH: Your Honor, that proposal makes sense to  
4 New GM. Thank you.

5 THE COURT: Great. Turning to the next category, the  
6 undisputed air bag deployment manual key rotation plaintiffs.  
7 I would propose basically the same schedule. Although, I think  
8 that, as discussed, nobody thinks that there's a need for GM to  
9 file a list in the first instance. So we can just start with  
10 the notice with admissible evidence by April 6th and go from  
11 there.

12 Two additional just thoughts to throw out on this  
13 front: One, I think here New GM should think long and hard  
14 before filing a motion, unless it has a strong argument for why  
15 the claimant's testimony, as I understand the issue to be,  
16 doesn't create a material dispute of fact that would preclude  
17 the granting of summary judgement. That is to say, if there is  
18 admissible testimony that the keys shut off and then somehow  
19 the person turned it back on and there is, you know, no  
20 evidence to rebut that, either expert or otherwise, I would  
21 think that that would create a material dispute of fact that  
22 would probably preclude granting a summary judgement, then I  
23 would not imagine that GM could really move. Maybe I'm missing  
24 something. Maybe there's more to it, and maybe you do have  
25 evidence that would demonstrate conclusively that that

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1 testimony is inaccurate. But I thought I would throw that out.

2 Second, here, because there are only two cases, I  
3 really can't imagine that there would be need for supplemental  
4 submissions, which is to say that coordinating between those  
5 two cases, I think, would presumably be much easier and the  
6 liability of --

7 MR. HILLIARD: We agree.

8 THE COURT: Okay. So I would expect only a single,  
9 consolidated opposition in this category.

10 All right. Third, I expect there may be some strong  
11 reactions to my order the other night on this front, but the  
12 threshold question I have here -- this is the EPS/ESC/BCM  
13 category. The threshold question I have is to the extent that  
14 claimants have any ignition switch rotation, key rotation  
15 claims dismissed and the claims that remain are not related to  
16 the ignition switch, why should they remain in the MDL? This  
17 is, after all, the General Motors ignition switch litigation.  
18 So why shouldn't I remand those cases if the ignition switch  
19 claims go by the wayside?

20 MR. HILLIARD: You should.

21 MS. SMITH: You should not. So, your Honor, we have  
22 looked at this closely. In the first instance, we haven't seen  
23 what these amended complaints are going to look like yet, and  
24 so I think it's premature to even reach this issue before we  
25 see what these amended complaints state.

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1           We don't know, even in cases where they are reported  
2           EPS cases, some of the cases that the GAPML has transferred  
3           here purport to be EPS cases, but then contain all sorts of  
4           allegations about the ignition switch history and how it's  
5           intertwined with all of this; so we need to see what's actually  
6           in there first.

7           But more importantly, especially for EPS, which are  
8           the bulk of what the claimants say they will amend to state,  
9           especially for EPS claims. EPS has been a part of this MDL  
10          since day one. EPS was one of the recalls that was subject to  
11          the Phase I discovery. There have been depositions on it.  
12          There was a 30(b)(6) deposition on it in this case. It's one  
13          of the seven recalls in the economic loss, fifth amended  
14          consolidated class action complaint.

15          It has very much been an integral part of this MDL  
16          since the beginning. So although we think we don't need to  
17          reach this question yet, and if we do need to reach it, we  
18          would certainly want to brief it. But for now, we think before  
19          we do anything, we need to see what the amended complaints look  
20          like.

21          THE COURT: All right. Let me, before you hop up,  
22          Mr. Hilliard, let me say I think that makes sense. That is to  
23          say that we should defer this until after we have a better  
24          sense of what we're talking about, and the process has run its  
25          course and we see what amended complaints are filed.

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1           But what I would say is that you should be prepared to  
2 address this question then, whether by briefing or otherwise.  
3 I would say, in general, and not saying that the JPML or I have  
4 adhered to this line perfectly, but in general, I think the  
5 line that JPML tried to draw from the get-go, and I have tried  
6 to adhere to since then is, early on there was a question that  
7 arose, and I may have even talked about this in a conference,  
8 about other defects.

9           And basically, I agree with the JPML that as long as  
10 there were allegations in a complaint that concerned the  
11 ignition switch, that essentially if there were other defects  
12 alleged in the complaint, that it made sense for it to come  
13 here because the ignition switch was the core of the MDL.

14           But the flip side of that was that complaints that  
15 alleged a defect that was totally unrelated to the ignition  
16 switch should not come here because, despite some of your  
17 efforts at some times, I am not the federal judge for all  
18 General Motors cases. So I would think that that is sort of  
19 the starting point.

20           When this process does run its course, and we know  
21 what's leftover, what you'll have to do is persuade me that the  
22 cases that don't contain allegations concerning the ignition  
23 switch should remain here, and to the extent they do concern  
24 the ignition switch, whether they should remain here insofar as  
25 the common discovery on those issues may have already been

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1 taken.

2 So I think with that, we can leave it to another day,  
3 and put this on the agenda for whatever conference is  
4 appropriate after this process runs its course a little bit.

5 Mr. Hilliard, anything you want to say beyond what  
6 I've just said?

7 MR. HILLIARD: No. I'll leave that be, Judge. I just  
8 wonder if it's premature, while we're waiting for the  
9 complaints to be amended, should the briefing schedule apply to  
10 this category of cases right now as well? Or should we defer  
11 it until they are filed?

12 THE COURT: I was about to get into that separate and  
13 apart from what I just said. I was inclined to think that we  
14 should wait to see what's leftover before deciding on whether  
15 to proceed with briefing here. I think what I've just said  
16 underscores the wisdom of that.

17 So on that category, I think you're largely in  
18 agreement as to the proposed procedures, but there's some  
19 disagreements about dates. As for the dates, I think I would  
20 propose that by April 6th plaintiffs show cause why their  
21 ignition switch claims shouldn't be dismissed. And I do agree  
22 with lead counsel, this is in no aid of your letter of  
23 March 16th, that the order should include language making  
24 crystal clear that non-switch-related claims will not be  
25 dismissed and that there's no need to file anything if there's

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1 no objection to the dismissal of only the  
2 ignition-switch-related claims.

3 If plaintiffs fail to file or show cause by that  
4 deadline, then the ignition-switch-related claims would be  
5 dismissed with prejudice, and I take it that both sides are  
6 then in agreement that cases should be subject to the no  
7 plausibly pled defect procedures, namely, the plaintiffs would  
8 have to file amended severed complaints with dismissal of those  
9 that don't first without prejudice and then with. Is that  
10 correct?

11 MS. SMITH: That is correct, your Honor.

12 THE COURT: All right. As to plaintiffs who do  
13 attempt to show cause why their ignition-switch-related claims  
14 should not be dismissed, then -- no, I think I had originally  
15 said that we should proceed to the motion practice on the same  
16 schedule, but upon reflection, I think maybe we should -- well,  
17 no, this is -- sorry, I'm losing myself.

18 These would be plaintiffs who insist that their  
19 ignition-switch-related claims should go forward; so I think  
20 the same briefing schedule should apply for those presumably.  
21 Right? In other words, these are not folks who had filed  
22 amended and severed complaints stripping the ignition switch  
23 claims. These are presumably cases where GM thinks the  
24 ignition-switch-related claims are somehow subject to  
25 dismissal.

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1           MR. HILLIARD: Right. That's right. They're standing  
2 on the pleadings.

3           THE COURT: Right. So I think the same schedule  
4 should apply here with GM filing any motion by April 27th.  
5 Correct?

6           MS. SMITH: Yes. That makes sense to us.

7           THE COURT: All right. Now, I think for those that  
8 agree to dismissal of their ignition-switch-related claims, and  
9 then file amended severed complaints that are limited to other  
10 defects, we can wait and see how that process plays out, and  
11 you should anticipate, after that process has run its course,  
12 discussing the issue that we started with, namely, whether  
13 those cases should remain here or should be remanded, but let's  
14 wait and see how that process plays out.

15           If you want to write into the order here that within a  
16 certain amount of time of whenever that process should run its  
17 course, you should submit a next-steps proposal to me, that  
18 might make sense; so that there's a deadline, and it remains on  
19 everybody's radar. So maybe within two weeks or something of  
20 whenever that process would run its course.

21           All right. Moving on. The next category is the rule  
22 12(b)(6) motion claims. I think here too you're largely in  
23 agreement, the parties are in agreement, and I am okay with  
24 your joint proposal, which I think, if I have it correctly,  
25 each plaintiff would file an amended severed complaint and pay

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1 the filing fee by April 30th.

2 Failure to do so would result in dismissal without  
3 prejudice, and then conversion to dismissal with prejudice  
4 within 30 days if not cured. And this is the category I was  
5 thinking of a moment ago. Here is where I agree with lead  
6 counsel that we should wait and see, basically, how that  
7 process runs its course before deciding whether to proceed with  
8 motion practice.

9 So here, too, I think, and maybe you can align these  
10 so that there's only a single letter as to that last category  
11 and this category, but I would think within two weeks of that  
12 process running its course, you can submit your proposals with  
13 respect to how we should proceed, whether it makes sense to  
14 proceed with motion practice for this category or not, and if  
15 so, what it would look like. Is everyone good with that?

16 MS. SMITH: Yes, your Honor.

17 THE COURT: All right. Next category is statute of  
18 limitations notice. I'm okay here with the joint proposal but,  
19 first of all, I have a question, which is your letter indicates  
20 that of the 17 plaintiffs sort of in dispute, nine of them are  
21 potentially subject to the aggregate settlement with the Bailey  
22 firm. How does that fit in with the plan to proceed with  
23 briefing in this category?

24 MS. SMITH: Our plan is we believe it's unlikely that  
25 those ones that are eligible for the Bailey settlement will be

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1 the subject of the briefing. So the likely number would be --  
2 it would be about half of the contested claims that actually  
3 would be briefed for the Court.

4 THE COURT: All right. So let me just figure out. So  
5 you propose a different briefing schedule here? I'm okay with  
6 following a different briefing schedule, but I wonder if it  
7 should just be aligned with the other or if it's better to have  
8 it staggered so you are not filing too many briefs in one day.  
9 What's your preference?

10 MS. SMITH: I think from New GM's perspective, we  
11 prefer to have it staggered to just give us a little room to  
12 address each individual and do a little more.

13 THE COURT: All right. So given that, and given the  
14 need to modify it for my supplemental submission, I would  
15 propose GM's motion by April 13th, as GM proposes; the  
16 consolidated opposition by May 4th; supplemental submissions,  
17 on leave of Court by May 11th; and then reply by May 18th.  
18 Does that sound okay?

19 (Continued on next page)

20  
21  
22  
23  
24  
25

I3L8GEN2

1 MR. HILLIARD: It does, Judge.

2 MR. SMITH: Yes, your Honor.

3 THE COURT: One other footnote here, which  
4 unfortunately I don't have the docket number handy, maybe my  
5 law clerk can give it to me while I'm talking, but we received  
6 a submission the other day from Marjorie Creamer, a pro se  
7 litigant, who appeared at a conference in this case two months  
8 ago and has been filing things on a semi-regular basis. She is  
9 one of the plaintiffs listed on the statute of limitations  
10 notice, and she filed something, essentially, I think  
11 contesting dismissal of her case on that basis. I just wanted  
12 to make sure it was on GM's radar. I don't quite know how that  
13 fits in here, but you should make sure that it's subject to  
14 something that we are attending to at some point.

15 MR. SMITH: We are aware of something that is entitled  
16 rebuking or something the motion. We are aware of the filing.  
17 Thank you.

18 THE COURT: For the record, it's 16 Cv. 3923, Docket  
19 No. 101. Obviously, I don't want to discuss it substantively  
20 here since Ms. Creamer is not here, but I just wanted to make  
21 sure that it is on everybody's radar and we do address it. And  
22 given that she is proceeding pro se and the pleadings would be  
23 liberally construed, I looked at it and haven't looked at it  
24 with care, but certainly, I think, treat it as opposition to  
25 GM's argument that her case is subject to dismissal.

I3L8GEN2

1           The next category is the statute of repose category.  
2 I am OK with your proposal here, but -- and maybe Ms. Smith's  
3 remark answers the question -- I was curious why you proposed a  
4 different briefing schedule here from the statute of  
5 limitations plaintiffs. I guess more to the point, I was  
6 wondering whether there might be -- maybe they are so different  
7 that it does make sense to proceed in separate motions, but the  
8 topics have at least two out of three points in common. So I  
9 thought maybe we can consolidate them and make my life a little  
10 easier.

11           MR. SMITH: I think they are different in certain very  
12 fundamental respects, but New GM would not have an opposition  
13 to consolidating them. I think we would rather, in terms of  
14 staggering though, have those come a little bit later in time.  
15 So if we were going to stagger, either after the April 30th  
16 date as opposed to earlier. I know it's April 13th for one and  
17 April 30th for another, and right now it sounds like April 27th  
18 is the date for most of the other briefs. So maybe we can move  
19 it into early or mid-May for those.

20           THE COURT: That's fine with me. Why don't you guys  
21 discuss it among yourselves and in the order you can propose  
22 deadlines. I think it probably makes sense to put them  
23 together as one motion if it's not -- well, I think it would  
24 make sense. So why don't you do that, unless you persuade me  
25 it makes sense to keep them separate. And I would think a

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1 deadline in mid-May would be fine, with opposition three weeks  
2 later, supplemental submissions a week after that, and then a  
3 reply two weeks after that, I would think.

4 MR. SMITH: Thank you.

5 THE COURT: Great.

6 Moving right along. The next category is the  
7 successor liability notice. Everybody seems to be in agreement  
8 that briefing on issues relating to the GUC Trust settlement,  
9 as it's bearing on any argument that New GM exercises  
10 domination and control over Old GM successor, should be  
11 deferred pending the bankruptcy proceedings and seeing how  
12 those things play out.

13 As I understand it, there is disagreement with respect  
14 to whether to do the same as to choice of law and, quote  
15 unquote, originating jurisdiction issues. My threshold  
16 question is, what does originating jurisdiction mean? I don't  
17 mean to portray my ignorance, but what does that term mean?

18 New GM used the phrase.

19 MR. BLOOMER: Your Honor is correct, New GM did use  
20 the phrase. I think it's because, in the course of the back  
21 and forth on successor liability issues, the plaintiffs have  
22 stated some things that would indicate some disagreement  
23 between the parties on the jurisdiction of what law is going to  
24 govern their claims, and that's why there is a potential  
25 dispute on this issue.

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1           We think that it's largely governed by what they say  
2 in their complaint. The plaintiffs have indicated on meet and  
3 confers that that, at least, may not be the case. And so  
4 seeing it as a potential area of disagreement, our thought was  
5 to keep this train moving down the track by at least, if there  
6 is going to be a dispute about these issues -- and we have, I  
7 think, 85 plaintiffs who are contesting dismissal -- that we  
8 could at least take on choice of law and the related issue of  
9 where the plaintiffs are going to say their claims originate,  
10 to determine that, because obviously that states a key issue,  
11 and it looks like we may have a disagreement on that because we  
12 take it to be what is alleged in the complaint as being where  
13 the accident occurred as being the place, and the plaintiffs  
14 have said perhaps not.

15           I will let Mr. Hilliard speak to that, but if it is  
16 going to be an area of disagreement, and we think it is, we  
17 think we should move forward and try to brief that, to at least  
18 keep this moving consistent with the way we have treated other  
19 successor liability issues.

20           THE COURT: All right. But in answer to the precise  
21 question I asked, it sounds like originating jurisdiction  
22 doesn't mean anything. It really is just a choice of law. Is  
23 that correct?

24           MR. BLOOMER: It relates to choice of law, but it  
25 depends on what -- the plaintiffs in GM don't necessarily agree

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1 on where the accident and the claims allegedly arise from. So  
2 it is closely related to choice of law, but it is an issue that  
3 was raised initially by the plaintiffs.

4 THE COURT: I don't mean to be petty. I am just  
5 trying to make sure I understand what issues are coming down  
6 the pike. Does that have any independent relevance other than  
7 to the question of what law applies? I understand that there  
8 is a need to resolve choice of law issues, and I understand  
9 that one of the factors may well be, quote unquote, where the  
10 accident occurred or the claim arose.

11 MR. BLOOMER: That's correct. It doesn't have an  
12 independent significance except for choice of law. It's an  
13 issue bound up with that, that if there is going to be a  
14 dispute, we think it would need to be briefed as part of the  
15 choice of law briefing.

16 THE COURT: So my question for you, with respect to  
17 why we should proceed on this now, first of all, you guys have  
18 a lot to do in the next couple of months, and I certainly have  
19 a lot on my plate as well. So from that standpoint, I don't  
20 know whether it would be so bad to defer this for a little bit  
21 and see how things play out in the bankruptcy. Separate and  
22 apart from that, am I wrong that the sort of GUC Trust  
23 arguments could conceivably moot those issues or at least  
24 override or affect them?

25 As I understand it, I take it the argument would be

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1 that, basically, without regard for choice of law or under  
2 whatever laws apply, that the GUC Trust settlement issues  
3 reveal that GM has such domination and control over Old GM  
4 successor that it should be treated -- I don't know, maybe I am  
5 not understanding how these issues are all intertwined.

6 MR. BLOOMER: I think from GM's perspective, we don't  
7 think that that issue would affect this, because taking that  
8 issue on its own, I think that the court -- the idea of  
9 domination and control, obviously if, as plaintiffs in the GUC  
10 Trust have suggested, they do enter into settlement agreement  
11 2.0, I think that will take care of the domination and control  
12 argument. We are living in a world where the GUC Trust,  
13 allowing the forbearance agreement that had GM to terminate, is  
14 now back talking to plaintiffs. So that might reach the point  
15 where the court could even take judicial notice of the fact  
16 that there is no issue.

17 In terms of choice of law, and issues bound up with  
18 choice of law, we don't think that that separate issue is going  
19 to impact these. You are still going to have those choice of  
20 law issues that need to be addressed in the MDL, regardless of  
21 whether these parties reach a settlement or don't reach a  
22 settlement. So we think it does serve a purpose to move  
23 forward with it. Broadly speaking, it's consistent with the  
24 way the parties and the court have addressed these issues so  
25 far. And, yes, we have a lot to do, but if there is going to

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1 be a dispute with 85 plaintiffs on whether their claims are  
2 governed by the court's prior orders, I think we don't see a  
3 reason to delay, in terms of trying to address those, to get  
4 those claims resolved one way or the other.

5 THE COURT: I should say that, as to your first point,  
6 that thought had occurred to me as well, the arguments about  
7 domination and control might be weakened in light of --

8 MR. BLOOMER: We are doing a really bad job of it,  
9 your Honor, if it is as Mr. Hilliard says.

10 THE COURT: I will leave it there for now.

11 Last question is, am I right that you previously  
12 agreed to defer further briefing on these issues with respect  
13 to the economic loss claims from the other 35 states, and if  
14 so, why shouldn't we do the same here? Or is there some reason  
15 that that's different?

16 MR. BLOOMER: I think they are different because the  
17 35 states was always a separate category from the issues that  
18 grew out of the court's ruling on the initial 16 states. So  
19 what we are talking about with the 85 plaintiffs who contest  
20 dismissal are issues that are bound up with what the court  
21 originally decided on these issues. So it's really just taking  
22 that piece of it and moving it forward, to the extent that we  
23 have disputes, and it looks like we are going to have some.

24 The 35 other states, at some point we will be prepared  
25 to move forward on those, and can probably move forward on

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1 those more quickly, but it's not something -- that's not an  
2 issue that, at least part of this conference, we discussed with  
3 the plaintiffs, so I don't know what their position is. But  
4 these have always been treated as separate, at least in GM's  
5 mind, your Honor, because of the relationship to the court's  
6 rulings, and that's what the 85 plaintiffs relate to and the  
7 fact that we know we always had the additional states the court  
8 has not yet ruled on and how best to attack those states.

9 THE COURT: Give me one moment to just ask my clerk  
10 something.

11 Mr. Hilliard, I might be able to save you some air.  
12 My inclination, if only because I feel like there is plenty on  
13 our plates at the moment, would be to defer this. I recognize  
14 that we will probably have to deal with it, and in that regard  
15 it's just kicking the can down the road a little bit, but I  
16 also think that, to the extent that the GUC Trust settlement  
17 issues may have some bearing and we may know more on that in  
18 the next few weeks, it would make sense to defer this at least  
19 until the next status conference. I take it that's your view.

20 MR. HILLIARD: It is.

21 THE COURT: It's not to say, Mr. Bloomer, I disagree  
22 with anything you said, I think it may well be that we have to  
23 deal with these and there is an argument for dealing with them  
24 sooner rather than later, but I think we all have our limits,  
25 and I think we are near that for the moment. So let's put this

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1 off and plan to discuss it at the next status conference and  
2 decide how to proceed there.

3 So that, I think, covers the order 140 plaintiffs. My  
4 question, I guess, is how soon you can submit a proposed order  
5 that lays all that out. Would Monday be feasible?

6 MR. GODFREY: Ms. Smith, on behalf of Mr. Pixton, is  
7 lobbying for Tuesday, your Honor. Can we have till Tuesday?

8 THE COURT: I will give you until Tuesday. I do want  
9 to get it on the docket sooner rather than later. You should  
10 start working on all these things in the meantime since you  
11 know what is coming down the pike even before the order is  
12 entered, but I also want to make sure -- and this goes for the  
13 status conference letter as well -- the end of next week is the  
14 beginning of a Jewish holiday and I will be out so I want to  
15 make sure both these things are docketed before.

16 I should note that lead counsel in the letter proposed  
17 that the order include a schedule of cases that the parties  
18 believe or are in agreement are subject to these different  
19 protocols. I am not inclined to think that that is necessary  
20 or even makes sense. I think the motions and notices that will  
21 be filed will obviously reference the cases that are subject to  
22 it, and you should figure out a sensible way of doing that, and  
23 that would obviously make clear which plaintiffs are at issue  
24 and provide the relevant notice to the lawyers involved. I am  
25 worried that filing a list will just simply create more

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1 confusion and won't necessarily help. Am I missing something?

2 MR. HILLIARD: That's fine. We will do it.

3 THE COURT: Great. So turning back to the agenda  
4 letter for today. The next item is essentially when we should  
5 enter an order 140 type order for pre-sale accident plaintiffs.

6 I guess I have questions for each side. First for New  
7 GM. As I understand it, you are making or plan to make  
8 arguments for dismissal of, if not all of these cases, large  
9 swaths of them, on grounds that would apply more broadly,  
10 namely, successor liability, or lack thereof more to the point,  
11 and that they are subject to the free and clear provision in  
12 the sale order to the extent they are, quote unquote,  
13 non-ignition switch plaintiffs.

14 Am I right, and if I am right, wouldn't it make more  
15 sense to address, or wait for those issues to be addressed,  
16 whether by me or by Judge Glenn, and before proceeding with  
17 motion practice or any sort of order 140 type process with  
18 respect to these cases?

19 MR. GODFREY: I hesitate to ever say to the Court that  
20 you're wrong.

21 THE COURT: I am sometimes wrong. I admit. Don't  
22 tell my kids that though.

23 MR. GODFREY: I will leave you to determine that.

24 First, the categories or categorical dismissals are  
25 far broader than what the Court indicated. There are air bag

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1 deploy cases; there are replacement part cases; there are  
2 statute of limitations and statute of repose cases. Even  
3 though we have had very limited information about these cases,  
4 we believe that over 100, if not more, are subject to those  
5 kinds of motions before one even gets to successor liability or  
6 things of that type.

7 Second, there are 497 cases, over 40 percent of the  
8 remaining cases in this MDL fall into this category. They are  
9 here now, and we think an order 140 procedure will similarly  
10 cull and get rid of the facially invalid claims.

11 Third, we know from settlement 1.0, which was not  
12 executed and never went into effect, and we know from what the  
13 plaintiffs' counsel have said to Judge Glenn that they are  
14 trying to resurrect that settlement. We have studied the  
15 settlement papers from last August and it does not include a  
16 release from New GM. In fact, it expressly reserves the rights  
17 for the plaintiffs that are here, the 497, to go forward  
18 against New GM. So we are in a situation where nothing that is  
19 going to take place before Judge Glenn is going to impact over  
20 40 percent of the cases that are pending before this Court. So  
21 there is no longer, now that we know that -- there never was  
22 apparently -- a reason to defer 40 percent of this Court's  
23 docket on a settlement that won't bear on the magnitude or size  
24 of this Court's docket. It is going to continue going on.

25 I will comment a little further about that, but I

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1 think that answers the Court's question in terms of it's far  
2 more than what the Court indicated, which is why I don't agree  
3 with the Court.

4 THE COURT: So I get that, and I agree -- maybe I am  
5 missing something, but I wouldn't think that the GUC Trust  
6 settlement issues are reason to defer proceeding on this front.  
7 I think, as I understand it, the GUC Trust would resolve claims  
8 against the trust but not against New GM, and given that, it  
9 wouldn't have any bearing on these cases going forward, and  
10 they will need to be resolved one way or another in this court.

11 I guess the question I have though, and maybe I am  
12 forgetting something, but am I wrong that your argument is that  
13 for, quote unquote, non-ignition switch plaintiffs -- and I  
14 recognize the meaning of that term has been contested at points  
15 and Judge Glenn has opined on it somewhat recently -- isn't it  
16 your position that those cases are barred by the sale order?

17 MR. GODFREY: They clearly are barred by the sale  
18 order. I am sill simply pointing out that in addition, they  
19 have other problems, which this Court has identified, and we  
20 see no reason to delay 40 percent -- actually, 40.4 percent of  
21 this Court's docket, current docket as of this morning, pending  
22 things that will happen in Judge Glenn's court.

23 We took your Honor's admonition last time about being  
24 reasonably aggressive is just aggressive, but I think this is  
25 being just reasonably aggressive. I think we are in a stage

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1 where, given the success of the order 140 processes, that same  
2 standard should apply to these cases.

3 In addition --

4 THE COURT: Sorry. Let me just ask you, number one,  
5 where does the free and clear provision issue stand with  
6 respect to the non-ignition switch plaintiffs, if you can  
7 remind me? And number two, how many of the 40.4 percent would  
8 be subject to that? Or, number three, are you proposing that  
9 that would basically be incorporated into this proposal so that  
10 plaintiffs who would be subject to that would presumably be  
11 fleshed out and/or dismissed as a result of this protocol?

12 MR. GODFREY: In reverse order, yes, we would include  
13 it, but that was the only reason.

14 Second, I don't know the percentage breakdown of the  
15 40 percent. I can't tell the Court the answer to that. And I  
16 have forgotten the Court's first question.

17 THE COURT: The first question is where that issue  
18 stands litigation-wise. I know Judge Glenn ruled on who  
19 qualifies as ignition switch or non-ignition switch plaintiffs.  
20 I confess sitting here right now I don't remember if that issue  
21 was appealed or not, or if that's the final word on it, or if  
22 there is anything further.

23 MR. GODFREY: My recollection is, as it stands right  
24 now, they are barred. I don't think it was appealed, but I  
25 will have to confer with Mr. Steinberg who is bankruptcy

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1 counsel sitting here. I can ask him, if I might.

2 THE COURT: Sure.

3 MR. GODFREY: I was correct. Our position is that the  
4 bankruptcy court decided the issue and that was not appealed so  
5 it's final.

6 THE COURT: Mr. Hilliard, number one, do you have  
7 anything to say on that front?

8 MR. HILLIARD: I'm sorry?

9 THE COURT: I said I don't know if you have anything  
10 you want to say on that front with respect to the free and  
11 clear provision and the, quote unquote, non-ignition switch  
12 plaintiffs, or you agree that that issue has now been fully  
13 litigated, finally resolved, and perhaps we are in a position  
14 to figure out which cases should or can be dismissed on that  
15 basis.

16 Number two, I guess to put it to you bluntly is, why  
17 not enter an order 140 type order with respect to the pre-sale  
18 order cases on the theory that we can defer the question of  
19 whether to proceed with briefing, and it may be that it makes  
20 sense to hold off on that, but what is the harm in going  
21 through the process that we just went through with respect to  
22 the post-sale order plaintiffs and essentially culling the  
23 inventory and getting a better sense of what is actually there  
24 and should remain and so forth?

25 MR. HILLIARD: No harm as long as the order, should it

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1 be entered, just recognizes what is on our plate already and  
2 maybe is put kind of at the bottom of the briefing schedule so  
3 that we can get to it after the deadlines that the Court has  
4 already entered or the consolidated briefing is done.

5 It is true that the due process claims do not resolve  
6 any potential claims against New GM. So though Mr. Godfrey and  
7 I disagree on many things, I do recognize that ultimately this  
8 Court will have to decide if the pre-bankruptcy cases have  
9 claims against New GM inside of this courtroom.

10 THE COURT: I guess something you just said reminds me  
11 of a question that I had. It sounds like there is no dispute  
12 that Judge Glenn's ruling on who qualifies as an ignition  
13 switch plaintiff versus non-ignition plaintiff is final and has  
14 not been appealed. Is that correct?

15 MR. HILLIARD: I just defer to GM and their  
16 representations. If they are willing to tell the Court that's  
17 true, then I will believe them, subject to someone telling me  
18 otherwise.

19 THE COURT: You should check your phone after this. I  
20 won't take that as a judicial admission.

21 MR. GODFREY: In that case, I have a few more things  
22 that I would like to say.

23 THE COURT: It prompts the following question, which  
24 is, I had thought that following the Second Circuit's decision  
25 in the bankruptcy proceedings that at issue on Judge Glenn's

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1 plate was whether the non-ignition switch plaintiffs -- correct  
2 me if I am wrong. My understanding is that the Second Circuit  
3 ruled that there was a due process violation with respect to  
4 the, quote unquote, ignition switch plaintiffs, and that they  
5 could proceed without regard to the free and clear provision.

6 My understanding was that the Second Circuit remanded  
7 to Judge Glenn to determine and decide whether the, quote  
8 unquote, non-ignition switch plaintiffs could show a due  
9 process violation as well, which would allow them to proceed  
10 without regard to the free and clear provision.

11 MR. HILLIARD: Both of those things are true.

12 THE COURT: So my question is, it sounds like it may  
13 now be resolved who qualifies as a, quote unquote, non-ignition  
14 switch plaintiff, but where does the due process issue stand on  
15 that front? I think I spoke to Judge Glenn about this a month  
16 or two ago and he told me that this issue was not on his plate,  
17 that is to say that no one had raised it, but what is the  
18 status of it, or am I missing something, or should we wait and  
19 discuss this later?

20 MR. HILLIARD: Thank you for giving me that. I will  
21 give it a shot. I think Judge Glenn may not be correct, that  
22 it is on his plate, that it is not decided.

23 THE COURT: I should be clear, I may be wrong about  
24 what Judge Glenn told me. I don't want to throw him under the  
25 bus.

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1           MR. HILLIARD: I think there is some vagueness  
2 injected into this whole topic, but I am pretty sure, Judge,  
3 and I know that Mr. Berman and I have talked about it, and he  
4 is on the line and may want to weigh in as well, but I am  
5 pretty sure that it is on Judge Glenn's plate but it has not  
6 been decided.

7           THE COURT: Has it been briefed?

8           MR. HILLIARD: I want to stop speculating.

9           THE COURT: Speak up, Mr. Berman, so that we can  
10 hopefully hear you.

11          MR. BERMAN: My belief is that it's still before Judge  
12 Glenn and that GM is taking the position that the non-ignition  
13 plaintiffs waived their right by not asserting it in a timely  
14 fashion, and we are opposing that, but the issue is not teed  
15 up.

16          THE COURT: We are having a little trouble hearing  
17 you. Mr. Bloomer, you were making some sort of facial gesture  
18 suggesting that you had some information on this front. Maybe  
19 what makes sense is for you guys to submit a letter to me just  
20 telling me where this issue stands so that I have a better  
21 sense of it since I am getting the sense that folks at counsel  
22 table may not know themselves.

23          MR. GODFREY: I think I have a position, but I think I  
24 will submit a letter, and that way we will avoid any confusion.  
25 I think it's fair both to your Honor and to Judge Glenn to know

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1 exactly what our position is.

2 THE COURT: Here is what I will propose. I think it  
3 would make sense to enter an order 140 type order -- that's an  
4 unwieldy phrase, but you know what that means -- with respect  
5 to the pre-sale accident plaintiffs, and essentially go through  
6 the process that we just went through with respect to the  
7 post-sale accident plaintiffs, and deferring the question of  
8 what motion practice, if any, to proceed with thereafter, and  
9 we will go through a process akin to what we just did as to the  
10 140 plaintiffs when that process runs its course.

11 Why don't I give you two weeks to confer and propose  
12 an order along the lines of an order 140 with respect to these  
13 pre-sale order plaintiffs, and it may be that, given the issues  
14 we just discussed or otherwise, there may be additional  
15 categories of those plaintiffs, that is to say, there may be  
16 grounds that GM has to move as to those plaintiffs that didn't  
17 apply to the post-sale order plaintiffs, and you can discuss  
18 that and incorporate it into whatever the proposed order is.

19 Why don't you submit a proposed order to me on that  
20 front, and again, as long as you set reasonable deadlines, I am  
21 happy to leave it to you to try to figure out what sensible  
22 ones would be, mindful of the other deadlines coming down the  
23 pike, and if there is disagreement about what that order should  
24 look like, or what categories to include in it, or what have  
25 you, you can follow the normal course of submitting competing

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1 letters along with your proposed orders two weeks from now.

2 Does that make sense?

3 MR. HILLIARD: It does, your Honor.

4 MR. GODFREY: We are prepared to move on it before  
5 March 31. We think this is important to start the culling  
6 process. And we also think, in fairness to both this Court and  
7 also to the bankruptcy court -- the bankruptcy court has new  
8 counsel. We have been told they are discussing negotiations.  
9 As far as we can tell, they have no experts; they have no fact  
10 basis. They are new counsel. I don't fault them that they are  
11 trying to learn the case. But this process of getting basic  
12 information about the cases should be necessary for any  
13 minimally competent counsel to have before they negotiate a  
14 settlement. And if they are not going to have the information,  
15 I don't know how they can negotiate a settlement. It's  
16 necessary because otherwise you're simply taking whatever  
17 plaintiffs' counsel demands and that's not negotiation. That  
18 has serious problems.

19 THE COURT: You're proposing that you submit a  
20 proposed order by March 31 or that you make whatever motions?

21 MR. GODFREY: Motions.

22 THE COURT: I think we need to agree on what  
23 categories you would be moving in, no? In other words, the  
24 order 140 process involved you providing, essentially filing  
25 notice of what cases you thought were subject, what reasons,

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1 and then an opportunity for plaintiffs to then respond with  
2 voluntary dismissals.

3 MR. GODFREY: We can do that. We can file the notice  
4 of motion, but we think it's important, not just for this  
5 Court, but so that the new counsel understand, with some  
6 factual basis, what it is they are being asked to do. Right  
7 now they have no factual basis, from what we can tell, and  
8 that's partly because they are new and that's partly because  
9 they have not been involved in this case. But this is  
10 important so that there is some factual basis. Otherwise they  
11 are essentially ringfencing or segregating the GUC Trust assets  
12 and using New GM's money, and we think they need to have a  
13 factual basis before they can engage in those kinds of  
14 discussions. This is part of that.

15 THE COURT: I hear you. There are two separate issues  
16 here. One is, it's clearly in my purview, and that is trying  
17 to get a handle on the 40.4 percent of cases in the MDL and how  
18 they should proceed. And I agree with you that we should  
19 proceed on that front.

20 The second is the foundation or basis for whatever  
21 settlement may or may not be coming down the pike and,  
22 candidly, that's not my concern at the moment. It may very  
23 well end up my concern, but I see this order addressing the  
24 former and not the latter. And I also think it's frankly too  
25 late to really meaningful inform the latter, which is to say,

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1 if lead counsel is reporting back to Judge Glenn by April 9  
2 with respect to the status of the settlement, I think it makes  
3 sense to proceed along the lines of order 140, and that process  
4 takes some time in order to play out and that information will  
5 not be generated by April 9, and in that regard, whether you're  
6 right or not, in terms of their having a basis for a  
7 settlement, I don't think this order should be viewed as an  
8 informing that.

9 So bottom line I will stick with my initial  
10 inclination. So two weeks from today you should submit a  
11 proposed order, essentially modeled on order 140, but tweaked  
12 or modified as appropriate given the particulars of the  
13 pre-sale order category. You should confer with one another.  
14 Hopefully, you can agree upon not only the structure of it, but  
15 the relevant deadlines, but if there is any disagreements you  
16 can submit letters along with it, and why don't you by that  
17 same date submit a letter, either jointly or otherwise, with  
18 respect to what the status is of the due process issue as to  
19 the, quote unquote, non-ignition switch plaintiffs.

20 MR. GODFREY: Understood, your Honor. I just want to  
21 make one cautionary comment for your Honor's consideration. If  
22 we do it this way, and the plaintiffs and the GUC Trust reach a  
23 settlement without basic information, and then your Honor, with  
24 your Honor's rulings, etc., end up eliminating 30 to 40 percent  
25 of the cases, just upon the face value of the case, that will

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1 go to the heart of what one of our concerns is about these same  
2 claims which are pending in the bankruptcy court, which they  
3 have little or no value, and it will be a serious problem for  
4 that court. This Court has ruled that the cases are gone and  
5 have no value, and yet that court will be asked to address a  
6 settlement, based upon estimations without a factual basis from  
7 the defendants or from the GUC Trust, and they are wildly  
8 divorced from the reality of the rulings of this Court. So  
9 that's part of my concern in fairness to not just this Court,  
10 but in fairness also to the bankruptcy court.

11 THE COURT: I think we can defer further discussion on  
12 this front, but I will leave you with one remark, which is  
13 there are cases, for example, against multiple defendants where  
14 one defendant reaches a settlement, the other defendant  
15 litigates it and prevails, and in that regard proves that if  
16 the first defendant had held out, the result might have been  
17 different. I am not sure that this is meaningfully different  
18 from that. Maybe it is. Maybe it isn't. But in either case,  
19 I really don't see this proposed order as -- I think it's too  
20 late to meaningful inform the GUC Trust with respect to its  
21 approach to the settlement, and I don't think that that's its  
22 primary objective. So I will stick with the plan.

23 The next and penultimate issue on the agenda letter is  
24 bellwether economic loss *Daubert* hearing. Because the audio is  
25 not working so well for Mr. Berman or Ms. Cabraser, I am

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1 hesitant to get into an extended discussion on this at this  
2 point. I guess two questions. One is, can somebody remind me  
3 what the timing is on this front, when these are coming down  
4 the pike or when they would likely ripen? And number two, I  
5 guess I am trying to get a sense of, it sounds like New GM is  
6 the one proposing that there be some sort of hearing, and I  
7 guess I wanted to get a better sense of what the thinking was.  
8 Is it your view that there are or are likely to be material  
9 disputes of fact that would need to be resolved at a hearing,  
10 or do you think it would just be helpful for me to educate  
11 myself with respect to what may be complicated modeling issues  
12 or other issues? I am trying to get a sense of what your  
13 thinking is.

14 MR. GODFREY: In order of your questions, your Honor,  
15 the *Daubert* issues will be completely briefed by August 10th of  
16 this year. Secondly, each of the statements that your Honor  
17 made was part of our thinking, but with respect particularly to  
18 so-called expert Mr. Boedeker, he has no doctorate in the  
19 fields in which he is testifying, and we intend to challenge  
20 his qualifications as an expert.

21 One of the things that we did -- your Honor has not  
22 had the benefit of seeing this, but he relies upon the work of  
23 others who are experts in the field: Nobel Laureate McFadden,  
24 Rossi for conjoint analysis, Shari Diamond, who I suspect your  
25 Honor is familiar with, from Northwestern. New GM retained

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1 each of those experts, and they will be prepared to testify and  
2 to claim to your Honor, as they have in the reports, that the  
3 man knows not of what he speaks.

4 We also, because he uses hierarchical Bayesian  
5 statistics, which is a branch of statistics that normally  
6 experts need at least a doctorate in, he does not have a  
7 doctorate, we have retained an expert in that field from the  
8 Royal Academy. Two plus two is not 19. Not in this universe.  
9 And yet that is what we will attempt to prove with respect to  
10 Mr. Boedeker, that he has concocted and made up things that are  
11 not recognized in the field of economics or statistics, and  
12 that his work is, to say the least, more than unreliable. And  
13 we think the Court would benefit from hearing live from some of  
14 these witnesses, but ultimately the Court will have to make  
15 that determination. But I wanted to put a marker down in this  
16 letter that we think this would be a great benefit to the  
17 Court.

18 THE COURT: All right. So that underscores my view  
19 that we shouldn't really be getting into this, or it's  
20 premature to be deciding this at this point, and certainly I  
21 don't need to hear from Mr. Berman or Ms. Cabraser. I am  
22 assuming that you would disagree with what Mr. Godfrey just  
23 said, and in that regard, my not hearing from you should not be  
24 understood to be that I think you're conceding anything on that  
25 front. Let me leave it open for now and we can discuss this as

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1 we get closer, and if it's not going to be fully briefed until  
2 August, we have plenty of time to think about this.

3 I think, and I am now dealing with a very complicated  
4 motion involving *Daubert* issues in another case, economic  
5 modeling and so forth, so these issues are very much on my  
6 mind, and they were also discussed at the conference last week  
7 that I alluded to at the beginning of this conference. There  
8 are lots of options here, and I am actually interested in  
9 exploring what might make sense.

10 One is a full-blown hearing. If there are disputes of  
11 fact in particular, I think that that would either be necessary  
12 or appropriate. Alternatively, I know judges have utilized  
13 various tools to educate themselves and ensure that they  
14 understand the complicated expert issues at stake, including in  
15 this case it would be an economics or statistics day where you  
16 have an opportunity, essentially, to educate me either through  
17 your experts or through counsel. I know that judges have done  
18 various things, including doing that on the record, as with a  
19 regular hearing, or doing it on the record but with an  
20 agreement that whatever the experts say is not usable to  
21 impeach them later, so it's a little bit less contentious or  
22 sort of advocacy oriented and more oriented towards educating  
23 me, to doing something off the record completely, which is not  
24 my instinct in this, as I think you know. Another option is  
25 the retention of a court appointed expert who could sort of

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1 help me navigate what may be complicated issues and make heads  
2 or tails of it.

3 But the bottom line is, if you're telling me that  
4 these are issues that require a doctorate, I think you should  
5 assume that there might be some education of me that would be  
6 helpful and required here, and I would like you to put on your  
7 thinking hats and think creatively. You may know of other  
8 options out there or other things that judges have done on this  
9 kind of front, but why don't we lay the marker down that you  
10 should be thinking about this and talking to one another about  
11 it. And I recognize you may not ultimately agree, but if you  
12 can think about what the options might be and raise it with me  
13 as we get closer to these issues being fully briefed, I think  
14 that would make sense. All right?

15 MR. GODFREY: Thank you. I thought we should just put  
16 a marker down now, as I often do when I see things coming down  
17 the pike. I realize it's premature, but I thought I should  
18 just identify the issue for the Court now, and we will think  
19 about it and take up your suggestions and discuss it with the  
20 plaintiffs.

21 MS. CABRASER: Thank you for raising the options. We  
22 will consider them and discuss them. The fact that we disagree  
23 with Mr. Godfrey is putting it mildly so we will say no more.

24 THE COURT: I appreciate you raising issues that you  
25 see coming down the pike. It certainly makes my job easier and

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1 I am grateful for it. Why don't you discuss what I just  
2 discussed, and anything else that you can think of here, and  
3 put it on a future agenda. If you're in agreement, then you  
4 can present that to me, or if you think it should be briefed or  
5 discussed at a future conference, you can tell me that, but I  
6 certainly think it would pay to give thought to these things as  
7 we get closer to the time when it would be ripe.

8 The last item on the agenda letter is settlement.  
9 Anything on that front? Obviously, I got the letter yesterday  
10 which gives me the updated numbers. Mr. Godfrey mentioned some  
11 earlier as well. Anything to report on this front? Am I right  
12 there is a date coming up for you to reconvene before Judge  
13 Phillips?

14 MR. GODFREY: Yes, sir.

15 THE COURT: I assume that covers the economic loss  
16 side of the house. Anything further to discuss on the personal  
17 injury and wrongful death front?

18 MR. GODFREY: Ms. Bloom will let me know and we will  
19 let the Court know. She is taking a hard look at the remaining  
20 cases and seeing whether any of those could be resolved. She  
21 just concluded the one set, which is significant, and she is  
22 now off on her little list, and that's what she is doing.

23 THE COURT: Great.

24 MR. BERMAN: On the economic loss front settlement, I  
25 just want to raise one thing. You may recall early in the case

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1 that Mr. Godfrey laid down a marker that that would --

2 THE COURT: Mr. Berman, I apologize, and it's a  
3 problem with our audio system, no doubt, but it's very hard to  
4 understand what you're saying, which is not good for me or the  
5 record. I don't know if Ms. Geman can do the trick.

6 MS. GEMAN: My guess is that what Mr. Berman is  
7 indicating is that, on the subject of laying down markers, that  
8 New GM had expressed in words or to the effect that their  
9 benefit of the bargain in the summary judgment motion was  
10 effectively a silver bullet, very important to help the parties  
11 calibrate and engage in settlement. And I think Mr. Berman was  
12 just noting that, in thinking about the timing of next steps,  
13 that that motion is still outstanding.

14 THE COURT: Got you. Mr. Berman, one word yes or no,  
15 is that what you were driving at?

16 MR. BERMAN: Yes. It relates to the April 17 meeting.

17 THE COURT: I would anticipate that you will have a  
18 ruling before that and hopefully sooner rather than later.  
19 It's certainly on my radar and I am trying to get to it as  
20 quickly as I can.

21 MR. GODFREY: I would simply add there are number of  
22 silver bullets as well as gold ones, that's just one of them.

23 THE COURT: And they have various bulletproof vests.

24 Anything else for us to discuss other than the date to  
25 reconvene?

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1           MR. GODFREY: Just one issue that I think will  
2 probably be worked out. Mr. Pixton took the deposition of the  
3 top class actions representative last week or the end of the  
4 week before. We learned at the deposition there are additional  
5 documents that we think need to be produced that were covered  
6 by the Court's order. We sent a letter to colead counsel about  
7 that, and if we can't work that out, then we will let the Court  
8 know via letter.

9           THE COURT: I have certainly ruled on related issues  
10 and would think that that might provide you with what you need,  
11 but if not, you know how to find me.

12          MR. GODFREY: We do. I just wanted to identify it so  
13 the Court wasn't surprised if next week you receive a letter  
14 from us. I don't think that will happen, but if it did, that's  
15 background.

16          THE COURT: I appreciate that.

17                Anything else from the front table?

18                Let's talk about reconvening. I have sort of lost  
19 track of when it would make sense given the deadlines, but  
20 would it make sense approximately two months from now, you  
21 think, toward the end of May? Anyone?

22          MR. HILLIARD: From the plaintiffs' perspective, two  
23 months makes sense, Judge. I am just going to be very alert to  
24 your suggested dates because I have some high school  
25 graduations that are going to be mandatory this year.

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1 THE COURT: As they should be. I have a middle school  
2 graduation of my own.

3 Let me throw out a date then and you can respond.

4 How about the morning of Thursday, May 31st?

5 MR. GODFREY: Is it possible to do it earlier in the  
6 month of May, like the middle of the month? Is that possible?

7 THE COURT: Is that because you think that it would  
8 be --

9 MR. GODFREY: I think it would be helpful. I think  
10 that's a bit long.

11 THE COURT: How about either May 14 or May 15 or May  
12 11?

13 MR. GODFREY: 14th and 15th work for us. I don't know  
14 what works best for the plaintiffs, but the 11th, 14th and 15th  
15 work for us.

16 MS. CABRASER: None of those three dates work for me.  
17 I will be out of the country, unfortunately, on something that  
18 could not be rescheduled.

19 THE COURT: Ms. Cabraser, it's impossible to hear you.  
20 It's a source of frustration separate and apart from this  
21 conference, and I am going to try and get to the bottom of it,  
22 but I don't control the technology.

23 Ms. Geman.

24 MS. GEMAN: She is out of the country on those three  
25 dates with an event that cannot be moved.

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1 THE COURT: Do you know what dates she is out of the  
2 country for?

3 MS. GEMAN: I don't.

4 MS. CABRASER: Your Honor, I will be back as of  
5 Wednesday, the 23rd of May, and available thereafter.

6 THE COURT: All right. Mr. Godfrey, can you  
7 articulate why you think it would be helpful to reconvene  
8 before May 31st?

9 MR. GODFREY: I can articulate it. I am not sure the  
10 Court will agree with me.

11 I have observed over time in this case that status  
12 conferences, particularly in the last year and a half, every  
13 six weeks or so tend to have a rather full agenda and tend to  
14 make more progress. So we have a number of issues that are  
15 teed up, if you will. This is a large case, although it's much  
16 smaller than it was. We have things that come up. I can't  
17 tell you with any specificity the following three things will  
18 need the Court's attention earlier, but I think it's better to  
19 have it every five or six weeks than it is to have it every two  
20 months.

21 THE COURT: In principle I agree with you, but I also  
22 think, mindful that the audio system hasn't been working for us  
23 this morning, that there is good reason to have Ms. Cabraser  
24 and hopefully Mr. Berman here as well. So given that, with the  
25 understanding that if issues arise we can always have a

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1 telephone conference between now and then, which we have  
2 availed ourselves of in the past, I would propose May 31st.

3 Any objections?

4 MR. HILLIARD: The morning of May 31st?

5 THE COURT: 9:30, May 31.

6 MR. HILLIARD: That works, Judge.

7 MR. GODFREY: 24th or 25th, does that not work? I  
8 think we can do the 31st if your Honor wants to do it. I still  
9 think it's better to have it earlier rather than later, but I  
10 may be standing alone on this.

11 THE COURT: The 25th is Memorial Day weekend. I  
12 imagine I wouldn't be the only one who might want to -- well,  
13 it's the morning. The 24th is not an option because I am  
14 supposed to be on trial. That trial may go away, but Ms.  
15 Cabraser is arriving the day before, which makes it hard.  
16 Let's stick with the 31st.

17 Ms. Cabraser, Mr. Berman, does that work for you, yes  
18 or no? Just one word.

19 MS. CABRASER: Yes.

20 THE COURT: Mr. Berman.

21 MR. BERMAN: Yes.

22 THE COURT: Excellent. So we will do May 31st, and  
23 again, if issues arise between now and then that require  
24 attention, you can let me know and we will convene by telephone  
25 if need be.

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1           You are going to get me by Tuesday the proposed sort  
2 of follow-on order as to order 140 plaintiffs, within three  
3 business days the order with respect to whatever else we have  
4 done today, and within two weeks the order with respect to the  
5 pre-sale accident plaintiffs. I think that is the landscape so  
6 everybody is on the same page.

7           I do have one question, which is Mr. Chaplin, was this  
8 interesting?

9           MR. CHAPLIN: Kind of.

10          MS. GEMAN: He is a future lawyer, your Honor.

11          THE COURT: Well said, Mr. Chaplin. I want to commend  
12 you for your behavior this morning. It has been excellent,  
13 exemplary. I have children, in fact, one pretty much exactly  
14 your age. I am not sure that he could have sat through this  
15 conference with the kind of good behavior you have exhibited.  
16 I commend you on that. I hope that you get to do more fun  
17 things than this during your break, and I wish you the best of  
18 luck in your hockey career and your legal career.

19          MR. HILLIARD: With regards to your middle school  
20 graduation, if you haven't seen it, I would recommend Chief  
21 Justice Roberts' talk at his son's middle school graduation  
22 last year. It's on YouTube and it's worth seeing it.

23          THE COURT: I think I have seen it. Suffice it to  
24 say, my daughter would not be happy if I was tweeting at her  
25 graduation.

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Safe travels, everyone.  
We are adjourned.  
(Adjourned)