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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)

6 -----x
7 New York, N.Y.
8 August 21, 2018
9 9:30 a.m.

10 Before:

11 HON. JESSE M. FURMAN,

12 District Judge

13 APPEARANCES

14 LIEFF CABRASER HEIMANN AND BERNSTEIN LLP
15 BY: ELIZABETH JOAN CABRASER

16 -AND-

17 HAGENS BERMAN SOBOL SHAPIRO LLP (SEATTLE)
18 BY: STEVE W. BERMAN

19 -AND-

20 HILLIARD MUNOZ GONZALES LLP
21 BY: ROBERT HILLIARD

22 KIRKLAND & ELLIS LLP
23 BY: RICHARD CARTIER GODFREY
24 ANDREW B. BLOOMER
25 WENDY BLOOM

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1 (In open court; case called)

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

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

6 MR. BERMAN: Good morning, your Honor. Steve Berman
7 for plaintiff.

8 MR. HILLIARD: Good morning, Robert Hilliard for
9 plaintiffs.

10 Again, your Honor, thank you for your referral to your
11 physician. I ended up talking with him. I am completely past
12 it, but it was more serious than I had appreciated. I
13 appreciate the Court's referral and again wanted to thank you
14 for that.

15 THE COURT: You're welcome and hopefully your cough is
16 done.

17 Folks at the bake table.

18 MR. GODFREY: Good morning, your Honor Rick Godfrey
19 along with Andrew Bloomer and Wendy Bloom on behalf of New GM.

20 Also with us this morning is Mr.Darr from GM legal
21 staff. He will be coming back with us in chambers. I think
22 the Court has met Mr. Darr before -- several times before.

23 THE COURT: Indeed.

24 Welcome back everyone. It has been awhile. Mr.
25 Godfrey missed me so much that he signed on to do another trial

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1 in a different matter before me. It is good to see everyone.
2 I hope you're all having a good summer. It is good to hear
3 that everyone seems to be healthier than the last go-around.

4 Now, our agenda today is fairly sparse, which explains
5 our sparser attendance. Let's get to it. I think we also have
6 CourtCall operational, and my understanding is that Mr. Willis,
7 counsel to Ms. McKnight, is on the line,

8 Is that correct, Mr. Willis?

9 MR. WILLIS: Yes, your Honor. Good morning. Matthew
10 Willis of Brent Coon & Associates representing Ms. McKnight.

11 THE COURT: Good morning to you. I think most of what
12 we're going to cover won't necessarily pertain to you, but at
13 some point I will give you an opportunity to be heard when we
14 get to the bellwether trial concerning your client.

15 First on the bankruptcy proceedings front, I should
16 say I think it might make more sense to move the update
17 regarding the bankruptcy proceedings out of the agenda letter
18 and into the monthly status letter since, number one, I get
19 those status letters more often and, number two, it is really
20 more by way update on a related matter than it is an agenda
21 matter. That is to say if there is something to discuss in the
22 conference, you should include it in the agenda letter; but to
23 the extent you have been including updates on what is going on
24 on that end, I think it might makes more sense to put it in the
25 monthly letter.

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1 Having said that, there is one question I have. I did
2 communicate with Judge Glenn. I know he has under advisement
3 the parties' dispute concerning whether Rule 23 is a necessary
4 vehicle for the settlement and proceeding on that front, and I
5 guess he will decide that in due course. He and I will remain
6 in communication to make sure we're coordinating in a sensible
7 fashion.

8 With respect to the mediation of presale order claims
9 that is referenced, obviously that dovetails a little bit with
10 the successor liability issues that you briefed that we'll
11 discuss in short order.

12 My question is how does that relate to the cases
13 pending before me?

14 MS. BLOOM: Your Honor, it relates in the sense that
15 many of those same law firms have as well claims that are filed
16 in the MDL. And so the good news is that because we are in now
17 a big push also to resolve presale claims if we can, it may
18 mean that cases in your docket will be winnow out as well.

19 THE COURT: One concrete question is the mediation
20 that is occurring pursuant to Judge Glenn's direction, are
21 those separate claimants or are there some that are appearing
22 in front of me as well?

23 MS. BLOOM: It's both. The vast majority of folks
24 that have even bankruptcy-only claims are firms that we're
25 familiar with here in the postsale phase, and we are working to

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1 get dates actively with virtually all of them. And when we do,
2 we'll be discussing with them their claims that are filed both
3 in the MDL and bankruptcy court as well as their
4 bankruptcy-only claims.

5 THE COURT: All right. Very good.

6 Anything else to discuss on the bankruptcy proceeding
7 front?

8 MR. GODFREY: I think we will revert to that further
9 if it is acceptable to the Court in our in chambers discussion.
10 There is another topic that does relate to that, but I think
11 that is appropriate for in chambers.

12 THE COURT: Okay.

13 Anything else?

14 Moving on to Items Two through Four. I did receive
15 Jams letter of last night giving me a heads up that something
16 may be coming down the pike in connection with the Schroeder
17 case pending elsewhere. I take it that that letter was filed
18 really just to give me a heads up to lay down the marker so to
19 speak, but that there is nothing to be done today particularly
20 since Mr. Cooper as far as I know is not with us.

21 MR. GODFREY: That is correct, your Honor. We hoped
22 that it will be resolved; but if it is not, we'll be back in
23 short order. I didn't think it was fair to the Court not to
24 alert the Court to this possibility. As the Court knows in the
25 last four years we or you have successfully resolved

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1 99.9 percent of these. But this one just came up in the last
2 couple days and I thought we should at least alert the Court.
3 This was unexpected by us how it arose and hopefully we won't
4 be back here in a couple days, but that remains to be
5 determined.

6 THE COURT: I take it from your letter to Mr. Cooper
7 that you contemplate filing some sort of motion here if it is
8 not resolved by I think this Friday; is that correct?

9 MR. GODFREY: We have asked for a resolution by the
10 24th. If we do not get an acceptable resolution, then we will
11 be back as quickly as we can. I don't think we will be filing
12 it Friday. I think we have given until Friday to see if we can
13 begin resolution and I am hopeful; but we're not involved
14 directly with the counsel letter from another General Motors
15 counsel. New General Motors is handling that at least for the
16 moment at least.

17 THE COURT: I will keep my fingers crossed that you
18 are able to resolve it without the need for motion practice
19 here. In the event that you do file a motion, is there any
20 urgency to resolving it? Is it something we should set an
21 expedited briefing schedule for, or would the default local
22 rules suffice? What is your thought on that?

23 MR. GODFREY: My thought is it will probably be
24 expedited. Again, this is dependent on the negotiations that
25 are being overseen by Mr. Darr and his colleagues with other

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1 New GM counsel. But if they push ahead and demand a 30(b)(6)
2 on these topics, then we'll have an expedited briefing
3 schedule. On the other hand that is a negotiated item also. I
4 cannot give the Court anymore guidance other than we have
5 alerted the Court. We're trying our best to resolve it and
6 hopefully it will be resolved like most other things that have
7 been resolved in the case. I didn't want to surprise you if we
8 came in next Tuesday and having just been here and having you
9 say, Well, why didn't I know about this. I didn't think that
10 was fair.

11 THE COURT: I certainly appreciate that. I would say
12 try to resolve it. That would certainly be my preference. It
13 sounds like it might be yours as well. If you can't and you do
14 file a motion and you wanted to proceed on a more expedited
15 schedule than the default local rules, then you should file a
16 contemporaneous letter alerting me to that to make sure it is
17 not lost in the shuffle. I will be on the lookout for it in
18 the nearish future in any event.

19 Anything else on Items Two, Three, or Four?

20 MR. GODFREY: The only point -- and Ms. Bloom is here
21 for a number of reasons here today and she will get into the
22 details in chambers or when we get into settlement in open
23 court -- we have now dropped below a thousand cases remaining
24 in the MDL for the first time. Over 80 percent of the MDL has
25 been resolved. We're at 957 total. That includes the 124 new

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1 ones filed this year. So I couldn't do the math to figure out
2 of the original number how many are left, but we're now above
3 80 percent and as we'll discuss later we have our marching
4 orders in terms of a resolution to push if possible.

5 THE COURT: Great. I am pleased to hear that and
6 we'll cover more of that later. I did notice we were down
7 below 1,000. I thought about giving you all toasters or
8 something but decided that would not be appropriate.

9 I wonder if we ought to just skip ahead for a moment
10 and discuss the McKnight related issues since Mr. Willis is on
11 the line and perhaps he doesn't want to sit through the
12 discussion of the successor liability issues, which is the one
13 substantive issue on our agenda today. So why don't we do that
14 and take things out of order and he can even drop off or go
15 mute if he wants.

16 On the McKnight front, there was a letter motion filed
17 last night by New GM -- it seemed to be a light night for New
18 GM and it was for me as well -- raising a discovery dispute
19 concerning a medical or vocational exam of Ms. McKnight. I am
20 certainly happy to let that be briefed in the normal course,
21 that is to say, give Ms. McKnight an opportunity to respond in
22 writing within three days in accordance with standard
23 procedures; but I am also happy to address it today if that is
24 appropriate or makes sense.

25 Mr. Willis, are you on the line?

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1 MR. WILLIS: I am, your Honor.

2 A couple things. One, I appreciate your comments that
3 a standard motion practice I think would probably be the best
4 way to address it; but I would like to at least cover a couple
5 brief things for the Court.

6 First, I apologize to the Court my discussions with GM
7 on this issue for over a month have been specifically about the
8 vocational rehab expert. And I went back and checked my emails
9 this morning and on July 30th, the attorney for General Motors
10 did in fact say that they would request both an independent
11 medical exam as well as vocational expert exam. And I have
12 specifically told them that I disagreed with presenting
13 Mrs. McKnight for reasons I will not go into now about the
14 vocational expert and I simply missed the fact that they -- to
15 my knowledge that was the first time that General Motors
16 requested just the independent medical examine and I apologize
17 for not catching that sooner.

18 My point of all of this is I believe I have several
19 things that I can point out to the Court why I don't think that
20 General Motors has truly met the good cause standard. I would
21 prefer something slightly different, your Honor. I would
22 prefer that both General Motors and I try to work out any exam
23 but with very specific guidelines on the actual protocol of the
24 exam. I would like the experts at General Motors intended use
25 to present a possible exemplar report as they said they have

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1 used these experts in other bellwether cases. If we can use
2 those exemplar reports as a guideline for what the examination
3 will entail in this case with a court order limiting them to
4 those specific areas. I would also request that the Court in
5 any examination under Rule 35 order that the experts for
6 General Motors preserve all contemporaneous notes taking during
7 the examination and those be provided to plaintiff and I would
8 like the opportunity either for an expert on behalf of
9 plaintiff to observe the examinations or a third-party
10 videographer take the examinations.

11 Your Honor, if the Court would at least do two
12 things -- give some guidance on some of the limitations that I
13 just enumerated as well as possibly give us a few days to work
14 out a proposed order to the Court in the event that judge felt
15 good cause was met. Again, I would also ask if the Court would
16 prefer the Court give us time to address it in writing.
17 Although, I think you have already been able to hear the
18 general direction of what my response would be.

19 THE COURT: Let me just clarify. I take it from what
20 you said that you don't have an objection to a medical exam, it
21 is just the vocational exam front that you have concerns?

22 MR. WILLIS: The basis of the exam is correct other
23 than certain particular limitations, which I just set out some
24 of them.

25 THE COURT: The particular limitations, that is,

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1 having someone on your end observe or having the exam videoed
2 and the notes preserved, your request would apply to both
3 exams, I take it?

4 MR. WILLIS: Yes, your Honor. And without knowing the
5 proposed protocol of the exam, I may have an objection as to an
6 overreaching nature of the exam. But notwithstanding that
7 issue, that covers it.

8 THE COURT: Gotcha.

9 Here is what I would propose: It sounds like there is
10 plenty for all of you to discuss and a lot of room for
11 potential agreement and maybe even resolution of the disputes
12 here if there even are any. It seems like to some extent there
13 might even just be a miscommunication regarding what is in
14 dispute. So I think it would make sense for you all to discuss
15 it in the first instance and for me to maybe give you a couple
16 more days than I would normally give you in order to try to
17 work this stuff out and potentially agree upon a protocol or
18 order if you need one concerning these exams.

19 To that end, I would propose that any opposition by
20 Ms. McKnight the deadline for it be extended to next Monday.
21 My hope is that you can perhaps submit an agreed upon order by
22 that date and obviate the need to resolve any disputes. I will
23 say generally having heard what Mr. Willis has said, I am
24 skeptical of the argument to preclude an exam altogether.
25 Certainly it doesn't sound like a dispute that a medical exam

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1 should take place, and that seems right to me given the nature
2 of Ms. McKnight's claims and damages here. I would think that
3 the same argument and principle would extend to a vocational
4 exam since she has put in issue her ability to work. On that
5 score, I would think with the other bellwethers, a vocational
6 expert would be an appropriate one for GM to call here.

7 I guess that intimates my view a little bit on the
8 propriety of an exam generally. I have less of a view with
9 respect to the terms and conditions that Mr. Willis has
10 proposed because I don't entirely know what such an expert --
11 what the examine would entail and whether or to what extent
12 those terms and conditions would affect the results or what
13 takes place there. So I think it is probably better to leave
14 it to you to discuss those and see if you can agree upon
15 appropriate terms that would allow the expert to do what he or
16 she needs to do but provide safeguards and alleviate the
17 concerns that Mr. Willis may have.

18 Does that make sense giving you until Monday to work
19 this out and if not, you can file your opposition by that date,
20 Mr. Willis?

21 MR. WILLIS: Your Honor, thank you for that. I
22 certainly hate to ask the Court to indulge this, but I actually
23 leave for an out-of-country vacation -- the first one this
24 year -- and I leave tomorrow. I get back Monday evening. I
25 would ask the Court if it would consider giving us until

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1 Wednesday of next week. Although, I would be really glad to
2 try to come up with some potential dates for the examination
3 with General Motors even if in the event we're unable to agree
4 on specific issues regarding the parameters of the examination.

5 THE COURT: Why don't you talk to counsel for GM today
6 to figure out whatever you can figure out and either schedule
7 when you are going to have a more in depth conversation and/or
8 schedule dates for the exam if they proceed. Now, I am fine
9 giving you until next Wednesday. I don't think that will make
10 a material difference. I don't want to interfere with your
11 vacation plans. Why don't you try to work things out. If not,
12 that will be your opposition deadline and we'll go from there.

13 All right?

14 MR. WILLIS: Perfect. Thank you, your Honor.

15 THE COURT: I will defer in accordance with my
16 standard operation proceedings on the sealing requests. My
17 inclination on that front is to think there is no reason that
18 the letter itself needs to be redacted; but I have less of a
19 view on the exhibit, namely, the plaintiff's fact sheet, which
20 may or may not contain some slightly more sensitive or private
21 information. We'll deal with that in the normal course in
22 accordance I think Order 77 or what have you.

23 Anything else that you have to discuss in connection
24 with the McKnight case?

25 MR. WILLIS: No, your Honor. Except while we're on

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1 the telephone, I will just ask that General Motors -- I am not
2 certain which attorney will address this for Kirkland & Ellis
3 so I will ask whoever is going to take lead on it, I am in the
4 office and I will address it with him.

5 THE COURT: Folks at the back table are nodding as if
6 someone will get in touch with you. I am sure they will make
7 sure that happens.

8 The one thing I do want to address on this is I don't
9 think in Order -- what number is it? -- 141, which provides the
10 sort of general schedule for this case there is a deadline of
11 October 12th for the parties to meet and confer and submit a
12 joint proposed order regarding deadlines for submitting any
13 Daubert motions, dispositive motions, motions in limine, and
14 the like. I assume that you all contemplated that that would
15 be in the form of a proposed order akin to the one that we had
16 in prior bellwethers with detailed deadlines for pretrial
17 disputes for the filing of joint pretrial order, for jury
18 selection, and the like.

19 So, number one, I want to make sure we're all on the
20 same page about that. Number two, at least with respect to the
21 McKnight trial, I am inclined to move that deadline up and have
22 you all file that letter and proposed order sooner because I
23 don't see any reason why you can't give thought to when those
24 deadlines should be now and that will give me a better sense of
25 how to prepare for what is coming down the pike.

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1 Any objection to moving the deadline to set that
2 schedule sooner?

3 MR. WILLIS: Your Honor, on behalf of Ms. McKnight, I
4 will defer that to Mr. Hilliard and his team.

5 THE COURT: Mr. Hilliard is nodding his head as if it
6 is okay with him.

7 MR. HILLIARD: If he is deferring to me, it is okay
8 with me.

9 I will tell the Court as Mr. Willis knows, our team is
10 working with Mr. Willis and his firm daily. So we're trying to
11 give them all of the institutional knowledge from the previous
12 experiences so there will be no repeat of anything that the
13 Court would prefer not to see repeated.

14 THE COURT: No cars in the courtroom for example?

15 MR. HILLIARD: That is the one that stands out the
16 most, but I am sure there are others.

17 What we're coordinating is completely with his firm on
18 the sidelines assisting, but I will tell Mr. Willis that we do
19 agree with the Court's suggestion.

20 THE COURT: Great. How about we move up that deadline
21 for purposes of the McKnight case to September 7th and get the
22 ball rolling on those deadlines sooner. I am happy to leave in
23 place the deadline for the Roden case, namely, the October
24 deadline for the Roden case unless I changed that.

25 I did actually change that in the order entered on

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1 August 1st. So it really only applies to McKnight that that
2 would be moved to September 7th.

3 Mr. Godfrey.

4 MR. GODFREY: If I can ask the Court's clarification.
5 What we're speaking of is that by September 7th we propose the
6 deadlines for the various items. That is fine if that is what
7 we're talking about.

8 THE COURT: That is what we're talking about. Submit
9 a proposed order with those deadlines.

10 I do want to raise one thing for you to think about
11 and submit in connection with that, which is I am inclined to
12 think that there may not be as much need for as many jurors
13 this go-around and maybe not even a need to use a jury
14 questionnaire, that all the voir dire could be conducted
15 orally. On the one hand we have kind of a procedure and the
16 procedure is down and maybe it would just be easiest to leave
17 them in place. If it ain't broke; don't fix it. On the other
18 hand, a jury questionnaire does take time and attention and
19 what have you and I just raise it as a question.

20 So if you could address those issues in connection
21 with the September 7th submissions, namely, your view on how
22 many jurors we need given our usage in the last trials and
23 whether a jury questionnaire is necessary this time around.
24 The reason being, if it is not obvious, is I think with the
25 passage of time GM is less in the news and the ignition switch

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1 is probably less on people's minds these days and I think the
2 sensitivities are therefore a little bit less.

3 Mr. Godfrey, you are standing -- perhaps half
4 standing.

5 MR. GODFREY: I think we want the jury questionnaire.
6 The number of jurors I will discuss with Mr. Brock. I don't
7 have a view on that at the moment, but the questionnaire I am
8 pretty clear on.

9 THE COURT: Well, why don't you address that in your
10 submission on September 7th and I will take it under advisement
11 and decide how to proceed. As I said since we have it down, it
12 may just the easier course is to stay that course. We'll see.

13 Anything else folks in the courtroom to discuss on the
14 McKnight matter?

15 Very good.

16 Mr. Willis, anything else you want to discuss?

17 MR. WILLIS: No, your Honor. Thank you.

18 THE COURT: You are welcome to stick around if you
19 like. I am going to put you on mute so you can do whatever it
20 is you want to do, but I think we're done with things
21 concerning you.

22 Let's turn back to the successor liability issue
23 raised in your joint letter of the other day or last week. I
24 will confess that I am ambivalent about this. On the one hand,
25 I have my hands more than full. You all are in the process of

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1 briefing any number of rather significant and lengthy motions,
2 class certifications, summary judgment, Daubert motions
3 relating to those. Those will be fully submitted in November
4 and candidly it is likely to take me several months to make my
5 way through all of those motions. And then the bellwether
6 trials start up again in January and next March. As you know
7 those tend to involve a fair amount work. All of which is to
8 say I certainly have my hands full and in that regard I am not
9 eager to invite additional motion practice and if there are any
10 other motions that I didn't mention in that list, not to
11 mention my other few hundred cases.

12 Having said that, as you certainly know my tendency
13 and inclination is to keep things moving forward as much as
14 possible. I try tried to do that in the last conference by
15 advance the ball down the field a little bit by having you
16 attempt to reach agreement with respect to the remaining states
17 and it did advance the ball but only by a yard or two, which is
18 to say not as quite far down the field as I might have hoped.
19 From that standpoint there is some attraction to the New GM's
20 proposal, which doesn't quite invite the briefing on the issue
21 whole hog. That is to say it tables I think the 33 states that
22 are still in dispute, but it does at least move things forward
23 with respect to the other states. So that sort of gives you a
24 sense of my ambivalence.

25 I wanted to hash out a few things with you here.

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1 First, with respect to the folks at the front table, I guess
2 there is one question which is whether this would facilitate or
3 be meaningful with respect to mediation. There are two
4 questions on that front. One is the timing of the mediation.
5 I don't remember offhand when that is supposed to take place.
6 Candidly given the other matters that I just mentioned, I don't
7 know how quickly I would get you a decision on these issues in
8 that regard. It may or may not meaningfully help on the
9 mediation front.

10 The second is there is a dispute. Plaintiffs point
11 out that many of the plaintiffs in issue have fraudulent
12 concealment claims that would exist even if the successor
13 liabilities claims went away. GM's response to that is, A,
14 that is not the majority of the plaintiffs; and B, even if it
15 is, the damages are limited on those claims to what would have
16 been paid on a timely filed proof of claim. I don't think
17 plaintiffs responded to that particular point in the letter.
18 So I guess I wanted to ask you both about the timing of the
19 mediation and to address damages issues.

20 Ms. Cabraser, is that your?

21 MS. CABRASER: On the timing of the mediation, your
22 Honor, the available dates we have from the mediator that the
23 parties will make work are October 19th and October 26th I
24 believe. So I think the answer to your first question, your
25 Honor, is no, I don't think we would be seeing a determination

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1 from the Court even under the GM schedule by the mediation
2 dates.

3 THE COURT: I can assure you you would not.

4 And on the damages point?

5 MS. CABRASER: Your Honor, on the damages point I
6 think it is clear that regardless of outcome on successor
7 liability per se, we have the fraudulent concealment claims
8 that are independent claims in any event.

9 THE COURT: Right. GM's point on that is the damages
10 that are available on those claims are relatively limited or
11 limited relative to the successor liabilities claim. So even
12 if you are right and those claims would remain, then it would I
13 take it from GM's view materially affect the settlement value
14 of those claims.

15 MS. CABRASER: I think we disagree with that, your
16 Honor, without going into detail just on the nature of the
17 actual damages or actual punitive damages or punitive damages
18 regardless of the underlying theory on state law, whether it is
19 a successor liability theory or whether it is based on a
20 fraudulent concealment theory.

21 THE COURT: Well, I think the damages would basically
22 put you in the position that you would have been in but for the
23 fraud, right, and the gravamen of the fraud is that you weren't
24 able to file a proof of claim by the deadline so presumably it
25 would have been whatever you would have received had you been

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1 able to file the proof of claim by the deadline.

2 Wrong?

3 MS. CABRASER: No, I believe that is wrong. Under
4 that aspect of fraudulent concealment that would be correct.

5 THE COURT: So going back to the first point, the
6 schedule for the mediation, it occurs to me why isn't the
7 answer then to move the ball forward by setting a briefing
8 schedule but set the deadline beyond the mediation so that
9 since it is not going to be resolved by the mediation give you
10 all an effort to resolve it at mediation with a motion looming
11 in the horizon if you are not able to resolve it and that way
12 we'll have a schedule in place and if you cannot resolve the
13 cases, then we'll proceed down that path.

14 MS. CABRASER: Our point, your Honor -- my co-leads
15 can correct me if this is not complete -- was simply that given
16 everything that is on the Court's plate and on the parties'
17 plate with respect to accumulated motions and the fact that we
18 did want to move ahead, both sides, with mediation ASAP given
19 Layn Phillips' schedule that this was one more briefing matter
20 that didn't need to be briefed in the interim, but obviously it
21 is whatever your Honor would prefer.

22 THE COURT: Right. I guess what I am proposing is why
23 not set a schedule for briefing now but not make it in the
24 interim but put it out now, the issue date.

25 MS. CABRASER: I don't think any of us have an issue

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1 with that.

2 THE COURT: Folks at the back table, A, if you can
3 respond to that, and B, plaintiffs suggest in their letter that
4 they would need discovery on certain issues. My understanding
5 is with respect to the domination and control argument and with
6 respect to some argument concerning whether General Motors
7 expressly assumed liability, what is your response to those?

8 MR. BLOOMER: On the domination and control?

9 THE COURT: Well, the need for discovery, not a
10 substantive response.

11 MR. BLOOMER: I think we have a hard time seeing why
12 there would be a need for any discovery given the state of play
13 and given the fact that there was discovery had on the issue of
14 the first settlement agreement. It is hard to understand what
15 would be the need for discovery of anything that would have
16 happened since then that would be material, your Honor, again
17 that there is now a Settlement 2.0 that our client is clearly
18 opposing and which it has a right to do.

19 THE COURT: I think that is disputed.

20 MR. BLOOMER: Well, the money will come from our
21 pockets. So I think we have standing and the ability to be
22 heard on it. There is no dispute that the company doesn't
23 think it is a proper settlement agreement.

24 In terms of the relation of the parties since the
25 trial that Judge Glenn had in December and then the filing of

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1 Settlement 2.0, I don't know what discovery would yield or what
2 would be necessary to show. The notion that there is
3 domination and control by my client of the GUC trust when the
4 only potential relationship -- potential relationship -- we
5 would have had expired more than five months ago by the GUC
6 trust's own decision.

7 I am at a loss to see what discovery would be
8 necessary, who it would be done of, and how it would show
9 anything relating to domination and control given the current
10 oppositional status of the parties.

11 THE COURT: What about the deadline question? Why not
12 grant your request to proceed with briefing but set the
13 briefing schedule, basically with the motion deadline some time
14 in November after the next round of mediation to see what comes
15 from that?

16 MR. BLOOMER: Well, the mediation that has been
17 discussed so far, which is the mediation with Judge Phillips,
18 there is also in the bankruptcy context mediation that will
19 occur in November and December. It may well be the right
20 proposal depending on timing. I do think that as the Court
21 intimated it would make sense to move this ball down the road.
22 We thought hard in trying to propose what we thought could be
23 acceptable even if the Court didn't want to do all of it. We
24 addressed some threshold issues such as Michigan law, if
25 Michigan law applies to all these folks. So I think there are

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1 a number of jumping off points.

2 In terms of timing, I think having the briefing going
3 forward would assist the parties in mediating these issues
4 including the personal injury mediations that will occur in
5 November, December. So I think it is really a question of the
6 timing.

7 THE COURT: Here is what I am going to do. I am going
8 to table this until after we have our *in camera* discussion
9 about settlement so we can have a more candid discussion about
10 pressure points on this front and then I will decide. I think
11 the short answer if you haven't inferred it from my remarks is
12 I will allow the briefing to go forward along the lines of what
13 New GM proposes. To me it is just a question of when the
14 appropriate time to set a deadline would be, whether that is
15 before, after or during the mediation, and I will decide after
16 our discussion *in camera*.

17 MR. BLOOMER: Thank you, your Honor.

18 THE COURT: Very good.

19 Moving on to Item No. Six, personal injury cases.
20 First on the Wave 1 discovery. I know there are only two
21 plaintiffs remaining. I also gather from the letter that those
22 two plaintiffs missed their August 10th deadlines.

23 So what is going on there and what does it mean that
24 New GM is reserving its rights on that front?

25 MR. BLOOMER: Your Honor, I think what it means from

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1 our perspective -- your Honor, the two plaintiffs just for the
2 record are Sandy Brands and Emma Leyba. We discussed this on
3 our side over the last few days and I think what it means for
4 us is that we would propose moving in fairly short order for
5 summary judgment on those claims. We think that they are the
6 type of claims given the Court's prior ruling on the issue of
7 experts but also the quantum of evidence in the absence of
8 experts that will be necessary. We think they are ripe for
9 summary judgment. We would want to reach out to plaintiff's
10 counsel to work out a briefing schedule, which we haven't done;
11 but I think in terms of where we are in light of their failure
12 to tender expert reports is the next appropriate step would be
13 to tee up dispositive motion practice.

14 THE COURT: Have you been in communication with
15 counsel in those cases concerning the deadlines? Did they not
16 tender experts because they don't have experts, or is there
17 some other explanation?

18 MR. BLOOMER: I have not been in contact, your Honor,
19 so I don't know. I can get that information for the Court to.
20 To my knowledge based on discussions with my colleagues, there
21 just wasn't a submission of reports. I would need to talk with
22 them and respond to the Court as to whether there was
23 affirmative decision made versus some other reason why the
24 reports were not submitted.

25 THE COURT: Remind me of the next deadlines in those

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1 cases. I guess it is to present their experts for depositions,
2 but they don't have experts so that doesn't happen.

3 MR. HILLIARD: Both cases are represented by the same
4 lawyer, Judge.

5 THE COURT: Who is that?

6 MR. BLOOMER: Michael Shemtoub is the information I
7 have, your Honor.

8 THE COURT: It sounds like what would make sense in
9 looking at Order No. 141 the only additional deadlines are the
10 deadline for deposition of plaintiff's experts, which is
11 presumably moot if they don't have any experts, and then the
12 next deadline thereafter is the October 8th joint letter. It
13 calls for a joint letter between you and lead counsel, but my
14 inclination is to think there is no reason not just have
15 Mr. Shemtoub handle it if he is the only counsel involved on
16 those cases. My other inclination is why not move that
17 deadline forward and that way you can submit a joint letter
18 proposing next steps. If that is proceeding with summary
19 judgment motions, you can propose a schedule or perhaps there
20 is some other way of resolving the case without the need for
21 motion practice.

22 Does that make sense?

23 MR. BLOOMER: That makes sense, your Honor.

24 THE COURT: Let me move that deadline to September 7th
25 as well.

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1 Does that make sense?

2 MR. BLOOMER: Yep.

3 THE COURT: That is just an outside deadline. If you
4 can speak to Mr. Shemtoub before then and you are prepared to
5 proceed or propose how you each think we should proceed sooner,
6 go ahead and file that letter sooner but by September 7th.

7 You would agree that it makes sense to relieve Mr.
8 Hilliard of any obligations on this front and make it you and
9 Mr. Shemtoub, I assume?

10 MR. BLOOMER: We can do that.

11 THE COURT: Mr. Hilliard, I assume you are okay with
12 that?

13 MR. HILLIARD: I am, Judge.

14 THE COURT: Excellent.

15 We've already discussed Ms. McKnight's case.

16 Anything to discuss on the Roden case front?

17 I assume that is proceeding apace. Very case.

18 What about the other categories in Item No. Six --
19 Order No. 140 and 48 notices, wave 2 discovery, and
20 non-ignition switch plaintiffs -- anything to discuss on those
21 fronts?

22 MR. HILLIARD: Nothing from the plaintiff, your Honor.

23 MS. BLOOM: I can add a little color with respect to
24 the second sentence where we say we expect the procedures will
25 facilitate resolution of the Wave 2 claims. Just in the sense

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1 that of those 100 Wave 1 claims, we settled 85 with 16
2 different law firms. Other results were the 10 claims were
3 dismissed where claims counsel withdrew. So we did find the
4 Wave 1 process to be quite effective in resolving claims.

5 On Wave 2 there are 101 claims, and your Honor may be
6 happy to hear that within the next couple weeks, we have
7 mediation sessions with about three-quarters' worth of the
8 plaintiffs for those claims. So the process from our
9 perspective is very helpful in working to facilitate
10 resolution.

11 THE COURT: Great. That is helpful.

12 Now, I suppose this is as good a time as any to
13 address the issue that I raised in my order regarding today's
14 agenda, namely, there are any number of open motions. I can't
15 remember exactly what they are captioned, but the motion to
16 dismiss 319 claims pursuant to Rule 12(b)(6) or some such. I
17 have a feeling that a bunch of those are moot and can be
18 terminated; but among other things, the one and only way in
19 which anyone keeps tracks of what we do is our open motions and
20 in that regard I have an interest in terminating them if they
21 can be terminated.

22 Ms. Bloom.

23 MS. BLOOM: Yes. Our firm cooperated with Mr.
24 Hilliard's firm last night to be able to give this update. So
25 of those 319 claims as your Honor may recall on June 29th, we

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1 provided an update with respect to them. There were 171 of
2 those claims that were moot and 148 not yet moot. The good
3 news is that the numbers are moving in the proper direction.
4 There are now 253 claims that are moot to our best counting as
5 of last night and 66 that are not yet moot.

6 So with respect to where we stand, what the parties
7 propose is that we could provide another listing of the cases
8 like we did in June if your Honor would like. Or if your Honor
9 would prefer this group of the 66 are plaintiffs that are
10 primarily subject to the Order No. 137 and similar process
11 whereby counsel withdraw and we do typically find that those
12 cases are eventually going away. So if your Honor prefers, we
13 would be amenable, the parties, to mooting or terminating the
14 entire motion subject to the Court granting New GM permission
15 to file new motions to dismiss to the extent any of the 66
16 plaintiffs file amended complaints. If you just give us
17 guidance, we're happy to do either.

18 THE COURT: I would propose that we do the latter,
19 that is, take care of them in one fell swoop. I think it would
20 make sense for to you submit an update that specifies which
21 ones are genuinely moot and which ones are still subject to
22 Order 137 and similar protocols so that at least we're all on
23 the same page on that score and then we can let that process
24 proceed with the understanding that you reserve your rights to
25 file whatever motions you may want to file later if they do

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1 file amended complaints.

2 MS. BLOOM: Great.

3 THE COURT: Do you want to do that within, say, a
4 week?

5 MS. BLOOM: Sure.

6 THE COURT: Super. Thank you.

7 My clerk and I actually printed out a list of the
8 motions that appear to be open in that category. I don't know
9 if she brought it with her. I think she may have.

10 You can give it to them now.

11 Now, I am not promising that that is actually a
12 comprehensive list, but I think those are all the ones that
13 remain technically open and would need to be terminated; but
14 why don't you cross-reference it with your list to make sure
15 that nothing is missing.

16 Turning now then to the economic loss expert
17 guidelines issue. I got the joint letter motion also last
18 night proposing slight modification to the schedule. I would
19 say I am generally okay with that proposed modification but did
20 have a question that adverts to the possible need for sort of
21 expedited motion practice sometime in September.

22 Do we have a sense of when that might be, the
23 likelihood of it and how expedited we're talking about? Among
24 others things, there are a lot of Jewish holidays around that
25 time of year.

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1 MS. BLOOM: Yes. Ms. Geman and myself are quite
2 involved in working through that and those Jewish holidays
3 impact us as well.

4 THE COURT: I am not sure they do as much as they
5 impact me, but we don't have to argue about that.

6 MS. BLOOM: So the timing of this is quite tight. We
7 will receive the information on the New GM side that we need to
8 consider on August 31st, which is a Friday. In order to make
9 the timing work, the parties have agreed to meet and confer on
10 Labor Day, which is I believe September 3rd. I note that
11 involves Ms. Geman. She is actually doing that from out of the
12 country as I understand. If there is a disagreement, we would
13 be filing on the New GM side a motion within the next day or
14 so. So on, say, Tuesday or Wednesday. I think actually we
15 would be filing on Tuesday and the other side would be filing
16 on Wednesday.

17 We would be looking for your Honor to decide the
18 dispute quite quickly within the next two days because it would
19 impact things that the parties would need to do the following
20 week -- potentially depositions. They would need to occur
21 ahead of New GM's opposition to class cert brief. I do think
22 it is the kind of dispute that you would be able to decide
23 pretty quickly, but that is the sort of timing that the parties
24 are looking for.

25 I don't know how your schedule is towards the end of

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1 that week right after Labor Day.

2 THE COURT: That is not yet too bad. I assume this
3 would be in the nature of a letter motion and opposition, no
4 reply and expedited-discovery type of dispute?

5 MS. BLOOM: Yes.

6 MS. CABRASER: That is all correct. Ms. Geman is in
7 Israel today and couldn't be on the call or in court, but that
8 is what we have agreed. I think this is most likely to be
9 resolved. I am always an optimist. In any event, we'll make
10 that schedule work.

11 THE COURT: So basically any motion if one is
12 necessary would be filed by Tuesday the 4th, opposition will be
13 Wednesday the 5th, and I will decide it as quickly as I can.

14
15 MS. BLOOM: That's correct.

16 THE COURT: That's fine with me. I will commit to
17 getting a decision as quickly as possible. If not Wednesday,
18 then Thursday ideally to keep everybody on track with that
19 understanding.

20 The motion filed yesterday is granted.

21 Obviously I hope that you all can work things out and
22 avoid the need for that particular motion practice; but if not,
23 it doesn't sound like it will be too onerous.

24 Mr. Godfrey.

25 MR. GODFREY: Two points, your Honor. One is I think

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1 Ms. Cabraser and I both share the view that we'll try to work
2 out as much as possible. I don't know how that will turn out,
3 but that is what we're going to try to do. I think the fact
4 that we're able to work through this slight modification
5 illustration that we'll be able to work most things out. We'll
6 try, your Honor, because we understand full well of the burdens
7 we're imposing on the Court.

8 Secondly, and it is going to be entirely the Court's
9 call, but I mentioned this the last time that I do think the
10 Court would benefit by given the nature of the Daubert briefing
11 that is going to take place a separate Daubert hearing. I
12 think the Court will be in a better position to assess that at
13 the time you see the Daubert briefs, but I didn't want to let
14 that go unsaid because as I mentioned before I thought that
15 that would be helpful and necessary and possibly including an
16 evidentiary session but not sure about that. The Court will
17 have a better sense of that. You have done this more times
18 than we have.

19 I wanted to mention that to the Court so it didn't
20 come as a surprise. I didn't mention it the last time, but we
21 didn't build it into the schedule because we understand that is
22 in the Court's discretion but I wanted to mention that to the
23 Court again.

24 Thank you.

25 THE COURT: Here is what I would propose on that front

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1 to make sure it remains on my radar: I am not going to make
2 that decision now. I think I will wait until I can preliminary
3 look at the papers. How about within, say, three days of the
4 motions being fully submitted, you all submit a joint letter
5 indicating your views on whether a hearing or oral argument
6 would be necessary, that is to say, required or advisable and
7 if so your general views on what it would look like when it
8 should be held and how long it would take.

9 MR. GODFREY: That's acceptable to us, your Honor.
10 Thank you very much.

11 MS. CABRASER: That's fine, your Honor.

12 THE COURT: Great. Thank you.

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1 THE COURT: All right. I think the last item on the
2 agenda is settlement, some of which we will do in camera, but
3 to the extent that we can discuss things in open court here, we
4 should do that.

5 So, anything to discuss while we are all together?

6 MR. GODFREY: Ms. Bloom is going to handle this for
7 us, your Honor. I would say, only an observation, this is the
8 fourth anniversary from the start of this MDL.

9 THE COURT: That's supposed to make me feel good or
10 bad?

11 MR. GODFREY: I think actually compared to many MDLs,
12 you should feel quite pleased and optimistic.

13 THE COURT: All right.

14 MR. GODFREY: As I have said, we have resolved 80
15 percent of the personal injury cases, and that includes all of
16 the new ones that have been filed. Ms. Bloom has more details
17 she can share with the court in a lot more candid discussion on
18 going-forward plans in chambers, but I did think that it should
19 not go without note that in four years much of the case has
20 been resolved, and we hope to be able to resolve the rest of it
21 in one way or the other in short order.

22 THE COURT: Excellent. Ms. Bloom.

23 MS. BLOOM: We have actually addressed a lot of this
24 in the course of proceeding through some of the other agenda
25 items, so I will be shorter here.

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1 But the counts that I have are to date we've settled
2 2,049 claims within the MDL and a total of 2,814 if you include
3 outside settlements, cases not in the MDL. We currently are
4 under the thousand mark. We have 957 claims currently on file,
5 of which 124 are newly filed this year. Of the 957, 474 are
6 post-sale-order claims and 483 are pre-sale-order claims.

7 With respect to the 474, we are making a really big
8 push to trying to resolve the best we can those in the months
9 of September and October. We have discussions set for about
10 three-quarters of those claims.

11 With respect to the pre-sale-order claims, in
12 conjunction with the proceedings going on in the bankruptcy
13 court, we have reached out now to all of the referring PI
14 wrongful death plaintiff firms and are pleased to report that
15 they're all complying with the court's order. That helps us
16 gather the information we need to evaluate the claims, even
17 those plaintiffs who are only in the bankruptcy court have
18 agreed to comply.

19 So we are powering through the information that we are
20 receiving. That includes a bunch of information from
21 Mr. Hilliard for all of his clients, and we are aiming toward
22 having discussions with folks to resolve as many of the claims
23 as we can from your court and from bankruptcy court with a push
24 by year end.

25 So, we are in active discussions with folks, setting

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1 up meetings best we can in the October, November, December,
2 time frame based on getting these materials in so that we can
3 evaluate.

4 We did settle since the last status hearing a total of
5 83 new claims. So that is pretty much where we are on personal
6 injury and wrongful death claims.

7 THE COURT: All right. Thank you. That's very
8 helpful.

9 Just out of curiosity, is there any pattern detectable
10 with respect to the newly filed claims, the 124 filed this
11 year? Are they sprinkled throughout the different categories
12 that we have been tracking?

13 MS. BLOOM: We find that they are filed by some of the
14 same law firms that we have seen before, so I feel as if they
15 have sources by which they obtain these cases.

16 I would have to say from our perspective as we
17 evaluate the claims we really see that the claims should be
18 tapering off. We are not sure why they are. For example, many
19 of these claims now have the recall repair having been done
20 prior to the accident at this point in time and things like
21 that.

22 THE COURT: I assume they are all post-sale-order
23 claims at this point.

24 MS. BLOOM: Right. Although we do have a few
25 pre-sale-order claims that have been filed even now, and we are

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1 aware of unfiled pre-sale-order claims surprisingly, yes.

2 MR. GODFREY: What is curious, your Honor, in
3 answering your question is I had hoped that, like attrition,
4 the pattern would be slightly fewer each month. There seems to
5 be a randomness to it. In January there were 10 new; February,
6 13 new. But then March had 31 new; April, eight new; May, four
7 new; August, seven new; but June and July had 27 and 24 new.

8 So we can't figure out the pattern because it doesn't
9 fall into the traditional tapering off pattern you might see
10 with a bell curve, although it's much, much less so far this
11 year than it was last year.

12 THE COURT: Right. And I have noticed it seems to be
13 recurring lawyers, so maybe that explains the pattern, their
14 work habits.

15 All right. Thank you.

16 Anything on the settlement front from the front table?

17 All right. Then we are almost done.

18 For the in-camera session, any reason to have a court
19 reporter present? All right. Very good.

20 Two things before we finish.

21 One, I will look for the proposed order regarding what
22 we have done today in the normal course in accordance with
23 Order No. 8, including the revised deadlines that I have set.

24 The only other thing I want to say is, you may not be
25 as attuned to the calendar as I am on this front, but this is

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1 the time of year where sadly I have to say goodbye to the clerk
2 who has assisted me on the MDL mightily for the last year.
3 Kristen Loveland is leaving at the end of next week. As I have
4 said in the past, whether you think I am going a good job on
5 this front or not, I certainly could not do it at all without
6 the capable assistance of my staff and in particular the
7 remarkable assistance of the clerk who is designated to handle
8 matters relating to the MDL.

9 Kristen has done an extraordinary job over the last
10 year. You all should take an opportunity to thank her, because
11 to the extent that we're able to get things back to you and
12 deal with things in an orderly fashion, she is very much
13 responsible for that.

14 We do have her successor here with us today, Russell
15 Rennie, who will be joining my chambers in a couple of weeks.
16 He came to watch the conference and begin the adjustment
17 process. You all should take an opportunity to introduce
18 yourselves to him as well, since I assume you will get to know
19 him as you have Kristen in the last year.

20 I wanted to publicly and on the record thank Kristen
21 for everything she's done, and I hope that you all will take an
22 opportunity after the conference to do the same.

23 With that, we are adjourned. We will reconvene in a
24 couple of minutes in the robing room. Thank you.

25 (Adjourned)