



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

GENERAL MOTORS LLC IGNITION SWITCH LITIGATION

This Document Relates to All Actions

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14-MD-2543 (JMF)

14-MC-2543 (JMF)

ORDER NO. 107

JESSE M. FURMAN, United States District Judge:

**[Regarding the Phase Two Bellwether Plan for
Personal Injury and Wrongful Death Cases]**

INTRODUCTION

1. On November 18, 2014, the Court established the initial bellwether trial plan for MDL 2543 cases involving personal injury and wrongful death claims based on alleged defects in vehicles manufactured by General Motors LLC (“New GM”) or General Motors Corporation (“Old GM”). (Order No. 25 ¶ 5, Docket No. 422.) On May 3, 2016, with four of the six Early Trial Cases having been resolved in some manner, the Court ordered Lead Counsel for the MDL plaintiffs and counsel for New GM to meet and confer “regarding whether and to what extent additional bellwether cases should be selected for discovery and trial.” (Order No. 99 § V, Docket No. 2833.)

2. On June 15, 2016, the parties submitted letter briefs regarding their respective positions on a second bellwether trial phase (the “Phase Two Bellwether Plan”). (Docket Nos. 3003, 3004.) The parties agreed that a limited number of additional bellwether cases should be selected from the pool of other vehicles and types of claims remaining in this MDL proceeding. While the parties agreed on certain issues, they disagreed on other issues, including the proposed case selection process, scope of discovery, and whether there should be limited discovery and focused motion practice in one category of cases. After reviewing the parties’ respective letter

briefs and hearing argument at the June 17, 2016, Status Conference, the Court hereby ORDERS that the Phase Two Bellwether Plan will proceed as follows:

CATEGORIES OF ELIGIBLE CLAIMS

3. The following categories of claims involving accidents occurring on or after July 11, 2009, will be within the scope of and eligible to participate in the Phase Two Bellwether Plan:

- a. *Category A:* Personal injury or wrongful death claims involving air bag non-deployment allegations in the following “Service Part Vehicles” subject to NHTSA Recall No. 14-V-047 where there is no evidence (putting aside plaintiff’s reliance on the accident occurrence itself) that a service part ignition switch was installed in the vehicle before the subject accident: Chevrolet Cobalt (MY 2008-2010), Pontiac G5 (MY 2008-2010), Pontiac Solstice (MY 2008-2010), Chevrolet HHR (MY 2008-2011), and Saturn Sky (MY 2008-2010).
- b. *Category B:* Personal injury or wrongful death claims involving accidents in which air bags deployed in “Production Part Vehicles”¹ and Service Part Vehicles subject to NHTSA Recall No. 14-V-047: Chevrolet Cobalt (MY 2005-2010), Pontiac G5 (MY 2007-2010), Saturn Ion (MY 2003-2007), Pontiac Solstice (MY 2006-2010), Chevrolet HHR (MY 2006-2011), and Saturn Sky (MY 2007-2010).
- c. *Category C:* Personal injury or wrongful death claims involving air bag non-deployment allegations in the following “Unintended Key Rotation Vehicles” subject to NHTSA Recall Nos. 14-V-355, 14-V-360, 14-V-394, 14-V-400 and 14-V-540: Buick Lacrosse (MY 2005-2009); Buick Lucerne (MY 2006-2011); Cadillac CTS (MY 2003-2014); Cadillac Deville (MY 2000-2005); Cadillac DTS (MY 2006-2011); Cadillac SRX (MY 2004-2006); Chevrolet Camaro (MY 2010-2014); Chevrolet Caprice (MY 2011-2013); Chevrolet Impala (MY 2000-2014); Chevrolet Malibu (MY 1997-2005); Chevrolet Malibu Classic (MY 1997-2005); Chevrolet Monte Carlo (MY 2000-2007); Oldsmobile Alero (MY 1999-2004); Oldsmobile Intrigue (MY 1998-2002); Pontiac G8 (MY 2008-2009); Pontiac Grand Am (MY 1999-2005); and Pontiac Grand Prix (MY 2004-2008).

¹ Ignition-switch related claims involving accidents occurring on or after July 11, 2009, in the following “Production Part Vehicles” were within the scope of the initial bellwether trial plan, but were limited to claims in which plaintiffs alleged that the airbags in their vehicle did not deploy during the accident sequence: Chevrolet Cobalt (MY 2005-2007); Pontiac G5 (MY 2007); Saturn Ion (MY 2003-2007); Pontiac Solstice (MY 2006-2007); Chevrolet HHR (MY 2006-2007); and Saturn Sky (MY 2007). (*See* Order No. 34, Docket No. 610 at 2.)

**DIRECTIVE REGARDING CASE SELECTION PROCESS
AND DISCOVERY LIMITATIONS**

4. As it did with the Initial Discovery Pool in Order No. 25, the Court finds that the most effective process for populating the bellwether case pool is to allow both plaintiffs and New GM to play a role in selecting the cases. (*See, e.g.*, Order No. 25 ¶¶ 26-28, 32, 34.)

5. With respect to the parties' disputes regarding the scope of discovery (Docket Nos. 3003, 3004), the Court agrees with New GM that under the Phase Two Bellwether Plan (a) there is no need to set a limit on case-specific fact depositions at this time; (b) absent agreement of the parties or good cause shown, plaintiffs are not entitled to additional recall-related discovery of New GM or additional depositions of GM witnesses;² and (c) absent agreement of the parties or good cause shown, the one-deposition-per-witness rule (*see* Order No. 36 ¶ 43, Docket No. 604) remains in effect.

**PROCEDURES FOR CASE SELECTION, SCOPE OF DISCOVERY, AND MOTION
PRACTICE FOR CASE CATEGORIES A AND C**

6. By **Friday, July 29, 2016**, Lead Counsel and New GM shall each select (a) two cases that satisfy the Category A criteria and (b) two cases that satisfy the Category C criteria.

These eight cases shall constitute the Phase Two Bellwether Plan's Discovery Pool Cases.

- a. The parties shall exercise good faith in selecting cases for inclusion in the Discovery Pool and not select cases presenting unique or idiosyncratic factors that might render the results of the case unenlightening.
- b. For all plaintiffs selected by Lead Counsel for inclusion in the Discovery Pool, it is understood that there shall be a *Lexecon* waiver for those cases.
- c. For all plaintiffs selected by New GM for inclusion in the Discovery Pool, the *Lexecon* waiver process set forth in Order 25 will govern.

² As under Order No. 32 (Docket No. 529) and Order No. 36, a "GM witness" is a witness who is a present or former employee or officer of General Motors Company, General Motors LLC, General Motors Corporation, or their subsidiaries.

- d. The parties will use the process set forth in Order No. 25 to replace duplicate selections. The deadline to replace duplicates will be **Tuesday, August 2, 2016**.
 - e. If a plaintiff selected for the Discovery Pool voluntarily settles his/her case on or before **Friday, September 30, 2016**, Lead Counsel will have the option to select a replacement case within three (3) business days.
 - f. If a plaintiff selected for the Discovery Pool voluntarily dismisses his/her case on or before **Friday, September 30, 2016**, New GM will have the option to select a replacement case within three (3) business days.
7. Fact discovery in the Discovery Pool Cases will commence on **Tuesday, August 2, 2016**, and conclude no later than **Thursday, December 1, 2016**.
8. By **5:00 p.m. EST on Monday, December 5, 2016**, Lead Counsel will exercise one strike against a Category A Discovery Pool Case selected by New GM and one strike against a Category C Discovery Pool Case selected by New GM. Likewise, by that time New GM will exercise one strike against a Category A Discovery Pool Case selected by Lead Counsel and one strike against a Category C Discovery Pool Case selected by Lead Counsel. The remaining four cases—two Category A cases and two Category C cases—will constitute the Phase Two Early Trial Cases and proceed to case-specific expert discovery.

EXPERT DISCOVERY FOR PHASE TWO EARLY TRIAL CASES

9. Phase Two Early Trial Cases will proceed to case-specific expert discovery as follows:
- a. Lead Counsel shall disclose expert witnesses and submit any reports required under Fed. R. Civ. P. 26(a)(2)(B) on or before **Friday, January 6, 2017**.
 - b. Lead Counsel shall present their expert witnesses for deposition on or before **Wednesday, February 8, 2017**.
 - c. New GM shall disclose expert witnesses and submit any reports required under Fed. R. Civ. P. 26(a)(2)(B) on or before **Wednesday, February 15, 2017**.
 - d. New GM shall present their expert witnesses for deposition on or before **Friday, March 17, 2017**.
 - e. Absent good cause, no rebuttal expert reports shall be permitted.

10. Expert Discovery for the Phase Two Early Trial Cases shall be completed by **Friday, March 17, 2017**.

SCHEDULING THE PHASE TWO EARLY TRIAL CASES

11. By **Monday, January 9, 2017**, Lead Counsel and counsel for New GM shall each submit letter briefs proposing the sequence of trials and setting forth the parties' supporting rationales for their proposed sequences. The Court will then designate the sequence for trying the Phase Two Early Trial Cases.

12. MDL Bellwether Trial No. 7 will start on **Monday, July 10, 2017**. The parties shall meet and confer regarding proposed deadlines for submitting any *Daubert* motions, dispositive motions, and motions in *limine* for Bellwether Trial No. 7, and submit a proposed schedule no later than **Monday, January 9, 2017**. Unless and until the Court orders otherwise, all pretrial motions for Bellwether Trial No. 7 shall be fully submitted no later than **Friday, May 26, 2017**.

13. Unless and until the Court orders otherwise, MDL Bellwether Trial No. 8 shall take place from **September 11, 2017-September 29, 2017** (although the Court will not sit on Rosh Hashanah, which is September 21-22, 2017); MDL Bellwether Trial No. 9 shall take place from **October 30, 2017-November 17, 2017**; and MDL Bellwether Trial No. 10 shall take place from **January 15, 2018-February 2, 2018**. **The parties shall promptly advise the Court if they wish to request changes to the foregoing trial dates.** The parties will meet and confer regarding proposed deadlines for submitting any *Daubert* motions, dispositive motions, and motions *in limine* for Bellwether Trial Nos. 8-10, and submit a proposed schedule no later than **Friday, April 7, 2017**.

**PROCEDURES FOR CASE SELECTION, SCOPE OF DISCOVERY,
AND MOTION PRACTICE FOR CASE CATEGORY B**

14. New GM believes that air bag deployment in Category B eligible vehicles is

inconsistent with a claim that inadvertent switch rotation occurred in an accident. Lead Counsel disagrees. The Court finds that it will be more efficient and cost effective to focus discovery and motion practice for Category B cases on the issue of accident causation to determine if these plaintiffs can survive summary judgment in light of the undisputed evidence that their air bags deployed. Of course, there is no prejudice to any Category B plaintiff because if his/her claims survive summary judgment, the case can be set for additional non-duplicative case-specific fact and expert discovery and assigned a trial date. Accordingly, the parties will conduct targeted discovery in two bellwether cases as described below.

15. Discovery and motion practice for Category B cases shall be focused on the following issue: Can the plaintiff offer sufficient admissible evidence to create a genuine issue of material fact as to whether an inadvertent ignition switch rotation occurred in an accident where an airbag deployed during that accident?

16. By **Friday, July 29, 2016**, Lead Counsel shall select one case alleging that an ignition switch in a MY 2003-2007 Category B eligible vehicle inadvertently rotated in an accident even though the air bags deployed during the accident. Likewise, by that same date, New GM shall select one case alleging that an ignition switch in a MY 2008-2011 Category B eligible vehicle inadvertently rotated in an accident even though the air bags deployed during the accident. These two cases shall constitute the Initial Limited Issue Case Pool.

- a. Any plaintiff involved in an accident occurring on or after July 11, 2009, in which air bags did not deploy is ineligible for inclusion in the Initial Limited Issue Case Pool.
- b. The parties will exercise good faith in selecting cases for potential inclusion in the Initial Limited Issue Case Pool and not select cases presenting unique or idiosyncratic factors that might render the results of these cases unenlightening.
- c. For the plaintiff selected by Lead Counsel for inclusion in the Initial Limited Issue Case Pool, it is understood that there shall be a *Lexecon* waiver for that case.
- d. For the plaintiff selected by New GM for inclusion in the Initial Limited Issue

Case Pool, the *Lexecon* waiver process set forth in Order 25 will govern.

- e. By **Friday, August 5, 2016**, the plaintiffs selected for inclusion in the Initial Limited Issue Case Pool shall confirm that air bags deployed during the accident that is the subject of the claim.
 - f. If a party determines that a selected claim is ineligible for inclusion in the Initial Limited Issue Case Pool, the party who selected that plaintiff shall replace this claim in the pool. The deadline to replace ineligible claims is **Friday, August 12, 2016**.
17. Limited case-specific fact discovery in the Initial Limited Issue Case pool will commence on **Monday, August 15, 2016**.
18. Absent good cause, the case-specific fact discovery shall be limited to determining (a) the scope of plaintiff's accident causation claims; (b) the sequence of events leading to and during the accident; and (c) whether the ignition switch rotated during the accident sequence. This limited case-specific discovery shall be completed by **Friday, October 28, 2016**.
19. The two cases then shall be subject to expert discovery. The scope of the expert discovery shall be limited to whether inadvertent ignition switch caused or contributed to causing plaintiff's accident.
- a. Lead Counsel shall disclose expert witnesses and submit any reports required under Fed. R. Civ. P. 26(a)(2)(B) on or before **Friday, November 11, 2016**.
 - b. Lead Counsel shall present their expert witnesses for deposition on or before **Friday, December 9, 2016**.
 - c. New GM shall disclose expert witnesses and submit any reports required under Fed. R. Civ. P. 26(a)(2)(B) on or before **Friday, December 16, 2016**.
 - d. New GM shall present their expert witnesses for deposition on or before **Friday, January 13, 2017**.
 - e. Absent good cause, no rebuttal expert reports shall be permitted.
20. Expert Discovery for the Initial Limited Issue Case Pool shall be completed by **Friday, January 13, 2017**.

21. Dispositive motions for the Initial Limited Case Pool shall be filed on or before **Friday, January 27, 2017**. Dispositive motions shall be limited to the following issue: Does a disputed issue of material fact exist over whether an alleged inadvertent ignition switch rotation occurred in an accident where the air bags deployed during that accident?

22. Oppositions to dispositive motions shall be filed on or before **Monday, February 27, 2017**. Any replies shall be filed on or before **Monday, March 13, 2017**.

23. If the Court grants summary judgment to New GM on the aforementioned issue in any Initial Limited Issue Case, the parties will meet and confer regarding whether and to what extent the ruling applies to similar cases in the MDL personal injury pool and will report to the Court within **two weeks** of the summary judgment ruling. Absent agreement, the parties will propose a process for the Court to make this determination.

24. If the Court denies summary judgment to New GM on the aforementioned issue in any Initial Limited Issue Case, the parties will meet and confer regarding whether and to what extent the ruling applies to similar cases in the MDL personal injury pool and will report to the Court within **two weeks** of the ruling. Absent agreement, the parties will propose a process for the Court to make this determination. By the same date, the parties will also meet and confer and report to the Court regarding a schedule for conducting additional non-duplicative case-specific fact and expert discovery, motion practice, and a trial setting for the case.³

SO ORDERED.

Date: July 7, 2016
New York, New York



JESSE M. FURMAN
United States District Judge

³ The Court recognizes that, for the reasons stated by New GM in the parties' joint letter of July 1, 2016 (Docket No. 3072), a denial of summary judgment may have less applicability to other cases in the MDL pool, but the parties and the Court will be in a better position to evaluate whether that is the case after a ruling on the motion or motions.