

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. 138**

JESSE M. FURMAN, United States District Judge:

**[Regarding Discovery of Expert Witness Materials Relating to Economic Loss Claims]**

Lead Counsel for the MDL Plaintiffs and Counsel for General Motors LLC stipulate and agree to this Order regarding the scope of discovery of expert-related materials in connection with economic claims asserted in MDL 2543.

1. For purposes of this Order, “Consideration Materials” refers to any facts, data, information, or other materials that are relied upon by an expert in forming opinions and required to be identified in accordance with Fed. R. Civ. P. 26(a)(2)(B)-(C) in connection with claims asserted by economic loss plaintiffs in MDL 2543. Consideration materials include: (a) documents, books, treatises, articles, published literature, and unpublished writings of any kind authored by the expert or others, photographs, videos taken and any other materials upon which a testifying expert relies in forming his or her opinions to be expressed; (b) raw data and any cleaned-up or modified version of data utilized as an input to the expert’s analysis; (c) survey respondent screening questions and survey(s) or questionnaire(s) utilized; (d) any other inputs to the expert’s analysis; (e) any mathematical calculations upon which a testifying expert relies in forming his or her opinions to be expressed; (f) any and all test information, including but not limited to test set up sheets, reports, test data and results, and all documentation of the test in any manner recorded, non-test data, computer models, reports, information or other materials

(including native data versions of the above) upon which a testifying expert relies in forming his or her opinions to be expressed; (g) the outputs of the expert's analysis, including writings, results, summary tables, models, illustrations, charts, photographs, videos or other qualitative or quantitative analysis; (h) a data dictionary or glossary if needed to understand the output of the expert's analysis, computer programs and code used to generate the expert's results and other information or instructions sufficient to allow replication of the expert's analysis; and (i) any information that counsel has asked a testifying expert to accept as facts or assumptions in forming his or her opinions to be expressed. Consideration Materials also include communications between a testifying expert and another expert or third party that the testifying expert relies upon or will be relying upon to support his or her opinions, but the disclosure of such communications shall not subject to discovery any other analysis by the other expert or third party that is not imparted during the consultation with the testifying expert.

2. The parties shall produce any previously unproduced Consideration Materials ("Unproduced Consideration Materials").

3. The parties shall also produce the following additional materials from the expert witness's files ("Expert Witness File Materials"):

- a. All retention (or engagement) letters and agreements relating to work on MDL 2543 economic loss cases for which the expert witness prepared a written report.
- b. A current curriculum vitae or resume for the expert witness, including a list of all publications in the last 10 years.
- c. A list of all cases (by name and civil action number) in which the expert has testified at trial or deposition during the last four years, and, if not subject to a protective order precluding production, transcripts of any such testimony.

- d. A copy of all publications authored by the expert that the expert regards as relating to or concerning the subject matter of the expert's testimony in this action.

4. Unless otherwise agreed by the parties, the parties shall produce Unproduced Consideration Materials and Expert Witness File Materials simultaneously with any written report for such testifying expert. For any experts who do not prepare a written report, the parties shall produce Unproduced Consideration Materials and Expert Witness File Materials no later than fifteen (15) days before the date of the expert's deposition.

5. Notwithstanding paragraphs 1 to 4 above, the following categories of documents and other communications are excluded from production, and an expert may not be examined at deposition, hearing, or trial on the contents of the documents and communications:

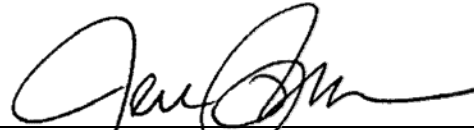
- a. Any notes taken by a testifying expert, the expert's staff, in-house experts, or others retained to assist the expert during the course of the expert's work in connection with this MDL Proceeding, unless the testifying expert relied upon such notes in formulating opinions;
- b. Communications between a testifying expert and that expert's staff, in-house experts, or others retained to assist the expert, unless the testifying expert relied upon such communications in formulating opinions;
- c. Communications between attorneys for a party and experts retained on behalf of that party, those experts' staff, in-house experts, or others retained to assist such experts, unless the testifying expert relied upon such communications in formulating opinions; and
- d. Drafts or interim expert reports or portions thereof.

6. The parties are not required to produce or exchange privilege logs for any materials withheld pursuant to this Order, including, but not limited to, drafts of expert reports, expert notes, or expert communications.

7. The parties agree that a deposition notice shall be sufficient to require any witness designated as a testifying expert to appear for a deposition. Absent good cause shown, no subpoena shall be served on a testifying expert.

SO ORDERED.

Dated: November 29, 2017  
New York, New York



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JESSE M. FURMAN  
United States District Judge