

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

GENERAL MOTORS LLC IGNITION SWITCH LITIGATION

14-MD-2543 (JMF)

This Document Relates To:
Fleck, et al. v. General Motors LLC, 14-CV-8176

ORDER

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JESSE M. FURMAN, United States District Judge:

Attached to this Order as **Exhibit 1** is a draft of the written juror questionnaire that the Court intends to use during the oral *voir dire* of prospective jurors on Monday, January 11, 2016. The questions include some that the parties proposed for inclusion in the initial written juror questionnaire distributed to prospective jurors this week. (*See* Docket No. 1917). Attached as **Exhibit 2** is a draft of (1) language the Court intends to read to the prospective jurors — before questioning — about the facts of the case; and (2) language on the Old GM/New GM distinction and imputation that the Court intends to read to the jurors who have been selected — that is, after jury selection, as part of the preliminary instructions. (Unlike the questionnaire, the Court will not distribute written versions of either of these instructions to the jurors; the Court will deliver them orally only.) The Court incorporated some of Plaintiff’s suggested instruction on the nature of the MDL (*see* Docket No. 2015) into its description of the case.


The parties need not submit a joint statement (or competing statements) of the case (*see* Docket No. 2016), as the Court does not intend to describe the case beyond the descriptions it has already given (including as part of the written questionnaire that prospective jurors completed yesterday, language to which neither party objected (*see* Docket No. 1991)) and the description it will give before questioning, the draft of which is attached as Exhibit 2 for the

parties' review (and which is largely the same as the description in the written questionnaire). (The Court notes as well that the parties previously submitted a joint statement of the case as part of the Joint Pretrial Order. (*See* Docket Nos. 1925 and 2023, at 12-13).)

Any objection or suggestion with respect to any of the attached materials shall be submitted by letter **no later than noon tomorrow, January 8, 2016**. Any objection or suggestion shall make specific reference to the relevant page and line number. (Line numbers are included only for the convenience of the parties in making objections or suggestions and will be removed from the final questionnaire.) By **that same time**, the parties shall also provide a list to the Court's staff (by e-mail, with copies to the other side) of anyone who should be included in the text of Questions 13 and 14. The list should include anyone who will sit at counsel table and any person (attorney or non-attorney) who is likely to assist counsel in the presence of the jury. (Anyone listed should plan to be present on Monday during *voir dire*, if possible.)

SO ORDERED.

Dated: January 7, 2016
New York, New York



JESSE M. FURMAN
United States District Judge

Exhibit 1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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ROBERT SCHEUER, :
 :
 Plaintiff, :
 :
 -v- :
 :
 GENERAL MOTORS LLC, :
 :
 Defendant. :
-----X

14-CV-8176 (JMF)

VOIR DIRE

3
4 JESSE M. FURMAN, United States District Judge:

**PLEASE DO NOT READ FURTHER OR WRITE ANYTHING ON
THIS QUESTIONNAIRE UNTIL THE JUDGE TELLS YOU TO DO SO**

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11

1 When directed to do so, please indicate if your answer to any of the following questions is “yes” by
2 circling the number of that question. If your answer to a question is “no,” you should not do anything. Do *not*
3 write your name or make *any other* marks on the questionnaire; the only marks you should make are circles
4 around the questions for which the answer is “yes.” If, when asked about a “yes” answer, you prefer not to
5 elaborate in open court, please say so.

6 A. General Questions

- 7 1. As I noted, this trial is expected to last approximately four to five weeks. Do you have any
8 commitments that would interfere with your serving as a juror at a trial that is expected to end by
9 Thursday, February 11, 2016?
- 10 2. Do you have any difficulty understanding or reading English?
- 11 3. Do you have any ideas or prejudices that would make it difficult for you to follow my
12 instructions as to the law?
- 13 4. Do you have any doubt that you will be able to apply the law as I explain it even if you disagree
14 with it?
- 15 5. Do you have any religious or ethical beliefs that would prevent you from passing judgment on
16 another person?
- 17 6. Do you have any personal knowledge of the claims in this case as I have described them?
- 18 7. Have you read or heard anything about this case through the media, the Internet, or through any
19 other source?
- 20 8. Would have you have any difficulty obeying my instructions not to read or learn anything about
21 this case outside the courtroom until you are excused as a juror?
- 22 9. Would you have any difficulty obeying my instructions not to communicate in any way about the
23 case until you are excused as a juror — including (but not limited to) communicating by email,
24 on social media, on Twitter, or whatever?
- 25 10. Have you ever studied or practiced law or worked in any capacity for a law office?
- 26 11. Do you have any reason to believe that anything in your life experience will make you partial to
27 one side or the other in this case?
- 28 12. Do you think that you could not sit fairly and impartially as a juror in a case involving claims
29 like those in this case?

1 B. Knowledge of Parties, Lawyers, and Witnesses

- 2 13. The plaintiff in this case is Robert S. Scheuer, and he is represented by Bob Hilliard of Hilliard
3 Munoz Gonzales LLP, Steve Berman of Hagens Berman Sobol Shapiro LLP, and Elizabeth
4 Cabraser of Lieff Cabraser Heimann & Bernstein LLP. Do you know, or have you had any
5 personal or business dealings with, the plaintiff, his counsel, or his counsel's law firms?
- 6 14. The defendant in this case is General Motors LLC. It is represented by Andrew Bloomer, Mike
7 Brock, and Richard Godfrey of Kirkland & Ellis LLP and Kyle Dreyer of Hartline Dacus Barger
8 Dreyer LLP. Do you know, or have you had any personal or business dealings with this
9 defendant, its counsel, or its counsel's law firms?
- 10 15. To your knowledge, do you have any relatives, friends, associates, or employers who have had
11 any dealings with, or been employed by, the parties or any of their attorneys?
- 12 16. Are you familiar with anyone else present in the courtroom, including your fellow jurors, all
13 Court personnel, and myself?

14 C. Circumstances of the Case

- 15 17. Have you, a family member, or a close friend ever been involved in a motor vehicle accident?
- 16 18. Have you or a close family member ever experienced any back injuries or problems?
- 17 19. Have you or a close family member ever taken pain medication for an extended period of time?
- 18 20. Have you or has anyone close to you had education, training, or work experience in the
19 following fields?:
- 20 a. Automotive design, manufacture, repair, or sales;
 - 21 b. Automotive engineering or testing;
 - 22 c. Non-automotive product testing or engineering;
 - 23 d. Accident investigation or reconstruction.
- 24 21. The defendant in this case is a corporation. It is entitled to be treated the same as an individual
25 person before the law. Do you have any reason to believe that you would not be able to treat
26 each party, whether an entity or an individual, fairly?
- 27 22. Do you have an opinion about car manufacturers or the automotive industry that would affect
28 your ability to sit fairly and impartially as a juror in this case?
- 29 23. As I have mentioned, the defendant — General Motors LLC or New GM — was created after
30 General Motors Corporation or Old GM declared bankruptcy in 2009. Would that, or any
31 knowledge you may have with respect to Old GM's bankruptcy, interfere with your ability to be
32 fair and impartial in this case?

1 24. As I mentioned earlier, New GM acquired some of the liabilities of Old GM. As I will explain in
2 more detail later, that means that for some kinds of claims, New GM can be held liable for the
3 conduct of Old GM; but for other kinds of claims, New GM can be held liable only for its own
4 conduct. Would you have any difficulty obeying my instructions about the distinction between
5 Old GM and New GM and which entity's conduct you may (or may not) consider in connection
6 with each issue or claim?

7 D. Experience with, and Opinions of, Lawsuits

8 25. Have you or has any member of your immediate family ever brought a lawsuit against anyone?

9 26. Have you or has any member of your immediate family ever been sued?

10 27. Have you or has any member of your immediate family ever appeared as a witness either at a
11 trial or in a grand jury investigation?

12 28. Do you have any opinions about lawsuits generally, or personal injury lawsuits in particular, that
13 would affect your ability to sit fairly and impartially as a juror in this case?

14 29. Do you believe that simply because someone brings a lawsuit, that must mean that person
15 deserves to get money?

16 30. Do you believe that there is anything wrong with a person bringing a claim for money damages
17 if he believes he was damaged through the fault of another person or organization?

18 31. Do you have any feelings that would stop you from awarding money damages for medical
19 expenses, pain and suffering, mental anguish, or other types of damages if the evidence
20 warranted such an award?

21 32. The plaintiff here may seek punitive damages. The purposes of punitive damages are to punish a
22 wrongdoer for conduct that harmed the plaintiff and to discourage similar conduct in the future.
23 Do you have any views with respect to punitive damages that would affect your ability to be fair
24 and impartial or affect your ability to make any decision with respect to punitive damages based
25 solely on the evidence in this case and my instructions as to the law?

26 E. Difficulties in Understanding or Serving

27 33. Do you have a problem with your hearing or vision that would prevent you from giving full
28 attention to all of the evidence at this trial?

29 34. Do you have any medical problems that might interfere with your service as a juror in this case
30 (including any inability to sit for long periods of time)?

- 1 35. In these questions, and in the written questionnaire that you completed last week, I have tried to
2 direct your attention to possible reasons why you might not be able to sit as a fair and impartial
3 juror. Apart from any prior question, do you have the slightest doubt in your mind, for any
4 reason whatsoever, that you would be able to serve conscientiously, fairly, and impartially in this
5 case, and render a true and just verdict without fear, favor, sympathy, or prejudice, and according
6 to the law as I will explain it to you?

Exhibit 2

1 FACTS OF THIS CASE [TO BE USED BEFORE QUESTIONING OF JURORS]
2

3 Before we proceed any further, let me remind you of the facts of the case so that you have
4 some sense of what it is about as we go through jury selection. As I told you a moment ago,
5 however, nothing I say is evidence.

6 This is a civil case. There are two parties: the Plaintiff Robert Scheuer, and the Defendant
7 General Motors LLC (sometimes called “New GM”). (General Motors LLC is sometimes called
8 “New GM” because its predecessor company, General Motors *Corporation*, or “Old GM,” went
9 bankrupt in 2009; New GM acquired many of the assets and some of the liabilities of Old GM in
10 the bankruptcy.) Mr. Scheuer seeks damages for injuries he allegedly suffered in a car accident
11 that occurred in Bristow, Oklahoma, on May 28, 2014, while he was driving a 2003 Saturn Ion —
12 a car that was manufactured by Old GM.

13 Mr. Scheuer alleges that his injuries were caused or exacerbated — that is, worsened — by
14 the fact that the airbags in his car did not deploy and that the airbags did not deploy because of a
15 defect in the ignition switch of his car — a defect that allowed the ignition key to move from the
16 “run” to the “accessory” or “off” position too easily. Mr. Scheuer alleges that both Old GM and
17 New GM were aware of the defect and concealed it from him and failed to adequately warn him
18 about the risk of harm before his crash.

19 New GM has admitted that model year 2003 Saturn Ions had defective ignition switches
20 that might result in airbags failing to deploy, but denies that the defect was the cause of Mr.
21 Scheuer’s accident or the non-deployment of the airbags in his car and denies that the defect caused
22 any of his injuries.

23 Mr. Scheuer brings four claims against New GM, all based on Oklahoma law because the
24 car accident took place in Oklahoma. (By the way, some of you may be wondering why a case
25 involving a car accident in Oklahoma is being tried here in New York. Under federal law, cases
26 can sometimes be transferred from one place to another to promote efficiency and for other
27 reasons; that is all that happened here. The fact that the case is being tried here should not affect
28 your deliberations in any way.)

29 Getting back to the claims in this case, Mr. Scheuer’s first claim is for Oklahoma
30 Manufacturer’s Product Liability. The second claim is for fraud. The third claim is for negligence.
31 And the fourth claim is for a violation of the Oklahoma Consumer Protection Act. As I noted,
32 New GM denies liability for all of the claims and denies that it caused any of Mr. Scheuer’s alleged
33 injuries and damages.

34 During the course of trial, each side will present evidence to support its claims. I will instruct you
35 as to the law to be applied and in accordance therewith, you will ultimately be asked to decide
36 whether the claims asserted by each party in this case are supported by the overall weight of the
37 evidence presented during trial.

1 OLD GM/NEW GM AND IMPUTATION [TO BE USED AFTER SELECTION OF THE JURY]

2 I've mentioned a few times that there is a difference between Old GM and New GM and
3 that New GM is the sole defendant in this case. I'd like to say a bit more about why this distinction
4 matters, and why you should keep it in mind as you listen to the evidence in this case. I will,
5 however, give you more detailed instructions on this subject at the end of the case.

6 On June 1, 2009, Old GM filed for bankruptcy under the laws of the United States. As part
7 of the bankruptcy case, Old GM sold certain assets to a new entity that became General Motors
8 LLC (that is, New GM). In addition, New GM agreed to assume some, but not all, of Old GM's
9 liabilities. The sale was finalized on July 10, 2009. As a result of the sale, New GM operates the
10 business known to the public as "General Motors" or "GM."

11 As you will learn, many Old GM employees immediately became New GM employees and
12 New GM immediately took custody of many Old GM documents and data. But New GM is — as
13 a legal and technical matter — an entirely different company from Old GM.

14 As I mentioned, as a result of the bankruptcy process, New GM assumed some, but not all,
15 of Old GM's liabilities. That means that for some kinds of claims, New GM can be held liable for
16 the conduct of Old GM. But for other kinds of claims, because Old GM and New GM are different
17 companies, New GM can be held liable only for its own conduct. The instructions that I give you
18 at the end of the case will explain in detail which entity's conduct you may (or may not) consider
19 in connection with each issue or claim.

20 In evaluating New GM's own conduct, you may have to consider what New GM knew and
21 when. As I will explain to you in more detail at the end of the case, under some circumstances,
22 the knowledge of an individual corporate employee or the content of a document in a corporation's
23 files can be applied — or "imputed" — to the corporation itself. That may be true even where a
24 person acquired the knowledge before becoming a corporate employee or a document was created
25 before it came into the possession of the corporate entity.

26 Again, I will give you more detailed instructions on these matters later and the standards
27 that you should use in deciding whether and when the knowledge of a New GM employee that he
28 or she acquired when working for Old GM or the contents of an Old GM document in New GM's
29 files can be attributed — or "imputed" — to New GM.

30 For now, I just want to stress that you should be sensitive to the distinction between Old
31 GM and New GM — and the fact that New GM did not exist until July 2009. In other words,
32 although there may be testimony and references at trial to "GM" or "General Motors," you should
33 pay careful attention to whether those references are to Old GM or New GM.