



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:
Ward v. General Motors LLC, 14-CV-8317

ORDER

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JESSE M. FURMAN, United States District Judge:

On April 20, 2017, the Court granted Plaintiff Dennis Ward leave to serve a subpoena on third-party Engineering Systems, Inc. (“ESI”) to identify the four people who performed driving tests for New GM expert Dr. James Sprague in connection with this case. (*See* 14-MD-2543 Docket No. 3827). On May 12, 2017, Plaintiff filed a letter requesting permission to serve deposition subpoenas on those four people. (14-MD-2543 Docket No. 3967).

Upon review of the parties’ submissions (14-MD-2543 Docket Nos. 3967 (“Ward Letter”); 14-MD-2543 3978 (“New GM Letter”)), Plaintiff’s request is GRANTED, substantially for the reasons set forth in his letter. Contrary to New GM’s assertions, Plaintiff’s effort to depose the four testers is not a fishing expedition; the testers’ knowledge (or lack thereof) at the time of the tests is plainly relevant to an evaluation of the test and Dr. Sprague’s opinions, and Plaintiff is entitled to depose them to find out what their knowledge was. Nor does granting the application depend upon, or imply, a finding that Dr. Sprague’s testimony was false. Dr. Sprague can speak only to what the testers were told as part of the test itself; he is not in a position to speak to what, if anything, the testers knew about the circumstances of the test from other sources. Accordingly, Plaintiff is granted leave to serve deposition notices on the four testers. The depositions shall not exceed two hours each, and shall be limited to “each subject’s

relationship with ESI, the manner in which he or she became involved in the ESI testing, his or her participation in the ESI testing protocol, and his or her knowledge thereof.” (Ward Letter at 4). Counsel shall confer in an effort to schedule the depositions to take place in a single two-day period when counsel for both parties can attend if they choose to do so.

Relatedly, in its letter opposing Plaintiff’s request, New GM requests entry of a protective order “(1) establishing the method by which plaintiff can contact the four individuals, and (2) ensuring the individuals’ names and addresses remain confidential.” (New GM Letter at 2-3). The Court agrees that a protective order is warranted, but disagrees with some of the particulars of New GM’s proposal. First, although the Court agrees with New GM’s proposal to have ESI send a “neutral letter” to each subject, the language proposed by New GM is not sufficiently neutral. Second, although the Court agrees that each subject’s name and address should remain confidential for now, it is inappropriate to suggest to him or her that such information will necessarily be kept confidential indefinitely. If, for example, a subject appears as a witness at trial, it is unlikely that the subject’s name would remain confidential.

For those reasons, the Court directs that the body of New GM’s proposed letter (*see* 14-MD-2543 Docket No. 3979, Ex. E) be modified as follows (for convenience, the changes are reflected in redlined format):

In February 2017, you participated in driving tests in Ann Arbor conducted by Dr. James Sprague and Engineering Systems, Inc. (“ESI”). ESI was serving as a consultant to General Motors and was conducting that testing for a lawsuit brought against the company by Mr. Dennis Ward. As you may recall, ESI agreed in writing that we would keep your name confidential except under certain circumstances — such as being instructed by a Court to disclose your name. ~~At Mr. Ward’s request, the~~ The Court presiding over the lawsuit has instructed us to disclose your names; ~~to Mr. Ward’s attorneys and we will do so shortly~~ has granted the parties in the lawsuit permission to depose you (that is, to ask you questions under oath) for up to two hours. Rest assured, you are not being sued. We simply wanted to notify you that the parties involved in this lawsuit may


contact you regarding your participation in these tests. ~~Both GM~~The Court has ordered that both General Motors and Mr. Ward ~~agree that~~must keep your name and personal information ~~are~~ confidential ~~and~~(specifically, that such information will only be disclosed to an attorney or employee of an attorney representing a party in the lawsuit. —Your information will remain confidential) unless and until the Court orders otherwise or you give the parties written consent to disclose such information.

New GM shall arrange for ESI to send to each subject, no later than **May 22, 2017**, and by **overnight courier**, a letter consistent with the foregoing, and neither party shall contact any of the subjects prior to May 24, 2017. Further, consistent with the modifications to the letter, the parties shall not disclose the subjects' names and addresses to anyone other than attorneys or employees of an attorney representing a party in this lawsuit, unless and until the Court orders otherwise or a subject gives the parties written consent to disclose his or her information.

The Clerk of Court is directed to docket this Order in 14-MD-2543 and 14-CV-8317.

SO ORDERED.

Dated: May 19, 2017
New York, New York



JESSE M. FURMAN
United States District Judge