

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)

ORDER

This Document Relates To:
Ward v. General Motors LLC, 14-CV-8317


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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, July 10, 2017. Attached as **Exhibit 2** is a draft of proposed instructions touching on the '190/423 Switch distinction. The first instruction is one that the Court intends to read to the jurors who have been selected — that is, after jury selection, as part of the preliminary instructions; the others (concerning the Statement of Facts, the Valukas Report, and Other Similar Incident evidence) are instructions that the Court would read at the appropriate times during the evidentiary portion of trial. (Unlike the questionnaire, the Court will not distribute written versions of these instructions to the jurors; the Court will deliver them orally only.)

Any objection or suggestion with respect to any of the attached materials should be raised at or before the final pre-trial conference on **July 6, 2017**. By then, 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 of the questionnaire. 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: July 5, 2017
New York, New York



JESSE M. FURMAN
United States District Judge

Exhibit 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
DENNIS WARD,	:	
	:	
Plaintiff,	:	
	:	14-CV-8317 (JMF)
-v-	:	
	:	<u>VOIR DIRE</u>
GENERAL MOTORS LLC,	:	
	:	
Defendant.	:	
-----X	:	

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**

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

A. General Questions

1. As I noted, this trial is expected to last approximately three to four weeks. Do you have any commitments that would interfere with your serving as a juror at a trial that is expected to end by Friday, August 4, 2017?
2. Do you have any difficulty understanding or reading English?
3. Do you have any ideas or prejudices that would make it difficult for you to follow my instructions as to the law?
4. Do you have any doubt that you will be able to apply the law as I explain it even if you disagree with it?
5. Do you have any religious or ethical beliefs that would prevent you from passing judgment on another person?
6. Do you have any personal knowledge of the claims in this case as I have described them?
7. Have you read or heard anything about this case through the media, the Internet, or through any other source?
8. Would you have any difficulty obeying my instructions not to read or learn anything about this case outside the courtroom until you are excused as a juror?
9. Would you have any difficulty obeying my instructions not to communicate in any way about the case until you are excused as a juror — including (but not limited to) communicating by email, on social media, on Twitter, or whatever?
10. Have you ever studied or practiced law or worked in any capacity for a law office?
11. Do you have any reason to believe that anything in your life experience will make you partial to one side or the other in this case?
12. Do you think that you could *not* sit fairly and impartially as a juror in a case involving claims like those in this case?

B. Knowledge of Parties, Lawyers, and Witnesses

13. The plaintiff in this case is Dennis Ward, and he is represented by:
- a. Nicholas Wise, James Bilsborrow, Paul Novak, and Diana Gjonaj of Weitz & Luxenberg, P.C.;
 - b. Bob Hilliard of Hilliard Munoz Gonzales LLP;

Do you know, or have you had any personal or business dealings with, the plaintiffs, their counsel and staff, or their counsel's law firms?

14. The defendant in this case is General Motors LLC (or GM LLC). It is represented by:
- a. Andrew Bloomer, Mike Brock, Richard Godfrey, Barry Fields, Paul Collier, Kimberly Branscome, Mark Nomellini, Brian Sieve, Renee Smith, Leonid Feller, Maria Rivera, and Allan Pixton of Kirkland & Ellis LLP;

Do you know, or have you had any personal or business dealings with this defendant, its counsel and staff, or its counsel's law firms?

15. To your knowledge, do you have any relatives, friends, associates, or employers who have had any dealings with, or been employed by, the parties or any of their attorneys?
16. Are you familiar with anyone else present in the courtroom, including your fellow jurors, all Court personnel, and myself?

C. Circumstances of the Case

17. Have you, a family member, or a close friend ever been involved in a motor vehicle accident?
18. Have you or a close family member ever experienced arterial vascular disease or an injury or issue involving the patellar tendon (in the knee)?
19. Have you or has anyone close to you had education, training, or work experience in the following fields?
- a. Automotive design, manufacture, repair, or sales;
 - b. Automotive engineering or testing;
 - c. Non-automotive product testing or engineering;
 - d. Accident investigation or reconstruction.
20. The defendant in this case is a corporation. It is entitled to be treated the same as an individual person before the law. Do you have any reason to believe that you would not be able to treat each party, whether an entity or an individual, fairly?
21. Do you have an opinion about car manufacturers or the automotive industry that would affect your ability to sit fairly and impartially as a juror in this case?

22. As I have mentioned, the defendant — General Motors LLC or New GM — was created after General Motors Corporation or Old GM declared bankruptcy in 2009. Would that, or any knowledge you may have with respect to Old GM's bankruptcy, interfere with your ability to be fair and impartial in this case?
23. As I mentioned earlier, GM LLC acquired some of the liabilities of Old GM. As I will explain in more detail later, that means that for some purposes, GM LLC can be held liable for the conduct of Old GM; but for some purposes, GM LLC can be held liable only for its own conduct. Would you have any difficulty obeying my instructions about the distinction between Old GM and GM LLC and which entity's conduct you may (or may not) consider in connection with each issue or claim?

D. Experience with, and Opinions of, Lawsuits

24. Have you or has any member of your immediate family ever brought a lawsuit against anyone?
25. Have you or has any member of your immediate family ever been sued?
26. Have you or has any member of your immediate family ever appeared as a witness either at a trial or in a grand jury investigation?
27. Do you have any opinions about lawsuits generally — or about personal injury lawsuits, lawsuits against corporations, or lawsuits against motor vehicle manufacturers in particular — that would affect your ability to sit fairly and impartially as a juror in this case?
28. Do you believe that simply because someone brings a lawsuit, that must mean that person deserves to get money?
29. Do you believe that there is anything wrong with a person bringing a claim for money damages if he believes he was damaged through the fault of another person or organization?
30. Do you have any feelings that would stop you from awarding money damages for medical expenses, physical pain and suffering, or other types of damages if the evidence warranted such an award?

E. Difficulties in Understanding or Serving

31. Do you have a problem with your hearing or vision that would prevent you from giving full attention to all of the evidence at this trial?
32. Do you have any medical problems that might interfere with your service as a juror in this case (including any inability to sit for long periods of time)?
33. In these questions, and in the written questionnaire that you completed on June 29th, I have tried to direct your attention to possible reasons why you might not be able to sit as a fair and impartial juror. Apart from any prior question I have asked you, is there *any* reason that you could *not* be a conscientious, fair, and impartial juror in this case and render a true and just verdict without fear, favor, sympathy, or prejudice, according to the law as I will explain it to you?

Exhibit 2

1 **PRELIMINARY INSTRUCTION ON THE '423 SWITCH VS. '190 SWITCH**

2 During trial, you will see and hear evidence regarding at least two different kinds of
3 ignition switches that were installed in GM cars. The first switch, known as the “'423 switch”
4 (after the last three digits of its part number), was installed in Chevrolet Cobalts, Saturn Ions, and
5 certain other GM vehicles in model year 2007 vehicles and earlier. Mr. Ward’s 2009 Chevrolet
6 HHR did *not* contain the '423 switch, however; instead, it contained a different switch, known as
7 the “'190 switch” (after the last three digits of its part number), which was installed in model
8 year 2008 and later vehicles. The parties dispute whether and to what extent the two switches
9 are similar or different.

10 As I will explain later, you may consider evidence relating to the '423 switch for certain
11 purposes. You must follow my instructions on that score; but ultimately it will be for you — and
12 only you — to decide, in accordance with my instructions as to the law, what weight, if any, to
13 give to any evidence concerning the '423 switch.

14 For now, I just want to stress that this is another distinction you should be sensitive to as
15 you hear and see the evidence at trial. That is, when you hear a witness testify about ignition
16 switches or see a document referencing ignition switches, you should pay careful attention to
17 whether the testimony or evidence concerns the '423 switch, the '190 switch, or both.

18

19 **STATEMENT OF FACTS**

20 The parties stipulate that Exhibit PX-____, which is a document called the “Statement of
21 Facts,” is admissible into evidence and it is now admitted. GM LLC stipulates — that is. it
22 admits — that all of the statements in this document are true and accurate.

1 As you will see, Paragraph 4 of the document describes an ignition switch that, under
2 certain circumstances, may move out of the “Run” position — and which the document defines
3 as the “Defective Switch” (capital “D,” capital “S”). The Defective Switch (again, capital “D,”
4 capital “S”), as that term is used throughout the Statement of Facts, is the ’423 switch. As I told
5 you at the beginning of trial, the ’423 switch was not installed in Mr. Ward’s car; instead, his car
6 had the ’190 switch. I remind you that it is important to pay careful attention to which evidence
7 concerns the ’423 switch, which concerns the ’190 switch, and which concerns both.

8
9 **VALUKAS REPORT**

10 The parties stipulate that Exhibit PX-____, which is a report known as the Valukas Report,
11 is admissible into evidence and it is now admitted. The parties further stipulate that the Valukas
12 Report is the product of an investigation conducted by a lawyer named Anton R. Valukas and his
13 law firm, Jenner & Block LLP. The Report, which was commissioned by GM LLC, was
14 submitted to the GM LLC Board of Directors on or about May 29, 2014.

15 Similar to the “Statement of Facts” (Exhibit PX-____), the Valukas Report refers
16 throughout to the “Ignition Switch” (capital “I,” capital “S”), which is a term defined on page 18
17 of the Report. Again, the Ignition Switch (capital “I,” capital “S”), as that term is used
18 throughout the Valukas Report, is the ’423 switch. As I told you at the beginning of trial, the
19 ’423 switch was not installed in Mr. Ward’s car; instead, his car had the ’190 switch. I remind
20 you that it is important to pay careful attention to which evidence concerns the ’423 switch,
21 which concerns the ’190 switch, and which concerns both.

22

23

1 **REFERENCES TO OTHER SIMILAR INCIDENTS**

2 Both the Statement of Facts and the Valukas Report refer to accidents or incidents
3 involving GM cars. Later in the trial, you may also hear testimony from expert witnesses
4 concerning these and other accidents and incidents. Most, if not all, of those accidents and
5 incidents involved vehicles with a '423 switch; none of the accidents or incidents involved the
6 '190 switch, which — again — was the kind of switch installed in Mr. Ward's car.

7 In light of that, you may not consider these other accidents or incidents in deciding
8 whether the ignition switch in Mr. Ward's vehicle was defective; whether his accident on March
9 27, 2014, was caused by any alleged defect; or whether Mr. Ward suffered any injuries as a
10 result of any alleged defect.

11 Instead, if you find — based on other evidence — that there was a defect in Mr. Ward's
12 ignition switch, you may consider evidence of these other accidents and incidents solely for the
13 purpose of determining whether Old GM or GM LLC had notice or knowledge of that defect.

14 It is for you to determine what weight, if any, to give this evidence. In determining the
15 weight to give the evidence, you may consider both the degree to which the '423 switch was
16 similar to the '190 switch, and the degree to which the other accidents or incidents were similar
17 to the accident involving Mr. Ward.

18 In considering the evidence, however, you should not allow sympathy for the people
19 involved in those other accidents and incidents to color your judgment about the issues you are to
20 decide in this case.