



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)
14-MC-2543 (JMF)

ORDER NO. 52

This Document Relates To All Actions
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JESSE M. FURMAN, United States District Judge:

**[Regarding Qualification of Documents Generated by a
Party as Authentic or Business Records]**

In their April 18, 2015 pre-conference status letter, the parties informed the Court that Plaintiffs intended to seek entry of an Order — modeled after an order entered in *In re Bextra & Celebrex Marketing Sales Practices & Product Liability Litigation*, MDL No. 1699 (the “*Bextra & Celebrex MDL*”) (see 14-MD-2543 Docket No. 894, Ex. B) — governing deposition exhibits’ authentication and qualification as business records (14-MD-2543 Docket No. 847). Upon review of the parties’ submissions (14-MD-2543 Docket Nos. 893, 894, 919, 920), and due consideration of the benefits of the order in the *Bextra & Celebrex MDL*, the Court agrees with Plaintiffs that a similar order is appropriate in this case.

Specifically, given the complex nature of this MDL (and the ever-increasing number of Coordinated Actions), the Court believes that entry of an order along the lines proposed by Plaintiffs will promote efficiency, ensuring that (1) deposition and discovery time is used to good effect and not spent on authenticating documents and/or confirming the business records status of documents where those issues are not in dispute; (2) discovery with respect to any such disputes is taken in a timely fashion; and (3) many (if not most) disputes can be resolved between the parties before the close of discovery or by the Court shortly after discovery.

Further, the Court finds that, contrary to New GM's contentions, entry of such an order will not prejudice any party's rights. Specifically, the Order the Court will enter in this case — as was true of the order entered in the *Bextra & Celebrex* MDL — provides a clear, streamlined process for any party to object to a document's authenticity and/or its qualification as a business record, and triggers a meet-and confer process with respect to such objections; it does not provide for blanket admissibility of any documents or shift the ultimate burden of proof with respect to admissibility of any document in dispute from the proponent to opponent. Ultimately, the Court finds that the entry of an order similar to the order used in the *Bextra & Celebrex* MDL will help to ensure that no party waits until close of discovery or eve of trial to raise objections, which is essential in litigation of this complexity and size and crucial for purposes of minimizing the risk of delays in the schedule set by the Court, including the schedule for bellwether trials.

Accordingly, it is hereby ORDERED as follows:

1. Order Applicable to All Cases in MDL Proceedings.

This Order shall apply to all cases currently pending in MDL No. 2543 and to all related actions that have been or will be originally filed in, transferred to, or removed to this Court and assigned thereto (collectively, "the MDL proceedings"). This Order is binding on all parties and their counsel in all cases currently pending or subsequently made a part of these proceedings and shall govern each case in the proceedings unless it explicitly states that it relates only to specific cases.

2. Authenticity of Documents Provided or Generated By A Party.

a. Documents Presumed Authentic.

Documents produced and/or purportedly generated by any party that purport to be copies of documents prepared or received by the party, or by an officer, director, employee or agent of

the party, shall — subject to Paragraphs 4-7 below — be presumed to be a faithful and authentic reproduction of the original and, subject to other applicable rules of evidence, admissible as such, unless any objecting party establishes, through a motion *in limine* or otherwise, that the document is not authentic. All other evidentiary objections other than authenticity are preserved.

b. Presumption of Authenticity Limited to Portion Generated by Party.

For the purposes of this Order, a document in its entirety is deemed to have been generated by a party only if that party or one of its then-directors, officers, agents or employees created all of the document. If a party or one of its then-directors, officers, agents, or employees created only part of a document, such as a part of a chain of electronic mail, only that part of the document is deemed to have been generated by that party.

3. Business Records Introduced in Depositions.

Documents (whether produced by a party or non-party) introduced as an exhibit during a deposition in these proceedings that purport to be copies of memoranda, reports, records, or data compilations in any form of acts, events, conditions, opinions, or diagnoses presumptively shall be considered a business record of the producing party within the meaning of Federal Rule of Evidence 803(6) or analogous applicable state court rules, subject to the following paragraphs.

4. Objections to Documents Previously Marked as Exhibits to Depositions.

Each party shall undertake a prompt review of all documents produced and/or purportedly generated by that party that have been placed into the record as deposition exhibits in any deposition in those coordinated and consolidated proceedings through the date of this Order, if any, and shall advise Plaintiffs' Lead Counsel and Defendants' Counsel in writing within 60 days after entry of this Order, of: (a) the deposition and exhibit number, as well as the bates numbers, of any exhibit where the producing or purportedly generating party claims lack of

authenticity and/or failure to qualify as a business record within the meaning of Rule 803(6) or applicable analogous state court rules; and (b) a detailed statement (including if appropriate reference to other pertinent documents and knowledgeable persons) of the grounds for the claim of lack of authenticity and/or the failure to qualify as a business record within the meaning of Rule 803(6) or applicable analogous state court rules. Any objection shall be deemed to have been made for all depositions in which the exhibit is or was used. Any such exhibits (to the extent such exhibit is produced and/or purportedly generated by a party) not so identified within that time shall be deemed faithful and authentic reproductions of the original and/or (as the case may be) business records within the meaning of Rule 803(6) or applicable analogous state court rules.

5. Objections to Documents Marked as Exhibits in Future Depositions.

Within 30 calendar days of the receipt of the transcript of a deposition hereafter taken in the coordinated and consolidated proceedings, any party wishing to contest the presumptive authenticity of any document(s) previously produced and/or purportedly generated by that party that were placed into the record of that deposition as deposition exhibits and/or failure to qualify as a business record within the meaning of Rule 803(6) or applicable analogous state court rules shall advise Plaintiffs' Lead Counsel and Defendants' Counsel in writing of: (a) the deposition and exhibit number, as well as the bates numbers, of any exhibit where the producing or purportedly generating party claims lack of authenticity and/or failure to qualify as a business record within the meaning of Rule 803(6) or applicable analogous state court rules; and (b) a detailed statement (including if appropriate references to other pertinent documents and knowledgeable persons) of the grounds for the claim of lack of authenticity and/or the failure to qualify as a business record within the meaning of Rule 803(6) or applicable analogous state

court rules. Any objection shall be deemed to have been made for all depositions for which the exhibit is used in the future. Any such exhibits not so identified within that time shall be deemed faithful and authentic reproductions of the original and/or (as the case may be) business records within the meaning of Rule 803(6) or applicable analogous state court rules. The parties shall not mark deposition exhibits *en masse* for the sole purpose of bringing those exhibits within the scope of this paragraph.

6. Documents Provided By Non Parties.

Documents produced and/or purportedly generated by a non-party shall be presumed to be a faithful and authentic reproduction of the original and business records of the non-party within the meaning of Rule 803(6) or applicable analogous state court rules, unless any objecting party establishes, through a motion *in limine* or otherwise, that a document is not authentic and/or fails to qualify as a business record of the non-party within the meaning of Rule 803(6) or applicable analogous state court rules. Documents produced and/or purportedly generated by a non-party that have been or, hereafter, are placed into the record as deposition exhibits in any deposition in the coordinated and consolidated proceedings shall be deemed to be faithful and authentic reproductions of the original and/or (as the case may be) business records within the meaning of Rule 803(6) or applicable analogous state court rules unless any party raises an objection within the requisite time frames set forth above in paragraph 4 and 5.

7. Remedies After Notification of Any Objection to Authenticity and/or Status as Business Record.

Upon being notified that an exhibit is claimed to be inauthentic and/or fails to qualify as a business record, after meeting and conferring with opposing Counsel, either Plaintiffs' Lead Counsel or Defendants' Counsel may, with consent of opposing Counsel or with leave of Court,

initiate appropriate discovery limited to seeking to further establish authenticity and/or the status of the document as a business record.

a. Limited Scope of Deposition.

Any deposition noticed solely to establish the authenticity or business record status of a document shall be limited strictly to that purpose for the specific document at issue and shall not address any other issues.

b. Depositions of GM Witnesses.

Where such a deposition is taken, that deposition shall not be counted towards the limits on days of depositions that may be taken per month pursuant to Order No. 36.

8. Limitations of Order.

a. No Effect on Other Rules of Evidence.

This Order addresses only the authenticity and/or business record status of any particular document, and is without prejudice to application of any other rule of evidence that may be implicated by a particular document. Further, in the event that the Court is called upon to rule on the admissibility of a document, this Order does not alter the burdens of proof with respect to admissibility.

b. No Waiver of Objections to Similar Documents.

The failure of any party to object to any document shall not constitute an admission or concession by that party that similar documents to which the party does object are authentic and/or qualify as business records under applicable federal or state laws. For example, the failure to object to each email being treated as authentic and/or a business record does not foreclose such an objection to any individual email.

c. No Advance Rulings on Admissibility.

This Order does not authorize any party to seek an advance ruling on the admissibility of evidence at trial. Unless and until the Court orders otherwise (upon application of a party or *sua sponte*), except to the extent necessary to rule upon any application to take limited discovery pursuant to Paragraph 7 above, the Court will not rule on disputes about the admissibility of any documents subject to this Order until after the parties complete discovery and exchange trial exhibit lists. In advance of that time, the parties shall meet and confer to propose a process and deadlines to resolve any disputes concerning the authenticity and/or business record status of documents subject to this Order.

9. Parties to Meet and Confer on Disputes.

The parties shall make good faith, cooperative efforts, through the meet and confer process or otherwise, to resolve any issues or disputes concerning this Order and the authenticity and/or business record status of documents subject to this Order so as to minimize the time and resources of the parties and of the Courts devoted to such matters. A party may seek relief from the Court only after meeting and conferring with the opposing parties.

SO ORDERED.

Dated: May 4, 2015
New York, New York



JESSE M. FURMAN
United States District Judge