



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. 70

JESSE M. FURMAN, United States District Judge:

**[Regarding Discovery Disputes With Respect to Plaintiffs’
Second Set of Consolidated Requests for Production of Documents]**

Having reviewed the parties’ submissions regarding their disputes with respect to Plaintiffs’ Second Set of Consolidated Requests for Production of Documents (“Second Set of Requests”) (14-MD-2543 Docket Nos. 1117, 1119), the Court makes the following rulings with respect to the disputed requests:

Temporal Scope of Second Set of Requests: Although the Court agrees with New GM that it should not have to provide “real-time correspondence with US Government entities occurring years after the relevant events in this litigation” (14-MD-2543 Docket No. 1119, at 5), it finds that the date of this Order is a reasonable cutoff date. Accordingly, the Second Set of Requests shall encompass documents generated through the date of this Order.

Disputed Document Requests Related to Correspondence with the U.S. Government (subpoenas and document requests New GM received from U.S. Government entities; documents related to the negotiation and resolution of the Government’s claims; and documents related to scheduling witness interviews with the Government or, alternatively, the names of witnesses interviewed by Government entities): Plaintiffs’ request for production of these documents is DENIED. Put simply, Plaintiffs do not have a “right of access to ongoing

government investigations or [an entitlement] to the work of criminal and regulatory investigators.” *In re WorldCom, Inc. Sec. Litig.*, No. 02-CV-3288 (DLC), 2003 WL 22953645, at *7 (S.D.N.Y. Dec. 16, 2003). Moreover, given the materials available to Plaintiff (including the Valukas Report and the list of witnesses interviewed by the Valukas team, which the Court previously ordered New GM to disclose (*see* 14-MD-2543 Docket No. 531)), Plaintiffs fail to demonstrate a need for the documents at issue.

Documents Related to the Feinberg Protocol: The Court is unpersuaded that the standard for discovery of confidential communications occurring in the course of mediation set forth in *In re Teligent, Inc.*, 640 F.3d 53, 57-58 (2d. Cir. 2011) (*see* Docket No. 1119, at 2-3), should be applied to a claims administration process set up by a party to litigation, such as the Feinberg Protocol. As that is New GM’s only proffered basis to categorically resist discovery of documents related to the Feinberg Protocol, and New GM offers no legal argument for why the *Teligent* standard should be applied here, the Court agrees with Plaintiffs that at least some documents related to the Feinberg Protocol are likely to be relevant and discoverable. Accordingly, New GM is ordered to produce requested documents related to the Feinberg Protocol (to the extent that there is no other basis to avoid disclosure, such as privilege).

Documents Related to the May 14, 2014 Consent Order with NHTSA: For substantially the reasons set forth in Plaintiffs’ submission (14-MD-2543 Docket No. 1117, at 2-3) — namely, that Plaintiffs challenge not only New GM’s conduct leading up to the recalls, but also that occurring *after* the recalls — the Court agrees that materials related to the May 14, 2014 NHTSA consent order are relevant and discoverable, and thus orders New GM to produce the requested documents. To the extent New GM believes that “certain documents . . . are protected from disclosure” (14-MD-2543 Docket No. 1119, at 5) — for example, as settlement

negotiations — it may object to disclosure of those documents, but that is not a valid basis to withhold the documents on a categorical basis.

SO ORDERED.

Dated: July 15, 2015
New York, New York



JESSE M. FURMAN
United States District Judge