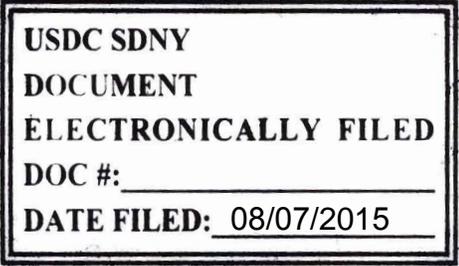


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
IN RE:

GENERAL MOTORS LLC IGNITION SWITCH LITIGATION



This Document Relates To:

*Barros v. General Motors LLC, 15-CV-1794 (JMF);
Bolden v. General Motors LLC, 15-CV-1316 (JMF);
Davidson v. General Motors LLC, 15-CV-2708 (JMF);
Dowling v. General Motors LLC, 15-CV-2033 (JMF);
Unseul v. General Motors LLC, 15-CV-1791 (JMF);
Wood v. General Motors LLC, 15-CV-1409 (JMF);
Smith v. General Motors LLC, 15-CV-178 (JMF);
Elliott v. General Motors LLC, 14-CV-8382 (JMF);
Sesay v. General Motors LLC 14-CV-6018 (JMF); and
Bledsoe v. General Motors LLC, 14-CV-7631 (JMF)*

14-MD-2543 (JMF)
14-MC-2543 (JMF)

ORDER NO. 73

-----x
JESSE M. FURMAN, United States District Judge:

[Regarding Motions for Reconsideration of, and Objections to, Order Nos. 61 and 63]

After the Court issued Order Nos. 61 and 63 — dismissing, pursuant to the terms of Order No. 50, economic loss complaints or claims brought by Plaintiffs not named in the Second Amended Consolidated Complaint (“SACC”), and delineating claims brought by economic loss plaintiffs not included in the SACC — several Plaintiffs filed motions to reinstate their claims or submitted objections to Order Nos. 61 or 63 on other grounds. (14-MD-2543 Docket Nos. 1097, 1143, 1153, 1154, 1161, 1165, 1171; 15-CV-178 Docket No. 74). Seven groups of Plaintiffs¹ objected to dismissal of their claims on the basis that they are bringing purely personal injury or wrongful death claims, and hence do not assert any “pure” economic loss claims that would

¹ Lead Counsel appears to have omitted one Plaintiff (Amy Smith) from their consolidated opposition, likely because she erroneously docketed her motion for reconsideration in the individual member case rather than in 14-MD-2543. (15-CV-178 Docket No. 74).

properly be included in the SACC in the first instance. After Lead Counsel filed a consolidated opposition on July 27, 2015, indicating that the plaintiffs' claims were subject to dismissal because their "complaints brought claims for relief (such as fraud by concealment or consumer protection claims) in which they appeared to [be] seeking pure economic loss claims as distinct from the claims arising out the crashes" (14-MD-2543 Docket No. 1213), a few Plaintiffs filed replies, reiterating that they do not assert economic loss claims of the type appearing in the SACC and requesting clarification as to which of their specific claims were dismissed pursuant to Order No. 61. (*See, e.g.*, 14-MD-2543 Docket No. 1227). One group of economic loss Plaintiffs — the *Elliott, Bledsoe*, and *Sesay* Plaintiffs, all represented by Gary Peller — filed a consolidated opposition to Order No. 63, objecting to dismissal of various claims asserted by them in their individual economic loss Complaints but not included in the SACC. (14-MD-2543 Docket No. 1161).

The first category of objections — those filed by personal injury or wrongful death Plaintiffs — can be addressed through a brief clarification of Order No. 61's effect. As Lead Counsel indicate in their opposition, and as noted above, Plaintiffs were included in the second group named in Order No. 61 because they asserted "claims for relief (such as fraud by concealment or consumer protection claims) in which they appeared to [be] seeking pure economic loss claims as distinct from the claims arising out the crashes." (14-MD-2543 Docket No. 1213). What this means is that those Plaintiffs' ambiguous claims for relief are only dismissed without prejudice by the terms of Order No. 61 *to the extent they are brought* under a theory of pure economic loss, such as a diminution of value separate and apart from the crash itself, which all Plaintiffs assert they are not.

Order No. 61 does not have any effect — nor could it — on claims for property damage or any other loss incurred because of a crash, as Lead Counsel’s opposition makes clear. Accordingly, to the extent that is what Plaintiffs seek, their complaints are unaffected. Order No. 61 simply prevents Plaintiffs from later litigating ambiguously worded claims under theories of pure economic loss — that is, asserting claims for economic loss damages separate from those arising from the crash — which are all properly litigated as part of the SACC. Accordingly, these Plaintiffs’ motion for reconsideration and/or reinstatement are DENIED.

The Court now turns to the objections filed by Mr. Peller. It is worth noting — as the Court did in overruling his objections to the SACC itself (14-MD-2543 Docket No. 1166) — that Mr. Peller’s clients’ rights are fully protected by Order No. 23 and this Court’s Orders, regardless of whether his clients’ Complaints remain dismissed without prejudice. (*See* Order No. 50 (14-MD-2543 Docket No. 875) ¶ 3). Nevertheless, given that Mr. Peller believes that his clients’ claims are factually and legally distinct from those asserted in the SACC — and in light of the fact that Mr. Peller’s clients’ claims will remain stayed in any event — the Court finds that he has demonstrated “good cause” for reinstatement of his clients’ claims within the meaning of Order No. 50. (*See* March 13, 2015 Hr’g Tr. (14-MD-2543 Docket No. 686) at 62 (noting that Mr. Peller’s clients’ claims did not “entirely overlap” with claims asserted in the previous Consolidated Complaint and positing that “the uniqueness, if you will . . . constitutes good cause within the meaning of” the prior version of Order No. 50). Accordingly, Mr. Peller’s clients’ claims are REINSTATED.²

² In a footnote, Mr. Peller indicates that he does not object to “dismissal” of certain factual allegations in the *Sesay* Complaint that were “made in error” and that the *Elliott, Sesay*, and *Bledsoe* Plaintiffs “request for authorization from Co-Lead Counsel to seek leave from the Court to amend their pleadings to correct errors and to update their claims against defendant Delphi

The Clerk of Court is directed to terminate 14-MD-2543 Docket Nos. 1097, 1143, 1153, 1154, 1165, and 1171 and associated docket numbers in member cases and 15-CV-178 Docket No. 74.

SO ORDERED.

Dated: August 7, 2015
New York, New York



JESSE M. FURMAN
United States District Judge

based on information produced idiscovery [*sic*].” (14-MD-2543 Docket No. 1161, at 1 n.2). The Court does not know what it would mean, in this case, to “dismiss” Mr. Peller’s clients’ allegations as opposed to claims. In any event, given that the *Elliott, Sesay, and Bledsoe* Plaintiffs’ Complaints are stayed, the Court sees no reason to take any action in connection with Mr. Peller’s footnote at this time. If Mr. Peller (or any other party) believes otherwise, he (or that other party) should file an appropriate application after conferring with the relevant parties.