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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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3 IN RE: GENERAL MOTORS LLC
4 IGNITION SWITCH LITIGATION,

14 MD 2543 (JMF)

5 -----x

6 New York, N.Y.
7 April 23, 2020
10:00 a.m.

8 Before:

9 HON. JESSE M. FURMAN,

10 District Judge

11 HON. MARTIN GLENN,

12 Bankruptcy Judge

13
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K4n2GMh

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K4n2GMh

1 JUDGE FURMAN: Good morning this is Judge Furman. I'm
2 tempted to say you may be seated, but I am assuming most of you
3 are seated.

4 We are going to proceed now that Mr. Fisher has
5 managed to get on the line. I think there may be one or two
6 people who still are not on, but I think Judge Glenn and I are
7 of the view that all of the critical folks are here and we
8 should proceed, since it is half an hour past our start time.

9 (Court and court reporter confer)

10 JUDGE FURMAN: Good morning to everyone. This is a
11 bit of the strange time in our country, indeed, in the world.
12 I am pleased and Judge Glenn is also pleased that we are able
13 to move forward with these matters notwithstanding what's going
14 on around us with the aid of technology, as imperfect as it may
15 be.

16 I know that there were some complications this morning
17 with respect to some of you getting on. I would actually love
18 your informal feedback and more information on what problems
19 you had just because, as you can imagine, we are in the process
20 of figuring out the best way to do these sorts of things and
21 hold hearings in the new world that we are living in. So if
22 you could let my law clerk, Ryan Sila, know what the issue was,
23 hopefully we can address it going forward.

24 I hope everyone is safe and well, that your families
25 are okay and doing well. There is obviously a lot of misery

K4n2GMh

1 and stuff going on around us.

2 We are here in connection with three motions -- the
3 GUC Trust motion for certain relief from the bankruptcy court,
4 a joint motion to withdraw the reference as to certain claims,
5 and the joint motion for preliminary approval of the class
6 action settlement.

7 At this point I intimate no view on any of these
8 motions but, speaking for myself, I certainly appreciate and
9 want to commend the hard work that all counsel put into the
10 motions and motion papers and everyone's efforts to resolve
11 these long-running and, suffice it to say, complex litigations.
12 So I'm sure Judge Glenn shares that view, but I just want to
13 compliment everybody on that and the work that you have done to
14 make our jobs easier.

15 There was, as I am sure all of you know, a last-minute
16 development early this morning, namely, I gather, settlement
17 with AAT, one of the objecting parties with respect to the
18 GUC Trust motion that was filed in the bankruptcy court. I
19 take it from the papers that I have seen that the parties
20 believe we can and should proceed notwithstanding that
21 settlement and, indeed, that we can grant the three pending
22 motions without waiting for that settlement to be papered.
23 That's something I think we will want to hear from you about.
24 It does seem a little bit strange, if not difficult, for us to
25 formally approve a settlement that is in the process of being

K4n2GMh

1 revised as we speak, and it seems like it might make sense to
2 await those revisions and any motions that are filed in
3 connection with the AAT settlement. I think, to be clear,
4 having spoken to Judge Glenn this morning, I feel comfortable
5 saying that both of us are okay and comfortable proceeding with
6 today's hearing, but it does raise a question of whether we
7 should hold off on formally approving anything pending the
8 contemplated revisions and any additional motions that need to
9 be filed.

10 We would like to hear counsel's views on that
11 question, namely, what bearing, if any, the last minute
12 settlement has on what we should do today, and I think it
13 probably makes sense for us to address that at the outset
14 before we get into the individual motions since it has some
15 bearing on whether and how we proceed more generally.

16 I think in a moment I will go through some of the
17 ground rules for today's proceeding and then take appearances;
18 but before I do that, let me check with Judge Glenn just to
19 confirm or see if you have any preliminary words that you would
20 like to share.

21 JUDGE GLENN: No, I don't. I simply echo what you
22 have said already, Judge Furman.

23 JUDGE FURMAN: All right.

24 With that, a couple of ground rules and instructions.
25 These were set forth in my order of yesterday, but just to

K4n2GMh

1 reiterate and confirm:

2 Number one, I want to remind everybody that this
3 conference cannot be recorded. Recording is prohibited by law.

4 Number two, please make sure that you identify
5 yourself any time you say anything to ensure that the court
6 reporter keeps an accurate record of the proceeding and that we
7 know who is speaking. There are obviously a lot of lawyers on
8 the line, so that is particularly important today, and I will
9 try to do the same for myself.

10 Number three, please mute your lines when you are not
11 speaking in order to eliminate any background noise, but
12 remember to unmute yourself when you want to say something.

13 And obviously it's too late to say that you should use
14 a landline, but hopefully most, if not all, of you heeded that
15 and you are on a landline, and I would ask you not to be on
16 speakerphone, either, because it is a little harder to hear
17 when you speak on speakerphone.

18 With that, I will proceed to take appearances just to
19 confirm who is on the line. I would ask that one person from
20 each set of parties basically take responsibility for noting
21 the appearances of anyone or everyone on the line for that
22 party or those parties just to make things a little bit easier,
23 and hopefully you are in a position to do that.

24 So with that, let me take appearances and let me start
25 with the economic loss plaintiffs.

K4n2GMh

1 MR. BERMAN: Good morning, your Honor. This is Steve
2 Berman. I hope you are doing well. With me on the line is
3 Elizabeth Cabraser, Rachel Geman, Sean Matt, and Ed Weisfelner.

4 JUDGE FURMAN: Very good. Good morning to you, and I
5 hope you are all doing well.

6 All right. And for personal injury/wrongful death
7 plaintiffs?

8 MR. HILLIARD: Good morning, Judge Furman. This is
9 Bob Hilliard. Good morning, Judge Glenn, as well. I hope you
10 guys are doing well. I'm flying solo here, so it is just me.

11 JUDGE FURMAN: All right. Good morning to you.

12 And let me say I hope everyone is doing well, so I
13 won't say that with respect to each of you.

14 For new GM?

15 MR. GODFREY: Good morning, your Honor. This is Rick
16 Godfrey. With me is Kyle Kimpler, our bankruptcy counsel, from
17 Paul Weiss, and my partners Wendy Bloom and Andrew Bloomer.

18 JUDGE FURMAN: Good morning to you.

19 All right. For the GUC Trust.

20 MS. GOING: Good morning, your Honor. This is Kristin
21 Going and Michael Huttenlocher, from McDermott Will & Emery.

22 JUDGE FURMAN: Good morning to you.

23 And for the participating unit-holders?

24 MR. ZENSKY: Yes. Good morning, Judge Furman and
25 Judge Glenn. This is David Zensky, from Akin Gump Strauss

K4n2GMh

1 Hauer & Feld, and with me is my partner Daniel Golden.

2 JUDGE FURMAN: Good morning to you.

3 All right. For the avoidance action trust, or AAT.

4 MR. FISHER: Good morning, your Honor. It's Eric
5 Fisher, from Binder & Schwartz, and with me on the line are my
6 colleagues Neil Binder and Lindsay Bush.

7 JUDGE FURMAN: Good morning to you.

8 And for the I guess described as the additional
9 ignition switch pre-closing accident plaintiffs.

10 MS. NORMAN: Good morning, your Honor. Lisa Norman,
11 from Andrews Myers.

12 JUDGE FURMAN: Good morning to you.

13 And I'm not sure if we have anyone on for the
14 Department of Treasury and the Treasury and Export Development
15 Canada, but let me check.

16 MR. JONES: Yes, your Honor. David Jones. I think
17 you have one of each. I'm David Jones, Assistant U.S.
18 Attorney, Southern District of New York, for U.S. Department of
19 the Treasury as bid lender.

20 THE COURT: All right.

21 MR. SCHEIN: Good morning, your Honor. Michael
22 Schein, Vedder Price, on behalf of the Export Development
23 Canada.

24 JUDGE FURMAN: Good morning to you, as well.

25 I think that covers it, but is there anyone else with

K4n2GMh

1 a speaking role today whose appearance has not been made?

2 Hopefully not.

3 All right. Great.

4 Let me just briefly make one disclosure that I don't
5 think I really even need to make because it doesn't pertain to
6 any of the motions directly pending before me, but I did just
7 want to note as a matter of transparency that Mr. Fisher is an
8 old friend of mine. His children go to the same school as my
9 children. I just wanted everybody to be aware of that, but I
10 don't think it affects anything that we need to do today.

11 With that, let's start, as I said, with the question
12 of what implications the settlement announced this morning with
13 AAT has on what we are doing today and what we can do, I
14 suppose. I think, for lack of a better way to do this on the
15 telephone, what I will do is basically just go through. I
16 think I will start with the parties that are directly
17 implicated in that motion, namely, the GUC Trust and the
18 participating unit-holders, AAT, and new GM, followed by the
19 plaintiff, and we will go in that order.

20 So let me start with the GUC Trust, and if you could
21 give me your views on what bearing that has on our agenda today
22 and what Judge Glenn and I should do with respect to the
23 pending motion, that would be great.

24 MS. GOING: Thank you, your Honor. Again, Kristin
25 Going on behalf of the GUC Trust.

K4n2GMh

1 Your Honor, we do believe that Judge Glenn can proceed
2 with the motion to approval the settlement agreement pursuant
3 to 9019 that was filed, and subsequently we believe that you
4 can also proceed with the preliminary approval motion, and the
5 reason that we believe that is possible is that the settlement
6 that was reached last night will result in changes to the
7 settlement agreement, but we can go through those changes with
8 your Honors today. The changes are very limited, and they are
9 surgically removing provisions that were attempting to preserve
10 claims against the AAT, so that the overall substance of the
11 settlement is not changing and the majority of the settlement
12 agreement is not changing.

13 In addition, your Honors should both have received a
14 revised order that we submitted last night, a proposed order
15 granting the 9019 motion, along with a red line that shows the
16 changes that we have made in light of the settlement. You can
17 see from the revised order that we are still keeping authority
18 to enter into the settlement agreement as it is going to be
19 amended on the record, and the parties will provide -- we have
20 committed to provide a full revised settlement agreement to the
21 Court by May 1 but, again, that is just going to be
22 memorializing the changes that have already been reached and
23 will be described to both Courts today.

24 JUDGE FURMAN: All right. This is Judge Furman.

25 I guess the question also is whether we can proceed

K4n2GMh

1 today. Is there any harm in awaiting those papers and the
2 revised versions by May 1 on the theory that then we would have
3 before us precisely what we are being asked to approve?

4 Ms. Going?

5 MS. GOING: I'm sorry, your Honor. Could you repeat
6 the first part of your question? You cut out.

7 JUDGE FURMAN: I just said, understanding your view
8 that we can proceed, is there any harm in waiting until May 1
9 so that we have in front of us the precise agreements and
10 language that we are being asked to approve?

11 MS. GOING: Your Honor, Kristin Going on behalf of the
12 GUC Trust.

13 I just -- the parties all believe that we have spent
14 so much time and effort to get to the point where we are today,
15 and speaking for the beneficial holders of the GUC Trust, they
16 are very eager to get the distributions that will be provided
17 for under this order, and so there is some desire to have the
18 order entered as soon as possible to allow these excess
19 distributions to be made. They sought initially to have the
20 excess distributions made August of 2019, and they have yet to
21 be made. So that is the desire of the parties, to have this
22 completed as expeditiously as possible.

23 JUDGE FURMAN: All right. Let me turn to the
24 participating unit-holders, Mr. Zensky.

25 MR. ZENSKY: Yes. This is David Zensky, for the

K4n2GMh

1 record. Thank you, Judge Furman.

2 We strongly believe that the Court and Judge Glenn
3 should proceed to consider, and hopefully approve and sign, the
4 revised GUC Trust approval order that we submitted early this
5 morning.

6 In terms of what the focus of today's motion is, which
7 is whether the GUC Trust's entry into the settlement satisfies
8 Rule 9019 and the various factors Judge Glenn needs to
9 consider, nothing that is happening with the AAT is going to
10 change the propriety of the business judgment of the GUC Trust
11 in entering this settlement. The add-in of the \$2.2 million
12 does not increase the amount the GUC Trust is contributing. It
13 does not change the GUC Trust's obligations or the benefits of
14 the settlement in any way. So nothing that will happen with
15 the layering into the settlement of the AAT will inform the
16 judgment that we are asking Judge Glenn to make today about
17 whether this settlement is appropriate from the perspective of
18 the GUC Trust itself.

19 Second, if your Honors refer to the revised order that
20 was submitted last night, you see the black line, there is a
21 new paragraph 5 which dictates that the AAT will separately
22 seek a 9019 approval for its decision to enter the settlement
23 and make the \$2.2 million payment. The AAT trust beneficiaries
24 will have full opportunity to be heard in respect to that
25 motion, and this order that we would like signed today says it

K4n2GMh

1 is without prejudice to whether Judge Glenn will ultimately
2 approval the AAT's joinder to the settlement. So no one's
3 rights in terms of the AAT components would be compromised by
4 proceeding with the GUC Trust approval today, and we very much
5 would like to end up there, as your Honor can imagine.

6 Second, it would not be just a delay to May 1. May 1
7 is the day that the parties who reached a settlement with the
8 AAT promised a revised settlement, but that would then be the
9 day that Mr. Fisher would file a motion on notice and there
10 would be a 21-day period before we could get back with you to
11 hear that motion. So if you were to determine to wait, or
12 Judge Furman were to determine, we are looking at at least I
13 think a month delay. That is not only important and
14 detrimental for the reasons that Ms. Going has identified, your
15 Honor, but you can't enter the preliminary approval order on
16 the Rule 23 issues without the GUC Trust approval order not
17 even entered. Both of the courts understand that that's the
18 outstanding issue. And as I understand it -- and new GM and
19 the economic loss plaintiffs can provide more color -- they
20 need the preliminary approval order in order to go out and
21 begin to obtain all of the data that is needed to send out the
22 notice to the absent class. So pushing everything back has a
23 spillover effect and delays to implementation and dislocation
24 of the settlement.

25 So for those reasons, your Honor -- and I am happy to

K4n2GMh

1 answer any questions -- we strongly believe that the Court can
2 and should proceed to determine the propriety of the GUC Trust
3 approval order as amended and to execute it today if it is
4 approved.

5 JUDGE FURMAN: Thank you. This is Judge Furman again.

6 I guess the two reactions/questions I have, the first
7 is, and Judge Glenn -- this is Judge Glenn's wheelhouse, not
8 mine -- but my understanding from him is that he could shorten
9 the time to hear any AAT approval motion. That is to say, it
10 doesn't necessarily have to take 21 days or a month. But maybe
11 you can address that.

12 But more fundamentally, I think, Ms. Going's comments
13 and yours contemplate that any AAT settlement is consummated
14 and approved. I guess the question I would have is, what if
15 that doesn't happen? What if either the settlement falls
16 apart -- it is just a settlement in principal right now -- or
17 what happens if Judge Glenn doesn't approve it? Where does
18 that leave things? Does AAT have the right at that point
19 presumably to restore its objection to the pending motion? And
20 if the motion has been granted in the meantime, what then? I
21 suppose Mr. Fisher can speak to that in a moment. But
22 Mr. Zensky, if you want to respond to that, that would be
23 helpful.

24 MR. ZENSKY: Yes, your Honor.

25 My understanding is that Mr. Fisher's client would be

K4n2GMh

1 withdrawing their motion and clear the way for a determination
2 today with both Mr. Fisher and the other parties to that
3 settlement -- as you know, the GUC Trust is not part of the
4 arrangement that was reached with the AAT, but each of those
5 parties I think is taking the risk that Judge Glenn would
6 ultimately approve the contribution from the AAT and sort of
7 that we will see where that leads then if we get there. But my
8 understanding is Mr. Fisher -- and he will confirm -- is
9 withdrawing his objection and clearing the decks for
10 Judge Glenn to enter the GUC Trust approval order today. And I
11 believe that you will hear that being determined to settle at
12 the range that new GM and the plaintiffs did was driven in part
13 for that very reason, in order to clear the deck so we can get
14 going today.

15 JUDGE FURMAN: All right. This is Judge Furman again.

16 Mr. Fisher, why don't I turn to you, and if you could
17 address that last question that I posed, namely, what happens
18 if the settlement that you have reached doesn't either get
19 consummated or approved, what then if we have proceeded with
20 respect to the motions before us today?

21 MR. FISHER: Yes, your Honor. Eric Fisher on behalf
22 of the Avoidance Action Trust.

23 So it is correct that we are withdrawing our objection
24 to approval of the settlement today, effective today, and as
25 part of that agreement, the economic loss plaintiffs and new GM

K4n2GMh

1 are withdrawing what has been their pending objections before
2 the bankruptcy court to the AAT's ability to proceed with its
3 distribution plan. So that is an element of what we have
4 agreed to that is effective today. And I think, as a result,
5 those objections are no longer obstacles to this court
6 proceeding on approval.

7 I concur with what Ms. Going and others have said,
8 that it is certainly my understanding that the anticipated
9 revised settlement, which we have committed to get to the Court
10 by the end of next week, will not materially alter any
11 obligations of the GUC Trust pursuant to the settlement
12 agreement that currently is before the Court. In the very
13 unlikely event that the settlement in principal does not come
14 to fruition, given that we are withdrawing our objections to
15 the settlement today and concomitantly new GM and the economic
16 loss plaintiffs are withdrawing their objection to our
17 distribution motion today, in that circumstance, where the
18 final settlement does not come to fruition, we would simply
19 reserve all of those arguments and the ability to make them
20 before the bankruptcy court in the very unlikely event that we
21 find ourself in some situation where the economic loss
22 plaintiffs continue to press forward with keeping their claims
23 against new GM.

24 JUDGE FURMAN: All right. Ms. Norman, let me ask you,
25 I don't know if you have a view on this or what bearing it has

K4n2GMh

1 on your objection on the motion before Judge Glenn, but what
2 are your thoughts?

3 MS. NORMAN: I'm sorry. Were you speaking to me? To
4 Ms. Norman, to Lisa Norman?

5 JUDGE FURMAN: Yes.

6 MS. NORMAN: Our objection is very limited. It is
7 unclear to us if settlement with economic loss plaintiffs is
8 going to exhaust the GUC Trust. Certainly our late-claims
9 motions are still pending and our reply brief isn't due until
10 the 11th of next month. So we are not necessarily opposed to
11 the settlement. We just want to ensure that, to the extent
12 that our late claims are going to be allowed, that this
13 settlement isn't going to exhaust the GUC Trust or put us in a
14 position where we are not going to be able to get paid on our
15 claims the way that any other general unsecured claimant would
16 be. But I don't know that that necessarily has bearing on what
17 you are going to do today.

18 JUDGE FURMAN: All right. And new GM? Mr. Godfrey?

19 MR. GODFREY: Yes, your Honor.

20 I agree with what Mr. Zensky said and I won't repeat
21 it. The only thing I would add, your Honor, is that the
22 settlement that you have before you -- and I don't know that
23 both you and Judge Glenn have had an opportunity to review it
24 carefully -- contemplated the eventuality of the AAT settlement
25 being folded into it. And so, from the standpoint of new GM

K4n2GMh

1 and I think the other parties, I hesitate to say that the
2 changes are ministerial, but they were all expressly
3 contemplated and we hoped we would be able to reach an
4 agreement with the AAT, and therefore we think it should go
5 forward today and there is no reason to wait. The changes that
6 will be necessary with respect to AAT, Ms. Going has outlined,
7 essentially taking certain paragraphs out for reservations of
8 right and adding certain language in going to releases and the
9 monetary contribution, but that's it. And so they were
10 contemplated expressly, we had hoped that we could reach
11 agreement earlier than last evening, but the parties worked
12 very hard and diligently in that regard, particularly
13 Mr. Kimpler and Ms. Bloom on our side, and therefore we see no
14 reason from the new GM perspective to delay going forward. We
15 think that the Court has -- both Courts have the information
16 that they need and they will have by next week, by next week
17 the precise language with respect to the settlement itself.

18 There is also the aspect of notice which, if you would
19 like more details, Ms. Bloom can get into, but we do have to
20 take certain steps with respect to getting the banks and
21 getting the notice program going, and we need the orders
22 approving to proceed along those lines.

23 I think there is nothing else that I need to add, just
24 everything else we would say I think is has been said by prior
25 counsel. If the Court has any questions.

K4n2GMh

1 JUDGE FURMAN: All right. For the economic loss
2 plaintiffs, Mr. Berman, I don't know if you are the relevant
3 person.

4 MR. WEISFELNER: Your Honor, if I may, it's Ed
5 Weisfelner, from Brown Rudnick, designated counsel on behalf of
6 the economic loss plaintiffs.

7 We don't have a lot of to add to what the prior
8 speakers have indicated. I would just highlight as a practical
9 matter the settlement is for \$2.2 million coming out of the AAT
10 trust, half of which gets reimbursed to new GM. The other
11 half, a million one, gets added to the \$120 million common
12 fund. So as a practical matter, the amount of the settlement
13 that benefits the plaintiffs, while material, still needs to be
14 put in context.

15 We trust the AAT and its counsel to proceed for
16 approval in good faith, and obviously we are taking a risk of
17 that settlement coming to fruition since we are immediately
18 withdrawing our opposition to their distribution motion.

19 That having been said, what drives us in asking the
20 Courts to consider the motions that are currently pending,
21 notwithstanding the relative last-minute settlement, is the
22 need for time to collect the requisite information that needs
23 to be developed in order to have effective notice of a final
24 settlement hearing, and our concern about waiting until
25 sometime after revision of the settlement agreement and the

K4n2GMh

1 release provisions, all of which I think the parties all
2 contemplated, so it's not heavy lifting, our concern is that we
3 are pushing back even further the time for final hearing if we
4 don't get preliminary approval today. It is already a very,
5 very long, arduous process, and none of the parties believe we
6 ought to wait any longer, and for that reason we would ask the
7 Court to consider the pending applications and motions
8 notwithstanding the last-minute settlement.

9 Thank you, Judge.

10 JUDGE FURMAN: All right. Judge Furman again.

11 Mr. Hilliard, I am assuming that you don't have
12 anything that you need to say on this, but let me just confirm
13 that.

14 MR. HILLIARD: Judge, this is Bob Hilliard. That is
15 so confirmed. We are neutral.

16 JUDGE FURMAN: And Mr. Jones, let me check with you.

17 MR. JONES: Thank you, your Honor. David Jones for
18 the U.S. Attorney's office.

19 Treasury has no position on whether or not to go
20 forward. We are, to be clear, generally relying on AAT's
21 exercise of its fiduciary judgment. We are a mere beneficiary
22 of it, and we are comfortable with how it proposes to proceed.

23 JUDGE FURMAN: And, Mr. Schein, just to confirm, the
24 same on your end?

25 MR. SCHEIN: Yes, your Honor. Michael Schein on

K4n2GMh

1 behalf of EDC.

2 We join in with Mr. Jones's comments and defer to the
3 AAT.

4 JUDGE FURMAN: All right. Thank you, everyone.

5 I think what I will do now is turn it over to
6 Judge Glenn, who may have some additional questions on that
7 front; and, if he doesn't, we can proceed with the GUC Trust
8 motion which is pending before him anyway. So in either case,
9 I will give him the floor, or the phone, as the case may be.

10 So, Judge Glenn?

11 JUDGE GLENN: Thank you very much, Judge Furman.

12 I am certainly very pleased to see the development
13 overnight and the proposed settlement with the AAT. It leaves
14 for today the limited objection of the additional plaintiffs
15 represented by Lisa Norman. In light of the developments, we
16 think it unnecessary, for counsel arguing the motions, I think
17 you can leave your argument fairly short. But my chambers had
18 posted four questions yesterday. In light of the developments
19 overnight, it is unnecessary to specifically address the
20 questions that I had posted yesterday.

21 I would certainly like to hear briefly from counsel
22 for the GUC Trust. There are obviously portions of the motion
23 that go beyond just the settlement, the plaintiffs' excess
24 distribution motion, etc. Again, as to that, there have been
25 no objections, so I think the arguments can be left fairly

K4n2GMh

1 short.

2 With respect to the additional proposed 9019 motion
3 that the AAT is going to bring on, I'm certainly prepared to
4 shorten the time for the hearing of that motion as well. I
5 will hear any counsel in regard to this, but what I had in mind
6 as the schedule for that -- and again, I'm certainly prepared
7 at this stage to go forward and listen to the argument today, I
8 will reserve decision until the end of the argument whether I
9 am prepared to sign the revised approval order today or not.
10 But in any event, I am prepared to go forward. If the AAT
11 files its 9019 motion before Friday, May 1, I will accept the
12 objection deadline to that motion as 12 noon on Wednesday, May
13 6. If no objections are filed to the 9019 motion, the AAT
14 counsel can file a certificate of no objection and the Court
15 will either promptly thereafter enter an order of approval or,
16 if necessary, we will schedule a hearing on very short notice,
17 if that is necessary. What I had in mind, if we have to have a
18 hearing, is Friday, May 8, at 10 a.m. But I am certainly
19 prepared to shorten the time to do that so this all can get
20 buttoned up.

21 With that said, I will reserve decision until I hear
22 the arguments today; but, in any event, I am prepared to go
23 forward, shortening the time on any motion to get that cleared
24 up as well.

25 With that, Judge Furman, unless there is anything you

K4n2GMh

1 want to add at this point, I would like to hear briefly from
2 Ms. Going with respect to the GUC Trust motion.

3 JUDGE FURMAN: This is Judge Furman. I have nothing
4 to add, so I am happy to let you proceed on that front.

5 MS. GOING: Thank you, Judge Glenn. This is Kristin
6 Going on behalf of the GUC Trust.

7 Your Honor, the GUC Trust, in consultation with its
8 counsel and with approval of the GUC Trust monitor, is seeking
9 authority and approval from this Court, after determining in
10 its business judgment that the settlement is fair and equitable
11 and that the settlement is in the best interests of the
12 GUC Trust beneficiaries to resolve the highly contentious
13 litigation that has been going on for over five years with the
14 ignition switch plaintiffs and litigation is likely to continue
15 absent the settlement for at least, we estimate, two more
16 years.

17 Furthermore, defending this litigation has consumed
18 trust assets, will continue to consume trust assets, and at the
19 same time has led to the delay in distributions to the
20 GUC Trust unit-holders. If settlement resolves the litigation,
21 it allows for the immediate distribution of \$300 million to the
22 unit-holders, and thus eliminates one of the last two obstacles
23 to the GUC Trust making its final distribution and winding
24 down.

25 I believe your Honor would like me to address the

K4n2GMh

1 relief that we are seeking in our motion apart from just
2 approving the settlement agreement under 9019, and the first
3 relief that we are seeking under the motion is a request to
4 reallocate \$50 million of GUC Trust assets. That request to
5 reallocate is a function of the GUC Trust agreement whereby the
6 GUC Trust is currently holding approximately 400 million in
7 distributable assets and it is seeking, pursuant to the terms
8 of the settlement agreement, to reallocate 50 million, which
9 would otherwise be available for distribution to unit-holders,
10 to fund the settlement that we have entered into with the
11 economic loss plaintiffs here.

12 As is detailed in the motion, that \$50 million is
13 comprised and broken apart into \$2 million which would be paid
14 upon entry of the preliminary approval order. That \$2 million
15 is nonrefundable to the GUC Trust, regardless of whether or not
16 final approval is entered, and it will be utilized to fund a
17 portion of the noticing costs that are necessary for the class
18 action settlement noticing. The remaining \$48 million would
19 not be paid unless and until there is a final effective date
20 for the class action settlement, and it would be paid at the
21 time that the GUC Trust is also receiving a release from all
22 class members who have not opted out of the settlement.

23 So it was on that basis that we seek the court's
24 authority to reallocate the \$50 million at this time,
25 recognizing that only 2 million will initially be paid out upon

K4n2GMh

1 the preliminary approval order being entered and the remaining
2 48 million will only be paid when and if there is a final
3 effective date of the settlement and the GUC Trust's receiving
4 the release from the entire class action class.

5 The second component of the relief that we have sought
6 in our motion is this Court's guidance and approval of the
7 GUC Trust action pursuant to Section 8.1(e) of the GUC Trust
8 agreement which provides the GUC Trust with the ability to seek
9 guidance from the Court with respect to any action that it
10 intends to take. Particularly here, in light of the
11 settlement, what the GUC Trust is looking for this Court's
12 guidance on is whether or not the GUC Trust release of its
13 right to pursue the adjustment shares is an appropriate
14 exercise of the GUC Trust's duty, recognizing that under the
15 terms of the plan and the sale agreement and the GUC Trust
16 agreement is the GUC Trust that has the sole ability to pursue
17 adjustment shares, where here, with this settlement, we believe
18 that the releases of the adjustment shares is appropriate
19 because it is part and parcel of the global resolution of all
20 issues surrounding a potential pursuit of the adjustment
21 shares. We simply want this Court's guidance to assure that
22 seeking those actions and giving up rights that the GUC Trust
23 has been provided under the plan end of sale agreement is an
24 appropriate exercise of the GUC Trust's duties.

25 I will pause there and see if your Honor has any

K4n2GMh

1 questions or if you would like me to address the objection from
2 the personal injury plaintiff at this time.

3 JUDGE GLENN: Thank you very much, Ms. Going.

4 This is Judge Glenn.

5 Let me hear from Ms. Norman with respect to the
6 limited objection from what is referred to as the additional
7 plaintiffs that she represents.

8 MS. NORMAN: Thank you very much, your Honor.

9 As you know, initially we were representing 389
10 personal injury and wrongful death plaintiffs. There are less
11 than two dozen of those plaintiffs left who have not settled
12 with new GM, and they are not involved in the MDL and their
13 claims are only pending in their court.

14 In theory, we are not opposed to the economic loss
15 plaintiffs settling with the GUC Trust. In fact, as you know,
16 we were jointly parties with the economic loss plaintiffs to
17 two prior settlement agreements with the GUC Trust which, for
18 various reasons, were not approved. So theoretically we are
19 not opposed to them settling, it is just we want to ensure that
20 there is a fair and equitable settlement and fair and equitable
21 distributions to all allowed general unsecured claimants. And
22 at this time, because we are still in the middle of briefing or
23 I guess toward the end of the briefing period for the
24 late-claims motions with respect to our claims, the GUC Trust
25 having just filed their response on Monday and then our reply

K4n2GMh

1 being due on the 11th of next month, that while our claims are
2 still pending, my only concern is I just don't -- I wasn't
3 clear if this settlement is going to exhaust the GUC Trust. I
4 understand and know that they are looking to wind it down, but
5 while we still have our small handful of claims pending, I just
6 want to ensure that this settlement isn't going to in any way
7 result in no distributions to our client by virtue of there not
8 being any assets left and just to ensure that there is no
9 prejudice to these remaining claimants to the extent their
10 claims end up being allowed.

11 JUDGE GLENN: Thank you very much, Ms. Norman.

12 I think the only objection that remains outstanding is
13 the objection of the additional plaintiffs. Let me address
14 that now. I am prepared to rule on that portion now.

15 First off, the additional ignition switch pre-closing
16 accident plaintiffs, in terms of the additional plaintiffs, are
17 identified in a number of filings with this Court, with the
18 bankruptcy court, ECF 14018, 14046, 14112, 14195, and 14346.
19 As Ms. Norman has said, her motion for leave to file late
20 claims remains pending.

21 The additional plaintiffs' objection is limited in
22 scope and only seeks to ensure that approval of the settlement
23 agreement will not prejudice the additional plaintiffs. The
24 additional plaintiffs, along with the plaintiffs, were the
25 parties to the prior proposed settlement agreements in 2017 and

K4n2GMh

1 2018 of the GUC Trust but, as Ms. Norman indicated, the
2 additional plaintiffs she represents are not parties to the
3 current settlement agreement. In their objection, they
4 indicate they object to any settlement that would treat
5 plaintiffs' late claims differently from the additional
6 plaintiffs, whose late-claims motion remains pending. I won't
7 go through all of the authority they relied on, but they
8 indicated in their papers a reliance on Second Circuit case law
9 holding that when rights of non-terminated parties are
10 implicated by the terms of the settlement, the Court cannot
11 approve without considering the interests of those nonsettling
12 parties. I will proceed on the assumption that in fact
13 Ms. Norman's clients would have the standing to object to the
14 proposed settlement without actually deciding the issue.

15 I would note that, with respect to Ms. Norman's
16 clients, only two have sought to file late claims on account of
17 the delta ignition switch recall, that is recall 14 CV 470, and
18 as of now they are not creditors or beneficiaries of the
19 GUC Trust, but they do have their late-claims motion pending.
20 But at this point I'm going to overrule the objection. The
21 GUC Trust, the motion papers clearly establish this, that the
22 GUC Trust will have in excess of \$70 million in distributable
23 assets after the settlement consideration is paid and, as
24 Ms. Going's papers indicate, that the amount is sufficient to
25 pay any newly allowed claims in excess of \$232 million, as

K4n2GMh

1 allowed claims are entitled to a recovery of approximately 30
2 percent of the estimated value of allowed claims. Because of
3 that particularly, the additional plaintiffs' objection arguing
4 the settlement is not in the best interests of creditors is
5 overruled. The Court agrees with the GUC Trust that the
6 additional plaintiffs will not be prejudiced by approval of the
7 settlement agreement. The pending late-claims motions filed by
8 the additional plaintiffs do not need to be resolved before
9 approval of the settlement agreement because the GUC Trust, as
10 I said, will have over \$70 million in distributable assets
11 after all amounts are distributed pursuant to the settlement
12 agreement, assuming that the motions are approved.

13 I won't go into . . .

14 (Judge Furman and the court reporter confer)

15 JUDGE FURMAN: Judge Glenn, are you still on?

16 A VOICE: I think Judge Glenn may have just dropped
17 off.

18 COURT CALL OPERATOR: This is Court Call. I do show
19 the line connected for Judge Glenn.

20 JUDGE FURMAN: I will try to confirm. Hang on.

21 (Pause)

22 JUDGE FURMAN: This is Judge Furman. I am not having
23 any luck reaching Judge Glenn separate from this call. Let's
24 give him a minute or two, and then we can decide how to
25 proceed. One option would be to move to the motions pending

K4n2GMh

1 before me while we try to find him. But bear with us.

2 (Pause)

3 COURT CALL OPERATOR: Again, this is Court Call. Let
4 me pull that line real quick. One moment.

5 (Pause)

6 COURT CALL OPERATOR: This is Court Call. I have had
7 no luck. The line is still connected, but there is no response
8 on the line. If there is a number I can dial out to reach him,
9 I can do that as well.

10 A VOICE: Hi. This is Judge Glenn's courtroom deputy.
11 Would you like me to try reaching him?

12 JUDGE FURMAN: This is Judge Furman. I suppose there
13 is no harm in it. I am trying to reach him myself, but you may
14 as well try to find out what's going on and if he is okay.
15 That would be great. Thank you.

16 A VOICE: I will. Thank you.

17 (Pause)

18 JUDGE GLENN: I may have to dial back in.

19 COURT CALL OPERATOR: Your Honor, this is Court Call.
20 You are connected. You were silent for a period of time, but
21 we can hear you at this time.

22 JUDGE GLENN: Okay. All right. Counsel, I apologize.
23 This has happened a couple of times with me, and I apologize
24 for that.

25 I'm going to try to find out, so I don't have to

K4n2GMh

1 repeat everything that I said, my overruling of the additional
2 plaintiffs' objections are on the record?

3 A VOICE: Yes.

4 JUDGE FURMAN: This is Judge Furman. I think that --

5 JUDGE GLENN: Again, I apologize.

6 JUDGE FURMAN: I wonder if the court reporter could
7 perhaps tell us where you dropped off. That might help you.

8 JUDGE GLENN: That would be very helpful.

9 (Record read)

10 JUDGE GLENN: Again, I apologize to everybody about
11 that.

12 Where I was going next, and I will briefly pick up
13 with that, I was going to go through the other requirements for
14 approval of the settlement and then going through, briefly
15 hopefully, each of the aspects of the GUC Trust's motion. So
16 bear with me.

17 For some of them there is, first, the question of
18 whether the GUC Trust and the Administrator of the GUC Trust is
19 exercising appropriate judgment in exercising its authority to
20 enter into the settlement. I applied the set of nonexclusive
21 factors that the Second Circuit has established in its decision
22 in *In re: Iridium Operating, LLC*, 478 F.3d. The seven factors
23 are at page 462. Since the only objection, which I have
24 already dealt with, is the additional plaintiffs' objection, I
25 won't go through each of those seven factors other than to say

K4n2GMh

1 that the Court has considered each to be applicable in the
2 circumstances that were decided that the seven factors are
3 satisfied here.

4 The first issue of course is the GUC Trust request for
5 instructions, and I conclude that that relief is appropriate
6 here. The practice of trustees seeking guidance from the Court
7 as to issues which involve difficult questions of law is well
8 established. I won't go through the case authority that
9 supports it, but I am satisfied there is plenty of case
10 authority that supports giving instructions to a trustee before
11 they take an action, and that's what's been requested here.
12 And the Court concludes that the GUC Trust proposed actions are
13 approved.

14 Again, because the AAT has withdrawn its objection, I
15 thought we would go through each of those separate grounds.
16 With respect to the issue of the GUC Trust Administrator's
17 request authorizing it to reallocate \$50 million of GUC Trust
18 assets, and as Ms. Going indicated, the GUC Trust has requested
19 authority to make two payments into the common fund that will
20 be established as a qualified settlement fund and will be used
21 to pay the settlement claims of class members of \$2 million
22 that will get paid quickly because it will be used as part of
23 the notice cost, assuming that Judge Furman grants preliminary
24 approval. Forty-eight million would be paid into the common
25 fund assuming that class settlement is approved by the District

K4n2GMh

1 Court.

2 Under the terms of the GUC Trust agreement, all monies
3 currently held by the GUC Trust, other than those that this
4 Court previously reallocated to pay the fees and expenses of
5 the GUC Trust for 2020, constitute excess GUC Trust
6 distributable assets and, pursuant to Section 6.1(b) of the
7 GUC Trust agreement, the GUC Trust Administrator must obtain
8 Monitor and Court approval to reallocate assets that would
9 otherwise be distributed to GUC Trust beneficiaries. That's
10 the relief that's being sought here, and I believe there is no
11 objection as to that aspect of the release, so that relief is
12 approved.

13 With respect to the GUC Trust's decision to go into
14 the settlement and pay a total of \$50 million -- \$2 million for
15 part of the notice costs and \$48 million settlement -- if
16 approved, again, I'm going to, on each of the *Iridium* factors,
17 conclude that, to the extent applicable, each of those
18 requirements are satisfied here.

19 Ms. Going, is there any other aspect of your motion
20 that remains open that I need to address?

21 A VOICE: No, there is not, your Honor.

22 JUDGE GLENN: All right.

23 MS. GOING: Your Honor, Kristin Going for the
24 GUC Trust. No, your Honor. Thank you.

25 JUDGE GLENN: I have reviewed the revised proposed

K4n2GMh

1 order that was submitted with the correspondence from
2 Mr. Kimpler, of Paul Weiss, overnight and I am satisfied that
3 that order is proper and appropriate, and I am prepared to
4 enter it.

5 Judge Furman, let me turn it back to you.

6 JUDGE FURMAN: All right. Thank you Judge Glenn.
7 This is Judge Furman.

8 I guess with that, we will move to the motions that
9 were filed and pending before me, beginning with the motion to
10 withdraw the reference. I'm going to basically proceed with
11 the questions and issues I flagged in the order that I filed
12 yesterday and basically just go in the order of the issues laid
13 out there. And I'm going to assume that those who are speaking
14 to these issues, first of all, that you have coordinated among
15 yourselves, so that I can simply note the question that we are
16 on, and whoever is taking responsibility can then identify
17 themselves and proceed with addressing it and, number two, that
18 I don't need to read each question or issue, that you will have
19 the order in front of you as we proceed.

20 So with that, I will turn to the motion to withdraw
21 the reference first and start with the first question there.

22 MR. WEISFELNER: Your Honor, this is Ed Weisfelner on
23 behalf of the economic loss plaintiffs.

24 Your Honor, the motion to withdraw the reference does
25 indeed implicate core bankruptcy issues. Nevertheless,

K4n2GMh

1 permissive withdrawal is appropriate, and indeed necessary, for
2 the proper consideration of the settlement agreement.

3 Judge, under controlling Second Circuit authority, and
4 I'm referring, obviously, to the 1993 decision in *Orion*, which
5 was contained in our joint brief, the fact that you have both
6 core and noncore issues is only one factor to consider in
7 consideration of a motion to withdraw the reference under the
8 permissive branch, and in fact it is not a controlling factor.

9 Here, I think what is critically important to keep in
10 mind is that between the bankruptcy issues and the MDL issues,
11 you have overlapping parties, you have overlapping putative
12 class claims, the legal and factual issues that would have to
13 be resolved are similar, if not identical, and indeed you have
14 the same legal standard that needs to be satisfied, that being
15 Rule 23. In point of fact, this is the only court that could
16 effect relief or consideration, rather, of the settlement
17 agreement given its implication for both bankruptcy and
18 nonbankruptcy issues.

19 Therefore, reflecting back to *Orion* and the factors
20 under that controlling decision, the most important
21 consideration for the grant of permissive withdrawal of the
22 reference is what's efficient and what would promote
23 uniformity; and because of the overlap, again, withdrawal of
24 the reference to allow a single court, the only court with
25 jurisdiction to consider both the bankruptcy and the MDL issues

K4n2GMh

1 is this court, makes the presentation and consideration more
2 efficient and avoids any possibility of a nonuniform finding.

3 That's all I had on question one, your Honor.

4 JUDGE FURMAN: All right. Great. Thank you. This is
5 Judge Furman.

6 And let's turn to question two. And let me say,
7 Mr. Weisfelner, I certainly appreciate that, but I have read
8 all of the papers on both of these motions, and I don't need to
9 hear general argument with respect to the arguments that have
10 been made in the papers for approval, really. You can consider
11 that stuff already absorbed on my end and just address the
12 questions and issues I flagged. I appreciate you are making
13 sure, but I just want to save time and trouble by mentioning
14 that.

15 With that, let's turn to the second question on motion
16 to withdraw the reference. In light of the AAT settlement, it
17 may be that there is less of an issue here, and maybe there
18 wasn't an issue in the first place, but it may be less
19 significant now even more so. But who is addressing that?

20 MR. WEISFELNER: Your Honor, this is Ed Weisfelner
21 again. I will try to be a lot briefer just because I know the
22 GUC Trust, once it is on the record, in point of fact the AAT
23 was never a creditor of the GUC Trust. The only thing I would
24 stress in connection with question number two is, again, we are
25 seeking to withdraw the reference not to have the merits tried,

K4n2GMh

1 but rather to have a settlement considered and approved on
2 notice to all the parties in interest, and I can't think of any
3 prejudice that any absent parties would have in connection with
4 their settlement being considered on both a preliminary and a
5 final basis by this Court as opposed to splitting it up so that
6 the bankruptcy settlement gets heard in a different court and
7 then the MDL settlement gets considered in this court.

8 Unless your Honor has any questions, I don't think
9 there is much more to add.

10 JUDGE FURMAN: Nope, I have no further questions. I
11 guess I should check and just make sure that no one else wishes
12 to be heard on this. Otherwise, I am prepared to at least tell
13 you what my ruling is going to be.

14 So upon review of the papers and hearing those
15 answers, I am prepared to grant the motion. Notwithstanding
16 the fact that it implicates core matters, I do agree that,
17 given the overlapping and intertwined nature of the claims
18 pending before the bankruptcy court and the claims in the MDL,
19 that it is more efficient and in aid of the settlement for me
20 to withdraw the reference and consider the Rule 23 motion with
21 respect to all of that, recognizing of course that if I denied
22 preliminary or final approval, then the settlement agreement
23 provides that the late-claims motions would be returned to a
24 bankruptcy court. So with that understanding, I find that
25 there is good cause to withdraw the reference, and I am

K4n2GMh

1 prepared to sign the proposed order or some substantially
2 similar version thereof and will do so after this hearing.

3 With that, let's proceed to the motion for preliminary
4 approval. Again, we will go in order of the questions and
5 issues framed by my order of yesterday, starting with question
6 one under the approval procedures category.

7 MS. GOING: Your Honor, Kristin Going on behalf of the
8 GUC Trust to answer the first question.

9 Your Honor is correct that entry of the final order
10 approving the GUC Trust motion, and you note correctly that,
11 pursuant to paragraph 141 of the settlement agreement, entry of
12 the order approving the GUC Trust motion is a condition
13 precedent to entry of an order preliminarily approving the
14 settlement, and your Honor has raised the question of what
15 happens in the event of an appeal of the GUC Trust approval
16 order. First, as your Honor just heard, there was only one
17 objection, thus we believe an appeal is unlikely, given that
18 the remaining objectors said they were not objecting to the
19 settlement itself but only speaking to preserve their rights.

20 That said, in the event that there was an appeal,
21 paragraph 141 of the settlement agreement also provides that
22 the occurrence of the GUC Trust approval order effective date,
23 which is a defined term, shall be a condition precedent to
24 entry of the final order unless it is waived in writing by both
25 new GM and the GUC Trust.

K4n2GMh

1 Furthermore, the GUC Trust approval order effective
2 date is defined in paragraph 31 of the settlement agreement to
3 be the date on which the GUC Trust approval order becomes a
4 final order, but paragraph 31 also goes on to provide three
5 options when, for purposes of this settlement agreement, the
6 GUC Trust approval order can be considered a final order.

7 And the third option in paragraph 31 is that the
8 GUC Trust approval order can become a final order for purposes
9 of the settlement agreement on any other date, if agreed upon
10 in writing by all plaintiffs' class counsel, new GM, and the
11 GUC Trust. Thus absent a state pending appeal, the parties in
12 settlement themselves can determine that the condition
13 precedent for entry of the final order has been met.

14 JUDGE FURMAN: All right. This is Judge Furman.
15 Thank you for that.

16 I think it is fair to say that withdrawal of AAT's
17 objection certainly takes the wind out of the sails of that
18 question a little bit, but it's certainly helpful to hear your
19 answer nonetheless.

20 With that, question two under approval procedures?

21 (Pause)

22 THE COURT: Who is addressing --

23 A VOICE: Your Honor, I thought we coordinated that.
24 Wendy Bloom was going to answer this one.

25 MS. BLOOM: Oh, I'm sorry. I thought Elizabeth was

K4n2GMh

1 answering it. This is Wendy Bloom. I am happy to answer.

2 So in question II.A.2, the Court is asking the legal
3 basis to require the class action settlement administrator to
4 file a declaration and list of opt-outs under seal and why the
5 parties should not be required to follow the court's standard
6 procedures for requesting to file something under appeal.

7 The parties have reexamined that aspect of the
8 settlement agreement in light of your Honor's question, and we
9 would propose this alternative to what was currently
10 contemplated, and that is that paragraph 28 of the proposed
11 preliminary approval order should be edited to provide that the
12 claims administrator will redact only such information as may
13 be redacted without court approval pursuant to paragraph 7(a)
14 of the court's individual rules and practices in civil cases.
15 We think that is necessary. It is the only thing that will be
16 necessary.

17 So in other words, we would envision that the list of
18 opt-outs would not include the personal identifying information
19 that we would be receiving, which includes current and former
20 addresses of those opt-outs and those VIN numbers, vehicle
21 identification numbers, of their vehicles, and we would simply
22 redact those pieces.

23 JUDGE FURMAN: All right. Thank you.

24 I think I may make it even more general and just say
25 that, you know, you would follow the standard operating

K4n2GMh

1 procedures for requesting that something be filed in redacted
2 form or under seal which contemplates already that personal
3 identifying information of the sort you described can be
4 redacted without court approval. If there are any other
5 proposed modifications of any of the proposed orders that
6 follow from today's proceeding, why don't you just e-mail those
7 to my chambers after today's proceeding so we can take stock of
8 your suggestions and incorporate, as appropriate. All right?

9 MS. BLOOM: Will do, your Honor.

10 JUDGE FURMAN: All right. Thank you.

11 With that, let's move to the class certification
12 section, question number one there.

13 MR. BERMAN: Steve Berman, your Honor.

14 With respect to your question, whether there are
15 salient conflicts, I would start by pointing the Court to what
16 I think the relevant case is, and that is the *In re: Payment*
17 *Card Interchange Antitrust Litigation*, 827 F.3d 223, 231. It's
18 a 2016 decision of the Second Circuit that says in order for
19 there to be a conflict that rises to the level of a problem, it
20 has to be, quote, fundamental, that goes to the very heart of
21 the litigation. And so then producing no fundamental conflict
22 going to the heart of the litigation by our having aggregated
23 within a subclass vehicles having the same defect remedied by
24 the same or similar recalls or, as another example, aggregating
25 both buyers and lessees who seek to recover under the same

K4n2GMh

1 benefit of the bargain as their adversary. So we don't see any
2 salient conflict.

3 But I would also point out, in answer to your
4 question, that the Second Circuit in the same case said that
5 conflicts can be addressed through the structural assurance of
6 fair and adequate representation from a diverse group of
7 individuals, and we think that we have done that here by the
8 appointment of independent class representatives and counsel
9 for each of the defects.

10 In addition, your Honor, I would point to two other
11 points on this conflict issue. You pointed out, rightly so,
12 that we were seeking to certify 23 groups and in the settlement
13 were reclassifying into five different groups, and I think a
14 blithering works case out of the Second Circuit held that there
15 are reasonable and logical limits to class Balkanization at the
16 allocation stage such that subclasses do not need to be created
17 for every material difference. And the Court went on to say
18 would be imprudent to require subclassing if it became
19 administratively burdensome. So when we were trying to put
20 together a settlement that we could administer, given the
21 millions of cars that are out there, we thought it made
22 administrative sense to group them the way we did.

23 I would also note, citing to the Court on this point,
24 *In re: Volkswagen "Clean Diesel" Litigation*, 895 F.3d 597, it's
25 a Ninth Circuit 2017 case, though the Court affirmed

K4n2GMh

1 certification of a single settlement class containing both
2 owners, lessees, and sellers of numerous models of Volkswagen
3 vehicles.

4 So then I pause there because I take it part of your
5 question deals with multistate laws, and I think I'm going to
6 get to that in a second because it even relates to questions
7 two and three, so I would like to go to question two unless you
8 have any questions on point one, your Honor.

9 JUDGE FURMAN: No. Why don't you continue, and then I
10 will follow up as needed.

11 MR. BERMAN: Okay.

12 So you asked can class representatives represent
13 claims arising under the laws of a different state, and I think
14 the answer to that is quite clear that they can. First of all,
15 I would cite to the Court -- and, your Honor, if you want, at
16 the end of my comments, I would be glad to e-mail any of these
17 citations to you, but there is a case called *Langan v. Johnson*
18 *& Johnson Consumer Companies*, 897 F.3d 88, 93. It's a Second
19 Circuit 2018 case. There, the Second Circuit said that "as
20 long as the main plaintiffs have standing to sue the main
21 defendants, any concern about whether it is proper for a class
22 to include out-of-state nonparty class members with claims
23 subject to different state laws is a question of predominance
24 under 23(b)(3) and not a question of adjudicatory's competence
25 under Article III." So we think the Second Circuit has

K4n2GMh

1 recognized that what we are doing here is proper.

2 In addition, I would cite the Court to *Hanlon v.*
3 *Chrysler Corp.* 150 F.3d 1011, it's a Ninth Circuit 1998 case,
4 where the Court affirmed the certification of a nationwide
5 settlement class, alleging the laws in all the states under
6 consumer protection statutes and held that "the idiosyncratic
7 differences between state consumer protection laws are not
8 sufficiently substantive to predominate over shared claims. "
9 And the Court went on to say that "although some class members
10 may possess differing remedies, based on state statute or common
11 law, they are not sufficient to deny class certification for
12 settlement purposes."

13 And likewise, your Honor, the Third Circuit, in
14 *Sullivan v. DB Investments, Inc.*, 667 F.3d 273 (3rd Cir. 2011),
15 also held that variations in the rights and remedies available
16 to injured class members under the various laws of the 50
17 states do not defeat commonality and predominance. And so
18 that's my answer to question two, your Honor.

19 JUDGE FURMAN: All right. Thank you.

20 MR. BERMAN: Question three, which kind of relates to
21 question two, there you asked us would new GM oppose class
22 certification on the grounds of reliance and causation and
23 various issues, and I started off by saying that new GM largely
24 raised these issues with respect to the predominance required
25 under Rule 23(b)(3); but in the settlement context, and I hope

K4n2GMh

1 I can point out to the Court very briefly, these issues are
2 decidedly less salient and there is ample authority to suggest
3 they do not prevent class certification in the settlement
4 context.

5 First I would start with the Supreme Court *Amchem*
6 decision where the Court held "the district court need not
7 inquire whether the case, if tried, would present intractable
8 management problems, for the proposal is that there will be no
9 trial." And so this issue came up precisely in the Ninth
10 Circuit in an *en banc* case, and I actually had the party here
11 arguing, and it's called *In re: Hyundai and Kia Fuel Economy*
12 *Litigation*. That's 926 F.3d at 560. And there, the Court
13 overturned a decision reversing approval of the class
14 settlement and the Court said that "even if any direct issues
15 such as reliance were present, they would primarily implicate
16 trial management issues, which we do not consider when
17 conducting a predominance analysis for a settlement class."

18 And likewise, your Honor, in a case called *In re: Am.*
19 *International Group Securities Litigation*, 689 F.3d 229 at 242
20 (2d Cir. 2012), the Court held there that "although reliance
21 issues may sometimes preclude certification of fraud-based
22 claims at trial, cannot stand in the way of certifying a
23 settlement class."

24 And given those authorities, we think that the
25 individual issues that GM raised in the litigation class are

K4n2GMh

1 not applicable here. That's my answer to number three, unless
2 your Honor has more questions.

3 THE COURT: All right. Thank you. Judge Furman
4 again.

5 I think I got all of the cites that you shared, but I
6 don't see any harm in having you e-mail them to my chambers
7 after the hearing today just to ensure.

8 More broadly, I would say, particularly with respect
9 to the intraclass or intrasubclass conflict type issues,
10 assuming that I grant preliminary approval, I would ask you to
11 make sure that you address that thoroughly in any papers
12 seeking final approval of the settlement. Taking seriously my
13 sort of fiduciary role with respect to class members, I think
14 that that's one of the more significant issues that I will need
15 to consider is just whether there is any intraclass conflicts
16 that pose an obstacle. But certainly you have addressed that
17 for purposes of today.

18 All right. With that, let's move to subsection (c),
19 terms of the class recovery and question one there.

20 MR. BERMAN: This is Steve Berman again, your Honor.

21 We think that the Court has wide discretion under Rule
22 23 to approve settlements that are fair, adequate, and
23 reasonable, and that it is fair, adequate, and reasonable here
24 that the bargain that was struck between new GM and the class
25 members is to have a recall/repair done. We don't see it as

K4n2GMh

1 compromising anyone's rights. Rather, it creates an incentive
2 that will persuade, hopefully, people who are driving dangerous
3 vehicles that have not been fixed to get them fixed for free
4 and, in turn, they can avail themselves of the benefit of the
5 settlement. This was an important term to new GM which we
6 agreed with to achieve the settlement. New GM does, as do we,
7 as an opportunity to further force and give effect to the
8 safety recall process initiated by NHTFA. And finally, there
9 is precedent for this. Settlements routinely require class
10 members to take action to obtain benefits such as filing a
11 claim or bringing in a car to a dealership to get repaired.
12 And in the recent *Takata Airbag Litigation* settlement, given
13 the airbag system repairs was a condition precedent to
14 receiving money benefits under the settlement. And I can give
15 you the citation. I think what I will do, your Honor, is there
16 is a link I can send to you, and I will just put the link in
17 the e-mail that I send to the Court with the previous
18 authorities that I have talked about if that's okay with the
19 Court.

20 JUDGE FURMAN: This is Judge Furman. That works for
21 me. And for the court reporter's benefit NHTFA is N-H-T-F-A.

22 One follow-up on that, I suppose there is a way in
23 which, putting aside the sort of public policy arguments in
24 favor of this provision that, in a sense, it increases GM's
25 exposure, if you will, in the settlement writ large, obviously

K4n2GMh

1 I suppose it has an obligation to pay for the repairs arising
2 from the recalls themselves, but on the theory that many of the
3 folks who might recover here might never have brought them in
4 for repairs, I suppose it may increase the cost that GM
5 ultimately has to bear. Is that something that should be
6 considered?

7 MR. GODFREY: Your Honor, this is Rick Godfrey for new
8 GM. Certainly every additional repair that is done pursuant to
9 the recall is provided free of charge by new GM to the
10 consumer, and those costs are significant. We don't know how
11 many people will claim or file and also seek the repair. But
12 if a significant number did, and we hope they do, then those
13 will be significant costs and benefits to the individuals
14 involved from a public safety and personal safety perspective,
15 I think, in answer to your question. I hope it does.

16 JUDGE FURMAN: Mr. Berman, did you want to add
17 anything?

18 MR. BERMAN: No, your Honor. We -- you know,
19 sometimes in these settlements the plaintiffs' lawyers try to
20 calculate what that benefit would be and then, you know, claim
21 additional fees based on that, and we are not doing that here.
22 But obviously the settlement will cost more than just the \$120
23 million that's the common fund.

24 JUDGE FURMAN: That's a good segue into the next
25 question which pertains to the fee application. Obviously the

K4n2GMh

1 application itself is not before me, but in evaluating when it
2 is before me, can you give me a rough sense of lodestar at this
3 stage?

4 MR. BERMAN: Yes, your Honor. At this stage our
5 unaudited lodestar exceeds \$125 million.

6 JUDGE FURMAN: Gotcha.

7 With that, let's move to the subsection D notice,
8 question number one.

9 MS. CABRASER: Yes, your Honor. Elizabeth Cabraser
10 for the economic loss plaintiffs responding to your questions
11 on notice.

12 The answer to question number one is yes. The notice
13 should make it very clear that the settlement does not affect
14 claims for personal injury, wrongful death, or property
15 damages. We propose the following language: "The settlement
16 will not include the release of any claims for personal injury,
17 wrongful death, or actual physical property damage arising from
18 an accident involving a subject vehicle," and we would add this
19 language to question four of the long form class notice, which
20 was Exhibit 5 of the submission.

21 And for the short form notice, Exhibit 11, the summary
22 settlement notice, Exhibit 12, and the initial press release,
23 Exhibit 16, we would add that language after the sentence that
24 states, "If you do not exclude yourselves and the settlement is
25 approved, you will be bound by the release, waiver, and

K4n2GMh

1 covenant not to sue." So that sentence will be qualified by
2 the clear statement, as you suggest, that the settlement will
3 not be releasing those personal injury and wrongful death
4 claims. And we will submit that language to your Honor today.

5 With respect to question two, whether the settlement
6 website need be separate from the MDL website, yes, the
7 websites will be separately maintained. The MDL website will
8 continue to provide ongoing information about the litigation
9 and the settlement, and it will include a link to the
10 settlement website. Indeed, the websites will be cross-linked.
11 So anyone going to one website can immediately link up to the
12 other.

13 JUDGE FURMAN: All right. Thank you very much.

14 On the proposed changes to the notices and press
15 release, that sounds good to me and makes sense. I think that
16 it probably makes sense, and we can circle back to this at the
17 end of the proceeding, but I would think that it makes sense to
18 actually file the revised versions of those on the docket just
19 so that they are part of the record and it is clear what is
20 being approved if I end up granting approval. But, again, we
21 can circle back --

22 MS. CABRASER: Yes, your Honor.

23 JUDGE FURMAN: -- circle back to that at the
24 conclusion.

25 All right. With that, Subsection E, claims procedures

K4n2GMh

1 question number one

2 MS. CABRASER: Yes. Elizabeth Cabraser again, your
3 Honor.

4 Paragraph 84 of the settlement agreement provides for
5 the final and binding nature of the settlement administrator's
6 decisions about class and subclass memberships. It isn't
7 unusual in class settlements to have an internalized appeals or
8 challenges procedure to settlement administrator decisions.
9 Otherwise, the district court and potentially the Court of
10 Appeals would be faced with numerous repetitive challenges to
11 what is intended to be a neutrally administered and final
12 settlement mechanism. So this is not an unusual provision of
13 the settlement agreement. In the *Volkswagen "Clean Diesel"*
14 case Mr. Berman cited to you, that was one of the futures of
15 the settlement approved by the district court and affirmed by
16 the Ninth Circuit with respect to an entire series of
17 settlements in that case. There was a review committee within
18 the settlement administration system and any appeals to class
19 membership, to compensation, etc., were considered and
20 determined in a binding way by that committee. Obviously, as
21 it would be here, it was under the general and ongoing
22 supervision and jurisdiction of the district court, but it was
23 clear in the notice and claims materials, as it is here, what
24 the process was, how we started that process, and where it
25 ended. And so particularly with a class that is this large, it

K4n2GMh

1 is a necessity of case and settlement management to have that
2 sort of an internalized process, and the courts have agreed
3 that it does comply with due process and is appropriate to the
4 nature of a settlement as a settlement.

5 JUDGE FURMAN: All right. Thank you. Question number
6 two?

7 MR. GODFREY: Your Honor, this is Rick Godfrey. I
8 believe Ms. Bloom is going to handle that.

9 MS. BLOOM: That's right. Ms. Bloom is now addressing
10 that question.

11 So, your Honor, in question (a)(2), is asking about
12 the settlement claim forms, and particularly the third row down
13 on the claim forms and what it is requiring. This caused the
14 parties to reexamine the settlement claim form, and there is an
15 edit that we would propose.

16 So the edit is based on the language of paragraph 82
17 of the settlement agreement, which provides the conditions to
18 settlement payment for those who have not received recall
19 repairs under a recall. Under that provision, it is only the
20 class member who is the current owner, purchaser, or lessee of
21 a subject vehicle who needs to establish that the recall
22 repairs have been performed. And so with respect to the third
23 row there and the fourth row, those pertain to a class member
24 who, if it did sell their vehicle after the notice goes out, is
25 no longer in possession of the vehicle. So in light of that,

K4n2GMh

1 the edit that we would propose -- there are a couple related to
2 this -- to the claim form is to delete row three entirely and
3 then in row four, which is talking about that occurrence, in
4 the column that is titled "Applicable Repairs Performed?"
5 instead of "No," we would insert there "Not Applicable." And
6 so what would be occurring, then, for class members who are
7 claiming that they sold the vehicle after the recall repair,
8 the issue then really is that the class action settlement
9 claims administrator will not have the information about that
10 because the Department of Motor Vehicles would have indicated
11 that this person currently owns the vehicle, and so really the
12 focus, then, should be on the documentation that will establish
13 that the vehicle is no longer in the possession, custody, or
14 control of that class member.

15 JUDGE FURMAN: All right. So just so I understand
16 what you are proposing, this is with respect to Docket No.
17 7015-9, is that correct?

18 MS. BLOOM: That is correct, and that is also -- the
19 settlement claim form is settlement agreement Exhibit 9 if you
20 are looking at it from, you know, just the documents itself,
21 the settlement agreement.

22 JUDGE FURMAN: All right. Thank you. I think that is
23 helpful and probably another thing that should just be filed on
24 the docket in whatever revised form that you are proposing.

25 All right. The next question is question number

K4n2GMh

1 three.

2 MS. BLOOM: Your Honor, I believe -- this is Wendy
3 Bloom again -- that I am on point for question number three.

4 Question number three, your Honor asks about the
5 definition of the term "Final Effective Date," and your Honor
6 notes that, under the settlement agreement, paragraph 24
7 provides the parties with authority to make that final
8 effective date be any date, and your observation is accurate
9 with respect to what paragraph 24 states with respect to
10 subpart (c).

11 What the parties were intending there is to provide an
12 option for the parties to agree, provided that it is in
13 writing, that the final effective date might be earlier than
14 the latest date on which the final order and final judgment
15 approving the settlement agreement become final, for example,
16 in the event that there is an appeal taken from the final order
17 and/or final judgment.

18 In light of this and your Honor's question, the
19 parties propose that if they propose to extend the final
20 effective date to any date later than the occurrence that is
21 listed in subpart (b) of paragraph 24, which is the date on
22 which all appeals taken from the final order and the final
23 judgment have been finally disposed of in a manner that affirms
24 the final order or final judgment in all respects, that any
25 such request would have to be subject to your Honor's

K4n2GMh

1 approval.

2 JUDGE FURMAN: All right. Is it your view that that
3 can be done without modifying the language of the settlement
4 agreement or is that something that can be addressed in a
5 pending order that I sign? I would assume so.

6 MS. BLOOM: Yes, your Honor, we agree. It could be
7 simply addressed in your order. However, because the parties
8 will be making amendments to the settlement agreement due to
9 our settlement with AAT, we would be happy to make this edit as
10 well if that's helpful or of interest to your Honor.

11 JUDGE FURMAN: I think that would probably make sense.
12 I would also ask that since you are going to be submitting
13 revised proposed language for paragraph 28, perhaps you can
14 confer amongst yourselves and submit a proposed modification or
15 language for the order that would address that issue and just
16 make it clear that Court approval is required under those
17 circumstances.

18 MS. BLOOM: We will do so.

19 JUDGE FURMAN: Great.

20 All right. With that, let's turn to question four.

21 MS. BLOOM: Okay. This is Wendy Bloom again. I am on
22 point, I believe, for question number four and question number
23 five.

24 So question number four, the Court is inquiring about
25 the process for an opt-out to identify that the opt-out is

K4n2GMh

1 opting out as compared to the process for a class member to
2 submit a claim in order to receive a settlement payment under
3 the settlement. Your Honor is correct that the options are
4 different.

5 In addition to mailing in a claim form, class members
6 have two options in addition to submitting their claim form.
7 One is they can attach it as a PDF to an e-mail and send that
8 to the class action settlement administrator. The other option
9 is they can electronically do so right at the website that will
10 be established, the settlement website.

11 A class member who wants to opt out is requested to do
12 so by mail. There are several reasons why we have decided to
13 put that in the settlement agreement, that the opt-out request
14 should be hand signed and mailed, three reasons, really. The
15 first is to prevent confusion of false positives. In the
16 experience of the class action settlement administrator, if the
17 settlement website offers both the option to have an opt-out
18 form and also make the claim, there will be people who choose
19 to do both, and this will then create a distorted picture of
20 more opt-outs than is in fact the case.

21 There are cases which find that this reason of trying
22 to prevent confusion makes sense for treating opt-outs
23 differently with respect to how they would submit their form.
24 Two cases that address this issue are *In re: Domestic Air*
25 *Transportation Antitrust Litigation*, 141 F.R.D. 534, 554

K4n2GMh

1 (N.D.Ga. 1992). Another is *Roberts v. Heim*, 130 F.R.D. 416,
2 423 (N.D.Ca. 1988).

3 The second reason that the parties did this is that to
4 have the additional options for the opt-outs would increase the
5 cost of settlement administration in order to address the false
6 positives and then decrease, then, the funds that would go
7 toward settlement payments.

8 The third reason is that new GM felt it was important
9 to have handwritten signatures in order to prevent fraud and
10 mass submissions of opt-outs by unauthorized persons. So that
11 was a driving consideration.

12 That being said, if the Court prefers some other
13 options, the parties are certainly open to those options,
14 whether it be a downloadable opt-out form on the website or a
15 means for opt-outs to make their request via e-mail or website.
16 However, we do prefer the option that we have set forth in the
17 settlement agreement for the reasons stated.

18 JUDGE FURMAN: All right. Thank you. I will ponder
19 that. I think in general I am of the view that the procedures
20 for somebody to opt out shouldn't be -- the transaction costs
21 shouldn't be that much greater to opt out than to submit a
22 claim on the theory that that can affect the decision in and of
23 itself and shouldn't be a thumb on the scale.

24 Having said that, I recognize that the reasons you
25 have proffered certainly are valid ones and things that I think

K4n2GMh

1 should be addressed, and in particular that should be taken to
2 mitigate or reduce the number of false positives. Let me think
3 about it. I am inclined to think that it may make sense to
4 still require it to be mailed in, but there might be ways to
5 make it a little bit easier to have a downloadable and
6 printable form, for instance, and make the address a little bit
7 more obvious than may be an option that requires wholesale
8 revision of anything, but I will think about it and address it
9 in any order if I go that route.

10 That does dovetail with question number five, which I
11 think, Ms. Bloom, you said you were addressing as well?

12 MS. BLOOM: That's right. So Ms. Bloom again.

13 The question number five is asking whether the claim
14 form and/or an opt-out form might be fillable and submittable
15 online. I would point out that the settlement claim form is
16 indeed fillable and submittable online once the parties have
17 that up and running.

18 So if your Honor looks at Exhibit 9 of the settlement
19 agreement, which is the settlement claim form, and that is the
20 same document that we referenced before, where we are making
21 edits, so I could go back and find that number if you need it,
22 but the claim form identifies as the third option that you can
23 submit the form electronically at the settlement website and in
24 fact encourages folks to do so. So with respect to settlement
25 claim form, we do have that option.

K4n2GMh

1 And then with respect to opting out, you are exactly
2 right. The answer here is dovetailing because it is the same
3 three reasons that we did not make that option available for
4 opt-outs -- confusion and false positives, increasing
5 administrative costs, and in order to avoid fraud.

6 JUDGE FURMAN: All right. And maybe that was just a
7 misunderstanding on my part. I had understood that electronic
8 submission would be essentially of a PDF document that was
9 filled in, scanned, or printed, or what have you, and then
10 submitted electronically through the website. But is it
11 actually the form is on the website and it would be filled in
12 and then you just click and submit it?

13 MS. BLOOM: Yes. And you may have some confusion
14 because, as I was reviewing some portions of the settlement
15 agreement in order to prepare for your Honor's question, it is
16 not entirely clear in some portions that that is what the
17 parties intended. However, by the time we got to working with
18 our class action settlement administrator and actually
19 finalizing our settlement claim form, we all identified that we
20 thought it would be possible to do a fillable form, and the
21 idea will be that there may be many class members where, as
22 they start to provide some information on the form, the form
23 may be able to self-populate to make the ease of filling out
24 that form, you know, even more efficient for the class member
25 because we may have obtained from the Department of Motor

K4n2GMh

1 Vehicles their address information. We may, if they are able
2 to provide, say, their VIN, we may have their information or
3 vice versa, you know. So that is the idea that they will be
4 able to fill out the form directly into the website with
5 activation of databases that are behind the scenes.

6 JUDGE FURMAN: Great. I'm glad to hear that. In 2020
7 it seems like coming up with ways of making it easier so that
8 these things should be readily available, and it sounds like
9 you are on that. Sounds great.

10 We are coming close to the end, but I want to circle
11 back just quickly to follow up on your answer to the final
12 effective date and question number three, because I think maybe
13 I missed this. But I think you said that you were open to or
14 prepared to revise it to make it subject to court approval if
15 the final effective date were pushed later than the final
16 resolution of any appeals, etc.? I guess my question is, under
17 the terms of paragraph 24, I think you could agree upon an
18 earlier date which would presumably have implications for the
19 deadline to submit any claims. Why shouldn't court approval be
20 required for any agreement among the relevant parties to change
21 that date?

22 MS. BLOOM: I suppose, your Honor, that we would be
23 happy to do so as well. We didn't think there would be
24 prejudice if the parties agree to allow the settlement to
25 proceed even if there is not a final approval and the appeal is

K4n2GMh

1 ongoing. Rather, that might be a benefit. However we would
2 absolutely be happy to have that subpart (c) work such that if
3 the parties are trying to do something different than what is
4 in (a) and (b), we would seek court approval.

5 JUDGE FURMAN: All right. I think that makes sense.
6 Again, just recognizing my fiduciary role *vis-à-vis* claimants
7 and absentee class members, I think any change beyond those
8 that are set forth in the agreement and that date probably does
9 make sense to just make it subject to my approval. So, again,
10 you can submit proposed language for the order on that score
11 and revised language of paragraph 24 in the revised settlement
12 agreement that will be forthcoming.

13 With that, we can move to the final section, the
14 miscellaneous section F and question number one there.

15 MS. CABRASER: Yes, your Honor. Elizabeth Cabraser on
16 miscellaneous duty.

17 Miscellaneous question one points out a gap in
18 paragraph 44 of the proposed preliminary order. We agree with
19 the Court and we propose to fill that gap by submitting a
20 revised order which includes the addition of the language or a
21 breach of the settlement agreement to paragraph 44, so that it
22 ensures the intent of the parties that this Court have
23 exclusive jurisdiction over the settlement approval process to
24 effectuate the requirements of Rule 23(e) so that any
25 challenge, including a challenge to a breach of the settlement

K4n2GMh

1 agreement, which is the added language, would tack on to the
2 end of paragraph 44, would be in this court and not any other
3 court.

4 JUDGE FURMAN: All right. That makes sense to me.
5 Very good.

6 And then question number two, are you also on tap for
7 that, Ms. Cabraser?

8 MS. CABRASER: I believe that is Ms. Going.

9 MS. GOING: Yes, your Honor. Kristin Going, on behalf
10 of the GUC Trust, to answer the final question regarding the
11 effect of the settlement agreement on the Elliott appeal, which
12 is docketed at 19-CV-5666.

13 Your Honor, the settlement agreement holds now and if
14 final approval is granted has no impact on this Elliott
15 bankruptcy appeal. It can be confusing because these
16 individuals, the Elliotts, actually own two different General
17 Motors vehicles. One is a Chevy Cobalt, which is not
18 implicated in the appeal question; and then they also own a
19 Chevy Trailblazer, which is the subject of the litigation in
20 the appeal.

21 The Elliott appeal relates to their attempt to file
22 claims in the bankruptcy on account of damages that they allege
23 occurred as a result of defects in their Chevy Trailblazer.
24 The Chevy Trailblazer is not one of the subject vehicles as
25 that term is defined in paragraph 70 of the settlement

K4n2GMh

1 agreement, and the claims that the Elliotts have alleged in the
2 litigation regarding the Chevy Trailblazer are not being
3 settled under this settlement agreement.

4 JUDGE FURMAN: I'm not sure I understand what that
5 means for purposes of the pending appeal. In your view, it has
6 no bearing on the pending appeal?

7 MS. GOING: That's right, your Honor. It is our view
8 that the appeal can be decided and it is separate and apart
9 from the current settlement agreement. I would liken the late
10 claims litigation that is the subject of that appeal is no
11 different than any other party that has sought to file a late
12 claim against the GUC Trust over the years. I think -- I had
13 assumed your question stemmed from some confusion that may
14 arise because of the fact that the vehicle in their claim
15 motion happened to be a GM vehicle, but it is separate and
16 apart from the admission switch defects and the nonadmission
17 switch defects in the economic loss plaintiffs that are being
18 settled here.

19 JUDGE FURMAN: All right. Great. Thank you. That's
20 helpful.

21 So that concludes the issues in question and questions
22 that I had flagged, and I appreciate your organization in
23 identifying folks to address each of them. I think it
24 certainly facilitated this hearing.

25 I will just confirm that no one has anything else that

K4n2GMh

1 they wish to say before we bring things to a close. I had
2 promised the court reporter that we would take a break at noon
3 if we aren't done, so our timing is perfect if we don't have
4 any other ground to cover. But let me, I guess I will go
5 through the list of those participating so as to avoid folks
6 speaking over each other, but I will go down the list.

7 So starting with the economic loss plaintiffs,
8 Mr. Berman, I will call on you. Anything else to add?

9 MR. BERMAN: Nothing to add, your Honor.

10 JUDGE FURMAN: All right.

11 Mr. Hilliard?

12 MR. HILLIARD: Nothing to add, Judge. Thank you.

13 JUDGE FURMAN: All right.

14 Mr. Godfrey?

15 MR. GODFREY: Your Honors, nothing to add. I thank
16 your Honors, Judge Furman and Judge Glenn, for your time under
17 such challenging circumstances. Thank you very much.

18 JUDGE FURMAN: All right.

19 Ms. Going?

20 MS. GOING: The GUC Trust has nothing to add, your
21 Honor.

22 JUDGE FURMAN: Mr. Zensky?

23 MR. ZENSKY: Nothing further, your Honor. Thank you.

24
25 JUDGE FURMAN: All right. I suppose I will ask

K4n2GMh

1 Mr. Fisher --

2 MR. FISHER: Your Honor, very briefly --

3 THE COURT: -- if you are still on the line.

4 MR. FISHER: Yes, I am.

5 -- very briefly, on behalf of the AAT, I am directed
6 to Judge Glenn in terms of next steps. We appreciate the
7 opportunity to bring the anticipated AAT 9019 motion on short
8 notice and we will plan to proceed accordingly; and, relatedly,
9 we will plan to submit to the Court the AAT pending
10 distribution order for entry now that the objections have been
11 withdrawn.

12 JUDGE GLENN: Thank you very much, Mr. Fisher. I am
13 certainly prepared to enter the distribution order and hear the
14 9019 on the schedule that I indicated earlier. Thank you very
15 much.

16 JUDGE FURMAN: All right. This is Judge Furman again.
17 Ms. Norman, anything?

18 MS. NORMAN: Nothing further from me, your Honor.
19 Thank you.

20 JUDGE FURMAN: Mr. Jones?

21 MR. JONES: Nothing further, your Honor. Thank you.

22 JUDGE FURMAN: Mr. Schein?

23 MR. SCHEIN: Nothing further, your Honor. Thank you.

24 JUDGE FURMAN: All right. Great. So let me close.

25 First of all, I am prepared to grant preliminary

K4n2GMh

1 approval to the settlement writ large. Obviously I can't do
2 that until Judge Glenn enters an order substantially in the
3 form that it has been submitted to him since that's a condition
4 precedent. Also I'm going to wait until I get the proposed
5 revised language I think as to paragraph 28 and 44, and maybe
6 there were some others, and I also would ask that you file on
7 the docket the proposed revisions that you have articulated to
8 the notices, press releases, and the claim forms that you have
9 discussed in the course of today's proceedings. The proposed
10 changes to the proposed order you could submit just informally
11 by e-mail to chambers, but, again, the notices, claims forms,
12 and press releases, I would ask that you docket on ECF so they
13 are part of the public record. And once that is done, we have
14 the revised language, and Judge Glenn enters an order that
15 satisfies the condition precedent, I am prepared to grant
16 approval, preliminary approval, obviously, that is. I would,
17 again, ask that the one issue that I flagged in particular,
18 that you make a point of addressing that in any final approval
19 papers when that time comes.

20 While we are at it, I was inclined, assuming that all
21 that happened in quick order, I had proposed December 18 at
22 9:30 in the morning as a date and time for a fairness hearing.
23 I suppose I can quickly run through -- well, you know what I
24 will do, just to make this easier, is if those who would have
25 to attend that hearing, if you could just confirm by e-mail

K4n2GMh

1 with my chambers if that date and time works for you, that
2 might be the easiest way of coordinating that. So, again,
3 December 18 of this year at 9:30 a.m. I would say God willing
4 or other things willing that would be in person in my
5 courtroom. I sure hope that we are in a position to be
6 together in person at that time, but obviously that is subject
7 to seeing where the world stands at that stage. So, again,
8 December 18 at 9:30 a.m. Please let me know if that time works
9 or is a problem. If it is a problem, then we will revise it
10 accordingly.

11 With that, let me close and then I will check with
12 Judge Glenn to see if he has any final words as well. But
13 first of all, again, my thanks to everyone both for the hard
14 work that you have put in to the submissions that you made,
15 including those late last night, which certainly made our jobs
16 much easier. It goes without saying, but should be said that
17 the litigation -- I could speak for the litigation before me --
18 has been long and complicated and but for a settlement would
19 presumably be even longer and more complicated. I have
20 benefited tremendously throughout that litigation from the
21 quality and devotion of counsel, and today is no exception, and
22 your motion papers in leading up to today are no exception, and
23 I thank you all for that.

24 I also thank you all for allowing us to do this
25 remotely. It is good fortune that, notwithstanding what's

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1 going on in the world, we can continue to move things forward
2 and keep the courts open by proceeding in these kinds of ways,
3 and I think it is a benefit to counsel and to the parties
4 ultimately and class members that we are able to do that.

5 I apologize for the technical problems that we had
6 earlier, and I would ask you again if you could just informally
7 provide some feedback to my chambers with respect to what
8 problems you had. It would be helpful in doing this going
9 forward just for us to be able to troubleshoot those things.

10 And with that, let me close by just again thanking
11 everybody and also wishing everybody good health and safety,
12 given everything that's going on today.

13 Judge Glenn, anything you want to say?

14 JUDGE GLENN: No. I want to thank everybody. I
15 particularly appreciate that GUC Trust and AAT and new GM were
16 able to reach a compromise. It enabled us to go forward here
17 today, and I look forward to see that 9019. So thank you to
18 all counsel. And we have a Word copy of the revised order
19 approving the GUC Trust motion that will be entered today.

20 Thank you very much.

21 JUDGE FURMAN: All right. And as I said, I promised
22 the court reporter to take a break at noon if we were still
23 going. My clock literally just changed to noon. So with that,
24 I am pleased to say that we are adjourned, and I thank
25 everybody and, again, wish you all good health and safety.

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Thank you very much.

COUNSEL: Thank you, Judge.

COUNSEL: Thank you, your Honor.

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