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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
2 -----x

3 In re GENERAL MOTORS LLC
IGNITION SWITCH LITIGATION 14 MD 2543 (JMF)
4 -----x
5

New York, N.Y.
July 28, 2016
9:35 a.m.

6
7
8 Before:

9 HON. JESSE M. FURMAN,

District Judge

10
11 APPEARANCES

12 HAGENS BERMAN SOBOL SHAPIRO LLP
13 Co-Lead Plaintiff Counsel
BY: STEVE W. BERMAN

14 -and-

LIEFF CABRASER HEIMANN & BERNSTEIN LLP
15 BY: ELIZABETH J. CABRASER

-and-

16 HILLIARD MUNOZ GONZALEZ LLP
BY: ROBERT C. HILLIARD

17 -and-

MARJORIE CREAMER, Plaintiff Pro Se

18 GARY PELLER, ESQ.
19 Plaintiff Counsel

20 KIRKLAND & ELLIS LLP
Attorneys for Defendant

21 BY: ROBERT C. BROCK
ANDREW B. BLOOMER
22 RICHARD C. GODFREY
ALLAN PIXTON
23 RENEE D. SMITH
HARIKLIA KARIS
24
25

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1 (Case called)

2 MR. HILLIARD: Good morning, your Honor, Bob Hilliard.

3 MR. BERMAN: Good morning, your Honor, Steve Berman.

4 MS. CABRASER: Good morning, your Honor, Elizabeth
5 Cabraser. We are all for plaintiffs.

6 MS. CREAMER: Marjorie Creamer.

7 THE COURT: Good morning.

8 MR. GODFREY: Good morning, your Honor, Rick Godfrey
9 for New GM with Mr. Pixton, Mr. Bloomer, Mr. Brock, and Ms.
10 Karis.

11 THE COURT: Good morning.

12 MR. BROCK: Renee Smith is also here for us, and she
13 may speak, depending on the issue that has come up.

14 THE COURT: Ms. Creamer, I gather you are an
15 unrepresented plaintiff. I think this case was consolidated
16 into the MDL a couple of months ago, if I'm not mistaken. Is
17 that correct?

18 MS. CREAMER: It was. Does that mean I'm in?

19 THE COURT: If you could provide the microphone, that
20 would be great.

21 MS. CREAMER: Would you say that again, your Honor.

22 THE COURT: Sure. My understanding is that you are a
23 plaintiff in a case that is part of this proceeding, but you
24 don't have a lawyer, is that correct?

25 MS. CREAMER: Correct.

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1 THE COURT: I am going to ask you to sit in the back
2 in a moment and you're welcome to attend and watch the
3 proceeding. These lawyers have been appointed as the lead
4 counsel to basically represent all of the plaintiffs in this
5 case for purposes of the coordinated proceedings. That being
6 said, you have certain obligations and things that you'll need
7 to do in connection with your case.

8 What I will do is issue an order and have it mailed to
9 you to explain some of that. I'm also going to ask you to file
10 a motion that would allow you to participate in the electronic
11 case filing system, which is an electronic system online that
12 basically would allow you to keep track of proceedings in the
13 case and decisions that I make and orders that are entered so
14 that you can monitor that and make sure that you do what you
15 need to do in connection with your case.

16 For now, Ms. Cabraser, Mr. Berman and Mr. Hilliard
17 will do the speaking. For today's purposes, you're certainly
18 welcome to stay and watch. Again, you don't have your own
19 lawyer, so you will need to make sure you need to what you need
20 to do with your own case, but they represent all the interests
21 of the plaintiff generally.

22 MS. CREAMER: Your Honor, I sent them all my material,
23 though. I sent them everything. I sent the form to be
24 represented by them and also my medical.

25 THE COURT: Let's not focus on that now because the

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1 things that we are doing today are sort of bigger-picture
2 issues that affect many, many cases.

3 MS. CREAMER: I will get a hearing date. You will
4 mail everything to me, like you do the regular attorneys so --

5 THE COURT: There is no hearing date. What I will do
6 is, I am going to issue an order and I will have it mailed to
7 you that explains certain things that you need to know and
8 certain things that I am going to ask you to do to make sure
9 that you can keep track of what's going on in the litigation.

10 The bottom line is, right now your case is one of
11 many, many, many cases in these proceedings and so the things
12 that are happening in the proceedings will benefit your case in
13 the sense that they will move your case forward. But your case
14 isn't scheduled for trial. There is no hearing for your case
15 in particular. It's sort of part of these larger proceedings.

16 Again, I am going to ask you to just sit in the back.
17 You can listen. My guess is, much of what we will discuss
18 today you won't really understand or know what's going on
19 because there have been a lot of things going on in this case.
20 But hopefully lead counsel, Mr. Hilliard over there, is lead
21 counsel with primary responsibility for personal injury and
22 wrongful death cases.

23 Mr. Hilliard.

24 MS. CREAMER: Can I ask my question.

25 THE COURT: Not just yet, please. If I could ask you,

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1 Mr. Hilliard, you obviously don't represent Ms. Creamer. But
2 if you could, as a courtesy to the Court, provide her with some
3 guidance and assistance to make sure she is aware of where
4 things stand and what she needs to do and the like, that would
5 be terrific.

6 MR. HILLIARD: Happy to do so, Judge. We became aware
7 of Ms. Creamer. We visited with her briefly before the
8 hearing. My legal assistant is here today, Lauren Gomez, who
9 will visit with Ms. Creamer again. We did review with her her
10 plaintiff's fact sheet and her plaintiff's original petition,
11 but we will do it all again to assist her, not only from the
12 Court's direction, but to make sure it helps.

13 MS. CREAMER: Your Honor, I found your 74 pages of an
14 order you wrote or it was put together by you on July 13.

15 THE COURT: No. That was the Court of Appeals for the
16 Second Circuit issued that decision.

17 MS. CREAMER: I read that and page 18 is exactly what
18 happened to me where the teenagers died, but I'm alive.

19 THE COURT: Ms. Creamer, again, I will issue an order
20 that directs you to do certain things and make sure that things
21 are brought to your attention. Mr. Hilliard has graciously
22 agreed to talk with you and provide you with some guidance and
23 assistance as well, and hopefully between those two things
24 you'll certainly have an understanding of what you need to do
25 and also where things stand in the litigation. I certainly

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1 understand your case is now part of this proceeding.

2 MS. CREAMER: I have a severe brain injury. I have a
3 TBI.

4 THE COURT: Ms. Creamer, I am going ask you to step to
5 the back now so we can continue with the rest of the
6 proceeding. Again, I'll issue an order and have it sent to
7 you. Thank you.

8 Counsel, we are on CourtCall, is my understanding.
9 Just as a reminder to remember to speak into the microphones.
10 And we will pick up with the agenda letter that I endorsed the
11 other day.

12 First, is the fourth amended consolidated complaint, I
13 granted the extension request in my endorsement, so that's
14 taken care of. Mr. Peller, who is here, I see, filed a letter
15 in which he made clear that he was not intending to seek or not
16 intending to file a motion to withdraw the reference, but did
17 ask me to direct lead counsel to confer with nonleadership
18 counsel regarding claims, particularly non-ignition switch
19 claims, and also whether to seek remand of certain cases,
20 depending on how things go, I suppose, in the fourth amended
21 consolidated complaint.

22 Mr. Berman, I assume that you will follow some
23 procedure along the lines of what you did in the past with
24 respect to consulting with other counsel in drafting and filing
25 the fourth amended consolidated complaint. Is that correct?

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1 MR. BERMAN: I had not thought about that. The
2 reach-out we did last time was extensive and nationwide. We
3 did talk with Mr. Peller this morning. We indicated we would
4 like his input on what other defects that might be part of the
5 fourth amended complaint. We will consider that. And we also
6 discussed the issue of, to the extent we decide not to include
7 some defects. And there is a lot of strategic reasons why we
8 would not include many of them, in my view.

9 What happens to those claims? Do they get remanded
10 back and are no longer part of the MDL? That's a discussion
11 that I think we need to have not only with the other
12 plaintiff's lawyers, but with GM. Perhaps after we file the
13 complaint and everyone sees what it is and before the next
14 status conference.

15 THE COURT: That all makes sense to me. I should
16 clarify. I don't mean to suggest that you need to follow the
17 same or as thorough as a procedure with respect to consulting
18 other counsel before filing the amended complaint. But I do
19 think it's in your interests as much as it is in the interests
20 of a smooth process for you to reach out and at least provide
21 an opportunity to be heard to other counsel, just to ensure
22 that their views and thoughts are taken into consideration, and
23 then you can -- I'll leave the process to you, but I would
24 encourage you to give other counsel an opportunity to be heard.

25 I also think your point and Mr. Peller's point is well

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1 taken that it does pay to think about the implications of what
2 defects are left out of any amended complaint. I think it's
3 premature to talk about it because at least I don't know yet
4 which those are, but I think it will certainly be an issue that
5 we should think through and you should all confer on, and we
6 should be prepared to address perhaps on September 7, I think,
7 is the next conference, but certainly sooner rather than later.

8 I am going to think out loud here. It's always a
9 little dangerous. I think my inclination is, if there are
10 complaints that are limited to defects that are not alleged in
11 the fourth amended consolidated complaint and unless there is a
12 compelling reason to keep them as part of this MDL, I think
13 there might be a strong argument for remanding those.

14 I think what might be more complicated, and this is
15 where the JPML and I have perhaps evolved over time and had
16 confronted some difficult issues, is what to do about
17 complaints that include an ignition switch defect or a defect
18 that is contained in the fourth amended consolidated complaint
19 as well as defects that aren't.

20 And if those are going to stay, then does that counsel
21 in favor of keeping ones that only allege -- in other words, if
22 we have some that bootstrap other defects in, does it then mean
23 that we should have complaints that only have those defects. I
24 think those are the kinds of things to think through and for
25 you all to discuss. I think I'll leave it there for now and we

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1 will talk more about that in due course. Sound good?

2 MR. BERMAN: Sounds good, your Honor.

3 THE COURT: Anything else to discuss on the fourth
4 amended consolidated complaint front?

5 MR. BERMAN: I'm thinking of the timing because the
6 complaint is due on September 13 and you said the next status
7 is on the 7th. We will be discussing these defects before we
8 have actually filed the complaint. I suppose if we don't know
9 a week before which defects are in, then we have got some
10 trouble on our side.

11 THE COURT: I wasn't thinking through the schedule
12 when I said that. It may be that we can't talk about these
13 things on September 7. I didn't mean to suggest that we needed
14 to or that that had to be the date we did. I don't think we
15 have a conference scheduled for after September 7, but I think
16 that's one item that we should address today. I imagine that
17 it would make sense to have one maybe in October, after the
18 next bellwether and after the fourth amended consolidated
19 complaint is filed, so we can begin to work through some of
20 these issues. But we can get there in due course.

21 Yes, Mr. Godfrey.

22 MR. GODFREY: I was simply going to say that I
23 appreciate your Honor identifying the issues to be discussed,
24 but I think it is premature to draw even any tentative
25 conclusions about what the appropriate course should be.

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1 The notion that the plaintiffs can bring the omnibus
2 dissolving the class action complaint, then be confronted with
3 the July 15 motion to dismiss ruling and then, as a tactic,
4 atomize the complaint so it's spread to the four winds is not
5 something that strikes me as neither efficient or appropriate.
6 But I will be anxious to see what they are proposing and I
7 would reserve judgment on that. But I at least would like to
8 identify for the Court that this is a much more complicated
9 issue from a matter of judicial efficiency and finality.

10 THE COURT: I think that's true of almost everything
11 in this case. I think your point is well taken, which is
12 simply that it's premature to really get into the particulars
13 here, so let's defer it until later. Anything else on the
14 FACCC, I'll call it for convenience?

15 MR. HILLIARD: May I put this on the Court's radar
16 with regard to this topic. There is also personal injury and
17 death cases that we are identifying and we will present to the
18 Court at that hearing, whenever it is, that are either non-ISD
19 or they are a hybrid of ISD and non-ISD defects that have been
20 inside this MDL, consolidated inside this MDL, and my hope is I
21 will have a list of both when the accident occurred and the
22 types of defects to you, but I want to just make you aware, on
23 your radar, nothing to address today, that it's not just an
24 economic loss.

25 THE COURT: That's a good thing to put on my radar. I

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1 guess here is my thinking, which is just thinking through the
2 timing here. If the FACC is filed on September 13, obviously,
3 those few weeks I'll be preoccupied with trial, as will some of
4 you, but I think it would make sense to have you confer in
5 those weeks about these issues so that we can discuss them at a
6 conference to be scheduled some time in October. And I think
7 it would be ideal, if it's feasible, for you to confer and then
8 file something with me telling me where the parties stand and
9 what you agree on or disagree on so that we can have a more
10 informed and concrete discussion at that conference, all of
11 which to say is, I don't want to defer it all to that
12 conference and then at that conference direct you to confer and
13 file things.

14 I think it would make sense, knowing that the FACC is
15 coming down the pike, to have you confer in advance of the
16 conference and file something indicating your respective
17 positions.

18 Why don't we take things out of order and talk about
19 when that conference could take place and maybe we could work
20 backwards from there. If the next bellwether starts on
21 September 12 -- I should say not if. It starts on the 12th.
22 Could we have a status conference on Friday, October 14?

23 MS. CABRASER: That works for plaintiffs, your Honor.

24 THE COURT: Please say it works, Mr. Godfrey.

25 MR. GODFREY: My son is getting married here in New

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1 York City on the 15th and I'm the host the night of the 14th
2 for the groom's family's reception, dinner. I'm wondering if
3 we could do it the 13th maybe. I have this little fear that
4 that day I might be a little bit cooccupied.

5 THE COURT: I can do it the 13th with the
6 understanding that I will have been fasting for 25 hours before
7 it and, therefore, it might be a little bit shorter than it
8 normally would be.

9 Plaintiff's counsel.

10 MR. BERMAN: What day is the holiday, your Honor?

11 THE COURT: Yom Kippur is the 12th, ends on sundown on
12 the 12th.

13 MR. BERMAN: I can't travel on the 12th. I can take a
14 redevye.

15 MR. GODFREY: Is there a possibility, the following
16 Monday?

17 THE COURT: No. Because that's a different Jewish
18 holiday.

19 MR. GODFREY: I should know this. You are right. The
20 14th. We will make it work.

21 THE COURT: I feel bad doing that to you.
22 Congratulations on your son's wedding and I would like you to
23 be able to celebrate that without distraction. If we did the
24 afternoon of the 13th, would that perhaps split the difference?
25 I will be well fed by that point.

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1 MS. CABRASER: That will work for us, your Honor.

2 MR. GODFREY: That works for us, your Honor.

3 MS. CABRASER: That gives us time to recoup from the
4 redevye.

5 THE COURT: Mr. Berman.

6 MR. BERMAN: Yes, sir.

7 THE COURT: Why don't we say 2:00 on October 13.

8 MR. GODFREY: Thank you, your Honor. My family and I
9 greatly appreciate it.

10 THE COURT: If we have the conference on October 13
11 and the FACC is filed on September 13, could I ask you guys to
12 confer on essentially these issues, the remand issues -- I
13 think, as we will discuss, there are going to be a lot of
14 issues that need to be deferred until after the filing of the
15 FACC. I'll tell you what. Why don't we defer on what you need
16 to file when you need to file it until we sort of have a better
17 handle on that. I think it makes sense to have you guys to
18 confer weeks after the FACC is filed and a week or so before
19 the conference submit something with respect to your positions
20 on how we should proceed and what it means and all that.

21 Next item on the agenda is the impact of the Second
22 Circuit's July 13 decision on economic loss claims. Sort of
23 consistent with what I just mentioned, I think my general view,
24 and this is probably going to be a bit of a theme, is that we
25 shouldn't do a whole lot right now, that I think we need to

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1 wait. And I think both sides have to use one of Mr. Godfrey's
2 favorite phrases, laid down their markers in the agenda letter,
3 but I am inclined to think that we need to wait until we see
4 what claims are and aren't asserted in the FACC and also what
5 other moves are made and how other courts and the like respond
6 to them before we really start to figure out what the thing
7 means. I think that the FACC will be probably the biggest
8 development in that regard in help inform our discussions.

9 There is a couple of things. First, if I'm not
10 mistaken, yesterday was the deadline for any petition for
11 rehearing in the Second Circuit. I'm assuming that one was
12 filed.

13 MR. GODFREY: No. The day before, your Honor, the
14 Second Circuit granted us a 14-day extension. Our due date is
15 now August 10. We will be filing it August 10 or before that
16 date, but certainly by August 10, New GM will be filing its
17 petition for a rehearing and rehearing en banc.

18 THE COURT: You should obviously keep me apprised of
19 what happens on that front and I may learn anyway. But let me
20 know promptly.

21 MR. GODFREY: We will do so, your Honor.

22 THE COURT: One question for you, Mr. Godfrey. In the
23 agenda letter lead counsel indicates its view that in the
24 Second Circuit's terminology nonignition switch, quote/unquote,
25 includes other ignition switch recalls that were issued later

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1 in 2014, that is, ignition switch recalls that are not what we
2 have described in this proceeding, as delta ignition switch
3 recalls. Is that your understanding or are you in agreement
4 with that?

5 MR. GODFREY: That is one way to read the opinion, but
6 I am not sure we are in agreement with that, your Honor.

7 THE COURT: Is that an issue that would ultimately be
8 for me to decide or presumably Judge Glenn in the first
9 instance.

10 MR. GODFREY: I think we would prefer to have guidance
11 from the Second Circuit first and then we will proceed
12 accordingly, but I think it's probably going to be from Judge
13 Glenn to decide. We will see how it turns out. I think at
14 this time we are focused on the petition for rehearing and we
15 are working through the issues. It's not a clear question in
16 the sense that depending on what the Second Circuit does on the
17 petition for rehearing, it may or may not be something that we
18 have to worry about.

19 THE COURT: That is certainly true. Right now I'm
20 operating on the assumption that the Second Circuit's ruling
21 will stand.

22 MR. GODFREY: I understand that, your Honor, and we
23 are working through the issues and I guess I would say that
24 this is one of the issues we are working through. But we put
25 the focus of our energies in the last two weeks on the petition

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1 for rehearing.

2 THE COURT: I would say generally obviously the
3 circuit's decision heightens or renews the need for
4 coordination with the bankruptcy court, all of which is to say,
5 I will expect that you guys will keep me comprised of
6 developments there and I will communicate with Judge Glenn as
7 appropriate just to make sure that we are not stepping on each
8 other's toes procedurally.

9 I should say I may have already disclosed this, in
10 which case I apologize for repeating myself, in the interests
11 of transparency, I think I've tried to be transparent to my
12 connection to folks involved in this. I do want to say, it is
13 a little attenuated. I'll tell you that. Judge Glenn is the
14 father of my wife's first cousin's wife. I tell you that only
15 because I do have a relationship with him outside of work and
16 predating I think either of us being on the bench and do see
17 him occasionally, at Jewish holidays and the like. Obviously,
18 we won't discuss things beyond what we should and would be
19 appropriate to discuss. I just wanted to mention that.

20 Next item is the impact of the Second Circuit's
21 decision on wrongful death/personal injury claims. Now, I've
22 already addressed the collateral estoppel issue in my
23 endorsement. As that presumably made clear, that should be
24 resolved before the Cockram trial and I don't see any reason to
25 be briefed and decided in the time that we have given that all

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1 the other motions are fully submitted, and you can expect that
2 I will give you more decisions on that front in the coming
3 days. I set a briefing schedule already and I'm happy to
4 entertain your proposals if you think that briefing schedule is
5 inappropriate in some way. Otherwise, we can leave it where it
6 is. Anyone wish to be heard on that?

7 Does everyone agree that that is the only potential
8 implication for Cockram, that is to say, that we don't need to
9 discuss, brief, or address any other issues? Speak now or hold
10 your peace. Mr. Hilliard.

11 MR. HILLIARD: Holding our peace, Judge.

12 MR. BROCK: Same for New GM.

13 THE COURT: Beyond that, I am, again, inclined to
14 think that we should defer taking any real action. I
15 understand that the plaintiffs may want to propose some sort of
16 modification of the bellwether plans. I will tell you that I'm
17 a little bit skeptical. I will grant you that the circuit's
18 decision, assuming it stands, may well expand the pool of cases
19 that could be tried, but I guess I'm not inclined to think,
20 unless there are reasons that I may not be aware of having to
21 do with the Feinberg process or otherwise, I'm not inclined to
22 think that it alters the pool in any substantive way beyond
23 simply increasing the number of cases that would be in the
24 pool. And the pools were sizeable enough already, which is to
25 say that I'm not sure that it really prejudices either side to

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1 kind of stick with the cases that we were already looking at
2 for these purposes. I think the initial selections are due
3 tomorrow.

4 I guess that's another way of saying, Mr. Hilliard, is
5 there some way in which the circuit's decision sort of
6 substantively alters the cases that are in the pool that would
7 counsel in favor of revisiting the process because the
8 selections might not be representative of the pool as opposed
9 to just simply expanding the sample size, in which case I'm not
10 inclined to think that we need to change course?

11 MR. HILLIARD: Your instincts are probably right. We
12 are doubtful that it does. We are ruminating a little more and
13 talking with GM, who shares your position. It's likely we will
14 end up in that spot with the Court and GM. We are still making
15 sure that we agree. That's why we changed our language to we
16 are considering it.

17 But frankly, Judge, my guess is, with a little
18 latitude from the Court, if you don't mind, give us a few more
19 days or weeks just to confirm with our own team that there is
20 nothing that we can determine changes the selection process.
21 But I will give you a heads-up. I'm leaning towards where the
22 Court is leaning and where GM is right now.

23 THE COURT: That's fine. I have no objection to you
24 conferring really about anything. You're welcome to talk about
25 it. I think there are substantive improvements that can be

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1 made to processes that we have already put in place.

2 Particularly if both sides agree, I'm always open to it.

3 I think in this instance you will have to persuade me
4 that there are substantive reasons that would justify changing
5 things as opposed to just sort of a few new cases being sort of
6 available for the picking. But I'll leave it to you to talk
7 about and maybe there are ways that we can revisit things or
8 add to processes that we already have in place and certainly
9 always open to thinking that through.

10 Am I right that the presale order with accident and
11 injury cases were part of the Feinberg protocols? They were
12 not excluded from that. Mr. Godfrey is nodding his head yes.

13 MR. GODFREY: Yes, your Honor.

14 THE COURT: Meaning they were part of it.

15 MR. GODFREY: Yes.

16 MR. HILLIARD: Not all of them. It depends on the
17 vehicle. Not all presale.

18 THE COURT: Right. In other words, those are
19 distinctions that we have already taken into account in the
20 bellwether structures that we have established. Nothing about
21 the Second Circuit's decision changes that. The Second
22 Circuit's decision obviously removes the date bar or may remove
23 the date bar and in that regard add to the pool cases that
24 predate the sale order, but it doesn't sound to me like there
25 is any reason that substantively that portion of the pool would

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1 differ from the portion that you're selecting from. In any
2 event, I'll leave it there for now and allow you to continue
3 thinking about it on your own and conferring about it if you
4 think that there are things that we ought to do.

5 One word about discovery and I think this applies to
6 both economic loss and the wrongful death personal injury
7 cases. I'll reserve judgment, I suppose, because it sounds
8 like you guys are talking about it and maybe able to reach
9 agreement, but at least for now I am going to leave things
10 where they are, which is to say, my prior rulings regarding
11 plaintiff's rights or lack thereof to essentially retake
12 discovery that they had an opportunity to take in phase 1 and
13 the so-called one-deposition rule, I am going to leave those in
14 place, which is to say that that is the default and I am going
15 to keep at the default as the orders set forth. That allows
16 for further discovery or multiple depositions if New GM agrees
17 or if I grant the amount of showing of good cause.

18 It may well be that the Second Circuit's decision
19 alters the playing field in such a way that a showing of good
20 cause can more easily be made. I don't know. But certainly
21 that's something that you should keep in mind at your
22 discussions. It sounds from the letter that New GM is at least
23 open to the possibility of some sort of targeted supplemental
24 discovery being appropriate, and perhaps there won't be any
25 disagreement in that regard, but I think for now I'll leave the

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1 default where it is.

2 Yes, Mr. Godfrey.

3 MR. GODFREY: To clarify our position, we take the
4 Court's orders in the spirit and the language in which they are
5 written. So we look at it, is there good cause, is there a way
6 that we can avoid burdening the Court with having to decide
7 some relatively minor issue, opening up discovery. Of course,
8 we are not reopening and doing discovery over. We are not
9 agreeable to that. But if there is some narrow specific issue
10 that might deal with but avoid necessarily burdening the Court,
11 we will entertain that, but we have not had that discussion
12 yet. The Court's comments this morning I think will be very
13 helpful in terms of guiding that discussion going forward.

14 THE COURT: Understood. And you should certainly
15 discuss it. I think it does make sense to require a showing of
16 good cause, but I also do think that, again, the circuit's
17 decision is relevant to whether a showing of good cause can be
18 made. Both sides should keep those principles in mind in their
19 discussion and maybe you'll be able to reach agreement.

20 Proceedings in the bankruptcy court. Anything else on
21 that front. Mr. Hilliard or Mr. Godfrey. Mr. Godfrey says no.
22 Mr. Hilliard.

23 MR. HILLIARD: No, Judge. We are talking about the
24 Adelphi witnesses, given the late production of Adelphi as to
25 some new documents that might require a deposition or two of

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1 Adelphi witness. But that's in discussion. I don't think
2 there is a need for the Court's, except your awareness that's
3 happening -- late production of pertinent documents requiring a
4 new deposition. GM is willing to discuss it. We are doing
5 that right now.

6 THE COURT: Proceedings in the bankruptcy court. I
7 have reviewed the transcript of the July 18 conference before
8 Judge Glenn. Anything that I need to be aware of on that
9 front?

10 Order of summation in Cockram I have already
11 addressed. I will stick with my ordinary practice on that.

12 Next is the impact of my ruling on the motion to
13 dismiss. Sticking with the theme, I'm inclined to think that
14 we should defer any detailed discussion until after the FACC is
15 filed, at which point I think it will be clear, hopefully
16 clear, to everyone what claims and defects are and aren't
17 included in the consolidated complaint.

18 Anyone disagree?

19 MR. GODFREY: I think that's prudent. There are some
20 decisions that plaintiffs will have to make. Whether they are
21 going to continue to pursue a nationwide class or not, for
22 example, whether they are going to keep all the ignition switch
23 defects in or not, whether they are going to keep in parts
24 defects. The Court's footnote, for example, on page 49,
25 footnote 15 should bear on that. There are a number of

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1 decisions.

2 But until they advise us of those decisions, we are
3 not in a position to give our views to the Court as to how the
4 case should most efficiently proceed going forward. We do
5 think that there should be more motion to dismiss practice and
6 motion practice in general, including perhaps on the meaning of
7 the benefit on the bargain theory, but we are a bit duck blind
8 at the moment. We don't really know where the ducks are coming
9 from or what they are going to say. Until that happens, I
10 think it's prudent for us to wait.

11 THE COURT: Fair enough. I am not saying yes or no to
12 further motion to dismiss practice. I think it was certainly
13 contemplated when we set a schedule for the motion that it was
14 a partial motion and that New GM would have an opportunity to
15 make further motions. I think the idea was to limit it to sort
16 of issues that would not be implicated by the Second Circuit's
17 ruling and in that regard there may well be issues in other
18 states and the like that New GM should be given an opportunity
19 to move on. I'm skeptical of any motion practice that would
20 revisit issues that could have and should have been raised in
21 the first round and that's certainly something that you guys
22 should discuss and keep in mind as we go forward and we figure
23 out how to proceed. But, again, we will take it as it comes.

24 One of the things we should discuss is there is
25 reference in the letter to someone's view, that discovery

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1 regarding whether there was a due process violation with
2 respect to other defects should take place here rather than in
3 the bankruptcy court. I am not sure what the theory is there.
4 I'm also inclined to think we don't need to figure that out
5 now. I don't know if anyone wants to speak to that now.

6 MR. BERMAN: It was my suggestion, our suggestion,
7 your Honor. As we understand the Second Circuit's order on
8 page 65 and 66, it identifies the fact that Judge Gruber
9 applied his ruling to nonignition switch defects and the other
10 ignition switch defects, but there was never any factual
11 undertaking.

12 Judge Glenn, I think the first thing he said at the
13 hearing was, we have got to come up with a process. So we
14 envisioned that we are going to try to make a due process
15 record in the bankruptcy court.

16 So the question I had for you and for the parties was,
17 would it be beneficial, since that discovery will also bear on
18 those claims, if they come back to this court, do we want to
19 coordinate that and make it MDL discovery so that every lawyer
20 out there would have an opportunity to participate and the
21 witnesses would be done once. It would be efficient. I threw
22 it out there as thought, not expecting anyone to try to resolve
23 that today.

24 THE COURT: You should think about it, discuss it with
25 each other. I certainly think it would make sense to

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1 coordinate. Not just make sense. I think it's imperative that
2 Judge Glenn and I do coordinate somehow. I don't think that
3 the coordination order has been entered in the bankruptcy court
4 because there was no discovery really done when Judge Gerber
5 was presiding over it.

6 One possibility is basically entertaining or
7 discussing whether that ought to be entered in the bankruptcy
8 court if discovery is going forward there. I guess why don't
9 you guys think this through. I can't remember when you are
10 next before Judge Glenn, but obviously he directed counsel to
11 confer about the process and what discovery would need to be
12 taken and so forth.

13 I should also back up. It sounds like there may be
14 some disputes about what the scope of those cases is, not just
15 whether the non-delta ignition switch cases are included in the
16 nonignition switch defects or not, but also I take it from the
17 transcript that New GM's view is that the only claims that can
18 proceed to discovery and make the argument about the due
19 process violation are the ones that were actually appealed,
20 which may be limited to Mr. Peller's clients. I don't know.
21 That strikes me as an issue that Judge Glenn should probably
22 decide in the first instance.

23 But this is just another area where I think there are
24 lots of wrinkles and complications and moving parts here, and
25 I'm not quite sure I have my head sufficiently around them and

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1 certainly don't have a well-developed view on how we should
2 handle them. I think you should begin thinking about them and
3 talk to each other and obviously address it with Judge Glenn
4 when you are next before him, and I will perhaps talk to him
5 about it at an appropriate time.

6 Can someone remind me when you are due back before
7 Judge Glenn?

8 MR. GODFREY: I don't think it has been set yet, your
9 Honor.

10 THE COURT: That would explain why I couldn't remember
11 it.

12 Anything else to discuss on this front.

13 Next item is class certification. On this I am
14 somewhere, I think, in the middle of where I think the parties
15 are. First, as you know, I have tried to keep things moving on
16 a quote/unquote reasonable but aggressive schedule here. I
17 obviously had to wait for the Second Circuit to rule, which
18 caused the delays on the economic loss side of things. But in
19 light of that ruling I think there are going to be some
20 additional delays for the reasons that we have already
21 discussed.

22 Having said that, I would like to keep things moving
23 as much as we can. And to that end I agree with plaintiff's
24 position that the parties should confer and propose a schedule.
25 We can discuss the date by which you should propose it, a

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1 schedule for depositions, that is, class representative
2 depositions, expert discovery and class certification briefing,
3 with the caveat and understanding that we may have to revisit
4 it, depending on developments, either in the Second Circuit,
5 the bankruptcy court, or here with the filing of the FACC.
6 Otherwise, all of which to say is, I think I would certainly
7 entertain argument from New GM if we set a schedule and then
8 material developments occur that we should revisit the schedule
9 and modify it. All of that is to say that I think you should
10 confer and propose a schedule.

11 On the scope of that I'm inclined to agree with New GM
12 that motion practice should not be limited to California. I
13 think as long as we are doing this, it doesn't make sense to
14 limit it to only one state and a state that everybody seems to
15 agree is potentially an outlier with respect to the law and
16 other things. I think it would make sense to include some
17 number of other states. I don't have a view right now on what
18 number, just so we get a little bit more of a range sample of
19 different laws and standards and the like on the theory that a
20 ruling on these issues would sort of provide data points to
21 apply to other states and the like going forward.

22 I guess one question I have is, having said all that,
23 is the ability to move forward on this issue or to what extent
24 is the ability to move forward on this issue complicated by the
25 open issues that I've already averted to, including, for

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1 example, what cases are within the quote/unquote nonignition
2 switch category, whether those cases can go forward, and the
3 like. I imagine it may take a while for that to be resolved
4 because it requires discovery and I would imagine motion
5 practice before the bankruptcy court. For that reason I am
6 hoping that we don't need to await that to move forward on the
7 class certification front, but maybe that's a fantastical hope.

8 Mr. Berman.

9 MR. BERMAN: Yes, your Honor. Let me explain what we
10 were trying to do because it may not have been clear from the
11 letter.

12 It seems to us right now that you have sustained
13 claims for the states that were the subject of your ruling on
14 the motion to dismiss. Our vision was that we would take those
15 claims, and they are not affected by the bankruptcy, and we
16 would move for class certification on those claims, that we
17 would not wait for all the other rulings to be happening
18 regarding the nonignition switch plaintiffs, the other defects
19 and the FACC. So why not take it in maybe two stages.

20 You are right. If the class certification schedule
21 has to wait for all of these other events to resolve, A, it
22 will be really difficult to come up with a meaningful schedule
23 and, B, we can be pretty far out there. If we focus on the
24 claims that have been sustained, why not tee those up sooner.
25 They are ready to go. I agree that more than one state is a

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1 good idea. If I can nudge you to at least consider one, then
2 the less is merrier.

3 THE COURT: You wanted to get your foot in the door.

4 MR. BERMAN: Exactly.

5 THE COURT: Let me just respond to your first point.
6 Is it really the case that the bankruptcy proceedings don't
7 have a bearing here in the following sense? Some of the claims
8 that I sustained in the TACC pertained to nonignition switch
9 defects. Presumably the scope and definition of any class
10 would be dramatically affected by a bankruptcy court decision
11 with respect to whether presale order claims can be brought as
12 to those defects. No. That is to say, who the notice would
13 need to go to and whether they are or aren't in the class.

14 MR. BERMAN: Right now I was envisioning, and this
15 obviously can be part of meet and confers, that we would focus
16 on the sustained ignition switch claims against New GM that are
17 in the TACC and that were sustained by the Court. We have a
18 very clear group of claims. I don't see how they are going to
19 be implicated by any further bankruptcy proceedings. And they
20 are really ripe to move forward. They are going to be a test
21 that will be valuable to see how things might go for the other
22 claims that might work their way through the court system.

23 THE COURT: Mr. Godfrey, my concern is, I'm a little
24 skeptical in the sense that I do think the nonignition switch
25 claims that are back in the bankruptcy court are going to have

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1 a material effect on the definition and scope of any class.

2 On the other hand, my concern in waiting for that
3 issue to resolve itself is -- we are talking, if there is
4 discovery, followed by motion practice and a decision from the
5 bankruptcy court, followed by an inevitable appeal perhaps to
6 me, followed by the Second Circuit, followed by the Supreme
7 Court or perhaps directly to the Second Circuit followed by the
8 Supreme Court. It could be years before those issues are
9 resolved, in which case I think we are squandering a lot of
10 time and maybe we can do this like we did the motion to dismiss
11 and sort of recognizing that it's only part of the larger
12 picture and perhaps move things forward in some material way.

13 Let me also say that I think my views here are that
14 all of these are kind of moves that would help inform the
15 settlement views of both sides and in that regard that was one
16 reason, for example, to move forward with the motion to dismiss
17 practice, even though it couldn't be an omnibus or
18 comprehensive motion. I think it was helpful in providing data
19 to both sides and informing whatever discussions are going on
20 or could go on. I view the class certification in a similar
21 vain and in that regard we could structure it in such a way
22 that we could move forward as much as possible. I think that
23 there is a lot to be said for that.

24 With that in mind, what do you want to tell me?

25 MR. GODFREY: First, your Honor has properly

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1 identified the conundrum that is facing the Court, based upon
2 the current third amended consolidated class action complaint.

3 The solution is, in the next roughly 55 days the
4 plaintiffs have to make decisions in light of the Court's
5 motion to dismiss ruling and in light of the Second Circuit's
6 decision as to what classes they seek, how they define those
7 classes, who is in, who is out. Because ultimately part of the
8 measure of whether or not a class is certified is whether or
9 not there is a possibility of a manageable trial. So we have
10 had one meet and confer. We have been told that plaintiffs
11 intend to add many new California named representatives. I
12 don't know whether that's for ignition switches or not.

13 I know when I look at footnote 15 on page 49 and 50 of
14 the Court's complaint, the Court has set forth the proof
15 requirements, and properly so, for some of the ignition switch
16 recalls, which we believe they are impossible to establish on a
17 class-wide basis. They are currently an individual. They
18 can't even ascertain what proper plaintiff is without certain
19 basic tests that would apply to each individual.

20 From where we sit, the starting point ought to be for
21 the plaintiffs to make the hard choices now. That's why we
22 agreed to give them the additional time so we have a definable,
23 understandable, and ascertainable putative class definition
24 that the Court can then measure against the Rule 23 standards
25 to determine whether or not that class can possibly pass muster

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1 or whether, as we believe, it is inherently unimaginable and
2 not certifiable under B3 or B2.

3 That's 55 days, but I don't think we are in a position
4 to say, let's pick a class. Because what class? Only the
5 ignition switch class. We are going to keep in the parts part
6 of that class in or not? Once you start peeling back the
7 onion, these are questions to which we don't know the answer
8 because the plaintiffs are masters of their complaint.

9 Our view is, we should step back. They have asked for
10 additional time. They should make the hard decisions. They
11 should discuss it with us.

12 We agree with the Court and, obviously, the Court has
13 agreed with us in terms of our position that we shouldn't just
14 focus on California. But if you ask me right now, Mr. Godfrey,
15 what class can we get teed up? I'm not the person,
16 unfortunately, who is defining the class. They are. Right now
17 they can't tell us. They have got all of these decisions they
18 have got to make. So when they say they want a California
19 class, California class with only February recalls? California
20 class for part of the recall? California class for other
21 defects? We don't know. Therefore, we are shooting in the
22 blind in terms of a schedule and efficiency.

23 One final point. I have always had the view that once
24 you're no longer in the nationwide class context and you are
25 looking at the possibility of state classes, you ought to do a

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1 one time per state. We ought not to have constant do-overs.

2 If the Court agrees with us that there is no proper
3 California state class and a defined class A, I would be less
4 than pleased to find out three months later that we now have a
5 new defined California class, and we do it again and again and
6 again. We should try to do this as efficient as possible where
7 we don't have constant do-overs.

8 Right now that's what we are facing, given the breadth
9 of the defined classes in the currently phrased complaint.
10 Until we see the new complaint, I don't know how to proceed. I
11 don't even know how to take a deposition of a named plaintiff
12 because I don't know what their class is going to be.

13 THE COURT: I think your points are well taken just
14 with respect to timing, which is to say that I think it's in
15 everybody's interests again to wait and see what the FACC looks
16 like before we get into a detailed discussion of how to move
17 forward here. I adhere to what I said earlier, which is that
18 to the extent that we can meaningfully advance the ball, even
19 if it does mean -- and we recognize that it may not resolve
20 these issues 100 percent, but I would like to move forward.
21 Which is not to say that I disagree with you that it would be
22 more efficient and better in an ideal world to do this once and
23 once only.

24 The flip side is here we have a lot of moving parts
25 and a lot of proceedings in a lot of different courts and the

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1 concern I expressed before is, it may be that doing it in one
2 shot means waiting two or three years, and I'm not inclined to
3 do that. I think I'll leave it there for now and include this
4 in the scope of the things that you should discuss in the wake
5 of the filing of the FACC and that we should discuss at the
6 October 13 conference. And at that point we will have a better
7 understanding and sense of things. Does that make sense?

8 MR. GODFREY: I think it does. I faced in this court
9 this issue once before, before Judge Scheindlin in the MTBE
10 litigation 10 or 12 years ago where the decisions about how to
11 proceed were made after basically the complaint was framed,
12 motions to dismiss, etc. And then the Court picked, I can't
13 remember if it was four or eight states to test class
14 certification on. They were not precisely defined classes and
15 Judge Scheindlin then ruled and we had a class certification
16 hearing and the case went forward after the class was denied on
17 an individual basis. It was predicated on clearly defined
18 classes where the plaintiffs had made the decision about how
19 they wanted to proceed, etc.

20 I think that after the fourth amended consolidated
21 class action complaint is filed on the 13th, I'm hoping we will
22 be in a better position because we take your Honor's words
23 reasonable and aggressive or that phrase seriously. We know
24 you are not going to just let us sit here. We will be in a
25 better position to be able to provide our views for the Court

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1 to consider and then the Court can give us its decision on how
2 to proceed. Thank you.

3 THE COURT: I think that covers the very meaty issues
4 that I said we needed to await the filing of the fourth amended
5 consolidated complaint.

6 What I would be inclined to do is to set a deadline of
7 October 6, which is one week before the next status conference,
8 and actually October 6 at noon, for you to file, basically --
9 if you can do a joint letter, great, but that may be infeasible
10 here, in which case I'm happy to take simultaneous letters from
11 each side just with respect to the issues that we have flagged
12 and discussed and any others that you can think of about the
13 implications of the fourth amended consolidated complaint and
14 what it means for moving forward.

15 Obviously, I'll leave it to you to go through the
16 transcript and make sure you hit all the categories that we
17 have discussed, but obviously motion to dismiss practice, class
18 certification schedule and practice, motion practice, remand
19 issues, that is to say, nondefects that are not included and
20 hybrid type of complaints, those are some, but perhaps not all
21 of the issues that you should be discussing and addressing in
22 those letters. Obviously, the more concrete you can get with
23 respect to your discussions and those submissions the better,
24 but we will discuss them on the 13th and I'll look for your
25 letters on the 6th. Is that ok?

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1 MR. GODFREY: Yes, your Honor. Thank you.

2 THE COURT: Why don't I say that the maximum 10 pages
3 per side. If you can file something joint, I'll give you 15
4 pages jointly. Again, if that proves to be infeasible or it is
5 easier for you to do it separately, that's fine. I recognize
6 there are some other Jewish holidays in there that may make a
7 coordination more difficult as well.

8 Disputes regarding absent cumulative class-wide
9 discovery addressed to my endorsement the other day, I don't
10 think there is anything further to discuss on that front.

11 MR. BERMAN: Excuse me. On that issue, currently, as
12 I understand your endorsement, the briefs will be due on
13 September 20 and to pick up a theme from Mr. Godfrey, he
14 doesn't even know sitting here today how many class reps we
15 have, what states they are going to cover. It seems to me that
16 we ought to, rather than just briefing the issue, see what we
17 have. Have some meet and confers as to why we don't have
18 enough class representatives because it could be that we have
19 hundreds of new plaintiffs.

20 (Continued on next page)

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1 THE COURT: Let me stop you. Maybe you should discuss
2 this in that same October 6 letter. Does that make sense?

3 MR. BERMAN: Would you take 11 pages?

4 THE COURT: I'll leave it at 10. If you need more,
5 you can make a letter motion.

6 All right. Coordination in related actions. I got
7 the update letter yesterday. I know there was a conference in
8 the California action yesterday. I don't know if there were
9 any updates on that front. But do you want to give me-- I also
10 don't know if there's anything going on. It seems like it's
11 coming down to the wire in the Texas Stevens action. I don't
12 know if there are any updates there or anything else that you
13 want to tell me. But Mr. Godfrey.

14 MR. GODFREY: Your Honor, I've always understood this
15 section of the agenda to identify potential friction points
16 between this Court as the lead court and any state court.
17 There are three potential friction points but nothing that
18 requires action by the Court immediately, but they are emerging
19 friction points.

20 First is Helix, which is a pending crime or fraud
21 claim, where the plaintiffs essentially are asking the court to
22 ignore this Court's ruling on crime or fraud.

23 There are also some potential discovery dispute
24 issues. They have not yet matured to the point where we will
25 need to seek the Court's assistance. We hope to avoid that.

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1 We've been pretty good in the last two and a half years about
2 avoiding that. But it is a developing issue.

3 Second, in New York State court were two cases,
4 Petrocelli and Colarossi. This is just to inform the Court
5 that -- and I'm not sure where this is going to go -- as the
6 Court knows, prior to New GM entering into the deferred
7 prosecution agreement and the statement of facts, New GM had
8 filed various answers or pleadings in various courts. Once New
9 GM entered into the deferred prosecution agreement, we have had
10 a rigorous process to go back and look at everything filed by
11 way of an answer to amend it to be consistent with the
12 statement of facts in the deferred prosecution agreement.

13 In these two particular New York State courts, the
14 plaintiffs' lawyers are seeking sanctions for New GM's
15 compliance by amending the answers to conform to the DPA. We
16 don't know how that's going to eventually be framed. We're not
17 sure whether that would end up in this court or not, but I
18 wanted to identify that for the Court so that you are not
19 surprised. We're still thinking that through.

20 Then finally, as to the Orange County DA case where
21 Mr. Berman and Mr. Robinson, who is on the executive committee,
22 are the counsel for the Orange County DA, what took place
23 yesterday was that the court did not set a trial date but
24 ordered the parties to continue to meet and confer with a trial
25 date range to discuss, meet, and confer in May, June, or July.

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1 My comments about that case that are important for
2 this Court, we believe, are as follows: number one, in that
3 case, the plaintiffs -- plaintiff -- represented by counsel
4 here, intend to continue to seek the brand devaluation theory
5 that this Court has rejected as a matter of law. That is the
6 public injury that the Orange County DA is relying upon as the
7 basis for the claim. And that is obviously a conflict with
8 this Court. How that plays out we don't know yet because that
9 will require some motion practice, I think, before Judge
10 Dunning.

11 Number two, while we're talking about a California
12 class proposal, we need to keep in mind that what plaintiffs
13 are proposing, or plaintiff is proposing in Orange County, same
14 counsel, is that the Orange County DA, acting on behalf
15 allegedly of all California consumers who purchased or used New
16 GM or Old GM vehicles, have the same claim. So that what is
17 being set up here is a parallel, you know, two shots at the
18 basket, time expired, and we think that there needs to be some
19 pretty serious coordination. And we think that they're going
20 to have to think of, you know, what we come down to, what
21 certification issues go forward here or not. We're going to
22 have to take a careful look at the overlap. There is serious
23 overlap here. It has not yet reached a point where we are
24 willing to seek specific relief from this Court, but it is not
25 difficult to envision that we will need serious relief from

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1 this Court depending on what they plead or don't plead in the
2 fourth pending class action complaint. I also don't know
3 whether they intend to streamline or change what's going to be
4 alleged in Orange County. But I identify that for the Court
5 because the reality is the Orange County DA action, allegedly
6 on behalf of the same consumers that they seek to represent in
7 this court for the same claim damages, speaks for itself.

8 This is the Stevens case. I don't know if Mr. Brock
9 can address the Stevens case.

10 THE COURT: Before you go there, Mr. Berman, anything
11 you want to say in response to that? It doesn't sound like
12 there's anything for me to decide, and you don't need to
13 respond to the extent that there are arguments that may be made
14 in California.

15 I am inclined to think that Judge Dunning can decide
16 for herself whether she agrees on my ruling on the brand
17 devaluation theory. I don't see why it would be binding on
18 her. I may or may not be right. I think I'm right. But I
19 would think, for preservation reasons if nothing else, you are
20 certainly entitled to press it there, and she can decide what
21 she wants to decide.

22 MR. BERMAN: Thank you. I think she has decided. She
23 has accepted the complaint, which has brand value. The only
24 point I would want to make is, there is no overlap between the
25 Orange County case and this case. In this case, we seek money

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1 going to California consumers in the people's action, it's
2 called, because the DA is acting on behalf of people of the
3 State of California. He is not seeking to put any money back
4 in the pockets of consumers. He is seeking law enforcement,
5 civil penalties that actually have been paid to the State of
6 California and to the DAs around the state. No overlap.

7 THE COURT: All right. I will obviously hear more on
8 that down the pike. Nothing I need to do now.

9 Yes, Mr. Brock.

10 MR. BROCK: Thank you, your Honor. Michael Brock for
11 New GM. I was just going to mention the case Stevens v.
12 General Motors LLC is scheduled for trial on August 8, and we
13 do expect that case to proceed to trial. We have our final
14 pretrial conference in the matter tomorrow.

15 I mentioned at the last conference that we were in
16 discussion about a way to, with plaintiff's counsel, about a
17 way to efficiently use the work that has been done here in the
18 Texas matter. And I did want to let you know that we expect
19 tomorrow to present to Judge Schaffer in Texas a proposed order
20 adopting 16 of the rulings here, to include the redaction
21 rulings with regard to the statement of facts, the Valukas
22 report, and other issues like that.

23 So as we think about an efficient MDL, or one of the
24 things we think about, is there a way to take the work that's
25 done here and hopefully use it in other places, and it seems to

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1 be working pretty well in Texas. So it's been very helpful.
2 As your Honor knows, there was a massive amount of work by our
3 counsel and by the court that went into the rulings, especially
4 before the Charter trial, and it looks like we'll be able to
5 use those rulings in an efficient way going forward in Houston,
6 Texas. So we wanted you to know that.

7 THE COURT: Excellent.

8 MR. BROCK: As to the matters that are in dispute,
9 your rulings are being cited by both sides as to what they
10 mean, so I think there will be more clarity on some of those in
11 the next month or so.

12 THE COURT: All right. Are you suggesting they
13 weren't clear enough?

14 MR. BROCK: No, they're very clear. That's why we're
15 citing them.

16 THE COURT: All right.

17 Anything else on the coordination front? I assume
18 not.

19 The Byrd remand motion. The letters suggested that I
20 would have a proposed stipulation resolving that by today.

21 MR. GODFREY: We're waiting for the signature of one
22 co-defendant. We expect to get that, but we do not yet have it
23 as of last night. I didn't check this morning. But we did not
24 yet have it. And we expect it to go through, in which case
25 this Court would keep the claims against New GM, but the claims

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1 against the other defendants, like the Pennsylvania Department
2 of Transportation, would be remanded. But we don't yet have
3 one signature.

4 THE COURT: And this would resolve the motions.

5 MR. GODFREY: It would. That's the plan anyway.

6 THE COURT: As a technical matter, I think your brief
7 or any opposition to those motions is due today. I think what
8 I'll do is grant an extension of that deadline for a week. I
9 would imagine that that would be mooted rather quickly, but it
10 will keep the pressure on you a little bit to make sure that
11 you get it by stipulation.

12 MR. GODFREY: Thank you.

13 THE COURT: And if for some reason you haven't gotten
14 it to me, keep in mind that your deadline is a week from today.
15 And then obviously the reply is also extended by a week.

16 All right. On settlement, first, I did get the
17 parties' proposed, I think it's order no. 108 -- I might have
18 lost track -- proposed order with respect to procedures to
19 address plaintiffs who fail to comply with the document
20 production obligations -- sorry. 108 is the order that set
21 those obligations, and the proposed order -- I've lost track of
22 the number -- would set forth procedures to deal with
23 plaintiffs who don't comply with those obligations.

24 It looks fine to me. I think, if I'm not mistaken, it
25 was order no. 72 is the supplemental order that I had issued

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1 with respect to the precursor to this, specifying certain
2 additional procedures with respect to briefing of any motion to
3 vacate and the deadlines and the like. And I'm just going to
4 incorporate that language in the parties' proposed order. But
5 with that understanding, I'll be entering the proposed order as
6 modified probably later today.

7 Otherwise, I am guessing that the Second Circuit's
8 ruling and my ruling certainly alters the landscape a tiny bit
9 with respect to settlement. And I would hope and assume that
10 you guys are at least talking among yourselves if not to each
11 other about those implications. Obviously these things are
12 moving targets a little bit, and New GM will be moving for
13 rehearing, petitioning for rehearing and the like, but I would
14 think that, to the extent that you were hoping to get some data
15 to inform your discussions, that you now have some.

16 You can obviously avail yourselves in that regard of
17 Magistrate Judge Cott, and I will hope and assume that you
18 would do so. I guess the question for my purposes is, is there
19 anything I can do. And we have periodically had in camera
20 discussions just to update me on where things stand. I imagine
21 the need for that is less now that Judge Cott has entered the
22 picture, but on the other hand if both sides think that it
23 would be helpful to do that in light of the developments that
24 have taken place, I'm certainly open to doing it. So any
25 thoughts?

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1 MR. BROCK: I think, your Honor, on the prebankruptcy
2 accidents, obviously it's where it involves the same vehicles.
3 So what we're doing now, we think we will have to inform the
4 docket, as you've mentioned. I don't think we're at a place
5 yet where we're ready to think about substantive discussions
6 about that docket. We are continuing, though, as we have
7 stated to your Honor in court and in chambers, to have
8 discussions with counsel, you know, with cases. We've heard
9 from a good number of folks. And we feel like we're making
10 good progress in that regard.

11 THE COURT: And what about on the economic loss side
12 of the house?

13 MR. GODFREY: Mr. Berman, after the motion to dismiss
14 ruling, which was very helpful and informative in terms of
15 framing some of the issues, has reached out to us -- I actually
16 took a vacation, so I was unable to respond until this morning.

17 THE COURT: I do have to apologize. I thought that
18 the week of the Second Circuit's decision and my decision might
19 have been the week that you were actually on vacation.

20 MR. GODFREY: It was. This is the second time I've
21 gone on vacation in four years where something happened like
22 that.

23 THE COURT: Once the Second Circuit ruled I figured
24 there was no reason for me to hold off on ruining your vacation
25 further, so I decided to go forward.

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1 MR. GODFREY: I told Mr. Berman what information was
2 left from him to have some discussions to see whether we can
3 develop a framework that might resolve this. I don't have a
4 view as to whether it's possible, but I think that we're
5 interested in discussing with him and he is interested in
6 discussing with us. We have now had more information on the
7 motion to dismiss, which is very helpful with respect to both
8 sides. And we'll see where it goes.

9 THE COURT: Very good. Anything else to discuss on
10 this front? I guess keep in mind that I'm obviously, as you
11 know, interested in facilitating your discussions, and if there
12 are ways that I can do so, you should let me know. But beyond
13 this, anything else to discuss on this front?

14 MR. GODFREY: No further. Thank you.

15 THE COURT: I do want to, as my endorsement indicated,
16 just check in on the Yingling status. I don't mean to be
17 obsessive-compulsive about this, but among other things there
18 are 20 or so open motions on my docket that relate to that case
19 and I would really like to close them. It's been several
20 months. I think I had been told that it would take a couple
21 weeks to dot the i's and cross the t's before I could remand
22 it. What's the status of things?

23 MR. GODFREY: We are close, and if your Honor set a
24 date three weeks from now to remand it and the parties don't
25 have it done that's fine with us. We expect to have it done

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1 within three weeks. But you could set an order to that effect.

2 THE COURT: So ordered.

3 MR. GODFREY: We knew you would want to do that, so we
4 figured out the maximum of what we needed. We think we will be
5 done next week. But that gives us enough cushion.

6 THE COURT: All right.

7 MR. GODFREY: Thank you.

8 MR. HILLIARD: I've continued to contact Mr. Pribanic
9 about that issue, and he reached out to me two days about that
10 saying that, we received a draft and they're less "pokey," as
11 he put it, than they had been and he hopes that it gets done
12 within the time frame that Mr. Godfrey just mentioned.

13 THE COURT: I don't know what that word means. Maybe
14 it's a Pennsylvania word.

15 MR. HILLIARD: That would be slow.

16 THE COURT: Gotcha. All right. Well, three weeks
17 from today I intend to remand Yingling, whether you guys have
18 dotted the i's and crossed the t's or not. So to the extent
19 that you perceive it to be in your interest to make sure that
20 those issues are resolved while the case is still part of the
21 MDL, it is in your interests to get it done in the next three
22 weeks. I was planning to give you less time than that, but my
23 hope is that you can resolve what you need to resolve and bring
24 that issue to closure.

25 All right. Bankruptcy. The bankruptcy appeals that

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1 were stayed pending the Second Circuit's decision. What are
2 your thoughts? I confess, I don't remember who the other
3 parties are in those appeals, and to that extent maybe not all
4 counsel is here, but to the extent that we can address them, it
5 would be helpful to know your thoughts.

6 MR. BERMAN: Your Honor, one of the appeals was the
7 claim that we brought alleging that New GM fraudulently
8 concealed the right to bring a proof of claim in the bankruptcy
9 court. That matter we appealed to you. We would like brief
10 that matter. So to the extent we need to set a briefing
11 schedule -- I'm trying to think. I should have done it before
12 today's conference, but all of this discussion of the FACC and
13 its implications now cause me to think that maybe we should
14 keep the stay going but the FACC be filed and then revisit
15 where we are in light of that.

16 THE COURT: With respect to all three -- I think there
17 were three appeals that were stayed pending the Second
18 Circuit's decision -- I confess, I'm not sure I -- well, I
19 certainly don't remember what the issues are in those appeals.
20 And it strikes me that the FACC may have some bearing on it.
21 And for that matter the petition for rehearing may have some
22 bearing on it.

23 MR. BERMAN: Right.

24 THE COURT: So maybe where we should leave things is
25 just, leave the stay in place but have you discuss it and tell

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1 me by some date what you think we ought to do.

2 Now, Mr. Peller, it looked like you wanted to get up.

3 Can you come to the microphone if you can.

4 MR. PELLER: Yes, your Honor. My clients are the
5 other appellants in that appeal. We intend to follow the lead
6 of lead counsel.

7 THE COURT: OK. Very good.

8 Mr. Godfrey, do you have any thoughts on this front?

9 MR. GODFREY: I think we should discuss it. I think
10 your Honor's intuition was correct; we'll be better informed.
11 But I think we should have the discussion and then give us a
12 date certain by which we have an agreement for the Court ready
13 to proceed or the parties' submitting viewpoints to the Court.

14 THE COURT: All right. Tell you what. Why don't you,
15 within a week from today, tell me what you think we ought to
16 do. If that is hold off until the FACC is filed and/or
17 rehearing petition is addressed, that's fine, in which case the
18 stays will remain in place. And obviously this may differ. It
19 doesn't have to be all three appeals are in the same bucket
20 here. If we can proceed on any of them, you can propose a
21 briefing schedule, but tell me how you want to proceed and tell
22 me within a week of today. All right?

23 Very good. And, again, if there are other counsel
24 involved beyond Mr. Peller, make sure that they are advised of
25 them.

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1 Our next conference is September 7, which will be a
2 combined final pretrial conference as to Cockram case and
3 status conference. I imagine that Cockram will probably be the
4 biggest item to discuss there, but given the number of things
5 going on, we may also have some important issues to discuss
6 more broadly. Having said that, obviously with the FACC being
7 filed a week after that and our conference in October, I
8 suspect that a lot of those issues will be deferred until
9 October. Obviously post that October date on the website and
10 include it in the order that you will submit, proposed order
11 you will submit to me after this conference.

12 I have one other item, but does anyone else have
13 anything else that we need to discuss?

14 MR. GODFREY: No, your Honor.

15 THE COURT: All right. The last item that I have
16 pertains to the fact that I am very sadly at the end of next
17 week losing Ms. Franklin to the Second Circuit. I want to,
18 number one, publicly thank her for her assistance over the last
19 year. She has done a remarkable job on my end. I imagine that
20 you all agree. And we only know a very small slice of it. I
21 want to thank her for her assistance. I really could not -- I
22 think I'm doing a reasonably good job in this case, but to the
23 extent I am, the credit is, over the last year certainly, due
24 in large part to her as well.

25 I have a new law clerk coming in, a woman by the name

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1 of Nishi Kumar, who will be starting the week after next.
2 Ms. Franklin will be introducing you to her by e-mail if
3 nothing else. And I'm hoping that the transition will be
4 relatively smooth. We're certainly doing our part to make sure
5 it is. But I obviously would appreciate your patience and
6 understanding if things that have been very smooth for the last
7 few months or many months are a little bit less smooth in the
8 coming weeks just as we work out those kinks.

9 So, again, my thanks to Ms. Franklin. Some of you
10 perhaps will take the opportunity to wish her well and say
11 good-bye to her, but I wanted to make sure you were aware of
12 that transition.

13 MR. GODFREY: Your Honor, thank you. For the
14 record -- Ms. Franklin informed me at the last status that she
15 was leaving to go to the Second Circuit and, as I understand,
16 eventually become clerk to Justice Ginsberg. On the behalf of
17 New GM, we thank her very much for the hard work she's done.
18 She's been a delight to work with and a credit to this court.
19 So I thank her on our behalf.

20 THE COURT: I'm going to assume that lead counsel
21 agrees.

22 MS. CABRASER: So stipulated, your Honor.

23 THE COURT: Excellent. Think we are all in agreement
24 on this.

25 With that, I wish you guys a pleasant rest of your

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1 day, and summer for that matter. You'll be getting rulings for
2 the day on Cockram motions. And we are adjourned. Thank you
3 very much.

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