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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
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3 In re: GENERAL MOTORS LLC  
4 IGNITION SWITCH LITIGATION 14 MD 2543 (JMF)  
-----x

New York, N.Y.  
April 20, 2016  
9:15 a.m.

8 Before:

9 HON. JESSE M. FURMAN,

District Judge

11 APPEARANCES

12 HAGENS BERMAN SOBOL SHAPIRO LLP  
13 Co-Lead Plaintiff Counsel  
14 BY: STEVE W. BERMAN  
15 -and-  
16 LIEFF CABRASER HEIMANN & BERNSTEIN LLP  
17 BY: ELIZABETH J. CABRASER  
18 -and-  
19 HILLIARD MUNOZ GONZALEZ LLP  
20 BY: ROBERT C. HILLIARD

17 KIRKLAND & ELLIS LLP  
18 Attorneys for Defendant  
19 BY: RICHARD C. GODFREY  
20 ROBERT C. BROCK  
21 ANDREW B. BLOOMER  
22 WENDY L. BLOOM

21 PRIBANIC & PRIBANIC LLC  
22 Attorneys for Plaintiff Yingling  
23 BY: MATTHEW R. DOEBLER

24 ALSO PRESENT: GARY PELLER (VIA TELEPHONE)

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1 (Case called)

2 THE COURT: Good morning to all of you. Welcome back.

3 I'm sorry we are getting off to a slightly later  
4 start. I must confess that it wasn't until about 25 minutes  
5 ago that I realized that I had never changed the time of this  
6 conference after the trial settled. I had been thinking in my  
7 head about a 9:30 start. In any event, here we are.

8 MR. BROCK: Only because Allan Pixton sent us three  
9 notes last night that the meeting is at 9:00 are we here on  
10 time.

11 THE COURT: I would say Allan Pixton should start  
12 sending me notes too, but that would probably not make sense.

13 I should also say that I'm glad that the trial did go  
14 away. I spent the last three days in bed recovering from the  
15 flu, so I'm only at half speed today, as well. I am better,  
16 I'm not contagious, lest you be concerned.

17 I think we're on CourtCall, just a reminder about that  
18 and reminder to speak into the microphones.

19 Let's get started. I don't think we have a  
20 particularly long agenda today. Maybe we can get through it  
21 relatively quickly.

22 First, on the bankruptcy proceedings, I wouldn't think  
23 there is anything really to update on that front beyond what  
24 was put in the letter. Everybody is sort of shaking their  
25 heads, so I'll assume that's the case.

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1           Coordination related actions, I got your letter  
2           yesterday and took note in particular of the discussion  
3           regarding Colarossi and Petrocelli, and I will take a closer  
4           look at that and reach out to those judges if I think that  
5           makes sense, which it probably does.

6           Anything else that we ought to discuss on that front?

7           MR. GODFREY: No, your Honor.

8           THE COURT: All right. I actually didn't get a chance  
9           to look at the relevant exhibit in connection with the Arizona  
10          matter but was curious how that resolved itself. I didn't  
11          speak to Judge Warner about that. I didn't see how it  
12          resolved.

13          Anyone want to just educate me?

14          MR. BERMAN: My memory of it -- I haven't looked at it  
15          in a few days -- is that the coordination order was entered.

16          THE COURT: That I know.

17          MR. BERMAN: Both sides have to do discovery  
18          obligations under local Arizona rules.

19          THE COURT: All right. I will take a look and see out  
20          of curiosity, but no one has asked me to do anything, and I  
21          don't think there is anything for me to do.

22          Document production, anything to discuss there? I  
23          guess the one question I have is I feel like, given that we  
24          have a little bit of a break from the otherwise grueling trial  
25          schedule to sort of take a step back, I wanted to just get a

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1 read on where things stand with respect to discovery writ  
2 large, sort of phase 3 that we're at now and where things  
3 stand. I think that under order 84 the parties were supposed  
4 to propose a deadline for a substantial completion date, and  
5 I'm not sure that ever happened. I don't think I ever set one.  
6 Maybe that is because some aspects of phase 3 discovery were  
7 deferred per later orders until after rulings on the motion to  
8 dismiss and/or the Second Circuit appeal. I wanted to just  
9 take a moment to take stock of where things stood and whether  
10 there is anything else we should be doing or thinking about,  
11 other deadlines, other disclosure categories, and so forth. I  
12 know I didn't alert you to this on the agenda. In that regard,  
13 I'm taking you by surprise.

14 Any thoughts? Otherwise, maybe we can just put it on  
15 for the next conference.

16 MR. BERMAN: My memory of where we are -- again, I  
17 would have to go back and look at the order -- is that we're  
18 waiting for your rulings on the motion to dismiss, which would  
19 then allow us to determine what, if any, additional discovery  
20 we need in phase 3 and what the time frame might be for  
21 completing that discovery.

22 THE COURT: Obviously, my recollection is that  
23 everybody contemplates a phase 4, but that really does turn on  
24 my ruling and the Second Circuit's ruling.

25 MR. BERMAN: Right.

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1           THE COURT: Everybody at the back table agree with  
2 that?

3           MR. GODFREY: Yes. Directionally, I think until the  
4 complaint is framed up after the motion to dismiss hearing, I  
5 think then we would have a more intelligent discussion about  
6 what the next steps would be.

7           THE COURT: Okay. What I don't want to do is find  
8 out, in the absence of a deadline for completion, substantial  
9 completion, find out after I have ruled that all the stuff that  
10 you could be and should be doing even without that ruling  
11 hasn't actually been happening. I don't have a sense that that  
12 is the case, but I want to just make sure that we are making  
13 good use of the time that we have, to the extent that you can  
14 be making progress.

15           Yes, Ms. Cabraser.

16           MS. CABRASER: Your Honor, we certainly have been and  
17 we will be taking a look at that internally to make sure that  
18 we are not playing catch-up after the June hearing on the third  
19 amended complaint ruling. So we will use the time between now  
20 and then to do as much planning as we can with respect to that  
21 discovery so that we're not on hiatus.

22           THE COURT: Okay. All right. Both sides take a look  
23 at it. If there is anything that you need to raise, you  
24 certainly know how to do that.

25           All right. Bellwether trial scheduling may be the big

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1 ticket item today. It is a little hard for me to believe that  
2 you guys could not manage if I accelerated one of the trials,  
3 but with some reluctance, I will grant your request to keep the  
4 trial dates for Cockram and Norville as they are, in part  
5 because, God knows, I could use a little break myself. I don't  
6 know if what I have been suffering from this week is a product  
7 of the pace the last few weeks. My other cases could benefit  
8 from a little more attention, as well. I will leave things as  
9 they are, which gives us a few months to focus on other things  
10 and make sure that all the loose ends there are tied up, as  
11 well. There are two other caveats to that. One is that,  
12 consistent with what you propose in the letter, I definitely do  
13 want to accelerate motion practice with respect to both of  
14 those trials as much as feasible so that there is less time  
15 pressure on all of us and me in particular in the lead-up to  
16 each of the trials. In other words, in exchange for giving you  
17 more time to prepare for trial, I think we should take  
18 advantage of that, and you should give me more time to work on  
19 the motions than I had with respect to trials 1 and 2. To that  
20 end, I would like you to confer and submit a proposed order. I  
21 don't see any reason not to do it with respect to both trials,  
22 but something akin to I think it was Order No. 98, the one that  
23 basically has the chart and lays out in fairly detailed fashion  
24 the pretrial orders with respect to each trial. If you can do  
25 that with respect to trials -- well, I don't know what numbers

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1 to call them anymore -- Cockram and Norville, I think that  
2 would make sense.

3 Anybody want to discuss?

4 MR. BROCK: I was just going to mention, your Honor,  
5 that we have roughed out a schedule that would provide for  
6 completion of all of the Daubert motion, briefing motions  
7 in limine, and dispositive motions July the 1st for the Cockram  
8 case. We probably have some details still to work out in terms  
9 of the chart, but I was just going to ask, in terms of your  
10 direction about getting things moving before you in a timely  
11 way, is that within the frame that would be acceptable to the  
12 Court?

13 THE COURT: Remind me, Cockram is currently scheduled  
14 for September 12th?

15 MR. BROCK: Yes, your Honor.

16 THE COURT: Yes, I think that would be fine.

17 MR. BROCK: We will do the same for Norville. We  
18 haven't charted that one out, but we will try to look at a  
19 schedule that would provide for completion of the replies to  
20 the dispositive motions, which is actually the last briefing  
21 item that we have, say, six weeks in advance of the Norville  
22 case, similar to what we were talking about for Cockram.

23 THE COURT: I would propose even a little bit more.  
24 Since you have more time, let's make it more of a sliding scale  
25 and give me more time. I don't see why not. You're going to

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1 have to do the work at some point. Since we have a little bit  
2 of a break, you may as well do it sooner and give me more time  
3 to then deal with it.

4 MR. BROCK: All right. We will be more aggressive  
5 with that and make a proposal to your Honor, and you can let  
6 you know.

7 THE COURT: In terms of making a proposal on that  
8 score, within the next week? Is that reasonable?

9 MR. BROCK: A week is plenty of time. We have been  
10 working on this some, and I think we can get it done within a  
11 week.

12 THE COURT: Mr. Hilliard, do you agree?

13 MR. HILLIARD: We do agree, Judge.

14 THE COURT: All right. The other caveat or item is I  
15 am inclined to think that we should -- at a minimum, I want to  
16 consider whether we ought to add new trials to the mix to  
17 supplement the cases that are currently scheduled. Obviously,  
18 it was originally contemplated that we would have six  
19 bellwether trials and six jury verdicts emerging from them. As  
20 it now looks, the most that we will have, the most in terms of  
21 jury verdicts will be three, which is, obviously, only half of  
22 what we expected. I'm inclined to think that we should  
23 probably supplement it. I don't know if you have already  
24 talked to one another about that or if you have any thoughts or  
25 if you want to be directed to talk to each other now. How do



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1 you want to proceed?

2 MR. HILLIARD: We are talking, Judge. This has been  
3 far from static. Order No. 34, really, is not reflective of  
4 what we need now. Order No. 34 said the core vehicle recalls  
5 will be tried as bellwether cases. Now most of the core  
6 vehicles are out of the MDL. We have done a survey of the  
7 remaining cases in the MDL. Granted that more are getting  
8 filed every day, but they are all the ignition rotation  
9 subsequent recall cases, some of which seem to be good  
10 bellwether candidates.

11 We have talked to GM about the idea of structuring a  
12 proposal to the Court on getting those cases in line to try, at  
13 least one or two, and try to propose how we would do that in  
14 regards to specific discovery or any general discovery that may  
15 need to be done as to those defects. We spoke to GM this  
16 morning. They agree that we'll meet and confer on that and  
17 propose something.

18 And then I brought up to them the issue of the next  
19 two trials will not inform the settlements because, to GM's  
20 credit, they are actively and successfully settling a lot of  
21 the cases, and I think the Court will hear about that perhaps  
22 later. So Cockram is scheduled and Norville is scheduled, and  
23 then there are a growing number of non-Order cases that perhaps  
24 need to be reflective of what a jury would -- or need to have a  
25 jury decide what to do with those so that they can settle those

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1 cases. Nothing that we could have foreseen at the initial  
2 beginning of this MDL, your Honor, but I think it is almost  
3 imperative to value those cases, as well. I can't give the  
4 Court any real sense of how many of those second wave cases are  
5 getting settled, but I will acknowledge -- and I think GM will  
6 agree -- that GM is very active right now on trying to resolve  
7 as many as they can, both in state court cases and in this MDL,  
8 and so I'm trying to be mindful of what they need through a  
9 bellwether process and what those plaintiffs' lawyers need in  
10 regards to a jury verdict that would help and assist. The  
11 verdicts that would come out of Cockram and Norville will not  
12 help and assist those cases. And I have some suggestions to  
13 GM. I'm not suggesting the Court do anything except consider  
14 this. We will meet and confer with GM and propose something to  
15 the Court, hopefully, I would say late April or early May.

16 THE COURT: Okay. Mr. Brock.

17 MR. BROCK: Yes, your Honor, for new GM, Mr. Hilliard  
18 and I did speak briefly about the issue of putting some other  
19 cases in discovery for selection for trial; and of course, with  
20 the Court's direction, we're more than willing to have a  
21 conversation about that. There are certain types of cases that  
22 the company is not resolving at this point. For instance,  
23 there are a number of airbag deployment cases. That might be  
24 the kind of case that would be a good candidate for trial  
25 because at some point we have got to deal with some of these

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1 things where we don't think there is liability or reasonable  
2 liability of the company.

3 On the issue of the two cases --

4 THE COURT: Just so I understand, airbag  
5 non-deployment separate and apart from any ignition switch  
6 defect?

7 MR. BROCK: They are cases where there is an alleged  
8 ignition switch defect, but in the accident the airbag  
9 deployed.

10 THE COURT: Got you.

11 MR. BROCK: A fair number of cases in that space.

12 On the issue of the two cases that are set for trial,  
13 we could not disagree more that the cases are not going to be  
14 helpful to inform the value of the docket. There are issues  
15 that will be presented in those trials that are common to all  
16 of the cases, things like did a switch rotate, under what  
17 circumstances did it rotate. Those cases are prepared. They  
18 are ready to go to trial. We think they should proceed as  
19 scheduled.

20 THE COURT: I'm not going to revisit the Cockram and  
21 Norville cases, which is to say that as far as I am concerned,  
22 we will proceed and go forward with those. I suppose if you  
23 want to persuade me that we shouldn't by giving me a more  
24 thorough discussion or shedding more thorough light on the  
25 remaining pool and what's in the pool and why these are no

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1 longer representative or would no longer be helpful in terms of  
2 settlement, I am certainly open to that. But given what  
3 Mr. Brock just said -- and I suppose I will revisit this after  
4 I do learn more about settlement status and stuff -- but I'm  
5 inclined to think that we should stay the course on that front.  
6 I am, however, inclined to think that we should begin to think  
7 about and develop a protocol for selection of the next round of  
8 bellwethers, whatever that round should be. Obviously, the  
9 goal here is to pick cases that are as representative of the  
10 largest categories in the pool as a whole as they can be. In  
11 that regard, you guys are in a better position to evaluate and  
12 assess which categories of cases would most be helpful to try  
13 in order to facilitate settlement of other cases in the pool.

14 Why don't you discuss that, and maybe you want a few  
15 weeks from now to present something to me on that.

16 MR. BROCK: Three weeks.

17 THE COURT: Sure.

18 MR. HILLIARD: That's fine with us.

19 THE COURT: It can be in the form of an agreed-upon  
20 proposed order if everybody is in agreement, of if there is  
21 disagreement, we can sort of revert to the way we handled that  
22 in the past with either competing red lines and competing  
23 briefs let's say up to 10 pages each, and then I will figure  
24 out how we will proceed on that.

25 All right. The third amended consolidated complaint,

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1 I had proposed an oral argument date of June 17th. That was,  
2 obviously, without knowing what your schedules were and whether  
3 that was feasible on your end. Does that work?

4 MR. GODFREY: It does for new GM, your Honor.

5 MR. BERMAN: It does for us, as well, your Honor.

6 THE COURT: I guess it does raise the question, we  
7 currently have the next status conference scheduled for  
8 June the 2nd, I'm happy to keep that on the schedule and  
9 separate the two. We can also move the status conference to  
10 June 17th and sort of deal with all this together if that makes  
11 sense.

12 MR. GODFREY: I see no reason to have a June 2nd, but  
13 we will defer, obviously, to what the Court prefers.

14 MR. BERMAN: We could do either. I was thinking we're  
15 anxious to get going. If we could argue on the 2nd, it buys us  
16 a few more weeks, but we will do either the 2nd or the 17th,  
17 but we should combine them, I think.

18 THE COURT: All right. The 2nd, for reasons on my  
19 end, is probably a little too ambitious. And I am also on part  
20 one duty that week, so it probably would be better to  
21 consolidate everything on the 17th anyway. Let's move the  
22 status conference to the 17th and also have oral argument on  
23 that date. Needless to say, I'm eager to decide the motion  
24 myself. In that regard, I promise you I will get you the  
25 decision as soon as I can, as soon as it is feasible.

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1 MR. BERMAN: Question on that, your Honor.

2 THE COURT: Yes.

3 MR. BERMAN: I don't think we have really had an oral  
4 argument on a substantive motion yet. How much time do you  
5 allow the parties, if you can give us some guidance on that?

6 THE COURT: I think what I will do is, rather than  
7 answer that in the abstract now, what I would anticipate is a  
8 week or two before the argument, I will issue an order, not  
9 only giving you a sense of time, although my practice is less  
10 rigid than certainly the Supreme Court and possibly even the  
11 Second Circuit in the sense that if I think I'm benefiting from  
12 the argument, I will let you keep arguing. But more  
13 importantly, I will probably identify issues that I think would  
14 be most hopeful to me in terms of having argument and things  
15 that you can and should focus on. Why don't you just look for  
16 that order, and hopefully that will give you the guidance you  
17 need, and we will go from there.

18 Anything else on that front?

19 All right. On the plaintiffs' executive committee  
20 opening, I am okay with lead counsel's recommendation not to  
21 replace Mr. Cooper. I think certainly I agree that quite a bit  
22 of progress has made and, obviously, most of that at a time  
23 when he was not meaningfully participating, so I think it is  
24 probably fine to leave it as is.

25 That brings us to issues with Mr. Peller. Is he on

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1 the line?

2 MR. PELLER: Yes. Gary Peller for certain plaintiffs,  
3 your Honor.

4 THE COURT: Good morning, Mr. Peller. Thank you for  
5 joining us.

6 All right. I have read Mr. Peller's submission and  
7 lead counsel's response. My inclination -- and I will  
8 certainly give you an opportunity to be heard, both sides to be  
9 heard -- but my inclination is to think that nothing actually  
10 needs to be done at this point in time. I have no objection to  
11 Mr. Peller keeping me informed about what he believes to be  
12 conflicts with lead counsel. Indeed, as my opinion with  
13 respect to Mr. Cooper's motions made clear, I think it is  
14 better practice to raise those things in a timely fashion. But  
15 lead counsel is authorized, indeed required, to exercise its  
16 discretion in deciding what arguments to make on behalf of the  
17 class and how to present them, and nothing that has been  
18 presented to me indicates that they have done anything other  
19 than exercise that discretion in an appropriate manner.  
20 Additionally, by his own admission, the substantive rights of  
21 Mr. Peller's clients have not been prejudiced, as far as I can  
22 see; that is to say, every court that these cases have been  
23 litigated in the bankruptcy court and this court and in the  
24 Second Circuit, Mr. Peller has been permitted to and has  
25 presented the arguments that he thinks lead counsel should be

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1 making on behalf of his clients. The bankruptcy court ruled on  
2 those arguments, finding them to be without merit, and the  
3 Second Circuit presumably will rule on them in due course, all  
4 of which is to say Mr. Peller has both preserved and pressed  
5 his arguments, so I don't think that his clients have suffered  
6 any prejudice from lead counsel's exercise of discretion.

7           Ultimately, reading between the lines, I interpret the  
8 gist of the filing to be more about lead counsel's refusal to  
9 acknowledge or designate Mr. Peller's work as common benefit  
10 work, an issue that Mr. Peller had previously flagged for me I  
11 think by letter back in December. For much the same reasons  
12 that I did in December, I'm inclined to think that those issues  
13 are not ripe for me at this point either. That is to say, I  
14 may ultimately be called upon to resolve those disputes, but,  
15 number one, I don't think there is much, if any, of a common  
16 benefit fund in existence today, although maybe the Yingling  
17 settlement changes that, I don't know; number two, if or when  
18 there is, we're likely to have the benefit of the Second  
19 Circuit's ruling, which may have some bearing on the dispute  
20 and each side's views with respect to it. And regardless, I  
21 can and will set up an appropriate process to adjudicate any  
22 disputes; that is, Mr. Peller's disputes and any other lawyer's  
23 disputes about lead counsel's decisions about what is and isn't  
24 common benefit work. At that point, I think we would have a  
25 much better record upon which to resolve those disputes. All



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1 of which to say I certainly think it is helpful in terms of  
2 laying down the marker, to use Mr. Godfrey's favorite term, but  
3 I'm not inclined to think that I need to take any action at  
4 this point.

5 Mr. Peller, is there anything I'm missing?

6 MR. PELLER: Your Honor, may I be heard?

7 THE COURT: Yes.

8 MR. PELLER: So GM's letter in response characterized  
9 all the actions thus far as discretionary actions making  
10 tactical decisions about what arguments to press or not, and I  
11 regret if our notice was not clear. But at this point, what  
12 the precipitating fact is, is an actual failure to perfect an  
13 appeal on behalf of a whole category of MDL plaintiffs, which  
14 could lead to the actual preclusion from pressing the claims  
15 regardless of what the Second Circuit rules. So if lead  
16 counsel made an argument that was made on behalf of  
17 non-ignition switch plaintiffs, it would be to their benefit,  
18 but lead counsel did not perfect an appeal on behalf of  
19 non-ignition plaintiffs and has no standing to make any  
20 arguments for them. So the situation is a little more stark  
21 with respect to lead counsel's discharge of his duties to  
22 non-ignition switch plaintiffs in the MDL.

23 THE COURT: These are not plaintiffs that you  
24 represent; correct?

25 MR. PELLER: That's right. We're just notifying the

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1 Court that the non-ignition switch plaintiffs that lead counsel  
2 purported to represent in the bankruptcy proceedings may be  
3 precluded from pressing their claims by the failure of lead  
4 counsel to appear on their behalf, and that seems to suggest  
5 that lead counsel's clients no longer have standing. Some  
6 change in the structure needs to be made in order to ensure  
7 that non-ignition switch MDL plaintiffs will have claims to  
8 press if they prevail in the Second Circuit.

9 THE COURT: All right. You have preserved that issue  
10 and indeed argued it in the circuit; correct?

11 MR. PELLER: That's correct.

12 THE COURT: All right. Again, I understand the  
13 argument you're making. I think that it doesn't make a whole  
14 lot of sense for me to do anything in the absence of a Second  
15 Circuit ruling. If it turns out that the Second Circuit  
16 rejects your arguments on the merits, then there is really no  
17 prejudice from any failure to preserve the arguments with  
18 respect to other plaintiffs. If they agree with you, then the  
19 other plaintiffs may or may not be precluded from raising it,  
20 but we can deal with that at the appropriate time. So I think  
21 it just underscores my view that we shouldn't deal with this  
22 now, but let me hear from Mr. Berman.

23 MR. BERMAN: Your Honor, I don't think you need to  
24 deal with it now. I just want to say two things.

25 THE COURT: Speak into the microphone.

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1           MR. BERMAN: Just two things: First, that the notion  
2 that we have somehow not performed our duties with respect to  
3 non-ignition switch plaintiffs I think is a little bit  
4 astounding. I filed the very first non-ignition switch  
5 plaintiff case in the country called the Andrews case. Very  
6 early on, there was quite a bit of controversy whether that was  
7 part of the MDL. It is. I have been pursuing, along with  
8 Ms. Cabraser, those claims ever since, and the very first issue  
9 that we raised on appeal in the Second Circuit was the right of  
10 the bankruptcy court to have barred those claims, any claim  
11 against new GM. We take issue with Mr. Peller that we haven't  
12 preserved it. We did. We raised it. We have been diligently  
13 pursuing those claims. But again, at the end of the day, we  
14 can wait for the Second Circuit and revisit this issue if we  
15 have to.

16           THE COURT: All right. Thank you very much.

17           Mr. Peller, anything else you want to say?

18           MR. PELLER: No, your Honor.

19           THE COURT: Thank you for bringing these issues to my  
20 attention. I recognize that to some extent these conflicts  
21 have been brewing since 2014 between Mr. Peller and lead  
22 counsel; and again, by kicking them down the road, I don't mean  
23 to suggest that they're not issues that I would ultimately need  
24 to resolve or issues that may ultimately need to be resolved,  
25 but I do think it is premature to do anything further with them

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1 now.

2 Mr. Berman.

3 MR. BERMAN: Just one other point, your Honor, not to  
4 belabor the issue, but just so you know, we're not acting  
5 hastily here. When Mr. Peller asked us to do common benefit  
6 work, Ms. Cabraser and I examined the merits of his position.  
7 We then consulted with the designated bankruptcy counsel, three  
8 lawyers who are probably some of the premiere bankruptcy  
9 lawyers in the country, and come to the conclusion that  
10 oftentimes that his position, in our view, is without merit,  
11 and therefore we can't in good faith say go ahead and spend  
12 time and money on that. There is a process that goes on here.  
13 We are not just acting reflexively every time he raises an  
14 issue.

15 THE COURT: I have no doubt about that. Not only is  
16 there a process, but one of your obligations is to do that and  
17 to say no when you think it is appropriate. I'm not opining  
18 now on whether your views and decisions with respect to  
19 Mr. Peller have or have not been correct. Ultimately, if there  
20 are those sorts of disputes, I will resolve them. But one of  
21 your obligations to the class under the orders that I have  
22 entered is to say no when you think it is appropriate. So in  
23 that regard, it is not surprising that some lawyers might not  
24 agree with you in that regard, and it is important that they  
25 have an opportunity to be heard. And Mr. Peller has now been

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1 heard and will ultimately have an opportunity to be heard in  
2 more thorough fashion. But I don't mean to suggest at this  
3 point that you haven't done precisely what you are supposed to  
4 do under the orders that I have entered.

5 All right. Last item that you have listed on the  
6 agenda is settlement. Obviously, I indicated that I would want  
7 to meet with the parties privately after this conference just  
8 to discuss things on that front. I don't know to what extent  
9 you can discuss this here now. Obviously, to the extent we  
10 can, I would prefer to.

11 So Mr. Godfrey.

12 MR. GODFREY: Your Honor, on the prior topic, I  
13 hesitate to weigh into it because it is, in some ways, not our  
14 fight, but a number of things that have been said that we  
15 disagree with. But I think we can wait to see what happens.  
16 If we need to file a short written submission to make sure  
17 people understand what we disagree with, we will. There have  
18 been a number of statements made that we don't agree with. I  
19 don't think we need to belabor that issue this morning.

20 THE COURT: This is on the Mr. Peller/lead counsel  
21 comments?

22 MR. GODFREY: Yes.

23 THE COURT: I simply assumed that you had no dog in  
24 that fight.

25 MR. GODFREY: Well, we have no dog in the fight,

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1     except that people were saying, the record reflects X, and we  
2     disagree with that. Our silence should not be seen as  
3     acquiescence. But I think in light of the fact that the Court  
4     has indicated how it views the matter this morning, we don't  
5     need to say anything further on that. I just wanted to make  
6     that for the record.

7             THE COURT: All right. If you feel the need to  
8     clarify further by submitting something, you may, but as far as  
9     I am concerned, you haven't waived anything or acquiesced to  
10    anything, and I am not addressing it now. I think you can hold  
11    your fire if you want.

12            MR. GODFREY: I think that is my preference always,  
13    but thank you for the guidance.

14            As to the settlement, I'm not certain how your Honor  
15    would like to proceed. We're prepared to have an in chambers  
16    discussion, as the Court suggested, and to have some detail  
17    about confidential settlement matters.

18            Mr. Hilliard is correct, new GM, Mr. Preska and  
19    particularly Ms. Bloom, have been very active in the past month  
20    trying to use the benefits of the MDL bellwether process to  
21    engage, and I think they have engaged and made significant  
22    progress in that regard. I'm not certain precisely how the  
23    Court wants to proceed here. We're happy to answer questions  
24    here, but I think we might prefer to do this in more detail in  
25    chambers in camera. Again, it's the Court's pleasure. If you

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1 will give me guidance, I will figure out how best to approach  
2 this.

3 THE COURT: There are a few subjects that I think we  
4 probably can discuss in the forum, but if you think otherwise,  
5 you can tell me.

6 The first are the two that you referenced in your  
7 letter. First, Order No. 42 contemplated the appointment of a  
8 CPA. I think you were actually supposed to propose candidates  
9 for that within 30 days of the order. I didn't realize that  
10 until I looked back at it myself. I don't think anybody has  
11 done that. I want to follow up on that and figure out where  
12 that stands.

13 MS. CABRASER: Your Honor, I made a proposal to  
14 streamline that process by having Citibank actually serve that  
15 function, as they did in Toyota. And General Motors has  
16 rightly raised concerns to make sure that such a procedure  
17 would not contravene the confidentiality requirements of the  
18 order. That ball is in my court to follow up on.

19 THE COURT: Okay.

20 MR. GODFREY: We are looking at that. We will look at  
21 that proposal of Ms. Cabraser, and if it satisfies our  
22 concerns, it may have merit; if it can't, we have an  
23 alternative proposal, which is to use Mr. Freeman, who the  
24 Court is already familiar with by virtue of the Hilliard/Henry  
25 settlement docket, so we are discussing this and hope to have a

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1 resolution in the near future.

2 THE COURT: I will give you another 30 days from  
3 today. Let's try and resolve that.

4 MR. GODFREY: That should be enough time, your Honor.

5 THE COURT: The second thing that you raised is  
6 whether and to what extent personal injury wrongful death  
7 plaintiffs should be required to provide additional  
8 documentation and information essentially for settlement  
9 purposes.

10 MR. GODFREY: Yes. So where we stand on this is we  
11 have made significant progress in terms of discussions and  
12 possible resolutions where we have basic information -- I mean  
13 basic information of the type Ms. Cabraser's clients have  
14 provided or Mr. Hilliard's clients have provided, police  
15 reports, medical records -- but a significant number of  
16 plaintiffs' counsel have not provided that information. So  
17 they want to talk. We want to talk. But we can't talk in the  
18 abstract based upon a complaint. We need some basic  
19 information. We will propose with the Court I think perhaps by  
20 Friday of this week a proposed order in that regard; or if your  
21 Honor wants to give us until Monday, we will fly it by the  
22 plaintiffs' lead counsel first and let them comment on it. But  
23 the goal is we're interested, as we said before, that is new  
24 GM, in seeing whether we can resolve these matters reasonably  
25 and efficiently and quickly. We can't do it if we don't have



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1 basic information. It would be irresponsible on our part to  
2 settle a case without even understanding the injuries or what  
3 happened, just basic facts. And we're going to need a court  
4 order because despite the number of counsel's willingness to  
5 engage, they just for whatever reason, I don't think short of  
6 court order, we're not going to get the information. I think  
7 it is roughly half the counsel involved, roughly half the  
8 cases. We know when we get the information, we can make  
9 progress. We know we can't make progress without the  
10 information. So we need a bit of an incentive.

11 THE COURT: Are these plaintiffs who have not  
12 completed the plaintiff's fact sheets? What is the  
13 relationship here with the plaintiff's fact sheets?

14 MR. GODFREY: This is more detailed information.  
15 Perhaps Ms. Bloom can comment on this.

16 MS. BLOOM: Many have completed a hard copy plaintiff  
17 fact sheet. We had asked, as well, in order to expedite review  
18 that we receive an Excel version of those so that we can use  
19 that to understand and begin to assess individual cases, and we  
20 never really did receive usable Excel versions of those. Many  
21 of the answers are incomplete. So in the process now of  
22 engaging with about 45 percent of the post-bankruptcy accident  
23 claimants, we have developed a process that's working quite  
24 well of an Excel template that we give to people, and we ask  
25 them to complete it. That is less cumbersome than the fact

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1 sheet, and a very particular set of documents that we ask for.  
2 Medical records, police report, SDM data, if it exists, and  
3 accident photos, are the key drivers. And we get that in a  
4 very particular format through a very secure website set up,  
5 and it expedites everything. And we are able to then very  
6 efficiently have our team of nurses and our team of technical  
7 folks review those documents and get ready to engage.

8 At this point, what we're thinking is we've got this  
9 good inventory now of folks that have taken advantage of the  
10 letter that lead counsel has sent out to provide that data to  
11 us, and we're looking ahead to say once we work our way through  
12 this group, it would be terrific if we could then move on to  
13 engage meaningfully with the rest of the MDL docket that are  
14 those post-bankruptcy actions. To do that, we have to have  
15 those documents. It would really speed things up.

16 MR. GODFREY: The short answer on this precise  
17 question is: Some, we have plaintiff's fact sheets, some we  
18 have incomplete plaintiff's fact sheets, most we need the  
19 documents for. I think Ms. Bloom gave the rest of the answer.  
20 That is the short answer to the precise question.

21 THE COURT: Okay. Mr. Hilliard.

22 MR. HILLIARD: So it's a good idea and it is a bad  
23 idea because settlement is a voluntary process, and if they  
24 reach out to GM and they want to settle on behalf of their  
25 client, they have a duty and responsibility to accept the form

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1 and give them the information or walk away and say we don't  
2 want to do it, we'll wait until Judge Furman send us back to  
3 our home and we will try this case.

4 We have done it. It is onerous and it is difficult.  
5 It is a process that has succeeded in settling cases, where  
6 plaintiffs are allowed to get resolution and move on.

7 So I sent Wendy's e-mail to all of the current lawyers  
8 inside this MDL to get their feedback. I didn't want to just  
9 agree that we would propose an order and you would sign it. We  
10 sent it a week ago, attaching Ms. Bloom's e-mail saying, please  
11 comment on it because it is onerous but GM's track record is  
12 they don't collect it and sit there, they do then move into a  
13 resolution and an offer and a demand stage. And we haven't  
14 heard anything back in a week on that. This was a request from  
15 the lawyers inside the MDL to also propose their own candidates  
16 for additional bellwethers, as well, and we had gotten some  
17 responses from some lawyers in that regard. So I know that  
18 they have at least received it and considered it but not  
19 responded to it. And I told, during the informal cafeteria  
20 meet-and-confer this morning, my real view is it is a  
21 worthwhile effort if resolution is the goal, and GM has a track  
22 record of not wasting the time of the plaintiff or the  
23 plaintiff's lawyer once the information is there. They do move  
24 to a settlement, and it gets done. And I advised the lawyers  
25 inside the MDL of that.

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1           So I agree that it is necessary. I'm cautious about  
2 whether they should be ordered to provide information that is  
3 voluntary when they are not a selection in the bellwether  
4 process and they will not be tried in this court unless they  
5 were directly filed, but I will say in the same breath that it  
6 would aid in the Court's hope that this matter does get  
7 resolved.

8           THE COURT: I presume that all of these materials  
9 would be things that plaintiffs would have to disclose if the  
10 cases were ever to go to trial anyway; correct?

11          MR. HILLIARD: Absolutely.

12          THE COURT: I think I am inclined to think that it  
13 makes sense. I think new GM has certainly demonstrated its  
14 good faith in trying to settle as many cases as it can, and it  
15 sounds right that these sorts of documents would be necessary  
16 in order to meaningfully engage in settlement discussions. So  
17 I am open to it. What the particular order looks like, I will  
18 wait and see your proposal. I do think you should show it to  
19 lead counsel first and take it a step at a time in that regard.

20                 This dovetails with the next issue that I wanted to  
21 raise, which I flagged in the agenda and I think I mentioned it  
22 at the last conference, which is my inclination to involve  
23 Magistrate Judge Cott in the settlement of cases. He is very  
24 good at settling cases. I think he would have a little bit  
25 more flexibility than I feel I have in the sense that if one

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1 side or the other wanted to consult with him ex parte and  
2 without the other side present, I think he would presumably  
3 feel a little bit more able and willing to do that than I am  
4 inclined to be. He, obviously, is not the judicial officer who  
5 would be ultimately called upon to approve any settlement of a  
6 class settlement, for example, and in that regard there are a  
7 few issues there. So I think there are a lot of advantages and  
8 reasons that involving him might make sense.

9 In a case like this, there is always the argument that  
10 having a private mediator might also make sense, somebody with  
11 unlimited time if only because they're getting paid by the  
12 parties to provide their time. On the other hand, I am also  
13 not sure that the two are mutually exclusive here. New GM has  
14 made a tremendous amount of progress even without Magistrate  
15 Judge Cott or a private mediator, as far as I know. I guess my  
16 inclination is to think that there is no reason not to proceed  
17 on multiple tracks here, and having a judicial officer involved  
18 who, if a lawyer is not providing certain materials that are  
19 necessary for meaningful settlement discussions, would not only  
20 have the authority but the ability to basically direct the  
21 person to comply and sort of follow up as needed in that regard  
22 and bring people in and order people to do things that I think  
23 might be beneficial.

24 What are your thoughts?

25 MR. GODFREY: Your Honor, on behalf of new GM, first,

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1 we think that there is a proper role for a judicial mediator in  
2 certain circumstances, and we think the role has two aspects at  
3 this stage: Aspect A, if you will, or number 1, is we think it  
4 might be helpful to the Court if the parties ex parte could  
5 have candid conversations with a judicial mediator, not only to  
6 advise him as to the status, the plan, etc., in detail that  
7 they would not otherwise be comfortable doing with the other  
8 counter party being present; but also if he has suggestions as  
9 to a different way or better way, certainly we're all here, our  
10 goal is to try to have amicable resolution of as many of these  
11 as possible if that is achievable. And then (B) or second,  
12 we've been very successful at using private mediators and  
13 neutrals to bring the parties together or getting them close  
14 together. However, there are always counter parties that the  
15 assistance of a judicial mediator with the authority of the  
16 Court would be helpful to particularly some types of cases and  
17 particularly as you get to certain categories of issues. So we  
18 think that there is an important but at this stage limited  
19 role. Of course, over time it can retract or expand depending  
20 upon how things are going and the needs of the parties, but I  
21 do think that there is a role at this stage for judicial  
22 authority, imprimatur of the Court, in those two particular  
23 areas. That's our view.

24 THE COURT: I think that sounds consistent with what I  
25 had to say.

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1           Mr. Berman.

2           MR. BERMAN: We agree to the appointment of Judge Cott  
3 at this point would be useful.

4           THE COURT: Great. Excellent. I have spoken to him,  
5 and he is I think open to it, as well. In fact, he's actually  
6 in the middle of a settlement conference as we speak but  
7 indicated that he would be willing to take a break and join us  
8 in our meeting after this conference, which I think would make  
9 sense to, in part, just introduce you to him and, in part, also  
10 have at least preliminary discussions with him as to the best  
11 way to proceed in terms of even organizing whatever processes  
12 you would do with him. But I will enter a referral order and  
13 basically give him carte blanche to sort of proceed with  
14 settlement, which is not to say that I will be out of the  
15 settlement business altogether. If the parties think it would  
16 be helpful to enlist me in any respect, you are certainly  
17 welcome to continue to do so, but I do think that he will have  
18 a little bit more flexibility, and ultimately I think he is  
19 frankly better at this than I am, as well.

20           Mr. Godfrey.

21           MR. GODFREY: Thank you, your Honor.

22           One point of guidance perhaps going into this. We  
23 ascribe to your Honor's view of not replacement, either/or, or  
24 in addition, this is an additional helpful tool that will allow  
25 us. So we would not think it productive if we stop doing what

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1 we're doing and suddenly start a new program. In other words,  
2 we would like to continue what we're doing but inform Judge  
3 Cott and then enlist his help where necessary. And there are  
4 going to be spots where it is necessary sooner rather than  
5 later for some counterparts. That is the spirit in which we  
6 embrace the Court's idea.

7 THE COURT: Understood. That is consistent with my  
8 view of it, which is to say that he is another tool that you  
9 can use. My sense is -- and correct me if I'm wrong -- that  
10 this is not a uniform process in the sense that we're dealing  
11 with dozens or hundreds of lawyers and perhaps a different  
12 process might be helpful with respect to different lawyers than  
13 with other lawyers. In that regard, I think Judge Cott is just  
14 one tool to be used and obviously only to the extent that it  
15 would help resolve these things, but I think he can be helpful  
16 in that regard, and he will probably be relieved to hear that  
17 he is not the only tool because he, too, has other cases that  
18 he needs to work on. Good.

19 The last issue on this front that I wanted to raise  
20 and thought we could discuss here, unless you tell me  
21 otherwise, is to just get an update of the status of the  
22 settlement in Yingling and where that stands and the timing and  
23 so forth.

24 Any thoughts?

25 MR. GODFREY: I spoke with the team that is working on



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1 Yingling settlement documents last night. They tell me that  
2 all was going well, according to schedule. It is complicated  
3 because there are four guardians for four minor children.  
4 Basic paperwork has been prepared. I think they're working, I  
5 think they're exchanging it today or tomorrow. I asked them,  
6 do we have a sense of the timing in terms of getting it all  
7 done. So, first, good news for the Court is it is on track  
8 from their perspective. The second point is that it is  
9 complicated because of the four minors. And third is the  
10 structured settlement, it is going to be done as a structured  
11 settlement. They had to engage a structured settlement expert.  
12 That complicates it in the sense of timing because I don't  
13 think they know how long it will take for the structured  
14 settlement person to work out with the plaintiffs' counsel and  
15 the guardians the structure they want. We will work with them  
16 on that. That is an issue more on the plaintiffs' side than  
17 our side. We don't see any bumps in the road, but I can't tell  
18 you it is going to be done in a week versus three weeks because  
19 of the structured settlement complication, which is pretty  
20 common in these cases. They just engaged the person, as I  
21 understand it. So I don't know in terms of whether it will be  
22 two weeks or three weeks. I think our feeling is Mr. Pixton  
23 thought it would be a couple of weeks in light of where they  
24 are in terms of having engaged this expert.

25 THE COURT: I realize Mr. Pribanic is not present,

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1 although somebody back there just stood up.

2 Are you with Mr. Pribanic? Can you state and spell  
3 your name?

4 MR. DOEBLER: Matthew Doebler, D-O-E-B-L-E-R.

5 Yes, your Honor, I work with Mr. Pribanic. He is on  
6 the phone if we need to get in touch with him.

7 THE COURT: I didn't recognize your face, but I  
8 certainly recognize the name.

9 I guess the question I have for both sides is -- I'm  
10 not sure it is harming me to keep the case on my docket for a  
11 little more time -- what are the reasons for doing that as  
12 opposed to remanding it and letting you tie up the loose ends  
13 with the case back in the Western District of Pennsylvania? 6.

14 MR. DOEBLER: Well, from my personal perspective, I  
15 don't know what the benefit is of leaving it here. If you ask  
16 me, I would have you remand it today. I have been in touch  
17 with opposing counsel, and they do not share that position.  
18 They would like to keep it here until at least we get to the  
19 place where a settlement agreement has been signed. I  
20 certainly would not be honestly representing the conversation  
21 we've had. We're not opposed to that, either. I am mindful of  
22 your attention, and that's one of the reasons why I would like  
23 to get it into the Western District. I'm also not opposed to  
24 their desire to leave it here until that settlement agreement  
25 is signed.

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1           THE COURT: Do you have anything to add to what  
2 Mr. Godfrey said in terms of the timing of when it would likely  
3 be signed?

4           MR. DOEBLER: No, although from a practical  
5 perspective, I suspect we are on the longer end of that time  
6 frame rather than the shorter end of that time frame.

7           THE COURT: What does that mean?

8           MR. DOEBLER: I imagine at this point we're in the  
9 neighborhood of three weeks until the settlement agreement is  
10 signed. I think one thing that is important is that we frame  
11 the conversation appropriately, that there is a settlement  
12 agreement that will be signed that is separate and distinct  
13 from the petition for approval of the settlement, which will be  
14 presented to the Western District of Pennsylvania. Speaking  
15 only about the signed settlement agreement, I believe that can  
16 happen within a three-week time period, but that is not to say  
17 that the settlement will be wrapped up with a bow on it in that  
18 time period.

19           THE COURT: No, but I assume everybody is in agreement  
20 that when the settlement is signed, at that point remand would  
21 be appropriate for the court in Pennsylvania to administer and  
22 do whatever needs to be done to get the settlement actually  
23 consummated.

24           MR. DOEBLER: That is my understanding. I believe  
25 that is an accurate assessment of what opposing counsel has

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1 said, as well.

2 THE COURT: All right. Mr. Godfrey, is that right?  
3 And tell me why it shouldn't just be remanded today and you can  
4 do all this in Pennsylvania?

5 MR. GODFREY: Yes, we agree that once the settlement  
6 agreement is signed, it is appropriate for the Court to  
7 exercise its discretion to remand it back to the Western  
8 District of Pennsylvania. As to why not today, well we have a  
9 saying where I'm from, the Upper Midwest, it is best to keep  
10 the horse in the barn because it is hard to get it back in once  
11 it gets out. While I don't anticipate this falling apart, I  
12 have been around long enough now to know that I like to see  
13 that signature before we agree voluntarily to a remand, so we  
14 don't have to do this twice.

15 THE COURT: I think we will stay the course on this  
16 front, as well. I will keep it with me until there is a signed  
17 settlement agreement. I don't know about horses. I'm from New  
18 York City, but I think it does make sense to keep it with  
19 someone who is familiar with the case in the event that there  
20 are issues or something goes awry rather than sending it to a  
21 judge who doesn't know what the case is. I will keep it until  
22 there is a signed settlement agreement. At that point, you  
23 should advise me promptly, and I will enter a suggestion of  
24 remand, and I presume the multi-district litigation panel will  
25 promptly remand it so that the settlement can be consummated.

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1           Anything else, Mr. Doeblner?

2           MR. DOEBLER: No, your Honor. Thank you.

3           THE COURT: Thank you.

4           All right. The only other issue I think that I had is  
5 the pro se plaintiff issues. There are two that I have  
6 flagged, although I confess that I just wanted to more broadly  
7 take stock of whether there are any issues on this front. That  
8 is to say, I don't know if anybody has an inventory of how many  
9 other pro se plaintiffs there are in the MDL. I think given  
10 that we have a little bit more time now than we expected to  
11 have, it might make sense if there isn't such an inventory to  
12 sort of create one and figure out who we're talking about and  
13 ensure that, to the extent that those parties need notice of  
14 anything, that they have been getting notice or do get notice  
15 and that there aren't any problems arising from the fact that  
16 they are without counsel.

17           So I guess that's the sort of broad umbrella that I  
18 wanted to raise with respect to these issues. The two  
19 plaintiffs that I flagged, in particular, one was Ms. Marino,  
20 whose counsel withdrew in December of last year. And I had  
21 given her until March 3rd to either get new counsel or register  
22 as an ECF user, but I don't think we have heard anything from  
23 her, and I don't know what the status of things is with respect  
24 to her. I assume that she may have submitted a plaintiff's  
25 fact sheet since I don't think I have ever heard otherwise

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1 unless I'm misremembering something. I don't know, however, if  
2 she has been receiving notice of orders to the extent that she  
3 needs them or if there is anything else that we should be doing  
4 with respect to her or if her case should be essentially stayed  
5 under Order No. 1 until some later date, but I wanted to check  
6 in with respect to her.

7 MR. HILLIARD: Your Honor, I have some information  
8 regarding Ms. Marino. We have done a couple of things to try  
9 to reach out to her. She lives in Houston, Texas. Her  
10 accident was on January 22nd, 2008. We reached out to her  
11 lawyers, who withdrew, and they said they're withdrawn, so we  
12 called her phone numbers on 4/18 and 4/19, and we sent a  
13 certified letter to her on 4/18 asking her to conduct us, just  
14 so we can give her the information about what is going on in  
15 the MDL. No one answered the phone, and the letter was never  
16 delivered. That's all I have on Ms. Marino.

17 I asked, also, if there were other pro se plaintiffs  
18 inside the MDL besides the two you flagged, and we'll do a  
19 complete survey, and we can probably get that done within a  
20 week, but there is at least one other, and I'll be prepared to  
21 advise the Court who that is and give you an update as to that  
22 person.

23 I also have, if you're interested, Judge, some  
24 information on the second person you flagged, Ms. Perez.

25 THE COURT: All right. With respect to Ms. Marino,

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1 first of all, her accident is a pre-sale order accident; is  
2 that correct?

3 MR. HILLIARD: Yes.

4 THE COURT: I take it from that, absent the Second  
5 Circuit doing something, reversing, that she may not be able to  
6 proceed anyway.

7 MR. HILLIARD: And you bring up a point, she may be  
8 stayed in bankruptcy right now. I know that what we did by  
9 agreement was moved all the pre-accidents over to bankruptcy  
10 and stayed them. I will run that to ground and find out. If  
11 she's stayed until the Second Circuit's ruling, she is at least  
12 protected during the stay.

13 THE COURT: Okay. Ms. Perez, you said you were going  
14 to address, as well.

15 MR. HILLIARD: Yes, sir. She lives in Albany,  
16 New York. Her phone is disconnected. Her accident was on  
17 March 3, 2014. We called her number. Again, it was  
18 disconnected. We sent her an e-mail on 4/18 and 4/19 and a  
19 certified letter on 4/18 just asking that she contact us. We  
20 didn't get any response from the e-mails and the certified  
21 letter was not received or accepted. And that's all I have on  
22 her.

23 THE COURT: All right. Maybe someone on the back  
24 table is better positioned as to this, but has she completed  
25 the plaintiff's fact sheet? I think the last indication was

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1 she hadn't.

2 MR. BLOOMER: Your Honor, to our knowledge, she has  
3 not. We had originally moved to dismiss without prejudice and  
4 then asked for an extension on her behalf for her to do it, and  
5 the Court granted that on February 22nd. That's Docket No.  
6 2347, and that's the last I think judicial action, but since  
7 that we haven't seen, she has not. And I had one of my  
8 colleagues check yesterday, so we did not have anything further  
9 from her.

10 THE COURT: All right. I think I gave her until  
11 March 21st to comply, and we haven't heard from her; is that  
12 correct?

13 MR. BLOOMER: That is correct, to my knowledge.

14 THE COURT: Going back to the broader point, I do  
15 think it would make sense to take stock and do a more thorough  
16 inventory of all the plaintiffs, just to figure out if there  
17 are other pro ses out there and where they stand, I think, and  
18 clean things up to the extent that we can. My inclination is,  
19 with respect to Ms. Perez, that it would make sense for new GM  
20 to move to dismiss her at this time, having given her ample  
21 opportunity to comply with the plaintiff's fact sheet order,  
22 and she has not complied. Obviously, giving her notice of that  
23 would be appropriate. If she doesn't respond, then I would  
24 presumably grant that motion.

25 With Ms. Marino, it may not be an issue because it may



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1 be that her case is stayed as a pre-sale order accident anyway.

2 MR. BLOOMER: On Ms. Marino, just two additional data  
3 points with respect to her that I'm aware of, your Honor, and  
4 that is your Honor directed her to file as an ECF user by  
5 March 3rd, and she was served with a copy of that order by her  
6 former counsel, according to the Boyd docket at 167. And I  
7 think your prior order directed her to retain new counsel or  
8 file as an ECF user. That was also served on her by her former  
9 counsel, which was Boyd Docket No. 162. Your Honor may already  
10 know that. Apparently, her formal counsel did stay engaged  
11 enough to provide those two orders to her.

12 THE COURT: I would hope so since I think I ordered  
13 counsel to do that.

14 MR. HILLIARD: I think the Court is right to be  
15 cautious in regards to this pro se plaintiff, Judge, because I  
16 am being told there is a plaintiff's fact sheet that was  
17 provided or her lawyer did provide, and I'm trying to track it  
18 down. If GM doesn't have it, I will figure out where it is and  
19 try to get it to them. They're correct, she has not filed as  
20 an ECF user.

21 THE COURT: Why don't you guys work together on this  
22 and maybe give me a joint update. I'm happy three weeks, I'm  
23 happy 30 days. So why don't I give you 30 days. A joint  
24 update on what you can figure out about the status of pro se  
25 parties in this MDL, those that I probably know about, those

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1 that I may not know about, where they stand, and to the extent  
2 you think that any action should be taken, what action you  
3 would propose, and obviously that may differ on each side, but  
4 you can let me know. And if there's actions to be taken before  
5 then with respect to Ms. Perez, for example, you can certainly  
6 proceed as you think appropriate. At a minimum, within  
7 30 days, why don't you give me a joint update on that, just to  
8 make sure there is nobody falling through the cracks and we  
9 don't have a problem that reemerges at some later date. All  
10 right. Very good.

11 As discussed earlier, our next status conference will  
12 be on June 17th, not June 2nd, at which point we will also have  
13 oral argument on the motion to dismiss, which will be fully  
14 briefed as of the 30th of this month. I will be working on it  
15 between now and June 17th, lest you be concerned about that.

16 Should we schedule a conference after that point? I  
17 recognize that when we start getting into the summer, schedules  
18 become complicated. I guess my inclination would be to get one  
19 on the schedule now, but I'm open to suggestions.

20 MR. GODFREY: I'm wondering whether your Honor would  
21 entertain waiting until June 17th, when schedules become some  
22 what clearer for some of us.

23 THE COURT: I'm okay with that with the caveat that it  
24 may be that we then don't have a status conference until  
25 September. In my experience, August is a complicated time to

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1 get lawyers in court. I'm planning to be out for pieces of  
2 August myself.

3 MR. HILLIARD: Or as an alternative, Judge, we can  
4 speak with GM and get available dates during that time period  
5 that meet all of the summer schedules and provide it to the  
6 Court, and then the Court can see if it meets your schedule,  
7 too. That would be a lot quicker.

8 MR. GODFREY: What about the last week of July? We  
9 were just canvassing. That works for our vacation schedules.  
10 Last week of July, would that work?

11 THE COURT: Meaning the week of July 25th?

12 MR. HILLIARD: Yes, your Honor.

13 THE COURT: July 29th would work for me. I was  
14 supposed to be in trial in a bellwether case.

15 MR. HILLIARD: It does not work for me, Judge. That  
16 is my wife's birthday trip, and I promise you that there would  
17 be difficulties.

18 THE COURT: Understood. I think Mr. Hilliard's  
19 suggestion makes sense here. Why don't you all get your  
20 calendars out and confer with one another, and if you can  
21 figure out some proposed dates, that's fine. As far as I am  
22 concerned, you can convey them informally to chambers, and if  
23 there is one that works for everybody, including me, I will  
24 issue an order scheduling it. That probably makes sense. I  
25 think it does make sense to do it a little sooner than

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1 June 17th, just because we may not be able to do it at that  
2 point.

3 MR. GODFREY: We will work on it, your Honor.

4 THE COURT: Mr. Berman.

5 MR. BERMAN: What Ms. Cabraser and I were discussing  
6 in that regard is we don't want to wait for September, for  
7 sure, because what we're anticipating is, assuming that you  
8 don't dismiss everything that has been pled, that we're going  
9 to finally get to the idea of an economic loss schedule. There  
10 is going to be a lot of work to do there. We would like to get  
11 a status conference sometime shortly after your ruling so we  
12 can kick off that schedule.

13 THE COURT: I think that makes a lot of sense. Give  
14 me some dates, and I will set a conference, which is not to say  
15 that I promise you a ruling by that date, but I will certainly  
16 do my best.

17 MR. GODFREY: I was just going to say, one way to  
18 efficiently resolve the litigation, of course, is the motion to  
19 dismiss has merit, it be granted --

20 MR. HILLIARD: Or settlement.

21 THE COURT: All right. All right. Enough.

22 Anything else to discuss?

23 MR. HILLIARD: No, your Honor.

24 THE COURT: All right. It is 10:20. I need to give  
25 Judge Cott a call and give him an opportunity to extract

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1 himself from the settlement conference that I mentioned he is  
2 in at the moment. Between that and just everybody, including  
3 myself, perhaps benefiting from a break, why don't we reconvene  
4 at 10:45. We're going to do it in my jury room right back  
5 here. If you just come into the courtroom, Ms. Smallman or  
6 Ms. Franklin can escort you into the jury room, and then we  
7 will get started at quarter to eleven.

8 Thank you very much.

9 I will look for your proposed order with respect to  
10 this conference.

11 We are adjourned.

12 Thank you.

13 (Adjourned)

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