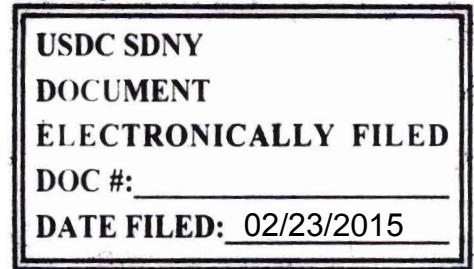


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

GENERAL MOTORS LLC IGNITION SWITCH LITIGATION

This Document Relates to All Actions
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14-MD-2543 (JMF)
14-MC-2543 (JMF)

AGREED PRESERVATION ORDER NO. 5

I. Introduction

General Motors LLC (“New GM”) and Plaintiffs, through Lead Counsel, (collectively, the “Parties”) jointly submit this Order (“Agreed Preservation Order No. 5”) for approval and entry by the Court. This Order sets forth New GM’s obligations for maintaining and preserving recalled parts covered by National Highway Traffic Safety Administration (“NHTSA”) Recall Campaigns 14V-240, 14V-253, 14V-315, 14V-341 (the “Relevant Recall Campaigns”).

II. Background

1. On June 12, 2014, the United States Judicial Panel on Multidistrict Litigation assigned *In re: General Motors LLC Ignition Switch Litigation*, 14-MD-2543 (“MDL 2543”), to this Court for coordinated or consolidated pretrial proceedings. (14-MD-2543, Docket No. 1.)

2. On June 25, 2014, this Court entered Order No. 1, which states, among other things, that “[a]ll parties and their counsel are reminded of their duty to preserve evidence that may be relevant to this action.” (14-MD-2543, Docket No. 19 at 12.) The Order further states that “[u]ntil the parties reach an agreement on a preservation plan or the Court orders otherwise, each party shall take reasonable steps to preserve all documents, data and tangible things containing information potentially relevant to the subject matter of this litigation.” (*Id.*) Further, the Parties had at all times been subject to preservation obligations as soon as the duty to preserve arose.

3. Since entry of Order No. 1, the Court has entered four Agreed Orders regarding the preservation of parts governed by various NHTSA Recall Campaigns:

(A) Agreed Preservation Order No. 1 (14-MD-2543, Docket No. 238) regarding parts governed by NHTSA Recall Campaign 14v-047000;

(B) Agreed Preservation Order No. 2 (14-MD-2543, Docket No. 279) regarding parts governed by NHTSA Recall Campaigns 14V-118, 14V-153, 14V-224, and 14V-266;

(C) Agreed Preservation Order No. 3 (14-MD-2543, Docket No. 344) regarding parts governed by NHTSA Recall Campaign 14V-151; and

(D) Agreed Preservation Order No. 4 (14-MD-2543, Docket No. 403) regarding parts governed by NHTSA Recall Campaigns 14V-116, 14V-446, as well as field actions, New GM Bulletin No. 13434, and New GM Bulletin No. 14096.

In these Preservation Orders, the Court recognized that, with regard to preservation obligations, “it is appropriate for the Court to enter preservation orders which properly balance the right of Plaintiffs to obtain relevant evidence against the potential undue burden and expense of preserving large numbers of parts that have been the subject of the Relevant Recall Campaigns.” (*See, e.g.*, Preservation Order No. 2 at ¶ 15; Preservation Order No. 4 at ¶ 16.)

4. This Order concerns the Relevant Recall Campaigns (as described below), which present similar burden and cost issues.

III. Relevant Recall Campaigns

5. **NHTSA Recall Campaign 14V-240 (New GM Recall No. 14128):** NHTSA Recall Campaign 14V-240 concerns front brake rotors. Specifically, on May 7, 2014, New GM notified NHTSA that it was conducting a safety-related recall for front brake rotors for model-year

2014 Buick LaCrosse vehicles and model-year 2014 Chevrolet Malibu vehicles. This recall, New GM Recall No. 14128, affects 8,208 vehicles.

6. **NHTSA Recall Campaign 14V-253 (New GM Recall No. 14157):** NHTSA Recall Campaign 14V-253 concerns windshield wipers. Specifically, on May 14, 2014, New GM notified NHTSA that it was conducting a safety-related recall for windshield wipers for model-year 2014 Cadillac CTS vehicles. This recall, New GM Recall No. 14157, affects 19,225 vehicles.

7. **NHTSA Recall Campaign 14V-315 (New GM Recall No. 14234):** NHTSA Recall Campaign 14V-315 concerns transmission turbine shafts. Specifically, on June 11, 2014, New GM notified NHTSA that it was conducting a safety-related recall for transmission turbine shafts for model-year 2012 Chevrolet Sonic Vehicles. This recall, New GM Recall No. 14234, affects 21,567 vehicles.

8. **NHTSA Recall Campaign 14V-341 (New GM Recall No. 14233):** NHTSA Recall Campaign 14V-341 concerns roof rail air bags. Specifically, on June 18, 2014, New GM notified NHTSA that it was conducting a safety-related recall for roof rail air bags for model-year 2011 Cadillac CTS vehicles. This recall, New GM Recall No. 14233, affects 16,932 vehicles.

IV. New GM's Preservation Efforts

9. New GM represents that it previously requested that New GM dealerships across the country preserve parts removed from vehicles upon completion of work associated with recall campaigns. New GM believes that, pursuant to this request, New GM dealerships across the nation are storing parts replaced in connection with the Relevant Recall Campaigns. However, this effort is not sustainable in that numerous New GM dealerships are running out of space in which to store such parts.

10. The Parties agree that based on the above representations, New GM has preserved or taken reasonable steps to preserve parts recalled under the Relevant Recall Campaigns.

V. Protocol for Preservation of Parts Subject to the Relevant Recall Campaigns

11. New GM represents that: (1) New GM dealerships are presently and will continue to be subject to undue burden and unnecessary costs if they continue to collect and store all of the recalled parts subject to the Relevant Recall Campaigns; (2) New GM dealerships cannot continue the practice described in paragraph 9 because numerous New GM dealerships are already running out of space in which to store recalled parts; and (3) New GM would be subject to undue burden as well as unnecessary and substantial costs were New GM to attempt to gather all of the parts subject to the Relevant Recall Campaigns from dealers and attempt to centralize the storage of parts. Plaintiffs are amenable to modifying New GM's preservation obligations so long as Plaintiffs are in no way prejudiced. The Parties continue to agree that it is appropriate for the Court to enter preservation orders that properly balance the right of Plaintiffs to obtain relevant evidence against the potential undue burden and expense of preserving large numbers of parts that have been the subject of the Relevant Recall Campaigns.

12. For good cause shown, the Court enters this Order with respect to New GM's obligations to preserve parts covered by the Relevant Recall Campaigns. This Order supersedes Order No. 1, entered on June 25, 2014, with respect to any potential obligation that New GM might have regarding preserving parts covered by the Relevant Recall Campaigns.

A. Parts Associated with Named Plaintiffs

13. New GM shall undertake reasonable efforts to assist any named plaintiff in a case pending in MDL 2543 (or another venue) with preserving parts covered by the Relevant Recall Campaigns that may be relevant to the plaintiff's claims. To allow New GM to do so, before a

recall repair is performed, a named plaintiff (or his or her counsel) must provide both the dealership replacing any such part(s) and New GM with reasonable, advance notice that the plaintiff wishes to have any such part(s) preserved for purposes of litigation.¹ New GM will then use reasonable efforts to arrange for the dealership making the repair to return any such part(s) to New GM for storage and preservation.²

B. Preservation of Representative Sample of Other Parts

14. As noted in paragraph 9, New GM believes that dealerships across the nation are currently storing or are in the process of storing parts from millions of vehicles subject to recall campaigns. The Parties recognize and agree that it would be unreasonable and unduly burdensome for New GM to request and attempt to receive and store all parts subject to recall campaigns.

15. Accordingly, unless otherwise instructed by the Court, New GM is only obligated to take reasonable steps to preserve recalled parts from 1% of the total number of vehicles recalled pursuant to the Relevant Recall Campaigns. Subject to footnote 3, this will result in the preservation of recalled parts from: (1) 82 vehicles recalled pursuant to NHTSA Recall Campaign 14V-240; (2) 192 vehicles recalled pursuant to NHTSA Recall Campaign 14V-253; (3) 216 vehicles recalled pursuant to NHTSA Recall Campaign 14V-315; and (4) 169 vehicles recalled pursuant to NHTSA Recall Campaign 14V-341.

¹ “[R]easonable, advance notice” means written notification to both New GM and the dealership at which the recall-related work is scheduled; the written notification must be received by New GM no less than five business days before the scheduled recall-related work. The notice to New GM should be sent to Andrew Bloomer, Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois, 60654, and must include: (1) the identification number (“VIN”) of the vehicle that will be the subject of the recall-related work; (2) the contact information for the dealership at which the recall-related work is scheduled; and (3) the NHTSA Recall Campaign under which the recall-related work will occur.

² “[R]easonable efforts” are specifically defined as follows: New GM shall contact the dealership at which the recall-related work is to take place and request that the part(s) at issue be shipped to a centralized storage facility where they will be logged by VIN through which vehicle repair information can be identified.

16. The Parties agree that preservation of these parts will result in New GM preserving a statistically significant and representative sample of parts covered by the Relevant Recall Campaigns and New GM may not argue otherwise for any purpose in litigation.³ The Parties expect to reach substantially similar agreements concerning parts subject to recalls that are not yet addressed by an agreed preservation order.

17. To implement the preservation protocol detailed above in paragraph 15 and footnote 3, upon entry of Agreed Preservation Order No. 5, New GM will request on a forward-going basis that New GM dealerships that replace parts pursuant to the Relevant Recall Campaigns send those parts to a centralized New GM storage facility for preservation (the “Preservation Request”). After the entry of Agreed Preservation Order No. 5, New GM will receive all such recalled parts until it has received recalled parts from 1% of the total number of vehicles recalled pursuant to the Relevant Recall Campaigns, subject to footnote 3. The Preservation Request shall also inform dealers that they may dispose of all parts previously replaced and now stored by the dealers in connection with the Relevant Recall Campaigns in the normal course of business.

18. Subject to paragraphs 22, 24, and footnote 3, New GM is not required to attempt to preserve parts covered by the Relevant Recall Campaigns over and above the number of parts identified in paragraph 22 and footnote 3. Thus, once New GM has received parts from 1% of the total number of vehicles recalled pursuant to the Relevant Recall Campaigns, as detailed in

³ The Parties recognize that New GM dealerships may not actually replace parts in connection with NHTSA Recall Campaign 14V-240 in that the recall-related work performed by a dealer from this campaign involves an inspection of the vehicles affected by the recall and a replacement of parts only if deemed necessary following inspection. Accordingly, New GM’s preservation obligation with respect to parts potentially affected by this recall will be to preserve recalled parts received from 82 vehicles pursuant to the 14V-240 campaign *or*, in the event recalled parts are received from less than 82 vehicles pursuant to the 14V-240 campaign, however many parts are received from this campaign.

paragraphs 22, 24 and footnote 3, New GM shall communicate to dealerships that the dealerships are not being requested to return additional parts to New GM and do not need to preserve any parts removed from vehicles pursuant to that Relevant Recall Campaigns on a forward-going basis. In addition, in the event that New GM receives parts from more than 1% of the total number of vehicles recalled pursuant to the Relevant Recall Campaigns as detailed in paragraph 22 and footnote 3 (“Excess Parts”), New GM may dispose of and not preserve the Excess Parts.

19. This Order shall also apply to related cases later filed in, removed to, or transferred to this Court.

20. All parties reserve the right to request a modification of this Order, including seeking an order further limiting preservation obligations with respect to parts preserved pursuant to the Relevant Recall Campaigns.

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SO ORDERED.

Dated: February 19, 2015
New York, New York



JESSE M. FURMAN
United States District Judge