

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

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

14 MD 2543 (JMF)

6 -----x

New York, N.Y.  
May 31, 2018  
9:30 a.m.

8 Before:

9 HON. JESSE M. FURMAN,

10 District Judge

11 APPEARANCES

12  
13 LIEFF CABRASER HEIMANN AND BERNSTEIN LLP  
14 BY: ELIZABETH JOAN CABRASER

14 -AND-

15 HAGENS BERMAN SOBOL SHAPIRO LLP (SEATTLE)  
16 BY: STEVE W. BERMAN

16 -AND-

17 HILLIARD MUNOZ GONZALES LLP  
18 BY: ROBERT HILLIARD

19 KIRKLAND & ELLIS LLP  
20 BY: RICHARD CARTIER GODFREY  
21 ANDREW B. BLOOMER  
22 RENEE DEBORAH SMITH  
23  
24  
25

1 (Case called)

2 THE DEPUTY CLERK: Counsel, please state your name for  
3 the record.

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

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

7 MR. HILLIARD: Good morning, Judge. Bob Hilliard.

8 THE COURT: Good morning to all of you.

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

11 THE COURT: Good morning to you as well.

12 MR. GODFREY: I'd like to introduce one other person  
13 to you, your Honor, for purposes of an in-camera, in-chambers  
14 conversation, Mr. Mike Darr. He's a senior member of the GM  
15 legal staff.

16 THE COURT: All right. Welcome, Mr. Darr .

17 Good morning. Welcome back. I hope everyone has been  
18 well. We are I think operational on court call. So just  
19 remember to speak into the mikes, particularly those of you who  
20 are taller than others.

21 Let's start off with the agenda letter. So the  
22 bankruptcy proceedings. I apologize for dropping the ruling on  
23 you guys shortly before this conference on Tuesday, but I did  
24 want to get it out since it had been quite a while. You should  
25 be grateful that I didn't ruin your holiday weekend.

1           So I don't know if it's too early to really have a  
2 meaningful conversation about the implications of the ruling  
3 for our purposes in the MDL. I don't know if it's something  
4 you need time to digest and talk to one another about. I'm  
5 certainly open to putting it off, but I obviously wanted to  
6 raise the issue.

7           MR. BERMAN: Steve Berman, your Honor. From our side,  
8 we think we need a little time to digest. We have some ideas.  
9 We probably need to meet and confer with GM about it. So we  
10 were thinking, Ms. Cabraser and I this morning, that maybe we  
11 could just set a time to get back to you, maybe ten days.

12           THE COURT: Mr. Godfrey, does that make sense?

13           MR. GODFREY: It does, your Honor. Although  
14 Mr. Hilliard's colleague had suggested June 14 to get back, and  
15 that's agreeable to us also. So we're agreeable to ten days or  
16 June 14. But in fairness, I think Mr. Hilliard's colleague had  
17 asked for the 14th.

18           THE COURT: I don't think there's a huge difference.

19           MR. GODFREY: I didn't either, but I did think I  
20 should disclose that.

21           THE COURT: Do you propose to do that by way of a  
22 joint letter to me proposing next steps and what, if anything,  
23 there is to be done? Does that make sense?

24           MR. GODFREY: I think it does, Your Honor.

25           THE COURT: All right. Great. I will look for that

1 by June 14.

2 On the Guc Trust settlement front, I confess that I  
3 didn't make my way through the entirety of the transcript that  
4 was submitted yesterday, but I have read a good chunk of it and  
5 got a good readout from my law clerk and from the submissions  
6 that I have seen in that litigation.

7 I certainly know that you have briefs due there on  
8 June 12 with respect to the gaiting issue of whether Rule 23  
9 applies. I don't know whether if there is anything else that  
10 we need to discuss.

11 I think you know that I have spoken to Judge Glenn. I  
12 think he mentioned it in his conference, not with respect to  
13 the merits or substance of this matter but just to make sure  
14 that we're sort of mindful of each other and not stepping on  
15 each others' toes and coordinating as appropriate.

16 So is there anything to discuss on that front?

17 MR. BERMAN: Not from our side, your Honor.

18 MR. GODFREY: Not from our side either, your Honor.

19 Thank you.

20 THE COURT: Great. Then I'm glad I didn't manage to  
21 read the whole transcript.

22 Is there anything else to discuss on the sort of  
23 bankruptcy proceeding front?

24 MR. GODFREY: Your Honor, it seems to me now would be  
25 an appropriate time to address your question from your minute

1 order about the Takata stay filing. We are not yet done  
2 reviewing the cases, but so far we've only been able to find  
3 one case where it might apply.

4 I'm embarrassed to say that after getting that news, I  
5 was not given the news of the name of the case or the number,  
6 but we'd like to have a week to finish the review of the  
7 docket.

8 We do not see it having a material impact on this  
9 Court thus far. In fairness to the Court and the Court's  
10 question, we want to complete the review of the docket.

11 Obviously, there is no impact on the economic loss  
12 side, but we're looking at each of the PI cases. We found one  
13 case where they appear to be a codefendant, but we haven't  
14 looked at the complaint there. We haven't finished a review of  
15 the docket.

16 So if we could have a week to get back to the Court,  
17 and if we have any issues, we'll identify what the issues are  
18 for the Court. We'd appreciate that.

19 THE COURT: All right. Ms. Cabraser.

20 MS. CABRASER: Yes, your Honor. Elizabeth Cabraser  
21 for plaintiffs. We have done the same thing, and I think have  
22 the same preliminary report.

23 I have one of the plaintiffs' steering committee  
24 members on the economic loss side on the Takata airbag MDL.  
25 And we know that the Takata bankruptcy proceedings do not

1 affect those MDL proceedings with respect to the non-Takata  
2 defendants. Everyone involved in that litigation is in  
3 agreement there.

4 I haven't seen any impact on implications on economic  
5 loss claims here, and our only question was perhaps with  
6 respect to a personal injury claim, that's not my direct  
7 bailiwick, but I haven't heard from anyone on the personal  
8 injury side in those proceedings or these proceedings who would  
9 suggest any limitation or impact. So I think we've got the  
10 same report for you as GM.

11 THE COURT: All right.

12 MR. HILLIARD: Your Honor, there is a single case that  
13 Mr. Godfrey referred to. It is called Lucas, docket number  
14 16-205. And in talking to the counsel for Mr. Lucas, he  
15 doesn't believe that -- his name is Richard Shenkan. He does  
16 not believe that the stay order is relevant to his case, and I  
17 will report that to the Court.

18 THE COURT: Thank you for that. I appreciate you all  
19 confirming my intuition that it didn't really matter, but it  
20 was filed. So I wanted to make sure that it was filed and what  
21 impact it had.

22 Mr. Godfrey, before you file anything, just reach out  
23 to Mr. Hilliard to make sure you're on the same page. If you  
24 want to get back to me within a week, that's fine by me.

25 MR. GODFREY: Thank you.

1 I suspect that we'll say nothing more than what  
2 Mr. Hilliard said. We see no impact, but there are -- we have  
3 a much reduced docket. We haven't looked at each of the cases.  
4 So we have to finish that process.

5 THE COURT: So just file a letter within a week and  
6 let me know what the story is.

7 Items 2 through 4, coordination of document  
8 production, depositions. Is there anything we need to discuss  
9 on those?

10 MR. GODFREY: Only by way of data for the Court which  
11 I think the Court may find of interest.

12 We have identified -- this is an understated number,  
13 but there were at least 3,921 total plaintiffs or claimants on  
14 the personal injury side of this case. Through a process of  
15 either settlement or the culling process of the withdrawal of  
16 counsel, 2,777 of those claims have now been dismissed or  
17 resolved. That's just under 71 percent.

18 Of the remaining claims, there are 1,144 remaining.  
19 And in terms of the pace of resolution, we've resolved, either  
20 by settlement or by motion or dismissal or withdrawal of  
21 counsel, 577 since our January 8 status.

22 So we've reduced by roughly a third of the total case  
23 on the docket since our January 8 status before the Court, and  
24 we proceeded on a set of procedures that the Court is very  
25 familiar with.

1 I thought the Court ought to be aware of the progress  
2 that's been made since the start of the year in the first  
3 literally five months.

4 THE COURT: Great. Thank you. That is indeed  
5 progress. So I appreciate that. I appreciate the detailed  
6 update in your letter filed yesterday on the same score.

7 Is there anything else to discuss on those three  
8 items?

9 All right. So let's talk about successor liability  
10 issues, which is next on the agenda, supplemented by your  
11 letters filed yesterday.

12 I have read your letters, and let me start with what I  
13 think is the easiest issue which is that I do not intend to  
14 entertain any briefing on the impact of the proposed settlement  
15 on successor liability claims at this time.

16 For one, I think that really effectively calls for an  
17 advisory opinion because the settlement may or may not go  
18 forward, and that is under advisement or in some sense under  
19 advisement.

20 For another, the premise of New GM's request is that  
21 the proposed notice, a notice that I think opposes altogether,  
22 is somehow inadequate because it doesn't adequately suggest to  
23 potential claimants that their successor liability claims  
24 against New GM may be affected.

25 To me that's really a function of the adequacy of the

1 notice, and I'm inclined to think that that problem can be  
2 addressed in the notice itself. But regardless, that's an  
3 issue for Judge Glenn and not for me. So I don't see any  
4 reason to proceed on that front at this time.

5 As for the other two proposals, that is, figuring out  
6 the impact of my prior rulings on the remaining 35  
7 jurisdictions and addressing the impact of the rulings in the  
8 10 jurisdictions where I've already discussed economic loss  
9 claims, I largely adhere to my prior view that we have enough  
10 going on right now and there is a limit to both your capacities  
11 and my own.

12 On top of that, the fact that the settlement could  
13 potentially moot some of the disputes that New GM proposes to  
14 brief is, in my view, all the more reason to kick the can down  
15 the road.

16 I don't think that it's a question of forum shopping,  
17 which is the phrase that New GM used in its letter. Rather,  
18 it's really triage and efficient case management and where we  
19 should be devoting our resources at this point, and I think our  
20 resources are better focused on other things, on the things  
21 that are going on at the moment.

22 That could change obviously depending on the timing  
23 and status of the Guc settlement trust issue and, for that  
24 matter, the other work that we're all engaged in here. But for  
25 now, I don't think it makes sense to invite the quantity of

1 briefing that New GM proposes.

2           However, I am inclined, not to mix my metaphors, but  
3 to move the ball down the field on one front or in a limited  
4 way. What I would propose is that you meet and confer  
5 essentially adopting the first part of GM's proposal on the  
6 first category of cases, that is to say that you meet and  
7 confer in a similar manner to the list response process that we  
8 have adopted in the personal injury/wrongful death context to  
9 see if you can reach agreement on which of the remaining 35  
10 jurisdictions would apply the law of Delaware or New York and  
11 basically see how much agreement or disagreement on that score  
12 there is, and then we can decide.

13           It may be that it would be appropriate to have  
14 briefing on whatever disputes remain on that score, or maybe  
15 we'll just leave it there and you'll file a stipulation to the  
16 extent that there is agreement. In any event, I think it would  
17 be helpful to engage in that exercise and get a sense of how  
18 many states are really in dispute or not.

19           So thoughts on that? If we do go that route, I'd be  
20 happy to adopt the dates that New GM proposes. So have New GM  
21 provide a list of the states that it believes would apply  
22 Delaware and New York law by July 13 and have plaintiffs'  
23 lead counsel respond by July 27 and then have you meet and  
24 confer by August 3 and then report back to me shortly  
25 thereafter, either by joint submission or in a stipulation or a

1 stipulation plus a submission, with respect to what is in  
2 dispute and whether and how you think that that dispute should  
3 be resolved.

4 What are your thoughts?

5 MR. GODFREY: Speaking for New GM, your Honor, we  
6 understand the Court's position. We'll go with that. Thank  
7 you.

8 THE COURT: All right. Mr. Berman?

9 MR. BERMAN: Same thing.

10 THE COURT: Great.

11 Are those dates good with everyone?

12 MR. BERMAN: Yes.

13 THE COURT: Excellent. There it is.

14 Is there anything else to discuss on that front? I  
15 think that covered the issues raised in your letters.

16 Moving right along then, on the personal injury case  
17 front, the first three categories are wave one discovery,  
18 category C cases, and the order 140 and 148 notices.

19 Is there anything to discuss on those three fronts?

20 MS. SMITH: Good morning, your Honor. Renee Smith for  
21 New GM.

22 The only thing we have additional to report is that on  
23 wave one is we are happy to report that 68 out of 100 of the  
24 cases have been resolved through the wave process, and all of  
25 that has occurred before a single deposition has been taken.

1 So we believe the process is working very well.

2 THE COURT: All right. I think I saw, between one  
3 submission and another, I think it went from 33 to 32. So I  
4 had the sense that one more went away somehow.

5 MR. GODFREY: If we were here Monday, it might be a  
6 higher number, but we're not quite yet done with another 15.

7 THE COURT: All right. Well, don't get my hopes up.  
8 Is there anything to discuss on those first three  
9 categories -- A, B, and C of topic number six?

10 MS. SMITH: Nothing additional for New GM, your Honor.

11 THE COURT: Mr. Hilliard, anything from you? I'm  
12 assuming not.

13 MR. HILLIARD: Correct, your Honor.

14 THE COURT: So that brings us to the timing of wave  
15 two discovery. My law clerk handed me a spreadsheet of sorts  
16 that has wave two scheduled proposals and columns for each of  
17 you.

18 So why don't you tell me what this is and tell me what  
19 you're thinking.

20 MS. SMITH: Your Honor, first of all, wave two --  
21 because of the progress of wave one, I'm also happy to report  
22 that wave two, as both plaintiffs and GM propose it, would  
23 in fact encompass the remainder of the Cobalt/Ion recall cases.  
24 The remainder of the phase 1 cases and phase 2 category A  
25 cases. So this, barring some maybe followups here and there,

1 should be the end of the waves for these category of cases.

2 Right now our preliminary numbers are that there are  
3 about 107 claims eligible for wave two. So they would be  
4 claims that are not wave one claims, claims that are not  
5 subject to order 140 motions, etc.

6 There are about 107. That may go down because we  
7 think we actually may have some additional order 140-type  
8 motions for those claimants, but this is kind of the end of  
9 this tranche of the wave process hopefully, and we'll hopefully  
10 resolve those cases.

11 There is also one law firm that has 78 of those 107  
12 cases, and we are in parallel having settlement discussions  
13 with that law firm. So we're working on both paths on that  
14 significant chunk of cases.

15 THE COURT: What firm is that?

16 MS. SMITH: It's the Toups law firm, Mitch Toups, and  
17 I believe there are a couple of other firms that they may be  
18 coordinating with, Carlson and Dugan.

19 THE COURT: So that explains why there is the hardship  
20 list is not applicable I take it.

21 MS. SMITH: Correct, your Honor.

22 THE COURT: Okay.

23 MS. SMITH: Again, plaintiffs agree in principle I  
24 think on the wave two procedures, and we just have some  
25 difference in terms of timing. Consistent with your Honor's

1 request that we aggressively move the docket forward -- and we  
2 are certainly ready, willing, and able to do that -- we propose  
3 starting wave two fact discovery basically just as wave one  
4 fact discovery is ending.

5           So we propose it August 1, and plaintiffs propose it  
6 about six weeks later. So I think it's modest, but it is a  
7 difference in schedule that we are proposing. GM is just ready  
8 to move things forward and believes that that is consistent  
9 with what the Court and the clearing of the docket have.

10           THE COURT: I'm just looking at the proposed dates  
11 now.

12           Are there differences within them, or is it just a  
13 function of the start date and then working from there?

14           MR. HILLIARD: It's just timing.

15           THE COURT: So, Mr. Hilliard, why shouldn't I adopt  
16 the more aggressive schedule here?

17           MR. HILLIARD: Generally I support more aggressive  
18 schedule inside this MDL, Judge, but the 80 cases that  
19 Mr. Toups has is currently scheduled for mediation in August  
20 with General Motors which likely may resolve that majority of  
21 the docket. So I would suggest that on this occasion a little  
22 delay to allow the litigation process to play out would not be  
23 unreasonable.

24           Again, as Ms. Smith said, it's a modest dispute in  
25 regard to the timing of the dates. It's not putting much of a

1 chit down. If there is a mediation already in the books for  
2 most of the docket, the way that the process has played out so  
3 far might save some resources.

4 THE COURT: Ms. Smith.

5 MS. SMITH: We believe that, as with wave one, the  
6 more aggressive schedule we take, the more likely these cases  
7 are to hopefully get resolved. And of course having in mind  
8 the mediation dates with Mr. Toups and his colleagues, we  
9 believe that our schedule is workable with those mediation  
10 dates.

11 THE COURT: All right. I will go with the more  
12 aggressive schedule proposed by New GM. My remarks about  
13 successor liability notwithstanding, we're four years into this  
14 MDL, and I want to move things forward as fast as we reasonably  
15 can. So I'll do that. I assume you can work up an agreed-upon  
16 order and submit it to me with those dates.

17 MS. SMITH: Yes, your Honor.

18 THE COURT: Great. So why don't you do that as soon  
19 as you can I suppose. Very good.

20 On the electronic power steering cases front, you'll  
21 be submitting something two weeks from Monday.

22 Is there anything to discuss on that front?

23 MS. SMITH: Nothing from New GM, your Honor.

24 THE COURT: Mr. Hilliard, I assume nothing from you?

25 MR. HILLIARD: No, sir.

1           THE COURT: This is not in your letter, but I just  
2 want to note that I did sign -- I don't know if it's been  
3 docketed yet, but there was a scheduling order with respect to  
4 a handful of airbag deployment cases that had been submitted,  
5 namely, to have limited discovery with respect to five  
6 plaintiffs in that category. I did sign that yesterday. So if  
7 it hasn't been docketed, it will be docketed shortly.

8           While I'm at it, I did, as you saw I suppose, grant  
9 the request for an extension of the deadlines on the economic  
10 loss front. I couldn't resist telling you it was a little  
11 begrudging, but I did give you the time.

12           On that score, could somebody give me a sense -- I was  
13 a little alarmed. I think there were 27 experts referenced in  
14 the letter.

15           Are you anticipating that there are going to be 27  
16 Daubert motions tied to class certification here? What are you  
17 anticipating?

18           MR. GODFREY: There will be Daubert motions, but I  
19 don't anticipate 27 of them, at least I hope not.

20           THE COURT: Me too.

21           MR. GODFREY: I must confess that I have read  
22 summaries of the reports. I have not read all the reports. I  
23 will say I hope not, and I am sensitive to the Court's prior  
24 comments about, A, not stupid briefing; and B, pick your  
25 battles. We're sensitive to that.

1 THE COURT: I know you are.

2 Mr. Berman, is there anything you want to say on that  
3 score?

4 MR. BERMAN: We have 8 of the 27 experts, to get a  
5 feel for who has all the experts. We, likewise, anticipate  
6 just a couple Daubert motions.

7 THE COURT: Very good.

8 That leaves just the settlement category. There is  
9 some stuff that we'll take up in camera after the conference is  
10 over, but to the extent that we can discuss it in this setting,  
11 let's do that.

12 I take it from the first item referenced that the  
13 mediation that I think was supposed to go forward with  
14 Judge Phillips in April did not.

15 Is that accurate?

16 MR. BERMAN: That's accurate.

17 THE COURT: There is some disagreement about whether  
18 it should or shouldn't, I take it?

19 MR. BERMAN: No. I should I you should be aware that  
20 New GM's position has now been fully articulated in a stay  
21 motion that they filed before Judge Glenn, and their position  
22 is that we should not talk settlement in this case until you've  
23 ruled on Daubert, class certification, and summary judgment.

24 So their position is, as I understand it, it would be  
25 not fruitful to have a mediation until 2019 because you're not

1 going to, the way I look at the scheduled, have issued ruling  
2 on those subjects until mid 2019.

3 THE COURT: I certainly don't anticipate them before  
4 2019 since I don't think they'll be fully briefed until close  
5 to the end of 2018.

6 MR. BERMAN: That's right.

7 THE COURT: Mr. Godfrey.

8 MR. GODFREY: It's a bit more nuanced than that. I  
9 have to be careful here about what I disclose. I think I'll  
10 put it this way: The parties have radically different views on  
11 the scope and nature of the exposure. As long as the parties  
12 have such radically different views, it's difficult to, in my  
13 judgment, shape a table by which a resolution can be achieved.

14 I do think rulings will take place this year. It may  
15 reanimate the ability to gauge the scope of that table.  
16 Certainly I can have a more transparent conversation in  
17 chambers, if the Court wishes, but I think that's what I'm  
18 comfortable saying now.

19 THE COURT: Maybe we should take that up in camera  
20 after this as well so that you don't have to be quite as  
21 circumspect. So let's do that.

22 Is there anything else that we can discuss in this  
23 setting? It does seem apropos, the statistics you cited  
24 before, that the order 140, 148, etc., process has certainly  
25 been pretty effective.

1           Is there anything else that you think would be helpful  
2 on that score?

3           MR. GODFREY: I would simply say that Ms. Bloom is  
4 spending significant amounts of time with her team on this for  
5 New GM, and I would be surprised if we did not by the end of  
6 the summer have additional substantial progress that has been  
7 made on that front.

8           THE COURT: Good. I appreciate hearing that. I hope  
9 that the fact that she's not here means that she's out making  
10 those efforts now.

11          MR. GODFREY: Actually, she's working on it as we  
12 speak. That's one of the reasons she's not here.

13          THE COURT: Good.

14          Is there anything else to discuss other than a next  
15 date for a meeting?

16          All right. In that case, let's talk about a next  
17 date.

18          How far out do you guys think we should look? It's  
19 the end of May. We could look the beginning of August. We  
20 could look -- don't all jump at once.

21          MR. GODFREY: I have another matter that your Honor is  
22 aware of. That trial ends the last week of July. So the first  
23 week of August or the second week of August would work from my  
24 perspective. I don't know with what the plaintiffs think, but  
25 certainly from our perspective, that would be an appropriate

1 time.

2 THE COURT: I think I'm hoping not to be here for some  
3 of that period. I would propose, if everyone is around, maybe  
4 Thursday, August 16. I should know this after four years, but  
5 if you prefer that we do it on a Friday or not on a Friday --  
6 maybe your views are different in the summer, but we could do  
7 it on the 17th, or we could do it on the 16th, or we could do  
8 it earlier in July.

9 MR. HILLIARD: Both work for me, your Honor.

10 MS. CABRASER: Either the 16th or 17th work for me.

11 MR. GODFREY: July does not work, your Honor. But the  
12 August dates that you proposed both work for us.

13 THE COURT: So let's make it August 16, the normal  
14 time of 9:30.

15 I think that concludes our business in open session.

16 Do you guys have a view on whether I should have a  
17 court reporter present for our discussion in the robing room?  
18 Obviously, I would seal it.

19 MR. GODFREY: I was going to suggest, your Honor, that  
20 I think -- you don't have the benefit of knowing the topic, but  
21 since we do, I think you probably need a sealed record.

22 Let's put it this way: I think you're going to want a  
23 sealed record. I won't make the judgment for you, but if I  
24 were where you are, I would want a sealed record.

25 THE COURT: Meaning we should be on the record and

1 seal it?

2 MR. GODFREY: Yes.

3 THE COURT: Better to err on the side of caution.

4 I'll have the court reporter come in with us. If you could  
5 give us a minute or two to get settled in there, I'll bring my  
6 law clerk in, and we'll reconvene there.

7 That adjourns the public part of this. I'll see you  
8 in a couple of minutes.

9 (Adjourned)

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