

1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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3 IN RE: GENERAL MOTORS LLC
IGNITION SWITCH LITIGATION,
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14 MD 2543 (JMF)

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New York, N.Y.
March 1, 2019
9:35 a.m.

9 Before:

HON. JESSE M. FURMAN,

District Judge

12 APPEARANCES

14 HILLIARD MUNOZ GONZALES LLP
BY: ROBERT HILLIARD

15 -AND-

LIEFF CABRASER HEIMANN AND BERNSTEIN LLP
16 BY: ELIZABETH JOAN CABRASER

-AND-

17 HAGENS BERMAN SOBOL SHAPIRO LLP (Seattle)
BY: STEVE W. BERMAN
18 Attorneys for Plaintiffs

19 KIRKLAND & ELLIS LLP
Attorneys for Defendants

20 BY: RICHARD CARTIER GODFREY
WENDY BLOOM
21 ANDREW B. BLOOMER
RENEE SMITH

22 DEREK POTTS
23 Attorney for Plaintiffs

24
25

1 THE DEPUTY CLERK: Counsel, please state your
2 appearance for the record.

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

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

6 MR. HILLIARD: Good morning, Judge. Bob Hilliard.
7 May I introduce Mr. Derek Potts who's come from Houston. He
8 has the largest remaining docket of EPS cases.

9 Subject to an agreement reached late last night with
10 GM, he had requested permission to address the Court. We
11 discussed it this morning, and I don't believe it's necessary
12 anymore, but he's traveled all this way. So I wanted to
13 introduce him. He was prepared to speak to you about his
14 docket cases and the remand issues. So I appreciate him coming
15 all this way.

16 THE COURT: Welcome, Mr. Potts.

17 MR. GODFREY: Good morning, your Honor. Rick Godfrey
18 on behalf of New Gm. With me is Mr. Bloomer, Ms. Smith, and
19 Ms. Bloom.

20 THE COURT: Good morning to you. I heard that you
21 guys inadvertently headed to the airport instead of coming
22 here. You know what Freud would say about that; right? You
23 don't have to comment.

24 MR. GODFREY: I'm not sure how I could describe my
25 team ignoring my questions like why are we going to La Guardia.

1 THE COURT: Welcome. I'm glad you readied the ship,
2 so to speak, and everyone is here. A reminder to speak into
3 the microphone so that anyone on CourtCall can hear us. Let's
4 get into it.

5 The first item is the bankruptcy proceedings which
6 have become a little more involved. I know the motion to
7 withdraw the reference has been filed. I accepted it as
8 related, and it is now assigned to me.

9 I confess that I have not read the submissions with
10 care at this point. I have skimmed them, and I did notice, I
11 think, if I'm not mistaken, that New GM is arguing that the
12 motion to withdraw the reference would be unnecessary if
13 Judge Glenn were to grant a stay. So it raises in my mind the
14 question of what order these things should be addressed in and
15 briefing schedules and what have you.

16 Any thoughts on these issues?

17 MR. GODFREY: Yes, your Honor. Rick Godfrey on behalf
18 of New GM.

19 The way the schedule is currently set in the
20 bankruptcy court is that the plaintiffs' proposed settlement is
21 scheduled to be presented and heard on March 11. Unless there
22 is a change in that schedule, we have no time to await a stay
23 resolution and then brief withdrawal. Withdrawal briefing
24 should take place now. We filed an opening brief. We think
25 it's mandatory. We also think in the alternative, it's

1 permissive.

2 If Judge Glenn agrees with us due to the substantial
3 overlap, near identical overlap of the issues that this Court
4 has pending, and grants the stay, then there will be no reason
5 for this Court to rule on the withdrawal motion.

6 But if Judge Glenn either does not grant the motion to
7 stay or just simply does not rule on it, that hearing on the
8 approval of the proposed settlement should not take place
9 without the withdrawal motion being decided.

10 I can get into as much detail as the Court wants, but
11 you asked me a precise question on briefing, and my answer is
12 we should be briefing it right now.

13 THE COURT: Although March 11 is a week from Monday.
14 So that doesn't give a whole lot of time to brief these things,
15 let alone decide them.

16 MR. GODFREY: We are moving as expeditiously as
17 possible. We've moved very promptly. We asked for a schedule
18 on the stay motion. We filed on the 22nd. We will be filing
19 our objections on Monday, the 4th. But the plaintiffs have set
20 a schedule --

21 THE COURT: And you're filing your objections to the
22 settlement on March 4?

23 MR. GODFREY: Yes.

24 THE COURT: Is there a briefing schedule before
25 Judge Glenn on the motion for a stay?

1 MR. GODFREY: I think it's automatic, your Honor.

2 THE COURT: But he hasn't altered the default
3 schedule?

4 MR. GODFREY: Mr. Bloomer is reminding me of
5 something. If I might have a second, your Honor?

6 THE COURT: Sure.

7 (Defense counsel conferred)

8 MR. GODFREY: It's automatic, your Honor. We had
9 asked for a scheduling conference, but that did not take place.
10 So it's automatic in terms of briefing.

11 THE COURT: And is it a two-week/one-week briefing
12 schedule?

13 MR. BERMAN: Our brief in opposition to the motion to
14 stay is due on Monday.

15 THE COURT: Okay. Do you have thoughts of how we
16 should be proceeding, what I should be doing?

17 MR. BERMAN: Yes, I do have thoughts, your Honor.

18 THE COURT: I would expect so.

19 MR. BERMAN: Our thoughts, Ms. Cabraser's and I, are
20 as follows: In its brief -- I just had a chance to skim it,
21 but at page 2, New GM says there is a stay motion before
22 Judge Glenn. In the absence of a stay, this Court should
23 withdraw the reference to the Rule 23 motion from the
24 bankruptcy court.

25 So our position is let's let this play out because if

1 Judge Glenn enters a stay, by GM's own words in the brief,
2 there is no need for you to wrestle with the withdrawal motion.

3 Now, Mr. Godfrey says that the timing is such that you
4 have to launch into the withdrawal motion because the
5 preliminary approval process may go ahead on March 11, the
6 judge may issue a preliminary approval order and not give a
7 stay, and therefore, you need to decide this.

8 And I suggest that let Judge Glenn decide if he's
9 going to approve the settlement and/or deny a stay. Then we
10 can deal with the bankruptcy withdrawal motion. As a practical
11 matter, there is not that big of a rush.

12 THE COURT: Does it not moot the withdrawal motion if
13 he does approve the settlement?

14 MR. BERMAN: No. If he approves the settlement, then
15 as I understand it, New GM will with more force want the
16 withdrawal motion. If he denies the preliminary approval, then
17 I don't think they're going to want the withdrawal motion. If
18 he grants preliminary approval, it's almost a de facto denial
19 of the stay, in which case we can brief the withdrawal motion.

20 But there is not this urgency because if he grants
21 preliminary approval, we then have to go and subpoena from Polk
22 and/or New GM the names and addresses of all the class members.

23 So there is going to be a long time period before
24 there is actually a final approval hearing, like five months.
25 Between the date he approves the preliminary approval and the

1 actual final settlement would be a five-month period.

2 THE COURT: I see.

3 MR. BERMAN: So I'm suggesting, let's see what
4 happens. And then if the stay is denied, we can wrestle with
5 the timing of briefing on the withdrawal motion.

6 THE COURT: All right. Meaning your position is we
7 shouldn't even set a briefing schedule on the withdrawal
8 motion.

9 MR. BERMAN: That's correct, until we find out if it's
10 needed.

11 THE COURT: Right now I assume under the default
12 rules, you would normally have -- I don't know how these things
13 work.

14 MR. BERMAN: We would normally do it on the default
15 rules. Our opposition to the mother to withdraw is due next
16 Friday.

17 THE COURT: Right.

18 MR. BERMAN: If you want to go ahead with briefing, we
19 would ask for some more time on that because he's wrestling
20 with the stay motion due Monday, and then effectively that
21 would only give us Tuesday through Friday to work on the
22 withdrawal motion. So at a minimum, we'd want to push that out
23 a little bit.

24 THE COURT: I know you're capable of doing more than
25 one thing at a time, but I hear you.

1 Mr. Godfrey, there seems some wisdom in letting things
2 play out. Let me put it this way: I don't think I would be in
3 a position to decide the withdrawal motion by March 11. It's
4 not fully briefed, and I haven't started looking at it. It's a
5 big issue to decide in that timeframe. It's essentially a week
6 from now.

7 So I don't see much choice in letting things play out
8 and seeing what Judge Glenn does with both the settlement and
9 the stay application. And then we can assess where there's
10 urgency and what the schedule should be. No?

11 MR. GODFREY: Well, first, this is driven by the
12 plaintiffs' insistence of having a March 11 preliminary
13 approval date. If they change the date, this Court has plenty
14 of time to consider the withdrawal matter.

15 Second, withdrawal is mandatory. We don't think on
16 the issues at hand, Judge Glenn has jurisdiction or should be
17 deciding them. Third --

18 THE COURT: So why did you wait until February 22 to
19 file the motion then?

20 MR. GODFREY: They filed their papers on February 1 or
21 February 2. We filed our motion to stay --

22 THE COURT: Right. But you've been threatening a
23 motion to withdraw the reference for literally six months, if I
24 remember correctly. Certainly this is not the first time I
25 heard it.

1 So I would think you could have either filed before
2 they filed their motion. I think the motion schedule was
3 previously set. So in that regard, Judge Glenn was
4 entertaining it, or you could have been in a position to file
5 it on February 2.

6 MR. GODFREY: No. Because we actually read their
7 papers. Their papers have serious problems. We actually tied
8 our motion to the request. And we demonstrate the overlap. We
9 demonstrate the inconsistent risk. We demonstrate the waste of
10 judicial resources, and we do that in our papers based on what
11 they filed.

12 THE COURT: So what do you propose?

13 MR. GODFREY: What I propose is either one of two
14 things: Either they adjourn the March 11 date so that
15 Judge Glenn has the opportunity to determine whether there is a
16 stay that will be entered or not; we simultaneously brief
17 withdrawals so that if Judge Glenn denies the stay motion; this
18 Court can then in due course take up the withdrawal motion.
19 There is no rush on this, other than the rush created by the
20 plaintiffs.

21 THE COURT: And I don't know how Judge Glenn's
22 calendar operates.

23 What leads us to believe that he actually is going to
24 rule on the settlement on March 11?

25 MR. GODFREY: That's what plaintiffs have asked for.

1 That's what we're preparing for. We're preparing for a
2 hearing -- the bankruptcy counsel is for New GM. We're
3 preparing for a hearing on preliminary approval, at which point
4 they'll be off to the races, at which point they'll be saying
5 it's already a done deal and you don't need to worry about
6 withdrawal. That's what we'll hear. This should be decided
7 beforehand.

8 THE COURT: And what's the harm -- assuming that he
9 does grant preliminary approval, it's just preliminary.

10 So what's the harm? How does it moot the withdrawal
11 motion?

12 MR. GODFREY: Well, first, we don't think he has the
13 authority, since withdrawal is mandatory. Secondly, he will be
14 making rulings on virtually every issue that currently is
15 pending before this Court.

16 These are the identical issues with one narrow
17 exception, and you can't even reach that exception until you
18 make the rulings that are pending before this Court on class
19 certification, on Daubert, and on summary judgment.

20 THE COURT: Mr. Berman, what's the harm in asking
21 Judge Glenn to put the brakes on settlement approval to first
22 sort out whether to put the brakes on altogether and/or whether
23 he should be resolving these things at all?

24 MR. BERMAN: Well, First of all, the premise of
25 Mr. Godfrey's motion is there is this huge overlap between

1 what's before you and what's before Judge Glenn. That's just
2 not true. There are five good reasons why it's not true.
3 First of all, the parties are not the same. In the bankruptcy
4 court --

5 THE COURT: I'm less interested in the merits at the
6 moment. You'll have your opportunity to brief those I imagine.

7 MR. BERMAN: Because New GM has known of this schedule
8 since they filed their papers. They could have filed the
9 motion to withdraw weeks ago, and we would have had time for
10 your Honor to consider this. So they're the ones crunching the
11 time.

12 At the same time, Judge Glenn is pushing us because
13 this settlement proposal is on its third version. He wants to
14 get it going. So we're kind of following the schedule that
15 we've worked out with him ahead of time.

16 So we filed it for a hearing on March 11. We don't
17 know if he's going to act on it on March 11. I doubt he will.
18 I assume he's going to take some time to consider the briefing.

19 But again, I harken back to New GM's brief because
20 they're taking a different position now than they did in the
21 withdrawal brief they filed in front of you where they say in
22 their withdrawal brief: "In the absence of a stay, the Court
23 should withdraw the reference."

24 So they're saying let the stay issue be decided first,
25 and then we can figure out if you should entertain withdrawal

1 from the bankruptcy court.

2 THE COURT: I certainly think it's hard to square that
3 position with the position that withdrawal is mandatory.
4 Again, I'll presumably have an opportunity to consider those
5 things in due course.

6 I think I'm inclined to reach out to Judge Glenn and
7 just figure out what's going on on his end of things. I did
8 speak to him earlier this week, but at the time, I wasn't clear
9 what the state of play was.

10 Right now my inclination is to wait and see how things
11 play out in front of him and, on that basis, figure out whether
12 we need to brief the withdrawal motion and, if so, on what
13 schedule.

14 So to that end, plaintiffs need not respond by next
15 Friday, and I certainly am not going to decide it by March 11.
16 I will tell you that. But I'll talk to Judge Glenn. That will
17 inform, I suppose, what kind of schedule we need to set.

18 I guess my inclination is to set a default schedule
19 right now that we can always alter in the event that it's
20 appropriate to do so.

21 So, Mr. Berman, what do you propose on that score?

22 MR. BERMAN: My team would like two weeks from
23 March 8.

24 THE COURT: All right. So the more efficient way of
25 saying that is March 22.

1 MR. BERMAN: Yes, sir.

2 THE COURT: I'll give you till March 22 and GM until
3 March 29 to file a reply. If there is reason or need to alter
4 that after I speak with Judge Glenn, I will alert you and we
5 will revisit it.

6 Mr. Godfrey.

7 MR. GODFREY: To be precise, we asked for a stay or,
8 in the alternative, a stay allowing the briefing and the
9 resolution of the withdrawal motion. That was what we asked
10 for, was relief on the motion for a stay.

11 So it was a two-part motion, the first part being just
12 a stay. But in the event the court, that is, Judge Glenn, did
13 not agree with that, then a stay allowing this Court to have
14 full briefing and ruling on the withdrawal motion.

15 THE COURT: So something in the nature of an
16 administrative stay.

17 MR. GODFREY: Correct.

18 THE COURT: But those are issues for Judge Glenn.

19 MR. GODFREY: Yes. It wasn't a stay and then
20 withdrawal. It was a stay, period. And if you don't grant the
21 stay, then at least enter a stay until the withdrawal motion
22 can be briefed and decided by this Court.

23 THE COURT: Am I wrong in thinking that if he were to
24 deny a stay, that you would have an ability to appeal that
25 ruling to me? Is that wrong?

1 MR. GODFREY: I think we'd have an ability to appeal
2 that ruling, but at that point, I think it would merge as a
3 practical matter in the withdrawal papers. They are slightly
4 different standards, but it comes to the same outcome
5 eventually.

6 THE COURT: All right. Very good.

7 And then taking a step back, more broadly, I take
8 it -- well, what are your respective views -- and they may
9 differ -- on how this intersects with the motions that are
10 pending before me in terms of what order they should be.

11 I take it GM's position is that I should decide the
12 motions pending before me, and then that would have a bearing,
13 if not resolve, the motions.

14 MR. GODFREY: It's not just GM's position, your Honor.
15 The settlement agreement itself, in comments made by bankruptcy
16 counsel for the plaintiffs, are that this Court's decisions
17 will have impacts.

18 In fact, there is a provision in the proposed
19 settlement agreement that depending upon how this Court rules,
20 they may have to re-do the notice. They may have to re-do
21 various terms of the agreement. There are provisions in the
22 agreement which recognize this.

23 In our papers, we outline all the statements they've
24 made over the past three months indicating that they are
25 dependent upon -- and this Court's rulings have an ultimate

1 bearing upon -- the terms of the settlement, the proposed
2 settlement.

3 THE COURT: And I take it that you're moving to
4 withdraw the reference only as to the Rule 23 motion before the
5 bankruptcy court; correct?

6 MR. GODFREY: That's correct.

7 THE COURT: All right.

8 Mr. Berman, did you want to say anything on that
9 front?

10 MR. BERMAN: Mr. Godfrey is correct that your rulings
11 on summary judgment in particular will have bearing on
12 ultimately who gets money out of the adjusted shares.

13 I don't think your ruling on class certification will
14 impact the bankruptcy for a couple of reasons: One, before you
15 on class certification is a test case of just three states; and
16 two, before you is a litigated Rule 23(b)(3) class.

17 Before the bankruptcy court is a 23(b)(1)(A) class
18 which is a limited fund class settlement which is a whole
19 different standard, and it's a settlement of class which has a
20 different standard as well. So the class certification rulings
21 I think are very much different.

22 THE COURT: All right. But it sounds like everybody
23 is in agreement that it probably makes sense to take up the
24 pending motions before me before turning to the bankruptcy
25 motions in the event that I do withdraw the reference.

1 MR. BERMAN: That's correct.

2 THE COURT: Okay. There is a lot going on. We will,
3 I'm sure, have more to discuss on this front. In the meantime,
4 that is the schedule we'll follow.

5 I will tell you that I am certainly trying and will
6 try to get you rulings on the pending motions as soon as
7 possible. You might have inferred that I've been a little busy
8 over the last few months. And in that regard, there are so
9 many hours in the day. So it is what it is. But I'm going to
10 do as best I can.

11 Mr. Godfrey.

12 MR. GODFREY: I know the Court has been busy.

13 THE COURT: Yes. Partially because of you and
14 unrelated matters, but we don't have to discuss that.

15 MR. GODFREY: I was playing back in my mind when you
16 said I think we're all in agreement. I'm not sure I understood
17 the Court correctly. So if I could rephrase what I think we're
18 in agreement on. I think the withdrawal motion needs to take
19 place before Judge Glenn decides any issues on the proposed
20 settlement.

21 I think before any issues on the proposed settlement
22 can be decided, this Court needs to rule on various issues. I
23 cannot disagree more with Mr. Berman about his characterization
24 of the class issues, but that's for another day. So I'm not
25 sure --

1 THE COURT: I think I was referring just to in the
2 event that I do withdraw the reference, what order I should
3 take up the motions. There it seems like everybody is in
4 agreement that the motions that are already pending before
5 me --

6 MR. GODFREY: I apologize. I misunderstood. Yes. I
7 agree with that.

8 THE COURT: Very good.

9 Anything else to discuss on that front? All right.
10 Good.

11 Mr. Berman, who is counsel in the case, the motion to
12 withdraw the reference case? I don't have the docket number
13 handy, but on your side.

14 MR. BERMAN: Ms. Cabraser and I, along with our
15 bankruptcy lawyers.

16 THE COURT: Have you entered a notice of appearance in
17 the matter?

18 MR. BERMAN: No, we have not. We're still trying to
19 figure out why that happened. A new case was opened. If we
20 need to file a notice of appearance, we will do so.

21 THE COURT: My understanding of how things these
22 things work -- I confess I think this is the first motion to
23 withdraw I've received as a judge. But I think it gets filed
24 in the bankruptcy court, and then it's transmitted to the clerk
25 of the district court and opened as a new case. So that's why

1 it happened that way.

2 I would just urge you to enter a notice of appearance
3 so that in the event I do issue orders or there is any need to
4 do anything, you will actually receive them.

5 MR. BERMAN: We will get that done today.

6 MS. CABRASER: We'll just do one omnibus notice of
7 appearance for all the counsel so that everybody is on the
8 docket.

9 THE COURT: Great. Excellent.

10 MR. GODFREY: We will also check that, your Honor.
11 Obviously bankruptcy counsel is resident here. We at Kirkland
12 are pro hac vice. So we will check that as well. We may have
13 to enter an appearance in that also.

14 THE COURT: You all should definitely figure it out.
15 I think there was counsel certainly on your side, but I don't
16 remember who it was.

17 MR. GODFREY: It was Paul, Weiss and King & Spalding
18 who are resident here. But having heard what you said to
19 Mr. Berman, we'll figure it out on our side. We may be filing
20 an appearance also.

21 THE COURT: Okay. On the agenda, items 2 through 4,
22 is there any need to discuss anything? It doesn't look like
23 it. That is, coordinated, related actions, document
24 production, and deposition updates.

25 MR. GODFREY: Just briefly, your Honor. During the

1 last status, I had put a marker down about a case in Maryland,
2 the Mary Schroeder case. I am pleased to report that the
3 matter and the issue have now been resolved. So we will not
4 have any risk of needing this Court's intervention, and I
5 thought the Court should be aware of that.

6 THE COURT: Good. Thank you.

7 MR. GODFREY: Secondly, Ms. Bloom has been very busy
8 in the last three months.

9 THE COURT: I think the last few years.

10 MR. GODFREY: Well, I'm informed that the status is
11 we're now down to 174 MDL cases. Close to 90 percent of all
12 cases that have been filed in the MDL have now been resolved.
13 Over half of the remaining cases were filed last year or early
14 this year.

15 So the progress in terms of an endgame resolution for
16 the personal injury docket has been significant. We're not
17 quite done yet, but even this week -- and Ms. Bloom can report
18 further either now or in chambers. She's been negotiating like
19 mad and getting some resolutions. So the numbers are changing
20 almost on a daily and weekly basis.

21 THE COURT: All right. Can I just get clarification.
22 This is sort of merging into the next item on the agenda. You
23 said 174. Your letter of February 22 indicated less than 350,
24 including 176 post-sale order claims.

25 Are you referring to --

1 MR. GODFREY: I'm referring to just this Court, not
2 the presale.

3 Ms. Bloom is going to take over now.

4 THE COURT: I think there are some presale claims
5 pending before me.

6 MS. BLOOM: So there are 172 remaining post-sale
7 claims, and I do think that by the end of March, a good number
8 of those will be gone. We have settlement conferences set up
9 for one that affects 34, one that affects 8, one that affects
10 7. I'm optimistic that a good number of these will all be gone
11 by the end of March.

12 The only thing I'd say is there is a group of 68
13 claims that remain, just so that you know, by one firm. They
14 have informed us that they have a number of additional claims
15 that they have not yet filed that they're working through.

16 So then for us, in terms of being able to work with
17 them to try to resolve those post-sale claims, there is a big
18 process where we have to get the information from them and
19 review it internally.

20 So for that group of 68 claims, post-sale claims, it
21 may not be until summer now that we can resolve those or
22 attempt to resolve them in light of that additional information
23 that we have learned. So you may see new claims filed, and I
24 would anticipate they'll all be from that one firm.

25 THE COURT: Which firm is that?

1 MS. BLOOM: And then your Honor is correct. On the
2 presale docket, we've made really tremendous progress, and that
3 impacts both the personal injury/wrongful death claims that
4 have been pending before Judge Glenn, as well as your Honor.

5 We are now down to 110 presale claims. 98 of those
6 are with Mr. Potts, and the parties are meeting next month,
7 March 21, again, with Mr. Black as mediator. He is the same
8 mediator that we used for the Bailey firm in Houston, and we
9 had good success.

10 And we're hopeful not only to resolve those presale
11 claims but also that we'll be able to resolve Mr. Potts'
12 remaining claims in the MDL that are post sale. So then you
13 really would be down to just a handful of presale claims.

14 THE COURT: You said 110 presale claims?

15 MS. BLOOM: Yes.

16 THE COURT: That's presale claims pending on the MDL
17 docket?

18 MS. BLOOM: Yes. Before your Honor.

19 THE COURT: So I'm confused because the letter you
20 guys filed yesterday seems to have 171 in that category.

21 MS. BLOOM: So after filing the letter that you
22 reviewed late last night, we filed the announcement of a
23 settlement that we just entered into on Wednesday where we
24 settled a bunch of presale claims. Yes.

25 So that meant that -- so we were struggling with that.

1 We hadn't signed the term sheet. So I had the team send in the
2 letter without incorporating those numbers and then reported
3 the numbers to your Honor last night in a letter.

4 THE COURT: All right. Are you filing anything with
5 respect to that settlement before me?

6 MS. BLOOM: Your Honor, that's good actually a good
7 point. The other thing I wanted to bring up is that because a
8 number of these settlements now involve presale claims, the
9 mediator that we have used, Dan Balhoff, who was the original
10 mediator for the Hilliard post-sale docket, requested that he
11 would like the same process that was used then which is that he
12 be appointed special master. It does help in terms of being
13 able to send out offer letters to have the imprimatur of the
14 Court.

15 So there will be about four or five of these
16 settlements actually starting next week where we will be filing
17 with your Honor papers very similar to what we did with the
18 post-sale docket where we will be seeking to have a qualified
19 settlement fund set up that your Honor will oversee and also to
20 have Mr. Balhoff appointed as the settlement special master for
21 those cases.

22 THE COURT: I think you indicated in the letter
23 reporting on the settlement with Mr. Hilliard's presale docket
24 a similar intention. Correct?

25 MS. BLOOM: That's exactly right. He will be one of

1 the dockets that will be coming along with the very same sort
2 of paperwork. That's right.

3 THE COURT: Will it be same as the one that I
4 previously approved?

5 MS. BLOOM: Yes. They will be virtually identical.
6 You'll see a trust agreement, and then you'll see the same
7 qualified settlement fund administrator, Scott Freeman, that
8 we'd be proposing in each of these qualified settlement funds.
9 And then you will see in each of them a motion to appoint
10 Mr. Balhoff as the settlement special master. So, yes. They
11 will be virtually identical but just different plaintiff law
12 firms, different aggregate settlements.

13 THE COURT: It would be helpful if when you file it,
14 if you could file a letter just identifying if there are any
15 changes from the motion that I approved several years ago on
16 that front, just to sort of draw my attention to those. That
17 would be helpful.

18 MS. BLOOM: Sure. I don't imagine that there would be
19 anything really that has changed. It's just for tax purposes
20 you need separate funds for the different plaintiff lawyer
21 groups and the different groups that are putting money into the
22 fund. So they'll be virtually identical, but I will, to the
23 extent there is anything different, make sure to do a cover
24 note.

25 THE COURT: All right. Great.

1 Mr. Hilliard, anything on that?

2 MR. HILLIARD: On behalf of new Gm, your Honor, all
3 conveyed to you accurately.

4 THE COURT: Mr. Godfrey.

5 MR. GODFREY: I was thinking that when we send in the
6 papers, we should update the Court on statistics so we all have
7 the current statistics about where we stand just in terms of
8 pending cases, etc.

9 Either way, we're at the 90 percent mark. In terms of
10 a plan, there is one group that's going to be at the end. The
11 theory is that the number of new cases except for this one
12 group has dropped off precipitously, but I can't make any
13 representations to the Court that that won't change at some
14 time.

15 THE COURT: Certainly there is no objection if you
16 want to update me sooner, but there is the monthly report. As
17 you saw from my endorsement, I think, given that the numbers
18 are low enough now, I think we should actually move to an
19 actual spreadsheet as to each individual plaintiff and where
20 things stand as to that plaintiff and so forth.

21 One follow-up question. Ms. Bloom, you referred to
22 the 68 pages remaining from one firm that has a number of other
23 unfiled claims.

24 Can you tell me what firm that is.

25 MS. BLOOM: That is the Langdon & Emison firm. That

1 is the same firm that we settled with this week, an aggregate
2 settlement of their presale docket. So it is also the same
3 firm that earlier -- I don't remember if it was before we met
4 with you or sort of in the interim, but we also sort of did an
5 aggregate settlement with them for one set of their post-sale
6 claims that were affiliated with one referring counsel. Now
7 we're dealing with what's left of their post-sale docket. So
8 that's sort of the last big push I think that's here really
9 after the Potts firm.

10 THE COURT: All right. Very good.

11 Now, Mr. Potts, I know you came all this way. If
12 there's anything you want to say, you're welcome to.

13 MR. POTTS: If you will give me just one minute,
14 your Honor.

15 When we talk about post-sale claims, we have a group
16 of claims that are not ignition switch I submit in that bucket.
17 We have 23 of those. Those are ESC or EPS claims. As the
18 Court knows, those cases have not been worked up. There has
19 been virtually no discovery.

20 I read your order a couple days ago saying you were
21 inclined to remand those. I just want to let you know we
22 wholeheartedly support that. Those people have waited for
23 years and have years more to wait because there has been no
24 discovery done. So as soon as that could be done, we would ask
25 the Court to do that.

1 THE COURT: All right. We'll turn to that in a
2 moment. I'm happy to hear further from you on that if you
3 want.

4 Ms. Smith.

5 MS. SMITH: Yes, your Honor. I just want to clarify
6 that the Court's order that I believe Mr. Potts is referring to
7 related to a certain subset of 18 claims. The Court has not
8 addressed -- and the parties all agree that we are not going to
9 address -- what the next steps are for the group of what we
10 call order 153 claims. So I just wanted to make sure there was
11 a clarification of what groups we were talking about here.

12 THE COURT: I was planning to ask for that
13 clarification since there are a lot of numbers being thrown
14 around even as to the 18. One of you says 17. The other says
15 18.

16 MS. SMITH: We're good with 18. It should be 18. So
17 I apologize for the confusion.

18 THE COURT: And the 23 that Mr. Potts just referred to
19 is in the pot, no pun intended, of cases that I thought there
20 was agreement. And in fact, I think I already ruled on it in
21 order 160 that there's basically a 60-day period during which
22 you're going to try and resolve them. If you don't, then we
23 would go from there.

24 Is that correct?

25 MS. SMITH: Thank you, your Honor. That is correct.

1 Just so the record is not unclear about this, we do
2 not agree that there has been no discovery related to those
3 cases, but we don't need to address that now. But I just
4 wanted to respond briefly to that.

5 THE COURT: Mr. Potts, you can tell me if you think
6 otherwise, but it sounds like we should take that up after the
7 end of that 60-day period, if you will.

8 I think the inclination that I shared in my
9 endorsement on the agenda letter, suffice it to say, I would
10 probably have the same inclination with respect to non ignition
11 switch claims that remain after that 60-day period, which is to
12 say my gut at the moment is that those should probably be
13 remanded sooner rather than later if they're not resolved.

14 MR. POTTS: I would agree. GM just recently agreed to
15 mediate those. So we were going to attempt to mediate those
16 with the rest of our docket on March 21.

17 THE COURT: All right.

18 MR. POTTS: Thank you.

19 THE COURT: Good luck to you all on that.

20 So sticking to the agenda letter, we've more or less
21 moved into item number 5. But wave one and wave two, wave one,
22 there are just the two remaining plaintiffs and a fully
23 submitted summary judgment motion that I will rule on
24 relatively soon I hope.

25 Is there anything to discuss as to wave two or the

1 order numbered 137, 140, and 148?

2 MR. GODFREY: No, your Honor, not from New GM's
3 perspective.

4 MR. HILLIARD: No, your Honor.

5 THE COURT: As to the personal injury next steps, I
6 think I resolved -- "resolved" may be the wrong word -- but
7 took care of most of it in order number 160, including the
8 dispute with respect to two of the plaintiffs, Cleveland and
9 Gabriel.

10 MS. BLOOM: I should also just inform your Honor with
11 respect to the Cleveland and Gabriel matter, the parties were
12 able to work out just yesterday. Because the plaintiff firm is
13 based in New Orleans and Mr. Balhoff, who has mediated hundreds
14 of these claims, is based in Baton Rouge which is right close
15 to there. So the parties have agreed to mediate with him. So
16 we will not need the services of Judge Cott. We will be aiming
17 to have that mediation occur in March as well.

18 THE COURT: Great. Thanks for letting me know that.

19 Am I correct that the plaintiffs who would be subject
20 to order number 160 -- that in that process that they would
21 include pro se plaintiffs?

22 MS. SMITH: Yes. There will be a couple of plaintiffs
23 who are pro se I think excluded from the process which would be
24 ones that are in what we call the order 137 process where
25 counsel has moved to withdraw and we don't know where they're

1 going to end up.

2 But I think there are two or three that are in the
3 wave process or subject to that wave three where they've gone
4 through order 137. They've either amended or complied or
5 whatever they needed to do, and their claims still exist.

6 They are proceeding pro se. So the next steps on
7 those claims we thought -- and I think agreed by Mr. Hilliard
8 and his team -- would be to include them in the wave as well.

9 THE COURT: All right. There is one pro se plaintiff
10 who has filed a number of things before me, Ms. Kramer.

11 Her case I presume would be in that list. Is that
12 correct?

13 MS. SMITH: That is correct, your Honor.

14 THE COURT: So I am concerned. I just want to make
15 sure -- the procedures are complicated, and I periodically see
16 lawyers who file things saying that they're befuddled by the
17 number of orders and the number of ECF hits and so forth. All
18 the more confusing for a nonlawyer to navigate.

19 I want to make sure that any pro se litigants are
20 clearly advised of and capable of understanding what they need
21 to do in order to comply with order 160 and whatever else they
22 need to do.

23 Any thoughts on that?

24 MR. HILLIARD: Your Honor, we took your endorsement to
25 heart. We're familiar with Ms. Kramer and are sensitive to and

1 have communicated with her throughout the years. We intend to
2 work with GM to unbefuddle procedure to be sure that it is
3 simple, direct, concise, and be available as well to answer any
4 questions along the way of the pro se plaintiffs.

5 I'm happy to submit it to the Court for the Court's
6 review to be sure that you agree that this is what the Court
7 expects us to do. But I think we're clear as to the purpose
8 and to be sure that they don't feel overwhelmed or overworded,
9 if I can use that, in regards to what they need to do in order
10 to protect their interests.

11 THE COURT: All right.

12 Mr. Godfrey.

13 MR. GODFREY: We agree with that. We think it's
14 actually beneficial, not just to the Court but to the parties,
15 to try to simplify procedures. It will probably save us more
16 time and money in the long run if we do that. So we'll work
17 with the plaintiffs in that regard pursuant to this Court's
18 suggestion.

19 THE COURT: What are your thoughts? I guess I was
20 thinking at a minimum that having some sort of notice in more
21 lay terms that would be served on any pro se plaintiffs, along
22 with whatever orders are applicable, would make sense but sort
23 of translating those into more understandable lay terms.
24 That's one option.

25 Another option would be to sort of have a separate

1 order that would lay it out in more clear, understandable ways
2 for an unrepresented party. In either case, I would think it
3 would make sense to sort of settle on that before the list of
4 wave three plaintiffs is nailed down or maybe even before
5 March 20 when I think order number 160 requires GM to serve
6 those plaintiffs with its notice. It might make sense to have
7 something done before then so that you could serve along with
8 that notice whatever we come up with.

9 Thoughts.

10 MR. HILLIARD: A separate order makes sense to me,
11 Judge. It could be the deadlines would be almost identical to
12 those who are represented, but we might be able to be fairly
13 flexible to something that may come up, and separate orders
14 might keep it cleaner in regards to how we handle pro se
15 plaintiffs. We'll confer with GM this afternoon and tomorrow
16 to try to get it started quickly.

17 THE COURT: So you why don't you report back let's say
18 within a week so that we hopefully can have something resolved
19 before that March 20 deadline.

20 Does that make sense?

21 MR. HILLIARD: Yes, sir.

22 THE COURT: I recognize, Mr. Hilliard, you don't
23 actually represent these people, but if I could task you with
24 on behalf of the Court, I suppose, representing their interest
25 in terms of me figuring out a good way of handling this, that

1 would be helpful.

2 MR. HILLIARD: I will, Judge.

3 THE COURT: Great. Thanks.

4 Do we know how many pro se plaintiffs are already in
5 this group approximately?

6 MS. SMITH: I believe it's two is what Mr. Hilliard is
7 saying.

8 MR. HILLIARD: Pardon me for interrupting. Goodwin is
9 the second one. So Kramer and Goodwin.

10 THE COURT: All right. I'm pleased that it's not a
11 large number, but I do want to make sure that they are clearly
12 advised of what they need to do so that they don't run into
13 trouble inadvertently. All right. Very good. So I'll expect
14 something within a week on that front.

15 So that leaves 18 I take it we're now in agreement.

16 Is that correct?

17 MR. GODFREY: Yes.

18 THE COURT: All right. I think, as we've discussed,
19 I've shared my inclination. I don't really see why the
20 12(b)(6) and statute of limitations repose arguments that New
21 GM wants to bring -- I don't see what efficiency is gained from
22 having those litigated before me as opposed to sending them
23 back to a transfer judge for any number of reasons. So I
24 really wouldn't be inclined to keep those and would be inclined
25 to remand them.

1 By contrast, to the extent that New GM thinks that my
2 December 2017 opinion with respect to airbag deployment would
3 dispose of any cases in that group, I think there is a stronger
4 argument that, given my familiarity with those issues and what
5 have you, that New GM should at least have an opportunity to
6 make that argument.

7 So I've got an agreed upon joint proposal I take it
8 for timing and procedures for remand. I don't know if that
9 means that you've accepted my inclination.

10 MR. HILLIARD: We've learned that your inclinations
11 are usually best accepted.

12 THE COURT: Sometimes I change my mind.

13 MR. HILLIARD: Sometimes you do. We've spent time
14 together and have come up to this agreement, subject to the
15 Court's approval, on our suggested next step for remand.

16 THE COURT: All right. Ms. Smith.

17 MS. SMITH: Yes, your Honor. We also took your
18 inclination to heart. Although we passionately -- and I mean
19 passionately -- believe these claims would be served by
20 remaining here, at the same time that this agreed process is
21 going on, we will be working on settling these claims as well.
22 So we're, again, cautiously optimistic that at least some of
23 these will resolve before we ever get through the process.

24 But taking the Court's inclination to heart and kind
25 of wanting to get peace and having these at least 18 procedures

1 resolved, we did work out an agreement with lead counsel last
2 night on this. But to make clear, for the next steps on the
3 next 60 claims, this is of course without prejudice to
4 maintaining our position on whether they should be remanded or
5 not.

6 THE COURT: Understood. So this proposal looks good
7 to me. So I'm happy to bless it. I would think it would make
8 sense to memorialize this in a stand-alone order separate and
9 apart from the post status conference order. So why don't you
10 convert this into a proposed order and let's say submit it
11 within the next week as well.

12 Does that make sense?

13 MS. SMITH: Yes, your Honor.

14 MR. HILLIARD: Yes, sir.

15 THE COURT: As I said before, I think we can defer
16 discussion of the 23 cases or however many other order 153
17 cases there may be until the 60-day period is over.

18 Mr. Potts, is that good with you?

19 MR. POTTS: It is.

20 THE COURT: Excellent. Are there other cases in the
21 mix that wouldn't fall in one of the buckets that we just
22 discussed? Anything else to discuss?

23 MS. SMITH: I believe from New GM's perspective on the
24 personal injury cases, that covers it.

25 THE COURT: What about the 110 presale order claims?

1 Where do those stand?

2 MS. BLOOM: So I really think by the end of March
3 there is just a handful remaining. If we don't have a
4 successful resolution with the Potts firm, then we would still
5 have their 98 or so claims plus the handful of others
6 remaining.

7 So what I would suggest is that we take this up at the
8 next status or some such thing when we have a better sense of
9 where we are with that, but I'm cautiously optimistic.

10 THE COURT: Mr. Potts, to the extent that you have the
11 largest number of those, does that make sense?

12 MR. POTTS: Yes. I believe by March 21st, we'll know
13 where we stand.

14 THE COURT: Good luck on that front as well. I'll
15 leave it to you to figure out if Mr. Potts has the majority of
16 those claims and we're going to discuss them at the next
17 conference, then it might make sense for him to come back so
18 that we can have an informed discussion about what to do if any
19 of those cases remain.

20 Since I think it makes sense to raise it now, my
21 suggestion about a tracking spreadsheet of some sort. I take
22 it from the last line of your letter from yesterday that you're
23 okay with that and agree it would be a good idea, and you're
24 all nodding.

25 MR. GODFREY: From New GM's perspective, I think at

1 this stage it's appropriate and necessary.

2 MR. HILLIARD: We agree, Judge. It's a good idea.

3 THE COURT: It would obviously be helpful if you are
4 conferring about it to make sure everybody is in agreement as
5 to who the plaintiffs are and what orders they're subject to
6 and what upcoming deadlines there are and so forth.

7 I think GM has been filing these letters. If you
8 could make sure that you confer before you file them to make
9 sure you work out numbers and who they are and so forth, that
10 would be great. All right? Terrific.

11 MR. GODFREY: Your Honor, in that regard, do you want
12 to see a draft of the formatting before we actually populate it
13 with the information to make sure it captures what you're
14 interested in?

15 THE COURT: Sure. I think that's a great idea. We
16 can do that informally. If you just want to email my chambers,
17 we can give you feedback.

18 MR. GODFREY: We don't want to prepare something and
19 then your Honor says you're missing the three pieces of
20 information you want. So we'll do that and send it to your
21 chambers.

22 THE COURT: The thing that I'm most eager to ensure,
23 number one, is that we're aware of the status of every
24 plaintiff and that we're aware of who the plaintiffs are; two,
25 that they're all subject to something, not just sort of

1 languishing; and number three, that we are all, including
2 myself, aware of whatever upcoming deadlines there are so that
3 we can kind of monitor them and make sure that what needs to be
4 done does in fact get done and what have you.

5 It partially dovetails with other items on my agenda
6 from the endorsement which are there are these motions that are
7 kind of floating out there. And sometimes it takes us time to
8 get to the bottom of whether these things are live, moot, etc.

9 I think it would be helpful in terms of that as well.
10 So that would be great. Why don't you just share it
11 informally. Then once we're all on the same page, you can
12 start submitting those monthly.

13 Ms. Smith, did you want to say something?

14 MS. SMITH: I didn't know if you wanted us to address
15 your two specific questions about terminating certain dockets.

16 THE COURT: Sure.

17 MS. SMITH: Number two I think on your agenda was the
18 docket number 5383. I believe New GM and lead counsel both
19 believe that those motions and claims on that docket may be
20 terminated if they have been mooted.

21 THE COURT: Okay.

22 MS. SMITH: Number 3 on your agenda is the status of
23 the motion to dismiss 25 claims. And that's docket 5974. All
24 the claims on that motion except for one we agree may be
25 terminated, and that is the claim of Ms. Uglow, case number

1 15 CV 04385.

2 To what your Honor was saying, in going through this
3 process, to answer your question, we realize that Ms. Uglow had
4 never responded to the motion to dismiss. Under order 153,
5 there was a requirement to either state she was going to amend
6 or withdraw certain things. So we will probably send a letter
7 on that coming up.

8 Other than Ms. Uglow's claim, that docket may also be
9 terminated. I believe lead counsel is in agreement with that
10 as well.

11 THE COURT: Can I propose, in part for my own internal
12 housekeeping reasons and in part just to make sure that things
13 are 100 percent clear, does it not make more sense to deny the
14 motion in its entirety and then you can file a new motion with
15 respect to Ms. Uglow and serve that on her?

16 MS. SMITH: I think that should be fine. We can do
17 that within the week or so.

18 THE COURT: Good. I'll take care of that then. That
19 would be helpful.

20 I assume we've covered at least what we can cover in
21 open session on the settlement front.

22 Is there anything further to discuss out here?

23 MR. GODFREY: Just one second, your Honor. Let me
24 look through my notes.

25 THE COURT: Sure.

1 MR. GODFREY: Not from New GM's perspective,
2 your Honor.

3 THE COURT: Anything else from the front table?

4 MR. HILLIARD: Not from the PI side, Judge.

5 MR. BLOOMER: Nothing from GM.

6 THE COURT: In a few minutes, we'll retire to the
7 robing room and have an in-camera discussion. A couple
8 questions before we do so. Number one, I assume no need for a
9 court reporter in that session.

10 MR. HILLIARD: No, sir.

11 THE COURT: Everyone said no just for the record.

12 Number two, we should figure out a next conference
13 date. So thoughts on that front. It would probably make
14 sense -- it sounds like certainly by the end of March a lot
15 will be clearer on the PI/wrongful death side. I'm not sure
16 how much there is to discuss on the economic loss side until I
17 resolve the motions and sort out the reference issues, etc.

18 Sometime in April maybe, given --

19 MR. HILLIARD: Your Honor, I would ask the Court if
20 the 17th, 18th, or 19th of April would work. I have a trial in
21 the first part of April that will go, and I would be
22 unavailable the in first two weeks.

23 THE COURT: The 19th definitely doesn't because
24 Passover starts that evening. I could do the 17th or 18th.

25 MR. GODFREY: I'm flying back from vacation on the

1 17th, but I could do the 18th, your Honor.

2 THE COURT: I'm relieved to hear that you take
3 vacation, Mr. Godfrey.

4 MR. GODFREY: I hit a certain age, and my wife is
5 enforcing the rule, at least occasionally.

6 THE COURT: Which day are you flying back?

7 MR. GODFREY: The 17th. So I could be here on the
8 18th.

9 THE COURT: Does the 18th work for everybody?

10 MS. CABRASER: I think it works for plaintiff,
11 your Honor.

12 MR. HILLIARD: It works.

13 THE COURT: So let's do the 18th at 9:30. I will look
14 for your proposed order memorializing what we've done today in
15 the next few days. As discussed, you should submit a separate
16 order with respect to the remand issues and the pro se issues
17 and what have you.

18 Anything else?

19 MR. GODFREY: No, your Honor. Thank you.

20 THE COURT: Great.

21 MR. HILLIARD: Thank you, your Honor.

22 THE COURT: Depending on how many people are coming
23 into the robing room, we may need a few extra chairs. So if
24 you could help my staff carry some in, that would be great, and
25 I'll see you in there in a few moments. Thanks.