

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)

**ORDER NO. 32**

JESSE M. FURMAN, United States District Judge:

**DEPOSITION PROTOCOL ORDER**

The United States Judicial Panel on Multidistrict Litigation initiated *In re General Motors LLC Ignition Switch Litigation*, MDL Docket No. 2543 (the “MDL Proceeding”) and began transferring cases relating to alleged defects in General Motors vehicles from various judicial districts to this Court for coordinated or consolidated pretrial proceedings. Actions involving the same subject matter as the MDL Proceeding are pending in other state and federal courts (the “Related Actions”).<sup>1</sup> Because the MDL Proceeding and the Related Actions involve similar allegations and many of the same parties, the Court believes discovery in the various proceedings will substantially overlap.

A fundamental purpose of multidistrict litigation under 28 U.S.C. § 1407 is to facilitate the conduct of efficient and non-duplicative discovery relating to questions of fact common to transferred and coordinated actions. In accordance with Section V of Order No. 8, the parties previously met and conferred on procedures to achieve the benefits of coordination and eliminate as much duplicative work as possible, and, as a result, the Court entered a Joint Coordination Order, Order No. 15, adopting general rules for coordination between the MDL Proceeding and

<sup>1</sup> Shareholder derivative suits and securities class actions are not considered “Related Actions” for purposes of this Order.

Related Actions. The Court anticipates most Related Actions will adopt the Joint Coordination Order and thereby become coordinated with the MDL Proceeding (the “Coordinated Actions”).

The parties will likely conduct deposition discovery in the MDL Proceeding and in the Coordinated Actions. Although the Joint Coordination Order contains provisions relating to depositions in the MDL Proceeding and Coordinated Actions, the MDL Court directed the parties to meet and confer to develop more specific protocols.

The Court has considered the parties’ positions and now issues the following protocols to govern (1) all depositions in the MDL Proceeding and (2) all depositions involving common questions in the MDL Proceeding and Coordinated Actions. This Order does not address the timing of depositions, a subject that the Court has addressed in prior Orders and conferences (*see, e.g.,* Order Nos. 14 and 25; Dec. 15, 2014 Status Conference Tr. at 63:16-21, 66:25-67:11, 67:17-18) and will address further in future Orders as appropriate.

### **General Provisions**

1. The protocols in this Order supplement the Joint Coordination Order, Order No. 15. If the deposition protocols in this Order are deemed to conflict with any provisions in the Joint Coordination Order, the protocols in this Order shall control. The show cause procedure in paragraph 4 of this Order and the limits on the number of deposition days in paragraph 16 of this Order do not apply to depositions of individual case-specific witnesses in Coordinated Actions, such as witnesses to an accident, first responders, providers of medical treatment to a plaintiff, and case-specific experts.

2. The presumptive limit on the number of depositions that either side may take does not apply in the MDL Proceeding, and thus the MDL Plaintiffs and MDL Defendants need not seek leave under Fed. R. Civ. P. 30(a)(2) to take in excess of 10 depositions, respectively.

3. The parties, the MDL Court, and the courts in the Coordinated Actions desire to minimize the expense and inconvenience of this litigation by providing for a single deposition of any witness common to the various proceedings (“Common Witness”) within the time limits set forth in this Order. Accordingly, as a general rule, a witness may be deposed only once in either the MDL Proceeding or any Coordinated Action unless otherwise agreed to by the parties in writing or authorized by an order of the MDL Court upon a showing of good cause by the party seeking the additional deposition.

4. Depositions, in addition to those being taken in the MDL Proceeding, may be taken in a Coordinated Action, but only upon leave of the court in which the Coordinated Action is pending, obtained on noticed motion for good cause shown, including why the discovery sought could not have been obtained in coordinated discovery in the MDL Proceeding. Liaison Counsel in a Coordinated Action in which any such motion is filed shall immediately notify the MDL Court of such filing and provide a copy of the motion.

5. If the MDL Plaintiffs or MDL Defendants and their respective Counsel in any Coordinated Action have received at least 21 days’ notice of a deposition in either the MDL Proceeding or any Coordinated Action (or if (a) the parties agree in writing that such notice is not necessary or (b) upon order of the MDL Court, a deposition is permitted to be taken with fewer than 21 days’ notice), such deposition may be used in the MDL Proceeding and each Coordinated Action for all purposes prescribed in Fed. R. Civ. P. 32 or as otherwise permitted by the Federal Rules of Evidence, by or against any party including parties later added and parties in cases subsequently filed in, removed to, or transferred to this Court as part of this litigation, without regard to whether any MDL Plaintiffs’ Counsel or any MDL Defendants’ Counsel or any counsel

representing plaintiffs or defendants in any Coordinated Action attended or examined the witness at the noticed deposition.

6. Fed. R. Civ. P. 6(a) shall govern the computation of time periods set forth in this Order. Unless specifically modified herein, nothing in this order shall be construed to abrogate the Federal Rules of Civil Procedure.

### **Length and Scope**

7. All depositions in the MDL Proceeding and the Coordinated Actions shall be noticed and conducted pursuant to the Federal Rules of Civil Procedure and this Order.

8. Fed. R. Civ. P. 30(d)(1) establishes a presumptive rule that a deposition should be limited to one (1) day of seven (7) hours. The Court and parties recognize, however, that (i) depositions of certain key witnesses may require more time, and (ii) providing attorneys in Coordinated Actions reasonable time for non-duplicative questioning may also require more time. Thus, Counsel should consult before a deposition to agree upon the time required to depose a particular witness. Absent agreement of the parties, or upon order of the MDL Court for good cause shown, the parties shall have no more than one (1) day of seven (7) hours to examine a particular fact witness.

9. Upon consent of counsel in the MDL Proceeding and, for depositions in a Coordinated Action, counsel in that Coordinated Action, the parties may agree to consecutive depositions of an individual who is both a fact witness and a corporate representative designee under Fed. R. Civ. P. 30(b)(6). One deposition will be taken in his or her individual capacity (as a fact witness) and a separate deposition will be taken in his or her capacity as a corporate representative. Absent agreement of the parties or order of the MDL Court for good cause shown, an individual designated to testify as both a corporate representative and in his or her individual capacity shall not be deposed for more than a total of two (2) days of seven (7) hours of testimony

per day. If such a witness is later designated as an expert witness, then the witness may be required to submit to additional deposition questioning.

10. It is understood that depositions of experts can be lengthy, and Counsel should use best efforts to coordinate and schedule extended time for depositions of experts. Unless otherwise agreed to by the parties, or order of the MDL Court for good cause shown, the deposition of an expert shall not exceed twelve (12) hours.

11. A deposition day shall commence at 8:30 a.m. in the time zone in which the deposition is taking place and terminate at the conclusion of seven (7) hours of examination time. The parties may agree to a modest variation in this schedule. There shall be a 15-minute morning break, a one-hour lunch break, a 15-minute afternoon break, and any additional necessary breaks. If a witness has a documented medical condition that prevents him or her from testifying for seven (7) hours in a single day, the parties shall work in good faith to develop an alternative schedule for that witness.

12. A deposition day shall ordinarily terminate by 5:30 p.m. in the time zone in which the deposition is taking place, but shall continue up to 7:00 p.m. if (a) the parties have agreed to a deposition longer than seven (7) hours and (b) extending the deposition day will make it possible to conclude the deposition in a single day. If a deposition is scheduled to last more than seven (7) hours and completing such a deposition in a single day is not feasible, in the absence of agreement between the parties, the deposition will re-convene at 8:30 a.m. the following day at the same location.

13. The time limits for a deposition set forth above shall be based on the actual time spent in examining the witness. Time spent on attorney colloquy and breaks (including for lunch) shall not be counted toward the time limit.

14. The parties are encouraged to make full and efficient use of each deposition day so as not to waste valuable time and incur unnecessary expenses. Not every witness will require an examination that lasts as long as the presumptive time limits set forth above. To the extent the parties can anticipate such, they will attempt to agree to lesser time limits and, for planning purposes, will provide other deposition attendees with advance notice of any agreement to lessen the examination time. This procedure may be particularly useful in the event that more than one deposition is scheduled on a given day.

#### **Scheduling, Logistics, and Service of Notices**

15. Lead Counsel for the MDL Plaintiffs, MDL Plaintiffs' Liaison Counsel, MDL Plaintiffs' Federal/State Liaison Counsel, Plaintiffs' Liaison Counsel in the Coordinated Actions, counsel for the MDL Defendants, and counsel for the deponent, if applicable, shall cooperate on selecting a mutually convenient date, time, and location for each deposition. In the absence of agreement, a deposition may take place within (a) the county in which the deponent resides, (b) the county in which the deponent is employed, or (c) the judicial district of the MDL Court.

16. Absent agreement of the parties or as otherwise ordered by the MDL Court for good cause shown, no more than five (5) days of depositions shall take place in any calendar week and no more than twenty (20) days of depositions shall take place in any calendar month. This provision does not limit the ability of the parties to establish a reasonable schedule for the multi-tracking of depositions, and the parties are directed to meet and confer regarding such a schedule. To the extent that the parties cannot agree on a proposed schedule for such multi-tracking, the parties shall file with the MDL Court separate proposed schedules. The parties shall routinely meet and confer in order to select the persons or entities to be deposed thereafter. Unless otherwise agreed by the parties or ordered by the MDL Court, depositions shall not be taken on Saturdays, Sundays, or federal court holidays. No more than sixteen (16) depositions of General Motors'

witnesses<sup>2</sup> (including fact and Fed. R. Civ. P. 30(b)(6) witnesses) may be taken in any calendar month, absent agreement of the parties or order of the MDL Court.

17. Each deposition notice in the MDL Proceeding shall comply with Fed. R. Civ. P. 30(b). The deposition notice shall include the name, address, and telephone number of an attorney point of contact designated by the party noticing the deposition, as well as the date, time, and location of the deposition. The notice shall clearly state whether the deposition will be videotaped in addition to being recorded by stenographic means.

18. Notices for Depositions in the MDL Proceeding and Coordinated Actions shall be served by e-mail, facsimile, or other electronic means on Lead Counsel for the MDL Plaintiffs, MDL Plaintiffs' Liaison Counsel, MDL Plaintiffs' Federal/State Liaison Counsel, Plaintiffs' Liaison Counsel in the Coordinated Actions, and counsel for the MDL Defendants. Each Plaintiffs' Liaison Counsel in a Coordinated Action, or his or her designee, shall be responsible for distributing such documents to other counsel for plaintiffs in their Coordinated Action.

19. Any notice for the deposition of a corporate or organizational representative under Fed. R. Civ. P. 30(b)(6) shall describe with reasonable particularity the matters for examination. The questioning during the representative deposition shall be limited to the specific matters referenced in the notice.

20. All depositions in this MDL Proceeding shall be cross-noticed in the Coordinated Actions. All depositions in a Coordinated Action shall be cross-noticed in this MDL proceeding and in the other Coordinated Actions. To allow for planning, preparation, and coordination between the MDL proceeding and the Coordinated Actions, depositions must be noticed at least twenty-one (21) days before they are scheduled to occur. Expedited depositions may be scheduled

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<sup>2</sup> For purposes of this Order, a "GM witness" is a witness who is a present or former employee or officer of General Motors Company, General Motors LLC, General Motors Corporation, or their subsidiaries.

by agreement of the parties in writing or as ordered by the MDL Court or a court in a Coordinated Action, and in which event the time limitations for notice shall be lessened, as well as the time limitation for production of any documents sought by third-party subpoena in conjunction with said deposition.

21. If a deposition in a Coordinated Action has been cross-noticed in this MDL, then parties in the Coordinated Action may not take a subsequent deposition of that witness except for good cause shown as determined by the MDL Court. Participation by counsel from a Coordinated Action in a deposition shall not expand the time allowed for such deposition under this Order.

22. This Order, in its entirety, shall be attached to any subpoena or notice that relates to the deposition of a third-party witness.

23. Any party or witness receiving notice of a deposition that it contends is not permitted by the terms of this Order shall have five (5) days from receipt of the notice within which to serve the noticing party with a written objection to the deposition. In accordance with paragraph 7 of this Order, all disputes regarding any matters arising under this Order, whether pertaining to a deposition in the MDL Proceeding or any Common Witness deposition in a Coordinated Action, shall, in the first instance, be brought before the MDL Court. In the event of such an objection, the deposition shall not go forward unless (a) the parties and the deponent reach an agreement in writing to resolve the objection or (b) the noticing party applies for and receives an order from the MDL Court granting leave to take the deposition. Before filing a discovery motion in the MDL Court, the parties must first attempt to resolve the dispute in good faith and in accordance with the procedures and requirements outlined in the Court's Individual Rules and Practices in Civil Cases and the Court's standard Case Management Plan and Scheduling Order, both of which are available at <http://www.nysd.uscourts.gov/judge/Furman>, and in Order No. 1.



24. Once a deposition has been scheduled, it shall not be taken off the calendar, rescheduled, or relocated fewer than five (5) days in advance of the date it is scheduled to occur, except upon agreement in writing between the noticing attorney and counsel for the opposing party witness (if the witness is a party or a current or former employee or an expert designated by a party) or counsel for the witness (if the witness is not a party or a current or former employee or an expert designated by a party) or by leave of the MDL Court for good cause shown.

#### **Means of Recording Depositions**

25. A certified court reporter shall stenographically record all deposition proceedings and testimony and provide a “real time” transcription feed to devices such as video monitors and computers, including computers not located at the deposition venue. The court reporter shall administer the oath or affirmation to the deponent. The written transcript prepared by the court reporter shall constitute the official record of the deposition for purposes of Fed. R. Civ. P. 30’s requirements concerning filing, retention, certification, and the like.

26. A deposition notice shall clearly state whether the deposition is to be videotaped. Where the party wishing to videotape the proceeding did not notice the deposition, a request to videotape the deposition shall be submitted in writing to the Lead Counsel for the MDL Plaintiffs, counsel for the MDL defendants, MDL Plaintiffs’ Liaison Counsel, MDL Plaintiffs’ Federal/State Liaison Counsel, and Plaintiffs’ Liaison Counsel in a Coordinated Action, no later than seven (7) days before the date on which the deposition is scheduled to occur. The party wishing to videotape the deposition, if not originally noticed as such, shall be responsible for arranging and paying for the videotaping. All videotaped depositions shall be accompanied by a simultaneous audiotape recording and be stenographically recorded by a court reporter as provided in paragraph 25. As noted above, the stenographically prepared transcript shall constitute the official record of the deposition.

27. Services or products offered or provided by the operator of the videotape equipment must be offered to counsel for all parties, regardless of which party is financing the videotaping of the deposition. Further, any video operator is subject to the orders of this Court whether the deposition was noticed or cross-noticed in the MDL Proceeding or in a Coordinated Action, including but not limited to the Confidentiality Order and Joint Coordination Order. The video operator shall be given a copy of all applicable orders at least five (5) days before the deposition.

28. The operator of the videotape recording equipment is subject to the provisions of Fed. R. Civ. P. 28(c). At the start of the deposition, the operator shall swear or affirm to record the proceedings fairly and accurately.

29. Each witness, attorney, and other person attending the deposition (in person or telephonically) shall be identified on the record at the commencement of the deposition. The videotape recording shall include the court reporter administering the oath or affirmation to the witness. Thereafter, the deponent and, if necessary, exhibits and any demonstratives will be videotaped.

30. The deposition will be conducted in a manner to replicate, to the extent feasible, the presentation of evidence at trial. Unless physically incapacitated, the deponent shall be seated at a table except when reviewing or presenting demonstrative materials for which a change in position is needed. To the extent practicable, the deposition will be conducted with the witness seated in front of a solid background with only such lighting as is required for accurate video recording. Lighting, camera angle, lens setting, and field of view will be changed only as might be reasonably necessary to record accurately the natural body movements of the deponent or to portray exhibits and materials used during the deposition. Sound levels will be altered only as necessary to record satisfactorily the voices of counsel and the deponent. The witness shall appear

in ordinary business attire (as opposed to, for instance, a lab coat) and without objects such as a bible, medical equipment, or props.

31. Video recording will be suspended during all “off the record” discussions and the video operator shall note such suspensions. The deposition will remain “on the record” absent agreement of counsel.

32. At the conclusion of the deposition, a statement shall be made on the videotape, on the audio recording, and in the stenographic record that the deposition has concluded and will set forth any stipulations between the parties.

33. The videotape operator shall use recording equipment with an appropriate timer and, unless otherwise agreed to by the parties, shall prepare and provide counsel with a log, cross-referenced with timestamps, that identifies the portion of the recording at which examination by different counsel begins and ends, when exhibits are used, and when there is any interruption of continuous tape recording, whether for recess, “off the record” discussions by counsel, mechanical failure, or other interruption.

34. The video operator shall maintain custody of the original video medium in its original condition, without editing in any fashion. No part of the video or audio record shall be released or made available to the public unless authorized by an order of the MDL Court.

35. The parties shall meet and confer to determine whether an agreement can be reached to limit the number of independent court reporting and videography firms involved in recording the deposition proceedings covered by this Order and to develop a cost-sharing agreement between the various parties or party groups for the associated fees, including the cost of the facilities where depositions are conducted.

**Remote Participation via Telephone, Internet, or Video Streaming**

36. If requested at least ten (10) days before a deposition, telephone facilities shall be provided so that parties wishing to participate in the deposition by telephone may do so at their own expense. By indicating in a deposition notice that it wishes to examine a witness over the telephone, a party shall be deemed to have moved for such an order under Fed. R. Civ. P. 30(b)(4). Unless an objection is filed and served within five (5) days after such notice is received, the Court shall be deemed to have granted the motion. Other parties may examine the deponent telephonically or in person. However, all persons present in the location with the deponent shall be identified on the deposition record and shall not by word, sign, or other means coach or suggest answers to the deponent and shall act in accordance with applicable federal rules of civil procedure and professional conduct governing interaction with the deponent. In addition, the court reporter stenographically recording the deposition shall be located in the same room as the deponent.

37. Technical difficulties with telephonic participation shall not constitute grounds for postponing the deposition or for rendering inadmissible a deposition that otherwise would be admissible in evidence. If technical problems with the telephonic facilities create disruptions in the deposition, counsel attending a deposition in person may discontinue telephonic participation for such periods of time as necessary.

38. To the extent economically feasible, the parties will make the live deposition proceedings available to locations that are remote from the deposition venue through the use of video streaming over secure and encrypted Internet connections. The viewing of or participation in any deposition via the Internet is expressly subject to the Court's Order Protecting Confidentiality and Privileged Materials (Order No. 10), or a substantially similar order in a Coordinated Action. The party participating remotely is responsible for providing his or her own Internet connection and shall not re-record the deposition by video or audio means.

### **Appearances and Examination**

39. Unless otherwise agreed to by the parties or ordered under Fed. R. Civ. P. 26(c) and subject to the terms of Order No. 10, depositions may be attended only by the parties, the deponent, the deponent's attorney, attorneys of record in the MDL Proceeding, attorneys of record in the Coordinated Actions, in-house counsel and corporate representatives, court reporters, videographers, and any person who is assisting in the litigation and whose presence is reasonably required by the aforementioned counsel of record. Expert witnesses who have signed the Protective Order may attend the deposition of other parties' experts but may not otherwise participate in depositions. Upon motion, and for good cause shown, the MDL Court may permit attendance by a person who does not fall within any of the categories above.

40. For there to be adequate deposition space, counsel intending to attend a deposition noticed in the MDL or in a Coordinated Action should advise all parties, including counsel for the noticing party, of their intention to attend in person at least five (5) business days before the deposition.

41. Unnecessary attendance by counsel is discouraged and may not be compensated in any fee application to a court. Counsel who have only a marginal or slight interest in a noticed deposition or who expect their interests to be adequately presented by other counsel should consider foregoing attendance of the deposition.

42. Based on the number of Plaintiffs and Plaintiffs' counsel involved in this litigation, Lead Counsel for the MDL Plaintiffs shall designate one (1) attorney to serve as the examiner of each deponent on behalf of the MDL Plaintiffs.

43. Plaintiffs' Counsel from the Coordinated Actions shall likewise designate one (1) attorney to serve as the examiner of each deponent on behalf of all plaintiffs in the Coordinated Actions. Should all plaintiffs in Coordinated Actions be unable to agree on one counsel to examine

a deponent, Lead Counsel for the MDL Plaintiffs shall assist in attempting to reach such agreement. If an agreement cannot be reached, the matter will be brought to the MDL Court for resolution. Counsel designated to be the examiner on behalf of all Coordinated Actions shall be permitted a reasonable amount of time to question the deponent and shall be permitted to make objections during examination by other counsel, in accordance with the Federal Rules of Civil Procedure, the Local Rules of the Southern District of New York, and the Orders of the MDL Court, and in accordance with the terms and procedures set forth in subparts (a) through (c) below providing that:

(a) The court in which the Coordinated Action is pending has adopted the MDL Discovery Orders or has entered a Protective Order, ESI Order or other Discovery Order substantially similar to the MDL Discovery Orders;

(b) The questioner for Plaintiffs' Counsel in the Coordinated Actions shall make best efforts to ask questions that are non-duplicative of questions already asked at the deposition; and

(c) Participation of Plaintiffs' Counsel from the Coordinated Actions through their questioner shall be arranged so as not to delay discovery or other proceedings as scheduled in the MDL Proceeding.

44. One counsel representing each MDL Defendant shall be permitted to examine deponents. The MDL Defendants should designate one attorney for the MDL defendants to conduct the principal examination of each deponent. Examination by other counsel for the MDL Defendants shall make best efforts to ask questions that are non-duplicative of questions already asked at the deposition

45. Notwithstanding the number of examiners, the time limits set forth above shall still apply. Counsel should cooperate so examinations by multiple attorneys do not result in a deposition exceeding the allotted time.

46. The parties shall meet and confer to develop supplemental protocols for (a) allotting examination time to various parties or party groups and (b) determining order of examination of a witness. Unless the Court orders otherwise, the parties shall submit an agreed-upon proposed order (or orders), or competing proposed orders and supporting letter briefs not to exceed five (5) pages, no later than **March 4, 2015**.

47. Counsel representing parties in the MDL Proceeding shall be entitled to attend the deposition of any witness whose deposition is taken in a Coordinated Action. The plaintiffs in all Coordinated Actions shall designate one counsel to examine the witness. One counsel representing the MDL Plaintiffs and one counsel representing each MDL Defendant shall each be permitted a reasonable amount of time to ask non-duplicative additional questions and shall be permitted to make objections during examination by other counsel.

#### **Custodial Productions**

48. Except as provided in the next paragraph, absent other written agreement by the parties or order of the MDL Court, if Plaintiffs notify counsel for a MDL Defendant at least sixty (60) days in advance of the intended deposition of any present or former employee of that defendant, the MDL Defendant will conduct a good-faith, reasonable search using search terms and based on that search produce non-privileged custodial file documents responsive to outstanding discovery requests at least fifteen (15) days in advance of the noticed deposition date. The MDL Defendant will be obligated to produce only previously *non-produced* portions of the custodial file responsive to outstanding discovery requests if the MDL Defendant's prior production included metadata identifying the deponent as a custodian of the previously produced

custodial file documents. Any production shall be to the designated contact for the MDL Plaintiffs and the MDL 2543 Document Depository. With respect to any custodial file document withheld or redacted for privilege, the producing party shall produce a privilege log in accordance with Order No. 10. Custodial file productions shall not be required for any witness being deposed only in his or her capacity as a corporate representative.

49. If Plaintiffs give MDL Defendants ninety (90) or more days' notice of an intended deposition of any present or former employee of that defendant, the parties shall meet and confer in good faith to establish a schedule with respect to the rolling production of custodial file documents to be completed more than twenty (20) days in advance of the noticed deposition date.

50. To the extent additional responsive, relevant, and non-privileged custodial documents are subsequently identified after a deposition, such documents will be produced promptly but will not require the deponent to be re-deposed absent order of the MDL Court for good cause shown.

### **Objections**

51. Objections shall be made only by counsel leading the questioning for the MDL Plaintiffs, counsel leading the questioning for all the Coordinated Action Plaintiffs, counsel for MDL Defendants, and individual counsel for the deponent (if any).

52. Unless otherwise specified, an objection by a single defendant shall be deemed an objection by all defendants; similarly, an objection by a single plaintiff shall be deemed an objection by all plaintiffs unless otherwise specified. However, unless otherwise specified, (a) an instruction not to answer by one defendant shall not be deemed an instruction not to answer by all defendants and (b) an instruction not to answer by one plaintiff shall not be deemed an instruction not to answer by all plaintiffs.



53. The only objections allowed during the deposition are those for the following bases: form of the question, foundation, privilege, confidentiality, or a limitation imposed by court order. All objections, except as to form, foundation, privilege, confidentiality, or being in violation of a court order, shall be preserved for ruling by the MDL Court or the court in the Coordinated Action at trial or other use of the deposition.

54. Counsel shall comply with Fed. R. Civ. P. 30(c)(2) concerning objections at a deposition. Counsel shall not engage in colloquy in objecting to a question or responding to an objection. Any objections to an examiner's questions shall be made in a concise manner, and counsel shall not suggest an answer to the witness. The phrases "objection as to form," "objection as to foundation," or similar language are sufficient and shall preserve all objections as to form and foundation until a party seeks to use a deposition. However, to determine whether there is a need to cure a defect in a question, counsel conducting the examination may ask the attorney lodging the form or foundation objection to identify the specific defect.

55. Counsel shall not direct or request that a witness refuse to answer a question, unless that counsel has objected to the question on the grounds of privilege, information that violates a MDL Court order, the witness being asked to disclose Confidential or Highly Confidential Information in the presence of a person not entitled to disclosure of that information, or a party or witness seeks to move to terminate or limit the deposition on the ground that it is being conducted in bad faith or in such a manner as to unreasonably annoy, embarrass, or oppress the party or witness.

#### **Consulting with a Witness During the Deposition**

56. A witness may consult with counsel during a deposition. When a question is pending, the witness must first answer the question before consulting with counsel, except that a witness may consult with counsel at any time for the purpose of (a) determining whether a privilege

exists, (b) determining whether disclosure of information may violate an order of the MDL Court or another court, or (c) addressing an issue regarding confidentiality or whether the information sought is subject to an applicable protective order.

### **Use of Exhibits and Documents During the Deposition**

57. Third-party witnesses subpoenaed to produce documents at a deposition shall be served with the document subpoena at least thirty (30) days before a scheduled deposition, absent written agreement by the parties, time constraints due to orders by the MDL Court, or a shorter period authorized by the MDL Court. The requested documents shall be produced at least fourteen (14) days before the date noticed for the deposition. The parties shall meet and confer regarding the timing for production of documents relied upon by experts disclosed by the parties pursuant to Fed. R. Civ. P. 26(a)(2).

58. During the deposition, copies of documents about which counsel plan to examine the deponent shall be provided to counsel for the deponent and counsel for the other party participants. As a general rule, hard copies of the documents should be made available to the deponent, the deponent's attorney, and the principal examiners of the deponent. The documents may be provided to other attendees on electronic media such as CDs, DVDs, or USB drives. To the extent possible, all exhibits should have printed Bates or other document control numbers affixed before distribution, which shall remain constant throughout the litigation.

59. Counsel shall use best efforts to mark exhibits sequentially and shall attempt to use previously marked exhibits in subsequent depositions rather than re-marking the same documents with different exhibit numbers. All documents marked as exhibits will be attached to the original transcript and will be retained with the original transcript. The court reporter for each deposition will include in each deposition transcript a list of the exhibits referenced in the deposition.

60. Objections to the relevance or admissibility of documents used as deposition exhibits are not waived, and are reserved for later ruling by the MDL Court or the court in a Consolidated Action.

61. Deposition exhibits shall also be placed in the MDL Document Depository at the conclusion of the deposition by counsel noticing the deposition, with a cover letter to all counsel in attendance advising that the documents have been placed in the depository.

#### **Examination Concerning Confidential Information**

62. If a deponent is questioned about any document or exhibit stamped Confidential or the Confidential Information contained therein, persons to whom disclosure is not authorized under the Confidentiality Order of this Court, including MDL Order No. 10 Protecting Confidentiality and Privileged Materials, will be excluded from the deposition for that portion of the examination. Any portion of a deposition transcript containing Confidential Information shall be sealed so as not to waive confidentiality.

#### **Disputes During or Relating to Depositions**

63. If the parties are unable to resolve a dispute in good faith, any party may seek relief from the MDL Court. Disputes regarding any matters arising under this Order, whether pertaining to a deposition in the MDL Proceeding or any Coordinated Action, shall, in the first instance, be brought before the MDL Court.

64. If a dispute arises before or after a deposition governed by this Order, a party shall file a motion and supporting documents with the MDL Court. Copies of the motion and supporting documents shall be e-mailed to counsel involved in the immediate dispute, Lead Counsel for the MDL Plaintiffs, MDL Plaintiffs' Liaison Counsel, MDL Plaintiffs' Federal/State Liaison Counsel, Plaintiffs' Liaison Counsel in the Coordinated Actions, and counsel for MDL Defendants. To the

extent the dispute involves a Coordinated Action, the MDL Court will strive to coordinate among the relevant courts.

65. If a dispute arises during a deposition and requires expedited consideration, the party requesting intervention should send a short e-mail to U. S. District Judge Jesse Furman or, if not available, to Magistrate Judge Michael Dolinger seeking immediate assistance to resolve the dispute. The request should contain a non-argumentative description of the dispute. The e-mail shall be copied to the lead examiners at deposition, as well as Lead Counsel for the MDL Plaintiffs, MDL Plaintiffs' Liaison Counsel, and counsel for the MDL Defendants. Immediately after sending the e-mail, the party requesting intervention should call Judge Furman's Chambers at (212) 805-0282 to ensure that Judge Furman is made aware of the e-mail in a timely fashion and to provide further information as needed. If neither Judge Furman nor Magistrate Judge Dolinger is available to provide a prompt resolution of the dispute, the deposition shall continue with full reservation of rights of the examiner and other counsel for a ruling at the earliest possible time. Nothing in this Order shall deny counsel the right to suspend a deposition pursuant to Fed. R. Civ. P. 30(d)(3), file an appropriate motion with the MDL Court, and appear personally before the MDL Court.

#### **Transcript and Time to Review Transcript**


66. Unless waived by the deponent, the deposition transcript shall be submitted to the deponent for correction and signature, and shall be corrected and signed within forty-five (45) days after receiving the official transcript from the court reporter. This time period shall not be extended, absent good cause shown. Corrections to a deposition shall be listed on an errata sheet signed by the deponent and the court reporter shall serve copies of the errata sheet on all parties purchasing the transcript. Should the deponent fail to submit corrections within forty-five (45) days, the transcript will be presumed accurate, and all parties shall have the right to use the copy

sent to the deponent as if it were final and signed with no corrections needed. Parties in jurisdictions where rules do not provide for correction and signing of a deposition transcript reserve their objections to corrections made pursuant to this procedure.

67. Counsel representing any party in the MDL Proceeding or any Coordinated Action may obtain directly from the court reporter, at the requesting counsel's own expense, a transcript of any deposition taken in the MDL Proceeding or in any other Coordinated Action. The transcript of any deposition taken in the MDL Proceeding or a Coordinated Action shall not be used or disseminated except in accordance with the terms of this Order and the MDL Court's discovery orders.

SO ORDERED.

Date: January 14, 2015  
New York, New York

  
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JESSE M. FURMAN  
United States District Judge