



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

GENERAL MOTORS LLC IGNITION SWITCH
LITIGATION

14-MD-2543 (JMF)

ORDER NO. 125

This Document Relates to:

Ward v. General Motors LLC, 14-CV-8317

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JESSE M. FURMAN, United States District Judge:

[Regarding the Application of Certain Pretrial Orders in MDL Bellwether Trial Nos. 1, 2, and 5 to MDL Bellwether Trial No. 7 (*Ward*)]

1. **Application of Certain Evidentiary Rulings in Bellwether Trial Nos. 1, 2, and 5 to Bellwether Trial No. 7:** Pursuant to Order No. 120 (Docket No. 3651), GM LLC and Plaintiff submitted a joint letter and proposal regarding the applicability of certain pretrial orders from Bellwether Trials Nos. 1, 2, and 5 to Bellwether Trial No. 7. Having reviewed the parties' submissions, and for good cause shown, the Court adopts the holdings contained in the chart attached as Exhibit 1 to this Order concerning the applicability of the listed pretrial orders from Bellwether Trial Nos. 1, 2, and 5 to Bellwether Trial No. 7. To the extent either party intends to file new briefing in accordance with this Order, the parties shall first meet and confer to avoid unnecessary motion practice and to narrow any disputes. Finally, for good cause shown (by way of letter motion seeking leave from the Court), any party may seek modification or reconsideration of the Court's evidentiary rulings that are deemed applicable to Bellwether Trial No. 7 pursuant to this Order if later rulings on motions *in limine*, dispositive motions, or *Daubert* motions change the scope of relevant and admissible evidence in Bellwether Trial No. 7. A party may only seek such leave to move for such modification or reconsideration, however, after meeting and

conferring with the other side.

2. **Effect of This Order on Other Rules and Orders:** To the extent not explicitly modified herein, the Court's Individuals Rules and Practices in Civil Cases and Rules and Procedures for Trials and all other applicable Orders of this Court remain in full force and effect. The Court may enter additional and/or modified orders regarding the pretrial schedule of Bellwether Trial No. 7 as circumstances require.

SO ORDERED.

Dated: May 15, 2017
New York, New York



JESSE M. FURMAN
United States District Judge

Issue Briefed in Bellwether <i>Scheuer</i>, <i>Barthelemy</i>, or <i>Cockram</i> and Ruling	Application to <i>Ward</i>¹
<p><i>Scheuer</i> Pl. Motion In <i>Limine</i> (“MIL”) No. 1 (Collateral Source Benefits) (Docket Nos. 1525, 1526)</p> <p>Ruling: 11/23/2015 Order (Docket No. 1727)</p>	<p>The parties agree that the Court’s ruling is specific to Oklahoma law and does not apply.</p> <p>HOLDING: The Court’s order regarding the <i>Scheuer</i> plaintiff’s MIL No. 1 does not apply to <i>Ward</i>.</p>
<p><i>Scheuer</i> Pl. MIL No. 2 (Prior Unrelated Injures and Family Medical History) (Docket Nos. 1565, 1566)</p> <p>Ruling: 11/23/2015 Order (Docket No. 1727)</p>	<p>The parties agree that the Court’s ruling is fact-specific to <i>Scheuer</i> and does not apply to <i>Ward</i>.</p> <p>HOLDING: The Court’s order regarding the <i>Scheuer</i> plaintiff’s MIL No. 2 does not apply to <i>Ward</i>.</p>
<p><i>Scheuer</i> Pl. MIL No. 3 (Use of Pain Medication) (Docket Nos. 1714, 1715)</p> <p>Ruling: 12/9/2015 Order (Docket No. 1837)</p>	<p>The parties agree that the Court’s ruling is fact-specific to <i>Scheuer</i> and does not apply to <i>Ward</i>.</p> <p>HOLDING: The Court’s order regarding the <i>Scheuer</i> plaintiff’s MIL No. 3 does not apply to <i>Ward</i>.</p>
<p><i>Scheuer</i> Pl. MIL No. 4 (Spoliation) (Docket Nos. 1711, 1712)</p> <p>Ruling: 12/29/2015 Order (Docket No. 1969)</p>	<p>The parties agree that the Court’s ruling is fact-specific to <i>Scheuer</i> and does not apply to <i>Ward</i>.</p> <p>HOLDING: The Court’s order regarding the <i>Scheuer</i> plaintiff’s MIL No. 4 does not apply to <i>Ward</i>.</p>

¹ Nothing in this proposed order should be construed to waive any of the parties’ preserved objections or rights to appeal the Court’s rulings. To the contrary, all arguments from prior briefing and/or oral arguments on such motions are expressly preserved

Issue Briefed in Bellwether <i>Scheuer</i>, <i>Barthelemy</i>, or <i>Cockram</i> and Ruling	Application to <i>Ward</i>¹
<p><i>Scheuer</i> Pl. MIL No. 5 (Deferred Prosecution Agreement) (Docket Nos. 1731, 1732)</p> <p>Ruling: 12/16/2015 Order (Docket No. 1894); 1/6/2016 Order (Docket No. 2018) (redactions)</p>	<p>Pl. Position: The Court’s ruling applies to <i>Ward</i>. The Statement of Facts (“SOF”) contains GM LLC’s admissions regarding GM’s knowledge and conduct regarding the defect which ultimately led to the recall of Plaintiff’s vehicle under NHTSA Recall No. 14V-047. And MDL Order No. 120 ¶2(i) already provides a procedure by which GM LLC can make targeted objections to specific portions of the SOF that would be substantially more prejudicial than probative. If necessary, Plaintiff will explain in opposing GM’s new motion <i>in limine</i> on this subject (and as Co-Lead Counsel explained in opposing GM’s Motion <i>in Limine</i> No. 32), the SOF is highly relevant to Plaintiff’s claims, and the appropriate way to address any Rule 403 concerns is to follow the procedure mandated by MDL Order No. 120 ¶2(i).</p> <p>GM LLC Position: The Court’s ruling on <i>Scheuer</i> Pl. MIL No. 5 does not apply to <i>Ward</i>, because the subject 2009 Chevrolet HHR did not contain the defective ignition switch part number 10392423 that was the subject of the Deferred Prosecution Agreement and Statement of Facts. New GM requests leave to file a motion <i>in limine</i> seeking exclusion of this evidence in <i>Ward</i>. Plaintiff does not oppose this request.</p> <p>HOLDING: The Court concludes that additional briefing regarding the <i>Scheuer</i> plaintiff’s MIL No. 5 is unnecessary, particularly in light of the Court’s ruling on New GM’s Motion <i>in Limine</i> No. 32. (<i>See</i> Docket No. 3947). The Court’s ruling on <i>Scheuer</i> Pl. MIL No. 5 applies to <i>Ward</i> and the parties are to follow the procedure set forth in MDL Order 120 for identifying any disputes with respect to the admission of specific portions of the SOF.</p>

Issue Briefed in Bellwether <i>Scheuer</i>, <i>Barthelemy</i>, or <i>Cockram</i> and Ruling	Application to <i>Ward</i>¹
<p><i>Scheuer</i> Pl. MIL No. 6 (Live Trial Witnesses) (Docket Nos. 1742, 1743)</p> <p>Ruling: 12/17/2015 Hr’g Tr. at 5:18-8:16</p>	<p>The parties agree that the Court’s ruling is applicable to <i>Ward</i>. The parties further agree to apply the process used in <i>Scheuer</i> for making New GM’s live witnesses available during plaintiff’s case in chief: specifically, 1) New GM will make any of its Will Call employee witnesses available to testify during her case in chief (subject to advance notice); and 2) by <u>July 17, 2017</u>, New GM will inform plaintiff as to whether it intends to call any of its May Call employee witnesses at trial, and any such New GM May Call employee witness will thereafter be made available to testify during plaintiff’s case in chief (subject to advance notice).</p> <p>HOLDING: The Court’s order regarding the <i>Scheuer</i> plaintiff’s MIL No. 6 applies to <i>Ward</i> and the Court adopts the parties’ process set forth above regarding making New GM Will Call and May Call witnesses available to testify during plaintiff’s case in chief.</p>
<p><i>Scheuer</i> Pl. MIL No. 7 (Plaintiff’s <i>Feinberg</i> Claim) (Docket Nos. 1807, 1808)</p> <p>Ruling: 12/29/2015 Order (Docket No. 1969)</p>	<p>The parties agree that the Court’s ruling is fact-specific to <i>Scheuer</i> and does not apply to <i>Ward</i>.</p> <p>HOLDING: The Court’s order regarding the <i>Scheuer</i> plaintiff’s MIL No. 7 does not apply to <i>Ward</i>.</p>
<p><i>Scheuer</i> Pl. <i>Daubert</i> Motion (Docket Nos. 1801, 1802)</p> <p>Ruling: 12/29/2015 Order (Docket No. 1970)</p>	<p>The parties agree that the Court’s rulings relating to Thomas Livernois, Jeya Padmanaban, and Harry Smith do not apply to <i>Ward</i> as none of them are designated as experts in <i>Ward</i>.</p> <p>HOLDING: The Court’s order regarding the <i>Scheuer</i> plaintiff’s <i>Daubert</i> motion does not apply in <i>Ward</i>.</p>
<p><i>Cockram</i> Pl. MIL No. 1 (Collateral Source Benefits) (Docket Nos. 2874, 2875)</p> <p>Ruling: 7/22/2016 Order (Docket No. 3129)</p>	<p>The parties agree that the court’s ruling is fact-specific to <i>Cockram</i> and does not apply to <i>Ward</i>.</p> <p>HOLDING: The Court’s order regarding the <i>Cockram</i> plaintiff’s MIL No. 1 does not apply to <i>Ward</i>.</p>

Issue Briefed in Bellwether Scheuer, Barthelemy, or Cockram and Ruling	Application to Ward¹
<p>Cockram Pl. MIL No. 2 (Seatbelt Nonuse) (Docket Nos. 2886, 2887)</p> <p>Ruling: 7/22/2016 Order (Docket NO. 3129)</p>	<p>The parties agree that the Court's ruling is fact-specific to <i>Cockram</i> and does not apply to <i>Ward</i>.</p> <p>HOLDING: The Court's order regarding the <i>Cockram</i> plaintiff's MIL No. 2 does not apply to <i>Ward</i>.</p>
<p>Cockram Pl. MIL No. 3 (Post-Accident Drug Testing, Termination, and Rehabilitation) (Docket Nos. 2962, 2963)</p> <p>Ruling: 8/18/2016 Order (Docket No. 3237)</p>	<p>The parties agree that the Court's ruling is fact-specific to <i>Cockram</i> and does not apply to <i>Ward</i>.</p> <p>HOLDING: The Court's order regarding the <i>Cockram</i> plaintiff's MIL No. 3 does not apply to <i>Ward</i>.</p>
<p>Cockram Pl. MIL No. 4 (Prior Alcohol Use; BAC and Anxiety Medication Use at Time of Accident) (Docket Nos. 2967, 2970)</p> <p>Ruling: 8/1/2016 Order (Docket No. 3158)</p>	<p>The parties agree that the Court's ruling is fact-specific to <i>Cockram</i> and does not apply to <i>Ward</i>.</p> <p>HOLDING: The Court's order regarding the <i>Cockram</i> plaintiff's MIL No. 4 does not apply to <i>Ward</i>.</p>
<p>Cockram Pl. MIL No. 5 (Marijuana and Tobacco Use) (Docket Nos. 2973, 2974)</p> <p>Ruling: 8/18/2016 Order (Docket No. 3237)</p>	<p>The parties agree that the Court's ruling is fact-specific to <i>Cockram</i> and does not apply to <i>Ward</i>.</p> <p>HOLDING: The Court's order regarding the <i>Cockram</i> plaintiff's MIL No. 5 does not apply to <i>Ward</i>.</p>
<p>Cockram Pl. MIL No. 6 (Employment Records) (Docket Nos. 2978, 2979)</p> <p>Ruling: 8/18/2016 (Docket No. 3237)</p>	<p>The parties agree that the Court's ruling is fact-specific to <i>Cockram</i> and does not apply to <i>Ward</i>.</p> <p>HOLDING: The Court's order regarding the <i>Cockram</i> plaintiff's MIL No. 6 does not apply to <i>Ward</i>.</p>
<p>Cockram Pl. MIL No. 7 (Academic Records and Learning Disabilities)</p>	<p>The parties agree that the Court's ruling is fact-specific to <i>Cockram</i> and does not apply to <i>Ward</i>.</p>

Issue Briefed in Bellwether Scheuer, Barthelemy, or Cockram and Ruling	Application to Ward¹
(Docket No. 2982, 2984) Ruling: 8/18/2016 Order (Docket No. 3237)	HOLDING: The Court's order regarding the <i>Cockram</i> plaintiff's MIL No. 7 does not apply to <i>Ward</i> .
Cockram Pl. MIL No. 8 (Feinberg Program) (Docket No. 2987, 2988) Ruling: 8/18/2016 Order (Docket No. 3237)	<p>The parties agree that the Court's ruling regarding communications with the Feinberg Compensation Program is fact-specific to <i>Cockram</i> and does not apply to <i>Ward</i>. However, the Court's ruling regarding the admissibility of evidence regarding the Feinberg Compensation Program and the risk of prejudice to plaintiff from the admission of Feinberg evidence applies to <i>Ward</i>. The parties agree that, as in <i>Cockram</i>, the answer to those concerns is not categorical exclusion pursuant to Federal Rule of Evidence 403. The parties are working on a proposed stipulation with respect to the appropriate protective measures, which includes the bifurcation of the amount of punitive damages.</p> <p>HOLDING: The Court's order regarding the admissibility of evidence regarding the Feinberg Compensation Program and the risk of prejudice to plaintiff from the admission of Feinberg evidence with respect to the <i>Cockram</i> plaintiff's MIL No. 8 applies to <i>Ward</i>. The parties will meet and confer with respect to the appropriate protective measures, including the bifurcation of the amount of punitive damages.</p>
Cockram Pl. Daubert Motion (Docket No. 2857, 2858) Ruling: 8/1/2016 Order (Docket No. 3158)	<p>The parties agree that the Court's ruling as to Don Tandy is case-specific to <i>Cockram</i> and does not apply to <i>Ward</i>. The parties agree that the Court's ruling as to Robert Rucoba, Rod McCutcheon, and Elizabeth Raphael do not apply to <i>Ward</i> as none of them are designated as experts.</p> <p>HOLDING: The Court's order regarding the <i>Cockram</i> plaintiff's <i>Daubert</i> motion does not apply to <i>Ward</i>.</p>

Issue Briefed in Bellwether <i>Scheuer</i>, <i>Barthelemy</i>, or <i>Cockram</i> and Ruling	Application to <i>Ward</i>¹
<p>GM LLC MIL No. 1 (NHTSA Consent Order) (Docket Nos. 1378, 1379)</p> <p>Ruling: 12/01/2015 Order (Docket No. 1770); 1/6/2016 Order (Docket No. 2017) (redactions)</p>	<p>Pl. Position: The Court’s ruling applies to <i>Ward</i>. The Consent Order contains GM LLC’s admissions regarding its recall of Plaintiff’s vehicle under NHTSA Recall No. 14V-047. And the Court has ruled that the proper way to address any Rule 403 concerns “is not to preclude evidence and argument of the Consent Order altogether; it is to give the jury limiting instructions and to redact any portion of the Consent Order that would be substantially more prejudicial or confusing than probative.” Docket No. 1770 at 4. If necessary, Plaintiff will explain in opposing GM’s new motion <i>in limine</i> on this subject (and as Co-Lead Counsel explained in opposing GM’s Motion <i>in Limine</i> No. 32), that the Consent Order is highly relevant to Plaintiff’s claims, and the appropriate way to address any Rule 403 concerns is for GM LLC to may make targeted objections to specific portions of the Consent Order.</p> <p>GM LLC Position: The Court’s ruling on GM LLC’s MIL No. 1 does not apply to <i>Ward</i>, because the subject 2009 Chevrolet HHR did not contain the defective ignition switch part number 10392423 that was the subject of the NHTSA Consent Order. New GM requests leave to file a motion <i>in limine</i> seeking exclusion of this evidence in <i>Ward</i>. Plaintiff does not oppose this request.</p> <p>HOLDING: Additional briefing regarding the GM LLC’s MIL No. 1 in <i>Scheuer</i> is unnecessary, particularly in light of the Court’s ruling on New GM’s Motion <i>in Limine</i> No. 32. (<i>See</i> Docket No. 3947). The Court’s ruling on GM LLC’s MIL No. 1 in <i>Scheuer</i> applies to <i>Ward</i>, subject to any later ruling with respect to New GM’s targeted objections to specific portions of the Consent Order. The parties should meet and confer with respect to appropriate redactions to the Consent Order.</p>
<p>GM LLC MIL No. 2 (Spoliation) (Docket Nos. 1411, 1415)</p> <p>Ruling: 12/29/2015 Order (Docket No. 1969)</p>	<p>The parties agree that the Court’s ruling is fact-specific to <i>Scheuer</i> and does not apply to <i>Ward</i>.</p> <p>HOLDING: The Court’s order regarding GM LLC’s MIL No. 2 in <i>Scheuer</i> does not apply to <i>Ward</i>.</p>

Issue Briefed in Bellwether <i>Scheuer</i>, <i>Barthelemy</i>, or <i>Cockram</i> and Ruling	Application to <i>Ward</i>¹
GM LLC MIL No. 3 (Paid vs. Incurred Medical Expenses) (Docket Nos. 1573, 1574) Ruling: 11/23/2015 Order (Docket No. 1727)	<p>The parties agree that the Court’s ruling is specific to Oklahoma law and does not apply to <i>Ward</i>.</p> <p>HOLDING: The Court’s order regarding GM LLC’s MIL No. 3 in <i>Scheuer</i> does not apply to <i>Ward</i>.</p>
GM LLC MIL No. 4 (Plaintiff’s Eviction) (Docket Nos. 1580, 1581) Ruling: 11/30/2015 Order (Docket No. 1770)	<p>The parties agree that the Court’s ruling is fact-specific to <i>Scheuer</i> and does not apply to <i>Ward</i>.</p> <p>HOLDING: The Court’s order regarding GM LLC’s MIL No. 4 in <i>Scheuer</i> does not apply to <i>Ward</i>.</p>
GM LLC MIL No. 5 (Cases Filed and Prior Settlements) (Docket Nos. 1582, 1583) Ruling: 11/30/2015 Order (Docket No. 1770)	<p>The parties agree that the Court’s ruling should apply to <i>Ward</i>, subject to the parties’ rights to move for reconsideration should the Court’s subsequent rulings change the scope of relevant or admissible evidence in this case.</p> <p>HOLDING: The Court’s order applies, subject to a party moving to reconsider pursuant to Paragraph 1 of this Order.</p>
GM LLC MIL No. 6 (Anderson/Ward- Green Criminal Cases) (Docket Nos. 1585, 1586) Ruling: 11/30/2015 Order (Docket No. 1770)	<p>The parties agree that the Court’s ruling is applicable to <i>Ward</i>.</p> <p>HOLDING: The Court’s order regarding GM LLC’s MIL No. 6 in <i>Scheuer</i> applies to <i>Ward</i>.</p>
GM LLC MIL No. 7 (Punitive Damages) (Docket Nos. 1611, 1612) Ruling: 12/30/2015 Order (Docket No. 1980)	<p>The parties agree that the Court’s ruling on GM LLC’s MIL No. 7 applies in <i>Ward</i> subject to GM LLC’s right to move for reconsideration pursuant to Paragraph No. 1 of this Order depending on the Court’s rulings on GM LLC’s motion for summary judgment.</p> <p>HOLDING: The Court’s ruling applies, subject to a party moving to reconsider pursuant to Paragraph 1 of this Order.</p>

Issue Briefed in Bellwether <i>Scheuer</i>, <i>Barthelemy</i>, or <i>Cockram</i> and Ruling	Application to <i>Ward</i>¹
<p>GM LLC MIL No. 8 (Misrepresentations to NHTSA) (Docket Nos. 1614, 1615)</p> <p>Ruling: 12/3/2015 Order (Docket No. 1791)</p>	<p>Pl. Position: The Court’s ruling regarding GM LLC’s MIL No. 8 in <i>Scheuer</i> applies to <i>Ward</i>. GM LLC raised no relevance objections to this evidence in its motion, which it argued “applied globally to all bellwether and other personal injury complaints.” And GM LLC already made its Rule 403 arguments in MIL No. 8, which were rejected by the Court. GM LLC should not get a second bite at the apple. Plaintiff’s vehicle was recalled pursuant to NHTSA Recall No. 14V047 – just like the <i>Scheuer</i> vehicle.</p> <p>GM LLC Position: The Court’s ruling regarding GM LLC’s federal preemption and <i>Noerr-Pennington</i> doctrine arguments should apply to <i>Ward</i>, but GM LLC should have the right to raise specific relevance and prejudice objections under Federal Rules of Evidence 401-403. The Court’s opinion did not address specific alleged misrepresentations and whether such evidence would be admissible under Fed. R. Evid. 402 and 403. It only denied categorical exclusion of this evidence. Given that plaintiff may seek to enter evidence about alleged misrepresentation to NHTSA regarding the short-detent ignition switch (part number 10392423), GM LLC should have the right to raise specific admissibility objections under Federal Rules of Evidence 402 and 403 in <i>Ward</i>, which involves a vehicle with a different ignition switch containing a longer detent and plunger (part number 15586190). Finally, GM LLC should have the right to move for reconsideration under Paragraph 1 of this Order based on any ruling by the Court that changes the scope of relevant or admissible evidence.</p> <p>HOLDING: The Court’s ruling applies, subject to GM LLC’s right to (1) make specific objections that such evidence is not admissible under Fed. R. Evid. 402 or 403 and (2) move for reconsideration pursuant to Paragraph 1 of this Order.</p>
<p>GM LLC MIL No. 9 (Privilege Issues at Trial) (Docket Nos. 1616, 1617)</p>	<p>The parties agree that the Court’s ruling is applicable to <i>Ward</i>.</p> <p>HOLDING: The Court’s order regarding GM LLC’s MIL No. 9 in <i>Scheuer</i> applies to <i>Ward</i>.</p>

Issue Briefed in Bellwether <i>Scheuer</i>, <i>Barthelemy</i>, or <i>Cockram</i> and Ruling	Application to <i>Ward</i>¹
Ruling: 12/3/2015 Order (Docket No. 1791)	
GM LLC MIL No. 10 (Discovery and Other Litigation Conduct) (Docket Nos. 1618, 1619) Ruling: 12/3/2015 Order (Docket No. 1791)	The parties agree that the Court's ruling is applicable to <i>Ward</i> . HOLDING: The Court's order regarding GM LLC's MIL No. 10 in <i>Scheuer</i> applies to <i>Ward</i> .
GM LLC MIL No. 11 (Other Similar Incidents) (Docket Nos. 1629, 1630) (<i>see also</i> Docket Nos. 1834, 1910) Ruling: 12/3/2015 Order (Docket No. 1790); 12/28/2015 Order (Docket No. 1968)	The parties agree the Court's rulings on the legal standards for analyzing the admissibility of evidence regarding other similar incidents (OSIs) from <i>Scheuer</i> , <i>Barthelemy</i> , and <i>Cockram</i> are generally applicable in <i>Ward</i> , but reserve the right to raise new arguments regarding the scope and type of admissible OSI evidence based on the different evidence proffered by plaintiff, the different factual circumstances at issue in <i>Ward</i> , as well as issues to be raised in the parties' dispositive motions and motions <i>in limine</i> . HOLDING: The Court reserves judgment on the applicability of its rulings on other similar incidents from <i>Scheuer</i> , <i>Barthelemy</i> , and <i>Cockram</i> to <i>Ward</i> .
GM LLC MIL No. 12 (Valukas Report) (Docket Nos. 1631, 1632) Ruling: 12/9/2015 Order (Docket No. 1837); 1/6/2016 Order (Docket No. 2019) (redactions)	Pls. Position: The Court's ruling applies to <i>Ward</i> . The Valukas Report contains GM LLC's admissions regarding GM's knowledge and conduct regarding the defect which ultimately led to the recall of Plaintiff's vehicle under NHTSA Recall No. 14V-047. And MDL Order No. 120 ¶2(i) already provides a procedure by which GM LLC can make targeted objections to specific portions of the Valukas Report that would be substantially more prejudicial than probative. Pursuant to MDL Order No. 120, Plaintiff intends to disclose by no later than <u>Friday, June 2, 2017</u> , the excerpts from the Valukas Report that he intends to offer at trial. The parties will raise any disputes with respect thereto by no later than <u>Wednesday, June 14, 2017</u> .

Issue Briefed in <i>Bellwether Scheuer, Barthelemy, or Cockram and Ruling</i>	Application to <i>Ward</i> ¹
	<p>If necessary, Plaintiff will explain in opposing GM's new motion <i>in limine</i> on this subject (and as Co-Lead Counsel explained in opposing GM's Motion <i>in Limine</i> No. 32), the Valukas Report is highly relevant to Plaintiff's claims, and the appropriate way to address any Rule 403 concerns is to follow the procedure mandated by MDL Order No. 120 ¶2(i).</p> <p>GM LLC Position: GM LLC Position: The Court's ruling on GM LLC's MIL No. 1 does not apply to <i>Ward</i>, because the subject 2009 Chevrolet HHR did not contain the defective ignition switch part number 10392423 that was the primary subject of the Valukas Report. New GM requests leave to file a motion <i>in limine</i> seeking exclusion of this evidence in <i>Ward</i>. Plaintiff does not oppose this request.</p> <p>HOLDING: The Court concludes that additional briefing regarding GM LLC's MIL No. 12 in <i>Scheuer</i> is unnecessary, particularly in light of the Court's ruling on New GM's Motion <i>in Limine</i> No. 32. (<i>See</i> Docket No. 3947). The Court's ruling on GM LLC's MIL No. 12 in <i>Scheuer</i> applies to <i>Ward</i> and the parties are to follow the procedure set forth in MDL Order 120 for identifying any disputes with respect to the admission of specific portions of the SOF.</p>
<p>GM LLC MIL No. 13 (Government Investigations) (Docket Nos. 1633, 1634)</p> <p>Ruling: 11/25/2015 Order (Docket No. 1749)</p>	<p>GM LLC's motion remains unopposed. The parties agree that the Court's ruling in <i>Scheuer</i> granting the motion as unopposed is applicable to <i>Ward</i>.</p> <p>HOLDING: GM LLC's motion remains unopposed. The Court's order regarding GM LLC's MIL No. 13 in <i>Scheuer</i> granting the motion as unopposed applies to <i>Ward</i>.</p>
<p>GM LLC MIL No. 14 (Congressional Testimony) (Docket Nos. 1635, 1636)</p> <p>Ruling: 12/9/2015 Order (Docket No. 1837)</p>	<p>Pls. Position: The Court's ruling should apply to <i>Ward</i>. Plaintiff agrees to disclose the specific page and line numbers of the Congressional testimony she intends to offer at trial along with his deposition designations on <u>Friday, June 2, 2017</u>, and the parties will raise any disputes with respect to this disclosure in connection with the parties' deposition designations.</p>

Issue Briefed in Bellwether <i>Scheuer</i>, <i>Barthelemy</i>, or <i>Cockram</i> and Ruling	Application to <i>Ward</i>¹
	<p>GM LLC Position: To the extent subsequent rulings on GM LLC's motion for summary judgment, plaintiffs' OSI disclosure, or other rulings change the scope of relevant or admissible evidence in this case, GM LLC reserves the right to submit additional briefing on the scope of evidence admissible pursuant to this ruling following those rulings. Plaintiff does not oppose this request.</p> <p>HOLDING: The Court's ruling applies, subject to a party moving to reconsider pursuant to Paragraph 1 of this Order. The Court also adopts plaintiff's proposal above regarding the disclosure of and resolution of disputes with respect to plaintiff's proffered Congressional testimony in connection with the parties' deposition designation disputes.</p>
<p>GM LLC MIL No. 15 (Government Reports) (Docket Nos. 1637, 1638)</p> <p>Ruling: 12/9/2015 Order (Docket No. 1837)</p>	<p>Pl. Position: The Court's ruling applies to <i>Ward</i>. The Government Reports concern GM's knowledge and conduct regarding the defect that led to the recall of Plaintiff's vehicle under NHTSA Recall No. 14V-047. If necessary, Plaintiff will explain in opposing GM's new motion <i>in limine</i> on this subject (and as Co-Lead Counsel explained in opposing GM's Motion <i>in Limine</i> No. 32), that the Government Reports are highly relevant to Plaintiff's claims, and the appropriate way to address any Rule 403 concerns is for GM LLC to may make targeted objections to specific portions of the Government Reports.</p> <p>GM LLC Position: The Court's ruling on GM LLC's MIL No. 15 does not apply to <i>Ward</i>, because the subject 2009 Chevrolet HHR did not contain the defective ignition switch part number 10392423 that was the subject of the NHTSA <i>Path Forward</i> and <i>Workforce Assessment</i> reports. New GM request leave to file a motion <i>in limine</i> seeking exclusion of this evidence in <i>Ward</i>. Plaintiff does not oppose this request.</p> <p>HOLDING: The Court concludes that additional briefing regarding GM LLC's MIL No. 15 in <i>Scheuer</i> is unnecessary, particularly in light of the Court's ruling on New GM's Motion <i>in Limine</i> No. 32. (See Docket No. 3947). The Court's ruling on GM LLC's MIL No. 15 in <i>Scheuer</i> applies to <i>Ward</i>. The parties shall meet and confer with respect to</p>

Issue Briefed in Bellwether Scheuer, Barthelemy, or Cockram and Ruling	Application to <i>Ward</i>¹
	<p>proposed redactions to the reports.</p>
<p>GM LLC MIL No. 16 (Non-Delta Ignition Switches) (Docket Nos. 1639, 1640)</p> <p>Ruling: 12/7/2015 Order (Docket No. 1825); 12/29/2015 Order (Docket No. 1971) (factual correction)</p>	<p>PL. POSITION: The Court’s order on GM LLC’s MIL No. 16 applies to <i>Ward</i>. Plaintiff alleges that his vehicle contains a defect that causes the vehicle’s ignition switch to move unintentionally from the ‘run’ position to the ‘accessory’ or ‘off’ position, resulting in a loss of power, vehicle speed control, and braking, as well as the failure of the vehicle’s airbags to deploy – which is the exact same defect that GM LLC admits exists in vehicles containing “non-delta ignition switches” subject to NHTSA Recall Nos. 14v346, 14v355, 14v394, 14v400, and 14v540. Moreover, as Co-Lead Counsel explained in the opposition to GM’s Motion in <i>limine</i> No. 32, GM has admitted that the Delta switch was a corporate common switch that was extremely similar to the switches used in vehicles subject to NHTSA Recall Nos. 14v394 and 14v400. Indeed, this commonality among switches meant that GM was able to use the Catera spring and plunger installed in certain Recall no. 14v394 vehicles during its secret part change to the Delta switch which resulted in ignition switch part number 15586190. As a result, evidence relating to non-Delta ignition switches and NHTSA Recall nos. 14v346, 14v355, 14v394, 14v400, and 14v540 is admissible in <i>Ward</i> and additional briefing on this issue is unnecessary. Further, to the extent New GM wished to exclude evidence of non-Delta ignition switches, it should have moved on this issue on or before the “Last Day to File Motions in <i>Limine</i>” date (May 3, 2017) set forth in the Court’s pretrial scheduling order.</p>

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	<p>GM LLC Position: The Court’s order on GM LLC’s MIL No. 16 should not apply to <i>Ward</i>. The Court concluded that evidence related to non-Delta ignition switches and the recalls related to those switches was relevant because GM LLC treated the switches similarly and used similar language in recalls related to non-Delta platform vehicles. <i>Ward</i>’s vehicle contains ignition switch part number 15586190, which has not been subject to recall for any inadvertent rotation or low-torque performance. Instead, the <i>Ward</i> vehicle was recalled due to the possibility that switch number 10392423 was installed during service repairs (and it was not). GM LLC’s vehicle performance data shows that different ignition switches in different vehicle platforms have different susceptibility to inadvertent key rotation. As a result, evidence relating to these non-Delta ignition switches and NHTSA Recall Nos. 14v346, 14v355, 14v394, 14v400, and 14v540 is inadmissible in <i>Ward</i> as irrelevant, confusing, and misleading. If the Court rules that GM LLC’s MIL No. 16 does not apply to <i>Ward</i>, the parties should submit a proposed schedule for additional briefing on this issue.</p> <p>HOLDING: The Court’s order regarding GM LLC’s MIL No. 16 in <i>Scheuer</i> applies to <i>Ward</i>, particularly in light of the Court’s ruling on New GM’s Motion <i>in Limine</i> No. 32.</p>
<p>GM LLC MIL No. 17 (Adequacy of Recall Remedies) (Docket Nos. 1641, 1642)</p> <p>Ruling: 12/7/2015 Order (Docket No. 1825)</p>	<p>Pl. Position: The Court’s Order on GM LLC’s MIL No. 17 regarding the sufficiency of recall repairs is fact-specific to <i>Scheuer</i> and does not apply to <i>Ward</i>. The Court’s order precluding the <i>Scheuer</i> plaintiff from challenging the sufficiency of recall repairs performed on other vehicles was based on the fact that the <i>Scheuer</i> plaintiff “never received the proscribed repairs.” Here, the <i>Ward</i> plaintiff’s vehicle <i>did</i> receive the recall repairs. Further, the adequacy of the recall repairs done on his and other vehicles is relevant to Plaintiff’s defect claims in this case. Plaintiff alleges that the defect was broader and more significant than a low torque switch and thus, to truly fix the defect, New GM needed to have taken additional remedial steps, e.g., by eliminating the single point of failure, prolonging the vehicles’ ability to deploy airbags, and/or changing the location of the ignition switch. The Court’s Order on GM LLC’s MIL No. 17 permitting plaintiff to admit evidence relating to the</p>

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	<p>adequacy of the other recall remedies – the availability of loaner vehicles and repair parts – is applicable to <i>Ward</i>. Like the <i>Scheuer</i> plaintiff, the <i>Ward</i> plaintiff also “received the company’s recall notice and attempted to have the recall repairs performed on his car,” rendering the adequacy of New GM’s efforts to effectuate the recall relevant to causation and punitive damages. Further, to the extent New GM wished to exclude evidence regarding the adequacy of the recall remedies, it should have been prepared to move on this issue on or before the “Last Day to File Motions <i>in Limine</i>” date (May 3, 2017) set forth in the Court’s pretrial scheduling order.</p> <p>GM LLC Position: The Court’s Order on GM LLC’s MIL No. 17 should apply to <i>Ward</i>. Like <i>Scheuer</i>, the <i>Ward</i> plaintiff did not have any recall repair performed prior to his accident and therefore the adequacy of the recall repairs is not relevant to his claims against GM LLC. Furthermore, just like in <i>Scheuer</i>, the probative value of any evidence or argument about the adequacy of the recall repair as to plaintiff’s claim for punitive damages is substantially outweighed by the risk of unfair prejudice, confusing the issues, misleading the jury, undue delay, and wasting time.</p> <p>Plaintiffs did not notify GM LLC of their position that GM MIL No. 17 should not apply in <i>Ward</i> until May 1, 2017. On May 1, 2017, plaintiff’s counsel indicated that “upon further reflection, Plaintiff will not agree to any stipulation with respect to the adequacy of recall remedies.” As of the date of this filing, plaintiff was considering GM LLC’s request to stipulate regarding certain aspects of the adequacy of the recall, such as to stipulate that plaintiff will not present evidence that there was inadequate torque in the switches that replaced the ‘190 switches in <i>Ward</i>’s vehicles and other vehicles, and that plaintiff will not present evidence that <i>Ward</i> sought a loaner vehicle. If the Court rules that GM LLC’s MIL No. 17 does not apply to <i>Ward</i>, the parties should submit a proposed briefing schedule on this issue.</p> <p>HOLDING: The Court reserves judgment, and the parties are granted leave to propose a briefing schedule on this issue after conferring in an effort to resolve or narrow any disagreement.</p>

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<p>GM LLC MIL No. 18 (Irrelevant, Pejorative, Unfairly Prejudicial Remarks) (Docket Nos. 1643, 1644)</p> <p>Ruling: 12/7/2015 Order (Docket No. 1825)</p>	<p>The parties agree that the part of this motion that was granted is applicable to <i>Ward</i>. The parties further believe they will be able to reach agreement on the rest of the issues raised in the motion.</p> <p>Neither party currently anticipates the need to brief the issue in <i>Ward</i>.</p> <p>HOLDING: The Court’s order regarding GM LLC’s MIL No. 18 in <i>Scheuer</i> applies to <i>Ward</i>.</p>
<p>GM LLC MIL No. 19 (Anonymous Letters) (Docket Nos. 1805, 1806)</p> <p>Ruling: 12/29/2015 Order (Docket No. 1971)</p>	<p>The parties agree that the Court’s ruling should apply to <i>Ward</i>.</p> <p>HOLDING: The Court’s order regarding GM LLC’s MIL No. 19 in <i>Scheuer</i> applies to <i>Ward</i>.</p>
<p>GM LLC MIL No. 20 (Evidence re Airbag Non-Deployment) (Docket Nos. 2209, 2210)</p> <p>Order: 2/25/2016 (Docket No. 2362)</p>	<p>Pl. Position: The Court’s ruling on GM LLC’s MIL No. 20 in <i>Barthlemey</i> applies to <i>Ward</i>. Both <i>Barthelemy</i> and <i>Ward</i> are cases in which plaintiffs based their claims on loss of control rather than airbag non-deployment with respect to vehicles subject to NHTSA Recall No. 14V047. The Court’s ruling in <i>Barthelemy</i> that evidence and argument regarding airbag non-deployment was admissible in that case applies equally in <i>Ward</i>.</p> <p>GM LLC Position: GM LLC asserts that the Court’s ruling on MIL No. 20 that airbag non-deployment evidence is admissible for the purpose of notice of defect in <i>Barthelemy</i> is case-specific and should not apply to the <i>Ward</i> case. While <i>Barthelemy</i> also involved claims of loss of control rather than airbag non-deployment, the airbag non-deployment evidence related to vehicles containing ignition switch part number 10392423. The <i>Ward</i> plaintiff’s vehicle does not contain that ignition switch part number and therefore the Court’s ruling that airbag non-deployment evidence is admissible for notice of defect should not apply.</p>

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	<p>The Court's ruling that airbag non-deployment evidence is inadmissible for the purpose of showing causation should apply to <i>Ward</i>.</p> <p>HOLDING: The Court's order regarding GM LLC's MIL No. 20 applies to <i>Ward</i>.</p>
<p>GM LLC MIL No. 22 (FTC Consent Order) (Docket Nos. 2213, 2214)</p> <p>Order: 2/16/2016 (Memo Endorsement of Stipulation, Docket No. 2287)</p>	<p>New GM and plaintiffs stipulate and agree that the parties will not introduce evidence relating to: (i) the proposed consent order between General Motors LLC and the Federal Trade Commission ("FTC") (<i>In the Matter of General Motors LLC</i>, FTC File No. 152-3101), or (ii) any final version of such FTC consent order.</p> <p>HOLDING: SO ORDERED.</p>
<p>GM LLC MIL No. 25 (Improper Lay Opinion and Speculative Testimony) (Docket Nos. 2961, 2964)</p> <p>Ruling: 8/18/2016 Order (Docket No. 3237)</p>	<p>The parties agree that the Court's ruling is fact-specific to <i>Cockram</i> and does not apply to <i>Ward</i>.</p> <p>HOLDING: The Court's order regarding GM LLC's MIL No. 25 does not apply to <i>Ward</i>.</p>
<p>GM LLC MIL No. 26 (Danny and Mary Cockram Ignition Switch Position Testimony) (Docket Nos. 2966, 2968)</p> <p>Ruling: 8/18/2016 Order (Docket No. 3237)</p>	<p>The parties agree that the Court's ruling is fact-specific to <i>Cockram</i> and does not apply to <i>Ward</i>.</p> <p>HOLDING: The Court's order regarding GM LLC's MIL No. 26 does not apply to <i>Ward</i>.</p>

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<p>GM LLC MIL No. 28 (Plaintiff's Feinberg Claim) (Docket Nos. 2983, 2985)</p> <p>Ruling: 8/18/2016 Order (Docket No. 3237)</p>	<p>The parties agree that the Court's ruling regarding communications with the Feinberg Compensation Program is fact-specific to <i>Cockram</i> and does not apply to <i>Ward</i>. However, the Court's ruling regarding the admissibility of evidence regarding the Feinberg Compensation Program and the risk of prejudice to plaintiff applies to <i>Ward</i>. The parties agree that, as in <i>Cockram</i>, the answer to those concerns is not categorical exclusion pursuant to Federal Rule of Evidence 403. The parties are working on a proposed stipulation for appropriate protective measures, which includes the bifurcation of the amount of punitive damages.</p> <p>HOLDING: The Court's order regarding GM LLC's MIL No. 28 applies to the extent described above in <i>Ward</i>. The parties will meet and confer with respect to the appropriate protective measures, including the bifurcation of the amount of punitive damages.</p>
<p>GM LLC <i>Scheuer Daubert Motion</i> (Docket Nos. 1815, 1820)</p> <p>Ruling: 12/29/2015 Order (Docket No. 1970)</p>	<p>The parties agree that the Court's ruling relating to the state-of-mind opinions of Steve Loudon applies to <i>Ward</i>. The parties agree that the Court's ruling as to Loudon and Stevick's SDM prolongation opinions apply to <i>Ward</i> subject to GM LLC's right to raise arguments to exclude these opinions on other grounds not addressed in GM LLC's <i>Scheuer Daubert</i> motion. The parties agree that the Court's case-specific rulings with respect to Michael Markushewski, and Chris Caruso, Robert Cox, and David Macpherson do not apply as they are not designated as experts in <i>Ward</i>.</p> <p>The parties reserve the right to raise arguments to exclude experts and/or opinions not addressed in GM LLC's <i>Scheuer Daubert</i> motion.</p> <p>The parties disagree about whether the Court's ruling as to Glen Stevick's knee-key opinion applies to <i>Ward</i>.</p> <p>Pl. Position: As Plaintiff will further explain in opposition to GM's Daubert brief, the Court's ruling regarding Glen Stevick's knee-key opinion in <i>Scheuer</i> applies to <i>Ward</i>. Stevick has adopted and incorporated by reference his knee-key opinions in <i>Scheuer</i> to his opinions in the <i>Ward</i> case. GM challenged Stevick's knee-key opinions in <i>Scheuer</i></p>

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	<p>precisely because they were “generic” and “not specific” to <i>Scheuer</i>. And GM challenged Stevick’s knee-key opinions in <i>Scheuer</i> because they were purportedly based on speculation and not on Stevick’s own testing – just as GM has challenged Stevick’s knee-key opinions in <i>Ward</i>. The Court’s ruling—the fact that there is some evidence to impeach the expert goes only to weight and there is no <i>per se</i> requirement than an expert conduct his or her own testing—applies in <i>Ward</i>.</p> <p>GM LLC Position: The Court’s ruling regarding Stevick’s knee-key opinions in <i>Scheuer</i> should not apply in <i>Ward</i>. As stated more fully in GM LLC’s <i>Ward Daubert</i> brief (Docket No. 3874), Stevick’s knee-key opinions in <i>Scheuer</i> are readily distinguishable from <i>Ward</i>. Stevick did not—and has not—performed any critical review of existing test data on the susceptibility for knee-key rotation in the later model year vehicles that contain the longer-detent ignition switch like the <i>Ward</i> plaintiff’s 2009 HHR. It did not pertain to the susceptibility of the ignition switch part number 15586190 for knee-key rotation. As a result, the Court’s finding that Stevick’s knee-key opinions were admissible in <i>Scheuer</i> has no bearing on the admissibility of his knee-key opinions in <i>Ward</i>. The order should therefore not be applied in <i>Ward</i>.</p> <p>HOLDING: The Court’s order regarding GM LLC’s <i>Scheuer Daubert</i> motion with respect to Loudon’s state-of-mind opinions applies in <i>Ward</i>. The Court’s order regarding Stevick and Loudon’s SDM prolongation opinions apply to <i>Ward</i> subject to New GM’s right to raise arguments in <i>Ward</i> that were not made in the <i>Scheuer Daubert</i> Motion. The Court’s order with respect to the experts not designated in <i>Ward</i> (Caruso, Cox, and Macpherson) does not apply in <i>Ward</i>. The Court reserves judgment regarding Stevick’s knee-key opinions pending the parties’ <i>Daubert</i> briefing.</p>
<p>GM LLC <i>Cockram Daubert Motion</i> (Docket Nos. 2852, 2853)</p> <p>Ruling: 8/1/2016 Order</p>	<p>The parties agree that the Court’s ruling relating to the opinions of Steve Loudon and Glen Stevick apply to <i>Ward</i>. The Court’s rulings relating to Dwayne Fuller, Chris Caruso, Stephen Irwin, and Michael Markushewski do not apply as they are not designated as experts in <i>Ward</i>.</p>

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(Docket No. 3158)	<p>The parties reserve the right to raise arguments to excluded experts and/or opinions not addressed in GM LLC's <i>Cockram</i>.</p> <p>HOLDING: The Court's order regarding GM LLC's <i>Daubert</i> motion applies in <i>Ward</i> to the extent described above, but the parties are free to raise arguments to exclude experts and/or opinions not addressed in GM LLC's <i>Daubert</i> motion in <i>Cockram</i>.</p>
<p>Redactions to the Valukas Report, the DPA Statement of Facts, and NHTSA Consent Order</p> <p>Orders: 1/6/2016 (Docket Nos. 2017, 2018, 2019)</p>	<p>The parties agree that the applicability of the Court's rulings of the redactions to the Valukas Report, DPA Statement of Facts, and the NHTSA Consent Order should be deferred until the Court rules on GM LLC's motion for summary judgment, plaintiff's OSI disclosure, and GM LLC's motions <i>in limine</i>.</p> <p>HOLDING: The Court reserves judgment on the applicability of the rulings on redactions to the Valukas Report, DPA Statement of Facts, and NHTSA Consent Order in <i>Scheuer</i> to <i>Ward</i> until after the Court rules on summary judgment or other rulings that change the scope of relevant or admissible evidence in this case.</p>
<p>GM LLC Motion to Preclude Plaintiffs from Calling Michael Gruskin Live At Trial</p> <p>(Docket Nos. 2404, 2442, 2455)</p> <p>Ruling: 3/9/2016 Pretrial Conference Transcript (and Docket No. 2461)</p>	<p>The parties agree that the Court's ruling precluding plaintiffs from calling Michael Gruskin to testify live at trial applies to <i>Ward</i>.</p> <p>HOLDING: The Court's order precluding plaintiffs from calling Michael Gruskin to testify live at trial applies to <i>Ward</i>.</p>

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<p>Barthelemy Pls. MIL No. 1 (Barthelemy's Criminal Record) (Docket Nos. 2231, 2232)</p> <p>Order: 2/23/2015 (Text Order, Docket No. 2346)</p>	<p>The parties agree that the Court's ruling is fact-specific to <i>Barthelemy/Spain</i> and does not apply to <i>Ward</i>.</p> <p>HOLDING: The Court's order regarding the <i>Barthelemy</i> plaintiffs' MIL No. 1 does not apply to <i>Ward</i>.</p>
<p>Barthelemy Pls. MIL No. 2 (Expert Testimony re Airbag Deployment) (Docket Nos. 2215, 2216)</p> <p>Order: 2/23/2015 (Text Order, Docket No. 2346)</p>	<p>The parties agree that the Court's ruling applies to <i>Ward</i>.</p> <p>HOLDING: The Court's order regarding the <i>Barthelemy</i> plaintiffs' MIL No. 2 applies to <i>Ward</i>.</p>
<p>Barthelemy Pls. MIL No. 4 (Prior Lawsuits by Plaintiffs) (Docket Nos. 2223, 2224)</p> <p>Order: 2/23/2015 (Text Order, Docket No. 2346)</p>	<p>The parties agree that the Court's ruling is fact-specific to <i>Barthelemy/Spain</i> and does not apply to <i>Ward</i>.</p> <p>HOLDING: The Court's order regarding the <i>Barthelemy</i> plaintiffs' MIL No. 4 does not apply to <i>Ward</i>.</p>
<p>Barthelemy Pls. MIL No. 6 (Officer David Kramer) (Docket Nos. 2217, 2218)</p> <p>Order: 2/23/2015 (Text Order, Docket No. 2346)</p>	<p>The parties agree that the Court's ruling is fact-specific to <i>Barthelemy/Spain</i> and does not apply to <i>Ward</i>.</p> <p>HOLDING: The Court's order regarding the <i>Barthelemy</i> plaintiffs' MIL No. 6 does not apply to <i>Ward</i>.</p>

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<p>Barthelemy Pls. MIL No. 7 (Plaintiffs’ Insurance Claims) (Docket Nos. 2221, 2222)</p> <p>Order: 2/23/2015 (Text Order, Docket No. 2346)</p>	<p>The parties agree that the Court’s ruling is fact-specific to <i>Barthelemy/Spain</i> and does not apply to <i>Ward</i>.</p> <p>HOLDING: The Court’s order regarding the <i>Barthelemy</i> plaintiffs’ MIL No. 7 does not apply to <i>Ward</i>.</p>