



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)

14-MC-2543 (JMF)

This Document Relates to All Actions

ORDER NO. 128

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JESSE M. FURMAN, United States District Judge:

**[Regarding New GM's Phase Two Bellwether Plan
Category C Replacement Case Selections]**

INTRODUCTION

1. Order No. 107 set forth the schedule for the Phase Two Bellwether Plan for Personal Injury and Wrongful Death Cases based on claims arising out of alleged defects in vehicles manufactured by General Motors LLC ("New GM") or General Motors Corporation ("Old GM"). The Phase Two Bellwether Plan covers three categories of claims involving accidents occurring on or after July 11, 2009. (*See* Order No. 107, Docket No. 3081.)

2. Following the selection of cases for the Phase Two Discovery Pool, two of Lead Counsel's Category C case selections, *Davidson* (15-CV-2708) and *Williams/Wilson/Forrister* (14-CV-8130), settled. Lead Counsel sought to select two replacement cases and the Court granted that request on November 18, 2016. (*See* Order No. 117, Docket No. 3543).

3. On November 18, 2016, Lead Counsel selected the *Dodson* (15-CV-8324) and *McPhail* (15-CV-2644) cases as their Discovery Pool Category C Replacement Cases. On March 20, 2017, New GM exercised its strike against the *McPhail* case. (Docket No. 3760.) The *Dodson* matter is currently proceeding through expert discovery and motion practice as contemplated under the Court's revised schedule set forth in Order Nos. 121 and 123. (Docket

Nos. 3659, 3902.) Trial in the *Dodson* case is scheduled to begin on **Thursday, November 2, 2017**. (Order No. 127 § IV, Docket No. 4253.)

4. New GM's initial Category C case selections, *Dixon* (15-CV-4088) and *Cain* (15-CV-4088) completed fact discovery on December 1, 2016 as contemplated in Order No. 107. On December 5, 2016, Lead Counsel exercised their strike against *Dixon*, leaving the *Cain* case to proceed to trial. (Docket No. 3571.) At that time, only one of New GM's initial Category A case selections, *Jackson-Hood* (16-CV-0924), remained active due to the October 20, 2016 voluntary dismissal of personal injury claims in New GM's other Category A selection, *Boyd* (14-CV-8385).

5. On January 6, 2017, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i), Category C plaintiff Keiara Cain voluntarily dismissed with prejudice her claims against New GM. (Docket No. 3615.) The Court terminated the *Cain* docket on January 9, 2017. (Docket No. 3624.)

6. On January 9, 2017, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i), Category A plaintiff Lenora Jackson-Hood voluntarily dismissed with prejudice her claims against New GM. (Docket No. 3626.) The Court terminated the *Jackson-Hood* docket on January 10, 2017. (Docket No. 3629.)

7. Following the dismissal of the *Cain* and *Jackson-Hood* cases, New GM sought replacement Category C bellwether selections and the Court granted that request on January 30, 2017. (*See* Order No. 121, Docket No. 3659.)

8. On January 30, 2017, New GM selected the *Thompson* (15-CV-4088) and *Tupper/Greene* (15-CV-4088) cases as its Discovery Pool Category C Replacement Cases. Ms. Greene's claims were voluntarily dismissed with prejudice on April 11, 2017 (*see Bradford*

Docket No. 138), and Lead Counsel exercised their strike against Ms. Thompson on April 24, 2017 (*see* Docket No. 3903). On June 23, 2017, New GM informed the Court that in light of Ms. Tupper's eligibility to participate in a new aggregate settlement affecting several hundred plaintiffs, New GM and counsel for Ms. Tupper agreed that it was inappropriate for Ms. Tupper to serve as an MDL 2543 bellwether candidate. (*See* Docket No. 4132.) New GM sought to select replacement cases and the Court granted that request on July 6, 2017. (*See* Order No. 127 § V.)

9. Upon review of the parties' joint letter dated July 17, 2017, and for good cause shown, the Court adopts a revised schedule for New GM's New Replacement Discovery Pool Category C Replacement Case selections as follows.

**PROCEDURES AND SCHEDULE FOR NEW GM DISCOVERY POOL
CATEGORY C NEW REPLACEMENT CASES**

10. By **Monday, July 24, 2017**, New GM shall select two cases that satisfy the Category C criteria ("Discovery Pool Category C Replacement Cases").

11. Fact discovery in the New GM Discovery Pool Category C Replacement Cases will commence on **Monday, July 24, 2017** and will conclude no later than **Friday, November 3, 2017**.¹

12. By **5:00 p.m. EDT on Friday, November 3, 2017**, Lead Counsel will exercise one strike against a New GM Discovery Pool Category C Replacement Case.

¹ In light of the compressed fact discovery period, the parties will work cooperatively and in good faith to minimize any discovery disputes and to resolve any scheduling conflicts. In particular, the parties agree to negotiate in good faith scheduling depositions requested by the parties to be taken outside of the fact discovery period to the extent: 1) documents are discovered and/or produced late in the fact discovery period; 2) necessary to accommodate the schedule of the witnesses; and/or 3) necessary to avoid potential overlap and conflicts for trial counsel in the *Dodson* trial.

13. The remaining case will constitute the New GM Phase Two Category C Replacement Case Early Trial Candidate for Bellwether Trial No. 11 and will proceed to case-specific expert discovery as follows:

- a. Lead Counsel shall disclose expert witnesses and submit any reports required under Fed. R. Civ. P. 26(a)(2)(B) on or before **Monday, December 11, 2017**.
- b. Lead Counsel shall present their expert witnesses for deposition on or before **Friday, January 12, 2018**.
- c. New GM shall disclose expert witnesses and submit any reports required under Fed. R. Civ. P. 26(a)(2)(B) on or before **Friday, January 19, 2018**.
- d. New GM shall present its expert witnesses for deposition on or before **Friday, February 12, 2018**.
- e. Absent good cause, no rebuttal expert reports shall be permitted.
- f. Expert discovery for the Phase Two Category C Replacement Case Trial Candidate shall conclude by **Friday, February 12, 2018**.

14. By **Friday, January 26, 2018**, the parties will meet and confer and submit a joint proposed order regarding deadlines for submitting any *Daubert* motions, dispositive motions, and motions *in limine* for Bellwether Trial No. 11.

15. The New GM Phase Two Category C Replacement Case Trial Candidate shall be scheduled as MDL Bellwether Trial No. 11 from **May 7, 2018-May 25, 2018**.² (Trial will not be held on May 21, 2018, as it is a Jewish holiday.)

² The Court recognizes that the period between the end of expert discovery and the start of trial — 84 days — is less than what the parties had proposed in their joint letter. Nevertheless, it exceeds (by a considerable margin) the comparable period for Bellwether Trial No. 1 (which was originally 66 days, later modified by additional orders to 48 days), and the Court assumes that there will be fewer (hopefully, many fewer) motions and issues to be resolved for Bellwether Trial No. 11 (by virtue of all the rulings that the Court will have provided by then in connection with the prior bellwether trials) than there were for Bellwether Trial No. 1. Moreover, the parties previously indicated that a trial in February or March (if not earlier) was realistic. (July 6, 2017 Status Conf. Tr. at 43). To the extent that counsel for either side has an irreconcilable conflict with the trial date for Bellwether Trial No. 11, counsel should immediately meet and confer and seek appropriate relief.

16. To the extent not modified herein, all deadlines in Order Nos. 107, 118, and 121 (and any other previous order modifying Order Nos. 107 and 118) remain in full force and effect.

SO ORDERED.

Date: July 18, 2017
New York, New York



JESSE M. FURMAN
United States District Judge