

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)

ORDER NO. 141

This Document Relates to All Actions

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JESSE M. FURMAN, United States District Judge:

**[Regarding Next Steps for the Post-Sale Production Part and Service Part and
Category C Personal Injury and Wrongful Death Cases]**

1. Order No. 136 § III directed the parties to meet and confer regarding next steps for the personal injury and wrongful death cases. (Docket No. 4706.) On January 4, 2018, the parties submitted letter briefs detailing their competing positions. (Docket Nos. 4921, 4922.) At the January 8, 2018 Status Conference, the Court heard argument and directed the parties to submit letter briefs addressing next steps for the post-Sale Production Part and Service Part claims, as well as addressing proposed Category C bellwether procedures. (See Order No. 140 § III.A, Docket No. 4967; see also Order No. 107 ¶ 3, Docket No. 3081 (defining categories).)

2. Upon review of the parties' competing letter briefs (Docket Nos. 4964, 4978, 5001), and for good cause shown, and as discussed in the February 7, 2018 telephonic conference held on the record, the Court adopts the following schedule and procedures for the Post-Sale Production Part and Service Part and Category C Personal Injury and Wrongful Death Cases.

**PROCEDURES AND SCHEDULE FOR WAVE ONE TARGETED DISCOVERY OF
PRODUCTION PART AND SERVICE PART PLAINTIFFS**

A. Identification of Wave One Plaintiffs.

3. To be eligible to participate in Wave One, a plaintiff must fit all of the following criteria: (1) the accident that forms the basis of the claims must have occurred on or after July 10,

2009; (2) the subject vehicle must be a Production Part (Phase 1) or Service Part (Category A) vehicle with air bag non-deployment (*see* Order No. 107 ¶ 3 (defining categories)); (3) the plaintiff must not be included on New GM's lists that were filed pursuant to Order No. 140, III.B-D; (4) the plaintiff must be represented by counsel and there must not be a pending motion to withdraw; and (5) the plaintiff must not be currently eligible to participate in an aggregate settlement.

4. On **Friday, February 16, 2018**, New GM filed on the main MDL docket a list of the 100 earliest-filed claims eligible to participate in Wave One targeted discovery.

5. By **Tuesday, February 20, 2018**, Lead Counsel may file on the main MDL docket a proposed list of no more than fifteen (15) additional plaintiffs eligible to participate in Wave One discovery based on hardship as potential substitutes for the most recently filed actions included in the initial list of 100. By that same date, counsel for any plaintiff included on New GM's February 16, 2018 list may file on the main MDL docket an objection to inclusion on New GM's list, but any objections must be limited to the following: (1) the plaintiff's claims do not meet Wave One eligibility criteria; or (2) extraordinary circumstances warranting exclusion from participating in Wave One.

6. By **Thursday, February 22, 2018**, New GM and Lead Counsel shall file on the main MDL docket a joint list of 100 cases that substitutes the most recently-filed claims from New GM's original list of 100 claims with up to 15 hardship claims. To the extent there is any dispute about this combined list (including any objections made subject to Paragraph 5, above), New GM and Lead Counsel shall address the disputes in a joint letter brief to the Court on that same date. Once any disputes are determined by the Court, the resulting 100 plaintiffs shall be referred to as the "Wave One plaintiffs."

B. Severance of Complaints.

7. Any Wave One plaintiffs whose claims are included in a complaint brought on behalf of multiple plaintiffs bringing personal injury and/or wrongful death claims arising out of different accidents or incidents will be severed upon the parties' joint filing described in Paragraph 6 above.

8. By **Monday, March 19, 2018**, each Wave One plaintiff whose claims were severed pursuant to the prior paragraph shall refile his or her complaint or an amended complaint in this Court and pay any filing fee associated with filing a complaint pursuant to 28 U.S.C. § 1914(a) or be dismissed without prejudice. By **Thursday, April 19, 2018**, any such dismissal without prejudice will automatically convert to a dismissal with prejudice unless any such dismissed Wave One plaintiff refiles his or her amended complaint and pays the required filing fee in accordance with this order. *See, e.g., In re Asbestos Prod. Liab. Litig.*, 2008 WL 4290954, at *2–3 (E.D. Pa. Sept. 18, 2008) (requiring amended and severed complaint and payment of filing fee within 60 days on pain of dismissal with prejudice); *In re Seroquel Prod. Liab. Litig.*, 2007 WL 737589, at *2–3 (M.D. Fla. Mar. 7, 2007) (noting “gatekeeping feature of a filing fee and the cost of managing [] additional cases in the federal court system as a whole, both as a part of this multi-district case and once remanded to the transferor or proper court, as individual cases”). In conjunction with any amended and severed complaint, a Wave One plaintiff shall also file a Related Case Statement, available at www.nysd.uscourts.gov/forms.php, identifying the new lawsuit as related to these proceedings (*In General Motors Ignition Switch Litigation*, 14-MD-2543 (JMF)). Any complaint or amended complaint refiled pursuant to this Order shall be treated for all purposes as if it were filed on the date the original consolidated complaint was filed.

C. Wave One Discovery Scope and Timing.

9. **Scope of Targeted Discovery.** Case-specific discovery of Wave One plaintiffs shall be limited to: (a) the scope of plaintiff's accident causation claims (*e.g.*, is plaintiff claiming that a rotation caused the accident, caused air bag non-deployment, or both?); (b) the sequence of events leading up to and during the accident; (c) whether the ignition switch rotated during the accident sequence; and (d) whether the air bag should have deployed during the accident.

- a. **Written Discovery:** Written discovery and document production shall be limited to substantially complete Plaintiff Fact Sheets and compliance with Order No. 108. In addition, New GM may serve non-duplicative targeted interrogatories or requests for production of documents limited to accident or air bag non-deployment causation issues in the specific accident as defined above. In turn, New GM will produce individual Vehicle Packages for each plaintiff's vehicle (if not already produced). (*See* Docket No. 3081, Order No. 107 at ¶ 5.) There will be no additional written discovery of any party during this phase of discovery.
- b. **SDM and Vehicle Inspection:** If the Subject Vehicle and/or SDM download is available, Wave One plaintiffs shall make those available to New GM for inspection and/or retrieval.
- c. **Non-Privileged Case-Specific Documents in New GM's Possession:** To the extent New GM has in its possession as of the date of this Order any data downloads of the subject vehicle or other non-privileged case-specific materials (*i.e.*, vehicle photographs, actual parts of the Subject Vehicle, accident reports, insurance or other third-party records relating to the subject incident), New GM shall make such items available to the Wave One plaintiffs for inspection, retrieval, and/or review.
- d. **Fact Depositions:** Wave One fact discovery depositions shall be limited to: (a) Wave One plaintiffs;¹ (b) the investigating police officer(s); and (c) two scene or first responder witnesses. As to the latter category, each party may select one deponent if there is any disagreement over who those two scene/first responder witnesses should be, and if one party does not pick any scene or first responder deponent, the other party may select two scene/first responder deponents. The number of deponents in categories (b) and (c), above, may be increased by agreement of the parties and/or by order of the

¹ Should the case proceed past the stage of Wave One discovery and any related dispositive motion practice, the deposition of any Wave One plaintiff would remain open to address other issues, such as damages, injury causation, *etc.*, at a later date. New GM would not need to seek leave of the Court to continue that deposition under the one-deposition rule.

Court. There will be no additional depositions of parties or third parties during this phase of discovery absent leave of Court.

- e. **Expert Discovery:**² Wave One plaintiffs are required to submit written expert reports, including all reliance materials in compliance with Order No. 74 (Docket No. 1279), for any expert necessary to establish accident or air bag non-deployment causation under applicable state law, and plaintiffs must also produce their expert(s) for deposition after the written reports are supplied to New GM's counsel.
- f. **No Waiver:** By participating in Wave One, the parties do not waive their rights to take additional discovery consistent with the Federal Rules of Civil Procedure, the Federal Rules of Evidence, and the Court's orders.

10. **Timing.** The targeted discovery described in Paragraph 9(a) - (e) above shall proceed on the following schedule:

- a. Targeted, case-specific fact discovery of Wave One plaintiffs shall commence on **Monday, February 26, 2018**, and shall conclude by **Thursday, August 2, 2018**.
- b. On **Thursday, March 15, 2018**, New GM shall file a notice on the main MDL docket of any Wave One plaintiffs who have not submitted a substantially complete Plaintiff Fact Sheet ("PFS"), have PFS deficiencies, or have not complied with Order No. 108. The parties are to promptly meet and confer to resolve any disputes.
- c. No later than **Thursday, March 22, 2018**, any remaining disputes concerning the PFS or Order No. 108 compliance of the Wave One plaintiffs shall be submitted to the Court.
- d. On **Monday, March 29, 2018**, any Wave One plaintiff who has not submitted a substantially complete PFS or produced all materials required to be produced under Order Nos. 25 and 108 may be subject to a motion to dismiss.
- e. Wave One plaintiffs shall disclose their expert witnesses and submit any written reports, including all reliance materials in compliance with Order No. 74 (Docket No. 1279), required under Fed. R. Civ. P. 26(a)(2)(B) on or before **Friday, August 10, 2018**.
- f. Wave One plaintiffs shall present their expert witnesses for deposition on or before **Friday, October 5, 2018**. The Parties are ordered to use good

² For clarity, medical expert discovery, including expert reports for or depositions of medical causation witnesses, are not required to be provided and are not permitted except by agreement of the parties or leave of Court.

faith efforts to coordinate depositions so that experts who have been retained by multiple Wave One plaintiffs are deposed utilizing the fewest calendar days possible. In other words, expert depositions relating to multiple cases should be consolidated on the fewest calendar days possible. Notwithstanding the foregoing, this Paragraph does not abrogate any provisions of Order No. 36 (Docket No. 604).

11. The Wave One deadlines herein may be stayed or modified by agreement of the parties or by order of the Court for good cause shown.

12. By **Monday, October 8, 2018**, New GM and Lead Counsel shall meet and confer regarding proposed next steps for Wave One cases and remaining Production Part and Service Part plaintiffs, and submit joint or competing letter briefs (not to exceed ten single-spaced pages) setting forth their positions.

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

13. By **Monday, March 12, 2018**, Lead Counsel and New GM shall each select three cases that satisfy the Category C criteria. By **Friday, March 16, 2018**, Lead Counsel and New GM shall each strike one case selected by the other side. The remaining four cases will be the “Discovery Pool Category C Replacement Cases.” By **Thursday, March 22, 2018**, the parties will submit to the Court joint or competing letters setting forth the parties’ positions as to which two of the Discovery Pool Category C Replacement Cases should be selected by the Court to be the “Category C Replacement Early Trial Candidates” for Bellwether Trial Nos. 12 and 13. The Court will make the final selection of cases to be tried as Bellwether Trial Nos. 12 and 13.

14. Fact discovery in the Category C Replacement Early Trial Candidates will commence on the date the Court makes its selection for the two bellwether trials and will conclude no later than **Monday, July 16, 2018**.

15. Expert discovery in the Category C Replacement Early Trial Candidates will take place as follows:


- a. Lead Counsel shall disclose their expert witnesses and submit any reports required under Fed. R. Civ. P. 26(a)(2)(B) on or before **Friday, August 17, 2018**.
- b. Lead Counsel shall present their expert witnesses for deposition on or before **Friday, September 14, 2018**.
- c. New GM shall disclose expert witnesses and submit any reports required under Fed. R. Civ. P. 2(a)(2)(B) on or before **Friday, September 28, 2018**.
- d. New GM shall present its expert witnesses for deposition on or before **Friday, October 19, 2018**.
- e. Absent good cause, no rebuttal expert reports shall be permitted.
- f. Expert discovery for the Category C Replacement Early Trial Candidates shall conclude by **Friday, October 19, 2018**.

16. By **Friday, October 12, 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 Nos. 12 and 13. By that same date, the parties should submit joint or competing letters addressing the order of trials and setting forth the parties' supporting rationales for their proposed orders. The Court will then designate the order of the Category C Replacement Early Trial Candidates.

17. Bellwether Trial Nos. 12 and 13 will commence on January 28, 2019 and March 25, 2019, respectively.

SO ORDERED.

Date: February 20, 2018
New York, New York



JESSE M. FURMAN
United States District Judge