



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. 43

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JESSE M. FURMAN, United States District Judge:

[Regarding Deposition Sequence And Examination Time]

Order No. 36 (Doc. No. 604) sets out the protocols that “govern (1) all depositions in the MDL Proceeding and (2) all depositions involving common questions in the MDL Proceeding and Coordinated Actions.” (*Id.* at 2.) Order No. 36 Paragraph 46 directed the parties to meet and confer “to develop supplemental protocols for (a) allotting examination time to various parties or party groups and (b) determining the order of examination of a witness.” The MDL Defendants and Lead Counsel for the MDL 2543 Plaintiffs were unable to reach agreement on a supplemental deposition protocol. The Court has considered the parties’ positions, conferred with judges presiding over Coordinated Actions and other related actions, and now issues the following protocols regarding the allocation of examination time and sequencing for MDL fact witness depositions.

Length, Scope, and Time Allocations by Witness Category

1. Absent an agreement or Court order to the contrary, the time allocations and examination sequencing for each fact witness deponent will depend on which of the following categories in which the witness is best aligned:

CATEGORY 1: Current or Former GM Employees and Contractors.

2. Category 1 fact witnesses consist of any individual who is being deposed in his or her capacity as a current or former employee or contractor of General Motors LLC (“New GM”), General Motors Corporation (“Old GM”), or New or Old GM subsidiaries and affiliates.

3. For any Category 1 fact witness, the seven (7) total hours of examination time shall be allocated as follows:

- (i) Five (5.0) hours shall be allocated to MDL Plaintiffs, unless MDL Plaintiffs and Counsel in Coordinated Actions otherwise agree that MDL Plaintiffs shall have less than five (5.0) hours with respect to a particular deposition.
- (ii) One (1.0) hour shall be allocated to Counsel in Coordinated Actions, unless MDL Plaintiffs and Counsel in Coordinated Actions agree that Counsel in Coordinated Actions shall have more than one (1.0) hour and MDL Plaintiffs will have less than five (5.0) hours with respect to a particular deposition. If, after meeting and conferring, MDL Plaintiffs and Counsel in Coordinated Actions cannot reach a resolution as to the distribution of time for a given deposition (mindful that MDL Plaintiffs are presumptively granted five (5.0) hours), the MDL Plaintiffs and other plaintiffs’ counsel shall present the matter for the Court’s resolution no later than five (5) days before the scheduled deposition.
- (iii) One (1.0) hour shall be allocated to New GM.

4. The examination sequence for any Category 1 fact witness shall be: (i), Counsel for MDL Plaintiffs; (ii), Counsel in Coordinated Actions (if any); and (iii), Counsel for New GM.

5. If another MDL Defendant desires time to examine a particular Category 1 witness, they shall meet and confer with MDL Plaintiffs and New GM regarding an allocation of time. If the parties cannot reach an agreement, the MDL Defendant may petition the Court for a reasonable allotment of time for examination.

CATEGORY 2: Other MDL Defendant Witnesses.

6. Category 2 fact witnesses consist of any individual who is being deposed in his or her capacity as a current or former employee or contractor of Delphi Automotive Systems, LLC (“Delphi”), Delphi Automotive PLC, Continental Automotive Systems, Inc., or other MDL Defendants (the “Other MDL Defendants”).

7. For any Category 2 fact witness, the seven (7) total hours of examination time shall be allocated as follows:

- (i) Three (3.0) hours shall be allocated to MDL Plaintiffs.
- (ii) One (1.0) hour shall be allocated to Coordinated Action Plaintiffs.
- (iii) Two and one-half (2.5) hours shall be allocated to New GM.
- (iv) One-half (0.5) hour shall be allocated to the Other MDL Defendant.

8. The examination sequence for any Category 2 fact witness shall be: (i), Counsel for MDL Plaintiffs; (ii), Counsel in Coordinated Actions (if any); (iii), Counsel for New GM; and (iv), Counsel for the Other MDL Defendant.

CATEGORY 3: Bellwether Plaintiffs and Their Representatives

9. Category 3 fact witnesses consist of any MDL plaintiff, his or her representatives, family members, personal acquaintances, or vehicle passengers.

10. For any Category 3 fact witness, the seven (7) total hours of examination time shall be allocated as follows:

- (i) Five and one-half (5.5) hours shall be allocated to New GM.
- (ii) One and one-half (1.5) hours shall be allocated to MDL Plaintiffs.

11. The examination sequence for any Category 3 fact witness shall be: (i), Counsel for New GM; and (ii), Counsel for MDL Plaintiffs.

CATEGORY 4: Bellwether First Responders and Scene Witnesses

12. Category 4 fact witnesses consist of any individuals who are not Category 3 fact witnesses and who are connected to the scene of the Bellwether plaintiff's accident at issue. Examples include, but are not limited to, police officers, emergency medical personnel, fire department personnel, accident investigators and reconstruction specialists (non expert), and eye witnesses who were not the plaintiffs' personal acquaintances or vehicle passengers at the time of the accident at issue.

13. For any Category 4 fact witness, the seven (7) total hours of examination time shall be allocated as follows:

- (i) Three and one-half (3.5) hours shall be allocated to New GM.
- (ii) Three and one-half (3.5) hours shall be allocated to MDL Plaintiffs.

14. The examination sequence for any Category 4 fact witness shall be: (i), Counsel for New GM; and (ii), Counsel for MDL Plaintiffs.

CATEGORY 5: Bellwether Plaintiffs' Healthcare Providers

15. Category 5 fact witnesses consist of any healthcare providers and medical support staff who participated in providing medical care or treatment to any plaintiff.

16. For any Category 5 fact witness, the seven (7) total hours of examination time shall be allocated as follows:

- (i) Four and one-half (4.5) hours shall be allocated to New GM.
- (ii) Two and one-half (2.5) hours shall be allocated to MDL Plaintiffs.

17. The examination sequence for any Category 5 fact witness shall be: (i), Counsel for New GM; and (ii), Counsel for MDL Plaintiffs.

CATEGORY 6: All Other Bellwether Case Witnesses

18. Category 6 fact witnesses include any other Bellwether case witnesses who do not fall within Categories 1 through 5 above.

19. For any Category 6 fact witness, the seven (7) total hours of examination time shall be allocated equally as follows:

- (i) Three and one-half (3.5) hours shall be allocated to MDL Plaintiffs.
- (ii) Three and one-half (3.5) hours shall be allocated to New GM.

20. The examination sequence for any Category 6 fact witness shall depend on whether the deposition notice was first issued by MDL Plaintiffs or New GM. The party that first issued the deposition notice shall proceed first, followed by the non-noticing party.

CATEGORY 7: All Other Witnesses

21. Category 7 fact witnesses include any other individuals who do not fall within Categories 1 through 6 above.

22. For any Category 7 fact witness, the seven (7) total hours of examination time shall be allocated equally as follows:

- (i) Three hours (3.0) shall be allocated to MDL Plaintiffs.
- (ii) One hour (1.0) shall be allocated to Counsel in Coordinated Actions.
- (iii) Three hours (3.0) shall be allocated to New GM.

23. The examination sequence for any Category 7 fact witness shall depend on whether the deposition notice was first issued by MDL Plaintiffs or New GM.

The party that first issued the deposition notice shall proceed first, followed by the non-noticing parties.

Other Provisions Relating to Time and Sequencing

24. The parties are expected to conduct a full and comprehensive examination during their initial time allocations. After completion of the examination sequences described above, and if allotted time remains, then the sequence will start again until the deposition is completed or no allotted time remains. Any such follow-up examination should generally be conducted for rebuttal purposes. If any party believes that the intent and spirit of the examination sequence provisions are being violated they may seek court intervention.

25. For those individuals whom Plaintiffs have notified Defendants of their intent to depose by the date of this Order, Plaintiffs, in coordination with Counsel in Coordinated Actions, shall provide a comprehensive list of those whom they believe, based on the facts and circumstances, warrant depositions exceeding the presumptive seven (7.0) hour limit set forth in paragraph 8 of Order No. 36 (“Extended Time Depositions”) by **April 3, 2015**. MDL Plaintiffs and New GM shall meet to determine whether an agreement can be reached on which witnesses’ depositions should last more than seven (7.0) hours and the respective expanded time limits. If the parties cannot reach agreement by April 13, 2015, MDL Plaintiffs and New GM shall present the dispute to the Court for resolution. With respect to all other depositions of Category 1 witnesses, Lead Counsel — again in coordination with Counsel in Coordinated Actions — shall provide New GM with a list of those witnesses they intend to designate for “Extended Time Depositions” no later than May 1, 2015. If, after meeting and conferring, the parties cannot reach agreement with respect to the witnesses designated by Lead Counsel pursuant to the preceding sentence,

Lead Counsel and New GM shall present the dispute to the Court for resolution no later than May 8, 2015. Unless otherwise agreed to by MDL Plaintiffs and New GM, any subsequent request by MDL Plaintiffs to take Extended Time Depositions of witnesses who are not identified on the aforementioned comprehensive lists will be granted by the Court only upon a showing of good cause. (The deadline and procedure for making such requests is described below in Paragraph 30.)

26. If a deposition is longer than seven (7) hours, the time allocations and sequencing of examination shall be proportionally increased consistent with the provisions of each respective Category above.

27. The general requirements for deposition notices issued in these proceedings are described in Order No. 36 at ¶¶ 15-24. In addition to those provisions, to avoid any confusion as to the parties' expected time allocations and the sequencing of witness examination, every deposition notice for a fact witness shall include an express designation indicating the deponent's fact witness Category. Any party objecting to the Category designation identified by the party issuing the deposition notice shall raise their objection to the party issuing the deposition notice as promptly as possible, but no later than five (5) business days from the date the deposition notice is issued. The parties shall then promptly meet and confer in good faith concerning the time allocation and examination sequence before bringing any disputes concerning these issues to the Court.

28. Nothing in this Order shall be construed as preventing the parties from agreeing to alternative time and sequencing allocations on a witness-by-witness basis.¹

¹ For a particular deposition involving Counsel in Coordinated Actions, for example, MDL Plaintiffs and Counsel in Coordinated Actions may agree to a different allocation of Plaintiffs' time without the need for Court approval.

29. The Court previously ruled that “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.” (Order No. 36 at ¶ 42.) By this Order, the Court clarifies that where a deposition relates to both personal injury and economic loss claims, MDL Plaintiffs may designate one (1) attorney to serve as the examiner on behalf of personal injury plaintiffs; and one (1) attorney to serve as the examiner of such deponent on behalf of economic loss plaintiffs. In any such instance:

- (i) The two examiners will share the total time allocated to MDL Plaintiffs as described in the respective Categories above,..
- (ii) The two examiners shall not ask repetitive or duplicative questions.

30. Nothing in this Order is intended to limit the ability of the parties, for good cause shown, to seek more time for certain key witnesses pursuant to Order No. 36, paragraph 8 of the Amended Deposition Protocol Order. For witnesses other than Category 1 witnesses, if a party intends to seek more time for a deposition, it shall make such a request known to the other side as soon as possible but in no event later than twenty-one (21) days before the scheduled deposition. Any objection to the request must be made within three (3) business days. If the parties are unable to reach agreement, they shall present the dispute to the MDL Court for resolution.

31. The provisions of this Order concern depositions of fact witnesses taken for discovery purposes only, and shall not be construed to apply to other depositions that may arise, such as depositions pursuant to Fed. R. Civ. P. 30(b)(6), depositions of retained expert witnesses, and trial preservation depositions.

SO ORDERED.

Dated: March 26, 2015
New York, New York



JESSE M. FURMAN
United States District Judge