

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
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ORDER NO. 91

JESSE M. FURMAN, United States District Judge:

**[Regarding Revised Pre-Trial Deadlines and Procedures
for MDL Bellwether Trial Nos. 2–6]**

The Court, having considered the parties’ proposed modifications of the deadlines for the *Barthelemy/Spain* and *Cockram* bellwether trials (see Docket Nos. 1864, 1985), hereby ORDERS the following revised pretrial deadlines and show cause motion procedures for MDL Bellwether Trial Nos. 2-6. This Order supersedes Order No. 89 (Docket No. 1864), which is hereby vacated; the dates that have been modified from or added to those in Order No. 89 are underlined.

1. Trial Dates for MDL Bellwether Trial Nos. 2-6.

Consistent with Order No. 75, unless and until the Court orders otherwise, the Early Trial Cases (see Order No. 25 (14-MD-2543 Docket No. 422)) will be tried on the following schedule:

- a. Trial Two (*Barthelemy/Spain*) shall take place between **March 14, 2016 and April 1, 2016**;
- b. Trial Three (*Yingling*) shall take place between **May 2, 2016 and May 20, 2016**;
- c. Trial Four (*Reid*) shall take place between **July 25, 2016 and August 12, 2016**;
- d. Trial Five (*Cockram*) shall take place between **September 12, 2016 and September 30, 2016**; and
- e. Trial Six (*Norville*) shall take place between **November 14, 2016 and December 2, 2016**.

2. Pre-Trial Deadlines for MDL Bellwether Trial Nos. 2-6.

- f. Dispositive Motions: Any dispositive motion, opposition, and reply in support of such motion must be submitted no later than the dates set out below:

| | Trial #2: <i>Barthelemy/ Spain</i> | Trial #3: <i>Yingling</i> | Trial #4: <i>Reid</i> | Trial #5: <i>Cockram</i> | Trial #6: <i>Norville</i> |
|-----------------------------------|---|------------------------------|--------------------------|-----------------------------|------------------------------|
| Dispositive Motions | <u>1/27/16</u> | <u>3/4/16</u> | 4/22/16 | 6/17/16 | 8/5/16 |
| Opposition to Dispositive Motions | <u>2/10/16</u> | <u>3/14/16</u> | 5/6/16 | 7/1/16 | 8/19/16 |
| Replies | <u>2/17/16</u> | <u>3/23/16</u> | 5/13/16 | 7/8/16 | 8/26/16 |

Unless the Court orders otherwise, memoranda shall comply with the page limits and other requirements set forth in this Court's Local Rules.

- g. Proposed jury instructions, verdict form, and questionnaires—whether a joint proposal or competing proposals—must be submitted no later than the dates set out below:

| | Trial #2: <i>Barthelemy/ Spain</i> | Trial #3: <i>Yingling</i> | Trial #4: <i>Reid</i> | Trial #5: <i>Cockram</i> | Trial #6: <i>Norville</i> |
|--|---|------------------------------|--------------------------|-----------------------------|------------------------------|
| Proposed Jury Instructions, Verdict Form, and Questionnaires | 2/29/16 | 4/18/16 | 6/11/16 | 8/29/16 | 10/30/16 |

The Court will conduct *voir dire* for both parties consistent with the Court's Individual Rules. The parties' counsel will be permitted to propose limited follow-up questions to the Court's questions.

- h. Trial exhibit lists must be submitted (after the parties meet and confer to resolve or narrow any evidentiary objections and disputes) no later than the dates set out below; provided, however, that the parties may by mutual agreement add or subtract additional trial exhibits at any time thereafter:

| | Trial #2: <i>Barthelemy/ Spain</i> | Trial #3: <i>Yingling</i> | Trial #4: <i>Reid</i> | Trial #5: <i>Cockram</i> | Trial #6: <i>Norville</i> |
|---|---|------------------------------|--------------------------|-----------------------------|------------------------------|
| Trial Exhibit Lists | 2/16/16 | 4/4/16 | 6/27/16 | 8/15/16 | 10/17/16 |
| Trial Exhibits to be submitted to the Court | <u>3/7/16</u> | <u>4/26/16</u> | <u>7/18/16</u> | <u>9/2/16</u> | <u>11/7/16</u> |

- i. Consolidated *Daubert* motions, not to exceed 50 double-spaced pages per opening brief, must be submitted no later than the dates set out below:

| | Trial #2: <i>Barthelemy/ Spain</i> | Trial #3: <i>Yingling</i> | Trial #4: <i>Reid</i> | Trial #5: <i>Cockram</i> | Trial #6: <i>Norville</i> |
|------------------------|---|------------------------------|--------------------------|-----------------------------|------------------------------|
| <i>Daubert</i> Motions | <u>2/3/16</u> | <u>3/4/16</u> | 4/22/16 | 6/17/16 | 8/5/16 |

Responses are not to exceed 50 double-spaced pages per brief, are due fourteen (14) days after filing of the respective motions. Replies, not to exceed 20 double-spaced pages per brief, are due on the earlier date of either seven (7) days after responsive briefs are filed. The parties are encouraged to file briefs ahead of the respective deadlines.

- j. Motions *in limine*, not to exceed 15 double-spaced pages per opening brief, are to be submitted no later than the dates set out below:

| | Trial #2: <i>Barthelemy/ Spain</i> | Trial #3: <i>Yingling</i> | Trial #4: <i>Reid</i> | Trial #5: <i>Cockram</i> | Trial #6: <i>Norville</i> |
|--------------------------|---|------------------------------|--------------------------|-----------------------------|------------------------------|
| Motions <i>in Limine</i> | <u>2/2/16</u> | 3/14/16 | 6/6/16 | 7/25/16 | 9/26/16 |

Responses, not to exceed 15 double-spaced pages per brief, are due ten (10) days after the filing of the respective motions.¹ Replies, not to exceed five double-spaced pages, are due seven (7) days after responsive briefs are filed for the respective motions. The parties are encouraged to file motions and briefs ahead of the respective deadlines.

- k. No pretrial memoranda shall be permitted, except by leave of the Court for good cause shown.
- l. A joint proposed pre-trial order must be submitted no later than the dates set out below:

| | Trial #2: <i>Barthelemy/ Spain</i> | Trial #3: <i>Yingling</i> | Trial #4: <i>Reid</i> | Trial #5: <i>Cockram</i> | Trial #6: <i>Norville</i> |
|-----------------|---|------------------------------|--------------------------|-----------------------------|------------------------------|
| Pre-Trial Order | <u>2/15/16</u> | 3/29/16 | 6/21/16 | 8/9/16 | 10/14/16 |

- m. Plaintiffs shall identify to New GM any purportedly similar incidents (“OSI”) evidence they intend to introduce at trial and any witnesses through whom they intend to introduce such evidence no later than the dates set out below. Any such OSI witnesses who have not been deposed in MDL 2543 shall be made available for deposition between the disclosure date and the date of plaintiff’s opening brief below. To the extent the parties have a dispute regarding OSI witnesses, the parties will brief them (in accordance with the Court’s guidance in Order No. 86 § XV) according to the schedule below. No replies will be allowed without leave of Court:

| | Trial #2: <i>Barthelemy/ Spain</i> | Trial #3: <i>Yingling</i> | Trial #4: <i>Reid</i> | Trial #5: <i>Cockram</i> | Trial #6: <i>Norville</i> |
|---------------------------|---|------------------------------|--------------------------|-----------------------------|------------------------------|
| OSI Disclosure | <u>1/22/16</u> | 2/5/16 | 4/1/16 | 5/27/16 | 7/15/16 |
| Plaintiff’s Opening Brief | <u>2/1/16</u> | 2/26/16 | 4/22/16 | 6/17/16 | 8/5/16 |
| GM Response | <u>2/19/16</u> | 3/18/16 | 5/13/16 | 7/8/2016 | 8/26/16 |

¹ February 12, 2016, is the deadline for responses to motions *in limine* in *Barthelemy/Spain* notwithstanding the fact that it is a Court holiday.

- n. Trial witness lists, subject to the provisions set forth in the Court's November 16, 2015 Memo Endorsement (Docket No. 1676), must be submitted no later than the dates set out below:

| | Trial #2: <i>Barthelemy/ Spain</i> | Trial #3: <i>Yingling</i> | Trial #4: <i>Reid</i> | Trial #5: <i>Cockram</i> | Trial #6: <i>Norville</i> |
|------------------------------|---|------------------------------|--------------------------|-----------------------------|------------------------------|
| Initial Witness List | <u>1/21/16</u> | 3/4/16 | 5/27/16 | 7/15/16 | 9/16/16 |
| Will Call and May Call Lists | <u>2/18/16</u> | 4/1/16 | 6/24/16 | 8/12/16 | 10/14/16 |

- o. Deposition designations and counter-designations—in addition to objections to designation—must be submitted no later than the dates set out below:

| | Trial #2: <i>Barthelemy/ Spain</i> | Trial #3: <i>Yingling</i> | Trial #4: <i>Reid</i> | Trial #5: <i>Cockram</i> | Trial #6: <i>Norville</i> |
|-------------------------------------|---|------------------------------|--------------------------|-----------------------------|------------------------------|
| Deposition Designations | 2/22/16 | 4/11/16 | 7/5/16 | 8/22/16 | 10/24/16 |
| Counter-designations | 2/29/16 | 4/18/16 | 7/12/16 | 8/29/16 | 10/31/16 |
| Submission of disputes to the Court | <u>3/4/16</u> | <u>4/22/16</u> | <u>7/15/16</u> | <u>9/2/16</u> | <u>11/4/16</u> |

- p. Demonstrative aides the parties reasonably anticipate using during Openings shall be exchanged and objections to such aides shall be submitted no later than the dates set out below:

| | Trial #2: <i>Barthelemy/ Spain</i> | Trial #3: <i>Yingling</i> | Trial #4: <i>Reid</i> | Trial #5: <i>Cockram</i> | Trial #6: <i>Norville</i> |
|-------------------------------------|---|------------------------------|--------------------------|-----------------------------|------------------------------|
| Demonstrative Exchange | 3/7/16 | 4/25/16 | 7/18/16 | 9/5/16 | 11/7/16 |
| Objections | 3/9/16 | 4/27/16 | 7/20/16 | 9/7/16 | 11/9/16 |
| Submission of disputes to the Court | <u>3/11/16 at noon</u> | <u>4/29/16 at noon</u> | <u>7/22/16 at noon</u> | <u>9/9/16 at noon</u> | <u>11/10/16 at 5 p.m.</u> |

3. Show Cause Motion Procedures Regarding the Application of the Court's Bellwether Rulings to Other Cases.

Consistent with the Court's comments at the August 28, 2015 Status Conference, the Court hereby adopts the following procedures for determining the applicability of certain pre-trial rulings in a preceding bellwether case to subsequent bellwether cases. The parties should meet and confer in good faith regarding the applicability of the Court's rulings regarding any other pre-trial matter by the Court in Bellwether Trial No. 1 (including, but not limited to, motions *in limine*, *Daubert* motions, dispositive motions, exhibit rulings, OSI rulings, and deposition designation rulings) to Bellwether Trial No. 2 and submit a joint proposal by the date below. To the extent the parties cannot agree regarding the applicability of some or all of the Court's rulings, then the parties will submit competing letter briefs and proposed orders regarding why the Court's orders with respect to Bellwether Trial No. 1 should not apply with equal force to Bellwether Trial No. 2. The same process will apply for determining the applicability of such orders from Bellwether Trial No. 2 to Bellwether Trial Nos. 3-6, *etc.* Two weeks before the date set out below, the parties should submit a joint proposal regarding page limits for their respective letter briefs (if necessary). Where appropriate, the parties may propose deferring briefing the applicability of an order on the remaining bellwether cases until a later date.

| | Trial #2: <i>Barthelemy/ Spain</i> | Trial #3: <i>Yingling</i> | Trial #4: <i>Reid</i> | Trial #5: <i>Cockram</i> | Trial #6: <i>Norville</i> |
|-----------------------|---|------------------------------|--------------------------|-----------------------------|------------------------------|
| Show Cause Submission | <u>1/19/16</u> | 3/2/16 | 5/25/16 | 7/12/16 | 9/14/16 |

Upon the conclusion of Bellwether Trial No. 6 (whether through dispositive motion practice or trial), the parties should meet and confer regarding procedures for show cause


submissions to determine the applicability of the bellwether trial rulings on other cases pending in the MDL.

4. Effect of This Order on Other Rules and Orders.

To the extent not explicitly modified herein, the Court's Individual 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.² The Court may enter additional and/or modified orders regarding the pretrial schedule of MDL Bellwether Trial Nos. 2–6 as circumstances require.

SO ORDERED.

Dated: January 5, 2016
New York, New York



JESSE M. FURMAN
United States District Judge

² Order No. 78 (Docket No. 1350) contains a typo in the penultimate paragraph, which should read: “To the extent not explicitly modified herein, Order No. 25 ¶ 50 and the Court's Individual Rules and Practices in Civil Cases and Rules and Procedures for Trials remain in full force and effect.”