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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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3 IN RE: GENERAL MOTORS LLC
4 IGNITION SWITCH LITIGATION,

14 MD 2543 (JMF)

5 -----x

6 New York, N.Y.
7 August 15, 2019
9:30 a.m.

8 Before:

9 HON. JESSE M. FURMAN,

10 District Judge

11 APPEARANCES

12 LIEFF CABRASER HEIMANN AND BERNSTEIN LLP
Attorneys for Plaintiffs

13 BY: ELIZABETH JOAN CABRASER

-AND-

14 HAGENS BERMAN SOBOL SHAPIRO LLP (SEATTLE)

15 BY: STEVE W. BERMAN

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HILLIARD MUNOZ GONZALES LLP

16 BY: ROBERT HILLIARD

-AND-

17 POTTS LAW FIRM

18 BY: ERIC G. JENSEN

KIRKLAND & ELLIS LLP

19 BY: RICHARD CARTIER GODFREY

ANDREW B. BLOOMER

20 WENDY BLOOM

21 ALSO PRESENT: DANIEL GOLDEN

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1 (Case called)

2 MS. CABRASER: Good morning, your Honor. Elizabeth
3 Cabraser, for plaintiffs.

4 MR. BERMAN: Steve Berman.

5 MR. HILLIARD: Robert Hilliard. Good morning, Judge.

6 THE COURT: Good morning, all of you.

7 MR. GODFREY: Good morning, your Honor. Rick Godfrey,
8 with Mr. Bloomer and Ms. Bloom, for New GM.

9 THE COURT: Good morning to you as well.

10 Welcome back. It's been a while. So long, that I
11 have a beard. So, I hope everybody is having a relatively good
12 summer.

13 We are on court call, I believe, so just a reminder to
14 speak into the microphones, but, hopefully, you don't need my
15 reminder at this point. Let's get going.

16 Following the agenda letter, the first item is the
17 bankruptcy proceedings. Let's table the discussion about the
18 motion to withdraw the reference until later, when we get to
19 the implications of my recent opinion. For present purposes, I
20 guess the question is: Is there anything to discuss here? I
21 think there was something that New GM wanted to discuss with me
22 in the closed in camera session after this, but is there
23 anything to discuss here? I know Judge Glenn had some sort of
24 conference on Monday, if I'm not mistaken, but anyway, the
25 question is: What's going on?

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1 MR. GODFREY: Your Honor, Rick Godfrey, for New GM.

2 I think issues related to the Monday conference before
3 Judge Glenn, and bankruptcy in general, are intertwined with
4 paths forward, which both sides are prepared to discuss with
5 your Honor. We have agreement on parts of paths forward, we
6 have disagreements on parts, which is not unexpected, but we
7 certainly had a very productive meet-and-confer session,
8 pursuant to your Honor's request, on Tuesday afternoon of this
9 week and made good progress, in my judgment.

10 So, I don't think there's anything unique about the
11 bankruptcy. There's nothing related to the other issues
12 related to the path-forward discussions that we are going to
13 have and, I think, shortly.

14 THE COURT: All right.

15 Do the folks at the front table agree?

16 MS. CABRASER: We'd agree with that, your Honor.

17 THE COURT: Let's table that, then.

18 The second item is -- well, second, third, and fourth
19 items: Coordination with related actions, document production,
20 depositions. Anything to discuss there?

21 MR. GODFREY: Unfortunately, yes. An issue arose at
22 the end of last week, that I became aware of at the beginning
23 of this week, about a case pending in Cobb, Cobb County,
24 Georgia. Again, we will try to work this out, as we have in
25 the past. The case name is Buchanan v. General Motors LLC. It

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1 is B-u-c-h-a-n-a-n. It is in Cobb County State Court, Georgia.
2 The plaintiff's counsel is very familiar to this Court; it's
3 Mr. Lance Cooper. And we became aware -- that is, MDL counsel
4 became aware -- early this week that he wants to take a very,
5 very senior New GM executive's deposition, who gave testimony
6 in this case. And the topics appear, as I understand it, to
7 overlap significantly with the topics in this case.

8 So, we are going to see whether we can work that out,
9 but I did want to put the proverbial marker down, so that your
10 Honor wasn't surprised if, two weeks from now or something, we
11 alerted you that we're going to need some assistance from this
12 Court. This person was deposed at length. It is the top of
13 the house. And we will see what happens.

14 We, Kirkland and I personally, are not involved in
15 this case -- GM has other counsel, New GM has other counsel --
16 but this just happened, so we were going to put it in our
17 related case letter of the 31st, but at the time, I was not
18 aware of it, so I'm aware of it now.

19 THE COURT: Is there a joint coordination order in
20 place in that case, do you know?

21 MR. GODFREY: That, I'm not sure, but I know that
22 Mr. Cooper is covered by the MDL, and so is his appearance is
23 on file here, so he is bound by that order. I don't know about
24 the case because this just happened.

25 So, we were able to work out the last issue. You may

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1 recall six months -- either the last status or two statuses
2 ago, we had a similar issue regarding the Valukas report, the
3 same case. It appears we were able to work through that issue
4 with New GM's counsel. I would hope we would be able to work
5 through this issue, since this is an apex issue, but it just
6 happened, and, consistent with our prior practice, I thought I
7 would alert the Court that this is brewing, and, hopefully, we
8 will be able to resolve it, as we have in the past.

9 THE COURT: All right. Well, I hope so as well and
10 appreciate the heads-up. It doesn't sound like this is
11 imminent or would be a rush, if it had to come to my attention;
12 is that correct?

13 MR. GODFREY: I do not believe it is imminent in the
14 sense of the next ten days to two weeks.

15 THE COURT: Okay.

16 MR. GODFREY: But it is top of the house, so --

17 THE COURT: I got that part.

18 MR. GODFREY: It is -- I'm going to spend some time on
19 this, or my colleagues will be.

20 THE COURT: All right.

21 Anything else on items 2, 3, and 4?

22 MR. GODFREY: No, your Honor.

23 THE COURT: All right. I'm assuming from your
24 silence, nothing from the front table on those.

25 In that case, let's talk about the personal injury

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1 wrongful death cases and sort of where those stand. I guess
2 the first question is: I know there's been some movement since
3 the July 31st status update letter. I don't know if you can
4 give me a realtime status of where things stand?

5 MS. BLOOM: Sure.

6 Okay. So, to date, in MDL 2943, we have settled with
7 2,794 claimants, of which 1,748 have been dismissed with
8 prejudice. We have left 178 plaintiffs in the MDL at this
9 point. Of those, 156 are postsale claims and 22 are presale
10 claims. And of these claims, you may recall we had talked
11 before, at the last status, about who's been filing new claims.
12 A good portion of these claims are the Langdon firm claims.

13 THE COURT: A good portion in both of those buckets,
14 plea and postsale?

15 MS. BLOOM: No. Overall, it's really only the
16 postsale claims. So, of the 156 postsale claims, the language
17 confirms it has 122 of them. In the past two years -- so,
18 since January 1st of 2018 -- there have been a total of 133 new
19 claims filed. The Langdon firm has filed 118 of them. So,
20 that kind of fact drives through some of what's occurred. So,
21 we have been very busy resolving with a number of firms except
22 for now this Langdon firm bucket.

23 In addition to the claims that you see here in the
24 MDL, there are about -- well, over 150 other claims that they
25 have. They're unfiled. So, it's a big group to get through.

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1 We are, on the GM side, needing to inspect a bunch of vehicles.
2 We are really drilling down. There are a number of these
3 claims, a good many of them, where the crash occurred a long
4 time ago. We see issues with respect to statute of
5 limitations. There are, on the flip side, recent crashes,
6 where it seems as if somebody should have had the recall repair
7 done quite a long time ago. We're really drilling down into
8 these, and so it will probably not be until the November time
9 frame that we're able to really meet in a substantive way with
10 the Langdon firm.

11 So, we have, both sides, agreed to do that. We have a
12 mediator committed to do that. It's a mediator that your Honor
13 is aware of, Mr. Balhoff, who's mediated many of these claims.
14 And so, in light of that, I do anticipate, with respect to Wave
15 Three -- just so that you know, currently there are 89
16 plaintiffs remaining in Wave Three. There were originally 119.
17 However, 77 of those are Langdon plaintiffs, which means that
18 there are really only 12 left that aren't part of the Langdon
19 bucket. I anticipate that we, both parties, are likely be
20 requesting an extension of Wave Three deadlines, so that we're
21 not doing and spending money on now the part of Wave Three that
22 is expert discovery and fact witness discovery until after we
23 see whether this bucket of claims is going to resolve in the
24 aggregate or not.

25 THE COURT: And, thus, in reference to the Langdon --

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1 MS. BLOOM: Yes.

2 THE COURT: -- the 77 Langdon claims?

3 MS. BLOOM: Yes.

4 THE COURT: Okay.

5 MS. BLOOM: So the parties are engaged in discussions
6 about that and what that would look like, but I do anticipate
7 that that will probably be to you with something like that, a
8 request like that. And then it could be that if the parties
9 are unable to resolve that aggregate bucket of Langdon claims,
10 that what we would come back to you with might be some proposal
11 that may be different, potentially, than simply a Wave Three or
12 simply the motion practice that we currently have for claims,
13 because that would be, I would hope at that time, the bucket
14 that's really left of claims, would be Langdon firm claims.

15 THE COURT: Okay.

16 What about -- I think there are 56, by my count, if
17 you combine post and presale that are not Langdon claims.

18 MS. BLOOM: Right.

19 THE COURT: What's going on with those?

20 MS. BLOOM: So we have 12 that are in Wave Three that
21 aren't Langdon that are going forward. Some of those claims
22 are subject to motion to dismiss practice under various of your
23 Honor's orders, and others of those, we are looking at engaging
24 in settlement discussions. So, either we will have reached
25 agreements or they will go forward through that Wave Three

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1 process.

2 Then there are -- let's see. It looks like there are
3 83 claims not yet in a Wave Three process, by my count. There
4 are 61 that are postsale, of which 44 are Langdon. And so,
5 with those claims, for us, we would see those in the bucket
6 that we'd be looking at in the November time frame, which
7 leaves 17 postsale claims that would be not yet in a Wave Three
8 process.

9 There are different reasons for each of those claims.
10 Some of them are claims that are also subject to motion
11 practice already, and then some of them are claims that were
12 more recently filed after that Wave Three process got started.
13 So, we'll be looking at those claims. And the same with 22,
14 there are 22 presale claims not yet in a Wave Three process.
15 Some of those, we see as ripe for motion to dismiss practice.
16 And so, that's kind of where we are, your Honor, with the
17 docket.

18 THE COURT: Okay. So that sort of answered a couple
19 of questions I had on my list of things to ask, which is, one,
20 what the status of the cases that are not in a Wave Three are;
21 and, two, what we should -- well, it doesn't answer the next
22 question, which is what we should do about them. And, in
23 particular, since new cases do continue to be filed, at a
24 slower pace, perhaps, but still filed, it sounds like to the
25 extent that those are Langdon cases, my guess is your answer is

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1 going to be defer until the November discussions, but query
2 whether we should -- I think those cases don't have a Wave
3 Three to be part of at the moment, so I was going to ask what
4 we should be doing about them and if we should figure out some
5 sort of protocol with respect to those cases and cases that
6 continue to be filed going forward.

7 MS. BLOOM: So, at the moment, given the small volume
8 of these other claims, my suspicion is going to be that if your
9 Honor is going to see a new claim filed between now and
10 year-end, it's most likely going to be from this bucket of
11 Langdon claims that are not yet filed, where he's deciding to
12 file some. So I do feel as if we have a good handle on these
13 other remaining claims. Many of them are subject to motions to
14 dismiss process, and we are evaluating all of them for
15 settlement.

16 What I would propose is that in December, we come back
17 to your Honor with what's left and a plan. I think, at that
18 point, we'll really know what's left.

19 THE COURT: All right.

20 Anyone -- Mr. Hilliard, anyone at the front table have
21 anything to add?

22 MR. HILLIARD: I mean, the options are: Settle,
23 dismiss, or remand, it seems, because there's no need to do a
24 trial in this court unless there's original jurisdiction in one
25 of his cases. So as long as they're making progress, I agree

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1 that in December, you will know if cases need to be remanded or
2 some sort of dispositive motion set. I think Ms. Bloom is on
3 top of it.

4 THE COURT: So I think that makes sense. It certainly
5 sounds like it makes sense to await the mediation on the
6 Langdon bucket to figure out sort of where things stand and
7 what we should be doing with respect to the cases without a
8 home, without a Wave Three, to be a part of. So why don't we
9 do that.

10 I guess I can table what a December deadline would be.
11 I suppose maybe it might make sense to have a conference then,
12 but that may also have -- the other things we're discussing
13 today may have some bearing on that. So let's circle back to
14 whether it's a conference date or some sort of other deadline,
15 but remind me before we conclude, to make sure I address that.

16 While you're up, I think I'd ask you to just advise me
17 of the status of the discussions with respect to -- I think
18 there are only four remaining cases in the list of potential
19 remand cases?

20 MS. BLOOM: So, your Honor, it's three cases. Two of
21 the plaintiffs of the four are in one case together. And for
22 all three of those cases, we are still engaged in ongoing
23 settlement discussions that we hope are going to be productive.
24 So, quite frankly, I know your Honor referenced that we've made
25 a number of requests for extensions. We do have a draft of

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1 what a potential remand package might look like from
2 plaintiffs, and New GM is exchanging its draft with the
3 counsel. These are big documents, you know, 20- to 30-page
4 documents, that is complicated to work through, and so, in all
5 candor, I think the lawyers have all felt as if things are
6 going to resolve, it's a lot of time on our part, and, also,
7 then, on your Honor's part, to submit this thing to go through
8 and consider. So, that is the reason for the extensions.

9 But, at this stage, we are actively working together
10 on trying to get to an agreed document and to outline places
11 where the parties would disagree. I do think it's possible
12 that we might be back to your Honor seeking another extension
13 of submission of the document, but, at this stage, we are much
14 closer, in the sense that both sides have developed working
15 documents that we are discussing from. And I do think we will
16 know within the next probably six weeks whether these remaining
17 cases will resolve or not and whether we will find ourselves
18 needing the order.

19 THE COURT: All right. So -- yes?

20 MR. HILLIARD: May I address that, Judge?

21 THE COURT: Yes.

22 MR. HILLIARD: I was told that I was not getting
23 picked up on the court call because of the microphones.

24 THE COURT: I should have reminded you of that.

25 MR. HILLIARD: The remand package is due to you on

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1 8/28. There are some --

2 THE COURT: I think it's 8/26. Is that what I have?

3 MS. BLOOM: It is 8/26.

4 MR. HILLIARD: It is 8/26, I apologize.

5 And there are some attorneys who are anxious to be
6 remanded and who have been clear that they will oppose, and I
7 will ultimately, I believe, side with them on the opposition to
8 any more extensions.

9 Mr. Pixton and my team are working right now to try to
10 get at least as close as we can to an agreeable document and
11 then come to you as quickly as we can on whatever disagreements
12 we still have, to be sure that -- and some of these cases are
13 really tragically sad cases, and they're ready to go back and
14 try them, so I can appreciate, and understand, and do support
15 their hope that there's no more extensions on the remand
16 decision and the agreement as to what goes with the remand.
17 So, I just wanted to advise you of that.

18 THE COURT: And these are lawyers representing the
19 plaintiffs in the three cases that Ms. Bloom is discussing?

20 MR. HILLIARD: Right. This is Mr. -- the Callie case,
21 with Morgan & Morgan. An attorney named Drew Felix is the one
22 that is the most vocal. I believe that's one of the four.

23 Right?

24 MS. BLOOM: Right.

25 THE COURT: All right. Well, the deadline is the

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1 26th. If there's an application for an extension, I'll
2 certainly consider it, and if it's opposed, I'll consider the
3 opposition.

4 Needless to say, I have been willing to grant the -- I
5 think it's five extensions already, out of a recognition that
6 it would be in everybody's interests, including my own, to
7 resolve these cases rather than send them back to another judge
8 who has no idea anything about the case and what have you, but,
9 at the same time, there is a time, as I have made clear in the
10 past, where all good things must come to an end, and I think it
11 would be appropriate to send these cases back, and I'm also of
12 the view that deadlines have a way of lighting a fire under
13 people.

14 So, I intimate no view on whether I would grant
15 another request for extension, but I do want to say that the
16 time is getting close to when I would not. That may be next
17 week, particularly if there is opposition; it may be that I
18 would be willing to give one more extension, I don't know, but
19 I think you get my drift.

20 MR. HILLIARD: I do. And, historically, I don't mean
21 to intimate that -- I think we've cooperated, and we do work
22 hard and fast together, but as to the remand packet, there will
23 clearly be a need of court assistance, and I understand what
24 you're saying about file it if you need it.

25 THE COURT: I understand.

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1 Ms. Bloom, anything you want to say on that?

2 MS. BLOOM: No.

3 THE COURT: Okay.

4 And then can you tell me what the status of things is
5 on the Potts Law Firm settlement front?

6 MS. BLOOM: Yes. We have Mr. Jensen, who represents
7 plaintiffs from the Potts firm, who's here as well.

8 THE COURT: All right. Welcome, Mr. Jensen. Do you
9 want to spell your name, since I'm not sure you're on the --

10 MR. JENSEN: Sure. I checked in earlier, but it's
11 Eric Jensen, J-e-n-s-e-n.

12 THE COURT: All right. Thank you.

13 MS. BLOOM: So, where we are on the two Potts
14 aggregate settlements is that the parties will sign settlement
15 papers by the end of this month. We're working on various
16 aspects of that as we speak.

17 In terms of how that impacts issues with respect to
18 the 33 plaintiffs that would be subject to the successor
19 liability motion, depending on various aspects of settlement
20 implementation, once we begin, it could be, I would guess,
21 between four to eight months before we'll know for sure what's
22 going on with those 33 and the aggregate settlement, because it
23 involves issues of the special master allocating things, it
24 involves, then, releases going out to all of these individuals,
25 they must consider their offers and things like that. So,

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1 that, at the moment, is sort of my guess as to when we would
2 have more information with respect to that.

3 THE COURT: All right.

4 Mr. Jensen, anything you want to add?

5 MR. JENSEN: Just briefly, your Honor. We've spoken
6 with both the settlement administrator and the folks that help
7 administrate the releases. I'm a little more optimistic,
8 maybe, than Ms. Bloom. I think it's probably closer to a four-
9 to five-month range. And it's a smaller group of folks than
10 the first aggregate settlement that we entered into. So, I do
11 think we would be able to get some indication to the Court on
12 whether those motions would ever need to be ruled upon fairly
13 quickly.

14 THE COURT: All right. I like to keep my house clean,
15 so to speak, and having open motions irks me. So, is there a
16 reason to keep this one open? I think the proposal had been to
17 not -- I had suggested denying it without prejudice in light of
18 the settlement, given that I think there are only two
19 plaintiffs who are not within the scope of the potential
20 settlement. I think, if I recall, you had agreed that that
21 made sense, but requested that I defer that until, I think,
22 five days after the settlements were finalized.

23 Is there a reason to hold off?

24 MS. BLOOM: Oh, I see. Yes. I don't think so. I
25 mean, I am confident that we will have signed the papers, so I

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1 don't anticipate -- exactly, I think that would be okay to take
2 this approach.

3 THE COURT: To?

4 MS. BLOOM: Yes.

5 THE COURT: Deny it without prejudice at this point?

6 MS. BLOOM: Yes, yes.

7 THE COURT: And then you can always revisit it if and
8 when it becomes a live issue?

9 MS. BLOOM: Yes.

10 MR. JENSEN: We would agree with that, your Honor.

11 THE COURT: And, A, am I right that there were two
12 plaintiffs who were not within the scope of this settlement;
13 and, B, what does it mean with respect?

14 MS. BLOOM: That's correct. So, on one of those
15 plaintiffs, we anticipate a motion to dismiss under another of
16 your Honor's orders. That would mean that your Honor wouldn't
17 have to visit successor liability issues. And on the other of
18 the plaintiffs, we are evaluating that case for discussion for
19 potential resolution.

20 If that is unsuccessful, then we might be back to your
21 Honor with some requests pertaining to that particular
22 plaintiff that might involve a visit with respect to the law of
23 the state of that particular plaintiff.

24 THE COURT: All right. So, it sounds like I can just
25 deny it without prejudice, and if or when it becomes ripe,

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1 you'll let me know; is that fair?

2 MS. BLOOM: That's right.

3 THE COURT: Okay.

4 Anything else from you?

5 MR. JENSEN: Nothing from my firm, your Honor.

6 THE COURT: All right. Thank you very much. And
7 thanks for joining us.

8 I think that brings us to next steps and the
9 implications of my August 6th ruling. I do want to say, I
10 apologize it took me so long to get that thing out. I think
11 you know my last year has been a little complicated. My mother
12 passed away earlier this year, which has certainly set me back
13 in a variety of ways, and I also had another case that you may
14 be aware of that took a little bit of time. So, in any event,
15 I would have liked to have gotten that out the door sooner, and
16 I'm sorry that it took me so long.

17 Be that as it may, the question is where we go from
18 here. I think -- there are five issues that I have identified,
19 I think all of which are referenced in the conclusion of my
20 opinion. One is settlement, which I don't know if there's
21 anything to discuss here as opposed to the closed session
22 afterwards, but that's certainly high on my agenda. Second is
23 the implication of my ruling on other states, since it
24 pertained only to the three bellwether states. Third is what
25 to do about class certification and the Daubert motions that I

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1 did not decide. I do think that the landscape changed
2 significantly enough, that the existing briefing is probably,
3 if not irrelevant, certainly close to it. Fourth is the motion
4 to withdraw the reference. And fifth is the sealing issues
5 that I said I would defer until we discussed. I don't know if
6 there are additional items, but those are the ones that I came
7 up with.

8 So, it sounds like you guys had some discussions on
9 Tuesday, have some agreement and some disagreement. Tell me
10 what's going on and use the microphone, Mr. Berman.

11 MR. BERMAN: Thank you, your Honor.

12 First, on the settlement front, I don't think this has
13 to be done in chambers. We have a date for a mediation on
14 September 11th in front of Judge Phillips.

15 THE COURT: All right. Good to know. Thank you.

16 MR. BERMAN: Next steps from the plaintiffs'
17 perspective, we would say the following:

18 First, we're going to be making a motion for
19 reconsideration. Your Honor has said before that you want to
20 get things right rather than final, and we think that you --

21 THE COURT: There's a balance, I would say, but, be
22 that as it may, I understand. Okay.

23 MR. BERMAN: We intend to file that motion tomorrow.
24 I'm prepared to preview the motion, if you want, or just alert
25 you to the fact that it's coming.

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1 THE COURT: I wouldn't mind a preview. So, tell me.

2 MR. BERMAN: Sure.

3 Your Honor, in your opinion on California law, you
4 said that you were mindful of contrary Ninth Circuit authority,
5 and you were referring to the Pulaski case and Nguyen case, and
6 in our motion for reconsideration, we're going to point out
7 that under Second Circuit law, you were required to not ignore
8 the Ninth Circuit, you were required to follow the Ninth
9 Circuit, and if you did follow the Ninth Circuit authorities,
10 you would have ruled that, as a result of Pulaski, benefit
11 bargain damages are based upon what a purchaser would have paid
12 at the time of purchase had the purchaser received all the
13 information; and, two, from the Nguyen case, the calculation of
14 damages, quote, need not account for benefits received after
15 purchase.

16 THE COURT: I think there may be a pronunciation issue
17 here. Is that the --

18 MR. BERMAN: N-g-u-y-e-n.

19 THE COURT: I think it's Nguyen.

20 MR. BERMAN: Yes.

21 THE COURT: Sorry. It was pointed out to me. Very
22 good.

23 MR. BERMAN: So, in our view, California law does not
24 pivot on the issue and does not even cited as relevant on the
25 issue of repairs.

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1 We're going to point out in the motion for
2 reconsideration -- and this relates to the lens in which you
3 viewed Mr. Boedeker -- that the Pulaski case makes it very
4 clear, and as do other cases in California law, that California
5 law takes a very broad approach to the remedies and damages
6 that are supposed to be awarded for a number of reasons. One
7 is, they're very protective of consumers, and the courts take
8 an even broader view when it comes to safety issues.

9 So, we think you'd look at the Boedeker modeling with
10 the wrong lens, to be frank. And, in fact, the Pulaski case
11 says that you just need some reasonable basis, as long as it's
12 not arbitrary, to award damages under the statutes. So, we
13 think, as we'll explain in our motion, that Boedeker had a
14 reasonable basis, and the Court misconstrued what he said and
15 what the law is on holding supply steady.

16 The second issue that we're going to raise, your
17 Honor, is: The Texas plaintiffs, by virtue of your previous
18 rulings, all had manifestation of defect. And so their cars
19 didn't work as they were promised; and, therefore, the idea
20 that a repair somehow fixes the problem for these folks, we
21 think, is erroneous.

22 And, again, the third area we're going to focus on is
23 Mr. Boedeker, and that's quite a detailed analysis. I'll just
24 flag it as the Boedeker issue.

25 And then, in the alternative, we're going to ask if

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1 you don't grant reconsideration, that you grant our request for
2 review by the Second Circuit. That will all be in the motion
3 that we will be filing tomorrow.

4 So, that kind of covers our view of the next steps,
5 because we're fairly positive that you're going to reconsider,
6 and that will have a different outcome for how we handle the
7 rest of the case, because, then, if you do reconsider, then we
8 would be moving forward with class certification and Daubert in
9 the California cases.

10 So, step one, in our view, next steps motion to
11 reconsider. And then we think that we should put the rest of
12 the litigation on hold for a 30- to 60-day period, and we think
13 that for the following reasons: Obviously, we're going to go
14 to mediation on September 11th. If we make progress on
15 September 11th, then we think all of our energies, all our
16 creativity, should be devoted to trying to get the settlement
17 done as soon as possible. We should not be spending time
18 diverting our team from that to writing briefs on these other
19 issues.

20 And given the length of time that's gone on in this
21 case, a 30- to 60-day pause, no briefing, we think makes some
22 sense and certainly is not prejudicial to any of the parties.

23 THE COURT: Just so I understand, 30 to 60 days after
24 the motion for reconsideration is fully briefed? After I rule
25 on it? What's the timing on it?

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1 MR. BERMAN: We think we file the motion for
2 reconsideration, pause for 30 days. I don't really have -- I'm
3 not sure when it starts or stops, but I think the notion is
4 there would be a period of time out to see if we can resolve
5 this.

6 THE COURT: Got it. Okay.

7 MR. BERMAN: That's our next steps, unless you have
8 other questions.

9 THE COURT: Let me hear from folks at the back table,
10 and then there may be further discussion.

11 MR. GODFREY: Your Honor, Rick Godfrey, for New GM.

12 So, what did the parties agree upon, or at least
13 agreed upon during our meet-and-confer?

14 First, we agree that mediation and further settlement
15 discussions is appropriate at the current time.

16 Second, I thought we had agreement, but perhaps
17 plaintiffs have had second thoughts, that for any successful
18 mediation, there need to be three groups of parties - the
19 plaintiffs, New GM, and the GUC Trust and the GUC Trust
20 unitholders.

21 Third, without the participation of the GUC Trust and
22 the GUC Trust unitholders, we have been insistent that no
23 mediation will succeed. Mr. Weisfelner, in the hearing before
24 Judge Glenn, outlined that position for Judge Glenn last Monday
25 accurately, at page 68 of the transcript. And the driving

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1 force behind this should come as no surprise to your Honor, or
2 anyone else, that New GM, if it's going to enter into a
3 settlement, needs global peace, we need finality. And without
4 the participation of the GUC Trust and the unitholders, there
5 is no global peace, there's no finality.

6 So, from our standpoint, the Court has jurisdiction
7 over the GUC Trust and the unitholders. They have entered
8 appearances here. The Court can order them to mediation. We
9 had extensive discussions about this last Tuesday, and I
10 thought that we had a shared vision that the mediation required
11 the presence of all three groupings.

12 Setting that aside -- that's path A -- path B is --

13 THE COURT: Can I ask you a question: The
14 September 11th mediation date, that does not include the GUC
15 Trust and GUC Trust unitholders?

16 MR. GODFREY: I hope it does. I would hope it does.
17 But we have not had discussions with Mr. Berman and
18 Mr. Weisfelner. I'm not sure who among the plaintiffs were
19 having discussions on this with Mr. Golden and Ms. Going, but
20 September 11th is a date available. We have people available,
21 Mr. Berman and his team are available, and I'm assuming, or
22 hoping, that the GUC Trust and the GUC Trust unitholders are
23 available.

24 THE COURT: Why don't we pause there for a moment.

25 Mr. Berman?

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1 MR. BERMAN: I don't disagree with Mr. Godfrey. I
2 thought this was a subject we were going to address in
3 chambers. That's all.

4 THE COURT: Got you.

5 Do you know if they intend to be there on
6 September 11th? Is there any issue on that?

7 MR. BERMAN: I don't. Mr. Golden is here. Maybe we
8 can invite him back to talk about that.

9 MR. GODFREY: I'm fine with that. I thought it was
10 public, but we'll stop there.

11 THE COURT: Very good. We'll pick that up in short
12 order.

13 MR. GODFREY: So, then, in terms of -- we had proposed
14 and believe it should be a parallel path. I'll comment on the
15 motion for reconsideration in a second. We think that there
16 should be no pause or stay, consistent with your Honor's
17 aggressive, yet reasonable, approach, but, also, this is not
18 rocket science. We are proposing that by August 31st we refile
19 summary judgment and the Daubert motions that have not been
20 mooted.

21 Now, it's your Honor's choice, whatever is most easy
22 and convenient for your Honor, so we can do it one of two ways.
23 And as an overview, I'm not proposing new arguments or anything
24 else. We can take the existing -- so, one choice is, we take
25 the existing motion papers and literally redline the parts that

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1 are no longer relevant. So, for summary judgment, we would
2 take out the parts that are no longer relevant and redline,
3 your Honor could then look to see what's left. And your Honor
4 will recall, it's the lost-time claims, injunctive relief
5 claim, and then we have specific named plaintiffs on specific
6 issues of liability under the three states' laws. So, maybe
7 60 percent, on an eyeball basis, is left. So, that's path A.
8 We would do that with each of the relevant briefs.

9 Or path B: We would simply take our Word version,
10 delete it, but might have to have some transitional sentences
11 so it reads in English between sections, but, for the most
12 part, there are standalone sections, and we would, as part of
13 this, have no new substantive arguments -- in other words,
14 nothing new -- and we would give your Honor a redline -- we
15 have a clean copy and then a redline, showing what was adopted
16 from the past. We can do that by August 31st, plaintiffs can
17 then do their version in 14 days -- I'd offer to do it for
18 them, but I suspect they wouldn't appreciate that -- and that
19 way, it's fully briefed, and your Honor doesn't have to wade
20 through all these papers trying to figure out what is left.

21 Now, as part of that, we've asked ourselves the
22 question: Well, what comes out? Clearly, the Daubert motions
23 for Mr. Began and Mr. Boedeker are no longer something the
24 Court has to decide, because the Court has seized upon a
25 jugular issue and ruled, as a matter of law, that the work that

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1 they sponsored, even if it was admissible, doesn't satisfy the
2 legal standards applicable. So, unless your Honor granted a
3 motion to reconsider, we would not proceed on the Daubert
4 motions because those have been mooted.

5 The Daubert motion for Mr. Manuel remains the same. I
6 have to take a look at that to see whether there's any issue in
7 there that has been mooted. Nothing on a quick glance, but we
8 would look at that to see whether we need to take out a
9 paragraph, a section, or something.

10 On Mr. Goldberg, the Daubert motion remains the same.
11 Nothing has changed, as far as I can tell.

12 And then on Mr. Stevick and Mr. Laub, I have not had a
13 chance to look at those carefully. They related, in part, to
14 Boedeker, they may relate, in part, to injunctive relief, so
15 either those don't get refiled or reupped, if you will, or they
16 get -- we'll take a look to see whether they're redlined.

17 But I wouldn't presume what's easier for the Court --
18 either refile them by taking things out, but that part of that
19 should be redlined version to show you that we're not making
20 new arguments, just showing where the changes are as an
21 attachment, so it's a clean brief, or, alternatively, we will
22 just do a redline so you can see, and what's ever easiest for
23 your Honor and your clerks. I'm not going to presume I know
24 what's easiest for the Court on that.

25 And then those are fully ready for briefing. And so

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1 if the mediation is not successful, we haven't lost any time;
2 there's no substantive new work, this is just a redlining
3 function, and if we have to do a clean brief, it's to take the
4 redlines out and then figure out what we need to transition it
5 so that it reads in the English language for the Court, and it
6 doesn't just show up in an odd way.

7 If we do that, on the parallel paths, then, if
8 mediation is successful, terrific -- your Honor hasn't lost any
9 time, and the case is resolved -- if mediation is not
10 successful, then your Honor hasn't lost any time, and
11 everything will be ready for your Honor. So if we take the two
12 weeks to the 31st, just take the two weeks, we'll have
13 September 11th mediation by then, and we'll have a report that
14 will say either hold off or we can proceed apace, but we've
15 lost no time, we haven't done any new work. All the work is --
16 I don't want to say it's ministerial on our part, because
17 someone senior is going to come look at it, but it's pretty
18 straightforward.

19 The other issues like class certification, unless the
20 reconsideration motion changes something, we don't need to
21 worry about class certification. Your Honor got this right,
22 deciding the Tyson case at footnote 12 at page 35 of your
23 August 6th opinion. If the named plaintiffs have no claims, we
24 don't get to class certification. And, so, if we are correct
25 on our summary judgment, and there are no claims left, class

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1 certification no longer exists.

2 That's our view, in terms of what the path forward
3 should be.

4 Now, in terms of the motion to reconsider, nothing
5 I've heard I haven't heard or read before, so we'll deal with
6 it when they file it. There's nothing new there that hasn't
7 already been considered by the Court.

8 And my only other comment is on the three states. So,
9 I went back -- this was a trip down memory lane, actually.
10 Your Honor may recall that the first time that the bellwether
11 approach was proposed was in August 2014.

12 THE COURT: I don't remember that.

13 MR. GODFREY: Well, it was.

14 THE COURT: I barely remember anything from
15 August 2014, except that I was terrified about this case, but
16 go ahead.

17 MR. GODFREY: Well, you never showed it to us. We
18 were terrified about the case, too, for other reasons.

19 But it was actually five years ago and four days that
20 we were first before your Honor, as you may recall, not that
21 anyone's counting the time.

22 The plaintiffs started with that they wanted initially
23 California only, then they wanted 50 states, but in 16 and 17,
24 your Honor will recall that we ended up where we wanted the 16,
25 because we figured that we can get the 16 done. If that didn't

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1 tell you what you needed to know, you wouldn't need to do
2 anything else. The plaintiffs argued for two, essentially
3 making the argument that they couldn't win California and they
4 weren't going to win elsewhere, essentially.

5 So, I don't know what the plaintiffs have in mind, but
6 there's a record here, that we're prepared to file quickly, at
7 least on the record, so your Honor can see what was said before
8 on this over time. The plaintiffs staked out a position --
9 your Honor agreed with them -- that California, Missouri, and
10 then your Honor tacked on Texas, I think, as a -- you know,
11 a -- it's a big state, fair enough, it's a big state, there's a
12 lot of people in the state.

13 So, the plaintiffs have a record here, and,
14 essentially, the record is if they don't win in California and
15 Missouri, they're basically done. Now, if they disagree with
16 that today, then I have a proposal, it's very simple: On
17 August 31st, they should file one page per state for each state
18 and tell the Court why it is that the law is different in those
19 states. We looked at the states. There are differences.
20 There are states, for example, where the benefit of the
21 bargained damages is limited to the cost of repair, period.
22 Period.

23 So, if they think there are differences in the states
24 that are outcome-determinative that justify any more of this
25 Court's time and resources, they should file one page per state

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1 for each of those states, on August 31st, we'll respond in two
2 weeks, because it's not there.

3 You will remember, in your April opinion, where I
4 filed prematurely that the motion you eventually granted, you
5 said you had made a decision, but you hadn't found any contrary
6 law. We looked at all these states. And if they believe
7 there's an outcome-determinative state, one piece of paper per
8 state on August 31st, and they ought to be able to tell you
9 that now. This case is five years old. So when they say
10 things, in the press and elsewhere, we've got these other
11 states, it's time to show us. There's an expression in
12 midwestern Missouri, Show Me State. Time to show me, time to
13 show your Honor, tell us the outcome-determinative differences,
14 because I'm prepared to go state by state, including the states
15 where the only standard of damages is not the lesser of, but
16 repair costs only, which even in Boedeker were valid. It means
17 they don't have a valid expert for those states.

18 So, our proposal here is very simple: Simultaneous
19 paths, the Court will then be in a position -- so it's not lost
20 any time, we don't have a 30- or 60-day gap -- if they really
21 seriously believe there are outcome-determinative differences
22 for other states, August 31st, one page per state, we'll
23 respond. And in the meantime, we'll have further conversations
24 about how we structure the mediation in chambers.

25 The only other issue, then, is -- I'm reading my

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1 notes, your Honor, and I think I've covered everything else
2 except the withdrawal motion.

3 So, on the withdrawal motion -- and I don't think we
4 have disagreement on this, but, again, I'm not a hundred
5 percent sure, this is a reserved issue from our meet-and-confer
6 the other day -- we have always said that we thought there
7 should be a narrow stay in the bankruptcy court so that the
8 bankruptcy court is not put in the position of having to be
9 concerned about judicial inefficiency and potential
10 inconsistencies with this Court because of the significant
11 overlapping of the issues. And Judge Glenn commented at some
12 length -- I was not at the hearing on Monday, but I've now read
13 the transcript -- on the various issues, and the change in
14 landscape, and the impact of your Honor's opinion that has to
15 be thought through, and those comments were spot on.

16 So, we've always thought there should be a stay of
17 issues relating to withdrawal -- of issues that are
18 overlapping. But if there can't be a stay, for some reason,
19 then there should be withdrawal to this Court. I don't think
20 withdrawal needs to be decided at the moment. There's going to
21 be some further briefing in the bankruptcy court, the contours
22 of which are unclear to me. Mr. Kimpler, from Paul Weiss, and
23 bankruptcy counsel is here with us this morning, but I think
24 the parties have to discuss that, as I understand the
25 transcript.

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1 But I think, for the purposes of this status at the
2 current time, given the issues pending in the bankruptcy court,
3 it does not appear that the overlap requires the Court at this
4 time to take up the withdrawal motion. It may -- because
5 depending on what the parties are going to be briefing on that,
6 that may impact our view, but I'm not -- your Honor has had
7 a -- and I think we've all expressed to your Honor, we know the
8 challenges you've had this year, the loss of your mother, and
9 are very sympathetic and sorry about that, and then, of course,
10 your other big case, which has taken up a tremendous amount of
11 time, and it's of national significance, for which we're all
12 appreciative, but it's taken up a great deal of time. We don't
13 want to impose unnecessary work. I don't think any of us do.

14 So, on the withdrawal issue, if push comes to shove,
15 you may have to take it up, but I don't see it, at the moment,
16 in the next several weeks. So, I would prefer, I think -- we
17 would prefer on the New GM side -- that we have the mediation,
18 we proceed down the parallel paths, we get the contours of the
19 briefing before Judge Glenn so we understand that better, and
20 then we can reassess, do we need anything other than a
21 continued stay or adjournment of these issues that overlap or
22 do we need your Honor to consider the withdrawal motion. I
23 don't have a judgment except my intuition is, we don't need to
24 decide that today, we don't need to impose any more work on
25 your Honor at the moment on that topic.

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1 THE COURT: All right.

2 MR. GODFREY: I think that covers -- the sealing, you
3 want me to address the sealing?

4 THE COURT: Let's defer the sealing for a moment.

5 MR. GODFREY: Okay.

6 THE COURT: But that was on my list of -- I think
7 that's the one thing that neither of you had addressed, but
8 let's table that for one moment. There's already a lot to
9 respond to in what you just said.

10 A question, and then let me tell you my thoughts and
11 get reactions from both of you:

12 First, when you say parallel -- I think you said
13 parallel tracks -- I assume you're referring to the motion for
14 reconsideration and your proposal with respect to the motion
15 for summary judgment/Daubert?

16 MR. GODFREY: I view the motion for reconsideration as
17 separate. I was saying parallel paths, mediation and putting
18 the Court in a position, so that if mediation is not
19 successful, the Court can promptly turn to the remaining
20 motions without having to then wait 30 or 60 days while the
21 parties get their papers to the Court.

22 THE COURT: Okay.

23 On your proposal, would you file your opposition to
24 the motion for reconsideration? Mr. Berman had proposed
25 putting that off for --

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1 MR. GODFREY: Yes, we would file it in due course,
2 whatever the Court's rules are, whatever the standard rules for
3 filing. I don't see any reason to delay that.

4 THE COURT: All right. Let me give you a couple of
5 reactions.

6 First, as between your A and B proposal on briefing,
7 and table for the moment whether I think briefing is a good
8 idea at all, I definitely don't want you to submit redlined
9 versions of your briefs. I would rather you take them, and
10 with the understanding that there are to be no new substantive
11 arguments that you would take your Word version, repackage it
12 as a clean new brief, and submit it. I think that would just
13 be cleaner and easier all around.

14 Having said that, here is my thought, let me throw it
15 out as a sort of baseline for further discussion: Plaintiffs
16 are planning to file their motion for reconsideration tomorrow,
17 and I don't see any reason that they should hold off on that.

18 I'm also inclined to think that New GM should file the
19 motions that Mr. Godfrey has outlined by August 31st, as he
20 suggests they're prepared to do, and since there's no new
21 substance or new arguments in them, that shouldn't be
22 particularly hard. It's really a repackaging task.

23 My inclination would then be to put things on pause,
24 as Mr. Berman suggests, probably closer to the 30-day mark than
25 the 60-day mark. That would certainly get us past the

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1 mediation date, and you could report back to me promptly after
2 the mediation where things stand, and, in essence, what the
3 probability of a settlement is, and whether you think it makes
4 sense to proceed full steam ahead with the motions or not. But
5 the proposal would be to defer opposition to the two motions,
6 and, I think, Mr. Godfrey, I'm saying one motion for GM, but I
7 think it's really multiple motions, but defer all oppositions
8 until after sort of the initial report on the mediation
9 basically until sort of the end of September, at the earliest,
10 and then we could kind of see where things stand.

11 And then finally on the motion to withdraw the
12 reference, that's GM's motion, if Mr. Godfrey is saying don't
13 decide it now, I don't see any -- or I would be surprised if
14 plaintiffs oppose that. My inclination would be to basically
15 put that on the back burner and plan to not do anything on it,
16 and if something changes, New GM thinks that it becomes ripe,
17 and I should consider it, it would tell me.

18 So, that's my proposal. I think -- I would like your
19 reactions here. I think what I will ultimately do is make a
20 preliminary ruling based on the conversations out here, and
21 then I can always reconsider after the closed session, based on
22 what we discuss in there, if that path makes sense or not, and
23 go from there.

24 So, Mr. Berman?

25 MR. BERMAN: That's fine with us, your Honor.

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1 THE COURT: My proposal?

2 MR. BERMAN: Your proposal.

3 THE COURT: Okay.

4 Mr. Godfrey, I understand you had a few other things
5 in there. Implicit in my proposal is that I didn't agree with
6 them, but anything else you want to say?

7 MR. GODFREY: Well, that part I figured out.

8 THE COURT: You're quick that way.

9 MR. GODFREY: I try.

10 I think we can live with this proposal, your Honor. I
11 think this is close enough, that it addresses our concern about
12 undue delay. The understanding, of course, is no new
13 substantive arguments by anyone concerning the things that we
14 filed before, so that applied, I assume, to both the plaintiffs
15 and the defendants.

16 THE COURT: It does, yes.

17 Again, subject to possible reconsideration after our
18 closed session, that's the way we'll proceed. So, the
19 plaintiffs will file their motion for reconsideration tomorrow.
20 Candidly, I'm happy to give you more time than that if you need
21 another week or so, but I'm also happy to let you file it if
22 it's ready. I would assume it's pretty darn close.

23 MR. BERMAN: It's pretty close. Since I'm in another
24 court tomorrow, would you mind if I filed it on Tuesday?

25 THE COURT: That's fine with me.

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1 Any objection from the back table?

2 MR. GODFREY: I prefer they not file it at all, but,
3 no, no objection. It means I have to write another brief, your
4 Honor.

5 THE COURT: All right. So I'll grant plaintiffs until
6 Tuesday to file their motion for reconsideration. And I will
7 give GM -- you said, August 31st, I think, but that's a
8 Saturday, so why don't I give you until September 3rd, unless
9 would it make a difference --

10 MR. GODFREY: There's Labor Day weekend. I'm
11 wondering if we could get --

12 THE COURT: I could give you until August 30th. Then
13 it won't intrude on your Labor Day weekend.

14 MR. GODFREY: That's going the wrong direction, your
15 Honor.

16 Just if you bear with me one second?

17 (Pause)

18 MR. GODFREY: Could we have until September the 5th,
19 your Honor?

20 THE COURT: Any objection, Mr. Berman?

21 MR. BERMAN: No, your Honor.

22 THE COURT: So I'll give you until September 5th to
23 file your repackaged summary judgment and Daubert motions,
24 again, with the understanding that there are to be no new
25 arguments, but --

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1 MR. GODFREY: I misunderstood, your Honor. I thought
2 you were asking us to respond to the motion to reconsider.

3 THE COURT: No, no. My proposal was that we're going
4 to hold off on your opposition.

5 MR. GODFREY: Oh, oh, okay. Then I'm okay with the
6 31st.

7 THE COURT: That's a Saturday. And you --

8 MR. GODFREY: We'll do the 5th, that's fine.

9 THE COURT: Saturday, that's Labor Day weekend, no
10 less.

11 MR. GODFREY: We will do the 5th, your Honor. My
12 younger colleagues will thank you very much.

13 THE COURT: I was about to say, I care more about your
14 associates than you do, I think.

15 MR. GODFREY: We need to rephrase that, your Honor.

16 THE COURT: I'll strike that from the record.

17 So, I'll give you till September 5th to file the slate
18 of motions that you have proposed; namely, your repackaged
19 summary judgment and Daubert motions, and, again, with the
20 understanding that there are to be no new substantive
21 arguments, it's just essentially repackaging arguments that
22 were made in the motions that I've decided, and including only
23 those issues that you believe remained live and ripe in light
24 of my August 6th decision.

25 My inclination would be to set a tentative date for

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1 oppositions and replies to both those motions, subject to
2 possible extension based on whatever happens on September 11th.
3 We could do September 30th as the opposition deadline unless
4 you think that would require you to work in advance of
5 September 11th, in which case, I'm happy to --

6 MR. BERMAN: One more week?

7 THE COURT: Sure. So why don't we do oppositions to
8 each of those sets of motions would be due October 7th, and
9 replies would be due, let's say, by October 18th. Does that
10 sound good?

11 MR. BERMAN: Sounds good to me. I'm not sure when I
12 get back to my office. Many people will be yelling at me for
13 it, but it sounds good to me.

14 THE COURT: Mr. Godfrey?

15 MR. GODFREY: Yes, I think the replies, we could do --
16 you said --

17 THE COURT: October 18th, I said.

18 MR. GODFREY: Fine. I think it will take us less time
19 because it's just going to be cross-referencing page numbers, I
20 think, but that's fine. If we can do it earlier, I think we
21 will try, but that's fine. I don't know how difficult this is
22 going to be from a younger lawyer standpoint.

23 THE COURT: Great.

24 And that leaves, I think, only the sealing issues
25 remaining. One substantive issue to note on that front: The

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1 Second Circuit recently decided a case relating to Mr. Epstein,
2 no less -- Brown v. Giuffre, I think it was called, or Brown v.
3 Maxwell, maybe, I think Brown versus Maxwell -- that sort of
4 reiterated, reaffirmed, discussed the jurisprudence with
5 respect to sealing matters, and, among other things,
6 underscored that the mere fact that a court hasn't relied on
7 something is not actually a basis to keep something under seal.
8 I think, candidly, I have been a little lax on that particular
9 point in this litigation and have often allowed things to
10 remain under seal on the grounds that it wasn't relevant to my
11 decision. I didn't consider it in connection with my decision.
12 I just wanted to flag that substantively as an issue that I'm a
13 little more sensitive to in light of the Second Circuit's
14 recent ruling. But that's a different question than the
15 procedures that we should follow.

16 Since there is a lot, I thought it would make sense to
17 talk about it today rather than adhering to the standard
18 protocols on this front. So, what are your thoughts?

19 MR. GODFREY: We did discuss it, and we are very
20 sensitive both to the standards as articulated by the Second
21 Circuit, but also your Honor's previously expressed views of
22 the importance of the public's right to know, and the First
23 Amendment considerations.

24 So, what we have proposed is: We will -- and we need
25 to take the legwork or GM does first -- we will go through --

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1 THE COURT: Can you clarify? Is this a joint proposal
2 or just yours?

3 MR. GODFREY: This is joint. This is joint, I
4 believe.

5 THE COURT: Okay.

6 MR. GODFREY: We will go through -- and I think we can
7 do it in three weeks, but we might need four, so I'd ask the
8 Court's indulgence for four weeks. We are going to go through
9 everything that is sealed and come up with a proposal for
10 plaintiffs to say, here's what we propose to unseal. We think
11 the vast majority, vast majority, would be proposed to be
12 unsealed.

13 Then plaintiffs can take, you know, two weeks or three
14 weeks to see whether they disagree with anything, and then we
15 would present to your Honor, here's the agreement and here's
16 what's left.

17 Now, the only things that come to Ms. Bloom's and my
18 mind about a quick review of the papers that remain sealed, I
19 think -- we maybe missed something, but I think -- there is
20 some propriety data, either from third parties where we have
21 obligations to keep it confidential or propriety to New GM, and
22 some propriety, perhaps, text around that. That's a fairly
23 narrow subset of what was sealed. So, on a rough, quick
24 review, after your Honor's order earlier this week identifying
25 the topics for discussion, that was what seemed to make sense

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1 to us. We discussed this with plaintiffs, and I think
2 plaintiffs -- it made sense to them as well, I think we'll take
3 the first crack at it, propose it to them, they then can agree
4 or not agree with us. If they agree with us, we'll just -- if
5 the plaintiffs agree with us, we'll simply file a document with
6 the Court so your Honor knows we agree the following is
7 unsealed, and then whatever is left, we can have that
8 conversation at a further conference or take direction from
9 your Honor, either to file a letter brief explaining why it
10 remains sealed or answer your Honor's questions.

11 It's really -- we are very sensitive to your Honor's
12 concerns about, quote, the Second Circuit standards, but, more
13 importantly, what you have said in this court from day one
14 about the public's right to know and the press' right to be
15 fully participatory, we're very sensitive to that. So, we will
16 proceed on whatever remains sealed, in terms of addressing any
17 questions you have, in any way that the Court feels is
18 efficient and desirable.

19 THE COURT: All right. So, let me just make this a
20 little more concrete. I think, as a general proposition, I'm
21 okay with that proposal. What I would propose is that New GM
22 review everything and basically present its proposal as to what
23 should remain sealed or redacted to plaintiffs within four
24 weeks, so by September 12th, I think, is that date. I would
25 give plaintiffs two weeks to respond, or basically the parties

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1 two weeks to confer; that is, plaintiffs respond if they have
2 any disagreement or not, so by September 26th, and then no
3 later than one week later, by October 3rd, would ask for a
4 joint letter from you indicating, essentially, where things
5 stand. And I think that on the basis of that, I could then
6 decide what made sense in terms of whether to have further
7 briefing or not. If we're talking about relatively minor
8 redactions, it may not involve too much; if we're talking about
9 more substantial redactions or sealing, then it might warrant
10 more substantial briefing.

11 Does that make sense?

12 MR. BERMAN: I think based on the email traffic we're
13 getting, that we need three weeks. There's a pretty extensive
14 volume of material, and we're going to take this very
15 seriously. We just had this issue come up in the Sixth Circuit
16 in an auto defect case against FCA in which things were
17 unsealed, that the court made it pretty clear should be made
18 public, so we need time to go through this. So we'd ask for
19 three weeks.

20 THE COURT: All right. I don't think the halls of
21 justice will crumble or the press will suffer grievously if we
22 give you another week. So that's fine. I'll give GM until
23 September 12th to present its proposal to plaintiffs, and then
24 your meet-and-confer deadline, which essentially entails
25 plaintiffs' response, by October 3rd, and then a joint letter

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1 no later than October 10th. Obviously, if there's no
2 disagreement, I'm expecting that you could submit your joint
3 letter even sooner than October 10th. That's just an outside
4 deadline. And why don't you include in that letter your
5 proposal for how to proceed based on the extent of any either
6 disagreement or proposed redactions and sealing. All right?

7 MR. BERMAN: Okay.

8 THE COURT: Good?

9 MR. GODFREY: Yes, your Honor.

10 THE COURT: All right. Very good.

11 Anything else to discuss with respect to the
12 August 6th opinion? Or does that cover the landscape? I think
13 it does, correct?

14 MR. BERMAN: It covers it from our perspective.

15 MR. GODFREY: I believe it covers it from New GM's
16 perspective, your Honor.

17 THE COURT: Great.

18 So the last item on the agenda is settlement. I don't
19 know if there's anything to discuss out here in open session or
20 not. One question I have is: We have tended to have the
21 in camera sessions off the record without the court reporter
22 present. Does everybody agree that that would be appropriate
23 today?

24 MR. BERMAN: Yes.

25 MR. GODFREY: As far as we're concerned, yes, your

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1 Honor. It's up to the Court.

2 THE COURT: All right. Very good.

3 MR. BERMAN: The only item I had, your Honor, was I
4 think New GM and the plaintiffs would ask that you ask
5 Mr. Golden, a representative of the unitholders, to attend the
6 conference, if that's okay with the Court.

7 THE COURT: That's okay with me. I imagine Mr. Golden
8 is dying to join us.

9 So, Mr. Golden, is that okay?

10 MR. GOLDEN: Yes, your Honor.

11 THE COURT: Great. Why don't you -- you will join us
12 in a moment.

13 Other than that, any new business? Anything else that
14 you want to discuss other than the date for our next conference
15 and then the December date with respect to the personal
16 injury/wrongful death cases? One option would be to have a
17 conference -- the next conference in December, and that would
18 sort of incorporate that deadline into it, if you will. Any
19 reason to have a conference before December? I guess that's
20 another way of putting it.

21 MR. BERMAN: It depends on what happens on the motion
22 to reconsider. That may then require a status conference, I
23 think, earlier than December to figure out next steps. So,
24 maybe we set something in December, and I just raise that issue
25 with you, and we can revisit it after the motion is decided.

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1 THE COURT: All right. I hear you. Tell you what,
2 why don't we set something in December, and depending on when I
3 rule on that motion and what my ruling is, if you think that an
4 earlier conference would be appropriate, you certainly know how
5 to make yourselves heard, and you can confer with one another,
6 and let me know that. Does that make sense?

7 MR. BERMAN: Yes, sir.

8 MR. GODFREY: Yes, your Honor.

9 THE COURT: All right. Great.

10 So, December -- any proposals here? I don't know if
11 early December, late December -- late December is out, just to
12 be clear. We're not going to do this over the holidays, as
13 much as I love you all.

14 MR. BERMAN: I don't know if you saw 60 Minutes last
15 week.

16 THE COURT: I didn't.

17 MR. BERMAN: It had a story of an 11-year-old who
18 conducts operas and composes operas, and she's playing at
19 Carnegie Hall the 12th, and I'm going to be there. So
20 somewhere around the 12th would work for me.

21 THE COURT: Are you going to get tickets for all of
22 us?

23 MS. CABRASER: Well, oddly enough, I had gone ahead
24 and bought my own ticket, and I'm sorry, I should have bought
25 them for everyone.

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1 The 12th would work.

2 THE COURT: All right. Well, that's an opening bid
3 that works for me. December 12th, at 9:30, speak now or hold
4 your peace.

5 MR. GODFREY: I'm moving here on November the 30th for
6 a month, so I'll be here.

7 THE COURT: Congratulations.

8 MR. GODFREY: Well, actually, it is -- I'm expecting
9 our first grandchild.

10 THE COURT: Oh, congratulations. That's wonderful
11 news.

12 MR. GODFREY: I've been informed I'm moving here.

13 THE COURT: All right.

14 Going once, going twice? Very good, we'll do
15 December 12th, at 9:30.

16 And, again, based on either the motion for
17 reconsideration or any other thing, for that matter, if you
18 feel that there is a need or basis for a conference before
19 then, confer with one another, and just let me know your
20 thoughts and dates that would work for everybody.

21 I do want to note this is the time of year where I
22 will be saying goodbye to my current crop of law clerks. It's
23 a slightly traumatic time of year for me. Denisha Bacchus, who
24 has helped manage the MDL for the last few months, as you know,
25 will be leaving at the end of next month, so I have her for a

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1 little bit longer. I have a new clerk, who will be arriving in
2 the next week, actually, who I'm going to have work on the MDL,
3 and I'll have Ms. Bacchus -- they will overlap for a period of
4 time, which will enable, I think, a smooth transition, and at
5 the appropriate time, Ms. Bacchus will send an email to all
6 counsel introducing Mr. Sila, who is going to be her
7 replacement on the MDL. So let me take the opportunity to
8 thank Ms. Bacchus for all of her extraordinary assistance. As
9 I've said before, I don't think I could manage this litigation,
10 let alone manage it reasonably well -- I think we're doing a
11 really good job, but I'll leave that judgment to others -- I
12 certainly couldn't manage it at all without the assistance of
13 my law clerks involved, and Ms. Bacchus is the latest in a
14 string of excellent ones on that front.

15 Mr. Nathan is another law clerk of mine who's here who
16 has done some work on the MDL as well. He's leaving me
17 tomorrow, and I don't want to talk about that further.

18 So, my thanks to the two of them and to Mr. Rennie,
19 who was involved in managing this earlier in his clerkship, who
20 is manning the fort upstairs, but I'll be sure to make sure
21 that he knows he was thanked as well. And I look forward to
22 you guys meeting their successor, and I'm sure that he will
23 pick up the reins and do a terrific job as well.

24 Anything else?

25 MR. GODFREY: No. On behalf of all the parties, not

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1 just New GM, we thank the law clerks. This is an invaluable
2 service for the courts, and I'm always amazed at the talent
3 that the federal judiciary has. It's really something special.
4 So, thank you.

5 THE COURT: I agree. And I have been blessed on that
6 front, and this year is no exception.

7 Ms. Cabraser, I didn't want to deny you the
8 opportunity to chime in as well.

9 MS. CABRASER: And we do appreciate the opportunity to
10 express our gratitude to the clerks and staff, past, present
11 and future. We're not supposed to admit how important you are
12 to the administration of these cases, but we willingly confess.

13 THE COURT: Well, I think I'm the one who made the
14 confession. I couldn't do it without them.

15 All right. I'll look for your proposed order
16 memorializing what we've done today. I think it's been three
17 days, but sometime next week. With that, we'll reconvene in
18 closed session in a few minutes with Mr. Golden, and I will see
19 you there shortly. Thank you.

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