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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

New York, N.Y.
November 2, 2018
9:37 a.m.

8 Before:

9 HON. JESSE M. FURMAN,

District Judge

11 APPEARANCES

12 LIEFF CABRASER HEIMANN AND BERNSTEIN LLP
13 BY: ELIZABETH JOAN CABRASER

-AND-

14 HAGENS BERMAN SOBOL SHAPIRO LLP (SEATTLE)
15 BY: STEVE W. BERMAN

-AND-

16 HILLIARD MUNOZ GONZALES LLP
17 BY: ROBERT HILLIARD

BRENT COON & ASSOCIATES
18 BY: MATTHEW R. WILLIS

19 KIRKLAND & ELLIS LLP
20 BY: RICHARD CARTIER GODFREY
ANDREW B. BLOOMER
WENDY BLOOM

21 ALSO PRESENT: MICHAEL S. DAAR, GM in-house counsel

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1 (Case called)

2 MR. HILLIARD: Morning, Judge. Bob Hilliard.

3 MR. BERMAN: Morning, your Honor. Steve Berman.

4 MS. CABRASER: Good morning, your Honor. Elizabeth
5 Cabraser, for plaintiffs.

6 MS. CREAMER: Marjorie Creamer for --

7 THE COURT: Good morning, Ms. Creamer.

8 MR. GODFREY: Good morning, your Honor. Rick Godfrey
9 for New GM, also with Ms. Bloom and Mr. Bloomer. Mr. Daar from
10 GM legal is in the audience.

11 THE COURT: All right. Good morning to all of you.

12 We are here for the regular status conference. I
13 think we're on CourtCall. So just a reminder, hopefully you
14 don't need it at this point, but make sure you speak into the
15 microphone.

16 I hope everybody has been well. I did see
17 Ms. Cabraser earlier this week at the MDL transfer judges
18 conference in Florida yet again. Trying to arrange for an
19 invitation for someone over there, but we'll see what happens.

20 I think we have Mr. Willis from Coon & Associates,
21 counsel to McKnight, on the line with speaking privileges. Is
22 that correct, Mr. Willis?

23 MR. WILLIS: Yes, your Honor. If you could hear me,
24 this is Matt Willis.

25 THE COURT: I can loud and clear, which is refreshing.

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1 So good. Welcome and good morning to you.

2 Let's get started on the agenda letter. I think this
3 might be the thinnest agenda in the history of this case. The
4 first three items, anything to discuss there?

5 MR. GODFREY: Yes, your Honor, if I may. In terms of
6 the coordination of related actions, I had put a marker down
7 during our last status on August 21 regarding the Mary
8 Schroeder v. General Motors LLC case in Maryland. Your Honor
9 will recall that I said there was a discovery dispute brewing
10 that implicated your Honor's *Lucas* materials opinion from 2015.
11 Since that status, the plaintiffs have rescheduled the
12 deposition. The parties continue to try to work it out. That
13 means there's nothing for this Court to do. I think it's now
14 on the back burner, and hopefully there will be nothing for
15 this Court to ever do. We continue to make progress, but I
16 thought I would at least, since it was an open issue from the
17 last time, identify for the Court for the moment at least that
18 issue does not appear to be ripe. And hopefully we can, as
19 most issues we have been able to in the past work out to avoid
20 this Court's intervention.

21 THE COURT: All right. Thank you for that.

22 I would say, obviously, try to work it out, and if you
23 can't, you know how and where to find me. The one request I
24 would make, I think the last time around you indicated if there
25 was a need for me to be involved that it would probably have to

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1 be on an expedited basis. I would say if you can avoid that,
2 that would be better for my purposes, or if you can't, it would
3 be better to give me a heads-up that it's coming down the pike
4 just because, as you may know, I have a lot going on separate
5 and apart from this case at the moment. And in that regard, it
6 just would be helpful in terms of me managing my time and
7 getting you a timely decision. All right?

8 MR. GODFREY: Understood. I do not anticipate
9 currently the potential emergency that we saw possible last
10 time. But I take the Court's guidance on that seriously, so
11 we'll do everything possible since we are very well aware of
12 the Court's schedule, which is why we're in this courtroom
13 today.

14 THE COURT: Indeed.

15 MR. GODFREY: Then the other thing I would report on,
16 and I think we can in chambers later today about settlement,
17 when we were here on August 21, I said it was the first time
18 that the MDL had less than a thousand pending cases. It was
19 957 actually. Since then Ms. Bloom has been doing what she
20 does, and we're now down to 664 cases. So almost a third of
21 the docket has been reduced since August 21, and that includes
22 150 new ones. We keep getting new ones.

23 THE COURT: I noticed they went up by four in the last
24 month.

25 MR. GODFREY: In fact, 47 of the -- if you look at

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1 it, of the 150 new case this is year, of the 664, 471 of those
2 are in the pre-July 9 bankruptcy docket, which we are going to
3 talk about in chambers with your Honor later today during the
4 settlement part of this.

5 So we continue to make very good progress in terms of
6 the number cases remaining on the personal injury/wrongful
7 death side. If you strip out the bankruptcies, it's only 193
8 now. Most of those unknown. So we've made remarkable progress
9 this year. The wave one, wave two, etc., have worked as I
10 think your Honor had hoped they would work. But I thought you
11 ought to be aware, in terms of the numbers, we reduced it by
12 another third almost, including the new cases, and there's only
13 193 that are originally filed in this docket that are not
14 bankruptcy-related. So the bankruptcy-related is what we're
15 focused next on, and we'll discuss that during the in-chambers
16 discussion.

17 THE COURT: Great. Thank you.

18 Anything else on the first three items, sort of
19 updated, updating items?

20 All right. Let's turn to item four, which is the
21 personal injury cases. Let me first address McKnight, the
22 motion to extend the deadlines in McKnight. I think in
23 principle I'm fine with the extensions. They're not lengthy,
24 and I think I will still have enough time to do what I need to
25 do. I guess the question I have is, so I know what's coming

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1 down the pike, what are we anticipating here? Do we think
2 there are going to be -- is there going to be a summary
3 judgment dispositive motion? Are there going to be 10, 20
4 motions in limine again? What's the expectation here?

5 MR. WILLIS: Your Honor, I'll let Ms. Bloom address
6 that from the defendants' standpoint. This is Matt Willis, and
7 I do not anticipate dispositive motions from the plaintiffs'
8 side, unless I've missed something from the plaintiffs'
9 steering committee.

10 THE COURT: All right. I would think Ms. Bloom a
11 little surprised that she was being called upon, but whoever
12 would like to address it from the defense side.

13 MS. BLOOM: On the defense side, we anticipate a
14 summary judgment motion, a *Daubert* motion, and motions in
15 limine as well.

16 THE COURT: Any idea of how many motions in limine?

17 MS. BLOOM: I do not. We are working to streamline
18 those. I think there might be two.

19 MR. GODFREY: Two or three.

20 THE COURT: All right. And a *Daubert* with respect to
21 one expert? More than one expert?

22 MR. GODFREY: More than one expert, your Honor.

23 THE COURT: I trust that you're all mindful of the
24 prior rulings in these cases in that regard and are not seeking
25 to re-litigate things that I've already decided and narrowly

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1 tailoring any motion practice.

2 MR. GODFREY: That's correct. One of the issues that
3 I've been involved in on this side, get drug into issues where
4 the team has, let's just say, not aligned necessarily, so
5 there's a discussion going on whether it's two or three or
6 whether we should just do one, a partial one. But it's not
7 going to be six or seven, if that's what the Court is concerned
8 about.

9 THE COURT: All right. Mr. Willis, what about from
10 you?

11 MR. WILLIS: Your Honor, truthfully, we are still
12 working on it, but what we had -- in discussion with the
13 attorneys on the steering committee, we had been considering
14 one of the Court's prior rulings in trying to cut it to as few
15 as possible on the in limine. And again, I don't anticipate
16 dispositive motions. I do anticipate probably at least one
17 *Daubert*, but maybe only a few.

18 THE COURT: All right. Mr. Hilliard, anything you
19 want to add here?

20 MR. HILLIARD: Yes, your Honor. I have two attorneys
21 who have a ton of institutional historic knowledge on what the
22 Court has ruled based on the other bellwether trials. We're
23 assisting Mr. Willis, not behind the scenes, but making sure
24 that he doesn't have to try to go find out what this Court has
25 ruled on, what GM has already had its shot at in regards to the

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1 *Daubert* motions. We're very active with Mr. Willis and the
2 Coon firm in regards to being sure that the general liability
3 issues that we know a lot about, we're assisting with briefing
4 and making sure that there's not going to be on this Court's
5 bench any re-litigation of any pretrial motions.

6 THE COURT: All right. Going back here, the summary
7 judgment motion that you anticipate filing, is that with
8 respect to all claims or only partial?

9 MR. GODFREY: I think currently it's all. I have not
10 seen the draft yet.

11 MS. BLOOM: It is all.

12 MR. GODFREY: I think currently it's all, but there's
13 occasions where I look at it and I disagree with something, so
14 we only do partial. So the plan currently is all, but I have
15 not seen the draft yet. And if I decide that I don't think the
16 Court's likely to grant it, then we'll pare it back. But the
17 current plan is all, but I haven't seen it yet.

18 THE COURT: Again, underscore that I've decided a lot
19 of things in this case, so be mindful of that. And I expect
20 that neither side will file a motion that you do not think that
21 I can actually grant.

22 So with that, the application for an extension of
23 those deadlines is granted. I'll enter that on the docket
24 later today.

25 Aside from that, on the personal injury/wrongful death

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1 cases, the various processes and protocols that we have in
2 place seem to be running their course, and relatively smoothly
3 at that. Is there anything to discuss on that front?

4 MR. GODFREY: Only to point out, if the Court were
5 interested in the data, it's attached to our related case
6 letter in some detail. But the wave process that the Court
7 implemented and directed the parties to follow has worked, from
8 our perspective, far better and faster than we had anticipated.
9 On wave one, 98 of the 100 original claims are now gone. On
10 wave two, 101 are gone, only 12 remain. And this is all within
11 a six- or seven-month period. So we've been surprised at the
12 rapidity with which we've resolved things. There will be
13 summary judgments filed on remaining ones. But I think, in
14 terms of the Court's goal at the start of the year, which was
15 to see if we could address the magnitude of the docket and pare
16 it down, the wave approach has worked extremely well.

17 THE COURT: Very good. Anything you want to say,
18 Mr. Hilliard?

19 MR. HILLIARD: I don't know if this goes to the
20 Court's endorsement about the one-off non-ignition switch
21 defect cases, but that is beginning to loom larger in the room
22 simply because, Mr. Godfrey's right, the wave process has
23 worked. But I wasn't sure if this was the point in the agenda
24 that your endorsement wants to visit about that. We have
25 conferred initially with GM and have some initial thoughts

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1 whenever the Court's ready.

2 THE COURT: So this is the moment. I guess, to just
3 expand upon the endorsement, my question is really next steps,
4 I mean, in two senses. One is wave one and wave two, if I
5 remember correctly, applies only to phase one cases in category
6 A of phase two, so there are several other categories indeed
7 with larger number of cases at this point. And query whether
8 we should have something akin to those processes for those
9 cases. Either way, I think we do need a sort of game plan for
10 an endgame here. That is to say, at some point these processes
11 have run their course, at least for purposes of pretrial
12 purposes under Section 1407. I've certainly given ample time
13 for GM to try and settle these cases, and they're making good
14 use of that time, but I think it's time to be thinking about an
15 endgame.

16 MR. HILLIARD: We agree, and I think GM agrees too,
17 Judge. There's three options, and that is settle, dismiss, or
18 go home. And my team spoke with Mr. Pixton, and with the
19 Court's permission, instead of -- since we got the endorsement
20 yesterday, I think we have a plan to visit and to propose to
21 the Court what we think should occur with the different
22 remaining categories. Recall that there are some that are
23 simply one-off GM cases. And as the Court has acknowledged,
24 you're not the GM judge for all liability cases across the
25 board. And there's some that will fall into that category, but

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1 there are others that might be able to be addressed through a
2 different type of wave system. But, again, it is our intent,
3 as long as the Court agrees, to huddle with GM, come up with a
4 proposal, and submit it to you to see if it fits your views on
5 how things should go.

6 THE COURT: All right. That's fine with me.

7 Mr. Godfrey.

8 MR. GODFREY: I think what Mr. Hilliard has said, your
9 Honor, covers our discussion yesterday. I would say, in broad
10 strokes, the following: (1) We are now at a stage where for
11 the month of November and December Ms. Bloom is going to pivot
12 and focus on the cases on Judge Glenn's docket that
13 ultimately -- some of them are overlapping cases here. But of
14 the 664, that's two-thirds of them. And we have a focused set,
15 and we'll discuss that further in chambers, but she's going to
16 pivot to that.

17 THE COURT: Just so I understand, this is the 471
18 category, although I guess only 372 of those are actually in
19 the bankruptcy court?

20 MR. GODFREY: Correct, correct. So that 471 is what
21 we're pivoting to for November and December, and we hope to
22 make significant progress there.

23 Secondly, we think that there are just no wave type of
24 processes that will be very effective at paring the remainder
25 down as well, and we'll discuss those with Mr. Hilliard.

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1 Third, many of the cases that are left are new.
2 They've not been here a while, so we don't have any information
3 about them. Part of the processes we'll be talking about
4 whether they're one-off or not, now's the time to get some
5 basic information. So given the success that's taken place in
6 this court, let's see if we can get rid as many of those as
7 possible.

8 Then the question is how many are left? I don't have
9 the answer to that, how many might fall out of that, but it
10 could be relatively few, if any. So we'll have a discussion
11 with the plaintiffs about a set of processes. There's lots of
12 procedural or substantive complications. But in terms of how
13 we look at it, we've gotten it down now to two remaining
14 buckets, the biggest bucket being the bankruptcy alone, the
15 bankruptcy MDL combined, the 471. Then we have the remaining
16 waves that take care of part of the remainder, and then we have
17 the new cases. I haven't stripped down, since we got the order
18 yesterday, how many might fall out of that, but it's a
19 relatively small number, and we have some ideas about that as
20 well.

21 THE COURT: When would you like to come back to me? I
22 think either a proposed order or -- I mean, the usual practice
23 of proposed order if you can agree upon things and letter
24 briefs if you disagree, or do you think that it makes more
25 sense to start with letter briefs and then postpone an order?

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1 What do you think?

2 MR. HILLIARD: Given the Court's schedule next week,
3 which we'll all be watching closely as well, will two weeks --

4 THE COURT: Depending on what Supreme Court does today
5 or the next two days, I may have a lot of time on my hands.

6 MR. HILLIARD: Subject to that, how does two weeks
7 sound?

8 THE COURT: Sure. That's fine with me.

9 It sounds like you're planning to do this, but I think
10 it makes sense to really dice and slice the remaining
11 inventory. My guess is that different procedures and timing
12 may make sense for different categories of cases, and really
13 getting into the weeds and the particulars of that would
14 probably make sense at this point.

15 MR. HILLIARD: A hundred percent agree. This is not
16 going to be an 8-mile-up look at the docket. This is going to
17 be a drill down on the specifics and particulars of each
18 individual discrete docket so that we'll both identify and
19 suggest ways forward for the different various remaining
20 dockets.

21 THE COURT: All right.

22 MR. GODFREY: I agree with that. Ms. Smith saw me
23 this morning, and my eyes glazed over on slicing and dicing all
24 the remaining cases. I can't say that I really understand it
25 without her here explaining it to me. So we have the data. I

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1 think we need to get together with the plaintiffs to figure out
2 whether there are more than the four categories, broadly
3 speaking, that we've identified, but I think we're in a
4 position to, particularly combined with the in-chambers
5 discussion which I know we'll have later, give the Court a
6 pretty good roadmap over the next couple weeks about how we
7 might come to an endgame resolution for the personal
8 injury/wrongful death side.

9 THE COURT: Great. Certainly, the categories that
10 we've been using are a helpful starting point, but just to be
11 clear, when I say "slicing and dicing," it may be that getting
12 even further down and dividing within those categories makes
13 sense.

14 One random question. I noticed that the number of
15 presale order claims has actually increased in the last month.
16 I would have thought that those, in particular, were not likely
17 to grow, just given the passage of time and statute of
18 limitations or repose, but anyone know what the story is there?

19 MS. BLOOM: I do.

20 THE COURT: OK.

21 MS. BLOOM: It is the same law firm that's filed most
22 of the post-sale claims this year in 2018 as well, and I do
23 understand from that law firm that they do not have many more
24 additional presale claims that they're planning to file, but
25 that they may have another handful. So I'm not aware of any

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1 other firm that will be filing more presale claims. My
2 understanding is we're finished with presale claims after this.

3 THE COURT: Do you have a sense of the pace on the
4 post-sale order claims, if those are going to continue coming
5 in at the same general pace? I know it's fluctuated a bit, so
6 maybe that's not even a --

7 MS. BLOOM: My sense, too, is that I am only aware of
8 this one firm at the moment that is still considering
9 additional post-sale claims.

10 THE COURT: Do you know what the scale of that is? I
11 mean, are we talking 10? 20? 50? If you don't know or you
12 don't want to say --

13 MS. BLOOM: I know they're examining quite a number of
14 claims. I don't know, ultimately, how many they'll file.

15 THE COURT: Very good. So two weeks from today -- and
16 I'll take your lead, frankly -- if you reach agreement on
17 enough that you think submitting a proposed order is sensible,
18 then go right ahead. If you think it makes more sense to
19 submit a joint letter or separate letters, I think I trust your
20 judgment at this point and would take my lead from you on that
21 front, but whatever you file should be filed two weeks from
22 today.

23 All right. Anything else on that score?

24 MR. GODFREY: I had one question, your Honor, about
25 what you just said. If we reached agreement in part but not as

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1 to other parts of the process going forward, did you want that
2 in a draft order, or did you want us to have just a letter
3 saying, we reached agreement on A, B, C; we disagree on E, F,
4 G? How does it make it easier for you, I guess is my question.

5 THE COURT: I guess unless there's something to be
6 gained from entering an order sooner rather than later, I would
7 think it would make sense to have an omnibus order. So
8 deferring until I've resolved whatever the disagreements are
9 probably would make sense.

10 MR. HILLIARD: As the Court has predicted, the bright
11 line is going to be the one-off cases, non-ignition switch that
12 we'll say they need to go home now; they may have a different
13 proposal. My guess is the rest will develop in a hybrid wave
14 system.

15 MS. CREAMER: Can I say something, your Honor?

16 THE COURT: Ms. Creamer, the answer is no.

17 MS. CREAMER: But the statute of limitations they were
18 talking about --

19 THE COURT: I understand, Ms. Creamer. Ms. Creamer,
20 two things: One is there is a process for you to advise me if
21 you wish to be heard.

22 MS. CREAMER: I asked to be heard a long time ago.

23 THE COURT: Ms. Creamer, there's a process if you wish
24 to be heard at a conference to let me know in advance, and you
25 did not actually avail yourself of that.

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1 Number two, there is a pending motion in your case
2 that's fully submitted that I will be deciding as soon as I
3 can, and in that regard, there's nothing to be done on your
4 case at the moment other than awaiting a decision from me.

5 I appreciate your presence here. Lead counsel is ably
6 handling things, and we'll leave it there for now.

7 MS. CREAMER: In chambers, can I go in chambers?

8 THE COURT: No, you may not.

9 MS. CREAMER: It took a lot for me to be here.

10 THE COURT: I am sorry that you did that.

11 MS. CREAMER: To be here --

12 THE COURT: Ms. Creamer. Ms. Creamer, enough. If you
13 can't be quiet now, I'm going to ask that you leave. Thank
14 you.

15 All right. Anything else on the personal
16 injury/wrongful death docket?

17 All right. Let's turn to the economic loss next
18 steps. I saw a reference to trial date. Anyone wish to be
19 heard on that?

20 MR. BERMAN: Yes, your Honor. So in the next week or
21 so, we will be done with all the briefing in the case. So all
22 the summary judgment will be fully submitted, all the *Daubert*
23 motions will be fully submitted, and the class certification
24 briefing will be done. So there's nothing left with respect to
25 the bellwether trials.

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1 THE COURT: Well, there's me giving you a decision.
2 With all due respect, that's the thing that matters the most to
3 me.

4 MR. BERMAN: Once you reach a decision, should you
5 deny summary judgment and grant the class, the next step is
6 trial date. So it seemed to us on the plaintiffs' side of the
7 table that maybe we should pencil in a trial date. And looking
8 at -- making some assumptions that you might rule January or
9 February and then we'd have to get a class notice out, and we
10 have to collect some data from a company called Polk to
11 identify the class members so that we can actually do the
12 mailings of the notice, that will take some time. So if you
13 build that all out, the earliest we could get to trial
14 realistically would be in the fall of 2019. So we thought it
15 would be safe to pencil in a trial date in October of 2019.

16 THE COURT: Any sense of how long a trial would be?
17 Obviously, I imagine it depends a little bit on what my rulings
18 are, but is there any way to predict that at this stage?

19 MR. BERMAN: Well, what we haven't talked about, I
20 think we have to have some further discussion about whether
21 we're going to try all the defects at issue in the bellwether
22 case or whether we're going to pick a couple, because you might
23 find that one jury -- might be too much for a jury to try to do
24 five defects. So that will in part determine the length of the
25 trial. So I can't make a prediction until we kind of slice and

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1 dice how the trial's going to proceed.

2 THE COURT: How and when do you propose that we do
3 that?

4 MR. BERMAN: As soon as your class certification and
5 summary judgment rulings are done.

6 THE COURT: All right. Mr. Godfrey.

7 MR. GODFREY: I think to say that trial date is
8 premature is an understatement. First, the Court has pending
9 summary judgment motion; has a pending class motion; has five
10 *Daubert* motions from the plaintiffs; has multiple, five *Daubert*
11 motions, six *Daubert* motions from New GM; and I believe, as I
12 said before at the last two status conferences with respect to
13 the *Daubert* motion but also probably with respect to the class
14 and summary judgment, that oral argument, if not an evidentiary
15 hearing on certain of the *Daubert* motions, may be of assistance
16 to the Court.

17 Ultimately, your Honor can determine that. But given
18 the sheer magnitude of the papers -- and we're not even
19 completed with the briefing till November 9 -- this is the most
20 intense briefing part of this case. And I know your Honor's
21 schedule generally. I also know you approach things very
22 rapidly, but I don't know if it's humanly possible to get
23 rulings out in January and February on the entire complexity of
24 this. I don't think it's possible before next late spring,
25 early summer, to be perfectly candid.

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1 Then we go to, no matter what you decide, what are we
2 going to try? We don't know what we're going to try. We don't
3 know how it's going to be formatted. They are seeking 23
4 classes for seven recalls for each state. Are we trying all 23
5 in the event the Court were to certify? I have a concern about
6 whether that's even possible. Are we trying all seven recalls?
7 If we're not, how does that work with overlapping juries in
8 light of the Supreme Court's admonition against dividing up
9 cases in such a fashion? There's a whole series of events that
10 the Court will have to face that all turn upon whether they can
11 get a class, which we don't think they can, whether they can
12 survive summary judgment, which we don't think they can, or
13 whether they can survive *Daubert* and various other motions.

14 I don't know how it is reasonable for the Court to
15 pick a date now, even one that's 11 months from now, since we
16 don't know what we're going to try, what the scope of the trial
17 is, who the experts are that are going to be allowed to
18 testify, to what opinions. And if you pick a trial date now, I
19 would bet serious money that we're going to be changing that
20 trial date by six months to seven months or eight months
21 afterwards, depending upon how the Court rules. I just don't
22 think it's practical.

23 MR. BERMAN: Very briefly, your Honor. I would -- I
24 think aggressive but fair are your words.

25 THE COURT: I think "reasonable" was.

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1 MR. BERMAN: Reasonable. You've set trial dates in
2 the PI cases despite the fact that *Dauberts* and various summary
3 judgment motions were going to be brought. And sometimes they
4 were won; sometimes they were lost. This case is no different.
5 A trial date basically a year from now, that's a pretty long
6 time to make the parties realize that there's going to be some
7 finality, to get this economic loss case toward finality
8 rather, I think it's a prudent thing to do. And if it turns
9 out that we're way off, then we'll revisit that trial date.

10 THE COURT: I understand that you sort of punted on
11 the question a moment ago, but if I were to schedule a trial
12 and block it off on my calendar right now, how much time do you
13 think that that would warrant? Recognizing that there's some
14 uncertainties involved, are we talking two weeks? A month?
15 Two months?

16 MR. BERMAN: I think if we're doing all the defects,
17 we're talking a month.

18 THE COURT: All right. Yes, Mr. Godfrey.

19 MR. GODFREY: So I've tried a couple classes,
20 certified class cases. Once a class certification takes place,
21 there's a whole new round of briefing, jury instructions, or
22 contour instructions, Rule 23 of appeals, etc., etc. It's not
23 practical. In terms of the length of trial date, it could be
24 as small as two weeks, as long as three months, depends on what
25 we're trying, depends on who the experts are, depends upon the

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1 number the recalls involved, depends whether a class is
2 certified, class certified for one recall not others. I can't
3 possibly answer that question in an intelligent fashion without
4 knowing what the legal contours of the case will be.

5 So I don't see how one can say -- this is, obviously,
6 within the Court's discretion, and a trial date 11 months from
7 now can always be changed, but it's not based on any realistic
8 assessment of where we are or where the case is. We don't have
9 enough facts to guide us to answer the Court's pertinent
10 questions or for me to say to the Court, other than even if you
11 were to certify a partial subclass of the 69 sought here for
12 the three bellwether states, I would then outline for you under
13 those circumstances the additional briefing that would have to
14 take place and the time that that would have to take place and
15 the amount of notice, and then we could figure out what a trial
16 date might look like. But that would then also necessarily
17 assume that I knew what the witnesses were going to be, which
18 depends upon the expert rulings.

19 So I think we should have a series of days in January
20 or February where the Court hears oral argument, if the Court
21 finds it helpful, evidentiary argument with respect to *Daubert*
22 so we see where we could go.

23 THE COURT: I think you're submitting letter briefs on
24 why you think that's appropriate when the motions are fully
25 submitted. Am I correct about that?

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1 MR. BERMAN: November 14.

2 THE COURT: All right. Yes, Ms. Cabraser.

3 MS. CABRASER: Your Honor, Mr. Godfrey has tried class
4 cases. Mr. Berman and I have tried class cases of many kinds.
5 This is a busy court, and we're competing for scarce judicial
6 resources. We think it's very, very important in order to
7 focus the case and bring it toward an end on the economic loss
8 side that we have trial time reserved. If a month is reserved
9 for us, we can figure out what we can try in that time frame.

10 These are bellwethers, and that means that we can
11 structure the trial in any number of ways to make it most
12 useful to the parties and most cost-effective and economical
13 for the court. We can try liability issues only. We can try
14 three states. We can try two of the three states. We can try
15 the defect that involves the largest number of vehicles. We
16 can resolve the defect that most encapsulates the common
17 conduct issues. This is about -- this isn't a product
18 liability trial, unlike the wrongful death/personal injury
19 trials. This is an economic loss/consumer class trial, and the
20 focus is going to be as much, if not more so, on the conduct
21 than on the characteristics of the product.

22 So we aren't at a point today where any of us can tell
23 you with credibility precisely what that trial will entail, but
24 the only way to get that process started is to give us a
25 deadline, to give us a trial date, and to give us time, a set

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1 time, to make that fit. Otherwise, this will go on and on and
2 on without end, and that is not in the best interest of the
3 class members. The cars are still on the road. The defects
4 are still out there. The recalls have not been completed.
5 This is one reason why there are new cases coming into this
6 MDL, new crash cases coming into this MDL. The economic loss
7 side has a role to play not only in compensating the consumers
8 but to bringing to an end the entire problem, and you know,
9 we'd like a deadline.

10 THE COURT: All right.

11 MR. GODFREY: One quick point, your Honor.

12 THE COURT: Quickly, since I think I get both sides.

13 MR. GODFREY: Which of the six trials that
14 Ms. Cabraser just outlined do I prepare for? Because she put
15 her finger on the problem. She outlined any number of
16 fundamentally different trials. One recall versus seven, the
17 recall for the Cobalt line, etc. We don't know the answer to
18 that. Until we get basic rulings, we won't know the answer.

19 THE COURT: I think there's a lot of truth to what
20 each side is saying here, which is to say, I think right now
21 I'm not a big fan of putting trials on my calendar that are not
22 real dates. When I set a trial date, it is usually a firm and
23 real date. And in that regard, I think Mr. Godfrey's point
24 that there's just a lot up in the air here is well-taken.

25 I also think he is more realistic, frankly, with

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1 respect to when I'm likely to be able to rule on the many
2 motions that are not even yet fully submitted. I have two
3 bellwether trials coming down the pike in January and March of
4 next year, and those are going to entail a decent amount of
5 motion practice, as you have just heard and we can assume. All
6 of which is to say I think it would be ambitious for me to say
7 that I am likely to decide those motions by January or
8 February. I think late spring or even early summer is more
9 realistic.

10 Having said that, I also am mindful of the fact that
11 we're four and a half years in; that this trial, if it happens,
12 would only be with respect to, at most, three of the states.
13 And in that regard, there's much work to be done even after any
14 trial. I do think that there's something focusing about having
15 a trial on the calendar, not only for you, but frankly for me.
16 I am extremely busy and in that regard have to choose, to
17 triage, and there's nothing like a trial date to focus my
18 attention as well.

19 I'm going to sleep on this and decide. My inclination
20 is to put something on the calendar, in part, frankly, because
21 there are a lot of people involved in this enterprise, and
22 blocking off a month from everybody's schedule so that you're
23 aware of that and mindful that it may change but aware of the
24 scheduling probably makes sense. My inclination is that
25 September, October of next year is overly ambitious, and it

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1 might be more realistic to say, perhaps, January of the
2 following year, or thereabouts. But let me think about it.
3 Let me look at my calendar, and I will let you all know.

4 All right. Anything else on the economic loss front?

5 All right. Settlement. We'll have an *in camera*
6 conference in a moment, but anything that we can discuss here
7 on the record?

8 MR. GODFREY: No, your Honor.

9 THE COURT: All right. Is there any reason to have a
10 court reporter present in the *in camera* portion?

11 MR. GODFREY: I don't think so, your Honor. It's up
12 to you, I think.

13 MR. HILLIARD: Not from our side, Judge.

14 THE COURT: All right. Very good. Couple other items
15 of business. One of my endorsements was whether I ought to get
16 a report on the common benefit fund/fees front.

17 Ms. Cabraser.

18 MS. CABRASER: Yes, your Honor. We can certainly do
19 that as we had done before. I have a recap that I ran that's
20 current as of the end of October -- I'm sorry, the end of
21 September this year. Happy to share that confidentially with
22 the Court *in camera*.

23 But my suggestion would be to get the Court a more
24 fulsome report and a more up-to-date report, as we did earlier,
25 by year's end. The information that I currently have is not

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1 completely audited. It will change as time and costs are
2 disallowed. Obviously, any time and costs that are actually
3 ultimately compensated or reimbursed is up to the Court, but
4 meanwhile, we would like to keep a handle on the time and costs
5 as they're reported in to keep those under control. And if you
6 give us a year's end deadline or any deadline you prefer, we'll
7 get you that report.

8 THE COURT: That makes sense to me. Do you want to
9 give me a proposed deadline?

10 MS. CABRASER: Why don't we get it in to you as a true
11 year-end report. It will be cumulative, and that would come in
12 on -- we could do it on the 31st of December, which is a
13 Monday.

14 THE COURT: Sure. I mean, I'm happy to give you a
15 week beyond that if you don't want to --

16 MS. CABRASER: If we run into an issue with respect to
17 auditing, I could ask the Court for an extension of the time.
18 I'd like to give myself this deadline, frankly, to get it done.
19 But if we needed a little extra time, I would ask you for that
20 just so that it's accurate.

21 THE COURT: Why don't I give you until January 4. I
22 think the court is closed on the 31st anyway.

23 MS. CABRASER: That's right.

24 THE COURT: Why don't you file something on the 4th,
25 and I assume that would be under seal. I guess -- well, maybe

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1 I shouldn't assume that. To the extent that you can file
2 something publicly, great. To the extent that you can't, I
3 would understand.

4 MS. CABRASER: Yes, your Honor. These are detailed
5 records done by task code and cost code, so we've always
6 considered that they come under the work product privilege and
7 would prefer to submit them under seal.

8 THE COURT: I think that makes sense. I just didn't
9 know if there was anything that you could publicly file, but
10 I'll look at it when you file it.

11 Yes, Mr. Godfrey.

12 MR. GODFREY: Thank you, your Honor.

13 There was one other issue I forgot to mention. The
14 parties continue to work well together, and we were able to
15 reach a stipulation with respect to expert Robin Jason that
16 mooted the *Daubert* motion having to be filed. That's the good
17 news.

18 I think I have a solution to something that occurred
19 to us after we reached that stipulation. For I think -- I
20 think there's 11 citation, but in three different briefs we had
21 cited to Jason's report or Jason's testimony. We don't see the
22 reason to redo those. I think we can just, since everything
23 that we wanted is in the stipulation, I think going forward you
24 can just look at the stipulation rather than her report or
25 testimony. I thought I should mention that. If your Honor

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1 wanted to approach it differently, then we're all ears, but I
2 think that's the simplest way. We don't have to rewrite
3 anything. When you read her, just go to the stipulation, and
4 that's what it is.

5 THE COURT: I think that probably makes sense, but you
6 have a better sense than I at the moment about how complicated
7 a task that would be for me or if it would make sense to file a
8 letter, for example, saying in lieu of looking at this, you
9 should look at this paragraph of the stipulation. I don't know
10 if that's --

11 MR. GODFREY: We had this discussion last night, and I
12 looked at the pages and think it's easy enough, given the
13 relatively scant citations, just to look at the stipulation.
14 But we're willing to proceed in any way your Honor wanted to.
15 I just thought we should at least flag the issue. On one level
16 we made your life easier, I think, by getting rid of the
17 motion; on the other hand, the motion stipulation was resolved
18 after the various briefs were filed. So I thought I'd raise
19 the issue for your Honor, and at least give some indication
20 whether you think we have the right approach or there's
21 something different we should do.

22 THE COURT: I'm inclined to leave it be with the
23 understanding that I'll look to the stipulation in lieu of any
24 report. Does that make sense? Anyone wish to be heard on
25 that?

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1 All right. Very good. We have any new business other
2 than -- otherwise, we should talk about the next status
3 conference.

4 We have the final pretrial conference in the McKnight
5 case scheduled for the morning of January 23. I should note,
6 on that score, I think I had flagged in the scheduling order
7 for the McKnight trial that I might want or need to shift the
8 trial date by a week. At the moment I'm not doing that. That
9 is to say, the existing date remains in place. If I change my
10 mind on that, I will let you know. I will make sure that
11 everybody is still free before I make any changes, but for now
12 the schedule that we have previously set remains in effect.

13 In that regard, the final pretrial conference is
14 January 23. In the past we have sort of treated that as a
15 hybrid final pretrial conference for the bellwether trial and
16 status conference for the MDL writ large. I'm happy to do the
17 same here, or if you think that we should meet separately,
18 either earlier or later, I'm certainly open to that as well.

19 So thoughts.

20 MR. GODFREY: I think it should be the same day, if
21 that's possible.

22 MS. CABRASER: Your Honor, that's fine. There may or
23 may not be much or any economic loss agenda at that time, so if
24 we could leave that open. But if we are going to have a status
25 conference for economic loss, I think it should be combined.

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1 THE COURT: All right. So we'll plan on that. It'll
2 be the same drill as the last time. That is to say, we'll
3 meet, and whenever the jurors are assembled for me to address
4 them, I will do that, and then we'll resume with the
5 conference. If there's nothing on the agenda for economic --
6 well, actually, I was going to say that you could seek leave
7 not to come if there's nothing that pertained to your share of
8 the docket, but I would say, presumptively, you should be here
9 because, at a minimum, it might be helpful to check in.

10 All right. Anything else?

11 MR. GODFREY: On that topic, not to prejudge it, I
12 think that, at a minimum, two topics should be addressed. One
13 is we will have a pretty fair idea as to whether our focus on
14 the 471 cases is working or not, and I think the Court should
15 be entitled to know that to help frame how we then reach
16 endgame resolution. That's two and a half months from now,
17 basically, or almost three months from now. And I would hope
18 that we've had good progress, but if not, then I think we'll
19 have to discuss how else we might approach it, and I think
20 that's a topic that's worth at least penciling in for serious
21 discussion.

22 Then, secondly, at that point the Court may have some
23 judgment or guidance as to whether you want oral argument on
24 various of the economic loss motions, whether you want a
25 *Daubert* hearing, whether it's just pure oral argument only,

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1 whether it's a combination of evidence and oral argument.
2 Because we're interested in making sure the Court has a fully
3 mature record in that regard, I think that also that should be
4 addressed at that time if it makes sense from the Court's
5 perspective.

6 THE COURT: I figured you were going to say that, and
7 I will see if it's an appropriate time.

8 We'll reconvene in, I think, the jury room back there
9 in a minute or two. My law clerk will bring you back. Other
10 than that, we are adjourned, and thank you very much.

11 MR. GODFREY: Thank you, your Honor.

12 (Adjourned)

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