

H767GM1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 In re GENERAL MOTORS LLC
4 IGNITION SWITCH LITIGATION

14 MD 2543 (JMF)

5
6 New York, N.Y.
7 July 6, 2017
8 9:30 a.m.

9 Before:

10 HON. JESSE M. FURMAN,

11 District Judge

12 APPEARANCES

13 HAGENS BERMAN SOBOL SHAPIRO LLP

14 Co-Lead Plaintiff Counsel

15 BY: STEVE W. BERMAN

16 -and-

17 LIEFF CABRASER HEIMANN & BERNSTEIN LLP

18 BY: ELIZABETH J. CABRASER

19 RACHEL GEMAN

20 -and-

21 HILLIARD MUNOZ GONZALEZ LLP

22 BY: ROBERT C. HILLIARD

23 KIRKLAND & ELLIS LLP

24 Attorneys for Defendant

25 BY: RICHARD C. GODFREY

ROBERT C. BROCK

ALLAN R. PIXTON

1 (Case called)

2 (In open court)

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

5 MR. BERMAN: Good morning, your Honor. Steve Berman.

6 MR. HILLIARD: Good morning, Judge. Bob Hilliard.

7 THE COURT: Good morning to all of you.

8 MR. GODFREY: Your Honor, Rick Godfrey, Mike Brock,
9 Allan Pixton and Wendy Bloom for the MDL status. And then for
10 the Ward final pretrial we also have Mr. Sieve and Ms. Smith
11 will be coming up for that.

12 THE COURT: Good morning and welcome.

13 MR. HILLIARD: And for the Ward pretrial, for the
14 plaintiffs may I introduce from Weitz & Luxenberg, Paul Novak,
15 Nick Wise and James Bilsborrow, who will be lead counsel for
16 the plaintiffs, and they will be presenting the pretrial issues
17 today after the status conference.

18 THE COURT: All right. Great. Am I right that this
19 is Mr. Pixton's first time at counsel table?

20 MR. GODFREY: Yes.

21 THE COURT: He has earned it.

22 MR. GODFREY: We thought so too, your Honor.

23 THE COURT: Congratulations or condolences, as the
24 case may be. All right. I think we're operational on Court
25 Call. Reminder as always to speak into the microphones.

1 So I think I had entered an order indicating that we
2 would handle the MDL status conference first and then proceed
3 to the final pretrial conference for Ward, after which I would
4 meet with counsel in camera to discuss settlement-related
5 issues.

6 I was thinking that it might make more sense to begin
7 with the MDL status conference and then have the in camera
8 meeting and after that proceed to the final pretrial
9 conference, but I don't know if anyone has any views on that,
10 or if there are lawyers on Court Call who are prepared and
11 wanted to his listen to the final pretrial conference, if you
12 have any thoughts.

13 MR. HILLIARD: That actually works better for the
14 three of us, Judge, due to a scheduling issue we have
15 elsewhere; and I haven't been advised that anyone on Court Call
16 is interested in the Ward pretrial.

17 THE COURT: All right.

18 MR. BROCK: Mike Brock for GM. Same for the defense,
19 your Honor, on folks who may potentially be joining by
20 conference.

21 THE COURT: Great, then let's do it that way.

22 We have a lot of ground to cover, so let's start with
23 the agenda items for the MDL writ large. Anything to discuss
24 with respect to the first four items in the tentative agenda
25 letter of June 30, that is, bankruptcy proceedings,

1 coordination-related actions, document production and
2 deposition update? Anything that we need to discuss there?
3 Mr. Godfrey?

4 MR. GODFREY: Thank you, your Honor. We have one
5 concern with respect to the pending late claims motion in the
6 bankruptcy court. We have learned that Magistrate Judge Cott
7 is involved in some settlement discussions with I think
8 designated counsel for plaintiffs. And if what he is
9 discussing is a settlement of GUC claims and GUC assets alone,
10 that's one thing, but if a settlement is being discussed which
11 will implicate the accordion feature, then that's something
12 else because that implicates new GM's rights.

13 So, we don't know the status of this -- we learned
14 about his role yesterday -- but we think that a further
15 discussion should be had on that. We're not quite sure how to
16 proceed, but if what is taking place is a discussion between
17 designated counsel and the GUC counsel -- which essentially is
18 playing with new GM's assets -- we very much have an interest
19 in that, to say the least.

20 So I think we need the court's guidance as to whether
21 we should contact Magistrate Judge Cott, how should we proceed
22 here. Because we have now learned about this, and we have
23 concerns about the implications with respect to the accordion
24 feature.

25 THE COURT: So, let me give you my understanding and

1 impression, and plaintiff's counsel can weigh in.

2 My impression is I do understand that plaintiffs'
3 counsel has contacted Magistrate Judge Cott to enlist his
4 services, and he called me to ensure that it was OK with me,
5 and I think Judge Glenn as well. It's an unusual situation
6 because it concerns litigation not only here but also the
7 bankruptcy court, but my view is that it is inextricably
8 intertwined with the MDL and therefore proper for him to
9 participate in.

10 My understanding -- and correct me if I'm wrong
11 counsel at the front table -- is that he has been asked to sort
12 of assist in -- assuming that there is a settlement, and
13 assuming the settlement yields or results in a pot of money --
14 that he has been asked to assist you in essentially trying to
15 figure out how much should be allocated to the economic loss
16 plaintiffs or claims in this case as opposed to personal
17 injury/wrongful death cases, which I guess would be part of
18 whatever settlement or issues needed to be submitted to Judge
19 Glenn.

20 Is that correct? And, if so, am I correct in assuming
21 that it really doesn't concern new GM at all?

22 MR. BERMAN: Well, you're correct that we are
23 discussing an allocation method with Judge Cott as the neutral
24 between the economic loss and the personal injury claimants.
25 That part is correct.

1 With respect to the settlement, I think it's premature
2 to discuss the terms of that settlement. If it does involve
3 the accordion feature, and we present that to Judge Glenn, that
4 would be the time when new GM can assert whatever rights it
5 believes it has. I don't believe it has any under the
6 agreement. It's a settlement between us and the PI plaintiffs
7 and the economic loss plaintiffs and the GUC trust. New GM is
8 not a party to the settlement, and we are proceeding pursuant
9 to the terms of the trust agreement.

10 THE COURT: All right. But as I understand it,
11 Mr. Godfrey was raising issues or concerns with respect to the
12 settlement discussions or whatever discussions are taking place
13 with Magistrate Judge Cott. I guess the question I have is the
14 GUC trust party to those discussions?

15 MR. BERMAN: Yes -- no, excuse me. It's just between
16 Mr. Hilliard's clients and Ms. Cabraser and my clients.

17 THE COURT: OK. So I guess my question is: In light
18 of that, is there any reason that new GM has any interest or
19 need to be involved in that?

20 MR. BERMAN: I don't believe so.

21 THE COURT: Mr. Godfrey?

22 MR. GODFREY: I'm not sure I understand the answer.
23 The second half of the question goes to the nub of the issue,
24 which is if the negotiations that are taking place have the GUC
25 trust and essentially doing a deal whereby it is making

1 decisions that determine allocations of assets that belong to
2 new GM via the accordion feature, then we very much have an
3 interest.

4 THE COURT: My understanding is that those issues may
5 well be implicated in a settlement, but you would have ample
6 opportunity to address them and speak to them in the
7 proceedings before Judge Glenn.

8 I think to the extent that -- and this isn't the
9 proper forum to seek relief of that sort; you should address
10 your concerns or issues with Judge Glenn -- to the extent you
11 are raising concerns about not being in the room, so to speak,
12 with Magistrate Judge Cott and his role here, I just don't
13 understand how new GM would have an issue with that. It seems
14 like an allocation issue among the plaintiffs. It may bear on
15 new GM's liability to those plaintiffs ultimately, but
16 presumably that would just be in the form of an offset, and
17 therefore I don't see why you need to be in the room for those
18 discussions.

19 MR. GODFREY: I think the court has raised a good
20 point that we will reflect upon. We have learned something
21 this morning that enhances our knowledge of what is taking
22 place, and we will think about whether we need to raise this
23 with Judge Glenn or whether we need to raise this with
24 Magistrate Judge Cott. But I think I've got the answer to my
25 question at least for now in terms of what the plaintiffs say

1 is the state of play.

2 I think the court understands our concern, but we will
3 think about this. As I say, I wanted to raise this because we
4 heard about this yesterday and we want to think about what we
5 just heard. And we will proceed after we give this some
6 further thought.

7 THE COURT: All right. I think what I will do is
8 after this conference or later today is just reach out to
9 Magistrate Judge Cott and mention that you had expressed this
10 concern and what I said in connection with it, and so he at
11 least is sensitive to it and alert to it. If you feel the need
12 to go beyond that and submit anything to either him or Judge
13 Glenn or me, you know how to find all of us. So I will assume
14 that that issue is addressed at this point.

15 Anything else that we need to discuss on those four
16 items?

17 MR. GODFREY: Just as a matter of information, on the
18 related case docket, we have the Ward trial coming up which the
19 court knows about, but we are currently set to start the Orange
20 County trial, the case brought by the Orange County district
21 attorney on August the 14th.

22 I do not know, but I suspect there may be some issues
23 that arise in that case that we might need to seek guidance
24 from this court on, but I don't know that; I may be wrong on
25 that. But I wanted the court to at least be aware that that

1 trial -- which will be a multi-week trial -- will be starting
2 on August 14th in Orange County.

3 THE COURT: All right. You should be aware in that
4 regard that I am out of the country from the night of August 15
5 until August 27. So in this world of technology, for better or
6 for worse, I'm not necessarily inaccessible, but it will
7 certainly not be easy for me to weigh in, let alone weigh in on
8 anything particularly substantial. So if there are issues, I
9 would strongly urge you to get them to me before I depart.

10 MR. GODFREY: And I will strongly urge the team that
11 will be trying it with me not to bother you on vacation, but I
12 just thought the court in fairness ought to know this trial is
13 set.

14 THE COURT: Fair enough. And in fairness you should
15 know I will be out of the country.

16 All right. Anything else? Very good.

17 So let's turn to item five, which is the status of the
18 economic loss motion practice and discovery. So, to the extent
19 that you were wondering whether or when I was going to rule on
20 the motion to dismiss, I have answered that uncertainty.

21 I'm sorry that it took me so long to give you a
22 ruling, but I have been really underwater for the last few
23 months not only with this litigation, which takes its toll, but
24 with the other several hundred cases that I have. And, believe
25 me, I would have gotten it out sooner if I could have, but you

1 also saw from the opinion itself it was not exactly a small
2 undertaking.

3 I also apologize for the fact that I dumped it on all
4 of you at 5:30 or thereabouts on a holiday weekend. I
5 recognize I might have ruined some people's weekends, and I
6 apologize for that. I did so in part to get it out of my hair
7 before the holiday weekend, but I also wanted to give you at
8 least a little bit more time to absorb it than you would have
9 had if I had filed it yesterday, which was the next day the
10 court was open. So, I apologize for that, and particularly to
11 any associates whose weekends I may have ruined.

12 With that, let's talk about where things stand. I
13 recognize that we still have the -- or I still have the
14 successor liability summary judgment motion pending. I have
15 not decided that for a couple of reasons. One, there is only
16 so much that I can take care of at once and, as I indicated,
17 between this case and the rest of my docket, I am I think at
18 capacity or maybe above it at the moment.

19 On top of that, that motion is not a modest
20 undertaking either, because for reasons I'm likely to explain,
21 I think it probably requires me to delve into the application
22 of the choice of law law in if not all of the states implicated
23 by the motion, certainly some number of them, which is another
24 way of saying that I am inclined at least at this point to
25 reject new GM's arguments concerning application of federal

1 choice of law rules or its alternative arguments that the
2 choice of law rules in one state should apply.

3 On top of that, my sense is that the train here is a
4 little bit in flux with the potential settlement between the
5 plaintiffs and the GUC trust, for example, which may have a
6 bearing on the issues addressed in the motion, and I guess one
7 question I have is whether that is true, whether it does have a
8 bearing on it, whether you have already addressed the potential
9 bearing of any such settlement in the supplemental briefing
10 that you submitted with respect to the motion for leave to file
11 late claims, or whether additional briefing would be
12 appropriate in the event that there actually is a settlement
13 and a pot of money that the settlement yielded.

14 Bottom line, for all of those reasons I haven't yet
15 given you a decision. I also don't have a sense -- and I would
16 love to get one here -- of how big an issue this is with
17 respect to moving matters forward either with respect to
18 litigation or settlement.

19 So, that is by way of I guess an invitation for you to
20 tell me your thoughts on where things are, where I can push or
21 pull to help move things along most effectively and so forth.

22 So, Mr. Berman, you look like you were getting up.

23 MR. BERMAN: I'm pausing because --

24 THE COURT: Just move the microphone a little closer,
25 please.

1 MR. BERMAN: We're still digesting the implications of
2 your order on motion to dismiss and what we do next. For
3 example, are we going to brief 35 more states? That decision
4 also intertwines with class certification, because if we're
5 going to move for class certification on the remaining states,
6 it seems to me there has to be some pleading motions perhaps
7 logically to precede that, because you're not going to want to
8 move for state certification in a state you've dismissed the
9 claims in.

10 So, I know we addressed the issue of what states
11 should be next in line for class certification in our letter,
12 but Ms. Cabraser and I were thinking that that should be part
13 of the meet and confer. In other words, what we should be
14 doing in the next three weeks is looking at the whole economic
15 loss case, looking at the states that have not been addressed
16 and coming up with a plan, a comprehensive plan for everything.

17 THE COURT: All right. That certainly seems fair to
18 me, and per some numbered order a while ago I had told you to
19 submit within three weeks of my decision on the motion to
20 dismiss your thoughts. So, as I made clear in my order on
21 Friday, I do not expect you to be prepared to address that in
22 any detail, and I do think it requires some careful
23 consideration and conferring with one another.

24 Let me tell you all -- I should have probably added
25 this in my preliminary remarks -- you can have a seat for a

1 moment -- just sort of where I stand in the big picture,
2 because it may have some bearing on those discussions.

3 To be completely blunt, I am not at all eager to
4 invite motion to dismiss practice with respect to another 35
5 states. To be completely candid, you know, these two motions
6 to dismiss have taken their toll on me and on my chambers. I
7 think they have collectively required something in the nature
8 of 260 pages of opinions.

9 As you've seen, I think it really does require careful
10 evaluation of the law in each of these states, and it's just a
11 huge undertaking, and I'm not sure that that is the most
12 efficient way forward either for my chambers or, more to the
13 point, for the MDL writ large. That isn't to say that it won't
14 ultimately be necessary. It may well be. And obviously I'm
15 prepared to do whatever I need to do to get this case across
16 the finish line, whatever that finish line ultimately looks
17 like.

18 But given the amount of resources that the parties
19 have to devote to those motions, and the amount of resources
20 that my chambers has to devote to them, I'm inclined to think
21 that some other way forward that would focus on the 16
22 jurisdictions that I have already addressed in those rulings
23 would probably make more sense. I don't know if that means
24 class certification practice that is devoted to those 16 or
25 some subset of those 16, followed perhaps by a bellwether trial

1 if there is no settlement. I think Mr. Berman had in a prior
2 conference floated that idea. It just seems like that may be a
3 more efficient way to go forward than essentially motion
4 practice on the other 35 states.

5 Alternatively -- and notwithstanding the fact that I
6 have found that there are subtle and nuanced differences
7 between the states on these issues -- maybe you guys can
8 essentially negotiate and agree on how the remaining 35 states
9 fall in the buckets that I have identified in these rulings and
10 sort of, you know, place them in each of the buckets as
11 appropriate.

12 Relatedly I'm not at all eager on class
13 certification -- well, on class certification I'm not
14 particularly eager to entertain serial motions there either,
15 and in that regard it would favor new GM's view on the matter,
16 but my concern is that proceeding in one comprehensive motion
17 with respect to all 51 jurisdictions, if it would require
18 motion practice on the pleadings with respect to the other 35,
19 would not necessarily be efficient for the reason I have
20 already discussed.

21 So, all that is to say that I think my inclination
22 would be to figure out some sensible way forward based on the
23 rulings that you've already gotten, but recognizing that at the
24 end of the day -- whether that's next year, the year after, or
25 who knows when -- that it may not be up to me, and I may need

1 to resolve things in those remaining states.

2 MR. BERMAN: Can I just add one thing, your Honor? If
3 you took the transcript from the Toyota case and compared it to
4 what you just said, it's the same reaction the judge had. He
5 came out and said my chambers can't handle it; I can't handle,
6 it; we're not going to do another 35 states, and then we
7 proceeded to do a bellwether approach for the rest of the case.

8 Now, we are going to obviously discuss it with new GM,
9 but other judges had the same reaction.

10 THE COURT: All right. Well, I'm not ruling on these
11 issues now. I recognize that might be a thumb -- and a heavy
12 one at that -- on the scales, but I did think it would make
13 sense to share it with you. And at the end of the day I can
14 handle additional motion practice. It's just my guess would
15 mean this litigation is going to last, you know, many more
16 years, because each of these motions takes a substantial amount
17 of time in its own right, and I have addressed only 16 of the
18 51 jurisdictions thus far.

19 So, Mr. Godfrey, anything you want to say at this
20 time? Otherwise, you know, it seems like you guys have a lot
21 to chew on and discuss with one another, and we should take
22 this up at a next conference, whenever that may be.

23 MR. GODFREY: Well, we do have a lot to discuss with
24 the plaintiffs. We have given a great deal of thought about
25 this prior to the court's ruling. So, in the interest of full

1 disclosure or a marker, let me give you some preliminary
2 thoughts for your consideration and the plaintiffs as well.

3 First, we ought to note as a result of the motion
4 practice, and the discovery to date, that 122 of the 246 named
5 plaintiffs in the fact are now gone, so 49.59 percent of the
6 named plaintiffs are gone.

7 So, I know the court sometimes when you issue these
8 rulings kind of wonders what it actually means in terms of the
9 progress of the litigation, but what it means is we have
10 tracked it out, and nearly half the plaintiffs' claims have
11 been dismissed or have been dropped, and that's progress of a
12 material sort.

13 Second, I think that the court and Mr. Berman both
14 have a fair point with which we are going to endeavor to try to
15 work through, that there are buckets of issues that can be
16 identified that if the parties can agree could both abbreviate
17 or perhaps eliminate briefing on motions to dismiss. Examples
18 would be manifest defect rule. In footnote 18 of the court's
19 opinion you have indicated a majority of the states have it;
20 that means a strong minority don't. We ought to be able to
21 agree, I would think, between the plaintiffs and us as to which
22 states are like Texas and New York and which states are, for
23 example, like one of the other states where the court has
24 disagreed with new GM on. Maybe we can't agree on all of them,
25 but I would hope that if we can't agree on all of them, we

1 could narrow the field of disagreement so that we're not going
2 to brief the same issue for another 36 jurisdictions, which I
3 think is the court's concern, and I think that we would try to
4 avoid.

5 Similarly, on incidental consequential damages, the
6 court rejected our categorical motion on that, but said some
7 states will allow, some states will not. We have never briefed
8 that, but again I think the parties would start by saying is it
9 possible for us to reach an agreement that the following six
10 states allow it -- if the court's ruling on categorical
11 rejection is the ruling -- or these states don't allow it.

12 Maybe we can't get anywhere, but there are buckets of
13 these things where I think we can identify what the states and
14 the differences in the states are, and maybe that way have an
15 expedited or accelerated briefing so you're not briefing
16 another 36 jurisdictions; you're briefing maybe four or five,
17 which I think would make it much easier for the court and much
18 easier for us.

19 There is a third issue which is the benefit of the
20 bargain theory. That is the heart of this case at this point
21 in time. We have never explored with the court what the
22 elements of the benefit of the bargain theory are. And we are
23 discussing it internally and then we will discuss with
24 plaintiffs what we think is the best way to get to that.

25 We happen to think that based on the discovery to date

1 and the pleadings to date that the benefit of the bargain
2 theory here yields nothing because of certain admissions that
3 have been made by the plaintiffs and the law in the various
4 jurisdictions. I am sure the plaintiffs disagree. That is a
5 finite, concrete legal issue that I do not think will depend
6 upon disputed facts. Plaintiffs may disagree with that. But
7 that's something that we are taking a hard look on as a way of
8 both identifying an overarching issue but also accelerating an
9 end game resolution possibility.

10 Because if we're right on that, then the number of
11 plaintiffs that remain in the case are very few; there could
12 never be a class. If we're wrong on that, that will inform the
13 contours of the litigation. But it is certainly something the
14 court has not had the benefit of any briefing on.

15 So the court has said I'm going to allow in various
16 states the benefit of the bargain theory. The court has never
17 explored -- because we have not asked the court, nor have the
18 plaintiffs asked the court -- to explore what the elements of
19 that claim are in the various states and what the implications
20 are either on the merits of the claim or for class
21 certification. And it seems to me that prior to class
22 certification, that is a theory that needs to be spelled out.

23 The final comment goes to the class. I think that
24 successor liability, for example, is something that we need to
25 know before we get to class certification. I think I heard

1 Mr. Berman say that. If I did, then he and I are in agreement
2 on that. If he didn't say it, then I misunderstood. But I
3 think that's something that is necessary to understand what the
4 contours of any putative class motion would be, and it's also
5 necessary to understand the putative end game resolution
6 possibilities. Are those claims of those people in? Are those
7 claims of those people out? And of course if your Honor is
8 going to do as you indicated preliminary a state-by-state
9 analysis, ultimately does it depend upon the individual states?

10 And the only other comment I would make is I think the
11 court's idea on a chart or summary -- I say an order of the
12 court, but a prepared chart or summary -- is a very good idea
13 that will help I think frame the next steps.

14 I'm not sure all the elements that need to be in that
15 chart. We have tried to start to sketch that out. Obviously
16 that's a joint enterprise. But I think it will not only be
17 helpful for the court, but I think it will be helpful for the
18 parties in terms of what is the next best appropriate step.

19 Obviously, the court understands our position on the
20 class, it should not be seriatim; we should do this one time
21 and one time only. We have disagreement with the plaintiffs on
22 that. But I think the starting point is successor liability
23 and then these finite issues, to see if there is a path forward
24 that does not overburden the court with, you know, motions of
25 the type you have now written 200 some pages on, which are very

1 detailed motions and rulings and that require a deep
2 investigation of the law by the court.

3 I'm hoping that we can reach agreement on some of the
4 issues I identified and some others. Maybe we can't, but I
5 think that's where we should put our efforts.

6 THE COURT: Neither of you addressed the question that
7 I posed about any potential settlement on the claims motion
8 with the GUC trust and what bearing that would have on the
9 successor liability motion and more specifically whether it
10 would warrant any additional briefing or your prior briefing in
11 connection with my order asking you to submit supplemental
12 briefs would adequately address that issue.

13 MR. BERMAN: I have to think about that issue. I
14 don't want to answer it on the fly, your Honor.

15 THE COURT: OK.

16 MR. BERMAN: If that's OK.

17 THE COURT: Totally OK.

18 MR. BERMAN: Maybe we could get you a letter on that
19 if you want.

20 THE COURT: All right. Why don't you, Mr. Godfrey, if
21 you want, maybe it does make sense for both of you to talk
22 about that issue as well and let me know on that sooner rather
23 than later, just so I know essentially where things stand on
24 this.

25 I mean I'm hearing Mr. Godfrey say loud and clear --

1 and, Mr. Berman you didn't opine, but I'm guessing you agree --
2 that a decision on that motion is important both for class
3 certification and for any potential resolution here. Is that
4 accurate?

5 MR. BERMAN: I agree with Mr. Godfrey.

6 THE COURT: So mindful of that, the sooner you let me
7 know whether supplemental briefing is appropriate and make a
8 proposal on that score -- or your view that it's not and I have
9 what I should need to resolve those issues -- that would be
10 helpful to me. I'm not going to -- well, why don't you aim to
11 get that within a week or so, and we will go from there.

12 I think the last report I got regarding the settlement
13 discussions suggested that it would be another couple weeks
14 before there was any -- I don't know where those things stand.
15 Maybe it pays to wait and see if there actually is a
16 settlement.

17 MR. BERMAN: I think if there is a settlement, I would
18 hope that you would know that and Judge Glenn would know that
19 within two weeks.

20 THE COURT: OK.

21 MR. BERMAN: That's our goal.

22 THE COURT: And is there any reason to wait until we
23 know that to opine on these issues? I wouldn't think.

24 MR. BERMAN: I don't think so. That's the question
25 you're asking me, does the settlement somehow moot the

1 successor liability issue, and I just want to think about that.
2 You kind of caught me off guard.

3 THE COURT: No, no, I understand that. My question
4 is: Is there any reason to wait until we know whether there is
5 a settlement for you to submit a letter to me telling me
6 additional briefing or what bearing --

7 MR. BERMAN: I think that would be a good idea to
8 wait.

9 THE COURT: Mr. Godfrey is shaking his head no.

10 MR. GODFREY: I don't see the need to wait. For one
11 thing, we don't really know the timing of it. For another
12 thing, there is an approval process for any settlement. And my
13 reaction to this is that we should be able to tell the court
14 now in quick order, certainly within a week, whether we think
15 there is more briefing.

16 If a settlement changes things -- which I suspect it
17 doesn't -- we can have a so-called brief at that time. But I
18 don't think we should wait on settlement that may or may not
19 come, with terms we do or do not know and we can speculate
20 about, but all it does is build delay into the system, which I
21 don't think is consistent with the court's goal of a reasonable
22 yet aggressive schedule.

23 THE COURT: I think that's right. I think you can
24 essentially submit a joint letter to me saying assuming there
25 is a settlement, here are our thoughts about how to deal with

1 it, whether supplemental briefing is appropriate. If it is, I
2 wouldn't want to waste the next couple of weeks -- squander the
3 last couple weeks and have you start to think about that and we
4 can proceed accordingly.

5 So give me a joint letter within a week on that issue.
6 And, just to be clear, it's really whether I have what I need,
7 whether additional briefing would be appropriate and, if so,
8 make a proposal on that score.

9 There is also I guess under this umbrella of where
10 things stand on the economic loss front the question of I guess
11 the current schedule set forth in order number 114 including
12 discovery and motion practice and what have you. I would think
13 that that's within the scope of whatever discussions you are
14 going to have and, therefore, we shouldn't get into the
15 particulars now. Is that a fair thing to say?

16 That is to say, I think we should defer until you've
17 had an adequate amount of time to absorb the rulings and
18 discuss these issues with one another to really get into the
19 weeds of whether the schedule that we have set requires
20 modifications. But if you think we should get into some of
21 that now, let me know.

22 MR. BERMAN: From plaintiffs' perspective, we could
23 wait on the schedule until we either agree with new GM or we
24 come back to the court with competing views on where we go from
25 here.

1 THE COURT: All right, great.

2 So under the ruling of last week and the prior order,
3 you had three weeks I think to report back to me, so I will
4 leave that deadline in effect and trust that I will hear from
5 you in that time. Yes?

6 MR. BERMAN: Yes, your Honor. Sorry to raise another
7 issue, but Mr. Godfrey was talking about the buckets as he sees
8 them. And I know he put a lot of work into the motion to
9 dismiss, and we all respect that on our side of the V, but
10 there is one area that we're going to move to reconsider on,
11 and I just wanted to let you know that that would be coming so
12 you weren't surprised by it.

13 It has to do with your categorical dismissal of
14 plaintiffs who sold their cars prior to the recall. And you
15 seemed to say in your order that those people could not have
16 suffered any diminished value as a result of disclosure of the
17 defect, which I understand how one could reach that conclusion.

18 But, as Mr. Godfrey pointed out, the plaintiff's
19 theory of the case is at the time of sale you were defrauded
20 and you lost the benefit of the bargain. And that applies to
21 anyone regardless of whether they held their car through the
22 defect or sold prior to the recall. At the time of the sale
23 they were defrauded and they overpaid.

24 And at the trial we're going to put on an economist
25 that will do what is called a conjoin analysis that will

1 measure that delta between a car that supposedly was safe and a
2 car that wasn't. So I'm just letting you know that that's
3 coming.

4 THE COURT: OK. Well, I appreciate the heads-up, and
5 I will look for that. Obviously you should address not only
6 why you think I got it wrong but why there is an adequate basis
7 to reconsider. I may well have gotten it wrong, but you have
8 other recourse, namely appellate review for that.

9 So, you will have to persuade me not only that I got
10 it wrong but that I overlooked something that would warrant
11 reconsideration under the standards that apply to such motions.

12 Now, Mr. Godfrey, you stood up and then sat down.

13 MR. GODFREY: I had second thoughts and decided to sit
14 down, your Honor.

15 THE COURT: All right, very good.

16 So, we will essentially table the issues that are
17 raised by my ruling and discussed in item number five in your
18 letter until I think I hear from you and presumably the next
19 conference which we will schedule in short order.

20 The number six is briefing in connection with Ward,
21 which I defer until the final pretrial conference. There is no
22 reason to discuss that in this setting. Item seven is the
23 status of bellwether trial number nine. Anything to discuss on
24 that? No?

25 MR. GODFREY: I think our position is laid out in the

1 papers, your Honor.

2 THE COURT: Unless I'm confused --

3 MR. GODFREY: If you're referring to -- oh, you're
4 referring to Dodson.

5 THE COURT: Yes. I don't think there are any
6 positions to be had there. The scheduled is set by order 123.

7 I do have one question with respect to the scheduling
8 of the trial, and I don't know if you will be in a position to
9 give me your thoughts at this time.

10 unfortunately -- and maybe ironically -- the annual
11 MDL conference for judges was scheduled to begin on the same
12 day as the Dodson trial on October 30, and it runs until
13 November 2.

14 Now, in an ideal world I would really like to attend
15 it. I think it's actually a helpful conference and very
16 specifically helpful in connection with this litigation, but it
17 would mean postponing the beginning of trial until Thursday, I
18 guess, November 3.

19 My concern is that I don't really want to risk the
20 possibility of the trial continuing through Thanksgiving. I
21 think that would make it a little bit more challenging to seat
22 a jury and not ideal to take a five day break over the
23 Thanksgiving holiday. It may be necessary, but it may be
24 necessary even if we start on October 30.

25 I guess I just wanted to raise it or float it as a

1 question and see if you had any thoughts about how inadvisable
2 it would be to postpone the start until that Thursday.

3 MR. HILLIARD: Judge, I'm going to be trying that case
4 for the plaintiffs, and I don't think, given my experience with
5 the court in the first trial, that there is a true realistic
6 danger of going through Thanksgiving, especially given the
7 number of bellwethers we have tried and the cooperation that we
8 have been able to both give and get from GM. I encourage you
9 to go.

10 THE COURT: All right. Mr. Brock, you were going to
11 stand. Just grab the microphone, please.

12 MR. BROCK: Yes, your Honor. Mike Brock for GM. May
13 I ask one question? Would the idea be that we would pick a
14 jury and maybe take the longer day on Thursday and get the
15 opening statements in, and we would have the trial underway on
16 the -- would that be the 2nd? December the 2nd? Or the 3rd,
17 that Thursday? So the trial would be underway that week in
18 terms of picking a jury, making opening statements, maybe a day
19 of evidence, and then we would come back and have a full week
20 and then another full week.

21 THE COURT: Yes, so basically it would simply shift
22 things by three days. So, under the current schedule I think
23 jurors would be filling out their questionnaire the prior week,
24 prior Wednesday if I'm not mistaken, and then we would
25 reconvene the morning of November 2nd -- as we are going to on

1 Monday for the Ward trial -- finish the selection of the jury,
2 and assuming that we seat the jury in time, proceed to openings
3 that day and potentially even a first witness if things go
4 quickly enough. And certainly I would anticipate by Friday the
5 3rd we would be into the evidentiary portion of the case. So
6 it would really be shifting it by three days.

7 MR. BROCK: I agree with Mr. Hilliard, I think we will
8 be finished by Thanksgiving if we pursue that schedule. I
9 think we're to a place now in these trials -- I mean something
10 different could happen somewhere along the way -- but they feel
11 like trials that would be completed in two weeks or two weeks
12 plus a day or two, so I think that sounds fine.

13 THE COURT: All right. I'm inclined to agree, and I
14 will be addressing this during the final pretrial conference.
15 One issue I have is I actually think there is a danger of
16 overtrying these cases and you are asking for too much time. I
17 will be addressing that in due course as to Ward. But for
18 related reasons, I don't see any reason why we couldn't get the
19 trial in and done before Thanksgiving, and if it spilled into
20 the following week, so be it.

21 But in light of that, I think I will go to the
22 conference and adjust the start date to November 2. Otherwise,
23 the trial schedule will remain as it is.

24 All right. That brings us to the category C
25 replacement issue. Let me start by saying the following. So

1 I'm not really interested in playing the blame game, that is to
2 say who settled what or who is doing what. Really the primary
3 question -- maybe the only question in my mind -- is what would
4 be the most helpful in resolving the remaining cases in the MDL
5 or in this particular instance the cases that fall in category
6 C of the second phase of the bellwether process.

7 At the same time -- and consistent with what I said
8 earlier about the burdens of this litigation writ large -- I'm
9 not eager to try cases solely for the sake of trying cases.
10 You know, these aren't particularly easy trials, as fun as they
11 are, and at some point my function here is to try and
12 facilitate resolution of these cases, and at some point I think
13 it would make more sense, as I've said before, to send them
14 back from whence they came to be tried for any number of
15 reasons, that that would ultimately be more efficient if I
16 can't assist you in getting across the finish line here as to
17 all cases.

18 I guess that leaves me essentially trying to figure
19 out what the right thing is here, whether it's necessary to
20 have another case in the mix. I'm wondering for new GM why new
21 GM took a different view as to the category A cases back in
22 January -- that's at docket number 3644 -- at which point new
23 GM took the view that it wasn't necessary to add any category A
24 cases to the mix. Relatedly, I'm wondering why, to the extent
25 that part of the purpose here is to sort of accumulate data on

1 these cases and to assist in purposes of settlement, why the
2 discovery that has been done in connection with the six cases
3 already selected for category C wouldn't essentially give you
4 what you need on that front.

5 On the flip side, my question for Mr. Hilliard or the
6 plaintiffs is obviously if cases are not settled they will
7 ultimately need to be tried, whether that is here or in the
8 transferor districts, and given that, and given new GM's view
9 that what it has at the moment doesn't suffice for its purposes
10 in terms of resolving all of the cases that are pending before
11 me, why shouldn't I defer to new GM's view that an additional
12 trial would be helpful in connection with those settlement
13 discussions?

14 On top of all that, I guess I really want to delve
15 into if I did allow new GM to pick a replacement case, whether
16 the January trial date is a viable one. I certainly think my
17 preference would be to keep it if we go that route, but, if
18 not, I would think that it wouldn't have to be long thereafter,
19 and it certainly wouldn't have to be well beyond February 2018,
20 to use, I think terminology from a prior order of mine.

21 So, that's my initial thinking. Obviously, as you can
22 see, I'm sort of unresolved on how to come out here, and I
23 wanted to discuss it.

24 Mr. Hilliard, why don't I start with you.

25 MR. HILLIARD: Well, Judge, as you know, we're here

1 until last call, so if the court wants to try it, we're going
2 to come try it, and we will be happy to do it. But what I
3 explained to GM is it's run its course. If it goes back to its
4 home venue, then it serves a different purpose than it serves
5 as a bellwether case.

6 They through their own abilities have shown that they
7 can settle big buckets of cases around the country. They have
8 told the court and me that part of the purpose is to show
9 they're willing to try cases within liability; and they have a
10 track record for that. So, I think that message has been sent,
11 and it has assisted them in settling state court cases in
12 pretty high levels, which I applaud them for doing.

13 And we do cooperate and try to agree on issues like
14 this. Had this happened early on, had it been the first case,
15 we would not even be speaking with you about it.

16 My hesitation is I don't think it's necessary in order
17 to inform the docket, in order to make decisions or to
18 encourage unknown plaintiffs lawyers somewhere else to perhaps
19 negotiate.

20 And in the same breath I'm more than happy to come try
21 whatever case is picked in front of this court, if the court
22 feels that one more category C bellwether case is necessary. I
23 would suggest it would be a judicial waste of time and
24 resources to do another case, but we would commit to it, just
25 as I know you would, and GM would, and we would get through it,

1 but I would really hope that you would think about do we really
2 need it and is it really going to move the ball any further
3 than the ball already sits.

4 THE COURT: And just taking a step back or a step up
5 to the 30,000 foot level, where do you see the personal
6 injury/wrongful death cases headed after phase 2 is done, which
7 is supposed to be early next year?

8 MR. HILLIARD: You've asked us to start trying to
9 figure out where this docket is going to go. And if the
10 entirety of the remaining MDL cases do not get resolved, then
11 there has to be a mechanism where you determine where to send
12 them and where they belong.

13 Remember, many of these cases were directly filed, and
14 we had indicated a couple status conferences ago that we were
15 happy to keep trying them here, but that was a one to one vote
16 on that issue.

17 So, we have started to think about and we will get
18 with GM on the remaining cases inside your MDL, what federal
19 court should they be remanded to given where the accident
20 happened and where the plaintiffs live. And I would believe
21 that we could suggest to you, if the cases are not resolved,
22 here is where they need to be remanded to, and then the court
23 will make its decision on where they go and when they go there,
24 which I think is what ultimately you're leading to is if the
25 MDL has led a full life and is ready to be done, then the

1 remaining cases still have to go be tried just for the
2 liability and damages of those cases, not to inform the
3 entirety of the docket. And, you know, it's a pretty
4 straightforward process even on the direct filed cases that I'm
5 sure GM and I can agree as to where they go.

6 THE COURT: All right. I certainly agree on that
7 score. And I guess the question I had -- and maybe you
8 implicitly answered it -- is do you think that there is a third
9 phase of bellwethers that would be warranted here?

10 I'm looking at new GM's letter of February 24th, which
11 provided an inventory of cases remaining in the MDL and
12 settlement and the like, and among other things at page 3 of
13 that letter there are five categories of cases that new GM
14 describes as not falling within either phase 1 or phase 2. I
15 don't know if there is anything I can do to facilitate
16 resolution of those cases beyond what's already been done or
17 what you're thinking on that score.

18 MR. HILLIARD: Those would almost in the category of
19 one-off type cases. If GM has determined that they have no
20 value or we're going to try each one specific to the facts of
21 the accident, I don't believe that a bellwether verdict would
22 change their mind.

23 I'm happy to sit down with them and try to come to an
24 agreement as to if there are any, which ones on that list could
25 use the court's assistance under the MDL umbrella.

1 But my first reaction is, you know, the majority of
2 the ignition switch core and kind of the penumbra of the core
3 cases have now been bellwethered, and we understand them and
4 it's worked. The cases have started to settle on a pretty
5 significant level around the country, and the ones that did not
6 get settled will likely not get settled. And there is no
7 reason to expect that you have any interest in continuing to
8 try those cases when they're one-off facts that might not have
9 the liability evidence necessary to convince GM that as a
10 docket those types of cases should settle.

11 THE COURT: All right. And just looking back at that
12 letter, I'm seeing some of these categories I think clearly
13 would not be appropriate for additional bellwethers. One is
14 presale order claims. I think we have discussed those before.
15 While they're obviously not within the scope of either of the
16 bellwether phases, I don't see them as categorically different
17 from the cases that have been tried. It's just a question of
18 what date the accident or incident occurred.

19 MR. HILLIARD: May I speak to that real quick?
20 Because that is one issue you asked us to look at, and that is
21 the docket that is now because of the Second Circuit's opinion
22 going to need to be either settled or sent back sooner rather
23 than later because they've been bellwethered -- I mean both
24 sides agree there is nothing else this court can do unless
25 there is a facilitation of settlement -- which you said, if

1 there is, I'll keep them so that we can simply in due course
2 get it done. But if there is not, I would suggest the court
3 consider setting a date after which you want to know when do
4 you want these sent back and where do I send them, and we give
5 you that information. Because, you know, those clients are
6 real people who have suffered injury and death, and they're
7 ready for some finality themselves.

8 THE COURT: Understood. And certainly that is an
9 issue I've raised before and was planning to raise in
10 connection with the next item on our agenda, namely settlement.
11 But all I was simply saying is that of the five categories I
12 referenced before, several of them are definitely not amenable
13 to further bellwether phases. There is one just for plaintiffs
14 whose claims where they have claims where the accident date is
15 unknown, but that obviously is not something that needs to be
16 bellwethered, so to speak.

17 All right. Mr. Godfrey, do you have anything you want
18 to say on this?

19 MR. GODFREY: I'll try to address what I think were
20 the court's two questions. First, why the differentiation
21 between new GM's position with the category A versus category
22 C? And the answer is simple: At the time that we made that
23 decision -- which we debated internally fairly hotly -- we
24 concluded we had enough discovery and that we knew enough about
25 the category A cases from the plaintiffs' side that a

1 substitute case was not necessary to assist us in reaching our
2 assessments. That's not the case -- or situation, excuse me --
3 with category C. Category C is the largest of the remaining
4 categories, and that's why we draw the distinction. So I hope
5 that answers the court's first question.

6 With respect to category C, because it is the largest
7 remaining category, we think that the balance of the selections
8 is important to test the parameters of what reasonable
9 settlements can and cannot be.

10 Mr. Hilliard is correct, we have been able to reach
11 many settlements in a cooperative basis. They're not easy to
12 reach. The negotiations are very precise and contentious, as
13 you would expect but always professional, but we don't think
14 that category C is yet at the mature stage that category A was
15 at the time we made the decision.

16 In terms of the issue of remand --

17 THE COURT: Hold on. On that issue, can you -- maybe
18 it's not possible -- but can you flesh that out a little more?
19 Other than the sheer number of cases in the categories -- and
20 if your letter of February 24 is an indication, at least at
21 that time there was 331 plaintiffs remaining in category C and
22 114 in category A. I don't know if you know what the current
23 numbers on that are. But other than the sheer number, why is
24 what you have on category C not essentially sufficient or
25 mature enough, if you will, to give you what you need?

1 MR. GODFREY: Category A was of course was the service
2 parts recall, which there is much more discovery on than
3 category C.

4 The current number, I have 226, but I'm not sure
5 that -- post-bankruptcy 226 is category C, give or take a few.
6 OK? As the court knows, these things vary by day a little bit.
7 But the emergence curve, if you will, in terms of the number of
8 new cases, as the court also knows, has declined over time, as
9 one would expect. So roughly 226, something in that area.

10 That's the best answer I can give to the court from
11 discussions with the team. Obviously the plaintiffs may have a
12 different view, and we respect that, but we just disagree from
13 a balance standpoint in terms of selecting here that will give
14 us the most information.

15 In terms of the remand issue, which I was starting to
16 get to, there is two aspects to that which lead us to conclude
17 it's premature. One is this court's direction, orders and
18 guidance has been a material benefit I think to both parties in
19 terms of understanding how to proceed, when to proceed and how
20 to resolve claims. I think Mr. Hilliard would agree with that.
21 I think he said the same thing roughly in different words. And
22 by remanding cases prematurely, we lose that, and it ends up
23 burdening other judges and will lead to, I think, inefficient
24 results given the number of claims that still remain total.

25 Secondly, for these other claims there are some broad

1 legal issues we think that motion practice will dictate in
2 large measure, we hope -- could be wrong -- the ultimate
3 outcome either by resolution or by decision. And while we've
4 not yet reached the stage at which those would be briefed, we
5 think that's important because we think that for the same
6 reason there is an MDL to begin with, the consistent
7 application of the rules of law will be of material benefit to
8 resolving those claims whether it's by settlement or by
9 resolution. I think that's for a later day, but again in
10 fairness to the court, so you understand new GM's position on
11 that, that's how we think about this.

12 I'm trying to think, were there any other questions in
13 that long colloquy you had with Mr. Hilliard that I haven't
14 answered? I think I've answered them all, but if not, I
15 apologize.

16 THE COURT: Let me give you a couple more to ponder
17 then.

18 Number one, the reasons -- and this is bleeding into
19 the next issue on our agenda about settlement -- but with
20 respect to the issue of remand, what I heard you just say is
21 that my rulings have been helpful to the parties and to other
22 courts and what have you, and that you would anticipate that my
23 rulings in connection with motions in the upcoming cases would
24 also be helpful.

25 I guess just to push back on that a little bit,

1 presumably that would only apply to cases that are in phase 2
2 of the bellwether, which raises the question in my mind as to
3 whether there is anything further to be gained by keeping the
4 phase 1 bellwether cases here.

5 In other words, I don't think I need to say the MDL,
6 it's not an either/or, light on/light off determination I can
7 presumably decide as to some subset of the full universe of
8 cases that remand is appropriate and continue with respect to
9 others, all of which is I guess just to pose a question, you
10 know, might it be appropriate to remand the phase 1 cases
11 sooner than the phase 2 cases, even if there is more to be done
12 on the phase 2 front.

13 And I do think that Mr. Hilliard's point -- I mean as
14 I've said before, I am amenable to keeping these cases here as
15 long as I think the ball is moving forward in some fashion or
16 another, but I'm also acutely mindful of the fact that behind
17 each and every one of these cases there is a person, and I
18 don't know how old those people are but, you know, they have an
19 interest in finality; they have an interest in obtaining
20 recovery sooner if they're going to recover; and in that regard
21 it's not fair to them to keep them stuck here and not moving
22 their individual cases forward if there is nothing material to
23 be gained by keeping them here. So that's one question.

24 MR. GODFREY: That was a long question, so I will try
25 to --

1 THE COURT: I can be a little wordy, as you know.

2 MR. GODFREY: No, no, it's not that. A couple of
3 thoughts. One, I don't think breaking up the MDL by phases in
4 terms of remand is going to advance the ball as a practical
5 matter or a theoretical matter. Let me deal with the
6 theoretical matter first and practically second.

7 THE COURT: All right, but loudly and slowly.

8 MR. GODFREY: Sure. At the level of theory, the
9 court's orders even on phase 2 have implications that extend
10 sometimes beyond phase 2. And we also have, as the court
11 knows, the economic loss class actions where there is
12 substantial overlap on core issues. So, one way one looks at
13 it or not, the core issues of the MDL remain here, and so the
14 remaining phase 1 cases, it's not going to do on a theoretical
15 level anything other than, I think create the risk of
16 inconsistencies in the near term.

17 At the practical level, I share the court's concern.
18 I mean my client would like to resolve this sooner rather than
19 later as well. If these are remanded to the state courts,
20 effectively they start from scratch, and the ability to have
21 aggregate settlements, the ability to have smaller group
22 settlements, the ability even to have one-off settlements
23 becomes much more challenging from I think both the plaintiffs'
24 perspective but also from the new GM perspective.

25 So, there is a practical aspect here where I think

1 that a remand prematurely -- which I think this will be -- will
2 actually add delay into the system. And I also think it does
3 not address the consideration that the court is issuing rulings
4 all the time and will be in connection with economic loss that
5 bear on phase 1 issues.

6 The other aspect of this that I would say is I have
7 been pleased and surprised -- I don't know what Mr. Hilliard
8 thinks about this -- but I think that the court's management of
9 this has stimulated outreach to us from various plaintiff's
10 counsel that I don't think would take place necessarily if
11 certain cases were spread to the wind.

12 There is an understanding that the court is managing a
13 set of common issues from the court's perspective pursuant to
14 the MDL orders, and as a result Ms. Bloom spends a great deal
15 of time fielding calls and working through, as the court will
16 hear in chambers I think in some detail, buckets, one-offs,
17 groups, that I think will prove far more difficult if there is
18 a premature remand.

19 So, if we step back and say what's best from the
20 judicial system and the plaintiffs writ large -- and people may
21 disagree with us, but I'm speaking from the new GM
22 perspective -- the management of this MDL -- which may seem
23 like a lifetime, but this is actually only year three coming up
24 this August -- has resolved masses of claims that, A, other
25 MDLs, I think, would like to have done but didn't do and, B,

1 that I do not think would have taken place had you remanded a
2 bunch of cases last year, for example.

3 So we have a track record here. The track record is a
4 very beneficial track record for the judiciary writ large, I
5 think for the parties in this case, and I think for the parties
6 who have not yet resolved. I think the best hope in the near
7 term for the remaining cases is to keep the matters here.

8 We want the opportunity, for example, to settle as
9 much here as possible, and we think this is the most efficient
10 way to do it under the court's guidance and direction, and so
11 far I think the track record proves us correct.

12 At the end there may be a small number of cases where
13 it is what it is, and the court will then at that time make the
14 appropriate decision, but I think it's premature for the
15 reasons I outlined.

16 (Continued on next page)

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1 THE COURT: Thank you. That is helpful.

2 I would say flattery gets you nowhere, but it may
3 succeed in buying you more time here.

4 MR. GODFREY: Facts are facts.

5 THE COURT: The last question for you is if I did
6 agree to your request to select a category C replacement, and I
7 think I am leaning in that direction, what is your view on the
8 viability of a January trial date and the schedule?

9 MR. GODFREY: Mr. Brock thinks February or March will
10 be better. I don't think we will need a lot more time. Maybe
11 about a month or so. So February or March. Mr. Brock says if
12 it had to be January, we can do January.

13 THE COURT: Mr. Hilliard.

14 MR. HILLIARD: We were prepared to go in January
15 before that case settled, Judge. So depending on their
16 selection and who has that case and my participation versus the
17 attorney's who might represent that client's participation, we
18 were set to do that January trial. So it hasn't been that much
19 of a delay. I would guess keep the trial setting and if there
20 is an issue, we'll know it quickly as soon as selection is made
21 and we'll inform the Court or get with each other and make
22 suggestions depending on your trial setting. I am all about
23 getting it tried sooner if we're ready and if the Court has
24 dates for us. So my suggestion is keep it for now and hope we
25 can try it at that time.

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1 THE COURT: So I indicated that I was inclined to go
2 in GM's direction on this and I am going to largely because I
3 think you guys have earned my trust and respect in how you are
4 handling these things and in that regard I think new GM is in a
5 better position to opine on what will be helpful to it in
6 connection with its efforts to resolve all these cases through
7 settlement or otherwise and therefore I am inclined to defer to
8 new GM's view that if it doesn't have what it needs in those
9 category C cases and other Bellwether cases it will in fact be
10 helpful.

11 I will grant new GM's application on that score and
12 consistent with your request direct you to submit within seven
13 days of today either an agreed upon proposed order with case
14 selection, discovery, and other pretrial deadlines for
15 additional category C cases, obviously in accordance with the
16 procedures we have previously used. If there is disagreement,
17 you can tell me what those are.

18 I would love to keep the current trial date as is. So
19 if it is feasible to do that, great.

20 Hang on one second.

21 (Pause)

22 If only because of my desire to keep to a reasonable
23 aggressive schedule, I would like to keep that January date.
24 Having said that, I think it might be ambiguous and I would
25 note two things. One is I think it is currently scheduled to

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1 begin January 15th, which is a court holiday, namely, Martin
2 Luther King Day. It should be changed to January 16th at a
3 minimum. Beyond that if you in getting into the weeds of these
4 matters and discussing the dates think that is overly
5 ambitious, at the moment I could try the case beginning on
6 March 5th and that may prove to be more realistic. So I do
7 have an opening. Or I could fit it in at the beginning of
8 March, March 5th, and you can therefore discuss with one
9 another knowing that that is an option on my end. So I will
10 hear from you within a week on that score.

11 Let's talk about settlement. In short order we will
12 have a conference *in camera*. My plan is to have a court
13 reporter present for that with the intension that the
14 transcript will be sealed so that there is a record of it for
15 all sorts of reasons. I am happy to elaborate in that session,
16 but I think that makes sense. Having said that to the extent
17 we do discuss these matters in open session publically, I would
18 like to do so. One thing that I would like is in looking back
19 at GM's letter from February, I think it would make sense as I
20 am pondering the future of the MDL and trying to decide where
21 to push and when remands would be appropriate and what have
22 you, I think it would be very helpful to get a regular update
23 of the sort that is provided in that letter. Maybe a monthly
24 inventory letter going through the categories as that letter
25 did would be extremely helpful. It is at Docket 3726 if you

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1 want to find it easily. I assume you know what I am talking
2 about. It could be combined with the now monthly related case
3 update or submitted as a separate letter. Whatever you guys
4 think is sensible. One way or another I think it will be very
5 helpful to me and all of us in efforts to get this across some
6 sort of finish line to have a regular update on that front.

7 Beyond that, if Ms. Bloom is the one to speak to this
8 or, Mr. Godfrey, if you would like to give me what you can.

9 MR. GODFREY: With respect to the settlement topic, it
10 will be Ms. Bloom.

11 MS. BLOOM: I could do some of that now I think if
12 helpful. We can put it in a letter as well.

13 I can report that as of now new GM has settled claims
14 of 1,697 of the MDL 2543 claimants. There are about 230
15 additional since the February 24 submission. Of those 1,697
16 plaintiffs, there are 1,407 of them who are now dismissed. We
17 expect another 75 of those claimants to have dismissals within
18 the next several months. And then the others will take time as
19 the settlement process works its way through.

20 We have then by our count about 1,090 unsettled
21 post-bankruptcy plaintiffs remaining. As Mr. Godfrey noted,
22 the largest category of those are the 226 by our count, which
23 would be phase 2, category C claims. We are continuing to
24 focus our attention in the post-sale order world. We are
25 waiting for the Court's guidance with respect to presale order

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1 on successor liability and also late claim rulings by the
2 bankruptcy court. With respect to post-sale order claims,
3 there are still remaining some law firms that we are working
4 with who have some sizable dockets. And when your Honor is
5 thinking about from your perspective breaking up cases by phase
6 1 or phase 2, we attempt to deal with a law firm to try to
7 resolve their entire docket and they oftentimes will have cases
8 that are phase 1 and phase 2 combined. So we're still in that
9 kind of world.

10 We also have made very good progress now with respect
11 to single-plaintiff claims in terms of having collected now and
12 synthesized much of the materials that the plaintiffs have been
13 ordered to provide as a result of the Court's order. So we are
14 now actively engaging as well with law firms that have
15 single-plaintiff cases. So that is a more time-consuming
16 process, and at the moment we have not focused for example on
17 placing discussions with phase 1 plaintiffs ahead of, say,
18 plaintiffs with phase 2 claims. We more focused on a
19 first-in-with-your-materials approach. So as plaintiffs have
20 provided the materials, we are able to synthesize them that is
21 really the order in which single-plaintiff cases we have been
22 analyzing them at present. So that is in general terms where
23 we are with respect to settlement.

24 THE COURT: Anything else to discuss in this setting
25 on that front?

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1 Before we break and convene in the robing room for
2 settlement issues, I am also prepared and will be addressing
3 what has been referred to on the docket as the individual B
4 issue in that setting.

5 We need to discuss future status conferences. Any
6 thoughts on that? I would think in light of my rulings on
7 Friday and the issues that you will be discussing in the next
8 few weeks that we should presumably schedule a conference not
9 long thereafter so that we can decide how to proceed on that
10 front

11 MR. HILLIARD: We floated the date of September 1st
12 for the next one, Judge. I believe that all parties were
13 available if that works for you.

14 THE COURT: I don't think that works for me.

15 MR. HILLIARD: Or that area of that week. Late
16 August, early September.

17 THE COURT: I thought as I already indicated I am out
18 of the country until the 27th. I don't yet know which days of
19 that week I will be in but wasn't prepared to be here every day
20 that week. I will put it that way.

21 Mr. Godfrey.

22 MR. GODFREY: Two things: First, the Orange County
23 trial will still be going on.

24 THE COURT: Excuse me?

25 MR. GODFREY: The Orange County trial may still be

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1 going on. Mr. Berman thinks no. I think yes. It is not a
2 two-week trial. I think it is more like four or five weeks.
3 The judge only sits four days. On other days she hears other
4 motions. She has a busy docket. The Judge has a busy docket
5 and only sits four days. I don't think we'll be done by then.
6 If the trial were to be done by then, my wife arranged for us
7 to go to Japan on vacation. If we do that, it is fine if
8 Mr. Brock or Ms. Broom will cover in my absence. I thought the
9 last week of August because someone else will cover in my
10 absence or Mr. Berman's absence or third week of September.
11 That week of September is fine. It shouldn't be dependent upon
12 my schedule. Whatever works for the Court that is a logical
13 time, but the Court ought to know that, A, I might not be here
14 because we are done with that trial and I may be in Japan and,
15 B, I am scheduled to be in Japan but may be in Orange County
16 with Mr. Berman.

17 THE COURT: I am pleased to hear that you do sometimes
18 vacation, Mr. Godfrey.

19 MR. GODFREY: This was an involuntary drafting, your
20 Honor.

21 THE COURT: Let me float the following question that
22 may or may not be welcome given the Orange County trial, but
23 would it not make sense to reconvene in the beginning of August
24 on the theory that you will be submitting your thoughts in the
25 next three weeks, and at a minimum we can discuss those issues

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1 at a status conference at the beginning of August?

2 MR. GODFREY: That will work for us, your Honor, if
3 the Court thought that was helpful.

4 MR. HILLIARD: In thinking about it realtime, it makes
5 sense for a couple reasons, Judge. By then there will be
6 clarity on the Guc issue and there will be information to
7 provide you in regards to the successor liability. So, yes, it
8 would probably be helpful to do the first part of August.

9 MS. CABRASER: Your Honor, it is time for a real slow
10 talker.

11 THE COURT: Into the microphone even if it is slow.

12 MS. CABRASER: And loudly.

13 How about August 10th, your Honor? I think that works
14 for the co-leads.

15 THE COURT: That would fork for me.

16 MS. CABRASER: That is a Thursday.

17 MR. GODFREY: That is the final pretrial for Mr.
18 Berman and myself in Orange County.

19 THE COURT: Hopefully Mr. Berman knew that, too.
20 Would earlier that week be an option?

21 MS. CABRASER: Yes, your Honor, for plaintiffs.

22 THE COURT: I think I can do any day that week.

23 MR. GODFREY: I prefer not the 9th.

24 THE COURT: Is the 9th viable for you?

25 MR. GODFREY: Not the 9th.

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1 THE COURT: I thought you said on the 9th.

2 MR. GODFREY: No, because I have to go back to
3 California.

4 MR. BERMAN: How about the 8th?

5 MR. GODFREY: The 8th works for me.

6 THE COURT: We'll reconvene on August 8th at the usual
7 time, 9:30, and go from there.

8 I don't think we need to set future conference dates
9 now. We can discuss it on August 8th because what we do on
10 August 8th will have some bearing on that, not to mention by
11 then I will have resolved the schedule for the replacement
12 category C cases.

13 Anything else to discuss in this setting? If not, I
14 will expect the proposed order memorializing all that we have
15 done in the usual time.

16 Let's take a five-minute break so everybody can
17 stretch their legs or use the facilities and my deputy will let
18 you into the robing room and again we'll be on the record but
19 that session will be under seal and we'll talk about various
20 issues there.

21 Thank you.

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