UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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In re GENERAL MOTORS LLC
IGNITION SWITCH LITIGATION 14 MD 2543 (JMF)
Oral Argument
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New York, N.Y.
June 17, 2016
9:15 a.m.

Before:

HON. JESSE M. FURMAN,

District Judge

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(Case called)

THE COURT: All right.

We are operational on Court Call so we will start the conference today. Just a reminder to please speak loudly, clearly, and into the microphone so everybody can listen. Obviously, the biggest order of business today is oral argument on the pending motion to dismiss that is partial motion to dismiss the third amended consolidated complaint.

I am going to deal with the status conference issues first, just so we can get those out of the way, and then we will proceed to oral argument. And depending on how long the initial part goes, maybe we will take a few minutes break before we proceed to oral argument but I will decide that when the time comes.

So, let's get into it. I will follow the agenda letter, as per my usual practice. First is the status of bankruptcy proceedings. Obviously, we are still awaiting a decision from the Second Circuit and I don't have any better idea than you when that may be forthcoming. I don't know if it has been docketed but in light of the three appeals to me were stayed pending the Second Circuit's decision, just as a housekeeping matter, I directed the clerk to put those on suspense status. That has no implications for your purposes, it is just a housekeeping matter on my end but just wanted to flag that.

In the letter there is reference to four non-MDL suits that are implicated in bankruptcy proceedings. I don't know what those are about. I don't know if I should care, that is to say that they have any bearing on anything I am doing.

Does anyone want to address that and is there anything about the bankruptcy proceedings at large that we ought to discuss?

Mr. Godfrey?

MR. GODFREY: Thank you, your Honor. Good morning.

THE COURT: I neglected to take everybody's appearances but I think we all know each other by now so I think that's fine, assuming it is fine with the court reporter.

MR. GODFREY: We are going to introduce one new member of our team a little bit later toward the end of the status.

THE COURT: All right.

MR. GODFREY: I think the answers to your questions are for informational purposes only and does not bear on anything that is currently before the Court. If we need the Court's assistance, we will let the Court know in due course but I don't think it is anything other than informational purposes. I think we are on time.

THE COURT: And I assume there is nothing we need to discuss regarding the bankruptcy proceedings at large, given that we are just waiting on the Second Circuit?

MR. GODFREY: I think that's a fair statement from our

perspective, your Honor. Thank you.

THE COURT: Does anyone at the front table want to chime in there? I assume you agree.

Next is coordination and related actions. The main item here is the letters that you submitted in connection with the California action that Mr. Berman is leading. I guess my instinct is it seems like the issue isn't really ripe just yet, that there is a demurrer that is sort of a motion to dismiss, I take it, and being argued in that action and obviously there is the pending motion to dismiss here and both of those may have significant bearing on the issue. I don't know how long -- have a sense of how long it will take me to decide my motion to dismiss. I don't know how long it will take Judge Dunning to decide the motion in that case but I guess my inclination is not to sort of go there just yet.

Does anybody disagree with that approach?

MR. GODFREY: I don't know that we disagree but I don't think we have adequately informed Court of the status.

It is true that the motion for demurrer we argue next Wednesday the 22nd. Also up that day, however, is the motion for discovery that we have concerns about because it implicates the MDL. I do not know what Judge Dunning will do, whether she will wait on the motion for discovery pending her decision on the motion for demurrer or whether she will act independently on that. I am going to argue the motion for demurrer out there

next Wednesday but I don't -- I don't -- I have only been in front of her now twice. I don't have a -- we do not discuss at any of those appearances how she intends to proceed. That's why we raised the issue, so that it may very well be she defers ruling on it pending her ruling on the motion for demurrer. On the other hand, she may issue a tentative Tuesday night, which is standard California practice that she follows along with many other judges, where she is going to proceed independently in discovery which then would of course conflict, we believe, with what the Court has previously done here.

THE COURT: All right. Tell me a little bit more why it conflicts? Obviously I have deferred the question of discovery on other defects pending the motion to dismiss ruling. If I were to grant the motion with respect to the other defects issue then there wouldn't be discovery on those issues in the MDL, I assume. In this case I don't know what interest I have in sticking my nose into the California action. If I deny it then presumably that discovery should, at some point at least, go forward, in which case what is the harm in letting it go forward in California on the theory that, as Mr. Berman says, it will ultimately be put to use in the MDL as well.

MR. GODFREY: With all respect, your Honor, I think Mr. Berman has it backwards.

The coordination and the parties in this court have

indicated this is the lead case. Until this Court decides what is in or out it remains the lead case. Mr. Berman is attempting to make the California Court the lead case regardless of what this Court decides. The Court has already, in effect, deferred this ruling on discovery saying let's see what happens in the demurrer on the motion to dismiss here. If we knew that Judge Dunning was going to do the same so that we have a set table so to speak, which is in which court, then we could decide whether or not discovery is appropriate there as compared to here. But, if the Court allows the California Court to get out ahead of it regardless of what happens here, then we will be in the reverse where this is no longer the lead case and discovery issues will be taken there that implicate this case.

All we are saying is that given the timing of this, California should not go forward on discovery until this Court decides and that Court decides. Otherwise, we are going to have a mess on our hands and you are going to have orders of this Court that are not applied or conflicted with, unintentionally, by the California Court because the California Court is looking at the California Court's purview, State of California, and this Court is looking at the national purview which includes the State of California at this point in time.

Now, if Mr. Berman wants to stipulate he has no valid claims in this case under California law which we think he

should given California case law, that's a different proposition. He is trying to have it here, he is trying to proceed here and he is trying to proceed there on identical claims.

That's the problem.

THE COURT: All right, Mr. Berman?

MR. BERMAN: Yes, your Honor.

THE COURT: Microphone, please.

MR. BERMAN: They're two very different cases. The California claims before your Honor are on behalf of consumers who are seeking restitution or damages. The State of California's case is an law enforcement action, it is not seeking damages, it is seeking civil penalties for each false advertisement that GM issued into the State of California. Two completely different remedies under the same statutes.

So, I have to -- my client -- I'm not exactly sure what Mr. Godfrey is asking you to do. Judge Dunning will make her decision as to whether or not discovery should go forward. I followed the procedures in the joint coordination order. I have made an application to Judge Dunning saying there is good cause as to why discovery should now go forward in California. The good cause is, one, we want California-specific advertising that has not been produced yet in the MDL, that is central to the people's case; and two, right now you have not allowed discovery on the other defects but those other defects are at

issue in the California case.

So, one of two things are going to happen and I don't think either will hurt the MDL or GM. One, you toss the other defects, and, as you noted, then what do you care if discovery is going forward in California; or two, you take some time on your motion, we don't know, maybe there will be amendments, we don't know how long it will take to get the pleadings settled. In the meantime, I am fairly confident discovery will go forward in California based on my understanding of the pleading burdens in law enforcement action which are pretty low, and we will take that discovery and it will be the benefit of the MDL, it will come back and be used here. And to the extent any lawyer thinks that we somehow have not done a good job of discovery on those defects in California, they can come before this Court and say we have good cause for doing additional discovery that the people didn't do properly.

So, I don't see how we are in any way impinging on your authority, nor was it our intent to do so.

THE COURT: All right. Let me ask you, do you have any objection or do you see any problem with my reaching out to Judge Dunning to gently inquire when she would imagine deciding the demurrer motion in her case and exploring whether it might make sense to put off the discovery issues before her and, by extension before me, until after that motion and the motion to dismiss in this case or decide it, assuming that that is not

too far from now?

MR. BERMAN: Well, I kind of do, to be honest, because I want Judge Dunning make her own decision with respect to the people's case. I understand your concern but look at it from my client's perspective. We spent two years -- first they removed the case to federal court and sent it to your Honor. Your Honor said that was improper. Then we wind up in the bankruptcy court for two years so the client has been delayed for two years. We are finally back in our court and the client wants the case to proceed and not wait.

So, you have the right as a federal judge to reach out to whoever you want. If you are asking whether that bothers me, it does.

THE COURT: All right. I think the lawyers in Missouri don't seem to think I have the right to reach out to whoever I want but that's a different story.

I will take it under advisement. I think at a minimum I will reach out to her and touch base with her. What implications that has I will see and I think I may discuss timing on the motions to dismiss and demurrer, and if it doesn't seem like that will materially affect things, that is to say waiting on those, I am hoping to decide the motion to dismiss as quickly as possible. It is obviously a substantial motion but we have done a considerable amount of work on it already and in that regard I am hoping that, you know, in the

next couple weeks that I am able to get a decision out.

Now, if that's the case and she's on a similar time table, I don't really see the harm in waiting for things to shake out and having a better sense of the landscape to resolve the discovery issues but she may disagree and it may be that that's overly optimistic on the timing front anyway.

MR. BERMAN: Mr. Godfrey is usually involved. There is a tentative involved the night before and usually there is a ruling the next day or shortly thereafter.

THE COURT: Gotcha. Well, I'm not as efficient, I guess. All right, so I will reserve judgment on that issue and try and sort out how to deal with it.

Any other related action items that we ought to discuss? I obviously got the most recent update from yesterday as my reference to the Missouri lawyers made clear. Anything we need to discuss there?

MR. GODFREY: No, but I do think the Felix case in Missouri is an emerging issue that -- and your Honor has captured it well, the essence of Missouri lawyers, obviously they're unfamiliar with the All Writs Act or other things, perhaps -- we have a current status, where it ends up going we don't know, but I think you can see the implications for the MDL Court if goes in a certain direction. We may or may not be back to you depending on what happens. Hopefully we will be able to work through this as we have the past two years I think

pretty successfully, but this is a not unserious emerging issue for the Court.

THE COURT: All right. Well, let me know. Keep me apprised as you have and let me know if there is anything you think I ought to do. For the record, having read that letter from lawyers objecting to your letter to me and not your response but co-counsel's response, I'm entirely in agreement with your colleague's response which is to say I don't think there was anything improper about your communications to me. In fact, they were in compliance with my orders. And, I don't think there is anything improper about my reaching out to my state colleagues just for purposes of coordination. I have been very careful not to step on anyone's toes when it comes to substance and certainly didn't do so here.

All of which is to say I think their objections are misguided and unfounded and you are welcome to share that with whoever you like, but I will wait and see if there is any need for me to do anything further.

The next item is document production. Anything to discuss there? Mr. Godfrey is shaking his head no and Mr. Berman and Mr. Hilliard, Ms. Cabraser.

MS. CABRASER: Let the record reflect I am shaking my head horizontally.

THE COURT: I will deem everybody to have shaken their head no.

Next is maybe the biggest issue on our status conference agenda which is the proposals for additional bellwethers. Let me get into that.

First, on the sort of higher level issues, that is to say issues that don't pertain to the sort of categories, I am largely in agreement with New GM's views. First, I do think that principles and procedures that I adopted and set forth in order no. 25 should generally be adhered to and applied, in particular the cases should be selected by each side and a process similar, if not identical, to that set forth in order no. 25. I think those principles and procedures were well considered at the time and I don't see any good reason to depart from them now.

Second, I largely agree -- I will get into more detail about this in short order -- but I largely agree with the more limited approach to discovery proposed by New GM. Unless I am missing something, I don't think the plaintiffs are seeking additional written discovery with respect to, I think it is you guys have complicated my life by using different categories and numbers and letters and so forth but I think that there is largely overlap between plaintiffs' category 2 and New GM's category C. As to that, I read plaintiffs' letters carefully and it didn't seem to me that they were seeking additional written discovery which makes sense to me because I think that that would have been encompassed by phase I discovery that we

have already done but perhaps I am wrong about that.

MR. HILLIARD: You are right, Judge. You are correct.

THE COURT: So, with respect to depositions, first I agree with New GM that I should not limit case-specific fact depositions unless and until there is some indication that there is a need for that or some abuse of the numbers of depositions that heretofore there hasn't been any discussion of that, and I am inclined to leave you to do what you think you need to do and raise issues as you see them and if it turns out I should revisit that and set a limit, I will certainly be open to that.

I also am inclined to agree that, in general, the one deposition rule should remain in place and apply. That said, plaintiffs may be able to show good cause to re-depose at least some of the witnesses, although not necessarily for the full seven hours, maybe for a shorter period of time, and I am inclined to leave -- essentially leave the prohibition on a second deposition in place and allow it only if there is agreement with New GM or upon a showing of good cause and that, I think, will allow me to control the number of re-depositions and set appropriate time limits if it is appropriate to do them at all.

So that's on the higher level issues but let's get into the particulars with respect to the categories. On those, I think I also largely agree with New GM's approach but I do

have some disagreements and some questions and issues more generally. Let me take them slightly out of order and, again, it is complicated by the fact that you have done different orders in different categories and so forth which I will try to wade through anyway.

First, I agree completely with New GM's general approach and proposal with respect to what it has characterized as category B cases which I think are the same or largely the same as plaintiffs' category 4, that is to say ignition switch cases in which the air bags did deploy. That is, I agree that discovery in those cases should proceed but on limited basis focusing on issues of general or accident causation caused by summary judgment practice on those issues.

I don't entirely understand the plaintiff's counter argument regarding the potential for other defects to have caused the accidents and I guess I am inclined or open -- would like to know more about what that means. I was under the impression that -- I mean, I do think that in answer to the question of a fact and legal question as to whether, if there is air bag deployment it necessarily means that there was no ignition switch defect in the car would materially advance things with respect to a large swath of cases in the MDL. That just seems sort of obvious to me. I don't know if there are some cases within this category if the category can be split further, that is to say, if there are some cases where

plaintiffs believe that there may be other defects that are implicated and we should not address those now and just focus on ones where everybody is in agreement that either there was or there wasn't an ignition switch defect and focus on answering the question that I just posed but I guess I am just trying to get my head around what the cases in this category look like and what these other potential defects might be.

Mr. Hilliard?

MR. HILLIARD: Thank you, Judge. Good morning. I hope are you having a good summer. It is good to be back.

So, generally, you are absolutely right. The hesitation that the plaintiffs have is in your proposal that might help, is that there are specific cases that might be double-impact cases where the first impact there was no deployment, second impact there was, and whether the ignition key came into play on first impact. Agreed, it is very case-specific. Agreed also it is very rare, but our experts have talked generally about the air bag deployment and whether or not ignition switches were involved and there are some indications that it could occur.

We attempted inside the air bag deployment category to weed out or make a separate sub-category of those we would be more concerned with or need more analysis of that it is just not going to be able to fall under the yes-the-air-bag-deployed-on-a-pretty-typical-accident-so-the-ig

nition-switch-is-not-involved-in-the-defect analysis.

THE COURT: Yes.

MR. HILLIARD: We all agree that, to date, if the air bag has deployed in a typical collision scenario, that the ignition switch is likely not involved in the defect.

We have been working professionally and pretty effectively with GM in this category and trying to get more information from the other attorneys inside this MDL who have air bag deployed cases in order to be sure that we understand whether there is any sub-category that we should alert the Court to in regards to the dispositive motion practice. But otherwise, generally, your suggested approach is where we thought you would be heading and we have been working with GM to at least identify those cases correctly.

THE COURT: Okay. And explain to me the multiple event case, how one piece of it could be a defect inadvertent key rotation and the other piece not.

MR. HILLIARD: Hypothetically, only after talking to our experts on whether it could occur. For example, if the ignition switch is moved from "on" to "accessory," the impact occurs, there is still inertia of the vehicle going forward, and sometime after the first impact but before the second impact the ignition switch is back into the "on" position for whatever reason, whether it is hit during the course of the accident scenario, whether -- I can't speculate as to that part

and I am not going to add support to it except to say if there are double impact cases, those would at least be quickly or easier to identify and then a determination specific to that case made by an expert as to whether there is a supportable argument that the double impact caused the air bags to deploy.

THE COURT: Okay. Putting aside the likelihood of that theory, can we not put those cases aside and focus this category, if you will, just on the straight up question in a case where there is a crash and air bag deployment and the question is could that crash conceivably have been caused by inadvertent key rotation.

MR. HILLIARD: Yes, we can.

THE COURT: Is there any reason not to proceed in the way that GM has proposed on that, with respect to those sort of core cases in category B/category 4?

MR. HILLIARD: There is not.

THE COURT: Good, so let's do that.

The question I had is in New GM's proposal if you guys select, I think it was a total of eight cases to proceed to limited discovery and then motion practice on, I guess the question in my mind is why do we need eight cases? It seems like it is sort of a -- I mean, I don't know how the facts would vary among these cases in a way that would make material differences and meaningfully help litigation on this front. Maybe I am missing something. I thought this was sort of a

fairly straight forward question of just, as an engineering matter, whether air bags could deploy or not deploy. Maybe there are wrinkles here I'm not aware of. Mr. Fields is standing.

MR. HILLIARD: It seems like a full category analysis like you are suggesting and not fact-specific to the case once we ferret out and set aside those double impact issues.

So, I don't know that picking eight will, unless it is to inform the entire group, I think it is a general causation process.

MR. FIELDS: Good morning, your Honor. Barry Fields.

We agree. I mean, there are obviously a number of different permutations that can occur, but I think we could be informed by just using four cases, for instance, where each party selects two cases so we basically cut the proposal in half.

So, I think that would be an agreeable approach as well.

THE COURT: That is certainly live progress but why can't we do it with one case?

MR. FIELDS: I think one of the things if you were going to do it with two cases, I think you would want to do it with pre-2008 cases and the post-2008 cases as well. You have the service part vehicles and then you have the production part vehicles so I'm not sure there would be any significant

difference, but just in case people believe that somehow there is some unique factors associated with production part versus the service part issue, I think if you take one case from each category that would be covered.

THE COURT: And what could those potentially unique issues be? I mean, my understanding is the issue in those cases is whether a plaintiff could prove that a defective switch was installed on the car but if it is or isn't, I thought the issue -- the argument you are making on these cases is if the air bag deployed then whether there was --

MR. FIELDS: It would be exactly the same. Again, your Honor, I think it is really sort of trying to cut off any potential arguments from other plaintiffs in the future but I think you are right that the only difference, significant difference between those two categories is whether in the service part case you have a situation where they can prove in fact they actually had the, we will call it the old part placed in the car.

So, you could, if you wanted to put that aside, could you go with the case which in cases, regardless of whether it is a service part case or production part case.

THE COURT: Just move the microphone back to you.

That's fine, and I am inclined to think that there is not going to be a material difference but if only to sort of put the issue to rest and make sure that everybody -- any

potential differences are aired in this process, let's pick one from each category and in that regard -- well, otherwise I will I guess adopt the proposed -- let me back up.

After this conference I would like an order submitted to me that looks largely like the one that New GM has proposed but as you can see we are going to refine things as we go along. So, bottom line is I am okay with the New GM proposal on this front. I may tweak some of the dates and I will talk more about that in due course, but on this one I think let's go with the scheme that you have proposed but limit it to two cases, ultimately -- select two cases, one from the production part category and one from the service part category.

MR. FIELDS: Your Honor, I think the only wrinkle, of course, if you go one-one, is which party selects that case. So, that's one of the wrinkles that would arise.

THE COURT: All right. Well, why don't you guys talk about that and see if you can figure it out. My gut tells me that shouldn't affect issues here, the goal is to really --

MR. FIELDS: Find a representative case.

THE COURT: Yes, that is the goal with respect to this whole process, is to try representative cases, but my point here is because we are focusing on the discrete question of whether if an air bag deployed, does it necessarily mean there was no inadvertent key rotation. I would think that the particulars of any one case are less significant than may be,

as we have already seen in some of these other bellwethers. So, in that regard, maybe you can either agree on representative cases for each of the subcategories or at least come up with a process to pick one, or maybe this is an area where you each propose one and submit briefs to me and I will pick one of the two as representative. Why don't you guys talk that through and hopefully you can agree on something and put it in a revised order. All right?

MR. FIELDS: We will, your honor.

MR. BROCK: Good morning, your Honor. Robert Brock.

One of the things that I will talk to Mr. Hilliard about after the conference is the possibility of looking at a stipulated set of facts that might help inform a ruling because if there is general agreement and I think that is what I am hearing, general agreement that if an air bag has deployed, a defective switch is not implicated in the accident sequence, it may be that we can move to looking at a few exceptions and deal with the general issue by stipulation but it might at least be worth a conversation.

THE COURT: All right. I think that is actually well worth a conversation and a good suggestion so why don't you discuss it and maybe you can stipulate -- and I'm not sure this is inconsistent with the larger approach anyway which is to say maybe we can proceed to some sort of selection process to identify the two cases and, even so, you might be able to

stipulate on certain case-specific or certain facts and then limit discovery to expert discovery or what have you.

So, why don't you discuss that, it is certainly worth thinking about to make this a more efficient and effective process. I am certainly open to that, as you know.

That deals with that category. The next category is -- sorry, one question before we move on. Is there an overlap between this category and what the plaintiffs have described as category no. 5? It wasn't clear to me whether 5 was encompassed in what New GM has described as category B or overlapped or totally different. This was one area where the two different category systems caused me a little confusion.

MR. FIELDS: Your Honor, Barry Fields.

There shouldn't be any overlap. Here in category B we are really focusing on the, we will call it the Cobalt Ion series of vehicles where plaintiff's category 5 actually includes other types of vehicles such as the Impala, the Cadillac vehicles, SRX, etc. So, they are a different group of vehicles and a different group of recalls.

THE COURT: And are you in agreement -- I'm not sure that category 5 was addressed in your letter.

MR. FIELDS: We agree, your Honor, at this time, there should not be any bellwethers from category 5.

THE COURT: Why? Because there aren't enough cases?

MR. FIELDS: Right now there are not enough cases and

I think the question is we would have to go look, for example, a lot of these cases we would have to -- a lot of these vehicles we would have to see which recalls they're associated with and whether or not these are all or part of the same recall. They look like different recalls.

The number of cases also, I think, would merit not considering them at this time and the question that plaintiffs raise is whether or not there is a sufficient amount of discovery that has occurred on these vehicles and I don't know the answer to that and their position on that.

THE COURT: Very good. I will come back to those categories in a moment.

The next is category 1 on plaintiff's taxonomy and I think category of New GM, I think those are the categories or at least substantially the same. These are air bag non-deployment and service part vehicles. My question here is I would think the principal question in these cases is -- well, maybe I'm wrong in light of Mr. Fields' comments earlier -- but the factual question of whether a defective switch was in fact installed in a particular plaintiff's car and whether the plaintiff could prove that. I guess the question I have is how could bellwethers yield -- what role would bellwethers play in answering that question in moving things forward.

I guess the related question is are there any sort of fact issues in this category or in subcategories within this

category that might be advanced by a bellwether trial and verdict and then, ultimately, my question is if not, if these cases are all sort of sui generis and turn on whether a plaintiff can or cannot prove this, what is to be gained by keeping them here at all. Why isn't the answer on these, if we have completed sort of coordinated discovery on the ignition switch at large, why not remand them and let the transfer courts proceed and proceed with case-specific discovery and/or trial in each of those cases.

So, I don't know who wants to -- maybe New GM should go first and hear the ones who are proposing some sort of bellwether process here.

MR. FIELDS: Your Honor, I think with respect to that particular category we obviously have a fairly significant number of cases. There is some disagreement on the numbers but it looks like we have, we believe, 80 to upwards of 147. I think there is the potential that the core question is whether or not the, we will call it the old part was used in these vehicles but you have a number of people who are obviously suggesting that that may be the case. And so, we believe, given the number of cases that are involved here, that this would be a way to deal with this particular category of cases because, thus far, we have not sort of touched on this issue. It was something that we raised in our original plan and at that point plaintiffs were sort of suggesting that it might be

useful to actually include these particular vehicles as part of a bellwether plan and we believe there would be value to at least moving the process along if we could test one or two of these cases.

THE COURT: Explain to me what that value is. That's my question.

Let's say John Doe has a 2009 vehicle within the category and alleges that it was repaired and a new ignition switch was put in that was a defective ignition switch and got in an accident and it was caused by that. Okay? Let's say that case goes to trial and you win because the plaintiff is not able to show that either that it was ever repaired in that manner at all or that the switch was the cause of it. How does that advance the ball with respect to other cases where plaintiffs have that sort of theory?

MR. FIELDS: Well, I think the core issue really is that for all of these different individuals, they are using the fact of non-deployment in all of these instances as an inference of a defect. And so, I think by taking these cases and testing one or two of these cases we can demonstrate that hopefully in fact that is an invalid inference that can be made by these group of plaintiffs.

THE COURT: All right.

Mr. Hilliard?

MR. HILLIARD: So you have a service part vehicle case

where the vehicle no longer is available for analysis and the jury decides that the air bag should have deployed and because it didn't deploy there was a defect and there is no evidence of whether or not a part was put into -- a service part was ever put into the ignition. So, you have a finding of defect with no evidence that the owner knew or knew whether a part was put in.

If the purpose of bellwether is to create a matrix of value for similar-type cases and these exact vehicles but for the service part issue have been completely analyzed through the first bellwether process and the Hilliard-Henry settlement, number two, I agree with the Court that I don't see how an actual trial, if we are playing out how much time it is going to take and what we may or may not be able to bring to the jury and what might still be proven in regards to the defect, I don't see how it advances the purpose of bellwether and that is creating some sort of shared view on settlement value because, if you take my analogy -- I mean take my example -- if we can't show and we stay neutral on was a service part put into this vehicle because the owner simply doesn't know but there is impact where the air bag should have deployed and the jury determines yes to defect; assuming you let us go to the jury on those facts, what have we done in regard to the other vehicles? GM has to say that's a one-off deal, guys. We can't create value for this class based on that verdict.

THE COURT: All right.

MR. HILLIARD: So, unless you -- pardon me. Go ahead, Judge.

THE COURT: No, go ahead.

MR. HILLIARD: Unless you carve it out more, unless there is actual selection based on the owner has evidence to support that he took it in and the ignition switch was replaced, if you only want to do those cases and try them, then though I don't think that given the first two settlements that it's worth the energy and efforts and the resources necessary to do a service part vehicle bellwether, perhaps if you disagree with me and have been convinced by GM that perhaps it has to be only those where there is actual evidence, affirmative evidence that the replacement did occur.

THE COURT: So, in the course of your speaking I think you persuaded me that it should be the exact opposite, which is to say why not have bellwethers where the plaintiff can't, doesn't have proof that a replacement part was actually put in and the theory of the case is basically there was air bag non-deployment, it was a deployment level event ergo the only explanation for the non-deployment was a defective ignition switcher so it must have been replaced at some point along the way.

I would think, if there are a sufficient number of those cases, it might make sense to pick one as -- I mean, some

number as bellwethers and see if that theory gets you to a jury, and if it gets you to a jury whether a jury agrees that that is sufficient proof of a defect. If the answer to either of those is no, then I think that might materially -- I mean assuming, again, that there are a sufficient number of those cases, maybe that would terribly advance things with respect to enough cases that it would justify a bellwether.

Your thoughts?

MR. HILLIARD: Seldom used tactic of persuasion, getting the listener to take the opposite position.

Given my analysis of my own docket, there is more of those cases than that of any other and that is I don't remember if I did, I may have, or there was a previous owner before they bought it. So, generally, yes, that makes sense to me are and I can almost, not immediately but within the next week or so, find out how many of this category include those types of cases and confer with GM and report to the Court as a result of those numbers it does make sense.

That would help because if most of the folks don't know whether they put the new ignition in then the settlement discussions with GM are going to be -- well, then how can we pay you any money?

THE COURT: Okay.

Mr. Fields, what do you think about sort of focusing this category on those kinds of cases where the plaintiff

doesn't remember or have proof that a repair was made and it is sort of an inference from the non-deployment?

MR. FIELDS: I think that makes sense, your Honor and I think there are going to be a number of different individuals in that case, in that category that would fall in that camp.

THE COURT: So, why don't you guys talk about that further and explore it further in light of my comments. My inclination is if there is sufficient number of those cases -- it sounds like both sides are inclined to think there are -- we should have some sort of bellwether process to focus on that sort of question, whether that is sufficient proof of a defect. It is sort of a flip side in some respect to the non-deployment question and whether deployment, in and of itself, is proof enough.

So, talk further about that and assuming that there is agreement on that score, you can talk about numbers and the light in light of my general remarks about the selection process.

Next is plaintiffs' categories 3, 5 and 6; these are cars with other defects and cars with other model years and air bag deployment.

Actually, let me exclude category 5 for a moment and focus on 3 and 6. My question on those is -- and maybe this is a question as to why they're in the MDL at all but, why shouldn't we send those cases back if they're not related to

the ignition switch? And the question is whether other defects cause accidents.

MR. HILLIARD: So, the acceptance of cases under the MDL was fairly liberal during the whole process. There is a defect involved a sort of vehicle, incident occurred. The tag-along was entered and the Court accepted the referral. Some of these cases are directly filed which means they would stay in the court even if you make the decision that they don't belong. It seems like that given the couple of years we have been doing this, this is only as it should be, the ignition switch defect MDL but there are some cases that involve accidents from the -- with a defect that were removed, tagged along and accepted that have to be addressed. And you may end up trying some of my cases because we filed them directly in here just to give you a head's up on that and it may be a completely different defect outside ultimately.

THE COURT: All right. I mean, listen. Taking a step back, both the JPML -- and I have tried to draw appropriate lines and in some cases that's been easier than in others. May be. Cases slip through the cracks all together. But I don't think anybody views -- well, I don't view myself and I don't think the JPML views me as the GM Judge, that is to say that I am the Judge for all cases brought in federal court or removed to federal court against GM and, in that regard, have tried to draw appropriate lines to sort of make the MDL intelligible and

coherent and obviously the core of it is the ignition switch defect and the complication is there have been a number of complaints where there are allegations relating to the ignition switch defect but other defects as well and then how do you draw the line and so forth.

I guess my concern about these cases -- I'm not persuaded -- or I am persuaded that they should not be included in a bellwether plan at this time but my question is how we move them forward and ultimately how that's done and where that's done. I hear your point that some of them were directly filed but, ultimately, if they were improperly filed here or I don't think they belong here, I don't have any material advantage in litigating them, then maybe they should go elsewhere but Mr. Godfrey wants to say something.

MR. GODFREY: First, they're part of the MDL because the plaintiffs in the third amended class action complaint and in many of the individual actions make the same allegations about the same nucleus of operative facts, so that even if a case has defect A, which is not an ignition switch, they make the same allegations which is JPML believed it was appropriate to send them here. There were cases that we moved as a tag along where the Court denied it saying, no, it does not overlap -- there is not the overlap of discovery.

So, the cases that are here a judgment has been made either by plaintiff's counsel, with which we agree, or the JPML

that says when you look at the total picture of the case and its allegations, the same nucleus of core operative facts is for ignition switch is for the case even if they're talking about a particular other defect.

Second, what you end up doing with them is going to depend, in part, upon resolution of the third amended class action complaint and are, in part, upon bellwethers that precede it: An example would be the crime fraud allegations. Your Honor has ruled on the crime fraud allegations. Other complaints have made the same allegations even if they're not related to the ignition switch defect. They're making course of conduct, they're making pattern and practice allegations.

Your Honor has ruled on some of those. Your Honor is going to rule on more of them in connection with the third amended class action complaint but it is not as though these cases somehow got here by accident. There was a judgment made by plaintiff's counsel with which we agreed or independently by the JPML that there was a sufficient overlap of the nucleus of core operative facts that they properly belong here. How we end up resolving them -- ultimately the bellwether -- I think as the matter matures we will have better guidance on that but your Honor is making rulings and will be making rulings shortly which bear on those cases. As the matter proceeds, your Honor's rulings will determine the parameters and scope of various of these cases even if they don't technically involve

ignition switch defect.

THE COURT: Mr. Berman looked befuddled but, in any event, I am inclined not to discuss these categories further for present purposes because I think everybody is in agreement, and that includes me, that they're not appropriate for bellwethers.

I do have a larger concern, as I said, about what we are doing to advance the ball on these cases but based on what I just heard I am persuaded that, well, first of all, I don't think anybody is prepared to discuss that right now and I think it would potentially benefit the discussion to wait and see what my ruling is on the pending motion and perhaps some other issues. I guess I just want to put it on everybody's radar for future status conference whether it is the July conference, September conference, or what I don't know, but I would like you to be thinking about it, to discuss with one another what, if anything, we can and should be doing with respect to these cases, these categories of cases to make sure that the ball is being advanced. I mean, I recognize we have obviously focused on the sort of core cases in the MDL and that makes a lot of sense, but it's also two years into the MDL and I want to make sure that there aren't large swaths of cases that are just -- I want to make sure there are not large swaths of cases that are just stagnating and not being advanced in any meaningful way.

Mr. Godfrey?

MR. GODFREY: We agree with that and there are two action items right now that bear on these cases. One, if I were to comment on is the Court's ruling in the past and the Court's ruling with respect to the third amended class action complaint which will bear on this; and then secondly, Ms. Bloom from the settlement side of the house is here this morning, she is going to address with your Honor some of the issues but we have the requests for information from the plaintiffs.

We have an active program that Ms. Bloom is heading up on the outside, Mr. Grossman on the inside, to determine whether or not cases can be settled. There is positive news to report on that this morning but the information is a predicate towards settlement. In other words, it is hard to settle a case when you don't have any basic information about it. And so, that issue is up for later, Ms. Bloom will comment about it. But those two items together will make progress on this part of the docket about which the Court has expressed concern.

THE COURT: I understood it to be discussed further, keep it on your radar and that leaves New GM's category C and plaintiffs' category 2 which I believe are the same or largely the same.

Again, I agree with New GM's approach to the selection process and discovery on that. Plaintiffs propose limiting selections to the two recalls with, as I understand it, the most cars affected, that is 14B355 and 14B400. I don't think

New GM addressed that in its letter.

Do you want to comment?

MR. FIELDS: Yes, your Honor.

From our standpoint, it is unclear why plaintiffs would suggest that all of these recalls be included in the bellwether category and then say that you are only going to select cases from two other recalls. So, from our standpoint it probably makes sense. They might in fact decide to select from those two recalls but it seems to us if these are going to be eligible then any of the cases in that category should be subject to selection as a bellwether candidate.

THE COURT: Okay. I mean, to me this just turns on what would be the most helpful in advancing resolution of a larger category of cases. I don't have knowledge as to whether and what extent they differ in material ways from other recalls in the category. I agree with you if they're ripe we should limit this category to those two recalls and not even nominally say that the other recalls are included. I guess the question is should the category be limited to the two recalls or broader and include the other recalls.

MR. FIELDS: In general, the description of the recalls and remedies for the recall I think are very similar so I think there is some value to including all of the recalls in the mix and I think you can get value whether or not you are taking a verdict from one recall. I think you can still apply

that same logic to another recall because the claimed defect and the remedies associated with the alleged defect are very comparable. So, I think there is value including them all in the mix and I think also allowing the parties to select from those various recall categories.

THE COURT: Mr. Hilliard?

MR. HILLIARD: The only potential issue, Judge, even though GM's objection makes some sense, is these are the two biggest categories in regards to cases inside this MDL which will allow for the most informative selection process.

THE COURT: But I guess the point is the whole process is to pick representative cases. You may be right that the cases from those two recalls are going to be the most representative but why not let that process play out in the selection process?

MR. HILLIARD: I'm not disagreeing as I am listening to the argument. We requested that the first two recalls based on the number of cases in those recalls but, as a practical matter, if you throw in the rest of them too as part of the selection process, I don't know that the difference is going to be that great so there is no real disagreement.

THE COURT: All right. So, we will include all of them and how that shakes out in selection is a different story but we will include all of them.

Then the only other question that I think I haven't

yet addressed is the depositions. I agree, again generally with New GM, that there is no reason to set a limit on the number of case-specific depositions but I think that leaves the question of whether plaintiff should be allowed to depose any witnesses with respect to the recalls or whether they essentially had their opportunity to do that as part of phase I discovery.

So, Mr. Hilliard, what is your response to that? I mean to the extent that you concede that --

MR. HILLIARD: We should have done it.

THE COURT: This was within the scope of Phase I and you got documents you need. Why should I let you have a second bite at the apple on that front and more depositions? And to the extent I do let you, why not limit the number of those?

MR. HILLIARD: -- so your suggestion at the beginning I took to heart, and that is, we could come to you and say we would like to take these depositions and here is why. In talking about this with GM, we tried to make clear we are not going to redepose the Mayberrys, the Meltons, or any of those figureheads, but it would be the individuals that we depose that we did not talk to about these other matters, and during those six hour hours for us, one hour for them, we did not go into those facts. GM chose, as a trial strategy, not to bring live witnesses and I am assuming that is going to continue. I have been, as you can imagine, very flexible with GM about

suggesting why don't I bring you the names of the folks that we have and let's see, and then they rightly remind me that deadlines matter. And so I'm sensitive to what has occurred and I am also aware that the Court is practical in regards to if we are doing it because it makes sense for one of the bellwethers and there is not going to be any overlap and it is going to be shorter, and to the point that we might have a shot with you at allowing it. And I am hopeful that perhaps GM will be a little more flexible after today about letting us, once the bellwethers are selected, take a view of the general liability experts -- I mean, general liability GM witnesses that were already deposed with some clear conditions on not revisiting issues but only as to the defects and recalls.

But, there is really just no reason -- I am about to fall on the sword. I'm not about to come up with reasons why, make up reasons. It is what it is.

THE COURT: Here are my thoughts before Mr. Godfrey gets up.

I appreciate your falling on the sword. At the same time I also recognize, you know, this is a complicated, large litigation with a lot of moving parts and in that regard if you had essentially six hours to depose a witness and I understand why there might be need to plug certain holes here and there and notwithstanding my view that deadlines matter. I think the way to proceed is basically not grant permission at this point

for any further depositions on this front but essentially sort of leave it with a similar process to the one deposition rule which is to say any deposition that you want to take with respect to the recalls and of GM witnesses, have you to either have -- reach agreement with GM -- GM has to agree and consent to it or you have to show me why it should be permitted and I will then make a determination of whether there is good cause and if it should be limited in time or scope or what have you. And obviously I think I would recommend strongly that you limit your -- you know, don't bite off more than you can chew and if there are ones that are particularly important and you have a pretty persuasive argument for why it is really important to these categories of cases and why that was not the focus of the prior depositions, then I would urge New GM to be reasonable and to pick its battles and I will also be reasonable. But, I think that's the better way to do it and we will sort of let it play out.

Does that make sense?

MR. HILLIARD: It does. Thank you, Judge. Message received.

THE COURT: Anything you to need to say on that front at the back table?

MR. GODFREY: No.

THE COURT: Good. All right. So I think that exhausts the bellwether discussion. Again, I think it makes

sense for you to redo the proposed order in light of my comments and rulings but I think something along the lines of what New GM has proposed makes sense. So, why don't you confer with one another and is it realistic to think that you could resubmit something to me within -- I was going to say a week but it might make -- Mr. Brock is putting up two fingers so why don't I give you two. Is that sufficient?

MR. HILLIARD: I think he means two days, Judge.

MR. FIELDS: I think he means two weeks.

THE COURT: I will give you two weeks. I do want to say, though, I want you to keep the deadlines that are proposed in New GM's order in place, particularly the deadlines that are coming up, the first deadlines, if you will. I may well move some of the deadlines closer, particularly the ones that are the later deadlines which is to say I might give you less time than you are proposing to give yourselves but I certainly don't want things to get delayed because of the next two weeks, so all of which is to say you should sort of get the ball rolling to the extent you can on these issues and this will cause further delay.

All right. The remaining issues are settlement and the additional documentation issue. Maybe it makes sense to start with settlement issues at large and just sounds like there might be some updates on that front. I do want to get an update on the statute of the Yingling settlement and remand

issues and also the status of the Hilliard-Henry settlements and what, if anything, there is to be done on that front.

Ms. Bloom or Mr. Godfrey, anything?

MR. GODFREY: Ms. Bloom is setting up outside so we will address that.

MS. BLOOM: Just an update.

First, perhaps on overall settlement efforts, since the last status hearing we are pleased to report that we have resolved another 225 claims through aggregate processes and then, in addition, we have resolved, through settlement, the Yingling matter and a number of other individual state court cases. So, we feel that we are making good progress.

We have, within the MDL, about 500 additional cases that are in process for review and we have, by our count, probably about 900 or so where the plaintiff lawyer has not stepped forward with the information that helps us to evaluate settlement being the medical records, the police reports, accident photos, and whether or not SDM data exists.

So, I think we are pleased with the process so far but we could use the Court's help with respect to that other group of cases. Just hearing the bellwether discussion, it might be helpful for the Court to know that within these aggregate dockets -- so plaintiffs lawyers who have a number of cases -- they will have both production part and service part vehicles. We are able to resolve those collectively in a docket often

times if we have the information and can engage in discussions back and forth about them and the merits of that case. So, on the settlement side, I would say that that information is helping us and it's quite useful to be able to resolve a group of all ignition switch claims.

We do similarly have underway state court, hundreds of cases as well that are under review and, as well, lawyers come forward to us with unfiled claims. So, we feel like we are kind of moving along in that respect.

With respect to the Yingling settlement, the parties are close now to final documents. We have exchanged language. There are a couple of technical issues that we are still working through but both sides are happy with the progress that we have made and I would say within the next couple of weeks we will have the final settlement papers together.

With respect to the Irvin matter, the remand has occurred and the parties are moving forward to set up the competency hearing in that respect and I think that will be very straightforward, and that's really just an issue of whether that particular individual is able to sign the release in the Hilliard-Henry settlement on her own behalf.

So, I think that is going to be straightforward and no issues with that.

THE COURT: Okay. With respect to the Hilliard-Henry settlement at large -- two questions. First, going back to the

other aggregate settlements that you alluded to, is there any need for anything from me on those orders?

MS. BLOOM: No, I am happy to report. And they're interesting, as we have talked about the Court about before. Different sets of lawyers prefer to handle things in different ways and so for some of those cases we were able to use a mediator. We did use the special mediators who have been appointed by the Court in the Hilliard and Henry matter for some of our mediations. We have used some other mediators as well, and in some cases we are not using a mediator whatsoever, the parties are able to work together without needing that facilitation. And so far then we are not in a situation where we are needing a court-appointed special master. We are not in a situation where we are needing an QSF set up.

So, I think we are able to proceed with those and then where your Honor will see then the results of those settlements will be when we get to the point of being prepared to make payments on those settlements so we have obtained the releases, we will be providing notification from the common benefit order for the appropriate actions that we will be withholding a fee that will go into those common benefit order funds that is now established or is about to be established now that your Honor has entered that order.

Additionally, we will be able to be moving to dismiss cases once all the settlement paperwork is complete and there

may be a few instances where you will see something similar to the Irvin matter or to the Yingling matter where it is a wrongful death case and a particular settlement requires court approval under those state statutes or there is a competency hearing. But, many times, even for those, we are able to go to a state court to deal with that through probate or something like that.

So, I am happy to report that at this point in time we don't need anything from your Honor, other than with respect to that collection of cases that is sitting there where we don't have information.

THE COURT: Any sense of timing when you would anticipate my seeing dismissal orders or the like?

MS. BLOOM: So, all of these things, as you have seen with the Hilliard and Henry settlement take time. We, I think, are becoming more efficient in our ability to review these matters and I'm hopeful that with respect to these new collection of settlements, they will move more efficiently in terms of having reached the agreement, getting the release, and making the payments.

So, I think starting, I would say, in the September time frame, your Honor will most likely start to see dismissals and things like that.

THE COURT: Is that true for -- are you referring to the Henry Hilliard settlements or the other aggregate

settlements?

MS. BLOOM: Hilliard and Henry, I don't have the deadlines in front of me but, yes, in the fall time frame I think we are getting close. And so, right now where we are with respect to that, settlement releases are coming in, there is a process whereby New GM has the opportunity to review the releases, see if we have issues with them, and I think for the most part everything is progressing smoothly there.

THE COURT: Okay. Do we need to come up with a process to deal with those on my end or is it simply a question of submitting individual orders or aggregate orders saying the following cases are dismissed?

MS. BLOOM: It will be the same with respect to the Hilliard and Henry settlement. We will get to the point where we will be prepared, we would have releases in hand and be prepared to enter dismissal orders -- stipulated orders of dismissal.

THE COURT: Okay. Great.

And this is probably obvious but I would think to the extent that there are situations like an Irvin and I can't remember the other case that was remanded for --

MS. BLOOM: Yingling.

THE COURT: Yingling hasn't been remanded yet but to the extent that there are issues relating to that or competency issues to be adjudicated, I do think it would continue to make

sense if you can't resolve those locally and keep them here that they should be remanded for at least the limited purpose of dealing with those kinds of issues. But, we will leave it there for now.

Mr. Hilliard, anything you want to say on this front?

MR. HILLIARD: All accurate. I did not get an update from Scott Freeman's call yesterday with Ms. Bloom about some missing spouse issues. It is not something the Court needs to have on the Court's radar yet. I will talk to Ms. Bloom after the hearing.

I did get an update on the percentages of released and approved packets and I do agree with Ms. Bloom that we are on track, we are moving well. The time frame seems right and there is nothing that the Court needs to do except know that it's -- we will be here shortly with some releases.

THE COURT: Very good.

Let's talk about the last item on the agenda which is the additional documentation issue. I did grant New GM's request this morning to file a reply and was able to read the reply. I guess the threshold question I have which relates to what Ms. Bloom just said to me, that is to the extent I am inclined to do anything, why not limit it and would it make sense to limit it to that category of 900 lawyers' cases where lawyers haven't come forward with anything. Those strike me as maybe, among other things, that would be inducement for those

lawyers to come forward and also query whether it makes sense to impose costs on cases where you are already in discussions or well under way and proceeding at pace.

MS. BLOOM: I do think that we could -- I suppose it would be easier because settlement discussions are confidential. If we were to identify cases in that way we would be providing some information about where we are within a process that's a confidential process.

So, I think the easier route would be if there could be an order that would pertain and then if a particular plaintiff lawyer is already cooperating, we might be able to agree to a waiver as opposed to doing it the other way. Otherwise, I think we would be asking to file something under seal in order to protect the integrity of those conversations.

THE COURT: I hear that concern. That, to me, is an issue in the mechanics and I guess one option which is consistent with what you just said would be to enter an order that directs plaintiffs to produce certain materials unless New GM essentially consents that they don't need to with the understanding that you would do that, essentially, and that with respect to the cases that you are well under way in settling.

MS. BLOOM: Absolutely. If we are in the midst of discussions, the order would be surplusage in that respect in that we have already obtained the information. That particular

law firm then would have complied, in essence, with the order so it's not even as if we would need a waiver because, really, what we are saying is that many -- we are moving forward because many folks are coming forward with these documents that we are seeking. And it is not as if -- some folks come forward and they will say this particular document doesn't exist. It could be that the car doesn't exist anymore, it could be that there are no crash photos.

So, we just need to know the information one way or the other. Is it there? Let's see it. And if it isn't, then that's a piece of information that both sides know.

THE COURT: Okay. And I couldn't get a handle on the information you are seeking, whether the issue is that this is an issue that's already been produced in the plaintiff's fact sheets but it is just not in as usable a format as you would like or the extent to which it is new or additional information that's being sought. Can you elaborate on that and sort of identify the ways in which this information would be helpful in facilitating and moving things forward on the settlement front?

MS. BLOOM: Sure.

We have, in the bellwether process, an order that was established that creates these fact sheets that are in a PDF format and then request to have that converted into an Excel format, and then plaintiffs provide documents that may be in their possession into Everlaw. That is not the system that I

think New GM would necessarily have preferred but it is the system that's working for bellwethers.

On our front, on the search warrant side, as we attempt to use the information, what works most efficiently, right, and we are trying to get through thousands of cases, is to have the information accurately in an Excel format. Excel information that we have from lead counsel will have rows of data that are empty, not complete, information in wrong boxes, and we don't find it to be reliable as we then move forward with a detailed review of a particular plaintiff lawyer's docket.

So, if we are able to get that plaintiff lawyer engaged, really, to provide us the information accurately in an Excel file, things move along much more quickly. We have their VIN, we know the date of the accident, it enables us to run data through New GM's system just handing over that Excel file. It enables us to go forward and look for pieces of information that we need.

In addition, many times, although I would think in evaluating a case a plaintiff would have all of the medical records and the police report and the insurance claim file already in hand, we don't have that information in Everlaw. What we are finding, as we engage with plaintiff lawyers, is that for the very first time they are going out there now and obtaining records from healthcare providers, finding the police

report, trying to figure out where this vehicle exists and if it exists at all.

And so, we do not have that information and what typically happens is that a lawyer will reach out to us and say, I'm interested in discussing settlement; and we will say, okay, we would like the police report, the crash photos, the SDM data or to know where the car is and we would like the medical records. It then takes a number of months for the lawyer to go out and obtain that information.

So, it's not information that we have now and in our experience, with all of these cases, it is information that is just coming in as we are meeting with that particular plaintiff lawyer and it takes time.

So, that is why we really need your Honor's help and these pieces of information that we are seeking are very fundamental to discovery. So, if we are able to determine how to value a case, we really need to understand a bit about the facts of the accident. We really need to see what that vehicle looked like. We need to understand does that SDM data exist. We need to understand what the police report says about the facts and circumstances of the accident and those same documents would be useful if settlement discussions are not fruitful. Those would be the core documents then that an engineer or somebody, accident reconstructionist would look at if the case is going to get tried at some point in time.

THE COURT: All right, but some of the information you referenced, VIN number, date of the accident, that would be the on the plaintiff's fact sheet, no?

MS. BLOOM: It would be, but then in addition to processing the cases that we have now, right? We would have to go through a cumbersome process with a fact sheet that is in a PDF format or use an inaccurate Excel file that currently exists in Everlaw and it takes time in process on our side.

So, what we are asking for is the Court's help to make this more efficient so that we can really get through, in an efficient way, review of all these hundreds of cases, really thousands of cases that we are looking through. It goes very quickly now if we are able to have that information, say, for one lawyer he has 10 cases or she has 15 cases, if we had their whole docket on an Excel file with those VIN numbers, we can do a lot with it, quickly.

THE COURT: And you keep saying thousands but earlier you said there were 900 cases that people haven't engaged you on.

MS. BLOOM: Right. We have state court cases and unfiled claims, too. So, for New GM as a whole, we are trying to get through all of this.

THE COURT: I hear you.

MS. BLOOM: Yes.

THE COURT: But in your reply you seem to essentially

be withdrawing the requests which I think was wise for an order demanding lawyers to produce materials with respect to those cases. I don't think I have authority to require them to and to the extent that I do, I would not be inclined to exercise it. I think it is one thing to exhort lawyers to provide that material because it certainly is probably to their advantage ultimately but -- so, in that regard, focusing on the cases that are in the MDL, again you keep saying outside but is it the 900 we are talking about?

MS. BLOOM: Within the MDL it is almost a thousand. I said about 900 -- it is really 958. So, the number grows. I think by the time we are back here next it could be a thousand folks that we are talking about.

So, we could go the cumbersome route of what exists now but all that would be is a PDF form. For the most part it is not documents so we are asking for the Court's help to come up with an efficient way to facilitate settlement and we really would, for New GM, like to have the MDL be a vehicle to help resolve cases via settlement and this is something we are seeing would help us.

THE COURT: Mr. Hilliard, I am not going to sign the order in its current format for a variety of reasons including the fact that it does seem to apply to state cases and unfiled cases and I think, again, it is one thing to exhort lawyers to provide materials and another thing for me to coordinate with

my counter-parts in state courts which I am more than happy to do, as you know. But, I am inclined to do something on this front with respect to the 958 or so cases that New GM has not yet engaged with counsel on that are not somewhere along the way.

The bottom line is with respect to cases where New GM thinks it would be helpful and essentially facilitate settlement discussions, that is, ones they are not already engaged in. You do seem to have changed your tune a little bit from the prior conference in which you conceded that if these cases ultimately move forward these are core documents and core issues and information and documents that would need to be produced and in that regard, particularly to the extent that New GM is saying to me these are really needed for settlement agreement purposes and they would ultimately need to be produced whether the case is settled or not, why not direct them to do it. I am inclined to think the answer is I will enter some order but want you guys to try and really get into the weeds of what they really need for these purposes and limit it to that but maybe they would have done that. And, again, only with respect to cases that are not already sort of in the process of settling in some substantial way.

MR. HILLIARD: So, I changed my tune because I spoke to my musicians and the mass of attorneys complained loudly and aggressively about the burdensomeness of this given that the

plaintiffs' fact sheets have been filled out and I would ask the Court, because I sensed you wanted to grant something like that and, frankly, we filled out something like that after our settlement was signed off on aggregately which means we had consideration, we had a reason to do it, we had already filled out the plaintiffs' fact sheets.

My view, and what I would hope the Court would consider, is if an attorney has complied with your order and completely filled out the plaintiff's fact sheets, do not require them to take that information and convert it for GM into an Excel spreadsheet -- what I heard Ms. Bloom say is it is burdensome for them to do it -- well, okay, you have the information and you can do it and these attorneys will have to, after complying with your order, go in and you saw the one affidavit from Mr. Henry who would be responsible for the non-settled cases, many of which I heard this morning will probably be subject to dispositive motions despite the efforts that GM says that they want us to undergo additionally which we had -- including we have already filled out the plaintiff's fact sheet so please consider if there is compliance with your order across the board, across the MDL. Do not require them to go change the produced information into an Excel spreadsheet for the ease of general motors.

If there are a group of cases where plaintiffs simply are in violation of your order and the plaintiff's fact sheet

has not been submitted and that is perhaps the reason why there is dispute between General Motors and plaintiffs about the number of folks inside your MDL. We tried to come up with an agreed number to give to you so you will understand the universe within which you are ruling over and we couldn't and one of the reasons is there are some plaintiffs fact sheets that have not been provided which means that there are active noncompliance.

It makes sense to me that if that is the case maybe there is a new order where they have to do it in the new Excel spreadsheet way since they haven't provided the information and their months of no longer on that of nonclients.

Finally, Judge, I commend and I understand and I recognize GM is settling these cases without this information, number one, and sometimes entering into settlement negotiations and then getting the information which is what they did with us but -- I hope there is a middle ground where if there is additional non-plaintiffs fact sheet information they want and I wasn't sure that I heard a distinct, here is the overlap Judge, here is what we are asking for additionally that we have never asked for before. If there is additional information that they want that makes sense unrelated to settlement, then that should be provided through the expenditure of their request for production or interrogatories. If it is in relation to settlement and if it is in addition to the

plaintiff's fact sheet, then I'm open to talking with them about it because I think I can pretty well expertly analyze do you need this for informative settlement discussions given what my track record is with them and the information and they had the time. We made our settlement announcement and now the more information we are getting in order to have the disbursement points properly allocated.

THE COURT: All right.

MR. HILLIARD: So I need to just be sure, because I know there is a record that the majority of the attorneys that have been on calls with me about this issue expressed concern about the unfairness of providing this additional information in addition to the plaintiffs fact sheet with no guarantee it will lead anywhere at all for their cases and that is why I initially gave you the that makes sense and then I had to shift a little bit.

THE COURT: All right. A couple points.

I hear you and I hear your musicians loud and clear through you. On the other hand, I think New GM's point in the reply that heretofore discovery in the MDL has been largely one-sided is a point well taken and that, ultimately, if these cases are going to move forward either on settlement, the settlement front, or ultimately on trial, that imposing a burden on the lawyers in those cases is not particularly unfair, in my view.

It seems to me there are separate issues here. I am inclined to enter some version of this order. I think you guys should discuss it further and see if you can reach an agreement on what it looks like. I am inclined to include some language to the effect that New GM can essentially waive that it is only with respect to cases that New GM essentially needs it and that that language, the effect that if a lawyer is actively engaged in settlement discussions with New GM that New GM will not -- that this information would not necessarily be needed and, quite frankly, I think part of the virtue of an order along those lines there is to prod those Lawyers who have not yet come forward who are engaged with New GM to do so which is to say that maybe this will actually encourage them to do that and ultimately they won't need to comply with this, what if they think it is burdensome, they won't need to comply if they engage New GM and New GM can get into a discussion with them with respect to what they need and take it out of the purview of this order. So, I am inclined to include some sort of language along those lines with an eye toward the order applying to the 958 or so cases that New GM has not yet engaged on.

Number two, it seems to me that there is a difference between information that's in the plaintiff fact sheets already and is just not in the format that New GM would like and additional information that has not been requested before.

With respect to the former, I understand the hassle but it doesn't strike me -- that just strikes me as an issue that the parties should be able to resolve and there are lots of vendors out there that can convert information from one format to another. And I would think that it wouldn't actually be that onerous to engage somebody to just, if New GM needs it in a different format, to just spend a little bit of money to do that and I am inclined to think that New GM should bear that burden and if it now believes that it is a different format than it previously agreed to would be helpful, the burden is on New GM to do that.

On the other hand, if there are areas, information, documentation that have not been requested before, I think it would be appropriate and that information would be helpful for settlement and ultimately would be necessary if the cases are moving forward anyway. I am open to an idea that an order should be entered directing plaintiffs to produce that and if on top of that it wouldn't particularly be much more onerous, the marginal costs of requiring the plaintiffs lawyers to re-input information that is already in the plaintiffs' fact sheets, if it wouldn't be much of a marginal cost, then maybe it does make sense to just require them to do it.

So why don't you guys discuss it and see if you can sort out those things with the understanding that I am open to some version of the order really focused on and boiled down to

the things New GM genuinely needs to advance settlement discussions with respect to these cases and especially with respect to things that were not previously requested in order no. 25 or otherwise.

Let me also say that to the extent that there are parties who are not in compliance with the plaintiffs' fact sheet requirements, that's a different issue all together. New GM, I think, intimated in its motion that it may have further applications to me on that and you know how to do that. And I think Mr. Hilliard's point that maybe with respect to any plaintiffs who are not in compliance that if you want to propose that to the extent they're given an opportunity to bring themselves into compliance that they do so in a different format. Now that you have learned from your experiences, I think that is a point well taken and I am open to the idea of tweaking it.

So, can I leave it there for now and leave you guys to try and negotiate language of an agreed upon order, and if you can't agree on particular issues then you can present those to me in the ordinary way?

MR. HILLIARD: We can, and I am hopeful that we will be able to.

THE COURT: Great, and why don't I give you two weeks to do that as well.

MR. HILLIARD: How long?

THE COURT: Two weeks.

MR. HILLIARD: Two weeks, got it.

MS. BLOOM: Can I ask for an additional bit of time? I am about to take my vacation next Friday for that following week, so I am trying in the week before I go to finalize the documentation for all these 225 new settlements.

THE COURT: All right. I thought Mr. Godfrey told me you guys don't take vacations, but I will.

MR. GODFREY: She's only had one in two years, your Honor.

THE COURT: No comment. Sure. I will give you three weeks on that front.

MS. BLOOM: Thanks.

THE COURT: I think that exhausts the agenda letter. There are a few remaining little matters for me to address and then let's take a break before we take up oral argument. This has taken a little longer than depicted but such is life.

Number one, I think with respect to the pro se plaintiffs who were addressed in some recent submissions that I think the deadline just passed for opposition to the latest motions to dismiss, so I would presume that I will issue an order on that front and in the near future I think it makes sense to give them a little bit of extra time in case things were submitted and just not docketed yet and the like.

Second, there are a couple individual member case

motions that either have been filed or have reason to think might be filed. In particular, there is a motion to dismiss filed by, I think it is Furukawa and the Colley case for improper service, that's 16 Civ. 2730, and it sounds like motions to remand may be filed in the birth case, 16 Civ. 4180. Anything to report on either of those? Obviously the Furukawa motion doesn't involve New GM but anything to discuss here, otherwise I am just flagging that they are on my radar.

I can't remember what the reason for this is but I think in the schedule for the Norville trial, currently jury questionnaires are to be filled out on November 3rd but I think that's going to change to November 4th and that the parties would have until 9:30 in the morning on Wednesday, November 9thth, to review and submit their lists of strikes. So, I will make that one modification and I have forgotten why now I needed to make that modification but it is now made.

Now, our next status conference is July 28th. I did note that that date does not appear on the MDL website. I don't know why that is but if whoever controls that could fix that?

MS. CABRASER: We will do that, your Honor.

THE COURT: Great. That would be great. My law clerk advises me that there are jury department issues which is why the Norville dates needed to be changed. I don't know what that means but, in any event, they are changed.

I think that's it for status conference issues. Anything else to discuss?

MR. GODFREY: Two items, your Honor.

THE COURT: Microphone, please.

MR. GODFREY: Two items, your Honor.

In terms of oral argument, we have never had a formal oral argument. Do you prefer us at the podium or spread out at the desk? How do you prefer us to proceed here?

THE COURT: I think it will make sense for you to stand at the podium. Maybe move it a little bit forward but that probably makes sense and will help ensure that you speak into the microphone.

MR. GODFREY: The second thing, Mr. Brock is going to introduce the new member of our trial team, your Honor.

THE COURT: Thank you.

MR. BROCK: Thank you, Robert Brock.

The first state court case is scheduled to commence on August 8th in Houston, Texas, the name of that case is Stevens. I did want to let you know that I am cautiously optimistic that a good bit of the work that we have done here is work that we will be able to utilize in terms of some of the briefings and rulings on the general issues innocent Texas litigation. So, to the extent that one of the purposes of an MDL could be to advance early rulings on important issues, I am hopeful that we are going to be able to apply a good bit of the work that we

have done here in Texas. So, I wanted to let you know that.

The second thing about that Trial schedule is that jury selection is scheduled for the week of August the 1st so I believe that I will not be here for the July 28th status conference, but Mr. Fields and others will handle the trial issues that may come up at that time. I may try to participate by telephone, if that's okay.

And then I did want to introduce my partner, Hari Karis, who will be at the front table next time. Hari and I have tried a number of cases together. Remarkably she agreed to do another one with me but she will be my co-counsel in the Cochran case and will represent our trial team at the next status conference.

THE COURT: Can you just spell her name since she is not on the appearance sheet?

MS. KARIS: Your Honor, let me spell it. H-A-R-I-K-L-I-A, last name K-A-R-I-S. And thank you, your Honor, for admitting me pro hac and I look forward to being before you.

THE COURT: Great. And I was mistaken, you actually are on the appearance sheet, so welcome. Nice to meet you.

MS. KARIS: Thank you.

THE COURT: I look forward to seeing you, and sorry that I may not see you on July 28, Mr. Brock.

Just for my informational purposes, the Stevens case

is the state, mini before Judge Schaeffer.

MR. BROCK: Your Honor. There are two cases that are scheduled for trial, Stevens is the first case and that is part of the -- part of that MDL process and the second case is named Alexander and it's set for trial, I believe, in mid-October.

THE COURT: All right. Great.

Anything else? Very good. Let's take a five to 10 minute break, something akin, I would say, to seven minutes and take up oral argument at that time.

Thank you.

(Continued on next page)

THE COURT: Let's get into oral argument on the motion to dismiss. I know it's the third amended consolidated complaint, but just for the sake of brevity, why don't we just call it the complaint for now, since we all know which complaint we're talking about. I think I had communicated through my law clerk that my general plan was to go topic by topic, largely focused on the issues that I had flagged in my order of June 10, docket No. 2959. That is my intention, and I think I had communicated through her that my general plan was to have New GM proceed first on the theory that it's New GM's motion.

The one thing that I've rethought, and I'm going to throw it out as a thought, is whether it might make sense to have the plaintiffs take the lead in the first instance on the theory of damage issues, just because I think a lot of the other issues may be framed by that in nailing down and getting a better handle on what the theory of damages might help inform the further discussions. I don't want to throw anybody for a loop, since that's a little different than what I had initially communicated through my law clerk, but any thoughts on that?

MR. BERMAN: I'd be glad to go first. It's New GM's motion, so it's between you and New GM, I think.

THE COURT: Mr. Godfrey, what are your thoughts on that?

MR. GODFREY: Whatever the Court would like.

THE COURT: Why don't we do that, and let me start with Mr. Berman then.

MR. GODFREY: I would like the final word, though, your Honor.

THE COURT: We'll see about that.

Mr. Berman, talk to me about your theory of injury, and just to be clear, I think where the plaintiff has out-of-pocket costs because of the need to comply with the recall or otherwise, or where the plaintiff sold the car after the recall was announced and sold it for less money and can prove that, I sort of understand the theory, I think. What I'm trying to nail down is for the plaintiffs who are not in either of those categories but basically just held on to a car and the car has presumably been recalled and fixed, what the theory of damages is with respect to that category of plaintiffs. Is it diminution of value, brand tarnishment? Can you Elaborate.

MR. BERMAN: I'd be glad to. I wasn't sure from your question in your order, when you said theory of injury, whether I had to elaborate on the fact that we're basically alleging that there were some core omissions that unite all the plaintiffs, but it sounds to me like I don't need to go through that. There were omissions about the safety of GM vehicles, the GM culture, and so forth, and you're focusing more on the actual damage theory.

THE COURT: Yes. Theory of damages, exactly.

MR. BERMAN: I think theory of damages starts from the proposition that I set forth in slide 2 that I handed up to your Honor in the series of slides that I might refer to. And that is a vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer. Our damage relates to our theory in the case. Now, New GM says our brand diminution theory is crazy, unprecedented, but we're in an unprecedented factual situation here. Never before in automobile history that I'm aware of has there ever been an automobile manufacturer that recalled 20 million cars for 70 different defects in one year.

What happened as a result of that was simple. There was a diminution in value not just in the cars that had ignition switch defects but in all cars, because it's marketing 101, brand matters. Companies try to establish their brands. In fact, I just learned that in the Volkswagen matter, Volkswagen did such a good job in its advertising and establishing its brand that Volkswagens actually hold on to their value longer than other cars. So a brand is important. And Judge Selna, in the Toyota case, recognized when he was discussing Kwikset that brand has value.

What happened here? We allege that, first of all, the injury occurs at the point of sale. The injury here was at the point of sale, everyone was told that they had a car that was

safe and reliable, and they didn't have a car that was safe or reliable, or they thought they were buying a brand that had a reputation for producing safe and reliable cars.

THE COURT: But to me there's a distinction between those. Those strike me as different theories of damages. If the theory is that there's a defect and by virtue of the defect the car is less valuable, yes, I understand that that would basically occur at the time of sale. If the theory is that they bought a brand and the brand is no longer as valuable, that didn't occur at the time of sale, because if someone bought a car in 2007, the brand was what the brand is. It was only after the defects were revealed to the world in 2014 that there was any diminution in value from the defect.

MR. BERMAN: But our theory of the case is when you bought your car in 2007 or 2009, the brand was not what we thought it was. In other words, these problems didn't arise in 2014. You don't, all of a sudden, in one year develop safety defects. So what Mr. Valukas found, and we cited it in our complaint, was the company was cutting costs. The company was devaluing safety. The company was the siloing people, so they couldn't figure out whether they were producing safe cars. The company did not have an adequate tread database, so they couldn't track their defects. So when you bought your car, you thought you were buying a car that was by a company that knew how to make safe and reliable cars, and that's not what you

got. You got a car made by a company that wasn't capable of making safe and reliable cars, whether or not you had a defect or no defect.

THE COURT: But no one knew that until at least 2014. Let's assume for the sake of a hypothetical that those facts never come out, that GM has an amazing reputation for safety and manages to conceal that really that's entirely a sham forever. How has any consumer been harmed by that?

MR. BERMAN: Again, the consumer is harmed. There are two different ways you can be harmed. First of all, you said that no one knew that until 2014, but the complaint alleges, and you've seen the testimony, that with respect to the ignition switch defect, for example, GM knew about that for years.

THE COURT: I mean the consuming public, and to the extent that there is value to the brand, there was no effect, there was no tarnishment of the brand until the defect was revealed to the world. Correct?

MR. BERMAN: That's correct.

THE COURT: So how could that injury have occurred at the point of sale if the theory is that the brand is now diminished if that didn't occur until the defects and the problems were revealed to the world?

MR. BERMAN: But the brand was actually not what you thought it was when you bought the car. Right? Let's say

you're going to buy a Rolex watch.

THE COURT: It was what you thought it was at the time you bought the car because brand is a function of what the consuming public thinks it is.

MR. BERMAN: Right. So let's look at it this way. I went and bought a car. As the Koppelmans alleged, they bought a car because they heard about safety advertising. They bought a car because they thought the airbag was going to be safe. They bought into a brand they thought was a good brand. They didn't do anything wrong. They paid, let's say, $5,000 for that car. In 2014, first you have the ignition switch defect recall. That is a massive amount of publicity, and it's not just a recall, there's also information coming out that GM had been covering this up and concealing it. That had an impact on the value of all GM cars. And then as the further recalls came out, 10 million more ignition switch cars in June, dozens of other defects later in the summer, the value of these cars went down even more.

So here I'm a consumer, I bought a car in 2009, I thought I was buying the GM brand, a brand that promoted itself, and we've cited the advertisements, which we'll go through later in the argument, as a company that put safety first and then a culture that put safety first.

THE COURT: All right. Can you cite to me any case that recognizes this theory of damages, brand dilution or

diminution as a theory of damages, a valid theory of damages?

MR. BERMAN: Yes. I think Judge Selna recognized that in one of his footnotes when he's talking about the Kwikset case, when he talks about the value of brand and the value of market forces. That's one answer.

Two, and again, I go back to where I started. This is an incredibly unique factual predicate. There are no cases that either party cites where all of a sudden you've got an avalanche of defects that undo the brand value of an automobile manufacturer. Not only did Judge Selna talk about market forces and brand diminution, but I think that this is basically a classic consumer protection case. And so all of the consumer protection cases that talk about "you get damages," I think the Plubell case and even the Kelly case from Missouri talked about, you get diminution of value. It's a normal damage that flows from a classic consumer protection injury. Classic consumer protection injury here again is: I went in, I bought a car that I thought was coming from a reputable manufacturer. And when the truth came out later, through no fault of my own, through the fault of the manufacturer, I'm suddenly holding a car that's worth less money.

Now, one of the things we try to do to show you that, because the cases talk about, and if you look at the cases that GM cites, they're a long line of manifestation cases where they say if you have no manifestation you have no injury and you

have no claim. If you look at those cases, there's a theme that I think binds the cases together, and that is the court, for example, in the Carriuolo case, talked about these damages are speculative. And the courts all use the words "damages are speculative."

Here's we did a couple things to show you that the damages and the injuries are not speculative. One, we gave specific examples of diminution of value, and that's at paragraphs 1013 through '14, for example, and 1016, where we calculated through our experts the diminution of value on certain vehicles. And there's are not ignition switch vehicles. These are other vehicles.

We then went in the trade press, and I have an example at slide 6 where the trade press is reporting. The Dallas Morning News says it's picked up an analysis of iccars.com and found that the resale values of the main vehicles in the GM recalls have dropped 14 percent. So there's objective facts out there showing that these cars are dropping in value.

Then we have someone, for example, like Mr. Koppelman, and I have his facts up on slide 8 for you. He went to his dealer and he says: Hey, I got one of these recalled cars; I'd like to sell it. But he couldn't get a price that he thought was reasonable. And his dealer says due to the recalls, the value's declined. And he goes on to Kelley Blue Book and saw his car had dropped. All of a sudden he's holding, through no

fault of his own, a car that's not worth what he thought it was.

THE COURT: Let me pose the following hypothetical to you, and I want to stress that this hypothetical does not involve any presidential candidates. Let's imagine that there is a prominent real estate developer who has a very prominent brand name, and part of the appeal of buying a condo or apartment in his or her building is the name. Right? And let's assume somebody buys an apartment in that person's building. Part of the value of the apartment, which like a car, is certainly an asset that can be resold and has value, and part of the value, we'll stipulate, is the fact that it's in a building with this person's name on it. Now let's assume that that person then commits some heinous act, murders somebody, and obviously his or her name is no longer quite as valuable. Does the person who bought the apartment have a legal claim against the developer because the brand is no longer what it was?

MR. BERMAN: No, and here's the difference between this case and that case. If you look at slide 9, this is out of GM's annual report, and what GM is admitting in its annual report is that "the cost and effect on our reputation of the product safety recalls could materially affect our business," and then they go down at the bottom to say, "we may lose customers if we do product recalls in an untimely basis." So

the difference between your hypothetical and this case is that GM is making representations about the safety of its cars, about the reliability of its cars, because GM knows it's important to consumers that it do so.

THE COURT: OK. But let's change my hypothetical in the following way: Let's assume that the developer has committed murder at some point in the past and conceals that in all the promotional materials about why his or her brand is the best and why his or her buildings are the best and living in his or her buildings, your apartment has tremendous value because his or her name is his gold, and it comes out later that he or she has done some heinous thing in the past. Legal claim, because at the time of the sale the brand wasn't actually what it was marketed to be?

MR. BERMAN: Probably I would say that might be a little attenuated, but it wouldn't be attenuated -- let me turn that into this claim. Let's say that developer said: Here's my brand; one of the reasons my brand is a good brand is because my buildings are clean; they're environmentally solid; we have state-of-the-art everything. So he makes a representation about his brand, the brand, this is what we do for our buildings, and it turns out that there's a building that's a slum, it's terrible, and word gets out that this developer's buildings are not really what he represented them to be. He didn't represent anything about whether he was a

criminal or not. But in that case, he made representations about quality and safety, said his apartments were safe.

THE COURT: OK. And no question somebody who lives in the slum building may have a valid claim with respect to fraud or misrepresentation, but somebody who lives in a building that nobody argues is a slum, that lives up to the representations that that developer made, why would that person have a claim by virtue of it turning out that there's one building that doesn't live up to these representations?

MR. BERMAN: Because if it could be shown, in my view, that there was a carryover effect between what happened in building A to the next building, so that all the condos in building B went down because word had gotten out that this guy was not what he said, they may have a claim, but that's not our case.

THE COURT: That is your case with respect to someone like Ms. Andrews, right? Ms. Andrews has no allegation that there's a defect in the car. The claim is that basically by virtue of all the negative publicity surrounding defects that manifested in other cars, her car is now worth less, or am I misunderstanding?

MR. BERMAN: No. She alleges that she believed that New GM was a reputable manufacturer of safe and reliable vehicles and the company stood behind its vehicles, and she would not have purchased her car if she knew of the many

defects in other GM branded vehicles, as well as GM's corporate culture. And I think that makes sense.

The disconnect that I think we're having is very early in the complaint, we loaded the complaint with allegations containing GM's representations about its brand, about its reliability, about its safety. GM wasn't necessarily talking just about a Chevy or a Malibu. It was talking about the company, because it understands when you're buying a car, in part, you're not just buying a brand, you're also buying the company. And Ms. Andrews was hurt when the truth about the company came out. Why would Ms. Andrews, for example, have a car that's suddenly worth thousands of dollars less than when she bought it, what she expected it to be because the value went down when the market realized GM was not what it thought it was. It was not the company people thought it was.

THE COURT: All right. Last question for you, and then I'll hear from Mr. Godfrey. You keep on emphasizing that this case is unprecedented and that's why this may be an unprecedented theory of damages, but if I were to recognize your theory of damages, would it not open the door to any consumer bringing a claim where there's an allegation of defect with respect to one product, bringing a claim saying by virtue of that defect the value of the brand, and I had nothing to do with that product, I didn't buy that product, I didn't use that product, I was unaffected by that product except insofar as the

reputation of the brand has taken a hit because of the defect? Why would this not open the door?

MR. BERMAN: In this case I'd answer that in two ways. No. 1, we've given you objective facts that there's been a brand diminution. We gave you examples. We had our expert calculate it, so some other consumer would have to go hire an expert and calculate that whatever other product they bought had diminished in value because of the representations about product A. That's a pretty big burden. And B, I think you have to look at the complaint holistically to see whether there's a plausible theory here under Twombly. And the reason I say this is somewhat unprecedented is because, again, when you're looking at plausibility, whether there's a name brand damage, we've got 20-plus million cars, we've got 70 defects. We've got unprecedented publicity about this. We've got a company that enters into a deferred prosecution agreement that affects as the brand, and we've got a company that admits in its 10Ks and its annual reports that if it doesn't properly initiate and report recalls, it will hurt its brand and lose customers. That's a pretty compelling set of facts and allegations that is not going to open the door up to a bunch of cases.

THE COURT: All right.

Mr. Godfrey.

MR. GODFREY: Thank you, your Honor. To call this

unprecedented is an understatement. A plaintiff which has nothing wrong with his or her vehicle has a claim. A plaintiff who had a defect, which is repaired, has a claim. A plaintiff whose vehicle functioned perfectly and the defect never manifested itself has a claim. Under this theory, any time something happens to the brand that is negative, there is a claim, and one question is not only is it unprecedented, what is the brand here. General Motors owns brands, but they're asking you to believe because of the DPA, because of the problems with the Saturn Ion and Saturn callout, a brand that was discontinued in the fall of 2009, that a Cadillac dealer in 2014 in the month of January lost value. There's no precedent to support the claim.

Procter & Gamble own many brands. Under their theory, if there's a problem with Tide, that when you use it and it blows up your washer and dryer, or if you have a problem with Old Spice, everyone who buys a Procter & Gamble product, including Pampers, has a claim. This is not opening the door. It destroys the door, the door frame, and the house. That's why it's unprecedented, but there is law on the topic, and that's point 2.

The reason the plaintiffs did not cite a single, solitary case in their favor is because we've cited almost 50 cases to the contrary. Whether you call it stigma damage, whether you call it reputation damage, whether you call it loss

of the benefit of the bargain damage, all of the cases uniformly reject it, and Toyota did not do what they said. All that Judge Selna found in Toyota was that there was Article III standing based upon the allegations in the complaint. He did not decide the merits of the question regarding manifested defect.

Point 3, the claim is contrary to the general rule. In this court, Weaver, Hubbard, Canon, we've cited cases across the country uniformly holding that if there's no manifested defect, you have no claim. They're going one step further. They're saying you don't have to have a manifested defect; you just have to have purchased the brand, whatever that means. People buy Cadillacs. It's a different brand than Chevy's, it's a different brand than Buick's. So when he says this is unprecedented in terms of facts, he doesn't know his history.

In 2001, General Motors shut down the Oldsmobile brand. It discontinued the brand. In 2009, it discontinued the Saturn brand. They don't make them anymore. Under his theory when Ford came out with the Edsel that in the 1950s certainly damaged Ford's reputation, people who purchased Lincolns should have had a claim. Multiple factors influence and impact brands, and the reason that the cases come out the way they do is that the law has drawn a bright line, and the cases say this. The cases say where there are no out-of-pockets, where the product expectations have been met

because the defect never manifested itself, where the consumer received the benefit of the bargain, and because manufacturers do not guarantee nor promise a particular resale value, nor do they guarantee a particular brand value, because those are subject to a myriad of factors, both macro and micro economic, the law has said that it is inherently speculative and not cognizable damage. When he says we have an expert who calculated this, put a number on it, and people in the marketplace say put a number on it, the law says, no, that doesn't matter. It's a bright-line rule. The causal change is too remote. There are a myriad of factors, particularly in the automotive industry, influencing the price of a vehicle.

And if we want to get really hypothetical here, under his theory, someone who purchased a car in 2009, purchased a Saturn vehicle, the brand was discontinued, they resold in 2010, they resold it again in 2011 and resold again in 2013, the fourth purchaser, who never dealt with GM, under his theory, has a claim. It is the wings of the butterfly, and that's why the case law says it's speculative and it is not recoverable as a matter of law.

THE COURT: All right. Do you concede that if the plaintiff can prove that he or she sustained out-of-pocket costs as a result of the defect that those would be a valid theory of damages?

MR. GODFREY: It depends on the facts. If the

plaintiff tied the out-of-pocket cost to the defect, which would be idiosyncratic here, and if they did that notwithstanding they could get a free repair by the recall, and they can prove that, then in that narrow subset, depending upon the basis for the claim, they might be able to sustain a cause of action. I say might because you then fall into other problems, such as the generality of safety allegations not being claims as a matter of law. But out-of-pockets is not what this case is about. That's not a class action. There's no out-of-pockets here. This is about a broad-based putative class that there is no limitations under the law.

THE COURT: All right. And what about a person, and again, I recognize it might be idiosyncratic, but if a person actually sold a vehicle after the defects are announced but before the recall repairs are performed on the car and can prove, assume for the sake of the hypothetical, that the resale value -- or let's stipulate the following facts: Somebody has an agreement to sell a car for X amount of money and the next day the facts come out about the defect and the person says: I'm not going to pay you X any longer; yes, there's a recall; yes, I can get a free repair, but to me it's not worth the same today; it's kind of worth X minus Y. Why isn't the Y a valid theory of damages here?

MR. GODFREY: Because the law says, and again, the cases are uniform, that a recall moots the claim. It removes

the predicate for the damages and the law has said that damages of that ilk are inherently speculative. That's what the law says, and it makes sense. Again, that's not what we're here about because we're not here on a noncompliant Rule 8 complaint about two or three people. We're here for 20, 30 million customers who purchased vehicles, new and used, that have a GM-branded vehicle, but the law says that it's moot; they don't have a claim because the predicate for damages was taken out.

Finally, this is bad public policy, what he's asking for. Set aside that you'd have to overrule and say that the three prior decisions of this Court were wrong. Set aside that you'd have to disagree with most federal courts of appeal, Seventh Circuit, Eighth Circuit, Eleventh Circuit -- you'd have to disagree with all of them -- the Fourth Circuit, the Carlson case, which was a reputation case back in 1989, set aside those problems, think of what this means. Any time a company does recalls, it is creating a cause of action for people who own the recalled vehicles. That makes no sense from a safety perspective. It makes no sense from an economic perspective. It's just bad policy.

THE COURT: Is that an argument about the theory of damages? That strikes me as your prudential mootness argument.

MR. GODFREY: It's prudential mootness, but it's also theory of damages.

THE COURT: All right.

MR. GODFREY: On the theory of damages point, Judge Easterbrook explained why awarding compensations for these people who make claims of this ilk results in windfall compensation and why it's just inappropriate under the law. Again, bad public policy.

Finally, they're essentially guaranteeing brand value. The whole predicate is that there's a guaranteed brand value, that no matter what, a purchaser of an automobile, which is an inherently depreciating asset, has guaranteed brand value, and on that predicate, they can therefore get a claim for damages if the company does anything that impacts the brand. That's not the law and there's a good reason for it, because it opens not just the door, but you lose the door and the frame and the house.

THE COURT: I know you like that metaphor.

MR. GODFREY: It wasn't mine. It was a case down in the Tenth Circuit, but that's OK.

THE COURT: You should give credit where credit is due.

My last question for you is you focused on the issue of manifestation and cited plenty of cases that suggest that there is a manifestation requirement in certain contexts, and I guess that actually is my question. It seems to me that you're trying to say categorically that there's a manifestation requirement, but it seems to me that that might vary by

jurisdiction and within jurisdictions by legal claim, that some jurisdictions don't have that requirement, that some may have it with respect to the straight-up fraud claim, but not with respect to the consumer protection claim, and so forth. Is it your view that categorically that isn't something that I need to get into the weeds of, particular jurisdictions and particular claims?

MR. GODFREY: Yes, it's a categorical rule, and I'm happy to go jurisdiction by jurisdiction, but the Court might want to look at footnote 8 of the Eighth Circuit's opinion in Briehl, as well as the Carlson case in 1989, the Fourth Circuit. What Briehl says, and I'll paraphrase it, but the language is, and it cites a number of the cases that the plaintiffs cite, as does the Mikhlin case, which your Honor put in your order. It's the citation of the case that says that class certification decisions, etc., are singularly unhelpful because they don't go to the merits.

The cases that the plaintiffs cite are one of two types. They're either classification cases where the plaintiffs and the courts do not address the merits of the defect requirement, or, and this really goes to your Honor's question, I think, in a different way, they are seeking to transform this case from a product defect case into a false advertising case. That's why the cases that they spend the most time on are false advertising cases where there's no

dispute about the nature of the advertising.

Take the Kwikset case from California, which did not overrule the prior cases, as we point out in pages 9 and 10 of our reply brief. The law still in California is manifest defect. Kwikset was an advertising case which says these locks were all made in the U.S.A. Every single lock was not made in the U.S.A. It was a pure false advertising case. Same with Carriuolo. There's a reason that the Carriuolo case in the Eleventh Circuit does not discuss product defects. It's because it wasn't a product defect case. It was a false sticker case. That's the allegation. That's why it doesn't discuss the Kia case, which is the law in Florida, or the five cases after Kia enforcing this rule. That's why they don't do that.

THE COURT: All right. Then in this case, is there a valid false advertising theory?

MR. GODFREY: Then the claim is different because false advertising doesn't recognize diminution of value either. You have a different theory of damages, but we have different answers to that, and in the products defect case where the predicate is a product defect, the cases have applied across the board, because in many of the cases we cited, the allegation was false advertising: You promised me a safe vehicle; you promised me a reliable vehicle; you promised me you had the data technology, etc. Most of the cases we cite on

manifest defect rule have those allegations, and they're brought under consumer fraud, fraud, fraud in concealment, the same claims as here, most of the courts say, Let's cut right through it and say bright-line general rule.

THE COURT: All right.

MR. GODFREY: Now, I have one thing to tell the Court, because you're going to get a letter on it, because we found out about this late yesterday. This is part of the duty of counsel. Late Wednesday of this week, we found out yesterday, and I'm not involved in this litigation, so that's why we're not on the service list. In the Takata litigation, Judge Marino issued an opinion denying the motion to dismiss and not applying the manifest defect rule. He does not cite a single authority. He simply parrot's the plaintiff's complaint language and denies the motion to dismiss. He suggests it could be decided at a later time. We think he's wrong. We think he's ignored the authority. He's applying, for example, the law of Alabama, where the law in Alabama's got three Supreme Court cases on point. But my duty of candor to the Court -- that case just came down; we think it's a different case, we think the court has certainly made an error; he does not discuss the law at all -- but I feel an obligation to bring that to your attention. We'll be submitting a supplemental authority letter, so if your Honor's wondering why we didn't raise it, I'm coming out now.

THE COURT: I appreciate your candor. Why don't you turn to the RICO claims and address those issues, please.

MR. GODFREY: Sure. I get to go now, right?

THE COURT: Yes.

MR. GODFREY: Thank you.

THE COURT: First, do you agree that the Second Circuit law applies or that I should apply Second Circuit law?

MR. GODFREY: Yes.

There are really two issues that the Court has raised. One is whether there's a cognizable RICO injury. We think no. We think it's tied in some ways to the overarching claim. No plaintiff can recover diminished value damage. RICO requires out-of-pockets. It requires a loss, a definite loss.

THE COURT: Going back to the question I asked you earlier, would you agree that there's a valid theory of injury for RICO purposes if the plaintiff had shown that he or she sustained out-of-pocket losses or sold the car and can prove that the resale value was lower because of mail fraud or wire fraud?

MR. GODFREY: Yes.

THE COURT: Assuming the other elements are met.

MR. GODFREY: I was going to say that, assuming the other elements, yes, as to the first question on out-of-pockets. That would qualify under McLaughlin. That would qualify under Merrill Lynch.

No as to the second question because it's still inherently speculative. The principal case that the plaintiffs argue, of course, is the Merrill Lynch case. As the Court would note at the outset, the Merrill Lynch case was a Second Circuit decision affirming the dismissal of the claim. So they're citing a case for the proposition that they have a claim and relying upon a case where the claim was in fact dismissed. And in that case, the gist of the complaint, and this is important, was that the partnership interests which were sold ab initio, out of box, may be impossible to make money or to recover anything of the original investment, that they were fraudulent from start to finish. So you had a loss by definition because you were defrauded. They're not making that argument here. They're in the McLaughlin world of American tobacco, with the value model. That's the world they're in, and the Second Circuit has held they do not have a legitimate damage claim.

THE COURT: Are you familiar with the Ninth Circuit's decision in Living Designs Inc. v. E.I. duPont?

MR. GODFREY: I will check, your Honor. I don't recall that one, but let me see if we've got that one here. I don't believe that's cited in our papers. Maybe it was and I missed it, but I don't have that, no.

THE COURT: Then I won't ask you about it. You may want to look at it and address it. I guess one question, and

then I'll ask Mr. Berman this, in that case it speaks to the two issues that I flagged in my order, injury and the enterprise issue. It's a case where the Ninth Circuit reversed a grant of summary judgment and found that there were material issues for trial noting where duPont was alleged to have essentially collaborated with outside counsel in concealing information in litigation and thereby settling cases for less money than they would have settled if the information hadn't been wrongly concealed.

MR. GODFREY: Oh, is this the case involving pesticides and herbicides?

THE COURT: Yes.

MR. GODFREY: Oh, OK. I am familiar with that case, but it's not cited in the briefs by either party. That case is like the Mayfield case. The allegations in that case are like Mayfield, that the lawyers were actively involved in a fraud. The reason I'm familiar with that case is there's a famous Delaware Supreme Court decision in 2001 where the court set aside a settlement and a release on the grounds that because of discovery fraud actively engaged in by counsel, both inside and outside is the allegations, that the release and settlement agreement were voidable. The facts of that case are remarkably different, but that really goes to your second question as to whether or not there's a RICO enterprise here.

THE COURT: It goes to the first also because there's

a section of the opinion where the Ninth Circuit says there's a valid theory of injury here, namely, that the cases would have settled for more but for the concealment, and that strikes me as as speculative, if not more speculative, than the theory at least with respect to people who resold cars and alleged that they resold them for less by virtue of the defects, and so forth. Now, maybe you think the Ninth Circuit got it wrong.

MR. GODFREY: No. I think I don't agree with your Honor's conclusion about it that makes it similar, and the reason is if that case came out after the Delaware Supreme Court decisions setting aside the settlement, and the predicate was fraud in the inducement and rescission, that they were defrauded in entering into a settlement that they otherwise would not have entered into, certainly at the terms they entered into and the price they entered into but for the concealment. The allegations, and I don't know whether these are true or not, but the allegations were the affirmative concealment of discovery and other things of that ilk.

The predicate for the Ninth Circuit decision that your Honor describes is taking off the cue from the Delaware Supreme Court. They've ruled that that is a basis for a rescission. No one here is seeking a rescission claim. This is not a rescission action. They're seeking a diminution in value, and the courts have applied a bright-line rule on it, and RICO cases for different reasons follow that rule.

THE COURT: All right. Then turn to the enterprise issue. Does the Ninth Circuit case not speak to that?

MR. GODFREY: Well, it speaks to it like Mayfield. So Mayfield was raised and we briefed the Mayfield case. And in Mayfield, and again I don't know whether the facts are true or not in either case; I only know what the allegations are as reported by the court, so I'll take the allegations as true. I don't mean to suggest any lawyer engaged in misconduct, but these are the allegations. In Mayfield the allegations were that law firms working for the client routinely filed complaints, did not serve them and improperly got default judgments that they then enforced against consumers. I don't think anyone can describe that conduct as anything other than a violation of any number of statutes, not just the rules of court, but any number of statutes, you are making representations to a court that you served someone and you're seeking to execute on a false judgment. And it wasn't a few of them. In other words, it didn't happen where some young lawyer or old lawyer made a mistake and they didn't follow the correct procedures and they fumbled. No, this is a course and pattern and practice of conduct. We don't have that here.

The enterprise issue here they look for, and they look at three predicate acts. One is informed by the Lundy decision, which I know your Honor is familiar with; it has the same in-furtherance requirement, and your Honor's already

addressed that in the crime fraud context, a slightly different context, that the lawyers here do what lawyers did. I mean, think of the breadth of this. One thing about the complaint, despite its longevity, they make very broad allegations. There are allegations in the complaint in numerous paragraphs about not just King & Spalding but General Motors' other unnamed law firms. For all I know, they think that I and my firm are part of this because we have the temerity to defend General Motors in this litigation. They have broad-based allegations about what lawyers do routinely. Lawyers routinely provide legal advice about whether to settle or proceed to trial. Lawyers routinely provide legal defenses. That's far removed from what you're describing in the Ninth Circuit and certainly far removed from the one in Mayfield.

THE COURT: All right. Mayfield, I agree, is further down on the spectrum, but talk to me about the Ninth Circuit case, which I appreciate that you were able to recall, and this case, at least the allegations with respect to Melton, for example, and I recognize that I've addressed this in my crime fraud ruling.

MR. GODFREY: First, I think your Honor got it right on crime fraud. Your Honor did not find any allegations similar to or conclude any allegations similar to what the Ninth Circuit did, at least my recollection is. Secondly, the issue in the -- is it Livingston, the Ninth Circuit case?

THE COURT: Living Designs.

MR. GODFREY: Living Designs, right. That's close.

The allegations there were that this was a course of conduct not just in a case but across the defense of the entire product line. What we had here was, and I think your Honor captured it well when you said there were aggressive discovery -- certainly -- approaches, but there was nothing sufficient to justify a crime fraud ruling. People can criticize lawyers after the fact about whether they were overly aggressive or underaggressive in discovery all the time. That does not transform King & Spalding into having its own interests, and General Motors' own interests, into participants in an enterprise for the purpose of defrauding someone. There's no fraud intent, and I think Lundy makes it clear, that that conduct was not taken in furtherance, in furtherance of an illicit scheme.

Now, make no mistake. This allegation that they have is simply a back-door attempt to overrule or overturn the crime fraud ruling because the next step will be if the allegation stands, now they get discovery, and we're right back before the Court on whether or not they get the King & Spalding documents. We have the documents. So that's where this is going. This is simply an attempt to undo the crime fraud ruling.

THE COURT: Let me give Mr. Berman a turn, just so we keep things moving along.

Mr. Berman, if you could speak to RICO.

MR. BERMAN: Ms. Cabraser is going to be doing the RICO allegations.

THE COURT: All right. Let me ask you at the outset the same question I asked Mr. Godfrey. Do you agree I should look to Second Circuit law, to the extent that there are conflicts, that Second Circuit law applies for my purposes?

MS. CABRASER: Yes and no, your Honor. Basically yes, the Court should look to the Second Circuit law as informed by United States Supreme Court law.

The other thing that I would say is, and in the area of the RICO law especially, the law moves very quickly. The Supreme Court is interested in civil RICO, and what tends to happen is the more recent cases, because there's a recency effect in civil RICO, so the more recent cases from whatever circuit, may be more applicable to the fact situation here, and of course every RICO case, particularly civil RICO case, by definition is an unusual one. I don't think there are any two cases exactly alike in all the cases the parties cited. So, generally yes. The little caveat is sometimes there's a very recent case, and I will come to an example in a minute, that doesn't necessarily conflict with the Second Circuit at all. It doesn't come from the Second Circuit, but it's more apposite to the circumstances of this case than, say, a competing Second Circuit case might be. We're supposed to have a unified

federal jurisprudence with respect to civil RICO, but it's an evolving one, and the Supreme Court is the one that makes the major breakthroughs that can amend a RICO jurisprudence.

THE COURT: They can upend jurisprudence in most respects, which isn't to say they do that. But talk to me about how your broader theory of injuries are compatible and acceptable under McLaughlin.

MS. CABRASER: Your Honor, this isn't a McLaughlin case for a number of reasons. First of all, in McLaughlin, the price of light cigarettes was not depressed by revelations of their addictive nature and their lack of safety. The price was identical to that of regular cigarettes, and it was controlled by tobacco manufacturers, and they can do that because of the allegation that smokers were addicted; they were going to have to buy something, and light cigarettes and the other cigarettes, brand by brand, the prices were the same. There isn't a secondary market for cigarettes. There is for cars. That's the problem here, and this is particularly relevant to the civil RICO claim, because unlike some other claims, civil RICO can involve cognizable injury based on fraud in the inducement, but it doesn't necessarily have to. In other words, things that happen to the plaintiffs' property, and cars are property, after the contractual relationship or after the purchase that are perpetrated by the RICO defendant can be cognizable under civil RICO.

We cite U.S. Foodservice. Some cases are like Merrill Lynch. The fraud was baked into the original transaction. That case was dismissed on statute of limitations not because the claim wasn't meritorious as an injury claim, but because it had happened too long ago. In U.S. Foodservice, the fraud and the damage happened after people were locked into their contracts with U.S. Foodservice. In McLaughlin, no secondary markets for cigarettes, you didn't theoretically have to buy another pack of cigarettes and if you had them you smoked them, and that was that. Here, people are stuck with the cars they bought. They're stuck with the cars they bought during period of active concealment by the RICO defendant, GM. After the concealment was upended, after the revelation, after the scandals, and after the recalls, the values of those cars were diminished objectively in the market. Kelley Blue Book, NADA prices show that. We can prove that. The market reacts, people's cars are worth less, their property is injured.

THE COURT: What about Judge Barker's decision in Bridgestone/Firestone; applicable, right, wrong?

MS. CABRASER: Judge Easterbrook's decision in Bridgestone/Firestone?

THE COURT: Judge Barker's decision granting in part and denying in part the motion to dismiss the master complaint in that case, relying on, among other things, Second Circuit law in finding that allegations of injury were not sufficiently

concrete or particularized, basically.

MS. CABRASER: I think in retrospect, he was wrong. I think nowadays, and that was 2000. Nowadays in 2016, we have the market data and the expertise and the Daubert-qualified experts on both sides of the V to demonstrate diminution in value postsale. So I would say the factual scenario there was very different, and the expertise has developed. I would be loath to say that Judge Barker is wrong about anything. I think she was absolutely right about class certification in that case, but again, the litigation's moved on, and this factual scenario is very different. Again, we're talking about a RICO claim here where, as the Bridge v. Phoenix case, controlling case, Supreme Court unanimous decision, says there need not be any reliance by the purchaser, by the plaintiff; the fraud can occur at any point. Those who are the direct victims of a RICO fraud are not necessarily those to whom misrepresentations were made or from whom facts were concealed.

You got a moment of candor from Mr. Godfrey, so it's only fair that you get one from me. We cite Bridge v. Phoenix in our opposition. We cited it on two pages. At one point we actually got it wrong. We said that it had affirmed the dismissal of a RICO case. In fact, it was just the opposite. What happened in Bridge v. Phoenix was an eight-year odyssey began with the dismissal of a RICO complaint because the district court found that the plaintiffs were not the direct

victims. They couldn't prove causation, they didn't have standing, and they didn't have cognizable injury, all the things that GM, New GM, has said about us here. The Seventh Circuit through Judge Posner reversed that dismissal. The case went up to the Supreme Court. The decision we cited is the Supreme Court decision that says the plaintiffs were the direct victims even though no misrepresentations were made to them. They were the victims of a bid-rigging system, which I'll explain in a minute. They did have damages, they could prove causation. The case went back to the Northern District of Illinois. This is the Chicago soap opera. It was dismissed on summary judgment. Again, lacked proximate cause, lack of ability to particularize a damage.

It went up to the Seventh Circuit again. In a 2011 decision Judge Posner reversed summary judgment, and the case was alive. The case went to trial not once but twice, the second time resulting in a jury verdict for $7 million, which jury verdict was affirmed on appeal, again by Judge Posner with a denial of en banc review in 2013. That decision explains not only the proximate cause but how the damages were able to be proved in that case, and this is what is important to cognizable injury here, in ways that the Supreme Court case we cited doesn't fully explicate.

Here's what happened. This was a public bid for tax liens. People are in the business of bidding for tax liens.

They pay the tax liens. They wait for the underlying property owner to default, and then they end up owning the property. It is impossible to tell when you buy a tax lien whether the owner will or won't default. In other words, you may make no money on that purchase at all. You may lose money, but over time, big numbers, many transactions, you're going to make money, and so the more tax liens you can buy the more money you're going to make. What happened? There was a one-bidder rule for tax lien auctions. The plaintiffs obeyed that rule, one person per company. They're called the one-arm bidders, one arm, they raise one arm. The defendants didn't follow that rule. They put in multiple bidders. They put in shills, and so they got a higher percentage of the liens and hence a higher percentage of the money.

Ultimately the plaintiffs, after eight years, on the facts of that case, with the help of the Supreme Court and three decisions from Judge Posner, were able to demonstrate their damages. They needed experts to do it, they needed statistics to do it, they needed probability to do it. Because they had to prove because they got a smaller percentage of tax liens, some but not all of which would pay off, they were damaged, they were injured in their business, which was the tax lien business, because of that loss of opportunity. This is not exactly that case, but it's an illustration of how cognizable injury under a RICO theory can be proved. We can do

the same thing too. Here, we bought the cars first. We bought the cars for a price. That price was diminished after the fact when presale conduct was ultimately revealed, and that is true today. You look on Kelley Blue Book, these cars have diminished value.

THE COURT: Even where the repairs have been made?

MS. CABRASER: Yes. Apparently that's true, because Kelley Blue Book and NADA don't reflect that a recall has been recalled and performed. And of course in a large number of these cars, the recall hasn't been performed. GM hasn't been able to complete the recalls. There are a lot of them. They affect many cars. So in addition to the out-of-pocket costs, which we also allege under RICO, which by the way, occur when you go in for a recall, they aren't free. You spend time, you spend money, alternative transportation, babysitters, time off of work or school. Those are costs. They're individualized, they're particularized, but they're definite, and they can be proven.

THE COURT: Can you turn to the enterprise issue briefly so we can just keep things moving.

MS. CABRASER: Yes.

THE COURT: First of all, tell me, do you agree that I can consider the documents that I considered in connection with the crime fraud ruling insofar as you were in possession of them and relied on them in drafting the complaint?

MS. CABRASER: Yes, you can, your Honor. The allegations in the complaint go beyond that information in the documents, and of course the allegations in our complaint are made in a different context for a different reason. We're not asking you to reconsider your crime fraud ruling, and we're not taking an end run around it. What we're saying is that those were some but not all of the communications and predicate acts by members of an association-in-fact enterprise, by the way, not RICO defendants. Neither ESIS nor King & Spalding were named as RICO defendants in the complaint. New GM is the RICO defendant. New GM defrauded the class through the conduct of that enterprise. While it had a common purpose, which is revealed in the communications and in what the enterprise members knew, there isn't any requirement that we can find of a specific intent on behalf of all of the members of the enterprise or even of predicate acts by the enterprise.

THE COURT: Doesn't the enterprise have to be defined by a shared purpose to commit some wrong?

MS. CABRASER: The enterprise has to be defined by a common purpose to do something, and then the question is do we the uncharged members of that association-in-fact enterprise need to actually believe and intend that what they are doing is fraudulent. We can't find a direct answer to that in the specific context of this case. The usual fact is all of the members of an association-in-fact enterprise are named as

defendants also. But the fact of the matter is the purpose of the RICO statute was to prevent and deter people intent on fraud from taking over or using legitimate businesses to defraud.

THE COURT: All right. Let's assume that GM did not use outside counsel or ESIS but internalized those functions and used inside counsel. Still a RICO claim?

MS. CABRASER: There may not have been a RICO claim, your Honor, there. And that's Fitzgerald, another Judge Posner decision, another interesting decision, and there Judge Posner said, Look, this is warranty fraud.

THE COURT: Is that the Chrysler case?

MS. CABRASER: Chrysler, yes. The warranty fraud that you accused Chrysler of perpetrating through its dealers, it didn't need the dealers; it could have done it on its own. So you're basically punishing Chrysler for not vertically integrating. This case is a very different situation, and again this is a very different factual scenario, because what happened here is that maybe -- maybe -- New GM, through only inside counsel, through only inside claims people, could have managed in the face of mounting litigation by death and injury claimants, maybe could have managed to conceal these facts for as long as it occurred with the help of outside counsel and outside claims administrators, but that's not what happened. And so the factual scenario that we have to prove is that New

GM formed this enterprise, this association in fact, to have a respected law firm and a respected claims administrator essentially front for them, to create a shield, to create what Judge Posner in Fitzgerald describes as the aura of legitimacy, which is one reason RICO defendants utilize, exploit enterprise. That's what happened here.

Now, Mr. Godfrey says, well, he's worried, because, Wait a second, if outside law firms were members of the enterprise there, does that mean we're going to claim that the litigation conduct right now violates RICO? Absolutely not, and he's made my point. The litigation now and the litigation before 2014 are in such stark contrast, they're greater than the contrast between night and day. Here, we know there's a defect. We know what the conduct is. Much of it has been admitted, and yet GM, through zealous, vigorous, principled counsel, is able to mount principled defenses to the claims against it based, for example, on lack of causation in the crash cases and other defenses. That is the sort of litigation conduct that doesn't come within the parameters of the RICO enterprise, but we can't accept the bright line that GM is asking to immunize all litigation conduct.

That's what Judge Preska refused to do last year in Mayfield v. Asta. She said I can't do it, there's no case that allows me in the Second Circuit, there's no case that allows me to set that bright line, and in fact in the Second Circuit,

litigation conduct can constitute RICO violative conduct. And it can relate to a RICO enterprise. The facts make all the difference, and we say the facts here were egregious. That act of concealment was egregious. It cost lives, it ruined families, it created a vast reservoir of economic loss for our class, and it was all preventible had New GM not been able to erect a shield of legitimacy and respectability around litigation conduct that was fraudulent.

THE COURT: We've gone much longer than I ever planned.

MS. CABRASER: I apologize.

THE COURT: It's not your fault, more my fault.

Let me turn back to Mr. Godfrey just to address issues of class standing and prudential mootness.

MS. CABRASER: Your Honor, can I give you the brief cites that I didn't give you in addition? You've got the Supreme Court cite.

THE COURT: I'm guessing I can just get it from Westlaw.

MS. CABRASER: You could if you knew that it's not called Bridge in the Seventh Circuit. It's called BCS Services v. Heartwood 88, which is 637 F.3d 750, and it's then called BCS v. BG, and that's 728 F.3d 633. That's why the history of the case is so confusing: the names changed, the case remained the same, and neither side gave you a whole story of Bridge,

but it's key here.

THE COURT: Thank you.

Mr. Godfrey, if you could briefly address class standing and prudential mootness. First, on class standing, tell me why I should reach that issue now. First of all, I largely deferred it in the decision that you tell me I was wrong in, Weisblum v. ProPhase Labs, if I remember the name correctly, but I guess tell me why it wouldn't make more sense to wait until if not class certification certainly until the theories of liability and claims that remain in the case are fleshed out and sort of made clearer. It strikes me if you look at the Second Circuit's case law on this issue that it turns largely on the nature of the claims and the evidence that would be used to support the claims, and that may depend on my rulings on some of the other issues here. No?

MR. GODFREY: Well, we know what the nature of the claims are, and those claims lack class standing. We don't need to wait for a maturation of the case. Secondly, DiMuro Retirement Board, and the NECA case all decided it at the front end, not in the context of class standing. Third, with respect to the Weisblum case, there's a different way to read that. I reread that opinion the other night. There's a different way of reading it where your Honor may have been saying, and we may disagree with your Honor's point, but your Honor may have been saying for Article III purposes, I will find standing, but I'm

not deciding whether there's class standing. If that's the case, then your Honor was consistent with other courts and it's not inconsistent with Retirement Board, with the exception of Retirement Board deciding class standing at the front end.

THE COURT: All right.

MR. GODFREY: I think it's better because we know what the nature of this case is, we know what the allegations are, and to the extent your Honor allows anything to go forward in discovery in a class certification arena is not going to change. We choose to get to class standing now so we narrow the case and don't engage in unnecessary expenses of discovery for people who have no claim. If your Honor were to adopt the minority rule, that manifest defect is not just a lack of injury and fact, not just lack of cognizable damage on the merits, but instead is also lack of injury and fact under Article III. So within the manifest defect rule, courts analyze the injury and facts slightly differently. Some courts say it is both merits and Article III lack of standing. Other courts say no, there's Article III standing, but it's lack of cognizable damage on the merits. So it's not a 12(b)(1) dismissal, it's a 12(b)(6) dismissal.

THE COURT: You'd agree that if it is cognizable on the merits under whatever law and whatever jurisdiction, certainly there is Article III standing, correct?

MR. GODFREY: I think I would be hard-pressed to give

you any reason why it wouldn't be correct.

THE COURT: All right.

MR. GODFREY: Well, assuming that it meets the causation requirement that it's concrete, particularized. Assuming all of those other elements which I assume your Honor's question is predicated upon, then of course.

THE COURT: Going back to the bellwether discussion that we had, the parties in this litigation have treated the Delta platform, for example, as sort of fungible, that Ions and Skys are sort of the same for all intents and purposes, for purposes of the defect, for purposes of GM's representations and so forth at trial. Why wouldn't any person who bought a Delta platform vehicle have standing to bring the claims that they're bringing on behalf of all purchasers of at least the Delta vehicle?

MR. GODFREY: I'm hoping by your question you agree that for the other 67 recalls, there's no class standing so we're now down to just five defects as compared to the 72 that are alleged.

THE COURT: Well, I'm asking you a question. You can commit to whatever you want, but I'm asking you that question.

MR. GODFREY: The DiMuro case is a good illustration. The Retirement Board case, which came out shortly before Weisblum came out, is a good illustration. In those cases, what the court held was that one had to look at the particular

products purchases and the particular facts, and they found that they were dissimilar, that there was not a unifying common factual theme.

THE COURT: But the issue in Retirement Board was that ultimately plaintiffs would have to prove failure to fulfill duties with respect to individual loans and individual trusts, and distinguished NECA where they said the misrepresentations applied more broadly and therefore were similar enough and not unique that plaintiffs could bring claims on behalf of the class. My question here is if a plaintiff bought a Delta platform vehicle, the gravamen of the claim is that GM's representations about its safety, about its culture, etc., etc., were fraudulent and false, and wouldn't the evidence relating to that be at least common with respect to any and all other owners of Delta platform vehicles? In other words, isn't that class or subclass more similar to the plaintiffs in NECA than it is Retirement Board?

MR. GODFREY: I don't think so.

THE COURT: Why not?

MR. GODFREY: The allegation, for example, in Retirement Board is that there's a policy of inaction, had the same generalized allegations. There's an old case from Seventh Circuit called In Re Roman Block that came out in 1996 or '95. It was a 2-to-1 decision that revolutionized class action law, Judge Posner, in writing the opinion, explained that if one

gets to a high enough level and generalized enough, then everything is a common question. At 100,000 feet everything looks the same. But that's not how NECA and Retirement Board and DiMuro examined them. They look at the specific allegations. When you look at the complaint, many of the named plaintiffs don't make any allegations about what they saw, heard, or even knew of. Half of them don't have any representations about that. So we are not in a position to conclude, much less have a basis to conclude, that there's sufficient commonality to justify standing as compared to each individual person has to have the elements necessary to establish a claim.

THE COURT: All right. Prudential mootness, briefly. I think I get the argument; you made it before. Is there anything else you want to add on that?

MR. GODFREY: Let me just see, your Honor. No. The cases are cited. I don't see any reason to repeat what I've already said.

THE COURT: I don't know who is up at the front table.

MR. BERMAN: I am, your Honor.

THE COURT: Do you want to address those two points?

MR. BERMAN: In terms of class standing, our view is that obviously it hinges on how you view my brand damage theory, but if the brand damage theory is still in the case, then we think that there is class standing because the

plaintiffs are united with every single vehicle owner covered by the complaint, and they're suing for the same thing: same omissions and the same issues. The omissions about whether this company could actually produce a safe and reliable car are common to every class member's diminution claim.

THE COURT: All right. Assume for the sake of argument, and don't read too much into it, that I don't buy your brand diminution theory, what implications does that have for class standing?

MR. BERMAN: Then I think you would take a look at the Delta switch. We'd fall back on the Delta switch claims, because if you don't buy the brand diminution, there's, I think, viable claims on behalf of the Delta switch owners.

THE COURT: Would you concede in that case that the purchaser of a Delta switch platform car would not have class standing to litigate on behalf of someone who bought a different car?

MR. BERMAN: I would argue with respect to the ignition switches that any plaintiff who had an ignition switch has the same or similar issues for all other ignition switch cars that are in the case. And I think Mr. Godfrey conceded as much during his status report when he said the category 5 cases belong here because they all arise out of the same common nucleus effect.

THE COURT: Right, but here we're talking about

categories 3 and 6, to some extent, that is, cars where the defects are something other than the ignition switch. Do you agree that if a plaintiff purchased a car, the allegation --

MR. BERMAN: I agree.

THE COURT: Sorry?

MR. BERMAN: I agree.

THE COURT: All right. And do you agree with Mr. Godfrey that I can or should reach the issues of class standing at this stage? Certainly he's right that Retirement Board and NECA and those cases arose in the motion to dismiss stage, which is where we're at now.

MR. BERMAN: I agree with that as well.

THE COURT: OK. Why don't you talk about prudential mootness.

MR. BERMAN: The mootness doctrine doesn't apply here for two reasons. First of all, going back to something Mr. Godfrey said, this is not a products liability case. This is a false advertising case, so the damage that was caused by GM's false advertising, which we say is diminished value, continues today. So with respect to the diminished value claim, and we allege that at paragraph 1016, with respect to the diminished value claim, it's never been remedied because people haven't gotten their money back, and so I don't see how that claim can be mooted, whether it's an ignition switch plaintiff or a nonignition switch plaintiff. And that gets to

the mootness issue with respect to the ignition switch plaintiffs, and there we are alleging there has not been effective repair, and that's at paragraphs 1150, 1494, 2524, and 1158. So if there hasn't been an effective repair and we've identified a single point of failure in fact with respect to the airbag, which we believe still exists in every GM vehicle that's supposedly been fixed, those allegations have to be taken as true at this stage, so how could that claim be mooted. That's all I have on mootness, your Honor.

THE COURT: All right. Mr. Godfrey, let's turn briefly to misrepresentations and puffery, and I'm going to try and keep things moving and get out of here in a few minutes.

MR. GODFREY: First of all, we just had a very interesting clarification that we no longer have a product defect case, he says, we have a false advertising case. Of course the case law in manifest defect reject that artificial labeling. Labels don't matter, substance does, and that's why the cases that we cite include people who allege false advertising such as safety and reliability, etc., etc.

Secondly, whether a statement is actual or not, general rule, depends on how specific it is and whether it is capable of being measured so as to be proven or disproven. The test that courts have used, and we use the Ninth Circuit case as illustrative, the Ikon case, which the Court I think is familiar with from the briefing, says it's measurable, it's

quantifiable. We're not talking about the damage. We're talking about the statements. So the Second Circuit case law is in accord with that case, and if you look at the statements that the plaintiffs are complaining about, they're complaining about the annual report, where we say GM's proven safety, Chevrolet believes that safety is the big thing, unmatched lifesaving technology, advertising about Chevy, designing and building reliable vehicles. That's what they say. We've cited 15 or 16 cases using the exact same advertising or similar words where courts have uniformly said that is not measurable, quantifiable, specific enough, and does not give rise to a cause of action.

Then there's another problem. They speak in roughs. Nearly half the plaintiffs don't indicate they ever saw any advertising. The other half speak about advertising in general. Advertising under Rule 9(b) has to be specific, say the who, what, when, and where, and specifically what it is that you relied upon. So you take the Honda Motor case out in California. They like to cite California cases. The court found excellent design, construction, and safety. That language is not actionable; the Ford Motor case out of the Eastern District of Pennsylvania, and we could go on and on, in 2015, statements that the vehicle was safe and reliable, nonactionable puffery; the Daigle v. Ford case, out of the District of Minnesota, advertises that the Freestar minivan was

safe and reliable, mere statements and opinions.

THE COURT: Let me ask you two questions and then I'll turn to Mr. Berman, assuming he's the one covering this. One, do I need to reach this issue at this stage, that is to say, to the extent the plaintiffs are alleging material omissions or concealment, do I need to reach the question of whether they've adequately alleged affirmative misrepresentations or whether those qualify as puffery?

MR. GODFREY: I think given the way they've pled the complaint, it would be inappropriate not to rule that it's unactionable puffery because the context of the admissions are a duty based upon what was said. In other words, they have linked what was said by General Motors, New GM, although they many times referred to old GM, but we'll set that aside because I think the Court has a footnote about that from them, they have linked what the duty to disclose was or the alleged admissions to what was said. So if what was said was unactionable puffery, then by definition, you would be hard-pressed to, even under their view of the law, justify a duty to disclose.

THE COURT: And that brings me to my second question. Doesn't it depend on state law or law of different jurisdictions, which is to say the law may vary on, A, what standard applies to what is or isn't puffery; and B, on whether an omission requires an actionable statement or half-truth, if

you will?

MR. GODFREY: This is where we come full circle. Remember, every state law requires that you have a cognizable damage, and so if they don't have cognizable damages you don't need to get to this. I'm assuming you're parking that for now. Hypothetically let's assume you've ruled against us and you're asking the question. So then the question is yes, it depends upon individual state governing law, but we have attempted to outline the state statutes or state case law, sometimes based on a statute, to discern and present to the Court a general rule, which is what we've done. All the states require, basically as the Second Circuit has held in the DirecTV case, that the same general legal principles must be quantifiable, must be measurable, etc.

THE COURT: All right. Mr. Berman.

MR. BERMAN: Let me address the question, do you need to decide this now, and I would say no, because largely this is an omissions case, and one of the reasons that we put in all of the representations about safety and reliability was to highlight to the Court that GM itself thought that statements about safety and reliability are material, and that goes to the duty, related duty to disclose the truth about safety and reliability. So I don't think you need to get there, but if you do get there, I think the statements are not puffery. I start with the Toyota case.

In the Toyota case, Judge Selna ruled that a statement about a "commitment to overall safety gains" was actionable; the statement "building safe automobiles is the most important thing we can do" was actionable; a "safety and security of our driver is an absolutely priority" was actionable. The statements that we have put into the complaint, for example, paragraph 245, "Chevy made safety a top priority," under Toyota, that's actionable, and it's measurable and you know it's measurable, your Honor. How do you know it's measurable, your Honor? Because of the Valukas report. The Valukas report went out and made findings that GM did not make safety a top priority. We've got statements, for example, paragraph 225, slide 20, "a safety philosophy that runs deep," that's quantifiable. Mr. Valukas went and found they did not have a bona fide safety philosophy. We can call expert witnesses to say that this company had a safety philosophy that ran deep. That's an actionable statement.

Slide 21, "holistic approach to safety," again, Mr. Valukas, through an objective lens, found that they siloed people, that they didn't report accidents properly. He went out and he measured their safety and their whole culture, and he found it to be lacking. That's an actionable statement.

Slide 22, GM boasted that it had "a new culture in which it was pushing accountability deeper into the organization." First of all, New GM thought it was material to

tell consumers about its culture, and again, Mr. Valukas went out and measured that culture and found it to be lacking through objective criteria. So we think we have put forth enough statements that are actionable and not puffery.

THE COURT: How do you deal with the 9(b) issues, unless you can proffer a plaintiff who says that he or she saw these advertisements?

MR. BERMAN: There, I think the issue is very state-law dependent. For example, under California law, and we've cited the cases to you, you don't have to actually -- you as a plaintiff have to say "I remember being exposed to advertisements," and if we establish that there was a long-term advertising campaign, that's all we have to show because courts have said it's not realistic to require a consumer to remember the specific advertising he or she saw many years later; it's good enough if they say "I remember being exposed to advertising." And some of the plaintiffs have alleged just that; for example, the Koppelmans. Others have remained silent on that, and those people still have claims because of omissions. You can't allege that you relied on an omission. We think the law is in every single state that we are talking about here that if an omission is material, that's all you have to allege.

THE COURT: All right. I think what I'm going to do on the Missouri issues that I flagged in my order, I'm going to

ask you just to add that to the letter briefs that you're filing on Virginia law, rather than addressing it here. Hopefully no one stayed up all night last night reading Missouri law.

MR. BERMAN: I did, but that's OK, your Honor.

THE COURT: I apologize. Let's end with the Andrews California plaintiff and briefly address that and we'll wrap up.

Mr. Godfrey.

MR. GODFREY: Yes, your Honor.

THE COURT: You agree that if I recognize the sort of brand dilution, diminution theory Ms. Andrews would have a valid claim, correct?

MR. GODFREY: If you recognize the theory as pled so that a person who has a defect-free vehicle but just has a GM-branded vehicle, then she would have a damages element. That doesn't necessarily mean she would have injury in fact as recognized by the various state laws. It doesn't mean she would meet the other elements of the claim. You would certainly address the damages issue. I agree with the Court.

THE COURT: Anything you want to tell me on Ms. Andrews?

MR. GODFREY: Well, other than the fact that under California law the Cardinal Health case, the American Suzuki case, the Cohen v. Guidant case, which came out after, which

came out in '11, then the two cases we cite on pages 9 and 10 of our reply brief, California law would not agree with the Court's holding if the Court were to so hold that. California law requires manifested defect so that the law in California is pretty straightforward in this regard. But if the Court were to create a federal law overriding California law, not follow the Erie doctrine, then Anna Andrews would have some kind of injury, but it would not be one that we would consider legally cognizable under existing precedent.

I should add, your Honor, we have now had three shifts in this discussion, which has been very interesting. We started out by saying, and this is important, I think, for the Court to focus on, it's brand damage because of, it's not diminution of value, it's brand damage, suddenly became diminution of value by the time we got to the RICO discussion. And it started out as a defect case. Now it's a false advertising case, and in the last section it's no longer false advertising, it's a false admissions case. And Toyota case did not hold that those general statements would be actionable. It holds there were specific misdescriptions that could be measurable. Measurable doesn't mean you could measure puffery, that person A has an opinion and person B has a different opinion. It says that I'm going to brake in 15 seconds and I have a faster brake pedal, it turns out it's only braking at most in 30 seconds, that is measurable and quantifiable.

Puffery falls into the opinion category, and we submit that the case law we cited justifies that.

I don't know whether your Honor has any other questions. From where we stand, this is not only unprecedented, but people who resell, resell, and resell again, if you give them claims in terms of a legal theory for damages and there's a reason why the law has driven a bright-line test that says, in the 49 cases that we've cited and earlier cases that we've cited, this is the wings of a butterfly fly. I think your Honor's probably familiar with that; if a butterfly flaps its wings enough it causes a tsunami in south Florida. That's the theory. The law says that theory is not acceptable, and that's why the cases have uniformly held, although using different language, and setting aside the DeCatur decision, which we'll get the Court a letter on, and said no manifest defect means no injury, means no claim. You don't need to worry about the differences in state law because that rule as announced is a uniform rule throughout the jurisdictions we identify.

Thank you very much, your Honor. Unless you have any questions, I have nothing further to add.

THE COURT: All right.

Mr. Berman, why don't you briefly address California and then wrap up as well.

MR. BERMAN: Ms. Andrews' allegation, I think I

discussed in the context of the brand theory.

THE COURT: Yes. Anything else you want to add on that?

MR. BERMAN: I don't think I had anything else, other than Mr. Godfrey says, Wow, this is really unprecedented, and again I would call your attention to Judge Selna's opinion at 790 F.Supp.2d. 1152 (65) where in footnote 11, he talks about there's a difference between a product defect case or a malfunction case and cases where you're suing for labels and brands that "have independent economic value," and he says if you're going to bring such a claim, you have to do more; you have to plead more than just "I wouldn't have bought that product." We did plead more in Toyota and we pled more here. We've given you examples of diminution, from our expert, from the press, from the plaintiffs' own words.

And that gets me to the last argument. With respect to all the cases Mr. Godfrey has called to your attention, here's what the court in Lloyd said: "The respondent points us to a gaggle of other cases in which courts have held absent actual injury, product malfunction you can't recover." The Court goes on to say those case are distinguishable and basically sums up by saying in those cases the injury pled was speculative, there were no objective facts about a real injury, and that's why all those cases found no standing and no claim.

Again, we put objective facts of injury before this

Court, and that's what distinguishes Mr. Godfrey's cases.

THE COURT: Thank you all very much. It was certainly enjoyable and helpful as well. We have the supplemental briefs that you'll be filing on Virginia law and you can now address the issue that I flagged with respect to Missouri law in the order. It sounds like there's something coming down the pike with respect to the Takata decision, and I'll give plaintiffs an opportunity to submit something on that as well. Why don't you do that within, let's say, three days of whatever New GM submits on that, if you're not already in the process of addressing it.

Any other loose ends on this front? Otherwise I think the work is largely for me to do. All right. Thank you all. Thank you for your patience.

Yes, Mr. Godfrey. You always want the last word.

MR. GODFREY: No. I was going to ask a question.

THE COURT: All right. Then I'll get the last word. What's your question?

MR. GODFREY: Did you want us to address the Ninth Circuit Living Designs case? I don't know that there's a need, but given the Court's questions, the parties didn't brief it, and I didn't know whether you wanted us to address that or not.

THE COURT: Ms. Cabraser, I have no objection to giving you an opportunity. I don't think either of you addressed it in your briefs, if I'm not mistaken. It's a

little hard to keep track, of course.

MS. CABRASER: We'd be happy to address it briefly.

THE COURT: All right. Why don't you add that to your supplemental letters as well. It will be Virginia law, Missouri law, and Living Designs. But that's not an opportunity to rebrief issues that you have already briefed. Just address whether and to what extent you think that case is distinguishable, correct, incorrect, or the like.

MR. BERMAN: Page limit?

THE COURT: The letter briefs, I think, were limited to three, but that was when it was just on Virginia law, so let's say six. And if that proves unreasonable, you can let me know.

MR. BLOOMER: Sorry, your Honor.

THE COURT: Six pages on those issues.

All right. I wish you all a very pleasant weekend, and thank you very much. We're adjourned.

(Adjourned)