

F6grgmc

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

3 In re: GENERAL MOTORS LLC
4 IGNITION SWITCH 14 MD 2543 (JMF)
5 LITIGATION

5 -----x

6 New York, N.Y.
7 June 16, 2015
8 9:30 a.m.

8 Before:

9 HON. JESSE M. FURMAN

10 District Judge

11

12

13

14

APPEARANCES

15

16 LIEFF CABRASER HEIMANN & BERNSTEIN LLP
17 Lead Counsel for Plaintiffs
18 BY: ELIZABETH J. CABRASER

18

19 HAGENS BERMAN SOBOL SHAPIRO LLP
20 Lead Counsel for Plaintiffs
21 BY: STEVE W. BERMAN

20

21 HILLIARD MUNOZ GONZALES LLP
22 Lead Counsel for Plaintiffs
23 BY: ROBERT HILLIARD

23

24 JOSEPH E. PAPELIAN
25 Attorneys for Defendant Delphi Automotive Systems

25

F6grgmc

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

SIDLEY AUSTIN LLP
Attorneys for Defendants
BY: EUGENE A. SCHOON

KIRKLAND & ELLIS LLP
Attorneys for Defendants
BY: ANDREW B. BLOOMER
ROBERT C. BROCK
LEONID FELLER
ALLAN PIXTON

HARTLINE DACUS BARGER DREYER LLP
Attorneys for Defendants
BY: KYLE H. DREYER

MICHAEL GRUSKIN
In-House Counsel for Defendant GM

KING & SPALDING LLP
Attorneys for Defendants
BY: SCOTT DAVIDSON

BROWN RUDNICK
Attorneys for Defendants
BY: EDWARD S. WEISFELNER

F6grgmc

1 (Case called)

2 THE COURT: Good morning to all of you. Welcome back.
3 Let's get right to it.

4 As you know, we are on CourtCall, so just a reminder
5 to speak loudly and clearly and into the microphone. One
6 housekeeping matter before we turn to the agenda. Then I'll
7 have a few miscellaneous matters at the end as well.

8 You may have seen on the docket yesterday, I think it
9 was yesterday, there was a notice of a redesignation to a new
10 magistrate judge. Magistrate Judge Dolinger is retiring
11 shortly. Although I haven't actually used his services, I
12 think he is mentioned in at least one order. I think the
13 deposition protocol order provides that if there is an urgent
14 matter and I'm not available, you should contact him.

15 I thought it prudent to designate a new magistrate
16 judge. Judge Cott, James Cott, is that person. Going forward,
17 wherever Judge Dolinger was mentioned in any prior order, you
18 should substitute Judge Cott and contact him if it would have
19 been appropriate to contact Judge Dolinger.

20 Let's get to the agenda letter. I'll go through that
21 in order and then have a few other random matters. First, the
22 status of the bankruptcy proceedings. Needless to say, I have
23 been keeping abreast of developments on that front as well.
24 I'm not sure what, if anything, we have to discuss. There are
25 various moving parties at the moment.

F6grgmc

1 The letter does state an intention on the part of the
2 plaintiffs, or at least some plaintiffs, to file motions to
3 withdraw the reference. I'm curious, number one, what the
4 theory is and, number two, what the plan is, if we need to
5 figure out any scheduling issues or if the default briefing
6 schedules suffice. I don't know if any of you want to speak to
7 that.

8 MR. BERMAN: Steve Berman. Very briefly. Our
9 bankruptcy lawyer is here and he can elaborate if I don't. The
10 theory is that the matter involves what are called noncore
11 proceedings at this point. Therefore, in noncore proceedings,
12 the reference can be withdrawn. We believe the case law
13 indicates they should be withdrawn. We will be filing
14 actually, I think, three motions to withdraw.

15 What is not stated in our letter is that the State of
16 California and the State of Arizona will be filing today
17 no-stay pleadings, and we will file today or tomorrow a motion
18 to withdraw the reference in both of those cases. Not only are
19 they noncore proceedings, but we believe they are purely law
20 enforcement actions that are focused solely on New GM's conduct
21 and do not belong in the bankruptcy court any longer and never
22 should have been placed there.

23 The same is true for withdrawal of the reference. We
24 will then file an omnibus motion to withdraw the reference for
25 the presale/post-sale and a new complaint, again on the theory

F6grgmc

1 that it is a noncore proceeding and that these actions are
2 directed solely to New GM's misconduct which post-dates the
3 bankruptcy.

4 THE COURT: When you say three, that is three
5 including the state actions or three plus those?

6 MR. BERMAN: I think it will be three separate
7 pleadings: The California pleading, Arizona pleading, and the
8 one pleading that addresses all of the MDL complaints.

9 THE COURT: The omnibus one?

10 MR. BERMAN: Right.

11 THE COURT: Any sense of timing on that one?

12 MR. BERMAN: Within the next week.

13 THE COURT: There was also reference in the letter to
14 a possible motion with respect to the GUC trust administrator's
15 motion regarding the exercising of the GM warrants.

16 MR. BERMAN: That's right.

17 THE COURT: That is a separate matter?

18 MR. BERMAN: Separate matter.

19 THE COURT: Any sense of what that situation is? Do
20 you want to state your name? I'm not sure you are on the
21 record here.

22 MR. WEISFELNER: Good morning, your Honor. Edward
23 Weisfelner of Brown Rudnick. Your Honor, we are seeking
24 clarity from the GUC trust and from the administrator as to
25 whether or not their pending motion goes beyond seeking

F6grgmc

1 authority to liquidate the subject securities, the warrants and
2 the stock, or whether embedded in their application is either
3 the intent to distribute those proceeds or request to
4 distribute those proceeds.

5 Unless we can get clarity that the GUC trust does not
6 intend to make any additional distributions, we feel that we
7 will be obligated to seek relief from the bankruptcy court in
8 the first instance to prevent the trust from making any
9 distributions pending an appeal from Judge Gerber's decision.

10 THE COURT: It doesn't sound like anything is likely
11 to come my way on that in the first instance.

12 MR. WEISFELNER: Not in the foreseeable future, your
13 Honor.

14 THE COURT: Very good.

15 In terms of briefing schedules on any motions filed
16 before me, any reason to deviate from the default rules under
17 the bankruptcy procedures and the like?

18 MR. BERMAN: Not that I can think of, your Honor.

19 THE COURT: Very good. Anything from the back table?

20 MR. BLOOMER: Andrew Bloomer on behalf of GM. If
21 there are motion filings, we will respond, as we said in our
22 letter, once we see what the arguments are. There are, as I
23 understand it, three motions. We may want some additional time
24 beyond what is set forth in the rules. It is going to depend
25 on what the arguments are and what they involve. We may want a

F6grgmc

1 little bit of relief on that.

2 In terms of the merits, we will respond when we see
3 the motions. I do know the plaintiffs have indicated they are
4 going to file some judgment pleadings in the bankruptcy court.
5 As this Court knows from the bankruptcy court's judgment, there
6 are some fairly specific time lines and procedures for those
7 types of pleadings submitted to the bankruptcy court.

8 THE COURT: And the time line is running.

9 MR. BLOOMER: Correct.

10 THE COURT: We will stick with the default tables. If
11 there is need for more time, you know how to seek it. Anything
12 else we need to discuss on the bankruptcy front?

13 MR. BERMAN: No, sir.

14 THE COURT: Very good.

15 Turning to the next matter, which is the timing/scope
16 of motion practice on the amended consolidated complaint. The
17 second amended consolidated complaint was filed on Friday, 1244
18 pages and 5573 paragraphs. It certainly gives new meaning to
19 "short and plain." Putting that aside, there are a couple of
20 things.

21 One is there are some redactions in there. I
22 indicated I had temporarily granted leave to file it in
23 redacted form with the understanding that we would discuss a
24 process for reviewing those redactions. I think this also
25 applies or at least the remarks that I am about to make may

F6grgmc

1 apply to other things, the King & Spalding motion as well.

2 I think you know that I take pretty seriously the
3 presumption in favor of public access to judicial documents.
4 All of these qualify as judicial documents, which is not to say
5 that things can't be redacted or sealed if that is appropriate.
6 But there does have to be a sufficiently persuasive and
7 compelling reason to overcome the presumption.

8 In my view, if I haven't made this clear, the mere
9 designation of something as confidential and/or the mere
10 agreement between parties that something is confidential is not
11 in and of itself sufficient, which is to say that there has to
12 be an interest that is recognized in the law as sufficient.

13 Having said that, I guess I want to see if you had
14 discussed the process for reviewing the proposed redactions,
15 any suggestions on that score.

16 MR. BERMAN: We did have a suggestion. If I may make
17 one comment on the "short and plain" statement. At least 700
18 pages of the complaint are just the state law counts that we
19 had to go through laboriously state by state, count by count.
20 That is one of the reasons why it is so long.

21 The other reason it is long is that Ms. Cabraser and I
22 have been through motions to dismiss car defect cases and these
23 kinds of cases, so we anticipated the attacks we are to get
24 under 9(b) on RICO on whether we have alleged proper
25 diminution. Each of those segments, based on our history, we

F6grgmc

1 felt we needed to put in enough to foresee what these motions
2 would be.

3 THE COURT: Understood. I was being a little glib,
4 obviously.

5 MR. BERMAN: I understand.

6 THE COURT: I should also make clear that I have not
7 read the 1244 pages.

8 MR. BERMAN: In terms of the redactions, what we
9 discussed with Mr. Bloomer this morning was that they think
10 they need a week to go through the complaint, which I think is
11 fair given its length, and that we would have a meet-and-confer
12 at the end of the week, and if we can't agree, that we would
13 file letter briefs, not to exceed 5 pages, one week after,
14 basically within two weeks of today.

15 THE COURT: You would file letter briefs within two
16 weeks of today if there are any disputes?

17 MR. BERMAN: Yes.

18 THE COURT: Really regardless because I think you need
19 to persuade me that the things are properly redacted.

20 MR. BERMAN: Correct.

21 THE COURT: Is that correct, Mr. Bloomer?

22 MR. BLOOMER: Your Honor, that's correct. There is
23 overlap between the complaint and the motion to compel, But
24 there are some differences. Like you, I haven't been able to
25 get through the whole thing just yet. I think rule 8 is

F6grgmc

1 probably in play here if and when we get there. In terms of
2 working through the process, I think we can complete that
3 review, as Mr. Berman said, in a week and then submit briefs
4 within a week thereafter.

5 One point of clarification. In terms of the Court's
6 views, which we are well aware of, the question of judicial
7 documents relates to the underlying documents in the motion and
8 the pleadings themselves, unless I understood the Court
9 differently in terms of what is a judicial document, whether
10 you are referring to the motion itself, which is a discovery
11 motion, and the complaint itself as distinguished from the
12 underlying documents cited in both, understanding the showing
13 that has to be made in either case but just wanting to make
14 sure we understood the Court's views on this.

15 THE COURT: I was referring to the motion itself and
16 the complaint itself, which I think are pretty clearly judicial
17 documents in the sense that they are things that I need to act
18 upon and review. I'm not inclined to think that anything
19 referenced therein is necessarily a judicial document, though
20 it may well be that at some point, if I need to review some of
21 the underlying documents or the like, they could become so. At
22 least right now I'm not prepared to say that they are within
23 the scope of that.

24 MR. BLOOMER: Understood.

25 THE COURT: I'm content to say that your letter

F6grgmc

1 motions or your letters that will be filed by June 30th, to be
2 clear, can be limited to the complaint itself and the motion
3 papers themselves unless you think it is obvious that something
4 beyond the scope of those would likely be treated or considered
5 as a judicial document. I'm happy to defer that until later,
6 when I turn to these things, if I discover or come to think
7 that something else is a judicial document that may require
8 briefing. Does that make sense?

9 MR. BLOOMER: It does. We will have to think about
10 that. It may depend on whether you have the underlying
11 document that may be cited in the complaint or in the brief and
12 what that says and what that means if that document has been
13 designated confidential and what showing can be made.

14 If it would satisfy the standards for sealing and
15 confidentiality, that will be one outcome; if it doesn't, that
16 would be another outcome. I don't think we have approached it
17 from the standpoint of whether the motion and the complaint
18 itself are judicial documents only, but the question of what
19 happens with the underlying documents because they are cited
20 from, quoted from in these pleadings.

21 THE COURT: I suppose I need to think it through, but
22 I'm not inclined to think that just because a document is
23 quoted in a judicial document, that turns everything quoted
24 therein into a judicial document itself. For simplicity,
25 unless you decide that it makes more sense to do otherwise, in

F6grgmc

1 which case you can go beyond that, why don't you treat these
2 letters as limited to the motion papers themselves in the
3 complaint. To the extent that there is need for any follow-up,
4 we can address that at some later point. Or if there is a
5 motion from the press or some other entity, then we can deal
6 with that as well.

7 MR. BLOOMER: That's helpful, your Honor. Thank you.

8 THE COURT: Bottom line is by June 30th. As far as
9 I'm concerned, you don't need to file anything on June 30th,
10 but any party who wishes for the redactions to remain in place
11 or for something to be filed under seal should essentially
12 persuade me or show cause by the 30th why it should remain
13 redacted and/or under seal.

14 If you don't believe that it needs to be or should be
15 under seal or in redacted form, you are certainly welcome to
16 advise me of that by letter. But if you think it should remain
17 under seal or redacted as the case may be, that is the deadline
18 to tell me why.

19 MR. BLOOMER: Thank you, your Honor.

20 MR. HILLIARD: One clarification I need, Judge. This
21 has been brewing for some time among the parties. The exhibits
22 to the crime-fraud motion, is it the Court's view that those
23 are not to be addressed at this time because they may not be
24 judicial documents until you determine if you are going to
25 consider those or just the substance of the motion itself?

F6grgmc

1 It's pretty exhibit-heavy, and it's an exhibit whose substance
2 the Court will have to determine if the crime-fraud exception
3 applies.

4 THE COURT: I confess that because the motion is not
5 even remotely fully briefed, I haven't even looked at it, so
6 I'm working a bit from ignorance here. I take it you submitted
7 the motion itself as well as the documents that are at issue?

8 MR. HILLIARD: That's right. We attached as exhibits
9 the emails and the produced privileged information that we
10 believe supports our argument for the Court to find crime-fraud
11 exception. But I want to be sure I'm consistent with what you
12 are instructing us to do.

13 We believe the exhibits are substantive to the Court's
14 decision; in other words, they are judicial documents. Once
15 you read our motion, you are going to have to review, analyze,
16 and make a determination based on the substance of the
17 communications between GM and its King & Spalding counsel.

18 This circles back to my question. That is, the motion
19 and exhibits, because of the type of motion, really are one,
20 more so than maybe other motions would be. I'd like the Court
21 to consider letting us address both because we believe both
22 should not be sealed or confidential.

23 THE COURT: Thank you for clarifying. Let me revise
24 what I just said. I think you should address anything, the
25 sealing or redactions and anything that has been actually

F6grgmc

1 submitted to me. If something is merely quoted in the
2 complaint, I don't think you need to address that. But if
3 there is an actual exhibit attached to the motion papers or the
4 like, then that itself is arguably a judicial document because
5 it has been submitted to me to be reviewed and I may well need
6 to review it in connection with the motion.

7 I may ultimately defer decision on whether something
8 can remain under seal because it may require a determination in
9 the first instance as to whether I actually do need to review
10 it. If it turns out I don't need to review it, then it may not
11 actually qualify as a judicial document or may just be subject
12 to a weak presumption in favor of public access.

13 Number two, I may need to defer because if there is a
14 dispute regarding whether these documents are privileged in
15 some way, then I may need to resolve that because the privilege
16 itself may be a justifiable reason to keep something redacted
17 or under seal.

18 Is everybody on the same page?

19 MR. BLOOMER: Your Honor, I think that's fine. It may
20 be, if we are getting into the individual documents themselves,
21 that we would want more than 5 pages if that is what we are
22 going to be addressing. I think the Court is right in terms of
23 you have to get the thing fully briefed and to decide on that
24 basis what is or isn't a judicial document.

25 Part of this, not to jump too far ahead, is going to

F6grgmc

1 be what happens if a document is considered a judicial document
2 or not. That is kind of a separate issue that I think the
3 parties will raise later on in the conference. If we are going
4 to be addressing not just the pleadings themselves but perhaps
5 underlying documents and the treatment of those, there are two
6 different issues a few different issues.

7 One is their treatment as part of a filed motion, one
8 is their treatment beyond that. That might depend on whether
9 the Court makes a finding it is a judicial document or not a
10 judicial document. If that's the case, respectfully, I think
11 we would like to perhaps do 10 pages on those letter briefs if
12 we can.

13 THE COURT: I will give you up to 10 pages but with
14 the request that you not use them if you don't need to.

15 MR. BLOOMER: Understood. Thank you, your Honor.

16 THE COURT: Turning to the more substantive question
17 of the timing and scope of motion practice more generally with
18 respect to the second amended consolidated complaint, any
19 thoughts on that?

20 MR. BERMAN: We had a discussion at a meet-and-confer
21 as directed. As I understand it, New GM would like a week to
22 review the complaint because of its length. Then we are going
23 have a meet-and-confer and report back to the Court on whether
24 we are in agreement on how to proceed or write letter briefs
25 stating our views.

F6grgmc

1 THE COURT: Do you want to set a deadline for that?

2 MR. BERMAN: June 30.

3 THE COURT: Sounds good to me. Mr. Bloomer, is that
4 OK?

5 MR. BLOOMER: I'm sorry. I didn't hear the date, your
6 Honor.

7 THE COURT: June 30th, same day.

8 MR. BLOOMER: June 30th, I think that will be fine.

9 THE COURT: The next item may be similar, timing of
10 motion practice on any factual predicates and legal claims that
11 are alleged in any individual economic loss complaints that are
12 not included in the amended consolidated complaint. A couple
13 of things.

14 I did receive plaintiffs' letter per my prior order
15 regarding claims and defects not included in the second amended
16 consolidated complaint. I noticed that a few plaintiffs filed
17 their response, essentially making certain alleged corrections
18 to that letter, alleging that there are some factual
19 inaccuracies with regard to the letter. My prior order hadn't
20 provided for any objections per se, but I think it probably
21 does make sense in the interests of making sure that the list
22 is actually comprehensive and correct.

23 Number one, any thoughts with respect to whether I
24 should formally allow anyone else to object or be heard on the
25 issue? Number two, I assume you may want to file either a

F6grgmc

1 revised or amended letter or respond to the alleged
2 corrections.

3 MR. BERMAN: Yes, your Honor. We have had a
4 discussion with GM on this as well. They have provided a list
5 of cases that they think under your order we should list as
6 being dismissed without prejudice. We have agreed to work on
7 that list to make sure we both agree and to submit that to the
8 Court.

9 In the process of doing that, we would like to look at
10 the objection that was filed, basically an objection saying
11 that they are wrong. They are in the complaint, so we are
12 going to take a look at that. Either way, their action would
13 be dismissed without prejudice. They are either in the
14 complaint or they are not.

15 Under your order, people have seven days for the
16 filing of the amended to complaint to object to not being
17 included. We think the only lawyer in the country that can do
18 that now is Mr. Peller, because no one objected to the
19 consolidated amended complaint.

20 THE COURT: It sounds like the first order of business
21 might be for you to confer and make sure everybody is on the
22 same page with respect to what is and isn't in there.

23 MR. BERMAN: Correct.

24 THE COURT: Any thoughts with respect to a process to
25 formalize that?

F6grgmc

1 MR. BERMAN: Within a week we should be able to submit
2 an agreed order, I think.

3 THE COURT: OK. I would be inclined to think that
4 that order should provide a couple of days for anyone who
5 wishes to be heard on the issue, to either say that I am or am
6 not in the complaint or what-have-you, just so there is clarity
7 on it. Why don't you incorporate that into whatever you submit
8 along with language implementing the prior orders. Order 50 I
9 think is the principal one. Does that make sense?

10 MR. BERMAN: That makes sense, your Honor.

11 THE COURT: Do you want to do that within a week of
12 today?

13 MR. BERMAN: Correct.

14 THE COURT: All right. Very good.

15 I think under my prior orders anyone had 14 days to
16 object and seek reinstatement of an individual complaint. I
17 think it probably would make sense to have that 14 days run
18 from whatever date that next order is signed. So maybe include
19 that as well just to incorporate the prior language.

20 MR. BERMAN: We will do that.

21 THE COURT: Very good. More broadly again, it was my
22 intention and hope that we figure out some process to ensure
23 that any common issues of law and fact are adjudicated in the
24 MDL as opposed to being left for a court after remand if that
25 comes. One-off issues may be appropriate to leave to transfer

F6grgmc

1 of court, but some of those may also be appropriate to deal
2 with here.

3 The broader question is whether you have any thoughts
4 on the timing and scope of motion practice with respect to
5 things that are not in the second amended consolidated
6 complaint. It may well be that that, too, should be left for
7 you to discuss and propose in your letter.

8 MR. BERMAN: I think in order to address that in an
9 educated manner, we need to see if there are any cases out
10 there. As far as I know, only Mr. Peller claims he has claims
11 that are not in the consolidated complaint. Perhaps as time
12 passes, once we see what we have, we can address the timing of
13 what we do with those.

14 THE COURT: That makes sense to me. It also makes
15 sense in that order, I would think, to allow any lawyer whose
16 complaint is reinstated or who believes that motion practice
17 should be had in the MDL with respect to their case-specific
18 issues, allow that person to be heard as well. Maybe confer
19 with respect to that that, and if you have any suggestions or
20 proposed language, address it. That would be helpful.

21 Mr. Bloomer, all good with you?

22 MR. BLOOMER: Your Honor, I think that makes sense,
23 yes.

24 THE COURT: Very good.

25 Next item: Court action in related actions. Any

F6grgmc

1 updates? I think the most recent letter I got was June 5th. I
2 know the hearing in Felix was put over until the end of the
3 month, if I remember correctly. I don't know if there is
4 anything further on that or any other case that I should be
5 made aware of. Ms. Cabraser.

6 MS. CABRASER: I don't think there is anything further
7 in Felix. There was a status conference that Judge Schaffer
8 convened in the Texas state MDL. There are 18 personal injury
9 or wrongful death individual actions in those proceedings. The
10 court, as I understand it -- Mr. Hilliard may have additional
11 information on this -- took some case management steps to
12 advance those proceedings, nothing incompatible with
13 coordination here.

14 With respect to the participation of counsel from the
15 coordinated and related actions in the ongoing depositions,
16 that has worked very well. There has been no issue with
17 respect to the inadequacy of the time provided to state court
18 lawyers to ask questions. In fact, that time is essentially
19 gone, unutilized, and those counsel have conferred with the MDL
20 lawyers with respect to that questioning. That process of
21 depositions has been going smoothly.

22 THE COURT: Excellent. I am certainly pleased to hear
23 that. Mr. Hilliard, did you have anything you want the add?

24 MR. HILLIARD: As to Texas, I do. We had a status
25 conference with Judge Schaffer. The important part from this

F6grgmc

1 Court's perspective is it's kind of a time-to-get-on-our-horse
2 status conference. He specifically deferred to this Court in
3 regards to taking the lead, but said he is interested in
4 setting a trial soon after our first trial, and he wanted both
5 sides to brief him as to when that trial should be. He was
6 amenable to spring or later. We are in the process of briefing
7 that.

8 He also believes he is going to follow this Court's
9 lead on having the first bellwether in Texas being from the
10 first recall, just as you did. He basically said as soon as
11 Judge Furman's trial is over, I'm interested in really making
12 sure that Texas has a trial setting sooner rather than later.
13 The sooner rather than later part means we will know sooner
14 when it is going to be, not necessarily right after yours, but
15 I would guess by the next status conference we will have a
16 trial setting in Texas.

17 He also requested, since we have skipped a few status
18 conferences, that we begin, kind of like this Court does, with
19 monthly status letters as to what is going on and how it may
20 affect Texas. There are about 180 cases in your court from
21 Texas but only 18 state court cases pending in this court.

22 THE COURT: All right.

23 Mr. Bloomer, do you have any updates?

24 MR. BLOOMER: Just briefly, your Honor. Then I will
25 turn it over to my colleague Mr. Dreyer to address a couple of

F6grgmc

1 issues. Very quickly on the Pate case I think we reported to
2 your Honor on the Pate court's ruling on motions for discovery
3 as part of our June 5th letter. We now have the orders from
4 those rulings that are consistent with what the judge did in
5 Pate, and we will submit those as part of our next related
6 actions letter to the Court.

7 I think Mr. Dreyer has a few issues as well, your
8 Honor.

9 MR. DREYER: If the Court please, as the Court is
10 aware, Judge Rowell in the Gilbert case in Philadelphia County
11 refused to enter the coordination order even though it was
12 agreed to. That order was agreed to by the plaintiffs'
13 counsel. That order that judge recall issued has now been
14 cited by plaintiffs' counsel in a variety of other state court
15 actions as a reason why they should not coordinate.

16 In light of that, in the Gilbert case we have reached
17 out to the plaintiffs' counsel again. They are amenable to
18 filing a joint motion for reconsideration of that order asking
19 Judge Rowell to change his mind and adopt the coordination
20 order for that case. In particular, Judge Rowell stated that
21 he wanted to be in control of his own docket, the discovery
22 process, and the case management guidelines.

23 THE COURT: I think Judge Rowell is a she, by the way.

24 MR. DREYER: I'm sorry. I apologize. I just have
25 "Judge Rowell" here. I haven't appeared before Judge Rowell.

F6grgmc

1 I'll get that corrected.

2 The long and short of it is Judge Rowell wanted to be
3 in control of her docket. We are telling her in our joint
4 motion for reconsideration that she would remain in control of
5 that docket, that the joint coordination order doesn't have any
6 effect on her ability to control her management of her cases or
7 control her management of her discovery process except to the
8 extent that the joint coordination order looks for cooperation.
9 We hope to be able to have that agreed joint motion for
10 reconsideration on file very shortly.

11 Secondly, with respect to the Felix case, the one that
12 is in Missouri, the hearing that is scheduled, as the Court
13 well knows, is for June 30th and that hearing is on the
14 plaintiffs' motion for sanctions that they filed after GM
15 supplemented its discovery responses and provided immediate
16 access to all the documents in the MDL repository.
17 Additionally, in supplementing GM's responses, we answered
18 discovery by pointing the plaintiffs to documents that they
19 were seeking by way of identifying them through Bates numbers.
20 That hearing is going to take place on June 30th.

21 Additionally with respect to the Felix cases, the
22 Court is aware the last time we were together we were talking
23 about the plaintiffs' lawyers in that case to participate in
24 the MDL depositions. They sent a letter to both Mr. Hilliard
25 and myself asking for some time to be able to ask questions

F6grgmc

1 during the MDL process.

2 For the Court's benefit, they have appeared and we
3 have allowed them to appear at every deposition that they have
4 requested at this point. To this point in time, as of this
5 date, they have not asked a question, though they have entered
6 an appearance. Even though they are not part of the
7 coordination order, we are trying to be flexible enough to
8 allow them to ask questions if they choose to do so. At this
9 point there have been no questions that have been asked by any
10 of them.

11 Finally, your Honor, we have a case in Florida that is
12 called Miller. It is a case that involves an 82-year-old
13 gentleman who is a partial paraplegic for reasons that are
14 beyond just simply the crash. The plaintiff has requested an
15 emergency setting or an expedited setting in that case where he
16 is concerned about his client's life and whether or not he
17 would be able to make it through to a later point in time.
18 That motion was filed, but there has been no hearing on that
19 particular motion for expedited trial setting at this point in
20 time.

21 At the same time, we filed a motion for entry of the
22 joint coordination order, which the plaintiff's lawyer has not
23 agreed to. We are going to probably have a hearing on both of
24 those things at the same time. As of right now, the motion for
25 expedited trial setting has not been set for a hearing.

F6grgmc

1 Finally, with respect to the Texas MDL, Judge Schaffer
2 did address the issue of a trial setting. We commented to him
3 that we would have to work with the schedule for other state-
4 related cases in addition to this Court's trial schedule
5 because we do have a number of cases that are already set and
6 in place for 2016 and some of us can't be in multiple locations
7 at the same time.

8 We are to submit something on July 15th that outlines
9 what we think would be the right thing to do along with Mr.
10 Hilliard and his co-lead counsel in the Texas MDL. We will
11 have some feel for what the judge wants to do by the August
12 17th status conference that Judge Schaffer has scheduled.

13 Thank you, your Honor.

14 THE COURT: You said that some of you can't be in two
15 places at the same time, suggesting that some of you can. If
16 you know how to do that, let me know.

17 A couple of issues come to mind. One, to the extent
18 that you are having issues with respect to scheduling trials
19 before Judge Schaffer, it occurs to me that at some point we
20 should probably talk about setting trial dates for the second,
21 third, fourth, however many bellwether trials we want to talk
22 about scheduling sooner rather than later. I'd rather get
23 things on the calendar so, when you are coordinating with other
24 judges, you can tell them that I have a trial date and it will
25 be a little easier to schedule now than down the road.

F6grgmc

1 Maybe you can begin that discussion and either submit
2 a proposal to me or, at a minimum, we can discuss it at the
3 next status conference. It may pay to do that even sooner than
4 the next status conference. Why don't you talk about that, and
5 you can submit something to me on it sooner rather than later.

6 MR. HILLIARD: Judge, on that issue, may I ask the
7 Court how quickly after the first one would your docket allow
8 us to go to trial, so we could prepare? All bellwethers will
9 be prepared by then of the remaining six. It would be
10 exclusively up to the Court's docket, within reason.

11 THE COURT: Can you remind me? I seem to recall we
12 were talking about setting aside three weeks for the first
13 trial. Is that right?

14 MR. HILLIARD: Yes, sir.

15 THE COURT: Do we expect that most trials will be more
16 or less that length?

17 MR. HILLIARD: Correct. Maybe a little shorter once
18 we get it streamlined, but you can expect that.

19 THE COURT: It looks to me like I'm pretty wide open.
20 I will tell you now that I am not planning to be on trial the
21 week of February 15th, which is Presidents Week and my children
22 have off from school. I'm not going to ruin their week by
23 being with all of you. I will protect that week. But it looks
24 like the weeks thereafter are pretty wide open for the
25 foreseeable future. This is my top priority and I will make it

F6grgmc

1 work.

2 MR. HILLIARD: Thank you, Judge.

3 THE COURT: The second thing I want to say is I was
4 well aware of Judge Rowell's order and similar order in Felix
5 and the like. I don't want to go too far, as there is no
6 application before me with respect to those, but I read her
7 order as essentially saying that she is happy to coordinate
8 things but on a more ad hoc basis. In that regard, although I
9 think it is regrettable, I think the coordination order has
10 worked extremely well so far. I haven't heard any complaints
11 from judges who have entered it that it has intruded on their
12 case management. So I think that is the easier path to take.

13 To the extent that a judge is amenable to essentially
14 doing the same thing but just by way of more case-specific
15 orders, that's fine by me. It strikes me as more work for
16 them. In that regard, I'm hoping that that is in fact the
17 right way to read it and that she is amenable and will
18 coordinate through more ad hoc orders.

19 You should keep me abreast of developments on that
20 score and also if and when you file the motion for
21 reconsideration, so I can take whatever steps I need to take.
22 We'll leave it at that for now.

23 Anything else on the coordination front?

24 MR. BROCK: Your Honor, in terms of thinking about the
25 trial schedule for early next year, are you contemplating that

F6grgmc

1 we look at three or so trials or more than that? We will have
2 six cases that hopefully will be trial-ready as we go into the
3 new year. What is the Court's thinking in terms of how many we
4 would think about suggesting for trial?

5 THE COURT: I don't have a firm view on the matter.
6 I'm happy to let you discuss and make a proposal to me.
7 Thinking out loud, I would probably be inclined to put down
8 three or four for now, again on the theory that it is good to
9 get them on the calendar. If in a couple of months we want to
10 add the fifth and sixth, we can always do that. But at least
11 start with three or four would be my inclination.

12 MR. BROCK: The only other thing I was going to
13 mention on that topic is that as we get into December, I think
14 we will be presenting to your Honor a lot of issues that will
15 extend into other cases in terms of rulings that you will make
16 on deposition cuts and other issues related to each side that
17 will be presented to you.

18 There will still need to be some time between cases,
19 unless we get it all sorted out by the end of December, to
20 interact with your Honor on some of the case-specific issues
21 that will be involved in each of the matters. I guess what I
22 hear you asking us to do is look at what that schedule might
23 look like and what time we would need to suggest in terms of
24 interaction and motion practice on the specific cases.

25 THE COURT: Yes. I would certainly think that

F6grgmc

1 through, keeping in mind number one I'm only one person. While
2 you are my priority at this point, I do have some other cases
3 that I need to worry about. Number two, inevitably I assume
4 there may be motions in limine in these cases and other case-
5 specific issues, evidentiary issues and the like, that need to
6 be addressed.

7 Realistically, I don't think it is feasible to go end
8 one trial on a Friday and start the next trial the following
9 Monday. I think you need to allow a little bit of time to
10 recharge and deal with those case-specific issues. I don't
11 want to be unrealistic. I'm a big fan, as you know, of a
12 reasonable but aggressive schedule, but "reasonable" is part of
13 that phrase as well. So do leave a little bit of time in
14 between.

15 The other thing is, you don't know, trials can take
16 longer than you anticipate. I'm hoping that they will take
17 less time than you anticipate, but I think it is necessary to
18 pad them a little bit. My deputy is probably having a heart
19 attack as well, so keep her in mind.

20 MR. BROCK: That's helpful. Thanks.

21 MR. HILLIARD: One issue that is going to crop up as
22 we get closer to the end of the year. You will recall that the
23 Court made the first selection solely on the first recall,
24 which is 100 percent defective ignitions that went into all of
25 these cars. GM made an argument that they wanted to have some

F6grgmc

1 bellwethers on the second recall, which is some are/some
2 aren't. Sooner or later, if the docket does not settle, the
3 value of those cases will probably need to be bellwethered.

4 It is not a front end issue, but maybe by the end of
5 the year some guidance from the Court. After three bellwether
6 cases, we will probably know the value of the 100 defective
7 docket, but we will have another section of the docket that
8 will probably need to be addressed. It seems that the Court
9 prefers to discuss things before they get ripe and fall off the
10 tree. This one is not yet ripe, but it will be before the end
11 of the year.

12 THE COURT: Why don't you talk about whether it makes
13 sense to put that on the agenda for the next status conference.
14 I agree, I do prefer to talk about things before they fall off
15 the tree. It may be that the next status conference is the
16 right time to talk about entry of a supplemental bellwether
17 order with respect to those cases have deadlines and the like.
18 Talk about that. If you think it is the time to do it, then we
19 will talk about it in August. I appreciate the heads-up.

20 GM document productions. Anything to discuss there?
21 It didn't seem like there was. No one is popping up, and I see
22 some heads shaking, so good.

23 Deposition update. I'm very pleased to hear that
24 things have been proceeding smoothly and that coordination and
25 participation with state counsel is also proceeding smoothly.

F6grgmc

1 I'm thrilled that you haven't had to bother me both because it
2 suggests that things are proceeding smoothly and it means you
3 are not bothering me. Of course, if there are issues, you are
4 always welcome to contact me.

5 There is an indication that you need a briefing
6 schedule with respect to issues concerning Mr. Valukas's
7 deposition. First, can somebody remind me, is that scheduled
8 for October?

9 MR. BROCK: Your Honor, the deposition is scheduled
10 for September 24th. We have been in discussions with
11 plaintiffs' counsel about issues relating to that deposition,
12 taking some guidance from your Honor's order with regard to the
13 production of some of the voluminous materials.

14 Our suggestion would be that you allow us to continue
15 to meet and confer on that issue. If we can't bring it to
16 resolution, we can put it on the August status conference for
17 discussion.

18 THE COURT: No need to set a briefing schedule now,
19 you can continue to discuss. That is fine with me. I think
20 the next status conference is August 28th. That doesn't leave
21 a whole lot of time to brief and decide any issues that remain
22 in dispute. Keep that in mind. Obviously, I'll need to give
23 you a pretty tight briefing schedule if it comes to it.

24 Mr. Hilliard.

25 MR. HILLIARD: My concern, Judge, is that again you're

F6grgmc

1 right, I don't think that is going to give us enough time. I
2 don't know that we have to be in front of you and have it
3 argued. My belief is we can pretty quickly decide if we can't
4 agree. Then we can submit to you in writing the reasons why
5 and what we think we need to have briefed and brief it.
6 Perhaps the Court can rule prior to the next status conference.

7 It is a core issue, too, Mr. Valukas, without making
8 the argument yet, and GM has some strong views, as do I.
9 Perhaps put us on a 5- to 7-daytime table now and either agree
10 to it or explain to you why we can't and what the issues are
11 and get it briefed and, hopefully, ruled on before the next
12 status conference.

13 MR. BROCK: That's fine with us. I think what we had
14 in mind is if we were not in agreement, we would be briefed on
15 the issue prior to the status conference. If your Honor wanted
16 to hear from us on any of the issues at that time, that would
17 be fine. That gives us plenty of time to make whatever
18 adjustments would be needed in advance of the deposition date.

19 THE COURT: To the extent that there are disagree-
20 ments, are you contemplating simultaneous letter briefs? I
21 assume that you will have essentially vetted what the issues
22 are and therefore adequately addressed them in simultaneous
23 letters.

24 MR. HILLIARD: Yes, your Honor. We are both well
25 aware of what the issues are and just can't agree as to who is

F6grgmc

1 right.

2 THE COURT: I can help you on that.

3 MR. BROCK: That's fine with us. Would the Court
4 consider maybe very brief reply briefs to those simultaneous
5 filings?

6 THE COURT: Sure. Why don't we set a deadline. Does
7 July 17th give you enough time to have your discussions run
8 their course? All right. By July 17th, if there are any
9 disputes that require my involvement, you should submit
10 simultaneous letter briefs, not to exceed 10 pages, and I'll
11 give you until July 24th to file any replies, not to exceed 5
12 pages. All right?

13 MR. BROCK: Yes, sir.

14 THE COURT: Very good.

15 Bellwether trial submissions. Per order number 25,
16 paragraph 49, your proposals for an order are due July 15th.
17 You have asked for some guidance with respect to length and
18 subjects. In terms of subjects, the goal here is to identify
19 the cases that are most representative of large numbers of
20 cases in the MDL. That is to say that they are representative
21 and not outliers or idiosyncratic, that they are good vehicles
22 to provide you with the necessary information and the like.

23 I don't entirely know what to tell you to address
24 except to tell you to address why you think the cases of the
25 cases that remain on the list, why you think the ones at the

F6grgmc

1 top of your list are the best from that perspective. Do you
2 need more guidance than that?

3 MR. HILLIARD: We spoke briefly, Judge. Good
4 vehicles.

5 THE COURT: No pun intended.

6 MR. HILLIARD: GM suggested 10 pages. I told them I
7 was fairly flexible. I think the cases will be well developed
8 and defined and a paragraph on each as to why that category of
9 case should be first is probably more important than specifics
10 of much of the detail of the case. They reached out to me
11 before the hearing this morning and asked for 10 pages. I told
12 them there is no heartburn in regards to that. If you are fine
13 with it, we are as well.

14 THE COURT: Sure. I'll give you up to 10 pages, with
15 the request again that if you that you don't use them all if
16 you can be more precise than that. Anything else on that
17 front?

18 MR. BROCK: Your Honor, I have one issue that we spoke
19 about this morning that is not on the agenda with regard to the
20 bellwether trials. That is that we will be discussing over the
21 next week or so a protocol that we would suggest to your Honor
22 for allowing GM to file answers and motions that are necessary
23 as applicable to the state from which the case arises.

24 The plaintiff has indicated they might want to look at
25 filing specific complaints as to the cases that are designated

F6grgmc

1 for trial. That, of course, is something we are open to
2 talking about also. We could answer those complaints, but we
3 need to put some affirmative defenses and other matters in the
4 record. We will be coming back to you soon with a suggestion
5 on that. I just wanted to mention that today.

6 THE COURT: OK. Mr. Hilliard?

7 MR. HILLIARD: A big issue there, Judge. In
8 discussions it occurs to me that we should probably take all 16
9 bellwether plaintiffs and create a complaint specific to the
10 state depending on the choice of law decisions. GM's
11 affirmative defenses may require discovery on our part to
12 either rebut them or move to have evidence not considered. I
13 mentioned that to them as well. It is important because if we
14 wait until the deadline of the 6th, we may bump up against the
15 discovery deadline, which would prevent some discovery on the
16 affirmative defense that they may decide is pertinent to GM's
17 defense.

18 My suggestion to them, just to tell the Court, we will
19 create 16 complaints specific to each state. They can answer
20 those 16. Even though some of them will not be selected as our
21 final 6, it would allow us time, if necessary, to the use the
22 remaining discovery calendar to hone in on any issue raised by
23 either our complaint which GM may need or their defenses which
24 we may need.

25 THE COURT: Any suggestion with respect to when to do

F6grgmc

1 that? In terms of the pleadings, I don't see any reason why
2 those couldn't be done sooner rather than later.

3 MR. HILLIARD: I don't think there is a need for the
4 Court to create deadlines, because we are both anxious to get
5 it done. This is just keeping you in the loop on it if we come
6 to a problem. It didn't seem like we would this morning. I
7 believe as soon as I leave here, I'm going to tell my team to
8 do it right now. They will have it in a few days, and they can
9 review, analyze it, and get me their affirmative defenses and
10 their state-specific answers as quickly as they can.

11 THE COURT: Why don't you talk about this sooner
12 rather than later. Assuming everybody is in agreement, submit
13 a letter to me advising me what the plan is, and I can so order
14 it if that is appropriate. If there is any disagreement, I can
15 resolve it. It sounds like you are as anxious as I might be to
16 make sure that everybody is on the same page. I think that
17 suffices for now.

18 Anything else on the bellwether front?

19 On the inspection and testing of ignition switches, it
20 doesn't sound like there is anything that needs to be
21 addressed. I see heads shaking.

22 Additional documents that New GM has produced to the
23 government. It sounds like you are continuing to meet and
24 confer, so it probably isn't ripe for discussion now. I'm
25 happy to set a deadline for the submission of anything or happy

F6grgmc

1 to take my cues from you and leave you to continue your meet-
2 and-confer, if that is more appropriate.

3 Mr. Bloomer.

4 MR. BLOOMER: Thank you, your Honor. In all fairness
5 to the plaintiffs, we sent them a response I think yesterday on
6 some of this, and they probably haven't had a chance to review
7 it. I think this is one where we may be able to reach
8 agreement on most but not all issues. I would be in favor of
9 the Court taking its cue from the parties. We should know,
10 hopefully, within the next week or so where we are and then
11 would contact the Court if there are any issues left in dispute
12 and propose submission of simultaneous briefs.

13 THE COURT: Fine by me. I'll assume that everything
14 is honky-dory unless I hear from you.

15 On the King & Spalding motion, the motion is in the
16 process of being briefed. If I remember correctly, the
17 opposition is due July 1st and reply is due July 10th. There
18 is the issues with respect to the redactions and sealing. I
19 think we have addressed that. I think the letters that I
20 directed you to file by the 30th will cover that as well. Is
21 that correct?

22 MR. HILLIARD: It is.

23 MR. BLOOMER: Your Honor, I think that's fine, because
24 there is a lot of overlap between the two.

25 THE COURT: Very good. Anything else on that front?

F6grgmc

1 Next is treatment of nonconfidential discovery
2 material. I assume this is perhaps what Mr. Bloomer was
3 adverting to earlier. Fill me in.

4 MR. HILLIARD: It segues some as to the exhibits on
5 the motion, Judge. This has been just a fundamental disagree-
6 ment between the parties, and it's been brewing for some time,
7 that is, the public's right to access the nonconfidential
8 documents in a case like this one that has such national
9 interest and importance.

10 It is my view and I have told GM that I often
11 dedesignate confidential documents with the intent of being
12 sure that they don't stay secret or covered up and not just
13 part of this litigation. It is not part of the protective
14 order, any rule that prevents the sharing of documents with the
15 public once dedesignated.

16 GM has subsequently said, we now take the position
17 that you cannot do this. You can use it nonconfidentially
18 inside the litigation, but you can't give it to The Wall Street
19 Journal, you can't share it with The New York Times.

20 Though I have respected that since we now have a
21 disagreement, I disagree strongly. I have read this Court's
22 views on public access and First Amendment, and I brought some
23 of your stronger language. We just need some help. Unless
24 there is judicial handcuffs put on the sharing of
25 nonconfidential important documents in the case, not to mention

F6grgmc

1 the lives lost and the injuries caused and the interest
2 nationally, unless there is a specific direction by this Court
3 saying you cannot do that, you can dedesignate them but you
4 cannot use them in any other form other than this Court, I'll
5 comply.

6 That is the issue, and it is ripe to be briefed and
7 discussed. In fairness to GM, they are just telling me, you
8 can't do it, we don't want you to do it, please stop.

9 MR. BROCK: Your Honor, Mike Brock on behalf of GM.
10 We understand the Court's comments from earlier today about the
11 presumption in favor of public access to court filings. That
12 is not the issue that we are addressing here and that we have
13 been addressing with Mr. Hilliard. To the contrary, this issue
14 is brought to a head because of the way in which nonprivileged
15 materials are being used outside of the litigation proceeding.

16 Consistent with the idea that the sole purpose of the
17 liberal discovery rules is to assist in preparing cases for
18 trial, we would like to file a request of the Court for a
19 protective order requiring that pretrial materials be utilized
20 only for purposes of this litigation. We agree that we have
21 tried to work this out, we are not going to work it out, and
22 that we would like to file a motion on this. We can be
23 prepared to do so as soon as this week to bring this issue to
24 your Honor for consideration.

25 THE COURT: Just so I understand, these are discovery

F6grgmc

1 materials that have been exchanged but they are not designated
2 or they are dedesignated so they are no longer designated as
3 confidential, is that correct?

4 MR. HILLIARD: That is correct.

5 THE COURT: I'm pretty sure that I have written on
6 this in the context of another case, so you may want to be
7 mindful of that in whatever you submit. I'll take a look at
8 that myself. I couldn't find it in the last five seconds. But
9 that is fine by me. You are prepared to file something by
10 Friday, you said, Mr. Brock?

11 MR. BROCK: Yes, your Honor.

12 THE COURT: Mr. Hilliard?

13 MR. HILLIARD: Reply by the following Wednesday.

14 THE COURT: All right. Any need for anything beyond
15 that? I wouldn't think so.

16 MR. BROCK: No, sir.

17 THE COURT: That's fine by me. Friday and Wednesday.
18 There may be urgency with respect to the public's interest in
19 this stuff, but there is no artificial date by which this needs
20 to be resolved. I will try and resolve it sooner rather than
21 later. Is that correct?

22 MR. HILLIARD: It is.

23 THE COURT: Very good. Why don't we say 10 pages on
24 that, too. Would that suffice?

25 MR. HILLIARD: Yes, sir.

F6grgmc

1 MR. BROCK: Your Honor, having a brief in process, we
2 have a good bit to say on this issue, a number of cases to
3 cite. I might ask for 20 pages, if your Honor would be
4 receptive to that.

5 THE COURT: Sure. Mr. Hilliard, you may have 20 as
6 well.

7 MR. HILLIARD: May I have permission not to use it
8 all?

9 THE COURT: Not only my permission but my encourage-
10 ment.

11 Interrogatories. It also sounds like that is not
12 ripe, you are continuing to meet and confer. Mr. Bloomer has
13 nodded. Anyone need to be heard on that? Good.

14 Settlement. As long as you continue to assure me that
15 you are discussing possible resolution mechanisms, I don't need
16 to discuss it in this context. I'm happy to leave it at that
17 unless anyone wishes to be heard on that.

18 A couple of other issues. Number one, last week, on
19 June 8th, plaintiffs in Hammatt v. General Motors, docket No.
20 15 Civ. 1970, submitted, albeit through the orders and
21 judgments clerk, a document captioned "Request to Dismiss
22 Complaint Without Prejudice Pursuant to Rule 41(a)(1)(A)(i)."
23 Some of the language in that submission indicates that it was
24 being submitted jointly with New GM, but the submission was not
25 in fact signed by anyone at New GM.

F6grgmc

1 Because it was sent through orders and judgments
2 rather than filed on ECF, which I candidly didn't focus on
3 until the last day or so, given that, among other things, the
4 certificate of service indicated it was being filed on ECF, it
5 is not clear to me that New GM has even seen it. I wanted to
6 flag it and find out what the story is with it if there are any
7 issues.

8 Normally, I don't need to approve (a)(1)(A)
9 dismissals, but some of the language in the submission gave me
10 pause. That is to say, there was some language with respect to
11 leave to refile the case in the home district.

12 Mr. Bloomer.

13 MR. BLOOMER: Thank you for bringing it to our
14 attention, your Honor. No, didn't know about it. It was not
15 in any way, shape, or form a joint submission. The first we
16 heard about it was when Ms. Atkins sent it to us late
17 yesterday. It was something we did not know about.

18 THE COURT: I don't know if you have had a chance to
19 look at it. I want to give you a chance to review it and let
20 me know what, if any, thoughts you have. If you have looked at
21 it, maybe you have those thoughts already. Any thoughts?

22 MR. BLOOMER: Very, very briefly. I think I under-
23 stand the rule on this. It is obviously a bit of an odd
24 filing. If we could have by the end of the week to let the
25 Court know or at least a few days to let the Court know by

F6grgmc

1 letter submission what our position is. We want to take a look
2 at the law given that it was filed without any communication or
3 acquiescence of our client.

4 THE COURT: All right. Anyone at the front table need
5 to be heard on this? I'm not sure it implicates you.

6 MR. BERMAN: We were going to reach out to counsel and
7 take a look at what kind of vehicle it is and try to understand
8 it a little better. If he is trying to claim he is not part of
9 the MDL, he may be correct, so we want to examine that. We
10 don't want, as lead counsel, to be forcing people whose claims
11 shouldn't be here to be here. We thought a week would be good
12 to try to understand and give you our views on this as well.

13 THE COURT: If it hasn't already been docketed, I do
14 plan to docket it. I'll do that today to make sure that it is
15 part of the public record and everyone has it. Why don't you
16 both let me know within a week of today if you have any views
17 on it or wish to be heard and either be heard in whatever that
18 submission is or make a proposal if you think that anything
19 beyond that is necessary.

20 The next item is per I think it is order 51 you were
21 supposed to submit to me by yesterday a proposed order putting
22 individual counsel on notice that they are required to
23 coordinate discovery with lead counsel to ensure that
24 essentially all noncase-specific or nonidiosyncratic discovery
25 is done through the MDL. I didn't get anything. I don't know

F6grgmc

1 if that escaped your notice or slipped through the cracks.

2 Anyone wish to be heard? Section 7 of order 51.

3 MR. BERMAN: Yes, your Honor. We had a meet-and-
4 confer on that. We are drafting a proposed order. I think we
5 would be able to get that to you within a week.

6 MR. BLOOMER: Your Honor, yes, we drafted an order and
7 did send it to lead counsel. I think it was only within the
8 last 30 hours, so they probably haven't had a chance to review
9 it. I suspect we should be able to get an agreed order to the
10 Court on this issue fairly promptly. They do need an
11 opportunity to review it and get any edits or comments to us.

12 THE COURT: I'll treat it as an extension request, I
13 will grant an extension nunc pro tunc. I don't like to do
14 that, you should know that. I'll give you until the 23rd to
15 submit either an agreed-upon order. If there are any
16 disagreements, you know how to address those. I know there are
17 a lot of deadlines and you guys have been pretty remarkable in
18 terms of meeting them and complying with them. Obviously, try
19 to comply with all of them.

20 Speaking of which, there are some upcoming motion to
21 dismiss type deadlines. I'm not going to go over those, but I
22 assume that you all are generally mindful of them.

23 Our next status conference is August 28th. I'm
24 inclined to think that we should probably put one on the
25 calendar for the one after that, if not two after that.

F6grgmc

1 Looking at both deadlines in this case and my own schedule, and
2 assuming that you wanted to stick with the every-other-month
3 calendaring at this point, I was inclined to propose either
4 October 30th, which is the phase II discovery deadline date, or
5 November 2nd as the conference after the August one. Any
6 thoughts on that?

7 MR. HILLIARD: Judge, I would respectfully propose we
8 need to go back to every month starting in the fall given the
9 trial setting and the issues that in my experience come up that
10 could probably be resolved here and will need to probably have
11 the Court's attention and our attention, especially if we have
12 other trial settings that are dovetailing into the first trial
13 setting. My comfort level is to have it on the Court's docket
14 starting September, October, November. It will likely be
15 focusing on trial-related issues. That is my request, your
16 Honor.

17 THE COURT: I think that point may be well taken. We
18 can always cancel one. That is easier than putting one on the
19 schedule. I'm going to throw out some dates. If anyone wishes
20 to be heard, you can speak now or hold your peace.

21 The first will be Friday, September 25th. For those
22 who might be concerned, Yom Kippur is that Wednesday, the 23rd,
23 so it does not conflict in that regard. The second would be
24 Friday, October 30th. The third would be Friday, December 4th.

25 Mr. Hilliard.

F6grgmc

1 MR. HILLIARD: Our seventh baby is due October 30th.

2 THE COURT: Seventh?

3 MR. HILLIARD: Seventh, yes.

4 THE COURT: Wow.

5 MR. HILLIARD: Thank you very much. I would like to
6 back it up a week or two. I wouldn't come, of course, if they
7 conflicted, but I think I need to be here for the trial issues,
8 which is always, I'll say for the record, secondary to where
9 I'm going to be if there is a conflict. I would like to maybe
10 address the conflict now.

11 THE COURT: The birth of your child should be your
12 first priority, even if it is your seventh child.

13 MR. HILLIARD: Should and is.

14 THE COURT: Do you October 23rd instead of October
15 30th?

16 MR. HILLIARD: Yes.

17 THE COURT: I'll do it the 23rd to accommodate Mr.
18 Hilliard. Congratulations to you and your family on that.

19 Anyone else wish to be heard on those dates?

20 MR. BERMAN: September 25th I have a pretty major
21 class certification hearing. I can do any other day that week.

22 THE COURT: Can we do the 24th then?

23 MR. BERMAN: Yes, your Honor.

24 THE COURT: That is the Valukas deposition.

25 MR. BROCK: How about September 18th? Will that work,

F6grgmc

1 your Honor?

2 THE COURT: That does work for me. It is getting a
3 little closer to the August 28th conference, but it may well be
4 that we have things we need to discuss.

5 MS. CABRASER: For whatever it is worth, that would
6 not work for me, your Honor. I apologize.

7 THE COURT: How about September 21st?

8 MR. BERMAN: Yes, that works.

9 THE COURT: My son's birthday. Today is my
10 anniversary. No one has wished me happy anniversary yet.

11 ("Happy Anniversary"s)

12 So August 28th is next, then September 21st, October
13 23rd. I had said December 4th, but maybe we should do November
14 20th instead, since we have moved the other ones up. Does that
15 make sense? That leaves us some time in December as well, when
16 things are heating up a little bit. So we will make the last
17 one November 20th.

18 Any other scheduling issues on that score?

19 Does anyone see the need to have a conference next
20 month? You are in the midst of a heavy deposition schedule, so
21 it might be easier and better to wait until the August date
22 that is already on the calendar. I see nodding heads.

23 Given that, I regret to tell you that Ms. Atkins will
24 not be here at the next status conference. Her clerkship is
25 coming to an end in the beginning of August. I know you have

F6grgmc

1 been dealing with her quite a bit. I probably don't need to
2 tell you how helpful she has been in this case, and for that
3 reason I want to publicly thank her for all the assistance she
4 has provided. I think things have run smoothly, and it has
5 definitely a lot to do with her.

6 She will continue to be in chambers for the next five
7 to six weeks, so you will continue to communicate with her and
8 hear from her. I'm sure she will let you know who will be
9 taking this matter over after her departure, which will make me
10 sad, and I assume it will make you sad as well.

11 Anything else that we need to address?

12 MR. HILLIARD: Not from the plaintiffs, Judge.

13 THE COURT: You know the drill with respect to a
14 proposed order memorializing what we have done today. I think
15 there are a lot of deadlines and page length issues to go in
16 there. It sounds like things are going well.

17 Thank you all. Have a pleasant day. Good to see you.

18 (Adjourned)

19

20

21

22

23

24

25

