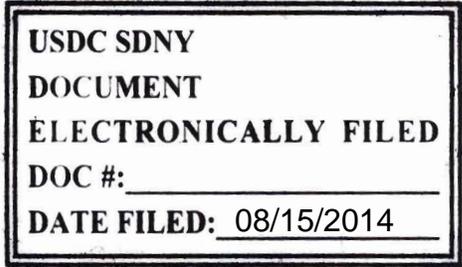


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



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IN RE:

GENERAL MOTORS LLC IGNITION SWITCH  
LITIGATION

14-MD-2543 (JMF)  
14-MC-2543 (JMF)

*This Document Relates to All Actions*

**ORDER NO. 8**

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JESSE M. FURMAN, United States District Judge:

On August 11, 2014, the Court held the Initial Status Conference and gave Temporary Lead Counsel for Plaintiffs (“TLC”), counsel for Defendants, and other plaintiffs’ counsel an opportunity to be heard on issues addressed in the agenda items set forth in Order No. 7 (14-MD-2543, Docket No. 215).<sup>1</sup> The Court, having reviewed all submissions by counsel in response to Order No. 5 (14-MD-2543, Docket No. 70), including all applications for leadership positions, and having considered the parties’ arguments in court, issues this Order to, among other things, (1) appoint Plaintiffs’ Lead and Liaison Counsel and members of the Plaintiffs’ Executive Committee and take steps to further define the authority, duties, and responsibilities of those positions; (2) establish a procedure for reviewing cases filed directly in the multidistrict litigation (“MDL”); (3) set forth a schedule and process for the filing of a Consolidated Complaint and any objections thereto; (4) set a schedule for regular Status Conferences and a process for counsel to submit a proposed agenda in advance of each Conference; (5) determine a process to coordinate this MDL with related cases, including proceedings in the Bankruptcy Court and state courts; (6) set forth a process and briefing schedules for motions and appeals from the Bankruptcy

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<sup>1</sup> Attached to this Order as Exhibit A is the sign-in sheet from the Initial Status Conference reflecting all counsel who indicated their appearance at the Conference.

Court; and (7-9) provide guidance and rules with respect to communications and submissions to the Court, including the submission of proposed orders.

**I. PLAINTIFFS' COUNSEL APPOINTMENTS**

At the outset, the Court reiterates its appreciation to Temporary Lead Counsel for their able assistance in the litigation up to this point. The Court appreciates that, without any guarantees for more permanent appointment, Temporary Lead Counsel was in a difficult position taking the lead and making recommendations to the Court. Temporary Lead Counsels' help in coordinating among Plaintiffs' counsel, in suggesting procedures for the appointment of counsel, in discussing threshold issues with defense counsel and the Court, and in making recommendations for other leadership positions was invaluable to the Court.

The Court thanks all counsel who applied for leadership positions for their interest and for their helpful written submissions and oral presentations. As the Court stated at the Initial Status Conference, there are many more well-qualified candidates than there are positions to fill and choosing among applicants was a difficult task. In doing so, the Court has considered the criteria it identified in Section II of Order No. 5, as well as (1) the desirability of having counsel who is familiar with bankruptcy law and procedure and (2) the need to ensure adequate representation for the full range of cases currently in the MDL (including, for example, both economic loss cases and personal injury/wrongful death cases; pre-Sale Order claims and post-Sale Order claims; claims limited to the ignition switch defect and claims relating to other alleged defects, and so on). In addition, the Court took into consideration not only the individual applicants' qualifications and experience, but the depth and quality of their firms, the experience and qualifications of any co-counsel, and the depth and quality of co-counsel's firms. The Court hopes and assumes that counsel appointed to leadership positions will take full advantage of the

range of talent among other counsel, whether through the formation of appropriate subcommittees or otherwise — and that other counsel, including those who applied unsuccessfully for leadership positions, will provide assistance as appropriate.

**A. Leadership Appointments**

Pursuant to the leadership structure approved and described by the Court in Order No. 5, the Court makes the following appointments:

*Co-Lead Counsel:* Steve W. Berman, Elizabeth J. Cabraser, and Robert C. Hilliard.

*Executive Committee:* David Boies, Lance A. Cooper, Melanie L. Cyganowski, Adam J. Levitt, Dianne M. Nast, Peter Prieto, Frank M. Pitre, Joseph F. Rice, Mark P. Robinson, Jr., and Marc M. Seltzer.

*Plaintiff Liaison Counsel:* Robin L. Greenwald.

*Federal/State Liaison Counsel:* Dawn M. Barrios.

All of the foregoing appointments are personal in nature. That is, although the Court anticipates that appointees will draw on the resources of their firms, their co-counsel, and their co-counsel's firms, each appointee is personally responsible for the duties and responsibilities that he or she assumes. In due course, the Court will discuss a process for evaluating appointees' performance and commitment to the tasks assigned.

The Court is aware that one or two of the foregoing counsel did not formally apply for the position to which he or she was appointed. If such counsel is unwilling or unable to serve in the position to which he or she was appointed, he or she shall file a letter motion on ECF (in **both 14-MD-2543 and 14-MC-2543**) seeking to withdraw from that position no later than **August 19, 2014**, at which point the Court will make a substitute appointment.

**B. Defining the Authority, Duties, and Responsibilities of Counsel**

The Court is inclined to believe that it should (1) define the authority, duties, and responsibilities of the foregoing leadership positions with greater specificity than set forth in

Order No. 5; and (2) should set more specific guidelines and rules regarding staffing, fees, expenses, and billing records than set forth in prior Orders. *See, e.g.*, Order No. 4, *In re Mirena IUD Prods. Liab. Litig.*, 13-MD-2434 (CS) (S.D.N.Y. May 22, 2013) (Docket No. 103) (directing lead and liaison counsel to propose guidelines for fees, expenses, and the like); Order No. 5, *In re Mirena IUD Prods. Liab. Litig.*, 13-MD-2434 (CS) (S.D.N.Y. July 10, 2013) (Docket No. 207) (specifying the authority, duties, and responsibilities of plaintiffs' leadership counsel and setting detailed guidelines and rules regarding staffing, fees, expenses, and billing records); *see also, e.g.*, Order No. 4, *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices & Prods. Liab. Litig.*, 10-ML-02151 (JVS) (FMO) (C.D. Cal. June 1, 2010) (Docket No. 181) (ordering that lead and liaison counsel play a gatekeeping role with respect to all pleadings and motions). Lead Counsel is directed to confer with Liaison Counsel and the Executive Committee about those issues and to be prepared to address them at the next Status Conference. Alternatively, if prepared to do so, Lead Counsel may submit a proposed order addressing the issues, in accordance with Section VII below, in advance of the Conference.

## **II. PROCESS FOR REVIEWING CASES FILED DIRECTLY IN THIS DISTRICT**

The Court establishes the following procedure for the review of cases that are directly filed within the Southern District of New York. Plaintiffs, through Lead Counsel, and Defendants will have seven (7) days from the date of a Court order consolidating a case with the MDL to meet and confer and object by letter motion to the inclusion of the case in the MDL. The party in favor of consolidation in the MDL will then have three (3) days to file a response to any such filed objection. Such objections and responses shall not exceed three (3) single-spaced pages and shall be filed **only** in 14-MD-2543 (and "spread" to the relevant member case). No replies will be allowed without leave of Court.

With regard to any cases the Court has already consolidated with the MDL, the seven-day period to meet and confer and object will begin to run as of the date of entry of this Order.

Failure to object as set forth herein shall constitute a waiver of any objection to inclusion of the case in the MDL.

### **III. CONSOLIDATED COMPLAINT**

Within forty-five (45) days of the entry of this Order, Plaintiffs, through Lead Counsel, will make available for review by all Plaintiffs through electronically secure means a draft Consolidated Complaint with respect to all claims alleging economic loss. Plaintiffs will have seven (7) days to submit to Lead Counsel any comments on the draft Consolidated Complaint. Plaintiffs, through Lead Counsel, must file a final version of the Consolidated Complaint, **in both 14-MD-2543 and 14-MC-2543**, within sixty (60) days of the entry of this Order.

Plaintiffs seeking to object to the filed Consolidated Complaint must file their objections within seven (7) days, and Lead Counsel shall have seven (7) days to respond. Any such objections and responses shall not exceed five (5) single-spaced pages and shall be **filed in both 14-MD-2543 and 14-MC-2543**. No replies will be allowed without leave of Court.

### **IV. STATUS CONFERENCES**

#### **A. Status Conference Schedule**

The Court will conduct the next Status Conference on **September 4, 2014**, at **9:30 a.m.**, in **Courtroom 310** of the Thurgood Marshall United States Courthouse, 40 Centre Street, New York, New York. (Please note that that is a different courtroom than the Court used for the Initial Status Conference.) Counsel should check in with the Courtroom Deputy at least fifteen minutes in advance. Counsel should arrive at the Courthouse with sufficient time to go through security. Seats in the courtroom may not be reserved.

The Court will conduct additional Status Conferences on the following dates: **October 2, 2014; November 6, 2014; and January 9, 2015**. The Court will schedule Status Conferences once every two months or so thereafter and additional Status Conferences as needed. Unless the Court orders or indicates otherwise, all Status Conferences will begin at **9:30 a.m.**, and will be held in Courtroom 1105 of Thurgood Marshall United States Courthouse, 40 Centre Street, New York, New York. (As noted, the September 4, 2014 Conference will be in Courtroom 310.)

**B. Proposed Agendas**

In advance of each Status Conference, Counsel for General Motors LLC (“New GM”) and Lead Counsel shall meet and confer regarding the agenda for the Conference. No later than five (5) days prior to each Status Conference, Counsel for New GM and Lead Counsel shall file a joint letter, not to exceed five (5) single-spaced pages and to be filed in **both 14-MD-2543 and 14-MC-2543**, setting forth the parties’ tentative agenda and the parties’ proposals on those issues (and, to the extent applicable, submitting any proposed orders — joint or otherwise — in accordance with Section VII below). In the first paragraph of the joint letter, the parties shall indicate their views on (1) whether the Court should allot more than three hours for the Status Conference; and (2) whether the Court should utilize an oversize courtroom (such as Courtroom 110 or 310) as opposed to its ordinary courtroom (Courtroom 1105).

More immediately, Lead Counsel and counsel for Defendants shall meet and confer with respect to the agenda for the September 4, 2014 Status Conference within ten (10) days of the entry of this Order. Counsel should discuss the need to address and/or update the Court with respect to the following issues (in addition to any other issues identified by counsel):

1. An initial discovery plan to produce those relevant, non-privileged documents previously provided by New GM (and the other Defendants, to the extent applicable) to Congress and the National Highway Traffic Safety Administration (“NHTSA”);

2. The entry of an appropriate protective order that balances the presumption in favor of public access to documents and information filed with the Court with the interests of maintaining as confidential information that is subject to protection under Rule 26(c) of the Federal Rules of Civil Procedure and the judicial opinions interpreting such Rule, and recognizes that the Court shall make all decisions regarding the sealing and/or redactions of pleadings or other materials filed in Court;

3. A proposal and plan to create a single electronic document depository that will be used in both this MDL and related state and federal cases;

4. The parties' positions on document discovery beyond the initial disclosures in item 1 above;

5. The parties' positions on third-party document discovery, including if such discovery should be limited to preservation efforts;

6. The parties' positions on document discovery of defendants other than New GM;

7. The parties' positions on the production of documents relating to the May 29, 2014 Report by Anton R. Valukas, and a process for addressing disputes regarding same;

8. The parties' positions on the production of documents provided by New GM to government agencies other than NHTSA, and a process for addressing disputes regarding same;

9. The entry of an Electronically Stored Information (ESI) order;

10. The entry of a Federal Rule of Evidence 502(d) order;

11. Additional preservation protocols that balance the right of Plaintiffs to obtain potentially relevant evidence against the undue burden and expense to New GM of preserving large numbers of parts that have been the subject of recalls or other evidence and a process for addressing disputes regarding the same; and

12. Other potential preservation issues relating to third parties, as well as a protocol for inspection of plaintiffs' vehicles in the event a named plaintiff wishes to sell a vehicle.

The Court expects Lead Counsel and counsel for Defendants to meet and confer in good faith on those issues (and all others that arise over the course of the litigation) in an effort to prepare agreed-upon orders for the Court's consideration whenever possible.

**C. Proposed Orders**

Unless the Court orders otherwise, no later than three (3) business days following each and every Status Conference, Lead Counsel and Counsel for New GM shall submit a proposed order (in accordance with Section VII below) memorializing any actions taken or rulings made at a Status Conference.

**V. COORDINATION WITH OTHER ACTIONS**

At each Status Conference, the parties shall apprise the Court of the existence and status of related cases proceeding in other courts, including state courts. Additionally, in consultation with Lead and Liaison Counsel, New GM is ordered to provide a joint written update to the Court every two (2) weeks, advising the Court of matters of significance (including hearings, schedules, and deadlines) in related cases, to enable this Court to effectuate appropriate coordination, including discovery coordination, with these cases.

The Court strongly believes that it is prudent to establish, at an early stage, appropriate procedures for coordinating this litigation with related cases in other courts, including the Bankruptcy Court and state courts. To that end, within ten (10) days of the entry of this Order, Plaintiff's Liaison Counsel and Federal State Liaison Counsel (and Lead Counsel, if Lead Counsel elects to join) shall meet and confer with Counsel for New GM to discuss appropriate additional procedures for such coordination. No later than five (5) days prior to the September 4, 2014 Status Conference, Plaintiff's Liaison Counsel, Federal State Liaison Counsel, and Counsel for New GM shall file a joint letter, not to exceed five (5) single-spaced pages and to be filed in **both 14-MD-2543 and 14-MC-2543**, setting forth the parties' proposals. Counsel should also be prepared to address the issue of coordination at the Status Conference itself.

## **VI. MOTIONS AND BANKRUPTCY APPEALS**

Unless otherwise ordered by the Court, all motion papers shall comply (in form, length, etc.) with the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York (the “Local Rules”) (available at <http://nysd.uscourts.gov/rules/rules.pdf>) and this Court’s Individual Rules and Practices in Civil Cases (available at <http://nysd.uscourts.gov/judge/Furman> ).

New GM (and other Defendants, as applicable) is ordered to respond by **Friday, August 29, 2014**, to the motion to remand filed in *Sumners v. General Motors, LLC*, 14-CV-5461 (JMF) (14-MD-2543, Docket No. 182). The *Sumners* Plaintiffs’ reply, if any, will be due seven (7) days thereafter.

New GM is further ordered to notify the Court by letter no later than **Monday, August 18, 2014**, if it intends to object to the *Edwards* Plaintiffs’ motion for leave to file an omnibus complaint (14-MD-2543, Docket No. 188). If New GM intends to object, it shall file a response in opposition by **Monday, August 25, 2014**. The *Edwards* Plaintiffs’ reply, if any, will be due seven (7) days thereafter.

Counsel for New GM, Lead Counsel, and counsel for the *Phaneuf, Elliott, and Sesay* Plaintiffs will meet and confer regarding appropriate procedures relating to appeals from the Bankruptcy Court’s No Stay Pleading decisions, and shall submit a letter not to exceed three (3) single-spaced pages with their respective positions regarding same.

## **VII. PROCESS FOR SUBMITTING PROPOSED ORDERS**

Any and all proposed orders should be e-mailed to the Orders and Judgments Clerk of the Court ([judgments@nysd.uscourts.gov](mailto:judgments@nysd.uscourts.gov)), as a .pdf attachment. At the same time, counsel should e-mail the proposed order, as a .docx (i.e., Microsoft Word) attachment, to the Court

([Furman\\_NYSDChambers@nysd.uscourts.gov](mailto:Furman_NYSDChambers@nysd.uscourts.gov)). Any such e-mail shall state clearly in the subject line: (1) the caption of the case, including the lead party names and docket number; and (2) a brief description of the contents of the document. Counsel shall not include substantive communications in the body of the e-mail. (The sender of an e-mail will ordinarily receive an auto-reply e-mail appearing to come from the Courtroom Deputy stating that substantive communications in the body of the e-mail will be disregarded. Parties need not, and should not, respond to the auto-reply message.)

**VIII. TEXT-SEARCHABLE SUBMISSIONS**

All filings and submissions — regardless of format and submission method — shall be text-searchable.

**IX. CONTACTING CHAMBERS**

Most procedural and logistical questions can be answered by consulting this Court's prior orders, the Local Rules, and the Court's Individual Rules and Practices in Civil Cases. Accordingly, counsel should review those materials before contacting Chambers by telephone.

**X. CONCLUSION**

The Clerk of Court is directed to terminate Docket Nos. 108, 112, 116, 121-22, 125, 132, 134-36, 138-39, 141-45, 147, and 149-78 in 14-MD-2543, and any associated entries in member cases.

SO ORDERED.

Dated: August 15, 2014  
New York, New York

  
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JESSE M. FURMAN  
United States District Judge