

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:

GENERAL MOTORS LLC IGNITION SWITCH
LITIGATION

This Document Relates to All Actions

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14-MD-2543 (JMF)

14-MC-2543 (JMF)

ORDER NO. 151

JESSE M. FURMAN, United States District Judge:

[Regarding Wave Two Discovery Procedures]

Consistent with the Court's comments at the May 31, 2018 Status Conference, and for good cause shown, the Court adopts the following schedule and procedures for Wave Two Discovery of the Post-Sale Production Part and Service Part personal injury and wrongful death cases.

**PROCEDURES AND SCHEDULE FOR WAVE TWO TARGETED DISCOVERY OF
PRODUCTION PART AND SERVICE PART PLAINTIFFS**

A. Identification of Wave Two Plaintiffs.

1. To be eligible to participate in Wave Two, a plaintiff must fit all of the following criteria: (1) the accident that forms the basis of plaintiff's claims must have occurred on or after July 10, 2009; (2) the subject vehicle must be a Production Part (Phase 1) or Service Part (Category A) vehicle with air bag non-deployment (*see Order No. 107 ¶ 3 (defining categories)*); (3) the plaintiff must not be included on New GM's lists that were filed pursuant to Order No. 140, III.B-D; (4) the plaintiff must be represented by counsel and there must not be a pending motion to withdraw; and (5) the plaintiff must not be currently eligible to participate in an aggregate settlement.

2. By **Wednesday, June 20, 2018**, New GM will file on the main MDL docket a list of the remaining claims eligible to participate in Wave Two targeted discovery.

3. By **Tuesday, July 10, 2018**, New GM and Lead Counsel shall file on the main MDL docket a joint list of cases eligible to participate in Wave Two. To the extent there is any dispute about this combined list, New GM and Lead Counsel shall address the disputes in a joint letter brief to the Court on that same date. Once any disputes are determined by the Court, the resulting plaintiffs shall be referred to as the “Wave Two plaintiffs.”

B. Severance of Complaints.

4. Any Wave Two plaintiffs whose claims are included in a complaint brought on behalf of multiple plaintiffs bringing personal injury and/or wrongful death claims arising out of different accidents or incidents will be severed upon the parties’ joint filing described in Paragraph 3 above. Unless and until the Court directs or orders otherwise, however, the Clerk of Court shall not terminate any such Wave Two plaintiff from his or her original docket. (The Court will direct or order such termination instead after either (a) the plaintiff has filed an amended and severed complaint pursuant to Paragraphs 5 and 6 below, or (b) the plaintiff has been dismissed with prejudice for failure to comply with this Order.)

5. By **Thursday, August 30, 2018**, each Wave Two plaintiff shall refile their complaint or an amended complaint in this Court and pay any filing fee associated with filing a complaint pursuant to 28 U.S.C. § 1914(a) or be dismissed without prejudice. By **Thursday, September 27, 2018**, any such dismissal without prejudice will automatically convert to a dismissal with prejudice unless any such dismissed Wave Two plaintiff refiles their amended complaint and pays the required filing fee in accordance with this order. *See, e.g., In re Asbestos Prod. Liab. Litig.*, 2008 WL 4290954, at *2–3 (E.D. Pa. Sept. 18, 2008) (requiring amended and severed complaint and payment of filing fee within 60 days on pain of dismissal with prejudice); *In re Seroquel Prod. Liab. Litig.*, 2007 WL 737589, at *2–3 (M.D. Fla. Mar. 7, 2007) (noting “gatekeeping feature of a filing fee and the cost of managing [] additional cases in the federal court

system as a whole, both as a part of this multi-district case and once remanded to the transferor or proper court, as individual cases"). In conjunction with any amended and severed complaint, a Wave Two plaintiff shall also file a Related Case Statement, available at www.nysd.uscourts.gov/forms.php, identifying the new lawsuit as related to these proceedings (*In General Motors Ignition Switch Litigation*, 14-MD-2543 (JMF)). Any complaint or amended complaint refiled pursuant to this Order shall be treated for all purposes as if it were filed on the date the original consolidated complaint was filed.

6. To facilitate the assignment of these new cases to the undersigned for inclusion in the MDL and the orderly termination of Amending Plaintiffs from their initial dockets (as of the date of the newly filed amended and severed complaint), each Amending Plaintiff shall (1) prominently note in the Related Case Statement that he or she is an existing plaintiff in an existing case, citing the case name and docket number of that case; (2) reference in the Related Case Statement the MDL Order pursuant to which he or she is filing an amended and severed complaint; and (3) attach as an exhibit to the Related Case Statement a copy of the *original* complaint in which the Amending Plaintiff is already associated.

C. Wave Two Discovery Scope and Timing.

7. **Scope of Targeted Discovery.** Case-specific discovery of Wave Two plaintiffs shall be limited to: (a) the scope of plaintiff's accident causation claims (e.g., is plaintiff claiming that an ignition switch rotation caused the accident, caused air bag non-deployment, or both?); (b) the sequence of events leading up to and during the accident; (c) whether the ignition switch rotated during the accident sequence; and (d) whether the air bag should have deployed during the accident.

a. **Written Discovery:** Written discovery and document production shall be limited to substantially complete Plaintiff Fact Sheets and compliance with Order No. 108. In addition, New GM may serve non-duplicative targeted

interrogatories or requests for production of documents limited to accident or air bag non-deployment causation issues in the specific accident as defined above. In turn, New GM will produce individual Vehicle Packages for each plaintiff's vehicle (if not already produced). (See Docket No. 3081, Order No. 107 at ¶ 5.) There will be no additional written discovery of any party during this phase of discovery.

- b. **SDM and Vehicle Inspection:** If the subject vehicle and/or SDM download is available, Wave Two plaintiffs shall make those available to New GM for inspection and/or retrieval.
- c. **Non-Privileged Case-Specific Documents in New GM's Possession:** To the extent New GM has in its possession as of the date of this Order any data downloads of the subject vehicle or other non-privileged case-specific materials (*i.e.*, vehicle photographs, actual parts of the subject vehicle, accident reports, insurance or other third-party records relating to the subject incident), New GM shall make such items available to the Wave Two plaintiffs for inspection, retrieval and/or review.
- d. **Fact Depositions:** Wave Two fact discovery depositions shall be limited to: (a) Wave Two plaintiffs;¹ (b) the investigating police officer(s); and (c) two scene or first responder witnesses. As to the latter category, each party may select one deponent if there is any disagreement over who those two scene/first responder witnesses should be, and if one party does not pick any scene or first responder deponent, the other party may select two scene/first responder deponents. The number of deponents in categories (b) and (c), above, may be increased by agreement of the parties and/or by order of the Court. There will be no additional depositions of parties or third parties during this phase of discovery.
- e. **Expert Discovery:**² Wave Two plaintiffs are required to submit written expert reports, including all reliance materials in compliance with Order No. 74 (Docket No. 1279), for any expert necessary to establish accident or air bag non-deployment causation under applicable state law, and plaintiffs must also produce their expert(s) for deposition after the written reports are supplied to New GM's counsel.
- f. **No Waiver:** By participating in Wave Two, the parties do not waive their rights to take additional discovery consistent with the Federal Rules of Civil Procedure, the Federal Rules of Evidence, and the Court's orders.

¹ Should the case proceed past the stage of Wave Two discovery and any related dispositive motion practice, the deposition would remain open to address other issues, such as damages, injury causation, *etc.*, at a later date. New GM would not need to seek leave of the Court to continue that deposition under the one-deposition rule.

² For clarity, medical expert discovery, including expert reports for or depositions of medical causation witnesses, are not required to be provided and are not permitted except by agreement of the parties.

8. **Timing.** The targeted discovery described in Paragraph 7(a) - (e) above shall proceed on the following schedule:

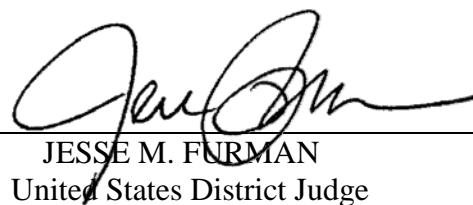
- a. Targeted, case-specific fact discovery of Wave Two plaintiffs shall commence on **Wednesday, August 1, 2018**, and shall conclude by **Friday, December 21, 2018**.
- b. On **Wednesday, August 15, 2018**, New GM shall file a notice on the main MDL docket of any Wave Two plaintiffs who have not submitted a substantially complete Plaintiff Fact Sheet (“PFS”), have PFS deficiencies, or have not complied with Order No. 108. The parties are to meet and confer to resolve any disputes.
- c. On **Thursday, September 20, 2018**, any remaining disputes concerning the PFS or Order No. 108 compliance of the Wave Two plaintiffs shall be submitted to the Court.
- d. On **Thursday, September 27, 2018**, any Wave Two plaintiff who has not submitted a substantially complete PFS or produced all materials required to be produced under Order Nos. 25 and 108 may be subject to a motion to dismiss. Upon notice from New GM, any Wave Two plaintiff not in compliance with his or her discovery obligations under this Order will have one week to comply with this Order or face dismissal without prejudice. If within one month following his or her dismissal without prejudice, a Wave Two plaintiff complies with this Order, or otherwise contests his or her dismissal, he or she may move to vacate the dismissal. Any Wave Two plaintiff who does not do so will be dismissed with prejudice upon a second notice from New GM.
- e. Wave Two plaintiffs shall disclose their expert witnesses and submit any written reports, including all reliance materials in compliance with Order No. 74 (Docket No. 1279), required under Fed. R. Civ. P. 26(a)(2)(B) on or before **Tuesday, January 15, 2019**.
- f. Wave Two plaintiffs shall present their expert witnesses for deposition on or before **Thursday, February 28, 2019**. The Parties are ordered to use good faith efforts to coordinate depositions so that experts who have been retained by multiple Wave Two plaintiffs are deposed utilizing the fewest calendar days possible. In other words, expert depositions relating to multiple cases should be consolidated on the fewest calendar days possible. Notwithstanding the foregoing, this Paragraph does not abrogate any provisions of Order No. 36 (Docket No. 604).

9. The Wave Two deadlines herein may be stayed or modified by agreement of the parties or by order of the Court for good cause shown.

10. By **Thursday, March 7, 2019**, New GM and Lead Counsel shall meet and confer regarding proposed next steps for Wave Two cases and remaining Production Part and Service Part plaintiffs, and submit joint or competing letter briefs (not to exceed ten single-spaced pages) setting forth their positions.

SO ORDERED.

Date: June 6, 2018
New York, New York



JESSE M. FURMAN
United States District Judge