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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)

This Document Relates To:
Fleck, et al. v. General Motors LLC, 14-CV-8176

ORDER

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JESSE M. FURMAN, United States District Judge:

[Regarding New GM's Objections to Excerpts from the Valukas Report]

Having considered the parties' submissions regarding what portions of the Valukas Report should be admitted at trial (*see* Docket Nos. 1961, 1962), the Court makes the following rulings with respect to Plaintiff's designations and New GM's objections:¹

<u>Plaintiff's Valukas Report Designation</u>	<u>New GM Objection</u>	<u>Court's Ruling</u>
Page 1-3	<p>Cumulative (including of more specific fact statements in the Valukas Report) under 403; inadmissible opinion under 701; unfair prejudice under 403, including, inadmissible opinions, characterizations, and conclusions; misleading the jury under 403; confusing the issues under 403; other incidents / OSI; number of alleged incidents under 403 / New GM MIL 5; hearsay regarding statements from "customers, dealers, the press"</p> <p>In addition, with respect to Wisconsin Safety Patrol and Indiana University statements: other</p>	<p>New GM's objection is OVERRULED. Although somewhat duplicative of later sections of the Report, this selection puts the Report in context and provides a concise and clear summary (effectively in New GM's own words, <i>see</i> Docket No. 1837 at 5-8) of the ignition switch defect, New GM's notice thereof, and New GM's conduct in addressing it (or not, as the case may be).</p>

¹ New GM filed its objections, included in the following chart, as part of a document that has been temporarily sealed. (*See* Docket No. 1988). The Court does not understand New GM's objections — as opposed to the Valukas Report itself — to contain any confidential or sensitive material that would warrant redaction or sealing.

<u>Plaintiff's Valukas Report Designation</u>	<u>New GM Objection</u>	<u>Court's Ruling</u>
	incidents / OSI; hearsay; statements are based upon scientific, technical, or other specialized knowledge but do not satisfy 702	
Pages 3-5	Cumulative (including of more specific fact statements in the Valukas Report) under 403; inadmissible opinion under 701; unfair prejudice under 403, including inadmissible opinions, characterizations, and conclusions; misleading the jury under 403; confusing the issues under 403	New GM's objection is OVERRRULED for substantially the same reasons.
Pages 7-9	Cumulative (including of more specific fact statements in the Valukas Report) under 403; inadmissible opinion under 701; unfair prejudice under 403, including inadmissible opinions, characterizations, and conclusions; misleading the jury under 403; confusing the issues under 403; hearsay with respect to <i>New York Times</i> statements In addition, with respect to Wisconsin Safety Patrol and Indiana University statements: other incidents / OSI; hearsay; statements are based upon scientific, technical, or other specialized knowledge but do not satisfy 702	New GM's objection is OVERRULED . Among other things, these comments are admissible for New GM's notice of the ignition switch defect (including its ability to rotate when hit by the driver's knee). These paragraphs are highly probative on the question of New GM's notice and investigation of the defect, and are not unduly prejudicial.
Pages 8-10	Cumulative (including of more specific fact statements in the Valukas Report) under 403; inadmissible opinion under 701; unfair prejudice under 403, including inadmissible opinions, characterizations, and conclusions; misleading the jury under 403; confusing the issues under 403;	OVERRULED . Among other things, these comments are admissible for New GM's notice of the ignition switch defect (including its ability to rotate when hit by the driver's knee). These paragraphs are highly

<u>Plaintiff's Valukas Report Designation</u>	<u>New GM Objection</u>	<u>Court's Ruling</u>
	<p>hearsay with respect to <i>New York Times</i> statements</p> <p>In addition, with respect to Wisconsin Safety Patrol and Indiana University statements: other incidents / OSI; hearsay; statements are based upon scientific, technical, or other specialized knowledge but do not satisfy 702</p>	<p>probative on the question of New GM's notice and investigation of the defect, and are not unduly prejudicial.</p>
Pages 17-19	Fed. R. Evid. 106 — add the two numbered paragraphs at the top of page 19	New GM's Rule 106 objection is SUSTAINED as unopposed.
Pages 29-30	Fed. R. Evid. 106 — add statement on pages 208-09 re Malladi's slide deck finding that "certain [Cobalt] ignition switches did not meet specifications," and add first two sentences of second paragraph (except for "Stumped and frustrated" phrase) on page 196 to explain who Malladi is.	New GM's Rule 106 objection is OVERRULED. The Court agrees with Plaintiff that Malladi's testing (referenced more than 170 pages later in the Report) is irrelevant to this section.
Page 30-32	<p>Unfair prejudice under 403, including inadmissible statements regarding the law and regulations; inadmissible opinion under 701 and 702.</p> <p>If admitted, Fed. R. Evid. 106 — add first two paragraphs under H.1. on pages 30-31</p>	New GM's objection is SUSTAINED; this portion is cumulative of the NHTSA Consent Order, could potentially confuse the issues, and intrudes on the Court's role in instructing the jury as to any applicable law.
Page 57 n. 219	Cumulative under 403; inadmissible opinion under 701; unfair prejudice under 403, including inadmissible opinions, characterizations, and conclusions; misleading the jury under 403; confusing the issues under 403; other incidents / OSI	New GM's objection is OVERRULED. These reports are highly relevant to the single-key rotation issue, and there is little danger of unfair prejudice.

<u>Plaintiff's Valukas Report Designation</u>	<u>New GM Objection</u>	<u>Court's Ruling</u>
Page 63-64	Fed. R. Evid. 106 — add the first paragraph on page 72 and the first two sentences on the third paragraph on page 74	New GM's Rule 106 objection is OVERRULED . The Court agrees with Plaintiff that the proposed selection is complete, and that New GM's proposed additions are not necessary for either context or fairness.
Pages 66-69, 71	<p>With respect to the carryover paragraph on pages 68-69 and the paragraph on page 71: inadmissible opinion under 701; unfair prejudice under 403, including inadmissible opinions, characterizations, and conclusions; misleading the jury under 403; confusing the issues under 403</p> <p>Fed. R. Evid. 106 — need to define CPIT and VAPIR by adding the carryover paragraph on pages 63-64 and the carryover paragraph on 65-66; add carryover paragraph on pages 69-70 and first sentence of first full paragraph on page 70</p>	<p>SUSTAINED as to the carry over paragraph on pages 68-69 and the last paragraph on page 71, which are potentially unfairly prejudicial and add little probative value to the other facts.</p> <p>New GM's Rule 106 objection is SUSTAINED with respect to the content on pages 63-66 as uncontested. Furthermore, the Court agrees with Plaintiff that it would be helpful to the jury to include the Glossary on pages 314-15. New GM's Rule 106 objections with respect to pages 69 and 70 OVERRULED as the text goes beyond the scope of Plaintiff's selection and is not needed for fairness.</p>
Pages 81-83	Cumulative under 403; unfair prejudice under 403; misleading the jury under 403; confusing the issues under 403	OVERRULED . Accordingly, the agreed-upon text on pages 83-84 should be included pursuant to Rule 106.
Page 89	Cumulative under 403; unfair prejudice under 403; misleading the	OVERRULED . This complaint is relevant to the

<u>Plaintiff's Valukas Report Designation</u>	<u>New GM Objection</u>	<u>Court's Ruling</u>
	jury under 403; confusing the issues under 403; hearsay; inadmissible opinion under 701	question of notice and is not unfairly prejudicial.
Pages 91-95	None, other than general counter-designations under FRE 106 that apply to all of plaintiff's designations.	SUSTAINED as unopposed.
Pages 98-99	None, other than general counter-designations under FRE 106 that apply to all of plaintiff's designations.	SUSTAINED as unopposed.
Page 103	Other incidents / OSI; cumulative under 403; inadmissible opinion under 701; unfair prejudice under 403, including inadmissible opinions, characterizations, and conclusions; misleading the jury under 403; confusing the issues under 403	OVERRULED in light of the Court's ruling on OSI evidence and for the reasons stated at the final pretrial conference. (<i>See</i> Docket No. 1968). But the phrase "and Diane Truttmann's head injuries" should be redacted, as it does not appear that Plaintiff intends to offer evidence of the Truttmann incident.
Pages 110-11	Other incidents / OSI; cumulative under 403; inadmissible opinion under 701; unfair prejudice under 403, including inadmissible opinions, characterizations, and conclusions; misleading the jury under 403; confusing the issues under 403	OVERRULED in light of the Court's ruling on OSI evidence and for the reasons stated at the final pretrial conference. (<i>See</i> Docket No. 1968).
Pages 111-12	Other incidents / OSI; cumulative under 403; inadmissible opinion under 701; unfair prejudice under 403, including inadmissible opinions, characterizations, and conclusions; misleading the jury	OVERRULED in light of the Court's ruling on OSI evidence and for the reasons stated at the final pretrial conference. (<i>See</i> Docket No. 1968).

<u>Plaintiff's Valukas Report Designation</u>	<u>New GM Objection</u>	<u>Court's Ruling</u>
	under 403; confusing the issues under 403	
Pages 113-15	Other incidents / OSI; cumulative under 403; inadmissible opinion under 701; unfair prejudice under 403, including inadmissible opinions, characterizations, and conclusions; misleading the jury under 403; confusing the issues under 403	OVERRULED in light of the Court's ruling on OSI evidence and for the reasons stated at the final pretrial conference. (<i>See</i> Docket No. 1968).
Pages 140-42	Other incidents / OSI; cumulative under 403; inadmissible opinion under 701; unfair prejudice under 403, including inadmissible opinions, characterizations, and conclusions; misleading the jury under 403; confusing the issues under 403 Fed. R. Evid. 106 — add first full paragraph on page 136 and carryover paragraph on pages 136-37, add footnote 632 on page 141, add remaining last six lines of first paragraph on page 144	SUSTAINED in part and OVERRULED in part. The portions "In 2010 . . . based on the non-deployment of airbags in the Cobalt" (page 140) and "K&S wrote that" (on page 141) through the end of 142 should be redacted, as these portions are potentially unfairly prejudicial and intrude on the province of the jury. Otherwise, OVERRULED in light of the Court's ruling on OSI evidence and for the reasons stated at the final pretrial conference. (<i>See</i> Docket No. 1968). New GM's Rule 106 objection is SUSTAINED as to the content on pages 136-37 and footnote 632, but OVERRULED as to page 144.
Pages 143-44	Cumulative (including of more specific fact statements in the Valukas Report) under 403; inadmissible opinion under 701; unfair prejudice under 403,	SUSTAINED. Among other things, this summary is cumulative of facts contained elsewhere in the Report and in the DPA

<u>Plaintiff's Valukas Report Designation</u>	<u>New GM Objection</u>	<u>Court's Ruling</u>
	<p>including inadmissible opinions, characterizations, and conclusions; misleading the jury under 403; confusing the issues under 403; other incidents / OSI; number of alleged incidents under 403 / New GM MIL 5</p> <p>In addition, with respect to Wisconsin Safety Patrol and Indiana University statements: other incidents / OSI; hearsay; statements are based upon scientific, technical, or other specialized knowledge but do not satisfy 702</p> <p>Fed. R. Evid. 106 — add remaining last six lines of first paragraph on page 144</p>	<p>Statement of Facts. Accordingly, New GM's Rule 106 objection is OVERRULED as moot.</p>
Pages 148-50	<p>Other incidents / OSI; cumulative under 403; inadmissible opinion under 701; unfair prejudice under 403, including inadmissible opinions, characterizations, and conclusions; misleading the jury under 403; confusing the issues under 403</p> <p>Fed. R. Evid. 106 — add footnote 677 on page 151</p>	<p>SUSTAINED in part and OVERRULED in part. The phrases "jurors would expect . . . in this case and" (page 149) and "K&S warned . . . significantly larger verdict" should be redacted as they are potentially unfairly prejudicial and intrude on the province of the jury. Otherwise, New GM's objection is OVERRULED in light of the Court's ruling on OSI evidence and for the reasons stated at the final pretrial conference. (<i>See</i> Docket No. 1968).</p> <p>New GM's Rule 106 objection is SUSTAINED.</p>
Pages 150-53	Other incidents / OSI; cumulative under 403; inadmissible opinion	OVERRULED in light of the Court's ruling on OSI

<u>Plaintiff's Valukas Report Designation</u>	<u>New GM Objection</u>	<u>Court's Ruling</u>
	<p>under 701; unfair prejudice under 403, including inadmissible opinions, characterizations, and conclusions; misleading the jury under 403; confusing the issues under 403; number of alleged incidents under 403 / New GM MIL 5</p> <p>Fed. R. Evid. 106 — add second and third paragraphs on page 153 and carryover paragraph on pages 153-54</p>	<p>evidence and for the reasons stated at the final pretrial conference. (<i>See</i> Docket No. 1968).</p> <p>New GM's Rule 106 objection is OVERRULED.</p>
Pages 167-70	Other incidents / OSI; cumulative under 403; inadmissible opinion under 701; unfair prejudice under 403, including inadmissible opinions, characterizations, and conclusions; misleading the jury under 403; confusing the issues under 403	SUSTAINED in part and OVERRULED in part. The phrase "The lawyer pointed out . . . to West Virginia" (page 169) should be redacted as potentially unfairly prejudicial and because it intrudes on the province of the jury. The remainder of New GM's objection is OVERRULED in light of the Court's ruling on OSI evidence and for the reasons stated at the final pretrial conference. (<i>See</i> Docket No. 1968).
Page 252-55	<p>Improper character evidence under 404; irrelevant under 402; inadmissible opinion under 701; unfair prejudice under 403, including inadmissible opinions, characterizations, and conclusions; misleading the jury under 403; confusing the issues under 403;</p> <p>Fed. R. Evid. 106 — add first and second full paragraph on page 227, first full paragraph on page 228,</p>	SUSTAINED. These portions of the Report are cumulative of, and less probative than, the underlying facts described elsewhere.

<u>Plaintiff's Valukas Report Designation</u>	<u>New GM Objection</u>	<u>Court's Ruling</u>
	first full paragraph on page 230, carryover paragraph on pages 230-31, first full paragraph on page 231 except for last sentence, heading B and following paragraphs on page 232 through first full paragraph on page 233, heading 2 and following paragraphs on page 244 through the first full paragraph on page 245, and the first full paragraph on page 255	
Pages 255-56	Improper character evidence under 404; irrelevant under 402; inadmissible opinion under 701; unfair prejudice under 403, including inadmissible opinions, characterizations, and conclusions; misleading the jury under 403; confusing the issues under 403	SUSTAINED. These portions of the Report are cumulative of, and less probative than, the underlying facts described elsewhere.
Pages 306-09	None, other than general counter-designations under FRE 106 that apply to all of plaintiff's designations	SUSTAINED as unopposed.
All designations	Fed. R. Evid. 106 — add pages 12-14, and first paragraph on page 15	OVERRULED. This excerpt is cumulative of the paragraph on page 5, which summarizes Jenner & Block's investigative process; its length suggests that it would also lead to undue delay and jury confusion.
All designations	Fed. R. Evid. 106 — add paragraphs under headings D and E on page 24 (the first, second, and third full paragraphs)	SUSTAINED with regard to the paragraphs under heading D, which provide background for the discussion of the TSB. OVERRULED with regard to the paragraph under heading E; while helpful to

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		New GM, this background material need not in fairness be considered along with the rest of the Report's excerpts.
All designations	Fed. R. Evid. 106 — add second full paragraph on page 258 through page 276	OVERRULED. This proposed portion is long, would confuse the issues, lead to delay, and does not in fairness need to be considered with the rest of the facts in the Report.

Except where noted, the foregoing rulings largely address objections as to cumulativeness without regard for other evidence that Plaintiff may offer. As noted at the final pretrial conference held earlier today and previously (*see* Docket No. 1968, at 7; December 17, 2015 Hr'g Tr. 10-11), the Court will address any objections or issues of cumulativeness writ large during the course of trial.

SO ORDERED.

Dated: January 6, 2016
New York, New York



JESSE M. FURMAN
United States District Judge