



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:

ORDER

Mary Dodson v. General Motors LLC, 15-CV-8324

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JESSE M. FURMAN, United States District Judge:

[Regarding the Application of Certain Pretrial Orders in MDL Bellwether Trial Nos. 1, 2, 5, and 7 to MDL Bellwether Trial No. 9 (*Dodson*)]

1. **Application of Certain Evidentiary Rulings in Bellwether Trial Nos. 1, 2, 5, and 7 to Bellwether Trial No. 9:** Pursuant to Order No. 123 (Docket No. 3902), GM LLC and Plaintiff submitted a joint letter and proposal regarding the applicability of certain pretrial orders from Bellwether Trials Nos. 1, 2, 5, and 7 to Bellwether Trial No. 9. Having reviewed the parties' submissions, and for good cause shown, the Court adopts the holdings contained in the chart attached as Exhibit 1 to this Order concerning the applicability of the listed pretrial orders from Bellwether Trial Nos. 1, 2, 5, and 7 to Bellwether Trial No. 9. For the avoidance of doubt, in submitting motions *in limine* in Bellwether Trial No. 9, the parties are not precluded from relying on the Court's reasoning in prior orders on motions *in limine* even if that ruling does not apply to Bellwether Trial No. 9 because it was fact-specific to a prior case. To the extent either party intends to file new briefing in accordance with this Order, the parties shall first meet and confer to avoid unnecessary motion practice and to narrow any disputes. Finally, for good cause shown (by way of letter motion seeking leave from the Court), any party may seek modification or reconsideration of the Court's evidentiary rulings that are deemed applicable to Bellwether Trial

No. 9 pursuant to this Order if later rulings on motions *in limine*, dispositive motions, or *Daubert* motions change the scope of relevant and admissible evidence in Bellwether Trial No. 9. A party may only seek such leave to move for such modification or reconsideration, however, after meeting and conferring with the other side.

2. **Effect of This Order on Other Rules and Orders:** To the extent not explicitly modified herein, the Court's Individuals Rules and Practices in Civil Cases and Rules and Procedures for Trials and all other applicable Orders of this Court remain in full force and effect. The Court may enter additional and/or modified orders regarding the pretrial schedule of Bellwether Trial No. 9 as circumstances require.¹

SO ORDERED.

Dated: August 30, 2017
New York, New York



JESSE M. FURMAN
United States District Judge

¹ The Court notes that the parties' proposed Order and chart included all sorts of formatting problems. For example, the header of the chart is included on only some pages; the spacing on the text varies; and there are pages that included a lot of white space after the Court made edits to the text. The Court tried to fix these problems, but gave up after a while. The parties should make their best efforts in future proposed Orders and charts to strip any hidden codes and fix these sorts of formatting problems.

Issue Briefed in Bellwether <i>Scheuer, Barthelemy, Cockram, or Ward</i> and Ruling	Application to <i>Dodson</i>²
<p><i>Scheuer</i> Pl. Motion <i>In Limine</i> (“MIL”) No. 1 (Collateral Source Benefits) (Docket Nos. 1525, 1526)</p> <p>Ruling: 11/23/2015 Order (Docket No. 1727)</p>	<p>The parties agree that the Court’s ruling is fact-specific and does not apply.</p> <p>HOLDING: The Court’s order regarding the <i>Scheuer</i> plaintiff’s MIL No. 1 does not apply to <i>Dodson</i>.</p>
<p><i>Scheuer</i> Pl. MIL No. 2 (Prior Unrelated Injures and Family Medical History) (Docket Nos. 1565, 1566)</p> <p>Ruling: 11/23/2015 Order (Docket No. 1727)</p>	<p>The parties agree that the Court’s ruling is fact-specific to <i>Scheuer</i> and does not apply to <i>Dodson</i>.</p> <p>HOLDING: The Court’s order regarding the <i>Scheuer</i> plaintiff’s MIL No. 2 does not apply to <i>Dodson</i>.</p>
<p><i>Scheuer</i> Pl. MIL No. 3 (Use of Pain Medication) (Docket Nos. 1714, 1715)</p> <p>Ruling: 12/9/2015 Order (Docket No. 1837)</p>	<p>The parties agree that the Court’s ruling is fact-specific to <i>Scheuer</i> and does not apply to <i>Dodson</i>.</p> <p>HOLDING: The Court’s order regarding the <i>Scheuer</i> plaintiff’s MIL No. 3 does not apply to <i>Dodson</i>.</p>
<p><i>Scheuer</i> Pl. MIL No. 4 (Spoliation) (Docket Nos. 1711, 1712)</p> <p>Ruling: 12/29/2015 Order (Docket No. 1969)</p>	<p>The parties agree that the Court’s ruling is fact-specific to <i>Scheuer</i> and does not apply to <i>Dodson</i>.</p> <p>HOLDING: The Court’s order regarding the <i>Scheuer</i> plaintiff’s MIL No. 4 does not apply to <i>Dodson</i>.</p>

² Nothing in this proposed order should be construed to waive any of the parties’ preserved objections or rights to appeal the Court’s rulings. To the contrary, all arguments from prior briefing and/or oral arguments on such motions are expressly preserved

<p>Scheuer Pl. MIL No. 5 (Deferred Prosecution Agreement) (Docket Nos. 1731, 1732)</p> <p>Ruling: 12/16/2015 Order (Docket No. 1894); 1/6/2016 Order (Docket No. 2018) (redactions)</p>	<p>GM LLC Position: The Court’s ruling on GM LLC’s MIL No. 32 deferred consideration on the admissibility of certain Cobalt-Ion evidence including the Statement of Facts until the parties had fully developed the record for trial and could prepare their strongest arguments. (Docket No. 3947 at 3 & n.1.) Consistent with the Court’s ruling on GM LLC’s MIL No. 32, the parties will resolve disputes regarding the admissibility of specific portions of the SOF proffered by plaintiff through the process set forth in MDL Order No. 123. (Docket No. 3947 at 3.)</p> <p>Nevertheless, GM LLC reiterates its position that ‘423 switch evidence has no probative value in this case and is unduly prejudicial. As the Court’s rulings in the <i>Ward</i> case made clear, ‘423 switch evidence has a substantial risk for undue prejudice to GM LLC. (See <i>Ward</i> Trial Tr. at 191:12-19, 326:17-327:16; 6/30/2017 Op. and Order (Docket No. 4167); 7/11/2017 Text Order (Docket No. 4244).) GM LLC reserves the right to dispute plaintiff’s admission of any evidence from the SOF, but will defer those arguments to the parties’ briefing under the process set forth in Order No. 123.</p> <p>Pl. Position: The Court’s ruling applies to <i>Dodson</i>. The Statement of Facts (“SOF”) contains GM LLC’s admissions regarding GM’s knowledge and conduct regarding the defect which ultimately led to the read-across which resulted in the recall of Plaintiff’s vehicle under NHTSA Recall No. 14V-394. As the Court has stated, the SOF is “plainly relevant” to the Category C cases, including <i>Dodson</i>. (Docket No. 3947 at 2.) Further, the SOF’s probative value is not minimal, since the SOF discusses the “first wave” of Ignition Switch Defect-recalled vehicles, and as New GM continued to “peel the onion,” the true magnitude of the defect was revealed and included Dodson’s 2004 Cadillac CTS. Indeed, the SOF describes the defect at issue as a low torque switch which, under certain circumstances, may rotate out of the run position, causing the vehicle to lose power. When this happens, the vehicle loses power steering, power brakes, and in the event of a crash, the airbags will not deploy. This is the exact defect that manifested itself during Mary Dodson’s November 16, 2013 accident. In any event, MDL Order No. 123 provides the proper procedure by which New GM can make targeted objections to specific portions of the SOF that would be substantially more prejudicial than probative.</p>
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Issue Briefed in Bellwether <i>Scheuer, Barthelemy, Cockram, or Ward and Ruling</i>	Application to <i>Dodson</i>²
	HOLDING: The Court's ruling on the <i>Scheuer</i> plaintiff's MIL No. 5 applies to <i>Dodson</i> . The parties are to bring any disputes to the Court regarding specific portions of the SOF that plaintiff seeks to admit through the process identified in MDL Order No. 123.

Issue Briefed in Bellwether <i>Scheuer, Barthelemy, Cockram, or Ward</i> and Ruling	Application to <i>Dodson</i>²
<p><i>Scheuer</i> Pl. MIL No. 6 (Live Trial Witnesses) (Docket Nos. 1742, 1743)</p> <p>Ruling: 12/17/2015 Hr'g Tr. at 5:18-8:16</p>	<p>The parties agree that the Court's ruling is applicable to <i>Dodson</i>. The parties further agree to apply the process used in <i>Scheuer</i> for making GM LLC's live witnesses available during plaintiff's case in chief: specifically, 1) GM LLC will make any of its Will Call employee witnesses available to testify during her case in chief (subject to advance notice); and 2) by <u>November 6, 2017</u>, GM LLC will inform plaintiff as to whether it intends to call any of its May Call employee witnesses at trial, and any such GM LLC May Call employee witness will thereafter be made available to testify during plaintiff's case in chief (subject to advance notice). The parties also agree that the portion of the Court's ruling regarding Plaintiff's right to seek an adverse inference if GM LLC does not make a witness available to testify live has been preserved and applies to <i>Dodson</i>; pursuant to that ruling, Plaintiff may re-raise this issue at trial when the Court is in a better position to address it.</p> <p>HOLDING: The Court's order regarding the <i>Scheuer</i> plaintiff's MIL No. 6 applies to <i>Dodson</i> and the Court adopts the parties' process set forth above regarding making GM LLC Will Call and May Call witnesses available to testify during plaintiff's case in chief.</p>
<p><i>Scheuer</i> Pl. MIL No. 7 (Plaintiff's Feinberg Claim) (Docket Nos. 1807, 1808)</p> <p>Ruling: 12/29/2015 Order (Docket No. 1969)</p>	<p>The parties agree that the Court's ruling is fact-specific to <i>Scheuer</i> and does not apply to <i>Dodson</i>.</p> <p>HOLDING: The Court's order regarding the <i>Scheuer</i> plaintiff's MIL No. 7 does not apply to <i>Dodson</i>.</p>

Issue Briefed in Bellwether <i>Scheuer, Barthelemy, Cockram, or Ward and Ruling</i>	Application to <i>Dodson</i>²
<p><i>Scheuer Pl. Daubert Motion</i> (Docket Nos. 1801, 1802)</p> <p>Ruling: 12/29/2015 Order (Docket No. 1970)</p>	<p>The parties agree the Court's ruling relating to Thomas Livernois applies to <i>Dodson</i>. The parties agree that the Court's rulings relating to Jeya Padmanaban, and Harry Smith do not apply to <i>Dodson</i> as neither are designated as experts in <i>Dodson</i>.</p> <p>HOLDING: The Court's order regarding the <i>Scheuer</i> plaintiff's <i>Daubert</i> motion with respect to Thomas Livernois' opinions applies in <i>Dodson</i>. The Court's order with respect to the experts not designated in <i>Dodson</i> (Jaya Padmanaban and Harry Smith) does not apply in <i>Dodson</i>. The parties reserve the right to raise arguments to exclude experts and/or opinions not addressed in the <i>Scheuer</i> plaintiff's <i>Daubert</i> motion.</p>
<p><i>Cockram Pl. MIL No. 1 (Collateral Source Benefits)</i> (Docket Nos. 2874, 2875)</p> <p>Ruling: 7/22/2016 Order (Docket No. 3129)</p>	<p>The parties agree that the Court's ruling is fact-specific to <i>Cockram</i> and does not apply to <i>Dodson</i>.</p> <p>HOLDING: The Court's order regarding the <i>Cockram</i> plaintiff's MIL No. 1 does not apply to <i>Dodson</i>.</p>
<p><i>Cockram Pl. MIL No. 2 (Seatbelt Nonuse)</i> (Docket Nos. 2886, 2887)</p> <p>Ruling: 7/22/2016 Order (Docket NO. 3129)</p>	<p>The parties agree that the Court's ruling is fact-specific to <i>Cockram</i> and does not apply to <i>Dodson</i>.</p> <p>HOLDING: The Court's order regarding the <i>Cockram</i> plaintiff's MIL No. 2 does not apply to <i>Dodson</i>.</p>
<p><i>Cockram Pl. MIL No. 3 (Post-Accident Drug Testing, Termination, and Rehabilitation)</i> (Docket Nos. 2962, 2963)</p> <p>Ruling: 8/18/2016 Order (Docket No. 3237)</p>	<p>The parties agree that the Court's ruling is fact-specific to <i>Cockram</i> and does not apply to <i>Dodson</i>.</p> <p>HOLDING: The Court's order regarding the <i>Cockram</i> plaintiff's MIL No. 3 does not apply to <i>Dodson</i>.</p>

Issue Briefed in Bellwether Scheuer, Barthelemy, Cockram, or Ward and Ruling	Application to <i>Dodson</i>²
<p>Cockram Pl. MIL No. 4 (Prior Alcohol Use; BAC and Anxiety Medication Use at Time of Accident) (Docket Nos. 2967, 2970)</p> <p>Ruling: 8/1/2016 Order (Docket NO. 3158)</p>	<p>The parties agree that the Court's ruling is fact-specific to <i>Cockram</i> and does not apply to <i>Dodson</i>.</p> <p>HOLDING: The Court's order regarding the <i>Cockram</i> plaintiff's MIL No. 4 does not apply to <i>Dodson</i>.</p>
<p>Cockram Pl. MIL No. 5 (Marijuana and Tobacco Use) (Docket Nos. 2973, 2974)</p> <p>Ruling: 8/18/2016 Order (Docket No. 3237)</p>	<p>The parties agree that the Court's ruling is fact-specific to <i>Cockram</i> and does not apply to <i>Dodson</i>.</p> <p>HOLDING: The Court's order regarding the <i>Cockram</i> plaintiff's MIL No. 5 does not apply to <i>Dodson</i>.</p>
<p>Cockram Pl. MIL No. 6 (Employment Records) (Docket Nos. 2978, 2979)</p> <p>Ruling: 8/18/2016 (Docket No. 3237)</p>	<p>The parties agree that the Court's ruling is fact-specific to <i>Cockram</i> and does not apply to <i>Dodson</i>.</p> <p>HOLDING: The Court's order regarding the <i>Cockram</i> plaintiff's MIL No. 6 does not apply to <i>Dodson</i>.</p>
<p>Cockram Pl. MIL No. 7 (Academic Records and Learning Disabilities) (Docket No. 2982, 2984)</p> <p>Ruling: 8/18/2016 Order (Docket No. 3237)</p>	<p>The parties agree that the Court's ruling is fact-specific to <i>Cockram</i> and does not apply to <i>Dodson</i>.</p> <p>HOLDING: The Court's order regarding the <i>Cockram</i> plaintiff's MIL No. 7 does not apply to <i>Dodson</i>.</p>
<p>Cockram Pl. MIL No. 8 (Feinberg Program) (Docket No. 2987, 2988)</p> <p>Ruling: 8/18/2016 Order (Docket No. 3237)</p>	<p>The parties agree that the Court's ruling regarding the admissibility of evidence regarding the Feinberg Compensation Program and the risk of prejudice to plaintiff from the admission of Feinberg evidence applies to <i>Dodson</i>. The parties agree that, as in <i>Cockram</i>, the answer to those concerns is not categorical exclusion pursuant to Federal Rule of Evidence 403. The parties are working on a proposed stipulation with respect to the appropriate protective measures.</p>

<p>Issue Briefed in Bellwether <i>Scheuer, Barthelemy, Cockram, or Ward and Ruling</i></p>	<p>Application to <i>Dodson</i>²</p>
	<p>HOLDING: The Court's order regarding the admissibility of evidence regarding the Feinberg Compensation Program and the risk of prejudice to plaintiff from the admission of Feinberg evidence with respect to the <i>Cockram</i> plaintiff's MIL No. 8 applies to <i>Dodson</i>. The parties will meet and confer with respect to the appropriate protective measures.</p>
<p><i>Cockram</i> Pl. <i>Daubert</i> Motion (Docket No. 2857, 2858)</p> <p>Ruling: 8/1/2016 Order (Docket No. 3158)</p>	<p>The parties agree that the Court's rulings as to Elizabeth Raphael and Don Tandy are case-specific to <i>Cockram</i> and do not apply to <i>Dodson</i>. The parties agree that the Court's ruling as to Robert Rucoba and Rod McCutcheon do not apply to <i>Dodson</i> as neither of them are designated as experts.</p> <p>HOLDING: The Court's order regarding the <i>Cockram</i> plaintiff's <i>Daubert</i> motion does not apply to <i>Dodson</i>. The parties are free to raise arguments to exclude experts and/or opinions not addressed in the <i>Cockram</i> Plaintiff's <i>Daubert</i> motion.</p>

<p>GM LLC MIL No. 1 (NHTSA Consent Order) (Docket Nos. 1378, 1379)</p> <p>Ruling: 12/01/2015 Order (Docket No. 1770); 1/6/2016 Order (Docket No. 2017) (redactions)</p>	<p>The parties disagree on the applicability of the Court’s ruling.</p> <p>GM LLC Position: The Court’s ruling on GM LLC’s MIL No. 32 deferred consideration on the admissibility of certain Cobalt-Ion evidence including the NHTSA Consent until the parties had fully developed the record for trial and could prepare their strongest arguments. (Docket No. 3947 at 3 & n.1.) GM LLC reasserts its position that the Consent should be categorically excluded in <i>Dodson</i>. This position is bolstered by the parties’ experience in <i>Ward</i>, which demonstrated the risk that plaintiff will allow ‘423 switch evidence predominate a non-‘423 switch case. (See <i>Ward</i> Trial Tr. at 191:12-19, 326:17-327:16; 6/30/2017 Op. and Order (Docket No. 4167); 7/11/2017 Text Order (Docket No. 4244).) And given that plaintiff will be permitted to seek admission of specific portions of the SOF and Valukas Report, any evidence from the NHTSA Consent Order would be cumulative, a waste of time, and unduly prejudicial.</p> <p>Tellingly, the <i>Ward</i> plaintiff stipulated that he would not even seek to admit the NHTSA Consent Order. GM LLC has moved for summary judgment on plaintiff’s fraudulent concealment claim, which would further eliminate any minimal relevance the NHTSA Consent Order has to plaintiff’s claims.</p> <p>Pl. Position: First, the <i>Dodson</i> trial is more than two months away, and simply because Plaintiff seeks the Court to uphold its prior ruling on the admissibility of the Consent Order does not mean that Plaintiff is seeking to admit “cumulative” evidence or that plaintiff intends to “allow ‘423 switch evidence to predominate a non-‘423 switch case.” Further, the fact that some of the New GM admissions documents contain overlapping information does not automatically render such evidence “cumulative;” as this Court noted in <i>Ward</i>, “[Plaintiff] should not be limited to introducing evidence concerning the ‘423 switch through any one means. That is, the Court will permit him to introduce portions of the Valukas Report, the SOF, and deposition testimony, <i>even if there is some duplication among this evidence</i>, mindful that there may be subtle, but important, difference between different evidence.” (6/30/17 Op. & Order (Doc. 4167) at 4 (emphasis added).) Further, simply because the plaintiff in <i>Ward</i> stipulated that he would not introduce the Consent Order while attempting to reach agreement with New GM on his proffered Valukas Report and SOF designations does not make such stipulation applicable to the <i>Dodson</i> plaintiff. New</p>
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Issue Briefed in Bellwether <i>Scheuer, Barthelemy, Cockram, or Ward and Ruling</i>	Application to <i>Dodson</i>²
	<p>GM's Consent Order admissions are highly relevant to Dodson's claims, e.g., her negligence <i>per se</i> claim, to which the Consent Order directly speaks, and New GM's 403 concerns can be handled by way of trial exhibit redactions. Any concerns about "cumulativeness" should be raised at trial, not now when there is zero evidence in the record and Plaintiff has not even proffered her Valukas Report/SOF designations.</p> <p>HOLDING: The issue does not appear to be ripe at the moment. Accordingly, the Court defers decision on whether its ruling on GM LLC MIL No. 1 in <i>Scheuer</i> applies to <i>Dodson</i>. If Plaintiff plans to offer the Consent Order and the issue remains in dispute, the parties should advise the Court by joint letter at least two weeks prior to the final pretrial conference.</p>

Issue Briefed in Bellwether <i>Scheuer, Barthelemy, Cockram, or Ward</i> and Ruling	Application to <i>Dodson</i>²
GM LLC MIL No. 2 (Spoliation) (Docket Nos. 1411, 1415) Ruling: 12/29/2015 Order (Docket No. 1969)	<p>The parties agree that the Court’s ruling is fact-specific to <i>Scheuer</i> and does not apply to <i>Dodson</i>.</p> <p>HOLDING: The Court’s order regarding GM LLC’s MIL No. 2 in <i>Scheuer</i> does not apply to <i>Dodson</i>.</p>
GM LLC MIL No. 3 (Paid vs. Incurred Medical Expenses) (Docket Nos. 1573, 1574) Ruling: 11/23/2015 Order (Docket No. 1727)	<p>The parties agree that the Court’s ruling is case-specific to <i>Scheuer</i> and does not apply to <i>Dodson</i>.</p> <p>HOLDING: The Court’s order regarding GM LLC’s MIL No. 3 in <i>Scheuer</i> does not apply to <i>Dodson</i>.</p>
GM LLC MIL No. 4 (Plaintiff’s Eviction) (Docket Nos. 1580, 1581) Ruling: 11/30/2015 Order (Docket No. 1770)	<p>The parties agree that the Court’s ruling is fact-specific to <i>Scheuer</i> and does not apply to <i>Dodson</i>.</p> <p>HOLDING: The Court’s order regarding GM LLC’s MIL No. 4 in <i>Scheuer</i> does not apply to <i>Dodson</i>.</p>
GM LLC MIL No. 5 (Cases Filed and Prior Settlements) (Docket Nos. 1582, 1583) Ruling: 11/30/2015 Order (Docket No. 1770)	<p>The parties agree that the Court’s ruling should apply to <i>Dodson</i>, subject to the parties’ rights to move for reconsideration should the Court’s subsequent rulings change the scope of relevant or admissible evidence in this case.</p> <p>HOLDING: The Court’s order applies, subject to a party moving to reconsider pursuant to Paragraph 1 of this Order.</p>
GM LLC MIL No. 6 (Anderson/Dodson-Green Criminal Cases) (Docket Nos. 1585, 1586) Ruling: 11/30/2015 Order (Docket No. 1770)	<p>The parties agree that the Court’s ruling is applicable to <i>Dodson</i>.</p> <p>HOLDING: The Court’s order regarding GM LLC’s MIL No. 6 in <i>Scheuer</i> applies to <i>Dodson</i>.</p>

Issue Briefed in <i>Bellwether Scheuer, Barthelemy, Cockram, or Ward</i> and Ruling	Application to <i>Dodson</i>²
GM LLC MIL No. 7 (Punitive Damages) (Docket Nos. 1611, 1612) Ruling: 12/30/2015 Order (Docket No. 1980)	The parties agree that the Court's ruling on GM LLC's MIL No. 7 applies in <i>Dodson</i> subject to GM LLC's right to move for reconsideration pursuant to Paragraph No. 1 of this Order depending on the Court's rulings on GM LLC's motion for summary judgment. HOLDING: The Court's ruling applies, subject to a party moving to reconsider pursuant to Paragraph 1 of this Order.
GM LLC MIL No. 8 (Misrepresentations to NHTSA) (Docket Nos. 1614, 1615) Ruling: 12/3/2015 Order (Docket No. 1791)	The parties agree the Court's ruling is applicable in <i>Dodson</i> subject to GM LLC's right to (1) make specific objections that such evidence is not admissible under Fed. R. Evid. 402 or 403 and (2) move for reconsideration pursuant to Paragraph 1 of this Order. HOLDING: The Court's ruling applies, subject to GM LLC's right to (1) make specific objections that such evidence is not admissible under Fed. R. Evid. 402 or 403 and (2) move for reconsideration pursuant to Paragraph 1 of this Order.
GM LLC MIL No. 9 (Privilege Issues at Trial) (Docket Nos. 1616, 1617) Ruling: 12/3/2015 Order (Docket No. 1791)	The parties agree that the Court's ruling is applicable to <i>Dodson</i> . HOLDING: The Court's order regarding GM LLC's MIL No. 9 in <i>Scheuer</i> applies to <i>Dodson</i> .
GM LLC MIL No. 10 (Discovery and Other Litigation Conduct) (Docket Nos. 1618, 1619) Ruling: 12/3/2015 Order (Docket No. 1791)	The parties agree that the Court's ruling is applicable to <i>Dodson</i> . HOLDING: The Court's order regarding GM LLC's MIL No. 10 in <i>Scheuer</i> applies to <i>Dodson</i> .

Issue Briefed in Bellwether Scheuer, Barthelemy, Cockram, or Ward and Ruling	Application to <i>Dodson</i>²
<p>GM LLC MIL No. 11 (Other Similar Incidents) (Docket Nos. 1629, 1630) (<i>see also</i> Docket Nos. 1834, 1910)</p> <p>Ruling: 12/3/2015 Order (Docket No. 1790); 12/28/2015 Order (Docket No. 1968)</p>	<p>The parties agree the Court’s rulings on the legal standards for analyzing the admissibility of evidence regarding other similar incidents (OSIs) from <i>Scheuer, Barthelemy, Cockram, and Ward</i> are generally applicable in <i>Dodson</i>, but reserve the right to raise new arguments regarding the scope and type of admissible OSI evidence based on the different evidence proffered by plaintiff, the different factual circumstances at issue in <i>Dodson</i>, as well as issues to be raised in the parties’ dispositive motions and motions <i>in limine</i>.</p> <p>HOLDING: The Court reserves judgment on the applicability of its rulings on other similar incidents from <i>Scheuer, Barthelemy, Cockram, and Ward</i> to <i>Dodson</i>. Nevertheless, the parties should strive to avoid making arguments that, based on a fair reading of the Court’s prior opinions, the Court is likely to reject.</p>

<p>GM LLC MIL No. 12 (Valukas Report) (Docket Nos. 1631, 1632)</p> <p>Ruling: 12/9/2015 Order (Docket No. 1837); 1/6/2016 Order (Docket No. 2019) (redactions)</p>	<p>GM LLC Position: The Court’s ruling on GM LLC’s MIL No. 32 deferred consideration on the admissibility of certain Cobalt-Ion evidence including the Valukas Report until the parties had fully developed the record for trial and could prepare their strongest arguments. (Docket No. 3947 at 3 & n.1.) Consistent with the Court’s ruling on GM LLC’s MIL No. 32, the parties will resolve disputes regarding the admissibility of specific portions of the Valukas Report proffered by plaintiff through the process set forth in MDL Order No. 123. (Docket No. 3947 at 3.)</p> <p>Nevertheless, GM LLC reiterates its position that ‘423 switch evidence has no probative value in this case and is unduly prejudicial. As the Court’s rulings in the <i>Ward</i> case made clear, ‘423 switch evidence has a substantial risk for undue prejudice to GM LLC. (See <i>Ward</i> Trial Tr. at 191:12-19, 326:17-327:16; 6/30/2017 Op. and Order (Docket No. 4167); 7/11/2017 Text Order (Docket No. 4244).) GM LLC reserves the right to dispute plaintiff’s admission of any evidence from the Valukas Report, but will defer those arguments to the parties’ briefing under the process set forth in Order No. 123.</p> <p>Pl. Position: The Court’s ruling applies to <i>Dodson</i>. The Valukas Report contains GM LLC’s admissions regarding GM’s knowledge and conduct regarding the defect which ultimately led to the recall of Plaintiff’s vehicle in summer 2014 under NHTSA Recall No. 14V-394. Further, the Catera switch (“357 switch”) that was installed in Dodson’s 2004 Cadillac CTS is “extremely similar” to the Delta ignition switch which is the subject of the majority of the Valukas Report, and as noted in the Valukas Report itself, the 357 switch was <i>the predecessor</i> to the Delta ignition switch and they used the same component technical specifications. (VR at 37-38.)</p> <p>In its ruling on New GM MIL No. 32 (Doc. 3947), the Court held that the Valukas Report and other so-called “Cobalt Conduct Evidence” are plainly relevant to the Category C cases. If New GM wishes to make targeted objections to specific portions of the Valukas Report, it may do so by the procedures set forth in MDL Order No. 123. Pursuant to MDL Order No. 123, Plaintiff intends to disclose by no later than Sept. 22, 2017, the excerpts from the Valukas Report that she intends to</p>
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<p>Issue Briefed in Bellwether Scheuer, Barthelemy, Cockram, or Ward and Ruling</p>	<p>Application to <i>Dodson</i>²</p>
	<p>offer at trial. The parties will raise any disputes with respect thereto by no later than Oct. 4, 2017.</p> <p>HOLDING: The Court's ruling on GM LLC's MIL No. 12 applies to <i>Dodson</i>. The parties are to bring any disputes to the Court regarding specific portions of the Valukas Report that plaintiff seeks to admit through the process identified in MDL Order No. 123.</p>

<p>Issue Briefed in Bellwether <i>Scheuer, Barthelemy, Cockram, or Ward and Ruling</i></p>	<p>Application to <i>Dodson</i>²</p>
<p>GM LLC MIL No. 13 (Government Investigations) (Docket Nos. 1633, 1634)</p> <p>Ruling: 11/25/2015 Order (Docket No. 1749)</p>	<p>GM LLC’s motion remains unopposed. The parties agree that the Court’s ruling in <i>Scheuer</i> granting the motion as unopposed is applicable to <i>Dodson</i>.</p> <p>HOLDING: GM LLC’s motion remains unopposed. The Court’s order regarding GM LLC’s MIL No. 13 in <i>Scheuer</i> granting the motion as unopposed applies to <i>Dodson</i>.</p>

<p>GM LLC MIL No. 14 (Congressional Testimony) (Docket Nos. 1635, 1636)</p> <p>Ruling: 12/9/2015 Order (Docket No. 1837)</p>	<p>The parties disagree about whether the Court’s ruling applies to <i>Dodson</i>.</p> <p>GM LLC Position: The Court’s ruling admitting Mary Barra and Michael Millikin’s congressional testimony should not apply in <i>Dodson</i>. That testimony has no relevance in <i>Dodson</i> as it pertains to a congressional hearing focused exclusively on the ignition switch defect in the Cobalt Vehicles. In <i>Ward</i>, the testimony was relevant in part because Ms. Barra answered questions about the ‘190 switch in the 2008 to 2010 model year vehicles. To the extent the Court finds any relevance to the congressional testimony, it should nevertheless be excluded under Federal Rule of Evidence 403. Admission of any of the congressional testimony would be unduly prejudicial and unnecessarily cumulative of any ‘423 switch evidence that the Court permits from other sources such as witness testimony, the Valukas Report, or the Statement of Facts.</p> <p>Pl. Position: The Court’s ruling regarding New GM MIL No. 14 applies to <i>Dodson</i> and further briefing on this issue is not necessary. Plaintiff’s deposition designations are not due for over a month (9/22/17), and at this time Plaintiff does not know whether and to what extent she will seek to admit testimony from one of the four (4) Congressional hearings regarding the Ignition Switch Defect. However, should she identify and designate relevant testimony by that deadline, the parties should follow the procedures set forth in Order No. 123 (Doc. 3902) regarding deposition designation disputes, as they did in <i>Ward</i>. See Order No. 125 (Doc. 3972) at 12-13 (directing the parties to follow the deposition designation disclosure and dispute deadlines for plaintiff’s designated Congressional testimony).</p> <p>In any event, plaintiff is at a loss as to how New GM can justify a categorical exclusion of <i>all</i> Congressional testimony based on the “unnecessary 423 switch evidence” argument, when New GM itself acknowledges that the portion of Barra’s testimony that was played during the <i>Ward</i> trial was specific to the ‘190 switch. See 6/30/17 Op. & Order (Doc. 4167) at 6-7; 7/7/17 Order (Doc. 4211) (text only). Since Plaintiff has not yet designated any testimony, the Court should maintain the applicability of its ruling on GM LLC MIL No. 14, to the extent that that the ruling rejects New GM’s argument for the categorical exclusion of Congressional testimony, and require plaintiff to disclose the specific page and line numbers of the</p>
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<p>Issue Briefed in Bellwether <i>Scheuer, Barthelemy, Cockram, or Ward and Ruling</i></p>	<p>Application to <i>Dodson</i>²</p>
	<p>Congressional testimony she intends to offer at trial along with her deposition designations on <u>Friday, September 22, 2017</u>.</p> <p>HOLDING: No further briefing is necessary on this issue. The Court’s ruling on GM LLC’s MIL No. 14 in <i>Scheuer</i> applies to <i>Dodson</i>. Plaintiff shall disclose her Congressional testimony designations, if any, on Friday, September 22, 2017, and the parties shall adhere to the deposition dispute procedures set forth in Order No. 123 (Doc. 3902).</p>

<p>GM LLC MIL No. 15 (Government Reports) (Docket Nos. 1637, 1638)</p> <p>Ruling: 12/9/2015 Order (Docket No. 1837)</p>	<p>The parties disagree on the applicability of the Court’s ruling.</p> <p>GM LLC Position: The Court’s ruling on GM LLC’s MIL No. 32 deferred consideration on the admissibility of certain Cobalt-Ion evidence until the parties had fully developed the record for trial and could prepare their strongest arguments. (Docket No. 3947 at 3 & n.1.) At this time, GM LLC reasserts its position that the NHTSA Path Forward Report should be excluded in its entirety. This report is irrelevant to plaintiff’s claims here as it discusses a review of NHTSA’s conduct with respect to the ‘423 switch defect. It therefore has minimal probative value to plaintiff’s Cadillac CTS claims and is unduly prejudicial. Furthermore, this evidence would be unnecessarily cumulative of any ‘423 switch evidence that will be presented through the Valukas Report, SOF, and witness testimony. Tellingly, the Path Forward Report provides an abridged timeline that cites only to the Valukas Report and essentially paraphrases the document. Plaintiff should not be allowed to admit this evidence on top of any portions of the Valukas Report or SOF. This position is bolstered by the parties’ experience in <i>Ward</i>, which demonstrated the risk that plaintiff will allow ‘423 switch evidence predominate a non-‘423 switch case. (<i>See Ward</i> Trial Tr. at 191:12-19, 326:17-327:16; 6/30/2017 Op. and Order (Docket No. 4167); 7/11/2017 Text Order (Docket No. 4244).)</p> <p>Pl. Position: The Court’s ruling applies to <i>Dodson</i> and no further briefing is necessary. The Government Reports concern GM’s knowledge and conduct regarding the defect that led to the recall of Plaintiff’s vehicle. Further, as this Court held in its ruling on New GM MIL No. 32, the Government Reports and other so-called “Cobalt Conduct Evidence” are “plainly relevant” to Plaintiff’s claims, and the appropriate way to address any Rule 403 concerns is for GM LLC to make targeted objections to specific portions of the Government Reports. (5/4/17 Mem. Op. & Order (Doc. 3947) at 2.) Any 403 concerns may be addressed by the parties meeting and conferring regarding proposed redactions, and cumulateness is best addressed at trial, as there is currently no evidence in the record whatsoever.</p> <p>HOLDING: No further briefing is necessary on this issue. The Court’s ruling on GM LLC’s MIL No. 15 in <i>Scheuer</i></p>
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Issue Briefed in Bellwether <i>Scheuer, Barthelemy, Cockram, or Ward and Ruling</i>	Application to <i>Dodson</i>²
	applies to <i>Dodson</i> . The parties shall meet and confer with respect to proposed redactions to the reports..

<p>GM LLC MIL No. 16 (Non-Delta Ignition Switches) (Docket Nos. 1639, 1640)</p> <p>Ruling: 12/7/2015 Order (Docket No. 1825); 12/29/2015 Order (Docket No. 1971) (factual correction)</p>	<p>The parties disagree on the applicability of the Court’s ruling.</p> <p>GM LLC Position: The Court’s ruling should not apply. GM LLC’s MIL No. 16 dealt with the exclusion of non-delta ignition switch evidence in cases involving the delta ignition switch. The context here is completely reversed as this is a non-delta ignition switch case. Given the stark factual differences, the Court’s ruling from Phase One should not apply here.</p> <p>Pl. Position: The Court’s ruling should apply to <i>Dodson</i>. Plaintiff alleges that her vehicle contains a defect that causes the vehicle’s ignition switch to move unintentionally from the ‘run’ position to the ‘accessory’ or ‘off’ position, resulting in a loss of power, vehicle speed control, and braking, as well as the failure of the vehicle’s airbags to deploy – which is the exact same defect that GM LLC has admitted exists in vehicles containing “Delta” or “Kappa” ignition switches <u>and</u> non-delta ignition switches alike, including those vehicles subject to NHTSA Recall Nos. 14v346, 14v355, 14v394, 14v400, and 14v540. Moreover, as Co-Lead Counsel explained in the opposition to New GM’s MIL No. 32, GM has admitted that the Delta switch was a corporate common switch that was extremely similar to the switches used across multiple vehicle platforms, such as those subject to NHTSA Recall Nos. 14v394 and 14v400. Indeed, this commonality among switches meant that GM was able to use the Catera spring and plunger installed in certain Recall No. 14V-394 vehicles during its secret part change to the Delta switch in 2006. As a result, evidence relating to the Ignition Switch Defect’s manifestation in “Delta” and/or “Kappa” ignition switches <u>and</u> switches from vehicles subject to NHTSA Recall nos. 14v346, 14v355, 14v394, 14v400, and 14v540 is admissible in <i>Dodson</i>. The defect among these vehicles is common and “plainly relevant” to Plaintiff’s case, and the appropriate way to address any specific concerns is for GM LLC to make targeted objections to specific portions of the such evidence (Doc. 3947 at 2.)</p> <p>HOLDING: Strictly speaking, the Court’s order regarding GM LLC’s MIL No. 16 in <i>Scheuer</i> plainly does not apply to <i>Dodson</i>, as it pertained to the admissibility of non-Delta ignition switch evidence in a case involving the Delta ignition switch and this case is a non-Delta ignition switch case. That</p>
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Issue Briefed in Bellwether <i>Scheuer, Barthelemy, Cockram, or Ward</i> and Ruling	Application to <i>Dodson</i>²
	<p>said, the principles set forth in the Court’s ruling — not to mention, the principles that guided the Court’s rulings on the admissibility and balance of evidence between the different switches at issue in <i>Ward</i> — do apply and the parties should seek to apply them in good faith here. To the extent that there are disputes with respect to applying those principles to the evidence in <i>Dodson</i>, the Court will resolve them (in the first instance) in connection with objections to specific evidence at or before trial.</p>

<p>GM LLC MIL No. 17 (Adequacy of Recall Remedies) (Docket Nos. 1641, 1642)</p> <p>Ruling: 12/7/2015 Order (Docket No. 1825)</p>	<p>Pl. Position: The Court’s ruling on GM LLC’s MIL No. 17 is case-specific and is not applicable to the <i>Dodson</i> case. For example, the Court held that there were certain circumstances specific to Scheuer that could give rise to the admissibility of adequacy of recall evidence. The parties continue to work towards a stipulation with respect to the limitation of “adequacy of the recall” evidence that is likewise specifically tailored to the facts of the <i>Dodson</i> case.</p> <p>GM LLC Position: Plaintiff provides no compelling reason for why the limitations on adequacy of the recall evidence should not be the same in her case. The fact that her accident occurred before the initial Cobalt Vehicle recall only strengthens the basis for excluding evidence about the adequacy of the recall. GM LLC has proposed the following stipulation, which is substantially similar to the parties’ stipulation in Yingling, which similarly involved a November 2013 crash (<i>see</i> MDL Order No. 98 (Docket No. 2499)):</p> <p style="padding-left: 40px;">“GM LLC and Plaintiff stipulate and agree that the parties will not introduce evidence relating to: (i) the recall notice and repair for NHTSA Recall No. 14v394; (ii) the adequacy of the recall notice; (iii) the ordering and availability of parts to complete the recall repair, (iv) the availability of loaner vehicles, and (v) the pace and adequacy of completed recall repairs, through their witnesses, including any expert at trial. For avoidance of doubt, to the extent permitted by the Court, this stipulation does not include: 1) any evidence contained in the Valukas Report, the Deferred Prosecution Agreement and its exhibits, and the NHTSA Consent Order that the Court rules is admissible at trial; or 2) the timing of the recalls.”</p> <p>GM LLC will continue to meet and confer with plaintiff on a stipulation, and is hopeful that any court intervention is unnecessary. To the extent plaintiff is unwilling to agree to this stipulation, substantially similar to prior stipulations, GM LLC reserves the right to seek leave to file a motion <i>in limine</i>.</p> <p>HOLDING: The parties are to meet and confer regarding a stipulation about the admissibility of adequacy of the recall evidence in <i>Dodson</i>. If the parties are unable to reach a stipulation, they shall inform the Court and, if necessary,</p>
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Issue Briefed in <i>Bellwether Scheuer, Barthelemy, Cockram, or Ward</i> and Ruling	Application to <i>Dodson</i> ²
	propose a briefing schedule to resolve any remaining disputes.
<p>GM LLC MIL No. 18 (Irrelevant, Pejorative, Unfairly Prejudicial Remarks) (Docket Nos. 1643, 1644)</p> <p>Ruling: 12/7/2015 Order (Docket No. 1825)</p>	<p>The parties agree that the part of this motion that was granted is applicable to <i>Dodson</i>. The parties further believe they will be able to reach agreement on the rest of the issues raised in the motion.</p> <p>Neither party currently anticipates the need to brief the issue in <i>Dodson</i>.</p> <p>HOLDING: The Court’s order regarding GM LLC’s MIL No. 18 in <i>Scheuer</i> applies to <i>Dodson</i>.</p>
<p>GM LLC MIL No. 19 (Anonymous Letters) (Docket Nos. 1805, 1806)</p> <p>Ruling: 12/29/2015 Order (Docket No. 1971)</p>	<p>The parties agree that the Court’s ruling should apply to <i>Dodson</i>.</p> <p>HOLDING: The Court’s order regarding GM LLC’s MIL No. 19 in <i>Scheuer</i> applies to <i>Dodson</i>.</p>
<p>GM LLC MIL No. 20 (Evidence re Airbag Non-Deployment) (Docket Nos. 2209, 2210)</p> <p>Order: 2/25/2016 (Docket No. 2362)</p>	<p>The parties agree that the Court’s ruling is fact-specific to <i>Barthelemy/Spain</i> and does not apply to <i>Dodson</i>.</p> <p>HOLDING: The Court’s order regarding GM LLC’s MIL No. 20 does not apply to <i>Dodson</i>.</p>
<p>GM LLC MIL No. 22 (FTC Consent Order) (Docket Nos. 2213, 2214)</p> <p>Order: 2/16/2016 (Memo Endorsement of Stipulation, Docket No. 2287)</p>	<p>GM LLC and plaintiff stipulate and agree that the parties will not introduce evidence relating to the consent order (Docket No. C-4596) between General Motors LLC and the Federal Trade Commission (“FTC”) (<i>In the Matter of General Motors LLC</i>, FTC File No. 152-3101).</p> <p>HOLDING: SO ORDERED.</p>
<p>GM LLC MIL No. 25 (Improper Lay Opinion and Speculative Testimony) (Docket Nos. 2961, 2964)</p> <p>Ruling: 8/18/2016 Order (Docket No. 3237)</p>	<p>The parties agree that the Court’s ruling is fact-specific to <i>Cockram</i> and does not apply to <i>Dodson</i>.</p> <p>HOLDING: The Court’s order regarding GM LLC’s MIL No. 25 does not apply to <i>Dodson</i>.</p>

Issue Briefed in <i>Bellwether Scheuer, Barthelemy, Cockram, or Ward</i> and Ruling	Application to <i>Dodson</i> ²
<p>GM LLC MIL No. 26 (Danny and Mary Cockram Ignition Switch Position Testimony) (Docket Nos. 2966, 2968)</p> <p>Ruling: 8/18/2016 Order (Docket No. 3237)</p>	<p>The parties agree that the Court’s ruling is fact-specific to <i>Cockram</i> and does not apply to <i>Dodson</i>.</p> <p>HOLDING: The Court’s order regarding GM LLC’s MIL No. 26 does not apply to <i>Dodson</i>.</p>
<p>GM LLC MIL No. 28 (Plaintiff’s Feinberg Claim) (Docket Nos. 2983, 2985)</p> <p>Ruling: 8/18/2016 Order (Docket No. 3237)</p>	<p>The parties agree that the Court’s ruling regarding communications with the Feinberg Compensation Program is fact-specific to <i>Cockram</i> and does not apply to <i>Dodson</i>.</p> <p>HOLDING: The Court’s order regarding GM LLC’s MIL No. 28 in <i>Cockram</i> does not apply to <i>Dodson</i>.</p>
<p>GM LLC MIL No. 33 (Ignition Switch Videos) (Docket Nos. 3924, 3925)</p> <p>Ruling: 6/9/2017 Order (Docket No. 4065)</p>	<p>The parties agree that the Court’s ruling is fact-specific to <i>Ward</i> and does not apply to <i>Dodson</i>.</p> <p>HOLDING: The Court’s order regarding GM LLC’s MIL No. 33 does not apply to <i>Dodson</i>.</p>
<p>GM LLC No. 35 (Adequacy of the Recall) (Docket Nos. 4068, 4069)</p> <p>Ruling: 7/5/2017 (Docket No. 4181)</p>	<p>Pl. Position: The Court’s ruling on GM LLC’s MIL No. 35 is case-specific and is not applicable to the <i>Dodson</i> case. For example, the Court held that there were certain circumstances specific to <i>Ward</i> that could give rise to the admissibility of adequacy of recall evidence. The parties continue to work towards a stipulation with respect to the limitation of “adequacy of the recall” evidence that is likewise specifically tailored to the facts of the <i>Dodson</i> case.</p> <p>GM LLC Position: Plaintiff provides no compelling reason for why the limitations on adequacy of the recall evidence should not be the same in her case. The fact that her accident occurred before the initial Cobalt Vehicle recall only strengthens the basis for excluding evidence about the adequacy of the recall. GM LLC has proposed the following stipulation, which is substantially similar to the parties’ stipulation in <i>Yingling</i>, which similarly involved a November 2013 crash (<i>see</i> MDL Order No. 98 (Docket No. 2499):</p>

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	<p>“GM LLC and Plaintiff stipulate and agree that the parties will not introduce evidence relating to: (i) the recall notice and repair for NHTSA Recall No. 14v394; (ii) the adequacy of the recall notice; (iii) the ordering and availability of parts to complete the recall repair, (iv) the availability of loaner vehicles, and (v) the pace and adequacy of completed recall repairs, through their witnesses, including any expert at trial. For avoidance of doubt, to the extent permitted by the Court, this stipulation does not include: 1) any evidence contained in the Valukas Report, the Deferred Prosecution Agreement and its exhibits, and the NHTSA Consent Order that the Court rules is admissible at trial; or 2) the timing of the recalls.”</p> <p>GM LLC will continue to meet and confer with plaintiff on a stipulation, and is hopeful that any court intervention is unnecessary. To the extent plaintiff is unwilling to agree to this stipulation, substantially similar to prior stipulations, GM LLC reserves the right to seek leave to file a motion <i>in limine</i>.</p> <p>HOLDING: The parties are to meet and confer regarding a stipulation about the admissibility of adequacy of the recall evidence in <i>Dodson</i>. If the parties are unable to reach a stipulation, they shall inform the Court and, if necessary, propose a briefing schedule to resolve any remaining disputes.</p>
<p>GM LLC No. 36 (City of Tucson Pavement Data) (Docket Nos. 4127, 4129)</p> <p>Ruling: 7/5/2017 (Docket No. 4181)</p>	<p>The parties agree that the Court’s ruling is fact-specific to <i>Ward</i> and does not apply to <i>Dodson</i>.</p> <p>HOLDING: The Court’s order regarding GM LLC’s MIL No. 36 does not apply to <i>Dodson</i>.</p>

Issue Briefed in Bellwether <i>Scheuer, Barthelemy, Cockram, or Ward and Ruling</i>	Application to <i>Dodson</i>²
<p>GM LLC <i>Scheuer Daubert Motion</i> (Docket Nos. 1815, 1820)</p> <p>Ruling: 12/29/2015 Order (Docket No. 1970)</p>	<p>The parties agree that the Court’s rulings relating to the opinions of Steve Loudon and Glen Stevick are applicable to <i>Dodson</i>. With respect to Chris Caruso, the Court’s ruling from <i>Scheuer</i> is applicable to <i>Dodson</i> in that Caruso will not be offering a specific injury causation opinion at trial; however, as was the case in <i>Scheuer</i>, to the extent such opinions are disclosed in his <i>Dodson</i> report, Caruso may testify “that ‘a properly deployed frontal impact airbag and seatbelt pretensioner would have provided a barrier between [Ms. Dodson] and the vehicle interior structures, reducing or mitigating the harmful interior impact and G-forces [she] was subjected to’ and that ‘the injuries suffered by [Ms. Dodson] would not have been expected to be life threatening, had [the airbags and seatbelt pretensioners] activated appropriately.’” <i>Scheuer Daubert Op.</i> (Docket No. 1970) at 10. Similarly, New GM reserves the right to raise objections to questions and testimony to the extent “Caruso’s testimony at trial strays into the realm of specific [injury] causation” (<i>Id.</i>) The parties reserve the right to raise arguments to exclude experts and/or opinions not addressed in GM LLC’s <i>Scheuer Daubert</i> motion.</p> <p>The parties agree that the Court’s case-specific rulings with respect to Michael Markushewski, Michael McCort, Robert Cox, and David Macpherson do not apply as they are not designated as experts in <i>Dodson</i>.</p> <p>HOLDING: The Court’s order regarding GM LLC’s <i>Scheuer Daubert</i> motion applies to <i>Dodson</i> to the extent described above. The parties reserve the right to raise argument to exclude experts and/or opinions on grounds not addressed in GM LLC’s <i>Scheuer Daubert</i> motion in <i>Dodson</i>.</p>

Issue Briefed in Bellwether Scheuer, Barthelemy, Cockram, or Ward and Ruling	Application to <i>Dodson</i>²
<p>GM LLC <i>Cockram Daubert Motion</i> (Docket Nos. 2852, 2853)</p> <p>Ruling: 8/1/2016 Order (Docket No. 3158)</p>	<p>The parties agree that the Court’s ruling relating to the opinions of Steve Loudon, Chris Caruso, and Glen Stevick apply to <i>Dodson</i>. The Court’s rulings relating to Dwayne Fuller, Stephen Irwin, and Michael Markushewski do not apply as they are not designated as experts in <i>Dodson</i>.</p> <p>The parties reserve the right to raise arguments to excluded experts and/or opinions not addressed in GM LLC’s motion in <i>Cockram</i>.</p> <p>HOLDING: The Court’s order regarding GM LLC’s <i>Daubert</i> motion applies in <i>Dodson</i> to the extent described above, but the parties are free to raise arguments to exclude experts and/or opinions not addressed in GM LLC’s <i>Daubert</i> motion in <i>Cockram</i>.</p>
<p>GM LLC <i>Ward Daubert Motion</i> (Docket Nos. 3873, 3874)</p> <p>Ruling: 6/20/2017 (Docket No. 4110)</p>	<p>The parties agree that the Court’s rulings relating to the opinions of Steve Loudon, Glen Stevick, and Matthew Pitman apply to <i>Dodson</i>. The parties agree that the Court’s ruling relating to the opinions of David Lent do not apply as he is not designated as an expert in <i>Dodson</i>.</p> <p>The parties reserve the right to raise arguments to excluded experts and/or opinions not addressed in GM LLC’s motion in <i>Cockram</i>.</p> <p>HOLDING: The Court’s order regarding GM LLC’s <i>Daubert</i> motion applies in <i>Dodson</i> to the extent described above, but the parties are free to raise arguments to exclude experts and/or opinions not addressed in GM LLC’s <i>Daubert</i> motion in <i>Ward</i>.</p>

<p>Issue Briefed in Bellwether <i>Scheuer, Barthelemy, Cockram, or Ward and Ruling</i></p>	<p>Application to <i>Dodson</i>²</p>
<p>Redactions to the Valukas Report, the DPA Statement of Facts, and NHTSA Consent Order</p> <p>Orders: 1/6/2016 (Docket Nos. 2017, 2018, 2019)</p>	<p>The parties agree that the applicability of the Court’s rulings of the redactions to the Valukas Report, DPA Statement of Facts, and the NHTSA Consent Order should be deferred until the Court rules on GM LLC’s motion for summary judgment, plaintiff’s OSI disclosure, and GM LLC’s motions <i>in limine</i>.</p> <p>HOLDING: The Court reserves judgment on the applicability of the rulings on redactions to the Valukas Report, DPA Statement of Facts, and NHTSA Consent Order in <i>Scheuer</i> to <i>Dodson</i> until after the Court rules on summary judgment or other rulings that change the scope of relevant or admissible evidence in this case.</p>
<p>GM LLC Motion to Preclude Plaintiffs from Calling Michael Gruskin Live At Trial (Docket Nos. 2404, 2442, 2455)</p> <p>Ruling: 3/9/2016 Pretrial Conference Transcript at 28-30 (and Docket No. 2461)</p>	<p>The parties disagree about the applicability of the Court’s ruling to <i>Dodson</i>.</p> <p>Pl. Position: The Court’s ruling precluding plaintiffs from calling Michael Gruskin to testify live in the circumstance contemplated by that ruling applies to <i>Dodson</i>, specifically where he is necessarily in the courtroom as part of his duties as General Counsel for General Motors LLC.</p> <p>GM LLC’s Position: The Court’s order speaks for itself, and plaintiff’s attempt to limit its scope and reasoning is inappropriate. Plaintiff has shown no good cause why the Court’s order should not apply to <i>Dodson</i>.</p> <p>HOLDING: Unless and until the Court orders otherwise based upon a proper application by Plaintiff demonstrating that the balance of the marginal probative value of Mr. Gruskin’s live testimony and the potential prejudice cuts differently here than it did in <i>Barthelemy</i>, the Court’s order precluding plaintiffs from calling Mr. Gruskin to testify live at trial applies to <i>Dodson</i>.</p>

Issue Briefed in Bellwether Scheuer, Barthelemy, Cockram, or Ward and Ruling	Application to <i>Dodson</i>²
Barthelemy Pls. MIL No. 1 (Barthelemy's Criminal Record) (Docket Nos. 2231, 2232) Order: 2/23/2015 (Text Order, Docket No. 2346)	The parties agree that the Court's ruling is fact-specific to <i>Barthelemy/Spain</i> and does not apply to <i>Dodson</i> . HOLDING: The Court's order regarding the <i>Barthelemy</i> plaintiffs' MIL No. 1 does not apply to <i>Dodson</i> .
Barthelemy Pls. MIL No. 2 (Expert Testimony re Airbag Deployment) (Docket Nos. 2215, 2216) Order: 2/23/2015 (Text Order, Docket No. 2346)	The parties agree that the Court's ruling is fact-specific and does not apply to <i>Dodson</i> . HOLDING: The Court's order regarding the <i>Barthelemy</i> plaintiffs' MIL No. 2 does not apply to <i>Dodson</i> .
Barthelemy Pls. MIL No. 4 (Prior Lawsuits by Plaintiffs) (Docket Nos. 2223, 2224) Order: 2/23/2015 (Text Order, Docket No. 2346)	The parties agree that the Court's ruling is fact-specific to <i>Barthelemy/Spain</i> and does not apply to <i>Dodson</i> . HOLDING: The Court's order regarding the <i>Barthelemy</i> plaintiffs' MIL No. 4 does not apply to <i>Dodson</i> .
Barthelemy Pls. MIL No. 6 (Officer David Kramer) (Docket Nos. 2217, 2218) Order: 2/23/2015 (Text Order, Docket No. 2346)	The parties agree that the Court's ruling is fact-specific to <i>Barthelemy/Spain</i> and does not apply to <i>Dodson</i> . HOLDING: The Court's order regarding the <i>Barthelemy</i> plaintiffs' MIL No. 6 does not apply to <i>Dodson</i> .
Barthelemy Pls. MIL No. 7 (Plaintiffs' Insurance Claims) (Docket Nos. 2221, 2222) Order: 2/23/2015 (Text Order, Docket No. 2346)	The parties agree that the Court's ruling is fact-specific to <i>Barthelemy/Spain</i> and does not apply to <i>Dodson</i> . HOLDING: The Court's order regarding the <i>Barthelemy</i> plaintiffs' MIL No. 7 does not apply to <i>Dodson</i> .

Issue Briefed in Bellwether Scheuer, Barthelemy, Cockram, or Ward and Ruling	Application to <i>Dodson</i>²
Ward Pl. MIL No. 1 (Traffic Citation) (Docket Nos. 3927, 3928) Order: 6/9/2017 (Dkt. No. 4065)	The parties agree that the Court's ruling is case-specific to <i>Ward</i> and does not apply to <i>Dodson</i> . HOLDING: The Court's order regarding the <i>Ward</i> plaintiff's MIL No. 1 does not apply to <i>Dodson</i> .
Ward Pl. MIL No. 2 (SDM Spoliation) (Docket Nos. 3933, 3934) Order: 6/9/2017 (Dkt. No. 4065)	The parties agree that the Court's ruling is fact-specific to <i>Ward</i> and does not apply to <i>Dodson</i> . HOLDING: The Court's order regarding the <i>Ward</i> plaintiff's MIL No. 2 does not apply to <i>Dodson</i> .
Ward Pl. MIL No. 3 (Ignition Switch Videos) (Docket Nos. 3937, 3938) Order: 6/9/2017 (Dkt. No. 4065)	The parties agree that the Court's ruling is fact-specific to <i>Ward</i> and does not apply to <i>Dodson</i> . HOLDING: The Court's order regarding the <i>Ward</i> plaintiff's MIL No. 3 does not apply to <i>Dodson</i> .
Ward Pl. MIL No. 4 (Past Tobacco Use) (Docket Nos. 3941, 3942) Order: 6/9/2017 (Dkt. No. 4065)	The parties agree that the Court's ruling is fact-specific to <i>Ward</i> and does not apply to <i>Dodson</i> . HOLDING: The Court's order regarding the <i>Ward</i> plaintiff's MIL No. 4 does not apply to <i>Dodson</i> .
Ward Pl. <i>Daubert</i> Motion (Docket Nos. 3877, 3878) Order: 6/20/2017 (Dkt. No. 4110)	The parties agree that the Court's ruling with respect to Roger Nightingale's opinions in <i>Ward</i> does not apply as he is not designated as an expert in <i>Dodson</i> . HOLDING: The Court's order regarding the <i>Ward Daubert</i> motion does not apply to <i>Dodson</i> .

Issue Briefed in Bellwether <i>Scheuer, Barthelemy, Cockram, or Ward and Ruling</i>	Application to <i>Dodson</i> ²
<p>GM LLC MIL No. 32 (Admissibility of “Cobalt Conduct Evidence” in Category C Cases) (Docket Nos. 3739, 3766)</p> <p>Order: 5/4/17 (Docket No. 3947)</p>	<p>The parties disagree about the extent of the Court’s ruling on MIL No. 32 as it applies to <i>Dodson</i>.</p> <p>GM LLC Position: In its ruling on GM LLC’s MIL No. 32, the Court stated that it could not categorically exclude the Cobalt Conduct Evidence “on the present record.” (Docket No. 3947 at 2.) The Court deferred ruling on the admissibility of that evidence until “closer to trial, when the record will be more fully developed and the contours of the trial will be clearer.” (<i>Id.</i> at 3.) In the interim, however, the parties and the Court completed the <i>Ward</i> trial. During that trial, the Court recognized that the amount of ‘423 switch evidence in a non-‘423 switch case presented a “fundamental problem” and that addressing those issue piecemeal was like “arranging . . . the deck chairs on the Titanic.” (7/12/2017 Ward Trial Tr. at 191:12-19.) Consistent with the Court’s guidance in its MIL 32 ruling, GM LLC and plaintiff have agreed to resolve disputes regarding the Valukas Report and SOF through the ordinary procedures. (Docket No. 3947 at 3.) But GM LLC believes that after the parties’ experience in <i>Ward</i> categorical exclusion of the Consent Order and government reports is warranted. This evidence is of minimal probative value; is unduly prejudicial given that it relates to a recall, ignition switch, and vehicles not at issue in this case; and would be cumulative of any ‘423 switch evidence that plaintiff admits through the Valukas Report and SOF. GM LLC requests leave to file additional briefing on the admissibility of the Consent Order, the government reports, and also congressional testimony in <i>Dodson</i>.</p> <p>Pl. Position: No further briefing is necessary on the issue of categorically excluding the Valukas Report, SOF, or other “Cobalt Conduct Evidence.” In ruling on New GM MIL No. 32 (Doc. 3947), the Court held that the Valukas Report and other such “Cobalt Conduct Evidence” are “plainly relevant” to the Category C cases, and New GM should not get what will be <i>at least</i> their fifth bite at this apple. If New GM wishes to make targeted objections to specific portions of the Valukas Report, it may do so by the procedures set forth in MDL Order No. 123. Pursuant to MDL Order No. 123, Plaintiff</p>

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	<p>intends to disclose by no later than Sept. 22, 2017, the excerpts from the Valukas Report, SOF, and the NHTSA Consent Order that she intends to offer at trial. The parties will raise any disputes with respect thereto by no later than Oct. 4, 2017.</p> <p>HOLDING: The Court’s order preliminarily denying GM LLC’s request for categorical exclusion of the Valukas Report, Statement of Facts, NHTSA Consent Order, government reports, and Cobalt-Ion OSIs applies to <i>Dodson</i>. The parties are to follow the procedures set forth in MDL Order No. 123 with respect to the submission of Valukas Report and SOF disputes. Consistent with the Court’s holdings above, GM LLC is granted leave to file additional briefing on the categorical exclusion of the NHTSA Consent Order and government reports.</p>