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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:

GENERAL MOTORS LLC IGNITION SWITCH
LITIGATION

14-MD-2543 (JMF)

ORDER

This Document Relates to:

Mary Scruggs f/k/a Mary Dodson v. General Motors LLC, 15-CV-8324

JESSE M. FURMAN, United States District Judge:


[Regarding the Application of Certain Evidentiary Rulings in MDL Bellwether Trial Nos. 1, 2, 5, and 7 to MDL Bellwether Trial No. 7 (Scruggs f/k/a 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), New GM and Ward have submitted a joint letter and proposals regarding the applicability of certain evidentiary rulings 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 evidentiary rulings from Bellwether Trials Nos. 1, 2, 5, and 7 to Bellwether Trial No. 9. For the avoidance of doubt, to the extent the parties have not addressed the applicability of other evidentiary rulings from Bellwether Trial Nos. 1, 2, 5, and 7 the parties reserve the right to address those rulings and their arguments regarding the applicability or inapplicability of those rulings to Bellwether Trial No. 9 if necessary during pre-trial filings and trial. Such arguments are preserved and not waived.

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.

SO ORDERED.

Dated: October 10, 2017
New York, New York



JESSE M. FURMAN
United States District Judge

Issue Briefed in Bellwether <i>Scheuer</i>, <i>Barthelemy</i>, <i>Cockram</i>, or <i>Ward</i> and Ruling	Application to <i>Scruggs</i>¹
VTI Report (Docket Nos. 2116, 2119) Order: 1/19/2016 (1/19/2016 Trial Tr. at 789-90)	HOLDING: The Court's order regarding the VTI Report in <i>Scheuer</i> applies to <i>Scruggs</i> .
Secretary Foxx Letter (Docket Nos. 1999, 2003) Order: 1/6/2016 (Final Pretrial Conference Hr'g Tr. at 3:24-4:22)	HOLDING: The Court's order regarding the Secretary Foxx letter in <i>Scheuer</i> applies to <i>Scruggs</i> .
OSI Photographs Opening Demonstratives (Docket Nos. 2049, 2050) Ruling: 1/10/2016 (Docket No. 2057)	HOLDING: The Court's order regarding the use of other similar incident photographs in opening demonstratives and in connection with expert testimony at trial in <i>Scheuer</i> applies to <i>Scruggs</i> .
Commentary re Old GM Conduct (1/12/2016 <i>Scheuer</i> Trial Tr. at 88-92) Ruling: 1/12/2016 (<i>Scheuer</i> Trial Tr. at 88-92.)	HOLDING: The Court's order regarding commentary about Old GM conduct during the opening statement and the scope of the Court's crime fraud ruling and Motion <i>in Limine</i> No. 9 in <i>Scheuer</i> applies to <i>Scruggs</i> .
Presenting GM Answer to Jury (<i>Scheuer</i> Trial Tr. at 1247-52, 1264) Ruling: 1/21/2016 (<i>Scheuer</i> Trial Tr. at 1247-52)	HOLDING: The Court's order regarding presenting New GM's answer to Plaintiff's complaint in <i>Scheuer</i> applies to <i>Scruggs</i> . The parties shall meet and confer regarding any proposed redactions to New GM's <i>Scruggs</i> answer and raise any disputes at least 48 hours prior to the answer being offered into evidence.

¹ 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

Issue Briefed in Bellwether <i>Scheuer</i>, <i>Barthelemy, Cockram</i>, or <i>Ward</i> and Ruling	Application to <i>Scruggs</i>¹
<p>Stevick Expert Testimony (Docket Nos. 2109, <i>Scheuer</i> Trial Tr. at 713-24)</p> <p>Ruling: 1/15/2016 (<i>Scheuer</i> Trial Tr. at 715-724)</p>	<p>HOLDING: The Court’s order regarding the testimony of Glen Stevick in <i>Scheuer</i> applies to <i>Scruggs</i>.</p>
<p>Limiting Instructions During Trial (Docket No. 2039)</p> <p>Order Issued: 1/11/2016 (<i>Scheuer</i> Trial Tr. at 5.)</p>	<p>HOLDING: The Court’s order regarding certain limiting instructions to the jury in <i>Scheuer</i> applies to <i>Scruggs</i>.</p>
<p>Preliminary Jury Instructions and Statement of Case (Docket No. 2031, 2046)</p> <p>Order Issued: 1/11/2016 (<i>Scheuer</i> Trial Tr. at 15-16)</p>	<p>HOLDING: The Court’s order regarding the preliminary jury instructions and statement of the case in <i>Scheuer</i> does not apply to <i>Scruggs</i>. The Court’s ruling regarding references to GM LLC and New GM during the preliminary jury instructions applies to <i>Scruggs</i>.</p>
<p>Medical Costs Stipulation (Docket No. 2159)</p> <p>Ruling: 1/21/2016 (<i>Scheuer</i> Trial Tr. at 1184-85)</p>	<p>HOLDING: The Court’s advice to the parties in <i>Scheuer</i> to enter into stipulations with respect to any and all issues that are not actually in dispute — including, if applicable, medical costs — applies in <i>Scruggs</i>.</p>

Issue Briefed in Bellwether <i>Scheuer</i>, <i>Barthelemy</i>, <i>Cockram</i>, or <i>Ward</i> and Ruling	Application to <i>Scruggs</i>¹
<p>Stipulation and Jury Instruction re Admissibility of Statement of Facts, Valukas Report, and NHTSA Consent Order (Docket Nos. 2059, 2069, 2083)</p> <p>Ruling: 1/11/2016 (<i>Scheuer</i> Trial Tr. at 129-31); 1/12/2016 (<i>Scheuer</i> Trial Tr. at 218-220); 1/13/2016 (Docket No. 2087)</p>	<p>HOLDING: To the extent the Court allows any portions from the Statement of Facts, Valukas Report, or NHTSA Consent Order to be introduced, the parties shall meet and confer to agree to proposed instructions describing the Valukas Report, Statement of Facts and/or NHTSA Consent Order that will be subject to a reservation of rights similar to the one proposed in <i>Scheuer</i> for the same documents. As in <i>Scheuer</i>, New GM’s reservation of rights shall be entered into the record but not in the presence of the jury. (Docket No. 2087.)</p>
<p>Loudon Testimony (Docket No. 2490)</p> <p>Ruling: 3/14/2016 (<i>Barthelemy</i> Trial Tr. at 5)</p>	<p>New GM’s Position: The Court’s ruling permitting Loudon to testify about the affect a part number change on “discovering the problem” with the 423 switch should not apply in <i>Scruggs</i>. Such testimony has minimal relevance given that plaintiff’s 2004 Cadillac CTS was built on a different platform and contained a 257 switch and therefore there was never a risk it may have had a 423 switch installed at any point. Further, this testimony would be cumulative and unduly prejudicial 423 switch evidence. While Loudon was permitted to offer testimony on this issue in <i>Ward</i>, the part change had probative value there because <i>Ward</i>’s 190 switch was the result of the improvement of the 423 switch. This issue has little to no probative value in this case about a 257 switch in a Cadillac CTS and as plaintiff’s position makes clear is an effort to “punish New GM for bad conduct unrelated” to her or her vehicle. (Docket No. 4167 at 3.)</p>

Issue Briefed in <i>Bellwether Scheuer, Barthelemy, Cockram, or Ward and Ruling</i>	Application to <i>Scruggs</i> ¹
	<p>Plf.’s Position: The Court’s Order regarding the testimony of Steve Loudon in <i>Barthelemy</i> applies to <i>Scruggs</i>. To the extent New GM objects to Loudon’s testimony concerning Old GM’s failure to change the part number when it improved the ‘423 switch, that conduct is relevant to the issues in this case. New GM’s concealment of the redesign demonstrates its understanding of the safety risks posed by inadvertent switch rotation and its attempt to hide them. Old-to-New GM engineers’ concealment of the change made it more likely that it would also overlook or ignore those risks that inadvertent switch rotation continued to pose, and therefore continue overlooking the problem across GM’s corporate common switches as well. Furthermore, the concealment of the ignition switch change is an integral part of the ignition switch defect narrative, and is evidence of a culture willing to ignore safety risks at all costs. (<i>See</i> 6/30/17 Op. & Order (Doc. 4167) at 4167 (“[Ward] will be permitted to present evidence concerning the long and tortured history of the ‘423 switch (not to mention expert testimony concerning the relationship between the two switches).”); Order re: 4102 Letter from Robert C. Hilliard dated June 19, 2017 (Doc. 4104) (Text Only) (“As it has indicated before, the Court believes, contrary to the apparent view of New GM, that evidence of the history of the 423 switch is relevant to that question [of whether a non-423 switch is defective] and to the larger context.”)). Moreover, Loudon was permitted to testify about the part change without a corresponding part number change during <i>Ward</i>, and while Plaintiff does not plan to harp on the issue, she should be permitted to raise it as part of “the larger context” of this case. <i>See</i> 7/11/17 <i>Ward</i> Tr. at 136:22-137:9. In addition, it cannot be said that this evidence would be cumulative when, at this point, there is zero evidence in the trial record.</p> <p>HOLDING: The Court’s order regarding the testimony of Steve Loudon in <i>Barthelemy</i> applies to <i>Scruggs</i> to the extent the same testimony was properly disclosed and is offered in <i>Scruggs</i>, except that the Court reserves judgment as to the admissibility of Loudon’s opinions regarding the absence of a part number change and the effect of that on the ability to “discover[] the problem” pending New GM’s objections to specific questions on that front at trial. (3/14/2016 <i>Barthelemy</i> Trial Tr. at 6.)</p>

Issue Briefed in Bellwether <i>Scheuer</i>, <i>Barthelemy</i>, <i>Cockram</i>, or <i>Ward</i> and Ruling	Application to <i>Scruggs</i>¹
<p>No Need for Sponsoring Witnesses with Respect to Stipulated Documents</p> <p>Ruling: 3/9/2016 <i>Barthelemy</i> Final Pretrial Conference Tr. at 8:14-9:3; 13:17-21</p>	<p>HOLDING: The Court’s guidance with respect to the issue of “sponsoring witnesses” applies to <i>Scruggs</i>.</p>
<p>‘423 Switch Jury Instruction (Docket Nos. 4098, 4104, 4193, 4225)</p> <p>Ruling: 6/30/2017 (Docket No. 4167); 7/5/2017 (Docket No. 4183 at 8-10); 7/6/2017 <i>Ward</i> Final Pretrial Conference at 26:23-27:3; 28:22-29:23; 7/10/2017 <i>Ward</i> Trial Tr. at 20:25-21:9.</p>	<p>HOLDING: The Court’s ruling that it is “important to ensure that the jury understands the distinction between the ‘423 switch and the ‘190 switch” applies equally to <i>Scruggs</i> with respect to the distinction between the ‘423 switch and the ‘257 switch in plaintiff’s 2004 Cadillac CTS. As in <i>Ward</i>, the Court is “prepared to give (1) a preliminary instruction about the two switches to the jury after it has been empaneled; (2) to give an appropriate instruction when the Valukas Reports and SOF are admitted; and (3) to give curative instructions as appropriate during trial (including, for example, if deposition testimony is admitted and it is unclear from the testimony to which switch it refers.” (Docket No. 4167 at 4.)</p> <p>The parties shall meet and confer and propose jury instructions consistent with those used by the Court in <i>Ward</i> prior to the final pretrial conference. (<i>See</i> Docket No. 4183 at 8-10.) The parties shall also meet and confer and propose a curative instruction to be given before certain deposition testimony is played as well as a list a deponents for which such a curative instruction is needed. The proposed instruction shall be consistent with the Court’s ruling in <i>Ward</i>. (<i>See</i> 7/10/2017 <i>Ward</i> Trial Tr. at 20:25-21:19; Docket No. 4225.)</p>
<p>Recalling Witness In Phase Two of Bifurcated Trial</p> <p>Ruling: 7/6/2017 <i>Ward</i> Final Pretrial Conference at 34:22-35:14</p>	<p>HOLDING: To the extent the trial is bifurcated, the Court’s ruling that a witness may be recalled to testify in a second phase of a bifurcated trial applies to <i>Scruggs</i>. As in <i>Ward</i>, the Court “will limit evidence in phase 2 as appropriate” and “testimony that should have been offered in the first phase and is not relevant to the issues in the second phase” will not be permitted. (7/6/2017 <i>Ward</i> Final Pretrial Conference at 35:5-14.)</p>

<p>Issue Briefed in Bellwether <i>Scheuer</i>, <i>Barthelemy</i>, <i>Cockram</i>, or <i>Ward</i> and Ruling</p>	<p>Application to <i>Scruggs</i>¹</p>
<p>Laura Andres Categorical Deposition Objection Rulings</p> <p>Ruling: 1/10/16 (Docket No. 2056); 3/8/16 (Docket No. 2448); 6/30/17 (Docket No. 4167)</p>	<p>Holding: The Court’s rulings from the <i>Scheuer</i>, <i>Barthelemy</i>, and <i>Ward</i> trials regarding categorical objections to the deposition designations of Laura Andres apply to the <i>Scruggs</i> case.</p>
<p>Laura Andres Deposition Designation Exhibits (<i>Scheuer</i> Trial Tr. at 804)</p> <p>Ruling: 1/19/2016 (<i>Scheuer</i> Trial Tr. at 804- 805); 8/31/16 (Docket No. 3308 at 3)</p>	<p>HOLDING: The Court’s ruling regarding the deposition exhibits of Laura Andres in <i>Scheuer</i> applies to <i>Scruggs</i> to the extent the same exhibits are offered.</p>