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)
Telephone Conference
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New York, N.Y.
December 18, 2020
9:30 a.m.

Before:

HON. JESSE M. FURMAN,

District Judge

APPEARANCES

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BY: WILLIAM WEINTRAUB

(The Court and all parties appearing telephonically)

THE COURT: Good morning. This is Judge Furman. Let me just confirm that the court reporter is on.

Good morning, Andrew. Thanks for joining us.

Sorry for the delay. I had some technical difficulties. Before I take appearances from counsel, a couple of ground rules: Number one, particularly given the number of lawyers on, if you could mute your phones when you're not speaking. It's certainly best practice to ensure that there's no background noise distraction. Remember to unmute yourself if or when you want to say something. When you say something, please make sure that the first thing you say is your name, to ensure that the record is clear as to who is speaking.

We shouldn't hear any chime while you're speaking since there are separate lines for public access and for counsel, but in the event that you do, please pause so I can take stock of who has either joined or left, as the case may be. We do, as I mentioned, have a public access line on, I've confirmed that, although I assume counsel has folks listening in, and if at any point during this proceeding, you learn that it is down for some reason, please alert me right away, so that we can take care of that problem. The conference is public, as it would be if we were in open court. It is prohibited to record it, so anyone listening in may not be recording it.

With that, I'll take appearances. I think what I'll

do is do this roll call style, since there are many different parties and counsel, and I want to make sure I get everyone.

So let me start with Mr. Berman?

MR. BERMAN: Good morning, your Honor. Present.

THE COURT: All right. And Ms. Cabraser?

MS. CABRASER: Good morning, your Honor.

THE COURT: Is Ms. Geman on with you as well?

MS. GEMAN: Good morning, your Honor. Yes, I'm here.

THE COURT: All right.

Bob Hilliard?

MR. HILLIARD: Good morning, Judge. Glad to hear your voice.

THE COURT: Likewise. Good morning.

And Mr. Weisfelner?

MR. WEISFELNER: I'm here, Judge. Good morning.

THE COURT: And Mr. Matt.

MR. MATT: Yes. Good morning, Judge.

THE COURT: Did I miss anybody for plaintiffs?

I'll assume not.

For General Motors LLC, Mr. Godfrey?

MR. GODFREY: Good morning, your Honor. Hope you're doing well and given your Northeaster that arrived.

THE COURT: Yes. We're digging out a bit, although it's a little easier in the city than outside.

Ms. Bloom, are you present?

MS. BLOOM: Yes. Good morning.

THE COURT: Good morning.

Mr. Bloomer?

MR. BLOOMER: Yes, your Honor. Good morning.

THE COURT: Good morning.

And for the GUC Trust, Ms. Going?

MS. GOING: Good morning, your Honor.

THE COURT: And, finally, I think for the unitholders, Mr. Zensky?

MR. ZENSKY: Yes, I'm here, your Honor. Thank you.

THE COURT: Good morning.

And did I miss anybody?

All right. In that case, we can proceed.

MR. WEINTRAUB: Your Honor, you did miss me. William Weintraub, of Goodwin Procter. I'm the lone objector to the settlement.

THE COURT: Indeed. My apologies. I failed to turn to page 2 of my appearance sheet, so sorry about that. Thank you for joining me.

I should start, I want to apologize, it was only in the last day or so that I realized that folks are spread all across the country, and this is a slightly ungodly hour for those on the West Coast. So, I apologize for not thinking of that. Six and a half years of having conferences at 9:30 in the morning will have its diehards, so had I thought about it,

I might have adjusted it, but thank you, all, for being up whatever time it is wherever you are.

With that, we are here for a fairness hearing in connection with a proposed settlement. I got Ms. Keough's supplemental declaration of December 15th, which is at ECF No. 8296. I did want to check, I also got, by email this morning — that is email to my law clerk — an indication from Ms. Bloom that the parties had to correct the numbers in the final proposed judgment with respect to those opting out, but I wanted to make sure that that was -- number one, that I understood what is going on there, and, number two, that the record is clear as to what those numbers are.

So, Ms. Bloom, can I turn to you and ask you to just explain that on the record.

MS. BLOOM: Yes, certainly.

So, in the original proposed final order and judgment, there was a footnote that referenced certain persons who were opting out where the parties had agreed the documentation was insufficient, and there is also a paragraph 5(c) that sums up the opt-outs first-in total, those requesting opt-outs, and then identifies different categories of persons.

And your Honor had asked if we would send, ahead of this hearing, a corrected version of that because the declaration of Jennifer Keough identified that there had been some movement, in particular with the folks that were

referenced in the footnote. We'd received documentation, J&D had, with respect to one person, and given that today, we still have not, through J&D, received documentation from the others, we've gone ahead and assumed, for this point in the proposed final order and final judgment, that those persons will not count as valid opt-outs.

In the course of looking through all of that, we realized that the nature of the class is such, that someone who owns a GM vehicle may subsequently purchase another, and we've noticed that there were seven people who were requesting to opt out where they fit into different categories with respect to their different requests pertaining to different subject vehicles. So it might be the case, for a single person requesting to opt out, that they had filed a claim for one subject vehicle that is in the class period, but then another subject vehicle or proposed subject vehicle that doesn't count properly because they purchased or leased that vehicle outside of the class period.

And so when we looked at that, it turns out that the aggregate number of total persons seeking to opt out decreased from 171 to 164, by those seven people that had vehicles that fit into different of the categories. So the only change that the parties have made to our proposed final order and final judgment are numbers that you see in paragraph 5(c), that are now a redline copy that we've provided to the Court, as well as

a clean copy. And if your Honor needs, I can put those numbers into the record or the parties can certainly file an amended proposed final order and final judgment in the record, whatever your Honor prefers.

THE COURT: I have, of the 164 persons seeking to opt out per 195 total subject vehicles, the request by 25 persons covering 32 subject vehicles are invalid and rejected if I adopt the order, then the request of 62 persons for 68 subject vehicles conforms to the requirements of my prior order and the agreement, and the request of 84 persons for 95 subject vehicles, while deficient, will be accepted, as I understand the numbers in the proposed final judgment. Is that correct?

MS. BLOOM: Yes, your Honor. And yesterday, into the evening, we verified those numbers, both with J&D, the claims administrator, and also with class counsel. So we've done some double and triple checks, and these are the numbers that are accurate.

THE COURT: Okay.

A couple of other follow-up questions on this front:

Number one, maybe I'm mixing apples and oranges, and there are obviously a lot of numbers and a lot of papers and briefs that were filed, but I had earlier noted that there were, I think, 166 opt-outs or arguably valid opt-outs, and this now has the count being 146. I don't understand how it went down, but perhaps I'm mixing one number with another.

MS. BLOOM: Yes --

THE COURT: You know --

MS. BLOOM: I'm not sure either. What I do know is, we didn't receive any opt-out requests that came in past the deadline, so there was just simply a matter of some shifting where, with respect to some people, we had reached out through J&D to get documentation. So the only thing that has occurred is perhaps some shifting around of the -- originally, we thought it was 171 persons, but it's 164.

THE COURT: Okay.

The other -- so I'm looking at your brief, your opening brief, on supporting final approval, Docket No. 8245, this is page -- I guess actually the first page, the introduction, says, "Following the notice plan, there have been, at most, 166 class member opt-out requests." So I guess that's the number. And then plaintiffs' opening memorandum, 8241, has the same number at page 1 and 2. So that's what I was referring to and trying to figure out how the number went down.

Do you --

MS. BLOOM: Let me look into that. I don't have that answer right now, but I will see if I can get it while we are online.

THE COURT: Okay.

And then the last question for you, and then I'll turn

to class counsel, and I think Ms. Cabraser may have been the point person on these issues, but, if not, she'll correct me: The three, as I understand it, opt-outs were missing documentation and had until this hearing to correct the deficiencies. J&D is obviously not on the line, but can we confirm that they have not done so even this morning?

Hello?

MS. BLOOM: Your Honor, we did — this is Wendy Bloom again — we did confirm that as of very late last night. I don't know that we can -- I don't know that we can confirm it as of this second of our hearing, but I can look at the email that we had. It was late into the evening.

THE COURT: All right. Well, maybe you can try and get confirmation. I think the odds of the deficiencies being corrected between late last night and early this morning are slim, but it would obviously be better to get a realtime confirmation.

Ms. Cabraser, let me turn to you on the numbers issues. I don't know if you have an answer to the 166 versus 146 question?

MS. CABRASER: I'm not sure, your Honor, where the 146 comes from. We are now at 164, the number of persons, without opt-outs for 195 class vehicles. And, as Ms. Bloom was explaining, we were at, I think, 166.

In seeking approval, I think we earlier stated — and

it may have been a typo — 146 persons with 163 subject vehicles, and we are now at 164. So the point being, your Honor, that through a series of communications to and from J&D and Outreach, every effort was made to make sure that persons who were actually in the class with respect to their specific vehicle who wished to opt out were able to do so if they supplied the supporting documentation even after the opt-out deadline.

MS. BLOOM: Your Honor?

THE COURT: Okay, yes.

MS. BLOOM: It's occurring to me — and I can --

THE COURT: Ms. Bloom?

MS. BLOOM: Yes.

THE COURT: Ms. Bloom, just a reminder to say your name first. I know your voices well by now, but the court reporter may not. So just a reminder to say your name.

MS. BLOOM: Sorry. It's Ms. Bloom.

It's occurring to me that what likely occurred with the 166 and how it dropped down to 164 is exactly what I just explained. So, in other words, we hadn't realized in our opening brief that when we were counting 166 people, that those are some people who had multiple requests that fell into categories, such as one having a valid vehicle and the other vehicle not being valid. So I'm going to think that when we look into this, that 166 would be the same as the 164.

THE COURT: All right. That's what I just concluded.

Ms. Cabraser said she didn't know where the 146 number came from. That's the number that you proposed for the number of opt-outs that should be accepted, the 62 people for 68 vehicles, conforming to the requirements of the order, and 84 for 95. 62 and 84 is 146. If you add 25, the invalid opt-outs to that, it comes to 171, which exceeds the total, but I assume that's because there's some double-counting because of multiple vehicles; is that correct, Ms. Bloom?

MS. BLOOM: Yes.

MS. CABRASER: Your Honor, Ms. Cabraser here.

Yes, that is correct. We are actually seeking approval as valid of 146 persons with 163 subject vehicles.

THE COURT: All right.

And my understanding is that the lists that you had previously submitted in connection with your proposed final judgment, that those are correct, it was just the numbers needed to be corrected; is that correct, Ms. Cabraser?

MS. CABRASER: Yes, that's right, your Honor. The numbers that are in the proposed order as submitted by Ms. Bloom late last evening now reflect the current and correct numbers.

THE COURT: All right. Thank you.

With that, let me basically -- I have received a lot of briefs, suffice it to say, and I also, having presided over

this litigation for six and a half years, know it pretty intimately, so I'm not sure there's anything else that I need to hear from you, but let me -- six and a half years later, this is a significant moment, so let me give each party an opportunity to be heard, and then we can go from there. And I will start with plaintiffs, and, again, if there's anything to be updated from the most recent filings, please let me know, but I'll assume that with the updates that Ms. Bloom and Ms. Cabraser just gave me, that everything is now complete.

So, starting with plaintiffs, I don't know, Mr. Berman, Ms. Cabraser, which --

MR. BERMAN: Yes, your Honor. Steve Berman.

I'm going to speak to the fairness of the settlement, and Ms. Cabraser is going to speak to fees and the Goodwin objection. And I don't know if you want to do everything related to the fairness first and then turn to fees. That's up to the Court, but I'll address the fairness.

Your Honor just indicated that you have presided for six years, and you've done a lot of reading, and you're very familiar with this case, so I'm not going to do the traditional go through the *Grinnell* factors and why we meet all those factors here. We did that on the preliminary approval, and nothing has really changed.

The only thing that's changed, in my view, and I will share that with the Court, is we sent out over 28, 29 million

notices, and the reaction has been really quite outstanding. We have an incredibly low opt-out rate, and we have no real objection to the settlement. We have a couple of objectors, but they're not objecting to the fairness of the settlement, they're really objecting to their unique circumstances. One is a tragic personal injury case, and that's really not the subject of the economic loss case.

So, in light of that -- and I can say in this day and age, and I don't know what your Honor's experience is, but there are quite a few what we call serial objectors, and those are law firms that look for deficiencies in settlements and file objections, and we go back and forth to appellate courts often, and in this case, there are no serial objectors, and it's not hard to find a client here, given the large size of the class.

So I think that speaks volumes to how carefully documented and processed the settlement was. Having said that, I'm available to answer any questions that you have, but I don't want to repeat what's already in our briefs.

THE COURT: Oh, excuse me, I forgot to take my phone off mute.

Let me repeat what I just said to myself, which is that is sufficient, and I agree that the absence of any substantial objection is definitely noteworthy in a settlement of this magnitude, and then I asked Ms. Cabraser to address the

fee application, since I don't see any reason to separate the two.

So, go ahead, Ms. Cabraser.

MS. CABRASER: Thank you very much, your Honor.

As your Honor is aware from the interim time and cost report that you've received in camera on previous occasions, and as you've obviously observed over the past six years -- over six years, this has been an intensively litigated case. It has presented difficult procedural and substantive questions, it involved a very large class, and the time that has necessarily been spent on this case to date reflects that.

We are requesting an aggregate Rule 23(h) award of 34.5 million, of which fees would comprise approximately $24,585,000, and the expenses, the out-of-pocket costs, unreimbursed to date, comprise approximately $9,915,000. That is against a lodestar of contemporaneously monthly reported time, over $78 million, reported in under this Court's previous orders and includes time submitted by the coleads, the current executive committee designated bankruptcy counsel, and liaison counsel.

I think our fees and costs application details the methodology we used in reporting that lodestar as part of the lodestar cross-check that's called for under the jurisprudence of this circuit to make sure that the award requested did not constitute a windfall and that it's reasonable and proportional

not only to the size of the settlement, but to the intensity of the litigation.

Noteworthy here is that this fee request is not being sought to be deducted from the class settlement fund. That's not the structure of the settlement. Instead, the parties here utilized what has become a best practice, where it's possible to do this, which is that they negotiated the class settlement under the auspices of the court-appointed mediator, Layn Phillips, and reached that agreement after many, many mediation sessions before turning to negotiations, separate negotiations, of the class fees and costs, and that is reflected in the modest percentage when you compare the class fund of over $121 million and the fee request. If that math is done, the fees and the percent of the net constructive common fund is equivalent to 16.8 percent. That is below the range of comparative fees in cases that compare in terms of duration and result to this one, and, as a result, it appears the class recognizes that. The most common objection to class action settlements these days are objections by class members to attorney's fees. No class member has made any objection to the attorney's fees sought by class counsel here. As a result of the amount of time necessarily expended and expended on a contingent basis in this case, if your Honor awards the fee as requested, that will reflect not a positive multiplier, as is frequently the case, but a negative multiplier of .31, which

means that, on average, for compensable time, those who contributed to the results of the class would be receiving less than a third of their normal hourly fees.

As your Honor is aware, we tried throughout this case to prosecute it both vigorously and intensively, but cost effectively, and I think that's reflected in the blended average hourly rate that we reported into the Court on all of this time, and, again, that rate will go down because of the negative multiplier effect.

The intensity of the litigation is also demonstrated by the level of costs that were necessarily incurred by those who worked for the economic loss class throughout the case, and we're requesting that reimbursement in the amount of approximately $9.9 million.

We will turn to the allocation of the aggregate fee award, if and after this Court awards it, by going through the time records, making allocation recommendations to the counsel involved, and that's the procedure that was utilized by class counsel in the Toyota sudden acceleration case. It resulted in an agreed allocation that was thereafter approved by the Court, and we would undertake to do the same here based on the very thorough contemporaneous time and cost records that we have.

THE COURT: All right. Thank you.

Go ahead.

MS. CABRASER: One thing, your Honor — and I should

have said this at the outset — among the factors that this Court looks at in awarding fees, the three-part test, the *Goldberger* factors, which start with looking at the percentage of the fund, that test also looks at the public interest. And as your Honor knows, safety was a concern here of the parties throughout, and so one of the things that we're very encouraged by with respect to the very enthusiastic reception of the settlement by the class is that we are already close to 520,000 claims, although the claims period doesn't close until March 18th of 2021.

With respect to the vehicles involved in these claims that have been presented for recall repairs to correct the alleged safety defects, over 32,000 vehicles have already gotten those repairs.

So this settlement is working both economically and with respect to the public policy of vehicle safety.

THE COURT: Terrific. Thank you.

New GM. Mr. Godfrey or someone else?

MR. GODFREY: Yes, your Honor. This is Rick Godfrey. Good morning, your Honor.

As the Court knows, this MDL, when it was first formed, was one of the largest MDLs in many years. We had over 4,000 personal injury and wrongful death claimants, we had over a hundred class actions that eventually were consolidated involving multiple recalls. If the Court approves the proposed

economic clause class settlement today, involving almost over 30 million individual class members and over 15.5 million vehicles, this MDL will be down to ten remaining individual personal injury/wrongful death claimants in total.

In addition, the settlement wraps up an even longer-running piece of litigation in the bankruptcy court involving the GUC Trust, old GM, et cetera, and, thus, this settlement, proposed settlement, that the parties have tendered to the Court, as the Court noted at the start of this hearing, is a significant event in the life of this litigation. We are not going to repeat, and I am not going to go into, unless the Court has questions, the *Grinnell* factors or the factors under Rule 23(e). We have briefed those extensively in our brief, as have the plaintiffs, and I think have demonstrated on the record, the extensive record, before the Court that the standards of *Grinnell* and Rule 23(e) are satisfied.

Many years ago, in a 1987 case, Judge Posner, writing for the Second Circuit, in a case called *Mars Steel*, overruled merits objections to a class settlement, and in so doing, after finding that the settlement was fair, reasonable, and adequate, in a classically descriptor phrase of Judge Posner, he observed that the proof is in the pudding and, indeed, in the eating. And that's the case here. We have virtually no opt-outs, given the size of the class, very, very few. We have five objections, not on the merits. We have no state regulator

objection. We have no Attorney General objection from the Department of Justice. We have no inquiries from governmental regulators about the settlement. And as the Court well knows, for many years in the litigation, the Department of Justice, the National Association of Attorney Generals, the various state attorney generals, Orange County DA, were very actively involved in related litigation over the issues of this case. No one is objecting, and that is the proof of the pudding, as Judge Posner once so aptly put it.

In addition, we have — and your Honor raised this issue, and Ms. Cabraser just pointed out the data — in the preliminary hearing that we had last April, your Honor, from pages 46 to 49 of the transcript, asked about the public safety benefits. Ms. Cabraser is entirely correct that already we've seen people satisfy the precondition of getting the repairs done in order to get the settlement benefits. That is something that the plaintiffs' counsel are interested in, that is something that General Motors, New GM, is interested in from a public safety perspective, that for the vehicles that still have not been repaired, get them repaired, and there's been progress made on that front already as a result of the settlement's preliminary approval.

Unless the Court has any further questions, I have nothing more to add to what's in our brief other than to thank the Court for reading the voluminous papers here and

considering the parties' proposed settlement. But if approved, as I say, the MDL will be down to its final ten personal injury/wrongful death cases, which is a remarkable achievement by all involved over the last six years.

THE COURT: Thank you very much, Mr. Godfrey.

Let me check with Ms. Going for the GUC Trust, if you have anything you wish to add?

MS. GOING: Thank you, your Honor. Kristin Going, on behalf of the GUC Trust.

Your Honor, we join with New GM's comments and just note that the resolution of this litigation will resolve all the late claims motions that are currently pending in the bankruptcy by virtue of the withdrawal of the reference order that was entered back in April.

With that, we have no further statements. Thank you.

THE COURT: All right. Thank you.

Mr. Zensky, do you wish to say anything?

MR. ZENSKY: David Zensky, Akin Gump Strauss Hauer & Feld, your Honor.

I have nothing to add and only to thank the Court and Judge Glenn for the time and attention that you have both given to this matter and the potential resolution. Thank you.

THE COURT: All right. Thank you.

And, Mr. Weintraub, I'll give you an opportunity to be heard on your limited objection and your fee motion.

Mr. Weintraub?

MR. WEINTRAUB: I'm sorry, your Honor. I did the same thing you did, I started speaking while I was still on mute.

Good morning, your Honor. William Weintraub, of Goodwin Procter, for Goodwin Procter.

Let me begin by saying, your Honor, that Goodwin is not here to be a spoiler, and believes that this settlement is a good thing, and is happy to see six and a half years of litigation almost wrapped up.

I'm also pleased that Mr. Berman this morning said that there were no objections by serial objectors. Some of the papers improperly suggested that Goodwin is acting as a spoiler, and a serial objector, and acting in bad faith, and that's really not the case, your Honor.

The issue raised by Goodwin's limited objection is simple and straightforward. The settlement agreement and the two proposed orders improperly, in our view, seek to eliminate Goodwin's right to seek payment from the fund created by the proposed settlement. Goodwin that its independent right belongs to Goodwin, it's not a claim that's asserted by any class member, and it's not a claim that's subject to any class action complaint. There have been suggestions that Goodwin does not have standing at this point to raise this objection. We believe Goodwin's standing is self-evident. The moving parties have privately agreed to limit their fee claims of

roughly $80 million to a fee fund of $24-1/2 million. This is done in the settlement agreement, which is a contract.

Goodwin is not a party to the settlement agreement. Goodwin did not agree to limit its claims in this manner. Goodwin served as designated bankruptcy counsel and provided value and beneficial services in the bankruptcy court that we believe benefited all plaintiffs. But the settling parties have gone a step further because the moving parties have asked this Court for a bar order that bars Goodwin from seeking payment from the common fund of 121 million that's created from the payments by the settling parties. It's the imminent imposition of this bar order that has compelled Goodwin to file its limited objection.

Goodwin is in a unique position in this case, and perhaps some background is in order, your Honor.

As the Court is aware, in these MDL proceedings, there was a lot of interaction between this Court and the bankruptcy court with jurisdiction over all GM's bankruptcy case. This was because New GM took the position that the bankruptcy court's 2009 sale order barred litigation against New GM on successful liability theories, independent claim theories, and other grounds. New GM, as the Court, I think, knows well, filed several motions to enforce the sale order in the bankruptcy court, and the bankruptcy court established certain threshold legal issues that would inform whether the MDL

litigation and other lawsuits were barred by the bankruptcy sale order.

The three coleads in this case needed sophisticated bankruptcy advice on these important threshold issues and did not have the expertise within their own law firms. In fact, this Court's Order Number 8 expressly recognized the importance of bankruptcy law expertise to the MDL proceedings. Goodwin was retained by all three coleads to be designated bankruptcy counsel with respect to the proceedings in the bankruptcy court.

Goodwin was to primarily represent the interests of personal injury and wrongful death claimants, and Brown Rudnick, who is on the phone, was to represent the interests of persons that asserted economic losses, but not physical injury. The decision to retain two law firms was a strategic decision made by all three coleads.

The two firms did not work at cross-purposes, the two firms being Brown Rudnick and Goodwin. The firms cooperated and collaborated throughout the proceedings. The two firms coordinated their activities. This cooperation included exchanging drafts and often editing each other's work on issues of common importance to both personal injury claimants and economic loss claimants. The two firms reinforced each other, often in opposition to General Motors, the GUC Trust, and the unitholders, who were coordinated against all of the plaintiffs

on the bankruptcy court's threshold issues.

When Goodwin was first approached to act as designated bankruptcy counsel, Goodwin was understandably concerned about payment. Goodwin's primary concerns were, first of all, compliance with this Court's orders and procedures, which meant making it absolutely clear that Goodwin was a participating counsel within the nomenclature of this Court's orders and that Goodwin prepared and submitted contemporaneously recorded time records of the work that all three coleads asked Goodwin to perform. And Goodwin, second of all, was concerned about identifying source of payment.

These concerns were addressed in a written engagement letter that we filed with the Court as an exhibit to my declaration. The engagement letter was signed on October 2 of 2014 and was based on the then existing record in this case, specifically Order Nos. 8, 13, and 15, because order 42 did not yet exist.

The engagement letter made it expressly clear Goodwin was a participating counsel. The engagement letter also reflected Goodwin's concerns about payment. Goodwin's primary concern was that it wanted to be paid for the work it was commissioned to do regardless of whether the success, which was far from clear at the beginning, was on the personal injury side or on the economic loss side.

While Goodwin was prepared to live with no payment if

no one was successful, it wanted to be paid if someone was successful. And this was clearly reflected in our engagement letter and, in particular, paragraph 4, which I won't read, but which is part of the record. The engagement letter makes it clear that even if there were no recoveries on the personal injury side, if there was a fund created anywhere, which, perforce, means the economic loss class action, that Goodwin would be entitled to be paid from that for common benefit work.

The Goodwin letter uses the lexicon of common fund class action cases and makes it clear, as I said, that Goodwin could be paid from any common fund. All three coleads signed the letter, including Ms. Cabraser and Mr. Berman. Noticeably, your Honor, and notably, the existing orders 8, 13, and 15 only spoke of a common fund and did not, at the time that Goodwin signed its letter and the three coleads signed this letter, have a separate regime for the class actions, and Goodwin relied on the engagement letter in accepting the engagement.

Well after the time that the engagement letter was signed, the class action lawyers obtained Order No. 42 that, at least on its face, tries to change the landscape on payment of counsel. Under Order 42, personal injury cases are taxed and the class action is not, there would be a separate arrangement made through Rule 23(h) for class actions, but the important point, your Honor, is neither Rule 23, nor Order 42 contains the further delineation that only some of the future funds

would be accessible for payment of fees.

Goodwin was unaware of Order 42 until more than a year after it was entered, interestingly, not until after Goodwin and others were successful in the Second Circuit on the due process and other issues, and it was in the midst of Goodwin's drafting the opposition to General Motors' petition for cert that Order 42 was first, more or less, thrown into its face.

At that point, Goodwin was not prepared to keep working with, in its view, the class action attorneys reneging on Goodwin's engagement letter, so Mr. Hilliard began paying Goodwin from February 2017 forward. So, to be clear, your Honor, Goodwin only seeks payment for its work from October 2014 through January 2017 for the work it did as designated bankruptcy counsel, which is roughly 28 months of work, resulting in a fee of $1.5 million.

Goodwin is not looking to jump the line, as has been incorrectly argued; Goodwin has waited for years for these fees. The issue today is not timing of payment, it is source of payment, and, as I said earlier, your Honor, the effectively the bar order would bar Goodwin from even asking this Court for fees from the $121 million. We have no doubt that the Court could review Goodwin's fees and deny them as not beneficial — that's within the discretion of the Court — but what the bar order does is prevents Goodwin from even asking this Court to look at its fees, at least with respect to the $121 million.

THE COURT: Okay. Mr. Weintraub, let me ask you a couple of questions.

MR. WEINTRAUB: Sure.

THE COURT: One is you said that you're unique, but I guess I don't quite understand how you're different than any other participating counsel. There are a variety of lawyers and law firms that I know full well contributed a great value to the litigation of the class action and what ultimately resulted in this settlement, and in that sense, I don't know why you're any different, and why you should be treated differently, and why you should jump the line, so to speak. And if your answer is because of the engagement letter with lead counsel that promised you something beyond a portion of the allocation isn't the answer, that you may well have a valid claim against lead counsel, but that's a matter between you and not a matter that relates to the settlement or the allocation process.

MR. WEINTRAUB: Well, I think the answer to your question, your Honor, is because we served as designated bankruptcy counsel, we are neither fish nor fowl, so to speak. We were not class counsel, we were not personal injury counsel, we were not active in the district court, as you know, and we did not have separate clients for the work that we've done here. So, unlike the other lawyers, who have clients to look to for payment, Goodwin has no one to look to for payment.

Goodwin will either get paid partly out of the 34-1/2 million -- or 24-1/2 million, which is clearly insufficient to pay counsel in full — I understand that. Goodwin might be paid from the personal injury cases, but has not been able to really figure out how and when that will come about, what the size of the claims are against those funds, and when those funds will be disbursed. And it believes that it has a right, as nonclass counsel providing a common benefit under the common fund cases, to claim against the $121 million. That's an independent right that we don't believe the other parties can decide Goodwin doesn't get to make the claim. I'm not saying that the claim has to be allowed, but the effect of the bar order is Goodwin doesn't even get to make the claim.

So we're unique in that we did targeted work in the bankruptcy court beneficial to everyone, and our nose is not under the tent, we've been excluded from the tent. And that's why we're in an uncomfortable position, your Honor.

THE COURT: All right.

And then my last question is: You sort of intimated in your recap that, in essence, you were content with Orders 8 and 13 and your being deemed participating counsel and then feel that your interests were somehow prejudiced by Order 42, but by your own admission, you didn't know about it for a year or more thereafter. Why isn't that on you as participating counsel? To the extent that you had any rights, or

entitlements, or interests by virtue of being participating counsel, was it not incumbent on you to monitor this litigation, and to the extent that an order was entered that you thought affected your interests or rights, then you could have asked to be heard? Why should I hear that complaint now?

MR. WEINTRAUB: Well, I've got two answers to that, your Honor.

I think you're correct, that's ultimately on me. I would have thought that the people that I was working with for four and a half years would have mentioned it to me. I would have thought that since I have an engagement letter, someone would have mentioned it to me. They didn't. It's on me for not watching the record to make sure that the people who hired me weren't going to change the rule of me. You're absolutely right with respect to that, your Honor.

But my other point, which I made earlier, is there's nothing in Order 42 that precludes Goodwin from making a common benefit claim against the common fund. What precludes or purports to preclude someone from making a common benefit claim to the common fund is the settlement agreement, which we're not a party to, which says that all of the claims are going to be channeled to the 34 -- the 24-1/2 million, and all the people that signed the settlement agreement have agreed to that. That's fine, that's great. We weren't consulted; we didn't sign the settlement agreement. So my ultimate point, your

Honor, is there's nothing in 42 that precludes us, it's the settlement agreement and the request for the bar order, and we think the bar order exceeds the ability of this Court to basically sever these claims and destroy these claims before they're ever presented to the Court.

THE COURT: All right. Thank you.

All right. Thank you --

MR. WEINTRAUB: Can I just make one more point, your Honor --

THE COURT: Briefly.

MR. WEINTRAUB: -- if I might?

Counsel has said that this Court cannot blue-pencil the settlement agreement and cannot force the parties to revise it. I don't agree with that. I think that this Court can condition approval on providing that Goodwin is not subject to the bar order. But I also think, under Second Circuit law, the *Manville* 5 case, 759 F.3d 206, what this Court can do is not require any changes to the settlement agreement, not require any changes to the fee order or the proposed judgment, but simply rule that Goodwin is not bound. In the *Manville* case, what the Second Circuit held, when Travelers tried to avoid making a settlement payment that it said was conditioned upon the entry of a bar order that protected it from independent claims, the court said the condition has been met because the bankruptcy court and the district court entered the order as

required under the settlement agreement with the language required under the settlement agreement. The fact that there is a party who is not bound by the scope of the order does not vitiate the settlement.

So, your Honor, you could rule that Goodwin does have the ability to claim against the $121 million. It doesn't require any violence to the settlement agreement, and it doesn't require anyone to appeal from the order approving the settlement agreement.

THE COURT: All right. Thank you, Mr. Weintraub.

I thank all counsel, both for the very helpful papers that you filed in advance of today and for your comments today. And, more broadly, I thank counsel, as I will repeat in short order, for everything over the last six and a half years. That, obviously, is directed particularly at counsel for New GM and lead counsel, who have certainly devoted a lot of time and energy to this litigation before me and appeared in front of me quite a bit.

I am prepared to --

MR. HILLIARD: Your Honor, this is Bob Hilliard.

I would just like, for the record, to say that the lead counsel primarily responsible for personal injury supports, as well, the request to approve this settlement.

And I was reminded, when listening to Rick Godfrey at the very first hearing, he was cautious that this might be a

ten-year process, so we cut Rick's prediction in half, but I just wanted to, for the record, let the Court know that through my appointment, I also support it.

THE COURT: Thank you. I appreciate that, Mr. Hilliard. And sorry to not call on you earlier. I was going to turn to you at the end of this to discuss personal injury/wrongful death stuff, but I appreciate hearing from you.

My recollection is that Mr. Godfrey said it could be ten to twenty years, or at least that there are MDLs that last that long, so, in that regard, I think you may have undercounted the percentage decrease.

In any event, I am prepared to rule on both of the pending motions, and I will do so now.

On May 1st of this year, after almost six years of hard-fought litigation and countless pages of briefing, opinions, and other filings, I preliminarily approved a settlement, as amended, and preliminarily certified a class and five subclasses. See Docket Nos. 7877, 7888-1 and 7892. In the same order that is 7877, I approved a proposed allocation plan and approved a plan of notice.

Following my preliminary approval, the settlement administrator delivered more than 27 million notice forms to class members by mail or email; that is 93.5 percent of the class. To date, only 146 class members have submitted arguably valid opt-outs and only three valid objections have been filed,

two by class members and one, a limited objection by Goodwin Procter, Mr. Weintraub being here today, a law firm that lead counsel had hired in connection with the related bankruptcy proceedings. Notably, no one has objected to the proposed subclasses or to the plan of allocation. To date, almost 520,000 class members have filed claims, with more likely to come between now and the March 2021 deadline. That is at paragraph 8 to 12 of the Keough declaration, appearing at ECF No. 8296.

On September 28th and November 9th of this year, lead plaintiffs and class counsel or lead counsel filed a motion for final approval of the class action settlement and for an award of attorney's fees and expenses. That's at Docket Nos. 8159 and 8240. New GM and the GUC Trust have filed their own briefs in support of approval. Docket Nos. 8245 and 8250. Only one opposition to the motion for approval, if it can be called that, was filed by Goodwin Procter, which also filed its own motion for fees raising substantially the same arguments that Mr. Weintraub has made today and in the limited objection. That's at ECF Nos. 8156 and 8271. In addition, two class members, Lawrence and Celestine Elliott, filed a response to the fee motion and their own request for incentive awards. That's at Docket No. 8201.

Upon review of the parties' motion papers, lead plaintiffs' motion for final approval of the class action

settlement is granted. As an initial matter, I find that the notice — which included individual mailings or emails, as I said, to over 27 million class members, a reach exceeding 93 percent, a nationwide press release picked up by hundreds of outlets, publication in People Magazine, and a website — satisfies the requirements of Rule 23(e)(1) and the due process clause.

I also find that the proposed settlement class and proposed settlement subclasses meet all of the requirements of Rule 23(a) and satisfy the requirements of Rule 23(b)(3), substantially for the reasons stated in plaintiffs' memorandum of law in support of their motion for preliminary approval. That's at Docket No. 7817. As to one issue I had flagged in my preliminary approval order, the appropriateness and adequacy of the subclasses, I am persuaded that the proposed subclasses are appropriate and adequate and serve to alleviate the one salient potential conflict within the class — namely, the nature of the defect — substantially for the reasons stated by plaintiffs at pages 23 to 27 of their brief. At 8241. As I noted, no one has objected to the proposed subclassing.

And, second, I find that the settlement itself is fair, reasonable, and adequate, in light of the factors set forth in Rule 23(e)(2) and in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974). These factors include "the complexity of the litigation, comparison of the proposed

settlement with the likely result of litigation, experience of class counsel, scope of discovery preceding settlement, and the ability of the defendant to satisfy a greater judgment." *In re Drexel Burnham Lambert Group*, 960 F.2d 285, 292 (2d Cir. 1992)(citing *Grinnell Corp.*, 495 F.2d at 463). Here, the balance of these factors strongly favors approval. For instance, I hardly need to comment on the complexity of the litigation — I've done so multiple times in writing over the years — but it has been going on for over six years. The conduct at issue dates back nearly 20 years. It has involved thousands of pages of briefing on multiple rounds of substantive and substantial motion practice under the law of every jurisdiction in the United States, resulting in over 8,000 docket entries, and the scope of discovery has been nothing short of staggering.

The settlement figure, $155.6 million, if you include the separate request for fees and costs, compares favorably to the likely result of the litigation. Granted, that figure is significantly lower than the damages that plaintiffs sought in the first instance, but it is more reasonable in relation to the value of the case following several of my rulings, most notably on New GM's motion for summary judgment.

Moreover, the settlement is made even more reasonable in view of the considerable risks and obstacles plaintiffs would face if they were to proceed with litigation. If the

Second Circuit were to affirm my summary judgment ruling, class certification might well be impossible, and plaintiffs might well be able to recover nothing, and even if the Second Circuit were to reverse, plaintiffs would face a gantlet of other obstacles to recovery from additional arguments for summary judgment, to Daubert motions, to class certification motions, and that does not even include the bankruptcy litigation, where class members would need to prevail on several threshold issues and obtain permission to file late claims, before being able to even press their claims on the merits. Where, as here, plaintiffs face material, if not insurmountable barriers to any recovery at all, "There is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery." That is *Grinnell*, 495 F.2d at 455 n.2.

The experience of class counsel scarcely needs comment. Mr. Berman and Ms. Cabraser are among the most experienced counsel in the country litigating these sorts of cases, complex consumer protection class actions, and that experience has shown throughout this litigation. They are supported, in turn, by an extraordinary supporting cast — Mr. Hilliard, with respect to the personal injury/wrongful death cases, as well as their respective firms, and other plaintiffs' counsel, including counsel on the executive committee. And as I will emphasize later, I could not have

been more impressed with their performance and representation throughout the litigation.

Suffice it to say, the scope of discovery preceding settlement, which involved more than 23 million pages of documents and over 750 depositions, is enough for plaintiffs to have had "an adequate appreciation of the merits of the case before negotiating." *Morris v. Affinity Health Plan, Inc.*, 859 F.Supp.2d 611, 620 (S.D.N.Y. 2012).

And the reaction of the class overwhelmingly supports approval. As I noted, only 146 class members requested exclusion, including technically noncompliance requests. That is fewer than .0006 percent of class members and a ratio, relative to those who filed claims, of 1:3093, or thereabouts. The claims rate, meanwhile, is over 3.28 percent, which falls within the typical range for consumer protection class actions. See New GM's brief at page 12. Moreover, there were only two valid objections and one limited objection by Goodwin Procter. And I agree with the comments of Mr. Berman and Mr. Godfrey, I believe, that those numbers, given the nature of this litigation, given the size of the class and the nature of the settlement, are truly noteworthy and impressive.

Finally, two notes: One, the settlement resulted from arm's length and hard-fought negotiations between highly experienced counsel under the supervision of former Judge Layn Phillips, one of the country's leading mediators. That

provides additional confirmation of the reasonableness of the settlement; and, second, as Mr. Godfrey and Ms. Cabraser noted, the settlement provides for significant public safety interests, as well, by ensuring that members of the class obtain the repairs to their cars that should be done.

In the final analysis, I think only one *Grinnell* factor arguably or ultimately weighs against approval, and that is the ability of New GM and the GUC Trust to withstand a greater judgment, as there is little doubt here that New GM could withstand a greater judgment, but in litigation of this nature, that factor does not weigh heavily in the balance and certainly doesn't outweigh the other factors that support approval.

Accordingly, I find that the settlement agreement is fair, reasonable, and adequate. In doing so, I overrule the objections of Richard Warren and Kisha Davis and her sisters — see ECF Nos. 8122 and 8216 — substantially for the reasons stated on page 20 of plaintiffs' memorandum of law and pages 16 to 18 of New GM's memorandum of law. I also overruled the limited objection of Goodwin Procter for reasons that I will explain in a memorandum opinion and order that I will file later today.

In brief, though, I find that Goodwin Procter, as a nonparty, does lack standing to object to the settlement, and that even if it had standing to object, its objections lack

merit and would be overruled.

Finally, I find that the allocation plan, based on the allocation decision by Judge Phillips, which followed a process in which counsel representing each subclass was given an opportunity to be heard, is fair and adequate. See *In Re Credit Default Swaps Antitrust Litigation*, 2016 WL 2731524, at *9 (S.D.N.Y. 2016). In particular, I'm persuaded that the division of the class into subclasses and using multipliers to account for the strengths and weaknesses of each subclass' claims is fair and adequate. See, for example, *In Re WorldCom, Inc. Securities Litigation*, 388 F.Supp.2d 319, 343 (S.D.N.Y. 2005) ("Settlement proceeds may be allocated according to the strengths and weaknesses of the various claims possessed by class members.").

That leaves the two fee motions, one by Goodwin Procter and one by class counsel. Goodwin Procter's motion is denied, again for reasons that I will explain in a memorandum opinion and order to be filed later today. In brief, the settlement includes an allocation process to divvy up the pot of attorney's fees among participating counsel, and I'm persuaded that Goodwin Procter has a basis for different treatment than other participating counsel — that is, to award it a fee outside of that process. To the extent that Goodwin Procter believes that it has a valid claim based on the engagement letter, that is a different matter than those before

me.

As for class counsel's motion, the Second Circuit has articulated six factors that courts must consider when determining whether to award attorney's fees where the settlement contains a common fund: "(1) The time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations." *In re World Trade Center Disaster Site Litigation*, 754 F.3d 114, 126 (2d Cir. 2014)(quoting *Goldberger v. Integrated Research, Inc.*, 209 F.3d 43, 50 (2d Cir. 2000)). In addition to considering those factors, commonly referred to as the *Goldberger* factors, a court may use one of two methods to calculate fees, the lodestar method or the percentage of the fund method. See, for example, *McDaniel v. County of Schenectady*, 595 F.3d 411, 417 (2d Cir. 2010). The trend in this circuit favors the percentage method upon which plaintiffs rely here and using the lodestar to conduct a cross-check. *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005).

Applying the *Goldberger* factors here, I find that the proposed fee award is entirely reasonable. For all intents and purposes, I have already commented on most of the *Goldberger* factors and won't repeat that here, but to what I've said, I will add three brief notes. First, I do think that the

procedure followed supports approval. That is, as Ms. Cabraser noted, that the fees were negotiated separately and only after agreement had been reached on the settlement agreement itself. One could argue that that is a bit of a fiction in the sense that it is one pot, and surely the parties knew that fees would be allocated and, therefore, sort of went into it with both in mind. That being said, given that the fees are being paid by New GM, it ensured that that process, there was an actual adversary who was arguing, I suppose, in opposition to the request for fees, and, in that sense, I think it is a noteworthy and positive procedure.

Second, the proposed fee award amounts to 16.8 percent of the net constructive common fund of 145 plus million after deducting expenses of almost 10 million, or 15.8 percent, of the gross constructive common fund with the expenses included. See plaintiffs' brief 8, at Docket No. 8160, at page 16. That is well within the range of fees awarded in this circuit.

Third, the reasonableness of the fee award is confirmed by the lodestar cross-check, which, as Ms. Cabraser notes, results in a multiplier of negative .31. That is well below the mean in this circuit, and confirms that the "otherwise reasonable percentage fee" will result in a windfall -- I'm sorry, will not result in a windfall. *In re Colgate-Palmolive Company ERISA Litigation*, 36 F.Supp.3d 344, 353 (S.D.N.Y. 2014).

Accordingly, I exercise my "very broad discretion," as *Goldberger*, 209 F.3d at 57, to conclude that the proposed fee award of $24,585,272.06 is appropriate. I further find that class counsel are entitled to 9,914,727.94 in expenses that have not been previously reimbursed from the common benefit fund substantial for the reasons explained by class counsel in their motion.

Finally, class counsel seeks approval to pay service awards to the class representatives. Plaintiff incentive awards are "common in class action cases and are important to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by plaintiffs." *Hernandez v. Immortal Rise, Inc.*, 306 F.R.D. 91, 101 (E.D.N.Y 2015). Paragraphs 66 to 72 of Mr. Berman's declaration that appears at Docket No. 8161 avers that lead plaintiffs have done just that, and, accordingly, I conclude that the modest proposed awards — $2,000 for each plaintiff who was deposed and $1,000 for the others — is reasonable and justified under the circumstances.

By contrast, I decline to grant service awards to Lawrence and Celestine Elliott, as they request at ECF No. 8201. The Elliotts cite no authority supporting their request for relief, and the Court, that is I, have found none, and, indeed, they provide no good reason to treat them

differently from other members of the class who are not named plaintiffs, some of whom also involved themselves in the litigation.

That resolves the pending motions. I have reviewed the proposed order and proposed judgment. I've made relatively limited changes to them or may make some limited changes to them, but will sign them and file them later today.

And, as noted, I will also be filing a memorandum and opinion addressing Goodwin Procter's submissions.

So that brings us to a couple of housekeeping issues, both in connection with that and otherwise.

First, Ms. Cabraser, I'll address this question to you: Should we set a process deadline timing for the fee allocation process; that is, a deadline for lead counsel's proposal and a deadline or process for objections to that proposal? Do you want to confer with other counsel and propose a schedule and structure? What are your thoughts on that?

MS. CABRASER: Thank you, your Honor. Elizabeth Cabraser.

We, with the Court's permission, will confer on that and come up with a more specific timeline, but it is something that, in light of the Court's grant of approval to the settlement and the fee application, we will turn to immediately, and I would expect that we would be able to work through the allocation process among counsel and present

something to the Court in the first quarter of 2021. But if we can have a bit of time to come up with a more specific timeline, we'd appreciate that.

THE COURT: All right. Why don't you -- would it be reasonable to get back to me with a proposal and, if appropriate, a proposed order by, let's say, January 7th, given the holidays?

MS. CABRASER: Yes, your Honor.

THE COURT: Okay, great. I'll look for that.

Second — and I suppose I'll address this to any counsel for New GM — at present, I get many reports from you guys, as you all know, namely, a monthly report of pending cases broken down into categories, phases, waves, orders, and so on, a report of related cases pending elsewhere, a report of whether any new economic loss claims have been filed, and a report on all complaints, coordination orders, protective orders, and the like filed elsewhere. In light of my rulings today and the progress and state of the personal injury/wrongful death docket — as Mr. Godfrey noted earlier, that is the only ten cases remaining — I don't think all of that is necessary going forward, and I would propose that I relieve you of those burdens going forward, and we figure out a more limited and streamlined update process, perhaps just with the relevant details of whatever the claims are that are still pending and maybe an update on the pending settlements, where

they stand, and how many have or haven't been finalized, and anything else that you think I ought to know in any given month or so, but it strikes me that it's not necessary to get into the level of detail and some of the things that you are currently reporting are now either moot or unnecessary.

Ms. Bloom, maybe I'll check with you first and see if you have any thoughts on that, and if you want to think about it and submit a proposal or proposed order with respect to whatever you think would be appropriate going forward in place of what we now have, I'd be open to that, too. Ms. Bloom?

MS. BLOOM: Your Honor, yes, Ms. Bloom.

We did give some thought to that, and we concur with your Honor that there is not a need anymore for four separate letters, one about Order No. 8, one about Order No. 15, one about Order 161, and Order No. 50.

We do -- if your Honor finds it helpful, we do think that perhaps the tracker of active cases would be something we'd continue to provide to your Honor, and then one additional letter at the end of each month, which would eliminate many of the different categories that we no longer need.

There are some categories that pertain to waves one, two, and three, which are no longer relevant. We only have, among those ten folks, wave four and the new wave pool. We would like to continue to advise your Honor about related cases. There are still a good number of those.

So what we might think to do is mockup, whether it be for the end of this month or next month, something that we think might be helpful, propose it over to Mr. Hilliard, see if he's in line, and maybe start getting you a new format here just as quickly as we can, rather than have another discussion about it.

THE COURT: All right. I think that probably would make sense, and I agree that the tracker, the details in the tracker, is probably the most helpful with respect to pending cases. Frankly, at this point, what wave it's in, what category it's in, those are less important than where each case stands, and what the next scheduled events are, and so forth.

Mr. Hilliard, any thoughts on this?

MR. HILLIARD: Your Honor, Bob Hilliard.

Not really, Judge. We continue to be in pretty constant communication with Ms. Bloom about the remaining cases, we continue to be available for any of the discrete pro se issues that may crop up from time to time, and when reached out to by any of the state court plaintiffs, I understand that those cases are also dwindling down and are close to being done as well.

Other than that, we just stand ready to wind this up completely.

THE COURT: All right.

So why don't we do what Ms. Bloom proposed, and if you

think it pays to have an order in place that supercedes the previous orders requiring reports, I'm certainly happy to consider it. If you want to submit something and then finalize it later, I'm happy to do that. Suffice it to say that I'm saying now that you are relieved from the current reporting obligations, and I think what you should do is along the lines of what you proposed, mock something up, submit it to Mr. Hilliard, see what he thinks, and then you can submit it to me, and if we want to finalize and put up what you would do going forward on the basis of that, then we can do that. Does that make sense?

MS. BLOOM: Super. Yes, your Honor.

MR. HILLIARD: Yes, your Honor.

THE COURT: All right. Great.

In terms of cases that count or should be closed, let me just make sure that I have this right. I would think that the MDL docket should remain open, given both that there are things to be done in connection with the class action settlement and also because there are a handful of remaining personal injury/wrongful death cases, and then more that are pending settlement, and that it should remain open both on my document and the JPML's end, but if anyone disagrees, you can let me know.

Am I correct that to the extent that any of them are open, the economic loss cases that are listed in Exhibit 1 to

the settlement agreement, that those can and should be closed by the Clerk of the Court, Ms. Bloom?

MS. BLOOM: Your Honor, Mr. Bloomer will address that.

THE COURT: Okay. Mr. Bloomer.

MR. BLOOMER: Yes, your Honor. Hi. Andrew Bloomer, on behalf of New GM.

The short answer, your Honor, and the good news, is that for all of the cases, economic loss cases, listed on Exhibit 1, by our count, the Court has already closed all but three of those cases through various orders, including Order 171. So all but three, under our assessment, have been closed already administratively. And in the ordinary course, as the Court has granted approval, those claims will be dismissed with prejudice.

The three cases that have not been closed are the -- and I can give your Honor the docket numbers, if that would be helpful — are the Elliott case, the Sesay case, and the Bledsoe case. And your Honor may recall that you had granted reinstatement of those cases some time ago --

THE COURT: Yes.

MR. BLOOMER: -- in, I believe it was, Order 39 and 50. The Court reconsidered and allowed those cases to be reinstated. And, your Honor, would it be helpful for me to give you the document number of those cases?

THE COURT: No. I have them.

So you're telling me that of the ones in the list attached to the settlement agreement, that all are already closed on the docket other than those three; is that right?

MR. BLOOMER: That's correct.

And as to those three, the majority of claims in those cases are claims that relate to the recalls covered by the settlement, so most of those three complaints are -- the claims in those complaints are covered by the settlement, and, therefore, would be, by operation of the Court's approval order, dismissed with prejudice. But there are some, I'll call it, stray cats-and-dogs claims that would arguably not be covered by the settlement, and what we would propose in terms of a procedure would be to give those plaintiffs some period of time, perhaps 30 days, to file, if they so choose, an amended complaint or amended complaints that would remove any claims and allegations that are covered under and released by the class settlement, and then if they -- I think, similar to the mechanism the Court has adopted before, if they don't file by the date provided, that we would -- New GM would be able to file a first notice of noncompliance, that would be followed up -- for dismissal without prejudice that would be followed up by a second notice that would convert to dismissal with prejudice, if they don't file by the second date, and if they do file, then what we would propose is that we have a chance and time to review whatever the amended complaint is, and

confer with plaintiffs' counsel on those cases, and propose, either jointly, or if there's a disagreement, next steps, but, basically, using a mechanism the Court has used before to address claims according to a procedure, so that we either get new complaints, or, if not, what exists now is ultimately dismissed, if the Court approves that. And we could submit a proposed order to that effect by a date certain, if the Court would like that.

THE COURT: Okay. I think that probably makes sense, and you can tell me what date you would propose to submit something.

Let me just confirm: I assume that although I should oversee that process, that, ultimately, any claims that are outside of the settlement should, presumably, be remanded and proceed elsewhere; is that correct? I don't know why they would proceed before me.

MR. BLOOMER: That may be the case, your Honor. I think, depending on the claims, there may be some issues relating to, say, successor liability, where the Court has ruled that the Court may be best positioned, compared to other courts, to decide, which is why, I think, in talking about it internally, what we thought made sense is to propose some time for us to be able to look at it, and talk with the other side, and make a proposal to the Court.

But remand may be an option, but there also may be

claims and legal issues that the Court is well versed in, given its rulings in the MDL, that it may make sense to address in the context of the MDL.

THE COURT: Okay.

So when would you like to submit something? And I think it would make sense, presumably, to run it by lead counsel, check and see if they have any thoughts at the moment, but when would you propose to submit something?

MR. BLOOMER: I think your Honor had previously mentioned, on the fee allocation process, a January 7th date. If that's acceptable to the Court, we could submit a proposed order by that date, having run it by lead counsel beforehand.

THE COURT: All right.

Mr. Berman, Ms. Cabraser, I don't know which of you would want to address this, but do you think that makes sense?

MR. BERMAN: Steve Berman, your Honor.

That makes sense.

THE COURT: All right.

So why don't I set that same deadline, January 7th, for a proposed order on that, and we'll follow the standard procedures and protocols; that is to say, if everybody's in agreement about the proposed order, submit it in PDF and Word format; if there are disagreements, you should submit a redline and competing letter briefs with respect to the disagreement. You certainly know that by now.

Are there any other things that we should address, loose ends? And maybe what I'll do is just go down by party, check with everybody and see, and then I'll wrap things up. I have, unfortunately, another proceeding awaiting me on a video, so I need to wrap things up sooner rather than later. But let me check first with lead counsel. I'll give each of the three of you a brief opportunity to be heard.

Mr. Berman?

MR. BERMAN: Nothing further, your Honor. Thank you.

THE COURT: Ms. Cabraser?

MS. CABRASER: Your Honor, nothing further, except to thank this Court, as other counsel have, and to thank you, your Honor, for keeping the court open, and operating, and moving forward during this very challenging year. We appreciate it, we miss being there in person, but the class has benefited from the Court's commitment to moving forward during the pandemic. Thank you.

THE COURT: Thank you, Ms. Cabraser.

Mr. Hilliard?

MR. HILLIARD: Thank you, Judge. I'd like to echo what Ms. Cabraser said about the Court's continued focus, participation, and direction over the last five and a half years. I think that this MDL is now going to go down into the books as being unique, having concluded, or close to concluded, during a pandemic. The symbiotic relationship between the

colead plaintiffs' counsel brought power both to the PI side and the DL side, and your appointment in that regard was impressive. I enjoyed my relationships with my coleads. And with the other side, I was impressed with the talent and the professionalism of the defense lawyers, as might be seen by one of my recent hires.

But I walk away from this grateful to the Court, most of all, for concluding what was an extremely complicated and difficult MDL, and I'm thankful for the relationships that have resulted.

THE COURT: Thank you, Mr. Hilliard.

Briefly, Ms. Going, anything to add?

MS. GOING: We thank the Court, your Honor, and we have nothing further to add.

THE COURT: All right.

Mr. Zensky?

MR. ZENSKY: Nothing further, your Honor. Thank you.

THE COURT: All right.

Mr. Weintraub?

MR. WEINTRAUB: Yes, your Honor.

First of all, thank you for hearing me today, and I echo what everyone else has said. This has been a hard-fought case, and I think we're all happy to see it wrapped up.

I just have one point of clarification, your Honor. Am I correct that your ruling today on Goodwin's limited

objection does not reach its entitlement to an allocation as participating counsel from the 34-1/2 million?

THE COURT: Correct. My ruling — and, again, I'll be filing an opinion addressing it in more detail — is that you are entitled to participate in that process, but that is the fee allocation process, and you are subject to it along with other participating counsel. So it's without prejudice to whatever rights you may have in connection with that process.

MR. WEINTRAUB: Thank you, your Honor.

THE COURT: All right.

Finally, I didn't mean to skip New GM. Mr. Godfrey?

MR. GODFREY: Well, thank you, your Honor, for your time in the last six plus years. I will say that it is too bad he did not live to see it, but Professor McGovern, who I think many people would agree was the dean of the MDLs, about a year or so ago before he died, said he thought this may have been the best run, perhaps the best run MDL he had ever seen both in terms of expediency and efficiency, but also in terms of its endgame resolution, and I think we share that view -- I think all counsel share that view.

I agree with Mr. Cabraser and Mr. Hilliard, although it is a bit of a sore subject that Mr. Hilliard did poach one of our young stars, Mr. Pixton, but that's a different topic for another time that he and I will continue to discuss, but we appreciate very much the Court's time, and our colleagues, who

were worthy adversaries, and we thank them for that.

THE COURT: All right. Thank you.

MS. BLOOM: Your Honor, Ms. Bloom, just with a minor housekeeping issue to get back to you on your questions for the record here.

I have been able to confirm with the claims administrator that, in fact, we have always had 164 persons who are opt-outs, so, indeed, our references in our opening briefs, both class counsel and New GM, were due to this issue of people having multiple different claims. And I also have confirmed with the claims administrator that the three did not submit any additional paperwork, so our Appendix B is accurate.

And just, as well, on behalf of myself and New GM, again, I thank your Honor for all of these years of work. This has been a real privilege and honor to participate with everyone, my colleagues, and to get to know better coleads and Mr. Hilliard. It's been a great experience. Thank you.

THE COURT: All right.

Mr. Bloomer, I feel like I should give you a chance to be heard, too, since you've devoted quite a bit of your life for the last six and a half years to this. So go ahead.

MR. BLOOMER: No, indeed. Your Honor, thank you, obviously, for the privilege of being able to appear before you, and thanks to my co-counsel as well as opposing counsel for a truly memorable experience with fine lawyering. I very

much appreciate it. So I just want to say thanks to everyone and to wish everyone happy holidays.

THE COURT: All right. Thank you.

Luckily, I get the final word. Unfortunately, I have to keep it brief since I'm, as I said, late to a video, and I know the court reporter is as well.

So, Andrew, you can regroup there when we finish here.

There's something anticlimactic about ending the last six and a half years with a telephone conference, but, as Ms. Cabraser noted, I'm pleased that we have been able to keep this litigation and, more broadly, the justice system moving forward despite the extraordinary circumstances of the last nine months, but, needless to say, I would have much preferred to be with you in person, to be able to look you all in the eyes after the last six and a half years, and say what I'm about to say. And I would invite each of you, and those who have spent the last six and a half years with me, to stop by when you're in New York, after this has fully wrapped up. I would obviously like to see you in person.

But let me just say thank you to you. We have been through a lot together over the last six and a half years, and not only the litigation that I have already summarized, but, more personally, deaths, births, marriages, bar admissions, all sorts of things, and now pandemic. I think you may overstate the praise — that's an occupational hazard in my job, people

tend to exaggerate praise — but to the extent that we have done a good job, that I have done a good job, I owe a lot of the credit, number one, to my law clerks and staff, who I think have provided extraordinary assistance throughout the litigation. Mr. Piaker is on the phone today, his predecessors are not, but I include them in that they really have done extraordinary things in helping me manage what has been an incredibly complicated and challenging litigation.

In addition, I would thank counsel. I think the public doesn't fully appreciate or understand the degree to which, when a judge handles litigation well, how much of that depends on counsel, but it truly does, particularly in litigation of this nature and complexity, which involves not just complicated legal issues, but call for excellent briefing that you have provided throughout, but incredibly challenging management issues. Having lead counsel, who knew what they were doing, and defense counsel, who knew what they were doing, you have helped me at every turn, and I appreciate it. As I've said, I think before, that you have picked your battles with one another, that you have managed to work well together and agree upon what could be agreed upon, that you've helped me in understanding what needed to be done at each stage of the litigation, and, again, to the extent that we have done a decent job in the last six and a half years, and I'd like to think we have, much of the credit belongs to you. So I thank

you for that.

That concludes what I want to say. As I said, I will enter the two orders later today, along with an opinion on the Goodwin Procter matter. I wish everybody very happy holidays, and please stay safe and well. It's a dangerous time out there, and I'd like to make sure you all stay healthy and stay well. I extend that to you and your families, and, again, when this is all over and done, and, obviously, we're not fully done with each other yet, given the various loose ends, when you're in New York, please do let me know and stop by.

So, with that, you have my sincere thanks, best wishes for happy holidays, and we are adjourned. Thank you very much.

COUNSEL: Thank you, your Honor.

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