UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:	.	Case No. 09-50026-mg
	.	Chapter 11
	.	
MOTORS LIQUIDATION COMPANY,	.	(Jointly administered)
Et al., f/k/a GENERAL	.	
MOTORS CORP., et al,	.	One Bowling Green
	.	New York, NY 10004
Debtors.	.	
	.	Wednesday, February 15, 2017
. . . . .	.	11:05 a.m.

TRANSCRIPT OF HEARING RE: OBJECTIONS TO ORDER TO SHOW CAUSE; HEARING RE: MOTION FOR AN ORDER GRANTING AUTHORITY TO FILE LATE CLASS PROOFS OF CLAIM, FILED BY EDWARD S. WEISFELNER ON BEHALF OF DESIGNATED COUNSEL FOR THE IGNITION SWITCH PLAINTIFFS & CERTAIN NON-IGNITION SWITCH PLAINTIFFS
(CC: DOC. NOS. 13806, 13837);
HEARING RE: OMNIBUS MOTION BY CERTAIN IGNITION SWITCH PRE-CLOSING ACCIDENT PLAINTIFFS FOR AUTHORITY TO FILE LATE PROOFS OF CLAIM FOR PERSONAL INJURIES AND WRONGFUL DEATHS, FILED BY WILLIAM P. WEINTRAUB ON BEHALF OF HILLIARD MUNOZ GONZALES LLP AND THOMAS J. HENRY INJURY ATTORNEY
(ECF NO. 13807, 13836)

BEFORE THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For General Motors LLC: King & Spalding
By: SCOTT DAVIDSON, ESQ.
ARTHUR STEINBERG, ESQ.
1185 Avenue of the Americas
New York, NY 10036-4003
(212) 556-2164

APPEARANCES CONTINUED.

Audio Operator: TL, ECR

Transcription Company: Access Transcripts, LLC
517 Dell Road
Landing, NJ 07850
(855) 873-2223
www.accesstranscripts.com

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

APPEARANCES (Continued):

For Marlene Karu:	Wolf Haldenstein Adler Freeman & Herz LLP By: MALCOLM T. BROWN, ESQ. 270 Madison Avenue New York, NY 10016 (212) 545-4600
For Pre-Sale Accident Plaintiffs:	Goodwin Procter LLP By: WILLIAM P. WEINTRAUB, ESQ. The New York Times Building 620 Eighth Avenue New York, NY 10018-1405 (212) 813-8839
For Participating Unit Holders:	Akin Gump Strauss Hauer & Feld LLP By: NAOMI MOSS, ESQ. DANIEL H. GOLDEN, ESQ. One Bryant Park New York, NY 10036-6745 (212) 827-8010
For Groman Plaintiffs	Golenbock Eiseman Assorbell & Peskoe LLP By: MICHAEL S. WEINSTEIN, ESQ. 711 Third Avenue New York, NY 10017 (212) 907-7347
For JPMorgan Chase Bank, N.A.:	Wachtell, Lipton, Rosen & Katz By: HAROLD S. NOVIKOFF, ESQ. 51 West 52nd Street New York, NY 10019-6150 (212) 403-1000
For GUC Trust:	Gibson Dunn By: GABRIEL K. GILLETT, ESQ. 200 Park Avenue New York, NY 10166-0193 (212) 351-4000

APPEARANCES (Continued):

For Takata Plaintiffs:
Stutzman, Bromberg, Esserman & Plifka
By: SANDER L. ESSERMAN, ESQ.
2323 Bryan Street, Suite 2200
Dallas, TX 75201-2689
(214) 969-4900

For Ignition Switch Plaintiffs and certain Non-Ignition Switch Plaintiffs:
Brown Rudnick
By: HOWARD S. STEEL, ESQ.
7 Times Square
New York, NY 10036
(212) 209-4917

For Certain Ignition Switch Plaintiffs:
Lieff Cabraser Heimann & Bernstein
By: RACHEL J. GEMAN, ESQ.
250 Hudson Street
Eighth Floor
New York, NY 10013-1413
(212) 355-9500

TELEPHONIC APPEARANCES:

For Camille Stuber:
Ellis & Estes
By: DANIEL P. ESTES, ESQ.
JIM ELLIS, ESQ.
3949 Corrales Road #230
Corrales, New Mexico 87048
(605) 266-0800

For Ignition Switch Pre-Sale Accident Plaintiffs:
Hilliard Munoz & Gonzales LLP
By: ANNE K. FORNECKER, ESQ.
719 South Shoreline Boulevard #500
Corpus Christi, Texas 78401
(361) 882-1612

(Proceedings commence at 11:05 a.m.)

THE COURT: All right. Please be seated. We're here in Motor Liquidation Company, 09-50026. All right. Let's take up first the order to show cause. There were a handful of objections to it. Let me hear first from Mr. Steinberg and then give others a chance.

MR. STEINBERG: Good morning, Your Honor. Arthur Steinberg from King & Spalding with Scott Davidson on behalf of New GM. We had served the order to show cause on approximately 600 to 625 parties, and it has engendered four objections. One -- and I'm going to take the easiest ones first. One was filed by a pro se plaintiff named Marcos Michael.

THE COURT: Is Mr. Michael here? Yes, thank you.

MR. STEINBERG: And so he essentially filed a letter which we construed to be his brief on the threshold issues, and although technically, all plaintiffs were supposed to wait for the designated counsel, we -- as a pro se plaintiff, we just said, we'll respond to whatever he said.

THE COURT: Okay.

MR. STEINBERG: His issues, he is a post-sale accident in a non-ignition switch vehicle. He raised issues about whether a used car purchaser is allowed to assert a claim outside of the sale order or without regard to the sale order. He has a punitive damage request, and we're going to brief that in ours. So I think he's not really asked for a change of a

show cause order, and I think Your Honor can consider his pleading --

THE COURT: All right.

MR. STEINBERG: -- as you consider everything else.

THE COURT: After we finish, Mr. Michael, I'll give you a chance to address the Court, as well.

Go ahead, Mr. Steinberg.

MR. STEINBERG: The second is a Camille Stuber. She also is a post-sale accident for a non-ignition switch vehicle. There, I think there's some confusion on counsel's part. They raised the issue about punitive damages as to whether they should be able to assert it, and they raised the issue about whether the claim that they asserted on unfair trade practices is really a claim as a non-ignition switch plaintiff, that they should be allowed to assert. And they said they wanted to have permission to file an issue -- brief on issue number four. So I think we said that the show cause order had procedures about if you can file a brief and you're not in compliance with it.

The reality is, is because this objection has been carried, the designated counsel, I understand, has actually circulated his brief to the 625 people. So now, they can make a focused argument as to whether they're entitled to file a brief or not. And I probably don't have a dog in that hunt, if Your Honor wants --

THE COURT: Okay. Let me just say generally because

I thought that -- I guess it's -- Mr. Ellis is Ms. Stuber's counsel. I'm not going to decide today whether anybody else is going to file any briefs. The order to show cause -- we had covered at prior hearings the order to show cause sets up a proposed schedule to exchange drafts of briefs, and if there's an argument that somebody thinks is unique to their case that's not include and they want to then seek leave to file a short brief, I'll consider it then, but it's premature today. I agree with that.

MR. STEINBERG: So that takes us to the last two, which are somewhat linked to the Takata plaintiffs and Marlene Karu. Marlene Karu filed a complaint against New General Motors, some of which we believe is -- well, we believe that the complaint probably violates, at least in part, existing orders of this Court. But the Karu plaintiff's claim was merged into the Takata MDL and is stayed there. So the real issue that we believe that is involved in the Karu complaint is whether whatever Your Honor rules on the four threshold issues would be binding on the Karu plaintiffs. Clearly, Your Honor had set this up so that would be the case. The colloquy that you had at the November status conference was -- with Mr. Peller was really with regard to the procedure as to whether an adversary proceeding or contested matter could be used, but I think Your Honor had asked the rhetorical question is that if the procedure was correct, do you think that I have the

authority to enforce an existing order or an injunction of this court and make a ruling that will be binding on everybody and make a ruling so that I don't have to make consecutive rulings over and over? And I think Your Honor asked us to draft a show cause order to effectuate that, and that --

THE COURT: And that's what you did.

MR. STEINBERG: And we did, and that's the provision that they're challenging. And we think that that issue has been decided. But if Karu wants to say something as to why this doesn't apply to them and they have permission to file a separate brief, then we'll respond to that. But the issue about used car purchases, which I think is the essence of what they're really arguing about, that is the third threshold issue.

THE COURT: Yes.

MR. STEINBERG: That is what you're going to be getting briefs on. And they may have a strong view, and I'm sure designated counsel will share that view, but we equally have a view and I assume that Your Honor will decide that when all the briefs are in.

The Takata plaintiffs, in their objection, raised an issue about discovery. And Takata still has not sued New General Motors yet, but because Karu has been moved into the MDL, they have indicated that they will do it. Now, Takata has New GM vehicles and potentially Old GM vehicles. So if they

just sued on the New GM vehicles, that would not implicate the sale order, we would not have an issue. To the extent that they are suing on Old GM vehicles as a non-ignition switch plaintiff, in our view, then we believe that implicates the sale order.

So that's the starting assumption. The notion that they should be able to take discovery on something that is otherwise prohibited by the sale order and other orders entered by the bankruptcy court, we weren't prepared to agree to, but we are agreeing to make the concession that the show cause order that says that there should -- no discovery be taken is only with respect to the four threshold issues and nothing more than that. There are obviously other cases that are proceeding in the MDL, outside the MDL, against New GM, where there's active discovery that's going oyes, and we're not asking Your Honor to try to interfere with that.

THE COURT: Yeah, I should say -- because this will come up with -- when we talk about the proposed interrogatories, as well. I spoke with Judge Furman this morning, and the substance of our conversation was that with respect to the motion to file late claim, the issue of discovery had arisen and that -- I told him what I told all of you. I was not prepared to wait until sometime in 2018 for things to move forward before me and that I had directed counsel to try and draft interrogatories, and we have some

objections to some of them we'll talk about today. I just wanted to be -- I wanted to satisfy myself that I wasn't running afoul of something that Judge Furman had directed with respect to discovery. I know discovery is stayed in many of the actions at this point, and the upshot of it is, is Judge Furman said, go ahead and do what you think you need to do, including with respect to discovery.

So I just -- we didn't have -- we didn't talk substance about anything. We talked specifically about -- I just thought it was important that I not be entering orders that were contrary to what he was doing or wanted to do, and so he's aware of -- generally. I haven't shared the proposed interrogatories with him, but --

MR. STEINBERG: So --

THE COURT: So whatever -- you know, the issue for me is there are -- on discovery, there are maybe -- there's discovery on threshold issues, whether that goes forward or that goes forward, but I'm not dealing with broader discovery issues.

MR. STEINBERG: So with regard to the discovery issue on a not yet filed complaint, the not yet discovery procedures, we don't know whether it runs afoul. We have a sense that it could run afoul and that we would bring an issue to Your Honor to resolve, but we're not there yet to do that. So we've said that we don't think that the issue on the objection is ripe,

but we've laid down our marker which is that we believe that if you sue New GM with respect to an Old GM vehicle for an economic loss when you're a non-ignition switch plaintiff that you are barred by the sale order from doing so. And if you do that, you will be violating an existing injunction of the bankruptcy court. And we've said that to Karu, and we've said that to the Takata plaintiffs. There obviously is an issue that they will talk about, which is whether if the lawsuit was brought by a used car purchaser, whether that would violate the sale order, and that's the third threshold issue that's before Your Honor.

So the final thing that underlies the Takata and Karu objections is that if there is an issue as to whether you're violating the bankruptcy court orders or not, can they take it to the Takata court or whether this court should be able to decide that issue. We believe strongly that, as we have done for years, that this Court should decide the appropriateness of whether it is a violation of an existing injunction of the bankruptcy court. Again, that issue was actually not ripe yet because there hasn't been a lawsuit started or discovery, but -- so what you have a lot with the Takata plaintiffs is they're jousting for position on something that hasn't really started yet. And I think when you think about it from why I'm standing before Your Honor today is I don't think any of this affects the show cause order that was signed on December 13th. The

briefs -- they're open, and the next briefs are going to be filed by the end of this month, in a couple of weeks, and the briefing schedule will be finished by March, and our bottom line position is that when Your Honor rules on those issues, anybody who we serve with the show cause order is going to be bound by that, and that's the whole purpose of this exercise.

THE COURT: I must say, when I went over the objections, some of them, I'm not sure ought to be characterized as objections, but went over the pleadings relating to the order to show cause, it seemed to me that while some parties were putting down their place markers about what positions they were going to take when we have the briefing, there really was very little in the way of objection to the actual language in the order to show cause. But that's (indiscernible).

MR. STEINBERG: Anyway, that's -- those are my remarks.

THE COURT: Okay. Thanks very much.

All right. Who wants to be heard next?

MR. ESSERMAN: I might as well go. Thank you, Your Honor. Sandy Esserman of Stutzman, Bromberg, Esserman & Plifka, appearing today on behalf of the Takata lead counsels only, as you know.

THE COURT: You wear many hats.

MR. ESSERMAN: Yeah, exactly. I should have brought

my hats.

I agree with some of what Mr. Steinberg said. In looking at the order to show cause, I think it could be interpreted in several ways. Mr. Steinberg's clarified as to -- in his objection response and today how GM views it. In particular, there is a concern because the Takata MDL has not sued GM.

THE COURT: Yet.

MR. ESSERMAN: New GM -- yet -- New GM is not yet a defendant. The Karu complaint did sue New GM for what is believed to be a clear, allowed claim under the Second Circuit opinion. That case has been sent to the MDL and stayed. That's the current posture of that case. It is -- so that case is completely stayed. And there will be, at some point, an amended complaint filed. I suspect it will be filed after Your Honor rules on the threshold issues.

What the Takata plaintiffs were concerned about is somehow getting roped into some of the issues that aren't even ripe. There's really no --

THE COURT: Well, they are going to be roped into the threshold issues, which I am being called on to decide. I'm only deciding them once. If they don't want to play in this sandbox, that's their choice. But they've been served, and when I decide -- I mean, the higher court can decide I was wrong, but when I decide, it's my intention to have that ruling

bind all of those people who have received notices preceding, had an opportunity to participate, file briefs. You can't sit back and later take a position, we're not bound by your ruling on threshold issues, we don't think it affects us.

It's my intention to, to the fullest extent I'm permitted to do so by law, bind all parties -- all parties in interest, I'll use the term "parties in interest" -- with respect to whatever decisions I render. They may go your way, but I'm not going to have people come back, you know, a year or two years from now and say, well, I'm not bound by your ruling, Judge Glenn. It's my intention -- that's why the notice program -- I recognize that with Judge Gerber's rulings, there were some parties who claimed that they didn't have notice of the proceedings, they didn't participate, they don't feel that they're bound.

One of the things I'm trying to assure is that everybody as to whom these issues apply has been given notice, an opportunity to participate. Don't have to file a brief if they don't want to. They can. They can deal with the briefing the way the order to show cause does, so I don't just get briefs thrown, you know, across the transom. But they shouldn't think that by not participating after they've received notice that they're not going to be bound by my rulings. Higher court could decide otherwise, but that's how I'm proceeding.

MR. ESSERMAN: And Your Honor's clear on the record as to how you proceeded. We want to raise the issues that it's -- since GM has not been sued in the MDL, and discovery has not been sent out, we think these issues are not yet ripe for determination.

THE COURT: Sit back, take your chances, Mr. Esserman, but I'm telling you, to the fullest extent I'm permitted to do so by law, everybody who's received notice of this proceeding and the order to show cause, when I resolve the issues, it's my intention, to the fullest extent permitted by law, to bind them. And so if some group -- whatever hat you're wearing at the time, if your clients want to ignore the proceeding and take their best shot later on by arguing, I'm not bound, I wasn't there, the issue wasn't ripe, they'll do that, but fair warning. Go ahead.

MR. ESSERMAN: Thank you, Your Honor. You know, the order also had some ambiguity, in our view, as to what discovery was permitted and what discovery was not permitted, but I think Mr. Steinberg and the GM responses clarified that --

THE COURT: And you --

MR. ESSERMAN: -- to our satisfaction.

THE COURT: Why don't you enlighten me by pointing me to the language in the order that you think there's ambiguous.

MR. ESSERMAN: Well, we were concerned that certain

discovery might be prohibited, but I think it's very clear in GM's response, and I don't have the order in front of me that it's limited to the threshold issues. There's no discovery on the threshold issues --

THE COURT: Correct.

MR. ESSERMAN: -- only and that there was not an intention --

THE COURT: I'm not becoming a discovery master for anybody else in another case.

MR. ESSERMAN: Exactly. Exactly. So that was an issue. There was a phrase in that sentence, and I --

MR. STEINBERG: Sandy?

THE COURT: Mr. Steinberg's going to hand you a copy, Mr. Esserman.

MR. ESSERMAN: Thank you.

THE COURT: Just tell me the page and --

MR. ESSERMAN: Page 3.

THE COURT: Okay.

MR. ESSERMAN: Order that unless otherwise further ordered by the Court, no discovery shall be authorized or take place in this court regarding the 2016 threshold issues or any other issues -- any other issue related to the enforcement or applicability of the sale order to a claim against New GM.

THE COURT: And what is it that you find not clear about that?

MR. ESSERMAN: Well, I think it's been clarified to be clear. When first reading it, I think you could read it broader than just the 2016 threshold issues. So I --

THE COURT: Well, it says 2016 threshold issues or any other issue related to the enforcement or applicability of the sale order to a claim against New GM. So it didn't stop after 2016 threshold issues.

Hold on, Mr. Steinberg.

MR. ESSERMAN: Yes. But once again, we don't have discovery pending.

THE COURT: Okay.

MR. ESSERMAN: So I can't match up discovery against what is necessarily prohibited, but that language seemed a little bit broad to us and we wanted -- we thought some clarification was needed, and I'm satisfied on the record as to that. Having said that, there is no pending discovery. There is no pending GM as defendant in this case. So we're arguing hypotheticals and what may or may not occur and what is ripe and what is not ripe.

THE COURT: Do you have any other position you want to take with a different hat on?

MR. ESSERMAN: I think our papers have adequately stated it, Your Honor. Thank you.

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

Mr. Steinberg, do you want to just respond briefly on

the discovery issue?

MR. STEINBERG: Yeah. The only thing I wanted to just say is that in that paragraph that they were reading to -- and I was part of the collective drafting exercise, there was an emphasis on the word in this court, as well, too. So it's not just the modification of the 2016 threshold issues, but it's the discovery related in and out of this court.

THE COURT: All right, thank you.

All right. Mr. Michael, do you want to come on up and be heard?

MR. MICHAEL: Good afternoon, Your Honor.

THE COURT: You're Marcos Michael?

MR. MICHAEL: Yes, I am.

THE COURT: All right. And you did -- you filed the pleading. It's at ECF Docket Number 13819. Go ahead.

MR. MICHAEL: I have no idea, first of all, why I even received this documentation. I mean, I have a pending case that I'm in trial right now with General Motors. We're in settlement discussions and --

THE COURT: Okay. I don't want to know about your settlement discussions. Do you have a lawyer in that case?

MR. MICHAEL: No.

THE COURT: Just -- okay. Where is the case pending?

MR. MICHAEL: Southern District.

THE COURT: Okay.

MR. MICHAEL: It's with Judge McMahon.

THE COURT: All right. I'm sure you were served because this order to show cause was intended to cover anybody who was really potentially affected by the issues. It doesn't require you -- always happy to have you here. If there's anything you want to say further, I'm happy to listen.

MR. MICHAEL: Yeah. I'm here basically to protect myself and protect the lawsuit that's going on right now. I mean, my vehicle was purchased -- is a 2005 Chevy Avalanche was the vehicle that was in the accident. The accident happened after bankruptcy in 2012. It was serviced by New GM after their bankruptcy. So my case --

THE COURT: Did you buy the car new or used?

MR. MICHAEL: Excuse me?

THE COURT: New or used?

MR. MICHAEL: New. So my case should not be conducted in here at all is what I believe.

THE COURT: It's not being conducted in here, but --

MR. MICHAEL: You understand what I'm saying.

THE COURT: -- I've been asked to decide certain issues on remand from the Second Circuit, but okay.

MR. MICHAEL: That's basically all I have to say, Your Honor.

THE COURT: Okay. Thank you.

MR. MICHAEL: Thank you.

THE COURT: Mr. Steinberg, do you want to address it at all?

MR. STEINBERG: The only thing I would say about that is that clearly, Mr. Michael has a claim that has a large amount -- large root of being an assumed liability. That's why the litigation is going forward. There probably were -- when we served the order to show cause, we probably served the active litigation docket to make sure that everybody who is suing New GM is going to be bound by the rulings, but I think that's the only thing I have to say.

THE COURT: All right. Thank you very much.

Okay. Anybody else wish to be heard?

MR. ESTES: This is Daniel Estes on behalf of Camille Stuber.

THE COURT: All right. GO ahead.

MR. ESTES: I'm sitting in on -- thank you.

THE COURT: Tell me your last name again?

MR. ESTES: Frankly, I think --

THE COURT: Tell me your last name again.

MR. ESTES: Spelled E -- Estes. Can you hear me?

THE COURT: Yes, I can.

MR. ESTES: Estes, E-S-T-E-S.

THE COURT: All right. And --

MR. ESTES: And I'm with Jim Ellis.

THE COURT: All right. And --

MR. ESTES: I represent Camille Stuber.

THE COURT: Okay. GO ahead.

MR. ESTES: And I think we're here, just as Mr. Michael is here, we were served the order to show cause along with a letter by Mr. Steinbrenner and -- or Steinberg and Mr. Davidson. When we read the order to show cause, we were invited by the language to file a letter to see if we might participate in the briefing. We did. I understand the judge's concern that it was premature. I don't know if the timeline was as clear to us as it was to everybody in New York.

We did file a letter to preserve any right that we needed to assert our individual assertions and claims why we shouldn't be stayed in a New Mexico litigation against New GM only. The opposing counsel, I think, just as in the prior claimant's view, New GM is actively litigating and defending the claim. It's willing to pay any judgment. We're in settlement negotiations. So frankly, we were a little blindsided when we were served the order to show cause and were concerned that it put an entire stay on any discovery and any furtherance of our litigation. So we just entered our appearance and filed a letter to preserve our rights in case the general plaintiff's brief didn't cover everything we wanted to say.

THE COURT: All right. And you know the order to show cause, it sets out how the briefing procedure is going to

work. You'll get a draft of the brief, and if there's an issue you think you need to raise that's not included, you can request to file a separate brief.

MR. ESTES: And we have received the draft brief. We received it yesterday or the day before, have reviewed it, and our position still stands that we have a unique issue that we would like to address. We don't believe it would be overlapping or duplicative of what the brief already states. It would be more fact-specific to our individual circumstances.

THE COURT: Yeah. I'm not going to rule on --

MR. ESTES: And we would move again for leave.

THE COURT: Yeah. At this stage, I'm not going to rule on specific requests to file separate briefs. The order sets forth the procedure. I didn't read your letter as objecting to any specific provision in the order to show cause. I understand that your civil suit is pending in the New Mexico state court. I guess it relates to a 2009 Chevrolet Corvette, if I'm not mistaken.

MR. ESTES: That's right.

THE COURT: Okay. Mr. Steinberg, do you want to address at all?

MR. STEINBERG: Yeah. I think just so it's clear so there's no confusion, a post-sale accident like Camille Stuber had in a non-ignition switch vehicle can go forward for compensatory damages as an assumed liability. Some of the

threshold issues have general categories as to whether someone's an ignition switch or a non-ignition switch, and therefore we erred on the side of just including everybody --

THE COURT: In the service, yeah.

MR. STEINBERG: -- in service of that. And to the extent that they -- their avenue as a non-ignition switch plaintiff is to assert an independent claim and then try to get punitive damages on the independent claim, that is potentially implicated by the second threshold issue, as well, too, and that's why they got the receipt of this thing. But clearly, there are hundreds of litigation that are going forward involving Old GM vehicles and accidents, and we do not intend to stop the progress of those litigations to the extent that they're seeking compensatory damages of what we had -- New GM had agreed as an assumed liability on the --

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

All right. Yes, sir.

MR. BROWN: Good morning, Your Honor. Malcolm Brown, Wolf Haldenstein, on behalf of Marlene Karu. I have nothing to add to the presentation that was made by Mr. Esserman. I just rise to state that we're prepared to stand on the arguments that were set forth in our objection.

THE COURT: Okay.

MR. BROWN: Unless the Court has any questions --

THE COURT: Just let me see if I have any questions.

As I understand it, Ms. Karu purchased a 2010 -- purchased a used vehicle. Is that correct?

MR. BROWN: That's correct, Your Honor.

THE COURT: And you objected to the order to show cause to the extent it would bar Karu's efforts to obtain discovery from New GM in the Takata litigation that names New GM as a defendant.

MR. BROWN: That's right, Your Honor.

THE COURT: But you also argued you did not believe you should be deemed subject to the order to show cause and not be required to participate in any proceedings involving the 2016 threshold issues. My comments earlier really -- I -- to Mr. Esserman apply likewise to you, Mr. Brown, and your client. I'm deciding these issues once. Karu got notice of the proceeding. It's my intention to apply whatever rulings I render to the fullest extent permitted by law. You don't have to participate with respect to briefing or hearing on the 2016 threshold issues, but it's fully my intention, when I decide them, to make those rulings binding to the fullest extent I can. So you sit back at your own risk if that's what you decide, but, you know, the order sets out how the briefing will be done, and you'll decide after the briefing as you get -- I take it you got a draft already, as well.

MR. BROWN: Yes, Your Honor.

THE COURT: And you'll decide whether you think

there's some unique issue that you need to brief, but, you know, if the threshold issues apply to Karu, it's my intention to decide them and bind everybody I can. Okay?

MR. BROWN: I understand, Your Honor.

THE COURT: All right. Thank you very much, Mr. Brown.

MR. BROWN: Thank you, Your Honor.

THE COURT: All right. Anybody else wish to be heard?

All right. With respect to the order to show cause, the Court has reviewed Mr. Michael's letter, which was at ECF 13819, the Bledsoe, Elliott, and Thomas plaintiffs represented by Mr. Peller at ECF 13811, the Takata MDL Action plaintiffs represented by Mr. Esserman, it's at 13813, the Karu pleading, 13816, the Stuber pleading, 13820, Honaker, 13833, considered New GM's omnibus reply at 13822. After carefully considering all of the pleadings filed with respect to the order to show cause, the objections, to the extent that their objections are overruled and we'll go forward with the schedule as set forth in the order to show cause.

Mr. Steinberg, do any of those dates have to change at this point? No.

MR. STEINBERG: No.

THE COURT: Okay. And, you know, there's a lot covered in the order to show cause. I appreciate the efforts

that were made by counsel from the parties who worked well together in trying to describe the issues and did so fairly. I'm not sure I would have drafted every one of them exactly as they were done, but I've commented before, I think that they fairly set forth the issues that the Court's going to be presented, and we're going forward with the briefing. So to the extent of any objections, they're overruled, and go forward with it.

All right. So let's talk about the motion for an order granting authority to file the late class proofs of claim, and I guess, Mr. Weintraub, yours is not class claims, but the late claims.

So who wants to be heard first on this? I'm going to let Mr. Weintraub go first. Okay, Mr. Steinberg?

MR. STEINBERG: Sure. We're actually in agreement, so this should be easier.

MR. WEINTRAUB: Uh-oh, I'm in trouble.

THE COURT: That's dangerous.

MR. WEINTRAUB: Well, Your Honor, as requested by the Court, we met and conferred. We went through the draft interrogatories and we've condensed the disagreement down to, I think, one basic issue, which is whether or not, with respect to the Pioneer factors, could there be discovery with respect to defects other than the ignition switch defect. And both the economic loss plaintiffs and the personal injury plaintiffs

filed brief objections and fairly well self-contained that I think say essentially the same thing, which is when you're looking at the Pioneer factors, the focus should be on the claim that you actually seek to file and the defect that is raised in that claim and not other defects, which we believe are irrelevant to the Pioneer issues.

We think that whether or not someone may have had an unrelated issue with their vehicle or may have considered filing a claim and not filed a claim is irrelevant to the Pioneer factors. The questions that have been asked, if the Court permits them to proceed after we brief the other issues, hone in on knowledge of the bar date, knowledge of the bankruptcy, and all the things that would potentially be relevant to the Pioneer factors with respect to the claim that was actually filed. So for that reason, Your Honor, we would request that discovery be limited to the ignition switch defect. I would also point out that the instructions to the interrogatories contained a definition for -- I think it's called ignition switch related issues, and those catalog what are the symptoms of an ignition switch defect.

THE COURT: Definition 10 on page 4.

MR. WEINTRAUB: Definition 10. So that to the extent there was a relevant issue with respect to the vehicle, it would be picked up by the use of that definition. So more specifically, Your Honor, if you look at our redline, what it

essentially comes down to --

THE COURT: And you had objected to what were numbers 9, 10, 11, 12 --

MR. WEINTRAUB: 15 through 18, 22, and 27. And they fall into two buckets. Nine to 12, 9, 10, 11, and 12, we think can be deleted altogether because those questions solely relate to problems other than the ignition switch defect. And we think with respect to 15 through 18, 22, and 27, we have suggested revisions to those to confine those questions to the ignition switch defect. So with those two modest changes, deleting 9 through 12 and confining 15 through 18, 22, and 27, we have no issues with respect to the discovery, Your Honor.

THE COURT: All right. Let me hear from Mr. Steinberg. Or am I going to hear from somebody else?

MR. STEINBERG: Or do you want to ask whether the other --

THE COURT: Mr. Steel? Is that -- who's going to -- go ahead, Mr. Steel.

MR. STEEL: Morning, Your Honor. Howard Steel of Brown Rudnick. My hat today is for -- on behalf of Patricia Barker, who's the proposed class representative for the ignition switch plaintiff in connection with the late claim motion. We'll echo what Mr. Weintraub said. We have the same comments to the interrogatories, just add a little bit. Barring from Mr. Weintraub's brief, he cites the DPWN case,

which provides, I think, some critical guidance on this dispute in terms of whether the court for Second Circuit found that the trade claims that that plaintiff had did not relate the same as the anti-trust claim. So sort of a mirror to the dispute that we're focusing on today. That being said, we have the same comments as Mr. Weintraub. Thank you.

THE COURT: Thanks, Mr. Steel.

All right. Anybody else on the plaintiff side of these case? No?

Mr. Steinberg. So what's wrong with what Mr. Weintraub has said as to why the discovery should be limited to the ignition switch claims?

MR. STEINBERG: Because, first, Your Honor, this type of discovery was solicited in the MDL on behalf of the economic loss plaintiffs.

THE COURT: Well, that's the MDL. I -- that's in the MDL. As I said, I talked to Judge Furman, but I'm -- and he said, you know, if there was discovery believe -- that you believe is relevant to the matters before you, fine.

MR. STEINBERG: But my point is that in the MDL, in the context of asserting, in effect, the same claim against New GM, they have answered the -- at least the economic loss plaintiffs in connection with the fact sheets. They have answered questions as to whether there was an issue with their vehicle, to the extent that it would implicate the -- an

ignition switch even, and they've answered the questions if it related to an event unrelated to the ignition switch.

THE COURT: Why is there -- let's assume somebody had a non-ignition switch problem. Why is that relevant to whether people should be permitted to file late claims on ignition switch?

MR. STEINBERG: Because if the general issue -- unlike in DPWN, which was whether -- if they had no knowledge of an anti-trust conspiracy that was being committed against them by a debtor, that didn't affect whether they should file a trade claim. People who own a car know there's a problem with their car, know if there's enough of a problem with their car, that they should file a claim in the bankruptcy case, assuming that they knew that there was a bar date. So to the extent that they had experienced problems in their vehicle and they didn't know what it was, but it was an experienced problem.

THE COURT: Let me ask you this hypothetical. Let's assume somebody has an Old GM car and their radio stops working. And what relevance does it have as to -- to permit discovery about whether somebody went in because their radio wasn't working to the issues that are before me?

MR. STEINBERG: I'm not sure if it would, but on the other hand --

THE COURT: I'm trying to give you a farfetched hypothetical where it's so clear that --

MR. STEINBERG: Right. But sometimes people --

THE COURT: Because your interrogatories, if they complained about the radio, they'd have to disclose that and then have to answer interrogatories about it, right?

MR. STEINBERG: They would have to answer questions that said, in effect, any time I brought my car in for a repair, without trying to distinguish whether it was an ignition witch event or something else, any time I brought my car in --

THE COURT: So I bring my car in for servicing, and the service tech always asks me, are there any problems, and I say, well, something intermittently does whatever, and I tell him and he writes it down. What -- I don't understand what relevance that would have --

MR. STEINBERG: I don't think it --

THE COURT: -- to the issues that I have to address.

MR. STEINBERG: I don't think it would, but on the other hand, Your Honor, to take a different example, if someone came in complaining that their power steering didn't work and that they brought it in because they thought it was a malfunction, I think that is relevant as to whether they thought they would have a claim in order to file a claim. Even if they don't want to file a power steering claim now, it shows an awareness of a problem with their vehicle such that, in examining the Pioneer factor as to whether there was a

justifiable neglect to not file anything, we think that would be relevant. We also think it avoids the confusion as to whether if the power steering problem was caused by an ignition switch event or a non-ignition switch event. They don't have to go through with it. The reality is, is that for the economic loss plaintiffs, they don't have to answer this question because they actually answered the question already. Ms. Barker answered the question in her fact sheet. You know, she has a 12-year-old car with 180,000 miles who had the ignition switch fixed three years ago, who went on a curb, no property damage, no physical injury, and she brought her car in twice to a dealer before then. She's answered the questions. We wouldn't be pushing it. This is really whether someone who was in an accident and then --

THE COURT: Mr. Weintraub's clients.

MR. STEINBERG: Mr. Weintraub's client. So with regard to Mr. Weintraub's clients, if the car was totaled and that was the first time they knew that it had a problem, there was not going to be an issue anyway, but if the car was in an accident and then they had subsequent problems with that car before the sale date that may or may not have been ignition switch related, which would have triggered a heightened awareness to file a claim, we think that that event, that knowledge, is relevant as to whether it will lead to admissible evidence on the Pioneer issue. It doesn't have to be exactly

relevant. It could lead to something that would be relevant. And certainly, that's the issue that we're trying to capture, not whether the radio needed to be repaired. And that's the essence of these questions. We talk about it, I think, in terms of a defect, not worn tires or --

THE COURT: So you had propounded -- your number 9, your old number 9:

"Did you bring your vehicle to a dealer or repair shop or a mechanic as a result of what you now believe to be or was a defect other than a defect related to the ignition switch?"

MR. STEINBERG: Right. We didn't use the word --

THE COURT: So if somebody -- radio didn't work, they'd have to think back, I had a problem with the radio, I had to bring it in. They'd have to answer that interrogatory. I don't understand what that has to do --

MR. STEINBERG: I think we tried to use the word "defect" to try to take away the radio example.

THE COURT: No, I -- you know, I actually had a car with a defective radio, and -- this was some years ago, and the dealer replaced it. It was a defective radio. It was a pretty new car. The radio just stopped working. Brought it in, they replaced the radio. And I'd have to answer this interrogatory about defective radio?

MR. STEINBERG: Yeah. We think that if you brought

your car in two or three times, it's not that hard to answer what I brought into a car -- into a dealership for and what was repaired or what wasn't repaired. It just gives you the scope of what's involved with this vehicle.

THE COURT: And your old -- what was 11:

"Did you communicate with Old GM or New GM about what you now allege to be a defect other than a defect related to the ignition switch?"

MR. STEINBERG: Right.

THE COURT: It's the same problem I have. If somebody had the defective radio, oh, gee, I think I communicated to Old GM that twice I brought this car in, they never fixed -- they couldn't -- they didn't fix the radio, just replace it already. What does that have to do with what this case is about?

MR. STEINBERG: Well, I think it's written in terms of if they brought it in to a dealer to be repaired, that's not necessarily GM. It's if they wrote a letter to GM saying, you sold me a lemon car and I'm very unhappy about it, I think I was in an accident and you were at fault. It's that written communication.

THE COURT: So I brought it in to the dealer twice for the radio and they didn't -- I'm still suffering with this radio problem, so I wrote a letter to GM.

MR. STEINBERG: Saying that, you sold me a radio that

has not been repaired. I think it raises the issue as to whether it's relevant to whether they would file a claim in the case, and it relates to their vehicle. I mean, you could parse a trade claim versus an anti-trust claim, and I think that's different than parsing various elements of a complaint about the way a car has been operating.

THE COURT: All right. Anything else you want to add?

MR. STEINBERG: On the interrogatory issues?

THE COURT: Yes.

MR. STEINBERG: No.

THE COURT: All right.

MR. STEINBERG: Thanks.

THE COURT: Anybody else want to be heard on this?

MR. GILLETT: Morning, Your Honor. Gabriel Gillett from Gibson Dunn on behalf of the GUC Trust. The only thing I'd add is just that in the radio example that you're talking about, it's still not all the burdensome on the plaintiffs. I mean, we tried very hard to write these questions in a way that were clear and limited, and I take your point that --

THE COURT: Oh, it's clear enough, but it's not limited. That's the problem.

MR. GILLETT: I guess I would submit that it is not all that burdensome for these people to answer the -- even if it's all 27 questions about when they brought their cars in,

when they wrote GM, et cetera.

THE COURT: Thank you.

Anybody else wish to be heard?

All right. The objections to the proposed interrogatories, and they're shown in a redline that has strike-throughs and some additional language, the objections are sustained. The proposed additional language will be made, so I'm going to approve the service of the interrogatories as reflected in the redline that's been submitted to the Court. I didn't write down ECF number, but I'm sure you'll figure that out.

Any other questions on the discovery? Okay. Is there anything else I need to deal with today?

MR. STEINBERG: Your Honor, we had sent up to Your Honor yesterday what the parties had worked on on a briefing schedule with respect to two -- for lack of a better word, two threshold issues relating to the late claims motion. One dealt with the tolling issue as to when each of the three categories of plaintiffs, economic loss ignition switch, economic loss non-ignition switch, and pre-sale accident plaintiffs --

THE COURT: I apologize, I didn't see it. Do you have another copy at all?

MR. STEINBERG: Yes.

THE COURT: You've agreed on a proposed schedule?

MR. STEINBERG: We've agreed on the issues and the

proposed schedule.

THE COURT: All right. Let me just look at it. Thank you.

MR. STEINBERG: After Your Honor finishes reading it, there's a couple things I want to highlight to you about that.

THE COURT: Okay. Let me read it. Go ahead, Mr. Steinberg.

MR. STEINBERG: So a couple things. One, the -- you can see the two issues that were identified for a briefing schedule, and parties are proposing simultaneous briefing with page limitations. It is possible you'll get two briefs from each side, but I think both sides will try to work together so you'll only get one brief from each side on that, and parties have asked for oral argument with Your Honor to fill in the date.

The tussle that was going on back and forth was that the plaintiffs were saying that because of Judge Gerber's statements about the bar date in the April 2015 decision, they believe that the Pioneer factors were satisfied and therefore no discovery needed to be taken at all. So I think the parties agreed that even though you have agreed to the form of interrogatory to be served, that until Your Honor actually decides the issue as to whether discovery is appropriate, that the time clock for responding to the interrogatories will not have started. But once that time clock starts, the plaintiffs,

to the extent that they have to answer interrogatories, have 30 days to do that response. I think that was the tradeoff that was done that's reflected in this order.

THE COURT: All right. So we're talking about the interrogatories that I've just gone over.

MR. STEINBERG: That's correct.

THE COURT: And I've ruled. You ought to get them served quickly. And so let's assume that they're served by next Monday. What follows from that? They have 30 days to answer them?

MR. STEINBERG: I think plaintiffs will argue that the 30-day clock has not started until you have ruled that it's appropriate for -- to take discovery because the Pioneer issue has not been automatically satisfied by Judge Gerber's statements, and --

THE COURT: And what I thought I made clear last time, I understand their argument that they don't believe discovery is appropriate because Judge Gerber ruled as he did, and I understood your position that you want to be able to take discovery. I indicated that at this stage, all I would authorize is the interrogatories. We've now resolved the issue as to the scope of the interrogatories. Maybe I'm missing something. The clock on answering those interrogatories runs when they're served, and then it's going to serve -- I assume, you know, by Monday. And when I get the briefing, you'll each

take your respective positions as to whether the discovery was relevant or not. You know, Mr. Weintraub took the position it wasn't -- just Judge Gerber ruled, the discovery is not relevant. You took the position, no, the Pioneer factors are relevant. When I decide the issues, I'm going to decide whether -- I may or may not conclude that Judge Gerber ruled in that law of the case where I find it persuasive and I'll follow it. I don't know, but we're moving forward.

MR. STEINBERG: Okay.

THE COURT: Maybe I'm missing something.

MR. STEINBERG: No, no. I think Your Honor has clarified the issue. I'm sure Mr. Weintraub and Mr. Steel may want to say something in response, but I understood what you said. The only other thing that I would point out that's in this proposed order, which will now have to be modified to reflect Your Honor's statements if that's where we end up, is that MDL discovery is not going to be affected. So one of the things that is actually going to happen is that the economic loss ignitions switch putative class representative, Ms. Barker, her deposition is going to be taken probably within the next three weeks. And --

THE COURT: I'm not doing anything to affect the MDL stuff.

MR. STEINBERG: I know, but I just wanted to reflect that that's -- there's a paragraph in that proposed order that

says nothing is intended to affect MDL discovery. The only caveat is that they only wanted to put up Ms. Barker once and they wanted her to cover not just MDL issues, but anything someone wanted to ask for late claims issues. So you'll see a few words or sentence that says that the GUC Trust will have the ability, subject to conforming with MDL procedures, to ask questions at Ms. Barker's deposition.

THE COURT: Okay. Mr. Weintraub, you want to be heard?

MR. WEINTRAUB: Yes, Your Honor. What I tried to make clear at the last hearing was that the people that I represent and the law firms I'm working with did not want to go to the expense of answering what are going to be numerous interrogatories with subparts 175 times before they knew whether or not discovery was appropriate, given our arguments about Pioneer. Now, I may have a 2 percent chance of winning that, but you never know --

THE COURT: You don't. You don't even have a 2 percent chance. I thought I made that clear last time. I'm permitting this limited discovery.

MR. WEINTRAUB: I understand that.

THE COURT: I'm permitting depositions with Ms. Barker's deposition. I'm not quite sure or clear about what's going on there, but --

MR. WEINTRAUB: Okay. It may have been my

misunderstanding, but what I thought we were doing was agreeing upon the form of the interrogatories so that when these two threshold issues were decided, people could respond to them. I understand that you disagree with me, and maybe I got it wrong, but --

THE COURT: No, because I plan -- just to be clear -- well, go ahead, Mr. Weintraub.

MR. WEINTRAUB: But the important point is that this order was a negotiated order, and the issues around the interrogatories were all negotiated with the understanding that we would have sufficient time to respond to them given the fact that it's going to 175 people. We had originally asked, in the meet and confer, for 90 days from the time that it was approved. There was a lot of pushback on that. So as part of the agreement that was made, the time would run 30 days from the determining on these threshold issues, which we assumed, given the schedule we were talking about, was sometime in the middle of March. And what we decided internally was we would take a running start and start working on the discovery right away so that we wouldn't -- so we would, in effect, have more than 30 days. So I think through no one's fault, Your Honor, we have now lost the benefit of having the additional time that we thought we needed to get the discovery done. I understand you want us to do the discovery. We'll incur the expense, but we do need more than 30 days.

THE COURT: Expense? I mean, these are -- how many interrogatories did we wind up with no subparts?

MR. WEINTRAUB: Well, there are subparts. You know, who, why, when and where is more than one question, but, Your Honor, the point is this is 175 times to unsophisticated people who are going to need to interface with the Hilliard firm to get those responses done. And as easy as everyone in this courtroom may think that they are, I'm telling you that we believe it's going to take longer than 30 days.

THE COURT: How much time do you want?

MR. WEINTRAUB: I would like 60 days from whenever they're served, Your Honor, under the circumstances.

THE COURT: Mr. Steinberg.

MR. STEINBERG: I would say 60 days on the outside with a commitment to give us a rolling production as they come in.

THE COURT: Well, I'm going to set --

MR. WEINTRAUB: That's fine.

THE COURT: -- change the order to 60 days. I think you ought to agree on a rolling production. It doesn't need to be in the order itself. I expect you to --

MR. WEINTRAUB: We were always amenable to that, Your Honor.

THE COURT: Yes. And I'm not going to give you an argument date yet because I want to see -- I'm going to look at

the briefs before I give you an argument date. My calendar is getting pretty crowded. I have the Motors Liquidation trial starting April 24th on the lien release or on the fixtures and with lots of things that are going to happen before that. So I don't let things linger, but I can't assure you yet when I'm going to hear argument. Okay. Let's -- but that's why I wanted to get this limited discovery done, the briefing done, and I'll give you a argument date as soon as I can.

MR. WEINTRAUB: Thank you. Sixty days is fine with us, Your Honor.

THE COURT: Okay.

MR. WEINTRAUB: Thank you.

THE COURT: All right. So you'll revise the order and -- okay.

MR. STEINBERG: Your Honor, there's just one other subject that I'd like to bring --

THE COURT: Just a minute. Change the paragraph on scheduling the hearing date. Just put language on a date to be set, scheduled by the Court.

MR. STEINBERG: Your Honor, just to put my toe in the water, but not to jump in the pool, I just wanted to point out to Your Honor that the MDL did have a conference on February 11th and that there was a fairly detailed report that was given as to the status of cases that had been settled in the MDL, and I don't think we have shared with you the transcript of that

hearing. And I think to the extent that Your Honor is concerned that progress on the settlement front is being made, we thought that that information may be interesting. Or you don't necessarily have to look at that because Judge Furman asked the parties to reformat the presentation and to deliver something by February 24th.

THE COURT: Why don't you just give me a copy of that.

MR. STEINBERG: So we will send you the February 24th report.

THE COURT: Yes.

MR. STEINBERG: Thank you.

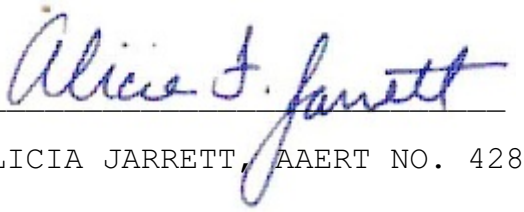
THE COURT: Okay. Anybody else have any issues they want to raise today? Thank you very much. We're adjourned.

(Proceedings concluded at 12:02 p.m.)

* * * * *

C E R T I F I C A T I O N

I, Alicia Jarrett, court-approved transcriber, hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



ALICIA JARRETT, AAERT NO. 428 DATE: February 17, 2017

ACCESS TRANSCRIPTS, LLC