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UNITED STATES JUDICIAL PANEL  
ON  
MULTIDISTRICT LITIGATION

IN RE: ) No. 2543  
GENERAL MOTORS IGNITION SWITCH ) Chicago, Illinois  
LITIGATION ) May 29, 2014  
1:45 p.m.

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE U.S. PANEL ON MULTIDISTRICT LITIGATION

**Hon. John G. Heyburn II, Chairman**  
United States District Court  
Western District of Kentucky

**Hon. Marjorie O. Rendell**  
United States Court of Appeals  
Third Circuit

**Hon. Lewis A. Kaplan**  
United States District Court  
Southern District of New York

**Hon. Ellen Segal Huvelle**  
United States District Court  
District of District of Columbia

**Hon. Charles R. Breyer**  
United States District Court  
Northern District of California

**Hon. Sarah S. Vance**  
United States District Court  
Eastern District of Louisiana

**Hon. R. David Proctor**  
United States District Court  
Northern District of Alabama

(Panel convened at the Dirksen United States  
Courthouse, Chicago, Illinois)

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1 (Proceedings heard in open court:)

2 THE CLERK: The Panel is now in session. You may be  
3 seated.

4 JUDGE HEYBURN: All right. We have two arguments for  
5 this afternoon.

6 First is 2543, General Motors Ignition Switch  
7 Litigation.

8 we have 16 counsel who will be making argument, first of  
9 which is Mark Robinson.

10 MR. ROBINSON: Good afternoon, your Honors.

11 Judge James Selna efficiently managed the Toyota  
12 Unintended Acceleration cases in California over the last four  
13 years. Many of the things he did are involved in this GM case.  
14 will be involved.

15 I submit that, frankly, recent experience under 1407  
16 should trump even location of where a Bankruptcy Court is.

17 JUDGE VANCE: But the facts of that case are different  
18 from this one, aren't they?

19 MR. ROBINSON: Pardon me?

20 JUDGE VANCE: The facts are different, are they not?

21 MR. ROBINSON: There are some facts, like the bankruptcy  
22 issue is different. But --

23 JUDGE VANCE: It's a different defect, too, right?

24 MR. ROBINSON: But a lot of the damage issues are the  
25 same. The liability issues. The same problems that he had with

1 choice of law around the country.

2 All of the various issues as to the claims that were  
3 made were pretty similar to these claims here. It was just a  
4 different defect.

5 So what I'm saying is this, is that the fact that there  
6 is a pending post-bankruptcy, which claims -- where there are  
7 post-bankruptcy issues, where they are looking at whether certain  
8 claims are barred, if any, should not dictate which judge can  
9 effectively manage a complex auto industry case like Judge Selna  
10 just managed.

11 I think that that's the issue here, your Honors.

12 JUDGE VANCE: Don't you agree that the bankruptcy issue  
13 has to be decided regardless? I mean, somebody has got to decide  
14 the scope of that consent agreement and whether it's valid,  
15 right?

16 MR. ROBINSON: I agree that Judge Gerber is going to do  
17 that, your Honors.

18 But not -- not a lot of discovery. There was no  
19 discovery in the Bankruptcy Court, like some of these other cases  
20 that counsel have cited that -- so there are no documents up in  
21 New York.

22 JUDGE VANCE: What about the fraud-on-the-court issue?  
23 Does that require discovery?

24 MR. ROBINSON: That's another one that Judge Gerber has  
25 got to decide, your Honor.

1 JUDGE VANCE: Doesn't that involve discovery?

2 MR. ROBINSON: I'm sorry? Does...?

3 JUDGE VANCE: Does that not involve discovery?

4 MR. ROBINSON: Right now, if he actually ruled on the  
5 due process issue and found that there was a lack of due process,  
6 he wouldn't have to go to the fraud-on-the-court argument, your  
7 Honor.

8 But really, there are claims that are still new GM  
9 claims in the sale order. That's what's really important, is the  
10 Tread Act, the safety Act, the Lemon Law cases, California Health  
11 and Safety cases.

12 There is cases in the MDL. We need to separate the MDL  
13 from the bankruptcy issue. And this is not really -- this is not  
14 a bankruptcy issue. It's a post-bankruptcy inquiry into which  
15 claims are barred.

16 JUDGE PROCTOR: But they are related, aren't they?

17 MR. ROBINSON: Pardon me?

18 JUDGE PROCTOR: They are related issues to those two.

19 MR. ROBINSON: Factually there are some issues. But  
20 frankly, the MDL judge is going to manage the cases that are  
21 before him. And if for some reason certain cases are carved out,  
22 then he will manage or she will manage those cases before him.  
23 But I -- I --

24 JUDGE HEYBURN: The bankruptcy -- but the bankruptcy  
25 ruling will decide how many people make -- get to make the very

1 same claims, right?

2 MR. ROBINSON: That's true.

3 JUDGE HEYBURN: Okay.

4 MR. ROBINSON: And we agree with that.

5 But what I'm saying is that why not get somebody that's  
6 experienced in this world of -- recently, anyway -- of the issues  
7 before the Court.

8 JUDGE HEYBURN: Thank you very much.

9 MR. ROBINSON: Thank you, your Honors.

10 JUDGE HEYBURN: We appreciate your -- and you will have  
11 a minute rebuttal, I guess.

12 MR. ROBINSON: Thank you.

13 JUDGE HEYBURN: All right. Mr. Levitt.

14 MR. LEVITT: Good afternoon, your Honors. Matthew  
15 Levitt.

16 JUDGE HEYBURN: Yes.

17 MR. LEVITT: In our papers we advocate transfer to  
18 somewhere in California in the first instance, either to the  
19 Central District, Judge Selna, for all the reasons that  
20 Mr. Robinson set forth, the Northern District of California,  
21 where Judge White has our case, the Masiel case, or if the Panel  
22 thinks that the center of gravity is here in the Midwest we  
23 believe that it should be sent to my home court here in Chicago.

24 with respect to -- I wanted to raise one point about the  
25 bankruptcy issues first. Because obviously it's going to be a



1 hot-button thing here all afternoon.

2           The fact is, unlike every case that is cited by the  
3 people favoring transfer to the Southern District of New  
4 York -- don't get me wrong, I think this Panel should send these  
5 cases to the most qualified judge out there who can handle  
6 them -- but I think, in factoring out a couple of things, in  
7 looking at the Southern District of New York it shouldn't be a  
8 reflexive transfer simply because the bankruptcy is pending  
9 there.

10           Every single case that has been cited in GM's papers and  
11 in other papers that have been filed -- and we have picked it up  
12 in our paper, which is ECF 146, Page 12, Footnote 46 -- each of  
13 the bankruptcy cases there are cases that focus on pending  
14 bankruptcies.

15           As Mr. Robinson said, this is not the issue here. This  
16 is a completed bankruptcy. There is a single, clear issue.

17           In fact, even, the Bankruptcy Court has referred to them  
18 or it as a threshold issue. It is a limited issue that will be  
19 handled without -- the way it looks now -- any discovery at all,  
20 but on stipulations of fact.

21           So after that, this should be a quick trip in and out of  
22 the Bankruptcy Court.

23           And the one last point I wanted to make, because I see  
24 that I'm out of time, is that there are other -- that GM is not  
25 the only defendant in this case. Continental was also named as a

1 defendant in our complaints and others. And as well as the  
2 Delphi Corporation.

3 So I think in looking at this as broadly as possible, we  
4 are simply looking for a transfer to the best judge for these  
5 cases. And the bankruptcy shouldn't be a factor in that final  
6 choice for the reasons I stated.

7 And the second point that I wanted -- and then I will  
8 sit down -- is that the Panel should also be aware that to the  
9 extent General Motors advocates, as they do, as an alternative  
10 for the Eastern District of Michigan, when they had the  
11 opportunity to file their own bankruptcy in Michigan they chose  
12 not to.

13 JUDGE HEYBURN: Thank you very much.

14 MR. LEVITT: Thank you very much.

15 JUDGE HEYBURN: Mr. Hewitt?

16 If the next person, Mr. Schmidt, you could sort of get  
17 in line here? And Mr. Clifford after that.

18 MR. HEWITT: Good afternoon.

19 JUDGE HEYBURN: Good afternoon.

20 MR. HEWITT: The bankruptcy issue is really a red  
21 herring.

22 The scheduling order provides -- and as GM made clear  
23 yesterday in the supplemental filing -- essentially every one of  
24 the ignition switch cases are stayed pending resolution of the  
25 bankruptcy issue.

1           Once the bankruptcy issue resolves, then the ignition  
2 switch cases will proceed.

3           JUDGE HEYBURN: Why do you say that? If we were to  
4 centralize, the transferee judge might decide to move ahead.

5           MR. HEWITT: The bankruptcy judge has made clear, and GM  
6 has made clear, that the Bankruptcy Court has jurisdiction over  
7 the threshold issues whether or not --

8           JUDGE HEYBURN: But there are many -- but there are many  
9 claims that have nothing to do with the bankruptcy. The  
10 post-bankruptcy claims are going to arguably proceed,  
11 irrespective of what the Bankruptcy Court decides, right?

12           MR. HEWITT: A more limited number of claims and a very  
13 limited number of cases raise issues against anyone unassociated  
14 with the bankruptcy.

15           JUDGE HEYBURN: What's the relative balance that you are  
16 talking about?

17           MR. HEWITT: I don't have the percentage.

18           JUDGE HEYBURN: Just roughly. Just --

19           MR. HEWITT: The great percentage of the claims, in the  
20 90s percent of the claims, are going to be affected by the  
21 bankruptcy issue and the ruling.

22           The parties have made clear, these are stayed pending  
23 the bankruptcy adjudication. Once that adjudicates, the parties  
24 have argued, one, that there is due process issue and that they  
25 shouldn't be bound by the injunction in the stay order.

1 GM believes that the Bankruptcy Court's ruling will end  
2 --

3 JUDGE BREYER: I'm sorry. I don't -- if I bought my  
4 car, my GM car, after the bankruptcy had closed -- okay, it was  
5 -- or the claim, and I now claim, in light of this very  
6 interesting information about the ignition switch my car has lost  
7 value, I have a claim today post-bankruptcy, don't I?

8 MR. HEWITT: GM argues that the claims are barred  
9 against new GM due to the formation of a new entity, this new GM,  
10 that has no liability for the acts of old GM.

11 JUDGE HEYBURN: But your question is different than  
12 that.

13 JUDGE BREYER: No.

14 MR. HEWITT: But they claim that that issue is subject  
15 to the ruling from the Bankruptcy Court, whether or not that  
16 claim against new GM is barred by the stay order, the injunction  
17 from the bankruptcy.

18 JUDGE BREYER: So GM's view is that every claim is  
19 barred.

20 MR. HEWITT: Essentially. Outside of the wrongful  
21 deaths and the injuries.

22 JUDGE BREYER: All claims are barred. Because even if  
23 you -- even if you acquired the car post-bankruptcy, without the  
24 knowledge of faulty -- purportedly faulty ignition switch, your  
25 claim has been barred by the bankruptcy.

1 MR. HEWITT: You can't hold the new GM liable for it,  
2 that's what they've argued.

3 JUDGE HEYBURN: Even if you bought the car from the new  
4 GM?

5 MR. HEWITT: That's one of the arguments GM has made.  
6 In short, your Honors, the Southern District of New  
7 York, the Bankruptcy Court will deal with the bankruptcy issues.

8 This Court has in many other instances, in Delphi  
9 itself -- Delphi had gone bankrupt. There was a 2005 MDL. This  
10 Court, despite the bankruptcy was in Southern District of New  
11 York -- because Delphi is headquartered in Michigan -- put the  
12 MDL in the Eastern District of Michigan.

13 GM and its securities, in derivative litigation, the MDL  
14 went to the Eastern District of Michigan back in 2006.

15 Enron filed bankruptcy in the Southern District of New  
16 York. The MDL was in the Southern District of Texas.

17 This panel looks to where the headquarters of the  
18 defendant are. Both defendants acknowledge, outside of the  
19 bankruptcy issue, aside from Southern District of New York, they  
20 think Eastern District of Michigan is a suitable district, it's  
21 the appropriate district. It's where the witnesses are going to  
22 be located. Documents.

23 The reason Toyota went to the Central District of  
24 California, as this Panel found, is because that was the  
25 headquarters in U.S. of Toyota.

1 Not because Judge Selna had particular experience, he  
2 has done a commendable job with this case, but this Panel didn't  
3 send it to Judge Selna because he had particular experience with  
4 Toyota or an automotive MDL, it was because Toyota was  
5 headquartered in that district.

6 JUDGE RENDELL: Which judge in Michigan?

7 MR. HEWITT: Judge Goldsmith would be very appropriate.  
8 He has two cases right now.

9 The docketing conditions in Eastern District of  
10 Michigan, there is three pending MDLs in New York and California,  
11 you have got 42 or 46 and 22. Docketing conditions are  
12 favorable. We have got very good judges.

13 Detroit is where all of the activities took place giving  
14 rise to this MDL. It's the location where the adjudication of  
15 these claims should proceed.

16 JUDGE HEYBURN: Thank you.

17 MR. HEWITT: Thank you.

18 JUDGE HEYBURN: Mr. Schmidt.

19 MR. SCHMIDT: May it please the Court, Alexander  
20 Schmidt.

21 Our clients do advocate for the cases to be transferred  
22 to the Southern District of New York, primarily because of the  
23 pending bankruptcy proceeding there.

24 JUDGE HEYBURN: Is it your view also that GM is claiming  
25 that -- Judge Breyer's hypothetical -- if you bought the vehicle

1 after the bankruptcy, and then the events occurred, that somehow  
2 the bankruptcy bars your claim?

3 MR. SCHMIDT: GM has taken this position. Obviously we  
4 disagree with it.

5 JUDGE HEYBURN: Yes.

6 MR. SCHMIDT: But it does raise an important point, a  
7 practical point.

8 This could be a proceeding where you have simultaneous  
9 events going on in two different courthouses.

10 while the parties have preliminarily agreed as to what  
11 some of the threshold issues might be, both GM and the Court has  
12 reserved the right on potentially address other  
13 bankruptcy-related issues.

14 And there may be lots of disagreement down the road as  
15 to what is a bankruptcy issue and what isn't a bankruptcy issue.

16 JUDGE VANCE: What is the agreement to stay applied to?  
17 Is that just the adjudication of the scope of the effect of the  
18 agreement?

19 MR. SCHMIDT: The stays apply to all the District Court  
20 actions.

21 JUDGE VANCE: No, not the bankruptcy.

22 MR. SCHMIDT: I'm sorry. I missed the beginning of your  
23 question.

24 JUDGE VANCE: It was represented by previous counsel  
25 that there was an agreement to stay the litigation pending a

1 resolution of the bankruptcy issue, right?

2 MR. SCHMIDT: That's partially correct, yes.

3 Stays are partial and they are potentially limited in  
4 time. The stays are lasting only definitively through the end of  
5 the summer.

6 As of September 1 parties may request relief from the  
7 stay, partial or whole.

8 JUDGE VANCE: So it would not include through appeals.

9 MR. SCHMIDT: That's correct. I mean, the appeals will  
10 be -- if there are appeals from the Bankruptcy Court, they will  
11 go to the Southern District of New York.

12 JUDGE HEYBURN: And who granted the stay? who entered  
13 the stay?

14 MR. SCHMIDT: I'm sorry? I missed --

15 JUDGE HEYBURN: who entered the stay?

16 MR. SCHMIDT: The Judge directed the parties to agree --

17 JUDGE HEYBURN: what Judge? what Judge?

18 MR. SCHMIDT: -- to the stay.

19 Judge Gerber, Bankruptcy Judge Gerber.

20 JUDGE HEYBURN: Okay. The Bankruptcy.

21 MR. SCHMIDT: He has exercised his exclusive  
22 jurisdiction retained under the 363 sale order to entertain these  
23 threshold issues.

24 JUDGE HUELLE: which Judge in the Southern District if  
25 you were to be transferred there?



1 MR. SCHMIDT: We think Judge Furman, who is presiding  
2 over first two filed cases, is an ideal judge for this.

3 He is in fact already familiar with the GM bankruptcy.  
4 He handled an appeal of an injunction under the 363 sale order  
5 already. He would be the ideal person.

6 Thank you very much.

7 JUDGE HEYBURN: Thank you.

8 Mr. Clifford.

9 MR. CLIFFORD: Your Honors, good afternoon.

10 Robert Clifford from Chicago. welcome to Chicago.

11 I'm here to encourage the Panel to centralize these  
12 cases here in the Northern District of Illinois.

13 we have a great docket available, we have 49 judges,  
14 only 16 MDLs. A great number of the putative class members live  
15 here in the Midwest and in the District.

16 Very significantly, we think the internal investigation  
17 by GM is being spear-headed by a local firm, Jenner & Block here  
18 in Chicago. Their lead defense lawyers are here, in terms of  
19 where the parties are at.

20 So we think Chicago would be a great forum for this  
21 litigation.

22 JUDGE HEYBURN: Thank you very much.

23 MR. CLIFFORD: Thank you, sir.

24 JUDGE HEYBURN: Mr. Tropin.

25 MR. TROPIN: May it please the Court, Harley Tropin.

1           We support transfer to the Southern District of Florida.  
2           I speak on behalf of about 175 named plaintiffs, 14  
3 separate class actions, and 13 different law firms.

4           I think this is one of those cases where it's truly  
5 nationwide, and there is no one district that really cries out  
6 where it should go.

7           To briefly address the Southern District of New York  
8 issue, the Bankruptcy Court will make rulings and any district  
9 judge that you send this case to will apply those rulings and  
10 interpret those rulings.

11           I don't think there is any particular magic to it going  
12 to the Southern District of New York, because any judge will and  
13 is capable of interpreting Judge Gerber's rulings and they will  
14 have to.

15           JUDGE HEYBURN: So let me see if I understand the  
16 dynamics here of this total case.

17           The people that are going to be -- assuming for the  
18 moment that you actually, if you are purchased a vehicle from the  
19 new GM, and that you -- that you do actually have a claim against  
20 new GM.

21           So is it going to be something like 80 percent of the  
22 rest of the people, whether they can participate or not is going  
23 to be determined by the Bankruptcy Court because of their various  
24 ruling on fraud or due process, for the like?

25           MR. TROPIN: I would hesitate to give a percentage,

1 Judge. If I make a representation to you I'd like to have more  
2 comfort in it. But maybe it's something like that.

3 JUDGE HEYBURN: But it's a huge percentage of the total  
4 group.

5 MR. TROPIN: His rulings would be significant. But it's  
6 very clear that all the plaintiffs have made rulings -- have made  
7 allegations that implicate new GM.

8 And so what Judge Gerber says will not be the end of the  
9 story.

10 JUDGE BREYER: well, not only will it not be the end of  
11 the story, it will it be the beginning of the story. Because the  
12 question is whether or not the Bankruptcy Court can enter final  
13 orders with respect to this.

14 MR. TROPIN: That will be one issue.

15 JUDGE BREYER: So that -- and that has to be, if the  
16 Bankruptcy Judge says no, the Supreme Court says no, then it goes  
17 to an Article III court to make the finding.

18 MR. TROPIN: Exactly.

19 JUDGE BREYER: And that would be in New York.

20 MR. TROPIN: That would be in New York.

21 But any judge, once that appellate process is complete,  
22 when you think about it, will have to apply that ruling. So  
23 there is no magic to us that it is in New York that the appellate  
24 process takes place.

25 JUDGE VANCE: Does that order -- does that order require

1 any discovery?

2 MR. TROPIN: I'm sorry?

3 JUDGE VANCE: The decision in the Bankruptcy Court, does  
4 that require discovery?

5 MR. TROPIN: My understanding is the initial order is  
6 asking us to do stipulated facts, but there would be relatively  
7 little discovery, and the great majority of the plaintiffs,  
8 almost all of them except for one group, want to be out of the  
9 bankruptcy as quickly as possible and in the District Court no  
10 matter where that is.

11 JUDGE HEYBURN: Are you in general agreement with the  
12 idea that until either the Bankruptcy Court or an Article III  
13 judge decides these bankruptcy-related issues, all the cases  
14 should be stayed?

15 MR. TROPIN: Well, we certainly have agree with that  
16 until September. We'd like to see what happens.

17 I think that makes some sense.

18 But we are going to proceed with some of the claims  
19 regardless. We think some of the claims are going to be outside  
20 of the scope --

21 JUDGE HEYBURN: Right.

22 MR. TROPIN: -- of what the Bankruptcy Judge is going to  
23 do.

24 If I could briefly talk about why I think Florida is  
25 appropriate, I think it comes down to numbers and the mission of

1 this group, which is to have an expeditious resolution.

2 Florida is four times faster than New York.

3 JUDGE HEYBURN: Who is the judge down there?

4 MR. TROPIN: One of the judges is Chief Judge Moreno,  
5 who was praised for his handling of the HMO case.

6 He now, based on the ruling of this Panel, he  
7 transferred the last of those back to the home districts so that  
8 is totally over and his chief judgeship ends. He is well-capable  
9 of handling this expeditiously.

10 Every other forum that has been suggested, all 16 of  
11 them, I believe that the Southern District of Florida is quicker  
12 than. We are quicker in terms of time to trial and --

13 JUDGE BREYER: Can I just ask a question that's in my  
14 mind? You are said that in the bankruptcy proceeding the parties  
15 are being asked to agree to a stipulated set of facts in order to  
16 expedite it?

17 MR. TROPIN: Yes.

18 JUDGE BREYER: And is that true on the fraud on the  
19 court? That's true -- it's only true as to the due process, is  
20 that right?

21 MR. TROPIN: Yes. The fraud-on-the-court I believe that  
22 discovery is being sought.

23 JUDGE BREYER: So there still is that other issue, and I  
24 think Judge Vance is asking the question, as I understand it, for  
25 it to be entirely resolved.

1           Obviously this is a denial of due process, and so forth,  
2 and that may take care of it, but there is a second issue, and  
3 that issue is rather factually intensive, isn't it?

4           MR. TROPIN: I have to agree that it is. We hope it  
5 gets a quick trip through the Bankruptcy Court. And I must tell  
6 you that the majority, the vast majority of the plaintiffs did  
7 not want that issue raised because we want to get out of  
8 Bankruptcy Court and into District Court as quickly as possible.

9           But you are absolutely right, Judge. There is that  
10 issue and there will probably be some discovery on that.

11           JUDGE KAPLAN: And if that issue ultimately turns out to  
12 be important in the Bankruptcy Court, isn't it true that the  
13 factual development of the fraud-on-the-Bankruptcy-Court argument  
14 is going to overlap substantially with a lot of the plaintiffs'  
15 cases on the merits as to what GM knew and when they knew it?

16           MR. TROPIN: Yeah. I would be -- I would be  
17 disingenuous if I said there wasn't some relationship.

18           But we view that as the tail of the dog. In other  
19 words, we don't want that tail to swallow the dog, the dog being  
20 the cases that we filed across the country in the District Court.

21           We think that Judge Gerber has made it clear that he is  
22 going to decide these things quickly, issue his ruling, and then,  
23 as I said, I think that any district judge, including anybody  
24 that you are likely to send this to, is capable of interpreting  
25 and enforcing that order.

1 JUDGE KAPLAN: But it could turn out to be quite a  
2 misshapen dog, although you don't like that prospect, right?

3 MR. TROPIN: Right.

4 I'm trying to come up with a clever analogy about a dog.  
5 I just can't do it. So --

6 JUDGE HEYBURN: We will give you an opportunity. But  
7 that's all we can do.

8 MR. TROPIN: I know. I'm whipped on that, Judge. I'm  
9 sorry.

10 JUDGE HUELLE: How will you be able to move that issue,  
11 if it turns out to be the central issue before the bankruptcy  
12 judge, I don't know how you would get it out of the Bankruptcy  
13 Court faster in some fashion. How will the plaintiffs who want  
14 that in District Court be able to succeed in accomplishing that?

15 MR. TROPIN: I think Judge Gerber has made it clear that  
16 he views even that issue as something that should be expedited  
17 and resolved quickly and what we don't want, for strategic  
18 reasons that you heard referred to this morning, we don't want GM  
19 to use and Delphi to use the Bankruptcy Court as an effort to  
20 slow down this litigation.

21 That fraud-on-the-court issue we don't want to have slow  
22 down this litigation, become the hold off.

23 Thank you very much. I hope that you send it to the  
24 Southern District of Florida. I think that it is the quickest  
25 and most expeditiously resolution.

1 JUDGE HEYBURN: Thank you.

2 MR. TROPIN: I appreciate your time.

3 JUDGE HEYBURN: Thank you.

4 Mr. Becnel, what's a country lawyer from Reserve,  
5 Louisiana, doing in a big city like Chicago?

6 MR. BECNEL: This is tough. This is tough.

7 May it please the Court, I stand arguing for two places.

8 I filed the case in the Middle District of Louisiana  
9 before the chief judge there, Brian Jackson. They had not had an  
10 MDL in 35 years. In fact, most of my career no one has ever  
11 heard of an MDL in Baton Rouge.

12 JUDGE RENDELL: And so the first one should be this --

13 JUDGE HUVELLE: This one?

14 JUDGE RENDELL: -- this relatively small --

15 JUDGE HEYBURN: Start them off easy.

16 MR. BECNEL: Judge Jackson was with the Department of  
17 Justice prosecuting a lot of these big cases, and so that's why  
18 he has that. So they can handle it.

19 Secondly, I rise for New Orleans. Judge Englehardt. He  
20 recently handled the FEMA trailer case, which he tried 13 jury  
21 trials, and handled about 20 different defendants, coordinated,  
22 and got the whole case resolved. And he needs something to do.

23 JUDGE VANCE: We just gave him another MDL.

24 MR. BECNEL: That's a little baby one. That's a baby  
25 one. That's a nothing case.



1           But the thing you haven't talked about yet is that GM  
2 has appointed Ken Feinberg.

3           I have two death cases. I didn't go file them in the  
4 courtroom because I didn't want my client to have to pay court  
5 costs and maybe try to get some sort of a stay on that.

6           Mr. Feinberg is going to negotiate with all of the  
7 injury cases and all of the death cases. And Mr. Feinberg, for  
8 example, one of the cases I have where the black box was not  
9 taken because the insurance company took it and crushed the  
10 car --

11           JUDGE HEYBURN: But that's not really an issue for us  
12 because none of the injury cases have requested centralization.

13           MR. BECNEL: Not yet. But depending on what  
14 Mr. Feinberg says, depending on what the Bankruptcy Court says,  
15 depending on what the MDL judge says, I think you are going to  
16 need a triple coordination between all of those people.

17           That's the way you are going to resolve this case.

18           You not going to resolve it with one and one and then  
19 continually have individual cases filed, if they don't agree on  
20 the amount or the number.

21           JUDGE VANCE: So your theory is it should go to a single  
22 judge to handle all of it.

23           MR. BECNEL: That's correct. And that's what the MDL  
24 process is all about.

25           And I think a single judge -- you know, we have had

1 judges coordinate -- for example, Judge Fallon -- a thousand  
2 defendants with 20 or 30 different state judges. And you get  
3 these coordinations. That's what's really -- I mean, this is an  
4 administrative case more or less, and then that judge can decide  
5 the individual issues as Judge Barbier has done with BP Oil.

6           These are complicated cases and they not going to go  
7 away fast. And sitting there, and having people wait after some  
8 of these people have been killed five, six, seven years ago --

9           JUDGE HEYBURN: I mean, that's -- with all due respect,  
10 that's not an issue before us. There are no injury cases. We  
11 are not being asked, as I understand it, to centralize a case  
12 that involves causes of action involving personal injuries. No  
13 one has asked us to do that.

14           I doubt we're going to do that on our own initiative  
15 until someone asks us and we have an argument about that, so --

16           MR. BECNEL: Well, I understand that.

17           The only reason I brought it up is because GM went out  
18 on their own, just like BP did, and asked Mr. Feinberg.

19           JUDGE HEYBURN: That's correct.

20           MR. BECNEL: And in BP he settled 225,000 cases.

21           JUDGE HEYBURN: Thank you very much. We appreciate your  
22 argument.

23           Miss Greenwald? Yes.

24           MS. GREENWALD: Good afternoon, your Honors.

25           Robin Greenwald appearing in the Ross matter.

1 I'm going to go off script and I'd like to address the  
2 fraud-on-the-court issue that I know Judge Vance initially  
3 raised, and many of you others have asked about.

4 I want to clarify what Judge Gerber did and didn't do in  
5 fraud on the court.

6 He said that he would put it down -- it's right in the  
7 order -- as a preliminary issue, a threshold issue, if and only  
8 if there were sufficient stipulations to address that issue.

9 But he recognized at the May 2nd hearing that fraud on  
10 the court may very well involve protracted, detailed discovery.  
11 And if that's the case, he said it may not stay the threshold  
12 issue.

13 So I think that's still a very open question, as to  
14 whether fraud on the court will remain with Judge Gerber, or  
15 whether, more appropriately, that issue will go to the transferee  
16 court.

17 So I just wanted to raise that, that the parties agreed  
18 initially that due process should be the initial threshold issue.  
19 And while it's in the order, I think it's still an opening  
20 question, whether -- whether it will go.

21 JUDGE PROCTOR: Well, if we were to send the case to the  
22 Southern District of New York, that judge could withdraw the  
23 reference on the bankruptcy matter if he or she thought that  
24 appropriate, correct?

25 MS. GREENWALD: Well, yes and no.

1           So I wanted to point the Panel to a case, In re Stirling  
2 Homex Corp., which is 388 F.Supp. 567. It's from 1975. I admit,  
3 it's not a brand new case.

4           In that case the Court discusses in the context of a  
5 reorganization where the defendant itself was in the context of a  
6 reorganization.

7           And the Panel itself recognizes that there were two  
8 principles in choosing a transferee court, and one of them was  
9 need for the just and efficient conduct of both proceedings.

10           But the second one was that the transferee court not be  
11 the same judge as the judge with the responsibility for  
12 overseeing the reorganization. Because they wanted to avoid the  
13 potential conflict between the purposes of reorganization in  
14 bankruptcy, and the purposes underlying transfer under 1407.

15           So I believe --

16           JUDGE RENDELL: But this isn't a pending bankruptcy.

17           JUDGE KAPLAN: But this isn't, that's right.

18           MS. GREENWALD: That's correct. So I think in this in  
19 particular, the Southern District motion to enforce the motion of  
20 GM wouldn't dictate one way or the other a preference for the  
21 Southern District of New York.

22           Because the issues involved in the bankruptcy matter are  
23 different and apart from the issues that are going to be before  
24 the transferee court.

25           JUDGE KAPLAN: But one of your predecessors conceded --

1 and I wonder if you disagree -- that if the fraud-on-the-court  
2 issue has to be litigated in the Bankruptcy Court, there is a  
3 heavy overlap between the factual questions to be determined by  
4 the Bankruptcy Court and factual questions on the merits for the  
5 plaintiffs in the MDL.

6           Isn't that the case?

7           MS. GREENWALD: I think there will be some overlap. I  
8 don't think it's substantial. I definitely believe, Judge  
9 Kaplan, there will be some overlap, no question about it.

10           However, I believe that if there is going to be  
11 substantial discovery necessary for fraud on the court, Judge  
12 Gerber telescoped at the May 2nd hearing that he may very well  
13 not have that as a threshold issue.

14           JUDGE VANCE: You mean he won't decide it?

15           I don't understand. If someone has raised that as an  
16 issue to invalidate that agreement, he says I'm just not going to  
17 decide that, is that what happens?

18           MS. GREENWALD: I think what he was saying is that he  
19 had several issues that are threshold issues now, and they were  
20 -- at one point they were going to be ordered, due process first,  
21 then fraud on the court -- and what he said was he was going to  
22 take them both together if the parties would come up with  
23 sufficient stipulations that would not necessitate a large amount  
24 of discovery in the Bankruptcy Court.

25           we don't know. We don't know.

1 JUDGE KAPLAN: But if it's not, then I understood you to  
2 say moments ago that he would then take fraud on the court off  
3 the list of preliminary issues -- that is to say, not out of the  
4 case -- and recognize it couldn't be dealt with as a preliminary  
5 issue and it may have to be dealt with later by the MDL court.

6 Right? Didn't you say that?

7 MS. GREENWALD: Correct.

8 JUDGE HUVELLE: You are arguing for the Eastern District  
9 of New York. I can tell you're arguing against not deciding the  
10 Southern District based on the bankruptcy, but why would you pick  
11 the Eastern District of New York?

12 MS. GREENWALD: I'm -- actually I believe that the Panel  
13 should send this case to the judge in this country that is the  
14 most available and experienced to do this, to handle this matter.

15 I don't think it is --

16 JUDGE HUVELLE: So it could be the Southern District.

17 MS. GREENWALD: -- against or for -- the issue of  
18 bankruptcy doesn't militate in favor or against the Southern  
19 District of New York. So it could go a multitude of places.

20 JUDGE HEYBURN: Let me ask this because I'm not sure. A  
21 number of the Panel members have asked related questions.

22 But as I understand it, the Bankruptcy Court -- it would  
23 be for the Bankruptcy Court, am I correct, to decide whether or  
24 not there has been a violation of due process or fraud on the  
25 Bankruptcy Court, is that correct?

1 MS. GREENWALD: Definitely for due -- yes, I mean, I  
2 believe that's correct.

3 JUDGE HEYBURN: And that the effect of that is to  
4 determine whether the bankruptcy bar on claims against old GM is  
5 a valid bar or not. Because if the bar was achieved by fraud on  
6 the court, then the bar is unenforceable, right, or would not  
7 have effect?

8 MS. GREENWALD: Correct. Correct. Correct.

9 JUDGE HEYBURN: As I understand it, the Bankruptcy Court  
10 and perhaps an appeal to a District Judge, if that's the way that  
11 has to work -- is going to decide that issue, and that in effect  
12 will decide whether these nationwide of -- you know, the  
13 nationwide class includes all these people whose claims otherwise  
14 would be barred, right?

15 MS. GREENWALD: I see fraud on the court narrower than  
16 that. I'm not saying that it wouldn't encompass some of that.  
17 But I see fraud on the court as not encompassing many of the  
18 allegations in the various complaints that are on file across the  
19 country.

20 JUDGE HEYBURN: No. It wouldn't determine whether they  
21 proved the allegations, but it would determine -- let's assume  
22 for the moment that we do centralize before a judge. It would  
23 determine the class of people who would be able to make claims,  
24 because their claims would no longer be barred by bankruptcy and  
25 a Bankruptcy Judge would have determined that.

1 MS. GREENWALD: well, or -- yes. Or it could determine  
2 whether GM knew and should have told the Bankruptcy Court during  
3 the 2009 bankruptcy proceedings.

4 JUDGE HEYBURN: Yes. That's what I'm saying.

5 MS. GREENWALD: I don't know if it would go to the whole  
6 class of population. But I guess in essence it would be the same  
7 thing.

8 JUDGE HEYBURN: well, it would determine some of them.

9 MS. GREENWALD: It would be the same thing.

10 MR. PROCTOR: There would be common --

11 JUDGE HEYBURN: Arguably there is a group of people  
12 whose claims are barred because of bankruptcy.

13 MS. GREENWALD: Correct. So right. So it would be the  
14 pre-2009.

15 JUDGE HEYBURN: Exactly. That's what I'm saying.

16 JUDGE PROCTOR: well, wouldn't there be common discovery  
17 on who knows what and when did they know it?

18 MS. GREENWALD: Again, I think fraud on the court would  
19 be limited, as we see it. Again, I mean, there are going to be  
20 some people would see it differently.

21 JUDGE PROCTOR: would there be discovery?

22 MS. GREENWALD: Fraud on the court would be limited to  
23 what GM knew. Certainly that would be a relevant issue: what  
24 pre-new GM or old GM knew as of July 2009 and what was told to  
25 the Court. But that is a narrow picture.



1 JUDGE PROCTOR: well, wouldn't it be whoever  
2 participated from the bankruptcy and benefited from the  
3 bankruptcy proceeding, what they knew and whether they defrauded  
4 the court? That could be the purchaser, that could be the  
5 debtor, that could be others involved in the bankruptcy, could it  
6 not?

7 MS. GREENWALD: In -- I'm not sure I understand -- I'm  
8 sorry. I'm not sure I understand the exact question.

9 JUDGE PROCTOR: You're saying, it seems like only old  
10 GM's knowledge would be at issue as to fraud-on-the-court issues  
11 in the bankruptcy.

12 MS. GREENWALD: Correct.

13 JUDGE PROCTOR: I'm not so sure about that.

14 wouldn't it be anybody who participated in the  
15 bankruptcy and the sale and what they knew? If new GM knew in  
16 2009 and benefited from a bankruptcy sale, for example.

17 MS. GREENWALD: well, we take the position that anything  
18 that new GM knew after the date of the sales order would not be  
19 barred, and not even relevant to the motion to enforce.

20 So we steadfastly believe that, for example, Judge  
21 Heyburn's question earlier about whether someone who bought a car  
22 in I think it was August or November 2009, whether they would be  
23 even covered or encompassed in this bankruptcy proceeding. We  
24 steadfastly say no, they are not.

25 Obviously GM may stand up here and say something

1 different. But we would say absolutely no.

2 So I guess there is a date the fraud on the court ends.  
3 I don't know what date that is, whether July 9th or July 8th, but  
4 there would have to be a clear line as to what date GM knew and  
5 should have informed the Court and didn't.

6 JUDGE BREYER: I would ask you a question before you sit  
7 down, which is I understand in this whole proceeding today we  
8 don't have any people who allege personal injury -- had personal  
9 injury claims.

10 MS. GREENWALD: Correct.

11 JUDGE BREYER: Does your law firm represent any  
12 plaintiff who has a personal injury claim arising out of the --

13 MS. GREENWALD: We do. And under the sales order GM has  
14 not -- they don't say the sales order impacts in any way, shape  
15 or form the post-2009 sale.

16 JUDGE BREYER: One, is it your intention to try to MDL  
17 those cases or not? Or what is everybody waiting for in that  
18 regard?

19 MS. GREENWALD: I think that some people are waiting to  
20 find out what happens with the claims administration process that  
21 GM is trying to put together.

22 Nobody knows exactly what that's going to look like. We  
23 know it's Ken Feinberg. We don't know what it might or might not  
24 look like, what it will encompass. We don't -- we don't know  
25 that yet.

1 I mean, who knows? We could be back here at some point.  
2 I don't know.

3 JUDGE HUVELLE: Will the bankruptcy issue that we have  
4 been discussing have the same exact impact, depending on how we  
5 define the date -- put that aside -- will personal injury  
6 plaintiffs have the same, will it affect them the same way?

7 MS. GREENWALD: It could and it couldn't.

8 So it wouldn't for certain for people who were injured  
9 after July 2009 because the sales order specifically excludes  
10 that class of people. I think even GM would agree with that.

11 At the bankruptcy hearing on May 2nd, GM's bankruptcy  
12 attorney walked a fine line there. And he said that while the  
13 motion to enforce currently does not encompass people who are  
14 injured, physically injured or died before July 2009, they were  
15 leaving open the option to go back to Judge Gerber and say that  
16 the sales order should preclude those actions as well, but they  
17 did not include that in what's before Judge Gerber now.

18 So they would have to answer that.

19 Okay. Thank you.

20 JUDGE HEYBURN: Thank you very much for answering our  
21 questions.

22 Mr. Gonzales. Then Mr. Harris is next.

23 MR. GONZALES: Good afternoon, your Honors.

24 My law firm in Corpus Christi does represent a large  
25 number of personal injury claimants.

1 JUDGE HEYBURN: How many are there all together, do you  
2 have any idea?

3 MR. GONZALES: In my law firm, probably close to 60  
4 death cases.

5 JUDGE HEYBURN: Oh, really.

6 MR. GONZALES: Over 150 injury cases.

7 we have filed four in the country, including several in  
8 Texas.

9 Paradoxically, and probably not relevant to the economic  
10 loss argument, is there has been a request for a Texas MDL that  
11 GM has agreed to, and that is being considered by the Texas state  
12 MDL panel.

13 It has not reached the hearing level yet. So I just  
14 wanted to advise the Court of that.

15 I want to say, because the Court is asking important  
16 questions that are exactly on point, these cases are interwoven.  
17 Everything that a personal injury plaintiff is going to want to  
18 know about fraud the bank -- the economic loss plaintiffs want to  
19 know as well.

20 Let's call it exactly what it is. We all want to know  
21 exactly what GM knew and when they knew it.

22 JUDGE HEYBURN: Not exactly. Because the fact, if the  
23 fraud existed, it is an integral cause of the personal injury.  
24 In other words, if the fraud had been disclosed then the injury  
25 likely would not have occurred.

1           In the economic loss cases, you know, if -- it's  
2 simply -- you know, the loss didn't occur until it was disclosed  
3 that there was a problem and then your car isn't worth as much.

4           But if you bought and sold a car during the time of the  
5 fraud, then, you know, arguably you have no damage. It was no  
6 harm, no foul.

7           So there actually is a difference between the two.

8           MR. GONZALES: That's a very good point, your Honor.  
9 And I would just make one quick clarification.

10           In our Texas class, which by the way we were the first  
11 law firm to file the first case in Texas, and by the way --

12           JUDGE HEYBURN: We got your ad.

13           MR. GONZALES: -- no surprise, we are asking for it to  
14 come to Corpus Christi, Judge Nelva Gonzales Ramos -- no relation  
15 to me -- a fine young jurist in Corpus Christi.

16           Your Honor, we in Texas in our class said the old --  
17 what old GM did or said or knew has no relevance whatsoever to an  
18 economic loss case.

19           All of our allegations pertain to what the new GM did or  
20 did not do after they came out of bankruptcy.

21           we're not even making any allegations against the old  
22 GM. We don't need to.

23           what the new GM did in doing a recall in 2014 they  
24 should have done on the day after bankruptcy because they had the  
25 same knowledge. And, folks, I mean with all due respect to

1 counsel here, if they want to make assertions against the old GM  
2 in the Bankruptcy Court, that's -- that's their decision.

3 But we have not. Because we think we can get all of our  
4 relief from the new GM.

5 By the way, Judge Ramos in Corpus Christi has already  
6 held an evidentiary hearing in this case. Five hours.

7 JUDGE HEYBURN: This is state court?

8 MR. GONZALES: This is a federal court. This is where  
9 we are asking -- we are asking the Panel to send this case to  
10 Judge Nelva Gonzales Ramos.

11 JUDGE HEYBURN: But you are saying there is a group of  
12 apparently personal injury cases apparently in state court in  
13 Texas that have not been removed. They are asking for a state  
14 MDL.

15 MR. GONZALES: Exactly. On the personal injury cases.

16 Both GM and plaintiffs are asking for a Texas MDL. But  
17 Judge Ramos held an evidentiary hearing for five hours, because  
18 we had filed a request that GM order or tell customers to park  
19 those cars because of the defect.

20 JUDGE HUELLE: But if we take your argument to heart  
21 that these are all going to be interrelated, how does that argue  
22 for Texas if you're 60 plus 150 -- 60 death cases and 150  
23 personal injury, those are all plaintiffs in Texas, I assume.

24 MR. GONZALES: No. They are all over the country.

25 JUDGE HUELLE: No? And they have all been filed in

1 Texas?

2 MR. GONZALES: No. We have only -- we have only filed  
3 four personal injury claims throughout the country.

4 We are strategizing now on those personal injury claims  
5 on how to address and when to file and where to file and things  
6 of that nature.

7 I think what's going to happen here, Judge, at some  
8 point everyone has to come together: Bankruptcy, Article III,  
9 everyone. Because GM is not going to want to produce each of  
10 these witnesses many, many times.

11 JUDGE HUVELLE: Why does that argue for Texas?

12 MR. GONZALES: I'm just arguing for Texas as a very  
13 central place to come. It's between San Francisco, it's between  
14 New York.

15 JUDGE HEYBURN: It's not Oakland. It's not Oakland.

16 JUDGE KAPLAN: And it's close to the southeast  
17 conference.

18 MR. GONZALES: Great Mexican food in Corpus Christi.  
19 You know the whole argument.

20 But I think the only way new that judges and young  
21 judges get to learn this process is to get this opportunity. I'd  
22 like to see Judge Ramos in Corpus Christi handle it.

23 JUDGE HEYBURN: Thank you very much. We appreciate it.

24 MR. GONZALES: Thank you, your Honor.

25 JUDGE HEYBURN: Mr. Paris.

1 MR. PARIS: Good afternoon, your Honors.

2 My name is Simon Paris. I'm with Saltz, Mongeluzzi,  
3 Barrett & Bendesky, and I'm arguing in favor of the Middle  
4 District of Pennsylvania.

5 JUDGE RENDELL: Are you talking about Harrisburg?

6 MR. PARIS: Harrisburg is lovely this time of year.

7 JUDGE RENDELL: How is it to get to Harrisburg at this  
8 time of year?

9 MR. PARIS: Harrisburg maintains a nice international  
10 airport with direct flights from about 9 to 11 cities in the  
11 United States. As your Honor knows, she is quite familiar with  
12 Harrisburg.

13 JUDGE HEYBURN: Be careful. You are talking with an  
14 expert here.

15 MR. PARIS: The Panel has not looked to Harrisburg or  
16 the Middle District in quite some time, and I'd like you to look  
17 back at the Labelstock opinion.

18 Because what should govern here is docket conditions and  
19 the willingness to put a major piece of litigation in the hands  
20 of Harrisburg in the Middle District of Pennsylvania where the  
21 Court has not looked for quite some time.

22 Those were the two reasons where essentially you  
23 provided and transferred the Labelstock case in 2003, were  
24 favorable conditions and an underutilized nature of the Middle  
25 District of Pennsylvania.



1 Now, as it pertains to the bankruptcy you have raised  
2 some very good issues and some very good questions.

3 One of the threshold issues, Judge Heyburn, is your  
4 initial question. One of the threshold issues will lend itself  
5 to identification of claims that are clearly not covered or  
6 contemplated by the bankruptcy, and those claims can go forward  
7 by the MDL. They are not covered or impacted by the bankruptcy  
8 and should not necessarily be held up by that.

9 JUDGE BREYER: But the claim.

10 I understand in a sense you are arguing the result. GM  
11 isn't going to come up here and saying it's not claimed. And  
12 they are going to say it's barred. And who is going to  
13 adjudicate that? Is that --

14 MR. PARIS: That, your Honor, Justice Breyer -- Judge  
15 Breyer, sorry. Slip of the tongue.

16 JUDGE BREYER: Thanks. Okay.

17 MR. PARIS: You're welcome.

18 JUDGE BREYER: Generally there is no -- there is no  
19 confusion.

20 MR. PARIS: I agree that they will oppose that concept,  
21 but Judge Gerber will make that decision as one of the threshold  
22 issues while the actions are stayed up till September.

23 And when that threshold issue is determined, then the  
24 organization and before the MDL Panel will be done, and hopefully  
25 a consolidated case class action complaint on file, that will

1 help define the scope of the remaining determinations that need  
2 to be made before the Bankruptcy Court.

3 Thank you.

4 JUDGE HEYBURN: Thank you.

5 Mr. White is next. Then Mr. Shevitz. And then Miss  
6 Cabraser.

7 MR. WHITE: May it please the Panel, I'm Ed White here  
8 to argue that the case that is going to admittedly be sent  
9 somewhere in an MDL should be sent to roughly the geographic  
10 center of the United States: Oklahoma.

11 Kansas is actually closer to the center of the country  
12 but nobody is here for Kansas.

13 I looked this morning on the MDL docket, and there were,  
14 by my count, 91 cases that are currently listed in the docket  
15 today. And of those, there is a big group in California, 28.  
16 There is 14 in Florida. There are seven in New York, and of  
17 course the bankruptcy is in New York.

18 There are cases all over. And there is a group of folks  
19 that want to go to California. There is a group of folks that  
20 want to take this case to New York.

21 You have heard from a variety of districts around the  
22 country.

23 The reason that I think that Oklahoma is the appropriate  
24 place to send this case is because this is a national case, this  
25 is a case where there is an important perception of how this case

1 is handled, and I think that the fact that it's like a mediation,  
2 when everybody is unhappy you may have a decent result.

3 And here, sending the case where I'm asking you to send  
4 it --

5 JUDGE RENDELL: It would make everybody unhappy?

6 MR. WHITE: It would make everybody unhappy.

7 JUDGE RENDELL: Miserable.

8 MR. WHITE: Except for me, and my client, and a few  
9 other folks potentially.

10 It also might make Judge Russell unhappy. But I suspect  
11 whatever judge is handling this, it's going to be a heavy load.

12 I was noting that Judge Russell in Oklahoma is senior  
13 status, and I thought that that might be kind of a cut against  
14 going there. But it turns out that of the roughly 240 MDL cases  
15 around the country, 60 of them are with senior-status judges,  
16 which surprised me that that proportion was with senior status,  
17 and they controlled their docket to a greater extent than  
18 regular-status judges.

19 So I think that actually cuts in favor of Oklahoma.  
20 Your Honors, we would ask for transfer to Oklahoma.

21 Secondly, we think that somewhere more central --  
22 Ohio is obviously a strong option -- and we would argue for that  
23 secondarily or for the Northern District of Illinois.

24 JUDGE HEYBURN: Thank you very much.

25 MR. WHITE: Thank you, your Honors.

1 MR. SHEVITZ: Good afternoon.

2 Richard Shevitz on behalf of Tracy Lewis.

3 we filed a consumer class action case in the Northern  
4 District of Indiana.

5 The Southern District of Indiana is another centrally  
6 located district in the Midwest. Like some of the other  
7 transferee courts, it's a court that's not overburdened and it  
8 happens to be the home of Judge Barker, who handled the Ford  
9 Firestone Litigation MDL very well some years ago.

10 But I want to spend a moment just to pick up with an  
11 observation about some of these comments that have been made  
12 about the relationship between --

13 JUDGE HEYBURN: Excuse me.

14 I skipped Mr. Gallucci. We will get to you, wherever  
15 you are.

16 Yes. Okay. You will be next. Okay.

17 Go ahead.

18 MR. WHITE: When I heard my name I thought I should step  
19 up.

20 JUDGE HEYBURN: No, you're right. You're right. They  
21 were both arguing for Pennsylvania.

22 JUDGE RENDELL: You've seen one Pennsylvania, you've  
23 seen them all.

24 MR. WHITE: I wanted to pick up with an observation  
25 about the relationship between the Bankruptcy Court and the MDL

1 transferee court, whichever one it may be.

2 JUDGE HEYBURN: Yes. That's a good issue.

3 MR. WHITE: The Court has raised some questions -- and I  
4 don't know that I have the answers to those questions.

5 There were issues related to withdrawal of the  
6 reference, issues related to appeals.

7 But one thought that struck me is that among the courts  
8 that may serve as transferee court, the Southern District of New  
9 York is also the one that would serve as an appellate court over  
10 any bankruptcy proceedings from might be appealed.

11 For example: Discovery disputes. The stay order, which  
12 you have heard some talk about already.

13 JUDGE RENDELL: That could be a different judge. It's  
14 not just one court. It would go to a different District Court  
15 judge.

16 MR. WHITE: Of course, your Honor. Of course.

17 However, for example, some questions were already  
18 brought up about relationships between the transferee court and  
19 the Bankruptcy Court on discovery.

20 we don't know what the scope of discovery is going to  
21 look like in Bankruptcy Court. It presumes -- the talk has been  
22 that it will be rather focused at the beginning, but any  
23 transferee court is likely to coordinate with the District Court  
24 as to that scope of discovery right from the outset and could  
25 enter into some kind of joint order.

1           And so, for example, just to take a mundane issue like  
2 the discovery issue, if a discovery dispute arises it is  
3 litigated in the Bankruptcy Court and one side or the other is  
4 unhappy with the Bankruptcy Court's interpretation of an initial  
5 discovery order in the case and takes an appeal to the Southern  
6 District of New York, a different judge than the transferee  
7 court. You would have a situation where that district judge  
8 sitting in the Southern District of New York is reviewing as an  
9 appellate forum in part a ruling by a fellow District Court judge  
10 in that district.

11           JUDGE RENDELL: Why does that matter? It could be  
12 ruling -- you know, reviewing your ruling of another --

13           MR. WHITE: It may not.

14           JUDGE RENDELL: And it could be that all the appeals  
15 would come to the transferee judge, which might actually be  
16 efficient.

17           MR. WHITE: Well, again, I'm only bringing these up, for  
18 example. These may not be -- certainly they are not  
19 insurmountable problems, but they are issues that cropped up in  
20 that jurisdiction that may not exist elsewhere.

21           A transferee court from another jurisdiction I don't  
22 think would serve directly in the capacity of taking an appeal  
23 from the bankruptcy so there would be that much more distance  
24 between them in the two matters going independently.

25           And the court handling, for example, consumer class

1 action claims, is not considering that record when it looks at  
2 proceedings that are appealed to it from the Bankruptcy Court on  
3 a related matter.

4 JUDGE HEYBURN: Who do you want to have it in the  
5 Southern District of Indiana?

6 MR. WHITE: Well, we have made that observation, that  
7 that court is obviously a good choice. We also pointed that we  
8 agree with some of the other plaintiffs' counsel about the  
9 Central District of California. But at the end of the day the  
10 best judge in the land is the right choice, and that's why I  
11 wanted to focus these comments about the New York situation.

12 JUDGE HEYBURN: Thank you.

13 Okay. Mr. Gallucci. I was -- yeah. I skipped him,  
14 so --

15 MR. GALLUCCI: Good afternoon.

16 I was all ready to talk about Harrisburg, having grown  
17 up right outside of Harrisburg. But after hearing the questions  
18 from the Court today and thinking about it, the -- although we  
19 have asked for the Eastern District of Pennsylvania and we would  
20 certainly favor sending the case to the Eastern District of  
21 Pennsylvania, we -- I believe that the case is complicated enough  
22 that it should be sent to the jurist with the most experience,  
23 and the alternative argument that we have made is the Central  
24 District of California. I think that may be the case.

25 And with that, I would like to sit down.

1 JUDGE HEYBURN: Thank you.

2 Miss Cabraser.

3 MS. CABRASER: Good afternoon, your Honors.

4 JUDGE HEYBURN: Good afternoon.

5 MS. CABRASER: Elizabeth Cabraser for the Ramirez,  
6 Elliott, Foster and Salerno plaintiffs collectively, plaintiffs  
7 representing statewide classes in 40 states and a nationwide  
8 civil RICO class.

9 And these plaintiffs have recommended, among others:  
10 the Northern District of Ohio, the District of Massachusetts --  
11 where the case is assigned to William Young -- we have also  
12 observed that the Northern District of Illinois, and for these  
13 purposes the Eastern District of Pennsylvania, would be  
14 appropriate transferee courts not because geography is destiny --  
15 in this case it certainly isn't -- but because those courts, as  
16 do many others, contain experienced jurists.

17 We're really asking the Panel to do what it does best:  
18 what the plaintiffs were accused of doing by GM, I think  
19 lightheartedly, judge-shopping, because so many of us recommended  
20 Judge Selna.

21 Really we're asking this Panel to judge-shop for the  
22 best jurist in any jurisdiction, the one with the experience, the  
23 energy, the ability to devote immediate and intensive efforts to  
24 discovery in this matter because despite the overlap with the  
25 Bankruptcy Court issue, that threshold issue of due process, so



1 much of the fact pattern in this case involves post-2009 events  
2 by new GM.

3           In some instances these were the same people as were  
4 making the decisions and had the knowledge at old GM. But in  
5 other cases, not.

6           what's happening now is that there is a recall underway  
7 for vehicles that were sold both pre- and post-bankruptcy, and  
8 new GM is not differentiating between the pre-bankruptcy cars and  
9 the post-bankruptcy cars, because they all share the same  
10 ignition switch defect, it's a safety-related defect, and they  
11 need that recall.

12           And issues have arisen with respect not only to when new  
13 or old GM knew what, and when they knew it, and what they did, or  
14 what they should have done and what they didn't do, but issues  
15 have arisen that are with part of the allegations of these class  
16 action complaints about this ongoing recall, which is taking  
17 place right now in real time, not back in the past, and which is  
18 going to require we believe, on behalf of plaintiffs, active  
19 judicial supervision.

20           JUDGE RENDELL: So who is that energetic best jurist?

21           MS. CABRASER: Among the judges that we know, certainly  
22 Judge Selna; certainly Judge Young; Judge DuBois in the Eastern  
23 District of Pennsylvania, who was assigned the Salerno case, has  
24 one other MDL pending; Judge Dow in the Northern District of  
25 Illinois, who is assigned the Northern District of Illinois case

1 that Mr. Clifford mentioned, has one other MDL pending.

2 with the possible exception of Judge Young who is quite  
3 busy not only on Nexium anti-trust but on other matters, each of  
4 these other judges has one other MDL. Judge Selna has the Toyota  
5 case, but that case is winding down.

6 The class action is settled. That settlement is final.  
7 And over half of the personal injury wrongful death cases are  
8 settled as well, and they will be settled by year's end.

9 JUDGE HEYBURN: If I might ask, what would you see --  
10 there are obviously lots of good judges in the Southern District  
11 of New York.

12 MS. CABRASER: Yes. Absolutely.

13 JUDGE HEYBURN: What are the pros and cons of putting it  
14 in that jurisdiction, from your viewpoint?

15 MS. CABRASER: Well, the pros that are it's a great  
16 district.

17 JUDGE HEYBURN: Yes.

18 MS. CABRASER: It has more -- it has twice the number of  
19 MDLs than any other, and those are for good reasons: There are  
20 many able judges in the Southern District of New York.

21 what we do say, though, is the bankruptcy really doesn't  
22 cut for or against the Southern District of New York for a number  
23 of reasons that other counsel have noted.

24 There is the potential conflict issue which was  
25 addressed by Judge Wisdom in the Four Seasons Panel decision from

1 back in 1971 that you heard about.

2           There is the situation that this due process violation  
3 issue is intended to be decided on no formal discovery on very  
4 short order.

5           And that if larger discovery is required, whether it's  
6 fraud on the court or anything else, that's going to involve a  
7 continuum that reaches back from before 2001 to the current day  
8 that's going to need to be addressed by a district judge, as will  
9 the trial of any disputed fact issues.

10           JUDGE BREYER: Are you participating in the bankruptcy  
11 proceeding with respect to the due process issue?

12           MS. CABRASER: Yes.

13           JUDGE BREYER: And the reason I'm asking the question  
14 is, do you have a sense -- other than short time -- but is there  
15 a timetable? Do we have a sense of when -- because it does seem  
16 like a threshold issue -- when the judge is going to decide that?

17           MS. CABRASER: I think we do. We don't have a deadline.  
18 Judge Gerber didn't impose a deadline on himself. But we know  
19 that the parties are exchanging stipulations of fact now.

20           There will be a status conference on July 2nd.

21           The stays that everyone has voluntarily entered into to  
22 try to help organize these proceedings really lasts, as a  
23 practical matter, until September 1st because at that time we can  
24 request relief from it.

25           That gives this Panel time to act. It gives the

1 transferee judge, wherever he or she is, time to get the case  
2 organized.

3           The stay doesn't preclude the district -- the transferee  
4 judge from organizing the litigation, and it doesn't preclude us  
5 all from figuring how best to plead in master pleadings the  
6 independent claims against new GM.

7           Remember, these aren't successor liability claims. This  
8 is -- this is new GM liable for what new GM has done  
9 post-bankruptcy.

10           JUDGE VANCE: Excuse me.

11           You said if the fraud-on-the-court claims have to  
12 involve discovery that that would have -- that goes way back.  
13 That would have to be decided by a district judge.

14           And what I'm not clear on is if that issue has been  
15 raised in front of the bankruptcy judge as a basis for  
16 invalidating the sale order, how is he not going to decide that  
17 and how is that going to be decided by a district judge?

18           I'm just puzzled as to how that's going to happen.

19           MS. CABRASER: Thank you.

20           First of all, if the due process issue, which is the  
21 much simpler issue, the issue intended to be decided on  
22 stipulated facts without formal discovery, is that due process  
23 was violated because GM's known creditors weren't advised of the  
24 ignition switch defect that old GM knew about, then fraud on the  
25 court need not be reached.

1 JUDGE VANCE: Right.

2 MS. CABRASER: And then it's a simple matter of the  
3 discovery that the MDL transferee court, wherever situated, would  
4 do.

5 we think it's most likely, because it's a simpler issue,  
6 more straightforward, that the due process issue will resolve  
7 that matter and then we can all get on to the main event, which  
8 is what to do about the recall claims, the economic loss claims  
9 with respect to new GM.

10 JUDGE HUELLE: Are the issues going to be dramatically  
11 different for the personal injury cases that will be coming? Do  
12 you have any of those plaintiffs?

13 MS. CABRASER: We do, your Honor. We have them.

14 There are far many more than have been reported in the  
15 press. The good news on that is that GM has indicated, at least  
16 preliminarily, that they take responsibility for those whenever  
17 they occurred, whatever the vehicles were, and they have -- they  
18 have assigned Mr. Feinberg to try to come up with a programmatic  
19 way to resolve all those cases.

20 That may or may not require judicial supervision, but I  
21 think if and when the personal injury claims come into the  
22 federal system -- they are now in the state system only -- I  
23 think, without speculating as to when or whether that will happen  
24 -- I think it's wise for the Panel in considering its choice of a  
25 transferee judge to consider someone who would also be willing

1 and able to supervise those claims, hopefully through a  
2 court-supervised program of resolution.

3 JUDGE HEYBURN: Do you have any sense how many of those  
4 injury claims exist nationwide?

5 MS. CABRASER: I -- I can --

6 JUDGE HEYBURN: I think we were under the assumption  
7 that there may have been less than 50, and we are told recently  
8 now there is 160, just in --

9 MS. CABRASER: I'm extrapolating from the cases that my  
10 firm has and that I know others have, and so this number may be  
11 low, but unfortunately there will be several hundred -- I hope  
12 it's in the low hundreds -- death cases. And a larger number of  
13 serious injury cases.

14 I don't think -- and I'm happy to say this -- I don't  
15 think we are looking at many, many thousands. This is not like a  
16 pharmaceutical mass tort case, thank heavens.

17 I think we are looking at hundred of cases. So  
18 something that does require a program, but something that a court  
19 could supervise.

20 Oh, and by the way I forgot to mention the Southern  
21 District of Indiana, also in America's Heartland, many wonderful  
22 judges there, Judge Barker among though.

23 I think your Honors have --

24 JUDGE VANCE: Michigan is in the Heartland too. What's  
25 the matter with that?

1 MS. CABRASER: It is.

2 And Michigan has -- the Eastern District of Michigan has  
3 the Detroit bankruptcy to occupy itself, which is a huge matter.  
4 It wasn't General Motors' first choice, and we note historically  
5 that most of the large cases against GM have not been transferred  
6 there. They have been transferred to other districts.

7 Because again, these vehicles and this recall is taking  
8 place nationwide. We don't have a center of gravity for the way  
9 that conduct is affecting the class plaintiffs today.

10 JUDGE HEYBURN: Thank you very much.

11 MS. CABRASER: Thank you.

12 JUDGE HEYBURN: Mr. Bloomer. For GM.

13 MR. BLOOMER: Chairman Heyburn and distinguished members  
14 of the Panel:

15 I'm Andrew Bloomer speaking on behalf of General Motors,  
16 LLC, sometimes referred to as "new GM."

17 If I may, your Honors, I'd like to answer the question  
18 that Judge Breyer asked at the very beginning of this hearing  
19 regarding the issue of new GM and old GM. The -- no vehicle  
20 manufactured by new GM contained the subject part that's at issue  
21 here.

22 So a vehicle manufactured by new GM that contained any  
23 parts manufactured by new GM: not covered by the bankruptcy sale  
24 order and injunction.

25 \*\* now, why does the recall extend to the vehicles

1 manufactured by new GM which I think is at the heart of your  
2 question?

3           The answer to that is that can a part manufactured by  
4 old GM somehow appear in a vehicle that was manufactured by new  
5 GM? And the answer to that is: "It could."

6           Not because it was put there by new GM, but because  
7 someone might have taken that vehicle in.

8           we know the part number wasn't changed. A dealer who  
9 made a replacement on the ignition switch could have taken an old  
10 GM part that as we know had the same part number, put it in the  
11 vehicle.

12           So as an abundance of caution, those vehicles have been  
13 included in the recall. I think that is really the flea on the  
14 tail of the dog in this matter.

15           The vast majority of what we have here --

16           JUDGE BREYER: well, I'm not quite sure it answers  
17 completely the question. Because if in fact new GM was totally  
18 different than old GM, that is to say that some of the  
19 same -- that no same person worked for both, no individual who  
20 had the knowledge of both worked together, or that there were no  
21 records, documents, and so forth, that went from old GM to new  
22 GM, then I can understand that argument.

23           But if there is some potential overlap between old GM  
24 and new GM, you could have the situation, a second basis of  
25 liability would be what did new GM know about the problem when



1 they sold the new GM car?

2           Because under -- even under your scenario they take the  
3 car in and they put in the old -- possibly the old parts,  
4 that's -- that could demonstrate a problem.

5           So isn't it just --

6           MR. BLOOMER: Well, without --

7           JUDGE BREYER: -- what people knew too?

8           MR. BLOOMER: Without agreeing that new GM would even  
9 have a basis to know that that occurred, your Honor, I think it  
10 gets to the very issue that is before Judge Gerber, which is it's  
11 going -- the issues you're raising, understandably, go to the  
12 heart of the application, interpretation, and enforcement of the  
13 sale order.

14           And so regardless of how that question gets answered, I  
15 think there is consensus -- I would say almost full unanimity  
16 based on what I've heard here today -- that Judge Gerber is going  
17 to make those rulings. And those rulings are going to be  
18 dispositive rulings that are going to impact the shape and scope  
19 of this and are going to determine the viability of these claims.

20           Because the vast, vast majority of what's in these  
21 complaints are claims. And when I say the vast majority, based  
22 on what I've read -- and I can't say I've read every --

23           JUDGE BREYER: You're saying it's more than 80 percent.

24           MR. BLOOMER: I'm fairly comfortable with saying, your  
25 Honor, that what we're dealing with here -- 80 plus percent, 90

1 plus percent -- are claims involving vehicles and parts  
2 manufactured by old GM.

3 JUDGE HUVELLE: Are you the same counsel in the  
4 bankruptcy matter in the Southern District?

5 MR. BLOOMER: I am one of the counsel of record, Judge  
6 Huvelle, yes.

7 JUDGE HUVELLE: And so is that -- when you are  
8 distinguishing old GM from new GM, the bankruptcy proceedings  
9 obviously involve the old GM, and you are -- will be arguing the  
10 questions of due process and fraud on the court on behalf of GM?  
11 whether it's old or new, I don't know.

12 MR. BLOOMER: Only on behalf of new GM only, your Honor.

13 JUDGE HUVELLE: Okay.

14 MR. BLOOMER: I do not represent old GM.

15 JUDGE HUVELLE: So there are other counsel.

16 MR. BLOOMER: I believe there are other counsel that  
17 represent -- I don't believe old GM exists anymore. I believe  
18 there is a general unsecured creditors' trust and that trust has  
19 counsel.

20 Regardless, your Honors, of how this issue gets  
21 decided -- and it seems that no one standing before you today  
22 disagrees that Judge Gerber is going to have to decide that --  
23 whatever the decision is, there is going to be an appeal. That  
24 appeal is going to be in the Southern District of New York. It  
25 can't be otherwise.

1 JUDGE HUVELLE: And do you think that ought be the same  
2 judge as the MDL judge? Is there an advantage to that? Or  
3 disadvantage?

4 MR. BLOOMER: I think, regardless of who the individual  
5 judge is are -- because I think all would concede here that the  
6 Southern District has numerous well-qualified -- it's a very deep  
7 bench, well-qualified, well-experienced judges with a lot of MDL  
8 experience, a lot of experience in complex commercial litigation  
9 and products liability litigation.

10 And what I think it underscores, Judge Huvelle, is the  
11 fact that the Southern District, as a district, is the right  
12 place for this because no matter what happens there is going to  
13 need to be considerable coordination between whoever the MDL  
14 transferee judge would be and the bankruptcy proceedings, which  
15 are ongoing.

16 And Judge Gerber has set that, those proceedings are  
17 underway, and they are fairly far along, as has been described by  
18 other counsel. And those decisions are going to get made, and  
19 I'm willing to bet that regardless of what the decisions are  
20 there will be appeals, and those are going to be in the Southern  
21 District of New York.

22 JUDGE HEYBURN: It sounds like it's less -- less  
23 coordination than just whoever the transferee judge is will have  
24 to apply the rulings. You know, I mean central to any ongoing  
25 case, as you suggest, is the ultimate effect of the rulings

1 coming out of the Bankruptcy Court and whatever appeal there is.

2 MR. BLOOMER: That could well be, Judge Heyburn, and it  
3 could be that judge might be hearing the appeals of matters  
4 before Judge Gerber. I mean, this could play out a number of  
5 different ways.

6 My point being that whichever judge this judge selects  
7 is going to have to do some very close coordination with the  
8 Bankruptcy Court.

9 JUDGE RENDELL: Of course, the coordination could be  
10 pick up the phone and say: How's this going? I mean, it's  
11 really -- it's parallel tracks, if you will.

12 MR. BLOOMER: This is true.

13 JUDGE RENDELL: It could be in Michigan, Eastern  
14 District of Michigan.

15 would you speak to Eastern District of Michigan? I am  
16 kind of surprised, as General Motors, that you wouldn't say this  
17 is where the evidence is, this is where the facts are, this is  
18 where all the things have --

19 MR. BLOOMER: And there is truth to that.

20 And we said -- what we said is had there been no  
21 bankruptcy -- I think our papers say had there been bankruptcy  
22 and if there were no bankruptcy, that would certainly be a  
23 suitable forum.

24 I think our approach in looking at this was to say this  
25 is -- we've got threshold issues, at the very least, threshold

1 issues that are going to have to be decided by Judge Gerber who  
2 has exclusive and ongoing jurisdiction over matters involving the  
3 interpretation and enforcement of his sale order.

4 And thinking down the line, regardless of what he does,  
5 there will very likely be, given the number of parties, given  
6 these issues, there is going to be appeals.

7 They are going to go to one district. That's the  
8 Southern District of New York. So when we go --

9 JUDGE HEYBURN: Isn't it very likely that beginning a  
10 huge case like this prior to the resolution of the appeal is  
11 going to be problematic?

12 MR. BLOOMER: It certainly would underscore the need  
13 for, whether it's picking up the phone or something more, close  
14 coordination between the bankruptcy judge and the district judge.

15 JUDGE HEYBURN: I would say -- that's what I was getting  
16 to. I don't understand the close coordination.

17 The Bankruptcy Judge Gerber is going to be deciding the  
18 case that's going to be appealed.

19 JUDGE VANCE: What's going to go in a transferee court  
20 while that's going on?

21 MR. BLOOMER: Well, I think, since -- I think roughly  
22 the number of -- there is -- as of today -- and we filed a  
23 pleading yesterday, a supplemental information, which the numbers  
24 have changed somewhat, but as of today I believe 317 out of 330  
25 named plaintiffs have entered until stipulations to stay their

1 underlying actions pursuant to Judge Gerber's scheduling order.

2           So the answer I think in the short-term is those cases  
3 are stayed, and in favor of and in allowance for Judge Gerber to  
4 decide these issues that he has described as threshold issues,  
5 but also realizing there are other issues that are implicated  
6 that could be raised by plaintiffs or some number of plaintiffs  
7 or could be raised, Judge Vance, by my client.

8           JUDGE HEYBURN: Thank you very much.

9           MR. BLOOMER: Thank you very much, your Honors.

10          JUDGE HEYBURN: Mr. Schoon.

11          MR. SCHOON: Good afternoon, your Honors.

12          Eugene Schoon on behalf of the new Delphi, specifically  
13 Delphi Automotive PLC and Delphi Automotive Systems LLC.

14          I do not represent the old Delphi which is also  
15 identified in some of the papers.

16          I hesitate to even stand up right now because we have  
17 been left out of all the argument. I think that's appropriate.

18          Let me explain why we're a defendant in -- that is, new  
19 Delphi is a defendant in fewer than half of the cases, and in  
20 those we have -- of those we have been served in even fewer of  
21 those, fewer than half of those.

22          we don't think we should be in this litigation at all.

23          Delphi Automotive, the old Delphi, made a component part  
24 that was part of another part that became part of a system that's  
25 at issue here.

1           But we are where we are. And I haven't been able to  
2 persuade our colleagues on the other side to dismiss us yet.

3           I do want to mention one thing, however, and that is  
4 there is more than one bankruptcy that may become involved here.  
5 We allude to this in our papers.

6           Delphi, the old Delphi filed for bankruptcy also in the  
7 Southern District of New York. To date no plaintiff has filed an  
8 adversary proceeding against us, nor have we filed a motion to  
9 enforce the free and clear sale order -- that is, new Delphi --  
10 at this point.

11           But if this litigation proceeds and we find it necessary  
12 to do so, we could very well be filing motions similar to what  
13 new GM has done. And I think the Court should be aware of that  
14 as just another factor as we consider the appropriate venues.

15           We are in front of Judge Drain. Bankruptcy Judge Drain.  
16 We think it's fine to see Judge Gerber progress in the case with  
17 new GM because there is such an overlap in issues.

18           But we are different. There will be no argument against  
19 us, we believe, of fraud on the bankruptcy court, for example,  
20 that's being made against GM. Ours will be more of the strict  
21 due process argument we assert.

22           But putting that aside, we advocate of course for the  
23 Southern District of New York as well as for the Eastern District  
24 of Michigan. And I don't need to repeat the arguments there.

25           I want to say just one thing about the Central District

1 of California, though, and I believe Judge Selna is a fine jurist  
2 and he has done a marvelous job in Toyota.

3 My only concern about this from my client's perspective  
4 is that while he has done a marvelous job for the last four years  
5 in Toyota, we were not part of that. And I think assumptions get  
6 made, decisions are made in litigation, that we'll then be asked  
7 to assume without having full opportunity to present them.

8 I don't mean to cast aspersions on plaintiffs, or  
9 others, but it's just a concern on our part.

10 we think there are plenty of jurists, and they have all  
11 been named, and frankly Judge Selna would be fine among them.

12 But for those reasons we have identified the Eastern  
13 District of Michigan, and we would join with actually most of  
14 what the plaintiffs said on those jurists.

15 JUDGE HEYBURN: Thank you.

16 MR. SCHOON: Thank you, your Honors.

17 JUDGE HEYBURN: Mr. Robinson, you have got a minute.

18 MR. ROBINSON: Regarding Delphi, I can say that our  
19 experts in Toyota, a couple of them, worked for Delphi. So I  
20 don't think counsel should be worried.

21 I think this, your Honors, this is a difficult decision.  
22 I can hear it in your voices here.

23 The one -- I'd like to just go through quickly this:  
24 The failure of due process. If the Court finds that, then we are  
25 not going to need to go on the fraud-on-the-court issue. And I



1 think that's what's going to happen, is the first issue by the  
2 bankruptcy judge will be the due process issue.

3 I think this, that really there are several cases  
4 here -- the Penn Central case, the Four Seasons case, the  
5 Stirling case -- they are all say even if a judge were capable of  
6 carrying out these objectives simultaneously, the appearance of  
7 conflict which such an assignment presents should be avoided.

8 I don't really think it matters that this case goes to  
9 New York because the bankruptcy is in New York. There has been  
10 no discovery in the bankruptcy itself. No documents produced on  
11 the ignition switch in the Bankruptcy Court.

12 JUDGE BREYER: But I'm trying to figure out what the  
13 conflict is.

14 If Judge Gerber writes something about due process or  
15 fraud on the court, or so forth, it will be, as I understand the  
16 present state of the law, a report and recommendation. It goes  
17 then to the District Court.

18 The District Court has to conduct, as I understand it, a  
19 de novo review of it.

20 Now, upon a de novo review that judge may believe what  
21 they may believe, another may think that Judge Gerber there may  
22 be certain -- Judge Gerber, there may be certain things not  
23 presented, newly presented, and so forth and so on.

24 I just don't know that it sits there in the role of an  
25 appellate judge as much as a -- though it is, it is -- it could

1 be viewed that way -- but it also can be viewed that they have to  
2 make an independent determination based upon a de novo review.

3 So does the conflict really exist?

4 MR. ROBINSON: The cases say it may exist, your Honor.

5 JUDGE KAPLAN: The cases say a conflict exists between  
6 what two propositions or what two interests that are not  
7 coextensive?

8 MR. ROBINSON: well, what I'm saying is this, your  
9 Honor: is that the cases say a conflict exists. I would say --

10 JUDGE KAPLAN: In what circumstance?

11 JUDGE VANCE: what is it?

12 JUDGE KAPLAN: what is the conflict?

13 MR. ROBINSON: well, you're -- basically the MDL court  
14 may have motions before it that it's trying to decide that might  
15 relate to issues like fraud, and you have the -- if you have an  
16 appeal coming up from --

17 JUDGE RENDELL: Doesn't it involve ongoing bankruptcy  
18 proceedings? Isn't it when there are ongoing bankruptcy  
19 proceedings?

20 This will be Judge Gerber making a conclusion based upon  
21 review of facts. It's not an ongoing bankruptcy proceeding, as  
22 such.

23 MR. ROBINSON: No, no, no. It's not. No.

24 JUDGE RENDELL: The cases you cite, don't they involve  
25 ongoing bankruptcy proceedings?

1 MR. ROBINSON: Basically the cases say that you don't  
2 have to pick a judge in the Southern District of New York.

3 JUDGE HUVELLE: You may not have to, but is there any  
4 reason you can't?

5 MR. ROBINSON: No, I'm not saying you can't. I'm not  
6 saying that.

7 JUDGE KAPLAN: I'm trying to understand your argument  
8 and I'm trying to get some help.

9 Is it not true that in every case you cite you had a  
10 bankruptcy judge in charge of a Chapter 11, the objective of  
11 which is to reorganize the company and have it emerge, is that  
12 right?

13 MR. ROBINSON: Yes.

14 JUDGE KAPLAN: And if the MDL judge and the bankruptcy  
15 judge in that posture is the same, the argument in those cases is  
16 that somehow something that the MDL judge might do could have an  
17 adverse impact on the ability to reorganize or the terms of the  
18 reorganization or vice versa.

19 Is that true?

20 MR. ROBINSON: well, I think it could be true. I  
21 see some -- go ahead.

22 JUDGE KAPLAN: But that's what those cases are talking  
23 about, is that correct?

24 MR. ROBINSON: These cases I've cited are talking about  
25 that, correct.

1 JUDGE KAPLAN: Every one of them?

2 MR. ROBINSON: The three.

3 JUDGE KAPLAN: Okay. That's not true here at all if the  
4 MDL judge and a judge hearing an appeal from Judge Gerber are one  
5 and the same, isn't that true?

6 MR. ROBINSON: I do think that -- I don't know -- but  
7 you're a federal judge, Article III judge, but I think that there  
8 could be a conflict.

9 JUDGE KAPLAN: Could you tell us what it is.

10 MR. ROBINSON: I think that there may be issues brought  
11 up in the MDL that weren't presented before Judge Gerber.

12 For example, Judge Gerber would be -- may be making a  
13 finding on fraud on the court. That's a fraud on him.

14 That's not really an issue that's going to be before the  
15 MDL Panel.

16 JUDGE PROCTOR: Is the stipulation that you are talking  
17 about in the Bankruptcy Court going to be binding only on the  
18 parties --

19 MR. ROBINSON: Yes.

20 JUDGE PROCTOR: -- as to that proceeding and nothing  
21 else?

22 MR. ROBINSON: Yes. As I understand it.

23 JUDGE PROCTOR: So there would be free rein on discovery  
24 and litigating those facts beyond the Bankruptcy Court.

25 MR. ROBINSON: Yes. But to get back to what you're

1 saying, Judge Kaplan, I think this, that the answer is this: I  
2 think that if you're saying that you think it has to go to New  
3 York, I don't think it has to go to New York.

4 JUDGE KAPLAN: I'm not saying that at all.

5 MR. ROBINSON: Okay.

6 JUDGE KAPLAN: You're the one who has been standing here  
7 and repeatedly saying there would be a conflict if it did.

8 MR. ROBINSON: No.

9 JUDGE KAPLAN: And I'm trying to find out what the  
10 conflict would be because I can't figure it out. So I'm asking  
11 the man who brought it.

12 MR. ROBINSON: I guess my argument is this. I'll make  
13 another argument, how's that?

14 JUDGE KAPLAN: Okay.

15 MR. ROBINSON: My other argument is this: Is that you  
16 don't need to -- for example, if you went to one of the judges  
17 that Ms. Cabraser gave you in these other states, there is no  
18 problem here.

19 JUDGE BREYER: Well, we have to figure out what the  
20 problem is. We are asking you: Is there a problem?

21 MR. ROBINSON: I don't see it that there is a problem.

22 Because somebody in -- if there is an appeal to a  
23 federal judge in New York, and that judge rules, and then the  
24 Second Circuit rules, and there is a ruling as to which claims  
25 are barred, then the judge -- the MDL judge would just follow

1 those rulings.

2           So I don't think it really should matter that the case  
3 goes to New York because the bankruptcy judge is in New York.

4           JUDGE HUVELLE: But it can go to New York, you agree.

5           MR. ROBINSON: I think it can go to New York as well.  
6 So I'm not saying it can't go to New York. So if that's what  
7 your question was on conflict --

8           JUDGE KAPLAN: No, all I wanted to know was what the  
9 conflict was.

10           MR. ROBINSON: well, you did well, because I really  
11 couldn't give you a specific one.

12           But I guess to finalize here is this: I'm going to come  
13 back to where I began, and Ms. Cabraser mentioned it. I just  
14 think that you ought to really come up with the best judge.  
15 That's your job.

16           I do think that Judge Selna should be considered. I  
17 think that he is finishing up with Toyota. He has been through  
18 all these other issues -- not this bankruptcy issue, but he has  
19 been through all these other issues in this auto industry. He  
20 has been through the NHTSA issues, et cetera.

21           So -- and the class-related issues that relate to the  
22 auto industry and the damages issues that relate to the auto  
23 industry, that took two or three years of work. Some other judge  
24 is going to have to --

25           JUDGE HEYBURN: I think we understand what he did, and

1 obviously we respect Judge Selna a lot.

2 MR. ROBINSON: Thank you.

3 JUDGE HEYBURN: Thank you very much. You took more than  
4 a minute, but I think it's fair to say that it wasn't your fault.

5 MR. ROBINSON: That's okay. I have met Judge Kaplan  
6 before, and we always have fun.

7 Thank you, Judge Kaplan.

8 JUDGE HEYBURN: Thank you. We will take the matter  
9 under submission.

10 (Proceedings concluded.)

11 C E R T I F I C A T E

12 I, Maellen E. Pittman, do hereby certify that the  
13 foregoing is a complete, true, and accurate transcript of the  
14 proceedings had before the United States Panel on Multidistrict  
15 Litigation on May 29, 2014, at 1:45 p.m., at Chicago, Illinois.

16 /s/ Maellen E. Pittman, FCRR, RDR

17 United States Court Reporter

18 United States District Court

19 Northern District of Illinois

20 Eastern Division  
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