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July 10, 2014

BY ELECTRONIC FILING
The Honorable Jesse M. Furman
United States District Court
for the Southern District of New York
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, New York 10007

Re: In re: General Motors LLC Ignition Switch Litigation
S.D.N.Y. No. 14-MD-2543, 14-MC-2543 (JMF)

Dear Judge Furman:

This firm ("Wolf Haldenstein") and our co-counsel Golenbock Eiseman Assor Bell & Peskoe LLP ("Golenbock") represent the eight Plaintiffs who are collectively referred to as the "Groman Plaintiffs" in the Scheduling Orders entered by Bankruptcy Judge Gerber in the ongoing bankruptcy proceedings in this matter. I write pursuant to this Court's Order No. 3.

Our clients filed the first two Ignition Switch cases in this District, *Groman v. General Motors LLC*, No. 14-CV-2458 (JMF), and *DeLuco v. General Motors LLC*, No. 14-CV-2713 (JMF). On April 21, 2014, our clients initiated the current bankruptcy proceedings by filing a class action adversary complaint seeking a declaration that the Plaintiffs' consumer fraud and economic loss claims are not barred by the Sale Order injunction issued during GM's 2009 bankruptcy. *Groman, et al. v. General Motors LLC*, Adv. Pro. No. 14-01929 (REG). At the initial conference on May 2, 2014, Judge Gerber appointed Jonathan Flaxer of Golenbock as one of the two liaison counsel assigned to represent the Plaintiffs' interests in the Bankruptcy Court, and our two firms have since then worked incessantly, we believe to Judge Gerber's satisfaction, to fulfil that duty.[1] Our clients, incidentally, were the only Plaintiffs who asked the JPML to centralize the Ignition Switch MDL in this District, and they were the sole parties who advocated for transfer to this Court. *See In Re: General Motors LLC Ignition Switch Litig.*, MDL No. 2543 (JPML Doc. No. 120).

Wolf Haldenstein attended the July 1 meeting hosted by Temporary Lead Counsel ("TL") to discuss the contents of their July 7, 2014 letter, and we proposed written suggestions to them on July 2. Despite our daily role in the bankruptcy proceedings, which has involved numerous extensive meetings and negotiations with GM, Designated Counsel and other Interested Parties, including at

[1] Judge Gerber appointed Brown Rudnick, LLP as the other Plaintiffs' liaison counsel. That firm and two additional bankruptcy firms hired by other Plaintiffs' counsel were later referred to, at their urging, as the "Designated Counsel," *see In re Motors Liquidation Co.*, Case No. 09-50026 (REG), Scheduling Order Entered May 16, 2014, at 2 n.3 [Doc. 12697], although in this case that phrase is slightly inaccurate as Mr. Flaxer was also designated by the court. *See Manual for Complex Litigation, Fourth Edition*, § 10.221.

times TL firm representatives, TL did not report any of our suggestions to the Court in their July 7 letter. Our recommendations derive in part from the perspective that, unlike in the Toyota litigation, the factual issues concerning liability in the GM Ignition Switch cases are not genuinely in dispute. The key issues are therefore legal in nature, and the most crucial ones are being heard by the Bankruptcy Court in the early fall after an expedited briefing schedule, in which our clients are active participants. With that in mind, our recommendations for the leadership structure in the MDL are as follows:

1. Lead and Liaison Counsel. There should be four Lead Counsel for the economic loss claims, including at least one from a New York-based firm, which will eliminate need for separate liaison counsel. A four-lead structure has worked to serve the Plaintiffs' collective best interests in the Bankruptcy Court. We believe the personal injury claims should be separately organized.

2. Other Committees. We advocate an Executive Committee organized topically by subject matter rather than by litigation tasks. The Chair of the Executive Committee should serve on the main leadership team with the four Co-Lead Counsel and act when necessary as administrative liaison to the other Executive Committee members. At the same hierarchical level there should be a Lead Bankruptcy Counsel to advise Lead Counsel, coordinate any appeals of Judge Gerber's rulings and work with (but not replace or control) Judge Gerber's selected liaison counsel. There also should be a Lead RICO Counsel to prepare any necessary separate pleadings or RICO case statements.

We propose four Executive Committee positions. Because the Magnuson-Moss and consumer fraud claims will be driven by the laws of 47 states, there should be a Consumer Fraud Committee and a Products Liability Committee chaired by Executive Committee members, as well as a Class Action/Fraudulent Concealment Committee and a Personal Injury Liaison Committee.

Because (i) all Plaintiffs have been temporarily stayed by the Bankruptcy Court (99% of them voluntarily) from proceeding with discovery in the MDL, and (ii) we strenuously advocate that the parties mediate and attempt to resolve these cases later this summer or early fall while the threshold bankruptcy issues are pending before Judge Gerber, we disagree with TL that there is a need to appoint discovery, expert witness or trial committees at this time. In our view, in this case, giving Lead Counsel discretion and flexibility to appoint the best available counsel to handle litigation-specific tasks when and if they are needed is the most efficient approach.

3. Proposed Structure. See attachment.

4. Method and Schedule for Selection. We suggest that Lead Counsel, the Executive Committee Chair, Lead Bankruptcy and RICO Counsel, and the Executive Committee be appointed by open applications with the deadlines for submitting applications to be set at the August 11 conference.[2] The Executive Committee members should appoint their own respective committees, with Lead Counsel's consent.

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[2] Podhurst Orseck and Kozyak Tropin & Throckmorton state in their July 8 letter that TL's proposed "hybrid" methodology is a self-appointment mechanism. We read it the same way based on a draft proposed order that Temporary Lead Counsel circulated on July 3 along with its draft July 7 letter. If TL wish to clarify the issue, they should submit the draft proposed order to the Court.

5. Timing of Appointments. We disagree with TL's desire to rush the leadership application and appointment process. While appointing the MDL leadership need not wait until Judge Gerber rules, there is no need for haste because the parties are temporarily stayed from conducting discovery in the MDL through at least September 1, and will likely be stayed longer. The parties before the Bankruptcy Court have recently extended their timetable for exchanging stipulations of fact and briefs on the threshold bankruptcy issues through the end of September, assuming no discovery on those issues is requested or ordered, with a hearing on those issues scheduled for October 10. If discovery is ordered, the briefing schedule will be extended further.

TL's suggestion that appointing Lead Counsel quickly in the MDL will make the bankruptcy process "better off," July 7 Letter at 5, is not explained, but to the extent it implies that Lead Counsel appointed here should control the bankruptcy proceedings in lieu of Judge Gerber's Plaintiffs' liaison counsel appointments, it should be rejected. If efficiency can be improved upon in the Bankruptcy Court, it can and ought to be done through better coordination between Designated Counsel and Mr. Flaxer, which we have repeatedly urged Designated Counsel to do.

TL's statement that discovery can proceed immediately on "GMs post-bankruptcy conduct" and "ever-expanding recalls" that are "on center stage in the MDL" based on "more recently-filed" complaints, *id.*, raises what is to us a troubling issue. We know of only one complaint that meets this description, *Andrews v. General Motors LLC*, No. 5:14-cv-1239-ODW (C.D. Ca.), which the JPML conditionally transferred to this Court on July 2. *Andrews* is radically different from the Ignition Switch cases. It was brought on behalf of a different class, and it asserts a different legal theory. It should not be consolidated with these cases, and it should be led by different counsel. The Ignition Switch cases rest on a single defect common to five GM models affecting at most 2.5 million class members. *Andrews* alleges 35 mostly unrelated defects in numerous models and seeks damages for tens of millions of GM vehicle owners, even those whose cars were never recalled, based on a theory that GM's spate of recent recalls has devalued the "GM brand." Whatever the merit of that claim, the existing Ignition Switch class should not be encumbered by, or have its remedy delayed by, the much more costly and prolonged fact and expert discovery that will be required to litigate *Andrews*. That case should be treated as a stand-alone tag along action.

While we will not brief the consolidation issue in this letter, nothing in *Toyota* or the other cases TL cites remotely warrants permitting the same Lead Counsel to represent two entirely distinct classes in competing cases against the same defendant. While *Toyota* involved many car models, all were alleged to have the same throttle system and to "suffer the same overarching defect," *i.e.*, "sudden unintended acceleration." *See* C.D. Ca. No. 8:10-ML-2151-JVS, Doc. 429 (Amended Economic Loss Master Consolidated Complaint) at ¶ 327. If TL want to begin discovery in *Andrews*, they should apply for Lead Counsel in that case and allow other Plaintiffs' counsel to serve as Co-Leads in this MDL.

Respectfully submitted,

Alexander H. Schmidt

"Groman Plaintiffs" Proposed Lead Counsel Structure -- July 2, 2014