July 10, 2014

Via Electronic Filing

Hon. Jesse M. Furman
United States District Court, Southern District of New York

RE: *In Re: General Motors LLC Ignition Switch Litigation*, 14-MD-2543 (JMF); 14-MC-2434 (JMF)

Your Honor:

Thank you for providing Temporary Lead Counsel with leave to submit a reply to the letters filed by other counsel regarding our July 7 organization of counsel proposal. In class action MDL proceedings, it is often difficult for all plaintiffs to unanimously agree on how to proceed. Taking to heart the Court's directive that "[a]ll counsel should have a full opportunity to participate in the discussion and the status letters that the Court requests,"[1] Temporary Lead Counsel worked diligently to solicit the input of all Plaintiffs' counsel and submitted a proposal on July 7 that reflected a very broad, consensus view.[2]

Although the July 7 Recommendation did not reflect the desires of all, it remains the consensus view, notwithstanding the four letters submitted by a small group of counsel. By our count, counsel in only 15 of the 99 cases filed against GM dissent from the July7 Recommend-ation. These are ***far outweighed*** by (i) the 39 Plaintiffs' firms representing 46 cases who have, in the past three days, affirmatively reiterated their support of the July 7 Recommendation's leadership structure and application process, and (ii) counsel in an additional 38 cases who have not dissented from that proposal.[3]

The July 8 Podhurst/Kozyak letter contends that the July 7 Recommendation "effectively self-appoints [Temporary Lead Counsel] as permanent Lead Counsel," without "permit[ting] any other Plaintiffs' counsel to apply for the Lead Counsel position," and that it "empowers [the Temporary Leads] to handpick the majority of the Executive Committee, leaving only four of the ten slots open to a transparent application process."[4] Both assertions are incorrect. *First*, the July 7 Recommendation proposes an ***open*** application process for Lead Counsel, clearly stating: "Plaintiffs believe that the best process for selecting ***lead*** and liaison counsel is one that provides ***all*** interested counsel an opportunity to submit applications in writing, as well as an opportunity,

[1] Order No. 1 at 7.

[2] All Plaintiffs' counsel who we could identify had an opportunity to participate in the July 1 meeting of counsel in person or by telephone; we received and considered a myriad of phone calls and e-mails from counsel expressing their views; and we circulated a draft of the proposal to all counsel and solicited additional comment before finalizing what became the July 7 Recommendation.

[3] Given the breadth of this support and the page limit of this submission, we cannot identify all counsel and cases here but will promptly submit a summary table if the Court wishes to review it.

[4] Podhurst/Kozyak Letter at 2.

if requested, to address the Court in person at an open hearing."[5] *Second*, far from seeking to have the Temporary Leads "handpick" the Executive Committee, the July 7 Recommendation merely proposed that the Temporary Leads nominate Liaison Counsel and six of the ten Executive Committee members as a recommendation to the Court, and nothing more.[6] As the letter makes clear, all counsel would be eligible to apply for an Executive Committee position, and the Court will decide who is appointed. As we stated: "Nominees would be required to submit their qualifications and commitment to serve to the Court," with the Court "invit[ing] additional attorneys to submit the same information to the Court as the nominated applicants (with succinct oral presentation … if the Court wishes…)."[7]

Turning to the July 3, 2014 Pribanic letter, we disagree that no lead or liaison counsel are necessary for injury/ death cases, or, alternatively, that all attorneys representing clients who suffered from injury or death should be included in the structure. As in *Toyota*, much of the discovery here will be common between the economic loss and injury/death cases, making tight coordination not only desirable but necessary – a result best accomplished by including injury/ death counsel in the leadership structure, and a factor that the Court can consider in making appointments. Having scores of injury/death cases proceed independently within the MDL, or alternatively, with a representative from each case as a lead or liaison, would undermine the MDL process that sent those cases here, lead to little or no coordinated leadership, and result in massive inefficiencies and duplication of work.

The July 10 Wolf/Golenbock letter proposes a complicated structure headed by four-leads, a balkanized executive committee with separate layers of counsel assigned to rigid subject matters, a RICO counsel, and a lead bankruptcy counsel. This structure will result in inefficiencies, encourage "turf wars," and detract from expedient prosecution. The four co-lead option was thoroughly discussed and rejected by the vast majority in favor of a more efficient three-lead committee with an additional New York-based liaison. Similarly, the consensus view was to reject a rigid, pre-ordained subject matter committee in favor of the more flexible structure in the July 7 Recommendation, which enables Court-appointed leadership to efficiently shift the resources of counsel with considerable experience and expertise in particular areas as priorities arise in the litigation lifecycle, while avoiding redundancy and minimizing bureaucracy and political maneuvering.[8]

We also note that though Judge Gerber allowed Mr. Flaxer to speak on behalf of the Wolf/Golenblock interests, he was not appointed as a fourth co-lead. Instead, Judge Gerber designated three firms to represent Plaintiffs' positions in the Bankruptcy Court: Brown

[5] July 7 Recommendation at 4 (emphasis added). This same language had appeared in the draft letter circulated to all Plaintiffs' Counsel before filing.

[6] We simply thought that the Court might want the benefit of our views on counsel given our extensive combined leadership experience in other complex class actions, and this was the process that Judge Selna utilized in *Toyota* (as the Podhurst/Kozyak Letter acknowledges).

[7] July 7 Recommendation at 4.

[8] The Wolf/Golenbock letter vastly underestimates the scope of liability related work and discovery in this case based on the apparent assumption that all relevant facts for all relevant claims will be effectively admitted simply because (presumably) GM made certain statements or implicitly conceded certain points in connection with its recalls. We expect GM to vigorously contest liability with a host of defenses.

Rudnick LLP, Caplin & Drysdale, and Stutzman, Bromberg, Esserman & Plifka PC.[9] These three firms have sought to speedily address and limit the issues before Judge Gerber so that Plaintiffs can litigate the merits of their claims in this Court. In contrast, the Wolf and Golenbock firms have insisted on expanding threshold issues in the Bankruptcy Court to include "fraud-on-the-court,"[10] which would require extensive discovery over an extended period of time.

In arguing that the *Andrews* case should be a stand-alone action prosecuted by counsel who should not fully participate in the organization structure here, the Wolf/Golenbock letter seeks to preclude *Andrews* counsel from representing their own clients with ignition switch claims and from offering their considerable resources, knowledge, and experience to the other consolidated actions. It is noteworthy that only a single counsel group has raised this issue, and that is because *Andrews* will not encumber the existing ignition switch cases. In other MDLs, differences in the type, breadth, and scope of claims have not delayed the orderly progress of discovery and trial or settlement. Indeed, courts often find that all plaintiffs benefit from having the same counsel involved where issues of fact overlap, and courts have regularly permitted counsel to represent different types of claimants within a class or subclasses.[11] In *Toyota*, Judge Selna organized a highly complex MDL involving hundreds of cases with diverse claims and classes and efficiently and fairly moved them forward. While core fact and expert discovery common to all cases proceeded, coordinated case specific discovery also occurred for particular claims pursued independently by counsel responsible for those claims. Tellingly, all economic claims were settled simultaneously.

Lastly, the Court should reject the stay proposal embodied in the July 9 Becnel Law Firm letter and the Wolf/Golenbock delay plea. Judge Gerber has already expressed his desire for coordination and for the MDL process to move forward with counsel organization.[12] Other reasons for proceeding here include: merits discovery will be necessary to resolve threshold issues in the Bankruptcy Court, which should be conducted in this action so that it does not have to be redone; many of the claims here relate only to New GM and do not invoke the Bankruptcy Court's stay; and proceeding here will not interfere with any plaintiff's choice to participate in Mr. Feinberg's mediation process, which does not purport to affect this MDL litigation.

As the Court requested in Order No. 3, we are filing a Proposed Order, which adopts the consensus July 7 Recommendation.

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[9] *See* May 16, 2014 Scheduling Order at note 3; May 2 hearing transcript at 12. These three firms were retained by, respectively, Mark Robinson and Steve Berman; Elizabeth Cabraser and Weitz and Luxenberg; and Grant & Eisenhofer and Baron & Budd.

[10] See, e.g., May 2 hearing transcript at 48.

[11] *See, e.g., In re Toyota Motor Corp. Unintended Accel. Mktg., Sales Pracs., & Prods. Liab. Litig.*, C.D. Cal. Case No. 8:10ML02151 JVS, Order No. 2: Adoption of Organization Plan and Appointment of Counsel (Dkt. No. 169) (citing cases); *Sriram v. Pittore*, 1992 WL 367106, at *1 (S.D.N.Y. Nov. 24, 1992).

[12] May 16, 2014 Scheduling Order, ¶ 5(a) (Dkt. No. 12697).

Respectfully,

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