

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE:

GENERAL MOTORS LLC IGNITION  
SWITCH LITIGATION

No. 14-MD-2543 (JMF)

This Document Relates to:

ALL ACTIONS

**DECLARATION OF STEVE W. BERMAN IN SUPPORT OF CO-LEAD  
COUNSEL'S MEMORANDUM OF LAW IN OPPOSITION TO LANCE COOPER'S  
MOTION TO REMOVE CO-LEAD COUNSEL AND FOR RECONSIDERATION OF  
THE ORDER APPROVING THE QUALIFIED SETTLEMENT FUND**

I, Steve W. Berman, declare under penalty of perjury as follows:

1. I am the managing partner of the law firm Hagens Berman Sobol Shapiro LLP and Co-Lead Counsel for Plaintiffs in the above-captioned matter.

2. I submit this Declaration in support of Co-Lead Counsel's Memorandum of Law in Opposition to Lance Cooper's Motion to Remove the Co-Leads and for Reconsideration of the Order Approving the Qualified Settlement Fund. I have personal knowledge of the matters described in this declaration and am competent to testify thereto.

3. I have served as sole Lead Counsel, Co-Lead Counsel, and a member of other leadership teams in dozens of MDL class actions. In my opinion, a tremendous amount of work has been accomplished in this case in the 16 months after the Court appointed the leadership structure, as we have adhered to the "reasonable but aggressive" schedule adopted by the Court.

4. It is also my opinion that this work could not have been accomplished in this time frame without regular communication and coordination between and among my fellow Co-Leads and the Court-appointed members of the Executive Committee (EC). Together, the Co-Leads and the EC have, among many other accomplishments in this litigation, reviewed over 14.9 million pages of documents from GM and parts supplier Delphi; conducted 98 fact depositions (52 by Co-Lead Counsel and 46 by EC members), including depositions of the key personnel involved in designing and investigating the defective Delta ignition switch and concealing the defect from consumers and NTHSA; coordinated scores of experts and conducted or defended 25 expert depositions; and prepared for the first bellwether trial, including filing and responding to 28 pre-trial motions *in limine* and opposing GM's summary judgment motion.

5. EC members have also assisted with other projects and have researched and drafted memoranda on various legal topics, both in the MDL and related bankruptcy proceedings

and Second Circuit appeals; researched the documents and helped prepare issue outlines to guide the liability case against GM; attended a May 2015 meeting to discuss the evidence and deposition strategy; took depositions, some of which were played at trial; researched bellwether state laws and drafted amended bellwether complaints; assisted with OSI issues; and created cross-examination outlines for some of the GM expert witnesses that were expected to testify at the *Scheuer* trial.

6. While Co-Lead Counsel have not involved the EC in day-to-day tactical decision making (which would be unworkable), Co-Lead Counsel have communicated with EC members on a wide variety of subjects, as the Court expected the Co-Leads to do. The many important tasks undertaken by EC members could not have been accomplished without that communication and shared cooperation. While some EC members may wish for more day-to-day involvement, we have carefully tried to balance participation and efficiency and believe we have struck the proper balance.

7. Regarding the bellwether trial selections, I was not personally involved in selecting the bellwether pool of personal injury and wrongful death cases given that my primary role as a Co-Lead is to focus on the economic loss class action claims. Because the Court directed Mr. Hilliard to focus on the injury/wrongful death cases, and because Mr. Hilliard had filed numerous injury cases, I believed that it was appropriate that Mr. Hilliard choose the bellwethers.

8. Mr. Hilliard did consult with Co-Lead Counsel as to the proposed order of the bellwether trials, and we discussed many factors underpinning his recommendations. Having led the litigation since being appointed Co-Leads, I believed—and still believe—that it was appropriate for Co-Lead Counsel to lead the trial for the first bellwether and believed that the

Court would expect Co-Lead Counsel to do so and that this was an important factor to be considered in recommending a bellwether sequence to the Court. I do not believe that Mr. Hilliard's recommendations as to bellwether ordering were based on penalizing any plaintiff or his or her attorney; nor were the recommendations that were submitted to the Court by Co-Lead Counsel motivated by attorneys' fee considerations.

9. I was not personally involved in all communications with Mr. Pribanic as to selection of the *Yingling* trial as a bellwether trial candidate. I did participate on a telephone call on or about August 11, 2015 between the Co-Leads and Mr. Pribanic. On that call, Co-Lead Counsel explained that, regardless of which case was tried first, the Co-Leads were best positioned to try the first case in light of their deep knowledge of the facts and expert issues. After the call, I sent an e-mail to Mr. Pribanic, copied to Co-Lead Counsel, explaining that "the first trials should be conducted by co lead counsel for the reasons stated on our call." I also reiterated to Mr. Pribanic that fees did not influence Co-Lead Counsel's decision on the order of the proposed bellwether trials and that Mr. Pribanic's fee agreement with his clients would be "unaffected by bellwether status" and that any fees earned for working on his case "would be subject to the common benefit assessment." The full text of my email is as follows:

From: Steve Berman <[Steve@hbsslw.com](mailto:Steve@hbsslw.com)>  
Date: Tuesday, August 11, 2015 at 12:20 PM  
To: Victor Pribanic <[vpribanic@pribanic.com](mailto:vpribanic@pribanic.com)>  
Cc: Bob Hilliard <[bobh@hmgllawfirm.com](mailto:bobh@hmgllawfirm.com)>, "Steve Shadowen ([steve@hilliardshadowenlaw.com](mailto:steve@hilliardshadowenlaw.com))" <[steve@hilliardshadowenlaw.com](mailto:steve@hilliardshadowenlaw.com)>, Elizabeth Cabraser <[ecabraser@lchb.com](mailto:ecabraser@lchb.com)>  
Subject: bellwether trials

**Victor:**

**Thanks for the discussion yesterday. After reflection we have come to the conclusion that the order of bellwether trials should remain as approved by the court. We strongly feel that the first trials should be conducted by co lead counsel for the reasons stated on our call.**

**We also made clear on the call that the fee agreement between you and your client is unaffected by bellwether status. Our fee for work on your case would be common benefit work and recovery would be subject to the common benefit assessment.**

**As we get closer to the trial of your case we can again take up the issue of how we work together to bring our knowledge to bear on the trial.**

**If you need to discuss this further please let us know.**

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10. Mr. Hilliard invited me and my team to participate in the *Scheuer* trial. Even though my primary role as a Co-Lead is to focus on the economic loss class action claims, I gladly accepted the invitation in order to contribute to the common benefit of all plaintiffs, including those in the economic loss class actions. Seven attorneys from my firm, including myself, dedicated our efforts full time to support the trial. I worked closely with Mr. Hilliard and his team on all aspects of the trial other than the specifics regarding the client's injuries and damages. I focused on presenting the testimony from two general liability experts and prepared to cross examine some of GM's experts.

11. Although the *Scheuer* trial unfortunately did not result in a jury verdict, I strongly believe that *Scheuer* substantially advanced the MDL litigation and helped all injury and wrongful death plaintiffs in the MDL and Coordinated Actions ready their claims for trial. Expert reports were prepared that can be used as paradigms in other cases; helpful orders were issued on scores of motions *in limine*; and the Court's order on summary judgment made many findings that will benefit all plaintiffs. I also believe that some of the legal rulings will benefit

the class, as will the *Daubert* rulings on experts that are common to the class and personal injury cases. These benefits are the exact reason that led me to participate in the trial even though my primary mission is to prosecute the economic loss class case.

12. Regarding Lance Cooper's participation in the MDL as a member of the EC, in April 2015, Mr. Cooper informed the Co-Leads that he would no longer be working on any further assignments in the MDL. Mr. Cooper did not seek the Court's permission to withdraw from the EC. Since that time, Mr. Cooper has not shared in any further EC cost assessments and is \$100,000 in arrears, although he did pay his initial assessment of \$50,000. Collectively, EC members have advanced \$1.6 million in assessments, not including individually held costs.

13. I believe that, as a group, Co-Lead Counsel have diligently managed this case, and that we have faithfully discharged the responsibilities placed on us by the Court. I remain dedicated to the zealous and diligent prosecution of all cases against GM in the MDL and to continue to assist with discovery in the Coordinated Actions.

I declare that the foregoing is true and correct under penalty of perjury under the laws of the United States.

Executed this 1<sup>st</sup> day of February, 2016 at Seattle, Washington.

/s/ Steve W. Berman  
Steve W. Berman

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party through the Court's electronic filing service on February 1, 2016, which will send notification of such filing to the e-mail addresses registered.

/s/ Steve W. Berman

Steve W. Berman