

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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IN RE:
GENERAL MOTORS LLC IGNITION SWITCH LITIGATION

14-MD-2543 (JMF)

This Document Relates to All Actions

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JESSE M. FURMAN, United States District Judge:

DECLARATION OF ELIZABETH J. CABRASER
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, Elizabeth J. Cabraser, declare:

The following is correct to the best of my personal knowledge, information and belief and I am competent to testify thereto:

1. Early in this litigation, the Court established an Official MDL 2543 website, “gmignitionmdl.com”. See Order No. 27 (Document 442) (Filed December 1, 2014). The website posts a schedule of Upcoming Status Conferences, provides information on listening in by phone, and posts transcripts of all Status Conferences as soon as these are available, generally within a few days, if not the same day, as the conference. My firm maintains that website on a daily basis as part of its Co-Lead Counsel responsibilities. Court Orders are posted in these categories: General and Case Management Orders, Bankruptcy Court Orders and Opinions, Bellwether Orders, and Preservation Orders. It is our general practice to post all Orders and transcripts on a same-day basis, as soon as these become available from the Court or the Court Reporter. This website’s existence and purpose is widely publicized, and interested counsel and plaintiffs in the federal and state actions (and the news media) look to this website for current

information on the status and progress of the MDL.

2. In accordance with this practice, this Court's December 11, 2015 Order Appointing Daniel J. Balhoff and John W. Perry, Jr. as Joint Special Masters in the Settlement of Certain Cases (Doc. No. 155), approving the establishment of the 2015 New GM Ignition Switch Qualified Settlement Fund, was posted on the website on December 11, 2015 under the category of General and Case Management Orders (<http://gmignitionmdl.com/wp-content/uploads/20151211-order.pdf>).

3. I am one of five Co-Lead Counsel in the Toyota MDL (*In Re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2151). I was appointed by Judge Selna, together with Co-Lead Mark R. Robinson, Jr., to have primary responsibility for the individual personal injury and wrongful death cases in that MDL. In the Toyota MDL, Mr. Robinson was lead counsel for the first bellwether case, and for the next several Plaintiffs' "picks." After these Plaintiffs' pick bellwether cases were settled (with the Court informed thereof), the next bellwether case set for trial was a Toyota pick. Together with the individual plaintiff's counsel in that case, I, my partners, and other lead counsel committee members (functionally equivalent to Executive Committee members here), including Mark Lanier, prepared that case, the *St John* case, for trial.

4. The *St. John* case survived Toyota's summary judgment, *Daubert*, and *in limine* motions, and was on the virtual eve of trial when a Utah state case, the *Bookout* case, was tried to a plaintiffs' verdict. As a state case, *Bookout* was not a designated MDL bellwether: MDL courts have no power over state trial-setting and cannot designate state cases as bellwethers. However, *Bookout* was a coordinated action in the sense that it was tried with the benefit of discovery developed in the MDL, and by the Beasley Allen firm. A partner of that firm, W.

Daniel (“Dee”) Miles, was an active member of the Toyota MDL lead counsel committee for personal injury cases, a responsibility which was in addition to, and complemented, his role as counsel for many personal injury plaintiffs in state courts. Such a dual role is not unusual and, as the *Toyota* experience shows, can be beneficial. Shortly after the *Bookout* verdict and just before the commencement of the Toyota-pick *St. John* bellwether trial, the parties obtained a stay of trial to enable settlement discussions to proceed. I then negotiated and developed, with Toyota’s settlement counsel, John Hooper (and with the ongoing assistance of Mr. Miles, and input from Mr. Robinson), the Intensive Settlement Process (“ISP”), which is memorialized in the MDL Court’s Order Establishing Intensive Settlement Process, dated December 12, 2013 (Doc. 4490) (attached hereto as Ex. A), and implemented beginning January 14, 2014. As a Toyota Co-Lead Counsel, and as an active participant in the MDL discovery and bellwether trial preparation, it is my opinion that no single factor or event was dispositive in propelling resolution. Rather, a number of factors combined to drive the decision to commence the ISP process. These included, without limitation, and without revealing or waiving confidential settlement discussions: (1) the settlement of Mr. Robinson’s bellwether cases for substantial, confidential amounts; (2) the survival of the *St. John* case and its trial viability; (3) the *Bookout* verdict, assisted by common discovery and tried by a firm expressly aligned with and involved in the MDL; and (4) Toyota’s remaining prospect of facing several hundred wrongful death and personal injury claims in both the federal and state courts, regardless of initial trial outcomes.

5. The procedure under the Toyota ISP calls for individualized negotiations (and mediations, if necessary), between Toyota and individual plaintiffs’ counsel of their wrongful death and personal injury cases. The parties submit monthly reporting on the status and progress of the ISP to the MDL Court. Under the ISP program, all individual and group settlements are

confidential, and a small percentage of such proceeds is remitted (again on a confidential basis) into the Court-established Common Benefit Fund, pursuant to a common benefit order similar to Order No. 42 in this MDL. The ISP program includes both MDL and state cases. To date, the vast majority (over 412) of Toyota federal and state cases have been resolved or resolved in principle under the ISP program, and only a literal handful of cases have not commenced the ISP process.

6. It is my understanding that this Court, and GM as well, have been generally aware of the conduct of the Toyota MDL, and the existence of the ISP, for some time in this litigation. I suggested, and the Co-Leads agreed, that we recommend to GM its adoption of a similar program, and in the Fall of 2015 we communicated our desire to promote and assist in such a process. For example, on or about September 10, 2015, I corresponded with Mr. Godfrey to update him on the non-confidential aspects of the progress of the ISP, and to renew the Co-Leads' suggestion that GM consider a similar program to resolve all federal and state personal injury/wrongful death GM cases. Mr. Godfrey and other GM counsel considered this program, asked questions about it, and, while initially declining to propose an equivalent program to this Court, are, as I am informed, proceeding to discuss and negotiate resolutions with a number of personal injury/wrongful death plaintiffs on an ongoing and informal basis.

7. As part of my Co-Lead responsibilities, my office receives, maintains and corresponds with submitting counsel regarding the time and cost records submitted by the Co-Leads, Executive Committee Members, Liaison Counsel, and Designated Bankruptcy Counsel under the Court's September 16, 2014 Order No. 13, Organizing Plaintiffs' Counsel, Protocols for Common Benefit Work and Expenses. The time records themselves are work-product protected, and the Co-Leads will submit an interim report on common benefit time and costs to

this Court *in camera* on February 5, 2016. I can report generally that the time is essentially equally shared between Co-Leads and the other Designated Counsel: of all hours submitted to date, the Co-Leads collectively have submitted just over half the time; and the Executive Committee members, Liaison Counsel, and Designated Bankruptcy Counsel collectively, have submitted approximately just under half the time. With the exception of Mr. Cooper, whose last time entry was submitted on December 31, 2014, all Executive Committee members are active and submit common benefit time and costs on an ongoing basis.

8. Much of the time spent by Executive Committee members has been concentrated on intensive document review and analysis; deposition preparation and deposition taking, together with expert development: the work that preceded, and prepared for, the bellwether trial. Executive Committee members and Liaison Counsel collectively spent approximately 50,000 hours on these essential tasks, as reflected in time reported under Order No. 13 under its task codes: 8. Discovery, 9. Document Review, 11. Deposition preparation/take/defend, 14. Experts/Consultants, and 16. Trial Prep/Bellwether. (Trial time itself has not yet been submitted).

9. Throughout the course of the litigation, I have endeavored to apprise Designated Counsel of the Co-Leads' activities and strategy considerations, and to seek out Liaison Counsel and Executive Committee members' active participation and contribution to the ongoing work of the MDL, with respect to discovery, briefing and pleadings, and research assignments both in this Court, and in connection with briefing in the Bankruptcy Court and the Second Circuit. I have convened a series of conferences with this leadership group, including a lengthy in-person conference in my offices in SF in May 2015, to organize the deposition process and share deposition goals and strategy; and a series of telephonic conferences as various issues for

discussion and decision have arisen on matters relating to the content and effect consolidated class action complaints, the bankruptcy proceedings, discovery and case management in the MDL, and briefing in the Second Circuit. I communicate regularly with Federal/State Liaison Counsel Dawn Barrios to assist and support her coordination and outreach efforts with State Courts, and with plaintiffs' counsel with state claims.

10. My firm and members of the Executive Committee/Liaison Counsel provided trial preparation and trial support for the first bellwether trial (and continue to do so for upcoming bellwethers) through drafting and briefing of pretrial motions, *motions in limine* and responses thereto, and legal research and document analysis and retrieval as called upon to do so. Executive Committee members with few or no personal injury plaintiffs, whose involvement in the MDL consists solely or primarily of class economic loss claims, have also willingly and timely responded to requests for assistance on the bellwethers.

11. It has been my experience, as a lead counsel or plaintiffs' committee member participating in the Plaintiffs' bellwether trial processes in MDLs including *In re Air Disaster Near Honolulu, Hawaii on February 24, 1989*, MDL No. 807 (N.D. Cal.); *In re Silicone Gel Breast Implants Products Liability Litigation*, MDL No. 926 (N.D. Ala.); *In re Copley Pharmaceutical, Inc. "Albuterol" Products Liability Litigation*, MDL No. 1013 (D. Wyo.); *In re Telectronics Pacing Systems, Inc. Accufix Atrial "J" Leads Products Liability Litigation*, MDL No. 1057 (S.D. Ohio) (technically, a week-long summary jury trial); *In re Bextra/Celebrex Products Liability Litigation*, MDL No. 1699 (N.D. Ca.); *In re Vioxx Products Liability Litigation*, MDL No. 1657 (E.D. La.); *In re Guidant Defibrillators Products Liability Litigation*, MDL No. 1708 (D. Minn.); and *In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2151 (C.D. Ca.), that those in

Court-appointed leadership positions led the bellwether trial teams, co-counseled or assisted by the bellwether plaintiffs' individual counsel, and that the latter, unless they were also in MDL leadership positions, did not "go it alone." It is my belief, based on this experience, that this system best enables bellwether plaintiffs to have the benefit of the experience and insight of Court-appointed counsel into the recurring liability issues (defendant's knowledge, conduct, and product) that are key to all cases, while the individual plaintiff's attorney contributes knowledge of the case-specific facts.

12. Accordingly, though I was not personally involved in all communications with Mr. Pribanic as to the conduct of the *Yingling* Trial, I did communicate with the Co-Leads and Mr. Pribanic that, as consistent with developing bellwether practice in contemporary MDLs: 1) participation by Lead Counsel in bellwether trials was the norm; 2) participation did not replace the underlying attorney-client relationship or fee arrangement (except by mutual consent); 3) Lead (or other common benefit) counsel took a lead role in bellwether trials, because of their developed knowledge of the case; and 4) they did so as a common benefit undertaking, with compensation and reimbursement subject to ultimate approval by the Court. It is my understanding that my Co-Leads agreed with, and ultimately adopted, this approach with Mr. Pribanic in *Yingling*.

I hereby declare that the above statements are true and correct. Signed under penalty of perjury under the laws of the United States, on February 1, 2016, in San Francisco, California.

/s/ Elizabeth J. Cabraser

Elizabeth J. Cabraser

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

Exhibit A

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION**

In Re: TOYOTA MOTOR CORP.
UNINTENDED
ACCELERATION MARKETING,
SALES PRACTICES, AND
PRODUCTS LIABILITY
LITIGATION

Case No. 08:10-ML-2151 JVS (FMOx)

**ORDER ESTABLISHING INTENSIVE
SETTLEMENT PROCESS AND
SETTING HEARING**

This document relates to:

All Personal Injury, Wrongful Death
and Property Damage Cases

1 Presently before the Court is a Joint *Ex Parte* Motion and supporting
2 Memorandum of Points and Authorities filed by Plaintiffs’ Co-Lead Counsel for the
3 Personal Injury/Wrongful Death Cases, members of Plaintiffs’ Liaison Counsel
4 Committee for the Personal Injury/Wrongful Death Cases, and counsel for
5 Defendants Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.
6 (collectively, the “Parties”) for an order approving the establishment of an intensive
7 settlement conference and mediation protocol (the “Intensive Settlement Process”
8 or “ISP”). The Parties agree, and the Court grants, initial approval to the Intensive
9 Settlement Process, as described below. The Court hereby sets a hearing for any
10 comment, prior to the formal initiation of the Intensive Settlement Process, for
11 January 14, 2014 at 9:00 a.m. in the courtroom of the undersigned. Any comment
12 from plaintiffs shall be filed no later than January 8, 2014 with any reply by the
13 Parties to be filed no later than January 11, 2014. The previously-appointed
14 Settlement Special Master, Patrick A. Juneau, shall send an initial informational
15 package on the ISP to all counsel of record for cases subject to this order by
16 December 23, 2013.

17 Participation in the Intensive Settlement Process is open to all plaintiffs and
18 is subject to the provisions of Amended Order No. 25: Common Benefit Order
19 (Dkt. 3754). Under the Intensive Settlement Process, all parties, including, but not
20 limited to plaintiffs, Toyota Motor Corporation and Toyota Motor Sales, U.S.A.,
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1 Inc., in each of the respective personal injury/wrongful death and property damage
2 cases in these proceedings in which Toyota Motor Corporation and Toyota Motor
3 Sales, U.S.A., Inc. is/are defendants shall be required to participate in the two-stage
4 Intensive Settlement Process as ordered herein. The participants shall use their best
5 efforts and participate in good faith to resolve the cases during this Intensive
6 Settlement Process, which is described below as follows:
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10 **I. First Stage: Settlement Conference**

11 The first stage of the Intensive Settlement Process is attendance at an
12 informal settlement conference among all parties and their counsel in each
13 respective personal injury, wrongful death and property damage case. Plaintiffs'
14 counsel and counsel for Toyota shall timely meet and confer to discuss a list of
15 cases to participate in the settlement conference and a mutually convenient time,
16 date, and location. The Parties shall schedule settlement conferences, commencing
17 in February 2014 and regularly thereafter. Cases set for trial as bellwethers and
18 cases included in the bellwether discovery pool shall have priority in the Intensive
19 Settlement Process.
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24 Counsel for each plaintiff shall be present in-person and must have full
25 authority from their client who shall be readily available by telephone. Counsel for
26 Toyota and other defendants shall also attend in-person. A representative from
27 Toyota and other defendants shall not be required to attend, provided that counsel
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1 for Toyota and other defendants have full authority to resolve the plaintiff's case.
2 In addition, Toyota's and other defendants' representative(s) shall be readily
3 available by telephone, if circumstances for that particular settlement conference
4 require assistance.
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7 **II. Second Stage: Mediation**

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9 Cases that do not resolve during the initial settlement conference shall be set
10 for a formal mediation. Counsel for Toyota shall seek to schedule mediations,
11 subject to meeting and conferring with the Settlement Special Master, Plaintiffs'
12 counsel and other defendants' counsel for mutually convenient times and dates on a
13 recurring basis.
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16 Plaintiff(s) shall be present in-person (subject to Settlement Special Master-
17 approved accommodations) along with counsel. Counsel for Toyota and other
18 defendants shall also attend in-person. A representative from Toyota and other
19 defendants shall not be required to attend, provided that counsel for that defendant
20 has full authority to resolve the plaintiff's case. In addition, Toyota's and other
21 defendants' representative(s) shall be readily available by telephone, if
22 circumstances for that particular mediation require assistance. The Settlement
23 Special Master or his designee shall mediate these cases.
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1 For this streamlined mediation process, counsel for the attendees shall each
2 submit confidential statements solely to the Settlement Special Master on a date to
3 be determined by the Settlement Special Master. The Settlement Special Master
4 shall determine, after conferring with the Parties, the length of the confidential
5 mediation statements and the permissible number of exhibits attached thereto. As
6 part of this streamlined mediation process, the attendees may each make opening
7 presentations, but there shall be no live witness testimony.
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11 Cases that are not resolved during this process shall be placed on an active
12 calendar and/or remanded back to their originating court for trial under the
13 appropriate Rules of Court, after a proper motion has been made and a decision
14 rendered.
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16 **III. Stay of Proceedings**

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18 During the entirety of this Intensive Settlement Process, up to and including
19 decisions on any motions to remand or entry of case management orders for a
20 particular case, all pretrial, discovery and related activity shall be stayed for the
21 cases subject to this Order unless and until the Settlement Special Master certifies
22 that the parties for a specific case have complied with the requirements of this
23 Intensive Settlement Process.
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1 In addition, the bellwether trial process shall be suspended, including, but not
2 limited to discovery and motion practice, during this Intensive Settlement Process,
3 unless and until the Settlement Special Master certifies that the parties for that case
4 have complied with the requirements of this Intensive Settlement Process. The
5 Parties will meet and confer with the Settlement Special Master in an effort to reach
6 agreement on a joint case management order. However, with respect to a case that
7 is not previously set for trial and is not resolved pursuant to this Intensive
8 Settlement Process, a case management order shall be issued allowing at least nine
9 (9) months between the ending of the Intensive Settlement Process for that case and
10 the trial of that case. If a case was previously set for trial, the case shall be set for
11 trial no sooner than the period of time that exists from the date of the stay to when it
12 was previously set, but in no event shall this period of time be less than four (4)
13 months from the ending of the Intensive Settlement Process for that case and the
14 beginning of trial in that case(s).

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16 The ISP described in this Order is subject to amendment on good cause
17 shown, if necessary, to address exigent circumstances in a particular case.
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21 **IT IS SO ORDERED.**

22 DATED: December 12, 2013



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27 **JAMES V. SELNA**
28 **UNITED STATES DISTRICT JUDGE**

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. **8:10ML2151 JVS (FMOx)** Date January 14, 2014

Title **IN RE: TOYOTA MOTOR CORP. UNINTENDED
ACCELERATION MARKETING, SALES PRACTICES,
AND PRODUCTS LIABILITY LITIGATION**

Present: The Honorable James V. Selna

Karla J. Tunis

Sharon Seffens

Deputy Clerk

Court Reporter

Attorneys Present for Plaintiffs:

Elizabeth Cabraser / Todd Walburg
Mark Robinson, Jr. / Donald Slavik
Darren Aitken / Dawn Barrios/ Gretchen Nelson
Richard McCune / W. Daniel Miles
Moses Lebovits / David Fox / John Adams
Timothy Pestotnik / Stanton Matthews
S. Scott West / Armen Akaragian / Eric Snyder
John Kristensen / Tom Palmer

Attorneys Present for Defendants:

John Hooper / Vince Galvin
Raymond Hua
Shawn Scott / Shane Biornstad

Special Master Present

Patrick Juneau

Proceedings: Plaintiffs' and Toyota Defendants' Joint Ex Parte Motion for an Order Establishing Intensive Settlement Process (Fld 12/12/13)

Cause called and counsel make their appearances. The Court welcomes Superior Court Judge Lee Smalley Edmon on the Bench today. The Court and counsel confer regarding the proposed settlement processes and the handling of certain issues.

On December 12, 2013, the Court adopted procedures for an Intensive Settlement Process ("ISP") with regard to the personal injury/wrongful death actions in this docket. (Docket No. 4490.) At the same time, the Court set this hearing for January 14, 2014 to allow for comment prior to the formal initiation of the program.

The Court received no written submission with regard to the ISP, and not objections were received at the hearing today.

The Court confirms its adoption of the ISP as outlined in its December 12 Order.

