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UNITED STATES DISTRICT COURT
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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PLAINTIFFS' REPLY BRIEF IN RESPONSE TO CO-LEAD COUNSEL'S MEMORANDUM IN OPPOSITION TO LANCE COOPER'S MOTION TO REMOVE CO-LEAD COUNSEL AND FOR RECONSIDERATION OF THE ORDER APPROVING THE QUALIFIED SETTLEMENT FUND
-AND-
GENERAL MOTORS LLC'S COMBINED RESPONSE TO MOTION TO REMOVE THE CO-LEADS AND TO RECONSIDER THE BELLWETEHR TRIAL SCHEDULE AND MOTION TO RECONSIDER THE ORDER APPROVING THE ESTABLISHMENT OF THE 2015 NEW GM IGNITION SWITCH QUALIFIED SETTLEMENT FUND

I. Introduction

How did we get here? Two years ago GM was rocked back on its heels because of revelations that its fraudulent concealment of defects in its vehicles for over a decade killed and injured thousands of American consumers. A courageous Georgia couple, Ken and Beth Melton, took on GM and uncovered the truth. The Meltons brought GM to its knees. Now, two years later, as a result of Robert Hilliard's decisions to put his interests above the interests of the MDL plaintiffs, the tide has turned. Mr. Hilliard's decisions as a Co-Lead, including the selection of *Scheuer v. GM* as the first bellwether trial, allowed GM to bring Mr. Hilliard and his clients to their knees. If he is permitted to continue in his role as a Co-Lead, it will only get worse for the

MDL plaintiffs. Plaintiffs filed their Motions in an effort to shed light on how we got here and persuade the Court to reconsider how the parties move forward with this litigation.[1]

II. The Co-Leads' Mismanagement of the MDL

In the Motion to Remove, Plaintiffs outlined some of the mismanagement of the MDL by the Co-Leads. In their Memorandum, the Co-Leads detail the work done by them in the EC on this litigation. No doubt, there has been substantial work done, but there has also been mismanagement. Plaintiffs do not intend to rebut every contention made by the Co-Leads in their Memorandum. They have, however, attached the Declaration of Lance A. Cooper which includes the basis for the contentions that this MDL litigation was not properly managed in many respects. (*See* Declaration of Lance A. Cooper, attached as Exhibit 1)

III. GM is Wrong: The Co-Leads Have a Fiduciary Duty to All MDL Plaintiffs

It is ironic that GM presents the strongest defense of Mr. Hilliard's conduct. [2] There is no doubt GM wants to maintain the status quo as it looks forward to going to trial on all of Mr. Hilliard's filed bellwether cases. With this goal in mind, GM hired Professor Miller to help it convince this Court to keep things as they are. The crux of Professor Miller's opinions is that Mr. Hilliard owed no fiduciary duty to any MDL plaintiffs other than his signed clients.[3] Plaintiffs retained Professor Charles Silver to analyze the conduct of Mr. Hilliard during this MDL litigation. (Professor Silver's Declaration is attached as Exhibit 2) In his Declaration, Professor

[1] After careful consideration, Plaintiffs have decided not to ask that the Court remove Mr. Berman and Ms. Cabraser as Co-Leads. Although they enabled Mr. Hilliard to harm all MDL plaintiffs, other than his signed clients, they are primarily responsible for the economic loss claims and their removal could potentially harm the plaintiffs who have an interest in these claims.

[2] Perhaps it is not so ironic given GM's success to date.

[3] In their Response, even the Co-Leads do not go so far as to argue that they do not have a fiduciary duty to all MDL plaintiffs.

Silver also addresses Professor Miller's no fiduciary duty contentions. (Silver Dec. at ¶¶ 21-22) Professor Silver articulates why lead lawyers have a fiduciary duty to their signed clients, as well as other claimants who are plaintiffs in an MDL. (*Id.*) As Professor Silver explains, "[t]o the extent that lead attorneys displace [other] lawyers [by controlling common benefit work], they assume [other] lawyers' duties, including the fiduciary duty to refrain from exploiting clients. Otherwise MDL procedures would alter plaintiffs' substantive rights by allowing lead attorneys to take advantage of them." (Silver Dec. at ¶ 22) Of course Mr. Hilliard had a fiduciary duty to all MDL plaintiffs. If he did not, as Professor Silver points out, he could exploit the MDL plaintiffs in favor of his signed clients without consequence. (*Id.*)[4]

IV. Mr. Hilliard Breached His Fiduciary Duty to All MDL Plaintiffs

1. The Bellwether Selection Process is Critical to All MDL Plaintiffs

All MDL plaintiffs had an interest in making sure the initial bellwether cases were as strong as possible for the plaintiffs. As Professor Silver points out, "the single greatest source of bargaining leverage a plaintiffs' attorney has in settlement negotiations is the threat of winning at trial and forcing the defendant to pay a price set by a jury . . . . The most important task for any plaintiffs' attorney is to convince a defendant that if it takes a case to trial, it will get creamed." (Silver Dec. at ¶ 4) Professor Silver adds, "[t]he entire point of bellwether trials is to produce information about claim values so as to facilitate settlement bargaining on a wider scale. Bad results in bellwether trials reduce claim values for all plaintiffs; good results increase them." (Silver Dec. at ¶ 7) Plaintiffs also retained Larry Coben, an experienced attorney who has represented plaintiffs in MDL litigation and automobile defect cases. (Declaration of Larry

[4] Candidly, and respectfully, Plaintiffs submit that Professor Silver's Declaration contains all that this Court needs to enter an order granting Plaintiffs' Motions.

Coben, ¶ 6, attached as Exhibit 3)[5] Mr. Coben agrees with Professor Silver as to the importance of the bellwether selection process to MDL plaintiffs and the need to select the best cases for the plaintiffs. (Coben Dec. at ¶ 8) Succinctly stated, the goal is for counsel for the MDL plaintiffs to try as many strong bellwether cases as possible.

2. GM had the Advantage in the Bellwether Selection Process From the Outset

The nine cases selected by GM were all cases filed by Mr. Hilliard. (*See* GM's Claims for Inclusion in Bellwether Trial Plan and Discovery Tool, attached as Exhibit 4) In other words, GM determined that, of all the eligible cases, these nine cases filed by Mr. Hilliard presented the best opportunity for a defense verdict. Of the nine cases selected by Mr. Hilliard, seven were his cases. This gave GM significant control over the bellwether selection process since 16 out of 18 bellwether cases were Mr. Hilliard's cases and it could decide which Hilliard cases it wanted to settle and which it wanted to try in the event Mr. Hilliard decided he wanted to settle his cases.

GM's position was only strengthened when five of the six cases which were ultimately chosen as the first bellwether cases were Mr. Hilliard's cases, including the three GM selections. By that time, GM would have known that each of Mr. Hilliard's five cases were strong defense cases. Obviously, the three cases selected by GM and filed by Mr. Hilliard were considered to be the worst of the plaintiffs' cases since they were selected by GM. The two plaintiffs' selections by Mr. Hilliard were weak plaintiffs' cases as well.[6]

[5] As to the contention by GM and the Co-Leads that no other plaintiffs are joining with Plaintiffs' in their Motions, it is important to note that Mr. Coben is the Chief Legal Officer of Attorneys Information Exchange Group ("AIEG"), which is a group of attorneys with an interest in representing consumers in vehicle product liability cases. (Coben Dec. at ¶ 5) Many AIEG members represent plaintiffs in this MDL litigation and have an interest in the Motions before this Court.

[6] Attached as Exhibit 5 is a summary of each of these cases.

3. The Yingling/Scheuer Switch Made it Worse for All MDL Plaintiffs, Except Mr. Hilliard's Contracted Clients

The circumstances surrounding Mr. Hilliard's decision to switch *Yingling* and *Scheuer* are detailed in Plaintiffs' Motion to Remove. In their Response, however, the Co-Leads attempt to excuse the inexcusable.

The silver lining in the initial bellwether selection process was that *Yingling* was scheduled to be tried first. Unfortunately, *Yingling* did not remain in position number one for long. To reiterate, Mr. Pribanic and Mr. Hilliard met on July 28, 2015 to discuss *Yingling*.[7] Mr. Pribanic rejected Mr. Hilliard's demand that he be lead trial counsel and that they share any fees earned in the event the case went to trial. (Pribanic Dec. at ¶ 11) Mr. Hilliard punished Mr. Pribanic and the Yingling family by moving *Yingling* from trial position number one to trial position number five. (Pribanic Dec. at ¶ 12) These facts are documented in an August 6, 2015 letter, from Mr. Pribanic to Mr. Hilliard, as well as an August 7, 2015 letter, in which Mr. Pribanic informed the Co-Leads he intended to send to this Court. (Pribanic Dec. at ¶ 14) True and correct copies of the August 6, 2015 and August 7, 2015 letters are attached as Exhibits 7 and 8, respectively.

In the August 6, 2015 letter to Mr. Hilliard, Mr. Pribanic stated:

[7] Mr. Pribanic's Declaration authenticating his communications with the Co-Leads and confirming the circumstances surrounding replacing *Scheuer* with *Yingling* is attached as Exhibit 6. Of course, the Co-Leads highlighted in their Memorandum that Mr. Pribanic chose not to file a Declaration in support of Plaintiffs' Motion to Remove, somehow indicating that Plaintiffs' representations in their Motion to Remove relating to the *Yingling*/*Scheuer* switch were untrue.

Mr. Pribanic's letter leaves no doubt that Mr. Hilliard was on him not only to be lead counsel at trial, but to extract a portion of his fee in violation of his fiduciary duty to the Yingling family and all MDL plaintiffs. The only reason Mr. Hilliard removed *Yingling* from position number one was to punish Mr. Pribanic and further his own interests. If *Scheuer* was the best pick for the plaintiffs, as the Co-Leads now contend, why did Mr. Hilliard pick *Yingling* first? The answer is obvious – *Yingling* was the best pick.

On August 7, 2015, Mr. Pribanic received an email from Steve Shadowen, Mr. Hilliard's partner stating, "I suggest we all take a deep breath and discuss on Monday fair arrangements for joint preparation of this case for trial." (Pribanic Dec. at ¶ 15) After subsequent conversations, the Co-Leads chose not to move *Yingling* back to position number one. (Pribanic Dec. at ¶ 16) Both Professor Silver and Mr. Coben address Mr. Hilliard's conflicts in switching *Yingling* and *Scheuer*. (Silver Dec. at ¶¶ 29-32; Coben Dec. at ¶¶ 11-12)

The emails between the Co-Leads at this time are instructive. True and correct copies of the emails are attached as Exhibit 9. Mr. Berman was concerned about the "merits" of *Scheuer*, particularly since there was no car and no download. Ms. Cabraser added, "My concern is that

the (for shorthand) "no car" issue could get ruled on via [summary judgment] – and a bad ruling would then eliminate many cases." (*See* Exhibit 9) Ultimately, Mr. Hilliard was able to convince Mr. Berman and Ms. Cabraser that they should keep *Scheuer* number one because in over 90% of the personal injury cases there was no black box data. Although Ms. Cabraser recognized that *Yingling* was "an excellent death case," she and the other Co-Leads then rationalized that they could persuade this Court *Scheuer* was a better first bellwether trial, even though it was a much weaker case. (*See* Exhibit 9) Is it any wonder the MDL plaintiffs are in the mess they are in when it comes to the bellwether trial schedule?

On August 13, 2015, Mr. Pribanic sent an email to the Co-Leads and Mr. Shadowen. (Pribanic Dec. at ¶ 17) Mr. Pribanic attached to the email a Motion to Reform Bellwether Trial Schedule. (Pribanic Dec. at ¶ 17) Mr. Pribanic signed the Motion and attached exhibits which he intended to file along with the Motion. (Pribanic Dec. at ¶ 17) In the Motion, Mr. Pribanic, once again, highlighted Mr. Hilliard's misconduct. (Pribanic Dec. at ¶ 17) The Co-Leads ultimately agreed to ask this Court to move *Yingling* to position number three as long as Mr. Pribanic agreed not to file the motion or make the Court aware of why Mr. Hilliard moved *Yingling* to position number five. Mr. Pribanic wanted, at least, to be moved to position number three since he would have the opportunity to try *Yingling* in May 2016 instead of waiting until over a year until November 2016 to go to trial.

In August 2015, Plaintiffs' counsel had discussions with Mr. Pribanic regarding Mr. Hilliard's decision to move *Yingling* to trial position number five and *Scheuer* to trial position number one. (Cooper Dec. at ¶ 8) Plaintiffs' counsel informed Mr. Pribanic that Plaintiffs' counsel wanted to bring this matter to the attention of the Court. (Cooper Dec. at ¶ 8) Mr. Pribanic asked Plaintiffs' counsel not to do so since he believed that, if the Court were made

aware of the circumstances surrounding swapping *Yingling* with *Scheuer*, the Co-Leads might not abide by the agreement to ask the Court to move *Yingling* to position number three. Plaintiffs' counsel ultimately chose not to bring this matter to the attention of the Court out of deference to Mr. Pribanic and his concerns. (Cooper Dec. at ¶ 8)

3. Mr. Hilliard's "Not So Global" Settlement Harmed All MDL Plaintiffs

As Professor Silver explains, Mr. Hilliard's settlement of all but his bellwether cases presented additional conflict problems. (Silver Dec. at ¶¶ 15-17) The prospect of settling over a thousand cases with GM provided incentive for Mr. Hilliard to help his contracted clients at the expense of the remaining MDL plaintiffs. (*Id.*) Professor Silver's example in paragraphs 15-16 of his Declaration highlights why Mr. Hilliard's decision to settle all but his bellwether cases benefitted himself, his clients (other than his bellwether clients), and GM. Mr. Hilliard's only problem at that point was explaining to his bellwether clients why they were excluded from the settlement. Mr. Hilliard addressed this conflict by entering into the high-low agreements with GM which would ensure that his bellwether clients would receive compensation even if the jury returned a defense verdict. These high-low agreements only exacerbated the conflict between Mr. Hilliard and the remaining MDL plaintiffs. (Silver Dec. at ¶ 17) They guaranteed Mr. Hilliard would go to trial in his weak bellwether cases since he no longer had any incentive to settle or dismiss them. (Silver Dec. at ¶ 16) Furthermore, as Professor Silver states it is defendants' who settle mass tort cases in bulk, always want to get rid of the plaintiffs' attorneys who are involved. (Silver Dec. at ¶ 27) The reasons for this are obvious. The defendant wants the attorney out of the litigation. This decision by GM to allow Mr. Hilliard to continue the bellwether cases was, of course, unusual, but not surprising given what GM had to gain from Mr.

Hilliard's continued involvement in the litigation. ***In other words, Mr. Hilliard became GM's favorite lawyer.***

4. The Bellwether Trial Process – The Gift that Keeps Giving . . . to GM

Ultimately, the precipitating factor in filing these Motions was the initial email to the EC from Mr. Berman after the *Scheuer* trial disaster. A true and correct copy of this email is attached as Exhibit 9. The email attempted to whitewash what truly happened in *Scheuer*. Mr. Berman used such terms as "strong case" and the trial team "performing wonderfully." (*See* Exhibit 10) What was more concerning, however, was Mr. Berman's statement that the EC that the Co-Leads "look forward to continuing to zealously prosecute **these cases**." (*See* Exhibit 10; emphasis added). The four additional bellwether cases, other than *Yingling*, are weaker than *Scheuer*.

Furthermore, it appears that the plaintiffs are full steam ahead in working on preparing *Barthelemy* for trial. This is insane. As stated, *Barthelemy* is a case that should not have been filed, let alone be a second bellwether trial. (Ex. 4; Coben Dec. at ¶ 11) Simply stated, this case should be settled for the low GM offered, or dismissed. It certainly should not be the next bellwether trial. *Yingling* should.

5. Mr. Hilliard is Leaving the Wreckage Behind

It has come to the attention of Plaintiffs that, not surprisingly, Mr. Hilliard is moving on from the GM ignition switch litigation. Now that he has settled over a thousand cases and made sure he maximized his common benefit billing in *Scheuer*, he is pursuing his next endeavor – the VW MDL litigation. Attached as Exhibit 11 is a transcript from the Case Management Conference in the VW MDL dated Thursday, January 21, 2016. At this conference, Mr. Hilliard's partner, Mr. Shadowen, asked that Mr. Hilliard be appointed to a leadership position in

the VW MDL litigation. Judge Breyer, the Judge overseeing the VW MDL litigation had a question about Mr. Hilliard's availability since Mr. Shadowen told him he was working as Co-Lead counsel in the GM litigation. At the conference, Mr. Shadowen assured Judge Breyer:

Mr. Shadowen's answer is not surprising. Mr. Hilliard has milked this litigation for all it is worth and is moving on to his next opportunity. Unfortunately, the MDL plaintiffs are, once again, left as victims. This time not victims of GM, but, incredibly, the lawyer this Court appointed to represent them in this litigation.

V. The Disingenuous Efforts of GM and Co-Leads' to Impugn the Motives of Plaintiffs' Counsel

Plaintiffs' counsel should take some pride that GM and the Co-Leads criticize his conduct in this litigation. As is addressed in his Declaration, GM has attempted to thwart the efforts by Plaintiffs' counsel to hold GM accountable since the outset of this litigation. (Cooper Dec. at ¶ 1) Unfortunately, in their efforts to justify their conduct, the Co-Leads' adopt many of GM's arguments. These arguments are simply not true for the reasons set forth in Mr. Cooper Declaration. The silliness of these arguments is perhaps best demonstrated by the most recent

email Plaintiffs' counsel received from Ms. Cabraser.[8] There was a recent television expose about the work done by the Meltons and Plaintiffs' counsel, in promoting automotive safety and highlighting the continuing problems with the defects which are related to the GM ignition switch litigation. In her email, Ms. Cabraser states:

In the immortal words of Forrest Gump, "that's all [plaintiffs] have to say about that."

VI. The Timeliness Issue

Plaintiffs' now address the timeliness issue raised by the Court. Plaintiffs note that the Motion to Remove is new and fresh. It is an original motion, and not one asking for reconsideration. And even the second Motion is based on information that has only recently come fully to light. The high-low agreements were discovered by Plaintiffs' counsel after the *Scheuer* trial ended. Professor Silver and Mr. Coben address why these high-low agreements present additional conflict issues and ultimately harm the interests of the MDL plaintiffs. (Silver Dec. at ¶ 17; Coben Dec. at ¶ 13) Therefore, Plaintiffs submit both Motions are timely. Plaintiffs are not asking that the settlements be set aside; they are simply asking that the Court conduct

[8] Not that it matters but, in the Co-Leads' Memorandum they criticize Plaintiffs' counsel for not paying the MDL assessments. It must be noted, however, that other EC members, as well as Ms. Cabraser have not paid their MDL assessments either. (See Mr. Berman's email attached as Exhibit 12)

further investigation regarding the circumstances surrounding these settlements and whether they, ultimately, benefitted Mr. Hilliard at the expense of the remaining MDL plaintiffs.

Second, even as they argue untimeliness, the Co-Leads immediately send the Court to where this issue ought to be decided, and that is the "manifest injustice rule." It would be such a manifest injustice to rely on Local Rule 6.3 and punt, because breaches of fiduciary duty, appearances of vast impropriety, and potential damage to an ***ongoing*** MDL and hundreds of cases merits the "manifest injustice" review.

Some law should be made here. Some serious judicial inquiry should be made. Facts should be examined and thought about. This case, and future MDLs, deserve that much work. And, Rule 1 ultimately calls for justice and the administration of justice. Fed. R. Civ. P. 1. The Court has the inherent powers to ensure justice is done. Chambers v. NASCO, Inc., 501 U.S. 32 (1991). As the very old adage goes, "*boni judicis est ampliare justitiam*."[9] Justice in this case especially needs that extra and amplified work.

VII. Conclusion

Plaintiffs respectfully submit that the Court schedule a hearing on this matter to conduct further inquiry relating to the issues raised by the Motions. Plaintiffs respectfully submit that the Court should:

1) Enter an Order removing Mr. Hilliard as the PI Co-Lead;

2) Appoint two Co-Leads for personal injury cases. One Co-Lead would be counsel who represents a plaintiff or plaintiffs in MDL cases currently pending before this Court. The second Co-Lead would be an attorney who represents a plaintiff or plaintiffs in State Court Coordinated Actions; and

[9] BLACK'S LAW DICTIONARY 182 (6th ed. 1990) ("It is the duty of a good judge to enlarge or extend justice.").

3) Conduct an inquiry into the settlements between Mr. Hilliard's signed clients and GM and Mr. Hilliard's potential conflicts related to these settlements, including the decision by Mr. Hilliard and GM to enter into the high-low agreements in the bellwether cases.

Respectfully submitted this 5th day of February, 2016.

THE COOPER FIRM

/s/ Lance A. Cooper
Lance A. Cooper
Georgia Bar No. 186100

531 Roselane Street, Suite 200
Marietta, Georgia 30060
Main: (770) 427-5588
Fax: (770) 427-0010
Lance@TheCooperFirm.com

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that the foregoing was filed electronically with the Clerk of the Court using the CM/ECF system on February 5, 2016 and served electronically on all counsel of record.

THE COOPER FIRM

/s/ Lance A. Cooper
Lance A. Cooper
Georgia Bar No. 186100

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Exhibit 1

UNITED STATES DISTRICT COURT
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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DECLARATION OF LANCE A. COOPER

I, Lance A. Cooper, declare under penalty of perjury as follows:

1. As I told the Court at the August 11, 2014 hearing, I am not an MDL lawyer. I asked to be on the Executive Committee ("EC") because I thought I could help advance the interests of consumers who were harmed by GM key system defects[1] given my experience in *Melton v. GM*. I was honored when I received the appointment to the EC. Early on, however, I realized my appointment had a price. GM's lawyers consistently tried to prevent me from pursuing discovery in *Melton*, which was pending in the State Court of Cobb County. The Court may recall GM repeatedly accused me of violating orders during my prosecution of *Melton*. Unfortunately, from the outset, the Co-Leads at times supported GM's efforts.

2. The Motion to Remove the Co-Leads and Reconsider the Bellwether Trial Schedule detailed some of the mismanagement by the Co-Leads. In their response, the Co-Leads insist that they acted properly at all times. This Declaration, including the attached exhibits, provide details about the Co-Leads' mismanagement. In addition, as stated in the Motion to Remove, the Co-Leads' actions may ordinarily be considered part of the normal give and take of any MDL. They were not the reason for filing the Motion to Remove but were provided as

[1] The term "key system" is used because there are defects in GM vehicles, in addition to the ignition switch defect, which cause these cars to stall and airbags not to deploy.

background to give this Court context as to what led up to the selection of the bellwether trials and the disastrous result in *Scheuer v. GM*.

3. Early on, one of the Co-Leads, Mr. Berman, emphasized that he did not want *Melton* to "drive discovery." A true and correct copy of Mr. Berman's email is attached as Exhibit. 1. By that time, the MDL clients were benefitting from the pursuit of discovery in *Melton*, yet Mr. Berman was not interested in expedited discovery, he was interested in controlling the litigation. When GM and the Co-Leads were informed that we intended to pursue discovery specific to the fraudulent concealment in *Melton*, Mr. Hilliard accused me of pushing Judge Tanksley in an "unprofessional direction." A true and correct copy of Mr. Hilliard's email is attached as Exhibit 2. Ultimately, Judge Tanksley allowed us to pursue discovery in *Melton* which was invaluable in forcing GM to produce thousands of documents it previously argued were protected from disclosure by the attorney-client and work product privileges.

4. We also state in the Motion to Remove that the Co-Leads did not involve most of the EC members in discussions of the most important issues related to the litigation. For example, the Co-Leads excluded the EC from decisions regarding the bellwether case selection process. The EC members were aware there was a bellwether selection process, but were not given the opportunity to provide input. The EC received a November 10, 2014 letter from Mr. Hilliard regarding the eligibility of cases to be submitted for consideration of bellwether trials. I sent the Co-Leads an email suggesting that they include state court cases, where the trial court had signed off on the Coordination Order, as eligible bellwether cases. A true and correct copy of the November 12, 2014 email is attached as Exhibit 3. My reasoning was that including state court cases would give the plaintiffs more cases to choose from and would serve to benefit all of our clients. Ms. Cabraser responded in an email, "That makes sense, and it has been done in

other cases." (*See* Exhibit 3) Ms. Cabraser's email is contrary to the statements made at page 17 of the Co-Leads' Memorandum that State Court cases with Coordination Orders cannot be tried as bellwether cases. Mr. Hilliard ultimately chose not to involve the EC in the selection process and also chose not to include the State Court Cases with Coordination Orders as potential bellwether cases.

5. By the Spring of 2015, I realized that, based on my assignments from the Co-Leads, I was not providing much assistance to advance the cause of the MDL plaintiffs. I was also representing clients in the State Court Coordinated Actions. The deposition procedure agreed to by the Co-Leads and GM, for the most part, limited State Court Coordinated Counsel to one hour of questions per deposition. When I asked the Co-Leads for additional time, Mr. Hilliard inferred I had decided to "jump ship" and had a conflict because I was an EC member in the MDL who wanted to represent my clients in their state court case. A true and correct copy of the email and responsive emails, is attached as Exhibit 4. Of course, I did not have a conflict since my interest was to represent the interests of all plaintiffs in the MDL, to hold GM responsible.

6. During this time, our law firm began to receive calls from clients who Mr. Hilliard had chosen to no longer represent. One client in particular, Dierdre Betancourt, came to my attention. Ms. Betancourt's Declaration is attached as Exhibit 5. Ms. Betancourt informed our firm that Mr. Hilliard had promised her $3 million in settlement if she signed a contract with his law firm. (Betancourt Dec. at ¶ 8) He also promised to advance her living expenses. (Betancourt Dec. at ¶ 7) Ms. Betancourt was not the first client of Mr. Hilliard who alleged similar conduct on the part of Mr. Hilliard. Ms. Betancourt's story was particularly compelling because Mr. Hilliard chose to terminate his relationship with her without conducting an adequate

investigation of the circumstances surrounding the crash which resulted in the death of her daughter. (Betancourt Dec. at ¶ 8) I decided at this time it no longer made sense for my law firm to work with Mr. Hilliard. I sent him an email on April 23, 2015, which is included with Exhibit 6. In this email I detail the reasons why I no longer wanted to work under Mr. Hilliard.

7. Instead of a formal resignation, I thought it would be best to simply just let the Co-Leads know I no longer needed any additional assignments. Nine law firms were still on the EC and working on the GM litigation. I assumed there was not a problem with the other law firms working on the litigation. I am surprised that the Co-Leads would make such a big deal of my resignation since I continued to work with them and their law firms. Representative emails from attorneys with the Co-Leads, as well as the Co-Leads which claim they had no problem with my decision are attached as Exhibit 6. Attached is the most recent email from Elizabeth Cabraser congratulating the Meltons and myself on the work we did to ultimately uncover this defect which resulted in this GM litigation. (*See* Exhibit 7) Attaching these emails is not to promote me or my law firm, it is provided to show that the Co-Leads are engaged in revisionist history when they contend that somehow my resignation was harmful to the litigation or caused them any concern.

8. Finally, in August 2015, I had discussions with Mr. Pribanic about Mr. Hilliard's decision to move *Yingling* to trial position number 5 and *Scheuer* to trial position number one. I informed Mr. Pribanic that I wanted to bring this matter to the attention of the Court. Mr. Pribanic asked me not to do this since he believed, if the Court were made aware of the circumstances surrounding the swapping of *Yingling* with *Scheuer*, the Co-Leads might not abide by their agreement to ask the Court to move *Yingling* to position number three. I agreed to Mr. Pribanic's request, even though I had grave concerns about the bellwether trial selection process.

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

Executed on 5th of February, 2016.

Lance A. Cooper

Exhibit 1

taken in the MDL, since the concealment issues cut across all cases, without irreparably delaying either the Melton trial or the commencement of depos in the MDL, and neither the MDL nor Melton has any objection to coordination and reasonable accommodations in scheduling between the courts.

Sent from my BlackBerry 10 smartphone.
Original Message
From: Steve Berman
Sent: Thursday, September 11, 2014 6:09 PM
To: Cabraser, Elizabeth J.; Lance Cooper; Dawn Barrios
Cc: Bob Hilliard; Geman, Rachel; Lance Cooper
Subject: RE: GM Draft Coordination Letter

I will be straight up

I don't want Melton to drive discovery and don't understand why the depositions Gm complains of cant be moved back a bit and coordinated

Glad to hear why but we to in the mdl want to prove concealment so I don't see that as a distinction that warrants the advancement of these depositions

Judge furman seemed to be taking notes on this point and though you did a nice job saying yu haven't violated judge furmans orders-I still think he is troubled by the notices both the amount of depositions sought and the timing given your trial date is far away and given not all relevant documents have been produced or digested

Steve Berman | Hagens Berman Sobol Shapiro LLP | Direct: (206) 268-9320

-----Original Message-----
From: Cabraser, Elizabeth J. [mailto:ECABRASER@lchb.com]
Sent: Thursday, September 11, 2014 3:02 PM
To: Lance Cooper; Dawn Barrios
Cc: Steve Berman; Bob Hilliard; Geman, Rachel; Lance Cooper
Subject: Re: GM Draft Coordination Letter

Lance-thanks-we're still editing- trying to strike just the right balance between Melton and the MDL:

Sent from my BlackBerry 10 smartphone.
From: Lance Cooper
Sent: Thursday, September 11, 2014 5:34 PM
To: Dawn Barrios
Cc: Cabraser, Elizabeth J.; Steve Berman; Robert C. Hilliard; Geman, Rachel; Lance Cooper
Subject: Re: GM Draft Coordination Letter

This looks good to me. On behalf of Ken and Beth, thank you.

Sent from my iPhone

Exhibit 2

On Sep 18, 2014, at 9:15 PM, "Robert C. Hilliard" <bobh@hmglawfirm.com<mailto:bobh@hmglawfirm.com>> wrote:

Lance,

I am writing this to you as a member of the executive committee, as a plaintiffs attorney and as lawyer fighting GM.

I have spent my professional life forging alliances with like minded plaintiffs' lawyers and bringing every bit of talent and energy I have to fight the GM's of the world.

I am aggravated with you because you have have now placed the MDL leadership in a position that makes it difficult to provide you with support on this issue. Though all of us are driven by the same desire, by the same outrage towards GM , and by the same purpose in seeking justice—we are at a crossroads with you and how you have determined to proceed.

Lance, please rethink this strategy you have devised. You are pushing Judge Tanksley in an unprofessional direction. I don't understand how any possible outcome is helpful to the Meltons.

Its as if you are intent on bringing this to a head and creating a kerosene courtroom, while thumbing your nose at all good faith attempts by leadership to find a way to move forward together—which would necessarily require an agreed to pace.

You seem determined to ignore comity and coordination with the idea that there is some outcome you can salvage from this ever growing mess.

The MDL exists. There will be interaction and coordination in both discovery and the protection GM is seeking—you have neither faced this appropriately nor have you worked to determine a way to compromise your original position effectively.

As a result, we find ourselves on the eve of a state court status hearing and a likely response by Judge Furman to issues which were all workable if there was not such a unyielding rigidness to how Melton should proceed.

At this point, it may be too late and I do not know if there is an effective 'stand-down' that would allow all sides to take a breath, consider more reasonable and better structured strategies that acknowledges the truth of the absolutely necessary coordination—but, as it relates to your Melton case and tomorrow's hearing, I would ask and encourage you to figure out a way to do so.

R O B E R T C. H I L L I A R D
-- Attorney at Law --

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Exhibit 3

Lance Cooper

From: Cabraser, Elizabeth J. <ECABRASER@lchb.com>
Sent: Wednesday, November 12, 2014 4:03 PM
To: Lance Cooper; Robert C. Hilliard; Dawn M. Barrios
Cc: Lauren Gomez; Steve Berman; Sharon Sanchez
Subject: Re: MDL 2543 Meet and Confer re Melton II Motion to Compel / Privilege Issues

That makes sense, and has been done in other cases

Sent from my BlackBerry 10 smartphone.
From: Lance Cooper
Sent: Wednesday, November 12, 2014 6:56 AM
To: Robert C. Hilliard; Dawn M. Barrios
Cc: Lauren Gomez; Cabraser, Elizabeth J.; Steve Berman; Sharon Sanchez
Subject: RE: MDL 2543 Meet and Confer re Melton II Motion to Compel / Privilege Issues

Bob,

I read the November 10 letter regarding the eligibility of cases to be submitted for consideration as bellweather trials.

It seems to me it would make sense to include for eligibility any state court cases where the trial judge has signed off on the coordination order. This will give the plaintiffs more cases to choose from. If we have additional good cases in good venues to consider as bellweather trials, that should only serve to benefit all of our clients.

Thanks.

From: Robert C. Hilliard [mailto:bobh@hmglawfirm.com]
Sent: Tuesday, November 11, 2014 3:51 PM
To: Dawn M. Barrios
Cc: Lauren Gomez; Lance Cooper; Elizabeth Cabraser; Steve Berman; Sharon Sanchez
Subject: Re: MDL 2543 Meet and Confer re Melton II Motion to Compel / Privilege Issues

i will so remember that that is the idea.

ROBERT C. HILLIARD
-- Attorney at Law --

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On Nov 11, 2014, at 2:50 PM, Dawn Barrios <barrios@bkc-law.com<mailto:barrios@bkc-law.com>> wrote:

Thanks, Bob.

Just remember the idea is for me to circulate to all coordinating courts (so far we only have 3) the discovery before it is sent to GM so we can see if any of the state counsel have anything else to add to it.
d

Dawn M. Barrios
Barrios, Kingsdorf & Casteix, LLP

<bkc91230c.png><http://www.bkc-law.com/>

701 Poydras Street, Suite 3650
New Orleans, LA 70139
504.524.3300 (phone)
504.524.3313 (fax)
P Please consider the environment before printing this e-mail

From: Robert C. Hilliard [mailto:bobh@hmglawfirm.com]
Sent: Tuesday, November 11, 2014 2:48 PM
To: Dawn Barrios; Lauren Gomez
Cc: Lance Cooper; Elizabeth Cabraser; Steve Berman; Sharon Sanchez
Subject: Re: MDL 2543 Meet and Confer re Melton II Motion to Compel / Privilege Issues

lauren,

send dawn all discovery sent to date to gm in the MDL.

R O B E R T C. H I L L I A R D
-- Attorney at Law --

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On Nov 11, 2014, at 2:46 PM, Dawn Barrios <barrios@bkc-law.com<mailto:barrios@bkc-law.com>> wrote:

Please remember to get me copies of the discovery the MDL propounds as I have to send it to the coordinating counsel. I assume the discovery discussed below comes out of Melton, but am not sure.
Thanks,
d

Dawn M. Barrios
Barrios, Kingsdorf & Casteix, LLP

<bkc04a763.png><http://www.bkc-law.com/>

701 Poydras Street, Suite 3650
New Orleans, LA 70139
504.524.3300 (phone)
504.524.3313 (fax)
P Please consider the environment before printing this e-mail

From: Lance Cooper [mailto:lance@thecooperfirm.com]
Sent: Tuesday, November 11, 2014 10:28 AM
To: Pixton, Allan; Elizabeth Cabraser; Steve Berman; Robert C. Hilliard; #GM VIS MDL Defense Counsel; *kdreyer@hdbdlaw.com<mailto:kdreyer@hdbdlaw.com>
Cc: Dawn Barrios
Subject: RE: MDL 2543 Meet and Confer re Melton II Motion to Compel / Privilege Issues

I am following up on last night's conversation. I reviewed the document requests regarding the personnel files. In addition to the individuals listed in Request No. 5 in our First Request for Production, we also requested the personnel files of any person fired, reprimanded, etc. by GM as a result of the investigation into the ignition switch defect issue in Request Nos. 10 and 11 of our Second Request for Production.

This will confirm that we are not interested in obtaining any personal or financial information contained in the files.

We are interested in obtaining the following information regarding these GM employees or ex-employees:

Documents relating to performance evaluations since January 1, 2000

Documents relating to any separation agreements for employees who are no longer working for GM

Internal communications regarding the separation agreements

Documents relating to any reprimands, demotions, etc. for any of these employees

I understand that some of these documents may not be technically located in the personnel files. Of course, we would expect GM to produce these documents regardless of their location.

This list is not exhaustive, and, as Bob pointed out, this same agreement will apply for all future requests regarding GM employees and ex-employees inside the MDL—subject to a relevancy assertion by GM. Also, since the MDL covers a broader range of defects than Melton, we may ask for additional files as additional witnesses become apparent from discovery.

I look forward to speaking with you this evening in an effort to resolve any remaining differences regarding the production of these documents.

Lance

-----Original Appointment-----
From: Pixton, Allan [mailto:allan.pixton@kirkland.com]
Sent: Monday, November 10, 2014 10:29 PM
To: Elizabeth Cabraser; Steve Berman; Robert C. Hilliard; #GM VIS MDL Defense Counsel; *kdreyer@hdbdlaw.com<mailto:*kdreyer@hdbdlaw.com>; Lance Cooper
Subject: MDL 2543 Meet and Confer re Melton II Motion to Compel / Privilege Issues
When: Tuesday, November 11, 2014 5:00 PM-6:00 PM (UTC-06:00) Central Time (US & Canada).
Where: Dial In: 866-331-1856; Conference Code: 312-862-2453

Exhibit 4

On Apr 23, 2015, at 1:00 PM, Lance Cooper <lance@thecooperfirm.com> wrote:

Bob,

Your email confirms our suspicion that you are not interested in cooperation, but imposition. That is why I thought it best to let you know that we would not be working on any further assignments. Since you chose to address what has taken place since my appointment to the Executive Committee, it is appropriate for me to tell the rest of the story which resulted in my decision.

Before I do that though, in response to paragraph no. 7. of your email, Doreen provided you with **all** briefing you requested relating to the King & Spalding documents. I am hopeful that your clients understand what the Meltons did to help them in their efforts to obtain justice. We were able to hand you the case on a silver platter because of the work done in *Melton* I and *Melton* II.

Although my firm has never been a part of an MDL, I naively assumed that, given our work in *Melton* I and *Melton* II, our firm could significantly assist the MDL leadership in the prosecution of these cases. From the beginning, however, the MDL leaders controlled the litigation and failed to involve, in any meaningful way, any attorneys – either those on the Executive Committee or those handling state court cases. To my surprise, you attempted to undermine our efforts to obtain discovery in *Melton* II. Mr. Berman stated in early September that he did not want *Melton* II to drive discovery. Of course, I, once again, naively assumed that it would be in the best interests of all of our clients to obtain full discovery as soon as possible regardless of the forum in which it was obtained.

Further evidence of your efforts is contained in the September 18 email you sent to me which I have attached. In your email you threatened me (and also accused me of pushing Judge Tanksley in "an unprofessional direction") when I simply went to Judge Tanksley to ask her to require GM to produce the documents we had requested, including documents which GM contended were protected from production by the attorney/client and work product privileges.

As you now know, Judge Tanksley ultimately ordered GM to respond to the discovery we served in *Melton* II, which resulted in Judge Furman ordering that the same documents be produced in the MDL. In other words, the only reason the documents, including the privileged documents, were produced in the MDL was because of what we asked Judge Tanksley to do in *Melton* II.

Even though you actively opposed our efforts in *Melton* II, I decided to be a team player and to continue to try to work with you. During the coming months, there was very little communication between you and the EC members regarding the prosecution of the case. EC members were siloed (isn't that ironic?) and asked to review documents without any real understanding of the big picture. Over the past few months, I have had conversations with EC members who expressed frustration with the lack of communication and understanding of our litigation (and ultimately trial) strategy.

Perhaps the best example of the lack of communication and understanding of the big picture was your decision to schedule depositions without any input from EC members as to who should be deposed, why those persons should be deposed, when they should be deposed, and the reasons for the deposition assignments. There is no real strategic plan. For example, why are different law firms taking the depositions of individuals who either worked in, or directly with, the in-house legal department? Maybe there is a good explanation other than billable hours, but I have yet to think of one.

This is why I thought it would be best to try to work with the state court lawyers in the state court coordinated cases so that we could identify who should be deposed and make sure that there was an understanding of questions which would be asked of the witnesses in order to develop the case for each of the vehicles which are the subject of the litigation. That also is why I asked Dawn Barrios on March 19 to provide us with a list of coordinated counsel. (The answer to question no. 1 in your email is contained in this list.)

As I said in my previous email, when we discovered on the April 13 phone conference that there were more state court coordinated counsel than Dawn had told us about, I asked Dawn to provide us with the names of additional counsel. Dawn's response, and your lack of one, were telling. It became apparent that it was not in your interest to allow the state court coordinated counsel to do what Judge Furman's orders contemplate – to coordinate in order to represent the interests of their clients.

In your email, you suggest that it is a conflict if I sit on the EC and also advocate on behalf of my clients in state court cases. In other words, I am "jumping ship" if I intend advocate on behalf of all of my clients and not simply follow the MDL leads on what could be a "sinking ship." As an attorney though my obligation is to act in the best interests of my clients.

Other facts we learned over the past month have made it more clear we can no longer work with your law firm. Deidre Betancourt, your former client, contacted our law firm on March 26, 2015. Her daughter, Brittany, died in an accident in New York on October 9, 2014 while driving a 2006 Chevy Cobalt. Your paralegal, Lauren Gomez, showed up at the wake for Brittany and asked to meet with Ms. Betancourt the next day. You then met with Ms. Betancourt in Boston and promised her $3.5 million if she would sign a contract with your law firm. You also promised to advance her money and buy her a car. In March of this year, you then told Ms. Betancourt you could not help her. Ms. Betancourt called our law firm and asked why you would do such a thing. Given our conversations with other individuals, it is likely this was the pattern for your practice of soliciting clients.

We also received a phone call from one of the lawyers in the MDL who had a potential bellwether case. The lawyer told me that your partner, I believe it was Rudy Gonzales, told him that the case would have a better chance of being picked as a bellwether case if he agreed to pay your law firm 50% of the attorneys' fees. Although I have never been involved in an MDL before, that is just simply wrong.

Finally, your reference to the 'new Lance Cooper' and 'old Lance Cooper' is clever. I am, however, the same old Lance Cooper. The past year, however, has certainly been an education and given me a new perspective on how clients and cases should and should not be handled. Unfortunately, it is clear now that there is no 'old Bob' or 'new Bob,' it is the just the 'same ol' Bob.'

From: Robert C. Hilliard [mailto:bobh@hmglawfirm.com]
Sent: Wednesday, April 22, 2015 8:30 AM
To: Doreen Lundrigan
Cc: Lance Cooper; Cole Portis; Steve Berman; Dawn M. Barrios; Elizabeth Cabraser; Rudy Gonzales; Anne Fornecker; Steve Shadowen; Catherine Tobin
Subject: Re: GM MDL Depositions

Lance,

First, sorry for the delay in getting you the list. Dawn, please forward to Lance.

Now:

1.Specifically what Coordinated Action counsel are you referring to?

2. Your new role and your recent and sudden interest to solely push the interest of the State coordinated actions is potentially somewhat inconsistent with the MDL's role—given the tension b/t who gets how much time, etc.

How do you reconcile 'old lance cooper' who just 8 months ago applied for, argued for and received the appointment to the GM mdl executive committee, and who still sits on that committee to 'new lance cooper'? Similar to 'old' and 'new' GM—any differences seem to be really just a fiction—though if you truly have decided to jump ship we need to make sure all transitions are, if possible, free of professional conflicts and, again, if possible, seamless.

Setting this peculiarity aside for a moment.

3. Regarding your request for an extra hour for coordinated action counsel to question the listed witnesses, we cannot agree to this request at this time. We are of the opinion that the one hour allotted time for coordinated action counsel should be sufficient. However, please note that because we asked for extended time for DeGiorgio and Altman, in fact Coordinated Action counsel have been given an extra hour for those folks so MDL plaintiffs will have 7 hours, CA counsel will have 2 hours and NewGM will have 1.5 hours. Same extended time allotment is true for Stouffer and Wachtel.

5. With regard to the other list of deponents you have suggested, we have several that will be added to our next round of scheduling. We will advise you promptly if we think the others should be scheduled and if not, I would suggest that those individuals be noticed by you in your coordinated action and then we will cross notice pursuant to the Joint Coordination Order and the Deposition Protocol Order.

6. Regarding the 2005 Cadillac CTS, those NewGM depositions specific to that vehicle should be noticed by CA counsel in that litigation and then we will cross notice pursuant to the Joint Coordination Order and the Deposition Protocol Order.

7. If you have not already done so, please forward this morning all of the briefing you did in Melton to respond to the King & Spalding objections to the subpoena you served on them. As you know they have now served their objections in the MDL—when you were 'old lance cooper' you asked me for and I agreed to have you take the lead in this extremely important project given you have already responded to it once in Melton(I also, at your request, gave you the coinciding GM depositions related to same). Though, once we received the K&S objections and the clock began to tick, you suddenly backed out without explanation, told me you did not intend to help and dropped out of taking the depositions you requested to be assigned as well. Be that as it may, I still would expect you would want to completely share all of your briefing so we don't reinvent the wheel, huh?

Bob

ROBERT C. HILLIARD
-- Attorney at Law --

Board Certified in Personal Injury
Trial Law & Civil Trial Law

hmglawfirm.com

On Apr 21, 2015, at 4:01 PM, Doreen Lundrigan <doreen@thecooperfirm.com> wrote:

Bob, see the email from Lance below:

Bob,

Cole Portis and I have spoken with a number of the attorneys who represent plaintiffs in state court coordinated actions. Dawn Barrios was kind enough to provide us with a list of attorneys who represent plaintiffs in state court coordinated cases on March 19, 2015. Dawn also let us know she was appreciative of our efforts to work with these attorneys in order to coordinate our discovery efforts.

During last Monday's telephone conference with state court coordinated counsel, there were more attorneys participating in the call than that were on the list provided by Dawn. Following the call, we asked Dawn to provide us with the names of all of the attorneys in the coordinated actions, but she chose not to do so, deferring to the MDL leads on this matter. To date, we have not received the names of these attorneys nor heard from the MDL leads.

However, we have spoken on a number of occasions with the attorneys on Dawn's list. These attorneys agreed to allow my law firm and Beasley Allen to work with the MDL leadership to ensure that our client's interests are adequately represented during the upcoming depositions. We have had an opportunity to look at the list of GM witnesses the MDL leads have chosen. For the majority of witnesses we believe that the one hour allotted to the state court counsel is sufficient. For the following witnesses, however, it would be appropriate to give at least two hours to the state court coordinated counsel:

David Carey
Lucy Clark-Dougherty
Dwayne Davidson
Jaclyn Palmer
Elizabeth Kiihr
John Sprague

Bill Kemp
Carmen Benavides
Steve Oakley
Jennifer Sevigny
Ray DeGiorgio
Gary Altman
James Federico
Gay Kent
Alberto Mansor
Ron Porter
Deborah Nowak-Vanderhoef

In addition, we have identified the following GM witnesses with relevant knowledge of the GM/Cobalt ignition switch defect who should be deposed between now and November:

Kathy Anderson
Blendi Sulaj
Alan Adler
Ebram Handy
Douglas Brown
Fred Fromm
Keith Schultz
Annette Rigdon
Ryan Jahr
Nabeel Peracha
Peter Judis

Finally, it is apparent from the GM witnesses that the MDL leads have asked be deposed that you are focused on the Cobalt ignition switch defect and not vehicles with other ignition switches at this time. We have a state court coordinated action, Pate v. GM, which involves a 2005 Cadillac CTS. We will need to take depositions of GM employees on issues related to the Cadillac defect soon given the scheduling order entered in that case. We will get you a list of these witnesses. Furthermore, as soon as GM produces additional documents, we will supplement this list. I assume you have no problem with us noticing these depositions separately in our state court action if we are not able to schedule them in the MDL.

Please let us know by next week whether (1) you will agree that the state court counsel will have the time requested, (2) you will notice the additional GM depos, and (3) you will support our efforts to depose other GM witnesses in state court cases such as Pate v. GM where you have not scheduled the depositions of these witnesses in the MDL.

Thanks, Lance.

Doreen Lundrigan
The Cooper Firm
531 Roselane Street
Suite 200
Marietta, GA 30060
P: 770.427.5588 | F: 770.427.0010
doreen@thecooperfirm.com | www.thecooperfirm.com
Follow our blog

Marietta Accident Attorney

<image001.jpg>

<2014-09-18 Email.pdf>

Exhibit 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
IN RE:
GENERAL MOTORS LLC IGNITION SWITCH
LITIGATION 14-MD-2543 (JMF)

This Document Relates to All Actions
----------x

DECLARATION OF DIERDRE BETANCOURT

I, Dierdre Betancourt, am giving this Declaration based upon my own personal knowledge, except where otherwise specified. I suffer from no legal disability or incapacity. I am of the legal age of majority. I am competent to give testimony to the matters stated herein.

1. I am the mother of Brittany Betancourt Alfarone who was killed while driving a 2006 Chevrolet Cobalt on October 9, 2014.

2. Three days later, my step-brother, Eric Martinez, commented on an online news story about the crash. He wanted a witness to contact him. He left his phone number on the site. He subsequently received a text message from Lauren Christian, the mother of another young girl who died in a Cobalt crash. Ms. Christian asked Eric to contact Lauren Gomez, Mr. Bob Hilliard's paralegal. Eric called Ms. Gomez, and she told him she was in New York.

3. On October 14, 2014, Lauren Gomez made contact with me and sent me text messages.

4. On October 15, 2014, we held a wake for Brittany. Ms. Gomez was not invited to the family event, but we learned later that she had attended the wake anyway.

5. Two days after my daughter's funeral and wake, Ms. Gomez contacted me and told me that she had attended my daughter's wake the day before and was in town and would like to meet with me. I didn't feel as though I was ready to do this yet, but Lauren indicated she was only in town for a couple of hours and wanted to meet with me. I agreed to meet with her at my home, and we met on October 17, 2014, around 2 p.m.

6. On October 20, 2014, after that meeting with Lauren, I met with Bob Hilliard in Boston. He paid for my train trip there. We met in the bar areas of the Wyndham Boston Beacon around 6 p.m. He told me he could get me $3 million for my case. I told him it wasn't about the money, but that I needed closure and wanted an investigation done into my daughter's accident. Nonetheless, I signed a contract with him to represent me against General Motors.

7. As part of our agreement, Mr. Hilliard told me he would get me a car and advance me some funds. A copy of my agreement with Mr. Hillliard is

attached as Ex. 1, page 3. I was then appointed the Adminstratrix of Brittany's Estate.

8. Much to my dismay and shock, on March 1, 2015, Mr. Hilliard's office wrote me and cancelled the fee contract. In the letter, Mr. Hilliard's office told me I did not have a viable case. This is not what I had been told since, again, Mr. Hilliard promised me that he could get me $3 million for my case. As far as I knew, Mr. Hilliard did not secure the Cobalt or have it inspected by any experts to determine whether the defects in the car caused Brittany's death. I have since learned Mr. Hilliard never really investigated the accident and my daughter's death. Mr. Hilliard sent the fee contract back to me marked CANCELLED. A copy is attached as Ex. 1.

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

Executed on 4th of February, 2016.

Dierdre Betancourt

Dierdre Betancourt

EXHIBIT 1

THIS CONTRACT IS SUBJECT TO ARBITRATION

POWER OF ATTORNEY AND CONTINGENT FEE CONTRACT

This agreement is made between Deirdre Betancourt **herein after referred to as "the Client," and the Thomas J. Henry - Injury Attorneys and Hilliard Munoz Gonzales, LLP, hereinafter referred to as "Attorneys".**
In consideration of the mutual promises herein contained, the parties hereto agree as follows:

DB. TJH

1. PURPOSE OF REPRESENTATION

The client hereby retain and employs Attorneys to sue for and recover all damages and compensation to which the client may be entitled as well as to compromise and settle all claims arising out of the General Motors Auto Defect and Recall, as a result of the death of her Tony Alforne.

It is specifically agreed and understood that Attorneys' representation is limited to specific persons and or companies named as clients and that Attorneys are not representing or expected to represent any other person or entity not named herein as a client. It is expressly agreed and understood that Attorneys' obligations are limited to representing Clients in the specific matters documented herein, and Clients do not expect Attorneys to do anything else.

Client's signature hereon confirms that said client was not improperly solicited by Thomas J. Henry - Injury Attorneys or Hilliard Munoz Gonzales, LLP.

2. ATTORNEYS' FEES

In consideration of the services rendered and to be rendered to Client by Attorneys, Client does hereby assign, grant and convey to Attorney the following present undivided interests in all the claims and courses of action for and as a reasonable contingent fee for Attorneys' services and said contingent attorneys' fee will be figured on the total gross recovery:

35% of any settlement or recovery made before suit is filed thereon;
35% of any settlement or recovery made after suit is filed;
~~45% of any settlement or recovery made after trial commences, a notice of appeal has been given or an appeal bond has been filed~~

TJH By permission

DB.

3. ASSIGNMENT OF INTEREST

In consideration of Attorneys' services, the Client hereby conveys and assigns to Attorneys and agrees to pay to Attorneys an undivided interest in and to all of Client's claims and causes of action to the extent of the percentage set out in Paragraph 2.

If there is any type of settlement whereby the Client is to receive or be paid future payments, then the settlement will be reduced to present value, and the settlement will be arranged whereby there will be sufficient cash at the time of the settlement to pay the attorneys' fees which will be figured on the present value of the total settlement, including the present value of future payments.

All sums due and to become due are payable at Thomas J. Henry - Injury Attorneys and Hilliard Munoz Gonzales, LLP in Nueces County, Texas.

4. APPROVAL NECESSARY FOR SETTLEMENT

No settlement of any nature shall be made without Client's approval and Client agrees to make no settlement or offer of settlement without the approval of the Attorneys.

Attorneys are hereby granted a Power of Attorney so that they may have full authority to prepare, sign and file all legal instruments, pleadings, drafts, authorizations and papers as shall be reasonably necessary to conclude this representation, including settlement and/or reducing to possession any and all monies or other things of value due to the Client under the claim as fully as the Client could do in person. Attorneys are also authorized and empowered as Client's negotiator in any and all settlement negotiations concerning the subject of this Agreement.

5. REPRESENTATIONS

It is understood and agreed that Attorneys cannot warrant or guarantee the outcome of the case and Attorneys have not represented to the Client that the Client will recover all or any of the funds so desired. Client realizes that Attorneys will be investigating the law and facts applicable to this claim on a continuing basis and should Attorneys learn something which in the opinion of attorneys makes it impractical for Attorneys to proceed with the handling of Client's claim, then Attorneys may withdraw from further representation of Client by sending written notice to Client's last known address.

I understand that if I am currently receiving SSI, Medicaid, or certain other government benefits, and enter into any settlement without a financial consultant and/or attorney taking appropriate precautions on my behalf, that my receipt of these government benefits may be changed, stopped or deleted. Thomas J. Henry - Injury Attorneys and Hilliard Munoz Gonzales, LLP are not providing legal advice regarding any issue regarding SSI, Medicaid, or certain other government benefits.

6. DEDUCTION OF EXPENSES

Client additionally agrees that Attorneys are to be repaid and reimbursed out of client's recovery for all Court costs and expenses of litigation and non-litigation Attorney has paid or incurred. Including but not limited to, collection by various agents for Thomas J. Henry - Injury Attorneys and/or Hilliard Munoz Gonzales, LLP of medical records, affidavits, statements, depositions, investigation expenses, expert witness expenses, photographs, witness fees, Court costs, travel, meals, copies, long-distance calls, postage, advances to Client or in Client's behalf, or any other expense reasonably related to Client's claim. Regardless of the outcome of the matter described above, all medical expenses, subrogation claims, and/or liens shall be the sole responsibility of client. Client agrees that attorneys may borrow funds from a commercial bank to advance or pay such Court costs and litigation expenses and the reasonable interest charged by the bank on such borrowed funds will be added to the Court costs and litigation expenses to be deducted from the settlement recovery.

Thomas J. Henry - Injury Attorneys and Hilliard Munoz Gonzales, LLP have Client's permission to send "Letters of Protection" to providers for the benefit of client and attorneys are authorized to pay resultant monies owed from the Client's recovery at the resolution of the case.

7. COOPERATION OF CLIENT

Client agrees to cooperate with Attorneys at all times and to comply with all reasonable requests of Attorneys. Client further agrees to keep attorneys advised of his/her whereabouts at all times, and to provide attorneys with any changes of address, phone number, or business affiliation in writing.

Attorneys or either of them may at his/her option, withdraw from the case and cease to represent the client should client fail to comply with any portion of this Agreement or should Attorneys or either of them decide that he or she cannot continue to be involved in this case. Such withdrawal will be effective by mailing written notice to client's last known address.

8. ASSOCIATION OF OTHER ATTORNEYS

Attorneys may at their own expense, use or associate other attorneys in the representation of the aforesaid claims of the client. Thomas J. Henry - Injury Attorneys and Hilliard Munoz Gonzales, LLP are law firms with a number of attorneys. Various of those attorneys may work on Client's case.

9. TEXAS LAW TO APPLY

This Agreement shall be construed under and in accordance with the laws of the State of Texas, and the rights, duties and obligations of client and of Attorneys regarding attorneys' representation of Client and regarding anything covered by this Agreement shall be governed by the laws of the State of Texas. Any suit between Client and Attorneys or either of them regarding Attorneys' representation of client or regarding anything covered by this Agreement will be filed in a Court of competent jurisdiction in Nueces County, Texas.

10. ARBITRATION

Any and all disputes, controversies, claims or demands arising out of or relating to this Agreement or any provision hereof, the providing of services by Attorneys to Client, or in any way relating to the relationship between Attorneys and Client, whether in contract, tort or otherwise, at law or in equity, for damages or any other relief, shall be resolved by binding arbitration pursuant to the Federal Arbitration Act in accordance with the Commercial Arbitration Rules then in affect with the American Arbitration Association. Any such arbitration proceeding shall be conducted in Nueces County, Texas. This arbitration provision shall be enforceable in either federal or state court in Nueces County, Texas, pursuant to the substantive federal laws established by the Federal Arbitration Act. Any party to any award rendered in such arbitration proceeding may seek a judgment upon the award and that judgment may be entered by any federal or state court in Nueces County, Texas, having jurisdiction.

11. PARTIES BOUND

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

12. LEGAL CONSTRUCTION

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

13. PRIOR AGREEMENTS SUPERSEDED

This Agreement constitutes the sole and only Agreement of the parties hereto and supersedes any prior understandings or written or oral agreement between the parties respecting the within subject matter.

I certify and acknowledge that I have had the opportunity to read this Agreement. I further state that I have voluntarily entered into this Agreement fully aware of its terms and conditions.

Signed and accepted this 20 day of October, 2014

THIS CONTRACT IS SUBJECT TO ARBITRATION UNDER THE TEXAS GENERAL ARBITRATION STATUTE.

X Sherrie Bethancourt

Address:

Date of Birth:

Social Security Number:

Phone:

Email:

X

Attorney R Hilliard

CANCELLED

Client will receive an ~~advance~~ advance (Sec. 6) of reasonable monthly expenses -- Not to exceed 4k per month. In addition under sec. 6, client will recieve reasonable financial assistance to purchase or lease a vehicle. These expenses may cease if ~~client~~ attorney withdraws under sec. 5. Client will not have to repay attorney until this case settles. These expense will continue until the end of the ~~case~~ case.

Not TSH. approved

S.B

Exhibit 6

Lance Cooper

From: Rudy Gonzales <rudyg@hmglawfirm.com>
Sent: Friday, June 19, 2015 12:05 PM
To: Robert C. Hilliard; Steve Berman; Elizabeth Cabraser; Nick@hbsslaw.com; Annika K. Martin; Sean Matt; Lance Cooper; S. Scott West; Catherine Tobin; Dawn M. Barrios; Robin L. Greenwald; Alyssa Chaplin; Alex Hilliard
Subject: DeGiorgio deposition

Folks, you may be waiting on a report regarding the DeGiorgio deposition and I'm sure the deposition summary is forthcoming. A war is won battle by battle and sometimes even by hand to hand combat at close quarters. That's what the DeGiorgio deposition felt like. While he started out with a planned explanation for each and every area of inquiry, each member of the team did a great job and overall we scored the points we needed. Thank you Nick, Lance and Scott. It's a real pleasure to work with all of you.

Gracias!

--

Rudy Gonzales, Jr.
Board Certified in Personal Injury Trial Law
Hilliard Muñoz Gonzales LLP
719 S. Shoreline, Ste. 500
Corpus Christi, Tx. 78401
361.882.1612
361.882.3015(fax)
email: **rudyg@hmglawfirm.com**
www.hmglawfirm.com

Lance Cooper

From: Scott West <scott@westfirm.com>
Sent: Friday, June 19, 2015 2:11 PM
To: Lance Cooper
Subject: Re: DeGiorgio deposition

No, sir; THANK YOU for allowing me to have some of YOUR time.

You did an OUTSTANDING job!

S. Scott West
iPhone

On Jun 19, 2015, at 2:08 PM, Lance Cooper <lance@thecooperfirm.com> wrote:

Scott,

I left early after Kyle said GM would not give us additional time. I needed to get back to the office this afternoon.
Cole Portis listened in and said you did a great job.
Thanks for letting me have the time. Hopefully, we will see each other at future depos.
Have a good weekend.

Sent from my iPhone

Begin forwarded message:

From: Rudy Gonzales <rudyg@hmglawfirm.com>
Date: June 19, 2015 at 12:03:51 PM EDT
To: "Robert C. Hilliard" <bobh@hmglawfirm.com>, Steve Berman <Steve@hbsslaw.com>, Elizabeth Cabraser <ECABRASER@lchb.com>, "Nick@hbsslaw.com" <Nick@hbsslaw.com>, "Annika K. Martin" <akmartin@lchb.com>, Sean Matt <Sean@hbsslaw.com>, Lance Cooper <lance@thecooperfirm.com>, "S. Scott West" <scott@westfirm.com>, Catherine Tobin <catherine@hmglawfirm.com>, "Dawn M. Barrios" <barrios@bkc-law.com>, "Robin L. Greenwald" <RGreenwald@weitzlux.com>, Alyssa Chaplin <alyssa@hmglawfirm.com>, Alex Hilliard <alex@hmglawfirm.com>
Subject: DeGiorgio deposition

Folks, you may be waiting on a report regarding the DeGiorgio deposition and I'm sure the deposition summary is forthcoming. A war is won battle by battle and sometimes even by hand to hand combat at close quarters. That's what the DeGiorgio deposition felt like. While he started out with a planned explanation for each and every area of inquiry, each member of the team did a great job and overall we scored the points we needed. Thank you Nick, Lance and Scott. It's a real pleasure to work with all of you.

Gracias!

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<29871D31-2B82-4462-960B-3DB3138D96A2.png>

Exhibit 7

Lance Cooper

From: Cabraser, Elizabeth J. <ECABRASER@lchb.com>
Sent: Sunday, January 17, 2016 8:49 PM
To: Lance Cooper
Subject: GM stalling expose

Right On, Lance!
And tell the Meltons they
are heroes for what they are doing
for car safety.

Sent from my iPhone

Exhibit 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

IN RE:
GENERAL MOTORS LLC IGNITION SWITCH LITIGATION 14-MD-2543 (JMF)

This Document Relates to All Actions
----------x

DECLARATION OF CHARLES SILVER

I, Charles Silver, declare as follows pursuant to 28 U.S.C. § 1746:

I have been retained by The Cooper Firm of Marietta, Georgia to prepare an expert declaration responding to the *Declaration of Geoffrey Parsons Miller* and addressing other issues raised in the motions that Professor Miller discussed.

I. BACKGROUND AND QUALIFICATIONS

1. I hold the Roy W. and Eugenia C. McDonald Endowed Chair in Civil Procedure at the University of Texas School of Law, where I also serve as Co-Director of the Center on Lawyers, Civil Justice, and the Media. I have been a Visiting Professor at the Harvard Law School, the Michigan Law School, and the Vanderbilt University Law School. I received my law degree from Yale in 1987. I have been a member of the Texas bar since 1988. My CV is attached.

For present purposes, the following credentials are especially worth noting:

- I was an Associate Reporter on the American Law Institute's PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION (2010), and bore primary responsibility for the portions of that document that are discussed herein.
- Along with Professor Miller, I co-authored one of the first scholarly articles to address problems of MDL management. Charles Silver & Geoffrey P. Miller, *The*

Quasi-Class Action Method of Managing Multi-District Litigations: Problems and a Proposal, 63 VANDERBILT L. REV. 107 (2010).

- I am the sole author of a second article that focuses on the responsibilities of lawyers who hold lead positions in multi-district litigations. Charles Silver, *The Responsibilities of Lead Lawyers and Judges in Multi-District Litigations*, 79 FORDHAM L. REV. 1985 (2011).
- I authored an amicus curiae brief that was submitted for a group of law professors in support of the winning side in *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997), a Supreme Court decision that is discussed below.

II. MATERIALS REVIEWED

When preparing this report, I reviewed the following materials. I also reviewed cases, treatises, articles published in law reviews, and news reports.

- Plaintiffs' Motion to Reconsider the Order Approving the Establishment of the 2015 New GM Ignition Switch Qualified Settlement Fund
- Plaintiffs' Motion to Remove the Co-Leads and Reconsider the Bellwether Trial Schedule
- General Motors LLC's Combined Response to Motion to Remove the Co-Leads and to Reconsider the Bellwether Trial Schedule and Motion to Reconsider the Order Approving The Establishment of the 2015 New GM Ignition Switch Qualified Settlement Fund
- Co-Lead Counsel's Memorandum in Opposition to Lance Cooper's Motion to Remove Co-Lead Counsel and for Reconsideration of the Order Approving the Qualified Settlement Fund
- Declaration of Steve W. Berman in Support of Co-Lead Counsel's Memorandum in Opposition to Lance Cooper's Motion to Remove Co-Lead Counsel and for Reconsideration of the Order Approving the Qualified Settlement Fund
- Declaration of Elizabeth J. Cabraser in Support of Co-Lead Counsel's Memorandum in Opposition to Lance Cooper's Motion to Remove Co-Lead Counsel and for Reconsideration of the Order Approving the Qualified Settlement Fund

- Declaration of Robert C. Hilliard in Support of Co-Lead Counsel's Memorandum in Opposition to Lance Cooper's Motion to Remove Co-Lead Counsel and for Reconsideration of the Order Approving the Qualified Settlement Fund
- Declaration of Dawn M. Barrios in Support of Co-Lead Counsel's Memorandum in Opposition to Lance Cooper's Motion to Remove Co-Lead Counsel and for Reconsideration of the Order Approving the Qualified Settlement Fund
- Declaration of Geoffrey Parsons Miller

III. ANALYSIS

2. Because the purpose of this Declaration is partly to respond to the *Declaration of Geoffrey Parsons Miller*, I begin by noting that I have known Professor Miller for decades, have coauthored an important and relevant article on MDL practices with him, hold him in the highest regard, and have great personal affection for him. I take no pleasure in appearing opposite him. Not surprisingly, on many of the points his *Declaration* addresses, our opinions are the same. I necessarily focus on the differences.

3. When I read Professor Miller's *Declaration*, what struck me first was that General Motors LLC ("New GM"), the Defendant, retained him. It is certainly proper for a named party to submit briefing and an expert report on a contested motion, but it is essential to remember that a defendant's object is to minimize its losses. It should also be recalled that Mr. Robert Hilliard, the Co-Lead Counsel in this MDL, is supposed to have the opposite objective. His job is to force New GM to pay as much money as possible. The better he does that job, the less New GM should like him and the more it should relish the prospect of having him replaced. Even if Professor Miller is right in claiming that Mr. Hilliard's conduct was proper, New GM's hope that he will retain control of the MDL is a bad sign.

4. When thinking about Mr. Hilliard's actions, it is also important to remember that the single greatest source of bargaining leverage a plaintiffs' attorney has in settlement

negotiations is the threat of winning at trial and forcing the defendant to pay a price set by a jury. The standard economic model of the decision to settle calculates the upper bound on the defendant's willingness to pay by combining the defendant's expected trial loss and its litigation costs. The more a defendant expects to lose at trial, the more it will pay to settle. The most important task for any plaintiffs' attorney is to convince a defendant that if it takes a case to trial, it will get creamed.

5. The point that the prospect of winning at trial is what gives plaintiffs' attorneys bargaining leverage in settlement negotiations is as true in aggregate proceedings as it is in single-plaintiff cases. The Supreme Court emphasized the connection between trial results and bargaining leverage in *Amchem Products, Inc. v. Windsor*, 117 S.Ct. 2231 (1997), which involved a settlement class of persons injured by exposure to asbestos. In support of the settlement, class counsel argued that it did not matter whether the requirements for certification under Rule 23(a) and (b) were met because the district court judge had to review the fairness of the settlement under Rule 23(e). The Supreme Court disagreed.

> [I]f a fairness inquiry under Rule 23(e) controlled certification, eclipsing Rule 23(a) and (b), and permitting class designation despite the impossibility of litigation, *[] class counsel ... would be disarmed. Class counsel confined to settlement negotiations could not use the threat of litigation to press for a better offer.*

Amchem Products, Inc. v. Windsor, 521 U.S. 591, 621 (1997) (citing John C. Coffee, Jr., *Class Wars: The Dilemma of the Mass Tort Class Action*, 95 COLUM. L.REV. 1343, 1379–1380 (1995). The amicus curiae brief that I authored in *Amchem* made exactly this point, referring to a plaintiffs'

attorney who cannot threaten a defendant with a class-wide trial judgment as "a boxer whose hands are tied."[1]

6. Professor Miller and I emphasized the importance of trials in our joint article on MDLs. After noting that MDLs often devalue plaintiffs' claims by "forcing plaintiffs to incur substantial delays," we wrote:

> A bigger problem is that MDL judges cannot try cases transferred to them. They can only prepare these cases for trial. This limitation on MDL courts declaws plaintiffs in transferred cases by depriving them of the weapon that pressures a defendant to pay a reasonable amount in settlement: the threat of forcing an exchange at a price set by a jury. The standard economic model of settlement implies this result directly. Under this model, parties settle for the plaintiff's expected gain at trial because the plaintiff can credibly threaten the defendant with an equivalent loss.

Charles Silver and Geoffrey P. Miller, *The Quasi-Class Action Method of Managing Multi-District Litigations: Problems and A Proposal*, 63 VAND. L. REV. 107, 123 (2010).

1

> When the Rule 23 requirements are met for trial purposes, a plaintiffs' attorney possesses two important bargaining advantages in settlement negotiations: a credible threat to stick a defendant with an adverse class-wide judgment; and a fee-related interest in trying the lawsuit unless the defendant offers its expected value in settlement. The threat is a club. The desire for the largest possible recovery yielding the largest possible fee award is an incentive to use it. Both advantages disappear when the Rule 23 requirements can be met only in settlement. There can be no threat of an adverse class-wide judgment because the lawsuit cannot be tried as a class, and there can be no incentive to try the case because a trial will predictably yield nothing in fees. A plaintiffs' attorney who can obtain certification only if a defendant agrees to it in settlement is a boxer whose hands are tied.

Amchem Products, Inc. v. Windsor, 1997 WL 13605 (U.S.), 18 (U.S.Amicus.Brief, 1997).

7. The paramount importance of trials being clear, it should be equally apparent that a lawyer in charge of the plaintiffs' side of an MDL must operate free and clear of any conflicts that might weaken the incentive to achieve the best possible results in bellwether cases. The entire point of bellwether trials is to produce information about claim values so as to facilitate settlement bargaining on a wider scale. Bad results in bellwether trials reduce claim values for all plaintiffs; good results increase them. Because of these spillover effects, it is essential for all claimants in an MDL that lead counsel be incentivized to select the best possible cases as bellwethers, to prepare them fully, and to try them well. In this MDL, the welfare of more than a thousand personal injury victims is at stake. Lead Counsel's incentives must be above reproach.

8. Unfortunately, a clear and well-recognized potential for a serious conflict of interests exists when a lead attorney negotiates a side-settlement of his firm's inventory of cases while retaining control of an MDL (or any other aggregate proceeding). In this context, a lead attorney may encounter countless opportunities to gain additional relief for the signed clients by reducing the defendant's exposure in the unsettled cases that remain in the MDL. Essentially, the parties who *are* at the bargaining table can expropriate wealth from the parties who *are not*, and share it between themselves. The only remedy for this conflict is to require a lead attorney who wants to negotiate a side-settlement to resign.

9. Before discussing this problem further, I wish to note that, with one possible exception, I am not saying that Mr. Hilliard knowingly or intentionally did anything improper. I assume that, when negotiating a side-settlement with New GM for his signed clients, his goal was simply to get them the best possible deal. My point is that the desire to get the largest possible sum for his signed clients is the source of the difficulty. This desire would naturally have led him to tap any opportunity to enrich the signed clients that arose in the course of settlement negotiations

with New GM, including opportunities with the potential to reduce New GM's liability exposure to other MDL claimants. This is why the terms "structural conflict" and "structural collusion" have been applied to problems of the sort I will describe. Expropriation occurs naturally when plaintiffs' attorneys and defendants simply act on the basis of their incentives. They need not consciously collude. A structural conflict may have yielded an undesirable result for the MDL claimants whose cases weren't settled even though, when negotiating a side-settlement of his inventory of cases, Mr. Hilliard simply thought he was doing his job.

10. I also wish to make it clear that the common law requires lawyers to avoid conflicts partly because it can be difficult or impossible to determine their effects. As the Court knows, the standard rule is that a lawyer with a conflict must withdraw, unless the conflict is consentable and the client agrees to waive it after being fully informed. *See, e.g.*, RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 121 (2000). A conflicted lawyer who proceeds without a client's informed consent may suffer the penalty of fee forfeiture *even if the client cannot prove harm.* This penalty exists for several reasons, one of which is that "[t]he damage that misconduct causes is often difficult to assess." RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 37 Comment *b* (2000). For example, when a conflicted lawyer loses a trial, it is impossible to know whether an unconflicted lawyer would have made different decisions and prevailed. That will be the problem in this MDL if the plaintiffs lose another bellwether trial. Conflicts must be avoided because they are insidious.

11. Returning to the merits, I stated above that a serious potential for conflict exists when a lawyer in charge of an aggregate proceeding negotiates a side-settlement for an inventory of signed clients. The Supreme Court considered a problem with this structure in *Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999). There, a limited amount of insurance money was divided

between a class settlement and an inventory settlement, both of which were negotiated concurrently. This concerned the Supreme Court for many reasons, one of which was unequal treatment.

> As for the settled inventory claims, their plaintiffs appeared to have obtained better terms than the class members. They received an immediate payment of 50 percent of a settlement higher than the historical average, and would get the remainder if the global settlement were sustained (or the coverage litigation resolved, as it turned out to be by the Trilateral Settlement Agreement); the class members, by contrast, would be assured of a 3–year payout for claims settled, whereas the unsettled faced a prospect of mediation followed by arbitration as prior conditions of instituting suit, which would even then be subject to a recovery limit, a slower payout, and the limitations of the trust's spendthrift protection.

Ortiz v. Fibreboard Corp., 527 U.S. 815, 855 (1999). In practical effect, the negotiators divided the insurance money between their signed clients and the class members in a way that gave their signed clients more.

12. The decision in *Ortiz* spawned an enormous secondary literature, the consensus point of which is that unacceptable conflicts arise when attorneys who are in charge of aggregate proceedings negotiate side-settlements of signed claimants. Consider an excerpt from an article written by two practicing attorneys:

> *Ortiz* [] dealt with … the conflict created by class counsel simultaneously representing 45,000 individual claimants who were strangers to the class action—that is, not class members. Class counsel had negotiated a "side settlement" on behalf of the 45,000 individual claimants …. As Justice Souter's majority opinion

> explained, these facts precluded "any assumption that plaintiffs' counsel could be of a mind to do their simple best in bargaining for the benefit of the settlement class." To the contrary, "[c]lass counsel . . . had great incentive to reach any agreement in the global settlement negotiations that they thought might survive a Rule 23(e) fairness hearing, rather than the best possible arrangement for the . . . class." The court characterized the conflict as "egregious."

Richard G. Stuhan and Sean P. Costello, *Robbing Peter to Pay Paul: The Conflict of Interest Problem in Sibling Class Actions*, 21 GEO. J. LEGAL ETHICS 1195, 1213-14 (2008). Professor John C. Coffee, Jr., the leading commentator on class actions, read *Ortiz* the same way.

> *Ortiz* exemplified and emphasized external conflicts. In *Ortiz*, plaintiffs' counsel were offered a favorable settlement for their large inventories of individual clients, but on the condition that these same attorneys agree to serve as class counsel in an action seeking to resolve the rights of future claimants. After *Ortiz*, such "side settlements" now seem to represent a per se "impermissible conflict of interest."

John C. Coffee, Jr., *Class Action Accountability: Reconciling Exit, Voice, and Loyalty in Representative Litigation*, 100 COLUM. L. REV. 370, 388 (2000).[2]

13. Nothing prevents an attorney who holds a lead position in an aggregate proceeding from negotiating a side-settlement of an inventory of signed cases. The attorney need only recognize the conflict and resign the lead position. By resigning, the lawyer preserves good

[2] The language in quotation marks appears in an article by Professor Roger C. Cramton that was quoted with approval in *Ortiz*, 527 U.S. at 852-53 (quoting Roger C. Cramton, *Individualized Justice, Mass Torts, and "Settlement Class Actions": An Introduction*, 80 CORNELL L. REV. 811, 832 (1995)).

incentives by eliminating the possibility that the unrepresented claimants will be treated like sacrificial lambs.

14. Having used such colorful language, I should repeat the point made above. The problem with side-settlements is not that the lawyers who negotiate them are bad people. It is that the structure—negotiating a side-settlement while also controlling a separate aggregate proceeding—creates incentives and opportunities to help one group of people at the expense of another, and that the opportunities cannot be policed. It is because conflicts are insidious that lawyers' incentives must be pure.

15. Consider an example based loosely on the facts of this case.[3] Suppose that New GM would have paid $250 million to settle Mr. Hilliard's entire inventory of signed clients. Such an all-inclusive settlement would have had an important negative consequence for New GM: All of the bellwether cases involving Mr. Hilliard's signed clients would have been dismissed, including the weak ones that New GM expected to win. Because trial victories in the weak bellwether cases would have devalued the unsettled cases in the MDL, a settlement that carved out the weak cases and left them pending would have been even more valuable to New GM than an all-inclusive deal. New GM would therefore rationally have offered more than $250 million—say, $275 million—to settle all of Mr. Hilliard's inventory *except* the bellwethers.[4]

[3] I say "loosely" because I do not know many of the facts, including those relating to Mr. Hilliard's inventory settlement that are confidential.

[4] This is consistent with Mr. Hilliard's statement that "[t]he only reason these five bellwether trial cases are not part of the MOU is that [New] GM refused to settle the bellwether trial cases." *Declaration of Robert C. Hilliard in Support of Co-Lead Counsel's Memorandum in Opposition to Lance Cooper's Motion to Remove Co-Lead Counsel and for Reconsideration of the Order Approving the Qualified Settlement Fund*, ¶ 32. New GM must have thought that leaving Mr. Hilliard's bellwether cases pending would help it reduce it losses.

16. When New GM proposed the larger $275 million offer, Mr. Hilliard's rational response would be obvious. The $275 million offer would a great deal for his signed clients, so he would accept it. The carve-out for the bellwether cases would have an upside too: It would allow him to continue to deliver services in the MDL, thereby driving up his common benefit fee. The only problem would be explaining to the bellwether clients why they were excluded from the inventory deal. How, consistent with his fiduciary duty, could Mr. Hilliard leave them exposed to risks that his other clients no longer faced? To surmount this hurdle, he had to protect the bellwether clients against the downside risk of losing at trial. That's where the high/low agreements with New GM come in. They ensured that the bellwether clients would gain even if their cases went badly. The only victims of the side-settlement would be MDL claimants whom Mr. Hilliard did not represent.

17. The high/low agreements make it especially hard to explain the decision to carve out the bellwethers on any basis other than New GM's expectation of winning them and reducing the value of the unsettled claims. This was plainly true for the bellwether cases that were chosen by New GM. Those were the weakest cases New GM could find. But it likely was also true for the bellwether cases selected by Co-Lead Counsel that came out of Mr. Hilliard's inventory. The reason for this is that the side-settlement committed New GM to paying the "lows" in these cases. Being required to pay the "lows" in any event, New GM didn't stand to save many dollars in those cases by prevailing at trial. But defense verdicts could greatly reduce the value of the unsettled cases in global negotiations. In the context of a $275 million settlement of more than 1,300 pending cases, what reason other than the expectation of winning could New GM have had for agreeing to pay the "lows" but refusing to pay the small additional amounts (if any) that would have been needed to settle the bellwethers entirely?

18. It bears emphasis that, in the scenario just set out, there need not have been any conscious collusion. New GM sought to minimize its losses by leaving the weaker bellwether cases pending, and need only have made a settlement offer to that effect. Mr. Hilliard sought to maximize his signed clients' recoveries and his common benefit fees, while also protecting the bellwether clients from any downside risk. He need only have requested appropriate terms. The MDL claimants who are not at the bargaining table suffered a loss simply because the parties who were there acted on their prevailing incentives. That is how structural collusion works.

19. Professor Miller's observation that Mr. Hilliard violated no duties to anyone by settling his inventory cases with New GM is consistent with the point just made, but does not get to the heart of the matter. Professor Miller argues as follows. First, in an MDL, every lawyer must zealously represent the interests of his or her signed clients. *Declaration of Geoffrey Parsons Miller*, ¶ 9. Second, the duty to advance the interests of one's signed clients "is not limited by any obligations owed to clients of other attorneys." *Id.* Third, a lead attorney can perform common benefit work without violating the duty of loyalty to signed clients because "'common benefit' work, by definition, serves the interest of all plaintiffs, and thus is in furtherance of, rather than contrary to, an attorney's obligations to his or her individual client[s]." *Id.*, ¶ 10.

20. The defect in this analysis, I believe, stems from the failure to recognize that, like all legal work, common benefit work can be done well or poorly. Before explaining the importance of this oversight, I wish to make two points. First, Professor Miller and I agree that the quality of common benefit work can vary. One of the central arguments in our jointly authored article is that it is important to put the lawyers with the strongest incentives in charge of MDLs because claimants will benefit from the superior quality of the common benefit work they procure. *See* Charles Silver & Geoffrey P. Miller, *The Quasi-Class Action Method of Managing Multi-District*

Litigations: Problems and a Proposal, 63 VANDERBILT L. REV. 107, 157-159 (2010). Second, neither I nor anyone else will be able identify all the ways in which the side-settlement may have influenced the delivery of common benefit services in the MDL until the settlement's terms are studied with care. Because the side-settlement is confidential, observers like me who neither participated in the negotiations nor know the agreed terms are limited in what we can say.

21. Having said that the quality of common benefit work can vary, it remains to make the normative point that an attorney who serves as lead counsel in an MDL is a fiduciary to the following extent: the attorney must manage the common benefit workload in a manner that is calculated to maximize the gains for all claimants. In other words, a lead attorney may not allow "common benefit work" to become "common detriment work." The attorney may not handle common benefit work in a manner that is likely to make claimants worse off, and must operate free of any incentive to do so.

22. This is the position I argued for in an article published in 2011.

> Lead lawyers are certainly fiduciaries to their signed clients. In an MDL, therefore, the question is not whether lead attorneys are fiduciaries—they are—but to whom their responsibilities extend. In particular, it is important to know whether they must treat non-client claimants as well as they treat their clients. The basis for an affirmative answer is clear. To the extent that lead attorneys displace [other] lawyers [by controlling common benefit work], they assume [other] lawyers' duties, including the fiduciary duty to refrain from exploiting clients. Otherwise, MDL procedures would alter plaintiffs' substantive rights by allowing lead attorneys to take advantage of them.

> First principles also support the conclusion that lead attorneys are fiduciaries. In contractual principal-agent relationships, a fiduciary duty is implied when an agent armed with "open-ended management power" can help a principal or act to a principal's detriment. The fiduciary duty protects the principal from exploitation . . . . In MDLs, lead attorneys possess immense power and discretion. Consequently, non-client claimants are at risk of being exploited and require the protection the fiduciary duty provides. The ALI's *Principles* takes this position. Section 1.05 encourages judges to ensure [that] passive parties are adequately represented in all aggregate proceedings and it identifies the fiduciary duty as a tool to further this goal.

Charles Silver, *The Responsibilities of Lead Lawyers and Judges in Multi-District Litigations*, 79 FORDHAM L. REV. 1985, 1989-1990 (2011). In short, my position is that lead attorneys have a fiduciary duty when performing common benefit work that requires them to use their control of that work solely to the advantage of all claimants and to remain free of pressures to do otherwise.

23. Professor Miller did not consider the impact a side-settlement could have on the quality of the common benefit work performed by a lead attorney. But it is evident that the affect could be substantial. A side-settlement could convert common benefit work into common detriment work in two ways: by directly causing a lead attorney to mismanage it, and by weakening a lead attorneys' investment incentives.

24. Light can be shed on both problems by asking a straightforward question: Why does Mr. Hilliard still hold a lead position in this MDL? The inventory settlement resolved almost 100% of his cases. Only the unsettled bellwethers remain, and Mr. Hilliard's signed clients in those cases are insulated from losses by high/low agreements. Consequently, his incentive to

perform first-rate common benefit work has been greatly diminished. Other judges have appointed new lead lawyers following settlements that resolved large numbers of pending claims.

25. In fact, Judge Jack Weinstein did so in *In re Zyprexa Products Liab. Litig.*, 467 F. Supp. 2d 256 (E.D.N.Y. 2006), the opinion that New GM cited as an example of proper MDL management. *See General Motors LLC's Combined Response to Motion to Remove the Co-Leads and to Reconsider the Bellwether Trial Schedule and Motion to Reconsider the Order Approving The Establishment of the 2015 New GM Ignition Switch Qualified Settlement Fund*, p. 14 (citing *In re Zyprexa Products Liab. Litig.*, 467 F. Supp. 2d 256 (E.D.N.Y. 2006), for the proposition that "it is common for groups or subsets of claims—particularly personal injury claims—to be settled at various times in an MDL proceeding"); *see also Zyprexa*, 467 F. Supp. 2d at 261-62 (reporting that after "many thousands of cases in this multi-district litigation ("MDL") were settled under the direction of an original Plaintiffs' Steering Committee ("PSC I") … [a] new Plaintiffs' Steering Committee ("PSC II") was then established to deal with the thousands of incoming and remaining cases").

26. Professor Miller and I questioned the wisdom of allowing lawyers with few cases to control MDLs in our joint article, the primary thesis of which is that control should be given to the lawyers with the largest and most valuable client inventories. We even offered a proposed procedural reform that would require MDL judges to appoint "the lawyer or group of cooperating lawyers with the most valuable client inventory" to the Plaintiffs' Management Committee. Why? "Because a lawyer with a large inventory of signed clients should rationally want a superior lawyer to provide CBW [common benefit work] at a reasonable rate." Silver & Miller, *supra*, 63 VANDERBILT L. REV. at 161. Mr. Hilliard's large inventory of signed clients once gave him a solid

incentive to perform first-rate common benefit work and a strong claim to a leadership position, but both the incentive and the claim evaporated when his cases were resolved.

27. Mr. Hilliard's continuing occupancy of a leadership position is also odd for a second reason. In my experience, defendants who settle mass tort cases in bulk want to get rid of the plaintiffs' attorneys who are involved. For example, the global settlement in the Vioxx MDL required all lawyers who settled even one case to disqualify themselves from continuing to sue Merck on behalf of any non-settling claimants. *See* Master Settlement Agreement for In re: Vioxx, ¶¶ 1.2.4 and 1.2.8 *et seq.*[5] The lawyers had to refer non-settling clients to other attorneys and renounce any financial interest in their cases. Here, however, New GM did not get rid of Mr. Hilliard, or even attempt to. It left his bellwether cases alive, thereby securing his leadership position.

28. This unusual action is concerning. Why would New GM have wanted to keep Mr. Hilliard actively engaged in this MDL instead of using the side-settlement to force him out? The answer must have something to do with its desire to minimize the remaining MDL claimants' recoveries—a desire that is completely antithetical to the claimants' goal of maximizing their payments. The bellwether cases provide the obvious connection. If, from the plaintiffs' perspective, they are bad cases, by winning them New GM can devalue the unsettled claims. The combination of weak cases being tried by a lawyer with a diminished interest in winning would be a dream come true for New GM and a nightmare come to life for the MDL claimants.

29. The danger posed by the change in Mr. Hilliard's incentives seems especially clear when one focuses on the decision to replace the *Yingling* case with the *Scheuer* case in the bellwether line-up. When considering this decision, three things should be clear. First, it was a

[5] A copy of the agreement is available at http://www.officialvioxxsettlement.com/documents/

matter of great importance to all claimants that the plaintiffs choose their best cases as bellwethers and try their best cases first. This is so for a reason already explained: Plaintiffs' leverage in settlement negotiations depends mainly on the value of their cases at trial, and the point of bellwether trials is to create information about what pending cases are worth. Second, the decision to try a particular case first required a subjective judgment that should have been made by a lead attorney whose only desire was to maximize the value of the unsettled claims. Any competing interest would have tainted the decision maker and saddled the MDL claimants with inadequate representation. Third, Co-Lead Counsel's original assessment, reflected in the motion presented to the Court on July 27, 2015, was that *Yingling* was the better case. Nothing stated in any of the materials I read suggested that the original assessment was mistaken. I return to this point below.

30. Here, there are good reasons for thinking that Mr. Hilliard's incentives were tainted, and that this led to the poor decision to substitute *Scheuer* for *Yingling*. First, because the impending inventory settlement would resolve his signed clients' cases, Mr. Hilliard's remaining interest in the MDL would consist primarily of the common benefit fee he hoped a global resolution would generate. To maximize his share of the common benefit fee award (which would be divided among all lawyers who performed common benefit work), Mr. Hilliard had to expend as much time as he could, preferably in high-profile activities that made the importance of his contributions clear to the Court. This made the prospect of serving as trial counsel in bellwether cases especially attractive. Because trials require an enormous amount of time and take place in court, they are the ideal means of maximizing claims for common benefit fees.

31. Second, the plaintiffs involved in *Scheuer* were Mr. Hilliard's signed clients; the plaintiffs' involved in *Yingling* were not. By trying the *Scheuer* case first, Mr. Hilliard could cement his claim for common benefit fees, and he could do so before any negotiations produced a

global settlement. Had *Yingling* been tried first, this would not have been true. Mr. Victor Pribanic represents the Yingling family, and he rebuffed Mr. Hilliard's request to share fees in the matter and to be lead counsel in the case. It was on the heels of the failed negotiations with Mr. Pribanic that *Scheuer* was set for trial in place of *Yingling*. The consequences of this decision were devastating, for reasons the *Plaintiffs' Motion to Remove the Co-Leads and Reconsider the Bellwether Trial Schedule* clearly explains.

32. On behalf of its clients, The Cooper Firm contends that *Yingling* was obviously a much stronger case than *Scheuer*, and should have been tried first, as the bellwether schedule originally provided. The superiority of *Yingling* is certainly clear now, and, although I am not a trial lawyer and am reluctant to second-guess any seasoned attorney, one must take seriously the possibility that its superiority was also clear before the *Scheuer* debacle. After all, Co-Lead Counsel originally preferred *Yingling*. My point, however, is not that Mr. Hilliard intentionally chose a weaker case over a stronger one; it is that when he substituted *Scheuer* for *Yingling*, his incentives were compromised. He had a conflict when performing common benefit work because his fee-interest in his signed clients' cases was in the process of disappearing.[6] With their cases settled and his bellwether clients protected from losses, his predominant financial interest lay in maximizing his claim for common benefit fees. This gave him a reason to try a case he could work on rather than one he could not, regardless of their relative strength or the impact on the settlement

[6] On July 27, 2015, Co-Lead Counsel and New GM jointly identified *Yingling* as the first bellwether case to be tried. *Scheuer* was substituted for *Yingling* on or shortly after August 3, 2015, when the negotiations between Mr. Hilliard and Mr. Pribanic failed. The side-settlement of Mr. Hilliard's inventory of cases, minus the bellwethers, was announced on September 17, 2015. The side-settlement was thus likely being negotiated when the decision to substitute *Scheuer* was made. Given how far the negotiations must have progressed, it seems reasonable to infer that the impact of the side-settlement on Mr. Hilliard's fee interest in the MDL was predictable as of August 3, 2015.

value of the cases remaining in the MDL. A lawyer with a duty to ensure that common benefit work does not become common detriment work should not operate with a conflict of this kind.

33. Co-Lead Counsels' accounts of the reasons that supported the choice of *Scheuer* as the first bellwether strengthen my concern that poor incentives led to the decision. Most of the factors cited had little or nothing to do with the relative strength of the two cases. For example, Steve Berman says that Co-Lead Counsel were right to put *Scheuer* first because "the Court would expect Co-Lead Counsel to [lead the trial of the first bellwether] and that this was an important factor to be considered in recommending a bellwether sequence to the Court." *Declaration of Steve W. Berman in Support of Co-Lead Counsel's Memorandum in Opposition to Lance Cooper's Motion to Remove Co-Lead Counsel and for Reconsideration of the Order Approving the Qualified Settlement Fund*, ¶ 8. Should the Court's (supposed) expectation really have figured in the decision to try *Scheuer*, especially given that an order putting *Yingling* first was already in place? Or was this a poor reason for substituting a weaker case that Co-Lead Counsel could try for a stronger one that they couldn't?

34. Elizabeth Cabraser indicates that lawyers were the focus too. She observes that "participation by Lead Counsel in bellwether trials was the norm" and that "Lead (or other common benefit) counsel took a lead role in bellwether trials, because of their developed knowledge of the case." *Declaration of Elizabeth J. Cabraser in Support of Co-Lead Counsel's Memorandum in Opposition to Lance Cooper's Motion to Remove Co-Lead Counsel and for Reconsideration of the Order Approving the Qualified Settlement Fund*, ¶ 12. Should the decision to try a weaker case rather than a stronger one have been driven by an informal norm? Were Co-Lead Counsel so much better than Mr. Pribanic as to make up for the relative weakness of *Scheuer*? Or did the desire to build up the common benefit fee award lead to a poor decision?

35. The truth will never be known, and that is the problem. It is often impossible to tell *ex post* whether poor decisions were the result of misaligned incentives or mere mistakes. Not even lawyers who hold lead counsel positions in an MDL can be certain, for the reason already stated: interest conflicts are insidious. They corrupt lawyers' judgments invisibly. This is why lead attorneys' incentives and duties must always be tied to the results they obtain for MDL claimants.

36. Mr. Hilliard's alleged attempt to extract fees from Mr. Pribanic raises both a separate issue and serious concerns. I say "alleged" because there may be a disagreement as to whether such an attempt was made. Mr. Hilliard's *Declaration* is ambiguous on the point. *See Declaration of Robert C. Hilliard in Support of Co-Lead Counsel's Memorandum in Opposition to Lance Cooper's Motion to Remove Co-Lead Counsel and for Reconsideration of the Order Approving the Qualified Settlement Fund*, ¶ 14 ("Though sharing of fees was discussed under many different scenarios, the most significant issue, in my view, was that my team and I be allowed to assist Mr. Pribanic in actually trying the case."). The following discussion is based on the assumption that Mr. Hilliard did demand a portion of Mr. Pribanic's fee when discussing how and when *Yingling* would be tried.

37. There was no good reason for Mr. Hilliard to have insisted on sharing Mr. Pribanic's fee as a condition for co-counseling the case. As a lead attorney, he could have looked to the Court for compensation from any payment that might have been made to the *Yingling* plaintiffs. An order requiring a holdback from settlement payments for common benefit fees has already been entered in this MDL. Order No. 42. Mr. Hilliard's only request to Mr. Pribanic should have been for permission to co-counsel the trial. And he should have made that request only if his participation would have increased the odds of winning. Although I express no opinion

on this matter, I again observe that, when making this request, Mr. Hilliard's incentives were compromised.

38. The fee-sharing request raises a serious question of breach of the fiduciary duty that, I have argued, attaches to the delivery of common benefit work. As the Court knows, a fiduciary may not use his position to enrich himself, other than by earning a contracted-for fee. Here, no contract existed between Mr. Hilliard and Mr. Pribanic. Mr. Hilliard did have a right to common benefit fees, but that compensation stream was controlled by the Court. The proper way of altering it would have been by filing a motion and obtaining a new fee order. Given these facts, it is hard to avoid the conclusion that Mr. Hilliard sought to use his position as Lead Counsel to enrich himself by an improper means.

39. In an article quoted from above, I also argued that lead attorneys in MDLs should be subjected to a fiduciary duty that prevents them from using their control of legal proceedings to extract fees from other lawyers. Charles Silver, *The Responsibilities of Lead Lawyers and Judges in Multi-District Litigations*, 79 FORDHAM L. REV. 1985, 1990-1991 (2011). Using the Vioxx MDL as an example, I showed how the lead attorneys used their control of global settlement negotiations to do just that. I also made the following point:

> The fiduciary duty can protect [non-lead] lawyers while still permitting lead attorneys' to do their jobs. Although a fiduciary duty would prevent lead attorneys from using their control of settlement negotiations to enrich themselves at [non-lead] lawyers' expense, it would leave them completely free to do so by increasing claimants' recoveries. This is what they are supposed to use their powers to do. The duty would also allow lead attorneys to apply to the MDL court for common benefit compensation, just as lawyers do in successful class actions.

Therein lies the rub. Lead attorneys should focus on only one thing: Maximizing all claimants' recoveries. To ensure that they do, MDL judges should tie their compensation for common benefit work to the size of claimants' settlement payments—and to nothing else that would create conflicting incentives. It should be a per se violation of the fiduciary duty that applies to common benefit work for a lead attorney to seek a fee increase by negotiating a side-payment from a lawyer with a bellwether case, or in any way other than through the Court.

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

DATED: February 5, 2016

CHARLES SILVER

Exhibit A

RESUME OF CHARLES SILVER

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Yale Law School, JD (1987)
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PUBLICATIONS

IV. SPECIAL PROJECTS

Associate Reporter, American Law Institute, PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION, (2010) (with Samuel Issacharoff, Reporter, and Robert Klonoff and Richard Nagareda, Associate Reporters).

Invited Academic Member, ABA/Tort Trial & Insurance Practice Section, Task Force on Contingent Fees, REPORT ON CONTINGENT FEES IN CLASS ACTION LITIGATION, 25 Rev. Litig. 459 (2006).

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V. BOOKS

HEALTH CARE GAMES (with David A. Hyman) (in progress)

TO SUE IS HUMAN: MEDICAL MALPRACTICE LITIGATION IN TEXAS 1988-2010 (with Bernard S. Black, David A. Hyman, Myungho Paik, and William M. Sage) (in progress).

HEALTH LAW AND ECONOMICS, Edward Elgar (coedited with Ronen Avraham and David A. Hyman) (available February 2016).

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PROFESSIONAL RESPONSIBILITIES OF INSURANCE DEFENSE COUNSEL (2012) (with William T. Barker) (updated annually 2013-2015).

VI. ARTICLES BY SUBJECT AREA (* INDICATES PEER REVIEWED)

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2. "Double, Double, Toil and Trouble: Justice-Talk and the Future of Medical Malpractice Litigation," 63 DePaul L. Rev. 574 (2014) (with David A. Hyman) (invited symposium).

3. "Five Myths of Medical Malpractice," 143:1 Chest 222-227 (2013) (with David A. Hyman).*

4. "Health Care Quality, Patient Safety and the Culture of Medicine: 'Denial Ain't Just A River in Egypt,'" (coauthored with David A. Hyman), 46 New England L. Rev. 101 (2012) (invited symposium).

5. "Medical Malpractice and Compensation in Global Perspective: How Does the U.S. Do It?" in Ken Oliphant & Richard W. Wright, eds., MEDICAL MALPRACTICE AND COMPENSATION IN GLOBAL PERSPECTIVE (2013) (coauthored with David A. Hyman)*; originally published in 87 Chicago-Kent L. Rev. 163 (2012).

6. "Justice Has (Almost) Nothing to Do With It: Medical Malpractice and Tort Reform," in Rosamond Rhodes, Margaret P. Battin, and Anita Silvers, eds., MEDICINE AND SOCIAL JUSTICE, Oxford University Press 531-542 (2012) (with David A. Hyman).*

7. "Medical Malpractice Litigation and Tort Reform: It's the Incentives, Stupid," 59 Vanderbilt L. Rev. 1085 (2006) (with David A. Hyman) (invited symposium).

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14. "Insurance Crisis or Liability Crisis? Medical Malpractice Claiming in Illinois, 1980-2010," J. Empirical Legal Stud. (forthcoming 2016) (with Bernard S. Black, David A. Hyman, and Mohammad H. Rahmati).

15. "Policy Limits, Payouts, and Blood Money: Medical Malpractice Settlements in the Shadow of Insurance," 5 U.C. Irvine L. Rev. 559 (2015) (with Bernard S. Black, David A. Hyman, and Myungho Paik) (invited symposium).

16. "Does Tort Reform Affect Physician Supply? Evidence from Texas," Int'l Rev. of L. & Econ. (2015) (with Bernard S. Black, David A. Hyman, and Myungho Paik), available at http://dx.doi.org/10.1016/j.irle.2015.02.002.*

17. "How do the Elderly Fare in Medical Malpractice Litigation, Before and After Tort Reform? Evidence From Texas" (with Bernard S. Black, David A. Hyman, Myungho Paik, and William M. Sage), Amer. L. & Econ. Rev. (2012), doi: 10.1093/aler/ahs017.*

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23. "Malpractice Payouts and Malpractice Insurance: Evidence from Texas Closed Claims, 1990-2003," 3neva Papers on Risk and Insurance: Issues and Practice 177-192 (2008) (with Bernard S. Black, David A. Hyman, William M. Sage and Kathryn Zeiler).*

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26. "Stability, Not Crisis: Medical Malpractice Claim Outcomes in Texas, 1988-2002," 2 J. Empirical Legal Stud. 207–259 (July 2005) (with Bernard S. Black, David A. Hyman, and William S. Sage).*

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ATTORNEYS' FEES—EMPIRICAL STUDIES AND POLICY ANALYSES

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32. "Setting Attorneys' Fees In Securities Class Actions: An Empirical Assessment," 66 Vanderbilt L. Rev. 1677 (2013) (with Lynn A. Baker and Michael A. Perino).

33. "The Quasi-Class Action Method of Managing Multi-District Litigations: Problems and a Proposal," 63 Vanderbilt L. Rev. 107 (2010) (with Geoffrey P. Miller).

34. "Incentivizing Institutional Investors to Serve as Lead Plaintiffs in Securities Fraud Class Actions," 57 DePaul L. Rev. 471 (2008) (with Sam Dinkin) (invited symposium), reprinted in L. Padmavathi, ed., SECURITIES FRAUD: REGULATORY DIMENSIONS (2009).

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41. "The Treatment of Insurers' Defense-Related Responsibilities in the Principles of the Law of Liability Insurance: A Critique," 68 Rutgers U. L. Rev. (forthcoming 2015) (with William T. Barker) (symposium issue).

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43. "Insurer Rights to Limit Costs of Independent Counsel," ABA/TIPS Insurance Coverage Litigation Section Newsletter 1 (Aug. 2014) (with William T. Barker).

44. "Litigation Funding Versus Liability Insurance: What's the Difference?," 63 DePaul L. Rev. 617 (2014) (invited symposium).

45. "Ethical Obligations of Independent Defense Counsel," 22:4 Insurance Coverage (July-August 2012) (with William T. Barker), available at http://apps.americanbar.org/litigation/committees/insurance/articles/julyaug2012-ethical-obligations-defense-counsel2.html.

46. "The Impact of the Duty to Settle on Settlement: Evidence From Texas," 8 J. Empirical Leg. Stud. 48-84 (2011) (with Bernard S. Black and David A. Hyman).*

47. "When Should Government Regulate Lawyer-Client Relationships? The Campaign to Prevent Insurers from Managing Defense Costs," 44 Ariz. L. Rev. 787 (2002) (invited symposium).

48. "Defense Lawyers' Professional Responsibilities: Part II—Contested Coverage Cases," 15 G'town J. Legal Ethics 29 (2001) (with Ellen S. Pryor).

49. "Defense Lawyers' Professional Responsibilities: Part I—Excess Exposure Cases," 78 Tex. L. Rev. 599 (2000) (with Ellen S. Pryor).

50. "Flat Fees and Staff Attorneys: Unnecessary Casualties in the Battle over the Law Governing Insurance Defense Lawyers," 4 Conn. Ins. L. J. 205 (1998) (invited symposium).

51. "The Lost World: Of Politics and Getting the Law Right," 26 Hofstra L. Rev. 773 (1998) (invited symposium).

52. "Professional Liability Insurance as Insurance and as Lawyer Regulation: A Comment on Davis, Institutional Choices in the Regulation of Lawyers," 65 Fordham L. Rev. 233 (1996) (invited symposium).

53. "All Clients are Equal, But Some are More Equal than Others: A Reply to Morgan and Wolfram," 6 Coverage 47 (1996) (with Michael Sean Quinn).

54. "Are Liability Carriers Second-Class Clients? No, But They May Be Soon-A Call to Arms against the Restatement of the Law Governing Lawyers," 6 Coverage 21 (1996) (with Michael Sean Quinn).

55. "The Professional Responsibilities of Insurance Defense Lawyers," 45 Duke L. J. 255 (1995) (with Kent D. Syverud); reprinted in IX INS. L. ANTHOL. (1996) and 64 Def. L. J. 1 (Spring 1997).

56. "Wrong Turns on the Three Way Street: Dispelling Nonsense about Insurance Defense Lawyers," 5-6 Coverage 1 (Nov./Dec.1995) (with Michael Sean Quinn).

57. "Introduction to the Symposium on Bad Faith in the Law of Contract and Insurance," 72 Tex. L. Rev. 1203 (1994) (with Ellen Smith Pryor).

58. "Does Insurance Defense Counsel Represent the Company or the Insured?" 72 Tex. L. Rev. 1583 (1994); reprinted in Practicing Law Institute, INSURANCE LAW: WHAT EVERY LAWYER AND BUSINESSPERSON NEEDS TO KNOW (1998).

59. "A Missed Misalignment of Interests: A Comment on *Syverud, The Duty to Settle*," 77 Va. L. Rev. 1585 (1991); reprinted in VI INS. L. ANTHOL. 857 (1992).

CLASS ACTIONS, MASS ACTIONS, AND MULTI-DISTRICT LITIGATIONS

60. "What Can We Learn by Studying Lawyers' Involvement in Multidistrict Litigation? A Comment on *Williams, Lee, and Borden, Repeat Players in Federal Multidistrict Litigation*," 5 J. of Tort L. 181 (2014), DOI: 10.1515/jtl-2014-0010 (invited symposium).

61. "The Responsibilities of Lead Lawyers and Judges in Multi-District Litigations," 79 Fordham L. Rev. 1985 (2011) (invited symposium).

62. "The Allocation Problem in Multiple-Claimant Representations," 14 S. Ct. Econ. Rev. 95 (2006) (with Paul Edelman and Richard Nagareda).*

63. "A Rejoinder to *Lester Brickman, On the Theory Class's Theories of Asbestos Litigation,*" 32 Pepperdine L. Rev. 765 (2005).

64. "Merging Roles: Mass Tort Lawyers as Agents and Trustees," 31 Pepp. L. Rev. 301 (2004) (invited symposium).

65. "We're Scared To Death: Class Certification and Blackmail," 78 N.Y.U. L. Rev. 1357 (2003).

66. "The Aggregate Settlement Rule and Ideals of Client Service," 41 S. Tex. L. Rev. 227 (1999) (with Lynn A. Baker) (invited symposium).

67. "Representative Lawsuits & Class Actions," in B. Bouckaert & G. De Geest, eds., INT'L ENCY. OF L. & ECON. (1999).*

68. "I Cut, You Choose: The Role of Plaintiffs' Counsel in Allocating Settlement Proceeds," 84 Va. L. Rev. 1465 (1998) (with Lynn A. Baker) (invited symposium).

69. "Mass Lawsuits and the Aggregate Settlement Rule," 32 Wake Forest L. Rev. 733 (1997) (with Lynn A. Baker) (invited symposium).

70. "Comparing Class Actions and Consolidations," 10 Tex. Rev. of Litig. 496 (1991).

71. "Justice in Settlements," 4 Soc. Phil. & Pol. 102 (1986) (with Jules L. Coleman).*

GENERAL LEGAL ETHICS AND CIVIL LITIGATION

72. "The DOMA Sideshow" (in progress), available at http://ssrn.com/abstract=2584709.

73. "Philosophers and Fiduciaries" (in progress) (presented at several law schools and conferences).

74. "Fiduciaries and Fees," 79 Fordham L. Rev. 1833 (2011) (with Lynn A. Baker) (invited symposium).

75. "Ethics and Innovation," 79 George Washington L. Rev. 754 (2011) (invited symposium).

76. "In Texas, Life is Cheap," 59 Vanderbilt L. Rev. 1875 (2006) (with Frank Cross) (invited symposium).

77. "Introduction: Civil Justice Fact and Fiction," 80 Tex. L. Rev. 1537 (2002) (with Lynn A. Baker).

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79. "A Critique of *Burrow v. Arce*," 26 Wm. & Mary Envir. L. & Policy Rev. 323 (2001) (invited symposium).

80. "What's Not To Like About Being A Lawyer?" 109 Yale L. J. 1443 (2000) (with Frank B. Cross) (review essay).

81. "Preliminary Thoughts on the Economics of Witness Preparation," 30 Tex. Tech L. Rev. 1383 (1999) (invited symposium).

82. "And Such Small Portions: Limited Performance Agreements and the Cost-Quality/Access Trade-Off," 11 G'town J. Legal Ethics 959 (1998) (with David A. Hyman) (invited symposium).

83. "Bargaining Impediments and Settlement Behavior," in D.A. Anderson, ed., DISPUTE RESOLUTION: BRIDGING THE SETTLEMENT GAP (1996) (with Samuel Issacharoff and Kent D. Syverud).

84. "The Legal Establishment Meets the Republican Revolution," 37 S. Tex. L. Rev. 1247 (1996) (invited symposium).

85. "Do We Know Enough about Legal Norms?" in D. Braybrooke, ed., SOCIAL RULES: ORIGIN; CHARACTER; LOGIC: CHANGE (1996) (invited contribution).

86. "Integrating Theory and Practice into the Professional Responsibility Curriculum at the University of Texas," 58 Law and Contemporary Problems 213 (1995) (with Amon Burton, John S. Dzienkowski, and Sanford Levinson,).

87. "Thoughts on Procedural Issues in Insurance Litigation," VII INS. L. ANTHOL. (1994).

LEGAL AND MORAL PHILOSOPHY

88. "Elmer's Case: A Legal Positivist Replies to Dworkin," 6 L. & Phil. 381 (1987).*

89. "Negative Positivism and the Hard Facts of Life," 68 The Monist 347 (1985).*

90. "Utilitarian Participation," 23 Soc. Sci. Info. 701 (1984).*

PRACTICE-ORIENTED PUBLICATIONS

91. "Your Role in a Law Firm: Responsibilities of Senior, Junior, and Supervisory Attorneys," in F.W. Newton, ed., A GUIDE TO THE BASICS OF LAW PRACTICE (3D) (Texas Center for Legal Ethics and Professionalism 1996).

92. "Getting and Keeping Clients," in F.W. Newton, ed., A GUIDE TO THE BASICS OF LAW PRACTICE (3D) (Texas Center for Legal Ethics and Professionalism 1996) (with James M. McCormack and Mitchel L. Winick).

93. "Advertising and Marketing Legal Services," in F.W. Newton, ed., A GUIDE TO THE BASICS OF LAW PRACTICE (Texas Center for Legal Ethics and Professionalism 1994).

94. "Responsibilities of Senior and Junior Attorneys," in F.W. Newton, ed., A GUIDE TO THE BASICS OF LAW PRACTICE (Texas Center for Legal Ethics and Professionalism 1994).

95. "A Model Retainer Agreement for Legal Services Programs: Mandatory Attorney's Fees Provisions," 28 Clearinghouse Rev. 114 (June 1994) (with Stephen Yelenosky).

MISCELLANEOUS

96. "Public Opinion and the Federal Judiciary: Crime, Punishment, and Demographic Constraints," 3 Pop. Res. & Pol. Rev. 255 (1984) (with Robert Y. Shapiro).*

PERSONAL

Married to Cynthia Eppolito, PA; Daughter, Katherine; Step-son, Mabon.
First generation of family to attend college.

Exhibit 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
IN RE:
GENERAL MOTORS LLC IGNITION SWITCH
LITIGATION 14-MD-2543 (JMF)

This Document Relates to All Actions
----------x

DECLARATION OF LARRY COBEN

I, Larry Coben, am giving this Declaration based upon my own personal knowledge, except where otherwise specified. I suffer from no legal disability or incapacity. I am of the legal age of majority. I am competent to give testimony to the matters stated herein.

1. I am an attorney licensed to practice law in the Commonwealth of Pennsylvania and the State of Arizona. I have also been admitted to the federal courts in Pennsylvania and Arizona, as well as the Supreme Court of the United States. In my role as a trial lawyer, I have been admitted pro hac vice in most states.

2. For the past 40 years, my practice has focused on litigating products liability cases and the majority of my work has pertained to the representation of consumer victims catastrophically injured, or the families of a

loved one killed, because of a faultily designed motor vehicle. I have investigated cases and settled or tried to verdict thousands of such cases.

3. As a result of my diverse litigation work, I have authored four textbooks related to products liability law, crashworthiness litigation, and trial practice. I have also published more than 200 papers in various law periodicals regarding trial practice ranging from case selection, ethical responsibilities of trial lawyers, discovery, and trial practice. I have been an invited lecturer at hundreds of litigation related programs, taught an elective forensic science course at the University of Pennsylvania School of Engineering and continuously serve as a guest lecture at the ASU School of Law.

4. In activities related to my practice and experiences as a lawyer, I have testified before a Congressional Committee with oversight authority of the National Highway Traffic Safety Administration ("NHTSA") and provided written testimony to NHTSA on many vehicle safety issues. I also served in a representative capacity for existing tort victims on the Creditors' Committee during the GM Bankruptcy process.

5. For the past 40 years I have been an active member and currently serve as the Chief Legal Officer of the Attorneys Information Exchange Group ("AIEG"). AIEG is a 700 member group of attorneys who practice across the United States with a very special interest in representing consumers in motor

vehicle products liability cases. Our members have been the lead attorneys on virtually every well-publicized case involving auto company malfeasance – including faulty fuel systems in the Ford Pinto and GM Pick-up trucks, Ford Firestone tire class action litigation and individual cases, Ford Explorer litigation, Takata air bag litigation, and GM Ignition Switch litigation. AIEG serves its members by assisting in the cooperative effort to facilitate sharing information and the education of its members. We also occasionally prepare and file Amicus Briefs in courts, including the Supreme Court of the United States, and federal and state courts across the country. AIEG's goals include the preservation of the jury system and the improvement of motor vehicle safety through the litigation process.

6. I am personally familiar with how motor vehicle design cases are evaluated and selected for trial. I also understand the goals and purposes of the bellwether trial system in aggregate litigation, including the MDL process. My law firm has been co-lead or lead counsel in dozens of federal and state MDL litigations including the NFL Concussion action, Vioxx, and several medical devices actions. In these capacities we have been involved in assessing the viability of cases that plaintiffs select as bellwether cases. I personally have current responsibility for spear-heading a national proposed class action for economic loss involving millions of Ford products. And, my work in the NFL litigation involved the initiation of this Class action, facilitating the legal strategies pre-settlement,

developing the scientific predicate for the injury claims and serving along with a very few other members of the PSC in picking the players who would best represent the class members diverse interests and injuries of the settlement class – which was approved by the Court.

7. I have reviewed the following, including the filings and letters of Victor Pribanic:

- Plaintiffs' Motion to Reconsider the Order Approving the Establishment of the 2015 New GM Ignition Switch Qualified Settlement Fund
- Plaintiffs' Motion to Remove the Co-Leads and Reconsider the Bellwether Trial Schedule
- General Motors LLC's Combined Response to Motion to Remove the Co-Leads and to Reconsider the Bellwether Trial Schedule and Motion to Reconsider the Order Approving The Establishment of the 2015 New GM Ignition Switch Qualified Settlement Fund
- Co-Lead Counsel's Memorandum in Opposition to Lance Cooper's Motion to Remove Co-Lead Counsel and for Reconsideration of the Order Approving the Qualified Settlement Fund
- Declaration of Steve W. Berman in Support of Co-Lead Counsel's Memorandum in Opposition to Lance Cooper's Motion to Remove Co-Lead Counsel and for Reconsideration of the Order Approving the Qualified Settlement Fund
- Declaration of Elizabeth J. Cabraser in Support of Co-Lead Counsel's Memorandum in Opposition to Lance Cooper's Motion to Remove Co-Lead Counsel and for Reconsideration of the Order Approving the Qualified Settlement Fund
- Declaration of Robert C. Hilliard in Support of Co-Lead Counsel's Memorandum in Opposition to Lance Cooper's Motion to Remove Co-Lead Counsel and for Reconsideration of the Order Approving the Qualified Settlement Fund

- Declaration of Dawn M. Barrios in Support of Co-Lead Counsel's Memorandum in Opposition to Lance Cooper's Motion to Remove Co-Lead Counsel and for Reconsideration of the Order Approving the Qualified Settlement Fund
- Declaration of Geoffrey Parsons Miller
- Bellwether evaluation documents

8. In most MDL matters, the selection of bellwether cases remains a very important stage of litigation because it allows both sides to see the good, the bad, and maybe the ugly. The resolution of these cases at trial has the capacity to shape how successive cases will be tried or settled. Plaintiffs always want to present bellwether cases which have an excellent chance of success, are representative of good facts, good engineering science, and good damages. Because of the evidentiary precedent of rulings in bellwether cases, it is vital that strongly meritorious cases be chosen. The success of these cases has an enormous impact on virtually every other case waiting in line for trial or to re-engage in settlement discussions.

9. I do not know Mr. Hilliard, who currently serves as lead counsel for the personal injury cases in this MDL. I have no sense of how many major vehicle design cases he has handled to verdict in his home state or elsewhere.

10. It is my understanding that Mr. Hilliard was responsible for selecting the plaintiffs' bellwether cases in this MDL, including the *Scheuer* case. I

also understand that *Scheuer* and several other bellwether cases selected by him are cases his law firm signed-up. I also understand that somehow Mr. Hilliard and his firm handled over 1,000 cases purportedly involving the GM Ignition Switch defect. Because I am not privy to the legitimacy of any of these confidentially settled cases, I cannot comment on how many of those were "real cases" with real substantive merit. I can, however, affirm that based on my review of materials, the first case tried and the next one set as a bellwether case should never have been chosen. From an engineering standpoint and from a litigation standpoint, they are terrible selections.

11. I have studied the Bellwether Evaluations prepared by Mr. Hilliard or his team and find them very odd. First, it's clear to me that Mr. Hilliard was either uninformed or he ignored the substantive law of Pennsylvania in evaluating the *Yingling* case. Under Pennsylvania law, the purported comparative fault mentioned in the Evaluation is not a defense. The last appellate court case to restate this unyielding proposition of law in Pennsylvania was a case I litigated and styled *Gaudio v. Ford Motor Company,* 976 A.2d 524 (Pa. Super. 2009), appeal denied, 989A.2d 917 (Pa. 2010). Second, this case is woefully undervalued. Even if this young man had a menial job supporting a wife and several children, using the total offset method required in Pennsylvania, the economic loss alone will range from $300,000 to $700,000.00. A review of the *Barthelemy* case indicates

that there was no air bag deployment and a photograph of the vehicle explains why. The damage was so insignificant that deployment should not occur. The injury is described as "swollen right knee, swollen right shoulder". If that is the extent of injury and the extent of damage to the car, as a trial advocate, an officer of the court, and an experienced trial lawyer, I cannot imagine anyone with any level of trial experience agreeing to bring a lawsuit against a product manufacturer for this case—let alone designate it as a bellwether case. The *Reid* bellwether case is just as ridiculous a selection as the *Barthemlemy* case. The front end damage represents no more than a 5 – 7 mph delta V. An airbag should not deploy under that circumstance, thus there is no causation even if someone could prove the ignition switch defect played a role in causing this minor collision. The damage value of this case is below the threshold for a jury trial in most venues. Looking at the *Norville* and *Cockram* cases lead to the same conclusions: no real proof of product failure vis a vis the ignition switch or the failure of an airbag to deploy, and the damages are so insignificant that no competent products liability trial lawyer would ever recommend filing these cases against a manufacturer.

12. It is my understanding and belief that when Mr. Hilliard was chosen as lead counsel for the personal injury cases, he assumed a duty to every lawyer and every plaintiff in the MDL. And, by definition that duty dictated that he

select good bellwether cases to help every other plaintiff who will follow to trial or seek a subsequent settlement.

13. In my professional opinion, when Mr. Hilliard obtained a high/low settlement for his bellwether cases he lost major incentive to zealously represent those clients and, in turn, he compromised his fiduciary duty to all other MDL parties. It is also my opinion that Mr. Hilliard's actions were, without full disclosure to and concurrence from all members of the Executive Committee, improper. Once the high/low agreements were made, Mr. Hilliard's clients were guaranteed compensation and Mr. Hilliard was guaranteed to receive common benefit fees for the preparation and trial of these cases. Even with a defense verdict, Mr. Hilliard's clients would still receive compensation and he would receive a common benefit fee. A trial loss, however, harms the remaining plaintiffs by making it more difficult for them to receive adequate compensation for their claims.

14. This leads to the specific example of the *Scheuer-Bartolemy-Yingling* bellwether case selection issue. Under the rule of primacy in general, trial counsel like to lead with good evidence and good witnesses. In bellwether cases, conventional wisdom is the same: pick strong cases to go first. Thus, early on, the *Yingling* case was chosen to be the first bellwether trial. That made great sense. The plaintiff had the car. He had the black box download. He had a widow and five

children who had lost their father. No case is flawless, but that was an excellent choice for the MDL plaintiffs to have heard first. On the other hand, the *Scheuer* case was not a good case to start the MDL bellwether process. There was no car. There was no black box download. There were questions about how the wreck occurred. The plaintiff was not seriously injured and the damage claim was specious. I agree with this Court's comments at the end of the trial that this was an "outlier." Selecting that case, in my opinion, represents poor judgment predicated upon either a lack of appreciation of the basic necessary elements to win this type of case or a gamble at the expense of other litigants. Finally, the tactic of piggy-backing a soft tissue injury onto a loss of home economic loss claim was a bizarre strategy. It turns out that decision reflects that trial counsel did not properly prepare the case. But just as importantly it reflects a misunderstanding of how jurors in New York City would consider such a claim, *i.e.*, a reach that destroyed the client's credibility.

15. The next case in the bellwether list, *Barthelemy*, appears no better. The car in that case went out of control on black ice and may have sideswiped a guardrail. There is minimal damage to the vehicle and it is obvious from the photographs that the airbags should not have deployed. That same night, in that same area, there were some 38 other cars that lost control. Further, as with *Scheuer*, the plaintiffs have minimal injuries and low medical expenses. The

minimal injuries guarantee a low verdict even if the jury somehow finds GM liable.

16. I understand that *Barthelemy* was GM's pick. This begs the question: Why was this case filed in the first place? As a Co-Lead, Mr. Hilliard had the responsibility to make sure he only filed meritorious cases. He should have known better than anyone the risk of filing frivolous cases and allowing GM to pick one or more of those cases to be bellwether trial cases. It appears to be a good pick for GM. It was a bad pick, however, for Mr. Hilliard to file in the first place.

17. Our rules of conduct dictate we do our level best to avoid an appearance of impropriety. Here, I do not think any effort was made to follow this edict. And, absent a change in leadership, this tainted practice will flourish unchecked.

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

Executed on 5th of February, 2016.

Larry Coben

Exhibit 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

IN RE:

GENERAL MOTORS LLC IGNITION SWITCH LITIGATION

14-MD-2543 (JMF)

This Document Relates to All Actions

Hon. Jesse M. Furman

----------x

DEFENDANT GENERAL MOTORS LLC'S CLAIMS FOR INCLUSION IN BELLWETHER TRIAL PLAN'S INITIAL DISCOVERY POOL

Pursuant to MDL Order No. 25 ¶ 33 (14-MD-2543, Docket No. 422), General Motors LLC submits the following nine eligible Plaintiff's claims for inclusion in the bellwether trial plan's Initial Discovery Pool.

Plaintiff	Associated Plaintiff[1]	MDL 2543 Docket No.	Primary Counsel for Plaintiff(s)
Barthelemy, Lawrence	Spain, Dionne	1:14-cv-05810	Hilliard Muñoz Gonzales LLP
Crook, Reubena	-	1:14-cv-08176	Hilliard Muñoz Gonzales LLP
Elbahou, Elias	-	1:14-cv-05810	Hilliard Muñoz Gonzales LLP
Gonzales, Isabel	Quintero, Frances J.	1:14-cv-08176	Hilliard Muñoz Gonzales LLP
Norville, Amy	-	1:14-cv-08176	Hilliard Muñoz Gonzales LLP
Reid, Robert	-	1:14-cv-05810	Hilliard Muñoz Gonzales LLP
Sharpe, Joan	-	1:14-cv-05810	Hilliard Muñoz Gonzales LLP
Storck, LeAnn	-	1:14-cv-08176	Hilliard Muñoz Gonzales LLP
Vindiola, Cecilia	-	1:14-cv-08176	Hilliard Muñoz Gonzales LLP

[1] Order No. 25 requires the parties to submit "nine (9) eligible Plaintiff's claims" for inclusion in the Initial Discovery Pool. (*See* Order No. 25 ¶ 33.) Recognizing that more than one plaintiff may file a claim arising from a single incident, the parties have agreed that, for the purposes of Order No. 25 ¶ 33, any "claim" selected for inclusion in the Initial Discovery Pool shall include all bellwether-eligible claims arising from the same subject incident. Accordingly, certain proposed bellwether claims include the claims of "Associated Plaintiffs" who have filed claims—or on whose behalf claims have been filed—for the same respective subject incident and who also will be included in the Initial Discovery Pool.

Dated: February 17, 2015

/s/ Richard C. Godfrey, P.C.
Andrew B. Bloomer, P.C.
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654-3406
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
richard.godfrey@kirkland.com
andrew.bloomer@kirkland.com

Attorneys for Defendant General Motors LLC

CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2015, I electronically served the foregoing pleading on all counsel of record in this action using the CM/ECF system.

/s/ Richard C. Godfrey, P.C.
Richard C. Godfrey, P.C.

Exhibit 5

Lawrence Barthelemy v. GM

GM Bellwether Selection No. 1 (Bellwether Trial No. 2)

Contracted Law Firm: Hilliard Munoz Gonzales LLP

Incident Description	Lawrence Barthelemy was riding as a passenger with Dionne Spain at night on a bridge covered in a large run of black ice. Spain applied the brakes to avoid several multi-vehicle pileups ahead, lost control of the vehicle, spun around, and scraped the vehicle's front bumper against the bridge guardrail.
Vehicle Damage	Scuff/scrape to front bumper on the driver's side. No dents, and no needed repairs.
Airbag Status	Did not deploy
Injuries	Swelling to right knee and right shoulder (Barthelemy).
Allegations	Loss of power to vehicle caused or contributed to loss of control.

Robert Reid v. GM

GM Bellwether Selection No. 2 (Bellwether Trial No. 4)

Contracted Law Firm: Hilliard Munoz Gonzales LLP

Incident Description	Mr. Reid was driving and braked to avoid a vehicle that stopped suddenly in front of him. Mr. Reid believes the brakes worked at first but then stopped working, and that his engine cut off as he was braking. The engine was off after the crash and would not start.
Vehicle Damage	Damage to front bumper and bending across the front of the hood.
Airbag Status	Did not deploy
Injuries/Damages	Contusion and neck sprain. $2,000 claim for lost wages.
Allegations	Loss of power to vehicle caused or contributed to loss of control, and possibly the failure of the airbags to deploy.

Stephanie Cockram v. GM

Plaintiffs' Bellwether Selection No. 3 (Bellwether Trial No. 5)

Contracted Law Firm: Hilliard Munoz Gonzales LLP

Incident Description	Ms. Cockram lost control of, and wrecked, her vehicle. Ms. Cockram's blood tested positive for alcohol and prescription medication.
Vehicle Damage	Damage to front end.
Airbag Status	Did not deploy.
Injuries	Pain in and around hip. Abrasions and lacerations to face, arms, and legs.
Allegations	Loss of power to vehicle caused or contributed to loss of control and the failure of the airbags to deploy.

Amy Norville v. GM

GM Bellwether Selection No. 3 (Bellwether Trial No. 6)

Contracted Law Firm: Hilliard Munoz Gonzales LLP

Incident Description	Ms. Norville was driving down a rural road, swerved to avoid a deer, travelled down an embankment, struck several trees, and came to rest in a ditch. Ms. Norville went to the hospital where her blood tested positive for alcohol and prescription narcotics. Ms. Norville pled guilty to DUI.
Vehicle Damage	Damage all over vehicle, including front end damage.
Airbag Status	Did not deploy
Injuries	Sternum fracture
Allegations	Loss of power to vehicle caused or contributed to loss of control

Exhibit 6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
IN RE:
GENERAL MOTORS LLC IGNITION SWITCH
LITIGATION 14-MD-2543 (JMF)

This Document Relates to All Actions
----------x

DECLARATION OF VICTOR H. PRIBANIC

I, Victor H. Pribanic, declare under penalty of perjury as follows:

1. I am the founding partner of Pribanic & Pribanic, which was founded in 1984.

2. I graduated cum laude from Bowling Green State University 1976 and from Duquesne University School of Law in 1979. I began my career as an Assistant District Attorney in Pittsburgh.

3. In the firm's over thirty year history, we have successfully litigated hundreds of cases where people have experienced serious, life-changing events caused by the negligence or wrongful acts of others and we have tried many cases which have had a significant impact on our community.

4. I am lead counsel in the case of *Yingling v. General Motors LLC* ("*Yingling*"). I represent Nadia Yingling and five children in the death of James

Yingling. Mr. Yingling was fatally injured on November 12, 2013, while driving a 2006 Saturn Ion.

5. On June 5, 2014, I filed *Yingling* in the Western District of Pennsylvania. *Yingling* was subsequently transferred to this Court and included as part of the MDL.

6. On or about January 15, 2015, I submitted a Plaintiff's Fact Sheet, along with supporting documentation, on behalf of my clients.

7. I was contacted by Mr. Hilliard's office approximately 18 months ago. During the call, one of the persons Mr. Hilliard refers to as his "lieutenants" proposed that I associate Mr. Hilliard in *Yingling* and that I agree to share any fees earned. I declined the proposal.

8. Before the parties selected *Yingling* to be the first bellwether trial, as set forth in the bellwether trial schedule filed on July 27, 2015, I received a phone call from Mr. Hilliard advising me that he was selecting *Yingling* as the first bellwether trial. He also expressed an interest in "trying the case with me." I advised him that I had not considered trying the case with him and he indicated that he would come to visit me so we could discuss it.

9. Mr. Hilliard, and other Lead Counsel, did indeed select *Yingling* as the first bellwether trial. On Thursday, July 28, 2015, Mr. Hilliard flew to Pittsburgh where I met him for dinner and, among other things, discussed the merits of

Yingling. Mr. Hilliard never broached the notion that we try the case together nor discussed any terms during that meeting.

10. On Sunday, August 1, 2015, during a phone call with Mr. Hilliard, he told me he was thinking how we could handle the lawyers' fee if we tried the case together. He proposed that as a result of any settlement that my law firm would retain all lawyers' fees. He then proposed if we began the trial some arrangement for dividing the fees thereafter should be made. I understood equally.

11. After considering Mr. Hilliard's proposal, I sent the attached letter to Mr. Hilliard via email and regular mail on August 3, 2015. A true and correct copy of this letter is attached as Ex. 1. To be clear, I told Mr. Hilliard that the Yingling family expected me to be lead counsel at trial, yet I needed his assistance in preparing and trying the case. Based on my conversations with Mr. Hilliard, it was understood that Mr. Hilliard would provide assistance with the preparation and trial of *Yingling*, but that, as my August 3, 2015 letter states, I would be the lead counsel at trial. Mr. Hilliard did not respond to my letter.

12. On August 5, 2015, the Co-Leads sent a letter to this Court requesting modification of the bellwether trials. A true and correct copy of this letter is attached as Ex. 2. Specifically, the Co-Leads requested this Court enter an Order moving *Yingling* to position number five and moving *Scheuer v. GM* to position

number one. The August 5, 2015 letter was the first contact from Mr. Hilliard after I sent the August 3, 2015 letter.

13. On August 6, 2015, I sent a letter to Mr. Hilliard, a true and correct copy of this letter is attached as Ex. 3.

14. On August 7, 2015, I sent an email to the Co-Leads. I included a letter with this email. True and correct copies of the email and letter are attached as Ex. 4. In the email I informed the Co-Leads that I intended to send the letter to the Court in order to make the Court aware of the circumstances surrounding moving *Yingling* from position number one to position number five and that I would ask this Court to move *Yingling* back to position number one for the reasons set forth in the letter.

15. On the afternoon of August 7, 2015, I received an email from Steve Shadowen, Mr. Hilliard's partner stating "I suggest we all take a deep breath and discuss on Monday fair arrangements for joint preparation of this case for trial." A true and correct copy of this email is attached as Ex. 5.

16. I spoke with Co-Leads about moving *Yingling* back to position number one. On August 11, 2015, I received an email from Steve Berman informing me that the Co-Leads would not agree to my request.

17. On August 13, 2015, I sent an email to the Co-Leads and Mr. Shadowen. I attached to the email a Motion to Reform Bellwether Trial Schedule.

True and correct copies of the email and Motion are attached as Ex. 6. I signed the Motion and attached exhibits which I intended to file along with the Motions. The Co-Leads, at my request, ultimately agreed to ask this Court to move *Yingling* to position number three. In exchange, I agreed not to file the motion.

18. Attached to this Declaration are true and correct copies of communications between myself and the Co-Leads which reflect what is addressed in this Declaration.

19. This Declaration is not in support of the Motion to Reconsider the Settlement Trust.

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

Executed on 5th of February, 2016.

Victor H. Pribanic

Exhibit 1

Law Offices of
PRIBANIC & PRIBANIC
A Limited Liability Company
1735 Lincoln Way
White Oak, Pennsylvania 15131

Tel. 412/672-5444

VICTOR H. PRIBANIC

Fax. 412/672-3715

PITTSBURGH OFFICE
513 COURT PLACE
PITTSBURGH, PA 15219
TEL. 412/281-8844

August 3, 2015

CONFIDENTIAL

Bob Hilliard, Esquire
Hilliard Munoz Gonzales, L.L.P.
710 South Shoreline Blvd., Suite 500
Corpus Christi, TX 78401

RE: Nadia Yingling, Personal Representative of the Estate of James E. Yingling v. General Motors, LLC
Our File No.: 9108

Dear Bob:

I have been thinking of your kind offer to try this case with me. First, I want to thank you for, however it occurred, putting it first in line. It is obviously a tremendous opportunity for our client and a case that I absolutely relish the prospect of trying, albeit it with a bit of trepidation.

I trust that I can count on you as lead counsel for the personal injury cases in this MDL to assist in any way possible and after meeting you I am confident that I can do so but I am at a complete loss as to how both of us could try this case – I cannot see me second seating you anymore than you would want to second seat me in a trial. I have agonized over some way to split it up and I have no solution short of going it alone, with your good help, and that of my colleagues here at the office and putting my head down and getting to work immediately.

I hope your reaction to this is not to take any offense whatsoever – if it is – just think to yourself what would I do if I were in Victor's shoes and answer honestly and I expect you won't be able to take any umbrage at this choice whatsoever.

I hope to do the best job that 35 years in the courtroom will allow me to and pray for the strength and wisdom to get through this the best way possible for my client and all of your many many clients that will be affected in some way by the outcome.

You are going to get to try one of these cases if you choose to no matter what – I only have this one and feel duty bound to do it.

Again, I hope your feelings are not hurt by this and I hope we can remain, as we should, brothers in arms throughout this thing.

If you have some thoughts or want to discuss this, please give me a call.

Very truly yours,

Victor H. Pribanic

VHP:lmw

Exhibit 2

HAGENS BERMAN

Lieff Cabraser Heimann & Bernstein
Attorneys at Law

HILLIARD MUÑOZ GONZALES
TRIAL ATTORNEYS

August 5, 2015

VIA ELECTRONIC COURT FILING

The Honorable Jesse M. Furman
United States District Court for the
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: ***In re: General Motors LLC Ignition Switch Litig.*, 14-MD-2543 (JMF), 14-MC-2543**

Dear Judge Furman:

Lead Counsel for the MDL Plaintiffs write to request that the Court amend the order for trying the Early Trial Cases (Doc. No. 1217) to change the order of trials selected by MDL Plaintiffs. As reflected in the chart below, Plaintiffs propose to move the Scheuer case to Trial No. 1, the Cockram case to Trial No. 3, and the Yingling case to Trial No. 5.[1] The sequence of trials (as between MDL Plaintiffs and New GM) and replacement protocol previously ordered by the Court would remain the same.

New GM has no objection to the amended case order reflected below.

Plaintiffs therefore request that the Court adopt the following sequence for trying the Early Trial Cases:[2]

Trial Number	Names of Plaintiff(s) and Categorization of Claims	DL Case Number	Selecting Party
1	**Robert Scheuer** (Category 2: severe personal injury claims)	1:14-cv-8176	MDL Plaintiffs
2	**Lawrence Barthelemy** and **Dionne Spain** (Category 3: mild to moderate personal injury	1:14-cv-5810	New GM

[1] In light of the Court's statement that it would address the parties' proposed schedule (Doc. No. 1144) in due course, Plaintiffs have not included that proposed schedule again here.
[2] The parties will provide additional information regarding the six Early Trial Cases at the Court's request.

	claims)		
3	**Stephanie Cockram** (Category 2: severe personal injury claims)	1:14-cv-8176	MDL Plaintiffs
4	**Robert Reid** (Category 3: mild to moderate personal injury claims)	1:14-cv-5810	New GM
5	**Nadia Yingling,** Personal Representative and/or Guardian Ad Litem of the Estate of James E. Yingling, III (Category 1: wrongful death claims)	1:14-cv-5336	MDL Plaintiffs
6	**Amy Norville** (Category 2: severe personal injury claims)	1:14-cv-8176	New GM

Respectfully submitted,
/s/

Steve W. Berman
Hagens Berman Sobol Shapiro LLP
1918 Eighth Ave.
Suite 3300
Seattle, WA 98101

-and-

555 Fifth Avenue
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Elizabeth J. Cabraser
Lieff Cabraser Heimann & Bernstein, LLP
275 Battery Street
29th Floor
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-and-

250 Hudson Street
8th Floor
New York, NY 10013-1413

Robert C. Hilliard
Hilliard Muñoz Gonzales L.L.P.
719 S Shoreline Blvd, # 500
Corpus Christi, TX 78401

cc: All Counsel of Record (via ECF)

Exhibit 3

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August 6, 2015

Robert C. Hilliard, Esquire
Hilliard Munoz Gonzales LLP
719 S. Shoreline Blvd., Ste. 500
Corpus Christi, TX 78401

RE: Estate of James Yingling v. General Motors
Our File No.: 9108

Dear Mr. Hilliard:

I have received and reviewed the August 5, 2015 letter to Judge Furman wherein you have proposed to remove *Yingling* from trial position no. 1 to trial position no. 5. Your intentions are obvious. You want to control this litigation and maximize the fees earned by your law firm regardless of the harm your actions may cause the MDL plaintiffs.

For this reason, I intend to submit the attached letter to Judge Furman requesting that Judge Furman allow *Yingling* to remain as the first bellwether case to be tried in January 2016. I thought it would be appropriate, however, to give you, Ms. Cabraser and Mr. Berman 24 hours to decide whether you want to withdraw your request and allow *Yingling* to remain in trial position no. 1. If I do not hear from you in the next 24 hours, I will submit the letter to Judge Furman.

Sincerely,

Victor H. Pribanic

VHP:lmw

cc: Elizabeth J. Cabraser, Esquire
Steve W. Berman, Esquire

Exhibit 4

Law Offices of
PRIBANIC & PRIBANIC
A Limited Liability Company
1735 Lincoln Way
White Oak, Pennsylvania 15131

Tel. 412/672-5444

VICTOR H. PRIBANIC

Fax. 412/672-3715

PITTSBURGH OFFICE
513 COURT PLACE
PITTSBURGH, PA 15219
TEL. 412/281-8844

August 7, 2015

The Honorable Jesse M. Furman
United States District Court for the
Southern District of New York
500 Pearl Street
New York, NY 10007

RE: General Motors, LLC Ignition Switch Litigation
Docket: 14-MD-2543 (JMF), 14-MC-2543
CHANGE IN BELLWETHER TRIAL SCHEDULE

Dear Judge Furman

I represent James Yingling's wife Nadia and five children in *Yingling v. GM*, which is the case the parties have selected to be the first bellwether trial to commence on January 11, 2016. I am writing to express my objection to the modification of the bellwether trial schedule as proposed by Robert Hilliard, Esquire, et al, Lead Counsel for the personal injury cases in his letter dated August 5, 2015 (Document Number: 1229).

I was contacted by Mr. Hilliard's office approximately a year ago. In the call one of the persons Mr. Hilliard refers to as his "lieutenants" proposed that I associate Mr. Hilliard in *Yingling* and that I agree to share any fees earned. The proposal was declined.

Before the parties selected *Yingling* to be the first bellwether trial, as set forth in the bellwether trial schedule filed on July 27, 2015, I received a phone call from Mr. Hilliard advising me that he was considering selecting *Yingling* as the first bellwether trial. He also expressed an interest in "trying the case with me." I advised him that I had not considered trying the case with him and he indicated that he would come to visit me so that we could discuss it.

Mr. Hilliard, and the other Lead Counsel, did indeed select the *Yingling* as the first bellwether trial. On Thursday, July 28, 2015, Mr. Hilliard flew to Pittsburgh where I met him for dinner and, among other things, discussed the merits of *Yingling*. Mr. Hilliard never broached the notion that we try the case together nor discussed any terms during that meeting.

On Sunday, August 1, 2015, I received a phone call from Mr. Hilliard, who told me he was thinking about how we could handle the lawyers' fee if we tried the case together. He proposed that as the result of any settlement that my law firm would retain all lawyers' fees - he then proposed if we began the trial some arrangement for dividing the fees thereafter should be made.

After considering Mr. Hilliard's proposal, I sent the attached letter to Mr. Hilliard via email and regular mail on August 3, 2015. Mr. Hilliard did not respond to my letter. The August 5, 2015 letter addressed to this Court requesting modification of the bellwether trials is the first contact from Mr. Hilliard since I submitted the attached letter to him. I am frankly surprised and disturbed at Lead Counsel's request.

I have done extensive work to prepare for the January 2016 trial. I have retained the necessary experts and submitted their reports. I have a detailed understanding of the issues presented. I understand, however, that the success of the first bellwether trial is not only important to my clients, it is also important to all MDL plaintiffs and their counsel, as well as State Court case plaintiffs and their counsel. With this in mind, I have associated Lance Cooper with The Cooper Firm and Cole Portis with the Beasley Allen firm to assist me in *Yingling*. This team of lawyers will give my clients the best opportunity to prevail in the first bellwether trial.

Of course, Your Honor chose to appoint Mr. Cooper to the Executive Committee. Given his work in *Melton v. GM*, Mr. Cooper has unique knowledge of, and experience with, GM in the ignition switch cases. The Beasley Allen firm brings to *Yingling* the experience and resources which few other plaintiffs' firms in the country can bring. In addition, Cole Portis of the Beasley Allen firm obtained a plaintiff's verdict in the first Toyota sudden acceleration case to go to trial, *Bookout v. Toyota*. The successful result in *Bookout v. Toyota* resulted in Toyota choosing to settle their remaining sudden acceleration cases. Simply put, there could be no better team to try the case for the Yingling family which, again, if successful, will only serve to benefit all plaintiffs.

Further evidence of Mr. Hilliard's acting in his own interests is the case Lead Counsel selected to now be the first bellwether trial – *Scheuer v. GM*. Although I do not profess to know all of the liability facts of *Scheuer*, the Plaintiff Fact Sheet in *Scheuer* says that there is no car available to inspect and there is no download of the SDM. I have always understood it is extremely important for the plaintiff to have the product to prove liability in a product liability case. In *Yingling*, we have both the vehicle and the download of the SDM.

In addition, the damages to Mr. Scheuer as described in the Plaintiff Fact Sheet appear to be primarily soft tissue injuries with $5,000.00-$10,000.00 in medical bills and a few months out of work. In contrast, Mr. Yingling was a 35 year old father who lingered 17 days with a profound brain injury and dying, left behind a wife and five children.

Lead counsel chose *Yingling* as the first bellwether trial after months of deliberation and consideration. Your Honor appointed Lead Counsel to act in the best interests of all plaintiffs, not Lead Counsel. Lead Counsel, and Mr. Hilliard in particular, obviously chose *Yingling* to be the first bellwether trial because of its merits. Mr. Hilliard has apparently now changed his mind after learning that he would not be participating in the trial or sharing in any fees. Mr. Hilliard should not be permitted to tamper with the initial bellwether trial selection because his proposals were rebuked.

Very truly yours,

Victor H. Pribanic

VHP:lmw

Exhibit 5

From: Steve Shadowen <steve@hilliardshadowenlaw.com>
Date: Friday, August 7, 2015 at 5:16 PM
To: Victor Pribanic <vpribanic@pribanic.com>
Cc: "Robert C. Hilliard" <bobh@hmglawfirm.com>, Elizabeth Cabraser <ECABRASER@lchb.com>, Steve Berman <Steve@hbsslaw.com>
Subject: Yingling

Victor,

I suggest we all take a deep breath and discuss on Monday fair arrangements for the joint preparation of this case for trial.

Have a good weekend.

Steve

Steve D. Shadowen

HILLIARD & SHADOWEN LLP
719 Shoreline Blvd., #500
Corpus Christi, Texas 78401
Phone: 1-855-344-3298
Cell: 1-717-903-1177
Email: steve@hilliardshadowenlaw.com
Web: www.hilliardshadowenlaw.com

Exhibit 6

From: Lisa Wilson <lisa@pribanic.com>
Date: Thursday, August 13, 2015 at 11:36 AM
To: "Robert C. Hilliard" <bobh@hmglawfirm.com>, Steve Shadowen <steve@hilliardshadowenlaw.com>, Steve Berman <steve@hbsslaw.com>, "Elizabeth J. Cabraser" <ecabraser@lchb.com>
Cc: Matthew Doebler <mdoebler@pribanic.com>, Ernest Pribanic <epribanic@pribanic.com>, Victor Pribanic <vpribanic@pribanic.com>
Subject: Yingling #9108 - GM Ignition System Cases

FROM VICTOR H. PRIBANIC, ESQUIRE

Gentlemen and Ms. Cabraser,

The Motion I mentioned yesterday is attached – please let me know if we can discuss this today.

Thank you for your attention.

Victor

DICTATED BUT NOT REVIEWED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

NADIA YINGLING, Personal Representative and/or Guardian Ad Litem of the ESTATE OF JAMES E. YINGLING, III,

Plaintiff,

v.

GENERAL MOTORS, L.L.C.,

Defendant.

----------x

14-md-2543 (JMF)

1:14-cv-05336

MOTION TO REFORM BELLWETHER TRIAL SCHEDULE

AND NOW, comes the Plaintiff, Nadia Yingling, Personal Representative and/or Guardian Ad Litem of the Estate of James E. Yingling, III, by and through her counsel, Victor H. Pribanic, Matthew A. Doebler, and the law firm of Pribanic & Pribanic, L.L.C., files the following Motion to Reform Bellwether Trial Schedule, and in support thereof avers as follows:

1. This matter was originally listed as the first of the bellwether trial cases scheduled to be tried commencing January 11, 2016.

2. After the matter was listed for trial, counsel for Plaintiff, the undersigned, was approached by Robert Hilliard, Esquire, Lead Counsel for the Personal Injury Cases in this matter, who proposed that he participate in the trial and if the case was tried as opposed to being settled prior to trial, that some fee sharing arrangement be arranged between counsel for the Plaintiff and Mr. Hilliard.

3. The foregoing proposal was declined on August 3, 2015 via letter to Mr. Hilliard. *See* Exhibit 1 attached hereto.

4. No response to the letter was received from Mr. Hilliard – instead, the letter attached as Exhibit 2 (Document No.: 1229) was supplied to this court on or about August 5, 2015 proposing to move the Yingling case from the first trial position to the fifth trial position –

the last of the cases selected by the MDL Plaintiffs. This letter was then adopted by the Court and filed of record at Document Number 1239 on August 7, 2015.

5. The Yingling case involves the death of a 35 year old father who lingered after the crash for 17 days with a profound brain injury and dying, left behind a wife and five (5) children.

6. The Plaintiff has both the vehicle and a download of the SDM for this occurrence.

7. The case substituted for the Yingling case, that of Robert Scheuer (Docket No.: 1:14-cv-8176) involves a crash in which there is no vehicle, no download and appears to involve soft tissue injuries.

8. Prior to advising the court of this matter by Motion, a letter was submitted to Lead Counsel in this matter and a conference call occurred on Monday, August 10, 2015, during which counsel for the Plaintiff expressed his willingness to permit Lead Counsel to participate in the trial of the matter in some capacity – Mr. Berman, on behalf of Lead Counsel, disavowed any interest in the compensation of Lead Counsel other than by way of the common benefit fund – Mr. Hilliard's partner, Steve Shadowen, represented him during the call.

9. The foregoing discussion was predicated on moving the Yingling case back to the number one trial position if the Court would do so – during this conversation, Lead Counsel expressed the belief that this Court expects Lead Counsel to participate in the first of the GM bellwether trials without exception.

10. During the call, Lead Counsel expressed a willingness to consider returning the Yingling case to the Number one trial position under these terms – another call was to occur the following day.

11. Rather than the conference call that was to occur on August 11, 2015, counsel for Plaintiff received an email from Mr. Berman expressing that Lead Counsel strongly feel that the

first trials should be conducted by co-lead counsel because that is what the Court expects – a copy of the email is attached as Exhibit 3.

12. I have done extensive work to prepare for this formerly scheduled January 2016 trial; retained the necessary experts, submitted their reports and have a detailed understanding of the issues presented – I understand that the success of the first bellwether trial is not only important to my client but is also important to all MDL Plaintiffs and their counsel, as well as state court plaintiffs and their counsel. With this in mind, I have associated Lance Cooper, Esquire with The Cooper Firm and Cole Portis, Esquire of the Beasley Allen firm to assist me in the Yingling trial.

13. Mr. Cooper, as the Court is aware, is a member of the Executive Committee and given his experience in *Melton v. General Motors*, has unique knowledge of and experience with GM and the ignition system cases – Cole Portis tried the first successful Toyota sudden acceleration trial and collectively there is no better team to try the case for the Yingling family which, if successful, would serve to benefit all Plaintiffs.

14. Lead Counsel chose the Yingling case as the first bellwether trial after months of deliberation and consideration and after a representative of his office was present at each of the depositions conducted in this matter – it was chosen for the first position obviously because of its merits and it should be reinstated as the first bellwhether trial.

15. Lead Counsel were appointed by the Court to act in the best interests of all Plaintiffs, not Lead Counsel, and the happenstance that Mr. Hilliard would not be able to participate in the trial of this case upon the terms he sought should not be permitted to alter the trial schedule.

16. The Yingling case, is one which almost certainly will be tried on behalf of the Plaintiffs, whereas, there is a very substantial likelihood, it would appear, that the cases prior to Yingling will be settled – potentially compromising the Plaintiffs' ability to secure the

attendance of witnesses from General Motors, experts and others at the trial of the case whenever it occurs as opposed to the predictable, orderly opportunity to present the matter with a date certain as the first bellwether trial.

WHEREFORE, Plaintiff, Nadia Yingling, Personal Representative and/or Guardian Ad Litem of the Estate of James E. Yingling, III, for the reasons set forth above, respectfully requests that the Court modify the bellwether trial plan and schedule the Yingling case as the first of the bellwether trials to occur commencing on January 11, 2016.

Respectfully submitted,

PRIBANIC & PRIBANIC, L.L.C.

By: _____

Victor H. Pribanic
Pa. I.D. No.: 30785
Matthew A. Doebler
Pa. I.D. No.: 304848

1735 Lincoln Way
White Oak, PA 15131
Phone: 412.672.5444
Fax: 41223.672.3715
Email: vpribanic@pribanic.com
Email: mdoebler@pribanic.com

Counsel for Plaintiff, Nadia Yingling, Personal Representative and/or Guardian Ad Litem for the Estate of James E. Yingling, III

JURY TRIAL DEMANDED

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TEL. 412/281-8844

August 3, 2015

CONFIDENTIAL

Bob Hilliard, Esquire
Hilliard Munoz Gonzales, L.L.P.
710 South Shoreline Blvd., Suite 500
Corpus Christi, TX 78401

RE: Nadia Yingling, Personal Representative of the Estate of James E. Yingling v. General Motors, LLC
Our File No.: 9108

Dear Bob:

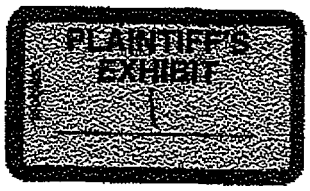
I have been thinking of your kind offer to try this case with me. First, I want to thank you for, however it occurred, putting it first in line. It is obviously a tremendous opportunity for our client and a case that I absolutely relish the prospect of trying, albeit it with a bit of trepidation.

I trust that I can count on you as lead counsel for the personal injury cases in this MDL to assist in any way possible and after meeting you I am confident that I can do so but I am at a complete loss as to how both of us could try this case – I cannot see me second seating you anymore than you would want to second seat me in a trial. I have agonized over some way to split it up and I have no solution short of going it alone, with your good help, and that of my colleagues here at the office and putting my head down and getting to work immediately.

I hope your reaction to this is not to take any offense whatsoever – if it is – just think to yourself what would I do if I were in Victor's shoes and answer honestly and I expect you won't be able to take any umbrage at this choice whatsoever.

I hope to do the best job that 35 years in the courtroom will allow me to and pray for the strength and wisdom to get through this the best way possible for my client and all of your many many clients that will be affected in some way by the outcome.

You are going to get to try one of these cases if you choose to no matter what – I only have this one and feel duty bound to do it.



Again, I hope your feelings are not hurt by this and I hope we can remain, as we should, brothers in arms throughout this thing.

If you have some thoughts or want to discuss this, please give me a call.

Very truly yours,

Victor H. Pribanic

VHP:lmw

Lieff Cabraser Heimann & Bernstein
Attorneys at Law

HILLIARD MUÑOZ GONZALES
TRIAL ATTORNEYS

August 5, 2015

VIA ELECTRONIC COURT FILING

The Honorable Jesse M. Furman
United States District Court for the
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: ***In re: General Motors LLC Ignition Switch Litig.*, 14-MD-2543 (JMF), 14-MC-2543**

Dear Judge Furman:

Lead Counsel for the MDL Plaintiffs write to request that the Court amend the order for trying the Early Trial Cases (Doc. No. 1217) to change the order of trials selected by MDL Plaintiffs. As reflected in the chart below, Plaintiffs propose to move the Scheuer case to Trial No. 1, the Cockram case to Trial No. 3, and the Yingling case to Trial No. 5.[1] The sequence of trials (as between MDL Plaintiffs and New GM) and replacement protocol previously ordered by the Court would remain the same.

New GM has no objection to the amended case order reflected below.

Plaintiffs therefore request that the Court adopt the following sequence for trying the Early Trial Cases:[2]

Trial Number	Names of Plaintiff(s) and Categorization of Claims	DL Case Number	Selecting Party
1	**Robert Scheuer** (Category 2: severe personal injury claims)	1:14-cv-8176	MDL Plaintiffs
2	**Lawrence Barthelemy** and **Dionne Spain** (Category 3: mild to moderate personal injury	1:14-cv-5810	New GM

[1] In light of the Court's statement that it would address the parties' proposed schedule (Doc. No. 1144) in due course, Plaintiffs have not included that proposed schedule again here.
[2] The parties will provide additional information regarding the six Early Trial Cases at the Court's request.

	claims)		
3	**Stephanie Cockram** (Category 2: severe personal injury claims)	1:14-cv-8176	MDL Plaintiffs
4	**Robert Reid** (Category 3: mild to moderate personal injury claims)	1:14-cv-5810	New GM
5	**Nadia Yingling,** Personal Representative and/or Guardian Ad Litem of the Estate of James E. Yingling, III (Category 1: wrongful death claims)	1:14-cv-5336	MDL Plaintiffs
6	**Amy Norville** (Category 2: severe personal injury claims)	1:14-cv-8176	New GM

Respectfully submitted,
/s/

Steve W. Berman
Hagens Berman Sobol Shapiro LLP
1918 Eighth Ave.
Suite 3300
Seattle, WA 98101

-and-

555 Fifth Avenue
Suite 1700
New York, NY 10017

Elizabeth J. Cabraser
Lieff Cabraser Heimann & Bernstein, LLP
275 Battery Street
29th Floor
San Francisco, CA 94111-3339

-and-

250 Hudson Street
8th Floor
New York, NY 10013-1413

Robert C. Hilliard
Hilliard Muñoz Gonzales L.L.P.
719 S Shoreline Blvd, # 500
Corpus Christi, TX 78401

cc: All Counsel of Record (via ECF)

From: Steve Berman <Steve@hbsslaw.com>
Date: Tuesday, August 11, 2015 at 12:20 PM
To: Victor Pribanic <vpribanic@pribanic.com>
Cc: Bob Hilliard <bobh@hmglawfirm.com>, "Steve Shadowen (steve@hilliardshadowenlaw.com)" <steve@hilliardshadowenlaw.com>, Elizabeth Cabraser <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.

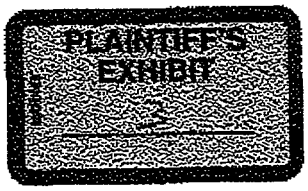
We also made clear on the call that the fee agreement between you and your client is unaffected by bellwether status. Our fee for work on your case would be common benefit work and recovery would be subject to the common benefit assessment.

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.

Steve Berman | Managing Partner
Hagens Berman Sobol Shapiro LLP
1918 Eighth Ave Suite 3300 - Seattle, WA 98101
Direct: (206) 268-9320
Steve@hbsslaw.com | www.hbsslaw.com | HBSS Blog

Named to 2015 Plaintiff's Hot List by *The National Law Journal*



CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing was filed electronically via the Court's electronic filing system and was served upon all parties by operation of the Court's electronic filing system on the _____ day of August, 2015.

Victor H. Pribanic

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

NADIA YINGLING, Personal Representative and/or Guardian Ad Litem of the ESTATE OF JAMES E. YINGLING, III,

Plaintiff,

v.

GENERAL MOTORS, L.L.C.,

Defendant.

----------x

14-md-2543 (JMF)

1:14-cv-05336

ORDER

AND NOW, to-wit, this _____ day of _____, 2015, upon consideration of the foregoing Motion to Reform Bellwether Trial Schedule, the same is hereby GRANTED and the Yingling case is moved to the number 1 trial position in the bellwether trial schedule, and will commence trial on January 11, 2016.

BY THE COURT:

Judge Furman

Exhibit 7

Law Offices of
PRIBANIC & PRIBANIC
A Limited Liability Company
1735 Lincoln Way
White Oak, Pennsylvania 15131

Tel. 412/672-5444

VICTOR H. PRIBANIC

Fax. 412/672-3715

PITTSBURGH OFFICE
513 COURT PLACE
PITTSBURGH, PA 15219
TEL. 412/281-8844

August 6, 2015

Robert C. Hilliard, Esquire
Hilliard Munoz Gonzales LLP
719 S. Shoreline Blvd., Ste. 500
Corpus Christi, TX 78401

RE: Estate of James Yingling v. General Motors
Our File No.: 9108

Dear Mr. Hilliard:

I have received and reviewed the August 5, 2015 letter to Judge Furman wherein you have proposed to remove *Yingling* from trial position no. 1 to trial position no. 5. Your intentions are obvious. You want to control this litigation and maximize the fees earned by your law firm regardless of the harm your actions may cause the MDL plaintiffs.

For this reason, I intend to submit the attached letter to Judge Furman requesting that Judge Furman allow *Yingling* to remain as the first bellwether case to be tried in January 2016. I thought it would be appropriate, however, to give you, Ms. Cabraser and Mr. Berman 24 hours to decide whether you want to withdraw your request and allow *Yingling* to remain in trial position no. 1. If I do not hear from you in the next 24 hours, I will submit the letter to Judge Furman.

Sincerely,

Victor H. Pribanic

VHP:lmw

cc: Elizabeth J. Cabraser, Esquire
Steve W. Berman, Esquire

Exhibit 8

Law Offices of
PRIBANIC & PRIBANIC
A Limited Liability Company
1735 Lincoln Way
White Oak, Pennsylvania 15131

Tel. 412/672-5444

VICTOR H. PRIBANIC

Fax. 412/672-3715

PITTSBURGH OFFICE
513 COURT PLACE
PITTSBURGH, PA 15219
TEL. 412/281-8844

August 7, 2015

The Honorable Jesse M. Furman
United States District Court for the
Southern District of New York
500 Pearl Street
New York, NY 10007

RE: General Motors, LLC Ignition Switch Litigation
Docket: 14-MD-2543 (JMF), 14-MC-2543
CHANGE IN BELLWETHER TRIAL SCHEDULE

Dear Judge Furman

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Of course, Your Honor chose to appoint Mr. Cooper to the Executive Committee. Given his work in *Melton v. GM*, Mr. Cooper has unique knowledge of, and experience with, GM in the ignition switch cases. The Beasley Allen firm brings to *Yingling* the experience and resources which few other plaintiffs' firms in the country can bring. In addition, Cole Portis of the Beasley Allen firm obtained a plaintiff's verdict in the first Toyota sudden acceleration case to go to trial, *Bookout v. Toyota*. The successful result in *Bookout v. Toyota* resulted in Toyota choosing to settle their remaining sudden acceleration cases. Simply put, there could be no better team to try the case for the Yingling family which, again, if successful, will only serve to benefit all plaintiffs.

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In addition, the damages to Mr. Scheuer as described in the Plaintiff Fact Sheet appear to be primarily soft tissue injuries with $5,000.00-$10,000.00 in medical bills and a few months out of work. In contrast, Mr. Yingling was a 35 year old father who lingered 17 days with a profound brain injury and dying, left behind a wife and five children.

Lead counsel chose *Yingling* as the first bellwether trial after months of deliberation and consideration. Your Honor appointed Lead Counsel to act in the best interests of all plaintiffs, not Lead Counsel. Lead Counsel, and Mr. Hilliard in particular, obviously chose *Yingling* to be the first bellwether trial because of its merits. Mr. Hilliard has apparently now changed his mind after learning that he would not be participating in the trial or sharing in any fees. Mr. Hilliard should not be permitted to tamper with the initial bellwether trial selection because his proposals were rebuked.

Very truly yours,

Victor H. Pribanic

VHP:lmw

Exhibit 9

Doreen Lundrigan

From: Victor Pribanic <vpribanic@pribanic.com>
Sent: Friday, August 14, 2015 11:03 AM
To: Doreen Lundrigan
Subject: FW: Yingling #9108 - GM Ignition System Cases

> Victor H. Pribanic
> Pribanic & Pribanic
> 1735 Lincoln Way
> White Oak, Pa 15131
> (412) 672-5444
vpribanic@pribanic.com

On 8/14/15, 10:54 AM, "Steve Berman" <Steve@hbsslaw.com> wrote:

>My assistant is out can someone send one
>
>
>Steve Berman | Hagens Berman Sobol Shapiro LLP | Direct: (206) 268-9320
>
>-----Original Message-----
>From: Cabraser, Elizabeth J. [mailto:ECABRASER@lchb.com]
>Sent: Friday, August 14, 2015 7:39 AM
>To: Steve Berman; Bob Hilliard
>Cc: Steve Shadowen; Thomas J. Henry; Michael E. Henry
>Subject: Re: Yingling #9108 - GM Ignition System Cases
>
>What's the conf call schedule on this today?
>
>Sent from my BlackBerry 10 smartphone.
>-----Original Message-----
>From: Steve Berman
>Sent: Friday, August 14, 2015 7:32 AM
>To: Cabraser, Elizabeth J.; Bob Hilliard
>Cc: Steve Shadowen; Thomas J. Henry; Michael E. Henry
>Subject: RE: Yingling #9108 - GM Ignition System Cases

>
>
>Well said
>
>
>Steve Berman || Hagens Berman Sobol Shapiro LLP || Direct: (206) 268-9320
>
>-----Original Message-----
>From: Cabraser, Elizabeth J. [mailto:ECABRASER@lchb.com]
>Sent: Thursday, August 13, 2015 11:02 AM
>To: Bob Hilliard
>Cc: Steve Berman; Steve Shadowen; Thomas J. Henry; Michael E. Henry
>Subject: Re: Yingling #9108 - GM Ignition System Cases
>
>That is the crux of the bellwether issue:
>Does the value-and legitimacy- of the MDL bellwether system derive from
>priority trial of the "best" case, or the most representative case?
>Most authorities say the latter. The keystone of any letter or motion
>response the Co-Leads file should not be a "we're the Co-Leads, and
>you're not" us vs them argument, but the point that the order of
>bellwethers was derived to achieve the most common benefit out of the
>exercise by Recognizing it's function: to have the experience of a
>truly representative trial inform the entire litigation. Yingling is an
>excellent death case-there is no argument about that. And it may well
>be that, in a non-bellwether system, plaintiffs would make every effort
>to have it tried first. But- New GM will argue that a Yingling
>plaintiff's verdict is anomalous and will not inform values for the remaining cases.
>There is no similar argument that the current #1 case is anmalous- your
>statistics show that and should be centerpieces.
>Sent from my BlackBerry 10 smartphone.
>From: Robert C. Hilliard
>Sent: Thursday, August 13, 2015 10:38 AM
>To: Cabraser, Elizabeth J.
>Cc: Steve Berman; Steve Shadowen; Cabraser, Elizabeth J.; Thomas J.
>Henry; Michael E. Henry
>Subject: Re: Yingling #9108 - GM Ignition System Cases
>
>
>also:
>
>there are 1,910 cases in the mdl.
>
>1,855 have no black box download available. (97.1%)
>
>That means our current #1 case is a bellwether for 97.1% of the cases.
>
>
>
>
>
>
>

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>
>_____
>
>ROBERT C. HILLIARD
>-- Attorney at Law --
>
>Board Certified in Personal Injury
>Trial Law & Civil Trial Law
>
>hmglawfirm.com<http://www.hmglawfirm.com>
>
>
>CONFIDENTIALITY NOTICE
>This electronic mail transmission contains information which is
>confidential and privileged under the attorney-client communication
>privilege and/or the attorney work product doctrine and should be read
>or retained only by the intended recipient. If you have received this
>transmission in error, please immediately notify the sender and delete
>it from your system.
>
>On Aug 13, 2015, at 10:48 AM, Cabraser, Elizabeth J.
><ECABRASER@lchb.com<mailto:ECABRASER@lchb.com>> wrote:
>
>My concern is that the (for shorthand) "no car" issue could get ruled
>on via SJ- and a bad ruling would then eliminated many cases
>
>Sent from my BlackBerry 10 smartphone.
>From: Steve Berman
>Sent: Thursday, August 13, 2015 8:45 AM
>To: Bob Hilliard; Cabraser, Elizabeth J.
>Subject: FW: Yingling #9108 - GM Ignition System Cases
>
>
>His letter is toned down
>
>What about the merits issue first case no car no download
>
>
>Steve Berman | Hagens Berman Sobol Shapiro LLP | Direct: (206) 268-9320
>
>From: Lisa Wilson [mailto:lisa@pribanic.com]
>Sent: Thursday, August 13, 2015 8:36 AM
>To: Bob Hilliard; Steve Shadowen; Steve Berman; Elizabeth Cabraser
>Cc: Matthew Doebler; Ernest Pribanic; Victor Pribanic
>Subject: Yingling #9108 - GM Ignition System Cases
>
>
>FROM VICTOR H. PRIBANIC, ESQUIRE

>
>
>Gentlemen and Ms. Cabraser,
>
> The Motion I mentioned yesterday is attached - please let
>me know if we can discuss this today.
>
> Thank you for your attention.
>
>
>Victor
>
>
>DICTATED BUT NOT REVIEWED
>
>
>This message is intended for the named recipients only. It may contain
>information protected by the attorney-client or work-product privilege.
>If you have received this email in error, please notify the sender
>immediately by replying to this email. Please do not disclose this
>message to anyone and delete the message and any attachments. Thank you.
>
>
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>
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>
>
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>immediately by replying to this email. Please do not disclose this
>message to anyone and delete the message and any attachments. Thank you.

Exhibit 10

Lance Cooper

From: Steve Berman <Steve@hbsslaw.com>
Sent: Friday, January 22, 2016 6:48 AM
To: GM Leadership
Cc: Bob Hilliard; Elizabeth Cabraser
Subject: FW: Email to Exec Committee

Dear EC Members—

As you know, we have been in trial in New York City these past two weeks on the *Scheuer* bellwether case. Last evening, Mr. Scheuer decided to voluntarily dismiss his case. GM has stipulated to a dismissal with prejudice under Rule 41(a)(1)(A), with both sides bearing their own fees and costs.

We believe that Mr. Scheuer has made a carefully considered and correct decision. As you may have read in media accounts, GM filed a motion this week to add witnesses and submit evidence that would allegedly demonstrate that Mr. Scheuer committed a fraud on the Court. We vigorously contested the motion, but the Court, in a ruling from the bench, largely sided with GM. After rendering that ruling, Judge Furman then strongly encouraged the parties to meet and find a way to make the case "go away." That suggestion, coupled with very thoughtful deliberation, has resulted in the stipulation of dismissal.

This result is, of course, disappointing. We believe that Plaintiff had been stating a strong case against GM. The expert testimony, in particular, was outstanding, and our trial team has been performing wonderfully. Judge Furman even called the trial "enjoyable."

Everyone on the trial team has been pouring their hearts and souls into this case. And we have greatly appreciated all of the hard work that the EC members have devoted to the trial and trial preparation as well. So, it is with great regret that we have to deliver this news.

Nonetheless, we are not discouraged and look forward to continuing to zealously prosecute these cases. The evidence of GM's wrongful conduct is very strong, and we look forward to presenting it to future juries.

Steve and bob

Hagens Berman Sobol Shapiro LLP
1918 Eighth Ave Suite 3300 - Seattle, WA 98101
Direct: (206) 268-9327
Sean@hbsslaw.com | www.hbsslaw.com | HBSS Blog

Named to **2015 Plaintiff's Hot List** by *The National Law Journal*

Exhibit 11

1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF CALIFORNIA

3 *BEFORE THE HONORABLE CHARLES R. BREYER, U.S. DISTRICT JUDGE*

4 - - -

5 JACQUELINE CORLEY, MAGISTRATE JUDGE

6 ROBERT S. MUELLER, III, SETTLEMENT MASTER

7 - - -

8 IN RE: VOLKSWAGEN "CLEAN DIESEL")
MARKETING, SALES PRACTICES, AND)
9 PRODUCTS LIABILITY LITIGATION,)
) Case No.
10) 3:15-MD-02672-CRB

11

--o0o--

12

REPORTER'S TRANSCRIPT OF
13 CASE MANAGEMENT CONFERENCE
THURSDAY, JANUARY 21, 2016
14 SAN FRANCISCO, CALIFORNIA

15 --o0o--

16 **APPEARANCES:**

17 **FOR THE UNITED STATES OF AMERICA:**

18 UNITED STATES DEPARTMENT OF JUSTICE
Environment & Natural Resources Division
19 BY: Robert D. Mullaney, Senior Counsel
Environmental Enforcement Section
20 301 Howard Street, Suite 1050
San Francisco, California 94105
21 415-744-6483 / Fax: 415-744-6476
Email: Robert.Mullaney@usdoj.gov
22

23 (Appearances continued on Page 2)

24 Reported by: Victoria L. Valine, CSR No. 3036, RMR, CRR
Pro Tem Court Reporter
25 victoriavalinecsr@gmail.com
916.798.5946

1 expenses, and you have to manage time, and I think your Honor's
2 pointed out those are two of the most important things in this
3 case, particularly if it proceeds along the settlement track.
4 So thank you for your consideration.
5 THE COURT: Thank you.
6 MR. SHADOWEN: Good afternoon, your Honor. Steve
7 Shadowen. I'm appearing on behalf of Bob Hilliard, who is on
8 trial with Judge Furman, in the Southern District of New York.
9 There are two aspects of this case that really call out for
10 the appointment of Mr. Hilliard to a leadership position. That
11 is, this is a social problem that involves people who are
12 injured, stakeholders, and decision-makers other than the
13 plaintiffs in this case, and there's going to be a need to
14 coordinate with those other decision-makers.
15 Secondly, these cars are still on the road, so there's a
16 need for speed in this litigation.
17 As one of the co-lead counsel in the GM ignition switch
18 litigation, Mr. Hilliard developed very close and trusting
19 relationships with the House and Senate Investigating
20 Committees.
21 Chairman Murphy of the House Oversight and Investigation
22 Committee, has already held hearings, will be hearing more, and
23 one of Bob's roles in the GM litigation was to coordinate --
24 just facilitate with those committees.
25 Similarly, Mr. Hilliard worked closely with Ken Fineberg in

1 developing the compensation protocols in that litigation.
2 And he also worked closely with Public Citizen and other
3 consumer advocacy groups.
4 With respect to speed, from the date that Bob and two other
5 co-lead counsel were appointed in the GM litigation, until the
6 start of the first bellwether trial in GM, in a case involving
7 124 deaths and thousands of injuries, 15 months, and Bob is the
8 lead trial counsel in that case, that's going on right now.
9 He's tracked over a hundred jury trials. He's a personable
10 guy who makes -- he's the grease that makes things happen. He
11 gets on the phone. He talks to people, and he's a guy that gets
12 things done.
13 THE COURT: So does he have time to do this?
14 MR. SHADOWEN: He does. We have the first trial. I
15 just got a text while I was sitting here that plaintiffs rested,
16 and that concludes our involvement in the bellwether cases
17 for GM.
18 There will be some other winding up, but I talked to Bob
19 specifically about that question, because I knew you would ask
20 it. He says he's ready to go starting next week.
21 THE COURT: Thank you.
22 MR. SHADOWEN: Thank you.
23 MR. BASSER: May it please the Court. Good morning,
24 your Honor. Stephen R. Basser of Barrack, Rosos & Bacine from
25 their San Diego office.

Exhibit 12

Lance Cooper

From: Steve Berman <Steve@hbsslaw.com>
Sent: Friday, January 22, 2016 4:30 PM
To: GM Executive Committee Group
Subject: FW: GM LIT FUND

Pls get current on assessments

Steve Berman | **Hagens Berman Sobol Shapiro LLP** | Direct: (206) 268-9320

From: Stefanie Knowlton
Sent: Friday, January 22, 2016 2:41 PM
To: Steve Berman
Subject: GM LIT FUND

The GM Lit Fund has a low balance of **$144,931.57**. Here are the firms that still need to contribute from the last 3 assessment calls.

FYI - Nast Law and Motley Rice have each contributed 50K for a 4th assessment, although we have only requested 3 so far.

Summary of Contributions /Sources of Litigation Fund

Cotchett, Pitre & McCarthy	$ 150,000.00		Assessment Payment 10/9/2014, 9/29/15, 12/10/15
Peter Prieto	$ 150,000.00		Assessment Payment 10/7/2014, 9/18/15, 12/4/15
Lieff, Cabraser, Heiman	$ 300,000.00	**$150,000.00 DUE (Assessment 3)**	Assessment Payment 10/9/2014, 9/29/15
HBSS	$ 450,000.00		Assessment Payment 10/7/2014, 9/29/15, 12/4/2015
Susman Godfrey	$ 150,000.00		Assessment Payment 10/9/2014, 9/29/15, 12/7/2015
NastLaw	$ 200,000.00		Assessment Payment 10/9/2014, 9/29/15, 12/30/15
Robert C. Hilliard, L.L.P.	$ 450,000.00		Assessment Payment 10/9/2014, 9/29/15, 12/14/15
Grant & Eisenhofer PA	$ 150,000.00		Assessment Payment 10/10/2014, (2 payments) 12/4/2015

Boies, Schiller & Flexner, LLP	$ 50,000.00	**$100,000.00 DUE (Assessments 2 & 3)**	**Assessment Payment 10/15/2014**
Robinson Calcagnie Robinson	$ 150,000.00		Assessment Payment 10/15/2014, (double payment) 12/7/2015
Motley Rice LLC	$ 200,000.00		Assessment Payment 10/9/2014, 9/29/15, (double payment) 12/4/15
Otterbourg P.C.	$ 100,000.00	**$50,000.00 DUE (Assessment 3)**	**Assessment Payment 10/15/2014, 12/30/2015**
Weitz & Luxenberg, PC	$ 100,000.00	**$50,000.00 DUE (Assessment 3)**	**Assessment Payment 10/20/2014, 9/29/15**
Barrios Kingsdorf & Casteix, LLP	$ 150,000.00		Assessment Payment 10/20/2014, (double payment) 12/11/15
Lance Cooper	$ 50,000.00	**$100,000.00 DUE (Assessments 2 & 3)**	**Assessment Payment**

$ 2,800,000.00

Stefanie Knowlton | Accountant
Hagens Berman Sobol Shapiro LLP
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Direct: (206) 268-9376
stefanie@hbsslaw.com | www.hbsslaw.com | HBSS Blog

Named to **2015 Plaintiff's Hot List** by *The National Law Journal*