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March 29, 2018

VIA E-MAIL TRANSMISSION AND ECF FILING

The Honorable Martin Glenn
United States Bankruptcy Judge
United States Bankruptcy Court
Southern District of New York
Alexander Hamilton Custom House
One Bowling Green
New York, New York 10004

**Re: In re Motors Liquidation Company, et al.
Case No. 09-50026 (MG)**

Dear Judge Glenn:

On March 26, 2018, Brown Rudnick LLP filed a letter with the Court [ECF No. 14257] (“**BR Letter**”) on behalf of certain economic loss and personal injury plaintiffs (“Plaintiffs”) seeking, *inter alia*, to adjourn the reporting date for updating the Court with respect to the Late Claims matter from April 9 to April 25, 2018. The Court granted the relief requested on March 27, 2018 [ECF No. 14258].

The BR Letter referred to some upcoming events in MDL 2543. New GM is writing to inform the Court of additional proceedings pending in MDL 2543 that bear on Plaintiffs’ late claims.

In particular, the BR Letter references Judge Furman’s forthcoming decision on the “benefit of the bargain” issue and how that may impact the Late Claims matter.¹ To more fully understand other relevant MDL events, attached as **Exhibit “A”** is a Schedule of Certain MDL 2543 Events That May Impact the Late Claims Matter. Likewise, since the BR Letter refers to Plaintiffs’ submissions of additional expert reports for economic loss claims, the attached Exhibit “A” reflects the timing of *Daubert* motion practice relating to those experts.

¹ The “benefit of the bargain” issue concerns whether vehicle owners who purchased a vehicle with a defect have legally cognizable benefit-of-the-bargain damages after the manufacturer recalls and repairs the defect, or offers to repair it, free of charge.

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Furthermore, at the March 22, 2018 MDL Conference, Judge Furman stated that he would enter an order establishing procedures to cull pre-363 Sale accident cases pending in the MDL, much like MDL Order No. 140² did for post-363 Sale accident cases. Generally, MDL Order No. 140 covered a number of procedures to apply Judge Furman's airbag deployment summary judgment opinion and other applicable legal defenses to post-363 Sale accident cases, and that process is continuing. As discussed with Judge Furman at that conference, there is a substantial overlap between the pre-363 Sale accident cases against New GM in the MDL and the personal injury or accident late claims filed against the GUC Trust in the Bankruptcy Court.³ New GM will therefore provide a copy to this Court of all MDL orders regarding pre-363 Sale accident cases.

New GM respectfully requests the Court's consideration of these related proceedings.

Respectfully submitted,

/s/ Arthur Steinberg

Arthur Steinberg

AJS/sd

² A copy of MDL Order No. 140 is attached as **Exhibit "B."**

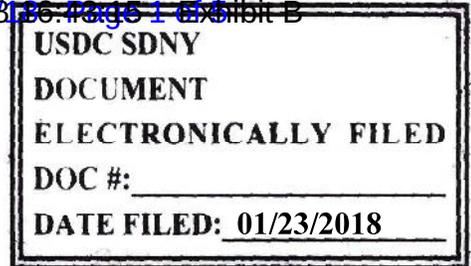
³ Based on current available information, there are 334 accident claimants in MDL 2543 that have also sought authority to file late proofs of claim in the Bankruptcy Court.

Exhibit A

Schedule Of Certain MDL 2543 Events That May Impact The Late Claims Matter

<u>TIMING</u>	<u>TYPE</u>	<u>DESCRIPTION</u>
Completed 12/8/17	Economic Loss (EL)	Briefing on New GM's Motion for Summary Judgment on Benefit-of-the-Bargain Damages
Completed 3/8/18	EL	Briefing regarding dismissal of certain economic loss claims and categories of damages in 35 states (manifest defect, damages for alleged lost time, and unjust enrichment)
4/5/18	Personal Injury (PI)	Submission of Joint Proposed Order re procedures for dismissal of potentially non-meritorious pre-Sale personal injury claims on grounds of statute of limitations, statute of repose, and failure to plead a defect/causation
4/20/18	EL	Plaintiffs' Rebuttal Expert Reports due
4/27/18 – 6/15/18	PI	Briefing on New GM's Consolidated Summary Judgment Motion in personal injury cases on ground that air bag deployed
5/4/18 – 7/20/18	EL	Briefing on Plaintiffs' Class Certification Motion related to three bellwether states (CA, TX, and MO)
5/4/18 – 7/20/18	EL	Briefing on New GM's Summary Judgment Motion and Daubert Motion related to three bellwether states (CA, TX, and MO)
5/15/18 – 7/3/18	PI	Briefing on New GM's Consolidated Summary Judgment Motion related to statute of limitations/repose
6/22/18 – 8/10/18	EL	Briefing on New GM's Daubert Motion (if any) related to Plaintiffs' Motion for Class Certification
6/22/18 - 8/10/18	EL	Briefing on Plaintiffs' Daubert Motion (if any) related to New GM's Motion for Summary Judgment
September or October 2018 2018 (or as soon thereafter as is reasonably practicable)	EL	Class Certification/Summary Judgment Hearing

Exhibit B



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)
14-MC-2543 (JMF)

ORDER NO. 140

This Document Relates to All Actions

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JESSE M. FURMAN, United States District Judge:

[Regarding the January 8, 2018 Status Conference]

The Court, having held a Status Conference on January 8, 2018, and having given counsel an opportunity to be heard on the agenda items set forth in the parties' January 3, 2018 tentative agenda letter (Docket No. 4918), issues this Order to memorialize the actions taken and rulings made at the Status Conference.

I. NEXT STATUS CONFERENCE

A Status Conference will be held **Friday, March 23, 2018, at 9:30 a.m. EDT** in Courtroom 1105 of the Thurgood Marshall United States Courthouse, 40 Centre Street, New York, New York.

II. NEXT STEPS FOR ALL PLAINTIFFS ALLEGING SUCCESSOR LIABILITY CLAIMS

Consistent with the Court's comments at the Status Conference, by **Wednesday, January 24, 2018**, Lead Counsel will inform New GM of their position on whether the successor liability claims of personal injury plaintiffs subject to the Court's August 3, 2017 and December 19, 2017 Orders should be determined based on the place of the incident, plaintiff's place of residence, or some other method, and the reasons for this position. *See In re Gen. Motors LLC Ignition Switch Litig.*, 2017 WL 3382071 (S.D.N.Y. Aug. 3, 2017); *In re Gen. Motors LLC Ignition Switch Litig.*,

2017 WL 6509256 (S.D.N.Y. Dec. 19, 2017). The parties will then meet and confer by **Thursday, January 25**, in an attempt to resolve any disagreements on the choice of law rules. By **Friday, January 26**, New GM will file on the main MDL docket a list of personal injury claims that it believes should be dismissed under the Court's successor liability rulings. By **Wednesday, February 21**, Lead Counsel will file on the main MDL docket: (1) a list of the plaintiffs who agree to voluntarily dismiss their claims; (2) a list of plaintiffs as to whom counsel plans to move to withdraw; and (3) a list of the plaintiffs who intend to press their claims, along with the factual and/or legal bases as to why those plaintiffs believe dismissal is not appropriate. By **Wednesday, February 28**, all voluntary dismissals and motions to withdraw shall be filed. By **Friday, March 9**, Lead Counsel and New GM will file a joint letter proposing next steps to address any remaining disputes on successor liability claims.

Moreover, if the Court grants New GM's motion for reconsideration with regard to New York successor liability law (which would result in summary judgment against Texas and Virginia plaintiffs), then the same process will be followed (but with likely different due dates) for those personal injury plaintiffs whose successor liability claims are governed by New York law.

Furthermore, within fourteen (14) days after the Bankruptcy Court rules on whether to permit the filing of late claims ("Late Claims Ruling"), the parties shall meet and confer to identify those jurisdictions (from the 35 that remain) where economic loss and personal injury successor liability claims should be dismissed based on the Court's successor liability rulings and the Late Claims Ruling. If the parties are unable to reach agreement, Lead Counsel and New GM shall file a joint letter proposing to the Court procedures for resolving successor liability issues in the remaining 35 jurisdictions.

III. NEXT STEPS FOR THE PERSONAL INJURY CASES

A. Post-Sale Production Part and Service Part and Category C Cases

Consistent with the Court's comments at the Status Conference, by **Monday, January 22, 2018**, New GM will submit a letter (not to exceed ten single-spaced pages) proposing a specific plan for next steps for the post-Sale Production Part and Service Part claims, as well as addressing proposed Category C bellwether procedures. (*See* Order No. 107 at ¶ 3, Docket No. 3081 (defining categories).) By **Monday, January 29**, Lead Counsel will file a response (not to exceed ten single-spaced pages).

B. Air Bag Deployment Cases

Consistent with the Court's comments at the Status Conference, by **Friday, January 19, 2018**, New GM will file on the main MDL docket a list of claims that it has currently identified as ones it believes should be dismissed in light of the Court's December 28, 2017 Opinion and Order. *See In Re: General Motors LLC Ignition Switch Litig.*, 2017 WL 6729295, at *1 (S.D.N.Y., Dec. 28, 2017). By **Wednesday, February 14**, counsel for plaintiffs included on that list will file on the main MDL docket: (1) a list of the plaintiffs who agree to voluntarily dismiss their claims; (2) a list of plaintiffs as to whom counsel plans to move to withdraw; and (3) a list of the plaintiffs who intend to press their claims, along with the factual bases as to why those plaintiffs believe dismissal is not appropriate. By **Wednesday, February 28**, those plaintiffs who agree to dismiss will file voluntary dismissals, and counsel for plaintiffs who intend to withdraw will file motions to withdraw. By **Friday, March 9**, Lead Counsel and New GM will file a joint letter identifying the number of and proposing next steps to address any remaining disputed claims in this category.

C. “No Plausibly Pled Defect / Causation” Cases

Consistent with the Court’s comments at the Status Conference, by **Wednesday, January 31, 2018**, New GM will file its motion to dismiss claims that New GM believes should be dismissed for failure to state a claim. By **Wednesday, February 14**, counsel for plaintiffs included on that list will file on the main MDL docket: (1) a list of the plaintiffs who agree to voluntarily dismiss their claims; (2) a list of plaintiffs as to whom counsel plans to move to withdraw; and (3) a list of the plaintiffs who intend to press their claims (specifically identifying which plaintiffs *intend* to amend their complaints). By **Wednesday, February 28**, those plaintiffs who agree to dismiss will file voluntary dismissals, and counsel for plaintiffs who intend to withdraw will file motions to withdraw. By **Friday, March 9**, Lead Counsel and New GM will file a joint letter identifying the number of and proposing next steps to address any remaining disputed claims in this category, including the proposed timing for any amended complaints.

D. Statute of Limitation/Repose Cases

Consistent with the Court’s comments at the Status Conference, by **Wednesday, January 31, 2018**, New GM will file a list of claims that New GM believes are barred by applicable statute of limitation or applicable statute of repose as discussed at the Status Conference. By **Wednesday, February 14**, counsel for plaintiffs included on that list will file on the main MDL docket: (1) a list of the plaintiffs who agree to voluntarily dismiss their claims; (2) a list of plaintiffs as to whom counsel plans to move to withdraw; and (3) a list of the plaintiffs who intend to press their claims, along with the basis as to why those plaintiffs believe their claims are not barred. By **Wednesday, February 28**, those plaintiffs who agree to dismiss will file voluntary dismissals, and counsel for plaintiffs who intend to withdraw will file motions to withdraw. By **Friday, March 9**, Lead Counsel and New GM will file a joint letter identifying the number of and proposing next steps to address any remaining disputed claims in this category.

IV. NEW GM'S MOTION TO COMPEL REGARDING TOP CLASS ACTIONS

Consistent with the Court's comments at the Status Conference, by **Monday, January 22, 2018**, Lead Counsel shall submit in camera the four withheld emails between Top Class Actions, LLC ("TCA") and the Hagens Berman firm that were not already produced to New GM by TCA in response New GM's April 28, 2017 subpoena, as well as copies of the two different consumer form submissions. By that same date, the parties will submit supplemental briefs (not to exceed three single-spaced pages) addressing Lead Counsel's attorney-client privilege and work product assertions for the form submissions and Lead Counsel's work product assertions over the four withheld emails between Hagens Berman and TCA.

V. SETTLEMENT

Consistent with the Court's comments at the Status Conference, New GM and the Bailey Peavy Bailey firm should: (1) immediately retain Robert Black of Mehafy Weber as a mediator in their settlement discussions; and (2) by no later than **Thursday, February 15, 2018**, submit a joint letter or competing letters (not to exceed five single-spaced pages) reporting whether those discussions have been fruitful or not, and if they have not been successful, what the parties propose as next steps. Additionally, the parties should continue to keep the Court apprised of developments regarding settlement.

SO ORDERED.

Dated: January 23, 2018
New York, New York



JESSE M. FURMAN
United States District Judge