

Products Liability Law Daily Wrap Up, TOP STORY—MOTOR VEHICLES—S.D.N.Y.: Removal of co-lead counsel sought in GM ignition switch MDL, (Jan. 26, 2016)

By Pamela C. Maloney, J.D.

Lance Cooper, the Georgia attorney who uncovered the defect in General Motors ignition switches that led to the recall of 30 million vehicles, has asked Judge Jesse Furman who is presiding over the multi-district litigation case against GM to remove co-lead counsel, Robert Hilliard, Steve Berman, and Elizabeth Cabraser, alleging that they violated their fiduciary duty in selecting the *Scheuer* case to proceed as the first bellwether trial. Robert S. Scheuer voluntarily dismissed with prejudice all claims against the automaker on January 22, 2016 (*In re: General Motors LLC Ignition Switch Litigation*, January 25, 2016).

Breach of fiduciary duty allegations. According to the motion to remove, in making the decision to remove the *Yingling v. GM* case as the first bellwether trial and to substitute the arguably weaker *Scheuer* case, co-lead counsel sought to punish the lawyer who represents the Yingling family and to put their interests in retaining control of the litigation over those of the MDL plaintiffs. Co-lead counsel's breach of fiduciary duty was evidenced by, among other examples, (1) selecting five of the six bellwether cases from Mr. Hilliard's personal case inventory; (2) failing to consider state court cases when selecting trials for the bellwether schedule; (3) failing to coordinate with other lawyers involved in the MDL; (4) failing to involve most of the Executive Committee members in discussions around important issues related to the litigation; (5) working with GM's counsel to ensure that other law firms were "essentially frozen out from the strategic and tactical decisions regarding the discovery process"; (6) thwarting efforts by the state court trial lawyers to coordinate the prosecution of the coordinated actions, and (7) selecting trials for the bellwether schedule before Kenneth Feinberg concluded his work with the GM Ignition Switch Compensation Claims Resolution Facility, which precluded consideration of may claims not resolved through that process from being considered as bellwether cases.

Scheuer loss. Calling the *Scheuer* case the very definition of an "outlier," the motion charges that it never should have been tried, let alone selected as the first bellwether trial "in one of the most well-documented deadly vehicle defect cover-up cases in history." The *Scheuer* case involved a post-recall incident with no vehicle, no download, and minimal injuries. Furthermore, while it appeared that the vehicle was available at the time Mr. Scheuer realized he had a potential claim against GM, the vehicle somehow had not been preserved. In contrast, the *Yingling* case, which was a wrongful death case with strong evidence, was obviously a better case despite co-lead counsels' argument that the *Scheuer* case was more representative of the existing cases. As it turned out, Mr. Scheuer was allowed to testify with regard to his damages and that testimony is now the subject of fraud and perjury allegations, and GM is "painting itself as a victim of fraud."

The complaint further charged that Mr. Hilliard had packaged most of his cases for settlement but chose not to settle *Scheuer* and one other case so that he could remain the lead trial lawyer in the MDL and continue to receive compensation.

In light of the alleged breach of fiduciary duty, the motion asks the court to remove the co-leads, appoint new co-leads, and provide a process pursuant to which the bellwether trial schedule can be reevaluated.

The case is No. 14-MD-2543 (JMF).

Attorneys: Elaine T. Byszewski (Hagens Berman Sobol Shapiro LLP), Major A. Langer (Perona, Langer, Beck & Lallande), and Mark P. Robinson, Jr. (Robinson Calcagnie Robinson Shapiro Davis Inc.) for plaintiffs. Andrew Baker Bloomer (Kirkland & Ellis LLP), Anne M. Talcott (Schwabe Williamson & Wyatt PC), and Arthur Jay Steinberg (King & Spalding LLP) for General Motors LLC, General Motors Holding, LLC, and General Motors Co. Michael T. Navigato (Bochte, Kuzniar & Navigato, LLP) for Don McCue Chevrolet, Inc. Melissa M. Merlin (Husch Blackwell Sanders, LLP) for Continental Automotive Systems US, Inc. Lance Cooper (The Cooper Firm)

Companies: General Motors LLC; General Motors Holding, LLC; General Motors Co.; Don McCue Chevrolet, Inc.; Continental Automotive Systems US, Inc.

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