

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE CHARLES R. BREYER, JUDGE

IN RE: VOLKSWAGEN "CLEAN)
DIESEL" MARKETING, SALES) Master File No.
PRACTICES, AND PRODUCTS) 3:15-MD-02672-CRB
LIABILITY LITIGATION.) MDL No. 2672
_____)

San Francisco, California
Thursday, April 21, 2016

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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(Appearances continued on next page)

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Official Reporter - U.S. District Court***

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BY: MATTHEW D. SLATER, ESQUIRE

(Multiple other counsel present in the courtroom as reflected in the minutes.)

1 Thursday - April 21, 2016

8:02 a.m.

2 P R O C E E D I N G S

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4 **THE CLERK:** Calling case 15-MD-2672, In re Volkswagen
5 and Clean Diesel Marketing Sales Practices and Products
6 Liability Litigation.

7 Appearances, Counsel.

8 Counsel, if you would come forward to the podium.

9 **MS. CABRASER:** Good morning, Your Honor. Elizabeth
10 Cabraser, lead counsel on behalf of the PSC for plaintiffs.

11 **THE COURT:** Good morning.

12 **MR. VAN EATON:** Good morning, Your Honor. Josh
13 Van Eaton for the Justice Department, government coordinating
14 counsel. Here with my colleague Beth Engel.

15 So Your Honor knows, the FTC is also present today and, I
16 believe, will make an appearance.

17 **THE COURT:** Great.

18 **MR. COHEN:** Good morning, Your Honor. Jonathan Cohen
19 for the Commission. With me today, as well, is my co-counsel
20 Michelle Shaffer.

21 **MR. GIUFFRA:** Good morning, Your Honor. Robert
22 Giuffra, Sullivan and Cromwell, lead counsel for Volkswagen.
23 I'm here with my colleague Sharon Nelles, and also Jeff Chase
24 from the Herzfeld & Rubin firm.

25 **THE COURT:** All right.

1 **MR. GIUFFRA:** Good morning.

2 **THE COURT:** Good morning.

3 **MS. DAWSON:** Good morning, Your Honor. Cari Dawson,
4 Alston & Bird, liaison counsel for the Porche defendants.

5 **THE COURT:** Welcome.

6 **MR. SLATER:** Good morning. Matthew Slater, Cleary
7 Gottlieb, on behalf of Robert Bosch GmbH and Robert Bosch LLC.
8 Thank you.

9 **THE COURT:** Thank you.

10 Well, good morning. Let me advise you, as I'm sure you
11 are all aware, that we are subject to CourtCall. That is, a
12 number of people have called in this morning and are
13 participating in the audio portion of the hearing by way of
14 CourtCall. And we welcome you.

15 I received a proposed agenda. And the first item on that
16 agenda is an update on settlement discussions.

17 As we left this matter on March 24th, I said to the
18 parties that by April 21st, today, I wanted a concrete plan for
19 addressing the issue of the cars on the road that are out of
20 compliance with environmental regulations.

21 I am extremely pleased to report that the parties have
22 come up with a concrete plan by today's date. And I would like
23 to publicly thank them and also to disclose the nature of the
24 agreements that have been arrived at.

25 I have received information that the parties have

1 authorized the settlement master, Director Mueller, to inform
2 me and report publicly that the United States, on behalf of the
3 Environmental Protection Agency, the EPA, the California Air
4 Resources Board, also known as CARB, in conjunction with the
5 California Attorney General's Office and Volkswagen have
6 reached an agreement in principle that addresses most of the
7 affected cars.

8 In particular, they have reached an agreement in principle
9 as to what to do about the approximate 480,000 2-liter engine
10 cars on the road and the associated environmental consequences
11 resulting from the excess emissions from these vehicles.

12 It is my understanding that the Federal Trade Commission
13 supports the agreement in principle, pending final Commission
14 approval.

15 It is also my understanding that the agreement will give
16 consumers several options, including the option to have
17 Volkswagen buy back their vehicle; and, subject to governmental
18 approval after further testing, the option to have the
19 consumer's vehicle modified in accordance with the agreement;
20 and for those consumers who have leased their car, to cancel
21 the lease and return the car to Volkswagen.

22 The consumers will not have to elect which option to
23 pursue until the consumer has had the opportunity to fully
24 evaluate the details of each option. There is nothing for the
25 consumer or their counsel to do until they receive the actual

1 formal notice.

2 I am also pleased to report that the Plaintiffs' Steering
3 Committee has also reached an agreement in principle with
4 Volkswagen. The combination of these agreements include
5 payment of substantial compensation to the consumer class
6 members in connection with the car buy back, the car
7 modification, and cancellation of lease options I have
8 previously discussed.

9 In addition, the agreement will fully address any excess
10 emissions of NOx coming from these vehicles, and the
11 environmental consequences from these excess emissions, by
12 establishing a fund for appropriate remediation efforts. In
13 addition to all these other matters, Volkswagen will be
14 required to commit other funds to promote green automotive
15 technology.

16 So, Mr. Van Eaton, on behalf of the governmental entities,
17 do you agree with what I have just recited as the agreements in
18 principle?

19 **MR. VAN EATON:** Yes, Your Honor. That absolutely is
20 correct. And I wanted to emphasize, the Justice Department
21 remains under the impression that the terms are confidential
22 and subject to an existing court order requiring
23 confidentiality of the terms.

24 **THE COURT:** I will address that.

25 **MR. VAN EATON:** Thank you, Your Honor.

1 One other note, that the terms would not become effective
2 unless and until the parties are able to reduce this to a
3 consent decree, upon which we would then seek public comment at
4 that time.

5 Thank you.

6 **THE COURT:** Absolutely. Thank you.

7 Ms. Cabraser, on behalf of Plaintiffs' Steering Committee.

8 **MS. CABRASER:** Yes, Your Honor, that is correct. We
9 have a ways to go with respect to documentation, class notice,
10 the approval process, but we are now able to start on that way.

11 **THE COURT:** On behalf of the Volkswagen entities.

12 **MR. GIUFFRA:** Yes, Your Honor. I'd like to first
13 thank the Court and Director Mueller for all you've done to
14 promote this process. There's nothing like a deadline to focus
15 persons' attention.

16 We're not aware of another MDL that's moved as quickly as
17 this one. I think we first met in December, and now we're at
18 this point four months later.

19 And I think that reflects that Volkswagen is committed to
20 winning back the trust of its customers, its dealers, its
21 regulators, and all Americans. And we think that these
22 agreements are an important step forward on the road to making
23 things right.

24 And, as Your Honor indicated, these agreements and the
25 settlements that we hope will result will compensate fully all

1 customers and remediate all environmental issues. So we think
2 they're good for consumers, they're good for the environment,
3 and they're good for Volkswagen.

4 And thank you, Your Honor.

5 **THE COURT:** Thank you.

6 Mr. Giuffra, you commented, I think, at the last hearing,
7 that you had never worked so hard in the last 30 days. I think
8 that was before March 24th. And I wanted to ask because this
9 is a status report.

10 (Laughter)

11 **THE COURT:** I wanted to get an update on that and find
12 out whether in the month between March and April you exceeded
13 that commitment. Is that correct?

14 **MR. GIUFFRA:** I think it's fair to say, Your Honor.
15 In fact, we were all at Director Mueller's offices at literally
16 3 o'clock in the morning on Saturday. We were working all
17 weekend. And I dare to think about the number of hours I
18 probably worked in the last month.

19 **THE COURT:** So you did exceed it.

20 **MR. GIUFFRA:** Close to 400, Your Honor.

21 **THE COURT:** That's perfect.

22 (Laughter)

23 **THE COURT:** And I want to just simply tell you that
24 it's my expectation -- I'm going to address this now -- it's my
25 expectation that even in this coming month you will be able to

1 best your record again.

2 (Laughter)

3 **THE COURT:** And we, the sports minded of us, call that
4 a hat trick because you'll have three in a row.

5 (Laughter)

6 **THE COURT:** And I appreciate that. Your family may
7 not, but I appreciate that. And I think all the parties do.
8 So thank you.

9 **MR. GIUFFRA:** Thank you, Your Honor.

10 And hopefully I'll get some of the summer off.

11 **THE COURT:** Some of the summer off. Well, it will all
12 depend on how one defines summer.

13 (Laughter)

14 **MR. GIUFFRA:** Thank you very much, Your Honor.

15 **THE COURT:** Okay. So, as Mr. Giuffra and the parties
16 have pointed out, there is a definite momentum to resolving
17 these issues. As Ms. Cabraser points out, there is still a lot
18 of work to be done in terms of the details, in terms of the
19 documentation.

20 So in order to bring this to a successful conclusion, I
21 want to set some deadlines for the public disclosure of these
22 documents and, of course, for the review by the public and
23 those interested parties of these agreements.

24 First, the United States shall file any consent decrees
25 memorializing their agreements with Volkswagen on or before

1 June 21st, 2016. That is in about 60 days.

2 Second, the Plaintiffs' Steering Committee shall file a
3 motion for preliminary approval of the settlement of the
4 consumer class action complaint on or before June 21st, 2016.

5 The Court then will hold a hearing on the preliminary
6 approval motion on July 26, 2016, at 8:00 a.m.

7 These filings will be public. And the public will have an
8 opportunity to fully review and evaluate the proposed
9 agreements before they are approved or acted upon by the Court.

10 However, in the meantime, while the final documents and
11 details are being negotiated, and clients are being consulted,
12 it is critically important, as the Justice Department points
13 out, all governmental entities point out, that the negotiations
14 and the tentative agreements remain confidential.

15 Therefore, I am ordering all parties, the United States,
16 the Plaintiffs' Steering Committee and Volkswagen, to continue
17 to keep the contents of the discussions and any proposed
18 agreements confidential until they are filed with the Court.
19 And today I am signing an order that says that.

20 I understand that the parties may have already agreed on
21 the proposed order. I will ask you to file that today so I may
22 review it and, if appropriate, enter it.

23 Yes.

24 **MR. VAN EATON:** Absolutely. We will send that to
25 chambers as soon as the hearing concludes.

1 Thank you.

2 **THE COURT:** Again, I want to emphasize perhaps
3 something that is not -- I think it's worthy of further
4 emphasis, is that the fact that there is confidentiality in the
5 negotiation of the agreements in no way is intended to suggest
6 that the public and interested parties will not have an
7 opportunity to review and comment on any proposed agreement.
8 That will take place. But while they are being negotiated, it
9 is essential that they remain confidential.

10 There's, sort of, a second reason, if I might just point
11 out, which is, this is a consumer class action in which there
12 are many, many people affected by it. A number of people who
13 may have no familiarity with litigation or class actions or the
14 court processes. Yet these people who have purchased these
15 vehicles are very concerned about what will happen with them
16 financially and what will happen with their vehicle.

17 And I find it a disservice to have information about where
18 people are in terms of negotiations sort of floated out there,
19 which these consumers believe are probably the terms of any
20 final agreement. It doesn't serve them well. It gives them
21 some concern. It gives them some suggestion that perhaps maybe
22 their particular concerns won't be addressed.

23 And that doesn't further either the settlement process,
24 nor does it further the decision-making processes that they
25 themselves will have to be engaged in, in a determination of

1 whether or not a settlement is appropriate for them.

2 And so I ask the parties, in the interests of everyone who
3 is affected by this -- and I think the general public is
4 affected by this -- to withhold judgment as to what is the
5 appropriate settlement until they are presented with a proposed
6 final settlement.

7 Once they're presented with those documents, I will
8 encourage the public and encourage the interested parties to
9 make their views known. But until then, there is truly nothing
10 for them to comment on at this point.

11 Now, there are obviously several other issues that I have
12 not discussed this morning. Nor have I addressed them. And,
13 indeed, I am sure you are aware there are approximately 90,000
14 cars with 3-liter engines. As well, there are the issues of
15 fines and penalties.

16 It is the Court's expectation that the parties, in
17 addition to finalizing the agreements that I've just discussed,
18 will work expeditiously in resolving these outstanding issues.

19 Now, I have set deadlines which are aggressive. In my
20 opinion, the parties have met these deadlines. And they did so
21 only because all of them, as reported by Director Mueller, put
22 in extraordinary effort and hours, seven days a week,
23 14-hour-plus days over the last two weeks, including up to and
24 through yesterday.

25 Without the cooperation of the Department of Justice, the

1 Plaintiffs' Steering Committee, EPA, CARB, and in particular
2 The Federal Trade Commission and Volkswagen, none of this would
3 have occurred today. So I want to thank you very much.

4 And not leaving things to chance, I'm going to order
5 another status conference on May 19th, 2016, at 8:00 a.m., just
6 to make sure -- I'll use an ill-advised pun -- that this is all
7 on track or on the road to a resolution of these matters.

8 Thank you very much for coming.

9 Yes, Mr. Van Eaton.

10 **MR. VAN EATON:** May I approach, Your Honor?

11 **THE COURT:** Yes.

12 **MR. VAN EATON:** I wanted to clarify one thing. It's
13 my understanding that the FTC will submit a separate order.
14 And I just wanted to clarify that the deadline will be on track
15 with the other deadlines.

16 **THE COURT:** I appreciate that. And, yes, I welcome
17 that from the FTC.

18 **MR. VAN EATON:** Thank you.

19 **THE COURT:** Because I haven't spoken to you in
20 particular, Counsel, I just want to thank you personally.

21 **MR. COHEN:** Thank you, Your Honor.

22 **THE COURT:** Okay. We are adjourned.

23 **MR. GIUFFRA:** Thank you, Your Honor.

24 (At 8:19 a.m. the proceedings were concluded.)

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

DATE: Thursday, April 21, 2016

Katherine Sullivan

Katherine Powell Sullivan, CSR #5812, RMR, CRR
U.S. Court Reporter