

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE CHARLES R. BREYER

IN RE: VOLKSWAGEN "CLEAN DIESEL")
MARKETING, SALES PRACTICES, AND) No. 15-MD-2672 CRB
PRODUCTS LIABILITY LITIGATION)
_____) San Francisco, California
Tuesday
December 20, 2016
11:00 a.m.

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiffs: LIEFF CABRASER HEIMANN & BERNSTEIN
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BY: ELIZABETH CABRASER, ESQ.
- appeared telephonically

**For Plaintiff
U.S. DOJ:** UNITED STATES DEPARTMENT OF JUSTICE
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BETHANY ENGEL, ESQ.
- appeared telephonically

**For Plaintiff
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BY: NICKLAS A. AKERS

(APPEARANCES CONTINUED ON FOLLOWING PAGE)

Reported By: Debra L. Pas, CSR 11916, CRR, RMR, RPR
Official Reporter - US District Court
Computerized Transcription By Eclipse

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APPEARANCES: (CONTINUED)

**For Plaintiff
FTC:** FEDERAL TRADE COMMISSION
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**For Defendant
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- appeared telephonically

**For Defendant
Porsche:** ALSTON & BIRD
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**For Defendant
Bosch:** CLEARY GOTTlieb STEEN & HAMILTON, LLP
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BY: MATTHEW SLATER, ESQ.
- appeared telephonically

(Various other parties also present telephonically via
CourtConnect and as reflected in the minutes.)

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1 **DECEMBER 20, 2016**

10:59 A.M.

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

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4 **THE COURT:** Okay. Let me call the Volkswagen case,
5 please.

6 Could we have appearances.

7 **THE CLERK:** Please state your appearances on the
8 telephone, please.

9 **MS. CABRASER:** Yes. Elizabeth Cabraser, plaintiffs'
10 lead counsel for the PSC. Good morning, your Honor.

11 **THE COURT:** Good morning.

12 **MR. VAN EATON:** Good morning, your Honor. Josh
13 Van Eaton and Bethany Engel for the Justice Department
14 representing the United States.

15 **MR. COHEN:** Good morning, your Honor. Jonathan Cohen
16 for the Federal Trade Commission.

17 **MR. GIUFFRA:** Good morning, your Honor. It's Robert
18 Giuffra of Sullivan and Cromwell for the Volkswagen defendants.

19 **MS. DAWSON:** Good morning, your Honor. Cari Dawson,
20 Alston and Bird, for the Porsche defendants.

21 **MR. SLATER:** Matt Slater for Robert Bosch, GmbH and
22 Robert Bosch, LLC.

23 **MR. AKERS:** And good morning, your Honor. Nick Akers
24 for the California Air Resources Board and the California
25 Attorney General.

1 **THE COURT:** Good morning.

2 Good morning, everybody. Thank you very much for
3 appearing.

4 The Court has the following announcement. I am extremely
5 pleased to report that the parties have reached agreements as
6 to what to do about the approximately 80,000 3-liter cars on
7 the road, engine cars on the road and the associated
8 environmental consequences resulting from the excess emissions
9 from these vehicles.

10 As you all know, the 3-liter cars are what remained to be
11 addressed after the prior agreements for the 2-liter engine
12 cars.

13 I have received information that the parties have
14 authorized the Settlement Master, Director Mueller, to inform
15 me and report publicly that the United States, on behalf of the
16 Environmental Protection Agency, the EPA, the California Air
17 Resources Board, also known as CARB, in conjunction with the
18 California Attorney General's office and Volkswagen have
19 reached an agreement that addresses the 3-liter engine cars.

20 The 3-liter vehicles have been divided into two
21 generations based on the engine in the car. The first
22 generation, or Generation I, consists of model years 2009 to
23 2012 VW Touaregs and Audi Q7s. There are approximately 20,000
24 Generation I cars.

25 It is my understanding the agreement will give consumers

1 with Generation I vehicles several options, including the
2 option to have Volkswagen buy back their vehicle and, subject
3 to governmental approval after further testing, the option to
4 have a consumer's vehicle modified in accordance with the
5 agreement; and for those consumers who have leased their car,
6 the option to cancel the lease and return the car to
7 Volkswagen.

8 The second generation cars consist of all the remaining
9 3-liter diesel cars. This second generation includes all three
10 car makers: VW, Audi and Porsche. There are approximately
11 60,000 Generation II cars.

12 It is my understanding that unlike the Generation I
13 vehicles, Volkswagen believes it can make the Generation II
14 vehicles fully emissions compliant. If Volkswagen can, then it
15 will not be required to buy them back. If Volkswagen cannot,
16 then consumers with Generation II vehicles will have options
17 like those available to the Generation I consumers, including
18 the option to have Volkswagen buy back their vehicle; and
19 subject to governmental approval after further testing, the
20 option to have the consumer's vehicle modified in accordance
21 with the agreement; and for a leased car, the option to cancel
22 the lease and return the car to Volkswagen.

23 The agreement will fully address any excess emissions or
24 knocks coming from these vehicles and the environmental
25 consequences from these excess emissions by requiring

1 Volkswagen to supplement the trust that will be established
2 under the 2-liter settlement.

3 I am also pleased to report that the plaintiffs' Steering
4 Committee and Volkswagen have reached agreement on substantial
5 aspects of the relief that the consumer class members will
6 receive. It is my understanding that the Federal Trade
7 Commission supports the agreement pending resolution of the
8 remaining issues and final Commission approval. The
9 combination of these agreements will include payment of
10 substantial compensation to the consumer class members.

11 I am optimistic the parties will resolve the remaining
12 issues and I am scheduling a telephonic status conference for
13 11:00 a.m. Pacific time this Thursday for the parties to report
14 whether they have resolved these remaining issues.

15 Consumers will not have to elect what to do until they
16 have had an opportunity to fully evaluate the details of a
17 proposed settlement. There is nothing for the consumers or
18 their counsel to do until they receive the actual formal
19 notice.

20 Finally, I also understand that the plaintiffs' Steering
21 Committee and Bosch have reached an agreement in principle to
22 largely resolve litigation concerning Bosch and I expect those
23 settlement documents will be filed at the same time as the
24 plaintiffs' Steering Committee Volkswagen settlement documents,
25 which I will come to in a moment.

1 The agreements between Volkswagen, the Department of
2 Justice and the State of California will be filed today. I am
3 going to assume that everything will remain on track for the
4 other parties and order them to file a motion for preliminary
5 approval of the class action settlement on or before January
6 31st, 2017. And should the Federal Trade Commission reach a
7 final resolution, it should file its proposed order at the same
8 time.

9 The Court's confidentiality order still applies. Of
10 course, the governmental agencies are free to file their
11 agreements and at that point confidentiality no longer applies
12 to the content of those specific documents.

13 Let me thank the parties for engaging in nearly
14 round-the-clock negotiations. Let me pay tribute to the
15 Special Settlement Master, Director Mueller, and to the people
16 who have worked with him. The work is not yet complete and I
17 look forward to our conference call on Thursday to receive more
18 favorable news.

19 Thank you very much. Go back to your deliberations.
20 Thank you.

21 (Proceedings adjourned.)
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CERTIFICATE OF OFFICIAL REPORTER

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

Debra L. Pas

Debra L. Pas, CSR 11916, CRR, RMR, RPR

Tuesday, December 20, 2016