

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE CHARLES R. BREYER

IN RE: VOLKSWAGEN "CLEAN DIESEL")
 MARKETING, SALES PRACTICES, AND) No. C 15-MD-2672 CRB
 PRODUCTS LIABILITY LITIGATION)
 _____) San Francisco, California
 Thursday.
 December 22, 2016
 11:00 a.m.

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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(APPEARANCES CONTINUED ON FOLLOWING PAGE)

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Official Reporter - US District Court
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ALSO PRESENT: **JOE RICE**
Plaintiffs' Steering Committee
- - -

1 **DECEMBER 22, 2016**

11:01 A.M.

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

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4 **THE COURT:** Okay. You may call the case.

5 **THE CLERK:** Calling multi district case, No. 15-2672,
6 In Re Volkswagen "Clean Diesel" and Marketing, Sales Products
7 and Products Liability Litigation.

8 Counsel, please step forward to the podium and state your
9 appearances. Thereafter, counsel on the phone please state
10 your appearances.

11 **MS. CABRASER:** Good morning, your Honor. Elizabeth
12 Cabraser, plaintiffs' lead counsel on behalf of the plaintiffs'
13 Steering Committee.

14 **THE COURT:** Good morning. Welcome back to
15 San Francisco.

16 **MS. CABRASER:** Thank you.

17 **THE COURT:** And people on the telephone.

18 **MR. VAN EATON:** Good morning, your Honor. It's Josh
19 Van Eaton and Beth Engel from the Department of Justice
20 representing the United States.

21 **THE COURT:** Good morning.

22 **MR. COHEN:** Good morning, your Honor. This is
23 Jonathan Cohen and Megan Bartley representing the Federal Trade
24 Commission.

25 **MS. FIORENTINI:** Good morning, your Honor. This is

1 Judith Fiorentini and Jon Worm representing the California Air
2 Resources Board and the California Attorney General.

3 (Brief pause.)

4 **THE COURT:** Sorry. Do we have Volkswagen on? Did
5 they identify themselves?

6 **THE CLERK:** They did not.

7 **THE COURT:** No.

8 **THE CLERK:** Do we have the party from Volkswagen on
9 the telephone?

10 (No response.)

11 **MS. DAWSON:** I'm sorry, your Honor. This is Cari
12 Dawson, along with my colleague Karen Kennedy on behalf of the
13 Porsche defendants.

14 **MR. SLATER:** This is Matthew Slater from Cleary
15 Gottlieb for the Bosch defendants.

16 **MR. RICE:** Your Honor, this is Joe Rice on behalf of
17 the plaintiffs' Steering Committee.

18 **THE COURT:** Good morning.
19 I still want to wait for Volkswagen.

20 (Brief pause.)

21 **THE COURT:** I think Ms. Cabraser has their number.

22 **MS. CABRASER:** I'm checking, your Honor --

23 **THE COURT:** Right.

24 **MS. CABRASER:** -- right now.

25 **THE COURT:** I meant that literally, not figuratively.

1 I don't think I'll comment on anything further...

2 (Brief pause.)

3 **MS. CABRASER:** Your Honor, if we could wait just a
4 minute. I know Volkswagen counsel are trying to get on the
5 line. I don't know what the problem is.

6 **THE COURT:** Okay. Did we use a particular call-in
7 number? It's not Court Call, right?

8 **THE CLERK:** No.

9 **THE COURT:** These people are on another line.

10 **MS. CABRASER:** It's a particular number, and it seems
11 to be working for everyone else. I'm sending it out again.

12 **THE COURT:** Okay. Well, we can wait.

13 (Brief pause.)

14 **MR. GIUFFRA:** Your Honor?

15 **THE COURT:** Yes.

16 **MR. GIUFFRA:** Oh, it's Robert Giuffra and Sharon
17 Nellis from Sullivan and Cromwell for Volkswagen.

18 I'm very sorry. We apologize. I think we were dialing
19 into Court Call. Then we tried another number. I -- I have
20 never been late to court before and certainly not to a
21 telephonic conference. So, I apologize.

22 **THE COURT:** Yeah. No need to apologize. Welcome to
23 the call. All other parties are here, and Ms. Cabraser is here
24 in court.

25 So let me first announce a further settlement and after

1 that, I'll invite any party that wishes to address the Court on
2 any other issue.

3 I'm extremely pleased to report that the plaintiffs'
4 Steering Committee and Volkswagen, Porsche and Audi defendants
5 have authorized the Settlement Master, Director Mueller, to
6 inform me and report publicly that they have reached an
7 agreement in principle on a class action settlement for
8 consumer payments and benefits to the owners and lessees of the
9 approximately 80,000 3-liter cars on the road.

10 These agreements will address the consumer aspects of the
11 fixes, modifications, and/or buybacks of the 3-liter vehicles
12 and relate to the agreements I announced on Tuesday between the
13 defendants and the United States on behalf of the Environmental
14 Protection Agency, the EPA, California Air Resources Board,
15 CARB, in conjunction with the California Attorney General's
16 office.

17 As you will recall, these agreements or those agreements
18 recognize two different categories or generations of 3-liter
19 vehicles. Here are the terms of the agreement in principle for
20 each three-liter generation.

21 For Generation I vehicles, which consist of 2009 through
22 2012 vehicles Touareg and Audi Q7:

23 One, owners will have the option of a buyback or, if
24 approved by EPA and CARB, an emissions modification. Consumers
25 who leased these vehicles can also cancel their leases and

1 return the vehicles to VW or can choose to have their vehicles
2 modified, if a modification is approved by the regulators.

3 The class action settlement will also provide for
4 substantial compensation to consumer class members, including
5 owners and lessees, as well as persons who sold after
6 September 18th of last year.

7 For Generation II vehicles, this is the second category of
8 vehicles, which consist of the 2013 through 2016 Volkswagen,
9 Audi and Porsche TDI vehicles, the following terms are
10 applicable:

11 First, Volkswagen, based on discussions and interactions
12 with the regulators, believe these Generation II vehicles can
13 be made compliant with Government emissions standards to which
14 those vehicles were originally certified. And, of course, it
15 makes environmental sense to provide a reasonable opportunity
16 for such full emissions compliance to be achieved.

17 If the EPA and CARB approve an emissions compliant fix of
18 these Generation II vehicles, Volkswagen will not be required
19 to buy back vehicles as under the regulatory settlements, this
20 is deemed a vehicle recall only.

21 At the same time, the class action settlement will provide
22 that those owners receive substantial compensation. If the EPA
23 and CARB do not approve the fix for Generation II models, the
24 owners of those models that cannot be fixed to originally
25 certified emissions standards will be given the option of a

1 buyback or potentially a fix to a higher emissions standards
2 and the lessees the option to cancel and return the vehicles to
3 Volkswagen.

4 Under the class action settlement owners and lessees will
5 also receive substantial compensation. If a modification is
6 approved by the regulators, the class action settlement will
7 also provide for substantial compensation to consumer class
8 members, including owners and lessees, and receive substantial
9 compensation as well as the September 18th post 2015 sellers.

10 The process to determine fix approval for the various
11 Generation II models will take most of 2017, or perhaps longer,
12 but it will be finite. Under the class action settlement
13 consumers will not have to wait that long for compensation, as
14 half of the consumer compensation will be paid on final
15 approval of the class settlement by this Court, with the
16 remainder paid at the time of fix or buyback.

17 This agreement, as I've articulated it, in principle,
18 which I understand the Federal Trade Commission also supports
19 pending resolution of remaining issues and final Commission
20 approval, must now be developed into more detailed
21 documentation, including a formal settlement agreement, class
22 action notices and a class notice plan. These documents
23 reflecting these agreements are to be filed with the Court,
24 together with a motion for preliminary approval, no later than
25 January 31st, 2017. I anticipate a hearing on preliminary

1 approval to be set for February 14, 2017.

2 I am optimistic that the parties will stay on track during
3 this ambitious process and I am scheduling a status conference
4 for January 18th, 2017 at 8:00 a.m. Pacific time for the
5 parties to report on the process.

6 Of course, the Court's confidentiality order still applies
7 to enable the parties to work through the necessary terms,
8 details and documentation, and remains in place until the
9 motion described above is filed publicly, and that will be
10 accomplished not later than January 31st, 2017.

11 So now let me turn to Mr. Giuffra of Volkswagen and ask
12 him whether he can give all of us an update as to the progress
13 of the 2-liter settlement.

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

15 I want to thank you and, also, the Settlement Master for
16 all your efforts in bringing about this settlement. From my
17 family. In particular, my nine-year-old son. Christmas came
18 early this year.

19 I'm pleased to report, your Honor, that the 2-liter
20 settlement implementation is going well, particularly given the
21 size of this program. VW has more than 700 people handling
22 calls and administering claims. They've designated a person at
23 each of the 629 dealerships handling buybacks and lease
24 terminations.

25 We had more than 750,000 [sic] claims registered on the

1 claims portal. After December 18, VW has extended offers to
2 literally 200,000 customers. More than 104,000 customers have
3 accepted those offers. The aggregate value of those offers is
4 literally \$2 billion.

5 Appointments with customers are being scheduled daily.
6 And as of December 18, thousands of buybacks and lease
7 terminations have been completed and more than 84,000
8 appointments have been scheduled.

9 I wanted, your Honor, if possible, to flag one issue for
10 the Court. While the great majority of Volkswagen customers
11 participating in the 2-liter settlement have taken very good
12 care of their vehicles. A handful of owners have brought in
13 vehicles for buyback that have been regrettably deliberately
14 stripped of parts. In fact, at least one owner went so far as
15 to strip the car of almost every removable part, including
16 seats, doors, a radio and even the air bag.

17 Now, under the settlement agreement there was an allowance
18 made for class members whose vehicles were in accidents or
19 otherwise suffered from harm through no fault of their own.
20 But, you know, we think that deliberately stripping the
21 vehicles of their parts goes -- goes too far. And, in fact,
22 the buyback announced provided for in the agreement were based
23 on the value of the cars as a whole, including their parts.

24 So, respectfully, Volkswagen would ask the Court to advise
25 class members that if they wish to receive settlement benefits,

1 they should not be engaging in deliberate parts stripping, and
2 we would very much appreciate that, your Honor.

3 **THE COURT:** And I would echo that. I think -- I
4 think you're absolutely correct, Mr. Giuffra.

5 The amounts, the whole process was based upon what I would
6 say the average car or at least the class of cars without the
7 necessity of looking at each individual car. Because we're
8 talking about 400,000, 500,000 cars, it would have lengthened
9 this process and complicated it enormously.

10 And so I think -- I think that not just in the spirit, but
11 clearly the purpose of the agreement was to accept these cars
12 by Volkswagen in the condition that they were -- they were in
13 as they were being driven on the road, and that's -- and not to
14 strip the cars.

15 And, obviously, if there is any concern in a particular
16 case or it becomes a larger problem, the Court will address it
17 upon motion of the parties. But I think that a word of caution
18 is appropriate at this time.

19 **MR. GIUFFRA:** Thank you very much, your Honor. We
20 very much appreciate that.

21 **MR. COHEN:** Your Honor, this is Jonathan Cohen for
22 the Federal Trade Commission. If I may just address two things
23 that Volkswagen just said very briefly.

24 **THE COURT:** Certainly.

25 **MR. COHEN:** We are definitely absolutely against a

1 bad faith behavior by consumers or dealers or companies or
2 anyone, but we want to make sure that consumers are not
3 concerned that eligibility for compensation depends on the
4 vehicle's superficial condition, because it doesn't under the
5 orders and the order language governs.

6 There is a procedure, of course, to modify the settlement
7 should that become necessary, but we don't believe that that is
8 necessary.

9 We also are very enthusiastic about the progress that
10 Volkswagen has made to date to effect the settlement. But
11 there have been some bumps in the road and we want the Court to
12 understand that the FTC is working closely with Volkswagen to
13 resolve those issues.

14 My understanding is that all parties believe that while
15 Volkswagen has accomplished a great deal, there is still more
16 that it can do.

17 **THE COURT:** Okay. Thank you.

18 Ms. Cabraser, do you want to address any of the issues?

19 **MS. CABRASER:** Thank you, your Honor. Elizabeth
20 Cabraser for the PSC.

21 We would echo those remarks of counsel. This is a very
22 ambitious program. It involves hundreds of thousands of class
23 members. Most of these class members are participating
24 actively in the program and they have been very patient and
25 reasonable as the program rolls out, and we appreciate that.

1 We've received communications from many, many class
2 members. We work with them to get them through the program,
3 and we appreciate the patience and good faith that they and
4 Volkswagen are showing to make this work. This is something
5 that needs to work in the real world. Cars are very real. And
6 the process is proceeding.

7 We appreciate the fact that as increased staffing has
8 become necessary and appropriate from Volkswagen and as changes
9 and improvements have had to be made to the program, they have
10 been made. And it's an ongoing process. It's an iterative
11 process.

12 We work with Volkswagen, and we work with the FTC, and we
13 work with class members, when they raise issues with us, to
14 make sure this continues to work well.

15 We know that the process of making offers and actually
16 effecting buybacks is not only continuing, but it is
17 accelerating as the process goes on. And we appreciate that.

18 The point of the settlement was to be efficient as
19 possible, as we can be with cars in the real world. And that
20 is why the superficial condition of the cars, as your Honor
21 noted, is not determinative of value. We wanted to give all
22 the consumers the benefit of that doubt so that every car had a
23 clean trade value, and we appreciate that class members are
24 participating in the settlement in that spirit. And it is a
25 spirit of settlement. And it is a matter of the parties, both

1 the defendants and the class members, being fair and reasonable
2 all around.

3 Thank you.

4 **THE COURT:** Thank you very much.

5 Well, I, of course, have not seen the details of the
6 settlement and I am looking forward to the filing, but on the
7 other hand, I am well aware of the extraordinary effort that
8 the lawyers for all the parties have put into this, especially
9 in the last several weeks, which has -- which has been --
10 raised issues that were not present in the first settlement.

11 So it simply wasn't a question of just doing what was
12 already done in the first settlement. It had to expand and
13 consider issues that were novel and that needed to be
14 negotiated; and that as frequently said, the devil is in the
15 details and the details are important and they are important to
16 bringing about a final resolution of this case.

17 And so I acknowledge what Mr. Giuffra said. Lawyers have
18 families. Lawyers have other obligations. Lawyers have lives.
19 And they have sort of taken all of that, put it to the side,
20 and worked on this task of resolving this issue because of the
21 serious environmental concerns that were raised by this
22 litigation.

23 And I want to thank all the lawyers, of course. And none
24 of this, in the Court's opinion, would have been achieved
25 without the extraordinary services of the director, Director

1 Mueller, and the people who work with him at Wilmer Hale. So
2 I'm very grateful, of course, to them as well.

3 I look forward to reading the proposed settlement and
4 then, again, having a hearing as early as possible to make a
5 determination whether preliminary approval is appropriate to be
6 given.

7 So have a holiday that has some relief, but, of course, I
8 realize that while the Court may be on holiday, the parties
9 will be -- will have to direct their attention to all of the
10 details of the settlement, which will be -- which will be a
11 task for them.

12 Thank you very much. We are in recess. Thank you.

13 **MR. GIUFFRA:** Thank you, your Honor.

14 **MS. CABRASER:** Thank you, your Honor.

15 (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

Thursday, December 22, 2016