

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
Wednesday, March 21, 2018

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

Plaintiffs Lead Counsel:

LIEFF, CABRASER, HEIMANN & BERNSTEIN
Embarcadero Center West
275 Battery Street, 29th Floor
San Francisco, California 94111

**BY: ELIZABETH J. CABRASER, ESQUIRE
DAVID S. STELLINGS, ESQUIRE**

For Plaintiffs:

HEYGOOD, ORR & PEARSON
2331 West Northwest Highway, 2nd Floor
Dallas, Texas 75220

BY: MICHAEL HEYGOOD, ESQUIRE

HEYGOOD, ORR & PEARSON
6363 North State Highway 161, Suite 450
Irving, Texas 75038

**BY: ERIC PEARSON, ESQUIRE
CHARLES MILLER, ESQUIRE**

(Appearances continued on next page)

Reported By: *Katherine Powell Sullivan, CSR #5812, RPR, CRR*
Official Reporter - U.S. District Court

APPEARANCES (CONTINUED):

For Plaintiffs:

PATRICK LAW FIRM
6244 East Lovers Lane
Dallas, Texas 75214

BY: CRAIG M. PATRICK, ESQUIRE

For Plaintiffs:

HYDE & SWIGART
2221 Camino Del Rio S, Suite 101
San Diego, California 92108-3609

**BY: JOSHUA B. SWIGART, ESQUIRE
SARA KHOSROABADI, ESQUIRE**

HYDE & SWIGART
120 South 6th Street, Suite 2050
Minneapolis, Minnesota 55402-1840

BY: ANTHONY P. CHESTER, ESQUIRE

KAZEROUNI LAW GROUP, APC
245 Fischer Avenue, Suite D1
Costa Mesa, California 92626

BY: ABBAS KAZEROUNIAN, ESQUIRE

For Duck Group opt-outs:

RICHARD C. DALTON, L.L.C.
1343 West Causeway approach
Mandeville, Louisiana 70471

BY: RICHARD C. DALTON, ESQUIRE

For Volkswagen:

SULLIVAN AND CROMWELL LLP
125 Broad Street
New York, New York 10004

**BY: SHARON L. NELLES, ESQUIRE
WILLIAM B. MONAHAN, ESQUIRE**

For Defendant Robert Bosch GmbH and Robert Bosch LLC:

CLEARY GOTTLIEB STEEN & HAMILTON LLP
2000 Pennsylvania Avenue, NW
Washington, D.C. 20006-1801

BY: MATTHEW D. SLATER, ESQUIRE

(Counsel present on CourtCall as reflected in the minutes.)

1 Wednesday, March 21, 2018

9:03 a.m.

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

3 ---000---

4 **THE CLERK:** Calling Civil Action C 15-2672, In re
5 Volkswagen Clean Diesel Marketing Sales Practices Liability
6 Litigation.

7 Counsel, please step forward and state your appearances
8 for the record.

9 **MS. CABRASER:** Good morning, Your Honor. Elizabeth
10 Cabraser, here with my partner David Stelling, plaintiffs'
11 lead counsel.

12 **THE COURT:** Good morning.

13 **MR. HEYGOOD:** Good morning, Your Honor. Michael
14 Heygood, along with my partners Eric Pearson and Charles Miller
15 and Craig Patrick, here on behalf of the Heygood, Orr & Pearson
16 plaintiffs.

17 **THE COURT:** Good morning.

18 **MS. NELLES:** Good morning, Your Honor. Sharon Nelles
19 from Sullivan and Cromwell. I have with me my partner Bill
20 Monahan here today on behalf of the Volkswagen group of
21 defendants.

22 **THE COURT:** Good morning.

23 **MR. SLATER:** Good morning, Your Honor. Matthew
24 Slater, from Cleary Gottlieb, on behalf of Robert Bosch GmbH
25 and Robert Bosch LLC.

1 **THE COURT:** Good morning.

2 **MR. DALTON:** Good morning, Your Honor. Richard Dalton
3 on behalf of plaintiffs, opt-outs the Duck Group.

4 **THE COURT:** Good morning.

5 **MR. SWIGART:** Good morning, Your Honor. Josh Swigart,
6 on behalf of Hyde & Swigart. My colleagues Abbas Kazerounian,
7 and Sara Khosroabadi, and Tony Chester as well. Thank you.

8 **THE COURT:** So thank you, all, for coming. I know
9 it's somewhat of an inconvenience, specially those of you who
10 do not reside in California or the Northern District, but I
11 appreciate it. I know we're also on CourtCall, so some people
12 are participating by phoning in.

13 This is a further proceeding to resolve the unresolved
14 claims that still exist between the consumer and Volkswagen and
15 certain other entities.

16 I think a little bit of background is probably important,
17 though I cannot believe you are not all aware of it.

18 But there has been a substantial, massive, and nearly
19 complete settlement of these claims. As a matter of fact, I
20 think somewhere in the neighborhood of 99.4 percent of people
21 who were Volkswagen consumers have resolved those claims. So
22 we're now dealing with six-tenths of one percent who have not
23 resolved their claims.

24 So I wanted to speak to plaintiffs' counsel and to defense
25 to see whether we can make a further effort. I need to have a

1 couple of facts.

2 So, Mr. Heygood, why don't you come forward. Mr. Dalton.
3 And is it Mr. Swigart? I don't know that I correctly -- no
4 reason to sit in the back of the courtroom.

5 Gentlemen, you are in the front of the courtroom and
6 you're going to be in the front of the courtroom. All right.

7 Now, Mr. Heygood, how many consumers do you represent?

8 **MR. HEYGOOD:** I represent plaintiffs that own or the
9 lessor of 1302 vehicles nationwide.

10 **THE COURT:** 1302 vehicles. Okay.

11 And, Mr. Dalton, how many do you represent?

12 **MR. DALTON:** Approximately 268.

13 **THE COURT:** 268.

14 And, Mr. Swigart, how many do you represent?

15 **MR. SWIGART:** Approximately 269, Your Honor.

16 **THE COURT:** Oh, you're ahead. One more client. How
17 did that go? 269.

18 **MR. SWIGART:** One way or the other.

19 **THE COURT:** All right. So we have approximately 1900
20 vehicles, somewhere in that neighborhood, which are not the
21 total number of unresolved claims, but they represent a good
22 start.

23 So as to your clients, are they still driving the
24 Volkswagen as it was purchased with the defeat device
25 operating?

1 **MR. HEYGOOD:** My clients range in a different
2 category. Some of them had their car totaled, some of them
3 have sold the car, some of them had those fixed, and some of
4 them have not had those fixed. It's not a singular thing.

5 **THE COURT:** Okay. I appreciate that. The ones who
6 have not had their car fixed, not totaled, not sold,
7 approximately how many of those do we have?

8 **MR. HEYGOOD:** It would definitely be an approximation
9 number, but I would say of my numbers it's probably a third.

10 **THE COURT:** Okay. So a third. That would be about
11 400 roughly.

12 **MR. HEYGOOD:** That's a rough estimate, Your Honor.

13 **THE COURT:** I'm not holding you to these numbers. I'm
14 just trying to get some ballpark figures here. 400.

15 Okay. What about you, Mr. Dalton?

16 **MR. DALTON:** Probably about two-thirds of my number.

17 **THE COURT:** Okay. So that's about -- I'm really bad
18 at math -- about 160 or so.

19 **MR. DALTON:** Right.

20 **THE COURT:** That's 560.

21 What about yours?

22 **MR. SWIGART:** I'll try to play it safe, Your Honor.
23 I'll just go in the middle and say half.

24 **THE COURT:** Okay. So maybe around 700 of the 1900
25 cars are out there polluting; right? That's what they're

1 doing. They're polluting. They are operating outside the EPA
2 regulations and CARB regulations.

3 So I think you should have a sense of urgency about
4 resolving these claims. We do not need the environment to be
5 further jeopardized by people driving vehicles that are out of
6 compliance with regulations.

7 Now, I'm not saying this to you because you're standing
8 before me, you're responsible for this. You're not responsible
9 for the cars being in the condition that they're in. But these
10 are people -- your clients do have these cars that are in the
11 condition that they're in, and we must do something about it,
12 number one.

13 Number two, Volkswagen has come in and made a settlement
14 proposal for a class of people to which only six-tenths of one
15 percent objected. So I think you have to look at why your
16 six-tenths of one percent is somehow more reasonable than
17 99.4 percent. 99.4. That's right. You have to sort of figure
18 that out.

19 You know, there was an old instruction in California
20 law -- it was my favorite, but it's not given anymore because
21 courts disapproved it -- and it was a charge given to a
22 deadlocked jury. And the charge was, you ought to look at your
23 position and figure out are you in the majority or are you in
24 the minority.

25 And if you're in the minority, you ought to think about

1 why is it that more people think you're wrong than think you're
2 right. And if you're in the majority say, well, what is
3 bothering that person out there, the minority, is it something
4 I haven't thought about?

5 And it's an effort to reexamine your position but to
6 understand it in the context that a lot of people have examined
7 their position and have come to a conclusion that's different
8 from the one that you're coming to.

9 So I just urge you this morning and today to take a look
10 at that, to engage into settlement discussions with that in
11 mind; that there is a real problem out there, you've got to
12 solve that problem, and that there are people who have solved
13 that problem and come to terms with it.

14 I've asked Ms. Cabraser to come here today, at my request,
15 because I think she is a resource for you as to what led to the
16 conclusions that they came to in their settlement. She's
17 there. She's not going to participate in it, but she's
18 available to you because I think that a lot of the things that
19 you are concerned about I have the hope she'll be able to
20 address. So that is why she is there.

21 I have Volkswagen here because they're the ones who have
22 to pony up, as they say on the West Coast. They have to come
23 in and they have to offer a settlement to you.

24 Now, I just urge Volkswagen to come in, look at their
25 positions, evaluate them, be reasonable. Because Volkswagen's

1 achievement in this, in many ways, was getting all of these
2 vehicles -- what I want them to do -- off the road and to pay
3 penalties for what they did and to pay compensation for the
4 people who have suffered.

5 And they're there 98 percent or 99 percent, but they
6 haven't crossed the finish line yet. You're going to help them
7 cross the finish line, not as a favor to them but as a
8 responsible way to deal with this particular problem because it
9 is the environment that is suffering.

10 So I'd like to go back. I'm not going to get involved in
11 the details of the settlement. You have Judge Corley,
12 Magistrate Judge Corley, also familiar with it, and she will
13 work with you.

14 At the end of the day I want you to report back to me that
15 you have a settlement proposal from Volkswagen that you would
16 recommend to your clients.

17 I understand you don't have 1302 people on the telephone
18 right now. You can't bring them in. I'm not asking you to do
19 that. I'm not asking you to contact your clients.

20 What I'm asking you to do is to sit down and negotiate a
21 settlement that you, as a responsible member of the Bar, would
22 recommend to your clients.

23 Thank you. I will see you here at 12:45 for a report.
24 Thank you.

25 **MR. SWIGART:** Thank you, Your Honor.

(Recess taken at 9:15)

(Proceedings did not resume on this date.)

- - - -

CERTIFICATE OF REPORTER

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

DATE: Wednesday, March 21, 2018

Katherine Sullivan

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25