

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Charles R. Breyer, Judge

In re Volkswagen Clean Diesel)	
Marketing, Sales Practices, and))	
Products Liability Litigation,)	
)	NO. C 15-md-02672 CRB
)	
_____))	
BRS,)	
Plaintiff,)	
VS.)	NO. C 16-3425 CRB
Volkswagen AG,)	
Defendant.)	
_____))	

San Francisco, California
Tuesday, June 27, 2017

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff VW :

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

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

For Plaintiff PSC:

BLB&G
1251 Avenue of the Americas
New York, New York 10020

**BY: JAMES A. HARROD
ADAM HOLLANDER**

Reported By: Rhonda L. Aquilina, CSR #9956, RMR, CRR
Official Court Reporter

APPEARANCES: (CONTINUED)

For Plaintiffs US. DEPT. OF JUSTICE:

UNITED STATES DEPARTMENT OF JUSTICE
Environmental & Natural Resources Div.
P.O.Box 7611
Washington, D.C. 20044-7611

**BY: JOSHUA H. VAN EATON
BETHANY ENGEL**

For Plaintiffs US. DEPT. OF JUSTICE:

OFFICE OF THE ATTORNEY GENERAL
State of California
455 Golden Gate Avenue - Room 11000
San Francisco, California 94102

BY: NICKLAS A. AKERS

For Plaintiff FTC:

FEDERAL TRADE COMMISSION
Bureau of Consumer Protection
600 Pennsylvania Ave., N.W.
Mailstop CC-9528
Washington, D.C. 20580

BY: JONATHAN COHEN

For Volkswagen:

SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004

**BY: ROBERT GIUFFRA, JR.
SHARON L. NELLES
DIANE L. MCGIMSEY**

For Porsche:

ALSTON & BIRD
One Atlantic Center
1201 West Peachtree Street
Atlanta, GA 30309-3424

BY: KARA F KENNEDY

For Defendants Bosch:

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

BY: MATTHEW SLATER

APPEARANCES: (CONTINUED)

For Michael Horn:

SCHERTLER & ONORATO
1101 Pennsylvania Avenue, NW, Ste. 1150
Washington, D.C. 20004

BY: JOSEPH A. GONZALEZ

1 Tuesday - June 27, 2017

8:00 a.m.

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

3 ---000---

4 **THE CLERK:** Calling civil action C 15-MD-2672, In re
5 Volkswagen "Clean Diesel" Marketing, Sales Practices, and
6 Products Liability Litigation, and civil action C 16-3435, BRS
7 versus Volkswagen AG.

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

10 **MS. CABRASER:** Good morning, Your Honor. Elizabeth
11 Cabraser with Cabraser, Heimann & Bernstein for plaintiffs.
12 With me is my partner David Stelling.

13 **MR. VAN EATON:** Good morning, Your Honor. Josh van
14 Eaton for the United States, with my colleague Bethany Engel.

15 **THE COURT:** Good morning.

16 **MR. VAN EATON:** Good morning.

17 **MR. AKERS:** Good morning, Your Honor. Nick Akers for
18 the California Attorney General's Office, and the California
19 Air Resources Board.

20 **MR. COHEN:** Good morning, Your Honor. Jonathan Cohen
21 for the Federal Trade Commission.

22 **THE COURT:** Good morning.

23 **MR. HARROD:** Good morning, Your Honor. James Harrod,
24 Bernstein, Litowitz, Berger & Grossmann for plaintiffs in the
25 securities cases. With me is Adam Hollander.

1 **MR. GIUFFRA:** Good morning, Your Honor. Robert
2 Giuffra with Sullivan & Cromwell. With me today is my partner
3 Sharon Nelles and Diane Gimsey also for Sullivan & Cromwell, a
4 partner of Sullivan & Cromwell.

5 And I think our plan today is Ms. Nelles will give you a
6 report on where we stand on some of the implementation of the
7 various settlement agreements, and then we have to deal with
8 the securities motion to dismiss, and then, you know, there may
9 be some other housekeeping issues Your Honor would like to
10 raise. Thank you.

11 **MR. GONZALEZ:** Good morning, Your Honor. Joseph
12 Gonzalez for Schertler & Onorato on behalf of Michael Horn.

13 **MS. KENNEDY:** Good morning. Kara Kennedy with Alston
14 & Bird for the Porsche defendants.

15 **THE COURT:** Good morning.

16 **MR. SLATER:** Good morning, Your Honor. Matthew Slater
17 of Cleary, Gottlieb on behalf of Robert Bosch GmbH, and Robert
18 Bosch, LLC.

19 **THE COURT:** All right. And I would like to remind all
20 of you that we are on Court Call, and so when you do approach
21 the microphone, please identify yourself for the benefit of
22 those who are not in the courtroom, but are listening to these
23 proceedings.

24 The order in which I'd like to take things is that I first
25 want to address the motion to dismiss the consolidated

1 securities class action case.

2 I have read a great deal on what has been presented by the
3 parties, and I have some impressions that I thought I should
4 share with you.

5 In terms of the control person, which is one of the issues
6 as to whether or not Mr. Horn and Mr. Diess; is that correct,
7 Dice?

8 **MR. GIUFFRA:** Yes, as to Mr. Diess.

9 **MR. GONZALEZ:** Yes, Your Honor.

10 **MR. GIUFFRA:** The last time Your Honor had dismissed
11 the claims as to Mr. Diess.

12 **THE COURT:** That's right. And the question is
13 whether, whether there is now in the amendment sufficient
14 allegations in order to reach these individuals as control
15 people. That's basically the issue. And the Court has
16 concluded that there is, and that the complaint would support
17 liability, if proven, of these individuals.

18 The more interesting question, at least to the Court, is
19 what is the appropriate time period to capsule the various
20 statements that were issued at different times by Volkswagen.
21 And it sort of is a two-edged sword, as I understand it. There
22 is no question that -- and I hope I'm not going to be too far
23 off on dates, but in May, I think it's May of 2014, but let me
24 just take a look.

25 (pause in proceedings.)

1 In May of 2014, the argument is that Volkswagen knew or
2 should have known that its losses related to the defeat device
3 were probable or that the likelihood of losses was more than
4 remote.

5 As I understand it, it was at that time that Volkswagen
6 took charge -- and I may be off on the dates, so I want to make
7 sure I'm right here -- took charge of 67 million Euros; is that
8 correct?

9 **MR. GIUFFRA:** No, Your Honor. Let me see if I can
10 help just provide a little bit of context.

11 Volkswagen took a charge in the third quarter of 2015 for
12 6.7 billion Euros.

13 **THE COURT:** Right.

14 **MR. GIUFFRA:** That was after September 18 when the
15 defeat device was announced. And, in fact, in Your Honor's
16 last decision on this issue, Your Honor made the point, which
17 we think remains correct, that as to Mr. Diess, the fact that
18 they did a provision for \$6.7 billion and it turned out not
19 needed to be increased over time, and given the absolute
20 absence of any allegation in the complaint that anyone knew
21 that the provision needed to be higher as of the date when they
22 set that provision, that that claim as to Mr. Diess should be
23 dismissed.

24 Mr. Diess, who was the head of the Volkswagen brand,
25 joined the company in July of 2015, you know, within months of

1 the announcement of the existence of the defeat device. And in
2 your last decision Your Honor held that he was not a control
3 person. You know, obviously the Class Period here runs from
4 2010 to 2016. Our position is on the issue of the control
5 person, they hadn't pled anything differently than what they
6 had in the original complaint as to Mr. Diess.

7 And I think what you're referring to in terms of May 2014,
8 that's a memo that was sent to Mr. Horn who was not a VWAG, was
9 not involved in making the financial disclosures, but was the
10 head of Volkswagen Group of America, and he got a memo saying
11 what the theoretical finds were.

12 But as Your Honor held in your decision the last time,
13 there wasn't anything specifically pled in the complaint as
14 required under the PSLRA and 9(b) as to Winterkorn and Diess,
15 the people who were actually involved in making the
16 disclosures, that they knew that there was a need for a
17 provision before the provision that was taken in September.

18 **THE COURT:** Well, I found that the provision taken in
19 September I thought was an adequate provision. That is to say
20 I thought that even though it was --

21 **MR. GIUFFRA:** Turned out to be lower --

22 **THE COURT:** Well, it was lower than -- well, we're all
23 in hindsight now. It's lower than what ultimately was
24 required. It didn't seem -- it didn't seem to be inappropriate
25 given any number of facts. While there is a theoretical

1 exposure, there is no requirement that one set aside or take
2 charge for what is the theoretical exposure in light of
3 evidence or knowledge that, as an example, enforcement of these
4 emissions violations have been far less in terms of dollars
5 than was -- than occurred in this particular case. That
6 doesn't say -- that doesn't mean to say the penalty
7 theoretically couldn't have been as great as it was, but it
8 does mean that if one takes a look at experience in order to
9 determine how much one should set aside as a charge or for a
10 contingent liability, and so forth, that's one of the factors
11 that one could consider as it should be, as it should be.
12 Otherwise you would, with every theoretical violation in which
13 the caps are so high that by virtue of either the amount of
14 money per violation or the amount of vehicles that were
15 affected by it, you could simply bring any company to a
16 standstill by setting out contingent liabilities. So I don't
17 find that troubling, and I find that that's satisfactory.

18 But going back for a moment, and you can address it, there
19 is an allegation that in 2008 Volkswagen was notified by CARB
20 that there was the potential of liability. And I'm trying to
21 find that in the complaint. And it references, it references a
22 letter, and it references a newspaper article. There it is.

23 **MR. GIUFFRA:** Your Honor, I would be happy to address
24 that. That same allegation --

25 **THE COURT:** Well, wait a moment.

1 (pause in proceedings.)

2 **MR. GIUFFRA:** That same allegation, Your Honor,
3 basically we go through what the allegation is. The allegation
4 is that --

5 **THE COURT:** Paragraph 163, so we're all talking about
6 the same thing.

7 **MR. GIUFFRA:** Yes. And Your Honor addressed that very
8 allegation at page 30 of the original motion to dismiss
9 decision. And, in fact, what Your Honor said at page 30 was
10 for example, although plaintiffs allege that VWAG knew that it
11 faced, quote:

12 Potential EPA finds of 37.5 and CARB finds of 5,000
13 for each affected car in the United States, close quote.

14 And then citing at that point it was complaint 220: They
15 do not provide sufficient allegations to infer that VWAG would
16 have had such knowledge as early at November 19, 2010, which
17 was the start of the Class Period. The 2010 is the end of Your
18 Honor's decision.

19 But the point, Your Honor, is that that particular notice
20 that they're talking about is a generic notice saying that if
21 you violate these laws in 2008, you face these theoretical
22 finds.

23 **THE COURT:** That's my question. Let me read what is
24 in the complaint now, okay.

25 **MR. GIUFFRA:** Yes.

1 **THE COURT:** Okay. What is in the complaint now at
2 page 163, is as follows:

3 The *Wall Street Journal* likewise reported on October 5th,
4 2015 that as early as 2006, senior VW engineers recognized and
5 publicly stated that the company could not produce high
6 performance diesel vehicles that met applicable emissions
7 standards.

8 Further, here's where we get to the point, regulators
9 suspected and were concerned about defendants' possible use of
10 defeat devices as early as 2008. On October 14th, 2015, I'm
11 going to mispronounce this, *Sueddeutsche Zeitung*, reported that
12 it -- I assume that's a paper, newspaper -- reported that it
13 was in possession of documents showing the United States
14 authorities have been questioning Volkswagen's cars emissions
15 since at least 2008. Specifically, according to this source,
16 CARB issued an Executive Order in 2008 demanding a statement
17 from VW that no defeat device was installed in the engines of
18 Volkswagen's cars. Otherwise, the letter states, CARB will
19 withdraw its certification of the vehicles and assess the
20 penalty of \$5,000 per car.

21 So what I'm saying here is if this story is true, if it's
22 true these things happened, which I have no idea whether they
23 did or not, then what does that say about Volkswagen's state of
24 mind with respect to the probability of this device being
25 discovered?

1 Put it in another way. If the regulator says to
2 Volkswagen: By the way, by the way we want from you a
3 certificate saying that you don't use a defeat device. They
4 say that in 2008. And if you don't give it to us, if you don't
5 give it to us then we will withdraw our certification, and
6 furthermore, we will assess a penalty of \$5,000 per car.

7 Now, you can say any number of things about that, which
8 perhaps could satisfy the Court. One is that's routine. They
9 do that. It's like you drive along the highway and there's a
10 sign that says, you know, if drive in the fast lane, or
11 something, you face a violation of \$271. It doesn't say you
12 are. It doesn't say we're focusing on you. It simply says
13 what the law is, and that that's not -- that gives you
14 knowledge of what the law is, but it doesn't give you knowledge
15 that the regulators are onto you, okay.

16 And this whole thing -- that is the way I look at this --
17 is based on are the regulators onto you? Do they have reason
18 to believe that you are violating the law or the regulations.
19 There's sort of two components on it. Number one, do they know
20 what they're doing, and do you know that they know? And if
21 they know what you're doing, and you know they know, I think
22 that that is the type of situation in which you have to take
23 that into account in your accounting, because, you know, how do
24 you say it, the game is up, you know. I mean, they're onto
25 you. And you know they're onto you. So your responsibility to

1 your shareholders is to take that into account.

2 Now, looking at that paragraph, that is one interpretation
3 of it, but it's not the only interpretation at all.

4 So I don't even know that you're the one who has to
5 respond to this. It seems to me that Mr. Akers, or somebody,
6 or plaintiff's counsel does have to respond to it. Is, you
7 know, what is this article? What does it mean? Is it
8 unambiguous? And does it give rise to liability? Because then
9 we're not just talking about 2015, 2016, we're actually going
10 back from an evidentiary point to 2008 or thereabouts, or 2010
11 when we begin the Class Period.

12 So I'll allow you to respond, and anybody who wants to
13 comment on that could join.

14 **MR. GIUFFRA:** Let me start with first principles.
15 This is a federal securities case governed by 9(b) and governed
16 by the Private Securities Litigation Reform Act, and so
17 negligence with respect to reserving, not taking enough of a
18 reserve, that's not actionable as a matter of law.

19 Second proposition, Your Honor recognized this in your
20 decision at page 30 the last time we argued this very same
21 issue, you've got to look to the scienter, and that's the
22 principal basis for our decision, our motion. The scienter of
23 the people who were responsible for making the financial
24 disclosures, not just a company generally.

25 And this notion of some collective scienter notion: Oh,

1 someone at Volkswagen knew that the theoretical fine if you
2 violate the CARB rule is \$5,000 a car, that doesn't get them
3 where they need to go in this case, or otherwise Rule 9(b) and
4 the Private Securities Litigation Reform Act would be a dead
5 letter.

6 And courts have repeatedly rejected the notion,
7 particularly in the reserving context, that one could even
8 contemplate some notion of collective scienter, which is a
9 doctrine -- while the Ninth Circuit has said it may be viable
10 has never really applied it. And the example that gets given
11 every time is a case called *Makor* from the Seventh Circuit
12 where they give the example of, well, if General Motors had
13 said it was selling a million SUVs a year and hadn't sold any,
14 okay, a really important and so demonstrably false statement,
15 maybe that's clearly something that the senior executives
16 involved in making the disclosures about the company sales of
17 SUVs would have known about. That's not what this is.

18 Now, let me take you sort of through it. The same
19 allegation was made in the original complaint. So an amended
20 complaint, there's nothing new about this allegation.

21 Number two, if you just look at the allegation on its
22 face, Mr. Diess doesn't show up in Volkswagen until 2015.
23 There's no allegation he knew about this. There's no
24 allegation that Professor Winterkorn knew about this, not at
25 all. So they don't connect it to him.

1 Number three, the fact as Your Honor pointed out
2 correctly, the mere fact that, you know, this is a theoretical
3 violation number doesn't mean that the company had that
4 exposure. And, in fact, Your Honor -- and I talked about this
5 the last time we were here -- paragraph 249, okay, that's the
6 allegation which talks about as late as November 2014, that
7 Winterkorn receives a memo reporting that there's -- on product
8 defect issues, and identifies the issue with respect -- this is
9 paragraph 249 -- that there's an issue with respect to the
10 diesel issue in America, and it says "North America," excuse
11 me, and refers to a cost, quote, this is a, quote:

12 Cost framework of approximately 20 million Euro for
13 the diesel issue in North America.

14 And what the plaintiffs say, and this is their allegation
15 which they're bound to, they say: After being placed on notice
16 of this, quote -- 249, quote:

17 After being placed on notice of Volkswagen's emission
18 cheating, Winterkorn and other top managers did nothing
19 for months, perhaps out of a cavalier and mistaken belief
20 that Volkswagen could resolve any U.S. legal issues by
21 paying a cost-of-doing-business fine."

22 At this point in time, Volkswagen was earning 12 billion
23 Euro. So 20 million Euro would clearly not be a material
24 amount of money to Volkswagen.

25 Now, obviously what's happened when you use hindsight and

1 say, oh, they were wrong. Well, the same thing, Your Honor,
2 was true in many other cases that I've been involved in. I
3 represented UBS in the Second Circuit, 2014. The claim was
4 that senior managers should have known that the bank was going
5 to suffer \$50 billion in losses from mortgage-backed
6 securities. The case was dismissed by the district, and the
7 stock drop was \$115 billion, way more than here. The case was
8 dismissed at the district court level, affirmed unanimously on
9 appeal, because they did not believe particularized facts
10 indicating that the senior managers, who were involved in
11 making the disclosures about the company's financial exposures,
12 knew about the risks that the company faced, and that it was
13 going to be billions and billions of dollars.

14 Now, here, what the other side would like to do is
15 conflate knowledge of the existence of the defeat device with
16 knowledge that it was going to cost billions and billions of
17 dollars, and therefore you should have taken up a bigger
18 reserve. And you can know about a problem, a product defect
19 problem, which is --

20 **THE COURT:** I don't think that's quite what they're
21 saying. I thought that what they're saying, though they may
22 very well be saying that, but I think they're saying they
23 know -- Volkswagen knows about the defeat device. And this
24 letter -- and we'll have to put some flesh on the letter, who
25 gets it, where does it go, and so forth -- this letter tells

1 them that the regulators know what's going on.

2 **MR. GIUFFRA:** There's no --

3 **THE COURT:** They may not know the details, but they
4 know enough to know that unless they are further satisfied by a
5 representation to Volkswagen, then they are going to withdraw
6 certification.

7 **MR. GIUFFRA:** Your Honor, I'm not aware of any
8 communications from CARB in 2008, okay, which would have been
9 no one said that this thing -- that CARB knew about this and
10 sat on its hands for eight or nine years. I believe -- and
11 this document again Private Securities Litigation Reform Act
12 case, you've got to plead things with particularity.

13 **THE COURT:** Right.

14 **MR. GIUFFRA:** And the mere citation of some newspaper
15 article that may get facts completely wrong and gets twisted
16 out of context is not enough to get past the motion to dismiss
17 in a securities case.

18 So this particular document, if you just take -- and
19 again, the same allegation was before the Court the last time
20 we had a motion to dismiss in this case, and Your Honor agreed
21 with us that they did not plead particularized facts that the
22 senior management of Volkswagen knew, and that's the standard,
23 knew that the reserves were too low.

24 The only thing that's in the complaint with respect to the
25 senior managers, in the context of the reserves, is the

1 paragraph 249, which I just read to Your Honor, which is
2 cost-of-doing-business fine and 20 million Euros for a company
3 that was making 12 billion in profit.

4 But this particular so-called Executive Order that gets
5 quoted in 2008, it's two years before the Class Period, it's
6 not particularized, doesn't say who it went to, and there's
7 certainly no allegation that I'm aware of that CARB knew there
8 were defeat devices in Volkswagen vehicles in 2008. This was a
9 process that went all the way through 2015, particularly it
10 came to a head, you know, in the period of August and September
11 of 2015.

12 Diess isn't at the company in 2008, and there's no
13 allegation here that Winterkorn received notice of this.

14 The only other thing that Your Honor referenced before,
15 which was also before the Court, was that Michael Horn, who was
16 the president of Volkswagen Group of America, which is a
17 marketing arm of Volkswagen, someone not involved in the
18 company's financial statements, was given these same 37,500
19 number, 37,500 number for a violation. In fact, the ultimate
20 fines that were paid were much lower than that in any event,
21 notwithstanding everything.

22 But, again, the fact is you've got to plead, if you're
23 going to challenge the reserving of the company, that people
24 actually knew who were involved in making those reserves, that
25 the reserves were off, and they have nothing. Zero. And

1 that's what Your Honor found the last time we did this, and
2 they've added nothing to change that.

3 Your Honor said, at page 30 of your decision, quote:
4 There are no factual allegations permitting the reasonable
5 inference that Volkswagen knew or should have known that its
6 losses were probable during the entirety of the Class Period,
7 close quote.

8 That holding is correct. And the only thing they put
9 forward to try to upset that holding, and the only new
10 allegations are allegations about, you know, citing, for
11 example, the statement of facts in the criminal guilty plea
12 against Volkswagen. That says nothing about provisions. It
13 says nothing about securities laws. It says nothing about
14 Professor Winterkorn or Dr. Diess. Their names are not
15 mentioned. And the only people who were referenced in the
16 statement of facts are people called "supervisors." And at
17 paragraph one of the Statement of Facts it expressly says that
18 these are, quote, senior employees below the level of VW
19 management board, close quote.

20 So you need to look at what the new allegations are.
21 They're either things they've already put before the Court,
22 Your Honor has already ruled, so that doesn't provide a basis
23 to reconsider Your Honor's decision, I wouldn't think, or they
24 cite, you know, documents, the Liang Plea Agreement -- he was
25 an engineer -- who there's no allegation about anything having

1 to do with reserving at all. There's no allegation about
2 Dr. Winterkorn or Professor -- Professor Winterkorn and
3 Dr. Diess. And so they really have no new allegations on this
4 that should cause the Court to reconsider its prior holding,
5 which was entirely correct and consistent with the law
6 governing, you know, when someone wants to bring a securities
7 claim based on provisions.

8 And, again, remember the standard in this circuit is
9 "known or deliberately reckless," which is pretty much
10 knowledge anyway. And you've got to have particularized
11 allegations, which they simply do not have.

12 **THE COURT:** Okay. Let me ask your colleagues here to
13 respond.

14 **MR. HARROD:** Thank you, Your Honor. James Harrod for
15 the securities plaintiffs.

16 Mr. Giuffra talked about first principles. I'd like to go
17 back to what the accounting standards require. And the purpose
18 of the accounting standards in this case, I'm going to read
19 from what's in paragraph 262 of our complaint, is the financial
20 statements are directed at investors in the public, and they
21 require company management, or the purpose is to determine how
22 well company management is protecting the resources of the
23 entity and ensuring the entity's compliance with applicable
24 loss and regulations.

25 And the requirement for a provision under IS-37 is based

1 on a present obligation as a result of a past event. So the
2 past event that we're talking about here begins with a decision
3 in 2006 that it happens at the management board level of
4 Volkswagen where they're presented with the opportunity to re
5 engineer their first generation of clean diesel engine. They
6 choose not to. They deliberately at that point choose to use
7 defeat devices to accomplish their goal of marketing these
8 types of products in the United States and in the world. As a
9 result of that they eventually sell 11 million vehicles, as we
10 know now, pursuant to that activity.

11 What then happens is we know that they engage in an active
12 deception from the outset of that. They come to the United
13 States and they lie to regulators. And we know that they're on
14 notice from the fact that the regulators themselves have said
15 you have to do this. That's what Your Honor quoted.

16 And I'm going to tell you right now what we know about the
17 2008 allegation about CARB's notice is what's in the complaint.
18 I can't -- I can't give you more than what's in there. But
19 they knew, and they now admit it in the Statement of Facts that
20 there was an active deception of the U.S. regulators that
21 stemmed from their use of the defeat devices.

22 So the question is --

23 **THE COURT:** Well, but that's sort of sliding over the
24 whole thing. Yes, when they embarked upon a pattern of
25 deception, they knew they were embarking upon a pattern of

1 deception, okay.

2 All right. Okay. Now, the question is to get to the end,
3 which is did Volkswagen set forth or establish financial
4 reserves that were adequate to take care of the problem of the
5 deception? That's not an elegant way of putting it.

6 **MR. HARROD:** Right.

7 **THE COURT:** But that's really what you're arguing.
8 You're saying look at this financial statement, look at this
9 financial -- this period of time, and so forth. The reserves
10 are either nonexistent or inadequate, given what their conduct
11 was.

12 Okay. But the law isn't you go out and you do something
13 wrong and you are then required, without more, to establish a
14 reserve in the event you're caught doing what you did that was
15 wrong. I don't think that's the law. I don't think that's the
16 law. I mean, essentially what you're saying is that every
17 company has a legal duty through its accounting system to blow
18 the whistle to disclose the fact that they're doing something
19 illegal. I mean, that may be nice in some sort of Sunday
20 school world, but it's not what is required.

21 Okay. So you can't glide over the fact that they were
22 doing something wrong, they knew they were doing something
23 wrong, and not bring into play what is it that the regulators
24 knew that was wrong; and what did they do about it, if
25 anything, or -- and/or what did they tell Volkswagen about what

1 they knew was happening? Because, obviously, come
2 September 15th, everybody knew. It was troubling. So there
3 wasn't a person around who was involved in this business who
4 didn't know that a device was used, and it was wrong, and it
5 would have consequences.

6 So I had go back to the eighth, the eighth allegation
7 that's found on paragraph 163 of your complaint, and say, well,
8 what does that mean? What are you saying there? And I find it
9 difficult to believe that nobody has gotten that article, or I
10 don't know whether he's standing by that article and saying
11 that that's a truthful allegation or it's simply just in the
12 press as a rumor or what? I don't get it.

13 **MR. HARROD:** I mean, we stand by the article, and we
14 believe it's correct. It's alleged in our complaint, and we
15 believe we're entitled to an inference that it's true.

16 **THE COURT:** Well, what's true? Exactly what's true?
17 That CARB -- I mean, they're sitting right behind you. They
18 know whether or not they sent out such a letter. This is a
19 newspaper, third-party report that a letter was sent. Okay.
20 Now, you say, well, we accept that as true. Well, I don't know
21 what that means. I mean, true that it's in the paper? Yeah.
22 True that it was done? I don't know. I see all sorts of
23 things in print that aren't true.

24 So what are you saying? You're saying -- you're saying it
25 happened or we just assume it happened?

1 **MR. HARROD:** We're saying that they received a letter
2 from CARB asking them -- inquiring about what does it say?
3 CARB issued --

4 **THE COURT:** It says you better certify your present
5 devices, because if you don't, we're going to withdraw our
6 certification.

7 **MR. HARROD:** And they did that. And doesn't that put
8 pressure on them knowing that the regulator is examining this
9 question?

10 **THE COURT:** I don't know what they did. That's my
11 question to you.

12 **MR. HARROD:** Well, we do know what he alleged, Your
13 Honor, and I think that that's --

14 **THE COURT:** Well, what's the basis of the allegation?

15 **MR. HARROD:** The basis of the allegation is the
16 report, these two articles, and the fact that it was a known
17 requirement that they had to issue these compliance
18 certifications, which they did by lying.

19 And they sent -- Mr. Giuffra talked about Liang. Liang
20 was an engineer at Volkswagen AG in Germany who has now pled
21 guilty to a number of crimes.

22 **THE COURT:** Let me ask you this. Have you read these
23 two newspaper articles?

24 **MR. HARROD:** Yes.

25 **THE COURT:** Has there been any inquiry of CARB as to

1 whether or not there's any accuracy to these newspaper
2 articles? The newspaper articles allege activities of CARB.

3 **MR. HARROD:** Okay.

4 **THE COURT:** That's --

5 **MR. HARROD:** Yes.

6 **THE COURT:** Don't they? They say CARB did X.

7 **MR. HARROD:** Issued an Executive Order in June 2008.

8 **THE COURT:** Okay. And you read the article?

9 **MR. HARROD:** Yes.

10 **THE COURT:** Did you inquire?

11 **MR. HARROD:** No.

12 **THE COURT:** So you have no idea whether CARB actually
13 did X.

14 **MR. HARROD:** No.

15 **THE COURT:** Well, I'm just trying to figure out how --
16 what weight do I give to an allegation in a newspaper for which
17 there is no evidence to corroborate it. Try to figure that one
18 out.

19 **MR. HARROD:** I think --

20 **THE COURT:** I mean, otherwise you run into complaints
21 that are simply based on --

22 **MR. HARROD:** Speculation.

23 **THE COURT:** Well, they're based on the web, they're
24 based on the Internet, they're based upon, you know, reports,
25 innuendo. They may be accurate. I'm not saying they're not.

1 I'm just saying this is going to be -- I don't think this is
2 the level of proof that one needs to be satisfied that
3 liability is to be established.

4 **MR. HARROD:** Well --

5 **THE COURT:** We're trying to prove scienter. What did
6 they know?

7 Now, if this article is true, then somebody knew
8 something, but --

9 **MR. HARROD:** Your Honor, I don't think we need this
10 allegation in particular to establish that, because we --

11 **THE COURT:** Oh, okay. Well, I'll strike it.

12 **MR. HARROD:** Well, I would ask you not to do that.

13 (Laughter)

14 **MR. HARROD:** But can I give you some other things that
15 we know?

16 **THE COURT:** Well, you can give me anything you want.
17 But, I mean, I'm now asking you about paragraph 163. And if
18 what you're saying is we don't need it, then that's fine with
19 me.

20 **MR. HARROD:** I think what we'd like you to do is to
21 consider that in the context --

22 **THE COURT:** But how do I consider it? What I'm saying
23 is how do I sit here and consider it? Do I consider it as
24 true?

25 **MR. HARROD:** Yes.

1 **THE COURT:** Not that -- not that there's an allegation
2 out there, which there is, but do I consider it true that this
3 thing actually happened? That is, that CARB -- this is a
4 report of something. Do I consider it -- I consider it true
5 that there's a report. And you've just told me, you said you
6 read the articles: Yes, it said exactly what we said it said.
7 That's fine.

8 But -- I mean, this isn't like, you know, the old rule
9 about hearsay. You're really admitting it for the truth of the
10 matter. You are really saying that what was in that newspaper
11 actually happened. To which I say to you, okay, what's the
12 evidence that it happened?

13 **MR. HARROD:** Well, but, Your Honor, this is a plea
14 negotiation. I think we're entitled to make allegations on
15 information and belief, which is what this is, without having
16 to provide you with the document that CARB sent to Volkswagen.

17 **THE COURT:** Well, at some point I think -- I think you
18 start getting into very remote -- remote types of complaints.
19 You can fashion a complaint based upon all sorts of innuendo
20 and hearsay and -- you know, I mean, listen, the President --
21 the former President of the United States is born in Kenya. I
22 mean, there are hundreds of reports out there. There are
23 thousands of reports. So I should make a finding that he was
24 born in Kenya? I mean, or I should treat that as evidence that
25 he was born in Kenya? I should accept that as an allegation?

1 I think the question about allegations invites a further
2 scrutiny, which is what is the basis for the allegation? What
3 is the basis for the allegation? You say the basis for the
4 allegation is I read the allegation. Good. Thank goodness,
5 because you're a responsible attorney, and you actually look at
6 the things that are -- you allege in your complaint. But that
7 doesn't give it credibility. That doesn't mean, yeah, I should
8 believe it.

9 **MR. HARROD:** I understand Your Honor's concern. And,
10 you know, we have the means that we have. I don't know that I
11 could have gotten that correspondence from CARB. I'm pretty
12 sure that I would not have been able to.

13 **THE COURT:** Well, CARB is here. I don't know if we
14 have to put them on the spot, but --

15 **MR. HARROD:** But can I just -- in the context of
16 everything else we know, we know that this is an existing
17 regulatory scheme that they were opposed to, and that they
18 attempted to evade. And when there was information that became
19 public about this -- and we knew that they were examining this
20 question of what the actual emissions of the vehicles were --
21 CARB immediately did in fact investigate. And there was a
22 dialogue beginning 2014, in about I think February or March,
23 that eventually resulted in Volkswagen's fairly spectacular
24 emissions that they had been doing this since 2008. And
25 regulators caught them, and they continued to lie.

1 So if I could just go back to 2014 when the ICCT study
2 comes out, and that's sort of the first domino that falls in
3 this, memos go to --

4 **THE COURT:** Well, when you say the first domino that
5 falls on that, you might be right. But the problem is that the
6 paragraph I'm talking about is 2008.

7 **MR. HARROD:** Right.

8 **THE COURT:** So you say that's not a domino, and that's
9 fine with me.

10 **MR. HARROD:** But the difference is, is what's -- what
11 they're talking about in 2008 is -- the difference is what's
12 known publicly, and what the regulators were onto is what
13 happened in 2014.

14 What Volkswagen knows, and what it is required to do under
15 the accounting rules to protect its own resources, began in
16 2006 before they even started selling these cars, and required
17 them to accrue a provision beginning at that time, because
18 there was a risk that the liability --

19 **THE COURT:** Yeah, you see, I don't buy that argument.

20 **MR. HARROD:** Okay.

21 **THE COURT:** I mean, because I think that's always --
22 then I think we've got -- these cases are laid out cases. Show
23 that they did something wrong. Show that they did something
24 wrong. They didn't take an accounting charge against it when
25 they did it. Case over.

1 **MR. HARROD:** So, but --

2 **THE COURT:** Done. Finished.

3 **MR. HARROD:** But doesn't that place the ability to
4 commit fraud in the fraudster's ability to hide it for so long?

5 **THE COURT:** Yes.

6 **MR. HARROD:** Isn't that troubling?

7 **THE COURT:** And every wrongdoer has at least the
8 potential of concealing his or her wrongdoing. That's not --
9 I'm not lauding it. I'm not encouraging it. I'm simply saying
10 that's part of it. The act of concealment is part of it. But
11 there isn't a concomitant duty in the Court's view that as soon
12 as they commit the act itself, and coincidental with their
13 concealment they then have to place accounting charges to
14 account for it in the event that the concealment is
15 unsuccessful.

16 **MR. HARROD:** And I understand that, but isn't that a
17 function of how serious the fraud is and how likely it is that
18 they're going to be caught? And internally, Volkswagen --

19 **THE COURT:** Yes, I think it is. I think it is that.
20 I think if it was probable that they are going to get caught --
21 and I think that's what the cases say -- if it's probable that
22 they're going to get caught, yes, indeed, they have to do
23 something about it.

24 But, here -- and that's why I was so disturbed by the 2008
25 letter. Because if the 2008 letter is a letter that one looks

1 at and says, *Aha*, to Volkswagen, *they're on to us*, that
2 increases, at least in some measure, it increases the
3 likelihood that you're going to be caught, because now they
4 know about it.

5 All right. But the act itself of concealment isn't
6 evidence that they were going to be caught, and it doesn't in
7 and of itself increase -- well, it increases the probability of
8 being caught, because if you never did it, the likelihood of
9 being caught is pretty remote, since you didn't do it. But
10 just commonsense would tell us that -- I mean, you and I don't
11 see eye to eye on that particular issue.

12 As to Diess, I don't know, you know, that there is enough
13 here to find him as a control person. I think there is as to
14 Horn. But if you want to address Diess --

15 **MR. HARROD:** Could I go back to 2014 just for a
16 second? Because I think -- I don't want to belabor this,
17 because I know if we have a difference of opinion what the
18 result is likely to be.

19 But on 2014, I believe that they were caught. They knew
20 they were caught. They started preparing. It was Gottweis,
21 and I believe his name is pronounced Neuser (sic), those two
22 close confidants of Winterkorn, we allege in detail the
23 relationship between them and Winterkorn in the complaint.
24 They are charged with preparing memos and preparing estimates
25 of the math that Mr. Giuffra talked about, 37,5 and 5,500. And

1 doing the multiplication, they sent Horn a memo which indicated
2 that the potential liabilities were 21 and-a-half billion
3 dollars to, I think, 25 and-a-half billion dollars. So that
4 gets sent to him in May of 2014.

5 For five quarters subsequent to that time period, this
6 information is in the universe of what is known at Volkswagen.

7 And, in fact, Mr. Giuffra likes to quote about paragraph,
8 I think it's 249 from our complaint, that Winterkorn, despite
9 his knowledge of the existence of the defeat devices, and that
10 they were being used, and that the regulators were now asking
11 questions of them, and that they were a matter of public report
12 in this ICCT study, believed that the maximum or the possible
13 fine was 20 million Euros. That is not reasonable, and it's
14 inconsistent with everything we know about Winterkorn.

15 The reason why they use the defeat devices in the first
16 place is because in 2006, the only alternatives to not using
17 them would have cost more money.

18 So if Winterkorn, who is obsessively detailed oriented,
19 understands that they now use defeat devices -- and I don't
20 know what the exact number is as of that date, but somewhere in
21 the maybe millions of cars worldwide and hundreds of thousands
22 in the United States, and concludes that, well, potential
23 liability is only 20 million Euros, and the fact that we all
24 know that the coverup is worse than the crime, as of 2014 not
25 only was it a matter of public record that the emissions in

1 these vehicles were up to 40 times the legal limit, but the
2 world knew that, and the regulators were inquiring. And what
3 did Volkswagen do? They continued to conceal that fact for 16,
4 18 months. They actively, and this is in the Plea Agreement,
5 the Statement of Facts, concealed that fact from the regulators
6 in the United States, and lied to them. They actually did a
7 re-call in December 2014, which was basically a subterfuge to
8 cover up the fact that there were these emissions compliance
9 problems.

10 So knowing that, is it reasonable for Winterkorn or anyone
11 else at Volkswagen to have believed that they would get a slap
12 on the wrist for doing this at the scale that they did it for
13 the amount of time that they did it, and then after being
14 caught continued to do it. That was not going to provoke a
15 gentle response, and it didn't.

16 **THE COURT:** Let me ask you this. Up until then what
17 was the largest fine that EPA imposed for a violation of this?

18 (off the record discussion.)

19 **MR. HARROD:** I don't know what the number is. I think
20 it's a billion dollars. I think there was a diesel case
21 involving like Navistar and a couple of the truck companies,
22 and they were fined collectively I think a billions dollars.
23 But I don't think anybody had ever done something quite like
24 this.

25 And, Your Honor, we're here today -- I mean, I'm not going

1 to -- you are very familiar with the facts and circumstances of
2 this case and what the impact of it was. The difference
3 between 20 million Euros and the accrual that they've now taken
4 of \$18 billion is very significant, and was known at the time
5 that they were issuing those financial statements, certainly
6 beginning no later than the second quarter of 2014.

7 And I don't think that there's -- you know, that
8 information has been -- you know, Neuser and Gottweis knew
9 that. They pled guilty. Volkswagen is taking criminal
10 responsibility -- I'm sorry --

11 **MR. GIUFFRA:** It's not true.

12 **MR. HARROD:** It's not true.

13 **MR. GIUFFRA:** It's not true. It's just not true.

14 **MR. HARROD:** Volkswagen AG pled guilty and took
15 responsibility for the acts of Neuser and Gottweis, among four
16 other people.

17 That's true; correct?

18 So, you know, they -- I don't understand how that
19 knowledge -- those acts can't be imputed upon Volkswagen.

20 **THE COURT:** Okay.

21 **MR. HARROD:** But I can address your question about
22 Diess, and it's the same thing that I just said. Diess was
23 involved. We don't -- we're not attempting to impose liability
24 on Mr. Diess for the time before he joined Volkswagen. So, I
25 mean, we concede that. I think it's pretty clear in the

1 complaint.

2 Second quarter there's a meeting. The financial
3 statements gone on July 29th. There's a meeting on July 27th.
4 Your Honor already upheld his liability for that statement
5 under 10(b).

6 The third quarter I would just make the same point that I
7 made previously. They are on -- they have now admitted to
8 liability. They have a 6.7 billion Euro charge. The potential
9 liability is anywhere from two and-a-half to three times that.
10 They are aware of that. I don't think that that was a
11 reasonable amount of money. And there's allegations in the
12 complaint that Diess was personally involved in planning the
13 response to the diesel crisis. And so I think given those
14 actions, his role as a member of the management board, he
15 should be held both for the third quarter in these proceedings.
16 Is it -- did I answer all your questions?

17 **THE COURT:** Thank you.

18 **MR. HARROD:** Thank you.

19 **MR. GIUFFRA:** Your Honor, if I could just be heard for
20 a second on several points that were just been made.

21 Number one, with respect to Mr. Diess, and in fact Mr. Horn.

22 Page 33 of your honor's decision, Your Honor said:

23 Quote, this is while plaintiffs allege in conclusory
24 fashion that, quote, Diess was involved in the day-to-day
25 operations of and exercised power and control over VWAG of

1 America, VW of America, Audi of America, including, among
2 other things, directing their public statements and
3 regulatory actions cited in complaint 52. They provide no
4 additional allegations plausibly supporting this
5 assertion. The allegations and control with respect to
6 Horn and Browning are similarly lacking.

7 There's nothing in the amended complaint that is any
8 different that was in the first complaint that Your Honor said
9 had not been, at least as to Diess and as to Horn, that was
10 more particularized.

11 The problem, Your Honor, is the other side seems to forget
12 that what we're dealing with here is a Private Securities
13 Litigation Reform Act 9(b) Class Action case. They have a high
14 pleading burden. It's a different pleading burden than people
15 having normal cases. It's not a negligence case. You've got
16 to have particularized allegations.

17 In the PSLRA Congress said you've got to show who, what,
18 where, why, and who made the various statements. And the only
19 statements that we're now talking about are the financial
20 disclosures of the company. So they talk about Mr. Neuser.
21 They talk about Mr. Gottweis. There's no allegation that those
22 folks were involved in the financial disclosures of the
23 company. The only people that they can point to are Winterkorn
24 and Diess.

25 Now, as to Diess, they have nothing other than his

1 knowledge of the existence of the defeat device in July, which
2 is right when he gets there.

3 As to Winterkorn, they certainly have allegations that he
4 knew about the existence of a defeat device. But what they
5 don't have, they don't have the connection. And what the
6 connection that they're missing are particularized allegations
7 that he knew that -- I mean, the fact that they had to be
8 defeat devices in these cars -- and we'll accept that
9 allegation for purposes, because Your Honor found scienter as
10 to Dr -- or Professor Winterkorn. They do not have
11 particularized allegations at all that he knew that this was
12 going to cause billions of dollars in exposure for the company.

13 In fact, the only allegation that's in their entire
14 complaint, the one, yes, I do like to quote it, at paragraph
15 249, is that he was told in November 2014 that this could be
16 dealt with on a cost of business fine of 20 million Euros.
17 That's the only allegation of any kind of particularized
18 allegation in this entire complaint, and they've had the
19 opportunity to replead.

20 Let's go back to CARB.

21 Made a big deal about the CARB statement. And then when
22 we actually questioned him, it came out that all they really
23 had was a newspaper article. Well, there's something called
24 the Freedom of Information Act. They could have made a Freedom
25 of Information Act request to CARB and gotten a copy of the

1 letter, as opposed to relying on a newspaper article.

2 So they have absolutely nothing, other than speculation
3 saying, well, you didn't take enough of a reserve. And in
4 every single case that I have where there's wrongdoing, people
5 always make the argument, oh, your reserve wasn't taken at the
6 time when you knew about the fraud. And courts repeatedly
7 reject that argument because, number one, black letter law
8 under the securities laws says that you don't have an
9 obligation to disclose wrongdoing. You don't. That's not a
10 securities law violation. You've got to make -- if there's a
11 disclosure you have to make, and it's a false statement, then
12 it becomes a problem. But the mere fact that there's
13 wrongdoing going on in a company doesn't mean you have to open
14 the kimono and tell the world about it.

15 And in this particular case, as Your Honor correctly
16 pointed out, and as the other side of the case sort of
17 admitted, the biggest fine that had ever been was in a big
18 truck case involving a whole series of truck manufacturers, and
19 the total fine collectively was a billion dollars. The only
20 number that's in this complaint is the 20 million Euro number.
21 That's it.

22 Now, Mr. Horn, they talk about, you know, that he was
23 notified that, you know, I believe it was May 2014, of what the
24 theoretical fines were. There's no allegation in this
25 complaint at all that Dr -- that Professor Winterkorn -- sorry,

1 but Germans have Professor Doctor. You could be both a
2 professor doctor and just a doctor, that's two years ago -- but
3 Professor, I think he's a professor doctor, Winterkorn, there's
4 no allegation that anyone told him what the fine levels were.
5 There's no allegation in this complaint that anyone told him
6 what the theoretical liability was other than the 20 million
7 Euro. That's the only thing. So what we're focused on here is
8 did he know the reserves were too low. And there's no
9 allegation, as Your Honor found correctly at page 30 of your
10 decision previously.

11 Let's see. And, again, you know, the point, the point
12 about Liang and Neuser and Gottweis, none of the Government's
13 Statement of Facts, complaints, make any allegation about the
14 company being under reserved. Professor Winterkorn is not
15 mentioned in the Statement of Facts. And as I mentioned before
16 in paragraph one, it was quite clear that the Statement of
17 Facts, the supervisors who were referenced did not include
18 management board level members, and that's paragraph one of the
19 Statement of Facts.

20 So we're exactly at the same position we were back when
21 Your Honor in your prior decision dismissed the claims that
22 were raised by plaintiffs saying that the company was under
23 reserved. They have nothing new to add. And they've had an
24 opportunity to replead. And Your Honor should dismiss those
25 claims at least with prejudice.

1 **THE COURT:** Okay. I'm going to take it under
2 submission.

3 Did you want to respond?

4 **MR. HARROD:** Sure. You had previously said that you
5 were inclined to hold Mr. Horn in as a control person. Counsel
6 just addressed that. And I can address Horn if you'd like, but
7 if you are --

8 **THE COURT:** Well, you can say what you want to say.
9 Go ahead.

10 **MR. HARROD:** So the key argument that they make about
11 Horn as a control person is that he is not -- is this idea that
12 the person to have control has to have a relationship to the
13 statements, which we reject. And we believe that we've alleged
14 Horn has -- that's not their only argument. Their argument is
15 we don't allege enough of the facts and circumstances of his
16 control.

17 Horn was for 25 years in Wolfsburg, was sent to clean up
18 Volkswagen Group of America. He was supposedly handpicked by
19 Winterkorn and schooled, is the quote, in Volkswagen's inner
20 workings. These are all allegations that we added that are
21 referenced in paragraph 562 of the complaint. And the quote is
22 he came to the U.S. to enact profound change. These are in
23 addition to the allegations we had previously had that he was
24 the designee that Volkswagen picked to go to Congress when they
25 were investigating the diesel scandal.

1 And it's undisputed that Horn admitted in Congress, and at
2 other times, that he learned of the defeat devices in May of
3 2014 while he was in charge of Volkswagen Group of America, and
4 apparently aware that he was making statements frequently in
5 press releases and brochures and marketing materials that the
6 cars comply. So if you're the CEO, as Mr. Giuffra described as
7 the marketing arm, which is a wholly-owned subsidiary of
8 Volkswagen AG, and you know that they're making these
9 statements, aren't you in a position to say maybe we shouldn't
10 say those things which are not true?

11 And, in fact, he -- we have allegations in the complaint
12 that he was involved. He asked for a report from engineers in
13 Germany about the ICCT study. He was involved in sending
14 emails in I think July of 2015 to members -- I believe it
15 includes members of the management board -- about the question
16 of potential certification for model year 2016 cars. One of
17 their arguments is he wasn't involved in making any of the
18 statements. But the certifications is one of the statements
19 that we allege to be false. And I think at worse for us those
20 communications reflect his knowing involvement in the
21 certification process. He's asking about the emissions study.
22 He's asking for answers. He gets an estimate of what the
23 potential fines and costs would be, and then he's emailing
24 people in Germany about the risk of not getting the model year
25 2016 cars approved for sale in the United States. I believe

1 those facts support a finding of control and his involvement.
2 Thank you, Your Honor.

3 **MR. GONZALEZ:** Good morning, Your Honor. Joseph
4 Gonzalez.

5 Earlier in this hearing Your Honor indicated some concerns
6 with basing allegations solely on newspapers and articles
7 because, really, it's innuendo. It's kind of just
8 characterizing unsubstantial facts. That's basically what
9 plaintiffs did in their amended complaint. They indicated that
10 Mr. Horn was a long-time veteran, that he was handpicked, that
11 VW dealers believed he had the clout between U.S. markets. But
12 that's not what the Court asked him to do. What the Court said
13 is you failed to identify the specific circumstances of
14 control. Talking about the VA clout, talking about what he did
15 20 years ago doesn't answer that question.

16 **THE COURT:** Well, what about his testifying in
17 Congress?

18 **MR. GONZALEZ:** Your Honor, the fact that he testified
19 in Congress, which he made clear that he did not know about it,
20 doesn't show his control, okay. What it shows is that he chose
21 to appear on behalf of the company. But that doesn't show the
22 specific circumstances of the fraud alleged; it shows that he's
23 decided to make a statement for the company.

24 And what the Court asked him to do --

25 **THE COURT:** About what?

1 **MR. GONZALEZ:** About the overall allegations, which is
2 precisely what he did. But the fact that he made a statement
3 about the overall allegations and agreed to appear and made
4 that statement doesn't respond to what the Court asked him to
5 do in the January decision: Public statements to regulatory
6 actions, identify the specific circumstances. He didn't do
7 that when he went up there. It doesn't mean that he did that
8 when he went up there. And so I don't think it's fair, given
9 the 9(b) rule pleading standard, to use that against him.

10 The second point plaintiffs make is that, look, he
11 received this email warning of the violations and the possible
12 fines. Scierter is no substitute for the specific
13 circumstances of control, and really that's what plaintiffs are
14 trying to do. They're saying, look, you found scierter, so
15 that's enough to establish specific circumstances of control.
16 It's not. And the example of him appearing before Congress is
17 a classic example of that. It doesn't show the specific
18 circumstances.

19 **THE COURT:** Thank you. I'm taking the matter under
20 submission.

21 **MR. GONZALEZ:** Thank you.

22 **THE COURT:** Let me turn to the Joint Status Report.
23 First, I found it very helpful and encouraging. I think
24 that the parties have done a spectacular job of implementing
25 these settlements. The logistics were daunting, and what --

1 and one can make a number of observations. One is, of course,
2 with any new program, there can be problems, unanticipated
3 problems for the most part, but maybe somewhat anticipated.
4 And the -- I would say that the plaintiffs and the defendant
5 have responded to the concerns that were addressed by the
6 consumers in an effort to implement this program, which is
7 probably the largest, the buyback, in the history of the
8 automotive industry. Maybe one of the largest buybacks ever in
9 any product case. And we're not just talking about a product,
10 we're talking about an automobile. And as we've repeatedly
11 said, that can be the major asset that a consumer has, and has
12 with it all sorts of attributes being that -- the means by
13 which transportation achieved: The bringing of your children
14 to school, taking them home, getting to work, shopping, all
15 those things rely on transportation, and in this case, of
16 course, relied on the vehicle that they had purchased or
17 leased. And so the importance of it was never in doubt, and I
18 think that the parties have responded to that.

19 Frequently, in settlements, the effort goes to the
20 settlement and less of an effort goes to the implementation. I
21 don't think that's true in this case. From the reports that
22 the Court has received from, I guess it's Ankara, the
23 implementer, as well as simply the reports of the number of
24 calls that the plaintiff's steering committee responds to,
25 which are in the many, many thousands that Volkswagen's had to

1 respond to indicates a serious and ongoing effort to achieve
2 justice for and compensation for the consumer. So that's what
3 the report details. And I would invite anyone who is
4 interested in the progress of this litigation to review the
5 Joint Status Report, which was filed on June 23rd.

6 I had a couple of questions that I wanted to direct to the
7 parties, and then of course hear from the parties if they want
8 to elaborate on where they are.

9 One of the requirements of the settlement was that a
10 substantial sum of money was required of VW -- I think the
11 amount was \$2 billion -- to be placed in Zev, that's Zero
12 Emission Vehicles, infrastructure over four 30-month cycles.
13 And Volkswagen points out that they have created a wholly-owned
14 subsidiary named Electrify America whose mission it is to
15 implement Volkswagen's obligations under this agreement. They
16 then highlight what they have done in connection with
17 implementing this plan, which again the Court believes to be
18 impressive.

19 But where I have some concern, and that's perhaps because
20 I sit here in California, is what is happening on the
21 California front with respect to the ZEV? As the report
22 indicates, there have been ongoing discussions, and they have
23 been fruitful. They have been discussions in which parties
24 have -- going back and forth and making suggestions as to how
25 to implement I think it's \$200 million in the California --

1 must have been designated for California. I may be wrong in
2 that number.

3 **MR. GIUFFRA:** It's 800 million total over ten years,
4 and the first tranche is coming due now.

5 **THE COURT:** And that is 200?

6 **MR. GIUFFRA:** I think that's roughly right, yeah.

7 **THE COURT:** All right. Well, okay, so it's \$800
8 million --

9 **MR. GIUFFRA:** Over ten years.

10 **THE COURT:** -- over ten years. Well, that's money.

11 And I was going to ask Mr. Akers if he could sort of give
12 me an update where we are.

13 **MR. AKERS:** Yes, Your Honor.

14 As we indicated in the status report, the parties have
15 been in discussions at a staff level intended to accomplish two
16 things, both to ensure that the ZEV plan is compliant with our
17 requirement to the Consent Decree, but also to ensure that
18 we're taking advantage of the expertise both of the Electrify
19 America staff and also ARB staff. Both entities do a fair
20 amount of work around zero emission vehicles and have knowledge
21 and expertise in this area.

22 Those have been fruitful discussions, and we anticipate
23 that an approvable ZEV investment plan supplement will be filed
24 with the Air Board this week. That will then be put out for
25 public comment. And there will be a notice meeting of the Air

1 Resources Board for July where we hope that that will be
2 brought forth for approval.

3 **THE COURT:** So that's very good news. In other words,
4 it's your expectation that within this week CARB will publish a
5 proposal.

6 **MR. AKERS:** That's correct.

7 **THE COURT:** I mean, it's a proposal for public
8 comment. I understand there will be public comment.

9 **MR. AKERS:** That's correct, Your Honor. The plan
10 supplement will be submitted by Electrify America to ARB, which
11 will then publish it, and then it will then be set for a
12 hearing before the Board in July.

13 **THE COURT:** Okay. Well, that seems encouraging.
14 Thank you.

15 **MR. AKERS:** Thank you, sir.

16 **THE COURT:** Where are we on the Mitigation Trust?
17 That is -- also seems to be a little bit of money. It's
18 900 million.

19 (Laughter)

20 **THE COURT:** That's real money.

21 **MR. VAN EATON:** Your Honor, it's even realer than
22 that.

23 **THE COURT:** Even you, you're the Government, does that
24 900 million seem like real money?

25 **MR. VAN EATON:** That's actually 2.7 billion of which

1 the 900 million is the first --

2 **THE COURT:** Oh.

3 **MR. VAN EATON:** -- and then on top, that's from the
4 2 billion, another 225 million included, so just shy of
5 3 billion total for the Mitigation Trust.

6 **THE COURT:** Now that's real money.

7 (Laughter)

8 **MR. VAN EATON:** Real money, undeniably.

9 So Your Honor, you appointed the trustee. The parties
10 have been negotiating a trust document. You'll recall in the
11 2-liter deal we had attached at the time what we called
12 Appendix D, which was a form of a trust. It turns out that
13 there were a number of issues from the perspective of an actual
14 trustee that we may not have contemplated in Appendix D. So
15 there have been a lot of issues to work through that we just
16 did not previously anticipate.

17 The progress is they're good. We anticipate being able to
18 file -- you'll recall the Consent Decree that requires the
19 United States to file the document with the Court, at which
20 point it will become active, and we anticipate being able to do
21 that in the very near future.

22 In the meantime, there's no indication that, you know,
23 we've had any problem with implementation. Volkswagen timely
24 paid the first payment. Interest has been accruing on those
25 payments. All of the consultations that are required under the

1 Consent Decree have taken place. And really this is just a
2 matter of sorting out the details of a very complicated trust
3 document and an unprecedented trust document for a very large
4 amount of money.

5 **THE COURT:** Well, who is negotiating this trust
6 document? I mean, obviously, you are on behalf of the
7 Government, but it's some third party, the trustee, that has to
8 have certain powers and certain responsibilities, and that is
9 what's complicated.

10 **MR. VAN EATON:** Correct. So the Trust has, as you
11 would expect, retained outside counsel, who we are negotiating
12 with. Also heavily involved in the negotiations are attorneys
13 representing the State Attorney Generals, who of course are the
14 beneficiaries under the Trust. And so there is a coalition of
15 states that have a representative. Mr. Akers, on behalf of
16 California is involved as well. We have also had ongoing
17 consultation with representatives of the tribal interests,
18 which are also beneficiaries under the Trust.

19 **THE COURT:** So how many people are you negotiating
20 with?

21 **MR. VAN EATON:** Everybody but Volkswagen.

22 (Laughter)

23 **THE COURT:** Well, so like there are 50 --

24 **MR. VAN EATON:** No, no, it's not all states. There is
25 a representative. The Attorney General Office for the state of

1 New York has been throughout, you know, the course of this
2 litigation is the primary point of contact for us, and that's
3 who we interface with, and then they take a message to and then
4 bring a message from the remainder of the states.

5 So really the team is California Attorney General's
6 Office, New York Attorney General's Office, and the Justice
7 Department negotiating with counsel for the Trust.

8 **THE COURT:** Well, that's very good.

9 **MR. VAN EATON:** Manageable.

10 **THE COURT:** Right. Now, you say near future, which is
11 one of those terms that gives me some pause.

12 **MR. VAN EATON:** Weeks, Your Honor.

13 **THE COURT:** Weeks?

14 **MR. VAN EATON:** Weeks not months, is what is my best
15 guess.

16 **THE COURT:** Weeks. Do you have a number?

17 **MR. VAN EATON:** I dare not.

18 **THE COURT:** Well, weeks not months means like three.

19 **MR. VAN EATON:** I suppose it's less than four.

20 **THE COURT:** Okay. But I want -- I want -- I'm
21 requesting that you file within 30 days an update as to where
22 we are on that. I don't want -- we have a lot of money sitting
23 in the Court Registry, and that money should be disbursed for
24 its intended purposes, and so I want to keep --

25 **MR. VAN EATON:** Absolutely, Your Honor, happy to file

1 an update within 30 days. The United States absolutely shares
2 that sentiment. We are eager to get the money accessible to
3 the states and other beneficiaries to start implementing these
4 projects.

5 And you mentioned the Registry, we also have a pending
6 motion before the Court to waive the investment fees and the
7 Registry on that money to ensure that every last dime can go
8 towards the intended purpose.

9 **THE COURT:** And that's a matter that I'll consider.

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

11 **THE COURT:** I'm trying in my own mind to think about
12 whether there are costs associated with maintaining the
13 Registry, and so forth, that ought to fairly be allocated to
14 satisfy those costs. But I understand the Government sits in a
15 separate position with respect to it, by statute, I think, and
16 so I'll take a look at that and act on it --

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

18 **THE COURT:** -- soon enough.

19 **MR. VAN EATON:** Anything further?

20 **THE COURT:** No.

21 **MR. VAN EATON:** Thank you very much.

22 **THE COURT:** Well, Ms. Cabraser, do you have anything
23 you'd like to add to this morning's discussion?

24 **MS. CABRASER:** Thank you, Your Honor.

25 The details of the status in progress of the claims

1 program to date are contained in the Joint Status Report and
2 also the June 26th, 2017 32-page report of Ankara, the claims
3 supervisor, complete with charts and graphs and many
4 statistics.

5 I would say this, not to repeat what is in those reports,
6 putting those reports together, and obviously the statistics
7 change daily, just by way of general overview we're
8 approximately eight months into a 23-month claim period. That
9 is, we're just over one-third of the way into the claim period
10 for the 2-liter vehicles. Even though we're one-third of the
11 way in, already nearly 62 percent of the vehicles are
12 participating either as bought back vehicles or vehicles to
13 which modifications have been performed. So that's one-third
14 of the way in, nearly two-thirds of the program accomplished.
15 There's an 85 percent participation rate for vehicles, and so
16 the program is well ahead of schedule.

17 As the Claims Supervisor reports, nearly 408,000 of the
18 claims -- of the Class Members have already made claims in the
19 program. And combining claims paid and offers made to these
20 Class Members already, that puts the total dollars at over
21 7 billion.

22 As the Court is aware, in most class action claims period
23 the rush comes at the end, and we do expect a rush at the end
24 of this claims period. Everyone is geared up for it. But we
25 also had a massive rush at the beginning that was capitalized

1 by the sheer volume of the benefits and the positive reception
2 that the settlement received among Class Members.

3 It's interesting to note that as the claims period has
4 progressed and settlements promises have become realities, the
5 settlement has become more, not less attractive to the Class
6 Members. That is, the reality has lived up to the promise, and
7 we know this statistically because as of today -- and, again,
8 this number changes daily -- 425 Class Members who previously
9 opted out have withdrawn their opt-out requests or otherwise
10 participated in the Settlement Agreement and signed individual
11 releases. So the traffic is one way, and the traffic is in.

12 These are all big numbers, big dollars paid out, over a
13 hundred thousand Class Member communications with the PSC, and
14 that doesn't count all of the communications with the Call
15 Center and the settlement web site, and it doesn't count the
16 hundreds of people from Volkswagen entities that Volkswagen
17 contracted with to implement the settlement: The Claims
18 Supervisor, the dealers, the PSC response team. It's taken an
19 army of people and a new infrastructure to make this work.

20 We, on the PSC, have used the technique of basically
21 riding along with Claim Members -- Class Members sometimes
22 literally to see what, if any, questions or problems there are
23 in getting through the claims process and getting through the
24 actual buyback to the check or to the modification of the car
25 and the settlement payment. And that's enabled us to surface

1 problems early with Volkswagen Claims Supervisor, and that's
2 enabled the parties working together to solve those problems to
3 improve the process, and to put new techniques into play, so
4 that for most people, most of the time in the Class, the
5 settlement process is working very smoothly, and we know that
6 because of the feedback that we're getting from Class Members.

7 Class action settlements work well with large scale
8 problems with thousands of people, with many, many claims, but
9 they also work best when they attend to the details and the
10 realities of solving the problem at hand. And we can report to
11 the Court that this settlement as implemented by the parties is
12 doing that.

13 So the big things are being accomplished. The statistics
14 tell you that. But the small things matter too. And with your
15 permission, I'm going to share with you just a very brief note
16 we received from Class Member Margaret Hobert from Southern
17 California. She says:

18 "Toward the end of February of this year, after I
19 researched the Volkswagen dealerships in the area, I went
20 to Riverside Volkswagen, about 40 miles from here. I was
21 thoroughly surprised when they took my 2015 Jetta, the
22 model I had researched for a year before I purchased it,
23 and the one that had approximately 4,000 miles on it at
24 the time of the scandal. By afternoon I was able to drive
25 back home in a 2017 metallic blue Jetta with the complete

1 safety package, which was my reason for buying the car in
2 the first place. The buyback of my original car plus the
3 penalty that Volkswagen paid covered the new car as well
4 as six years of pre-paid annual service plus heated seats.

5 (Laughter)

6 "I don't want to forget to tell you about the heated
7 seats. At 76, I'm one of the designated drivers for the
8 older members of my retirement community." And she
9 describes how she drives one woman to her eye
10 appointments. "I told her that I had heated her seat up
11 for her before she got in. Oh, no, I don't need anything
12 as fancy as that, she protested. I know she has a really
13 painful back problem, and she actually oozed into and out
14 of the passenger seat. Now she knows each month that she
15 gets a safe ride to and from her eye doctors, and a
16 comfortable heated seat both ways. I really love that. I
17 hope that nothing like the Volkswagen mess ever happens
18 again. Our environment needs all the help it can get."

19 This class member was able to take part actively in
20 solving the problem that outraged her. She became a part of
21 the solution. It empowered her. The settlement has empowered
22 thousands of other consumers to do the same. We thank the
23 Court for the opportunity to be a part of that.

24 **THE COURT:** Thank you. Let me ask you a question.

25 The opt-outs which you've raised, that a number of them, I

1 think the number you gave is 486, but some number like that,
2 came back into the settlement -- is that correct? -- there was
3 some number --

4 **MS. CABRASER:** That's correct, as of this morning,
5 425.

6 **THE COURT:** 425. So let's assume for a moment that
7 there is, listening to this colloquy, some consumer who opted
8 out of the -- we'll take the 2-liter Settlement -- opted out.
9 Is it possible -- and maybe I have to ask VW this -- but is it
10 possible that that person can change their mind and opt in?

11 **MS. CABRASER:** Your Honor, the rule is that once an
12 opt out, always an opt out, and the reason for that is so that
13 the people don't use a class action settlement as a revolving
14 door.

15 In this case, Volkswagen has agreed on a class member by
16 class member basis to entertain withdrawals of opt-outs, and
17 you'd have to confirm that with Volkswagen's counsel. But it's
18 my understanding that they are receptive to doing that for
19 opt-outs who want to come in and participate in the settlement
20 program.

21 **THE COURT:** In other words, I understand, but this --
22 and, Ms. Nelles, you can address this.

23 **MS. NELLES:** Thank you.

24 **THE COURT:** It's not a function of negotiation. That
25 is to say, they're not going to sit outside and say, look, if

1 you give us an extra heated seat, extra rear heated seats, I'll
2 join in on the settlement.

3 (Laughter)

4 **MS. NELLES:** I have a lot of those negotiations, Your
5 Honor.

6 **THE COURT:** Well, why don't you just tell us a little
7 bit about that, because I think that it is of interest --
8 obviously, it's the Court's interest to ensure that any
9 consumer has the benefit of a settlement and understands --
10 understands, and is given ample opportunity to consider whether
11 to come in or not.

12 **MS. NELLES:** Yes, Your Honor. And I will alert the
13 Court that it's a slightly sensitive topic, as many of the
14 opt-outs are represented by counsel. And the Court may recall
15 that with the other urging of Judge Cox in Detroit, the company
16 did open up a period for people who had opted out to join the
17 settlement for the 2 liters, and we have agreed to do the same
18 for the 3 liters.

19 We had a little bit of a kerfuffle when some
20 represented -- I would say the lawyers -- misrepresented
21 parties felt that perhaps we were communicating with their
22 clients when we shouldn't be.

23 So I just want to note that at the same time, as, Your
24 Honor, I believe we discussed before, and certainly we have
25 discussed with plaintiffs, Volkswagen believes this is an

1 excellent settlement. We believe it has been proven, and seen
2 as such by the extreme interest in the settlement. And we
3 remain completely open to allowing anybody at this juncture who
4 would like to join the settlement to joint the settlement, and
5 to do that all they need to do is contact Volkswagen.

6 But again, I just want to make sure that I am carefully
7 protecting Volkswagen from any concern about reaching out to
8 represented parties.

9 **THE COURT:** Right. You don't have to reach out,
10 because by reaching out your concern is that you will somehow
11 run afoul of an accusation that you are circumventing their
12 rights to counsel, and so forth.

13 However, the Court doesn't have that concern.

14 (Laughter)

15 First of all, notwithstanding how much money is in the
16 Registry of the Court, I am judgment proof.

17 (Laughter)

18 And secondly, I think it is my responsibility to reach out
19 to any Class Member or any potential Class Member to tell them
20 that there is the advantage of this particular settlement, and
21 that it's not too late for them to think about it in terms of
22 what's to their economic advantage.

23 I think that's --

24 **MS. NELLES:** It is absolutely not too late. I know
25 we've been going a long time, but if Your Honor will indulge

1 me, I just have a few highlights from the report, if that's all
2 right.

3 **THE COURT:** Sure.

4 **MS. NELLES:** And I just want to note, Ms. Cabraser
5 noted that the company has modified or removed from commerce
6 some 61 percent of the affected 2-liter vehicles. That's
7 61 percent of the 2-liter TDIs that are subject to the First
8 Partial Consent Decree.

9 I think it's just worth noting for Your Honor, we have --
10 about 290 of those more than 300,000 vehicles were acquired
11 through this particular 2-liter settlement, and about 273,000
12 of those vehicles were repurchases, 10,000 were early lease
13 terminations, and another 10,000 were complete or partial
14 emission modifications. The statistic that I'd like to add is
15 that about another 80,000 vehicles are currently in the
16 settlement pipeline. So we are really well, well on the way to
17 meeting the goals of the settlement. That means we have 80,000
18 were validations complete, offers have been extended, and many
19 of those already have scheduled appointments.

20 I also think it's worth noting that Volkswagen expects
21 that the ratio modifications to buybacks is going to increase
22 as the program continues. To date, the modification of the
23 Generation 3 vehicles was approved in January. The
24 modification of the Generation 2 automatic transmissions was
25 approved just in May, and now we're just waiting to hear on Gen

1 ls at this time. And as we receive those approvals, we've seen
2 growing enthusiasm for the modification.

3 I know Your Honor would be interested to hear that with
4 the help of the DOJ in particular, Volkswagen has launched a
5 program to make the settlement benefits available to service
6 personnel, and personnel -- other personnel deployed overseas.
7 We're also assisting consumers in remote U.S. locations, so
8 that they are able to take advantage, particularly certain
9 areas in Hawaii.

10 And of course there have been, as you heard and read, a
11 lot of process improvements. I believe we have a little chart
12 that's attached to the Status Report, and it shows that one of
13 the metrics -- and there's a number of calls received. And I
14 know Ms. Cabraser receives thousands of calls, and I know this
15 because Ms. Cabraser and I talk often about those calls.

16 And Volkswagen, with respect to just the 2-liter
17 Settlement Program, received more than 1,650,000 calls. And I
18 think you -- and what I think is a testament to how much
19 progress has been made in the settlement is when we were
20 receiving 10,000 plus calls daily, that amount grows fewer and
21 fewer all the time.

22 And one of the -- one thing we haven't touched on today is
23 the 3-liter Settlement Program. And of course we have taken
24 all that learning from the 2-liter Program and leveraged it
25 into putting together the 3-liter Settlement Program. And when

1 Final Approval was granted on May 17, the Claims Portal went
2 live on May 18. We are receiving in the nature of a handful of
3 a couple hundred calls daily, not tens of thousands, 500, 600,
4 which I think really indicates how streamlined the process has
5 become for consumers, with the assistance of all these fine
6 people in this room.

7 And to date more than 43,000 claims have been submitted.
8 So we're five weeks into that Program, 43,000 claims, that's
9 more than 50 percent of the total population of the affected
10 vehicles. So eight months in we have this enormous outpouring
11 on the 2-liter, over 61 percent. Five weeks into the 3-liter,
12 we're already at over 50 percent. In fact, we'll be -- we have
13 13,000 accepted offers. We have appointments that are going to
14 begin as soon as next week.

15 And I think, importantly, we also -- to note that we
16 remain on track in terms of obtaining approvals for the
17 emissions compliant repair, that's the so-called fix for the
18 3-liter of the Generation 2 vehicles, and the 3-liter.
19 Volkswagen has submitted proposals for all of the Generation 2
20 vehicles for emission compliant repairs, and we're now
21 continuing to work on proposals for modifications for the
22 3-liter Generation 1 cars.

23 So it really -- we couldn't be more pleased that we were
24 able to start this Joint Status Report by saying that the
25 parties agree on how great it is and how much substantial

1 progress has been made in every aspect of this joint effort.
2 And of course that couldn't have been done without the effort
3 of all these people, many, many third parties, and of course
4 the Court itself.

5 And with respect to even the 2-liter or the 3-liter, if
6 there is any opt-out that wants to respond to the outreach of
7 the Court, they are free to do so simply by accessing the VW
8 web site, the Claims Portal. That is all that needs to be
9 done. Thank you.

10 **THE COURT:** Thank you. I'd like to hear from Bosch.
11 Mr. Slater.

12 **MR. SLATER:** Thank you, Your Honor.

13 On our side it's a somewhat simpler process, made simpler
14 because of the efforts that were made by the PSC and by
15 Volkswagen previously in setting up the Program, and in
16 addition the efforts of Epiq and Ankara, both in terms of
17 outreach and in terms of administration.

18 Just shy of one month after Final Approval of the Bosch
19 settlement, close to 250,000 checks had already been issued, so
20 well over a third of the total possible Class Members had
21 already been sent a check.

22 The check cashing rate seems to be moving apace as well,
23 and we think that shows both the effort that has been made
24 beforehand, primarily by other people, and also the receptivity
25 of the Class to the settlement. We hope it will continue

1 smoothly.

2 For our part, we would be open to opt-outs coming into the
3 settlement at this point. We think PSC will need to consent as
4 well, but there should be room within the program to do so if
5 there is interest.

6 Thank you, Your Honor.

7 **THE COURT:** I would be remiss if I didn't point out
8 that none of this would have happened without the considerable
9 effort of the Settlement Master. He, from our point of view,
10 regrettably left this task. For the most part it was resolved.
11 But he sought government employment --

12 (Laughter)

13 **THE COURT:** -- and that has its attractions and
14 uncertainties.

15 (Laughter)

16 So I would thank once again publicly Robert Mueller, the
17 Former Director of the Federal Bureau of Investigation, his
18 Chief Assistant James Quarles, and also Aaron Zebley, who, the
19 three of them, and others at Wilmer Hale, for their
20 extraordinary service to bringing about civil justice in this
21 matter. I just simply want to acknowledge that.

22 Well, the Court has a number of things under consideration
23 it has to resolve going forward. There are motions to dismiss
24 on the -- what is this matter that I presently have, a motion
25 to dismiss on the dealer Bosch matters. There are fees that

1 the Court has to address. There are questions of -- ultimately
2 the question now is what to do with one of the state actions, I
3 think it's Wyoming. There's also a resolution of remand
4 motions, which the Court will turn to in due course, and that's
5 a term of art. And so there is a lot of unfinished business.

6 But of course from a consumer's point of view much of the
7 business has been finished.

8 And I want to thank the parties and everyone here in court
9 for all their fine work.

10 And we will be in recess. And I will see you at the next
11 calling, at least some of you.

12 Thank you. We're in recess.

13 **ALL COUNSEL:** Thank you, Your Honor.

14 (Proceedings adjourned at 9:37 a.m.)

15 ---oOo---

16

17

18

19

20

21

22

23

24

25

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

CERTIFICATE OF REPORTER

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

DATE: Wednesday, June 28, 2017



Rhonda L. Aquilina, CSR No. 9956, RMR, CRR
Court Reporter