

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE EDWARD M. CHEN, JUDGE

IN RE CHRYSLER-DODGE-JEEP ) NO. 17-MD-02777-EMC  
ECODIESEL MARKETING, SALES )  
PRACTICES AND PRODUCTS LIABILITY )  
LITIGATION )  
\_\_\_\_\_ )

San Francisco, California  
Wednesday, June 14, 2017

**TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES :**

For Plaintiff Jose Chavez, individually and on behalf of all others similarly situated:

HAGENS BERMAN SOBOL SHAPIRO LLP  
1918 Eighth Avenue, Suite 3300  
Seattle, WA 98101  
BY: STEVE W. BERMAN, ESQUIRE

CARELLA, BYRNE, CECCHI, OLSTEIN,  
BRODY & AGNELLO, P.C.  
5 Becker Farm Road  
Roseland, NJ 07068  
BY: JAMES E. CECCHI, ESQUIRE

(Appearances continued on the following pages)

Reported By: Angela Pourtabib, CSR #13714, RPR  
Pro Tem Court Reporter

APPEARANCES CONTINUED:

For Plaintiff Jose Chavez, individually and on behalf of all others similarly situated:

COHEN, MILSTEIN, SELLERS & TOLL  
2925 PGA Boulevard, Suite 200  
Palm Beach Gardens, FL 33410  
BY: THEODORE J. LEOPOLD, ESQUIRE

THE MILLER LAW FIRM  
950 West University Drive, Suite 300  
Rochester, MI 48307  
BY: E. POWELL MILLER, ESQUIRE  
SHARON S. ALMONRODE, ESQUIRE

SEEGER WEISS LLP  
77 Water Street  
New York, NY 10005  
BY: JENNIFER R. SCULLION, ESQUIRE

For Plaintiff Environmental Protection Agency:

U.S. DEPARTMENT OF JUSTICE  
Environment & Natural Resources  
Division  
P.O. Box 7611  
Washington, DC 20044  
BY: LEIGH RENDE, ESQUIRE  
EMILY C. POWERS, ESQUIRE

For Plaintiffs Kayla Kelley and John Milligan:

AHDOOT & WOLFSON, PC  
1016 Palm Avenue  
West Hollywood, CA 90069  
BY: TINA WOLFSON, ESQUIRE

## APPEARANCES CONTINUED:

For Plaintiff Mathue Fasching, individually and on behalf of all others similarly situated:

LIEFF, CABRASER, HEIMANN & BERNSTEIN  
275 Battery Street, 29th Floor  
San Francisco, CA 94111  
BY: ELIZABETH J. CABRASER, ESQUIRE

LIEFF, CABRASER, HEIMANN & BERNSTEIN  
250 Hudson Street, 8th Floor  
New York, NY 10013  
BY: DAVID S. STELLINGS, ESQUIRE

BRANSTETTER, STRANCH & JENNINGS, PLLC  
223 Rosa Parks Avenue, Suite 200  
Nashville, TN 37203  
BY: J. GERARD STRANCH, IV, ESQUIRE

BAILEY GLASSER LLP  
209 Capitol Street  
Charleston, WV 25301  
BY: BENJAMIN L. BAILEY, ESQUIRE

BLEICHMAR, FONTI & AULD LLP  
1999 Harrison Street, Suite 670  
Oakland, CA 94612  
BY: LESLEY WEAVER, ESQUIRE

KELLER ROHRBACK LLP  
1201 Third Avenue, Suite 3200  
Seattle, WA 98101  
BY: LYNN L. SARKO, ESQUIRE

MOTLEY RICE LLP  
28 Bridgeside Boulevard  
Mr. Pleasant, SC 29464  
BY: JOSEPH F. RICE, ESQUIRE

For Plaintiff Luke Kitchel, individually, and on behalf of all others similarly situated:

BARON & BUDD, P.C.  
15910 Ventura Boulevard, Suite 1600  
Encino, CA 91436  
BY: ROLAND TELLIS, ESQUIRE

APPEARANCES CONTINUED:

For Plaintiff Luke Kitchel, individually, and on behalf of all others similarly situated:

ROBBINS GELLER RUDMAN & DOWD LLP  
655 West Broadway, Suite 1900  
San Diego, CA 92101  
BY: RACHEL L. JENSEN, ESQUIRE

KOPELOWITZ OSTROW FERGUSON  
WEISERLBERG GILBERT  
2800 Ponce De Leon Blvd., Suite 1100  
Coral Gables, FL 33134  
BY: ROBERT C. GILBERT, ESQUIRE

For Plaintiffs Christopher Walker and Betty Lou Rugg:

LAW OFFICES OF FRANCIS O. SCARPULLA  
456 Montgomery Street, 17th Floor  
San Francisco, CA 94104  
BY: FRANCIS O. SCARPULLA, ESQUIRE

For Plaintiff Jason Gaines:

JOSEPH SAVERI LAW FIRM  
555 Montgomery Street, Suite 1210  
San Francisco, CA 94111  
BY: JOSEPH R. SAVERI, ESQUIRE  
NICOMEDES HERRERA, ESQUIRE

For Plaintiff Charles Marlatt and Stanley Bruce:

GIRARD GIBBS LLP  
601 California Street, 14th Floor  
San Francisco, CA 94108  
BY: ERIC H. GIBBS, ESQUIRE  
AMY M. ZEMAN, ESQUIRE

APPEARANCES CONTINUED:

For Plaintiff Anthony Leocadio:

HEYGOOD, ORR & PEARSON  
2331 W. Northwest Hwy, 2nd Floor  
Dallas, TX 75220  
BY: MICHAEL HEYGOOD, ESQUIRE

For Plaintiff Chatom Motor Company:

ROBINS KAPLAN LLP  
601 Lexington Avenue, Suite 3400  
New York, NY 10022  
BY: STACEY P. SLAUGHTER, ESQUIRE

ROBINS KAPLAN LLP  
2440 West El Camino Real, Suite 100  
Mountain View, CA 94040  
BY: MICHAEL F. RAM, ESQUIRE  
SUSAN BROWN, ESQUIRE

For Plaintiff Albert Sebastian:

CASEY GERRY SCHENK FRANCAVILLA  
BLATT & PENFIELD LLP  
110 Laurel Street  
San Diego, CA 92101  
BY: DAVID S. CASEY, JR., ESQUIRE

For Plaintiff Nathan Friedenfels:

HELMUTH & JOHNSON PLLC  
8050 West 78th Street  
Edina, MN 55439  
BY: RICHARD M. HAGSTROM, ESQUIRE

BERMAN DEVALERIO  
One California Street, Suite 900  
San Francisco, CA 94111  
BY: TODD A. SEAVER, ESQUIRE

GUSTAFSON GLUEK PLLC  
120 South Sixth Street, Suite 2600  
Minneapolis, MN 55402  
BY: CATHY K. SMITH, ESQUIRE

APPEARANCES CONTINUED:

For Plaintiffs Bret Rivero and Jamie Varnado:

PATRICK MILLER LLC  
400 Poydras Street  
New Orleans, LA 70130  
BY: MARC MICHAUD, ESQUIRE

For Plaintiff Maya Ramirez:

SHEPHERD, FINKELMAN, MILLER & SHAH, LLP  
35 East State Street  
Media, PA 19063  
BY: JAMES SHAH, ESQUIRE

For Plaintiffs John Stephens and Bill Turner:

DiCELLO LEVITT & CASEY LLC  
Ten North Dearborn Street, 11th Floor  
Chicago, IL 60602  
BY: ADAM J. LEVITT, ESQUIRE

BEASLEY, ALLEN, CROW, METHVIN,  
PORTIS & MILES, P.C.  
272 Commerce Street  
Montgomery, AL 36103  
BY: W. DANIEL MILES, III, ESQUIRE

For Defendants FCA U.S. and FCS N.V.:

SULLIVAN & CROMWELL LLP  
125 Broad Street  
New York, NY 10004  
BY: ROBERT J. GIUFFRA, JR., ESQUIRE  
DARRELL S. CAFASSO, ESQUIRE

For Defendant Robert Bosch LLC:

CLEARY, GOTTLIEB, STEEN & HAMILTON LLP  
2000 Pennsylvania Avenue, N.W.  
Washington, DC 20006  
BY: MATTHEW D. SLATER, ESQUIRE

APPEARANCES CONTINUED:

Appearances According to the "Confirmed Telephonic Appearance Schedule":

Jonathan Boggs  
Kathryn P. Caballero  
Katherine Charonko  
Jodi W. Flowers  
William B. Monahan  
Katy Pape  
Jon F. Worm

1 Wednesday - June 14, 2017

10:02 a.m.

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

3 ---oOo---

4 THE COURT: All right. Good morning, everyone.

5 Let me lay out the ground rules here. Oh, we've got  
6 to call the case. That's one of the ground rules.

7 THE DEPUTY: Good morning. Calling case C-17-2777 in  
8 Re Chrysler-Dodge-Jeep EcoDiesel Marketing Sales Practices and  
9 Products Liability Litigation.

10 THE COURT: All right. So I'm not going to have  
11 everybody make another appearance to start with. You have all  
12 checked in with Betty. I have your cards and information, so a  
13 record will be made.

14 I will be giving everybody a chance to say something,  
15 so you'll -- your appearance will, of course, be noted for the  
16 record as we move along.

17 What I'm going to do is sort of bifurcate this and  
18 invite -- I think there are 11 applicants for lead or colead  
19 counsel positions, and I think I had indicated in my last order  
20 that I would allot six minutes for each to make their  
21 presentation or answer some questions I might have.

22 And then the next group will be those who have applied  
23 for the steering committee, a plaintiff's steering committee  
24 position, and I have allocated, I think, four minutes for that,  
25 which is, of course, double what Judge Breyer allowed. So you



1 might note that, that I'm twice as generous as he is.

2 Those who -- the 11 who have applied for leadership  
3 positions, just to make clear, this is your chance to make your  
4 pitch for both. You know, if you do six and then another four,  
5 we might be here all day.

6 So -- and to be fair, I'm just going to do this in  
7 alphabetical order partly because that's the way my binder is  
8 organized, and so it's easier for me, but that's a neutral way  
9 of proceeding.

10 But before I do, I want to first see if defendants  
11 have any comment -- well, one, I want an update just briefly of  
12 whether anything has developed since our initial conference,  
13 particularly with the software submission to carve any PA.

14 MR. GIUFFRA: Good morning, Your Honor. Robert  
15 Giuffra with Sullivan & Cromwell for the FCA defendants.

16 I wanted to report to the Court that we think we're  
17 making good progress. This process takes time, and FCA remains  
18 optimistic that it can address the EPA and CARB's concerns as  
19 reflected in their NOVs and lawsuit without impacting the  
20 performance or fuel economy of these vehicles.

21 And as I mentioned at the last hearing, we had made a  
22 mission to EPA and CARB on May 19th, and that was for a  
23 certification of the model year 2017 Jeep Grand Cherokees and  
24 Ram 1500s. And those are the vehicles at issue in both the  
25 NOVs and the lawsuits.

1 THE COURT: Right.

2 MR. GIUFFRA: And the plan was to -- the request for  
3 the certification was for a modified emissions software  
4 calibration that would address the concerns expressed by the  
5 EPA and CARB.

6 THE COURT: Has there been any communication or  
7 developments since the --

8 MR. GIUFFRA: Yes, there has, Your Honor. Since the  
9 last hearing, which was on May 24th, FCA has had multiple  
10 meetings with EPA and CARB. By my account, it's about six.  
11 Either meetings or big conference calls.

12 And those have been to discuss the various  
13 calibrations that have been proposed as well as to discuss test  
14 results, and there also has been additional testing that has  
15 gone on.

16 FCA has continued to do its own testing at its own  
17 test facilities, but within the last week, FCA representatives  
18 were present when -- at the CARB testing facility, which is in  
19 El Monte, California, for testing that was being conducted by  
20 CARB, and then also at testing that was being conducted at the  
21 EPA facility in Ann Arbor.

22 Then there's been, you know, comments that have been  
23 made. Questions have been raised by the regulators, and that's  
24 obviously consistent with how this process works. It's an  
25 iterative process. And we've discussed additional software

1 calibrations with CARB and EPA.

2 And yesterday, there was a big telephone call where,  
3 you know, in response to our -- the questions that we had been  
4 receiving from EPA and CARB, we proposed an additional  
5 calibration to the software, and then the regulators asked us  
6 in the interim -- because they're going to evaluate the  
7 calibration we're putting forward to look at another  
8 calibration.

9 And so we're testing that additional calibration, the  
10 changes that they asked of us, and we hope to do that in the  
11 next several days. And, you know, again, we expect the change  
12 in the calibration will not have an impact in a negative way on  
13 emissions or on performance of the vehicles.

14 And the plan here, and I think this is important to  
15 note, that once the calibration is approved for the 2017  
16 vehicles, we would then seek approval to apply that calibration  
17 to the model year 2014 and 2017 vehicles, which are the  
18 vehicles at issue in the litigation.

19 THE COURT: 2014?

20 MR. GIUFFRA: 2016.

21 THE COURT: To '16.

22 MR. GIUFFRA: And I think the reason that becomes  
23 important is the hardware in the vehicles is the same, and so  
24 if we can get the approval for the 2017, and the issue, we  
25 think, is one of the calibration of the software, this is not a

1 case where we believe we have to change the hardware of the  
2 vehicles which, obviously, would make it a more expensive and  
3 complicated process.

4 So -- and I think the point, Your Honor, and I've  
5 learned this over the last several years. You know, cars have  
6 become like computers. And it's -- really, the calibration of  
7 the software is a very complicated process.

8 But the key point here is, you know, we believe we can  
9 recalibrate the software for the emissions control units in the  
10 vehicles and that will address the issues that are being raised  
11 in the lawsuits without affecting performance.

12 THE COURT: Any further guess as to timeline based on  
13 what --

14 MR. GIUFFRA: Yeah, let me talk about that. Now, this  
15 is a process that takes time. You know, we're hopeful that it  
16 will not be many months. You know, obviously, EPA and CARB  
17 need to be satisfied.

18 You know, we know from experience that this sort of  
19 certification process can take time. It takes time whether  
20 it's in a context of, say, a VW or in the context of a new car  
21 certification.

22 But I think it's fair to say, Your Honor, that all  
23 sides are operating in good faith. There's a lot of technical  
24 people on both the government's side and the FCA side that are  
25 working extremely hard.

1           And this process is one that requires a lot of tests,  
2           and it's important, obviously, that the software calibration be  
3           a durable one and actually work. And the government, you know,  
4           wants us -- to put us through our proof, and that's their  
5           right. And, you know, again, we remain optimistic that we can  
6           pull this off.

7           Just to be clear about this, once we get the approval  
8           of the 2017, we immediately try to get the approval for the  
9           2014 and 2016. It's possible the government might want us to  
10          address that -- their approval of that in the context of a  
11          resolution of the government lawsuit, and we would obviously be  
12          open to that and that might make a lot of sense.

13          But then once the approval comes, the company thinks  
14          it can put the approval -- put the new calibration out in the  
15          field in literally a matter of weeks because what's involved is  
16          a software reflash whereby customers would bring their trucks  
17          back to the dealership, and they would be reflashed, and that's  
18          a process that takes under a half hour per vehicle.

19          And it's not very expensive and is something that we  
20          think that, assuming it can work, will, we believe, resolve  
21          many of the issues in the litigation including issues like, you  
22          know, whether there's a diminution of value to these vehicles  
23          caused by the software issues that we've -- that we're  
24          discussing right now with the regulators.

25          THE COURT: All right. Well, appreciate that update.

1 Thank you.

2 MR. GIUFFRA: Thank you, Your Honor.

3 THE COURT: Betty, you said you need to get -- do we  
4 have people phoning in and trying to listen? Do you have to  
5 dial each of these, or are they --

6 (Telephonic interruption.)

7 THE COURT: All right. Well, welcome everyone. This  
8 is Judge Chen, and we had just started our proceeding, and we  
9 just got an update from defendants, Mr. Giuffra, about his  
10 communications with CARB and EPA.

11 I'm now going to actually ask Department of Justice,  
12 whether it's Ms. Powers or Ms. Rende, whether you have any  
13 updates, comments that you'd like to make at this point.

14 MS. RENDE: Good morning, Your Honor. Leigh Rende for  
15 the United States.

16 THE COURT: All right. Thank you, Ms. Rende.

17 MS. RENDE: And also for EPA, who is listening by  
18 phone.

19 Just a couple clarifications. Mr. Giuffra was  
20 referencing "when" approval is given. Just to be clear, "if"  
21 approval is given.

22 THE COURT: Yes.

23 MS. RENDE: There is uncertainty currently regarding  
24 an effective fix. It could be weeks or months away. So there  
25 is agreement with Mr. Giuffra or defendants that it will take

1 some time.

2 Discussions and testing are still ongoing. And the  
3 regulators, California and EPA, are currently reviewing the  
4 testing plan, which was provided last night.

5 THE COURT: Mm-hmm.

6 MS. RENDE: So it will take a little bit of time to  
7 come to an agreement.

8 THE COURT: And you're not going to hazard a guess at  
9 this point where this will lead to?

10 MS. RENDE: You know, the timing is out of the control  
11 of the lawyer's hands. So this is really a technical decision.

12 THE COURT: Well, in addition to the timing, the "if"  
13 question that you --

14 MS. RENDE: If. Absolutely.

15 THE COURT: What do you know about CARB's position?  
16 They have not formally entered, I think, the litigation in any  
17 way. Do you know anything about that?

18 MS. RENDE: I do know that the California Attorney  
19 General's Office is currently listening. Jon Worm, I believe,  
20 is on the phone, and we did speak with them earlier this  
21 morning.

22 And they have not formally joined. We are working  
23 very closely with California both at the technical level as  
24 well as on the legal side.

25 THE COURT: All right. All right. So that remains to

1 be seen.

2 MS. RENDE: Correct.

3 THE COURT: Okay. Any comments you might have before  
4 we embark on this next journey here about any thoughts you  
5 might have with respect to the structure of the plaintiff's  
6 steering committee, et cetera, et cetera, from where you sit?

7 MS. RENDE: From where we sit, the United States will  
8 work with any member that you select to be part of the  
9 plaintiff's steering committee as well as lead counsel.

10 And the same, obviously, goes for settlement master.  
11 We will gladly work with any of the capable candidates whom the  
12 Court is considering.

13 THE COURT: Great. All right. Thank you very much.

14 MS. RENDE: Thank you.

15 THE COURT: Okay. Let me first observe that I'm  
16 disappointed. I was told this was going to be a dog and pony  
17 show, and I see neither a dog or a pony in the audience, so  
18 somebody didn't get the memo.

19 But, in any event, why don't we start the process? We  
20 do have a clock. How rigid it will be, we'll see.

21 But what I'd like for those who have applied for lead  
22 counsel, you know, I'm interested -- obviously, I don't need to  
23 hear what you have in your papers about your past experience,  
24 and I'm aware of that, and I've gone through that.

25 I'd really like your sort of analysis of more details



1 of what the leadership structure should look like. Not just  
2 the size, but how you see it, whether it should be you foresee  
3 some division by formal subcommittees, liaisons, et cetera, et  
4 cetera, any thought that you might have in that regard.

5 And then also sort of the path that you see this  
6 litigation going down, maybe in contrast to or parallel,  
7 similar to VW, and what you see as sort of the unfolding of  
8 this case. Obviously, you can't predict in any precise terms,  
9 but I'd like to get sort of your vision.

10 And then, finally, what would you do in terms of  
11 controlling for expenditures, fees, and costs, which is, of  
12 course, always a concern.

13 So I know it's a lot to cover in six minutes, but  
14 that's what I'm mainly interested in. I'm not as interested --  
15 because everybody here is, obviously, very well experienced and  
16 qualified, so I'm aware of that. So if you could use your time  
17 in that regard, that would be appreciated.

18 And why don't we just start with the top of the  
19 alphabetical list, and that's Mr. Berman.

20 MR. BERMAN: Good morning, Your Honor.

21 THE COURT: Good morning.

22 MR. BERMAN: Before I address your questions, I would  
23 like to address one thing because I think I stand uniquely  
24 situated, and that is the Rule 23(g) of investigation.

25 I'm the only firm that actually was out there testing

1 the cars with such rigor and sufficiency that we actually filed  
2 the lawsuit before the EPA issued its violation notices. And  
3 because of that, there's a policy behind Rule 23(g) to look at  
4 that factor, and that is to encourage lawyers to undertake the  
5 expense to bring new cases to light.

6 And because of that, I don't think there's a lawyer in  
7 the room that I'm aware of that would say I don't deserve to be  
8 one of the lead counsel. They may want to be colead counsel,  
9 but there's kind of an unwritten rule in the plaintiff's part  
10 that when someone develops a case like this on their own with  
11 considerable expense, they are deserving of leadership.

12 Then I want to talk about how that experience  
13 dovetails with your questions. The first question is -- or one  
14 of your questions was how does -- where do you see the case  
15 going in light of Mr. Giuffra's remarks?

16 Because we've been testing these cars -- and by way of  
17 background, we bought one of these PEMS machines. We own one.  
18 We may be the only plaintiff's lawyer in the country that does.  
19 They are hundreds of thousands of dollars.

20 And when I heard Mr. Giuffra say that these cars are  
21 going to be fixed and the litigation is going to be over, I  
22 say, "Wrong."

23 What my experts are telling me is that there's a  
24 reason there were eight different cheat devices. And the  
25 reason is that the car manufacturer wanted to improve fuel

1 economy and power, and if you mess with the cheat devices,  
2 you're going to lose fuel economy and power. And so people are  
3 not going to -- they will not have gotten what they thought  
4 they got when they bought these cars.

5 Second, as we have discussed in the MyFord Touch case,  
6 there's a benefit of the bargain kind of case going there where  
7 you thought you bought something and you didn't get what you  
8 received. And under the case law, we went back and forth with  
9 the MyFord Touch. People are entitled to the delta.

10 So I do not see this case going away, and I see  
11 litigation over the fix, whether it works. And so my  
12 qualifications in that regard is I'm working with the experts.

13 And I also bring something to that fix issue that  
14 other lawyers don't, and that is I have emissions cases against  
15 everyone. General Motors, Mercedes. Mr. Giuffra in Detroit on  
16 the 2500 and 3500 Fiat cars.

17 And because of that, I'm thinking about this every  
18 day. My experts and I are on the phone every day talking about  
19 emissions cases. I'm talking to attorney generals, to  
20 regulators because they recognize our work in this case, in  
21 this field.

22 And so that's going to help us respond to Mr.  
23 Giuffra's technical arguments because I now see there's going  
24 to be a big technical one.

25 THE COURT: So assuming that it's not -- it's going to

1 be some months before any resolution for the EPA and CARB, and  
2 you're not optimistic, obviously, there's going to be a  
3 resolution, what do you see happening in the next 12 months in  
4 this case?

5 MR. BERMAN: I see --

6 THE COURT: Which would be a year from now.

7 MR. BERMAN: A complaint being filed as promptly as  
8 possible. There will be motions for sure.

9 And so one of the other benefits I bring is I've been  
10 dealing with these motions. I've been thinking about these  
11 motions, and so I can probably bring the most efficient  
12 complaint so we don't have to go through rounds and rounds of  
13 briefing because I know he's going to raise preemption. I've  
14 now dealt with his argument in Detroit. I've dealt with  
15 Mercedes' preemption argument. I know how to structure the  
16 complaint to get around the preemption argument.

17 I know the class issues that they're raising through  
18 their motions, and I think I'm uniquely structured to  
19 efficiently guide the Court through that process. And I think  
20 that's what the class would want, someone who has unique  
21 experience on these issues.

22 Now, with respect to -- so I think then we're going to  
23 wait -- we're going to litigate this case like we normally  
24 would because we don't know if there's going to be a fix.  
25 We're continually testing right now parameters and simulations.

1 If there's a fix, you know, what that might do to fuel economy.

2 And then, obviously, if Mr. Giuffra has a settlement,  
3 he would likely turn to us and say, "What do you want to do?  
4 Do you want to settle? Here is where we are."

5 If we don't think there's any impact, we're going to  
6 push back and either going to have a settlement, or we're going  
7 to litigate the issues that I talked about, which is you didn't  
8 get the benefit of the bargain and/or you may have a car that's  
9 not performing as well.

10 THE COURT: Say something about the leadership  
11 structure. Any more specifics? I mean, I know people have  
12 recommended eight to ten, six to eight steering committee along  
13 with colead counsel. Do you have any further thoughts?

14 MR. BERMAN: My thoughts are that you should have a  
15 colead leadership of two to four lawyers. That it should be  
16 made up of lawyers who have experience in automobile cases.

17 And the reason I say that is I think you want and the  
18 class wants lawyers who have thought about the very thorny  
19 issues of class certification that go around in these auto  
20 defect cases.

21 I think I've got an appreciation for that. Dealing  
22 with the MyFord Touch class cert. And so I think you want  
23 lawyers who are thinking about that issue and have dealt with  
24 that issue and bring experience in that issue.

25 In terms of the steering committee, so I think two to

1 four coleads. Maybe a steering committee of four to six  
2 people. So we're talking about eight to ten people who run the  
3 case.

4 There's going to be a need for -- there's going to be  
5 a lot of work in the case, Your Honor. For example, I'm  
6 dealing with this right now. So another thing that I bring is  
7 I'm also suing Bosch in all these other cases. So I have been  
8 studying Bosch, talking about Bosch, working on the Bosch angle  
9 probably more than any other lawyer in this courtroom.

10 But one of the things we're going to have to do with  
11 Bosch is there's going to be a lot of documents in German.  
12 We're going to have them translated. We're going to have to go  
13 over there. So, you know, I see dedicating a bunch of lawyers  
14 to focusing on the Bosch picture in conjunction with the  
15 leadership.

16 And there's obviously going to be a very rigorous  
17 technical part of the case in terms of the testing. Because as  
18 both the EPA lawyers and Mr. Giuffra said, this is very -- this  
19 testing is immensely complicated, and you need lawyers who  
20 understand the science and are able to work with the experts.

21 THE COURT: Right. And, finally, cost control.

22 MR. BERMAN: Cost control. I think that we should, as  
23 we did in MyFord Touch, after appointment, provide you with a  
24 protocol that you sign off on, on cost control.

25 And some of the things that I think about that we've

1 recently did in the Qualcomm case in front of Judge Ko is our  
2 protocol there says, "One lawyer here. One lawyer at a  
3 deposition unless it's a major executive or there's some  
4 technical issue, and very strict control on the number of  
5 lawyers looking at documents."

6 I agree with you. Given the size, perhaps, of this  
7 committee, we need to make sure we have good controls.

8 THE COURT: All right. Thank you.

9 MR. BERMAN: Thank you, Your Honor.

10 THE COURT: Appreciate it.

11 All right. Ms. Cabraser?

12 MS. CABRASER: Thank you, Your Honor. Elizabeth  
13 Cabraser for Lief Cabraser.

14 Mr. Giuffra is a messenger of hope and optimism, and  
15 what he says is encouraging, but it's reflective of what he  
16 said at the same time in the case in the Volkswagen litigation.

17 And technology is a wonderful thing. Getting it to  
18 work is something different. We saw that this morning with  
19 CourtCall.

20 So this case is going to unfold in realtime, and it's  
21 going to take real work, and it is in a position of  
22 uncertainty. And getting to certainty under the conditions of  
23 urgency that exist in this case is going to require the  
24 plaintiff's team that brings relevant experience, that brings  
25 competence, and that brings continuity.

1           We didn't fail to note that both Bosch and Fiat  
2 Chrysler chose lawyers to represent them in this case that had  
3 the experience from the Volkswagen case. It gives plaintiffs  
4 an advantage to do the same thing.

5           We're fortunate, I think, that so many members of the  
6 Volkswagen plaintiff's steering committee are here before you  
7 today ready, willing, and able to apply the expertise, the  
8 experience, what they have learned in Volkswagen to this case.

9           THE COURT: That steering committee had 21, as I  
10 recall. Or started off with 21, and nobody is suggesting that  
11 here, so...

12           MS. CABRASER: No one is suggesting that here, Your  
13 Honor, and I'm not suggesting that a plaintiff's steering  
14 committee be comprised necessarily exclusively of those from  
15 Volkswagen. Diversity is important.

16           But continuity and competence and the competitive  
17 advantage of having leaders for the class in this case who  
18 dealt successfully with the same defense counsel in Volkswagen  
19 cannot be understated.

20           With respect to the structure to make that happen, I'm  
21 a little more liberal on structure than some of the other  
22 applicants because I saw the plaintiff's steering committee, a  
23 large one of 21, work very efficiently, very expeditiously with  
24 no waste and delay in Volkswagen.

25           And, in fact, as the Court there observed, it was the



1 size of that committee that helped deliver the remedy in that  
2 case so quickly. I've seen that happen in other very large,  
3 very expeditious MDLs as well.

4 For example, Deepwater Horizon with a 17-member PSC  
5 and two coleads. And there, the settlement was delivered in  
6 record time for a case of that nature within about a year.  
7 It's delivered over \$11 billion to class members so far, and  
8 the Court was able to hold a three-phase trial because hundreds  
9 of depositions were taken within a year.

10 THE COURT: What do you think this case warrants? I  
11 know your application left it open. Do you have any  
12 specific --

13 MS. CABRASER: I did leave it open, and I think, Your  
14 Honor, that a PSC of ten to twelve people would not be too  
15 many. Would be immediately deployed.

16 Again, it depends on who those people are. There are  
17 many things we don't have to redo in this case because we did  
18 them in Volkswagen.

19 Mr. Berman mentioned technical expertise and testing.  
20 Well, that's not exclusive to the Hagens Berman firm, although  
21 they've done it. Other PSC members in Volkswagen did as well  
22 and were very, very active, for example, on the Bosch team.

23 I'll give you one example of something we spent months  
24 of intensive work developing in Volkswagen that we can use  
25 immediately here, and that is refining. Getting all the kinks

1 out of the machine translation tools for German. We did that  
2 in Volkswagen so that we were able to translate accurately,  
3 idiomatically, and technically.

4 We can do that with respect to Italian language  
5 documents as well because my firm has both German and Italian  
6 proficient staff attorneys.

7 Getting that translation done very rapidly so a large  
8 number of document reviewers and analysts can get to work on  
9 documents saves months of time. We're going to have millions  
10 of documents in this case. We have a plan for expedited  
11 document requests. We want the documents, obviously, that the  
12 government has gotten.

13 We will also want to ask this Court for a trial date  
14 or a trial time that was used very effectively in Volkswagen.  
15 That means this PSC is going to have to multitask. We're going  
16 to have to simultaneously prepare the case for trial; prepare  
17 for settlement; test the testing; work with the government,  
18 both state and federal; and if we're talking settlement, work  
19 on settlement.

20 And we cannot do it in a linear fashion. We have to  
21 do it in a simultaneous fashion. That's how these cases work.  
22 So I would caution against a PSC that is too small to get that  
23 done.

24 Most of the firms that are asking to be on the PSC  
25 have more than one lawyer. Some of the lead firms have entire

1 teams that already have the expertise from Volkswagen and/or  
2 other cases.

3 THE COURT: What are your thoughts, then, with respect  
4 to the colead counsel question since you were sole lead counsel  
5 in the Volkswagen case? Is there a need for colead counsel,  
6 and what's the -- what are the pros and cons in your view?  
7 I've put you in a tough situation, but --

8 MS. CABRASER: Let me put it this way, Your Honor. I  
9 served as lead counsel gladly in Volkswagen because that was  
10 the structure that Judge Breyer appointed. And it worked. It  
11 worked because of who was on the PSC.

12 A sole lead can work if that person is inclusive,  
13 collaborative, wants to spend the time and effort on  
14 administration. Wants to control the costs while ensuring  
15 maximum participation, and, basically, can keep a three- or  
16 four-ring circus going in the air at once.

17 I tried to do that in Volkswagen. I think the outcome  
18 speaks for itself. I've gone over the time. But I think  
19 having coleads here if they're the right people could also do  
20 that job consistently with efficiency and control.

21 For cost control, I would say use protocols as have  
22 been used in VW and other cases. Courts do that now. Colead  
23 counsel or lead counsel take them very seriously, and it works.

24 THE COURT: Great.

25 MS. CABRASER: Thank you.

1 THE COURT: All right. Thank you, Ms. Cabraser.

2 Mr. Casey?

3 MR. CASEY: Good morning, Your Honor.

4 THE COURT: Good morning.

5 MR. CASEY: David Casey on behalf of Casey Gerry. I'm  
6 going to deviate based on your comments from what I had  
7 prepared, Your Honor.

8 I'd like to first off say it was an honor to serve on  
9 the Volkswagen PSC, and I found Elizabeth Cabraser's leadership  
10 inspiring and very disciplined, and I think one of the reasons  
11 it was so successful is she made decisions quickly. She didn't  
12 have to really negotiate with anybody. She just laid out a  
13 game plan.

14 And for that reason, addressing the issue of the size,  
15 I think in this case, it would be best with one or if you added  
16 cocounsel to her, if you were considering her seriously, she  
17 certainly has been through the ropes and knows this area.

18 And when you get into the cost issue, you know, we've  
19 been through a lot of the data here. I was assigned early on  
20 in Bosch, and, as the Court is aware, Bosch was not prosecuted  
21 by the U.S. Government, so we were on our own on that. We had  
22 to dig through millions of documents. We worked very closely  
23 with the top experts in the United States.

24 And I think we kind of broke through the codes, Your  
25 Honor. We know what happened, and we have that knowledge, and

1 that knowledge will be of benefit to this Court in this  
2 litigation.

3 So I think when it comes down to costs, we really do  
4 have the experts in place. We do have a lot of the knowledge.  
5 You have before you some of the most outstanding lawyers I've  
6 ever had an opportunity to serve with, and I want to say it was  
7 a very collaborative well-working machine. It was a very, very  
8 positive experience at least, certainly, for me.

9 I do think the knowledge that we've gained certainly  
10 can be an asset to this Court. I will say early on in the  
11 Volkswagen case, we were pushing for a trial date because, as  
12 the Court is aware, what ensures things move along is to have a  
13 trial team and to have a trial date.

14 And so we had a trial team. So I think any PSC will  
15 have to have a trial team. I think any PSC will have to have a  
16 good discovery team, a team to deal with law and motion  
17 matters, a team to deal with the experts, and a team to really  
18 focus on Chrysler's conduct and Bosch's conduct. And then,  
19 important in all of that, is a team devoted to settlement, to  
20 work with the special master.

21 So it's multifaceted. To do that under effective  
22 leadership, I think you should have twelve to fourteen PSC  
23 members so that leadership has the flexibility to give those  
24 assignments.

25 And based on that, I submit. I'm trying to come in

1 under two minutes, Your Honor.

2 THE COURT: Well, you're doing very well, but you  
3 still have a couple of minutes. Let me ask you about the  
4 colead counsel. You get extra points the earlier you -- no.

5 With respect to the question of whether it's  
6 beneficial to have colead versus lead, how many lead counsel  
7 atop a steering committee? Any thoughts on that?

8 MR. CASEY: I would say no more than two. I think you  
9 want to keep it lean at the top but have an in-depth PSC.

10 Your Honor, one other thing I just forgot to mention.  
11 I had the honor of serving with Lesley Weaver, and we were  
12 assigned to the California Attorney General. We spent a lot of  
13 time meeting with the attorney general. Judge Breyer wanted us  
14 to work with government entities and develop a close working  
15 relationship.

16 That was very critically important because CARB was  
17 very important then, and it's even more important now in this  
18 overall equation. And so I would recommend that a part of the  
19 structure of this includes lawyers assigned dealing  
20 specifically with the California Attorney General.

21 THE COURT: And you played that role in the -- you  
22 were active with respect to that?

23 MR. CASEY: Yes, I was, Your Honor. And they did not  
24 file in that case. They monitored the case. But they had a  
25 presence, and I can't overstate the importance of that

1 relationship.

2 THE COURT: All right. Any other further thoughts?

3 MR. CASEY: Thank you for your time, Your Honor.

4 THE COURT: Great. Thank you.

5 Mr. Heygood?

6 MR. HEYGOOD: Good morning, Your Honor.

7 THE COURT: Good morning.

8 MR. HEYGOOD: As you note from my application, I  
9 simply said that I am offering my services in whatever capacity  
10 the Court deems appropriate in whatever portion of the  
11 plaintiff's management team that the Court may think that I can  
12 offer services.

13 I'll echo what's been said here today. I think that  
14 the structure of the Volkswagen PSC was very efficient. I was  
15 very happy to help on that, and it has been -- I think you have  
16 a lot of very quality lawyers in this room to choose from.

17 What I will focus my remarks on is really singular,  
18 and that is that we've heard a lot already today, and I suspect  
19 we will the rest of the morning, on class action. But we're  
20 here today on an MDL. This isn't a class certification. This  
21 is a multidistrict litigation. That includes class action and  
22 individual plaintiffs who have brought lawsuits seeking  
23 individual redress.

24 As I understand and read the pleadings that have been  
25 filed to date, there are more plaintiffs that have filed

1 individual lawsuits than there are individual plaintiffs who  
2 have sought class action status. In fact, I believe that this  
3 hearing today as an MDL hearing has to look at both sides.

4 And it may very well be -- I was on the Volkswagen  
5 steering committee and was ultimately part of class counsel for  
6 the class settlement in Volkswagen, and that model is going to  
7 be helpful.

8 But at an early-on stage like this, I think we cannot  
9 lose sight of the fact that this is an MDL and not a class  
10 action hearing today, and we have to be inclusive, and we have  
11 to take account of all the litigants.

12 THE COURT: What's an example of what should be done  
13 to take into account the individual nonclass litigants?

14 MR. HEYGOOD: I think that's the exact question that  
15 I'm asking the Court to focus on, and my answer to that is very  
16 simple. You have to have someone in the class plaintiff's  
17 committee, the leadership of this particular litigation, that  
18 comes from -- to this litigation historically, but also with  
19 this litigation, not from a class mindset, but from a  
20 representation of individual mindset. That's important for  
21 several reasons.

22 It's important to have that diversity, number one,  
23 because I think having that other voice in the room matters.  
24 Having that discussion. Whatever -- what wins in a day and  
25 what the strategy might be, it will be what it is, but you need



1 to have that discussion.

2 But most importantly, it's important for the optics  
3 around the country. There are going to be hundreds of lawyers  
4 from around this country who represent individuals who have  
5 these cars and these vehicles that are not going to be on  
6 plaintiff's steering committee. It is important for them to  
7 know and believe that whatever result happens, whether it be a  
8 litigation track or a settlement track, that their voice --  
9 people that were not looking at it solely from a class action  
10 standpoint but from a standpoint that they themselves was being  
11 heard. That's important because whatever comes out of this  
12 management has to be sold.

13 I know that firsthand because as a member of the state  
14 liaison committee in the Volkswagen leadership, I talked to  
15 hundreds and hundreds of lawyers who had cases around the  
16 country who were wanting to know, "Is my issue being heard in  
17 there? Is what my concern is and my client's concern, is it  
18 being discussed?"

19 That's important to sell it in the optics of it.

20 THE COURT: So what's an example of things you've  
21 heard, sort of the issues coming from individual non- -- I'm  
22 going to use some of Mr. Casey's time to give you that.

23 What's an example of where that voice -- you know,  
24 what specifically was the concern that otherwise would not have  
25 been heard were you not in the room?

1 MR. HEYGOOD: I think that the one thing that we can  
2 learn -- I think that Judge Breyer's litigation was wildly  
3 successful. One of the things I think that's grappling with  
4 now is an answer to your question, and that is that a little  
5 more effort and time could be given during the litigation in  
6 terms of timelines and scheduling that might focus on  
7 individual claims.

8 For example, not just a form class action complaint,  
9 but maybe a form individual complaint and things of those  
10 nature. I think what we're grappling with in the Volkswagen  
11 litigation now is we know however successful the resolution may  
12 be, there's going to be lawyers and plaintiffs who opt out of  
13 any potential settlement or opt out of any class. There's  
14 going to be ongoing litigation.

15 And as an MDL, I believe this MDL should be focused on  
16 that from the beginning and putting in their deadlines and  
17 things they're thinking about of whether this is successful or  
18 not, how will this look when the majority of cases are done,  
19 but there's still litigation? That's the obligation of the  
20 MDL, I believe.

21 THE COURT: All right. Thank you, Mr. Heygood.  
22 Appreciate it.

23 Mr. Levitt?

24 MR. LEVITT: We're in the size order segment of the  
25 hearing, I think. Let me put this up a little bit.

1 Good morning, Your Honor.

2 THE COURT: Good morning.

3 MR. LEVITT: Adam Levitt of Dicello, Levitt & Casey.

4 At the last hearing, Your Honor had stated that you  
5 strongly emphasize with the ongoing problems that each of the  
6 class vehicles spewing emissions into the air, that we needed  
7 to approach as aggressively and as efficiently as possible.

8 So in thinking about what the leadership of this case  
9 should actually look like and hearing what the defendants are  
10 saying, which, obviously, as others who went before me have  
11 said, is highly aspirational, we hope it works. We're not  
12 sure.

13 The way that I would -- so, first of all, to answer  
14 Your Honor's specific questions, I would propose a two-lawyer  
15 lead counsel structure.

16 I would also then propose a seven-firm steering  
17 committee under that, which falls into the following  
18 categories: Law and briefing; discovery involving Fiat  
19 Chrysler; discovery involving Bosch; third-party discovery;  
20 engineering and industry experts; economic experts; a trial  
21 team; and settlement. That's eight. I apologize. I  
22 miscounted.

23 So -- and I think that structuring it and sequencing  
24 it that way from the outset lets us have a focus from the first  
25 day. We're all working as a cohesive team.

1 I also think it's important that having a structure of  
2 that size rather than a larger structure lets us reach into the  
3 pool of extraordinarily talented lawyers in this room and  
4 otherwise in this case who have very specialized knowledge.

5 For example, perhaps, in German language translation  
6 and documents, in technical issues, in code issues. Because  
7 having been involved in many of the largest automotive cases  
8 out there, including the Ford MFT case before Your Honor with  
9 Mr. Berman and Mr. Tellis, as well as the GM 5.3L case, which  
10 we have in front of Your Honor where we're arguing the motion  
11 to dismiss three weeks from right now with Mr. Miles, it's  
12 important to have a team highly experienced in these kinds of  
13 cases.

14 We bring that experience to the table. One other  
15 thing that my new firm brings to the table is that looking at  
16 every case from a trial perspective from the first minute,  
17 we're the only firm, I think, with an in-house focus group and  
18 mock jury practice, which works on each of our cases from the  
19 outset. Ongoing focus grouping, ongoing enhancement of our  
20 message ongoing.

21 Because the goal here is what -- we hope Fiat Chrysler  
22 and Bosch and everything they're saying to the Court actually  
23 solves these problems, the goal is to set a relatively early  
24 and aggressive trial date and work toward that date. Without  
25 that out there, all the hope in the world isn't going to change

1 anything.

2 All the hope in the world isn't going to change the  
3 fact that until these cars are fixed and until the class  
4 members are properly compensated, we have a lot of work to do.

5 THE COURT: What's a realistic trial date given what  
6 you know of this case?

7 MR. LEVITT: 18 months.

8 THE COURT: And class cert, that would put class cert  
9 when?

10 MR. LEVITT: Probably ten months from appointment --  
11 it's very aggressive I know, Your Honor, but I think it's  
12 something. In terms of a lot of the class certification  
13 requirements, I think that a lot of them are going to be more  
14 straightforward than we might have seen in other cases.

15 And I think also to Your Honor's point on the  
16 diversity issue, my partner, Amy Keller, would be working on  
17 this case extensively with me. Ms. Keller has also extensive  
18 experience in automotive and highly technical litigation as  
19 well, so she would be an asset to any team.

20 So unless Your Honor has any questions -- oh, the last  
21 point was on cost containment and control. The protocol that  
22 we put before Your Honor and worked with Your Honor on Ford MFT  
23 would be the sort of cost control and oversight approach that I  
24 think is entirely appropriate here.

25 THE COURT: Great.

1 MR. LEVITT: So thank you very much, Your Honor.

2 THE COURT: All right. Thank you. Appreciate it.

3 Mr. Sarko?

4 MR. SARKO: Good morning, Your Honor. Lynn Sarko from  
5 Keller Rohrback.

6 Your Honor, let me start at the end. You asked about  
7 cost controls. I think the most efficient way is the faster  
8 you move the case along, the less it's going to cost at the  
9 end. I've found that through the history of these cases.

10 I will also say that it will force the plaintiffs to  
11 get their act together quickly to cut through the weeds, as  
12 they say, and nothing like pressure on the defendants to either  
13 move it towards resolution or decide what the issues are.

14 THE COURT: What do you think is realistic with  
15 respect to a trial date?

16 MR. SARKO: I actually am going to go out there, and I  
17 even had a conversation with Ms. Cabraser about it. I will say  
18 trial in six to seven months on some common issues. I think  
19 this is a case where it makes no sense to wait until the end on  
20 all the issues. There are some issues we can bring along.

21 We have some science that is still developing. Have  
22 to work with the Department of Justice. But I think that,  
23 actually, before Judge Breyer, having the threat of early  
24 bellwether cases actually moved us all towards resolution.

25 I will also --

1 THE COURT: Do you see a bellwether process here?  
2 What are you thinking?

3 MR. SARKO: I do on certain common issues. I mean,  
4 obviously, we need to have the class certified. There is also  
5 two defendants, Bosch and VW, but one of the things I think  
6 that would be helpful is early on to ask both sides for their  
7 trial plan and sort of lay them out. So that's one issue.

8 The second issue I would say as far as structure goes,  
9 you know, I am all about we, not I. I actually think cases  
10 like this operate better with a group. We have an outstanding  
11 group of people here who work not only in VW, but other cases.  
12 People have different expertise.

13 You have Mr. Rice who is -- probably can settle and  
14 get more money out of my pocket than other people. We have  
15 people who, you know, Mr. Bailey who has tested lots of cars.  
16 People have had other parts of these cases.

17 I will say that this is a case that isn't any one  
18 person's case. People decided to file it at different times.  
19 There were -- we actually did testing also. There's a number  
20 of counsel here who have tested the cars, which I think is  
21 helpful.

22 I think Mr. Giuffra should not feel so good because we  
23 actually see some big problems.

24 THE COURT: So why -- let me ask you because your part  
25 of the contingent has suggested a four colead counsel

1 structure, and so I'm trying to figure out why. When you have  
2 a steering committee that can have folks with these expertise,  
3 what's the advantage of having a large colead structure?

4 MR. SARKO: Well, I've actually found that, you know,  
5 if you have the right personalities, one, it's fine. But the  
6 tweak that I would have on the VW case is Ms. Cabraser did a  
7 fabulous job, but she does have to sleep. In order for us  
8 to --

9 THE COURT: I'm not sure about that.

10 MR. SARKO: In order for us to pursue this case with  
11 the intensity that we need, I think it would be helpful to have  
12 more than one colead, and I think that she's acknowledged that.

13 As to what the right number is, whether it's two,  
14 three, four, I think that all of those accommodate. If you  
15 believe in democracy, the more people, the better. I think  
16 that, you know, somewhere in the number of three or four is the  
17 right number for this case.

18 I will say it also is all about ego. You know, I have  
19 managed people for quite a while. I have been managing partner  
20 for a number of times. It is very difficult to get this many  
21 alphas to row in the same direction. But we did it in the VW  
22 case, and I actually think it's a better result than we  
23 otherwise would have.

24 We also, if you want me to look at how this case is  
25 different.



1 THE COURT: Yes.

2 MR. SARKO: I actually think we have learned more  
3 about Bosch as we've gone, and, you know, Mr. Slater should not  
4 feel so good, because I actually think that as we turn over  
5 more rocks that their role may be looked at even more intensely  
6 in this case.

7 I will also say that we also have a foreign aspect.  
8 You know, not only do we have the same regulators here, but we  
9 also have investigations going on in Europe that have been  
10 further developed. The Bosch story and saga has gone on.

11 I've done lots of work in Italy and in Europe with  
12 lawyers and investigations there. I think that will be active  
13 here. My firm has German and Italian lawyers. Other firms  
14 have German and Italian lawyers. I think those will be put to  
15 use.

16 And as far as structure for you, what I would suggest  
17 is that you appoint the leadership, you appoint colead counsels  
18 and a PSC, and you ask us to come back to you with committee  
19 assignments.

20 We actually, in the VW case, had 12 committees all the  
21 way from settlement to engineering to discovery, et cetera.  
22 People served on more than one committee, but that was very  
23 helpful.

24 And on cost controls, I will say that cases that the  
25 costs get out of control often are when people are not paying

1 attention. The lead counsel have not focused on it. And I  
2 think that we have a very good system that we utilized in other  
3 large cases.

4 I mean, and we are actually incentivized to keep the  
5 costs low. I mean, I will say that we don't use litigation  
6 funders. Our firm has the ability to fund this case, and the  
7 other firms do. But a dollar is a dollar, and we have no  
8 interest in spending more than we need to.

9 THE COURT: Great. Thank you.

10 MR. SARKO: Thank you.

11 THE COURT: Appreciate it.

12 Mr. Scarpulla?

13 MR. SCARPULLA: I'm sorry, Your Honor. I thought it  
14 was alphabetical.

15 THE COURT: Actually, it was. I made one mistake  
16 here, but I'm going to make an exception and allow you to come  
17 on up. Sorry about that, Mr. Saveri. You will get your  
18 chance.

19 MR. SCARPULLA: Your Honor, I will answer the  
20 questions which you suggested rather than talk about anything  
21 that is already in my submission.

22 As a structure, Your Honor is questioning that -- the  
23 number of people that should be coleads. I would think, and my  
24 clients respectfully suggest, Your Honor, that two maximum is  
25 sufficient for this case. We don't want it -- look. If the

1 government and Fiat Chrysler work something out, this case is  
2 going to settle. We know that.

3 So to have a huge structure that may be unnecessary  
4 and to have people spending time and money when that may be  
5 unnecessary to charge that to the class, seems to me that if  
6 you had just two coleads maximum, and you don't need -- you  
7 really don't need a plaintiff's steering committee if Your  
8 Honor doesn't want to.

9 Because if you're running these cases properly, lead  
10 counsel knows what lawyers can do what tasks, and they reach  
11 out to those lawyers to perform those tasks throughout the  
12 litigation, and so you reduce the amount of lodestar that's run  
13 up, and you reduce the costs to the class.

14 THE COURT: What if the case does not resolve? Some  
15 have indicated less optimistic about a possible resolution on  
16 the software front, and this goes into full-fledged litigation?  
17 What's your --

18 MR. SCARPULLA: Well, it still would be the same, Your  
19 Honor. You still reach out to the same lawyers to help you  
20 prosecute the case as a lead counsel.

21 You don't need this huge -- I don't think you need  
22 this huge structure. We try and avoid that in most of the  
23 class cases that I've had where I've been in the leadership.  
24 You have one or two lead lawyers, and they reach out to other  
25 lawyers to perform services as it goes along.

1           One of the things that my clients would respectfully  
2 suggest, Your Honor, that you might consider also having a  
3 class settlement counsel. Because if Fiat Chrysler and the  
4 government work this out, then all you'd need is somebody that  
5 can put together a reasonable settlement for the class members.  
6 And that --

7           THE COURT: Is that mutually exclusive from lead  
8 counsel? I mean --

9           MR. SCARPULLA: Well, it's not, but that must -- that  
10 has to be -- I would respectfully suggest, Your Honor, one of  
11 the first things to consider is can this case be settled? If  
12 you have a good settlement special master, like either Judge  
13 Renfrew or Judge Weinstein or both, who wanted to work with the  
14 government if they request it, and Fiat Chrysler and the other  
15 to work with the private plaintiffs, this case is going to end.

16           It would be quick, and it would end soon, and you  
17 wouldn't have a huge amount of costs or lodestar for the class  
18 members.

19           THE COURT: Do you see a settlement master playing a  
20 role at this juncture where there is a pending software fix  
21 being evaluated by the regulators? What role -- just that  
22 threshold question, what role would a settlement master play in  
23 that since there are direct discussions and iterations going  
24 back between Fiat Chrysler --

25           MR. SCARPULLA: Well, it may be that they -- if there

1 is an issue that comes up, and it may be that a neutral might  
2 help.

3 I think -- I don't remember if -- if Director Mueller  
4 was involved early on in the settlement with the government  
5 entities and Volkswagen, but I understand that as the case went  
6 on, he was involved in that, Your Honor.

7 THE COURT: Okay.

8 MR. SCARPULLA: And as for controlling fees and costs,  
9 I just told you -- I just mentioned to Your Honor a way to do  
10 it. But also there has to be a regular reporting of time and  
11 expenses on a monthly basis pursuant to an order that Your  
12 Honor would enter that would suggest how you kept time and to  
13 whom it was reported, and then limit the number of hard costs  
14 that are recoverable from the class.

15 Soft costs, Your Honor, could have come out of any  
16 fees. So if somebody wants to go to a deposition in, let's say  
17 -- I don't know whether there would be, but if there's a  
18 deposition in Milano, somebody might want to go there, and if  
19 you want to fly first class, that's fine, but that's on you.  
20 That's not on the class.

21 So -- and then have a regular report to Your Honor on  
22 the fees and costs. Because just having a time and expense  
23 report is -- I mean, if nobody is going to look at it until the  
24 end of the case, it doesn't work very well. It has to be  
25 something that you review on a monthly basis. You get it on a

1 monthly basis, review it on a monthly basis, make a report to  
2 Your Honor quarterly on those issues.

3 So unless Your Honor has questions of me, I'll sit  
4 down.

5 THE COURT: No. Thank you. Appreciate your insight.

6 All right. Mr. Saveri?

7 MR. SAVERI: Thank you, Your Honor.

8 Let me just start here. I think probably my Italian  
9 is better than anybody else in the room. So if that matters --

10 THE COURT: Did you want to illustrate that or give us  
11 a couple of lessons or something?

12 MR. SAVERI: (Speaking foreign language.)

13 THE COURT: Okay. You're hired.

14 MR. SAVERI: So a few points, Your Honor. Let's talk  
15 about the structure, first. I've served as sole lead counsel;  
16 I've served as colead counsel; I've served as members of the  
17 plaintiff's steering committee; I've been on boards of  
18 directors of corporations.

19 My -- all that teaches me is that we should be  
20 treating this enterprise essentially as one in which there is  
21 an executive who makes the decisions in this case, who is  
22 responsible to the Court, and who is surrounded or supported by  
23 a plaintiff's steering committee.

24 And when I think of a plaintiff's steering committee,  
25 I think of it like a board of directors of a corporate entity.

1 And I think it's -- it's useful to think and realize that  
2 there's no corporation that would have four CEOs, and it's very  
3 rare that that there would be two CEOs. I think there's a  
4 reason for that because I think that even in very complicated  
5 situations, it's important to have authority located in one  
6 person who is responsive to the Court and responsive to  
7 management of a group.

8 And that's a time tested way of organizing it, and  
9 there are good reasons for it. I think it produces the best  
10 results. I think it's the surest way of getting -- of having  
11 efficiency, and I think it promotes the interests of justice to  
12 the highest degree.

13 So I do think quite clearly there should be only one  
14 or two leads.

15 Now let's talk about the steering committee. I think  
16 that it's also important that the steering committee should not  
17 be too large. If you have 20 members --

18 THE COURT: Do you want to comment on Mr. Scarpulla's  
19 comment about no steering committee?

20 MR. SAVERI: Well, Your Honor, I actually think that  
21 with a properly chosen executive or sole lead, I think it's  
22 perfectly possible to run a case efficiently.

23 I'm the sole lead counsel in the Capacitor case in  
24 front of Judge Donato. In a lot of ways, it's a much more  
25 complicated case. There are 22 defendants all over the world.

1 There is no executive committee, and I run that case myself.

2 Now, I rely on a team of lawyers, but I actually think  
3 that that system works quite well.

4 But what -- my recommendation in this case, Your  
5 Honor, because it is in an MDL case, that there are reasons for  
6 having a steering committee. I think it's important in cases  
7 to have a steering committee supporting one or two leads that  
8 bring different expertise and experience to bear. That's not  
9 only in substantive areas like electronic discovery or  
10 discovery management or class certification or experts.

11 But I do think it's important to say that it's also  
12 important in these cases that the plaintiff's steering  
13 committee also promotes the -- a diversity of participation by  
14 persons or firms that perhaps haven't been chosen before.

15 And so I think that consistent with a lot of recent  
16 thinking on this, that it's important to when one populates a  
17 steering committee think about, candidly, issues about  
18 diversity of gender, race, geography. I think those are very  
19 important because these are public cases. This is an MDL case.  
20 There are broader public concerns involved.

21 And I do think that's important to the system. It's  
22 also important to the profession. So it's important to me at  
23 my firm. It's something that I've tried to advocate and  
24 promote, and I recommend that to be one of the considerations  
25 that Your Honor consider.



1 I also know that this Court has expressed a policy of  
2 encouraging the participation of younger lawyers to develop  
3 them professionally. That's also very important, I think, to  
4 the bar, and to the promotion of justice.

5 So those are -- those are criteria or qualities I  
6 would recommend that the Court consider in determining who is  
7 going to serve on this steering committee.

8 So that's my thought about structure.

9 THE COURT: Great. Thank you.

10 MR. SAVERI: In terms of the -- what I see about the  
11 litigation, I do echo the other counsel who have suggested that  
12 a trial date is very important. I don't think there's anything  
13 that is as therapeutic and promotes a speedy resolution of a  
14 case as a trial date.

15 Now, I think a trial date in seven months, I'd say, is  
16 wildly optimistic. To me, the big things that need to be  
17 addressed are the pleadings, discovery, class certification,  
18 preparation for trial. Just based on what I know of this case,  
19 I would imagine that if it moves quickly, it's 24 months. If  
20 it moves more slowly, it's 36 months.

21 I think there's some negotiation around that, but  
22 that's what I would recommend as what the parties consider as a  
23 trajectory of this case towards a trial date. And, again, I do  
24 think it's really important that a trial date be set.

25 Let's talk about time and expenses. My experience is

1 that it's important for the Court to enter two types of orders.  
2 Consistent with a practice in the court, I think there are  
3 limitations that should be set about the type of expenses that  
4 can be --

5 THE COURT: I'll give you a little bit of time.

6 MR. SAVERI: So those are things like how much can  
7 be -- relatively mundane things, perhaps. How much can be  
8 spent on copies, whether business travel is to be permitted,  
9 whether participation at a deposition is limited to one person  
10 or not.

11 But the other important part of this I think is a  
12 reporting requirement. I don't think the Court should be  
13 burdened with monthly time supports from us. My experience  
14 with -- we have a system that's working quite well based on an  
15 order from Judge Donato which says a couple things.

16 All counsel have to submit their time on a monthly  
17 basis. It has to be submitted by a date certain. Any time  
18 that's not included within that submission is not to be  
19 compensated.

20 That's submitted to me on a monthly basis. I review  
21 that. I make my own decisions as lead counsel about what's  
22 permitted and what's not permitted, and at that point, that  
23 time is basically locked down. That is set, that's the time in  
24 the case. And I think doing that on a monthly basis is  
25 consistent with best practices, and I also think it promotes

1 the kind of interests of efficiency.

2 I've also instituted in that case, the submission of  
3 time electronically. Technology has advanced over the years,  
4 and I also think that's a way of making the administrative  
5 burden less. So --

6 THE COURT: Thank you.

7 MR. SAVERI: -- thanks.

8 THE COURT: Appreciate it.

9 Mr. Seeger?

10 THE DEPUTY: I don't think he's --

11 THE COURT: Oh.

12 THE DEPUTY: Can you please state your name?

13 MS. SCULLION: Sure. Good morning, Your Honor.

14 Jennifer Scullion from Seeger Weiss.

15 Your Honor, I am here on behalf of Mr. Seeger today  
16 and -- who does respectfully seek appointment as colead counsel  
17 for the steering committee.

18 But first, Your Honor, I did want to express  
19 Mr. Seeger's sincere apologies for not being able to be here  
20 today in person. He did want me to express to you his deep  
21 respects for Your Honor, for the court, and for this process.

22 As explained in his letter application, Mr. Seeger  
23 actually was scheduled for trial for these first three weeks of  
24 June in Illinois. As it turned out, he actually ran into some  
25 medical issues this weekend. I'm happy to report he is fully

1 on the mend, but that means he could not be here today.

2 He did want me to confirm to you that he will be fully  
3 ready, willing, and able from a health and otherwise  
4 perspective --

5 THE COURT: All right.

6 MS. SCULLION: -- to take on leadership in this case.

7 THE COURT: Thank you.

8 MS. SCULLION: And I will be working closely with him,  
9 which is why I'm appearing here today in his stead. So we do  
10 appreciate your letting me appear for him today. Thank you.

11 Your Honor, we won't go back through the application.  
12 In terms of the questions Your Honor asked, we see the  
13 structure of the steering committee and how this case is likely  
14 to unfold as really tied together. And in that respect, we  
15 have supported a tiered structure with four colead counsel and  
16 then up to ten for an additional steering committee.

17 And in terms of why four, there are a few reasons.  
18 One is that in many ways it effectively can evolve over time,  
19 that from the larger steering committee, certain leaders will,  
20 in fact, evolve, especially in a case of this complexity and  
21 magnitude. So it can be useful to have that really from the  
22 get-go.

23 And we also think it's relevant here that those who  
24 have had experience in the VW case and in the VW steering  
25 committee are supporting having a colead structure here. I

1 think having learned and understand the complexity of the  
2 case --

3 THE COURT: Was there something about --

4 MS. SCULLION: There was nothing about Ms. Cabraser's  
5 leadership whatsoever, but I think there was an understanding  
6 that it can be useful to have coleads, and I think, as others  
7 have pointed out, this is a multiheaded hydra in many ways.

8 So we have supported a suggestion for coleads in part  
9 because there will need to obviously be parallel tracks. There  
10 is the need to prepare the case for trial. This is a case that  
11 we think needs leadership that has a proven track record of  
12 preparing a case and taking it all the way through.

13 THE COURT: So why can't that be and isn't that  
14 normally accomplished through the PSCs or, perhaps, a trial  
15 subcommittee as opposed to a designated colead?

16 MS. SCULLION: Yes.

17 THE COURT: What's the thinking behind having multiple  
18 leads?

19 MS. SCULLION: And so, again, Your Honor, it's more a  
20 reflection on how things often do develop and evolve over time.  
21 Certainly, a structure of having a trial committee also does  
22 work and has worked very effectively as well as a settlement  
23 committee.

24 We do think, as Your Honor has pointed out, there is  
25 urgency in this case as well as other similar cases given the

1 actual impact on the public and on the environment, so the need  
2 to have everything working effectively and efficiently is  
3 possibly even greater here than in many other cases.

4 And then, Your Honor, in terms of the larger steering  
5 committee, we've suggested up to ten. Your Honor will  
6 obviously figure out what the right balance is between dealing  
7 with a complex and large case like this but without having to  
8 get potentially something that's not manageable.

9 But we think ten is probably about the right number.  
10 It also has a benefit of allowing, obviously, for diversity of  
11 backgrounds, experience, and development of further leadership  
12 to come to the floor.

13 Your Honor, with respect to cost controls, I just want  
14 to focus -- we've heard a lot of discussion about process and  
15 protocols and, obviously, those are key. We obviously think  
16 character matters a lot in cost control and ultimately is what  
17 is going to determine that.

18 And we respectfully submit that both Mr. Seeger's  
19 reputation as well as others that we have -- are supporting for  
20 leadership is impeccable in terms of their commitment to  
21 ensuring that the case stays focused on the clients and getting  
22 the remedies that the consumers need and doing that in the  
23 most, again, efficient and effective way possible. So I do  
24 think that's ultimately what the foundation has to be for cost  
25 control.

1           And I did want to underscore, though, also, Mr. Seeger  
2 and our firm's commitment not only to this case, but to these  
3 device cases in general. And we have -- obviously, Mr. Seeger  
4 was involved very prominently in the VW case. He was part of  
5 the settlement committee. Worked hand in hand with many of our  
6 colleagues here very effectively in achieving a settlement  
7 there.

8           We have invested hundreds and hundreds of hours in  
9 this particular case, and we've also, along with some of our  
10 colleagues, filed other cases in this area against GM, against  
11 Mercedes. So there's a commitment to seeing through this issue  
12 on its many fronts by this firm.

13           And again, Your Honor, we very much thank you for your  
14 indulgence for letting me appear for Mr. Seeger today.

15           THE COURT: Certainly.

16           MS. SCULLION: Thank you.

17           THE COURT: Appreciate it.

18           All right. Ms. Weaver?

19           MS. WEAVER: Good morning, Your Honor.

20           THE COURT: Good morning.

21           MS. WEAVER: My name is Lesley Weaver. I opened and  
22 oversee the California office of the firm Bleichmar, Fonti &  
23 Auld.

24           As part of the VW team, as David Casey mentioned, I  
25 acted first as a liaison to the California Attorney General's

1 office, and also to CARB at the direction of lead counsel.

2 The language and cultural skills that I learned while  
3 studying and working in Germany in the early 90s, first at the  
4 University of Bonn and then later at Bayer AG, helped in  
5 numerous ways in this case, particularly as I helped lead the  
6 development of the RICO claims against Bosch.

7 My work involved not just analyzing complex German  
8 legal and technical documents but also coordination with German  
9 experts, NGOs, and other entities.

10 THE COURT: You're proficient enough to read and  
11 translate documents?

12 MS. WEAVER: Yes. Absolutely. And, in fact, in the  
13 review of some of the documents, in a key document against  
14 Bosch, I requested that we hire additional translators so that  
15 we could parse out exactly what some of the language meant,  
16 especially regarding indemnification, which was very complex.

17 Last June 2016, I arranged for meetings with, among  
18 other, a German expert to learn about his work in recreating  
19 the VW software code. Mr. Stranch and Mr. Bailey joined me in  
20 that meeting, and that trip is when we first, incidentally,  
21 learned that Fiat too might be involved in cheating on  
22 emissions because, again, Bosch creates the electronic control  
23 unit for the Fiat vehicles as well as the VW.

24 The information from that trip along with the key  
25 documents produced by VW formed the basis for the RICO claim



1 against Bosch in the VW litigation of which I was a primary  
2 author.

3           These same allegations were later filed word for word  
4 in a complaint filed before Your Honor. But a much better case  
5 can be made against Bosch. We now know more about the  
6 development of the cheat devices and the software that controls  
7 the physical operation of the vehicles.

8           This includes additional evidence of significant  
9 admissions that Fiat executives made in meetings in Germany,  
10 admissions against interest, and those are allegations that are  
11 only in the Johnson complaint that I filed with Mr. Bailey and  
12 Mr. Stranch.

13           Because Bosch will likely resist discovery in this  
14 case too, that evidence -- that informal evidence may play a  
15 key role in defeating jurisdictional and substantive motions.

16           Following that trip and in June 2016, I retained for  
17 this case, the Fiat case, the economic expert who played a key  
18 role in the VW litigation to understand damages in a potential  
19 case against Fiat. Just a few weeks ago, I convened German and  
20 U.S. experts to further discuss analyses of the Fiat defeat  
21 devices.

22           One element of this analysis was to consider whether  
23 the recall announced on May 9, 2017, of certain Ram trucks,  
24 which includes our class here as subclass vehicles, might  
25 affect this case.

1           One concern is the preservation of all software codes  
2 that might be altered as a result of that recall, and at the  
3 hearing on May 24th, Your Honor asked for and received  
4 assurances from the defendants that all preservation  
5 obligations would be met.

6           You've asked where this case is heading, and I think  
7 it's notable that just a few days later, following our meeting  
8 with the experts, a joint study by six scientists at UC Davis  
9 and also Germany was published. That study compares the defeat  
10 devices in the VWs and in the Fiat vehicles through a detailed  
11 look at the software codes. Significantly, that article  
12 documents a new kind of defeat device found in a Fiat 500X and  
13 compares it to the old defeat devices in the VW vehicles.

14           While the Fiat 500X is not sold in the U.S., the  
15 article is important because it describes the new frontier in  
16 emissions regulation and compliance. That is, time did not  
17 stand still while we were litigating the VW matter.

18           Cyber physical mechanisms for detecting testing even  
19 on road have progressed; thus, more than ever, this case will  
20 require significant resources.

21           Fiat has already reflashed the software in at least  
22 one of the eight AECDs identified in the EPA's notice of  
23 violation. Fiat apparently intends to do so again, at least  
24 with regards to the safety recall.

25           If, in fact, it turns out that the number of people in

1 EPA's testing division is cut in half as was proposed on March  
2 21st, 2017, which may or may not affect this case. I have no  
3 idea. But a public/private partnership could play a more  
4 important role than ever.

5 The Court should consider appointing counsel who work  
6 well with government regulators. I possess that track record  
7 as do others here.

8 My firm is young, but has good fortune. And I raise  
9 this because I think I want to be clear about it. In the first  
10 two years of its existence, we settled cases worth more than  
11 \$600 million acting as lead or colead. The firm's recovery in  
12 those cases alone arms us with considerable resources.

13 Importantly, those resources aren't being tapped by  
14 other cases. My firm is not acting as lead or colead in any  
15 other case, and I don't need to make time for this case. It  
16 will naturally occupy it.

17 THE COURT: What are your thoughts on the structure?

18 MS. WEAVER: Yes. I think it's always an interesting  
19 question. I think it is critical that -- personality is  
20 important. I do not think the Court should appoint CEOs in  
21 collaborative cases of this nature. I have -- I'm in support  
22 of a one to three colead proposal.

23 Again, probably six to eight. I wholeheartedly agree  
24 with the concept of committees. I do think that should be left  
25 to the discretion of a lead or coleads.

1 I think there's an argument to be made in a case like  
2 this where there might be a need for flexibility because Your  
3 Honor is correctly asking is this a litigation case or a  
4 settlement case? It's a little bit hard to know now. If it  
5 ends up being a settlement case, there might be a good reason,  
6 actually, to have a tier of firms.

7 I would like to say a note on diversity. Not as an  
8 afterthought, but as a parting comment for the Court's  
9 consideration. I was invited to participate in the drafting  
10 committee for the Duke Law Center's MDL Best Practices with  
11 respect to selection of lead counsel, and we hope those  
12 guidelines will issue next year.

13 But in the meantime, from my personal perspective, I  
14 am incredibly grateful for the opportunity that I was given by  
15 Judge Breyer to participate in the VW PSC. It changed the arc  
16 of my career. I had the honor of working with some of the  
17 finest lawyers in the country, and I'm extremely grateful for  
18 the opportunities to witness the varied approaches and the  
19 skill sets each lawyer and firm brought to the table.

20 I would -- I agree that Ms. Cabraser's leadership was  
21 outstanding. I deeply appreciate the mentorship by Lynn Sarko.  
22 I think Joe Rice was incredible in settlement, and I have  
23 formed deep, functional relationships with Mr. Bailey and Mr.  
24 Stranch.

25 I do think there are other VW -- non-VW lawyers here

1 who are local today like Mr. Gibbs, who could also play a great  
2 role.

3 In any event, I have tremendous respect for all of  
4 these lawyers, and I'd be happy to serve in any capacity you  
5 see fit. Thank you.

6 THE COURT: All right. Thank you. Appreciate it.

7 And, Ms. Wolfson?

8 MS. WOLFSON: Good morning, Your Honor. Tina Wolfson  
9 of Ahdoot & Wolfson. It's nice to be here again.

10 Let me start with a structure suggestion, and I'm  
11 going to alter that from what I put in my application letter.  
12 I think that a larger structure than I originally suggested  
13 makes sense upon further reflection. I would suggest two  
14 coleads and a PSC of eight additional members.

15 And that's because a lot of things need to happen  
16 quickly. It was music to my ears to hear Your Honor's view  
17 that this case is going to move forward and is going to move  
18 forward quickly because it is an important public policy case.

19 So whether we're on the litigation track or the  
20 settlement track, we need to get the documents that are readily  
21 available from defendants immediately. In fact, I would  
22 suggest that the Court even make that part of the appointment  
23 order. These documents that have been turned over to the  
24 government should be produced to the appointed counsel right  
25 away.

1           In terms of the consolidated complaints, that's going  
2 to require a lot of work and coordination. We would utilize  
3 the expertise of the different PSC members regarding potential  
4 state laws and the appropriate causes of action to be brought.

5           The class representatives would need to be vetted and  
6 make sure that all the subclasses are adequately represented.  
7 Most of the firms have retained their own experts: Mechanical,  
8 economic, environmental. All of those would need to be vetted,  
9 and the appropriate experts picked to lead this MDL.

10           Obviously, coordination with all the government  
11 entities is another thing that needs to happen very quickly.

12           I would also suggest just in terms of a management  
13 idea that the Court set periodic status conferences to move the  
14 litigation along. I'm colead counsel in the Experian data  
15 breach case in front of Judge Guilford in the Central District.  
16 That something that we suggested to him. He agreed, and it  
17 works really well to move the parties to get them going.

18           In the event one is not necessary, we have one  
19 scheduled every 30 days there, and sometimes the parties will  
20 call and say, "You know, we don't need to talk to you this  
21 time."

22           But it's really good to have that to keep things  
23 going.

24           I really appreciate that the Court doesn't want to  
25 hear what we already put in our papers, but I do want to

1 summarize that I have 23 years of litigation experience as a  
2 cofounder of my firm, and 17 of those years have been virtually  
3 exclusively devoted to class action contingency work.

4 I have vast expertise in consumer fraud cases, product  
5 liability cases, and auto defect cases especially.

6 I have served as lead counsel or colead counsel in  
7 some MDLs, but, obviously, not the largest and the most  
8 publicized such as this case.

9 In terms of efficiency and expenses, in Experian, for  
10 example we require monthly billing statements from all counsel.  
11 One of the columns on those billing statements is who  
12 authorized you to do this work so that people are not free to  
13 take on work themselves, but there's someone in charge of  
14 making sure there's no duplication, and it works well.

15 We do not report to Judge Guilford in that case, but  
16 we have had calls internally where certain things that are  
17 questionable, you know, I'm the one who makes those calls and  
18 says, "Hey, you can't bill for that. You can't, you know, sign  
19 that as a cost, et cetera."

20 In Home Depot, on the other hand, we did report to the  
21 judge periodically, and if that's something that -- you know,  
22 that's within Your Honor's discretion.

23 THE COURT: That made a difference, in your view, to  
24 report to the judge as opposed to lead counsel?

25 MS. WOLFSON: Frankly, I don't think so. I think it's

1 really up to the lead to make sure that there's no duplication  
2 and the work is handled efficiently. And if we were to be  
3 appointed lead, Your Honor, we would suggest a protocol to be  
4 made part of the court order.

5 I did want to say about diversity, Your Honor, I was  
6 encouraged and inspired by the fact that you pointed that out  
7 as one of the issues to be considered. There are numerous  
8 studies in the corporate world that diverse teams do better.  
9 They're smarter. They make more money. And so it's not a  
10 question just for our profession at this time. It's the class  
11 will do better with a diverse team.

12 And, unfortunately and ironically, our business, which  
13 is the business of justice, has a long ways to go in that  
14 respect. I'm sure Your Honor read the Law 360 article that  
15 came out in March 2017 that, you know, only 16.5 percent of  
16 lead attorney roles go to women.

17 I think more studies need to be done with respect to  
18 other minority groups, and part of the problem in the large  
19 MDLs is that the people who typically get appointed are repeat  
20 players, including the women.

21 And I think, you know, the article points out that  
22 private ordering is part of the problem. That's why I think it  
23 is important to appoint a PSC on this case and not just lead  
24 counsel.

25 And the bench has the power to turn all of that



1 around. That's a tension, I think, between continuity and  
2 diversity. So if all we focus on is continuity, we'll never  
3 know, you know, who the next dream team is and the full  
4 potential of what can be accomplished for the class.

5 THE COURT: Thank you.

6 MS. WOLFSON: Any questions?

7 THE COURT: No. Thank you, Ms. Wolfson. Appreciate  
8 it.

9 Okay. Are we okay on --

10 (Discussion with the reporter.)

11 THE COURT: All right. Yes?

12 MR. GIUFFRA: Your Honor, I just want to raise one  
13 question. You know, obviously, I just want to figure out when  
14 you'd want to hear from the defendants. I know -- I think,  
15 based on the alphabet, you may be at the end of the lead  
16 counsel folks.

17 And a lot of things were said about structure, the  
18 case, trials, the facts of this case versus VW that we  
19 definitely would want to respond to. And I can just --

20 THE COURT: Why don't we do that now? Obviously, I'm  
21 not here to get into the merits of the case, but any comments  
22 you have that will enlighten my thinking with respect to the  
23 leadership structure, why don't we do that?

24 And then we're going to take a break for the court  
25 reporter and for staff, and then we will go on with the second

1 half.

2 MR. GIUFFRA: Okay. So first, Your Honor, in terms of  
3 the structure, you know, from the standpoint of at least FCA,  
4 we have a concern about a multiheaded lead plaintiff structure.  
5 We think the best structure is one where there is one lead  
6 plaintiff who is in charge. One lead counsel.

7 We would be concerned about a structure with two or  
8 three or four that you would end up with disputes that would  
9 need to be resolved over whether it be settlement, the dates in  
10 a scheduling order, and the like.

11 And in the VW case, which we talked about, we had one  
12 lead counsel. That worked extremely well. Ms. Cabraser was in  
13 charge, and everyone on the plaintiff's side knew it. She  
14 could make the decisions with respect to the scheduling order,  
15 which, in that case, worked out extremely well. No problems.  
16 And we would presumably do one here.

17 Similarly, issues with respect to settlement were  
18 worked out with Ms. Cabraser was in charge. And I would have a  
19 real concern about -- particularly you have these big, you  
20 know, steering committees, of having factions on the steering  
21 committee vying for one or two or three lead plaintiffs -- and  
22 who is -- or lead counsel, excuse me, and who is in charge.

23 So I think having more than one person in charge of  
24 this will be contrary. Your Honor will be -- ultimately, I  
25 think, have a problem. You'll be referee among the lead

1 counsel. And from my standpoint, you know, I'll be having to  
2 negotiate with two or three lead counsel as opposed to one.

3 And whether it's -- you know, the first thing which  
4 we'll have to deal with, which will be the scheduling order,  
5 then if we have to move through -- you know, who -- I guess  
6 they can work out amongst themselves thing like motions to  
7 dismiss.

8 But you need to have someone in charge. That's how it  
9 is in a courtroom. That's how it is in a company. That's how  
10 it is, you know, in the government. You can't have multiple  
11 people in charge.

12 And I also think it's important to keep in mind here  
13 that, you know, there's a tendency for the whole sort of VW  
14 team to sort of move over to this case and say the two cases  
15 are comparable.

16 And let me just draw some important distinctions. It  
17 was a 21-person steering committee along with Ms. Cabraser in  
18 VW. And that was a very big steering committee, and in terms  
19 of settling the cases, we dealt with a much smaller group of  
20 people, and that case was on a settlement track from day one.

21 Now, let's just look at the number of vehicles. In  
22 VW, you had roughly 600,000 vehicles. And those 600,000  
23 vehicles were made into multiple generations. So you had  
24 two-liter vehicles, and you had three-liter vehicles.

25 Among the two-liter vehicles, you had gen 1, gen 2,

1 gen 3, and different cars. Pretty complicated stuff. The  
2 solutions for the different generations of cars were different.

3 And that was one of the issues that came up in that  
4 case was when we tried to resolve it with respect to the  
5 two-liter cars, the company was not able to fix those cars to  
6 the certified standard, and, ultimately, the settlement was  
7 reached that allowed the company to fix the cars to a lower  
8 standard but the fixes -- some of the fixes involved hardware  
9 changes, takes a long time, very complicated stuff.

10 That's just the two liter. Then the three liter, that  
11 was additional, you know, generations of cars, types of cars,  
12 fixes being different. So, for example, for the gen 1, three  
13 liters, those cars were made able to be fixed to the certified  
14 standard.

15 With respect to the gen 2 SUVs, those cars, VW  
16 believes, can be fixed, and there's a process going on to deal  
17 with that.

18 But a pretty complicated, you know, number of cars,  
19 number of generations of cars, plus Porsche was separately  
20 represented in that case.

21 Here you're dealing with a much more simple situation.  
22 You have two types of trucks. You have Jeep Grand Cherokees,  
23 Ram 1500s. They have the same engine in them; okay? So you're  
24 not talking about a situation where, you know, you have the  
25 kind of complexity that was at issue in VW.

1           In addition, you know, FCA has -- and I think this is  
2 important to just put on -- you know, I think people know it in  
3 the room, but for the Court to be aware of it, FCA has applied  
4 for a software solution before the first hearing in this case.  
5 Before the very first hearing, and FCA remains optimistic that  
6 it can reach a solution that will satisfy the government, not  
7 have any emissions impact, not have a performance impact, and  
8 we can address this.

9           In VW, the fix was not applied for until after the  
10 settlements. After the settlements. And with respect to the  
11 three-liter vehicles, that process is still going on, and the  
12 company thinks it can fix the three-liter vehicle cars. But --  
13 and that's what's been stated publicly. But it's a  
14 different -- it's just a different case.

15           And so, you know, we would be concerned both from the  
16 standpoint of management and cost controls in this case, if you  
17 have a, you know, five, ten-person steering committee. It's  
18 just not necessary when you look at the fact that you're  
19 basically dealing with one engine and two trucks.

20           THE COURT: Might that depend in part upon Fiat's  
21 position if there's not a fix or not a fix pending and this  
22 case moves forward that, as you indicated last time, there's  
23 not been an admission of liability as there was in the VW case,  
24 that this case, at least publicly stated, there seems to be  
25 disputes on a number of different fronts which suggests an

1 active litigation path if this case does not resolve?

2 MR. GIUFFRA: Well, I think, Your Honor, there may not  
3 be. I think the issues in terms of the litigation, the first  
4 set of issues we'll deal with will be a motion to dismiss. In  
5 VW, there was never a motion to dismiss filed.

6 THE COURT: Right.

7 MR. GIUFFRA: I don't believe there was ever an answer  
8 filed in that case. And so the case was in settlement mode  
9 from day one.

10 Here we will have a motion to dismiss, and, you know,  
11 there's been discussion, for example, of something called  
12 on-road PEMS testing. On-road PEMS testing is easily  
13 manipulatable depending on the weight of the driver, the speed  
14 with which you're driving, the temperature outside, whether  
15 you're going up a hill or not.

16 And so there's a reason why regulators rely on lab  
17 testing for the most part, and so -- so, you know, we'll have  
18 to -- and we've heard a little bit about, you know, cars that  
19 aren't even in the case. These Fiat 500Xs. They're not in the  
20 case. We're talking about one engine in two trucks.

21 And so the position of Fiat is it has not admitted to  
22 having the defeat devices in the vehicles. It has not admitted  
23 to having emissions issues, and the company believes and is  
24 confident that it can address the regulators' concerns.

25 If we can do so within a limited number of months --

1 okay? -- then I think this case has a completely different  
2 complexion, and we'll be fighting about things like diminution  
3 of value of the trucks or not.

4 There also are in this case --

5 THE COURT: But if not, if the fix is not in the  
6 works, then we also have a different case than Volkswagen  
7 because you've already indicated rather than not answering,  
8 there's going to be a motion to dismiss. There may be several  
9 rounds of that, there will be a fair amount of motions work as  
10 we're now beginning to hear.

11 You will -- I don't know if you're going to get  
12 into -- I wouldn't be shocked if you opposed class revocation,  
13 and then -- I mean, so we're going down a road that is  
14 typically -- and that suggests if the litigation route is the  
15 one that's going to be taken that that's going to require a  
16 significant amount of resources.

17 And that's why I'm curious about your comment about we  
18 don't need a large steering committee, et cetera. I mean, I  
19 understand your comment about the lead counsel, and the -- you  
20 know, the possible issues that result, but in terms of a  
21 steering committee that's large enough to accommodate the  
22 potential litigation handle given the "contestedness" of the  
23 matters --

24 MR. GIUFFRA: Well, I think most large cases, Your  
25 Honor, at least on the defense side, you don't have multiple

1 law firms. These are pretty big and sophisticated firms on the  
2 other side. If you appointed two or three or four to the  
3 steering committee with a lead counsel, you'd have a lot of  
4 people who could work on this case. And they're economically  
5 motivated, then they will spend their time on the case.

6 You don't need ten law firms in the case, particularly  
7 when you're only talking about a hundred thousand vehicles.  
8 And, ultimately, in terms of cost containment, you know, were  
9 the case to settle, you know, that would be something that  
10 would be a cost born by the company, I guess, in the end based  
11 on other cases.

12 But you don't need to have ten people coming to every  
13 status conference, for example. And, again, VW had a lot more  
14 vehicles, differences among the vehicles. Here you're talking  
15 essentially about one engine.

16 And so, you know, EPA and CARB are still investigating  
17 the matter. There have been no admissions.

18 And just to give you -- you know, just to make another  
19 point, which I think is important, in terms of the schedule,  
20 people start throwing out dates. You know, let me just give  
21 you a date, which is -- the EPA has agreed that the substantial  
22 completion date for the production of documents in connection  
23 with what are called EPA 208 requests -- and these are requests  
24 that are provided for under the Clean Air Act Section 208 -- is  
25 December 15, 2017.



1           Okay. So that's just the 208 responses, and that's in  
2 part because there's documents that have to be collected from  
3 Italy. They need to be translated. There will be data privacy  
4 issues that will have to be addressed with.

5           So the idea that we can sort of rush this case to a  
6 trial, I don't think, makes any sense whatsoever. You're  
7 talking about a case where there will be significant class  
8 circumstance issues.

9           I think people buy, you know, RAM trucks and Jeep  
10 Cherokees for different reasons. That would be an issue that  
11 would have to be addressed at class cert.

12           In addition, Your Honor, there will be experts in this  
13 case. There will be experts into the values of the cars.  
14 There will be experts -- let's assume we have a software  
15 solution that we believe works and that the government believes  
16 works. The plaintiffs may have experts who want to challenge  
17 that, although the Court, I think, would have to look at the  
18 expert agency's views on that question. But that's something  
19 that, you know, that will take some time.

20           So you're looking at --

21           THE COURT: So what's your best estimate as to a  
22 reasonable trial date as you -- assuming this case does not  
23 resolve quickly because of the things that -- we go on the less  
24 optimistic --

25           MR. GIUFFRA: I think the way to think about the case,

1 Your Honor, possibly is to think about it in terms of there's  
2 two paths it could go down. If we are able, as we believe, to  
3 satisfy the government, the expert government regulators, that  
4 we have a software solution that works and that does not have  
5 impacts on performance, and it satisfies emissions standards, I  
6 think this case will -- can resolve very quickly.

7 And there may be some dispute about diminution of  
8 value of cars, but if you can fix the cars and address them --  
9 you know, and I'm not aware these cars, you know, going down in  
10 value like the VW vehicles did -- I think the case can be  
11 resolved relatively quickly.

12 If there's some issue where we -- you know, we and the  
13 government cannot see eye to eye, I think we're down a  
14 different path, and you're talking about a litigation that  
15 would go on, potentially, for years.

16 THE COURT: That's why I'm asking what's your  
17 forecast --

18 MR. GIUFFRA: I think -- look. Our view is, Your  
19 Honor, that the likelihood of going down the litigation path  
20 here where we don't have a solution is a relatively low one,  
21 and I think it would be something where throughout the entire  
22 process of the litigation, we would be trying to work on a  
23 solution that would satisfy the regulators.

24 So no matter what happens, if you're going down the  
25 litigation road, you're basically still going to be working to

1 try to satisfy the regulators that we can fix the cars.

2 Because, as I understand it, this is really a question of  
3 calibration of software. No one is saying that the -- the  
4 emission -- the AECDs that are in the vehicle as they exist,  
5 you know, need to be taken out.

6 I believe in the proposals that we've made, the same  
7 AECDs are still in the vehicles, and we're just changing the  
8 calibrations of those AECDs, and that's what we're going back  
9 and forth with the government about.

10 But even, let's suppose -- let's suppose the process  
11 took a period that Your Honor was not satisfied with. Well,  
12 you know, the litigation would go on. We'd still try to fix  
13 the cars.

14 But I think -- look, if they file a consolidated  
15 amended complaint, that's the most likely first step here. So  
16 if Your Honor were to appoint a lead counsel in two weeks, and  
17 give them -- they may want -- you know, six to eight weeks is  
18 the normal period of time folks want to file a consolidated  
19 motion, consolidated complaint.

20 We would want the same amount of time to move against  
21 that complaint, and then you would have -- so let's suppose  
22 it's two months. Two months.

23 Then the other side would want two months to put in  
24 their opposition brief. You're out six months. Then there  
25 will be a reply brief, you're into seven months already.

1 Now, even if you move it --

2 THE COURT: Let me look at my local rules. I don't  
3 think it provides -- I can't remember that time frame, but --

4 MR. GIUFFRA: Let's just suppose if they do a  
5 consolidated -- let's even do shorter. A month for the  
6 consolidated complaint; right?

7 Then we would -- I would imagine they'd want to take  
8 some time, then we'd want at least a month to file our motion  
9 to dismiss. They'll want a month to do their opposition.  
10 Okay. That's three months.

11 THE COURT: There's a rush to take a bidding war with  
12 who --- how many can do it in two weeks? How many can go down  
13 to, like, ten days?

14 MR. GIUFFRA: But I think, realistically, Your Honor,  
15 there is going to be a period where there's going to be  
16 briefing on a motion to dismiss. It's going to take three to  
17 six months in my experience.

18 Your Honor is going to have to decide the motion. I  
19 suspect the motion will be a long motion which will have lots  
20 of legal issues in it, and so you're still talking about some  
21 period of time.

22 My estimate would be by that time that period is over,  
23 we would have a resolution with the Department of Justice and  
24 the EPA.

25 Because, again, unlike in VW where the settlements

1 came and then the fixes were being looked at, although there  
2 was process before that, here you have a situation where  
3 they've actually made the application before the first hearing  
4 in the MDL.

5 THE COURT: All right. Any final comments that you  
6 want to impart?

7 MR. GIUFFRA: No, Your Honor, other than, you know,  
8 one other point I would make is, you know, in terms of the  
9 settlement master, there was discussion of that.

10 THE COURT: Yeah.

11 MR. GIUFFRA: Mr. Mueller was more involved, I would  
12 say, on the PSC side, let's say, than the DOJ side, at least  
13 initially. But then as the settlement had to go forward,  
14 obviously, he was involved on all sides because it was a  
15 multidimensional interrelated settlement.

16 Now, whether you need someone at this point, you know,  
17 in the next -- I would think that's something that could await  
18 -- that could await the resolution of the motions to dismiss.

19 THE COURT: Well, if you delay it long enough,  
20 Director Mueller might be available again.

21 MR. GIUFFRA: Depends on what you read in the  
22 newspaper. He certainly did a great job in the VW case.

23 But I think the big thing would be -- the big thing  
24 would be -- you know, our main -- the main point I wanted to  
25 stand up here and say was a lot has been said about the

1 structure. I think there are a lot of benefits to having one  
2 person in charge to avoid having the problem of disputes among  
3 PSC members, and, at least from the standpoint of the defense,  
4 we know who we can deal with.

5 Because what happens if I'm working out a schedule  
6 with one person on as the lead counsel, and the other one is  
7 taking a harder line or not a harder line, and I'm sort of  
8 ending up with a negotiation among three people? And the one  
9 thing that worked really well in VW was you knew that Ms.  
10 Cabraser was in charge.

11 And so I really strongly urge the Court to follow that  
12 model, and I also don't think given the number of cars and the  
13 complexity of this case versus the other case, you need a PSC  
14 that's -- you know, that's manageable.

15 THE COURT: All right. Thank you, Mr. Giuffra.  
16 Appreciate it.

17 So at this point, why don't we take break? Given that  
18 the next phase, we have, I think, what? 19? 18, 19 folks?  
19 That's going to be another hour and a half. So to be humane  
20 about this, people may want to grab something quick to eat or  
21 sustain themselves.

22 So why don't we come back in 30 minutes, and resume  
23 with the phase 2? Thank you.

24 (Lunch recess taken.)

25 THE COURT: Okay. Last one to sit down loses their

1 position. Let's see how quickly...

2 Okay. We're going into phase 2 now, and we've  
3 allocated four minutes to make your presentation. And those  
4 who have already spoken will not -- not be invited to speak  
5 again.

6 So, again, alphabetical order. Mr. Bailey? Is  
7 Mr. Bailey -- you made it. Good.

8 MR. BAILEY: I just thought it was too risky to sit  
9 and try to get up and climb over everybody.

10 Thank you, Your Honor. I'm Ben Bailey from Bailey &  
11 Glasser in Charleston, almost heaven, West Virginia.

12 My letter doesn't talk about my language skills. I'm  
13 fluent in Appalachian English. I was born there. And for some  
14 of these pickup truck owners, we may need that.

15 THE COURT: That's a good angle. Excellent.

16 MR. BAILEY: I looked at my letter, Your Honor, and a  
17 couple of things I probably should have said more clearly. The  
18 team in my office consists of six lawyers. The team who works  
19 on this case is six lawyers, women and men. All of them much  
20 younger than I am. And the engineers at West Virginia  
21 University's Center for Alternative Fuels Engines and  
22 Emissions.

23 And that group is professors and PhDs, and they're  
24 teachers. And I probably didn't make that clear, but they've  
25 been involved in making diesel technology cleaner since the

1 heavy over-the-road vehicles in the 90s. They created this  
2 PEMS technology, and they do the testing of the vehicles on a  
3 dynamometer, which is like a treadmill, in a lab, and  
4 independent testing on the road.

5 We would very much like to serve on the PSC. When I  
6 filed my application letter, and when I filed the Fasching  
7 complaint with the seven other firms on it, what we knew about  
8 these vehicles was the testing that I had done in -- starting  
9 in late December of 2015 and through '16, and the numbers that  
10 were in the complaint filed by Mr. Berman, and the information  
11 in the NOV that the government issued that talked about the  
12 eight different AECDs.

13 Since then, another study that my colleagues at West  
14 Virginia University did has been made public. And everybody  
15 can see it if they want to. I brought a copy of it.

16 But we know now that these -- that there are tests in  
17 the private sector outside the car manufacturers and outside  
18 the government of at least seven different vehicles. Nine  
19 total iterations of them because these cars have already had  
20 one recall of hardware for about 11,000 cars in 2016.

21 THE COURT: Are we talking about the same models or  
22 different cars?

23 MR. BAILEY: Different. Both the Jeep, the --

24 THE COURT: The Ram.

25 MR. BAILEY: The Ram and the Jeep, there are about



1 11,000 of them that were recalled. R69 is the recall. That  
2 have different hardware, and there was a field fix mentioned  
3 in --

4 THE COURT: What years were these models?

5 MR. BAILEY: The 2014. And there's a field fix  
6 mentioned in the government's NOV that was done, I think, in  
7 2015 on 2014 vehicles.

8 And what we know from those tests is that whether  
9 these cars are -- whether they are as sold or after the recall,  
10 that they emit in town, depends on the vehicle, anywhere from 2  
11 to 15 times the certified NOx limits, and they emit on the  
12 highway anywhere from 5 to 35 times the limits. And some of  
13 those tests were done after this recall.

14 So while all of us hope that Mr. Giuffra and Fiat  
15 Chrysler are right about an easy proposed fix like the -- like  
16 the Volkswagen three-liter case, the devil is in the details.

17 And the details include not only whether these cars  
18 will have their performance or fuel economy altered, but  
19 whether they will be durable because a lot of people who buy  
20 big diesel trucks want them to last forever, and it begs the  
21 question of if it was so simple, why was it not done right in  
22 the first place or after the recall or after the field fix?

23 I bring that team to the table. We are pretty much  
24 done with Volkswagen, so I have all that to bring to the Court  
25 and to whoever you put in charge of this case.

1 I have had the privilege of working with virtually  
2 everyone who applied for leadership here, and throughout the  
3 Volkswagen case, I had the privilege of working with the  
4 government in both California and the EPA, and working with  
5 Director Mueller. Look where we got him.

6 You know --

7 THE COURT: Is that a positive or a negative? I don't  
8 know.

9 MR. BAILEY: But I will tell you that my team and I,  
10 our engineers will forever be grateful for the opportunity we  
11 had to do a technical -- the first technical presentation to  
12 Director Mueller and his team about how diesel vehicles work  
13 and how defeat devices work, and I'd like to do it here.

14 THE COURT: Do you have a technical background  
15 yourself?

16 MR. BAILEY: I do not. Well, I'm a West Virginian,  
17 and I have a liberal arts degree.

18 THE COURT: That sounds pretty technical. Judged by  
19 community standards; is that where we...

20 MR. BAILEY: I've run out my four minutes.

21 Your Honor, my firm and I have spent over 730 hours  
22 and over \$40,000 on this case as I left Monday. If you'll put  
23 us on the committee, I promise you that we will work  
24 efficiently, that we will work with grace, and that we will  
25 work with good humor when we can because this case is just too

1 important and life is too short to do otherwise.

2 THE COURT: Great. Thank you, Mr. Bailey. Appreciate  
3 it.

4 Mr. Bryson? Not here.

5 Okay. Mr. Cecchi?

6 MR. CECCHI: Good afternoon, Your Honor.

7 THE COURT: Good afternoon.

8 MR. CECCHI: So I think I'll start, because there's  
9 been a lot of discussion about Italy, the c-c-h is pronounced  
10 "K" in the Italian language.

11 (Speaking foreign language.)

12 So I don't think Mr. Saveri has a monopoly on Italy.

13 THE COURT: Well, let's have a contest here.

14 MR. CECCHI: And, you know, Mr. Sarko mentioned that  
15 he has and -- Sarko mentioned that he has an Italian lawyer in  
16 his office. I actually am an Italian lawyer.

17 But there is an important point that I would make  
18 substantively about that issue. Fiat, of course, is an Italian  
19 company. It's run by Sergio Marchionne. My firm is unique  
20 here. We've represented Italian companies in the past.

21 We've represented Alitalia. We currently represent  
22 the Archdiocese of Newark. I say that because those are unique  
23 entities, and I think having the perspective of having  
24 represented them speaks well to my ability to bring something  
25 unique to this PSC, which my application is for.

1 I did want to very briefly mention some of Mr.  
2 Giuffra's comments. I want to amend my application, Judge,  
3 that in the interests of efficiency and getting this case done  
4 because this is a really simple case. He should only have one  
5 other lawyer at Sullivan & Cromwell, and this guy is from New  
6 Jersey over here, so he can be that other lawyer.

7 It's a very simple case, but it's going to take them  
8 like ten years to get the motions done and the documents  
9 produced from Italy.

10 So -- you know, look. On the plaintiffs' side we  
11 don't buy the calibration story; right? And I think he would  
12 like to have what I'll call an understaffed PSC. He really  
13 would because that's to his advantage. And I don't begrudge  
14 him making an argument to his advantage, but this case speaks  
15 clearly to the need for, let's call it a more expanded PSC.

16 I agree with Ms. Cabraser that the size of this PSC,  
17 the work is there, Judge. I think Mr. Scarpulla mentioned we  
18 don't know if this is a settlement case or a trial case. I'm a  
19 former Assistant U.S. Attorney. Every case to me is the same,  
20 Judge. I get ready for trial in the case.

21 And one of the reasons VW was so successful, not only  
22 because of our esteemed and exalted leader, Ms. Cabraser, but  
23 we two-tracked it. We got ready for trial.

24 I was fortunate to work both on the Bosch team and the  
25 team that was responsible for digging up what I'll call some of

1 the less than stellar document preservation habits of Mr.  
2 Giuffra's clients. I took some of those depositions myself.  
3 Those issues we'll ascertain here as well.

4 I also want to echo something Mr. Berman said. 23(g)  
5 does speak to the initiative of plaintiffs' lawyers. I think  
6 that's a really important consideration here, Judge. My firm,  
7 Mr. Berman's firm, and Mr. Seeger's firm did file the first  
8 case before the EPA. We did use the portable emissions system  
9 to do that testing. We did invest those resources to buy that  
10 machine and do the testing. I think that initiative credits  
11 all of us, Mr. Berman, Mr. Seeger, and myself, for service  
12 here.

13 I also think that a leadership of two to four,  
14 Mr. Sarko, Ms. Cabraser applied, along with Mr. Berman and  
15 Mr. Seeger. Yes, VW was outstanding and it was great, but I  
16 think generally having more than one colead is in the interests  
17 of the class and the Court.

18 I wanted to mention to you --

19 THE COURT: Why is that?

20 MR. CECCHI: I just think because you have more heads  
21 thinking about the issues. You have --

22 THE COURT: Why can't that be done through the PSC?

23 MR. CECCHI: It can be done through the PSC, Judge.  
24 There's no question about that. But I think having two on the  
25 top does assist that process at the leadership level. You're

1 right, Judge. It has worked with one, but I think, as a  
2 general principle from my perspective, two is good.

3 I want to mention two other points. Bosch. I was  
4 also on the Bosch team in VW. I filed the first Bosch case in  
5 New Jersey before anyone else filed the Bosch case, and I have  
6 to say I was a bit nervous for a while because no one was  
7 piling on, and I was thinking, "Did I get it right?"

8 But I agree with everyone here. Bosch is a big player  
9 here, and that's a big issue.

10 My firm is unique because we also have patent lawyers.  
11 We do a lot of patent work. I am not a patent lawyer, but I  
12 can tell Your Honor that I often play a patent lawyer. I've  
13 learned the lingo. I know a little bit about patents, but we  
14 have actual patent lawyers who have expertise in mechanical and  
15 electrical patents, have reviewed the Bosch patents, did that  
16 in VW, and can do it here.

17 I think I'm done. I just wanted to mention I was an  
18 Assistant United States Attorney under Mike Chertoff. I know  
19 the Department of Justice. I look forward to working with them  
20 here. And one of the things that Mike taught us was not only  
21 to be vigorous prosecutors, but to have perspective. I think I  
22 bring that to all my cases, and it would be a real pleasure to  
23 work in this case before Your Honor. Thank you.

24 THE COURT: Great. Thank you.

25 Mr. Gibbs?

1 MR. GIBBS: Good afternoon, Your Honor. It's a  
2 pleasure to be here today. I'm going to scrap most of what I  
3 had planned to say and respond to a couple of your earlier  
4 questions.

5 I've served as lead counsel or on a steering committee  
6 in probably 20 auto class actions at this point against just  
7 about every major manufacturer in the country or in the world.

8 My opinion is this case needs one or two lead counsel  
9 and a steering committee of between seven and nine firms.  
10 Maybe I say that to my own disadvantage, but from my  
11 experience, I think that's about right.

12 And, of course, lead counsel can always call on a  
13 particular talent or expertise beyond what's -- who is  
14 appointed.

15 I also think it's important -- we're doing this in  
16 Anthem case now, and I think in every day which I'm appointed  
17 as a lead, a strict, strict timekeeping protocol is necessary.  
18 Monthly reporting at a minimum. That time needs to be reviewed  
19 in realtime, and work that wasn't approved needs to be cast  
20 aside, can't sit there for two or three years and linger and  
21 become a problem for the Court and the class and everyone else.

22 Reaching back to my application, one case I would like  
23 to highlight for Your Honor is the Hyundai MPG case, which I  
24 was appointed by Judge George Wu in the Central District to  
25 serve a fairly unique role there. At the initial MDL

1 conference, Judge Wu was told that the defendants and the small  
2 group of lawyers had negotiated a class settlement, and there  
3 were dozens and dozens of dozens of firms who weren't part of  
4 that.

5 He appointed me in a role to represent the interests  
6 of those firms and work with the Court and the settling parties  
7 to develop a discovery plan to essentially ferret out whether  
8 the settlement was fair and reasonable and adequate.

9 We did that over the course of many hearings with the  
10 Court, and discovery in Korea and in the United States, and,  
11 ultimately, through that process, 42 firms who had opposed the  
12 initial settlement either changed their views affirmatively and  
13 supported it or withdrew their objections.

14 Ultimately, Judge Wu approved a revised settlement  
15 that is worth about \$360 million, and I raise that because I  
16 think it reflects my firm's ability to manage and navigate  
17 complex litigation with a lot of thorny issues.

18 The last thing I'd like to do is in my written  
19 application, I mentioned one of my more senior partners, Amy  
20 Zeman, who is here with me today. I'm familiar with the  
21 Court's standing order which encourages active participation by  
22 more junior lawyers. That's something that my firm regularly  
23 strives to do. That's personally rewarding to me to see  
24 lawyers develop that way.

25 The tension, though, for us, in cases like this, large



1 MDL cases, is when you're competing with the type of talent  
2 that's in this room today, it's very difficult to take a lawyer  
3 and have her or him be the main applicant when she doesn't or  
4 he doesn't have the track record of formal court appointments.

5 Ms. Zeman, I think is perfect for a role here. She's  
6 fluent in German. She lived in Germany. She studied in  
7 Germany. She's worked with me in a number of auto cases.  
8 She's currently effectively playing my role in a large mass  
9 tort and is regularly receiving compliments from the Court and  
10 from lead counsel in that case.

11 Together we've worked well with Ms. Cabraser in the  
12 past in an MDL before Judge Chesney that settled for a hundred  
13 million dollars. So I would respectfully ask the Court to  
14 consider her as an appointment if you're so inclined to appoint  
15 our firm.

16 THE COURT: All right.

17 MR. GIBBS: Thank you very much.

18 THE COURT: All right. Thank you.

19 Mr. Gilbert?

20 MR. GILBERT: Good afternoon, Your Honor. May it  
21 please the Court, my name is Robert Gilbert, although most  
22 everyone here knows me as Bobby, and I come from Miami,  
23 Florida. It's a pleasure to be here before you. I'm part of  
24 the group of plaintiffs' counsel in the Kitchel complaint.

25 Your Honor, I became an attorney 31 years ago and

1 joined the law firm my grandfather set up in Miami, Florida  
2 because I wanted to help people pursue justice. And I've  
3 devoted my entire legal career, indeed, my entire life to  
4 trying to help people in need.

5 I believe based on the experience and qualifications  
6 that I described in my application, which is at docket entry  
7 95, that I am able -- capable, able, willing to assist the  
8 leadership appointed in this case in the pursuit of justice and  
9 would be very proud to accept the honor of an appointment here.

10 Your Honor, according to some figures that I've looked  
11 at published by the U.S. Department of Transportation, Florida  
12 is number three in the country in the number of pickup trucks  
13 with 11 percent of the total pickup trucks in this country, and  
14 Georgia is number four with 7 and a half percent of the total  
15 pickup trucks in the country.

16 Now, that's not specifically EcoDiesel, but that's  
17 pickup trucks in general, and we know that these are pickup  
18 trucks, Dodge Ram EcoDiesels.

19 In other words, Florida and Georgia count for nearly  
20 20 percent of all the pickup trucks in the United States today.

21 My original named plaintiffs that were part of the  
22 Kitchel complaint hailed from Florida and Georgia. Our Florida  
23 plaintiff purchased five Dodge Ram diesel 1500 EcoDiesels, and  
24 our Georgia client purchased one.

25 And like virtually all of the 103,000 affected owners

1 and lessees of these vehicles, those two plaintiffs made a  
2 conscious decision to purchase environmentally friendly pickup  
3 trucks, but unbeknownst to them, that's not what they got.

4           Based on the data reported by the DOT regarding  
5 Florida and Georgia plaintiffs and as one of only two Florida  
6 lawyers who has made an application for leadership here, I  
7 would suggest to the Court that it would be healthy and good  
8 for the process overall as we proceed forward to include at  
9 least one lawyer from Florida as a member of the PSC. And  
10 whether it's Mr. Leopold, who is an outstanding lawyer in his  
11 own stead, or me, I believe that that would do right for the  
12 class and be a very good addition.

13           I'd like to address quickly an elephant that I think  
14 is in the room. Other than Mr. Gibbs, who just presented, I'm  
15 first person, I think, today to make a presentation who wasn't  
16 named by Judge Breyer to be part of the PSC in Volkswagen. And  
17 I had hoped to be a member but I wasn't appointed.

18           And I think it would be perhaps topically appealing to  
19 the Court to take all or most of the PSC appointments and  
20 leadership appointments from Volkswagen and replicate it here,  
21 because, after all, they did an amazing job.

22           But I think for the MDL process, for the class action  
23 process, for this class, it would be healthy to broaden the  
24 group, to bring in some new faces from different parts of the  
25 country, gender diversity, et cetera, and I believe that I can

1 make a very big contribution to the team if appointed.

2 In particular, as I'm sure you've already seen from my  
3 letter, I am one of a smaller set of people in the room today  
4 who have actually tried class action cases to judges and  
5 juries. I've tried in the last decade alone ten certified  
6 class action cases to judgment for judges and 12-person juries  
7 in Florida.

8 Mr. Giuffra says that they're going to fight to the  
9 death or at least that's what we're hearing today. Ms.  
10 Cabraser indicated early this morning that the case needs to be  
11 prepared and prepared quickly on both a settlement track and a  
12 trial track.

13 I'm available, able to do that. Kids are no longer in  
14 the house, so I can spend as much time as needed here to  
15 prepare this case for trial.

16 THE COURT: Are you sure they're not coming back?

17 MR. GILBERT: They always come back, don't they?

18 But I can spend as much time as needed on the road,  
19 here or elsewhere, helping to prepare this case for trial, and  
20 I would be honored if the Court appointed me to be a member of  
21 the PSC. Thank you.

22 THE COURT: Great. Thank you. Appreciate it.

23 Mr. Hagstrom?

24 MR. HAGSTROM: Good afternoon, Your Honor. It's a  
25 pleasure to be here. Richard Hagstrom of Helmuth & Johnson

1 from Minneapolis, Minnesota. I am requesting an appointment to  
2 the PSC.

3 The economic loss, environmental circumstances here  
4 require a speedy resolution either through settlement or final  
5 judgment. Consequently, I suggest that for purposes of the  
6 PSC, the qualifications of the members have immediate capacity  
7 to work on the case, drawing negotiating skills, technical  
8 knowledge, and litigation and trial skills.

9 I'm personally willing to commit my time immediately  
10 to this case to carry it to conclusion. I strategize a case  
11 from the beginning expecting that it will go to trial. And  
12 based upon Mr. Giuffra's comments earlier, I think we ought to  
13 plan that this case will, in fact, go to trial. I firmly  
14 believe that that approach is necessary to get the best result  
15 for clients.

16 Now, there are obviously many talented lawyers in this  
17 room who are very capable and have had outstanding results over  
18 the years.

19 THE COURT: How is your Italian?

20 MR. HAGSTROM: Pardon?

21 THE COURT: How is your Italian?

22 MR. HAGSTROM: I know none, Your Honor.

23 Unfortunately, I've thought about learning the language, but I  
24 never have. I have friends in Italy, however, that do speak  
25 very well.

1           So there are a great deal of many talented attorneys  
2 here. I too have obtained great results in cases over the  
3 years. I've had many cases involving hundreds of millions of  
4 dollars and some in excess of a billion dollars.

5           I've represented the little guy against corporate  
6 giants, and I've represented corporate giants like 3M, Wells  
7 Fargo, U.S. Bank, and Bridgestone, Firestone to name a few. My  
8 firm and I are representing plaintiffs in the Volkswagen MDL  
9 and have assisted the lead counsel.

10           In short, I've been involved in many hard fought,  
11 major litigations over the years. I've worked with many of the  
12 firms in attendance here today, and I've litigated against and  
13 negotiated with Sullivan & Cromwell in a series of state class  
14 actions involving Microsoft over the years.

15           One of these cases settled only after three months of  
16 trial. The settlement returned the highest per capita recovery  
17 for plaintiffs of any of the cases against Microsoft. And  
18 although we were outstaffed literally three to one by the  
19 Microsoft team, the result that we obtained was a result of our  
20 tenacity, skilled trial team, and commitment to the clients,  
21 and I believe those skills are necessary here.

22           THE COURT: You were on the trial team?

23           MR. HAGSTROM: Yes, sir.

24           I've taken and defended hundreds of depositions,  
25 including internationally renowned experts. I've worked with

1 experts on extensive damage modeling over the years.

2 And, perhaps, unique to me among counsel here, but I  
3 don't know for sure, I helped pay my way through college as a  
4 mechanic. I've always been a motor head who loved automobiles,  
5 loved taking them apart. I love knowing how they work. I've  
6 rebuilt engines.

7 In addition, I've litigated cases involving software.

8 THE COURT: Have you rebuilt a Ram 1500 by chance?

9 MR. HAGSTROM: I have not rebuilt a diesel engine.

10 Just gas engines. My brother has rebuilt a diesel engine, but  
11 not me. Perhaps we can bring him here.

12 So I plan to put this knowledge to use in a case like  
13 this.

14 And somebody mentioned patent lawyers. Our firm has  
15 several patent lawyers present and they are certainly well  
16 skilled to look at the patents at issue here.

17 In summary, the pursuit of the class claims requires  
18 good old-fashioned hard work, creative thinking, and diplomacy.  
19 I know a formidable team will be appointed by Your Honor, and I  
20 would be honored to be a part of that team. Thank you.

21 THE COURT: Great. Thank you for your presentation.

22 Mr. Herrera?

23 MR. HERRERA: Good afternoon, Your Honor. My name is  
24 Nicomedes Herrera. I'm with the Joseph Saveri Law Firm, and I  
25 think I should begin by saying that I'm pleased, and I think

1 Mr. Saveri would be gratified to know, that I fully support his  
2 application to be --

3 THE COURT: I'm shocked.

4 MR. HERRERA: -- lead counsel.

5 But to focus my words on why should I be granted the  
6 privilege of serving with some of my distinguished colleagues  
7 on the steering committee. I think I'd like to emphasize  
8 something that may not be apparent on my papers, but that has  
9 to do with the distinctive background that I have.

10 As Your Honor knows, I've worked on very large class  
11 actions at the Saveri Law Firm including a leadership role in  
12 the Capacitors antitrust litigation that involved over 30  
13 million pages of documents produced by 22 corporate defendant  
14 families, most of them in foreign languages such as Japanese  
15 and Chinese and Korean and others.

16 We have handled that case as lead counsel efficiently.  
17 We have done, I think, a good job for our clients as well as  
18 for the public good in prosecuting that case, and I think I  
19 bring that type of sensitivity to --

20 THE COURT: Maybe you can describe your specific role  
21 in the Capacitor antitrust case.

22 MR. HERRERA: Sure. As one of the most senior  
23 attorneys at the firm, I've been involved with the cartel  
24 allegations with respect to two of the most important  
25 defendants in the case that comprise the vast majority of the



1 commerce, at least in the United States.

2 THE COURT: What did you -- maybe you can tell me,  
3 when you say you're involved, what did you do? What's been  
4 your specific tasks?

5 MR. HERRERA: Not only in terms of formulating top  
6 level strategy in terms of how to develop the allegations and  
7 -- but also down to the discovery level overseeing the  
8 discovery by our document reviewers, by writing substantive  
9 pleadings and motions, and, I think, being involved in  
10 overseeing some of the counsel that we work with, particularly  
11 in the sense of preparation for important depositions including  
12 executives in foreign countries.

13 I've taken a lead role in making sure that the work  
14 that our counsel that we work with are doing their job properly  
15 and efficiently.

16 And so I would say, to answer your question, from both  
17 the top level in terms of formulating strategy down to the  
18 bottom level of making sure the discovery is done efficiently  
19 and that the case is analyzed not only factually but legally in  
20 the highest manner possible.

21 I think that type of experience would inform my work  
22 on the steering committee in this case.

23 THE COURT: How large is the legal team in that case?

24 MR. HERRERA: Within the Saveri Law Firm, there are  
25 six attorneys that are mostly involved, and we work with many

1 different firms with respect to each of the defendants,  
2 corporate defendants. So we've broken up the work not only in  
3 terms of the type of defendants, but the geography and the type  
4 of responsibility in the work.

5 So I think it's a large and important case, and I  
6 think that in many case ways it perhaps maybe more complex than  
7 in this case, and I think that our commitment to quality and  
8 efficiency would allow me to be a valuable member of the  
9 steering committee.

10 But I would also like to add that I've been a general  
11 counsel. I began my career in Manhattan on some very large  
12 defense firms representing Fortune 100 companies,  
13 manufacturing, financial services, a broad range of industries.

14 And I was asked by my client to join their in-house  
15 department where I rose to general counsel position, and I  
16 think that having served both on the plaintiff side, the  
17 defense side, and in house will allow me to be a good member of  
18 the steering committee for two reasons.

19 Number one, this hasn't been something that has been  
20 mentioned by others, but in this case -- if I just may finish.  
21 In this case, we're not talking about a mistake. We're talking  
22 -- the code didn't write itself to defeat the testing. This is  
23 a decision that was made by a large and particularly  
24 well-respected corporation.

25 And it is important in this case that we just don't

1 redress this particular example of corporate wrongdoing, but we  
2 change the culture. The culture not just at Fiat Chrysler, the  
3 culture not just at Bosch, but the entire industry, and,  
4 perhaps, lead by example.

5 And having served as general counsel where I know that  
6 the culture of a corporation is set at the top level and how it  
7 can be changed for good and bad, that I would be a valuable in  
8 the steering committee to not only create a just result in this  
9 case but to have a sensitivity that this case is beyond the  
10 particular trucks in this case. It's beyond just the  
11 environmental harm that has been caused in this case.

12 It is about the culture of an industry that thinks  
13 that they can cheat, and I think that I would bring my broad  
14 experience to bear to create justice not just for society but  
15 for our clients and for these corporations as well.

16 THE COURT: All right.

17 MR. HERRERA: Thank you, Your Honor.

18 THE COURT: Appreciate it.

19 Ms. Jensen?

20 MS. JENSEN: Good afternoon, Your Honor. My name is  
21 Rachel Jensen, and I am a partner in the San Diego office of  
22 Robbins Geller Rudman & Dowd.

23 First, I'd like to echo a couple of comments that were  
24 made earlier about whether we're going on a litigation track or  
25 settlement track. I think the best way to get a quick

1 resolution, as others have said, is to prepare for trial, get a  
2 trial date, and work on parallel tracks.

3 I can tell Your Honor from my experience as one of the  
4 lead counsel in the Trump University class actions, that the  
5 trial date, the looming trial date was really why we were able  
6 to reach such an excellent resolution for the class.

7 Now, I recognize that Your Honor has no shortage of  
8 excellent applicants here today. I offer three reasons why I  
9 should be among those selected for the plaintiffs' steering  
10 committee.

11 First, I'm honored to have the support of virtually  
12 all the attorneys who are seeking lead counsel appointments,  
13 among those, Ms. Cabraser, Mr. Berman, Mr. Sarko, Mr. Seeger,  
14 and Ms. Weaver. Each of these attorneys knows the caliber of  
15 my work and that of my firm.

16 Judge Breyer appointed my partner, Paul Geller, to the  
17 PSC in VW, and I worked very closely with him as well as lead  
18 counsel and the other PSC members. Because of my background in  
19 civil RICO cases, I helped craft the RICO theory of liability,  
20 and my firm assisted on all the 23 related matters, and we  
21 built out a robust Bosch trial plan.

22 Now, Ms. Cabraser can attest to the fact that my firm  
23 worked very closely with hers. For every complaint, brief,  
24 argument, settlement papers and presentation, we had a hand in  
25 it. There was no night we wouldn't work. No weekend we

1 wouldn't sacrifice.

2 I would go so far as to say we weren't just part of  
3 VW, we were a major part of it. And it's due to my firm's hard  
4 work and our excellent work product that I have Ms. Cabraser's  
5 full support.

6 Now, second, I have proven ability to achieve  
7 excellent results in other high profile cases. As I said, I'm  
8 one of the lead counsel for the class in the Trump University  
9 class actions, and I'm the only attorney who survived all the  
10 litigation battles from the start to the end. All 150 motions  
11 of it.

12 And just for some perspective, I took Mr. Trump's  
13 deposition in 2012. He was a reality TV star, and now he's  
14 Commander in Chief.

15 So as surreal as all --

16 THE COURT: You take responsibility for that?

17 MS. JENSEN: As surreal as the case became, we were  
18 able to persevere and secure an excellent recovery for the  
19 class, and we did it just ten days after the election and ten  
20 days before trial was set to begin. Our settlement is expected  
21 to yield \$0.90 on the dollar, and our firm did it all pro bono.

22 The twists and turns of that unprecedented case, I  
23 think I can say, prepared me for just about anything, and I'd  
24 be honored to apply the agility that I honed in that case to  
25 this MDL.

1 I also bring a breadth of different types of legal  
2 experiences. I've worked on the plaintiff's side, the defense  
3 side. I worked for the Office of the Prosecutor at the UN  
4 Tribunal for Rwanda, former Yugoslavia. I worked for the ACLU  
5 on Capitol Hill, and I had the great honor of working for the  
6 great late Judge Ferguson on the Ninth Circuit.

7 And then finally, I provide a fresh face to represent  
8 a diverse class of consumers. I fully recognize that there are  
9 lawyers in this courtroom who have many more years of  
10 experience than I do. For instance, Paul Geller could have  
11 applied instead of me, but we decided together that it was  
12 important to practice what we preach about giving women and  
13 attorneys of color opportunities for MDL leadership.

14 Of course, this doesn't mean sacrificing quality.  
15 With my appointment to the PSC, the class will receive the  
16 benefits of my years of MDL and class action experience and  
17 expertise, and, in particular, RICO expertise, as well as the  
18 benefits of my firm's substantial financial and human  
19 resources.

20 I'd be honored to assist the Court, the class, and the  
21 public interests in this matter. Thank you so much.

22 THE COURT: Great. Thank you, Ms. Jensen.

23 Mr. Leopold?

24 MR. LEOPOLD: Good afternoon, Your Honor. Ted Leopold  
25 with the law firm Cohen, Milstein, Sellers, and Toll.

1 First, Your Honor, I'd like to certainly concur with  
2 my esteemed colleague that the Court should appoint a Florida  
3 attorney, I being one of them, and I appreciate the opportunity  
4 to appear before Your Honor here today.

5 One of the issues that the Court certainly needs to  
6 consider is the breadth and scope of the experience of counsel  
7 when they appear before the Court. A little bit in terms of  
8 what I have done over the last 30 years is two-fold as it  
9 relates to the importance of what this case is about.

10 Number one is for 30 years I've specialized in the  
11 area of automotive defect litigation. I have litigated some of  
12 the most important, I feel, and largest jury verdicts in the  
13 country in automotive safety related issues, crashworthiness  
14 litigation, and defect matters.

15 In addition, we've carried that over not only into  
16 individual litigation throughout the country where we've had  
17 these cases but also personally involved in class action work  
18 as it relates to automotive engine defect issues.

19 Of most recent vintage is the Caterpillar case, which  
20 some of the counsel I was colead counsel with, in front of  
21 Judge Simandle, which dealt with the issues of -- specifically  
22 similar to, if you will, emission standards and defects in  
23 Caterpillar truck and engines. We're involved in the same type  
24 of litigation right now against PACCAR and also against  
25 Cummins.

1 But also of importance is not that Mr. Berman doesn't  
2 have experience in it, but it's not a unilateral nor a monopoly  
3 in that regard.

4 We handled, actually, through -- in fact, Mr. Cecchi,  
5 and Mr. Shah, and myself, and a few others, the issue of  
6 preemption on the Clean Air Act. We prevailed in that issue in  
7 front of Judge Simandle, and we're dealing with those issues  
8 also in the PACCAR and the Cummins cases.

9 So I am personally very familiar with those cases with  
10 those legal issues, which are going to be paramount in this  
11 case in some shape or form.

12 THE COURT: So how does that kind of specific  
13 experience, can you imagine, help in this particular case?

14 MR. LEOPOLD: Well, in this case, I think it's going  
15 to certainly raise its head in terms of a legal issue that the  
16 Court is going to have to deal with. I think it brings a team  
17 together, one of which I hope is myself and my firm, that has  
18 litigated those issues, have briefed those issues, researched  
19 those issues, and have the ability to develop discovery along  
20 those issues to help box out the defenses that we believe that  
21 the defendants are going to raise in this case.

22 So I think it would be very important from a  
23 litigation standpoint, and I think that's also something of an  
24 added advantage that I believe that I bring to this particular  
25 litigation is not only my years of experience in individual



1 auto defect related matters, but also on the class action  
2 consumer side where I've been appointed lead counsel and colead  
3 counsel in several cases.

4 Also, it's interesting that Your Honor also raised in  
5 its order about some of the backgrounds on mass tort litigation  
6 experience, and I've had that. In fact, I've had the most  
7 recent experience in front of Judge Huvelle, which was a  
8 wonderful experience in the DynCorp matter, where we  
9 represented over 2,000 Ecuadorian individuals as a result of  
10 the Department of State spraying of crops and things of that  
11 sort. So I think I bring a lot of experience as it relates to  
12 those matters for the litigation.

13 Specifically, in terms of the scope and the type of  
14 team that this Court is looking for to prosecute this case, I  
15 think what Mr. Berman and Ms. Cabraser and others have said is  
16 appropriate. I think, generally, a two-person firm -- lead  
17 counsel could be one, but, certainly, there is precedent for  
18 that here in this court.

19 But, generally, I find in my experience as being a  
20 colead that two is good because of the ability to  
21 cross-pollinate, educate each other, be able to brainstorm  
22 issues, I think, is very, very important, especially in  
23 litigation like this when you're dealing with multiple issues,  
24 multiple factors of issues.

25 Secondly, as it relates to the plaintiffs' steering

1 committee, I do think that, perhaps, 14, 15 that has been  
2 proposed by some in here today or in their papers is too much,  
3 but I do think there are a significant number of issues all  
4 around that relates to the issues of having different teams.

5 And on a final aspect of that, in terms of my  
6 experience over the many years I've been litigating automotive  
7 defect cases, many against Fiat, many against Bosch, many  
8 against Chrysler, but they have dealt with international issues  
9 where I have taken and -- gone to Europe, Germany, whether --  
10 or Japan, whatever it may be.

11 So dealing with the international issues of discovery,  
12 depositions, and all that transpire in that aspect, I think  
13 that I and my firm can bring a lot both in the resources and  
14 ability to litigate that matter.

15 THE COURT: All right. Thank you.

16 MR. LEOPOLD: Thank you, Your Honor.

17 THE COURT: Appreciate it.

18 Mr. Michaud?

19 MR. SHAH: Good afternoon, Your Honor. Jamie Shah  
20 with the law firm Shepherd, Finkelman, Miller & Shah. Your  
21 Honor, I have been litigating --

22 THE COURT: Oh, I was calling Marc Michaud, but that's  
23 all right. That's okay.

24 MR. SHAH: I thought there was a big jump between  
25 Mr. Leopold and myself.

1 THE COURT: Everybody up the middle was wondering what  
2 -- but go ahead. No, now that you're up, let's just --

3 MR. SHAH: Thank you, Your Honor. I have been, for  
4 the past 17 years, litigating automotive defect class actions  
5 around the country. And for the past four-plus years, I have  
6 spent considerable time litigating diesel engine emission  
7 defect cases.

8 I've had the good fortune, as Mr. Leopold just  
9 mentioned, of working with Mr. Leopold and Mr. Cecchi on the  
10 Caterpillar and Cummins and PACCAR cases.

11 In addition, I've also litigated and recently settled  
12 another emissions defect case against Mitsubishi regarding  
13 10,000 of the company's Fuso trucks that were alleged to have  
14 faulty emissions systems.

15 I was not nor was my firm part of the VW case. I  
16 think that, nevertheless, the benefit that we have gained from  
17 litigating these four pieces of litigation with other counsel  
18 is that we were required to be involved in every aspect of the  
19 litigation from motion practice to class certification briefing  
20 to expert discovery on both the liability and damages side  
21 through settlement.

22 And so I think what we're able to bring as a result of  
23 that experience as Ms. Cabraser and Mr. Levitt mentioned in  
24 talking about leadership in general and how the case is going  
25 to be run, the steering committee is going to be called upon to

1 handle a number of different tasks.

2 And I think a benefit that we can bring is that we  
3 have, in very similar cases, dealt with all aspects of the  
4 litigation, and, therefore, can contribute across the board in  
5 terms of whatever the leadership decides needs to be done.

6 We also do, and I personally handle, a number of qui  
7 tam actions, so we're accustomed to working with the DOJ to  
8 move cases forward and to ultimate resolution.

9 I think another thing that we can bring from a unique  
10 perspective and skill set is that in addition to our class  
11 practice, we also have a significant hourly commercial  
12 practice, much of which focuses on representing European and  
13 Indian clients including in their stateside litigation.

14 We have an attorney that's based in Milan, which is  
15 obviously potentially relevant to discovery here. My firm is a  
16 member of a group called Integrated Advisory Group, which is a  
17 consortium of 75 independent law firms, fiduciary, and  
18 accounting firms worldwide that collaborate to assist with  
19 their clients.

20 And just by way of example, our newest associate just  
21 spent three weeks interning with a firm that we have a  
22 relationship with in Germany.

23 So we are familiar with litigation involving European  
24 companies, European industries, and I think can bring our  
25 experience to bear in that respect. And I think when that's

1 coupled with the significant four-plus years of experience we  
2 have litigating diesel emission cases, that we would be a  
3 veritable asset to the team here in the prosecution of this  
4 case.

5 And, finally, Your Honor, I would just say that I've  
6 had the good fortune of working in leadership positions with  
7 many of the fine attorneys in this room and have always strived  
8 reputationally to have good relationships within the  
9 plaintiffs' bar and also with defense counsel and would be  
10 honored to have the opportunity to serve in this matter.

11 THE COURT: But you have served -- let me just ask you  
12 in your exhibit, you list a number of -- quite a few cases  
13 where you were colead counsel in various cases.

14 MR. SHAH: That's correct, Your Honor.

15 THE COURT: And was that a lead counsel team of two or  
16 three? What typically --

17 MR. SHAH: The Caterpillar case was four individuals.  
18 Michelin PAX, I believe, was two attorneys. It's ranged  
19 anywhere from two to four firms.

20 THE COURT: And in terms of prior MDL appointment,  
21 lead positions in any MDL cases, have you had any?

22 MR. SHAH: I have. As I indicated in my -- on my CV,  
23 I've had a number of leadership positions in MDL cases,  
24 including --

25 THE COURT: Oh, I see. Right.

1 MR. SHAH: From automotive cases to other consumer  
2 cases.

3 THE COURT: All right. Thank you.

4 MR. SHAH: Thank you, Your Honor.

5 THE COURT: Appreciate it.

6 MR. SHAH: And thank you for letting me skip turns.

7 THE COURT: That's okay.

8 Now, let's see. Where was I? Marc, is it Michaud?  
9 And maybe I didn't pronounce it properly.

10 MR. MICHAUD: Good afternoon. It's Marc Michaud,  
11 Patrick Miller, New Orleans.

12 THE COURT: Okay. Thank you, Mr. Michaud.

13 MR. MICHAUD: Your Honor, if this is a contest about  
14 who has the most relevant direct experience, I lose. However,  
15 I think that I come here most organically, Your Honor  
16 notwithstanding.

17 On the morning of January 12th, 2017, I was waiting to  
18 be called for a court hearing in Covington, Louisiana, which is  
19 about an hour from New Orleans. And I was reading about the  
20 EPA announcement in this case just on my phone.

21 And between then and the time that I came on my way  
22 home, I received a telephone call from a friend who referred me  
23 to a gentleman by the name of Jamie Varnado. Jamie Varnado  
24 works at a place called Rainbow Chrysler Jeep in Covington,  
25 Louisiana, which I had to pass right by on the way home.

1           And I stopped to see Mr. Jamie. Jamie has a 2014 Ram  
2           1500 EcoDiesel. And so we started talking about it. He  
3           actually works there. He's a service manager there. So we  
4           started speaking about it, and I recognize that that could be a  
5           potential thing, obviously.

6           And on my way home between then -- and Mr. Varnado is  
7           from Mississippi. So on my way home, took about an hour to get  
8           home, I was processing this in my head and talking to my  
9           partners on the telephone, and I was preparing to file a  
10          lawsuit in Mississippi.

11          In that time, a friend of Mr. Varnado's, Mr. Bret  
12          Rivero out of Northern Louisiana, called me and, again,  
13          organically, he also has a 2014 EcoDiesel Ram. So in  
14          processing this, we decided to get this in the form of a class  
15          action complaint.

16          I do have class action complaint -- excuse me, class  
17          action experience, but this is my first attempt and my first  
18          application for appointment to any PSA.

19          But nevertheless, that day, I returned to my office at  
20          about 11:00 a.m., and we were on file by about 3:00 o'clock  
21          that afternoon. And so as far as the post-EPA announcement, we  
22          were the first case to file in this matter.

23          And, moreover, typically speaking, Your Honor, I  
24          represent people. I represent -- the vast majority of my  
25          practice is in representing individual consumers in consumer

1 fraud cases against some of the biggest companies in the  
2 country and in the world, frankly.

3 The majority of which I do is in consumer finance, and  
4 I have represented both sides of that issue. In my first seven  
5 years of practice, I was, you know, an associate in a large  
6 defense firm representing banks and mortgage companies and  
7 whatnot.

8 Since then, when I opened up my own practice, I did my  
9 own thing. I had no staff, I had no secretaries, nothing. And  
10 I managed these cases all on my own successfully litigating  
11 against and preparing settlements against some of the biggest  
12 banks, Bank of America, et cetera.

13 Since then, I have lots of experience litigating  
14 against lemon law cases, for example. So I have a large case  
15 against Mercedes Benz.

16 How much of this is going to relate to what we're  
17 doing here? Remains to be seen, Your Honor.

18 I think that what I've heard several times in, you  
19 know, this morning and the last couple few weeks ago is that  
20 diversity matters. Geographic diversity. I believe I am the  
21 only applicant from the Fifth Circuit.

22 I represent clients in both Mississippi and Louisiana.  
23 And I know somebody spoke about there being a lot of pickup  
24 trucks in Florida and West Virginia and whatnot, but I can  
25 promise you if there is any contest, I don't think I'm far



1 behind in that regard.

2           Nevertheless, I think that the reality is that I'm a  
3 consumer lawyer. If you look up -- if you called the Louisiana  
4 State Bar Association and said you have a consumer fraud  
5 matter, you would be referred to me. And whether or not that  
6 perspective plays into a plaintiffs' steering committee remains  
7 to be seen.

8           And so I humbly ask to be added to provide a different  
9 perspective. A more plaintiffs oriented and individual  
10 consumer oriented perspective. And that's why I've applied,  
11 Your Honor.

12           THE COURT: Great. All right. Well, thank you.

13           Mr. Miles?

14           MR. MILES: Good afternoon, Your Honor.

15           THE COURT: Good afternoon.

16           MR. MILES: D. Miles with the Beasley Allen firm in  
17 Montgomery.

18           May it please the Court, I come to you this morning  
19 offering a position -- or asking for a position on the PSC. I  
20 served in the Volkswagen PSC and was one of the 22 lawyers that  
21 were on that case. Ms. Cabraser had me on so many committees,  
22 I can't recount them all.

23           But my main -- I think my main duty on there was to  
24 herd all of the reseller dealers throughout the country. So if  
25 you can imagine used car dealers dealing with a trial lawyer,

1 imagine the challenge it was.

2 THE COURT: What a combination.

3 MR. MILES: Yes, it was. Thank you.

4 My firm represents the Stephens and Turner plaintiffs  
5 in this case and, also along with Mr. Levitt and also with  
6 Mr. Bailey, I represent the Johnson and the Webster plaintiffs,  
7 and we filed that together.

8 I don't just bring to you the Volkswagen experience.  
9 I also served on the Toyota case with Ms. Cabraser and Mr.  
10 Berman, among others.

11 I was also involved with the Ducati case down in Miami  
12 in the discovery committee. I'm not in a leadership role in  
13 that case.

14 And, also, we're involved in the General Motors case.

15 In the Toyota case, my firm was the first one to have  
16 a verdict in the Booker case, which sort of set the pace for  
17 the settlement. And in that case, I was involved in the  
18 settlement with both Mr. Berman in the early stages and then  
19 also with Ms. Cabraser in the later stages of which she and I  
20 were the architects of the intensive settlement process, which  
21 is still ongoing today. In fact, we had a call with Judge  
22 Selna yesterday. So it's a successful program that we came up  
23 with, so I'll offer you a resolution skill as well.

24 Your Honor, I also have worked with attorney generals  
25 all over the country, and I think that's a relevant piece of

1 information that may be helpful in the selection because I've  
2 represented up to twelve attorney generals, currently  
3 representing four now. So if there is a --

4 THE COURT: In what capacity? How have you  
5 represented --

6 MR. MILES: Representing Mississippi in a drug  
7 pharmaceutical litigation, representing Kentucky also in a  
8 Fresenius case, and representing the State of Louisiana in four  
9 separate cases. So I do offer you that as well.

10 And if there's going to be a contest for Italians,  
11 Mr. Bailey and I should have a contest among the "Bubba"  
12 language, because I am from Montgomery, Alabama, and there are  
13 a lot of trucks there, so I don't want to leave that out.

14 And, finally, Your Honor, I heard you ask the question  
15 about the structure. And I proposed a structure in my papers,  
16 and I believe I had proposed a structure of a colead.

17 But having said that, I do want to -- unprompted and  
18 certainly not asked to do this, I want to commend Ms. Cabraser  
19 on the VW case. It was undeniable her leadership in that case,  
20 and we were able to reach a remarkable result because of her  
21 leadership, and I was proud to be part of that, and it would be  
22 an honor for me to serve in this case as well, whatever  
23 structure you decide.

24 Unless you have any questions, Your Honor, I'll sit  
25 down.

1 THE COURT: Let me just ask you, the attorney general  
2 that -- you say you're now currently representing four attorney  
3 generals. Which states are you --

4 MR. MILES: Three. One I can't announce yet because  
5 it hasn't been publicly announced.

6 THE COURT: All right.

7 MR. MILES: Jim Hood for the State of Mississippi.  
8 I'm representing the State of Kentucky, and also representing  
9 the State of Louisiana.

10 THE COURT: Okay. Thank you.

11 MR. MILES: Thank you, Your Honor.

12 THE COURT: Okay. Mr. Miller?

13 MR. MILLER: Good afternoon, Your Honor.

14 THE COURT: Good afternoon.

15 MR. MILLER: My name is Ed Powell Miller. I'm the  
16 founder of the Miller Law Firm in Rochester, Michigan. I  
17 believe that my firm is the only Michigan applicant. Michigan  
18 consumers certainly have an interest in this case as Michigan  
19 is centrally relevant as the location of both defendants FCA  
20 and Bosch.

21 I'd like to focus on cost control. I can help in  
22 several areas. First, my firm provides boots on the ground in  
23 Michigan. My office is located in the heart of Automotive  
24 Alley right next to Auburn Hills. I drive by FCA's world  
25 headquarters every day.

1           Second, I know efficiency. I had to. I gave up a  
2 partnership after six years with the Honigman firm because my  
3 heart was not into corporate litigation. I decided to start  
4 the first pro-consumer class action firm in Michigan.

5           I sold my house, I sold my car, I raised \$35,000, and  
6 25 years later, I built a 30-lawyer firm with a focus on  
7 diversity, have more than 3 billion in settlements from one  
8 office in Michigan, and four times got 100 percent net cash  
9 recoveries for class members.

10           I know the automobile industry. To fund this class  
11 action practice, I devoted half my resources to building  
12 commercial litigation focused on the automotive industry. We  
13 have done hundreds of automotive commercial tier one supplier  
14 cases involving recalls, warranties, and product defects.

15           I've done many consumer class actions in the  
16 automotive industry including as lead and -- as lead counsel  
17 and as colead counsel for many others.

18           I don't believe there's a firm in the United States  
19 that has more automotive experience than my firm because it's  
20 been many hundreds of cases.

21           I know FCA, Your Honor. We've litigated against FCA  
22 many times. I'm currently sole lead counsel on the MDL  
23 Monostable Gearshift case in the Eastern District of Michigan,  
24 involving more than 800,000 defective vehicles, and I am lead  
25 or colead on two other cases against FCA.

1 I know Bosch. We've litigated against Bosch many  
2 times. In fact, on the plane over here from Detroit, I ran  
3 into the in-house counsel for Bosch, and we were very cordial.

4 THE COURT: And did you settle the case?

5 MR. MILES: I'm sorry? No, we didn't settle the case.  
6 In fact, we joked about the fact that we didn't settle the  
7 case.

8 Your Honor, I believe in building bridges. I am well  
9 known in Michigan. Ranked 3 in the state by Super Lawyers.  
10 Everyone knows I'm a pro-environment pro-consumer lawyer; yet,  
11 Republican Congresspeople put me on the judicial selection  
12 committee for the Eastern District of Michigan.

13 And yesterday I was advised that the judges in the  
14 Eastern District of Michigan awarded me with the Judge Friedman  
15 and Cook Civility Award, which is just given to one lawyer  
16 every year. I'm proud of that.

17 And I work well with other lawyers. I've worked with  
18 Elizabeth Cabraser in Michigan, who is great. Lynn Sarko, who  
19 is fantastic. Steve Berman, who is an outstanding lawyer. And  
20 I think a lot of weight should be given to the fact that Mr.  
21 Berman really discovered this problem. He drafted a great  
22 complaint, and he's worked very well with me on the Monostable  
23 Gearshift case.

24 I also believe in diversity. The head of my class  
25 action department is Sharon Almonrode, and she's been fabulous.

1 I hope you give me favorable consideration. Thank  
2 you.

3 THE COURT: Great. Thank you.

4 Okay. Mr. Rice?

5 MR. RICE: Thank you, Your Honor. Joe Rice from  
6 Charleston, South Carolina, of Motley Rice.

7 Your Honor, you're creating a law firm today. And  
8 when you create a law firm, you're going to be creating a law  
9 firm that's going to go against some of the best defense  
10 lawyers in the country, that the defendants have chosen with  
11 Sullivan & Cromwell and with Cleary Gottlieb.

12 And the consumers deserve that you -- for you to  
13 create the best law firm you can from the applicants that you  
14 have.

15 THE COURT: Do I get to determine the profit structure  
16 on that?

17 MR. RICE: I'm not sure that's within the ethical  
18 bounds.

19 You need a law firm that has expertise in a lot of  
20 different areas: Motion practice; discovery; finding experts;  
21 preparing experts; electronic document discovery; digging for  
22 little nuggets of discovery; coordination; and resolutions.  
23 One that can work as a cohesive group.

24 My focus is resolution. That is what I have been  
25 doing for the last 20 years or so. But resolution does not

1 happen without trial prep. It does not happen without a stable  
2 of good experts that are prepared to go forward. It does not  
3 happen without discovery in the document world, and it does not  
4 happen without understanding the science.

5 So this cohesive law firm has to be able to do all of  
6 those things in order to give the consumers what they deserve,  
7 which is a good result.

8 Someone said that if the government and FCA work out  
9 something that this case is going to settle. I don't think  
10 that's necessarily true, and I'm fairly confident that my  
11 friends from Bosch are going to be a little more difficult to  
12 deal with here than they were in VW in light of what's come  
13 out, and Ms. Weaver spoke about Bosch's involvement. There's a  
14 lot of smoke there, and I'm afraid we are going to be in for a  
15 little litigation.

16 Mr. Giuffra is using the lessons he learned in  
17 Volkswagen here. He had his client file an early application.  
18 He is talking about delay. We're talking about environmental  
19 damage that's occurring every day that needs to be addressed.  
20 There's got to be a balance there.

21 I'm sure that whoever is doing the discussions with  
22 FCA and Bosch want resolution. We'll hear a lot of the  
23 arguments that I listened to from Mr. Giuffra and Mr. Slater  
24 for the last couple years -- or the last year or so.

25 And we'll have the same experts in most likelihood.



1 Motley Rice has offices in South Carolina, New York,  
2 Connecticut, Rhode Island, West Virginia, Louisiana, DC, and  
3 Missouri. That's 93 lawyers, 109 support staff, and multiple  
4 years of MDL experience.

5 Class action experience. I was class counsel in  
6 Amchem and Ortiz. Both of them saw their way to the supreme  
7 court. I learned a lot from those cases.

8 And I've used that over the years as I've laid the  
9 negotiations in the Tobacco cases, and, most recently, in the  
10 Deepwater Horizon with Judge Barbier, the TVM cases with Judge  
11 Goodwin, and Volkswagen under Elizabeth Cabraser's leadership.

12 I also have probably the best associate in the country  
13 to deal with Mr. Giuffra's experts on the technical information  
14 here as we've been working with his experts for the last couple  
15 years, and that staff is available to work on this case.

16 I think my experience has shown my ability to work  
17 well with my colleagues. I support the leadership positions  
18 that have been sought. I think the key in whether you appoint  
19 one, two, three, or four is what Your Honor is comfortable with  
20 because you're appointing the person or the persons that you're  
21 going to be looking to direct it with.

22 And if you can get comfort with one, you should  
23 appoint one. If you think it needs to be two or three, you  
24 should appoint two or three. I think it's what Your Honor is  
25 comfortable with.

1 I think the lessons learned from Volkswagen will be  
2 very valuable lessons here, and I think that we will save a lot  
3 of time and efficiency to the extent we can use the education  
4 that we have and the cohesiveness that we had within the  
5 Volkswagen group.

6 Over the last two years or year and a half, I've  
7 spoken to a lot of consumers in the Volkswagen world. I  
8 understood what their problems were, what they thought the  
9 solutions should be. I spent a lot of time looking at the  
10 records, and we were able to craft a settlement that had a  
11 remarkably low number of opt-outs.

12 I think we will take that experience, and I look  
13 forward to working with the group if Your Honor selects me. I  
14 don't speak German, I don't speak Italian, but I count pretty  
15 good.

16 THE COURT: And you're from West Virginia, so...

17 All right. Thank you, appreciate it.

18 Mr. Seaver?

19 MR. SEAVER: Good afternoon, Your Honor. Thanks for  
20 hearing from all of us, including the applicants for the  
21 plaintiffs' steering committee of which I am one.

22 My name is Todd Seaver. I am a partner in the Berman  
23 DeValerio firm here in San Francisco. I and my firm are ready,  
24 willing, and able to commit to this case right away, hit the  
25 ground running.

1           With regard to the structure of the plaintiffs'  
2 steering committee, I think in my papers I had suggested to  
3 Your Honor four to six lawyers would be appropriate, but as a  
4 demonstration of my own flexibility, I think I'd revise that to  
5 -- 8 to 12, I think, would be the number for the reason that --  
6 well, I think it's apparent that there are fact disputes here,  
7 Your Honor, that are going to have to be fleshed out in the  
8 adversarial process.

9           And that's true even if, ultimately, the result is  
10 settlement. It doesn't seem that an informed settlement can be  
11 reached here without litigation.

12           And so there's a lot of language flying around the  
13 room, so there is an old Latin or Roman adage. I won't say the  
14 Latin, but it's, "If you want peace" --

15           THE COURT: You could give it in Italian. That would  
16 be --

17           MR. SEAVER: (Speaking foreign language.)

18           I did live in Germany for a year. I am proficient in  
19 German, but that's -- I think, has worn off, so I don't want to  
20 overstate that.

21           But the Roman adage is, "Hope for peace, but prepare  
22 for war," and that is why I think the lead counsel here,  
23 whoever it is, should have a deep bench of talented lawyers to  
24 draw upon, and that's why I think 8 to 12 lawyers is about  
25 right here.

1 I do think there is a -- well, with regard to timing  
2 and the urgency here, I mean, we have -- there are equitable  
3 claims, and there are legal claims, and chances are they're  
4 going to need to be tried together. And so I'd suggest a trial  
5 date 14 to 20 months out from today for reasons that others  
6 have stated.

7 But I would -- I recognize the temptation to keep the  
8 Volkswagen band together so to speak. I and my firm were not  
9 involved in Volkswagen litigation, but I would say that there  
10 is a benefit to some new blood being involved in this case.

11 And that is, invariably, in my experience, in  
12 leadership of various class actions from time to time, I and  
13 others here have been in forced marriages where you work with a  
14 firm that's relatively new to you. Maybe you haven't worked  
15 with them before.

16 And I'm always pleasantly surprised at the depth of  
17 talent and abilities which I never would have considered and  
18 would never have had the opportunity to work with those firms  
19 had I otherwise not been forced together.

20 So, finally, here with regard to the question of the  
21 lead counsel, as I stated in my papers, I support Elizabeth  
22 Cabraser. I think if there's going to be a sole lead counsel,  
23 and I'm not recommending it, I think it should be Ms. Cabraser.

24 But I think in this case, a colead structure of three,  
25 maximum four is appropriate. Really, it's just -- it comes

1 down to practical considerations of scheduling phone calls,  
2 getting people physically in a room together. Once you get  
3 beyond three or four, I think that becomes difficult and can be  
4 a hindrance, especially in the urgency -- with the urgency that  
5 this case presents.

6 Nothing else, Your Honor, unless you have questions.

7 THE COURT: I just have one question. I'm looking at  
8 your letter, and you've indicated where your firm is playing  
9 lead counsel. It wouldn't occur to me whether you have played  
10 lead counsel role. I know you indicated you were on a steering  
11 committee in the online DVD case. Have you served as lead  
12 counsel or colead in -- you yourself in any of these cases?

13 MR. SEAVER: Yes. Classical lawyer answer, it  
14 depends. But there was a case, In Re New Motor Vehicles case  
15 involving the auto industry but not auto defect. It was a  
16 cartel conspiracy case involving the export -- a conspiracy to  
17 prevent the export of motor vehicles from Canada and the United  
18 States.

19 That case -- actually, I started that case as a young  
20 associate, and then as the case went on, and I'm sorry to  
21 report on and on and on, I did assume the lead counsel role and  
22 continued today in that role.

23 THE COURT: Great. Thank you.

24 MR. SEAVER: Thank you, Your Honor.

25 THE COURT: Ms. Slaughter?

1 MS. SLAUGHTER: Thank you, Your Honor. My name is  
2 Stacey Slaughter. I'm from the Robins Kaplan law firm out of  
3 Minneapolis, Minnesota.

4 I represent Chatom Motor Company on behalf of car  
5 dealers who bought and then sold preowned vehicles. I applied  
6 for a position on the steering committee to represent the  
7 interest of those dealers in this case.

8 Dealers may have distinct consideration from consumers  
9 that will need to be considered in looking at any damage  
10 analysis. For example, dealers -- a primary reason that a  
11 dealer will purchase a preowned vehicle is a business reason.  
12 It's to turn around and sell it for a profit.

13 So resale value is a key factor in that purchase  
14 decision. Dealers will buy preowned vehicles at auction or  
15 from other dealers or consumers, perhaps. They may pay a  
16 transport fee to move that car onto their lot.

17 Lot size is often limited, so space is limited. In  
18 choosing to purchase that particular vehicle to put in that  
19 slot, they're making an economic decision to not purchase some  
20 other vehicle to put in that space.

21 So, again, resale value for these cars is key.  
22 Dealers will often enhance the car's value before reselling  
23 them. So it could be as simple as detailing the car or  
24 reconditioning the car before resale. So they put money into  
25 the value of the car before selling it as well.

1           And they typically do not engage in any kind of  
2 activity that would depreciate the value of the cars that maybe  
3 a consumer would engage in like driving it every day or driving  
4 it in traffic and risking getting into an accident that could  
5 decrease the car's value.

6           In short, everything that a dealer does in purchasing  
7 a preowned vehicle they do so and it's designed to increase the  
8 resale value for a profit.

9           THE COURT: Do you have any idea what the size of  
10 the -- how many dealers would be represented by that class or  
11 subclass?

12           MS. SLAUGHTER: Yes. We've done some preliminary  
13 market research and analysis, and I did come here today  
14 initially planning to talk about that. I was a little  
15 concerned that doing that might get into some of the expert  
16 area, but at least the preliminary analysis is roughly in the  
17 range of 10 percent of the impacted cars.

18           So these would be just some of the considerations --  
19 the different considerations for this particular group of car  
20 owners.

21           I wanted to mention a few points about my law firm,  
22 Robins Kaplan. We are a trial firm. When we take a case, we  
23 prepare the case for trial. I've been involved in trials with  
24 some of the most well-known and high profile trial lawyers from  
25 my firm, and we have eight offices and 220 lawyers throughout

1 the country.

2 I have with me here in the courtroom today two of my  
3 partners in the Silicon Valley office, Susan Brown and Michael  
4 Ram. Mr. Ram has actually certified a number of car class  
5 cases in the Northern District of California and he's also very  
6 familiar with this venue.

7 I think the most important thing -- I like the  
8 reference to "you're putting together a new law firm" because I  
9 think the most important thing about the lead counsel group and  
10 any plaintiffs' steering committee is that the lawyers have the  
11 ability to work together well as a team and be team players to  
12 truly put the interests of the clients ahead of themselves and  
13 ahead of their law firms to get the best outcome possible.

14 I do think my skill set will lend toward being a team  
15 player. Thank you.

16 THE COURT: All right. Thank you, Ms. Slaughter.  
17 Appreciate it.

18 Ms. Smith?

19 MS. SMITH: Good afternoon, Your Honor.

20 THE COURT: Good afternoon.

21 MS. SMITH: I am Catherine Sung-Yun Smith. I'm an  
22 equity partner at Gustafson Gluek in Minneapolis, Minnesota.  
23 While it is true that I probably don't have as long or  
24 decorated résumé as my fellow applicants here today, I'd like  
25 to highlight what I would bring to this case.



1 First of all, it would be -- I would bring diversity  
2 to this case in the leadership. Geographic diversity, of  
3 course, is a factor that should not be overlooked when we are  
4 trying to represent plaintiffs that are all over, all across  
5 the country.

6 But more importantly, I bring diversity in terms of  
7 race and gender as well. It is true that leadership positions  
8 are dominated by local Caucasian male attorneys, and just in  
9 this application too, it is true that there is not that many  
10 female attorneys here, and, certainly, not that many female  
11 attorneys of color. I believe increasing diversity is an  
12 important cause, and it will benefit the class that would be  
13 comprised of a diverse group of people.

14 Also, in addition to diversity, I represent the new  
15 generation of lawyers that will be leading these cases in the  
16 coming years. While it would be probably a tried and true  
17 course to go with more experienced attorneys who have served in  
18 leadership roles in many other cases, if that is the case, it  
19 will be nearly impossible for new attorneys to gain that  
20 experience to be even considered for leadership.

21 But my shorter years of experience doesn't really mean  
22 that I do not bring anything substantive to the case. In  
23 11-plus years, I have worked primarily on antitrust class  
24 action litigations, MDL cases, and consumer protection cases.

25 And my background as a foreign born and raised

1 attorney, I was able to work on many cases involving foreign  
2 corporations as defendants in the cases, which often pose  
3 additional hurdles in prosecuting the case.

4 THE COURT: I'm sorry, you represented defendants did  
5 you say?

6 MS. SMITH: I worked on cases with many foreign  
7 corporations.

8 THE COURT: Oh, where the defendant is a foreign  
9 corporation.

10 MS. SMITH: That's correct, Your Honor.

11 THE COURT: So what -- tell me a little bit about what  
12 you've done in these cases in terms of --

13 MR. SMITH: So I've worked on these tech cases LCD,  
14 CRT, ODD, all these cases that involved Korean, Japanese,  
15 Chinese corporations.

16 I mostly focused on the discovery effort: Going  
17 through documents; preparing for depositions; doing document  
18 requests; meet and confers; interrogatories; things of that  
19 nature.

20 THE COURT: What about trial work? Have you --

21 MS. SMITH: We had prepped for trial. I was on the  
22 LCD trial team, but -- I was very excited that we were getting  
23 close, but the case settled days before the trial. So I never  
24 really got to actually see it in action.

25 But I do believe that prepping for trial from the

1 get-go is the best way to get a great outcome either in terms  
2 of settlement or, you know, if it does go to trial, you know,  
3 it would be wise to prepare for that from the get-go.

4           So in this case, I believe that should be the same.  
5 The complexity of this case requires, I believe, about eight to  
6 ten leadership committee members, and I believe as long as the  
7 leadership is -- the lead counsel, one or two lead counsel  
8 leads the team of plaintiffs' steering committee, a good  
9 diverse mixture of attorneys in the committee in terms of  
10 geographic background, race and gender, and experience level  
11 will bring different skill sets, different attributes to best  
12 represent the class.

13           THE COURT: And what would you -- what would you  
14 contribute, do you think? What's your strongest asset that you  
15 would bring to the table?

16           MS. SMITH: I worked very hard on the -- I will be  
17 contributing in terms of discovery efforts. I have -- when  
18 there is foreign defendants involved, there is certain, I  
19 guess, steps that seem to work best in terms of document  
20 review, production, and even depositions. Translation  
21 protocols, how exhibits are prepared, how it's presented.

22           And all those things, I have -- over the last decade,  
23 I've found certain ways work better than others. So that's  
24 sort of the skill set that I would bring to this case.

25           THE COURT: All right. Thank you. Thank you.

1 Appreciate it.

2 MS. SMITH: Thank you, Your Honor.

3 THE COURT: Mr. Stranch?

4 MR. STRANCH: Good afternoon, Your Honor.

5 There's been a lot of discussion about whether there's  
6 more trucks in Mississippi or Louisiana or West Virginia, and I  
7 just want to point out that in Tennessee, we're a more gentele  
8 state, and we have both kinds of trucks. We have farm trucks  
9 and we have what we refer to as gentleman farmer trucks, which  
10 are all truck and no farm.

11 So the one thing that stands out to me that I think  
12 would help guide the Court some here is what is the goal of  
13 this litigation? The goal of this litigation is to get these  
14 cars fixed or off the road as quickly as possible.

15 And we see that this is probably not going to be a  
16 very quick thing because we have Mr. Giuffra out of one side of  
17 his mouth saying, "We're working as hard as we can to get this  
18 resolved with the government as quickly as possible," but at  
19 the other time -- other side of his mouth, saying, "But we  
20 didn't do anything wrong, and there's nothing here for us to be  
21 talking to the government about."

22 And so when you're dealing with a defendant that is  
23 doing that , what you have to do is prepare for trial as  
24 expeditiously as possible, and there's two ways that I believe  
25 that I am uniquely qualified to help do that.

1 First of all, Your Honor, I am a fluent German  
2 speaker. I lived in Germany when I was 15 and have maintained  
3 that fluency since then.

4 Second thing, Your Honor, is I was on the Bosch  
5 discovery team. I was appointed to the PSC in Volkswagen. I  
6 actually served on other discovery and trial teams as well, but  
7 the Bosch was one of the ones that I was originally appointed  
8 to, and I spent a large portion of my time working in.

9 That included everything from reviewing documents that  
10 were in German before we would meet to make sure that we could  
11 understand what was going on, to actually drafting memos, to  
12 going to Germany and meeting with witnesses, with governmental  
13 entities, with elected officials, with formers, or any one of  
14 -- experts in Germany that had done work.

15 To do that, dig into the facts so that we could  
16 determine what actually happened and what Bosch's role was.

17 It probably comes as no surprise to the Court that  
18 Mr. Slater's position was we did nothing wrong, and he would  
19 feed us information, and then we would have to go confirm or  
20 deny that information.

21 And as a result of doing that in Germany and learning  
22 as much as we could about how they operated, how the software  
23 worked, who was involved, we could start to pick apart what  
24 happened and how it worked. And that's a real benefit here  
25 because Bosch is again at the center with Fiat.

1           During that process of doing that, I worked very  
2 closely with other members of the PSC. I worked with  
3 Ms. Weaver, who you've already heard from, who's also a German  
4 speaker. And we traded and we divided up responsibilities  
5 within Germany and also used our independent network and  
6 contacts within the country to get as much done as possible.  
7 And I think looking at the results in Volkswagen, you can say  
8 that we had some serious successes.

9           I also worked with Mr. Bailey extensively throughout.  
10 While I personally grew up on a cattle farm, and unlike some of  
11 the other gearheads you heard from, I actually have rebuilt a  
12 diesel engine, Your Honor.

13           But most of the diesel engines that we had on our farm  
14 did not have heavy software in them. And so I worked with  
15 Mr. Bailey whenever I had questions about the software or the  
16 engineering to learn as much as I could about it. And that was  
17 to help guide our investigation in Germany and also in review  
18 of the documents.

19           What that actually leads to and the benefit that it  
20 gives, Your Honor, is I've already started working on the Bosch  
21 claim in Fiat. I've been to Germany and have met with people  
22 over there specifically about Fiat and Bosch and what they do.  
23 And we have a very good understanding now of what the Bosch  
24 defeat devices are in the Fiat engines.

25           We've also met with experts from Germany who have done

1     incredible amounts of testing that they've been sharing with  
2     the government that's leading the German government's  
3     investigation into Fiat.

4             And the benefit of that is we can move quickly to  
5     start implementing that, and it won't be a delay in getting me  
6     or some -- getting me up to speed on how Bosch operates, how  
7     the EDC17 operates, and we'll also know exactly where to look  
8     for documents and what to do, and that brings a real benefit  
9     here.

10            The last thing, Your Honor, is there is an injunction  
11     here that might be at issue before even a trial in this matter  
12     if the cars are not fixed or off the road. I have litigated  
13     numerous injunction cases, both in the election and voting  
14     context. Also in the pharmaceutical context and in other  
15     matters. Class context and non-class context. I have also  
16     defended them. It's been a substantial portion of my practice  
17     since the beginning.

18            Unless the Court has any questions --

19            THE COURT: Thank you.

20            MR. STRANCH: Thank you.

21            THE COURT: And, Mr. Tellis?

22            MR. TELLIS: Good afternoon, Your Honor. This may be  
23     the one time the phrase "saving the best for last" really  
24     works. Yeah. I had this other one about Elizabeth Taylor's  
25     fifth husband, but I decided not to go there.

1           Your Honor, good afternoon. I am Roland Tellis. I  
2 manage the Los Angeles office of Baron & Budd, and I head up  
3 the firm's class action practice group.

4           My letter details my 20-plus years' experience in  
5 complex cases including the MyFord Touch case pending before  
6 Your Honor for which I'm colead. I'd like to spend a minute  
7 talking about the size and structure of the PSC.

8           As Your Honor embarks on making a decision about how  
9 big and who should be on it, I think we have to build a team  
10 that is prepared for where this case is likely to go. Mr.  
11 Giuffra's comments suggest that we couldn't have two more  
12 different views about this case.

13           The notion that a software reflash will bring these  
14 cars into compliance without any impact on their performance or  
15 fuel economy begs the question, why, then, was it necessary for  
16 a company to surreptitiously put eight auxiliary emissions  
17 control devices in these vehicles and take the risk that  
18 they're facing today?

19           I think suffice it to say we ought to have a team  
20 that's prepared for hotly contested litigation from day one,  
21 and you should build the team that's prepared to do that.

22           I suggested in my letter that we have a PSC of six to  
23 eight members. We readily place ourselves and avoid redundancy  
24 and efficiency by having committees, and we stay in our lanes.

25           We can have a committee dedicated to creating



1 operative complaints, motion practice, fact discovery, experts,  
2 settlements, trials, and that sort of thing.

3 And I think through a responsible leadership and a  
4 well-crafted pretrial order or a case management order, we will  
5 address cost overruns and that sort of thing.

6 There's been some suggestion today that we either have  
7 no PSC or a very lean PSC, and firms in leadership reach out to  
8 friends they know, I think is how it was put. Or their own law  
9 firms.

10 And I think that's problematic for two reasons. One,  
11 this is a high profile case, Your Honor, and the selection  
12 process should be transparent as it should be in every class  
13 action. Your Honor should make the decision based on the  
14 record that is put before you and on the criteria that you  
15 placed in your pretrial order.

16 And the second thing is, as we all sometimes forget,  
17 law firms are not appointed to MDL positions. Lawyers are.  
18 And you should make the decision based on the individual  
19 qualifications of lawyers in this case.

20 I come from a big law firm. I would love to be able  
21 to have my stable of lawyers help me, but I don't think that's  
22 how the process works.

23 I -- what I can offer the Court, Your Honor, is a  
24 proven track record of delivering on whatever role I'm asked to  
25 play on a PCS. I was honored to be selected by Judge Breyer to

1 serve on the Volkswagen diesel MDL. I played a variety of  
2 roles.

3 Working with teams, preparing the amended complaint,  
4 working with experts to drill down on the Bosch EDC unit,  
5 working with experts to figure out how to come up with a  
6 baseline to determine the performance of these vehicles so we  
7 could test it against a fix.

8 I worked on a team that was preparing the amended --  
9 or the preliminary approval papers and dealing with objectors.

10 I was also honored to serve on the plaintiffs'  
11 steering committee in the Takata airbag litigation that's  
12 pending in South Florida. I have been involved in almost every  
13 aspect of that case.

14 The strategic decisions, taking and defending  
15 depositions, motion practice, and, most recently, I worked with  
16 a small group of lawyers, some of which are in the courtroom  
17 here today, negotiating a settlement -- a half a billion dollar  
18 settlement which received preliminary approval this past Friday  
19 against four of the seven automakers in that case.

20 If you select me, Your Honor, I'll make two  
21 commitments to you. One, I'll work collaboratively with any  
22 group of lawyers Your Honor selects to lead the case, and I'll  
23 personally devote my time to make this case reach a conclusion  
24 as quickly and justly as possible.

25 THE COURT: All right. Thank you, Mr. Tellis.

1 MR. TELLIS: Thank you.

2 THE COURT: That -- I think that -- is there anybody  
3 else that I missed? I think I've heard from everyone that's  
4 here.

5 So this has been very helpful, and, obviously, there's  
6 a tremendous amount of talent in this room, so that makes this  
7 process easy and hard. It seems like no matter what I do, I'm  
8 going to have a great law firm here.

9 But I do have to make a decision, and I intend to make  
10 a decision very quickly. I do want to move this on.

11 When I do announce a decision, it will be in the form  
12 of an order with a scheduling order.

13 For the next step, I know we have to address the issue  
14 of settlement master and -- as well as -- the first order will  
15 be to get the consolidated complaint on file and start the  
16 pleading work.

17 And that's what's forthcoming, and I know that can't  
18 be done until I complete this selection process, so I'm going  
19 to be working on that immediately.

20 So with that, let me thank everybody for making the  
21 trip, and I'm sorry we couldn't conclude in time for all of you  
22 to join the Warriors parade, but you can watch the reruns, I  
23 guess.

24 I'm going to schedule the next date when I get out  
25 this order because I may want to -- I mean, it will be soon.

1 It may be on fairly short notice.

2 But I -- we can't do anything until I get the  
3 structure in place; all right? Great.

4 Thank you, everyone. Appreciate it.

5 (The proceedings were concluded at 1:43 p.m.)

6 ---oOo---

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8  
9 **CERTIFICATE OF REPORTER**

10 I certify that the foregoing is a correct transcript  
11 from the record of proceedings in the above-entitled matter.  
12

13 DATE: Wednesday, June 21st, 2017  
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17 s/b Angela Pourtabib

18 Angela Pourtabib, CSR No. 13714, RPR  
19 U.S. Court Reporter  
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