

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE EDWARD M. CHEN, JUDGE

)	
IN RE CHRYSLER-DODGE-JEEP)	
ECODIESEL MARKETING, SALES)	Case No. 17-MD-02777-EMC
PRACTICES AND PRODUCTS)	
LIABILITY LITIGATION,)	
_____)	

San Francisco, California
Wednesday, November 8, 2017

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

Plaintiffs' Lead Counsel and Chair of Plaintiffs' Steering Committee:

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

**BY: ELIZABETH J. CABRASER, ESQUIRE
WILSON M. DUNLAVEY, ESQUIRE
KEVIN R. BUDNER, ESQUIRE
PHONG-CHAU GIA NGUYEN, ESQUIRE**

LIEFF, CABRASER, HEIMANN & BERNSTEIN
250 Hudson Street, 8th Floor
New York, New York 10013

BY: DAVID S. STELLINGS, ESQUIRE

(Appearances continued on next page)

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

1 **APPEARANCES (CONTINUED) :**

2 Plaintiffs' Steering Committee:

3 BLEICHMAR FONTI & AULD LLP
4 1999 Harrison Street, Suite 670
5 Oakland, California 94612

6 **BY: LESLEY E. WEAVER, ESQUIRE**

7 CASEY GERRY SCHENK FRANCAVILLA BLATT
8 AND PENFIELD, LLP
9 110 Laurel Street
10 San Diego, California 92101

11 **BY: DAVID S. CASEY, JR., ESQUIRE**

12 ROBBINS GELLER RUDMAN & DOWD LLP
13 655 West Broadway, Suite 1900
14 San Diego, California 92101

15 **BY: RACHEL L. JENSEN, ESQUIRE**

16 ROBINS KAPLAN LLP
17 800 LaSalle Avenue, Suite 2800
18 Minneapolis, Minnesota 55402-2015

19 **BY: STACEY P. SLAUGHTER, ESQUIRE**

20 BARON AND BUDD, PC
21 15910 Ventura Boulevard, Suite 1600
22 Encino, California 91436

23 **BY: STERLING CLUFF, ESQUIRE**

24 For the United States of America:

25 UNITED STATES DEPARTMENT OF JUSTICE
ENRD, Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044

BY: LEIGH RENDE, ESQUIRE
JOSEPH WARREN, ESQUIRE

For the California Attorney General's Office and the California
Air Resources Board:

CALIFORNIA DEPARTMENT OF JUSTICE
Public Rights/Consumer
600 W. Broadway, Suite 1800
San Diego, California 92101

BY: JUDITH FIORENTINI, ESQUIRE
JON WORM, ESQUIRE

(Appearances continued on next page)

1 **APPEARANCES (CONTINUED) :**

2 For Defendants FCA N.V. and FCA US LLC, Sergio Marchionne,
3 VM Motori S.p.A., and VM North America, Inc. :

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

5 **BY: ROBERT J. GIUFFRA, JR., ESQUIRE**
DARRELL S. CAFASSO, ESQUIRE

6 For Defendants Robert Bosch LLC and Robert Bosch GmbH:

7 CLEARY, GOTTLIEB, STEEN & HAMILTON LLP
2000 Pennsylvania Avenue, N.W.
Washington, DC 20006

8 **BY: MATTHEW D. SLATER, ESQUIRE**

9 Settlement Master: **KENNETH FEINBERG, ESQUIRE**

10 Appearances According to the "Confirmed Telephonic Appearance
11 Schedule":

12 Kathryn P. Caballero
13 Jodi W. Flowers
14 Leslie Allen
15 Megan B. Bradley
16 Mike Spector
17 Erik Dyhrkopp

18
19
20
21
22
23
24
25

1 Wednesday, November 8, 2017

11:02 a.m.

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

3 ---000---

4 **THE CLERK:** Calling case 17-md-02777, In re
5 Chrysler-Dodge-Jeep EcoDiesel Marketing, Sales Practices, and
6 Products Liability Litigation.

7 Counsel, please come to the podium and state your name for
8 the record.

9 **MS. CABRASER:** Good morning, Your Honor.
10 Elizabeth Cabraser, Lieff, Cabraser, Heimann & Bernstein,
11 plaintiffs' lead counsel.

12 **THE COURT:** Great. Good morning, Ms. Cabraser.

13 **MS. RENDE:** Good morning, Your Honor. Leigh Rende for
14 the United States, along with co-counsel Joe Warren.

15 **THE COURT:** Thank you, Ms. Rende.

16 **MS. FIORENTINI:** Good morning, Your Honor.
17 Judith Fiorentini, on behalf of the California Air Resources
18 Board and California Attorney General's Office. And with me is
19 my colleague Jon Worm.

20 **THE COURT:** Great. Thank you, Ms. Fiorentini.

21 **MR. GIUFFRA:** Good morning, Your Honor.
22 Robert Giuffra, Sullivan & Cromwell, for the FCA defendants.
23 I'm here with my colleague Darrell Cafasso.

24 **THE COURT:** Great. Thank you, Mr. Giuffra.

25 **MR. SLATER:** Good morning, Your Honor.

1 Matthew Slater, Cleary Gottlieb, on behalf of Robert Bosch GmbH
2 and Robert Bosch LLC.

3 **THE COURT:** Great. Thank you, Mr. Slater.

4 **MR. FEINBERG:** Good morning, Your Honor. Kenneth
5 Feinberg, court-appointed settlement master.

6 **THE COURT:** All right. Thank you, Mr. Feinberg.

7 Well, since you're up, why don't we start with your report
8 as to where things are at.

9 **MR. FEINBERG:** We're moving forward with preliminary
10 discussions with all parties, including CARB.

11 This morning, Your Honor, we had a confidential
12 information session where we -- courtesy of Joe Warren and
13 Leigh Rende and Judith Fiorentini.

14 We had an excellent presentation from the government to
15 the PSC and to Bosch and Fiat Chrysler as to the testing,
16 methodology and timing going forward on a rolling basis, this
17 testing. And I think it was very, very constructive.

18 I will now -- as a result of those confidential exchange
19 of information today, I will now consult with each of the
20 parties in CARB and determine next steps in the next few weeks,
21 month, as to what we will do next in order to join the issue
22 and try to move forward with specific settlement terms and
23 conditions. And we'll report to the Court as that goes
24 forward.

25 But today's session provided a real opportunity for

1 everybody to hear excellent presentation from Joe Warren, of
2 the Department, as to what the Department, EPA, CARB working
3 together, are doing with a cooperative Chrysler Fiat in
4 attempting to get some resolution and findings on this issue of
5 testing and coming up with a remedy.

6 So I think we moved the ball forward substantially this
7 morning.

8 **THE COURT:** Great. Thank you. Appreciate that.

9 I'd like to hear from the Department, from the
10 United States, a little bit more about timing, because, I
11 think, last time we were here we were at the stage of trying to
12 acquire vehicles, and there wasn't real clarity, precise
13 clarity about timing.

14 So maybe you can bring us up-to-date Ms. Rende.

15 **MS. RENDE:** I can. And, as you know, the purpose of
16 the testing protocol is to provide the regulators enough
17 information to determine the viability of FCA's proposed fix.

18 **THE COURT:** Uh-huh.

19 **MS. RENDE:** With that in mind, in terms of the timing,
20 we have made substantial progress on the testing protocol. But
21 FCA has indicated that it will take them approximately roughly
22 100 days to run the tests being required by the regulators.

23 And after that, we anticipate it being about four weeks
24 for the United States and California to review the test results
25 and determine whether or not the software calibration proposed

1 by defendants will actually fix our emissions concerns.

2 **THE COURT:** And when you do your analysis, will that
3 encompass questions about durability and performance of the
4 car, or is it just emissions?

5 **MS. RENDE:** It will involve testing related to
6 emissions as well as some performance aspects.

7 **THE COURT:** When you say "some performance aspects,"
8 the critical things that consumers are looking for, in terms of
9 mileage, horsepower, et cetera, et cetera, performance, was
10 that part of the --

11 **MS. RENDE:** To the degree that we typically look at
12 those factors when considering vehicle certifications. But I'm
13 not sure whether it will be to the level that is satisfactory
14 to the PSC. I'm not sure.

15 **THE COURT:** And if that approval -- if after four
16 weeks of getting the data is both CARB and EPA approved, what
17 happens then? Are the fixes then authorized? What happens?

18 **MS. RENDE:** Sure. At that point, the hope is that the
19 parties will have been working, perhaps, on an agreement,
20 perhaps some kind of settlement. And then it would then be
21 worked into that framework. Perhaps that would be the hope.

22 **THE COURT:** Absent a settlement, is there a process --
23 because, obviously, the Court's concern and the public's
24 concern is trying to get the cars, at least from an emissions
25 perspective, remedied. Is there a process short of a

1 settlement by which things would happen?

2 **MS. RENDE:** At the moment, there isn't one set in
3 stone for what would happen. But we do want to ensure that any
4 process that FCA follows is one that is approved by the
5 regulators.

6 **THE COURT:** Okay. And, typically, if it's approved by
7 the regulators, does that open a door for unilateral action,
8 let's say, on the part of the car manufacturer to start doing
9 the recalibrations or the repairs?

10 **MS. RENDE:** I would -- again, I would be surprised if
11 there's any movement on this without agreement of the parties.

12 **THE COURT:** Okay. All right. Maybe I can hear from
13 the parties your perspective on that, on what you've just
14 heard.

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

18 I think Ms. Rende, I agree with what she said in terms of
19 the schedule. Let me just add some specifics from our
20 perspective.

21 FCA remains very confident that the fix that we have for
22 the model year 2017 cars, which has already been accepted by
23 EPA and conditionally approved by CARB, is something that will
24 work in the 2014 and 2016 -- to '16 vehicles.

25 And I think that's a very important point. It's not like

1 we're just testing a new calibration. Again, we think these
2 vehicles are largely the same, and we should be able to have
3 the -- we should be able to have the recalibration work in the
4 earlier vehicles. So we're starting from that premise.

5 We've done a lot of testing. We've been working very well
6 with the government. And we're very hopeful we'll get this
7 test protocol worked out in a matter of days.

8 And our plan is, once the test protocol has been approved,
9 we will then, you know, work pretty much round the clock, as
10 much as one can do, to test the vehicles over the three-month
11 period that that will take. And then the government will have
12 one month for confirmatory testing.

13 Your Honor raised the question about fuel economy and
14 performance. And those are obviously legitimate issues in the
15 case. We will be testing for those parameters, which are
16 obviously important to consumers, as we generally do with the
17 government. And the information will be made available and was
18 done in connection with the 2017s. And the same information
19 should be available for the 2014s and 2016s.

20 So the testing process that's now undergoing is something
21 that will yield data that will be relevant to all the pending
22 matters in the case.

23 Now, in terms of process, you know, FCA would like to
24 resolve all the litigations it has against it, if it can. We
25 have a motion that will be heard before Your Honor to dismiss

1 the complaint on the 19th.

2 We think we have good arguments. Obviously, you got the
3 other sides' papers. I always say, you read our paper, you
4 think, these guys are right; you read the other paper, you say
5 they're right. Reply brief and Your Honor will have a better
6 sense where it stands. We think we have meritorious arguments
7 to move to dismiss the complaint. Your Honor will make that
8 decision.

9 But as we go forward and once the protocol is approved,
10 there's two steps in the process. Once we get to the second
11 step, once the recalibration is done, we will be getting data.

12 So it's not like we'll wait until day 100 and we'll just
13 find out then whether the recalibration works. The government
14 will be advised on a regular basis as to how the testing is
15 going. So I think we'll have a pretty good feel for it as we
16 move forward.

17 **THE COURT:** You will be providing the test results on
18 a rolling basis to the government?

19 **MR. GIUFFRA:** Yes. That's -- and that's the normal
20 process one undergoes to do that.

21 And, again, it's the government is the entity in the
22 United States that has the responsibility. This is a
23 peculiarly governmental function to decide whether a car
24 satisfies the emission standards and in this case whether the
25 recalibration works.

1 We think that if there are issues as we're going through
2 this process, we'll know so that we could reset things. We
3 don't expect that to happen.

4 And, you know, the bottom line is, you know, we'd like to
5 move forward as quickly as we can. We're committed to moving
6 forward as quickly as we can.

7 Mr. Feinberg is one of the world's greatest mediators, so
8 he calls us constantly. So, you know, I think everything is
9 moving along.

10 We get along very well with the PSC. Documents have all
11 been produced. I think there's one PTO that is still
12 outstanding. There have been no disputes that have been
13 brought to Your Honor's attention.

14 **THE COURT:** Thank you. Appreciate that.

15 **MR. GIUFFRA:** I think the bottom line is, we believe
16 we have a recalibration that will work based on the
17 recalibration that's already been approved for similar
18 vehicles.

19 Assuming that recalibration works, it will have impacts,
20 obviously, on the nature of the claims that the plaintiffs will
21 have. They need to show damages. And if we can fix the cars,
22 there won't be damage, in our view.

23 And we're prepared to try to resolve, you know, all of the
24 various litigations as promptly as we can. And we want to
25 cooperate with everyone.

1 And, again, Mr. Feinberg is doing his usual fantastic job
2 in keeping the balls moving. So I think it's all going quite
3 well, from our perspective.

4 **THE COURT:** Thank you.

5 Will the production on a rolling basis or the testing
6 information be shared with the PSC?

7 **MR. GIUFFRA:** Right now, our position is that we share
8 with our regulator, which is the government. And that's the
9 way it's been done in every case, as far as I'm aware of.

10 At some point the data might be available to the PSC. I
11 can envision that. Probably at the end of the road. But we
12 certainly don't want to have the PSC in the middle of the
13 testing process.

14 The PSC's, you know, incentives candidly are different
15 than the government's incentives. So we think that we should
16 do the process with the government, working with the government
17 and the government engineers.

18 It's a highly technical process and one that, you know, we
19 think the government is uniquely qualified. It's a Clean Air
20 Act case. The PSC, I don't believe, has brought a case under
21 the Clean Air Act. The government has. So whether the
22 certifications -- the government is the appropriate party to
23 deal with. And so we don't want -- and we actually think
24 injecting the PSC into this process would slow it down and
25 cause delay.

1 I think that at some point the PSC would have the
2 opportunity to see, you know, what the results are of the
3 testing. And how much they would see, we'd have to figure that
4 out.

5 You know, in the most recent case that was handled next
6 door, the PSC certainly has not been involved in any of the
7 testing that has gone on there. Even testing that has gone on
8 after the settlements were signed.

9 I mean, it's a little bit like, you know, when there's a
10 Pope; you know, white smoke comes up.

11 **THE COURT:** Hopefully there's not a lot of smoke in
12 this case.

13 (Laughter)

14 **MR. GIUFFRA:** We hope a lot of white smoke. We don't
15 want black smoke.

16 But in the VW case, the government has been dealing with
17 the company in terms of the testing, and the PSC is not in the
18 middle of it. And we don't want to set that precedent in this
19 case. And I can't imagine that the EPA or CARB would want to
20 do it on a going forward basis if what I read in the newspapers
21 about other car companies is true.

22 This is something we should deal with with our regulator.
23 It's a regulatory function. They have the experts. And, you
24 know, there will come a time when the PSC can get more
25 information. And today's process that Mr. Feinberg supervised

1 gave the PSC, I think, a reasonable amount of information
2 without getting into matters that impact on confidential
3 business information that Fiat Chrysler gave to the government
4 with the understanding that it wouldn't be available to other
5 folks other than through other processes.

6 **THE COURT:** What do you envision settlement -- if
7 settlement does not occur, let's say within the time frame of
8 shortly after the testing is completed, and if there is
9 approval by EPA and CARB, do you envision something happening
10 with these vehicles pending -- either pending litigation,
11 pending final settlement? Or do you envision the status quo
12 until there is some ultimate resolution?

13 **MR. GIUFFRA:** Oh, I think, the company would have
14 every right to go forward once it got its approval from -- from
15 CARB and EPA to go forward with a recall and get the cars
16 fixed. And presumably that would be something the government
17 would want. And that would be a way to deal with whatever, you
18 know, excess emissions are in the environment.

19 So you would just essentially decouple the -- the private
20 litigation would go forward; the cars, you know, would be
21 addressed. And then we'd have to see where we were at that
22 point.

23 I mean, our position would be, we'd like to see the PSC be
24 part of the settlement. Very much so. And that all obviously
25 depends on what the settlement terms are, candidly.

1 **THE COURT:** Right.

2 **MR. GIUFFRA:** But based on my knowledge of the law,
3 there would be nothing that would be preventing the company,
4 once it got an approval from EPA and CARB, from going forward
5 and offering its customers -- offering its customers, number
6 one, we could just -- sort of thinking out loud, we could -- we
7 obviously could offer customers to bring their cars back.

8 We could offer them terms with respect to how they would
9 go back and bring back their cars. In fact, in the VW case
10 there was discussion of having Mr. Feinberg do a protocol where
11 Mr. Feinberg would -- you know, we'd offer some amount of money
12 and get releases from people who are the customers, in exchange
13 for getting their cars fixed and maybe paying them some money.

14 You could do some version of that in this case --

15 **THE COURT:** There are other issues if you're talking
16 about release as opposed to just doing a recall.

17 **MR. GIUFFRA:** There's nothing, actually, that I'm
18 aware of, that would stop that.

19 So, you know, ideally, we want to work with the PSC. But
20 there's nothing that would stop the company from going forward
21 with communicating with its customers and having the customers
22 bring the cars back.

23 And whether we would then get a release or not get a
24 release is obviously something that could be figured out at the
25 time. And I'm not aware of anything that would stop us from

1 doing -- even going out and getting releases from people.

2 **THE COURT:** All right. Let me hear from Ms. Cabraser.
3 She may have some comment upon that.

4 **MS. CABRASER:** Just a minor comment on that, Your
5 Honor.

6 (Laughter)

7 **MS. CABRASER:** But, first, I would like to express
8 appreciation on behalf of the PSC for the information we
9 received this morning from the EPA, and appreciate the
10 cooperation and transparency of EPA and CARB in this process,
11 because this is a little different from the scenario
12 Mr. Giuffra described with respect to Volkswagen.

13 In that case, testing on most of the affected vehicles was
14 ongoing, and approval processes were pending after those
15 vehicles' owners and lessees had turned them back in.

16 At this point, our class members, the consumers, are the
17 owners and lessees of these vehicles. So they have a very
18 direct property interest in the vehicles in question.

19 We don't take any issue with the prerogative of the
20 regulatory agencies to decide emission standards. That's their
21 statutory role. We have no interest in getting in the midst of
22 that process.

23 But we do have an ongoing interest which arises from our
24 class members' ownership of these vehicles, during this
25 process, in being kept apprized on a confidential basis of the

1 status and progress of the testing that was described to us,
2 because we would like to know whether or not it is proceeding
3 on schedule.

4 That's the easy question. We want to know, is the testing
5 falling behind? Is it running ahead? That helps us in
6 settlement discussions. It helps us in our litigation
7 strategy.

8 And we do have an interest in interim information that is
9 coming out of that testing. Again, we're more than happy to be
10 subject to any and all appropriate protective orders. We're
11 subject to Federal Rule of Evidence 408 on an ongoing basis.
12 This morning's discussion was conducted under those auspices.

13 So we're very encouraged that the governmental regulatory
14 agencies are on the job; that the initial phase of testing is
15 about to begin. But we will want information, on an ongoing
16 basis, about the protocol that is actually approved, hopefully,
17 within the next few days. The timing, status and progress of
18 the testing that's been described to us. And, again, ongoing
19 data on that testing.

20 I think that will inform the settlement discussions which
21 are going to have to take place, as they did in Volkswagen,
22 against a backdrop of uncertainties.

23 I don't think we necessarily want to wait until outcomes
24 are certain before further engaging in those discussions. I
25 think we have -- we have set on a course of simultaneous

1 litigation on a good brisk schedule, and resolution discussions
2 on a similar schedule. And we'd like to see those continue.

3 So far, I think all the parties have essentially met their
4 schedules. I think we're on track with respect to submitting
5 proposed pretrial orders to Your Honor.

6 We haven't needed to bring discovery disputes to Your
7 Honor. And I hope we continue to be able to resolve things.

8 And I think we're on track to meet our deadline of next
9 week to send in our proposed ESI protocol as well. I know
10 discussions on that continue on a daily basis.

11 **THE COURT:** All right. Comment about the last thing
12 that I talked to Mr. Giuffra about, about if there is no
13 resolution but there is approval by the regulators, what
14 happens then?

15 **MS. CABRASER:** What could happen is that that approval
16 process could be implemented. At that point in time, we will
17 have a pending class certification motion.

18 We have a proposed class action. We represent a proposed
19 class. It will be of utmost importance to us that any
20 communications by any party with our proposed class members are
21 accurate, complete, informational, not misleading, not
22 harassing. And we have the authority of Rule 23(d) of the
23 Federal Rules of Civil Procedure to back that up.

24 And it is not unusual at all for there to be
25 communications with people who are one party's customers but

1 another party's class members be submitted to the Court for
2 approval, be approved by the Court, and be monitored by the
3 Court.

4 I also note that we were -- we have been very vigilant in
5 other class actions to assure that corrections, recalls,
6 et cetera, that one party may have a legal obligation to
7 implement, not be conditioned on or accompanied by releases.

8 In the Volkswagen settlement, of course, we did have
9 releases. Those were negotiated. Those were part of a
10 court-approved settlement. And, indeed, the Court reviewed and
11 approved every sentence of the releases as well as all the
12 terms and conditions of the settlement.

13 So we don't know what sequence of events will occur here.
14 What we do know is that whatever happens, no one has a
15 legitimate interest in interfering with the reduction of
16 illegal emissions. And no one should have a legitimate
17 interest in undercutting the rights of the consumers who own or
18 lease these vehicles.

19 **THE COURT:** All right. Well, I'm hopeful that this
20 will all be discussed, the issues we just talked about will be
21 discussed and negotiated.

22 If push comes to shove -- and I don't want to get too far
23 ahead of ourselves, because there are many steps to get there,
24 but if we do find ourselves in a situation where there has been
25 regulatory approval and there's no resolution, and there is at

1 least an attempt to mitigate the environmental harm through a
2 recall and approved fix, I would be very sceptical that this
3 could be done with a unilaterally imposed release claim;
4 certainly without some review and supervision by the Court.

5 But I'm not going to prejudge that. But that's my take in
6 the class action, putative class action, especially if there's
7 a class certification motion pending or about to be filed. But
8 let's not worry about that at this point. But I will indicate
9 that.

10 So there seems to be some difference, now, that's going to
11 be fairly immediate in terms of the testing results and sharing
12 of testing information. I'm wondering if the government has
13 any thoughts on that.

14 **MS. RENDE:** We do, Your Honor.

15 And to your last point, I do just want to be clear as
16 to -- as the United States is concerned, we are currently
17 litigating this case.

18 **THE COURT:** Yep.

19 **MS. RENDE:** So any approval of a reflash, in our view,
20 would need to come through a consent decree.

21 **THE COURT:** Okay.

22 **MS. RENDE:** That said, in terms of sharing
23 information, I wanted to clarify something that FCA just said
24 earlier.

25 It appears as though there is discussion of, oh, it's a

1 simple reflash; we're just putting in the same software that
2 was approved for NY17.

3 And it is not just as simple as that. And, yes, the
4 software is very similar. I just want to make sure that it's
5 clear there are some differences, and it is being tailored to
6 the older vehicles. So there are some differences, and this is
7 part of why we're doing the additional testing.

8 The other thing is, we don't want to set up any
9 unrealistic expectations regarding the timing of feedback. We
10 talked about early warnings, if there are potential issues with
11 the proposed fix. We hope to know that sooner rather than
12 later.

13 There are going to be approximately three phases to the
14 testing. So that type of feedback we don't expect to be
15 getting until the third phase.

16 And what that means is that by the next hearing -- which I
17 believe is December 19th -- we will likely not have that kind
18 of feedback. So we just don't want to set Your Honor up for
19 that kind of expectation.

20 **THE COURT:** Do you have any views or objections with
21 respect to the sharing of information that is provided on a
22 rolling basis, like, each phase, for instance, having that kind
23 of be available to the PSC?

24 **MS. RENDE:** Based on the presentation that Mr. Warren
25 made this morning, the United States is open to being

1 transparent. There are considerations that we have to account
2 for, relating to confidential business information and claims
3 of that nature.

4 **THE COURT:** Sure. But the testing, the actual
5 protocol, the timing of how things are going, and, I guess, the
6 data from the testing data -- I'm not sure exactly what that
7 looks like -- but those are the kinds of things that I'm
8 hearing from the PSC that they're interested in.

9 **MS. RENDE:** Right. And Ms. Cabraser did raise certain
10 issues that she would like responses on in terms of our being
11 able to provide information to her. So our hope is to be able
12 to follow up with her, as well as FCA, after today.

13 **THE COURT:** All right. Thank you.

14 Mr. Giuffra, any further --

15 **MR. GIUFFRA:** Your Honor, again, I think we've done a
16 reasonably good job of working together with the PSC and with
17 the government. And we're certainly open to some exchange of
18 information. The question is obviously how much.

19 And we would object strongly to any sort of a procedure,
20 which I think would be highly irregular, where we are
21 essentially inviting the PSC to be part of, you know, a review
22 of this testing process as it's going forward, because the PSC
23 just has no right to be part of the regulatory decision that
24 the government has to -- has to meet.

25 And so it's one thing to give the kind of information that

1 was given today by Mr. Warren, which is fine with us,
2 information about timing, what kind of testing we're doing.
3 I've already said to the PSC that when the time comes and we're
4 done, we'll give them the information about miles per gallon
5 and performance and noise and those kinds of things.

6 I just think it's a concern of ours that, you know, we're
7 trying to work this through with the government. It's a very
8 technical process. And so we think it's important to keep that
9 being, you know, a regulator -- party-regulator process.

10 That's how it's traditionally been done. And we see no
11 reason why the PSC should be getting in the middle of that in
12 terms of the nitty-gritty of how the tests are coming. Maybe
13 we can figure out some way that there's something above that
14 more broadly speaking. In terms of -- again, we'd like to try
15 to resolve it with them.

16 On the issue of, you know, what could and couldn't be
17 done, I imagine -- and Ms. Rende said it. We have a consent
18 decree; it will be signed; and then we would have to go
19 forward.

20 You know, one of the things that likely would be in that
21 consent decree would be we'd have to bring back a certain
22 number of vehicles by certain dates because the government --
23 you know, it's called a "take rate."

24 And so, you know, obviously, I can't predict what the
25 PSC's views will be, what the PSC's demands will be. But we

1 certainly can't give the PSC a veto over that process. So we
2 hope that we can work it out. We've got a terrific mediator in
3 the back who knows how to bring people together.

4 But I'm fairly confident that under the law we have the
5 right and ability, once we get regulatory approval, to go out
6 and deal with it.

7 There may be issues with respect to what communications we
8 make, and who reviews them, and accuracy and things of that
9 nature. But we'd obviously have to present that to the Court
10 and would do so at the appropriate time.

11 But the bottom line is, you know, FCA's position is we
12 want to have global peace with everyone, if we can work that
13 out, on terms that we think are fair and reasonable.

14 **THE COURT:** Well, I think that's everybody's goal
15 and -- which is why we have Mr. Feinberg here to help you all.
16 And the quicker we can get to global resolution, the better for
17 lots of reasons.

18 But I do raise the question, in case the global resolution
19 is not as quickly obtained as one would hope, and we have the
20 concern about cars being on the road. I do want the parties
21 to -- I mean, that's going to be part of your meet-and-confer
22 process.

23 And that's why I wanted to start to delve into exactly how
24 that might play out and what some of the issues might be. So,
25 for now, I'm going to leave that to Mr. Feinberg and you all to

1 discuss. But I'm going to continue to voice the Court's
2 concern that, you know, there are environmental concerns.

3 **MR. GIUFFRA:** And that's what the company's focused
4 on, because we want to try to get the reflash approved, and
5 then we can go bring it out to our customers.

6 There are many cases where you have a product case where
7 companies will do recalls, and the litigation will be going on
8 at the same time as the recall. That happens. You know, I
9 believe it's going on in the GM ignition switch case and other
10 cases like that.

11 So, you know, again, we'd like to try to get a global
12 peace. Mr. Feinberg is obviously a very persuasive person, and
13 hopefully we can achieve that.

14 **THE COURT:** Well, along those lines, I think there is
15 merit in what Counsel has indicated, Ms. Cabraser has
16 indicated, in terms of getting information that will be helpful
17 even during this next 100- to 130-day period on a rolling
18 basis. You can discuss, and I hope you will, the level of
19 specificity.

20 But I think in order to facilitate settlement discussions,
21 if we're going to expedite that, there's going to have to be
22 some sharing of information about what goes on with respect --
23 what is going on with respect to the testing on a rolling
24 basis. But, again, I would like you to meet and confer.

25 And, in that regard, if you run into a situation where you

1 cannot resolve it, you can bring the motion to my attention via
2 my standing order, and I'll have to resolve that. Hopefully, I
3 won't be needed for that. But, if necessary, I do want that to
4 be discussed and resolved.

5 It sounds like, from your CMC statement, that otherwise
6 discovery has been proceeding and pretty much on schedule as
7 far as I can tell. And, as you've indicated, there's not been
8 a problem at this point. I appreciate that, that the parties
9 are working cooperatively.

10 We do have the timeline. We are still scheduled to hear
11 the motions to dismiss on December 19th, at which point we
12 should have a further status conference.

13 And I'd like to hear report about how things are going.
14 Even as Ms. Rende indicated, we may not know much specific
15 because the phase one will, I guess, just be started or will
16 not have been completed at that point. But, nonetheless, I
17 want to know things are on track in terms of the time frame
18 that you have set forth.

19 And we do have a March 15th class certification filing,
20 leading to a June 14th class cert hearing. Now, obviously, if
21 you can reach a resolution of this case to obviate that, I
22 think that would be ideal from everybody's perspective.

23 But I will also make it clear that if there is no
24 resolution, at this point I have no intent of slowing things
25 down. We're going to proceed with the next phase as we have

1 already set forth.

2 And I think I indicated the last time that this is all
3 leading to, if necessary, a trial date in the earlier part of
4 2019. We still haven't set that date. I don't think I need to
5 yet. But we're getting to the point where I am going to set a
6 date fairly soon unless it's clear that this case can be
7 resolved otherwise.

8 So I do appreciate the parties -- the progress that you've
9 made both in terms of litigation, exchange of information, and
10 what went on today, and the discussions.

11 I just had one question with CARB. There was the
12 conditional approval. It's still conditional, I take it, of
13 the 2017?

14 **MS. FIORENTINI:** Yes, Your Honor. It's still
15 conditional. But that should not hold up the ability of the
16 agency to sign on to a protocol or begin testing. It's two
17 independent tracks.

18 **THE COURT:** All right. But you are working hand in
19 hand with EPA with respect to the testing protocol?

20 **MS. FIORENTINI:** Absolutely. We're in daily contact
21 with both EPA and United States Department of Justice, frequent
22 phone calls several times a day, and moving forward as quickly
23 as we can.

24 **THE COURT:** Good. Great.

25 Mr. Slater, I haven't asked you any questions. Would you

1 like to say anything since you're here?

2 (Laughter)

3 **MR. GIUFFRA:** He had a little problem on the way to
4 court.

5 **MR. SLATER:** I will not discuss the problems on the
6 way to court.

7 We appreciate the session that was held this morning, Your
8 Honor. As it made clear, and I think is clear more generally,
9 and as we've discussed before, these issues of the calibrations
10 in which Fiat Chrysler is engaged is one that is within their
11 control to meet the emissions requirements and to obtain the
12 performance characteristics that they are seeking for the
13 vehicles that they're selling.

14 And we're happy to support that process, but it's one to
15 which we are on the side --

16 **THE COURT:** Okay.

17 **MR. SLATER:** -- and do not have control.

18 We obviously can't conduct a recall of the vehicles. And
19 we'll -- we'll abide the results of CARB and EPA in that
20 respect.

21 **THE COURT:** Great. Thank you.

22 All right. Anything else we need to cover this morning?

23 **MR. GIUFFRA:** No, thank you.

24 **THE COURT:** Great. Thank you, everyone. Carry on.

25 **MR. GIUFFRA:** Thank you.

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

THE COURT: We'll see you next month.

Thanks.

(At 11:37 a.m. the proceedings were adjourned.)

- - - -

CERTIFICATE OF REPORTER

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

DATE: Thursday, November 9, 2017



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