

Pages 1 - 19

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE EDWARD M. CHEN, JUDGE

IN RE: CHRYSLER-DODGE-JEEP)
ECODIESEL MARKETING, SALES)
PRACTICES AND PRODUCTS)
LIABILITY LITIGATION.)

San Francisco, California
Friday, February 9, 2018

TRANSCRIPT OF PROCEEDINGS

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(Appearances continued, next page)

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Appearances according to the Confirmed Telephonic Appearance
Schedule:

Leslie Allen	Holly Froum
Megan B. Bradley	David Shepardson
Kathryn P. Caballero	Camille S. Biros
David S. Casey, Jr.	Jodi W. Flowers

Also Present: SETTLEMENT MASTER KENNETH FEINBERG.
(Appearing telephonically)

1 Friday - February 9, 2018

10:06 a.m.

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

3 **THE CLERK:** Calling Case 17-MD-02777, In Re:
4 Chrysler-Dodge-Jeep Diesel Marketing.

5 Counsel, please come to the podium and state your name for
6 the record. And I have parties on the phone, so please listen
7 in.

8 **MS. CABRASER:** Good morning, Your Honor. Elizabeth
9 Cabraser, from Lief Cabraser Heimann & Berman -- Bernstein.
10 Thank you.

11 **THE COURT:** Changed firms, huh?

12 **MS. CABRASER:** Well --

13 **THE COURT:** Has there been a merger that I didn't hear
14 about?

15 **MS. CABRASER:** Not yet. Thank you.

16 **THE COURT:** Thank you, Ms. Cabraser.

17 **MS. RENDÉ:** Good morning, Your Honor. Lee Rendé for the
18 United States, here with co-counsel Joseph Warren.

19 **THE COURT:** Great. Thank you, Ms. Rendé.

20 **MS. FIORENTINI:** Good morning, Your Honor. Judy Fiorentini
21 from the California Attorney General's office on behalf of the
22 California Attorney General's office and CARB.

23 And I'm also here with my colleague, Jon Worm.

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

25 **MR. GIUFFRA:** Good morning, Your Honor. Robert Giuffra with

1 Sullivan & Cromwell for the FCA defendants. And I'm here with
2 my partner Darrell Cafasso. Good to see you.

3 **THE COURT:** Thank you. Good to see you, Mr. Giuffra.

4 **MR. SLATER:** Good morning, Your Honor. Matthew Slater of
5 Cleary Gottlieb on behalf of Robert Bosch GmbH and Robert Bosch
6 LLC.

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

8 And I understand that Mr. Feinberg, our settlement master,
9 though not physically present, is participating by telephone,
10 and is listening in. And I have had a conversation with
11 Mr. Feinberg in advance of today's hearing, just to get a
12 general update.

13 So let's talk about that for a moment. I understand that
14 there were meetings in January, that there are ongoing
15 discussions, and some planned dates of further discussions over
16 the next month or two.

17 Anybody want to comment on that? Or fill in any more
18 details?

19 **MR. GIUFFRA:** Your Honor, Robert Giuffra with Sullivan &
20 Cromwell for the FCA defendants.

21 We had a meeting with the government about a week ago in
22 Washington, all day. I think everyone thought it was a
23 productive meeting.

24 And then Mr. Feinberg has set up a whole series of meetings
25 over the next month. There must be four to six days' worth of

1 meetings. Maybe even more, maybe eight days of meetings.

2 **THE COURT:** Okay.

3 **MR. SLATER:** So I think we are making good progress.

4 **THE COURT:** Thank you.

5 **MS. CABRASER:** Your Honor, Elizabeth Cabraser for the PFC.

6 I think that's correct, we have additional settlement conference
7 dates set up later this month, and also in March. And if -- as
8 needed, in early April.

9 And those are combinations of meetings with Fiat Chrysler,
10 Bosch, the Department of Justice, NEPA and the California Air
11 Resources Board, California AG, the PFC. So it's -- some of
12 them are back to back, but the idea is to get folks generally in
13 the same place at the same time for enough of an extended period
14 to have detailed constructive discussions.

15 **THE COURT:** All right. Thank you. And in the meanwhile,
16 the testing protocol has been implemented. There's been ongoing
17 testing. And according to the CMC statement, that data is being
18 provided on a rolling basis to the federal government and to
19 California.

20 And that the FCA defendants have provided class plaintiffs
21 with that -- some of that same data? Is that right?

22 **MS. RENDÉ:** Lee Rendé for the United States. That's
23 correct, to my understanding. FCA does continue to do its
24 testing of the proposed fix on a portion of the subject
25 vehicles. And we have received a fair amount of data from them.

1 And it continues to roll in to us. We get weekly updates from
2 them, which is very helpful.

3 **THE COURT:** Okay.

4 **MS. RENDÉ:** On testing.

5 **THE COURT:** I don't know what's confidential or what's not,
6 but is -- is the government -- have there been any surprises or
7 any data that would suggest there's going to be a problem so
8 far?

9 **MS. RENDÉ:** As I mentioned, we are -- we're just starting to
10 get this data. And so we have gotten a fair bit -- we are in
11 the process of reviewing it at this point. A few bumps in the
12 road. But it's nothing that is insurmountable, and we're
13 continuing to have conversations with FCA.

14 **THE COURT:** Okay.

15 **MS. RENDÉ:** So we would say it's progressing as expected at
16 this point.

17 **THE COURT:** Good. What is the expected time frame for
18 completion? Essentially, when we'll know which direction this
19 is going to take us?

20 **MS. RENDÉ:** Sure. I know at the last hearing, I mentioned
21 that the United States anticipated that FCA would complete its
22 testing by the end of March.

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

24 **MS. RENDÉ:** And right now there are a few updates. Testing
25 will go a little bit beyond March, that is our understanding.

1 And Mr. Giuffra can speak more to that. But our understanding
2 is that FCA's testing will likely be completed by around the end
3 of April. Assuming FCA does continue to follow the test
4 protocol.

5 **THE COURT:** All right. Mr. Giuffra, do you want to add
6 anything to that?

7 **MR. GIUFFRA:** Yes, Your Honor. Just a few points. At the
8 last hearing we talked about providing the PFC with the redacted
9 test protocol. That's all been worked out, no issues.

10 Second, another issue Your Honor has raised previously is
11 the status of CARB's approval with respect to the 2017 vehicle.

12 **THE COURT:** Yes.

13 **MR. GIUFFRA:** And the final approval has been given. And as
14 Your Honor -- I think as we've said before, FCA remains
15 confident that it has a fix for the model year 2014-2016
16 vehicles based on the model year 2017 software that's already
17 been approved by both the EPA and CARB.

18 And right now what we've done, just to -- basically
19 Ms. Rendé's covered it. But we are testing the vehicles. We
20 tested the vehicles prior to applying that carryback
21 calibration. And that work started in December and is now
22 complete on the Ram 1500 vehicles.

23 And now we're in the process of testing the vehicles after
24 applying the carryback calibration. And that is being done, and
25 the testing is around the clock. And we are obviously providing

1 the information to EPA and CARB on a regular basis.

2 It is my understanding we have also provided the noise,
3 vibration and harshness and drivability data to the PFC. We
4 expect that we will complete our testing on the Ram 1500s --
5 those are the bigger trucks -- by the end of March.

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

7 **MR. GIUFFRA:** And we expect that we will be done with the
8 Grand Cherokee by the third week in April. And then obviously,
9 after that, the protocol provides that the government can do its
10 own testing.

11 And again, Your Honor, as we've said previously, we think
12 that, you know, having this carryback calibration which has
13 already been approved by CARB and the EPA is the fastest way to
14 deal with the issue of vehicles on the road and addressing all
15 the issues with respect to the vehicles.

16 So we remain confident, we're moving forward, and we're
17 working hard.

18 **THE COURT:** All right. Let me ask the California, the
19 CARB -- Ms. Fiorentini whether you have any observations or
20 comments.

21 **MS. FIORENTINI:** Your Honor, we agree with everything that
22 has been shared with you. We continue to work towards a
23 potential agreement. We're monitoring the protocol. CARB has
24 been receiving data and is starting their analysis of that data.

25 **THE COURT:** All right. So how does that affect -- let me --

1 thank you.

2 How does that affect -- or does this have any effect, in
3 light of the ongoing discussions and the timetable for
4 completion of the testing? As it currently stands, a class cert
5 motion is to be filed April 16th. Is that, is there any reason
6 to deviate from that?

7 **MS. RENDÉ:** If I may, Your Honor, Lee Rendé. I just want to
8 make one correction. Mr. Giuffra did note that the testing is
9 complete for the Ram 1500 vehicles. It is not yet complete for
10 the Ram 1500 vehicles.

11 **MR. GIUFFRA:** No, I said the testing, the pre-testing was
12 complete.

13 **THE COURT:** Right.

14 **MR. GIUFFRA:** The testing of the Ram -- I'm pretty sure I
15 said the Ram 1500s.

16 **THE COURT:** End of March.

17 **MR. GIUFFRA:** I think I said the end of March.

18 **MS. RENDÉ:** Okay, just --

19 **THE COURT:** End of March. And that the Grand Cherokee would
20 be end of April.

21 **MR. GIUFFRA:** Third week of April, yeah.

22 **THE COURT:** Third week of April.

23 **MR. GIUFFRA:** Yeah. The part that's been done is we
24 pretested the vehicles, so we have the baseline, and then that's
25 done. That part of it's done.

1 **THE COURT:** Right. That's what my notes indicate. And
2 that's why I raise -- I mean, I'm assuming, unless I hear
3 otherwise, that our litigation schedule will move forward unless
4 I'm told that there's good reason not to. Let me make sure I'm
5 correct on that.

6 **MS. CABRASER:** Your Honor, that's -- that's certainly the
7 plaintiffs' position. That the litigation schedule should
8 remain in place, unless and until there's a reason to go into
9 another mode.

10 Whether or not the new class certification motion filing
11 date will exactly correlate to testing outcome, we don't know.
12 Testing goes on in the real world. So there can always be --
13 there can always be slippage. We hope there isn't, but things
14 can happen.

15 What we don't want to do is slow down the litigation
16 schedule unless or until there would be a really good reason,
17 either because we're going into resolution mode, or another
18 important reason, we have an information deficit. That's why we
19 reluctantly asked for the approximately one-month extension of
20 all the class cert dates.

21 **THE COURT:** Right.

22 **MS. CABRASER:** We just didn't have the information we
23 thought the Court would want for class certification.
24 Fortunately we're now in the process of getting that. And so I
25 don't foresee a problem in that regard.

1 But I think, we certainly pledge to bring to the Court's
2 attention, from our perspective, any need to or appropriate
3 reason to change the litigation schedule. And until then, we'll
4 just keep going.

5 **THE COURT:** All right. So at this juncture, and that's what
6 I assumed, there's no request or basis to deviate from the
7 stipulated schedule.

8 **MR. GIUFFRA:** Absolutely not, Your Honor. In terms of where
9 I think we view this from the standpoint of FCA, we view the --
10 you know, our main focus at this time is our regulators, for
11 obvious reasons.

12 With respect to the PFC, the last time I was here I actually
13 made a motion to dismiss. I argued the motion to dismiss. Last
14 night we sent the Court a decision from the Ninth Circuit in the
15 *Toyota Motors* case that came down two days after we argued that.
16 We think that decision is actually helpful to us on the motion
17 to dismiss.

18 We believe that in this case, there are substantial class
19 certification issues. The Ninth Circuit about two weeks ago in
20 the *Hyundai* case issued a decision reaffirming the need for a
21 massive advertising campaign to support certification of a
22 class. So we think there are real serious class certification
23 issues here.

24 We have produced over a million pages of documents to the
25 PFC. Obviously, whether we can resolve the case, we would love

1 to resolve the case, because it's always better to get
2 certainty. I just don't know, standing here today, whether
3 we'll be able to. So I think we want to view this as a
4 two-track process.

5 With respect to the government, we very much want to settle
6 with the government. That's in, I think everybody -- the public
7 interest. And then with respect to the PFC, we have a track
8 where we are working extremely hard with Mr. Feinberg, who is
9 obviously someone who has enormous persuasive powers to try to
10 resolve it with the PFC.

11 If we can't resolve it with the PFC, we'll go down the
12 litigation road. And again, I do believe there are serious
13 class certification issues in this case.

14 **THE COURT:** Well, I'm not surprised that that is your view.
15 And obviously, the Ninth Circuit's recent decision will have to
16 be factored into any class cert motion, but I will cross that
17 bridge when we get there. I'm sure class counsel is well aware
18 of recent decisions.

19 I am working on the motion to dismiss, and I'm aware, and
20 aware of your recent submission of authorities. And I can just
21 tell you that I expect to issue a decision fairly soon in that
22 regard. So that's on track, and I'm not going to allow that to
23 -- I don't want to be the cause of any delay here. So we're
24 going to just continue to march forward.

25 And I'm going to assume, unless good reason is presented to

1 me otherwise, that the April 16th date still obtains for class
2 cert filing.

3 **MS. CABRASER:** That's right, Your Honor. And we don't
4 intend to file any response to post-argument submission of
5 authorities. You know, my two cents' worth on that is that they
6 are distinguishable. This is a case of a pre-existing defect,
7 concealed, and takes us outside the fact patterns and the
8 concerns of the courts in those cases. This case is this case.

9 And we'll certainly address this case as this case when we
10 start the class certification briefing. That's where we are.

11 **THE COURT:** All right. Is there anything else that we need
12 to cover?

13 Sounds like discovery's -- there is no discovery issue that
14 I need resolve at this point, at least according to the CMC.
15 Discovery has been moving forward, and in a manner that will
16 permit the motion to be filed in April.

17 So unless there's anything else, I think we probably should
18 set another date. We should probably set -- I don't know. If
19 we set a date prior to the actual filing of a class cert to make
20 sure things are on track, and perhaps some point in March.

21 And then I do want to have a -- make sure we do get together
22 after the testing is completed and you have had your round of
23 discussions, to sort of see where we're at. And maybe set a
24 second date for the end of April.

25 So maybe something toward the third week of March or so, and

1 then at the end of April or beginning of May?

2 **THE CLERK:** March 19 at 10:00.

3 **MR. GIUFFRA:** Um, let me just check.

4 **MS. CABRASER:** That would work on the plaintiff side,
5 Your Honor.

6 **THE COURT:** Okay.

7 **MR. GIUFFRA:** I think I may be out of the country that --

8 **THE COURT:** Oh.

9 **MR. GIUFFRA:** I just want to check.

10 Yeah, I think I'm out of the country that week.

11 **THE COURT:** Week after?

12 **MR. GIUFFRA:** Um --

13 **THE CLERK:** March 26th.

14 **MS. CABRASER:** That would work for plaintiffs, Your Honor.

15 **MR. GIUFFRA:** If possible --

16 **MS. CABRASER:** That would work for plaintiffs, Your Honor.

17 (Off-the-Record discussion between counsel)

18 **MS. CABRASER:** Oh, okay. The other -- I was reminded that
19 some of us need to be in this courthouse on March the 21st.

20 It's not your --

21 **THE COURT:** I could specially set it if that works.

22 **MS. CABRASER:** Does that work? It's a Wednesday.

23 **MR. GIUFFRA:** That's the week I'm --

24 **MS. CABRASER:** You are out all week.

25 **MR. GIUFFRA:** That's the third week, yeah. The next week I

1 have to be in Zurich. On the 26th and 27th. I mean, I could do
2 it -- I could be here on the 26th, which is a Monday. For me,
3 personally, it would be better to do this April 2nd, 3rd, 4th,
4 you know, that whole next week. And then we have a mediation
5 session on the 5th and 6th in Washington with Mr. Feinberg.

6 **MS. RENDÉ:** You know, I'm sorry, Your Honor, but I just want
7 to clarify because you did say that you expressed a desire to
8 have a meeting at or after the determination has been made for
9 the testing? Or did you just mean FCA's portion of the testing?

10 Because, to clarify, FCA should at this point be -- complete
11 its testing roughly towards the end of April, but then the
12 United States and California will still need approximately 30
13 days.

14 **THE COURT:** Thirty days.

15 **MS. RENDÉ:** Correct.

16 **THE COURT:** So --

17 **MS. RENDÉ:** So I want to make sure you are aware, as we are
18 doing that kind of scheduling. So we are looking at the end of
19 May at this point. And it may change as other bumps in the road
20 arise.

21 **THE COURT:** Right.

22 **MS. CABRASER:** Does it make any sense at all to try to set a
23 conference, kind of split the difference and set a conference on
24 April 9th, which is a little bit before -- it's before the class
25 cert brief would have to be filed.

1 **THE COURT:** Right.

2 **MS. CABRASER:** It's --

3 **MR. SLATER:** That would be perfect.

4 **MS. CABRASER:** -- after most of the settlement discussions
5 that are currently scheduled.

6 **THE COURT:** Okay.

7 **MS. CABRASER:** We ought to have --

8 **THE COURT:** The scheduled settlement conferences are in
9 early April?

10 **MS. CABRASER:** Uh-huh.

11 **THE COURT:** First week?

12 **MS. CABRASER:** It would be the prior week.

13 **THE COURT:** I think that makes sense.

14 **MR. GIUFFRA:** Is when -- the 5th and the 6th.

15 **THE COURT:** That makes sense, we can just pause for a second
16 to see, make sure that we are still on track on litigation. And
17 then we will have to set another date, probably after you
18 complete your testing, in May.

19 **MS. CABRASER:** Right.

20 **THE COURT:** But why don't we go ahead. April 9 is what
21 you're suggesting?

22 **THE CLERK:** Yes, April 9 at 2:30.

23 **MR. GIUFFRA:** That would be fine.

24 **THE COURT:** All right, April 9 at 2:30. And we could set a
25 date now, or we could set it then, for the post-EPA-CARB --

1 **MS. CABRASER:** We may want to set it then or --

2 **MS. RENDÉ:** That would be my recommendation.

3 **THE COURT:** Right.

4 **MR. GIUFFRA:** I agree with that.

5 **THE COURT:** All right.

6 **MR. GIUFFRA:** We'll know more by then.

7 **THE COURT:** We'll know more.

8 **MS. CABRASER:** Would it be --

9 **MR. GIUFFRA:** I think there's a whole series of dates with
10 Mr. Feinberg in March, and then those two dates in April.

11 **MS. CABRASER:** Right.

12 **MR. GIUFFRA:** So there must be at least six days of
13 conferences that he set up.

14 **MS. CABRASER:** Six to eight.

15 **THE COURT:** Okay.

16 **MR. GIUFFRA:** There's a lot.

17 **THE COURT:** Right.

18 **MS. CABRASER:** Your Honor, would it be possible to set that
19 status conference slightly earlier in the day? I teach at
20 Berkeley, starting at 3:35 on Mondays.

21 **THE COURT:** Okay.

22 **THE CLERK:** You have a trial that week.

23 **MR. GIUFFRA:** Do you want to move it to a Tuesday? Tuesday
24 would actually be even better.

25 (Off-the-Record discussion between the Court and Clerk)

1 **MR. GIUFFRA:** Tuesday the 10th.

2 **THE COURT:** Is the 10th better for you, Ms. Cabraser?

3 **MS. CABRASER:** It will work, Your Honor.

4 **THE CLERK:** I'm sorry, which day?

5 **THE COURT:** The 10th.

6 **THE CLERK:** No, we have a trial.

7 **THE COURT:** I mean in the afternoon.

8 **THE CLERK:** Yeah, 2:30.

9 **MR. GIUFFRA:** How about the 11th? I'm flexible that week.

10 **THE COURT:** Is the 10th --

11 **MS. CABRASER:** That will work, Your Honor.

12 **THE COURT:** Let's do the 10th in the afternoon.

13 **MS. CABRASER:** Okay.

14 **THE COURT:** Because then you won't have your teaching
15 conflict.

16 **MS. CABRASER:** Thank you. Yeah, I can move things around on
17 the 10th.

18 **THE COURT:** All right. That will be at 2:30, because we
19 have trial all week.

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

21 **THE COURT:** And then we'll set the next date, which likely
22 will be key to CARB's and EPA's completion of their process. So
23 some time in late May, perhaps. But let's, let's see where
24 we're at on the 10th. And you will have had your full rounds
25 with Mr. Feinberg, and see where this litigation takes us.

1 But at this point, like I said, we're moving forward. And I
2 will get out the order on the motion to dismiss in the near
3 future. Okay?

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

5 **MR. GIUFFRA:** Thank Your Honor.

6 **THE COURT:** All right. Thanks, everyone.

7 **THE CLERK:** Court is adjourned.

8 (Proceedings concluded)

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CERTIFICATE OF REPORTER

I, BELLE BALL, Official Reporter for the United States Court, Northern District of California, hereby certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.



/s/ Belle Ball

Belle Ball, CSR 8785, CRR, RDR

Monday, February 12, 2018