

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MDL No. 2672 CRB (JSC)

IN RE: VOLKSWAGEN “CLEAN DIESEL”
MARKETING, SALES PRACTICES, AND
PRODUCTS LIABILITY LITIGATION

**PRETRIAL ORDER NO. 7: ORDER
APPOINTING PLAINTIFFS’ LEAD
COUNSEL, PLAINTIFFS’ STEERING
COMMITTEE, AND GOVERNMENT
COORDINATING COUNSEL**

_____ /
This Order Relates To:

ALL ACTIONS (except securities fraud cases)
_____ /

On December 9, 2015, the Court announced that it intended to appoint a Plaintiffs’ Steering Committee (“PSC”) to conduct and coordinate the pretrial stage of this multi-district litigation (“MDL”) with the defendants’ representatives or committee. (Pretrial Order No. 1, Dkt. No. 2.) The Court subsequently invited individuals to submit applications for a steering committee or a lead counsel position by January 8, 2016 and allowed parties to respond by January 14, 2016. (Pretrial Order No. 2, Dkt. No. 336.) The Court received a total of 150 submissions: 9 individuals applied for a lead counsel position, 104 applied for a steering committee position, and 37 applied for a lead counsel and/or a steering committee position. The Court held a hearing on the matter on January 21, 2016. Having carefully considered the written submissions and the applicants’ oral statements, the Court issues the following Order.

A. Lead Counsel

1. The Court appoints Elizabeth J. Cabraser of Lieff Cabraser Heimann & Bernstein, LLP as Plaintiffs’ Lead Counsel and as Chair of the PSC. Ms. Cabraser has extensive experience with multi-district litigation and has held leadership positions in 17 different MDLs, including

1 several that involved automobile defects. She also has the support of a great number of her fellow
 2 counsel in this MDL. (*See* Dkt. No. 782-3.) Moreover, the Court has first-hand knowledge of Ms.
 3 Cabraser's leadership abilities, having worked with her in her role as plaintiffs' liaison counsel
 4 and as a member of the PSC in *In re: Bextra and Celebrex Marketing, Sales Practices, and*
 5 *Products Liability Litigation*, MDL No. 1699 (N.D. Cal.). That experience left the Court with the
 6 confidence that Ms. Cabraser will effectively represent and guide the plaintiffs toward a resolution
 7 that is in their best interests.

8 2. The Court vests Ms. Cabraser, as Lead Counsel and PSC Chair, with the authority
 9 and duty to coordinate and oversee the PSC responsibilities set forth below; to schedule PSC
 10 meetings and keep minutes or transcripts of these meetings; to appear at periodic Court-noticed
 11 status conferences and hearings; to sign and file all pleadings relating to all actions; and to bind
 12 the PSC in scheduling settlement discussions and discovery, setting agendas, entering into
 13 stipulations, and in other necessary interactions with the settlement master, defense counsel, and
 14 the PSC. Ms. Cabraser shall also have the authority to retain the services of any attorney not part
 15 of the PSC to perform any common benefit work, provided the attorney so consents and is bound
 16 by the PSC's compensation structure. She shall perform other necessary PSC administrative and
 17 logistic functions and carry out any other duty as the Court may order.

18 3. Lead Counsel shall also do the following:

- 19 • Establish and maintain a depository for orders, pleadings, hearing transcripts, and all
 20 documents served upon plaintiffs' counsel, and make such papers available to plaintiffs'
 21 counsel upon reasonable request.
- 22 • Maintain in conjunction with their accountant records of receipts and disbursements
 23 advanced by PSC members and received by the PSC and report in writing to the PSC
 24 concerning disbursements and receipts.
- 25 • Designate counsel to schedule depositions, set agendas and otherwise interact with defense
 26 counsel, Government counsel, various plaintiffs' counsel, and the settlement master.

27 **B. Plaintiffs' Steering Committee**

28 4. As noted above, Ms. Cabraser will chair the PSC. The Court appoints the

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following attorneys as members of the PSC:

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5. The PSC appointments are personal to the individual attorney appointed. While the Court has considered PSC members’ resources and expects they will draw upon their firms and co-counsel to assist them with their duties, each member is personally responsible for his or her duties. The Court may add or replace members upon request from the PSC, or on its own motion, if and as circumstances warrant.

6. It is intended and expected by this Order that, as to all matters common to the coordinated cases, and to the fullest extent consistent with the independent fiduciary obligations owed by any and all plaintiffs’ counsel to their clients and any putative class, that pretrial proceedings shall be conducted by and through the PSC.

7. The Court notes it has appointed 21 attorneys to the PSC (in addition to Ms. Cabraser); the Court believes this is an appropriate number given the amount of work this litigation may entail and the need for an expeditious resolution of the matter.

8. The PSC is responsible for creating its own structure, including establishing subcommittees, subject to the Court’s approval. The Court recognizes that changes to the PSC’s organization may be necessary as the litigation progresses and new details emerge.

9. Finally, as the Court stated at the January 21, 2016 proceeding, the Court will make

1 the final determination as to the compensation and reimbursement of Plaintiffs' counsel. As a
 2 result, there is no need to choose counsel based on a competitive bidding process as proposed by
 3 an amicus. (*See* Dkt. No. 576.) All time keepers carrying out work for the plaintiffs' common
 4 benefit, including PSC members, who may look to any common fund or agreement for
 5 reimbursement or compensation shall maintain detailed and contemporaneous time records. The
 6 Court will provide further details in a subsequent Order.

7 **C. Government Coordinating Counsel**

8 10. On January 15, 2016, the Judicial Panel on Multidistrict Litigation conditionally
 9 transferred from the Eastern District of Michigan to this Court *United States v. Volkswagen AG, et*
 10 *al.*, Case No. 16-10006. (Dkt. No. 928.) In light of the United States Government interests in this
 11 MDL, the Court appoints United States Department of Justice Attorney Joshua H. Van Eaton as
 12 coordinating counsel for the interests of the United States. Mr. Van Eaton's role will include
 13 scheduling meetings, appearing at Court-noticed conferences, acting on behalf of the Government
 14 interests in settlement discussions (including ensuring that the appropriate Government decision
 15 makers are participating), coordinating discovery with the PSC and Defendants, and carrying out
 16 any other duty the Court may order. The Government Coordinating Counsel shall confer with the
 17 PSC and Defendants to achieve the greatest possible efficiencies and effectiveness, including as to
 18 the conduct of discovery and settlement discussions.

19 **D. Defendants' Liaison Counsel**

20 To act on behalf of all Defendants, and to ensure effective and efficient communications
 21 between Defendants and Plaintiffs' Lead Counsel, the PSC, the settlement master, and
 22 Government Coordinating Counsel, Defendants shall provide the Court with the name and firm of
 23 the attorney who shall act on behalf of Defendants as Defendants' Liaison Counsel **on or before**
 24 **January 27, 2016.**

25 **IT IS SO ORDERED.**

26 Dated: January 21, 2016



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 28 CHARLES R. BREYER
 United States District Judge