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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, May 24, 2017

TRANSCRIPT OF PROCEEDINGS

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similarly situated:

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(Appearances continued on the following pages)

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Kathryn P. Caballero
Jodi W. Flowers
William B. Monahan
Sara Randazzo
Patti Waldmeir
Earnest Wotring

Ryan B. Beene
Katherine Charonko
Archie I. Grubb, II
Katy Pape
David Shepardson
Jon F. Worm

1 Wednesday - May 24, 2017

10:07 a.m.

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

3 ---000---

4 **THE CLERK:** Calling 17-MD-2777, In Re
5 Chrysler-Dodge-Jeep EcoDiesel Marketing, Sales Practices and
6 Products Liability Litigation and all the member cases.

7 Counsel, please come to the podium and say your name for
8 the record and also please say your name before you speak.

9 **MS. CABRASER:** Good morning, Your Honor. Elizabeth
10 Cabraser of Lief, Cabraser, Heimann & Bernstein appearing this
11 morning on behalf of the Fasching, Kitchel, and other
12 plaintiffs. With me is my partner, David Stelling.

13 **THE COURT:** All right. Thank you, Ms. Cabraser.

14 **MR. BERMAN:** Good morning, Your Honor. Steve Berman
15 on behalf of the Chavez plaintiffs.

16 **THE COURT:** All right. Thank you, Mr. Berman.

17 **MR. SARKO:** Good morning, Your Honor. Lynn Sarko from
18 Keller Rohrback on behalf of the Fasching plaintiffs.

19 **THE COURT:** Good to see you, Mr. Sarko.

20 **MR. WARREN:** Good morning. Joe Warren for the
21 United States. We're here on behalf of the Environmental
22 Protection Agency.

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

24 **MS. RENDE:** Good morning, Your Honor. Leigh Rende,
25 R-E-N-D-E, for the United States as well. Mr. Warren will be

1 speaking for the United States today.

2 **THE COURT:** Thank you.

3 **MS. WOLFSON:** Good morning, Your Honor. Tina Wolfson
4 of Ahdoot & Wolfson on behalf of Kayla Kelley and John
5 Milligan, plaintiffs.

6 **THE COURT:** Good morning.

7 **MR. CECCHI:** Good morning, Your Honor. James
8 Cecchi -- Carella, Bryne, Cecchi -- on behalf of the Chavez
9 plaintiffs.

10 **THE COURT:** All right. Thank you, Mr. Cecchi.

11 **MR. TELLIS:** Good morning, Your Honor. Roland Tellis,
12 Baron & Budd, on behalf of the Kitchel, K-I-T-C-H-E-L,
13 plaintiffs.

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

15 **MR. LEOPOLD:** Good morning, Your Honor. Ted Leopold
16 on behalf of the Chavez plaintiffs with the law firm of Cohen
17 Milstein, Sellers & Toll.

18 **THE COURT:** Thank you. Good morning.

19 **MR. SCARPULLA:** Good morning, Your Honor. Francis
20 Scarpulla on behalf of two of the plaintiffs, Walker and Rugg.

21 **THE COURT:** All right. Thank you, Mr. Scarpulla.

22 **MR. HERRERA:** Good morning, Your Honor. Nicomedes
23 Herrera with the Joseph Saveri Law Firm. We represent
24 plaintiff Jason Gaines.

25 **THE COURT:** Thank you.

1 **MS. ALMONRODE:** Sharon Almonrode for the Chavez
2 plaintiffs. I'm appearing in the stead of my partner, E.
3 Powell Miller, who is having a motion today in Michigan on a
4 case that is ready to go to trial.

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

6 **MR. SAVERI:** Good morning, Your Honor. Joseph Saveri
7 on behalf of Plaintiff Gaines.

8 **THE COURT:** Good morning.

9 **MR. GIBBS:** Good morning, Your Honor. Eric Gibbs,
10 Girard Gibbs, on behalf of Charles Marlatt and Stanley Bruce.

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

12 **MS. ZEMAN:** Good morning, Your Honor. Amy Zeman, also
13 with Gerard Gibbs, on behalf of the Marlatt plaintiffs.

14 **THE COURT:** Thanks.

15 **MR. HEYGOOD:** Good morning, Your Honor Michael
16 Heygood -- Heygood, Orr & Pearson -- on behalf of the Leocadio
17 plaintiff group.

18 **THE COURT:** Thank you, Mr. Heygood.

19 **MS. SLAUGHTER:** Good morning, Your Honor. Stacey
20 Slaughter from Robins Kaplan on behalf of the plaintiff, Chatom
21 Motor Company.

22 **THE COURT:** Thank you.

23 **MR. MILLER:** Good morning, Your Honor. Charles
24 Miller -- Heygood, Orr & Pearson -- on behalf of the Leocadio
25 plaintiffs.

1 **THE COURT:** All right.

2 **MR. CASEY:** Good morning, Your Honor. Dave Casey on
3 behalf of Casey Gerry on the Sebastian case.

4 **THE COURT:** Thank you, Mr. Casey.

5 **MR. HAGSTROM:** Good morning, Your Honor. Richard
6 Hagstrom, Hellmuth & Johnson, on behalf of Friedenfels.

7 **THE COURT:** All right. Thank you, Mr Hagstrom.

8 **MR. MICHAUD:** Good morning, Your Honor. Marc Michaud
9 on behalf of plaintiffs Bret Rivero and Jamie Varnado.

10 **THE COURT:** All right. Good morning.

11 **MS. JENSEN:** Good morning, Your Honor. Rachel Jensen
12 of Robbins, Geller, Rudman & Dowd on behalf of Kitchel and
13 Johnson plaintiffs.

14 **THE COURT:** Thank you.

15 **MR. GILBERT:** Good morning, Your Honor. Robert
16 Gilbert from Miami on behalf of plaintiffs in the Kitchel case.

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

18 **MR. SEAVER:** Good morning. Todd Seaver of the law
19 firm of Berman DeValerio on behalf of plaintiff Nathan
20 Friedenfels.

21 **THE COURT:** Thank you. Good morning.

22 **MS. SMITH:** Good morning, Your Honor. Catherine
23 Sung-Yun Smith on behalf of the plaintiff Friedenfels.

24 **THE COURT:** Thank you.

25 **MR. STRANCH:** Good morning, Your Honor. Gerard

1 Stranch -- Bransetter, Tranch & Jennings -- on behalf of the
2 Fasching, Miller, and other plaintiffs.

3 **THE COURT:** Thank you, Mr. Stranch.

4 **MR. BAILEY:** How do you do, Your Honor. I'm Ben
5 Bailey, Bailey Glasser, on behalf of the Fasching plaintiffs
6 and the Derek Johnson plaintiffs and others.

7 **THE COURT:** Thank you. Good morning.

8 **MR. SHAH:** Good morning, Your Honor. James Shah --
9 Shepherd, Finkelman, Miller & Shah - on behalf of the Ramirez
10 plaintiffs.

11 **THE COURT:** Thanks.

12 **MS. SCULLION:** Good morning, Your Honor. Jennifer
13 Scullion, Seeger Weiss, on behalf of the Chavez plaintiffs.

14 Your Honor, I'm here on behalf of my partner, Christopher
15 Seeger, who is preparing for trial and apologizes that he could
16 not be here today.

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

18 **MR. MASTANDO:** Good morning, Your Honor. D. Anthony
19 Mastando of Mastando & Artrip here on behalf of the Chavez
20 plaintiffs.

21 **THE COURT:** Thank you.

22 **MR. ARTRIP:** Good morning, Judge. Eric Artrip from
23 Mastando & Artrip here on behalf of the Chavez plaintiffs.

24 **THE COURT:** Good morning.

25 **MR. LEVITT:** Good morning, Your Honor. Adam Levitt

1 with DiCello, Levitt & Casey here on behalf of the Stephens and
2 Turner plaintiffs.

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

4 **MS. WEAVER:** Good morning, Your Honor. Leslie Weaver
5 on behalf of the Fasching and Johnson plaintiffs with the firm
6 Bleichmar, Fonti & Auld.

7 **THE COURT:** Good morning.

8 **MR. RICE:** Good morning, Your Honor. Joe Rice with
9 Motley Rice from Charleston, South Carolina on behalf of the
10 Fasching plaintiffs and others.

11 **THE COURT:** Welcome. Thank you.

12 **MR. MILES:** Good morning, Your Honor. D. Miles from
13 the Beasley Allen firm in Montgomery, Alabama on behalf of
14 plaintiffs Turner and Stephens.

15 **THE COURT:** All right. Thank you, Mr. Miles.

16 **MR. ROUCO:** Good morning, you Your Honor. Richard
17 Rouco on behalf of the Feldman and Overstreet plaintiffs.

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

19 I think I should have had a Polaroid camera here and --
20 ask me to remember everybody's names, but I will.

21 **MR. GIUFFRA:** Good morning, Your Honor. Robert
22 Giuffra, that's G-I-U-F-F-R-A, from Sullivan & Cromwell for FCA
23 N.V., which is the holding company that owns FCA U.S., and FCA
24 U.S. is basically the old Chrysler which was ultimately
25 purchased by Fiat at out of bankruptcy.

1 I'm here with my partner Darrell Cafasso. It's really
2 good to be here.

3 **THE COURT:** You are representing both FCA N.V. and FCA
4 U.S.?

5 **MR. GIUFFRA:** Correct, Your Honor.

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

7 **MR. SLATER:** Your Honor, Matthew Slater, S-L-A-T-E-R,
8 of Cleary Gottlieb on behalf of Robert Bosch LLC, one of the
9 defendants.

10 **THE COURT:** All right. Thank you, everyone.

11 What I wanted to do today -- this is really a very
12 preliminary gathering. Of course you know that in two weeks,
13 we are going to be hearing the motion for appointment of lead
14 counsel and steering committee, and so I think the bulk of the
15 work will proceed thereafter. But I did want to have this
16 preliminary meeting to find out some information and sort of
17 set the tone for various things.

18 So first of all, I read or heard on the news yesterday and
19 now I've read the Complaint of the United States lawsuit filed
20 in the Eastern District, and so let me ask, since we have
21 Department of Justice here, where you -- how you think that
22 impacts what we are doing here, and are you expecting
23 consolidation with this case?

24 Come on up. Come up to the microphone.

25 **MR. WARREN:** Joe Warren for the United States.

1 Yes. That's correct. We filed our action yesterday in
2 the Eastern District of Michigan and immediately filed a notice
3 of potential tag-along with the MDL panel so we do expect to be
4 consolidated here in the near future.

5 **THE COURT:** All right. Thank you. Appreciate that.

6 Before we go further, let me also acknowledge that there
7 are a number of parties on the phone. I think I'm not going to
8 read all their names, but a number of counsel representing some
9 of the parties within the related actions here are listening
10 in, as well as various interested parties. And we do have a
11 list, and we'll keep that for the record. But I won't go
12 through and name all those.

13 Let me ask then the FCA -- of FCA, Mr. Giuffra, you had in
14 your preliminary statement indicated that there was a software,
15 sort of, fix that had been submitted to the EPA and the CARB,
16 and that you were awaiting response with the hopes that that
17 might go some ways towards a resolution of this.

18 Do you have any further developments to report in that
19 regard?

20 **MR. GIUFFRA:** Yes, I do, Your Honor.

21 On May 18th, FCA U.S. resubmitted applications for
22 conditional approval with EPA and CARB for model year 2017 Jeep
23 Grand Cherokee and Ram 1500s, including for modified emissions
24 software calibrations.

25 Let me focus on what this case is about and why that's

1 important.

2 This case arises out of Notices of Violation that were
3 filed until January by EPA and CARB asserting that Fiat -- that
4 FCA U.S. had not disclosed eight auxiliary emissions control
5 devices which effectively control the software on the emissions
6 systems in the trucks. And the case concerns roughly 104,000
7 model year 2014 and 2016 Ram 1500s and Jeep Grand Cherokees,
8 and they have three-liter V6 engines.

9 The key point here is notwithstanding the lawsuit that was
10 filed yesterday by the Department of Justice, FCA is completely
11 committed to working with EPA and CARB to get the calibrations
12 approved for the 2017s.

13 Why does that matter?

14 Because essentially the engines are largely the same and
15 both -- all the vehicles from the 2014s to the 2017s have what
16 we believe to be state-of-the-art emissions control systems.

17 And so we believe that the new software calibrations that
18 will be put in the 2017s, if that gets approved -- because
19 those vehicles are not now currently being sold -- will address
20 the regulators' concerns, and that the vehicles -- and this is
21 very important -- will comply with the originally-certified
22 emissions standards, and that's Tier 2 Bin 5, and that will not
23 have an impact on either performance or fuel economy.

24 Now, if we get that approved -- and there has been/a lot
25 of discussions back and forth in a cooperative basis between

1 FCA and CARB and EPA, and there has been testing, and I think
2 we've made good progress based on what I've been told.

3 So before the very first hearing, we have put forward an
4 emissions modification that we think will address the issue
5 that's raised in all of these lawsuits.

6 **THE COURT:** What is the expected timeline, do you
7 think?

8 **MR. GIUFFRA:** Well, we're hopeful that EPA and CARB
9 will move very quickly, and it's our understanding that were
10 they to approve this in a matter of weeks, we would be in a
11 position to have this software calibration -- the technical
12 term of art, it would be a reflash of the system.

13 I have learned from doing car cases that cars are very
14 much full of a lot of computer systems in them now, and you
15 essentially would take your truck back to the dealership, and
16 it would be reflashed within probably, you know, less than 30
17 minutes, and the system, all the -- any of the issues with
18 respect to the systems that have been raised by the regulators
19 would be addressed.

20 Interestingly enough if you read the Complaint yesterday,
21 the Government identifies a number of AECDs that it says were
22 not disclosed, and there's arguments -- it's a very
23 complicated -- the regulations are very complicated, and people
24 in good faith can disagree about what something should be or
25 should not be disclosed, and that's obviously something we have

1 to work out with the EPA and CARB.

2 But the important point is that of those eight AECDs that
3 were in the original calibration, none of them are being taken
4 out. They are being recalibrated, readjusted.

5 So the important point here is that we believe we can,
6 number one, address the regulators' concerns, recalibrate the
7 software. We don't need to put in new hardware. We believe
8 the cars can be recalibrated and, to use an expression,
9 "fixed," at least to satisfy the regulators' concerns, in a
10 manner that will fully have them be emissions compliant and
11 will not have an impact on performance.

12 And, you know, again, we're fully committed as a company
13 to working with the regulators to address this issue, and, you
14 know, we believe that it will work.

15 **THE COURT:** Is there any dispute that, regardless of
16 whether these are, quote, defeat devices or not and whether
17 adequate disclosures have been made with respect to these
18 control devices, that as we sit here now, there are about
19 100,000 cars or vehicles that are -- whose emissions exceed the
20 current EPA and CARB standards?

21 **MR. GIUFFRA:** Your Honor, we're not prepared to
22 concede that point right now.

23 Our position is that one could say -- this whole question
24 about what is a, quote/unquote, defeat device or not, it's
25 permissible under the regulations in certain circumstances to

1 have the emissions software system operate in a different way,
2 depending on, for example, if you're driving a truck up a road
3 or if you're carrying a big load and it's -- there is a lot of
4 complexity in it.

5 I'm not aware of the government asserting yet the extent
6 that there are excess emissions or not. And more
7 importantly --

8 **THE COURT:** That is alleged in their Complaint.

9 **MR. GIUFFRA:** Yes. But they haven't quantified the
10 amount of the excess emissions. The plaintiffs do make some
11 assertions in that regard, but even there, the testing that the
12 plaintiffs have done is so-called on-road PEMS testing, and
13 that is subject to -- for example, if you have a heavy load in
14 the vehicle, if you drive it up a hill and if it's a hot day,
15 you will have emissions higher than Tier 2 Bin 5, and that's
16 expected under the regulations, depending on how you're driving
17 the car.

18 The macropoint, Your Honor, that we would like to make is
19 before the very first hearing in this case, we have proposed,
20 we have submitted, there have been months of discussions with
21 the regulators for a solution that will address the issues that
22 are raised in the Department of Justice's Complaint and we
23 believe in the civil Complaints to the point where the vehicles
24 will be compliant.

25 You know, we can disagree about what should have been

1 disclosed or not disclosed, what is or is not a defeat device,
2 but if we can get the certification for the 2017s, because
3 essentially it can be applied to the earlier vehicles, there
4 will be no issue here, in our view.

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

6 Let me ask, Mr. Warren, do you have any observations or
7 comments or anything to enlighten us at this point about what
8 we just talked about?

9 **MR. WARREN:** Sure, yes. Thank you, Your Honor.

10 The United States is obviously interested in getting the
11 cars that are on the road, the model year vehicles for 2014
12 through 2016, repaired as quickly as possible.

13 And we are in agreement that if the application that's
14 been submitted by FCA for 2017 is approved, that's a good first
15 step toward getting the cars on the road fixed.

16 Where there is an area of disagreement is I can't endorse
17 the view that we're a few weeks away from the regulators
18 approving the FCA application that was just submitted with
19 regard to these vehicles.

20 EPA, in conjunction with CARB, are working very closely in
21 reviewing that application and doing testing to try to
22 determine whether these vehicles can be certified as being in
23 compliance with the Clean Air Act, but at this point, we can't
24 say with certainty if they will be approved or when they will
25 be approved.

1 **THE COURT:** Do you have any sense at all as to the
2 progression, how quickly is this -- if not a few weeks, is it
3 something that would -- might take months, or what's your
4 best --

5 **MR. WARREN:** Obviously the preference would be that it
6 happen quickly, but at the same time, you know, if past is
7 prologue, as FCA counsel has pointed out, these -- we're not at
8 the starting line in terms of reviewing the 2017 application.
9 There has been ongoing discussions between EPA, CARB, and FCA.
10 It's already taken some time, so it's hard to predict what the
11 future will hold.

12 Lastly, I should clarify that -- I am not sure FCA counsel
13 raised this. It is our view that, again, if the 2017 vehicles
14 should be certified as being in compliance, that that's really,
15 for us, a first step toward repairing the vehicles on the road.
16 In our view, there would be a number of steps, and those steps
17 to make the -- you know, preferably for the fix to happen
18 quickly, we think it would happen potentially through a
19 settlement, and such a settlement we think would need to
20 take -- be one that would be filed with this Court and a
21 consent decree following public notice and comment.

22 **THE COURT:** Right.

23 All right. Well, I raise the question about the emissions
24 issue because that underscores the urgency to move this along
25 one way or the other. Whether we're going to do it on a

1 settlement track or litigation track, the public interest
2 demands that we move forward quickly while this process is
3 still in the works, I guess, before EPA and CARB.

4 I say that sort of in response to FCA's suggestion of a
5 possible stay of proceedings. I think there was a hint in the
6 papers that perhaps this Court should pause and see what
7 happens, and I -- given this situation, I -- and the
8 uncertainty as to how long this is going to take, I, frankly,
9 don't see any basis to not move forward.

10 Certainly in the beginning stages of this case to get this
11 case organized, we're going to move forward, and we will go
12 forward with the hearing on, I think it's the 14th, on counsel
13 selection, and then after that, I think I scheduled a date, if
14 I'm not mistaken, with respect to possible appointment of a
15 Settlement Master.

16 Which leads me to my next question, Mr. Giuffra, and that
17 is obviously there are some, quote, repeat players, close
18 quote, here that have been through the VW process, and in some
19 ways, it's been remarked how quickly that very complicated
20 situation got resolved through the hard work of all the
21 parties.

22 And I want to get your sense as to whether you see this --
23 the VW case as providing some kind of a template for how this
24 case might proceed, or do you see this case being fundamentally
25 different in some ways?

1 **MR. GIUFFRA:** Your Honor, I think there are
2 similarities and there are differences. I think cases are like
3 children. You know, my children are not all the same.

4 And, you know, in VW, there were some cars -- and this was
5 the later, bigger SUV-type cars -- that the company thought it
6 could fix, and there's a process now under way to try to fix
7 those cars.

8 And with respect to those cars, you know, the issue of
9 buy-back was -- at least the current Settlement Agreement
10 provides those cars don't have to be bought back.

11 But I think the big difference between the cases, at least
12 at this point, is that FCA has proposed -- and this is after
13 months of discussion with EPA and CARB, including test results
14 going back and forth -- last week a proposed fix, you know,
15 before the very first court hearing, and that did not happen in
16 the other case.

17 And it believes that fix is one that can address all of
18 the concerns raised by the Department of Justice, EPA, and
19 CARB, and it believes that it can do so in a way that will not
20 impact fuel performance -- performance or fuel economy.

21 And the reason why that becomes important is because all
22 the folks over there obviously are looking to see whether there
23 has been any diminution in value of the vehicles. If there has
24 been no diminution in value because the vehicles perform the
25 same way because the fuel economy is the same, that obviously

1 goes to damages, and the claim that has been made -- and just
2 to give an example, in the Chavez Complaint at 122, the theory
3 is that FCA will not be able to make -- this is a quote.

4 "FCA will not be able to make the affected vehicles comply
5 with emissions standards without substantially degrading their
6 performance characteristics, including horsepower and
7 efficiency."

8 Now, if our position is that we can address the emissions
9 issues without substantially degrading performance
10 characteristics, including horsepower and efficiency, the basis
11 for the damages claim goes away.

12 Similarly, you know, they claim that -- in allegation to
13 paragraph 64, that the vehicles will be worth less in the
14 marketplace.

15 Well, if the vehicles can be fixed and they can be fixed
16 through a software flash, there wouldn't be any diminution of
17 value; therefore, no damages.

18 So I think in this particular case, our position
19 respectfully is we want to get the vehicles fixed; we want to
20 work with our regulators; we want to try to move the ball
21 forward; and we think if the fix is approved with a new
22 emissions calibration, that that will go a long way toward
23 resolving the lawsuit.

24 Now, the plaintiffs obviously are not going to accept all
25 of that. And I think the proper way to proceed would be, you

1 know, appoint a plaintiff Steering Committee. They will file a
2 consolidated Complaint. We will respond to the consolidated
3 Complaint.

4 I would hope -- what I meant maybe, Your Honor, is once we
5 get the approval, I think we can get going in a couple of weeks
6 to actually put it out into the field.

7 You know, this is a complicated process. It's already
8 been going on for a number of months. When you have a new
9 vehicle, it can sometimes take more than a year to have the
10 back-and-forth between the regulators and the car company.

11 So we're hopeful it can be done -- you know, the
12 Government says not two weeks. Maybe it's several months. But
13 we would really like to get it done. And then once it's done,
14 you know, the plaintiffs can evaluate whether the emissions
15 calibration does address the issues that are raised in the
16 Complaint, and we can go forward.

17 **THE COURT:** What if the fix is not approved? What is
18 your Plan B at that point?

19 **MR. GIUFFRA:** You know, I think if the new calibration
20 is not approved, then we're probably in a litigation situation
21 for some period of time, unfortunately, which we would like to
22 avoid because obviously we want to make sure that our customers
23 are satisfied and we want to do right by our regulators.

24 But we strongly believe that we have proposed a -- an
25 emissions calibration that will work.

1 And the big difference between this case and the other
2 case is that for some of the vehicles in the other case, it was
3 not possible to fix the cars to the certified standard.

4 In this particular case, the company's position is that it
5 can address the regulators' concerns fully, as well as not
6 impact performance.

7 And I think that's in part because these are -- these are
8 big trucks with state-of-the-art emissions systems. And it
9 appears, when you think about this as a logical matter, if all
10 really that you're talking about is putting in a new software
11 calibration, you know, we believe that part of the issue here
12 was that the people at the company, you know, didn't do --
13 maybe didn't do the right job or there were disagreements or
14 good-faith disagreements about what to be disclosed and when to
15 disclose it, and we're trying to address it now.

16 Obviously we have a Complaint against us from the
17 Department of Justice which we'll have to deal with, and
18 Your Honor will be there. So a settlement process certainly
19 would make sense with the Government. We would like to resolve
20 our Complaint with the Government, and there may be a need for
21 one with the plaintiffs. I don't know.

22 But speed is obviously extremely important to the company.

23 **THE COURT:** Well, I think it's important for the
24 reasons I stated in the public interest that we move this
25 along. And so I do intend to move forward, knowing that there

1 is a process in the works that may or may not yield something.

2 But what I wanted to get a sense from you is if your
3 recalibration or your software fix is not acceptable to the
4 regulators, are we going to be in a similar mode in terms of
5 trying to negotiate a larger resolution as happened in the VW
6 case, or is this going to be sort of battle-by-battle sort of
7 litigation on every front?

8 **MR. GIUFFRA:** Your Honor, I think it's probably too
9 early to tell.

10 In VW, the one point that did come forward was even with
11 respect to the vehicles that could not be fixed fully to the
12 certified standard, the company still reached an agreement with
13 the PSC. That process of getting approvals done that I
14 mentioned before for the vehicles that have -- that were
15 fixable through a software fix -- you know, software fix,
16 hundred percent compliant, that process is still going on after
17 the settlement. And it probably will be resolved later this
18 year. So that's another template one could use for resolving
19 this.

20 I think what FCA is hoping for here is a simpler process
21 whereby it actually -- it's already made the proposed
22 calibration. It's shared test results with the Government. It
23 thinks it has a calibration that works.

24 Assuming the regulators approve it, then we would go and
25 put it in the field and have all the customers address it.

1 Then to the extent there is any issues, they've been resolved.
2 Obviously, the plaintiffs may have a different view of that and
3 they would have to be part of that process, and then we try to
4 resolve both cases.

5 **THE COURT:** All right.

6 Let me ask you with respect to preservation, you have
7 addressed that in your statement in terms of litigation holds.
8 I want to make sure that the preservation and litigation holds
9 that have gone out encompass all -- both FCA N.V. in Italy as
10 well as FCA U.S., that this is a worldwide preservation
11 directive.

12 **MR. GIUFFRA:** Yes, it is, Your Honor. And we
13 obviously have taken it very seriously.

14 The first hold, which was an investigative hold based on
15 the fact that we were hearing from the Government, was in
16 January 15, 2016. It's been updated three times.

17 Then we did a civil litigation hold, and it's largely
18 coterminous with the investigative hold. Just certain tweaks
19 to address things that the plaintiffs were focused on. That
20 was first issued on December 15, 2016. It's been updated
21 again.

22 These holds cover roughly 190 employees from around the
23 world. They cover employees in the engineering, emissions
24 certification, manufacturing, quality assurance, sales,
25 finance, and the company's senior executives.

1 The holds cover matters relating to the engine
2 development, marketing the sale of the vehicles, notifications
3 to the Government, compliance with environmental and securities
4 laws, public statements the company has made. And they are
5 very broad.

6 They also cover records of all types, including obviously
7 electronic, and we've taken steps to, you know, deal with the
8 risk, for example, that someone might delete something from
9 their inbox. And the way the hold works is it's done
10 electronically, and it prevents the permanent deletion of
11 emails and preserves emails on the company's servers right now
12 indefinitely.

13 So we're confident that our holds are sufficient and
14 satisfactory, and they operate around the world, and it also
15 includes VM Motori, which is an important company --

16 **THE COURT:** That is what I was going to ask. It does
17 include VM?

18 **MR. GIUFFRA:** Yes.

19 Just to give some background on the entire situation,
20 which I think is important, FCA did not buy 100 per of VM
21 Motori until October 2013. It first bought, I believe, 50
22 percent in 2010. It was a joint venture with General
23 Motors/Roger Penske.

24 The engines were developed by this joint venture company.
25 Much of the development work was done prior to when FCA bought

1 100 percent of VM Motori. VM Motori is a very important player
2 in the whole question of the calibration of the software for
3 purposes of these engines.

4 **THE COURT:** All right. And so VM Motori, as well as
5 North America, is covered by the hold --

6 **MR. GIUFFRA:** Yes.

7 **THE COURT:** And is the hold any different -- based on
8 the VW experience that you had, is this similar scope then in
9 terms of the hold that's been issued?

10 **MR. GIUFFRA:** Well, I wouldn't want to compare. There
11 were issues actually before I got involved in the case with the
12 VW document holds.

13 **THE COURT:** I didn't mean to imply they were the same.

14 **MR. GIUFFRA:** As far --

15 **THE COURT:** Knowing what you know --

16 **MR. GIUFFRA:** As far as I know, there have been no
17 issues with respect to the FCA document holds, and the only
18 issues that come up in both -- whenever you deal with a
19 European company is that there are issues with respect to, you
20 know, data privacy rules in Europe, and we've addressed those,
21 and we're confident that the documents that are needed for the
22 litigation -- and that's litigation by the United States as
23 well as the plaintiffs --

24 **THE COURT:** Right.

25 **MR. GIUFFRA:** -- will exist.

1 **THE COURT:** Right.

2 Finally, what -- are there -- are you expecting more
3 tag-along cases and are there cases pending in state courts
4 that I should be aware of?

5 **MR. GIUFFRA:** Your Honor, right now, I'm not aware of
6 any state court cases. I think to the extent there have been
7 any, I think we've removed them.

8 **THE COURT:** Are you expecting -- do you know of any
9 more tag-alongs that are likely to come?

10 **MR. GIUFFRA:** The only one I was aware of, actually,
11 was the Government yesterday, and they filed in Detroit, and if
12 they didn't tag it, we were going to tag it.

13 **THE COURT:** All right. Okay.

14 At the risk of opening the floodgates here -- and I'm
15 going to shut that floodgate very quickly if it turns into a
16 flood -- but I just want to hear at this juncture whether there
17 are any concerns on the plaintiffs' side about the scope of the
18 litigation holds or the preservation order, if anybody has any
19 comments on that?

20 **MR. GIUFFRA:** Your Honor, my -- I want to correct one
21 thing.

22 My colleague indicated to me -- and I had forgotten
23 this -- we do have some state court cases in Texas.

24 **THE COURT:** What is the status of --

25 **MR. GIUFFRA:** There is a state court MDL being formed

1 in Texas.

2 **THE COURT:** State court MDL. Okay.

3 **MR. GIUFFRA:** We would like it all to be before
4 Your Honor.

5 **THE COURT:** Right. All right.

6 And let me ask, Mr. Slater, in terms of litigation hold,
7 do you something similar to report?

8 **MR. SLATER:** Yes, Your Honor.

9 We've -- we have litigation holds in place both with
10 Robert Bosch LLC AND the United States. And we've been working
11 with the parent company, Robert Bosch GmbH in Germany, to
12 ensure that there are holds in place there as well. And we
13 think that it's comprehensive of the issues that might arise in
14 litigation. They have been in place for a long time. They
15 have been updated over time as needed, and we have identified
16 any potential new sources of information and think that we're
17 in good shape.

18 **THE COURT:** Thank you.

19 And since Bosch is here, let me also -- I want to
20 disclose, to complete the record here, that I am an unnamed
21 member in the VW/Bosch case. I happen to have a vehicle that
22 was covered by that. I don't see a conflict. But out of
23 abundance of caution, I have renounced any entitlement or
24 interest in the Bosch portion of the settlement that I guess is
25 still pending. And since Bosch is a party here, I don't think

1 it's really related, but I'm renouncing -- I have already sent
2 my letter in renouncing any part of that. But I did want to
3 disclose that to all the parties here.

4 So let me go back to the plaintiffs' side, whether there
5 are any comments or concerns about the litigation hold.

6 Pending appointment of lead counsel and everything else, do
7 we -- do I need to address anything at this point?

8 **MR. BERMAN:** Very briefly, Steve Berman.

9 I raised this issue with Mr. Giuffra, and that is when I
10 looked at the types of devices that were subject to the
11 litigation hold, I had a concern that text messages on
12 employees' phones were not being preserved, and that could be a
13 very valuable source of evidence.

14 We just finished the deposition in the General Motors case
15 where text messages are very important because these employees
16 get excited. They text each other. "Hey, look what's
17 happening."

18 Mr. Giuffra didn't respond. I'm sure he has an answer for
19 the Court.

20 **THE COURT:** All right. Mr. Giuffra.

21 **MR. GIUFFRA:** Your Honor, it's my understanding that
22 the scope of the hold picks up text messages. The only issue,
23 of course, is that unlike, say, with a computer server where
24 the company can control the server, you know, with text
25 messages, it may be a little more difficult to make sure that

1 someone isn't deleting a text message --

2 **THE COURT:** Has a directive gone out --

3 **MR. GIUFFRA:** Every single -- the notices all talk
4 about preserving text messages, so that's been covered. The
5 only issue -- the caveat I'm making is that unlike a computer
6 server where the company can freeze the computer server, a text
7 message is a little more complicated.

8 **THE COURT:** You have to rely on the directive to the
9 custodian of that device?

10 **MR. GIUFFRA:** Yes.

11 I'll go back after we walk out of court today and I'll
12 even speak to Mr. Berman, if he would like. If someone has a
13 better idea to make sure we do that, I will do something
14 different. But I know the actual scope of the hold picks up
15 text messages.

16 **THE COURT:** All right.

17 Any other comments?

18 All right. A question has been raised in anticipation of
19 the hearing on the 14th as to how we're going to conduct that.
20 And I intend to allow each person that wants a place, either in
21 leadership or on the Steering Committee, to make a short
22 presentation. I have the paperwork.

23 I think Judge Breyer limited it to -- was it two minutes?
24 I don't have 156 or whatever it was, so I can be slightly more
25 expansive in that time, but, you know, three minutes or

1 something like that. But I will give an opportunity for
2 everyone who wants to to make a short presentation.

3 And I will want the parties to also address, particularly
4 those who have applied for the leadership positions -- and I
5 may have -- take a little bit more time in that regard, sort of
6 what you envision as the structure. That's been addressed to a
7 certain extent, but maybe more specifics about the structure
8 and the potential size of that -- of the Steering Committee and
9 whether that needs to be much different.

10 Some have already commented on that, but I do want to hear
11 more comments, especially as this case evolves, now that the
12 United States has come into the case and we begin to see what
13 this might look like.

14 So that's what we will do. We will convene on the 14th,
15 and this will probably take the better part of the day or a
16 good part of the day.

17 But I do intend to move this case forward because
18 notwithstanding the submission of the potential software fix, I
19 have no assurance -- we have no assurance at this point whether
20 that's going to be accepted, how long it's going to take to
21 work that out, what the impact will be.

22 In the meantime, at least as alleged, there are 100,000
23 vehicles on the road whose emissions of nitrogen oxide appears
24 to, at least allegedly, exceed current EPA and CARB guidelines,
25 and so that underscores the urgency to move expeditiously,

1 whether by way of a resolution or by way of litigation. And if
2 we are going to go the litigation route, there are obviously
3 going to be a number of issues that have to be addressed,
4 and -- because of the complexity of this case, but I intend to
5 move forward if that's the route we're going to take.

6 So unless there is any other comments, which I'm not
7 inviting necessarily, but if somebody feels the urge, we will
8 reconvene on the 14th.

9 **MR. GIUFFRA:** Thank you, Your Honor.

10 **THE COURT:** Thank you everyone for coming.

11 (Proceedings adjourned at 10:46 a.m.)
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CERTIFICATE OF REPORTER

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

DATE: Thursday, May 25, 2017

Pamela A. Batalo

Pamela A. Batalo, CSR No. 3593, RMR, FCRR
U.S. Court Reporter