

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Edward M. Chen, Judge

IN RE: CHRYSLER-DODGE-JEEP)
ECODIESEL MARKETING, SALES) NO. C 17-02777 EMC
PRACTICES, AND PRODUCTS)
LIABILITY LITIGATION,)
_____)

San Francisco, California
Friday, June 1, 2018

TRANSCRIPT OF PROCEEDINGS

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(Appearances continued on the next page)

Appearances According to the "confirmed Telephonic Appearance Schedule":

Leslie Allen
Camille Biros
Megan Bradley
Kathryn Caballero
David Casey
David Shepardson
Mike Spector

1 Friday - June 1, 2018

10:35 a.m.

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

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4 **THE CLERK:** Calling case C 17-277 In Re:
5 Chrysler-Dodge-Jeep, EcoDiesel Marketing. Counsel, please come
6 to the podium and state your name for the record.

7 **MS. RENDE:** Good morning, Your Honor. Leigh Rende,
8 along with co-counsel Joseph Warren, for the United States.

9 **THE COURT:** Good morning, Ms. Rende.

10 **MS. CABRASER:** Good morning, Your Honor. Elizabeth
11 Cabraser lead counsel and for the plaintiffs' steering
12 committee. I'm here this morning with my partner, David
13 Stelling, and we have several members of the PSC in appearance
14 also.

15 **THE COURT:** All right. Good morning, Ms. Cabraser.

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

20 **THE COURT:** All right. Thank you, Ms. Fiorentini.

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

24 **THE COURT:** All right. Thank you, Mr. Giuffra.

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

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

3 **THE COURT:** All right. Thank you, Mr. Slater.

4 **SPECIAL MASTER FEINBERG:** Good morning, Your Honor.
5 Kenneth Feinberg, court-appointed settlement master in this
6 case. No formal report to give today but I am here present.

7 **THE COURT:** Great. All right. Thank you,
8 Mr. Feinberg.

9 Let me just state for the record that I had a meeting with
10 the special master, settlement master, and all the parties in
11 chambers to discuss generally the path of this case without, of
12 course, discussing any of the specifics to which I am not privy
13 about any settlement discussions in particular.

14 But I did want to note for the record that I've gotten a
15 general update in terms of progress, which includes an update
16 on the testing of vehicles. And I will state for the record my
17 understanding that it is hoped at this point that the testing
18 will be complete by June -- the end of this month, June 30, but
19 there are a couple of issues that have arisen on a technical
20 side that could delay that. And that has caused concern on my
21 part about how close we can hew to that expectation. It
22 continues to be a priority of this Court that we get a fix
23 implemented, an approved fix implemented, and that we address
24 collectively the issues of the emissions problems.

25 And I think, Mr. Giuffra, you expressed some optimism and

1 hope that the technical issues will be resolved shortly --
2 either by June 30 or shortly thereafter, certainly by July?
3 That's still your expectation?

4 **MR. GIUFFRA:** Yes, Your Honor. FCA remains confident
5 that it can fix these vehicles to the certified standards, and
6 we're working literally around the clock pursuant to an agreed
7 protocol with EPA and CARB and we believe that we are making
8 good progress. This is an engineering process. It's
9 incredibly complex. And several issues that are technical have
10 arisen and we're working to address them. And I've spoken to
11 the person who is in charge of this process for FCA this
12 morning and he's confident that we'll be able to address those
13 technical issues. And we are hopeful that we can get this all
14 wrapped up in terms of getting the vehicles tested by the end
15 of June.

16 And again, Your Honor, the company is looking to, as I
17 said in chambers -- I'll say it publicly -- to, if we can,
18 achieve a global settlement with all interested parties from,
19 you know, the DOJ, CARB, EPA, state attorney generals, and the
20 PSC. And that's the company's objective and that's what we're
21 working to do if we can do it.

22 **THE COURT:** I think all the parties' objective is to
23 reach a settlement on all issues which would include both the
24 fix, any injunctive relief, as well as any civil penalty issues
25 that might have to be resolved. But I've also indicated that

1 the priority remains is the fix, and I don't want monetary
2 issues to hold up any injunctive equitable/fix relief.

3 **MR. GIUFFRA:** And you have FCA's firm commitment that
4 we will -- once the carry-back calibration is approved,
5 something that the government has already approved for the 2017
6 vehicles, once it's approved for the earlier vehicles we will
7 implement it as soon as possible. And if there are other
8 remaining issues, if we have to litigate those we will. But
9 the implementation of the carry-back configure -- calibration
10 is the company's top priority.

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

12 The other significant thing we discussed is the sharing of
13 information; in particular the consumer-facing issue terms that
14 are being discussed between the government and FCA. As I had
15 noted last time back in April, I wanted to make sure that the
16 PSC in timely way has access to those documents and so that it
17 can provide some input in earlier rather than later time.

18 And so I have ordered that that information -- whatever
19 state it's in -- be shared two weeks from today's date.
20 Hopefully things will be at a point where they're pretty much
21 progressed to the point where the parties are comfortable. But
22 even if they're not comfortable I'm going to order those draft
23 -- the draft of that -- the relevant terms to be shared with
24 PSC.

25 We also discussed sharing documents, similar documents,

1 with the state AGs. They're not part of this case technically
2 and so I don't think -- I don't know if I can order that. But
3 it is the intent to abide by this Court's commitment to the
4 state AGs that we would keep them informed and involved. And,
5 again, in a timely way. It's the Court's expectation that the
6 settlement documents again with respect to those issues that
7 are relevant to the state AGs would be shared. But my priority
8 right now is to get those documents shared with the PSC so that
9 we can move forward.

10 I also indicated that this testing protocol -- I
11 understand the complexities and things have arisen given the
12 age of the cars and everything else that has come about, that
13 this is taking substantially more time than had originally been
14 anticipated, but I'm very much hoping that we can get the
15 protocol testing done within that June 30 or shortly thereafter
16 time frame so that then the government can conduct its testing,
17 which they estimate will take about 30 days or so.

18 If we're at a point, though, however, come August 2 when
19 we have a hearing here -- and that will be the next status in
20 this case -- that that protocol testing is not done and there
21 are still problems, I want to hear from somebody who's involved
22 in the testing here in court and want to hear straight from the
23 horse's mouth what the problems are, how it's going to be
24 fixed, and how long it's going to take. I'm hoping we don't
25 get to that point, but I did indicate that and I'm reiterating

1 that.

2 So those were the main things to summarize sort of the
3 most important things that we talked about. I do want to now
4 talk about scheduling in this case and where we're at in terms
5 of case management.

6 We do have a motions hearing on August 2. We're going to
7 have a further status conference at that point. Hopefully
8 we'll know a lot more about the completion of the testing
9 protocol, situation with the testing, and any other progress
10 that's been made. I understand that there's been, from your
11 report -- your CMC report -- that there have been a substantial
12 number of depositions that have taken place and that there's
13 been a fair amount of discovery. But the one issue that is of
14 concern has to do with the employees or the witnesses who are
15 located in Italy for which it appears that the procedures under
16 the Hague Convention may have to be invoked.

17 So, why don't we set forth in the record, Ms. Rende, what
18 the time frame you expect, what needs to be done, and what can
19 the Court do to facilitate moving that forward?

20 **MS. RENDE:** Thank you, Your Honor. Yes, our
21 understanding is that should the United States need to seek to
22 compel testimony -- that is, if the witnesses in Italy will not
23 voluntarily agree to be deposed by the United States -- we
24 would have to go through the Hague Convention on evidence. And
25 that would be initiating a process of a letter of request. And

1 the process would involve us filing a motion with you. We
2 would have to attach a lot of information to that. So we would
3 need to prepare that. And then we would send it to the central
4 authority in Italy.

5 The process, our understanding, is that that process of
6 getting to the point where we could actually take the
7 depositions of these Italian citizens is that it could take up
8 to six months, perhaps a little bit more. And that would be
9 after we actually get you the packet of information that is
10 required for the letter of request.

11 Before we get to that point, however, there is the issue
12 of the protective order; that is, PTO10. Because we would
13 likely be including exhibits that are protected pursuant to
14 PTO10, we would have to address how those exhibits would be
15 handled if we pursued the letter of request process, how it
16 would be handled in Italy, how those components would abide,
17 whether they would abide, what equivalents there are in Italy.
18 So that could add perhaps another two months to the process.

19 **THE COURT:** What is that process? I mean, what do you
20 need to do? What precedent is there with respect to handling a
21 protective order?

22 **MS. RENDE:** Our first step would be to speak with FCA
23 and with Bosch about this process and just to get a sense
24 whether there might be any ways to adjust and maybe work with
25 Your Honor. And then I think we would have to go from there

1 and then work through our contacts in Italy trying to figure
2 out what exactly is required under Italian law and if there is
3 an equivalent. So we would have to --

4 **THE COURT:** So you haven't made that determination yet
5 about what Italian law requires or provides.

6 **MS. RENDE:** That's correct. We're in the process of
7 looking into that now. We're working with counsel in Italy.
8 But we have not -- I don't have a response for you on that
9 point right now.

10 **THE COURT:** And these are important witnesses in the
11 government's view.

12 **MS. RENDE:** Based on the information that we have
13 seen, we believe they do have relevant information. And a
14 number of them were identified in FCA's initial disclosures as
15 potentially having relevant information.

16 **THE COURT:** So that informs the trial date -- or, I'd
17 already indicated previously that I wanted to set something in
18 early 2019. Worst case scenario, depending on how critical
19 these witnesses are, that makes a January date very difficult.

20 But I am at this point going to ask counsel to pencil in
21 some dates in February, March and April. I'd still like to get
22 this case tried, although I'm not going to set a date now
23 because there's some question about exactly what the scope is.
24 For instance, if the emissions and injunctive part of this case
25 is resolved by consent decree, and that still leaves either

1 penalties or it leaves damages, that's one thing. And if it --
2 if we have to try the injunctive issue, that's something else.

3 So I'm not going to set a date yet. I probably will set
4 one at our next hearing in August. But it is my intent at this
5 point to have this case tried in either February, March or
6 April. And particular dates that I had already sort of
7 penciled in are February 4, March 4 or April 1.

8 Certainly by March and April that should afford enough
9 time to have accomplished what you need to accomplish with
10 respect to completion of discovery even with the witnesses in
11 Italy, I would think.

12 **MS. RENDE:** That is our hope. But we should have a
13 better sense later on.

14 **THE COURT:** All right. And are we expecting -- how
15 long of a trial? I know that's -- part of it depends on the
16 scope and everything. But your best guess at this point? What
17 should we be reserving in terms of a trial length?

18 **MS. RENDE:** This is Leigh Rende for the United States.
19 I would say that it depends on the information that we gather
20 through discovery. And we're still expecting documents to come
21 in. We're still in the process of deposing witnesses. I know
22 FCA has a response as well.

23 **MR. GIUFFRA:** Your Honor, you know, based on my
24 experience, depending on what issues are to be tried this case
25 could be weeks, it could go into months. You'd end up with

1 fact witnesses, you'd have a lot of experts depending on what
2 the issues were. So this could take some time.

3 But, again, you know, I think we are optimistic we can get
4 our calibration work done and hopefully approved. And our goal
5 is to get a global settlement. There may be discrete issues
6 that are not resolved. And if those issues are not resolved
7 and we have to have a trial sometime next year, you know, the
8 scope of that trial will depend on what those issues are.

9 **MS. CABRASER:** Your Honor, Elizabeth Cabraser for
10 plaintiffs.

11 Early on in this case we had extensive discussions with
12 the DOJ about trial coordination and what a trial would look
13 like. And while, you know, that's obviously a work in process
14 and it does depend on what claims or issues on the part of
15 which plaintiffs are being tried, we still believe that the
16 underlying course of conduct, the fact issues, underlying fact
17 issues, will be the same. The prioritization might be a little
18 bit different. But that's how we're prioritizing our
19 discovery. The underlying common course of conduct.

20 We also had assumed -- and we still do assume -- that
21 notwithstanding the complexity of the case and, in fact,
22 because of it, we'll be operating under a time clock, under
23 time limits set by the Court which will be to the benefit of
24 the jury certainly if it's a jury trial.

25 **THE COURT:** Yes. And that is my practice.

1 **MS. CABRASER:** To the Court notwithstanding. So we
2 don't have an hourly estimate at this point, but we're thinking
3 about it and we'd be prepared to be more specific about that in
4 August and, of course, as we go along recognizing that at least
5 from our perspective we're willing to share, you know,
6 plaintiffs' hours with the government plaintiffs in this case.

7 **THE COURT:** All right. Well, I will want to discuss
8 that and I would like you to think about that and discuss that
9 before August.

10 **MR. GIUFFRA:** Your Honor, one thought. Perhaps if
11 maybe as we get closer to that date we could maybe make
12 submissions to the Court about this issue. Because there could
13 be complexities given that this is an MDL trial. I believe the
14 government filed their case in Michigan. I don't know whether
15 the case would have to go back to the judge in Michigan.
16 Depending on what the issues were.

17 I think that probably wouldn't be true with respect to the
18 PCS's case. But there could be, you know, complexities with
19 respect to what issues would be tried. What issues would be
20 for the Court, what issues would be tried -- would be relevant
21 -- would be tried to a jury. Maybe the parties could consent
22 to have Your Honor do some or all of it. I don't know.

23 But there's a lot of moving pieces that would be involved
24 in having a trial on any of these issues in this case. And so
25 I just think we might want to have an opportunity to at least

1 express our views to the Court on that topic.

2 But, again, we're working toward a global settlement if we
3 could achieve one.

4 **THE COURT:** All right. Any response to that comment
5 about -- it's almost a jurisdictional question, I guess.

6 **MS. RENDE:** As Mr. Giuffra said, it could be a
7 jurisdictional question. And it's unclear whether FCA would
8 consent to Your Honor overseeing that trial. But this is
9 something that is worth more thought.

10 **THE COURT:** All right. Well, there's no doubt that
11 this Court has jurisdiction over some parts of this case, so my
12 plan is to try whatever there is. So I just want to forewarn
13 you that jurisdictional issues notwithstanding, my intent if
14 this case does not get resolved, as I've stated from day one,
15 is to get this case tried within a reasonable time frame.

16 And so, anyway, I've given you some tentative dates, at
17 least a framework, but we can talk about that more specifically
18 and hopefully we'll have a better idea and hopefully we'll know
19 we're on the path of at least resolving the fix problem.

20 **MR. GIUFFRA:** Your Honor, again, my suggestion would
21 be maybe a week before the hearing we could make submissions to
22 the Court and set out what we think at least are some of the
23 issues.

24 **THE COURT:** And you can incorporate that into your
25 case management conference. It can be a more extensive than

1 usual case management conference. But I would like you to
2 address those issues and including what a trial might look like
3 and how much time you think -- your best guess as to the length
4 of that.

5 So -- and then we will see you on the 2nd. There's a
6 motion to dismiss, further status conference. And hopefully
7 we'll know a lot more. And we'll know something more about the
8 Italian witness issue. All right. Anything else that we need
9 to --

10 Oh. We did mention -- I should mention, too. The *Pirnik*
11 case before Judge Furman, I think all the parties including the
12 Court recognizes the desirability as indicated by Judge Furman
13 of coordinating discovery with that case to the extent there's
14 some overlap.

15 It's clear, though, that given what I understand to be the
16 July 13, 2018, discovery cutoff date in that case, that it's
17 going to be very difficult to avoid duplicate depositions given
18 that there's some witnesses that are going to be on the
19 government's list and the PCS's list that they are just not
20 prepared to depose at this point because discovery is still
21 underway and their depositions may be informed by some other
22 depositions.

23 And so to get this all done within the next 42 days is
24 going to be very difficult. But as I understand it, the
25 government and the PSC is coordinating as much as possible with

1 counsel in the *Pirnik* case and there's going to be some --
2 some, I guess, sitting in on depositions and some other
3 coordination to try to minimize duplication as much as
4 possible. But complete elimination of duplication is going to
5 be very difficult. But there are ongoing coordinating efforts.

6 **MR. GIUFFRA:** Your Honor, on the issue of the fact
7 discovery deadline in *Pirnik*, particularly in light of what
8 Your Honor said and everyone here has said, about the desire
9 for coordination, we have been talking to the plaintiffs in
10 *Pirnik*. And maybe what we will do is go to Judge Furman and
11 see if he will extend that date so that we can at least avoid
12 some duplication of depositions.

13 **THE COURT:** All right. Obviously, to the extent that
14 that occurs with the input of the government here, perhaps that
15 will obviate some of that. I don't know if it can be entirely
16 eliminated. Maybe it depends on how much time Judge Furman
17 gives if he does move that date.

18 But I did want to note for the record that we're aware of
19 the coordination request. And that the parties have committed
20 to try to accommodate that as much as possible without
21 compromising their case here.

22 Okay. Is there anything else that we need to discuss this
23 morning?

24 **MS. CABRASER:** Your Honor, the PSC will be filing its
25 class certification motion next week on the 6th. And we plan

1 to meet and confer with defense counsel regarding reaching an
2 agreement on page limits for the briefs. We're aware of the
3 local rules on those, and we're going to be as succinct as we
4 possibly can. But this is a complex case with two defendants
5 and so we will be asking for some relief on those limits.

6 But as I say, first we'll meet and confer with the
7 defendants and see if we can work out something that's
8 agreeable to all parties. And we'll submit it to Your Honor
9 through the administrative motion or stipulation order
10 procedures as soon as we can.

11 **THE COURT:** All right. And submit a proposed order
12 with a blank on it so I can fill in the blanks. But, yes, I
13 will look for that. If you can get that to us as quickly as
14 possible because you need to know my decision.

15 **MS. CABRASER:** Yes. Thank you.

16 **THE COURT:** If you do that I'll appreciate it. And
17 we'll be on the lookout for that.

18 **MS. CABRASER:** Thank you so much.

19 **THE COURT:** Anything else?

20 **MS. RENDE:** Just a scheduling question, Your Honor,
21 about what time the status hearing will begin on August 2.

22 **THE COURT:** Well, we should -- yeah. We should --

23 **THE CLERK:** It's on the 1:30 calendar.

24 **THE COURT:** The motion hearing's at 1:30.

25 What else do we have on the calendar?

1 (Off-the-record discussion with the deputy clerk.)

2 **THE COURT:** Maybe we should specially set this. I
3 mean, keep it on that date but set it either for later in the
4 afternoon so it's separate from the other calendar, or make
5 this first and move the other calendar back.

6 **THE CLERK:** We will start at 1:00.

7 **THE COURT:** All right. Why don't we do that. We'll
8 have a consolidated hearing at 1:00/status conference. And I'm
9 going to specially set that and then defer the other motions so
10 that we have enough time to both discuss status in this case as
11 well as hear the motion. Maybe we'll set the other matters for
12 like 2:30, Betty. So we'll have from 1 to 2:30 if we need to.

13 **THE CLERK:** Yes.

14 **THE COURT:** All right. So 1:00 on the 2nd. Okay.
15 Unless there's anything further. Thank you and we'll see you
16 then.

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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: Friday, June 1, 2018



/s/Vicki Eastvold

Vicki Eastvold, RMR, CRR
U.S. Court Reporter