

Pages 1 - 26

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
Thursday, August 2, 2018

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff United States of America:

U.S. DEPARTMENT OF JUSTICE
Environment & Natural Resources
Division
P.O. Box 7611
Washington, DC 20044

BY: JOSEPH WARREN, ESQUIRE
LEIGH RENDÉ, ESQUIRE

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

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

BY: ELIZABETH J. CABRASER, ESQUIRE

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

BY: DAVID S. STELLINGS, ESQUIRE

(Appearances continued on the following page)

Reported By: Pamela A. Batalo, CSR No. 3593, RMR, FCRR
Official Reporter

APPEARANCES CONTINUED:

For California Attorney General and the California Air Resources Board:

STATE OF CALIFORNIA
Department of Justice
Office of the Attorney General
600 West Broadway - Suite 1800
San Diego, CA 92101

**BY: JUDITH FIORENTINI
JON WORM
DEPUTY ATTORNEYS GENERAL**

For Defendants FCA US LLC and Fiat Chrysler Automobiles N.V.:

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

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

For Defendant Robert Bosch GmbH Robert Bosch LLC:

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

BY: MATTHEW D. SLATER, ESQUIRE

Special Master:

THE LAW OFFICES OF KENNETH R. FEINBERG
1455 Pennsylvania Avenue, NW
Suite 390
Washington, DC 20004

BY: KENNETH R. FEINBERG, ESQ.

(And all other appearances as indicted in the minutes.)

1 Thursday - August 2, 2018

10:00 a.m.

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

3 ---000---

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

7 Counsel, please step forward and state your appearances
8 for the record.

9 **MR. WARREN:** Your Honor, Joe Warren for the
10 United States. Ms. Rendé is going to be speaking for the
11 United States today. She should be here any minute.

12 **THE COURT:** All right. Thank you, Mr. Warren.

13 **MS. FIORENTINI:** Good morning, Your Honor. Judith
14 Fiorentini and Jon Worm. We are here on behalf of the
15 California Attorney General's Office and the California Air
16 Resources Board.

17 **THE COURT:** Welcome. Good morning.

18 **MS. CABRASER:** Good morning, Your Honor. Elizabeth
19 Cabraser, David Stelling from Lief, Cabraser, Heimann &
20 Bernstein for plaintiffs.

21 **THE COURT:** Great. Thank you, Ms. Cabraser.

22 **MS. RENDÉ:** Good morning. Leigh Rendé for the
23 United States.

24 **THE COURT:** Good morning, Ms. Rendé.

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

1 for Robert Bosch GmbH and Robert Bosch LLC.

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

3 **MR. FEINBERG:** Good morning, Your Honor. Kenneth
4 Feinberg, Settlement Master in this matter.

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

6 And I know Mr. Giuffra is in the building, but we can
7 proceed without him. He's coming.

8 I know that Mr. Feinberg has a plane to catch, but I
9 wanted him to give me an update officially for the record as to
10 where things are.

11 **MR. FEINBERG:** Thank you, very much, Your Honor.

12 The negotiations involving all parties are continuing in
13 absolute good faith. Complicated case. The Government --
14 federal, state -- FCA, Chrysler, Bosch, everybody, PSC, of
15 course, Ms. Cabraser -- everybody is working rather
16 intensively. We've had, in the last 48 hours, about 20 hours
17 of face-to-face negotiation here in San Francisco.

18 We are making substantial progress. I think that the
19 negotiations will continue throughout the month of August into
20 September. I can't say at this time with any assuredness to
21 the Court when these negotiations will end and when I hopefully
22 believe they will be approved, but I can say that everybody is
23 certainly focused on this, and I commend all the parties for
24 their work.

25 There are a series of issues that have to be addressed.

1 Also the testing of the vehicles, as Your Honor knows,
2 continues, hopefully nearing completion in the next -- by
3 sometime in September.

4 And in the meantime, we will continue to work to try and
5 get all of the issues resolved, any potential monetary issues
6 resolved. And my update concludes rather generally because
7 everybody is in confidence trying to evaluate the various
8 terms, the various conditions, the various remedies that will
9 be available to class members, but I commend everybody for
10 their efforts.

11 And I will continue, per Your Honor's suggestion, to give
12 you weekly reports during the month of August into September as
13 to the progress that's being made so Your Honor will be kept up
14 to date, even before the next status conference, with my
15 providing the Court input each week as to the progress of these
16 negotiations, as we try and get to the end game.

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

18 And I will state for the record that with the parties'
19 consent, I have gotten updated information about the status of
20 testing in some detail and as well as the general process of
21 negotiating terms of settlement, and my understanding now, that
22 I will put on the record, is that the testing is proceeding.

23 There have been some glitches and problems, some of which
24 are alluded to in the Case Management Conference Statement, but
25 the parties anticipate and agree that there are a number of

1 issues that need to be addressed, that some data needs to be
2 provided by FCA to the Government, to the testing agencies.

3 And meanwhile, testing is going on on some of the vehicles
4 and testing is about to commence on some other vehicles, but
5 the anticipation is that with the provision of data and reports
6 from FCA to the Government, which is going to occur starting
7 really in the next week or two into through the month of
8 August, that the testing agencies will have completed their
9 testing by mid September, is the anticipation, and will
10 complete their analysis by the end of September.

11 And the Court is quite anxious about having that process
12 proceed because as stated for the record previously, it had
13 been anticipated that testing would be done in June and then
14 now it's been delayed to July and August, so now we're talking
15 about the end of September, and this is all occurring at a
16 time -- and I understand there are reasons and we need to make
17 sure that the quality of the testing data is acceptable, but in
18 the meanwhile, every day that we wait and await a remedy here,
19 we have a hundred thousand cars on the road that are causing --
20 that are emitting emissions that are evidently in excess of
21 applicable standards.

22 **MR. FEINBERG:** I should say, Your Honor, in light of
23 your placing on the record the September dates for the testing,
24 the finishing and the analysis of that, as Your Honor knows, on
25 a parallel track, we are hoping, all parties, to, on a parallel

1 track, come up with a comprehensive global settlement agreement
2 that would track the chronology of the testing so that, again,
3 the goal would be that by the end of September, we would have
4 the testing finalized and a comprehensive settlement involving
5 all parties to the MDL would be completed and successfully
6 completed at the same time. That's the goal.

7 **THE COURT:** Right. Thank you, Mr. Feinberg.

8 And on that front, my understanding is that the parties
9 are agreeable -- or the Court has indicated that it expects
10 that the drafting of the documents -- and there may be some
11 open issues, hopefully not, with respect to substantive terms
12 such as monetary terms, etc., etc., but the terms of the
13 documents, the terms of the consumer-facing issues and how
14 those will be dealt with, that that will also be completed by
15 the end of September, and I've directed the parties to meet and
16 confer on an intense basis and affirm and further empower
17 Mr. Feinberg to oversee that process, to give me weekly
18 updates, and to direct the parties, not only as a facilitator
19 of exchange of information, but, if necessary, to indicate and
20 order certain parties to appear, including management, if
21 necessary, in order to get this deal done.

22 And so I'm going to press again the priority of this Court
23 to figure out whether we've got a deal or not, whether we are
24 going to have a fix or not by the end of September, which is
25 now understandable because of the -- the delays have been

1 understandable, but it is two, three months behind what we
2 originally anticipated.

3 So let me ask the parties if there is anything more to add
4 in that regard with respect to updates on testing, settlement
5 discussions, etc.?

6 (No response from counsel.)

7 **THE COURT:** All right.

8 Well, I will indicate that record. I would like to have a
9 further status conference towards the middle or end of
10 September to see how that -- to get a further update on the
11 testing and on the negotiation progress. We can specially set
12 this -- I don't know, Mr. Feinberg, if you have a date or
13 series of dates in mind.

14 **MR. FEINBERG:** Your Honor, it might be, on the status
15 conference schedule for September -- one suggestion is with my
16 weekly reports, at some point in August based on the weekly
17 reports, to decide whether earlier in September, middle of
18 September, later in September for a status conference depending
19 on progress to date.

20 Is that a possibility or would Your Honor prefer to set a
21 date now or wait for my --

22 **THE COURT:** Why don't we reserve two dates: One, if
23 we need an earlier one, we can call it; and if not, if things
24 are going well and you don't think we need one, we'll opt for
25 the later dates.

1 Why don't we set two dates: One for -- what about the
2 first week of September? That is a short week, but -- I don't
3 know if it works better to specially set this on a particular
4 day of the week. I can't remember what our patterns have been,
5 whether Fridays, Mondays, middle of the week.

6 **MS. CABRASER:** For plaintiffs, any day that week would
7 work, Your Honor.

8 **THE COURT:** The Government?

9 **MS. RENDÉ:** We can be available any time you would
10 like, Your Honor.

11 **MR. GIUFFRA:** Your Honor, the 6th or the 7th, which is
12 a Thursday or Friday, would be best for us.

13 **THE COURT:** All right. I usually have a pretty packed
14 calendar on law and motion day, which is the 6th, so the 7th --
15 Teresa, are we open?

16 (Pause in proceedings.)

17 **THE COURT:** So the 7th in the morning would work,
18 9:30. That's kind of provisional, but we'll mark that date,
19 and then a later date in September, perhaps towards the end of
20 September, either the third or fourth week, the 23rd or the
21 28th.

22 **THE CLERK:** The 28th.

23 **THE COURT:** The 28th?

24 **MR. GIUFFRA:** I can't do the 28th.

25 **THE COURT:** No? Okay.

1 **MR. GIUFFRA:** That entire week is bad.

2 **THE COURT:** The entire week is bad? How about the
3 21st?

4 **MS. CABRASER:** Your Honor, the 21st would work for
5 plaintiffs in the morning.

6 **MR. GIUFFRA:** I have a court appearance in Delaware on
7 the 21st.

8 **MS. CABRASER:** The 20th?

9 **MR. GIUFFRA:** I could do the 19th. I could do the
10 18th. What about the first week in October? After the
11 September deadline that we're talking about comes to
12 conclusion, it might be -- October 1, 2, 3, something like
13 that. I'm just making that suggestion because of the time
14 frame.

15 **THE COURT:** All right. How are we October 1st or 2nd,
16 Teresa?

17 **MR. GIUFFRA:** I have to be in New Orleans -- I'm sorry
18 about this -- for an argument before the Fifth Circuit on the
19 1st. It hasn't been set yet, but I think that is the date
20 they're looking at. So for me that week of the 3rd would
21 probably be the best.

22 **THE COURT:** All right. How is our 3rd calendar?

23 **MR. GIUFFRA:** Or the 5th.

24 **MS. CABRASER:** The 3rd would work. The 2nd, 3rd or
25 4th.

1 **THE COURT:** Yeah. I'm out the 4th. I'm out the 4th
2 and 5th.

3 **MR. FEINBERG:** It looks like the 3rd, morning of the
4 3rd.

5 **THE COURT:** Why don't we say 9:30 on the 3rd?

6 **MR. FEINBERG:** Of course, Your Honor, weekly I will
7 keep you up to date about the efficacy of these dates.

8 **THE COURT:** Yes.

9 **MR. FEINBERG:** Thank you.

10 **THE COURT:** All right.

11 **MR. SLATER:** Just to be clear, Your Honor, on
12 September 7th, I'm scheduled to be out of the country, but we
13 will have somebody else here if that date goes forward.

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

15 **MS. RENDÉ:** Your Honor, if I may just comment on
16 something you said a little earlier. You did mention that the
17 Court expects the drafting of the settlement documents to be
18 completed by the end of September, and I just want to state for
19 the record that the United States -- we will endeavor to meet
20 that deadline as best as we possibly can, and of course that
21 will depend on the testing results, but we do understand that
22 that's the Court's goal, and we will --

23 **THE COURT:** That is the goal. And if for some reason
24 I am getting reports that it's not happening and that things
25 may need to be done to make it happen, then when we get

1 together in August or whenever it is, I may order further
2 meetings, whatever.

3 So it is a goal, but it is a goal that could have
4 consequences if it's not met.

5 **MS. RENDÉ:** Understood. Yes, Your Honor.

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

7 Let's talk about the case management itself. There is an
8 update in here, some of it on the testing, which I think we've
9 gone through and I have already obtained information on, as
10 well as the ADR.

11 There is a question -- we've got a schedule in terms of
12 class cert and it looks like there may be some *Daubert* motions
13 filed in conjunction with the class cert.

14 One thing that we haven't done yet is to set a trial date
15 in this matter. Although I'm hopeful that this case can be
16 resolved, as I think it should be and more effectively through
17 settlement process, my intent is if that does not succeed, is
18 to continue to move on the litigation and trial track.

19 And we had previously discussed dates in, I think, the
20 spring, and so I want to talk about potential dates, one of
21 them being either March or April, and I want to talk to you
22 about that and get your thoughts about whether, assuming we
23 proceed with class cert and get that resolved one way or
24 another and the state of discovery -- and some of it is, I
25 know, international -- whether this case can be tried within

1 that time frame. Let's say -- April 1st is one date that I
2 have.

3 That would mean a Pretrial Conference in March and that
4 means pretrial filings in late February. It also means summary
5 judgment motions toward the end of the year.

6 Is that doable?

7 **MR. GIUFFRA:** Your Honor, may I be heard on this?

8 **THE COURT:** Yes.

9 **MR. GIUFFRA:** A couple of things.

10 One suggestion we would have, right now you have the class
11 cert hearing -- I just want to put a marker down -- for
12 October 30th at 10:00 a.m.

13 **THE COURT:** Yes.

14 **MR. GIUFFRA:** Our papers will be submitted, I believe,
15 on Monday, which is the 6th, and then the other side will be
16 done on -- I think it's September 3.

17 We'll be asking the Court to hold an evidentiary hearing
18 allowing, you know, maybe two experts on each side to testify
19 at the class cert hearing. We think there are substantial
20 class cert issues in this case, and it's become routine -- I
21 actually had a hearing last week, two days, before Judge Crotty
22 in a securities case where we actually had three witnesses
23 testify.

24 And given the fact that under Rule 23(f), there is the
25 ability to appeal a class cert order, we think it would make

1 sense to have an evidentiary hearing, in which case it might
2 make sense to block out or at least have the option of blocking
3 out that second day.

4 So that would be the -- right now you have it set for the
5 30th, and you might just want to think about having, you know,
6 the next day available if you go down the road of having the
7 witnesses actually testify.

8 **THE COURT:** And what kind of -- you're expecting
9 expert testimony?

10 **MR. GIUFFRA:** Yeah. That would be -- what I would
11 envision -- again, I did this last week and I've done it
12 before. I would envision a two-day hearing where you would
13 have opening statements for probably 30 minutes. Then the
14 plaintiffs and defendants would put on, you know, their
15 respective experts, and in this case, I think it's probably two
16 experts a side.

17 **THE COURT:** And what would the experts address?

18 **MR. GIUFFRA:** They would -- they would address the
19 subject of their reports on direct and then you would have
20 cross-examination. Your Honor can obviously ask them
21 questions.

22 But that is now considered to be good practice in a case
23 of this complexity.

24 **THE COURT:** Right. But I was asking what's an example
25 of a topic area in the context of this class certification

1 motion?

2 **MR. GIUFFRA:** There would be -- there will be issues
3 that would have to be dealt with with respect to reliance.
4 There will be issues with respect to materiality, the
5 causation, damages, whether the -- whether the damages model of
6 the other side works, things like that.

7 One of the issues we have in this case is you do not have
8 a nationwide ad campaign, and so one of the questions is going
9 to be was everyone similarly situated in terms of what they --
10 why they bought the cars, for example, or the vehicles.

11 **THE COURT:** All right.

12 Ms. Cabraser.

13 **MS. CABRASER:** Your Honor, plaintiffs would request
14 that the Court defer its decision on that until the class cert
15 papers have come in and Your Honor has had a chance to review
16 them so that you can determine whether an evidentiary hearing
17 and what type of evidentiary hearing would be helpful to the
18 Court.

19 This is a minor point, but I'd note in passing that the
20 October 30th date for class certification was the subject of
21 some back and forth among counsel.

22 Mr. Giuffra has a very busy schedule, but sometimes mine
23 is busy, too, and so if the Court's decision were to hold
24 additional time past October 30th, we would be requesting that
25 it take place that next week. I have a court hearing the very

1 next day.

2 We both seem to be in constant transit. And -- yes. We
3 will stipulate to that.

4 So that would just be a point of scheduling, if the Court
5 were to determine that that were appropriate.

6 But at this point, I think our view is that the papers and
7 argument ought to be sufficient, but obviously that's for
8 Your Honor to decide when you see them.

9 **MR. GIUFFRA:** Actually, I think maybe -- I have no
10 problem -- I really just wanted to alert the Court to the fact
11 that we will be making the request for the evidentiary hearing
12 and just so, for purposes of scheduling, to at least put that
13 on the Court's radar.

14 I agree that the Court can get our papers, read the expert
15 reports, and determine whether it makes sense. I think that in
16 this case given the issues with respect to damages, whether
17 there is an injury, what the scope of the injury is, is
18 everyone in the same position, did everyone rely on the same
19 advertising, why do they buy these vehicles -- I think there's
20 lots of issues that will go and make this a very complicated
21 class certification issue, so I just wanted to put it on the
22 radar -- on the Court's radar.

23 **THE COURT:** Right now we've got this scheduled --
24 Teresa, is there -- are we devoting a full day, or what do we
25 have on the 30th?

1 **THE CLERK:** Of October?

2 **THE COURT:** Yes. Currently scheduled for the 30th.

3 **THE CLERK:** That's all that is there for that day.

4 **THE COURT:** We are scheduled to have that at what
5 time?

6 **THE CLERK:** 10:00.

7 **THE COURT:** I would think if I find that an
8 evidentiary hearing is required, a full day would be enough
9 because I don't need to hear on every single point, is my
10 guess, and I'm not sure I need to hear anything, but --

11 **MR. GIUFFRA:** I think that Your Honor -- again, I'm
12 trying to just sort of foresee the issue.

13 Whatever happens with respect to class cert, there will be
14 an appeal, and it would make sense, we believe, for the Court
15 to actually hear from the experts. I think there is two on
16 each side that would make sense for the Court to hear from.

17 Realistically in order to put four people up and down and
18 have cross-examination -- in the proceeding I had last week in
19 the Southern District of New York, we had directs for 40
20 minutes, crosses for 30 minutes, 10 minutes each for
21 recrosses -- I mean, redirects and recrosses. So you're
22 talking about an hour and twenty minutes per witness. When you
23 have four witnesses, it takes some time.

24 So realistically to do it all in one day, plus having some
25 sort of opening to at least set the issues for the Court and

1 then some sort of a closing where you can sum up what people
2 have said, I think it would actually be very helpful to the
3 Court because you're going to be looking at a stack of papers
4 from each side that are going to be very, very thick. So I'm
5 trying to just put this on the Court's radar.

6 You will obviously get our papers next week. You can
7 peruse them at your leisure. But I think when you read our
8 papers or read their papers, you're going to say there is a lot
9 of issues here, there's a lot of factual issues here, there's a
10 lot of complicated expert issues here, more so, candidly, than
11 in the typical case.

12 **MS. CABRASER:** Your Honor, I would just indicate that
13 while evidentiary hearings on class cert are sometimes useful
14 in certain types of cases, in our view, at least, this is a
15 case predominantly about what people didn't know and what they
16 weren't told uniformly.

17 So certainly, while there are experts with respect to some
18 of the damages issues, we're really focused here on
19 predominance of issues as they relate to liability with respect
20 to class certification.

21 But, again, I think it's for the Court to decide what
22 would be most helpful to it in making -- in going through its
23 own decision process and sorting those issues out.

24 I think it's fair to say we have different views on class
25 certification. We have different views on the issues of the

1 case. And, really, it's something for the Court, as the
2 decision-maker, to decide.

3 **THE COURT:** Right. I will make that decision once I
4 get the papers. And what I might do is advance that hearing up
5 to earlier in the day, get an early start, like 8:30 or
6 something, make sure if we need to hear from two, three, four
7 witnesses, that we can get them all done. Whatever it is, even
8 if we have an evidentiary hearing, right now my sense is if we
9 are taking expert testimony, which can be done fairly
10 efficiently -- we are not trying this case for the jury -- that
11 can all be done in one full day and I have a full day
12 available. So --

13 **MS. CABRASER:** Thank you.

14 **THE COURT:** If needed.

15 **MR. GIUFFRA:** On the issue of the trial, Your Honor,
16 let me raise that.

17 **THE COURT:** Yep.

18 **MR. GIUFFRA:** You know, our position has been from the
19 beginning that we want to try to resolve this case on a global
20 basis, and we're hopeful that can be done. And we would like
21 to obviously see Your Honor be the judge who signs the
22 settlement papers.

23 But with respect to the setting of a trial, the Department
24 of Justice made the decision to file this case in the Eastern
25 District of Michigan, and right now FCA's position is we will

1 not consent to a trial of the Department of Justice's claims in
2 this Court at this time. That could change down the road.

3 But, you know, that's our right. We think that, you know,
4 we have fact discovery that is ongoing. There's, you know, a
5 lot of complexity in this case. And -- for example, it's
6 entirely possible that there might -- the only trial you might
7 ever have with the DOJ might be over the penalty if we can't
8 come to an agreement.

9 And then with respect to the PSC case, you know, again we
10 have this class certification issue. There will be an appeal
11 by the party that loses on class certification. You know,
12 there is going to be extensive motion practice. There is a lot
13 of discovery that is going on, and -- for example, until you
14 know whether the carry-back configuration on the calibration,
15 you know, is effective, that obviously will affect the damages
16 that they will claim.

17 And so we think it's premature at this point. And this is
18 a case where the parties are working very hard to promote a
19 settlement, so it's not like you need to set a trial date in
20 order to encourage the parties to settle.

21 We had meetings the last two days with the Department of
22 Justice and the EPA and CARB. So we just think it's premature
23 to do so at this point.

24 **THE COURT:** All right. And you state in your papers
25 that FCA has not decided that they would consent to trial of

1 the Justice Department's case here, and if that's the case, I
2 would remand the case back to the originating district, but I
3 will also indicate that I have no intent of not trying the
4 cases that are before me, whether -- with or without MDL and
5 with or without Lexicon Consent.

6 So I am going to set a trial date. I may defer that,
7 maybe perhaps one more time, because I want to see how things
8 progress, but I do want to get some input in terms of, for
9 instance, if for sure your case is going to go to trial,
10 Ms. Cabraser, if this doesn't settle, whether the DOJ ends up
11 in Michigan or not, what your feeling is if we set an April or
12 perhaps May trial date.

13 **MS. CABRASER:** Well, we -- we took the trial -- the
14 preview trial dates we got last time very seriously and we have
15 been working towards trying to meet those.

16 Frankly, Your Honor, one of the assumptions we made was
17 that that would be a unitary trial with the DOJ and it would be
18 a phased trial as is described in the Status Conference
19 Statement for the obvious reasons of judicial economy and
20 consistency and the fact that we would be putting on the very
21 same evidence with respect to the very same conduct and the
22 very same parties and the very same events.

23 And so trying to figure out how to deal with that, given
24 the Lexicon problem, we don't have complete control of that.
25 From the PSC, we would hope the parties would continue to

1 explore some creative ways of getting that done through 1404,
2 for example.

3 I don't think the DOJ had any problem trying the liability
4 and injunctive relief issues of its case here, and that's why
5 we made the joint trial proposal. That would still be our
6 hope.

7 If we can't do that, we obviously would be going to trial
8 here and can we meet an April date. I think it is still
9 doable, although it is much more challenging, because of
10 discovery delays, because of our need to take depositions of
11 the Italian witnesses, and Mr. Marchionne's unfortunate death
12 complicates that for us because we would have more people to
13 examine.

14 I think there are some creative solutions to that. For
15 example, being able to use the documents rather than live
16 witnesses if the parties were both held to using documents
17 rather than witnesses so there wouldn't be unfair advantage or
18 surprise on either side. That would be one way to help us get
19 to trial in the spring of next year.

20 So it's increasingly tight. We'll still meet a trial date
21 if Your Honor gives us one today or if you wait until the next
22 time, but that may put a premium on some expedited and creative
23 approaches to the way the trial will be conducted, which I
24 think would be fully appropriate given that it may well be a
25 phased trial on common questions of liability that are going to

1 focus, I think, a hundred percent on the defendants and their
2 conduct and their documents and their witnesses, if we have a
3 chance to depose them.

4 **THE COURT:** Okay.

5 **MS. CABRASER:** Thank you.

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

7 Ms. Rendé, do you have any thoughts?

8 **MS. RENDÉ:** We are in a bit of an awkward position.

9 And as you mentioned, you know, if the defendants will not
10 agree to the waivers, then it does appear as though our trial
11 is set to be remanded at some point in the future to the
12 Eastern District of Michigan.

13 With that in mind, as we stated in the joint CMC
14 statement, we're not really sure how much we can comment on the
15 trial specifics, although for what it's worth, you did have a
16 question about a trial date in April and then you mentioned the
17 discovery schedule leading up to that trial.

18 As far as the United States is concerned, for us and our
19 trial, scheduling up to an April 29 trial date -- 2019 trial
20 date would really not give us sufficient time to meet any
21 discovery deadlines that would be geared towards an --

22 **THE COURT:** When do you think discovery -- if all else
23 fails and we're on a trial track, how much time do you need to
24 complete discovery to prepare for trial?

25 **MS. RENDÉ:** Well, for one example, you mentioned

1 possibly a Motion for Summary Judgment being due at the end of
2 2018. We would seek an additional several months. I mean,
3 perhaps, you know, aiming for trial in June or later, and it
4 really would depend on what the judge in Michigan would have in
5 mind, I think, for a trial date.

6 And with that in mind, you know, we would still plan to
7 have discovery for phase 1 of our trial continue before this
8 Court, but we do not expect to have or would not prefer to have
9 a discovery schedule that is directly in line, you know, with
10 experts, for example, with the PSE's trial set for April, if
11 that's when Your Honor chooses to set it.

12 **THE COURT:** All right. I'm going to defer, but I'm
13 going to ask the parties when we get back together on
14 September -- whatever the date was -- the first date -- the
15 7th, I think it was. In addition to getting an update on
16 progress with respect to discussions, settlement discussions,
17 to -- I'd like the parties to meet and confer and see if you
18 can come to -- and I understand there is some uncertainty about
19 where the United States' case may be tried, but assuming it
20 either is tried at the same time in -- within the same time
21 frame, whether it's in Michigan or here, I think realistically,
22 you know, I want to keep this within that same spring time
23 frame that we talked about.

24 So maybe instead of April, it might be May, perhaps
25 pushing towards June, to be realistic, but I don't want it to

1 go much beyond that if we are going to try this case -- if we
2 are going to have to try this case.

3 If you could meet and confer before that and perhaps come
4 up with a proposed schedule of summary judgment motions,
5 etc. -- I have a normal template. That may have to be
6 compressed or changed here in view of the international
7 discovery and everything else.

8 So let's put that on the agenda for the 7th.

9 **MS. RENDÉ:** Yes, Your Honor.

10 **THE COURT:** All right. Anything else that we need to
11 discuss this morning?

12 All right. Well, I guess everybody has their marching
13 orders, so to speak, and Mr. Feinberg has his. Even though he
14 left, he knows what he has got to do.

15 Right now we are planning on seeing you back on the 7th.
16 Everything else remains on track in terms of the next
17 litigation event.

18 Of course we will see you again this afternoon on the
19 Motion to Dismiss, but the time frame for the certification
20 motion remains in place.

21 And we will -- I'm going to endeavor to set a trial date
22 at the next setting of this case in September. All right.

23 **MR. GIUFFRÀ:** Your Honor, one thing. What I will do
24 is when we send in our papers shortly thereafter, maybe what we
25 will do is send a letter to the Court elucidating what we think

1 makes sense in terms of the possible evidentiary hearing and
2 then the other side can say what they think and then at least
3 from the scheduling standpoint, if it needs to be moved a week
4 so you have a day and a half rather than a day or maybe we can
5 do it in a day, although I'm sort of skeptical about that, we
6 can at least put it on the -- you know, put it in the calendar.

7 **THE COURT:** Okay.

8 **MR. GIUFFRA:** If that makes sense. I think that's
9 fair.

10 **THE COURT:** All right. Good. Thank you.

11 (Proceedings adjourned at 10:33 a.m.)
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

CERTIFICATE OF REPORTER

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

DATE: Friday, August 3, 2018

Pamela Batalo Hebel

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