

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MDL No. 2672 CRB (JSC)

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

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

\_\_\_\_\_ /  
This Order Relates To:

ALL ACTIONS (except securities fraud cases)  
\_\_\_\_\_ /

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

**A. Lead Counsel**

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

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

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

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

27 **B. Plaintiffs’ Steering Committee**

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

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following attorneys as members of the PSC:

Benjamin L. Bailey  
Bailey and Glasser LLP  
209 Capital Street  
Charleston, WV 25301

David Boies  
Boies Schiller and Flexner  
333 Main Street  
Armonk, NY 10504

David Seabold Casey, Jr.  
Casey Gerry Schenk Francavilla Blatt &  
Penfield LLP  
110 Laurel St  
San Diego, CA 92101

Roxanne Barton Conlin  
Roxanne Conlin and Associates  
319 7th Street  
Suite 600  
Des Moines, IA 50309

Paul J. Geller  
Robbins Geller Rudman and Dowd LLP  
120 East Palmetto Park Road, Suite 500  
Boca Raton, FL 33432

Michael D. Hausfeld  
Hausfeld LLP  
1700 K Street NW, Suite 650  
Washington, DC 20006

Adam J. Levitt  
Grant & Eisenhofer P.A.  
30 North LaSalle Street, Suite 1200  
Chicago, IL 60602

Frank Mario Pitre  
Cotchett Pitre & McCarthy LLP  
San Francisco Airport Office Center  
840 Malcolm Road, Suite 200  
Burlingame, CA 94010

Steve W. Berman  
Hagens Berman Sobol Shapiro LLP  
1918 Eighth Avenue, Suite 3300  
Seattle, WA 98101

Elizabeth Cabraser (chair)  
Lieff Cabraser Heimann & Bernstein,  
LLP  
Embarcadero Center West  
275 Battery Street, 29th Floor  
San Francisco, CA 94111-3339

James E. Cecchi  
Carella Byrne Cecchi Olstein Brody &  
Agnello, P.C.  
5 Becker Farm Road  
Roseland, NJ 07068

Jayne Conroy  
Simmons Hanly Conroy, LLC  
112 Madison Avenue  
New York, NY 10016

Robin L. Greenwald  
Weitz & Luxenberg, P.C.  
700 Broadway  
New York, NY 10003

Michael Everett Heygood  
Heygood, Orr, Pearson  
6363 North State Highway 161, Suite 450  
Irving, TX 75038

W. Daniel "Dee" Miles III  
Beasley Allen Crow Methvin Portis &  
Miles  
218 Commerce Street  
P.O. Box 4160  
Montgomery, AL 36103

Joseph F. Rice  
Motley Rice LLC  
28 Bridgeside Boulevard  
Mt. Pleasant, SC 29464

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Rosemary M. Rivas  
Finkelstein Thompson LLP  
1 California Street, Suite 900  
San Francisco, CA 94111

Lynn Lincoln Sarko  
Keller Rohrback L.L.P.  
1201 Third Avenue, Suite 3200  
Seattle, WA 98101

Christopher A. Seeger  
Seeger Weiss LLP  
77 Water Street, 26th Floor  
New York, NY 10005

J. Gerard Stranch IV  
Branstetter, Stranch & Jennings, PLLC  
227 Second Avenue N, 4th Floor  
Nashville, TN 37201

Roland K. Tellis  
Baron Budd, P.C.  
15910 Ventura Boulevard  
Encino Plaza, Suite 1600  
Encino, CA 91436

Lesley Elizabeth Weaver  
Block & Leviton LLP  
520 Third Street, Suite 108  
Oakland, CA 94607

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

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

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

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

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

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

7 **C. Government Coordinating Counsel**

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

19 **D. Defendants' Liaison Counsel**

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

25 **IT IS SO ORDERED.**

26 Dated: January 21, 2016



CHARLES R. BREYER  
United States District Judge