

UNITED STATES JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

In re: Chrysler-Dodge-Jeep)
EcoDiesel Marketing, Sales) MDL No. 2777
Practices, and Products) March 30, 2017
Liability Litigation) 1:14 p.m.
_____)

TRANSCRIPT OF ORAL ARGUMENT

Chair: Honorable Sarah S. Vance
United States District Court
Eastern District of Louisiana

Members: Honorable Marjorie O. Rendell
United States Court of Appeals
Third Circuit

Honorable Charles R. Breyer
United States District Court
Northern District of California

Honorable Lewis A. Kaplan
United States District Court
Southern District of New York

Honorable Ellen Segal Huvelle
United States District Court
District of District of Columbia

Honorable R. David Proctor
United States District Court
Northern District of Alabama

Honorable Catherine D. Perry
United States District Court
Eastern District of Missouri

Official Court Reporter:
Jennifer A. Pancratz, RMR, CRR, CRC
Sandra Day O'Connor U.S. Courthouse, Suite 312
401 West Washington Street, Spc 42
Phoenix, Arizona 85003-2151
(602) 322-7198

A P P E A R A N C E S

1
2 By: Christopher B. Hood, Esq.
3 Heninger Garrison Davis, LLC
4 For: R.D. Warren

5 By: Steve W. Berman, Esq.
6 Hagens Berman Sobol Shapiro LLP
7 For: Jose Chavez, et al., and Carpenter, Lawrence, et al.

8 By: Mark H. Troutman, Esq.
9 Isaac Wiles Burkholder & Teetor, LLC
10 For: Charles Marlatt, Jr., et al.

11 By: Leigh Rende, Esq.
12 United States Department of Justice
13 For: United States of America

14 By: Michael J. Wernke, Esq.
15 Pomerantz LLP
16 For: Victor Pirnik, et al.

17 By: Matthew D. Slater, Esq.
18 Cleary Gottlieb Steen & Hamilton LLP
19 For: Robert Bosch LLC

20 By: William B. Monahan, Esq.
21 Sullivan & Cromwell LLP
22 For: FCA US LLC
23
24
25

P R O C E E D I N G S

1
2 JUDGE VANCE: Next up is number 2777, in Re:
3 Chrysler-Dodge-Jeep EcoDiesel Marketing, Sales Practices, and
4 Products Liability Litigation.

5 Mr. Hood.

6 MR. HOOD: Thank you again, Your Honor, and may it
7 please the Court. Appreciate this second opportunity to be
8 before you today, and I hope to be extremely brief.

9 Since filing -- and solely for the purposes of
10 updating the Court about our position, we continue to
11 support -- Plaintiff Warren, rather, continues to support
12 consolidation.

13 We have since been persuaded, though, by the
14 thoughtful and carefully researched and well-supported
15 responses of a number of the plaintiffs in the case, that the
16 Northern District of Alabama is not the most appropriate court
17 for an MDL in this matter. And we would be and are supportive
18 of the reasons given for siting the MDL in the Northern
19 District of California.

20 I assume at this point that an MDL will be created.
21 We have no additional grounds to assert in support of
22 centralization other than those that appear in our moving
23 papers.

24 JUDGE VANCE: All right. Thank you, sir.

25 MR. HOOD: Thank you.

1 JUDGE VANCE: Mr. Berman.

2 MR. BERMAN: May it please the Court, Steve Berman on
3 behalf of those seeking transfer to the Northern District of
4 California.

5 JUDGE VANCE: Could you speak up, sir, please?

6 MR. BERMAN: Sure.

7 When I was preparing for today, I went and reread the
8 Volkswagen transfer order. This case is an emissions case,
9 just like the Volkswagen case. It involves the California Air
10 Resources Board issuing a notice of violation, just like
11 Volkswagen. And I submit to the panel that the same reasons
12 that animated you sending it to the Northern District of
13 California apply equally in this case as well.

14 And in this case, we have the California Air Resources
15 Board issuing a notice of violation and indicating in that
16 notice of violation that because of the poor air quality in
17 California, many California residents have suffered as a result
18 of FCA's actions. We think that that makes California the
19 jurisdiction with the greatest nexus.

20 Also, I would like --

21 JUDGE VANCE: Do you anticipate discovery from the
22 EPA?

23 MR. BERMAN: We anticipate coordinating, as we did in
24 Volkswagen, with both the EPA, and more importantly, I think,
25 the California Air Resources Board and the California Attorney

1 General's Office.

2 JUDGE VANCE: Which EPA office are you dealing with?
3 Is it Michigan or is it DC?

4 MR. BERMAN: I don't know yet, because we haven't
5 dealt with them yet in the case. We haven't got that far.

6 But I will point out to you that I think it was
7 vitally important in resolution of the Volkswagen case that we
8 were in San Francisco, but because of that, the California Air
9 Resources Board, acting through the California Attorney
10 General, agreed to appear in federal court, where normally they
11 would not do that. They agreed to coordinate with us in
12 reaching resolution, and I think that that will be a very
13 important factor in trying to get this case resolved.

14 In addition to the -- I would point out that with
15 respect to the other venues suggested, in particular, New York
16 and DC, there's something unusual that's happened here. No
17 plaintiff filed there. Now, usually in these high-profile
18 cases, plaintiffs file everywhere. No one filed in New York;
19 no one filed in DC. Why? Because of what happened in
20 Volkswagen, I think, for the most part, the plaintiffs' bar
21 understood the important nexus that California has with this
22 litigation.

23 JUDGE VANCE: All right. Thank you.

24 MR. BERMAN: Thank you.

25 JUDGE VANCE: Mr. Troutman.

1 MR. TROUTMAN: Thank you, Your Honors, and may it
2 please the Court. My name is Mark Troutman, and I'm here to
3 advocate on behalf of Mr. Marlatt and the other plaintiffs who
4 have filed in Ohio on behalf -- or in favor of the Southern
5 District of Ohio.

6 Given that we haven't talked much about whether to
7 consolidate the case, I'll go right to the actual location
8 of --

9 JUDGE RENDELL: Is there a case there?

10 MR. TROUTMAN: Excuse me?

11 JUDGE RENDELL: Is there a case there?

12 MR. TROUTMAN: There is, Your Honor, before -- pending
13 before Judge Marbley. It was filed shortly before the order
14 came out for the hearing.

15 JUDGE RENDELL: All right.

16 MR. TROUTMAN: The Court should strongly consider the
17 Southern District of Ohio because Ohio is preeminent in the
18 automobile industry. 70.5 percent of light vehicles are
19 actually manufactured within a 500-mile radius of the court,
20 and --

21 JUDGE VANCE: What does that have to do with the facts
22 of this case?

23 MR. TROUTMAN: It's the same argument we're looking at
24 with volume of vehicles and impact on the local area. You
25 know, Chrysler is less than three hours away from Columbus,

1 Ohio. In fact, Chrysler has plants all over the Midwest. All
2 of their plants are in Ohio, Michigan, Indiana, and Illinois,
3 so the actual technology going into these vehicles --

4 JUDGE BREYER: Where were most of these cars sold?

5 MR. TROUTMAN: As far as the briefing indicates, the
6 highest number of cars were sold in California, Your Honor. In
7 terms of --

8 JUDGE VANCE: That's true of every product in America.

9 MR. TROUTMAN: Yeah, that would support every consumer
10 class action ending up in California.

11 In terms of actual marketing, which is key to this
12 case, and the representations made by FCA, as we pointed out in
13 our briefing, 78 dealerships are in a 100-mile vicinity of
14 Columbus, and this actually exceeds that of some of the other
15 jurisdictions.

16 JUDGE HUVELLE: But where was the manufacturing and
17 design of these devices? Where is the center of gravity? Is
18 it, first of all, in this country?

19 MR. TROUTMAN: We haven't gotten to that point yet,
20 Your Honor. Presumably in Auburn Hills, Michigan, which is a
21 short drive from Columbus, and again, the plants are around the
22 area.

23 JUDGE VANCE: Why not Michigan? Why not Eastern
24 District of Michigan?

25 MR. TROUTMAN: Eastern District of Michigan has more

1 case -- has more MDL cases than Columbus. Columbus has two
2 right now, one of which is already being resolved and the
3 second of which is in an ongoing negotiation state.

4 In conclusion, Your Honors -- I see my time is up --
5 Judge Marbley has been a judge for 20 years, has never had an
6 MDL, and will be our next chief judge and would be very capable
7 of handling a case like this.

8 JUDGE VANCE: All right. Thank you.

9 MR. TROUTMAN: Thank you.

10 JUDGE VANCE: Mr. Rende? Or Ms. Rende.

11 MS. RENDE: May it please the Court, Leigh Rende on
12 behalf of the United States, here for the Environmental
13 Protection Agency.

14 And I'm here in support of centralization and transfer
15 to the Eastern District of Michigan.

16 JUDGE VANCE: Are you involved in litigation with
17 defendants on these issues?

18 MS. RENDE: No. As you know, we have not filed a
19 related complaint in this matter. However, we are an
20 interested party, mainly --

21 JUDGE BREYER: So you file in California --

22 JUDGE VANCE: So your interest is based on what?

23 MS. RENDE: Our interest is based on the fact that EPA
24 issued a notice of violation to the defendants, FCA US and
25 FCA NV, relating to the subject vehicles and violations of the

1 Clean Air Act. Now, the EPA's notice of violation forms the
2 basis for the complaints in these matters. Every plaintiff has
3 referenced --

4 JUDGE BREYER: As does CARB. As does CARB.

5 MS. RENDE: As does CARB, correct.

6 JUDGE BREYER: Right, okay. So what -- in Volkswagen,
7 as you know, you initially filed -- if I'm right about this.
8 I'm not quite sure I'm right about this, but I think it was
9 initially filed in one district, then transferred to the
10 Northern District of California. Is that correct?

11 MS. RENDE: I must confess that I'm not sure where it
12 was initially filed, but --

13 JUDGE BREYER: Okay. But you can go -- EPA can go
14 anywhere; right?

15 MS. RENDE: Correct. And we have a history of being
16 present in Northern District of California in the VW matter, as
17 you mentioned.

18 The other reason why we are interested in the Eastern
19 District of Michigan is because of the discovery burden. Given
20 EPA's central role relating to -- relating to regulating the
21 emissions of these particular subject vehicles, it's highly
22 likely that all of the plaintiffs are going to seek discovery
23 from EPA.

24 JUDGE VANCE: But if you're a nonparty, you're going
25 to be deposed and produce evidence where you are, not in the

1 transferee court. Right?

2 MS. RENDE: Well, so Eastern District of Michigan is
3 really -- it's convenient, it makes common sense to transfer
4 the case there, and it's capable of handling it.

5 In terms of common sense -- well, the convenience is
6 obvious in that EPA's main office for regulating air emissions
7 from these vehicles is located in the Eastern District --

8 JUDGE BREYER: I'm trying to figure out your common
9 sense argument, because maybe common sense would have told you
10 not to transfer the case to San Francisco in Volkswagen. I
11 mean, you go wherever. You go wherever the case is.

12 MS. RENDE: Correct.

13 JUDGE BREYER: I'm trying to figure out why the EPA is
14 trying to pick one forum or another to resolve this case.
15 Especially when CARB, which played a large role in these
16 matters, an extremely large role, isn't going to be in
17 Michigan. And they're not going to be in the District of
18 Columbia.

19 And why should you pit EPA against CARB? Why this
20 division? Why -- you come out here. This is the government.
21 You come out here and you take a position contrary to a
22 position that your co-environmental agency takes. And I'm
23 trying to figure out, what's so different about this case?

24 MS. RENDE: Our intent is not to -- our intent is not
25 to go against CARB --

1 JUDGE BREYER: Well, it looks that way, doesn't it?

2 MS. RENDE: Not at all, Your Honor.

3 JUDGE BREYER: Doesn't it appear that maybe you're
4 going to have different standards, that the EPA is rethinking
5 its policy on these issues, and it may be quite different from
6 the policies enunciated by CARB?

7 MS. RENDE: Well, what I am focusing today is not to
8 get into a policy or political discussion but really on the
9 recommendation for a venue. And for us, in terms of
10 convenience, Eastern District of Michigan does make the most
11 sense, especially due to the nexus of the actions that caused
12 the alleged violations of the Clean Air Act.

13 JUDGE VANCE: Do you envision joining this litigation?

14 MS. RENDE: It's currently -- we're currently
15 investigating this matter. As EPA referenced in its notice of
16 violation, the investigation is ongoing. EPA did allege
17 violations of the Clean Air Act, and investigations continue in
18 this matter.

19 JUDGE VANCE: All right. Thank you.

20 MS. RENDE: Thank you.

21 JUDGE VANCE: Mr. Wernke? Wernke? How do you say
22 your name?

23 MR. WERNKE: "Wernke," Your Honor.

24 JUDGE VANCE: "Wernke"? Okay.

25 MR. WERNKE: Good afternoon, Your Honor. I'm Michael

1 Wernke of Pomerantz. We represent the plaintiffs in the Pirnik
2 action pending in the Southern District of New York.

3 Regardless of where this panel decides to put the MDL,
4 to locate the MDL, the Pirnik action should not be included.
5 The Pirnik action was filed in September of 2015, and up until
6 about a month ago, it went -- it proceeded for a year and a
7 half having absolutely nothing to do with emissions. The
8 plaintiff's allegations were -- survived a motion to dismiss in
9 October, and since October, the parties have been engaged in
10 discovery.

11 JUDGE VANCE: But didn't you recently add allegations
12 about failure to disclose defeat devices to your complaint?

13 MR. WERNKE: We did, Your Honor. And the point I'm
14 making here is that up until at that point, about a month ago,
15 we added allegations to the complaint. We amended the
16 complaint.

17 JUDGE VANCE: So won't that require common discovery
18 with these other plaintiffs?

19 MR. WERNKE: There could be -- there could be some
20 overlap. First of all, only -- there will only be any -- there
21 will be absolutely zero overlap with the other plaintiffs in
22 these consumer actions unless Judge Furman in the Southern
23 District of New York denies defendants' motion to dismiss. If
24 Judge Furman denies -- grants -- sorry, if Judge Furman denies
25 defendants' motion to dismiss, only then will there be some

1 overlap.

2 And even then, there will be almost no overlap on any
3 issues of law. There will be some overlap on some issues of
4 emissions, but we still have this entire issue of the vehicle
5 safety, recalls, which was the genesis of this litigation
6 originally, that will have absolutely nothing to do with it.
7 Now, of course, if Judge Furman grants defendants' motion to
8 dismiss, then there's absolutely no overlap.

9 So for those reasons, in this -- our case -- just to
10 give you a sense of it, to date we have received 600,000 pages
11 of documents from the defendants that have nothing to do with
12 emissions. It all has to do with recalls, regulations having
13 to do with vehicle safety. We have already briefed -- put out
14 a motion for class certification, which we're waiting for
15 defendants to respond to.

16 So the case is well underway, and from our position,
17 there is no -- given the minimal amount of overlap and the
18 different kinds of claims in a securities case, issues having
19 to do with loss causation, scienter, damages, things of that
20 nature, that it doesn't make sense to be included in the MDL.

21 JUDGE VANCE: All right. Thank you.

22 Mr. Slater?

23 MR. SLATER: Thank you, Your Honor. I'm here on
24 behalf of Robert Bosch LLC, which is one of the defendants in
25 some of the actions.

1 This is a nationwide matter with potential plaintiffs
2 and potential activity in a variety of locations. The presence
3 of a larger number of cases in California at the moment is a
4 bit of an artifice. The same law firms are bringing multiple
5 cases on behalf of different named plaintiffs within the same
6 district, making it appear that there are more cases, but
7 they're all the same claims.

8 JUDGE HUVELLE: Well, but there is, you would agree, a
9 nexus with California, given the California local EPA?

10 MR. SLATER: There is a nexus to California, but it's
11 not a necessary one or an overwhelming one in terms of the
12 convenience of the parties.

13 JUDGE VANCE: What connection is there to DC?

14 MR. SLATER: The EPA is in DC. And then to the extent
15 that we're dealing with defendants from outside the country,
16 there's a significant convenience factor --

17 JUDGE BREYER: I'm just trying to figure out how
18 you're going to come to terms with the EPA, because you'd say,
19 "Oh, it's easy. They're just down the street." Just down the
20 street, when actually you're going to have to come to terms
21 with CARB as well.

22 And that is to say that if this case eventually
23 settles, then you're going to have to have these parties in
24 front of you in order to effectuate a settlement, and you know
25 that better than anybody else in light of your experience in

1 Volkswagen. You can't get a settlement with somebody sitting
2 out there who has a very, very strong -- very, very strong --
3 interest in the case.

4 MR. SLATER: Well, as Your Honor knows, there are 49
5 other states and two districts that are also very actively
6 involved in litigating in Volkswagen, so having the benefit of
7 CARB's proximity doesn't solve all the problems.

8 JUDGE BREYER: That's a different issue. That's a
9 different issue, and it's one that actually I have to address
10 in Volkswagen, as you know.

11 MR. SLATER: Yes.

12 JUDGE BREYER: But that didn't prevent a settlement of
13 500,000 vehicles, in which you participated.

14 MR. SLATER: Yes, Your Honor. But that took place
15 largely outside of court, and the -- most of the activity took
16 place in the eastern half of the United States. So I think the
17 parties go where the activity is.

18 JUDGE BREYER: Where the settlement master is.

19 MR. SLATER: Well, in that case of where the
20 settlement master is. But in addition, there weren't a lot of
21 depositions in this case, but all of them took place in the
22 East -- almost half of them took place in the District of
23 Columbia.

24 Some of the papers in terms of California, just in
25 terms of -- my client spoke to the presence of a facility in

1 the Northern District. It has absolutely nothing to do with
2 this case and should not be a basis.

3 We think that there is reason and the Court has
4 flexibility, the panel has flexibility, to assign the case to
5 any district, as has been discussed this morning. There is a
6 reason, including the convenience of the parties, to assign it
7 to the District of Columbia, and that's what we would advocate.

8 Thank you.

9 JUDGE VANCE: Thank you.

10 MR. MONAHAN: May it please the Court, Bill Monahan
11 for FCA US.

12 As an update, Your Honors, there's 19 federal actions
13 now in 10 different judicial districts. FCA supports
14 centralization in the SDNY or in the Northern District of
15 California.

16 As Mr. Slater noted, this is a nationwide litigation.
17 The vehicles at issue were sold in each of the 50 states.
18 Claims have been brought on behalf of purchasers and lessees in
19 each of the 50 states.

20 We believe that one of the most important
21 considerations as a result of the nationwide -- the fact that
22 this is nationwide litigation is convenience of the parties,
23 the witnesses, and also nonparties.

24 FCA NV is headquartered in London. The manufacturer
25 of the engines at issue is located in Italy. Bosch is located

1 in Germany. Given these international touch points, we believe
2 that the SDNY, which is the largest East Coast transportation
3 hub near both JFK and Newark, would be the most convenient for
4 the parties.

5 The Northern District of California would also be a
6 good option, for reasons already discussed. I won't go into
7 them. I would just --

8 JUDGE VANCE: What is your position on the securities
9 case?

10 MR. MONAHAN: Your Honor, in about two months, less
11 than two months, our motion to dismiss the emissions claims
12 will be fully briefed before Judge Furman. It will then be
13 decided -- if he grants our motion, that is not an emissions
14 case. If he denies our motion, it is an emissions case. And
15 we would respectfully suggest that the panel refrain from
16 deciding whether or not that case is related until after Judge
17 Furman decides that motion to dismiss.

18 JUDGE RENDELL: Well, we could not include it and then
19 put it on a conditional transfer order once that's decided.

20 MR. MONAHAN: Correct, Your Honor.

21 JUDGE HUVELLE: Has Judge Furman -- that is his only
22 case?

23 MR. MONAHAN: I'm sorry?

24 JUDGE HUVELLE: Judge Furman's only case is the one
25 that's been fully briefed. Would he be the judge you're asking

1 for in the Southern District?

2 MR. MONAHAN: We have absolutely no objection to Judge
3 Furman. And that is Judge Furman's only case, yes, Your Honor.

4 Thank you.

5 JUDGE VANCE: Anything else you would like to say?

6 MR. MONAHAN: No, Your Honors, unless you have any
7 questions. Thank you.

8 JUDGE VANCE: Thank you.

9 This concludes our hearing. Thank you very much.

10 (Hearing concluded at 1:32 p.m.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

I, JENNIFER A. PANCRATZ, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 7th day of April, 2017.

s/Jennifer A. Pancratz
Jennifer A. Pancratz, RMR, CRR, CRC