

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE CHARLES R. BREYER, JUDGE

IN RE: VOLKSWAGEN "CLEAN DIESEL" )  
MARKETING, SALES PRACTICES AND ) NO. 15-MD-02672 CRB  
PRODUCTS LIABILITY LITIGATION, )

San Francisco, California  
Thursday  
August 25, 2016  
8:00 a.m.

TRANSCRIPT OF PROCEEDINGS

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(Appearances continued, next page)

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**Also Present:** MAGISTRATE JUDGE JACQUELINE SCOTT CORLEY  
ROBERT MUELLER, III, SETTLEMENT MASTER  
JAMES L. QUARLES, III, ESQ.

Numerous other counsel also present, in person and via telephone through CourtConnect, as reflected in the minutes.

1 **THURSDAY, AUGUST 25, 2016**

**8:00 A.M.**

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

3 **THE CLERK:** Calling Case 15-MD-02672, In Re:  
4 Volkswagen "Clean Diesel" Marketing, Sales Practices and  
5 Product Liability Litigation.

6 Appearances, Counsel?

7 **MS. CABRASER:** Good morning, Your Honor. Elizabeth  
8 Cabraser, Plaintiffs' lead counsel, and on behalf of the  
9 Plaintiff Steering Committee.

10 **THE COURT:** Good morning.

11 **MR. VAN EATON:** Good morning, Your Honor. Josh Van  
12 Eaton for the Justice Department, with my colleague Bethany  
13 Engel.

14 **THE COURT:** Good morning.

15 **MR. AKERS:** Good morning, Your Honor. Nicklas Akers  
16 for the People of the State of California. I'm joined by my  
17 colleague Jon Worm.

18 **THE COURT:** Good morning.

19 **MR. BERMAN:** Good morning, Your Honor. Steve Berman  
20 appearing here today on behalf of the Volkswagen franchise  
21 dealers.

22 **THE COURT:** Good morning.

23 **MR. COHEN:** Good morning, Your Honor. Jonathan Cohen  
24 for the Federal Trade Commission. With me today is my  
25 colleague Simon Han.

1           **THE COURT:** Good morning.

2           **MR. GIUFFRA:** Good morning, Your Honor. Robert  
3           Giuffra, Sullivan & Cromwell, for Volkswagen. I'm here with  
4           my partner Mike Steinberg, and with Jeff Chase and Mr. Gallub  
5           of the Herzfeld & Rubin firm. Good morning.

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

7           **MS. DAWSON:** Good morning, Your Honor. Cari Dawson,  
8           Alston & Bird, liaison counsel for the Porsche Defendants.

9           **THE COURT:** Good morning.

10          **MR. SLATER:** Good morning, Your Honor. Matthew  
11          Slater of Cleary Gottlieb, for Robert Bosch GmbH and Robert  
12          Bosch LLC.

13          **THE COURT:** Good morning, Mr. Slater.

14                 Well, good morning, ladies and gentlemen. Let me just  
15                 remind you we're on Court Call, which means that a number of  
16                 people are participating, listening to the audio version.

17                 So for their benefit, I would point out that Judge Corley  
18                 is present, as well as Director Mueller. And Mr. Quarles is  
19                 here as well. Director Mueller and Mr. Quarles, who are  
20                 participating. Director Mueller is the Settlement Master.  
21                 And of course, others have assisted him in this settlement  
22                 process.

23                 We have set this hearing this morning to get an update on  
24                 the three-liter situation. But before going into that, I  
25                 would like to address two issues relating -- the first one

1 related to the two-liter issue.

2 As I understand, the notice has gone out. Is that  
3 correct, Ms. Cabraser? Is that right?

4 **MS. CABRASER:** Yes, Your Honor. All notices were  
5 emailed and/or mailed to all of the two-liter owners and  
6 lessees. So that was completed last week.

7 **THE COURT:** And that's very good news. Thank you so  
8 much for accomplishing that.

9 And again, my understanding is that the notice, itself,  
10 that has been mailed or e-mailed to members of the class in  
11 the two-liter situation are detailed. That is, that they are  
12 -- they explain the terms of the settlement, the -- of the  
13 proposed settlement, they explain the process for moving  
14 forward.

15 Is that correct?

16 (Reporter interruption)

17 **THE COURT:** Stand in front of the microphone, please.  
18 Thank you.

19 **MS. CABRASER:** Yes, Your Honor, that's correct. The  
20 notices that were mailed and/or e-mailed to all of the class  
21 members were the detailed 30-plus-page class-action settlement  
22 notices that Your Honor approved.

23 **THE COURT:** Great. So, I -- I raise that not in  
24 terms of the adequacy of the notice, which I believe is  
25 adequate, but because the Court has been advised by the

1 Federal Trade Commission that there have been reports of  
2 incidences in which individuals who are class members have  
3 been approached with proposals with, quote, end quote, that  
4 may be different from the proposed settlement, that may appear  
5 to the individuals as being more attractive, but in fact, may,  
6 themselves, in terms of opportunity, be deceptive. And --  
7 and/or possibly adversely affecting the rights of a claimant.

8 And I raise that not to get into the merits of any  
9 particular proposal out there, but rather to say that it is  
10 very important for class members to read the official notice.  
11 That is, the approved notice.

12 And if there are questions about that approved notice, the  
13 notice itself aids and assists in -- in either responding  
14 directly to the questions or to provide a means by which any  
15 class member can get further information about the settlement,  
16 if there's any issues that that individual wants to resolve.

17 So what I'm saying in a rather long-winded way is simply  
18 for class members, before they make a decision, if they're  
19 making -- that's what the process is about -- that they go to  
20 the notice. And look at that notice. And understand that  
21 notice. Because that will tell them what is really out there  
22 in terms of real opportunities, as distinct from something  
23 that may be pitched to them by individuals who have some other  
24 agenda in terms of resolving their claims.

25 So I wanted just to point that out to anyone that may be



1 listening, and urge them to follow the procedures that are set  
2 forward in the notice.

3 I have also been advised that there may be some resolution  
4 of some additional claims involving the dealers. And  
5 Mr. Berman, if you would like to address that, at this time,  
6 that would be helpful.

7 **MR. BERMAN:** Thank you, Your Honor.

8 I'm pleased to report that we have an agreement in  
9 principle. And the agreement involves the claims of  
10 Volkswagen franchise dealers.

11 You haven't heard much about them. But they have, like  
12 consumers, have been financially hurt here. They have cars on  
13 their lots they can't sell. Their franchise value has gone  
14 down. And they have invested millions in these Volkswagen  
15 franchises. So we are pleased that the settlement will  
16 address the financial harm that they've incurred.

17 In addition, I think it will benefit the consumer  
18 settlement. I think it's a good thing when the settlement is  
19 being implemented to heal the wounds between the dealers and  
20 Volkswagen. So I think it has a therapeutic effect in getting  
21 the consumer settlement done properly as well.

22 I think -- I haven't discussed this fully with  
23 Mr. Giuffra, but I think we would like to be in a position to  
24 present the motion within three weeks.

25 **THE COURT:** Well, that is very good news. And I

1 think that we ought to pick a date. I love dates. I love  
2 dates. I love 8:00. Some days I like 8:00 better than other  
3 days. But, let's pick a date.

4 So if we were to say that you feel that you could file  
5 with the Court something within three weeks, that would be --  
6 well, all the way to September 23rd.

7 Is that doable, Mr. Giuffra?

8 **MR. GIUFFRA:** Your Honor, I think maybe a month might  
9 just be safer, you know, with the end of the summer. And we  
10 still -- we have an agreement in principle. We think we are  
11 very far along with getting this wrapped up.

12 I just would want to make sure that we can get it done in,  
13 I think -- my guess is four weeks is what --

14 **THE COURT:** Four weeks. Great. September 30th.  
15 You've got it. Okay. That clearly is the end of summer, I  
16 mean, by anybody's calendar, isn't it?

17 **MR. GIUFFRA:** Yes.

18 **THE COURT:** Maybe the problem is that your family is  
19 yet to have a summer. Is that it, Mr. Giuffra?

20 **MR. GIUFFRA:** Well, last weekend we were at the  
21 beach. So -- but yes, Your Honor. And again, the company is  
22 very pleased about this resolution. There are about 650  
23 franchise Volkswagen dealers. And we consider this an  
24 important step forward.

25 **THE COURT:** Okay, very good.

1           **MR. BERMAN:** Thank you.

2           **THE COURT:** Thank you very much. So let's turn to  
3 the major issue that remains yet unresolved, which is the  
4 three-liter cars.

5           And let me turn to you, Mr. Giuffra, to give me your  
6 report on that.

7           **MR. GIUFFRA:** Yes, Your Honor. By way of background,  
8 I think it's important to remember that the three liter issue  
9 came up much later in the process than the two-liter issue.  
10 Started in November.

11           And we have been working very hard with the EPA and CARB  
12 in working toward a fix of those vehicles. And obviously, we  
13 have the obligation to prove to the EPA, CARB, that we can fix  
14 the vehicles.

15           And the long and short of it is the company still believes  
16 it can fix these vehicles without adversely affecting their  
17 performance. And we believe we can fix them to the standard  
18 to which they were originally certified. Can't guarantee it,  
19 Your Honor. It's an iterative process with the government.

20           And by the way of background, the two liters, we're  
21 talking about just under 500,000 cars. With respect to these  
22 cars, cars that were actually sold in the United States, we're  
23 talking a little bit over 80,000 cars. And they can be  
24 divided into essentially the following groups.

25           There is a SUV group which is SUV 2.2, it's Gen 2.2. And

1 those are VW Touaregs and Cayennes. There were also some  
2 passenger cars which are in the 2.2 category. So it's roughly  
3 7,000 of the 2.2 SUVs, and then another 22,000 of the 2.2  
4 passenger cars.

5 Then there are 2.1 SUVs. Those are Touaregs and Cayennes.  
6 And then passenger cars, 2.1.

7 So you're talking roughly 60,000 of these 2.2 vehicles.  
8 There's another 20,000 or so, what we call Gen 1 three-liter  
9 cars. And those consist of Q7 and Touareg vehicles.

10 Now, we have been working, as I mentioned, very hard with  
11 the government. It's very important to Volkswagen to address  
12 the issues of our customers with respect to the three-liters.  
13 They are obviously extremely valued. And again, I think this  
14 is a situation where actions speak louder than words. We  
15 first dealt with the two-liter customers, then we dealt with  
16 the dealers, and we've obviously worked with the government.

17 Now, the three-liter cars are not like the two-liter cars.  
18 We weren't able to fix the two-liter cars to the standard to  
19 which they were originally certified. The three-liter cars  
20 have different systems, better emissions-control systems, and  
21 are bigger. And we also believe that those cars are emitting  
22 far less NOx in excess of what they were certified, than the  
23 two liters.

24 Now, we obviously have to convince the agencies of that.  
25 And we are focusing first, Your Honor -- and this has been,

1 again, an iterative process. Lots of meetings. I actually  
2 went to one of the meetings in El Monte, California. It's a  
3 lot of engineers involved, a lot of technical work, testing  
4 results and the like.

5 But we focused initially on the Generation 2 cars because  
6 those are the newest generation of the three-liter, and they  
7 have the longest useful life left. And obviously, being able  
8 to fix those cars will be best for the environment, because  
9 they have the longest lifetime.

10 And so, I think the parties have been working in good  
11 faith. And Volkswagen at the highest levels of the company is  
12 committed to moving ahead.

13 Now, in terms of a timeline -- and I think this is  
14 important. Your Honor's very focused on deadlines. Rightly  
15 so. And I think it's obviously prodded the parties forward in  
16 this matter.

17 This iterative process is one where we're obviously  
18 providing information to the regulators on an ongoing basis.  
19 And we have to demonstrate the effectiveness of the fix. We  
20 believe that we will be submitting by November 4th documents  
21 that will be -- the documents we believe are all necessary,  
22 including test vehicles, to demonstrate that the Gen 2.2 SUVs  
23 can be made emissions-compliant. Obviously, the government  
24 has to then do its work.

25 And we believe that the papers and the documents that

1 we'll be submitting for those vehicles, for the 2.2 SUV, can  
2 be a template for the submissions for the remaining Gen 2  
3 cars. And that the fixes, in our belief, build on each other.

4 And obviously, the government needs to determine whether  
5 the fix is a durable one; what kind of testing we're going to  
6 do. But we believe that that initial submission that will be  
7 -- that submission, the complete submission on the 2.2 SUV  
8 will be an important milestone to show that the cars can be  
9 fixed. And it will provide a path forward in terms of  
10 upgrading the rest of the vehicles.

11 And we have had discussions with the Department of Justice  
12 and the EPA and CARB about preparing a document which was  
13 similar to the document that we had in the two-liter consent  
14 decree, which was Appendix B (Indicating quotation marks).  
15 And that document sort of provided the standards that we would  
16 have to meet, and what regulatory flexibility might be  
17 obtained, and how the submission dates would be all laid out.  
18 And that was something that was laid out for the two-liter.

19 And we've discussed, and Volkswagen is committed to  
20 working with the government, starting right now. And we've  
21 already internally started preparing what we think will be an  
22 Appendix B type document.

23 And that document would, you know, provide timetables,  
24 talk about what the emissions-modification criteria would be,  
25 what hardware and software requirements would be required,

1 what test vehicles would be made available, what on-board  
2 diagnostics issues and how they would be addressed.

3 On-board diagnostics are the lights on your vehicle that  
4 go off when there is a problem. We don't want those to go off  
5 when there isn't a problem, so that makes it very complicated.

6 And Your Honor, I can't understate the complexity of this.  
7 You're literally talking about two million lines of code.  
8 It's very, very complicated.

9 Also this Appendix B document would deal with things like  
10 the durability testing, fuel economy, warranty issues,  
11 labeling issues and the like.

12 So we would be prepared to do that, and we've told the  
13 government that. And we think that's a path forward. But I  
14 think the first milestone day is that early November date for  
15 those 2.2 SUVs.

16 We've also discussed, Your Honor, having meetings with the  
17 Department of Justice, EPA, and CARB in Washington in  
18 September. And, and so, you know, again, it's -- we have to  
19 prove it to the government. And we believe we can fix the  
20 cars. But obviously, you know, it's something we have to  
21 prove.

22 Just roughly in terms of what the -- what the fix that  
23 we're contemplating would involve for the newer vehicles, the  
24 2.2 SUVs, it would involve a software flash that could be done  
25 in under a half hour.

1           For the older vehicles in the 2.1 and 2.2 category, we  
2 would upgrade the catalytic converter and upgrade various  
3 sensors, so that those cars would have the catalytic converter  
4 and the sensors that are in the most -- the latest vehicle we  
5 have.

6           And then for the Gen 1s which are further down the road,  
7 we have additional work to do there. That would also involve,  
8 you know, additional changes with respect to the software,  
9 changes with respect to the sensors. And we have a separate  
10 team of engineers that's working on those vehicles. So I  
11 think, Your Honor, it's fair to say that we are working very  
12 hard on that.

13           The company's view is that this is a two step process, as  
14 was the two-liter. We've got to persuade the government that  
15 we have a fix, and again, we think we can have a fix that's  
16 emission-compliant. There are things that flow from that.

17           Obviously, in our view, if one can do an  
18 emissions-compliant fix, you're going down the road of a  
19 recall. And it's a different situation than in the two-liter  
20 scenario.

21           And once we deal with that, then to the extent there are  
22 any customer issues, which I would view as the second step of  
23 the process, we would then address those issues.

24           But, you know, the bottom line, Your Honor, is Volkswagen  
25 is committed to regaining the trust of all of its customers.



1 And, you know, we have teams of people that are working, you  
2 know, this week, last week, with the government, to try to  
3 bring this to resolution.

4 **THE COURT:** Okay, thank you.

5 Let me hear from the government, if I might. I'll turn to  
6 the Plaintiffs.

7 **MR. VAN EATON:** Josh Van Eaton.

8 Thank you, Your Honor.

9 The agency, the EPA and CARB definitely believe that the  
10 public is best served by moving as quickly as possible on  
11 these vehicles. So I want to assure you and the car owners  
12 that are listening that they have been evaluating these  
13 cars -- the problem with these cars since last fall. And they  
14 evaluate the proposed solutions from the company just as soon  
15 as they come in, and they are able to. It is their absolute  
16 highest priority, for the technical teams.

17 They have conducted regular meetings with the Defendants  
18 in person, by phone. Exchanges of information, vast amounts  
19 of information, highly-technical engineering information, in  
20 writing, almost daily.

21 And so it's very difficult to project a timetable for  
22 resolution because this work is ongoing. And without having  
23 complete test results from the Defendants on which they can  
24 base their assessment, it's a difficult exercise.

25 The bottom line is the agencies will not agree to a

1 solution until they are convinced that the solution will work.  
2 And they cannot be convinced that it will work without  
3 performing the necessary confirmatory testing, and reviewing  
4 the necessary data that is submitted by the Defendants. So  
5 they are eagerly awaiting those submissions.

6 And as Your Honor would expect, the date that they receive  
7 the submission is not the date that they are able to make a  
8 decision. It takes a certain amount of time to verify what  
9 they have received, to have their own engineers analyze it and  
10 make a sound engineering decision on behalf of the public.

11 So that is the process that we have been engaged in and  
12 that we anticipate continuing. And as soon as those  
13 submissions are in, they will be evaluated as quickly as  
14 possible, and a decision will be made.

15 **THE COURT:** So if I understand this correctly, that  
16 the government's in a position, or will be in a position, or  
17 is now in a position that once you receive information,  
18 assuming that information is complete, you then will be able  
19 to engage in -- I don't know whether we call it "verify" or  
20 "confirmatory testing."

21 And in that process, you will be in the position, then,  
22 once the -- as the confirmatory testing is done, to either  
23 reject or accept the proposed engineering solution to the  
24 three-liter cars. But you are not in that position yet,  
25 because you have yet to receive the completed tests from the

1 -- from Volkswagen.

2 Is that --

3 **MR. VAN EATON:** That's correct, Your Honor.

4 **THE COURT:** But I hear you saying that once you get  
5 those, you will move expeditiously to conduct the necessary  
6 confirmatory testing. It will either be yes or no, but it  
7 may -- it may be some sort of combination. Maybe yes, but, or  
8 no, but.

9 But you're just simply not in that position until you get  
10 the necessary information from Volkswagen.

11 **MR. VAN EATON:** That's correct, Your Honor. And I  
12 would reiterate it is ongoing, so it's not as though we have  
13 nothing to evaluate or discuss at this time.

14 **THE COURT:** Right.

15 **MR. VAN EATON:** But I would also highlight the  
16 assumption articulated by Your Honor, which is once we receive  
17 complete information. So...

18 **THE COURT:** If you were to receive this information  
19 by, let's assume, oh, October 24th, that's a nice Monday, you  
20 were to receive the information by that day, you would be able  
21 to initiate the necessary confirmatory testing forthwith.

22 Is that right?

23 **MR. VAN EATON:** As soon as it is received, we will  
24 start work.

25 **THE COURT:** Even if it came in before October 24th.

1           **MR. VAN EATON:** Yes, Your Honor.

2           **THE COURT:** But if it came in October 24th, that  
3 would be -- that would be a time that you could turn to it.

4           **MR. VAN EATON:** Yes, Your Honor.

5           **THE COURT:** Right away. Right?

6           **MR. VAN EATON:** Correct.

7           **THE COURT:** Okay. Let me hear from -- thank you very  
8 much, Mr. Van Eaton.

9           Do the Plaintiffs wish to comment on this at this point?

10           **MS. CABRASER:** Just briefly, Your Honor. The  
11 decision-making with respect to emissions modifications and  
12 potential fixes is, of course, the responsibility of the  
13 governmental agencies.

14           But the owners and lessees of the three-liter vehicles  
15 have the solution though the emissions problem in their hands.  
16 They're very much part of the solution. We've seen with the  
17 proposed two-liter settlement that when the owners and lessees  
18 are made part of the solution, and treated fairly, they step  
19 up. And over 200,000 of them have already taken first steps  
20 to participate in a settlement, if it's approved, although  
21 there's no looming deadline for them to do so.

22           We would like to set the course of potential three-liter  
23 resolution on essentially the same timetable. So it's good  
24 news to hear about discussions in September and October. And  
25 reporting and information in October. And we would propose

1 that the consumers, as well, be a part of any such  
2 discussions. We are moving forward on litigation for  
3 three-liters in the meantime, as is our job to do as a PSC.

4 But the three-liter owners have been understandably eager  
5 and anxious to find out how and when they can be a part of the  
6 solution.

7 So that's our request on behalf of the consumers. They  
8 play a pivotal role here. And they would like to be part of  
9 that solution, if there is a solution, as early as possible.

10 Otherwise, at an appropriate future date that Your Honor  
11 sets, we would like to propose scheduling on the litigation  
12 side of the matter, and an expedited trial date as we  
13 requested earlier this year for two-liters, which we believe  
14 was a positive step in expediting a resolution.

15 There's a lot we don't know yet about three-liters. There  
16 was a lot we didn't know about two-liters when we engaged in a  
17 resolution. And we were able to structure a resolution that  
18 is flexible, and that provides choices and options, so that  
19 whatever happens with respect to emissions modifications on  
20 the two-liter side, consumers will be treated fairly and will  
21 have choices. We believe we can do the same with  
22 three-liters, particularly if the information Mr. Giuffra  
23 suggests is forthcoming in the near term.

24 Thank you.

25 **THE COURT:** Let me ask you, Ms. Cabraser, before you

1 escape --

2 **MS. CABRASER:** Yes, Your Honor.

3 **THE COURT:** I don't see why, in this process where we  
4 are today, there can't be discussions between the Plaintiffs  
5 Steering Committee and Volkswagen as to alternative solutions  
6 to the problem.

7 Let me say a couple things about that. First of all, what  
8 makes this case a bit different from what I would say the  
9 run-of-the-mill case is that this case has -- there are a  
10 number of things that make it different.

11 But one thing that makes it different is that the --  
12 having a car on the road in violation of EPA standards is, in  
13 the Court's view, intolerable. It's something that must be  
14 addressed, and must be corrected, and must be done as  
15 expeditiously as possible.

16 So there is a time imperative that drives -- no pun  
17 intended -- a solution in this case, which will result in the  
18 cars either being modified satisfactorily to the government,  
19 to the EPA, or removed from the road. They cannot continue to  
20 be in violation of EPA standards.

21 So we know how, in a sense, it's going to end. That is to  
22 say, it's going to end -- and Volkswagen is fully committed to  
23 this, to bringing their cars into compliance. And that's --  
24 that's sort of the end of it.

25 Now, we don't know quite yet how we're going to get there,

1 because Volkswagen comes in and says: Look, we believe we can  
2 get there by employing these fixes, some of which take a half  
3 an hour to install, some of which take perhaps a couple of  
4 hours to install. And we think -- we think that will -- that  
5 will cure the problem.

6 And I hope they're right. I absolutely hope they're  
7 right. And, and the EPA hopes they're right. We all do.  
8 Because that would be a relatively simple -- I say "relatively  
9 simple" fix, in terms of inconvenience to the consumer, though  
10 it may be complicated, from Volkswagen's point of view from an  
11 engineering point of view, to put it all the together and to  
12 address all of those concerns.

13 So when I look at it, I think to myself, and I hear what  
14 people are saying, I think to myself, you know, that's --  
15 that's Plan A. And I hope it works. And then they're moving  
16 forward on Plan A.

17 But what if it doesn't? What if -- what if it just can't  
18 be achieved? And if it can't be achieved, it won't be by lack  
19 of will of Volkswagen not to achieve it. It will be because  
20 the engineering simply doesn't -- doesn't -- at this level,  
21 with the best engineers that they have, aren't able to produce  
22 that which would be satisfactory. That's not their fault.  
23 That's the reality of -- and when I say "fault," I'm looking  
24 at it in the context of trying to address the problem. That's  
25 the reality. So, that's Plan A. And it may or may not work.

1           But I want to focus now on Plan B. Because I have --  
2 because I know how it's going to end. That's what they always  
3 say about trial lawyers, is that trial lawyers -- very, very,  
4 good experienced trial lawyers have a very good idea how  
5 things are going to end and they try to avoid it.

6           But, but the answer here is that we have a pretty good  
7 idea how it's going to end. We're not quite sure how we're  
8 going to get there. And so I think that I want to urge and  
9 I'm going to order the parties to begin settlement discussions  
10 which will envision several alternatives. The Plan A  
11 alternative, and the Plan B. And Plan B may be complicated.  
12 But we've already done a Plan B, and that was the two-liter  
13 settlement.

14           And I'm asking Director Mueller to participate as the  
15 moving force in these settlement discussions. And I'm  
16 directing the parties to participate in them forthwith.

17           I'm also asking the parties to come back here on November  
18 4th. That day seems to be -- I mean, pardon me, November 3rd,  
19 November 3rd -- that's a Thursday, it is easier to travel that  
20 way -- to give me two things.

21           First of all, I would appreciate Volkswagen -- and I'm  
22 going to advance the day slightly to October 24th to make that  
23 submission to EPA that they were promising on November 4th. I  
24 would like them to make it on October 24th. It's a bit  
25 earlier, but I think that they can probably do that.



1           Then I would like the parties to come back here on the  
2 3rd, and for the EPA and Volkswagen to say whatever they can  
3 say at that point about their submission and about the  
4 progress on Plan A. And I would like the parties also to say  
5 how far they've developed Plan B, if they have.

6           And I would like the Plaintiffs' steering committee to  
7 give me some proposed dates that would envision a trial  
8 relating to these matters for some time in the summer.

9           So, I know that it's important to have enough lead time  
10 between a trial setting date and a trial date, but I think  
11 that that would ensure that there is a sense of reality, one,  
12 in moving the litigation forward, and two, communicate exactly  
13 the sense of urgency that the Court feels must be -- must be  
14 understood and acted upon by counsel.

15           By my saying that, I am in no way criticizing the parties'  
16 efforts to date to bring about a resolution. What they have  
17 in Plan A may make a great deal of sense and may be a -- an  
18 ideal situation. But the ideal is frequently the enemy of the  
19 good or the possible. And I want to -- I want to have a  
20 strong sense of reality in these negotiations, and urgency in  
21 trying to get this thing resolved.

22           I think from the environment's point of view -- well, I  
23 can't speak on behalf of the environment. From the  
24 Plaintiffs' point of view, the consumers' point of view, it's  
25 important to get this resolved quickly. From Volkswagen's

1 point of view, they share that concern.

2 **MR. GIUFFRA:** (Nods head)

3 **THE COURT:** They share that concern. But it's up to  
4 the Judge, up to the Court to ensure that it happens. And  
5 that's why these deadlines are not flexible. They are set for  
6 a real purpose. And I appreciate the parties' adherence to  
7 it.

8 So, thank you very much. I'm sorry I took so much time  
9 this morning.

10 We are in recess now. Thank you.

11 **MR. VAN EATON:** Thank you.

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

13 (Proceedings concluded)

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**CERTIFICATE OF REPORTER**

I, BELLE BALL, Official Reporter for the United States Court, Northern District of California, hereby certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

*Belle Ball*

/s/ Belle Ball

Thursday, August 25, 2016

Belle Ball, CSR 8785, CRR, RDR