

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. 5: NOTICE OF
INTENT TO APPOINT ROBERT S.
MUELLER, III AS SETTLEMENT
MASTER**

_____ /
This Order Relates To:

ALL ACTIONS
_____ /

As the Court noted at the initial status conference, there is an urgent need to determine if all or some of the pending matters can be resolved by the parties sooner rather than later. To that end, the Court invited the parties to suggest persons to be appointed by the Court to facilitate settlement discussions among the parties. Pretrial Order No. 1 (Dkt. No. 2). The Court has carefully reviewed the suggestions, and after given the issue considerable thought, gives notice of its intent to appoint **Robert S. Mueller, III** as settlement master.¹

Mr. Mueller served as the sixth Director of the FBI from September 2001 through 2013. He was nominated by President George W. Bush, and his initial ten-year term was extended for an additional two years at the request of President Barack Obama and pursuant to congressional legislation. He is currently a partner at WilmerHale in Washington, D.C. Mr. Mueller’s biography is attached to this Order as Exhibit A.

¹ The Court will not appoint Mr. Mueller to perform any adjudicatory functions, or to even advise the Court on such matters; accordingly, the Court does not intend to appoint him pursuant to Federal Rule of Civil Procedure 53. Attached to this Order as Exhibit B is a letter from Mr. Mueller agreeing to serve as settlement master and explaining his law firm’s Volkswagen-related engagements. The Court does not believe that any of these engagements make Mr. Mueller’s appointment to facilitate settlement discussions inappropriate.

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The Court has known Mr. Mueller professionally for more than 40 years, beginning with his service as an Assistant United States Attorney in the Northern District of California, and including his tenure as the United States Attorney for the Northern District of California from 1998 through 2001. There are few, if any, people with more integrity, good judgment, and relevant experience than Mr. Mueller. Mr. Mueller will not adjudicate, or assist the Court with adjudicating, any issues in these consolidated proceedings; rather, his role will be to use his considerable experience and judgment to facilitate settlement discussions among the various parties in these complex matters. His government and private practice experience makes him uniquely qualified to work with and earn the trust of the parties, including the consumer and car dealer plaintiffs, the United States government, the Volkswagen defendants, and the interested state governments.

The Court shall give the parties an opportunity to respond to the Court’s suggestion of the appointment of Mr. Mueller. Any responses shall be filed on or before noon on **January 15, 2016** and shall not exceed three pages.

IT IS SO ORDERED.

Dated: January 11, 2016



CHARLES R. BREYER
United States District Judge

Robert S. Mueller, III

Robert S. Mueller, III served as the sixth Director of the FBI from September 2001 to September 2013. He was nominated by President George W. Bush and was sworn in as Director on September 4, 2001 – just one week before 9/11.

His ten-year term was extended for an additional two years at the request of President Barack Obama and pursuant to legislation passed by Congress.

Born in New York City, Mr. Mueller grew up outside of Philadelphia. He graduated from Princeton University in 1966 and later earned a master's degree in International Relations at New York University in 1967.

After college, he joined the United States Marine Corps, where he served as an officer for three years, leading a rifle platoon of the Third Marine Division in Vietnam. He is the recipient of the Bronze Star, two Navy Commendation Medals, the Purple Heart and the Vietnamese Cross of Gallantry.

Following his military service, Mr. Mueller earned a law degree from the University of Virginia Law School in 1973 and served on the Law Review.

After completing his education, Mr. Mueller worked as a litigator in San Francisco until 1976. He then served for 12 years in the United States Attorney's Offices, first in the Northern District of California in San Francisco, where he rose to be chief of its criminal division. In 1982, he moved to Boston as an Assistant United States Attorney where he investigated and prosecuted major financial fraud, terrorist and public corruption cases, as well as narcotics conspiracies and international money launderers.

After serving as a partner at the Boston law firm of Hill and Barlow, Mr. Mueller returned to public service. In 1989 he served in the United States Department of Justice as an assistant to Attorney General Richard L. Thornburgh. The following year he took charge of its Criminal Division. During his tenure, he oversaw prosecutions including the conviction of Panama leader Manuel Noriega, the Lockerbie Pan Am 103 bombing case and the John Gotti mobster prosecution. In 1991, he was elected Fellow of the American College of Trial Lawyers.

In 1993, Mr. Mueller became a partner at Boston's Hale and Dorr, specializing in complex white collar crime litigation. He returned to public service in 1995 as senior litigator in the Homicide Section of the District of Columbia United States Attorney's Office. In 1998, Mr. Mueller was named United States Attorney in San Francisco and held that position until 2001. He then served as Acting Deputy Attorney General of the United States Department of Justice for several months before becoming FBI Director. Mr. Mueller is currently a partner at WilmerHale in Washington, DC, where his practice focuses on investigations, crisis management, privacy and cyber security work.

WILMERHALE

January 8, 2016

Robert S. Mueller III

The Honorable Charles R. Breyer
Senior District Judge
United States District Court
Northern District of California
San Francisco Courthouse
450 Golden Gate Avenue
San Francisco, CA 94102

Dear Judge Breyer:

Thank you for considering me for the role of Settlement Master. I would be willing to serve in that capacity.

With regard to potential conflicts of interest, to my knowledge I have not represented any Volkswagen entities.

As you know, I am currently a partner at WilmerHale. I joined WilmerHale in March 2014 after spending almost 20 years in the federal government as a federal prosecutor, as the United States Attorney in San Francisco, and as Director of the Federal Bureau of Investigation.

A review of the firm's representations identified the following matters involving or otherwise connected to Volkswagen AG, its subsidiaries, and affiliates (VW). I have participated in none of the matters described below. Should I be selected, I, and any WilmerHale personnel assisting me, would be walled off from these matters and any new matters involving VW that the firm might undertake during the course of the Settlement Master assignment. Firm attorneys assigned to any of the matters described below would be walled off from my work as Settlement Master. In addition, the firm has a "restricted access" protocol for certain highly confidential or sensitive matters, which would be implemented for this assignment. The WilmerHale matters involving or otherwise connected to VW are as follows:

- WilmerHale has since 2011 represented VW in an arbitration with Suzuki relating to the termination of their cooperation agreement. The arbitration has been substantial and is entering a second phase.
- WilmerHale represents PricewaterhouseCoopers AG, VW's auditor, regarding the audit implications of the ongoing diesel emission investigations and litigation. We also represent various other PricewaterhouseCoopers entities in other, unrelated matters.
- WilmerHale was recently retained by VW for advice on U.S. tax matters regarding diesel emissions.

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- WilmerHale is advising VW on potential damages claims arising from the car glass cartel investigation.
- WilmerHale is advising VW on certain compliance/regulatory matters that do not relate to diesel emissions.
- WilmerHale is advising MAN SE (a truck brand VW owns) on certain compliance issues.
- WilmerHale is also adverse to VW and brands that VW owns in a variety of matters unrelated to the engagements described above.
- WilmerHale has former representations for VW; none of these matters relates to diesel emissions.

I also note that Matthias Wissmann, a partner in WilmerHale's Berlin office, is President of the German Association of the Automotive Industry, the Verband der Automobilindustrie (VDA). Mr. Wissmann's role does not prohibit him or the firm from taking matters for and against VDA members, including VW. Mr. Wissmann would be walled off from my work as Settlement Master. Finally, I should add that in November 2014 I participated in a panel discussion on cyber issues at the annual VDA conference.

Yours truly,

A handwritten signature in black ink, appearing to read "Robert S. Mueller III". The signature is written in a cursive style with a small flourish at the end.

Robert S. Mueller III