

 [Click to Print](#) or Select 'Print' in your browser menu to print this document.

Page printed from: [The Recorder](#)

VW Judge Names 22 Lawyers to Class Action 'Dream Team'

Ross Todd, The Recorder

January 21, 2016

SAN FRANCISCO — A San Francisco federal judge has appointed Elizabeth Cabraser, co-founder of plaintiffs powerhouse Lief Cabraser Heimann & Bernstein, to lead litigation targeting Volkswagen A.G. over its diesel emissions scandal.

U.S. District Judge Charles Breyer, who is presiding over the VW multidistrict litigation (MDL), said the class would benefit from Cabraser's experience as a leader in 17 other MDLs, including some involving automobile defects.

In an order issued Thursday evening, Breyer expressed his confidence that "Ms. Cabraser will effectively represent and guide the plaintiffs toward a resolution that is in their best interests."

She will chair a nationwide steering committee of 21 additional attorneys, including David Boies of Boies, Schiller & Flexner; Michael Hausfeld of Hausfeld LLP; and Steven Berman of Hagens Berman Sobol Shapiro. Notably absent was John Quinn of Quinn Emanuel Urquhart & Sullivan, whose firm filed its suits alongside Hagens Berman.

Breyer's decision followed a marathon hearing Thursday morning in which more than 100 lawyers appeared in person to request a leadership position. Cabraser, a veteran plaintiffs lawyer, was among 150 attorneys vying for roles in the case. Roughly 50 sought to serve as lead counsel or to chair the steering committee.

The contest is one of the largest in class action history, and the spectacle Thursday in the ceremonial courtroom in the San Francisco federal courthouse seemed to have no precedent. Every seat in the gallery was packed shoulder-to-shoulder. Lawyers stood in the aisles and streamed into the hall.

Cotchett, Pitre & McCarthy's Frank Pitre, who had the seat at plaintiffs counsel table closest to the podium, said he arrived 75 minutes early for the hearing. Cabraser said she'd never seen anything like it and Boies agreed. Stephen Toll of Cohen Milstein Sellers & Toll said Breyer's job was like "selecting the Dream Team."

Breyer appointed Pitre to the steering committee, but Toll did not make the "dream team." Nor did former presidential candidate John Edwards, an attorney at Edwards Kirby in North

Carolina, whose bid had drawn some attention. The committee includes lawyers from 13 states, with California and New York most heavily represented.

The judge said that as part of his vetting process he called fellow jurists across the country who have seen some of the candidates in action. The appointments, he wrote, are personal to the individual attorney and those lawyers are personally responsible for their duties.

"I don't pick law firms, I pick lawyers," Breyer had advised the group at the hearing, which lasted nearly five hours.

Breyer attempted to keep things moving at Thursday's hearing. He asked lawyers to come up in groups of 10 and allowed each just two minutes to make his or her pitch. With a member of the courtroom staff resetting a digital clock after each presentation, most stopped well short of the buzzer.

The judge managed to pay close attention to most of the attorneys, greeting them, making eye contact and thanking them for their presentations. And a few of the speakers became targets of Breyer's quick wit.

When John Hennan, a young lawyer from Billings, Montana, spoke, Breyer quipped, "There aren't many cars in Montana" to laughs from the gallery. Hennan replied that there might be more lawyers in the courtroom than in his entire state. When another Montanan later pitched, Breyer cracked "Who's practicing law there today?"

Joseph Russoniello, the former U.S. attorney for the Northern District of California, received the most prolonged ribbing, though. "Your application to join the steering committee would be premised on the fact that the case" is resolved before the next presidential inauguration, the judge remarked, suggesting that Russoniello could be up for a third appointment to the post should a Republican win the election.

"It takes at least a year to be confirmed," Russoniello shot back.

The judge offered a handful of clues about who might be up for a leadership post over the course of the hearing. Breyer said that geographical diversity would be a consideration and mentioned that he would give some priority to lawyers in states where there are lots of plaintiffs.

In what might have been a subtle tip-off, Breyer greeted Cabraser by name as she walked up to the podium and didn't stop her when she went over the allowed time.

Before the leadership pitches, Breyer introduced Robert Mueller III, the former FBI director and current Wilmer Cutler Pickering Hale and Dorr partner whom he appointed this week to help guide the parties' settlement talks. Breyer called Mueller "the key" to settlement and asked counsel for VW at Sullivan & Cromwell and Herzfeld & Rubin to cooperate with him fully.

Breyer said the VW MDL is "obviously not a whodunit kind of case."

"It is more of a case of how can we fix what was done and if it can't be fixed how to get fair compensation" to those affected, he said.

[View the order and the full steering committee here.](#)

Contact the reporter at rtodd@alm.com.

Correction: An earlier version of this article mistakenly stated that only nine attorneys had sought to lead the plaintiffs steering committee. Actually, 46 lawyers applied for the position and an additional nine requested appointment as lead counsel.

Copyright 2016. ALM Media Properties, LLC. All rights reserved.