

In \$800M Fiat Settlement, Bob Giuffra and Elizabeth Cabraser Prove Civility Pays Off

By Jenna Greene
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Litigation doesn't have to be a war—just ask Robert Giuffra Jr. and Elizabeth Cabraser.

We honored the pair in 2016 as Litigators of the Week for their work on the Volkswagen emissions scandal—the first (and only) time I can remember picking opposing counsel as co-winners.

Now, the defense lion from Sullivan & Cromwell and the plaintiff's star from Lieff Cabraser Heimann & Bernstein—along with lawyers from the federal government, all 50 states, and Cleary Gottlieb Steen & Hamilton on behalf of co-defendant Bosch—just settled another mega-matter.

On Monday, they won preliminary court approval for an \$800 million deal that resolves most of Fiat Chrysler Automobiles' diesel emission issues. The automaker allegedly installed devices (made by Bosch) on Ram 1500 and Jeep Grand Cherokee "EcoDiesel" trucks to cheat federal and state vehicle emissions tests.

Once again, Cabraser working with co-counsel including Joe Rice of Motley Rice led the representation of vehicle owners and lessees, while Giuffra represented the automaker defendant.

Some of the key state players, such as David Nachman from the New York AGs office, were also the same, as were many of the Justice Department lawyers. True, Robert Mueller, who was special master in the VW case, was (ahem) unavailable, but Kenneth Feinberg, who oversaw the VW claims fund, stepped up.

The lawyers even hammered out the final details in the same 7th floor Sullivan & Cromwell conference



room in downtown Washington, D.C. where they reached the VW agreement.

"We had an established relationship of candor and trust," Cabraser said. "We could negotiate in good faith."

Giuffra added, "I never see opposing counsel as my enemy. There's just no point in being unduly adversarial for no purpose."

That reservoir of goodwill helped resolve the complex and contentious Fiat case, one that Giuffra likened to a Rubik's Cube.

Unlike the VW matter, "Fiat Chrysler on the liability side was not admitting or conceding anything," Cabraser said. "Fiat Chrysler had a very active litigation track—very intensive, very hard-fought."

Giuffra agreed, describing his approach as "a steel fist and a velvet glove"—mounting a vigorous defense while simultaneously being open to the right settlement.

“We litigated the case pretty hard on the applicability of the RICO standard,” he said, and had fully briefed opposition to class certification. Giuffra’s team at Sullivan & Cromwell included Scott Miller, David Rein, Bill Monahan and Megan Bradley. Giuffra said Grant Nakayama of King & Spalding played a key role as well.

Moreover, the defense had three separate arguments on motions to dismiss still pending before U.S. District Judge Edward Chen in the Northern District of California when the case settled.

At a January 23 hearing to review the settlement, Chen praised the lawyers for their efficient resolution, especially in light of “how complicated all the parameters were... in some ways more so than the Volkswagen case.”

The Fiat Chrysler deal differs from VW in several key ways. The most obvious is the price tag.

VW’s settlement tab was an estimated \$14.7 billion. About \$4.3 billion went to the government in criminal and civil penalties, and more than \$10 billion was earmarked to buy back the polluting vehicles and compensate the owners—an estimated 490,000 people.

By comparison, Fiat Chrysler settled for about \$800 million.

Why the difference?

For one thing, there only are about 100,000 owners and lessees of the offending Ram 1500 and Jeep Grand Cherokees.

More important, unlike most of VW’s cars, the Fiat Chrysler vehicles can be modified to comply with emissions standards.

As a result, there was no need for expensive buybacks. Instead, most owners will get \$3,075 in compensation after they bring in their vehicles for repairs.

Ecologically, it’s much better solution than junking hundreds of thousands of cars. As Cabraser said, “I’m not sure there would be enough parking spaces for bought-back vehicles.”

But it also meant the settlement wasn’t nearly as enormous—though she described it in many ways as “better for consumers and the environment.”

“I had to put my ego aside as a plaintiff’s lawyer and realize what’s important,” Cabraser said. “We got every last dollar we could possibly get for consumers.”

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