

LOS ANGELES
Daily Journal

Jan. 25, 2016

San Francisco plaintiffs' lawyer hailed as fine choice for lead counsel in VW case

By Tim O'Connor

When 60 law firms across the country pooled their resources for an unprecedented class action against American tobacco companies 20 years ago, they tapped Elizabeth J. Cabraser to argue the high-stakes bid before a federal appellate court.

Cabraser, a San Francisco partner with Lief Cabraser Heimann & Bernstein LLP, was already a star in 1996.

And in the star-studded firmament of litigators formed to battle Volkswagen AG in another unprecedented class action over the carmaker's emissions cheating software in nearly 600,000 vehicles, Cabraser has once again shone brightest.

She was selected from among 150 other attorneys to lead the multi-district litigation for the plaintiffs in the roughly 500 lawsuits joined together in U.S. District Judge Charles Breyer's San Francisco federal courtroom.



Daily Journal photo

Elizabeth Cabraser of Lief Cabraser Heimann & Bernstein LLP was hailed as an excellent choice as lead counsel in the Volkswagen class action.

Breyer cited her leadership roles in 17 multi-district actions, the endorsement she received from more than 60 of her colleagues in the pending Volkswagen lawsuits, and his own observations of her work in the Bextra and Celebrex arthritis drug multi-district litigation before him.

"That experience left the Court with the confidence that Ms. Cabraser will effectively represent and guide the plaintiffs toward a resolution that is in their best interests," Breyer wrote in an order naming Cabraser sole lead counsel and chair of a 22-member plaintiffs' steering committee.

The judge filed his order Thursday evening just a few hours after concluding a five-hour hearing where many of the nation's most accomplished plaintiffs' advocates pitched themselves for leadership roles.

And he followed up quickly Friday with another order for Cabraser and her committee to file a new consolidated complaint by Feb. 22, just three days before the next conference in the case.

Breyer could name a trial date at that Feb. 25 conference, lawyers involved in the case said. In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, 15-MD2762 (N.D. Cal., filed Dec. 8, 2015).

"And I'll tell you what, I think it will be a date before the end of the year," said Frank Pitre, a partner with Cotchett, Pitre & McCarthy LLP, who was appointed to the steering committee.

Concerned that perhaps hundreds of thousands of cars are on the road violating air pollution standards, Breyer wants this case large, complex, and spanning continents to move fast.

He pressed Volkswagen AG lawyers Thursday to pin down a date for when Volkswagen engineers will have workable replacements ready for the deceptive emissions' systems.

That is what made Cabraser the right choice to lead the plaintiffs as they move to settlement negotiations and prepare for possible trial, said Lesley E. Weaver, a partner with Block & Leviton LLP who was named to the steering committee.

"It shows the confidence Judge Breyer has in her and deference he is showing to her skills by naming her the sole lead counsel in an unprecedented case. You can't even compare it to Enron," she said.

Cabraser will "get us all aligned and facing forward," Weaver said, providing the momentum and speed Breyer is demanding.

She'll have the assistance of a top-shelf committee that also includes David Boies, chairman of Boies, Schiller & Flexner LLP; Paul J. Geller of Robbins Geller Rudman and Dowd LLP; and Steve W. Berman of Hagens Berman Sobol Shapiro LLP.

Notably left off the roster were celebrated litigants including John B. Quinn of Quinn Emmanuel Urquhart & Sullivan LLP; Mark Robinson of Robinson Calcagnie Robinson Shapiro Davis Inc.; and former U.S. senator and Democratic presidential candidate John Edwards.

Quinn, whose firm has won more than \$47 billion for its clients and has 27 lawyers stationed in Germany, did not respond to requests for comment.

Cabraser also did not return calls or emails seeking comment.

But those who will be working under her on the committee described her as a leader.

"She's a great quarterback," Pitre said. "She gets people in the best positions for them to succeed."

Weaver added that Cabraser has the "interpersonal skills, legal skills, and moral authority" necessary for such a demanding role.

Cabraser, Weaver, and Pitre are three of six California-based lawyers in leadership roles. Also named to the committee were David S. Casey Jr., of Casey Gerry Schenk Francavilla Blatt & Penfield LLP; Rosemary M. Rivas of Finkelstein Thompson LLP; and Roland K. Tellis of Baron Budd P.C.

The 22-member committee is a large one even for multi-litigation cases, lawyers said.

"The court believes this is an appropriate number given the amount of work this litigation may entail and the need for an expeditious resolution of the matter," Breyer wrote in his order.

Litigators from 12 states and Washington, D.C., are on the committee, achieving the geographic diversity Breyer wanted for the case.

It will be up to Cabraser to bring the far-flung crew together and work out a plan of attack.

"She's a wonderful lawyer and it's very difficult to argue against her as lead counsel," said Richard Marcus, a professor at UC Hastings College of the Law where he is the chair of litigation.