

# Daily Journal

FEBRUARY 3, 2021

## TOP VERDICTS

THE LARGEST & MOST SIGNIFICANT  
VERDICTS AND APPELLATE REVERSALS  
IN CALIFORNIA IN 2020

### TOP DEFENSE RESULTS

## In re: German Automotive Manufacturers Antitrust Litigation



LEE



WALL



LACOVARA

In the summer of 2017, news came out that European Commission antitrust regulators were investigating whether the “circle of five” German carmakers — BMW AG, Daimler AG, Volkswagen AG, Audi AG and Porsche AG — had colluded on developing diesel emissions systems.

Almost at once, car dealers and car buyers in this country filed class actions citing that investigation and accusing the companies of violating U.S. antitrust laws. Those suits were eventually brought together as multidistrict litigation before U.S. District Judge Charles Breyer in San Francisco.

Three years later, Breyer tossed the litigation out. *In re: German Automotive Manufacturers Antitrust Litigation*, 3:17-md-02796, (N.D. Cal., filed Oct. 5, 2017).

“There are some pretty meaningful distinctions between the U.S. and EU antitrust and competition laws, and at the end of the day, that’s a big part of how we

ended up winning here,” said Belinda S. Lee, co-lead of the Latham & Watkins LLP team that represents BMW in the litigation.

Attorneys from Sullivan & Cromwell LLP represent VW, Audi and Porsche, while ones from Quinn Emanuel Urquhart & Sullivan LLP and Squire Patton Boggs represent Daimler.

The European investigation, still going on, is based on allegations that the companies had many discussions and meetings about a number of technical matters, including reducing diesel emissions, the price of steel and the maximum speed a car can go while raising or lowering its convertible top.

The defendants argued those collaborations are allowed and even seen as pro-competitive under U.S. law, Lee said. “It didn’t matter what was happening ... on a different continent in an investigation that was under a different set of laws.”

The plaintiffs initially com-

plained of a “whole car conspiracy to reduce innovation.” By the third version of their complaints, the car buyer plaintiffs were accusing the companies of collusion on emissions systems, while the dealers were alleging a “steel price-fixing conspiracy.”

Breyer said both sets of allegations failed. For instance, he ruled that steel companies may have fixed prices, but just because the car makers went along “does not mean [they] are responsible for an increase in the price of steel.”

Further, the judge said plaintiffs’ attempt to define a special submarket of diesel passenger vehicles distinct from passenger vehicles generally “does not pass the straight-face test.”

Warren T. Burns of Burns Charest LLP in Texas, the liaison counsel for the auto dealers, said the plaintiffs have appealed to the 9th U.S. Circuit Court of Appeals. “Our complaints included dozens of pages of detailed factual allega-

### case INFO

#### Antitrust

Northern District of California

U.S. District Judge Charles Breyer

#### Dollar amount

**Defense Lawyers:** Latham & Watkins LLP, Daniel M. Wall, Belinda S. Lee, Michael Lacovara, Alicia R. Jovais, Elizabeth H. Yandell; Sullivan & Cromwell LLP, Sharon Nelles, Steven Holley, Suhana Han, Amanda Davidoff, Samantha Hynes; Quinn Emanuel Urquhart & Sullivan LLP, Shon Morgan, Adam Wolfson, Kevin Teruya, Josef Ansorge; Squire Patton Boggs, Troy Yoshino.

**Plaintiff’s Lawyers:** Pearson, Simon & Warshaw LLP, Bruce L. Simon; Burns Charest LLP, Warren T. Burns; Steyer Lowenthal Boodrookas Alvarez & Smith LLP; Allan Steyer; Seeger Weiss LLP, Christopher A. Seeger; Pritzker Levine LLP, Elizabeth C. Pritzker; Zelle LLP, James Robertson Martin; Freed Kanner London & Millen LLC, Kimberly A Justice; Bleichmar Fonti & Auld LLP, Lesley E. Weaver; Kantowitz Goldhamer & Graifman, Melissa Emert; Hart McLaughlin & Eldridge LLC, Steven Alan Hart; Lockridge Grindal Nauen PLLP, W. Joseph Bruckner

tions that the District Court did not address,” Burns said. “We’re hopeful the 9th Circuit, after reviewing those factual allegations, will come to a different conclusion.”

— Don DeBenedictis