

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**In re: American Honda Motor Co., Inc.,
CR-V Vibration Marketing and Sales
Practices Litigation,**

Case No. 2:15-md-2661

**Judge Michael H. Watson
Magistrate Judge Deavers**

This document relates to: ALL CASES.

**CASE MANAGEMENT ORDER 2:
ORDER APPOINTING PLAINTIFFS' LEADERSHIP POSITIONS**

This Order applies to all cases currently pending in *In re: American Honda Motor Co., Inc., CR-V Vibration Marketing and Sales Practices Litigation*, MDL No. 2661 and to all related actions that have been or will be originally filed in, transferred to, or removed to this Court and assigned thereto (collectively, "the MDL proceedings"). This Order is binding on all parties and their counsel in all cases currently pending or subsequently made part of the MDL proceedings.

The Court has reviewed the applications for liaison counsel and interim co-lead counsel and finds no need to hold a hearing. Having reviewed the applications and accompanying exhibits, the Court herein appoints co-liaison and interim co-lead counsel.

I. Interim Co-Lead Counsel

Prior to class certification, courts have the authority to appoint interim lead counsel under Federal Rule of Civil Procedure 23(g)(3). Fed. R. Civ. P. 23(g)(3) ("The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action."). Because of the large number of parties in this action and the fact that multiple overlapping and duplicative class actions have been transferred to a single district for the coordination of pretrial proceedings, efficient management of the

class mandates that the Court select a lead counsel. See *In re Cardinal Health, Inc. ERISA Litig.*, 225 F.R.D. 552, 554 (S.D. Ohio 2005); *In re Air Cargo Shipping Servs. Antitrust Litig.*, 240 F.R.D. 56, 57 (E.D.N.Y. 2006). “[D]esignation of interim counsel clarifies responsibility for protecting the interests of the class during precertification activities, such as making and responding to motions, conducting any necessary discovery, moving for class certification, and negotiating settlement.” Manual for Complex Litigation (Fourth) § 21.11, 2004 WL 258782, at *1 (2004).

When placed in the position of selecting interim lead counsel, Courts customarily assess applicants under the rubrics for appointment of permanent class counsel. See, e.g., *In re Cardinal Health*, 225 F.R.D. at 554–56; *In re Air Cargo Shipping Servs. Antitrust Litig.*, 240 F.R.D. at 57–59. Thus, when selecting counsel, Rule 23(g)(1)(A) requires the Court to consider: “(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel’s knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class” Fed. R. Civ. P. 23(g)(1)(A)(i)–(iv). Further, courts should select counsel that it believes will “fairly and adequately represent the interests of the class.” Fed. R. Civ. P. 23(g)(4) (listing this as the “duty” of class counsel). “If more than one adequate applicant seeks appointment, the court must appoint the applicant best able to represent the interests of the class.” Fed. R. Civ. P. 23(g)(2).

The Court has considered the competing applications for interim co-lead counsel and concludes that both sets of applicants have done work in identifying and investigating potential claims, have experience in handling class actions and other complex litigation, have demonstrated some knowledge of applicable laws, and have resources that counsel

will commit to representing the putative class. As such, both sets of applicants are qualified to serve as interim co-lead counsel in this case.

Although it is a close question as to which applicant is “best able” to represent the interests of the putative class, the Court finds Eric H. Gibbs (“Gibbs”) and David K. Stein (“Stein”) are best able to represent the interests of the putative class and, accordingly, the Court appoints Gibbs and Stein as interim co-lead counsel.

Eric H. Gibbs

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Gibbs and Stein filed the Oakes complaint in the Central District of California.

Although it was the third such complaint filed, the work counsel did in identifying or investigating potential claims in the action is evident. The Oakes complaint is more thorough than the Romaya complaint (filed by competing applicants Myles McGuire (“McGuire”) and Michael McMorrow (“McMorrow”)). Moreover, part of the delay in filing the Oakes complaint is attributable to the fact that Gibbs and Stein worked with an automotive expert and studied the industry before filing the complaint, as well as the fact that they sent Defendant a pre-suit demand letter, as required under California’s Consumers Legal Remedies Act.

Gibbs and Stein also have extensive experience in handling class actions, other complex litigation, and the types of claims asserted in this action. Gibbs has represented plaintiffs in over seventy-five class actions and other complex litigation over the past twenty years, and Stein has represented plaintiffs in more than ten automotive class actions, which is particularly relevant to this MDL. Further, their experience in automotive class actions is evidenced by the fact that they have resolved class action claims against Hyundai and Mercedes Benz and successfully litigated against Honda, Mercedes Benz, Volkswagen, Hyundai, Kia, General Motors, Toyota, and Chrysler. Particularly relevant to this MDL, Gibbs and Stein previously litigated a products liability suit against Honda, which led to a \$25 million settlement. They have also litigated class actions involving poorer than expected vehicle fuel economy, which is an issue Gibbs and Stein represent may arise in this action as Defendant has indicated that the solution to the vehicle's vibration may decrease fuel economy. Additionally, Gibbs and Stein represent that they have worked previously with defense counsel. The Court finds a preexisting professional relationship may help facilitate resolution of this case.

Counsel's familiarity with automotive product liability litigation, as well as litigation involving poorer than expected fuel economy, also demonstrates counsel's knowledge of applicable law.

Further, Gibbs and Stein have demonstrated that they have sufficient resources to commit to representing the putative class. The Gibbs Law Group LLP employs fifteen attorneys who all focus on complex litigation and a team of non-lawyer professionals. Additionally, Gibbs's and Stein's application demonstrates their history of committing significant resources to cases with no guarantee of recovery.

These attributes assure the Court that Gibbs and Stein will fairly and adequately represent the interests of the putative class. And even though the majority of Plaintiffs'

counsel support the application of McGuire and McMorrow, “the number of attorneys supporting a given candidacy is not included among the factors set forth in Rule 23(g).” *In re Shop-Vac Mktg. & Sales Practices Litig.*, No. 4:12-md-2380, 2013 WL 183855, at *3 (M.D. Penn. Jan. 17, 2013) (citing *In re Air Cargo Shipping Servs. Antitrust Litig.*, 240 F.R.D. at 58) (internal quotation marks omitted). Accordingly, although both sets of applicants are qualified to serve as interim lead counsel, after considering the applications on their merits alone, the Court finds Gibbs’s and Stein’s prior automotive class action litigation makes them best able to represent the interests of the putative class.

Plaintiffs’ interim co-lead counsel shall perform (or, where appropriate and with Court approval, designate other counsel to perform) the following responsibilities on behalf of all Plaintiffs in the MDL proceedings:

- A. Formulate (in consultation with other counsel) and present positions on substantive and procedural issues during litigation by signing and filing pleadings, motions, and briefs related to all actions on behalf of Plaintiffs;
- B. Present oral arguments to the Court;
- C. Work with opposing counsel to develop a litigation plan;
- D. Initiate, coordinate, and conduct all pretrial discovery on behalf of all Plaintiffs who file civil actions in this Court or that are transferred to this Court pursuant to 28 U.S.C. §1407 and which are consolidated with this MDL and are part of the MDL proceedings, including the preparation of joint interrogatories and requests for production of documents and the examination of witnesses in depositions;
- E. Establish and maintain a document or exhibit depository, in either real or virtual format, and have that depository available, under reasonable terms and conditions, for examination by all Plaintiffs or their attorneys in this MDL proceeding;
- F. Develop and propose to the Court schedules for the commencement, execution, and completion of all discovery on behalf of all Plaintiffs;
- G. Examine witnesses and introduce evidence at hearings on behalf of Plaintiffs;
- H. Employ experts as needed;
- I. Arrange for support services;

- J. Monitor the activities of co-counsel and ensure all deadlines are met;
- K. Appear at certain Court conferences;
- L. Act as spokespersons for Plaintiffs at pretrial proceedings and in response to inquiries by the Court;
- M. Initiate, coordinate, and conduct the requisite meet and confers with Defendant, confer with Defendant regarding procedural matters, and negotiate and enter into stipulations with Defendant as necessary for the conduct of the litigation;
- N. Explore, develop, and pursue settlement options with Defendant on behalf of Plaintiffs but not enter binding agreements except to the extent expressly authorized;
- O. Delegate specific tasks to other counsel as authorized by the Court, in a manner to ensure that pretrial preparation for the Plaintiffs is conducted efficiently and effectively;
- P. Call meetings of counsel for Plaintiffs for any appropriate purpose;
- Q. Provide periodic reports to all Plaintiffs' counsel concerning the status of the litigation on no less than a quarterly basis; and
- R. Carry out such other duties as the Court may order.

II. Co-Liaison Counsel

Mark Troutman ("Troutman") and Gregory Travalio ("Travalio") of Isaac Wiles

Burkholder & Teetor, LLC will serve as co-liaison counsel for Plaintiffs.

Mark Troutman

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Troutman and Travalio have proven qualified to assume the role of co-liaison counsel. Travalio and Troutman chair the class action practice at their law firm, Isaac Wiles Burkholder & Teetor, LLC, which has a strong local presence. The attorneys devote their practice to helping consumers in individual and class action cases and possess the skills and experience necessary for the role of co-liaison counsel.

Travalio specializes in consumer class action litigation, has published extensively on the subject of consumer law, and has held various leadership positions in class action cases, including serving as co-lead counsel in *In re Porsche Cars North America, Inc., Plastic Coolant Tubes Product Liability Litigation*, No. 11-md-2233, S.D. Ohio, and *Gascho v. Global Fitness Holdings, LLC*, No. 2:11-cv-436, S.D. Ohio, as a member of the executive committee in *Johnson v. Ford Motor Co.*, Nos. 3:13-cv-6529, 3:13-cv-14207, and 3:13-cv-20976, S.D. West Virginia, and *In re MyFord Touch Consumer Litigation*, No. C-13-3072, N.D. California, and as liaison counsel in *Davisson v. Ford Motor Co.*, No. 2:13-cv-456, S.D. Ohio, and *Board of Commissioners of Montgomery County, Ohio v. Federal Housing Finance Agency*, No. 3:12-cv-245. This experience reflects Mr. Travalio's background working in related litigation, experience that he will be able to rely upon as co-liaison counsel in this case. Travalio's career teaching civil litigation at the Moritz School of Law at The Ohio State University further demonstrates his credentials for this position.

Troutman also specializes in class actions. Troutman began his career at the Ohio Attorney General's Office. Since entering the private sector, Troutman has devoted his practice to consumer, commercial, and employment cases. Most recently, his focus has turned to consumer and other class actions. His experience includes: assisting in the day-to-day management of consumer class litigation as co-lead counsel in the *In re Porsche* matter, contributing to the responsibilities of lead counsel in *Gacho v. Global Fitness Holdings*, as well as working on the following cases: *Davisson v. Ford Motor Co.*, *Ford*

Unintended Acceleration Litigation, and *Ford MyTouch Consumer Litigation*, and *Belville v. Ford Motor Company*, No. 3:13-cv-6529, S.D. West Virginia.

Moreover, Travalio and Troutman represent that attorneys at Isaac Wiles have already contributed to preliminary research and case strategy in this matter. Therefore, it is apparent that Travalio and Troutman have the firm's resources at their disposal to assist them in performing their role as co-liaison counsel.

The position of liaison counsel requires a considerable amount of coordinating between class counsel and the Court as well as between class counsel, interim co-lead counsel, and defense counsel, a position that Travalio and Troutman have already assumed. Since this case's initial filings, Travalio and Troutman represent that they have "already worked with the McGuire Law firm and communicated with the Girard Gibbs law firm on several occasions to help facilitate the issues for the advancement of Plaintiffs' case." Further, they have already performed liaison duties in anticipation of the Court's initial conference in this case, which demonstrates their ability to work cooperatively with Plaintiffs' counsel. Beyond this, Travalio and Troutman submit that "they enjoy the support of all Plaintiffs' counsel for service to the class in [liaison] capacity."

For the foregoing reasons, the Court finds Troutman and Travalio are qualified and responsible and will adequately represent all Plaintiffs in discharging their duties as co-liaison counsel.

Plaintiffs' co-liaison counsel shall perform the following responsibilities on behalf of all Plaintiffs in the MDL proceedings:

- A. Coordinate services and filings;
- B. Maintain and distribute to Plaintiffs' counsel of record and to Defendant's Counsel an up-to-date service list;

- C. Receive and distribute pleadings, motions, briefs, and Court orders and notices amongst all Plaintiffs' counsel of record, provided all counsel shall continue to receive all notices through the Court's CM/ECF system;
- D. Serve as a local point of contact for the Court;
- E. Convene meetings of counsel of record and resolve scheduling conflicts;
- F. Advise Plaintiffs' counsel of developments in the proceedings;
- G. Maintain and make available to all Plaintiffs' counsel of record at reasonable hours a complete file of all documents served by or upon each party (except such documents as may be available at a document depository) with a working index of the same;
- H. Be available for any conferences convened by the Court and communicate the substance of any such conference to all other Plaintiffs' counsel;
- I. Promptly distribute a copy of this Order and the October 19, 2015 Case Management Order 1: Order Addressing Preliminary Matters and Setting Initial Telephone Conference to all new or additional parties to this litigation; and
- J. Carry out such other duties as the Court may order.

III. General Directions

All communications from Plaintiffs with the Court should be through interim co-lead or co-liaison counsel. If circumstances require direct correspondence with the Court by an individual counsel, copies of any such communications shall simultaneously be served upon Plaintiffs' interim co-lead and co-liaison counsel.

To avoid controversy over the interpretation of the terms of this Order, designated counsel should seek consensus among the Plaintiffs' counsel of record (and any unrepresented parties) when making decisions that may have a critical impact on the litigation.

Cooperation by and among Plaintiffs' counsel is essential for the orderly and expeditious resolution of this litigation. To that end, the communication of information among and between Plaintiffs' counsel shall not be deemed a waiver of the attorney-client privilege and/or the work product doctrine, if the privilege or doctrine is otherwise applicable,

and all of such persons shall maintain the confidentiality of such communications.


Cooperative efforts contemplated above shall in no way be used against any plaintiff by Defendant. Nothing in this Order shall be construed to limit the rights of any party or counsel to assert the attorney-client privilege or attorney work product doctrine.

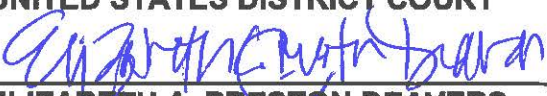
The Court understands that independent investigations have been undertaken by various Plaintiffs' counsel. Certain investigative materials gathered by individual counsel in the course of their independent case investigations may constitute attorney work product. All documents and investigative materials obtained prior to the date of this Order will be shared only with counsel having the same interests and only as provided per agreement among Plaintiffs' counsel as to the sharing of costs and expenses for obtaining and producing such investigative material and attorney work product. Counsel shall make a good faith effort to resolve the cost-sharing issues relevant to any such independent investigative materials. Any challenges to claims of work product as to investigative materials will be determined by the Court.

ALL COUNSEL are instructed to attempt to avoid unnecessary duplication of efforts and to control fees and expenses.

Reimbursement of interim co-lead and co-liaison counsel will be addressed in a subsequent Opinion and Order. In case the Court eventually adopts a lodestar method of compensation, counsel are instructed to begin keeping detailed track of the hours expended on these proceedings.

IT IS SO ORDERED.



MICHAEL H. WATSON, JUDGE
UNITED STATES DISTRICT COURT


ELIZABETH A. PRESTON DEAVERS
UNITED STATES MAGISTRATE JUDGE