

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

IN RE VOLKSWAGEN “CLEAN DIESEL”
MARKETING, SALES PRACTICES, AND
PRODUCTS LIABILITY LITIGATION,

No. 20-15564

D.C. No.
3:15-md-02672-
CRB

PUERTO RICO GOVERNMENT
EMPLOYEES AND JUDICIARY
RETIREMENT SYSTEMS
ADMINISTRATION,

ORDER

Plaintiff-Appellee,

v.

VOLKSWAGEN AG; VOLKSWAGEN
GROUP OF AMERICA, INC.;
VOLKSWAGEN GROUP OF AMERICA
FINANCE LLC; MICHAEL HORN;
MARTIN WINTERKORN,
Defendants-Appellants.

Filed September 23, 2021

Before: J. CLIFFORD WALLACE and MILAN D.
SMITH, JR., Circuit Judges, and JANE A.
RESTANI,* Judge.

* The Honorable Jane A. Restani, Judge for the United States Court of International Trade, sitting by designation.

COUNSEL

Robert J. Giuffra Jr. (argued), Sharon L. Nelles, Suhana S. Han, William H. Wagener, and Elizabeth N. Olsen, Sullivan & Cromwell LLP, New York, New York; David H. Dickieson, Schertler & Onorato LLP, Washington, D.C.; Gregory P. Joseph, Joseph Hage Aaronson LLC, New York, New York; for Defendants-Appellants.

Ian D. Berg (argued) and Takeo A. Kellar, Abraham Fruchter & Twersky LLP, San Diego, California; Mitchell M.Z. Twersky and Atara Hirsch, Abraham Fruchter & Twersky LLP, New York, New York; for Plaintiff-Appellee.

Douglas Wilens, Robbins Geller Rudman & Dowd LLP, Boca Raton, Florida; Thomas C. Michaud, Vanoverbeke Michaud & Timmony P.C., Detroit, Michigan; for Amicus Curiae Michigan Association of Public Employees Retirement Systems.

Gideon A. Schor, Wilson Sonsini Goodrich & Rosati PC, New York, New York; Joseph A. Grundfest, The William A. Franke Professor of Law and Business, Stanford Law School, Stanford, California; for Amici Curiae Law Professors and Former SEC Officials.

Deanne E. Maynard and Adam L. Sorensen, Morrison & Foerster LLP, Washington, D.C.; Jordan Eth, Mark R. S. Foster, and James R. Sigel, Morrison & Foerster LLP, San Francisco, California; Daryl Joseffer and Janet Galeria, U.S. Chamber Litigation Center, Washington, D.C.; for Amici Curiae Chamber of Commerce of the United States of America, Securities Industry and Financial Markets Association, and Alliance for Automotive Innovation.

ORDER

Judge M. Smith has voted to deny Appellee's petition for rehearing and petition for rehearing en banc. Judge Restani has voted to deny Appellee's petition for rehearing and recommends denying the petition for rehearing en banc. Judge Wallace has voted to grant the petition for rehearing and recommends granting the petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc. A senior judge requested a vote on whether to rehear the matter en banc. The matter failed to receive a majority of votes of the non-recused active judges in favor of en banc consideration. *See* Fed. R. App. P. 35. Judges Bennett and Bress did not participate in the consideration of the petition for rehearing en banc.

The petition for rehearing and for rehearing en banc is **DENIED**.