

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

**FILED**

IN RE MERCEDES-BENZ : MASTER NO. 99-4311  
ANTI-TRUST LITIGATION :  
: ORDER  
-----

NOV - 7 2001

AT 8:30 <sup>M</sup>  
WILLIAM T. WALSH  
CLERK

This matter having come before the Court for a scheduling conference pursuant to Rule 16 of the Federal Rules of Civil Procedure and Local Civil Rule 16.1 of the United States District Court for the District of New Jersey, and the Court having considered the positions of counsel for the parties; and good cause appearing;

IT IS this 1st day of November, 2001,

ORDERED as follows:

**1. Scope of Discovery**

- a. Until further Order of the Court, the parties shall proceed with discovery relating to class certification issues only.
- b. No subject, document or thing shall be deemed non-discoverable pursuant to this Order on the ground that it is also discoverable for some purpose other than class certification, except where the discovery sought

is so cumulative of or of limited probative value to class certification issues that its value is substantially outweighed by its probative value to other issues in dispute and is on that basis inconsistent with the spirit of this Order.

- c. Except for discovery regarding expert witnesses as set forth elsewhere in this Order, discovery on the issue of class certification will be complete on or before December 31, 2001, and no further discovery on this issue shall be conducted following that date.
- d. Any dispute regarding discovery relating to class certification shall be raised by application to the Special Master James J. Shrager, Esq.

## **2. Discovery of Expert Witnesses**

- a. Discovery of expert witnesses, limited to those experts expected to provide testimony on the issue of class certification, shall be conducted as follows:
  - i. On or before November 16, 2001, plaintiffs shall serve on defendants a statement identifying those person on whom plaintiffs intend to rely to give expert testimony in this matter, those persons' area(s) of expertise and their curriculum vitae.
  - ii. On or before December 31, 2001, plaintiffs shall

serve report(s) by their expert witness(es) as required and as further set forth by Federal Rule of Civil Procedure 26(a)(2) which report shall include, without limitation of the foregoing, a statement of all documents reviewed by the expert witness(es).

iii. Any deposition of plaintiffs' expert witness(es) shall be complete on or before January 11, 2002.

iv. On or before January 31, 2002, defendants shall serve report(s) by their expert witness(es) as required and as further set forth by Federal Rule of Civil Procedure 26(a)(2) which report shall include, without limitation of the foregoing, a statement of all documents reviewed by the expert witness.

v. Any deposition of plaintiffs' expert witness(es) shall be complete on or before February 11, 2002.

### **3. Depositions**

a. No party shall depose any person, including without limitation a business entity pursuant to Fed. R. Civ. P. 30(b)(6), who or which has already been deposed in this matter (hereinafter a "Successive Deposition"), except on the conditions set forth in this Order:

- i. Upon consent of all parties to this action and the person to be deposed, or
  - ii. Upon written application on notice to all parties and the proposed deponent for leave to take a Successive Deposition granted by the Special Master upon a finding that the Successive Deposition, as may be limited by the Special Master, would not be redundant to testimony already obtained and available to the parties.
- b. A Successive Deposition application made to the Special Master must include the following:
- i. a transcript of any deposition in this matter of the proposed deponent; and
  - ii. a summary of the substance of the prior deposition of the proposed deponent and a proffer in summary form of the subject(s) on which the party seeking the Successive Deposition intends to examine the proposed deponent, which summary shall be sufficiently detailed to permit a determination of whether the Successive Deposition would be redundant to testimony already available to the parties.
- c. An application for relief from the time limitations for depositions provided in Federal Rule of Civil Procedure

30(d)(2) shall be made to the Special Master.

**4. Document Depository**

- a. The parties having conferred and reported to the Court that they have reached agreement regarding the establishment of a Document Depository in accordance with the prior Orders of the Court, the Document Depository shall be established at the offices of Carpenter, Bennett & Morrissey beginning November 5, 2001, and continuing until further Order of the Court.
- b. Notice upon Carpenter, Bennett & Morrissey for any purpose in connection with the administration of or access to the Document Depository shall be accomplished by telephone call during normal business hours to Melissa B. Popkin, Esq., of that firm or in writing by facsimile transmission to her.
- c. The parties having agreed upon and provided to the Court certain rules to govern the operation of the Document Depository in the form attached as an appendix to this Order, these rules are incorporated by reference as the Order of the Court.
- d. Any dispute regarding the document depository shall be raised in a telephone conference call with all interested parties and the Court's law clerk, E. Evans

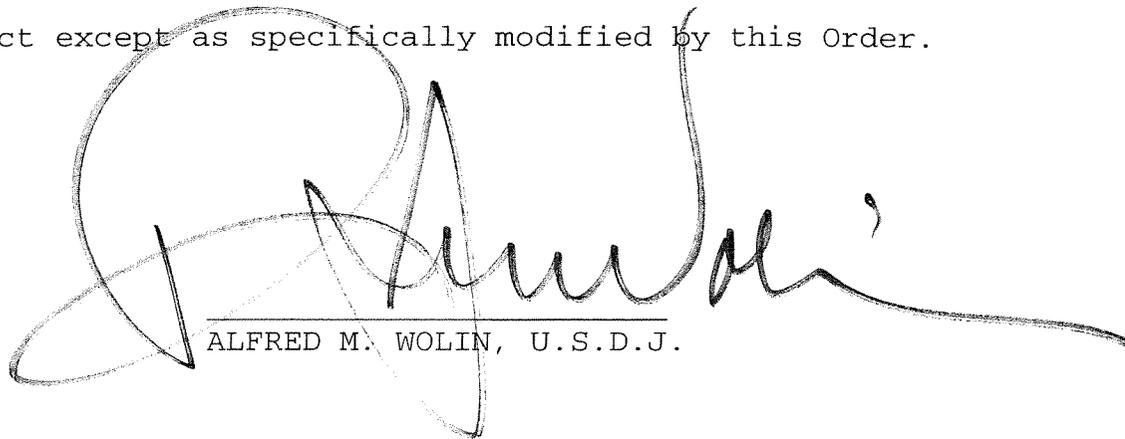
Wohlforth, Esq.

**5. Motion for class certification**

- a. Except as further provided to the contrary in this Order, a motion for class certification shall be governed by the provisions of Appendix N of the Local Rules of this Court.
- b. A Notice of Motion for class certification and any briefs and other papers in support of such motion shall be served on or before February 25, 2002.
- c. Opposition to a motion for class certification shall be served on or before March 21, 2002.
- d. Reply to any opposition in further support of a motion for class certification shall be served and all papers in support of and in opposition to the motion shall be filed with the Court on or before March 28, 2002.
- e. No party may serve or file with the Court a surreply or other papers not specifically provided for in this Order in support of or in opposition to a motion for class certification except with leave of Court, application for which shall be made in a telephone conference call with all interested parties and the Court's law clerk.

**6. Miscellaneous**

- a. Plaintiffs' pending class certification motion, the briefs supporting and opposing that motion and all expert reports in support of or in opposition thereto, are deemed withdrawn.
- b. Without limitation to the general applicability of the Rules of this Court and the Federal Rules of Civil Procedure, the parties shall comply with their obligation pursuant to Local Civil Rule 37.1(a)(1) to confer and in good faith obtain consent to the relief sought before making an application to the Special Master as provided in this Order.
- c. All prior Orders of the Court shall remain in force and effect except as specifically modified by this Order.



ALFRED M. WOLIN, U.S.D.J.

**DOCUMENT DEPOSITORY**

1. **LOCATION**

The document depository will be located at the offices of Carpenter, Bennett & Morrissey, Three Gateway Center, 100 Mulberry Street, Newark, New Jersey 07102. The depository will be located in rooms on the eighteenth floor. If the volume of documents exceeds the space available, Carpenter, Bennett & Morrissey will designate additional storage space for the documents. The actual rental costs of space dedicated to the document storage room or rooms will be shared by both sides in this litigation.

2. **HOURS OF OPERATION**

The document depository will be open Monday - Friday from 9:30 a.m. until 4:30 p.m., excluding holidays. Upon advance notice from a party of its desire to have the depository remain open past 4:30 p.m., the document depository will remain open until 5:30 p.m.

3. **PROTECTIVE ORDER**

Access to, and copying of, confidential documents in the document depository are subject to the limitations and requirements of the Stipulated Protective Order dated June 15, 2000, as amended on December 15, 2000, protecting against unauthorized disclosure of such documents.

4. **RESPONSIBILITY FOR PLACING DOCUMENTS IN DEPOSITORY**

All discovery materials produced in this litigation are to be produced and stored in the document depository. If a party elects to make documents available for inspection rather than producing them, only documents selected by another party for copying as a result of inspection need to be filed in the depository. The party responsible for copying any such documents will also be responsible for ensuring that a copy is sent to Carpenter, Bennett & Morrissey to be placed in the depository.

The producing party shall place the documents in the depository with an indication as to the requests to which they are responsive, or, in the alternative, as they are kept in the ordinary course of business. Documents shall be organized in an orderly and logical fashion. All documents deposited in the document depository must be bates numbered and the party depositing the documents shall be responsible for said bates numbering. Existing English translations of foreign-language documents, if any, shall be filed with the documents.

Copies of deposition heretofore taken in this matter, together with copies of the exhibits marked at the depositions, shall be placed in the depository immediately.

5. **COPYING OF DOCUMENTS IN DEPOSITORY**

The depository will contain a dedicated copy machine for producing copies and separately counting the copies that are made for each party and a log will be kept of the number of copies. The cost of photocopying will include a pro-rata share of the costs for both the photocopier and the counter. At the end of each month, parties will be billed for their photocopying.

6. **ACCESS TO THE DOCUMENT DEPOSITORY**

Counsel appearing for any party in this litigation and the staffs of their respective law firms working on these cases shall have reasonable access during the above-referenced hours of operation to each document in the depository and may copy or obtain copies at the inspecting parties' expense. Such inspections shall not be subject to monitoring by any party. Any party seeking access should give Carpenter, Bennett & Morrissey one day's notice, by telephone, of their appearance. A log will be kept of all persons who enter and leave the depository, and only duplicate copies of documents may be removed from the depository, except by leave of Court.

7. **NOTICE OF DEPOSITS**

After the initial deposit of documents in the depository, notice shall be given by the producing party to all Liaison Counsel of all subsequent deposits.