

1 IN THE UNITED STATES DISTRICT COURT

2 IN AND FOR THE DISTRICT OF DELAWARE

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4 IN RE: DAIMLER CHRYSLER  
5 SECURITIES LITIGATION

6	TRACINDA CORPORATION,	:	CIVIL ACTION
		:	
7	Plaintiff	:	
		:	
8	vs.	:	
		:	
9	DAIMLERCHRYSLER AG, a Federal	:	
	Republic of Germany Corporation,	:	
10	DAIMLER-BENZ AG, a Federal	:	
	Republic of Germany Corporation,	:	
11	JUERGEN SCHREMPP, a Citizen of	:	
	The Federal Republic of Germany,	:	
12	MANFRED GENTZ, a Citizen of	:	
	The Federal Republic of Germany,	:	
13	and HILMAR KOPPER, a Citizen of	:	
	The Federal Republic of Germany,	:	
		:	
14	Defendants	:	NO. 00-993 (JJF)

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16 Wilmington, Delaware  
17 Friday, January 30, 2004  
18 2:05 o'clock, p.m.  
19 Telephone Conference

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21 BEFORE: HONORABLE JOSEPH J. FARNAN, JR., U.S.D.C.J.

22 - - -

23 APPEARANCES:

24 MORRIS, NICHOLS, ARSHT & TUNNELL  
25 BY: A. GILCHRIST SPARKS, III, ESQ.,  
ALAN J. STONE, ESQ., and  
NATALIE WATSON, ESQ.

-and-

1 CHRISTENSEN, MILLER, FINK, JACOBS, GLASER,  
2 WEIL & SHAPIRO, LLP  
3 BY: TERRY CHRISTENSEN, ESQ.,  
4 MARK G. KRUM, ESQ., and  
5 ERIC P. EARLY, ESQ.  
6 (Los Angeles, California)

7 -and-

8 FRIED, FRANK, HARRIS, SHRIVER & JACOBSON  
9 BY: WILLIAM G. MCGUINNESS, ESQ.  
10 (New York, New York)

11 Counsel for Plaintiff Tracinda  
12 Corporation

13 SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP  
14 BY: THOMAS J. ALLINGHAM II, ESQ. and  
15 MICHAEL A. BARLOW, ESQ.

16 -and-

17 SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP  
18 BY: JONATHAN J. LERNER, ESQ.,  
19 JOSEPH N. SACCA, ESQ., and  
20 LEA HABER KUCK, ESQ.  
21 (New York, New York)

22 Counsel for Defendants DaimlerChrysler  
23 AG, Daimler-Benz, AG, Juergen Schrempf  
24 and Manfred Gentz

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1 THE COURT: Good afternoon. Judge Farnan here.

2 (Counsel respond "Good afternoon.")

3 THE COURT: I have a court reporter, so if you  
4 could just for the purposes of the record tell us who is on  
5 the line.

6 MR. CHRISTENSEN: Your Honor, I will start in.  
7 This is Terry Christensen with Eric Early and Mark Krum on  
8 behalf of Tracinda.

9 MR. STONE: Your Honor, this is Alan Stone and  
10 Gil Sparks and Natalie Watson with me from Morris Nichols on  
11 behalf of Tracinda.

12 MR. MCGUINNESS: Your Honor, William McGuinness  
13 from Fried Frank, et al. LLP for Tracinda.

14 MR. ALLINGHAM: Your Honor, this is Tom  
15 Allingham. I have Mike Barlow with me in Wilmington for the  
16 defendants.

17 MR. LERNER: And Jonathan Lerner, Joe Sacca and  
18 Lea Haber Kuck for defendants, in New York.

19 THE COURT: I wanted to get you on the phone. I  
20 apologize for the confusion with the weather down here. I  
21 wanted to talk about in the first instance the resuming of  
22 the trial.

23 I have read all the materials that you have  
24 filed. I understand that Mr. Schrempp wouldn't be available  
25 the week of February 16th, so I have tried to make two dates

1 available that essentially involve the remaining two trial  
2 days, and if necessary, a third day. Those days are February  
3 9th and 10th, and we would try the case from 12 noon till 7  
4 p.m. The alternative date is March 11th and 12th, where we  
5 would be in court from 9 to 5 and if necessary come back on  
6 Monday, the 15th in the afternoon.

7                   If you can give me an answer today, that would be  
8 great. If you can't and want to discuss it and check with  
9 witnesses, you can certainly let me know at the early part of  
10 next week.

11                   I tried to avoid what it looked like were dates  
12 that you would have conflicts with, from what you have been  
13 telling me.

14                   Do you think you want to wait over the weekend  
15 and get back to me at the beginning of the week?

16                   MR. CHRISTENSEN: Your Honor, I think we should  
17 at least take a look during the rest of the day and perhaps  
18 let Your Honor know on Monday. Would that be okay?

19                   THE COURT: That is fine. Is that all right with  
20 you, Mr. Allingham?

21                   MR. ALLINGHAM: Yes, Your Honor, it is.

22                   THE COURT: In addition, I have read the various  
23 letters and the opening motion. With regard to Mr. Valade, I  
24 am going to permit him to testify about all matters, and, as  
25 suggested, I believe, by DaimlerChrysler, I will handle any

1 objections to that testimony on a showing of undue prejudice  
2 posttrial, as I am handling all those kinds of objections,  
3 including the cited expert witness opposition.

4           With regard to whether the sanctions application  
5 would be heard before the trial resumes and also the filed  
6 objections to Special Master Seitz' report to me, I am going  
7 to first let the parties brief out on the basis of the rules  
8 and not have it in any way prevent us from getting back into  
9 the trial. I implicitly have ruled on one of the requests  
10 for sanctions, that is Mr. Valade's testimony, at least for  
11 present purposes. But that doesn't mean that I won't revisit  
12 it on a posttrial application, as with all objections that  
13 are raised in the trial.

14           I want to make one thing clear: that  
15 DaimlerChrysler, no matter what the briefing might indicate,  
16 is going to have some exposure for reasonable attorneys' fees  
17 and costs. I don't think the parties here can work this  
18 out. But the focus of any briefing in that regard, in my  
19 view, should be on the basis of what the application would  
20 be, so that there is some idea of the number of hours and  
21 costs involved. And the briefing should be about the  
22 reasonableness of the application.

23           That might help you narrow what you do in that  
24 regard.

25           On the question of timeliness of appeal from

1 Special Master Seitz' report to me, I would allow the appeal,  
2 although I understand that there is a good argument that it  
3 may have been late under my previous order appointing the  
4 Special Master. But in the circumstances, I think I ought to  
5 give both sides an opportunity, because there are other  
6 issues that are tied to the Special Master's findings, give  
7 them an opportunity to provide me with what they might find  
8 is error in his report to me.

9 So I don't think you ought to spend your time on  
10 the question of whether the appeal was filed on the fifth day  
11 or if it is controlled by Rule 72. Let's just assume that, I  
12 am telling you there is going to be an appeal, and let's  
13 focus on what the merits of that appeal might be, if any.

14 Okay. They are the items I wanted to talk  
15 about. Tracinda?

16 MR. CHRISTENSEN: Your Honor, the only question  
17 which would affect our thinking and our timing would be what  
18 Your Honor's thoughts are on Mr. Schrempp and Mr. Stallkamp.

19 THE COURT: As I understand it, Mr. Allingham has  
20 offered to return Mr. Schrempp for examination and will make  
21 a good-faith effort to produce Mr. Stallkamp. As I  
22 understand it, the dispute would be Mr. Allingham's  
23 suggestion that the testimony be limited to a certain number  
24 of hours, and Tracinda's position being that they should be  
25 allowed, because of the late-produced documents, to basically

1 have at the witness again.

2           It seems to me, in the circumstances we find  
3 ourselves, that I come down on the side of Tracinda, although  
4 I would hope that Tracinda would understand that I have sat  
5 through a good bit of testimony and that what is offered  
6 wouldn't be cumulative, because there is no need to reinforce  
7 points that have already been testified about. I think we  
8 all want to get to the end of the trial, posttrial briefing,  
9 and get a decision.

10           With that caveat, I would come down on the side  
11 of Tracinda.

12           MR. CHRISTENSEN: Thank you, Your Honor. We  
13 intend to be conservative about how much time we take with  
14 all this. That is very good for us, Your Honor.

15           THE COURT: Anything else on behalf of Tracinda?

16           All right. How about DaimlerChrysler?

17           MR. ALLINGHAM: Your Honor, in connection with  
18 our looking at the issue of scheduling, and in particular  
19 with respect to the limited references to Mr. Stallkamp and  
20 Mr. Schrempf in the notes, I wonder if the Court would  
21 entertain the possibility that either or both of those  
22 witnesses could testify by video.

23           Mr. Stallkamp, for example, is referred to once  
24 in all of the notes in a non-substantive way, and then once  
25 in a set of notes which is on his stationery but which were

1 taken, as the Court will soon find, not by Mr. Stallkamp but  
2 by Mr. Valade.

3 Mr. Stallkamp is not, as Your Honor heard,  
4 employed by DaimlerChrysler, and in light of the extremely  
5 limited nature of his involvement with these notes, has asked  
6 me to forward to the Court that request.

7 As well, Mr. Schrempp, who is in Europe, as Your  
8 Honor knows, has the same request. He is mentioned more  
9 frequently in the notes. But again, I think my count is  
10 correct, he is mentioned on ten pages out of those notes.  
11 And if the inquiry is as carefully circumscribed as Mr.  
12 Christensen suggestion it would be, I just ask whether the  
13 Court would entertain the possibility of testimony on video.

14 THE COURT: So I understand the request, this  
15 would be a video phone hookup, where the questioning would be  
16 live but Mr. Schrempp would appear on the video by a phone  
17 line?

18 MR. ALLINGHAM: I think that that is  
19 technologically feasible and that is the proposal that I  
20 would like.

21 With respect to Mr. Stallkamp, whether it would  
22 be in the same way, I know it would be technologically  
23 feasible for Mr. Stallkamp from Detroit, or whether it might  
24 be, given how extremely limited his involvement in these  
25 notes is, whether it might even be a video deposition in

1 order to preserve trial time. Either way would be acceptable  
2 to us.

3 MR. CHRISTENSEN: Your Honor, we would have some  
4 problem with that, because Your Honor has indicated that Mr.  
5 Valade will have sort of an open season with respect to what  
6 his testimony would be. And we really need to be able to  
7 deal with Mr. Schrempp in particular in person, and I think  
8 we need to have him in the courtroom and deal with the issues  
9 in the courtroom, Your Honor. Again, this only comes up  
10 because the notes weren't ever delivered for a year and a  
11 half, for whatever reason. And also, the notes really relate  
12 to four months of meetings. And just whether or not he is  
13 quoted on a particular page isn't really the limiting range  
14 of Mr. Schrempp's involvement in the notes. So we are  
15 certainly respectful of Mr. Schrempp's schedule. I assume  
16 that is why Your Honor is leaving out the week of the 16th.  
17 So I would ask that we have these people in the ordinary  
18 course.

19 THE COURT: All right. What I am going to do, I  
20 have had in patent cases, when I was on the sixth floor, the  
21 parties had to run some kind of a wire, and they did that and  
22 we have had people testify by video phone. I think we were  
23 not able to get in a foreign patent case a European hookup to  
24 do that. But before I even consider it, let me find out if  
25 in this courthouse it's possible, and then I will give you an

1 answer.

2                   Let me say this: If you have some tech person  
3 available to you, if they could, if you could call my case  
4 manager, Ms. Krett, and give that name and number, I will  
5 have the Court's person, John Fox, get a hold of them, and  
6 they all can have that discrete discussion.

7                   Anything else on behalf of DaimlerChrysler?

8                   MR. ALLINGHAM: No, Your Honor.

9                   THE COURT: All right. I wanted to just say  
10 this: In the ensuing days since the 27th was scheduled and  
11 now this conference, there were some media inquiries about  
12 the ability of the public to attend. And when it was  
13 understood that it was a teleconference, there were some  
14 requests to be patched into the teleconference. But there  
15 were enough of them that it would have caused some  
16 difficulty. So what the Clerk's Office has arranged is that  
17 the transcript of this teleconference, which is essentially  
18 about scheduling, is going to be made available at a set  
19 time, I think both on the website and by hard copy in the  
20 Clerk's Office. I just wanted you to be aware of that. I  
21 don't know the time yet.

22                   All right. Thank you.

23                   (Counsel respond "Thank you.")

24                   (Teleconference concluded at 2:20 p.m.)

25 Reporter: Kevin Maurer