

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FCA US LLC,

Plaintiff,

vs.

Case No. 16-12883

CUMMINS, INC.,

HON. AVERN COHN

Defendant.

MEMORANDUM AND ORDER REGARDING ELECTRONIC DISCOVERY DISPUTE

I.

This is a dispute between FCA US, LLC (FCA) and Cummins Inc. (Cummins) over a part installed in certain model year 2013-2015 Ram 2500 Pickup trucks with Cummins 6.7 L diesel engines (the vehicles). FCA manufactures the vehicles which contain the part provided by Cummins. The part is subject to a recall. The lawsuit is over the division of financial liability for the cost of the recall.

II.

The parties are engaged in discovery. They are currently in a dispute over the protocol for electronic discovery, particularly regarding the use of technology-assisted review (TAR). TAR, broadly defined, is a process to collect and classify large amounts of electronic material using computer software. The dispute is described in a series of letters to the Court and proposed orders. While the parties agree on many issues relating to discovery and particularly electronic discovery, they unfortunately cannot reach agreement over whether the universe of electronic material subject to TAR review should first be culled by the use of search terms. FCA takes the position that the

electronic material subject to TAR review should not first be culled by the use of search terms. Cummins takes the position that a pre-TAR culling is appropriate. They have left the matter for the Court to decide. The Court does so rather reluctantly. Given the magnitude of the dispute and the substantial matters upon which they agree, the parties should have been able to resolve the discovery issue without the Court as decision maker.

Be that as it may, having reviewed the letters and proposed orders together with some technical in-house assistance including a read of The Sedona Conference TAR Case Law Primer, 18 Sedona Con. J. ___ (forthcoming 2017), the Court is satisfied that FCA has the better position. Applying TAR to the universe of electronic material before any keyword search reduces the universe of electronic material is the preferred method. The TAR results can then be culled by the use of search terms or other methods. Accordingly, the Court shall enter FCA's proposed order.¹

SO ORDERED.

S/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: March 28, 2017
Detroit, Michigan

¹There are other minor revisions proposed by Cummins over which the Court strongly suggests that the parties meet and confer. In the event they reach agreement on any revisions, FCA shall submit a revised order for entry on notice.