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COVID-19 cases are surging in Michigan

Hospitalizations are up 80% in the state, officials warn

Kristen Jordan Shamus
Detroit Free Press
USA TODAY NETWORK

Coronavirus cases are rising in Michigan and COVID-19 hospitalizations have spiked 80% in recent weeks, climbing in all regions of the state, health officials warned Tuesday.

"It is very possible that this is the beginning of a second wave," said Dr. Joneigh Khaldun, the chief medical executive and chief deputy director for health for the Michigan Department of Health and Human Services.



Khaldun

"That is why we are asking everyone to remain vigilant and do these basic things: wearing masks, avoiding the social gatherings. It's very important."

State health officials reported 1,237 new cases Tuesday and 30 new deaths — with a seven-day average of 1,125 new daily cases.

The last time the seven-day average was this high was in April, the month when Michigan marked its largest number of COVID-19 cases and hospitals in metro Detroit were filled to capacity. So far this year, the MDHHS has reported 137,702 total confirmed coronavirus cases and 6,928 deaths.

Outbreaks on sports teams, in work settings, in assisted living facilities, in schools and on college campuses are driving the spread of the virus, Khaldun said. The concern is that as the weather gets colder and people move indoors, it could drive an even bigger increase in cases, hospitalizations, and soon after, deaths — especially as flu season approaches.

"We now have nearly 700 Michiganders admitted to our Michigan hospitals," said Brian Peters, chief executive officer of the Michigan Health & Hospital Association. "This is not an isolated trend. In fact, all regions in the state are seeing more individuals who need

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CORONAVIRUS UPDATE

Infection totals

Michigan: 6,928 deaths, 137,702 cases
U.S.: 215,818 deaths, 7,852,022 cases
World: 1,084,364 deaths, 38,033,287 cases
(As of 9 p.m. Tuesday)
Sources: Johns Hopkins University and state of Michigan



Court sketch artist Jerry Lemenu shows what it looks like inside the Gerald R. Ford Federal Building and U.S. Court House in Grand Rapids. PHOTOS BY MANDI WRIGHT/DFP

Sinister ideas in Whitmer kidnap plot

Plan to leave her in boat in middle of Lake Michigan told

Paul Egan and Tresa Baldas
Detroit Free Press
USA TODAY NETWORK

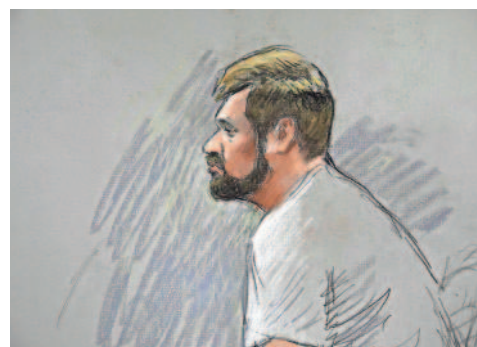
GRAND RAPIDS — Federal prosecutors on Tuesday revealed new and sometimes shocking details of the case they have built against six men accused of plotting to kidnap Gov. Gretchen Whitmer.

Defense attorneys began their efforts to shoot holes in the government's story, suggesting through questions they directed at an FBI agent that some of the plotting was just talk and that there was no specific kidnapping plan, just a range of ideas being tossed around.

Three bond hearings were held Tuesday and bond was denied for all three defendants — Kaleb Franks, Daniel Harris, and Brandon Caserta. More bond hearings could be held in federal court in Grand Rapids on Friday.

Five of the six defendants sat with chains around their waists and wrists, sometimes nodding to family members or friends in the courtroom, as assistant U.S. Attorney Nils Kessler showed photos and videos and drew testimony from an FBI special agent.

The sixth federal defendant is still in Delaware, where he was arrested. At a hearing



A courtroom sketch of the accused ringleader in the case, Adam Fox. He was the only suspect in court Tuesday who did not wear a mask in the courtroom.

there Tuesday, he agreed to be extradited to Michigan. All six are charged with conspiracy to kidnap and have been held in custody since their Oct. 7 arrests.

Seven other defendants face state charges brought by Attorney General Dana Nessel, including supporting terrorism, gang membership, and possessing a firearm in commission of a felony.

See **KIDNAP PLOT**, Page 13A

ELECTIONS 2020

Biden up by 9 over Trump in Michigan

President's support not budging in Free Press poll

Todd Spangler
Detroit Free Press
USA TODAY NETWORK

Three weeks before the Nov. 3 general election, a new Free Press poll shows President Donald Trump continuing to trail former Vice President Joe Biden by 9 percentage points in Michigan and seemingly unable to find a way to boost that level of support.

He's running out of time to do so. The survey of 600 active and likely voters — done by EPIC-MRA of Lansing for the Free Press and its outstate partners and released Wednesday morning — shows Biden, the Democratic nominee, leading Trump 48%-39%, virtually mirroring the 48%-40% lead he had in the same poll a month ago.

But more than anything else, the poll indicated that while Biden's support is slightly below where it was in July, at 11 percentage

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Court: Ford knew about defects, sold trucks anyway

Phoebe Wall Howard
Detroit Free Press
USA TODAY NETWORK

The owner of a 2006 Ford F-350 argued for years that Ford Motor Co. sold Super Duty trucks with defective 6.0L diesel engines to thousands of unsuspecting buyers and then concealed the known problems, saddling customers with repair bills and exposing them to engine failure.

Now an appeals court has agreed with Charles Brian Margeson, 41, of Torrance, California.



Margeson

He is the first Super Duty truck owner with a 6.0L diesel engine to have a fraud claim against Ford affirmed on appeal. The California Court of Appeal late last month upheld a lower court's ruling in Margeson's favor. Five other jury awards against Ford in similar cases are pending appeals.

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COVER STORIES

Super Duty

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"I bought my truck new. It must've broken down a couple dozen times and the turbo even blew up," Margeson told the Free Press. "I started carrying spare hoses with me and leather gloves because everything was super hot and I had to repair it myself on the side of the freeways. We would lose power. I mentioned it to Ford a couple times, saying, 'Hey, this is a lemon.' They just laughed it off. I just wanted a truck that worked."

He decided to opt out of a class action case involving unhappy Super Duty owners who eventually settled in 2013.

On his own, Margeson filed a lawsuit in June 2014. He was awarded a total of \$940,177.74 in June 2017, but the appeals court determined expert testimony about punitive damages was improper and tossed out that piece of his award — about \$726,000. But a new jury, in a trial not yet scheduled, will determine how much Ford must pay him in punitive damages, which by definition is designed to punish the defendant.

A top legal expert in the U.S. told the Free Press that Margeson's victory is a powerful example of how a class action case can be used to prevent potentially billions in costs when things go wrong with consumers, in this case for Ford.

"The company dodged a bullet," said Brian Fitzpatrick, a law professor at Vanderbilt University who clerked for the late U.S. Supreme Court Justice Antonin Scalia.

In Margeson's case, the Court of Appeal in California on Sept. 22 upheld the Los Angeles County Superior Court jury verdict that found Ford acted with malice, oppression or fraud by deliberately concealing known defects in its Power Stroke diesel engine. The engine was made by Navistar and used primarily in Super Duty trucks for model years 2003-07.

Margeson, a technician who maintains the electrical grid for Southern California Edison, used internal Ford documents to prove in court the Dearborn automaker knew its diesel engines were bad and put them in the heavy-duty pickups anyway for years.

Owners reported problems including loss of engine power, blown head gasket, warped or disfigured head bolts and oil cooler failure. Frequent breakdowns and decreased resale value dominated pickup discussion groups.

The jury award to Margeson included the maximum amount allowed for Ford's violation of California's lemon law, totaling \$214,537.34, plus legal fees. That amount is not in dispute and will go to Margeson.

It could've been avoided if Ford had taken his pleas seriously, Margeson said. "Every time I would tow, the thing would break down."

Bryan Altman of Los Angeles, Margeson's lawyer, said the new jury will determine how much Ford should be punished monetarily.

"There's no built-in ceiling on this," Altman said. "The jury will be tasked with considering how heinous and repetitive their fraudulent conduct was. They put this 6.0 engine in over 1 million Ford vehicles, with estimates in sales ranging as high as \$60 billion."

A Ford spokesman declined to comment on details of the case. Ian Thibodeau told the Free Press in a statement, "We are happy that the appellate court struck down the punitive damage award. Ford looks forward to the opportunity for a retrial."

Black smoke

Of the nearly \$215,000 the jury awarded Margeson under the lemon law, \$72,564.04 was in compensatory damages that essentially repay Margeson for his truck, which was among the priciest on the market at the time. The rest was a civil penalty.

For years, he and other owners of the heavy-duty pickups reported the engines would break down and emit black smoke.

Margeson decided to sue, he said, after the truck stranded him on the side of a highway with his wife and baby as semis roared past. He broke down in tears on the stand while testifying under examination.

"It was really scary," said Margeson, who declined an offer from Ford for a few hundred dollars after he had spent thousands in repairs. "I understand they're a business and they care about their shareholders. But, at some point, they need to be worried about their customers."

Ford initially denied a problem existed, then claimed there was insufficient evidence to prove the claim and finally maintained the company wasn't aware of the extent of the diesel engine problem. Internal emails written by upper level management shattered the Ford defense.

One email presented during trial was dated five months before Margeson purchased his truck. John Koszewnik, Ford's North American diesel division director, wrote on Feb. 5, 2006, that warranty repairs on the 6.0L engine were running "as high as \$5 million a month" and added Ford would not invest in an engine up-



Charles Brian Margeson of Torrance, Calif., purchased a 2006 Ford F-350 that routinely broke down when he hauled his trailer. He sued Ford Motor Co. for fraud and his case was upheld on appeal in September. CHARLES BRIAN MARGESON

grade. Two hours later, according to court records, Koszewnik warned people not to forward his email.

Mike Frommann, the Ford warranty manager, emailed his colleagues warning that the diesel engine could lead to a class action lawsuit if its cylinder pressure specifications went public.

He wrote in an email to colleagues dated July 13, 2006, "I recommend we delete all these emails."

By February 2007, warranty repair costs on the engine exceeded \$400 million, including more than \$227 million to fix fuel injectors and more than \$182 million on turbochargers, which was the largest repair rate ever seen for any Ford engine. This information was taken from an affidavit by one of Ford's own officials in a lawsuit it filed against Navistar. Despite this testimony, Ford later denied engine problems when it was being sued over the Navistar engine.

The appeals court affirmed there was "adequate evidence of intentional concealment of these problems by Ford to the detriment of consumers."

Not alone

Super Duty trucks, which are purchased for both personal and commercial work, are bigger and more powerful than their bestselling F-150 little brother. The F-250 and F-350 are marketed as being capable of pulling more weight and carrying heavier loads.

Ford Super Duty owners have claimed since it came out that the Navistar engine was troubled. At the same time, the faulty engine was touted as best in class by Ford with the most horsepower, most torque and other high-performance claims. The Free Press was unable to confirm how many of the vehicles remain on the road today.

Class action settlement

While the young father sued Ford himself, other truck owners chose a different route.

Dozens of class-action lawsuits involving the 6.0L diesel engine were consolidated and settled in 2013 by Ford. It entitled F-250 and F-350 owners to claim between \$50 and \$825 in reimbursement for post-warranty repairs.

Ford agreed to pay the 16 truck owners who brought the class action lawsuit on behalf of Super Duty owners nationally a total of \$150,000, which is separate from the relief money provided to all people included in the class group, Automotive News reported.

Compare \$150,000 total for 16 plaintiffs with nearly \$215,000 for one plaintiff, not including punitive damages.



Fitzpatrick

Super Duty owners were included in the class action and qualified for limited repair reimbursement unless they opted out.

Win for Ford

The Super Duty class action settlement was a huge win for Ford, especially in light of the recent court ruling, said Fitzpatrick, author of "The Conservative Case for Class Actions."

"That opens up the question, could every single class member have gotten the price of their car back?" he said. "If they had to pay every class member the price of their car back, it would be like the Volkswagen situation and Volkswagen paid billions of dollars. They ended up paying every class member the price of their car — 500,000 people."

The case against Ford appears to have been a lot more valuable than the Super Duty class members knew at the time, Fitzpatrick said.

"One of the virtues of class action, from the defendant's perspective, is 'global peace,'" Fitzpatrick said. "You can wipe something off your balance sheet in one fell swoop. That's why a lot of companies like class action. But every once in a while, someone will opt out. So the loose ends weren't quite tied up this time. But pretty close. One got away, but that's OK. The company still got a lot of global peace for the settlement."

Meanwhile, the F-350 case involving Mar-

geson is the first of six Super Duty cases led by Altman and the Knight Law Group, laying the groundwork for potential issues for Ford in the future.

In addition to Margeson, five other consumers who owned Super Duty trucks with 6.0L diesel engines collectively have been awarded more than \$10 million by juries. Ford is appealing all of these cases.

Fitzpatrick said Ford would be wise to settle with remaining Super Duty owners suing over the Navistar engine. He said the company could cut its losses and reduce time and money by closing the books.

Auto critics knew

"The dark times began in 2003," wrote Chris Riley in an historical overview of engines posted on autowise.com in early 2018.

"Faced with more stringent emissions standards, Ford introduced its least reputable diesel engine to date — the 6.0L Power Stroke. This engine was so bad that Ford and Navistar eventually went to court over it," Riley wrote. "It featured a glut of emissions equipment never before used, such as an exhaust gas recirculation (EGR) valve."

\$1B on repairs

By January 2009, Mike Levine wrote as then-editor of PickupTrucks.com, "Ford said it had spent \$1 billion on repairs and recalls to fix problems with legacy 6.0-liter Power Stroke diesel engines."

Loss of power steering and power brakes because of engine problems resonated with jurors in multiple cases, not just Margeson's, Altman said. "Ford would deny the problem" but their internal emails indicated the company concealed what it knew.

"They were even keeping repair people at Ford facilities in the dark so information never got out to the public, according to testimony," he said.

Bob Fascetti, who oversaw diesel engine products as director of V-engine and diesel engineering for Ford North America, said in a Feb. 28, 2007, affidavit: "Ford has experienced unprecedented repair rates with the 6.0L engines. The 6.0L has had the largest R/1000 (repairs per thousand) rate ever experienced by Ford for an engine in widespread production. In fact, the 6.0L, which represents only 10% of Ford's total engine volume, accounts for approximately 80% of all of Ford's warranty spending on engines. Additionally, warranty spending on the 6.0L accounts for approximately 25% of Ford's overall warranty spending."

Future business

Jon Gabrielsen, a market analyst who has interviewed hundreds of commercial truck buyers in North America on how they rank factors that influence their purchase, said these Navistar cases may be more sensitive than casual observers realize.

This is not just about individual Super Duty owners who have suffered financially but the situation has the potential to affect future business targeted by new CEO Jim Farley.

"It is a new day at Ford with new leadership and a more focused strategy, specifically including significant focus on the commercial end of the truck business," Gabrielsen said. "These F-250 and F-350 trucks are the volume leaders within the business-to-business commercial vehicle offering for Ford. And commercial business buyers are intensively focused on quality, reliability, durability and total cost of ownership of their fleets."

"So it would seem to be in Ford's best interest to clean up and close out this unfortunate chapter in history on any last open lawsuits in this area so that they can focus purely on growing this mission critical segment without the lingering taint on the Super Duty brand."

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Virus surge

Continued from Page 1A

hospital care for COVID-19.

The good news is we're not in a capacity crisis in our hospitals today, but we could be soon before our communities don't return to the level of vigilance we saw earlier in the year."

Peters urged people to follow public health recommendations to reduce the spread of COVID-19, and to get a flu shot.

"A simultaneous surge with COVID-19 and severe flu would potentially be disastrous for our health care delivery systems here in the state of Michigan," he said.

By wearing a mask, avoiding large gatherings, getting a flu vaccine and staying home when sick, ordinary people can make a difference, he said.

"Our hospitals need you and we need you right now," Peters said. "For your family member who's a nurse, for your friend who's a doctor, for your neighbor who works in environmental services in a hospital intensive care unit, for your elderly relatives who might need care and one of our hospitals soon, please help us."

Nick Derusha, president of the Michigan Association for Local Public Health, urged people to answer the phone if contract tracers call, and to follow quarantine orders.

"The virus will remain a threat until we have a vaccine available. It won't go away because we want it to," said Derusha, who also is the health officer and environmental health director for the Luce, Mackinac, Alger, and Schoolcraft County District Health Department.

Early in the pandemic, people in the Upper Peninsula were doing all they could to prevent the spread of COVID-19, he said. But as time passed and they remained separated from loved ones and were unable to go to large family reunions, big weddings and graduation parties, it led to what Derusha called "pandemic fatigue." People began to let down their guard.

"All Michiganders — north, south, east and west — must be vigilant and do what it takes to protect their friends, family and neighbors. It is within our power to control the spread of this virus," he said. "Be kind, and be safe."

The news comes as the percentage of positive COVID-19 tests also are rising in the state, Khaludun said. The MDHHS reported an average of roughly 3% of all tests returning positive results about a month ago. On Oct. 11, it reported over 4.4% were positive. The seven-day average of positive tests was 3.78% from Oct. 5-11.

Hospitals in Michigan, Peters said, are more prepared for a second wave of COVID-19 infections and the crush of patients that it could bring than they were in March.

"All of our hospitals have surge plans," he said. "If there is in fact a second surge later in the year, and we hope we don't have to deal with that ... we're in a better place now in terms of personal protective equipment, supplies."

Henry Ford Health System President and CEO Wright Lassiter III told the Free Press last week that its leaders have been meeting regularly to discuss when and how to mobilize if there should be another sharp rise in COVID-19 patients who need hospital care.

"We learned the lessons we learned from the first wave," he said. "The science and medicine around how you treat COVID evolved somewhat since March 10th, when we had the first cases in Michigan. What's different is that our physicians have the knowledge that's been obtained throughout the last six, seven months in terms of how to best treat patients who become stricken with the coronavirus."

"Probably the biggest lesson we learned, and it's not unique to Henry Ford, was that the global supply chain for health care was not sufficient for a global pandemic and so we've done several things there," Lassiter said.

The health system diversified its supply chain, and now buys from U.S. manufacturers, he said. Henry Ford now stocks a 100-day supply of PPE.

"The only area that we worry about at the moment is nitrile gloves because there's sort of a national shortage of those," he said.

Michigan isn't the only state seeing a rising number of novel coronavirus cases. It's happening nationally, too. The COVID Tracking Project reports an uptick in new daily cases and hospitalizations. The seven-day average is 50,000 new daily cases nationally.

Since the pandemic began, the United States has reported 7.8 million cases and 215,000 COVID-19-related deaths, according to the Johns Hopkins COVID-19 Global Case Tracker.

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