

Volkswagen Suits Rev Up in Georgia

Three days after the U.S. Environmental Protection Agency notified German auto manufacturer Volkswagen that cars it had sold in the United States for six years were violating federal emission standards, Atlanta attorney **Richard Robbins** filed what he says is the first product liability case against the carmaker in Georgia.

Robbins filed the potential class action litigation in federal court in Atlanta on Sept. 21 for professional photographer Joel Silverman, a former environmental lawyer and the unhappy owner of a diesel VW Jetta Sportswagen. Robbins said that Volkswagen's acknowledged corporate deception in programming its diesel-fueled vehicles' software to make it appear as if vehicle emissions were passing regulatory muster could not have affected a worse consumer demographic.

"The people buying these cars are affluent professionals interested in the environment and willing to pay a premium" for a vehicle that was supposed to achieve lower emissions of pollutants, but not at the expense of performance, Robbins explained. "Virtually every call I've gotten, people are not complaining about money but because they thought they were buying something environmentally friendly—and it's not. People were paying thousands of dollars in premiums for this car over regular Volkswagens."

Silverman told the Daily Report in an email, "I can tell you that buying a clean diesel car was a central part of my decision to buy a diesel VW Jetta."

A Volkswagen spokeswoman declined to comment on the Georgia case.

On Monday, a spokesman for state Attorney General Sam Olens said his Office of Consumer Protection also is investigating allegations of emission test cheating by Volkswagen. Olens is among more than two dozen attorneys general across the nation who have opened a multistate investigation into Volkswagen's years-long deception to rig its diesel engine technology to fool regulators and fraudulently meet or beat air pollution standards.

Robbins, a founding partner of **Robbins Ross Alloy Bellinfante Littlefield**, said Volkswagen has sold about 5,000 of the flawed, "clean diesel" vehicles in Georgia. He estimates that the German car manufacturer's admission that, far from being clean and green, those vehicles were emitting pollutants at levels barred by the EPA, could reduce the value of each car by as much as \$10,000, not including the time and trouble associated with securing repairs.

The result, Robbins said, could be an estimated \$50 million in damages for Volkswagen diesel car owners in Georgia alone. The suit also includes a racketeering provision that would, if successful, allow plaintiffs to secure treble damages that could top \$150 million, he said.

Robbins acknowledged that product liability cases against VW are currently being filed across the nation and

will likely eventually be consolidated, either in multi-district litigation or in a single class action suit. But, he said, "Why should Georgia owners be sucked into a huge class action if they can get a better deal being perhaps consolidated but separate?"

He said he expects to add five or six additional plaintiffs to the suit within a week. "In our business, time is everything," he said. "All the suits are going to be consolidated. We want to situate ourselves to be the best counsel for Georgia Volkswagen owners."

The Silverman suit was precipitated by revelations earlier this month that, since 2009, Volkswagen vehicles with 2.0-liter diesel engines have been equipped with a hidden "defeat device" that enabled the vehicles to fraudulently appear as if they passed U.S. emissions tests that limit the amount of pollutants each vehicle can legally emit. When a vehicle was tested for compliance with air pollution standards, the software was rigged to produce compliant emission results. But during normal operation, the vehicle software ran a different calibration that reduced the effectiveness of the emission control system, increasing emissions of nitrous oxide 10 to 40 times higher than acceptable EPA levels, according to the Silverman suit.

The fraud was discovered after the California Air Resources Board and the EPA launched investigations over the emissions discrepancies and refused to approve Volkswagen's 2016 models without an explanation from the car manufacturer.

Before he resigned last week, Volkswagen CEO Martin Winterkorn said he was "stunned that misconduct on such a scale was possible" and accepted responsibility for "irregularities" found in the diesel engines, although he disavowed any personal wrongdoing. Last Friday, Volkswagen's Supervisory Board released a statement saying there was "absolutely no excuse for the manipulations," promised to "call those responsible to account," and recommended the suspension of some employees. The board's deputy chairman called the emissions test manipulations "a moral and political disaster," and described the behavior of engineers and technicians involved in the engine development "unlawful."

The company has acknowledged that it still needs "to work on the remedy."

Robbins said that one of the problems is that Volkswagen has not provided any details as to the nature of the repairs that will be required to bring the vehicles into compliance with U.S. air pollution standards and what the consequent effects may be on the vehicles' gas mileage and performance.

"From all I read, they can fix it but it's going to degrade performance," he said. He added: "I think the market is going to assess damages pretty quickly."

Since Robbins filed the Silverman complaint, two other suits containing identical allegations—and also seeking class action status—have been filed in federal court in Atlanta. Heninger Garrison Davis, a firm from Birmingham, Alabama, filed suit on Sept. 23 on behalf of a South Carolina auto dealer, a North Carolina car owner and Norcross resident Carlos Alvarez, who had put his 2012 Passat up for sale when Volkswagen and the EPA went public with the emissions problems.

Decatur attorney Roger Orlando filed suit Sept. 24 on behalf of Valerie McLean, a Covington resident who bought a 2015 diesel Passat in June.

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