

# Forget the Lawyers: Here's What Will Decide Volkswagen Suits

Margaret Cronin Fisk

Della Hasselle

December 3, 2015 — 5:00 AM EST Updated on December 3, 2015 — 1:43 PM EST

Since the day it came out that Volkswagen AG cheated diesel-emissions tests, U.S. consumers have been suing and lawyers have been wrangling over where the cases will be heard.

But for the cars' owners and Volkswagen, that fight -- the centerpiece of a hearing Thursday in New Orleans -- doesn't matter so much because the legal case is actually quite simple. While other recent actions against carmakers have featured gruesome photos showing the dangers of faulty airbags or ignition switches, these suits will largely turn on how much customers should get for being duped into buying high-polluting vehicles.

All signs point to an early settlement since "the company has admitted liability" and promised to fix the problem or compensate consumers, said Erik Gordon, law professor at the University of Michigan. Depending on whether it just covers the premium paid for "clean diesel" or a full buyback of the cars, the payout could range from \$1.5 billion to \$8.9 billion, according to Bloomberg Intelligence.

\$20.5 Billion

Volkswagen has about 19.1 billion euros (\$20.5 billion) cash on its balance sheet. Bloomberg News reported this week it plans to secure a 20 billion-euro bridge financing deal to show it can cover the widening scandal.

Since news broke Sept. 18 that deceptive software had duped emissions testers to approve small cars for sale, regulators have ordered a recall

<http://www.bloomberg.com/news/articles/2015-12-03/forget-the-lawyers-here-s-what-will-decide-the-volkswagen-suits>

of larger vehicles, including those made by Volkswagen's Audi and Porsche units. In addition to the consumer suits -- which now number over 400 -- there are criminal and regulatory probes as well as the recalls and fixes themselves to pay for.

“At this time we are unable to comment on pending or active litigation,” Jeannine Ginivan, a spokeswoman for the carmaker, said in an e-mail.

By the end of the month, the judges in New Orleans will probably decide where the cases will be consolidated and which federal judge will preside. Then comes a series of preliminary hearings and filings to decide lead counsel and other procedural issues.

### Lawyers' Hearing

At Thursday's hearing, 22 lawyers in a packed room argued for their favorite districts. When it came to second choices, Detroit appeared to be the leader. Several attorneys argued for putting the cases before District Judge Gerald E. Rosen there, including those from northern and southern California and for Volkswagen.

Consumer lawyers asked for the cases to be consolidated in places including California, close to the state agency that helped uncover that VW's diesel vehicles were rigged to pass emissions tests; Virginia, near the company's U.S. offices; and New Jersey, where the U.S. unit is incorporated.

Lawyers urged the panel to send the cases to Texas, Illinois, Tennessee, Ohio and Alabama.

Volkswagen's attorneys asked the court to send the cases to Alexandria, Virginia, or Detroit, near Volkswagen's former U.S. headquarters. “We believe the scale has tipped towards Eastern District of Michigan,” said Jeff Chase, a lawyer for the carmaker. Chase said that court district has a structure in place for mediation.

### Real Issue

<http://www.bloomberg.com/news/articles/2015-12-03/forget-the-lawyers-here-s-what-will-decide-the-volkswagen-suits>

The real negotiations will focus on the settlement amount. The plaintiffs are claiming various wrongs: deceptive trade practices, breach of warranty, breach of contract, false advertising, fraud and others. Nearly all the states with the largest number of affected vehicles allow them to claim more than just their loss, some as much as three times the amount.

But those state rules would come into play only if the cases reach trial. Since Volkswagen's early admission of the cheating makes it likely to settle before then, the local laws will be more of a hammer to hold over the company during negotiations.

With as many as 567,000 affected vehicles sold in the U.S. and the "clean diesel" premiums running from \$1,000 to \$7,000 per car, Bloomberg Intelligence analyst Brandon Barnes put the low end of Volkswagen's liability range around \$1.5 billion just for that aspect. Triple damages, punitive damages for deceptive trade practices or fraud, and a push by some lawyers for a full refund on the purchase price minus depreciation might boost that.

### Buyback Cost

If Volkswagen is forced to buy back vehicles, the total cost could rise to \$8.9 billion, Barnes said.

"Regardless of the judge's political views or leanings, you have very specific state laws that set remedies," said Kevin Dean, who is representing clients suing Volkswagen in more than a dozen states. "The judge doesn't have the discretion on that. The remedies are carved in stone."

Volkswagen's admissions make the litigation unique, said Paul Hanly, a plaintiffs' lawyer who has spent over three decades working on such multidistrict cases.

“I’ve never been in any case where, before it ever gets filed, the defendant admits publicly that it engaged in a fraudulent activity,” Hanly said. “The only thing to prove is the extent of the fraud.”