

Global Edition

# Handelsblatt

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## **Dieseldate Litigation; U.S. Attorneys Take Aim At Bosch**

German auto components group Bosch, which supplied engine parts to VW, has been targeted in a U.S. lawsuit in connection with emissions-rigging by the world's largest automaker. VW might sell assets to help cover the costs of the scandal, one report said.

Most people are familiar with the image of the three monkeys, the first one covering his ears, the second one his mouth and the third his eyes. The trio has become emblematic of the common practice of ignoring things that are somehow bad or unpleasant. This is precisely the way Bosch is behaving in the Volkswagen emissions scandal, at least according to one VW driver from New York, who has filed the first lawsuit against the German auto parts supplier in the United States.

"Volkswagen's fraudulent scheme was facilitated and aided and abetted by defendant Bosch, which created the software used in Volkswagen's defeat device," said the 56-page lawsuit which accused the components group of being part of a conspiracy.

"Bosch's "'Hear no evil, See no evil' rationale for knowingly profiting from Volkswagen's crimes does not enable Bosch to escape civil liability under American law."

"Bosch, meanwhile, is not losing its cool over the U.S. lawsuit and referred to a statement it released in late September."

To cover the tens of billions of euros in expected costs from fines, lawsuits and the recalls of 11 million diesel cars fitted with software to cheat emissions tests, VW secured a EURO 20 billion (\$21 billion) credit line from banks this week. According to Reuters, it told the banks that it would sell assets if it finds no other way of repaying the loan.

Citing two unnamed people it said were familiar with the matter, Reuters reported that VW assured the lenders it would sell or list assets worth up to significantly more than EURO 20 billion euros if it fails to find other sources of money. There was no comment from VW.

While the group was unlikely to float Audi, Porsche or its truck business, it could sell the non-truck parts of its unit MAN, covering power engineering operations with ship engines, mini power plants, special gear units and other activities that may be worth a total of EURO 4-5 billion, Reuters reported.

The sale of luxury car brands Bentley and Lamborghini or motor bike brand Ducati was also possible, one source told the news agency.

In a piece of potential good news for the automaker, VW said on Thursday evening that the number of cars whose carbon dioxide (CO2) emissions and fuel consumption have been understated may turn out to be smaller than the 800,000 it announced last month. VW has said it expects costs of at least EURO 2 billion euros from the issue.

The checks had not been concluded yet, "but many CO2 levels have in the meantime turned out to be quite accurately measured," a VW spokesman said. News that VW had overstated the fuel efficiency of hundreds of thousands of cars had compounded the automaker's woes, coming just weeks after the diesel-rigging scandal came to light.

Bosch, meanwhile, is not losing its cool over the U.S. lawsuit and referred to a statement it released in late September. Bosch is the manufacturer of the supply and dosing module used in the after-treatment of exhaust gases, as well as the engine control unit software. Bosch argues that it supplies components according to the manufacturer's specifications. "The application of these components and their integration into the overall vehicle system are performed exclusively by the respective manufacturer."

These are tough accusations and harsh words, but they also offer a taste of what Volkswagen and now Bosch can expect in the U.S. lawsuits about to hit them. An army of American attorneys smells money, and lots of it. "There is a veritable litigation industry in the United States," said German lawyer Jürgen Ostertag, a partner in New York law firm *Pryor Cashman*, who is familiar with both the U.S. and German legal systems. Companies that supplied components to Wolfsburg-based VW are undoubtedly nervous. In addition to Bosch, the lawsuit against VW could drag in other suppliers as well.

The company did not comment on reports that Bosch, according to an internal VW document, warned VW against misuse of the engine control software. Bosch could actually remove itself from the line of fire by confirming that it did in fact warn VW, but it has refrained from doing so. The company takes a long-term approach to customer relations. This loyalty applies not only to VW but to all of Bosch's customers.

But if there is a trial in the United States, Bosch will break its silence. Like VW, Stuttgart-based Bosch will have to disclose anything even remotely related to the case, from internal reports to employee email communications. This is required under evidence-gathering rules for indicted companies in the United States, and it's relevant not just for the companies being sued: If the plaintiffs uncover other information and the names of other parties involved, they too can be included in the litigation. "Bosch will not be the only supplier to be sued in the United States because of VW," said an expert with a German law firm.

Few countries are as litigious as the United States. There are more attorneys - 1.2 million - than doctors or firefighters. There is one attorney for every 265 citizens in the United States, compared to 593 in Germany. According to the consulting firm Towers Watson, damage suits cost the US economy \$265 billion a year.

For Germans, complaints filed in the U.S. legal system often sound dramatic, and yet they are routine in the United States. In a typical complaint, the attorneys are trying to highlight their case as much as possible, in the hope of winning over judges. In the actual trial, they become even more dramatic, with the aim of impressing grand juries consisting of laypersons. "Psychological tricks are often employed there," said Mr. Ostertag.

Other German companies have already felt the effects of the U.S. legal system. Drug maker Bayer AG was on trial in 2003 in a case involving the anti-cholesterol medication Lipobay. The plaintiffs argued that the drug was linked to a number of deaths. In the first trial, the attorneys tried to portray Bayer as a company more concerned about money than the safety of its products. For visual effect, the attorneys showed the jury an image of a dollar bill, with a Bayer manager photoshopped into the image.

Branding a company as immoral and the plaintiffs as deeply injured victims is the plaintiffs' strategy. The better it sounds, the higher the damages. For companies, things can already get awkward in preliminary proceedings, when they are required to submit all documents. "A company that is being sued can quickly lose control over how internal email communications are to be interpreted," explained Ekkehard Helmig

of Helmig & Regula, a law firm in Wiesbaden, near Frankfurt. Plaintiffs' attorneys have a predilection for quoting email passages out of context,

Experts assume that the complaints against VW and Bosch will be combined into costly class action lawsuits. In these suits, each injured party receives a claim without having to file a lawsuit directly, and the sums involved can quickly run into the billions. Attorneys rub their hands with glee when they see class actions coming their way, because they typically receive 30 to 50 percent of the damages awarded.

In the case of VW and Bosch, the judges are now determining where the case will be heard. This is an important decision; Detroit, as the U.S. automobile capital, would be favorable for Volkswagen. California would be less favorable, because VW sold most of its diesel cars there, and Californian jurors would be most likely to have heard of the case or know someone affected by it.

The plaintiffs' attorneys are not guaranteed to succeed. The biggest case involving financial penalties in recent years was the oil spill disaster in the Gulf of Mexico. BP was ordered to pay \$18.7 billion in fines. Bayer, however, got a big surprise in 2003, when a grand jury rejected the class action suit in the Lipobay case. For the company, it was a "true acquittal" at the time.

Separately, VW's luxury car subsidiary Audi on Thursday appointed VW Chief Executive Matthias Müller as its supervisory board chief, replacing former VW Chief Executive Martin Winterkorn who resigned in the wake of the scandal.

Audi's head of technical development, Ulrich Hackenberg, suspended after the scandal broke, left the company and is to be replaced by Stefan Knirsch, the current head of Audi's powertrain development, on January 1, Audi said on Thursday.

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## WHY IT MATTERS

The lawsuit against Bosch shows other firms that supplied components to VW may also be hit by litigation in the U.S.

## FACTS

Bosch is being sued for allegedly aiding and abetting VW in the emissions scandal. An internal VW document suggests that Bosch warned VW against misuse of the engine control software it supplied. VW has told banks it may sell assets if it finds no other way of repaying a EURO 20 billion bridging arranged with them this week.