

## Mithoff to Represent Harris County in Emissions Suit Against Volkswagen

Brenda Sapino Jeffreys, Texas Lawyer  
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Richard Mithoff, the Houston trial lawyer who secured a \$2.2 billion settlement in 1998 for Texas counties against tobacco companies, is now going up against Volkswagen Group of America and Audi of America in vehicle emissions litigation for Harris County.

On Sept. 29, the Harris County Commissioners Court agreed to hire Mithoff and his firm, Mithoff Law, and lawyers from two other Houston firms, Baker • Wotring, and Abraham, Watkins, Nichols, Sorrels, Agosto & Friend to represent the county in a \$100 million lawsuit filed on Sept. 29.

Harris County Attorney Vince Ryan, whose office is also working on the suit, said Harris County may be the first government entity to file an emissions suit against Volkswagen since the U.S. Environmental Protection Agency on Sept. 18 issued a notice of violation against Volkswagen. The EPA alleges that "defeat devices" in Volkswagen diesel vehicles would bypass parts of the vehicle emission control systems intended to comply with emission standards.

The firms have a contingency-fee agreement with the county.

In a petition filed in the 234th District Court in Harris County, Harris County alleges Volkswagen, collectively for Volkswagen and Audi, violated Texas environmental laws in Harris County when it



Richard Warren Mithoff, founder,  
Mithoff Law, Houston

sold vehicles with "fraudulently manipulated vehicle emissions control devices in an effort to circumvent emissions testing requirements."

"Volkswagen's deceptive acts have undermined Harris County's efforts to improve air quality, reach attainment status, and protect our citizens," the county alleges in Harris County v. Volkswagen Group of America Inc.

Harris County alleges in the petition that Volkswagen sold more than 6,000 "fraudulently manipulated emission control vehicles" in Harris County from the 2009 model year through Aug. 31.

Harris County seeks at least \$100 million from the defendants. It seeks civil

penalties for violations of the Texas Water Code and the Texas Health & Safety Code, and attorney fees. The civil penalty is up to \$25,000 a day for each day of each violation prior to Aug. 31, according to the petition.

Mithoff said that under the Texas statutes, tampering with an emission control device is a violation of the law, as is selling a vehicle with a tampered device.

"In order to get a jury and judge persuaded ... we have to pursue fully the nature of the fraud, the extent of the fraud, who all was involved at a management level, to what lengths did the entities go to cover up the fraud and for how long was it underway," Mithoff said. "All of those things taken together aggravate the violation."

Gabriele Selch, a spokeswoman for Volkswagen in Germany, did not immediately respond to an emailed request for a response to the allegations in the suit.

Earlier in September, a Nueces County woman who owns a diesel Jetta filed a federal class action in Houston against Volkswagen, alleging violations of the Texas Deceptive Trade Practices Act.

At Mithoff Law Firm, attorneys Sherie Beckman and Warner Hocker are also working on the Volkswagen suit. The county's outside team also includes Debra Baker and Earnest Wotring, partners in Baker • Wotring, and Benny Agosto and Muhammad Aziz, partners in Abraham Watkins.