

With billions at stake in VW case, state and counties at odds

By James Osborne

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WASHINGTON - Volkswagen faces billions of dollars in fines in Texas for its admitted cheating on emissions tests, but the potential payday is being held up as the state Attorney General and county officials fight in court over which government agencies will get to claim a share of the proceeds from the German auto giant.

Under Texas law, county governments are entitled to half the award that any legal action against Volkswagen brings - with the remainder going to state coffers. But with more than 20 counties suing Volkswagen in the aftermath of the emissions scandal, Attorney General Ken Paxton is attempting to toss out all but two of the counties from the case, leaving the state in charge and the counties with no chance to claim any of the penalties.

The stakes are high for both the state and counties. A single county could reap tens of millions of dollars in penalties, at a time when low oil and gas prices are straining budgets across Texas and leading to cuts in public services.

"It's extremely important for the counties. We're all strapped," said Anthony Constant, a Corpus Christi attorney representing Dallas and other counties in the suit. "I have no idea what (the AG's office) is doing or why they're doing it, but it appears to me they have some concern it would somehow be bad for them if the counties were allowed (to) proceed."

The Attorney General's Office declined to comment. But in a filing earlier this year, Paxton argued that it was their office's right to uphold Texas' environmental laws and allowing the county lawsuits to proceed would lead to "the unconstitutional result" of Volkswagen being tried and fined multiple times for the same violation.

The lawsuits in Texas are but a small piece of a far larger wave of legal problems facing VW both in the U.S. and Europe since the auto maker was discovered to have installed software designed to fool emissions testing equipment into giving passing grades to its



Texas Attorney General Ken Paxton, center, makes comments during a news conference as Dallas County District Attorney Faith Johnson, left, listens, Wednesday, June 22, 2017, in Dallas. (AP Photo/Tony Gutierrez)

clean diesel cars, even as they pumped out nitrous oxide and other pollutants above legal limits.

Everyone from auto dealers to shareholders to vehicle owners has filed suit. Earlier this year, the German auto maker agreed to pay \$4.3 billion in civil penalties to the Justice Department, part of \$22 billion in settlements in the United States alone.

In Texas, the company settled violations of the state's anti-fraud laws for \$50 million in November. But Volkswagen still faces far more costly violations of the state's air pollution laws, which could potentially mean fines of between \$50 and \$5,000 per day for all 32,000 of its clean diesel vehicles registered in Texas. Some, which were sold under both the Volkswagen and Audi brands, have been on the road close to a decade.

But the process of determining the extent of those penalties is being held up by the infighting between the state and counties over who gets to sue Volkswagen.

After the trial court in Austin ruled the counties could remain in the case, the attorney general's office filed an appeal in October with the Texas Third Court of Appeals. Sensing an opening, Volkswagen's attorneys filed a motion to delay the entire trial until the question of the county lawsuits was resolved.

With the matter of the county lawsuits potentially headed to the Supreme Court - a process that can take years - the state

and counties' attorneys both argued against delaying the trial. But in January the appellate court sided with Volkswagen.

"We are very much united with the state in the case against VW, but VW has taken advantage with this stay order," said Richard Mithoff, the high-profile Houston personal injury lawyer who is lead counsel for the counties. "I'm very hopeful the matter can be resolved soon."

Volkswagen did not respond to emails, but the company has indicated that it wants to resolve its legal claims quickly.

Competition between state and county attorneys on environmental cases is not uncommon. Harris County Attorney Vince Ryan is known for filing quickly to supersede state claims. That was what Ryan and Fort Bend County Attorney Roy L. Cordes did with Volkswagen in 2015, filing suits days ahead of Texas and now avoiding the litigation hitting colleagues in other counties.

Those cases have not gone unnoticed in the state Capitol in Austin, where earlier this year state Rep. Charlie Geren, R-River Oaks, filed legislation that would have forced counties to inform the attorney general if they were planning a lawsuit and given the state the right to file first and pre-empt their claims. After opposition in the State House emerged earlier this year, a compromise bill only requiring county attorneys to notify the state ahead of filing litigation was passed and signed into law by Gov. Greg Abbott.

For now, attorneys on the Volkswagen case are waiting to see whether the Texas appeals court lets all the counties stay in the case - a ruling that could come any day.

Rock Owens, who runs the environmental division at the Harris County Attorney's Office, said the legal fight was part of a larger dispute between the state and municipal governments over local control - on everything from fracking bans to tree cutting ordinances. But he conceded the potential windfall from a settlement is having an effect, too.

"They always say follow the money," Owens said. "It's often motivation for things that are done."