

Lawsuits could force VW to buy back cheating diesels

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This Oct. 5, 2015 file photo shows the Volkswagen logo at the building of a company retailer in Berlin, Germany. Volkswagen almost inevitably will have to compensate owners of diesel cars equipped with emissions-rigging software. Some legal experts say the automaker could be forced to buy back the cars altogether. (AP Photo/Markus Schreiber, File)

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the automaker could be forced to buy back the cars altogether.

Many of the more than 200 lawsuits filed in the past few weeks allege that for seven years VW marketed four-cylinder diesel Golfs, Jettas, Beetles and Passats as clean alternatives to gas engines, knowing all along that the cars were spewing pollution that far exceeded legal limits.

In September, Volkswagen admitted to rigging [emissions tests](#) in the U.S. Earlier this month, Michael Horn, the head of its U.S. operations, told a congressional panel that VW was considering compensating owners for the lost value of their cars. He also said that it could take from one to two years to fix all the affected cars.

Seattle lawyer Steve Berman seized on that time frame when he sued VW last week in Los Angeles, seeking full restitution for owners of nearly 70,000 affected cars in California.

In a somewhat unique approach, Berman is seeking to get his clients their money back under California laws requiring automakers to guarantee emissions control parts for up to seven years or 70,000 miles. His lawsuit says that VW can't promptly make its diesels comply with the warranty, so under a different statute it "shall either promptly replace the new motor vehicle or promptly make restitution to the buyer."

The Environmental Protection Agency has said the VW diesels emit 10 times to 40 times the legal limit of nitrogen oxide.

"Our clients don't want to wait a year. They don't want to be driving a dirty car," Berman says.

The plaintiffs make the case that the cars can't be driven legally since they violate pollution standards, says University of Southern California law professor Greg Keating, who specializes in [consumer fraud](#) cases.

Even though the EPA says the cars can legally stay on the roads, eventually states with pollution tests will force owners to comply with the law, he says.



In this Sept. 23, 2015 file photo, Volkswagen diesel cars are parked in a storage lot near a VW dealership in Salt Lake City. Volkswagen almost inevitably will have to compensate owners of diesel cars equipped with emissions-rigging software. Some legal experts say the automaker could be forced to buy back the cars altogether. (AP Photo/Rick Bowmer, File)

"They can't give me the car that they told me I was buying, and they're forcing me to inflict environmental harm and be out of compliance with California law because of the wrong they committed," plaintiffs can argue, says Keating.

While Berman's lawsuit covers only cars in California, the consumer fraud argument could be made successfully nationwide, according to

Keating.

He and Erik Gordon, a business professor and lawyer at the University of Michigan, say the argument for a buyback is a good way to start settlement talks.

Gordon says the first option for judges would be to make VW pay buyers the difference between the value of the cars without the cheating software and what they are now worth. That could be hard to calculate. Lawyers also could argue that buyers based their purchase on VW's promises of clean, peppy cars, and because the repairs will hurt performance, VW must buy the cars back, he says. "You have to demonstrate to the court's satisfaction that (money) damages won't make you whole," Gordon says.

Most likely, Volkswagen will settle by paying customers to avoid a drawn-out process that keeps the scandal in the news, he says. "VW is going to get clobbered one way or another," Gordon says. As the cars get older, a buyback order is less likely because the owners got considerable use out of them, he adds.

Volkswagen wouldn't comment on pending lawsuits.

Product buybacks are rare, but not unheard of. In a July agreement with the National Highway Traffic Safety Administration, Fiat Chrysler agreed to make buyback offers to owners of more than 500,000 Ram pickup trucks and other vehicles. The Rams have defective steering parts, and some previous repair attempts failed.

Last month, Volkswagen admitted that 482,000 cars in the U.S. from the 2009 to 2015 model years have software that programs them to cheat on emissions tests. It later acknowledged that the same software was on 11 million cars worldwide.

The 482,000 cars are worth an average of \$14,466, ranging from \$8,409 for a 2009 Jetta to \$21,474 for a 2015 Passat, according to Kelley Blue Book. At the average resale value, VW could be forced to pay more than \$6.9 billion to repurchase the cars. That amount would cover most of the \$7.3 billion that VW has set aside for the emissions scandal.

"It's really enormous for VW to have to buy these things back," Keating says. "But maybe they will have to."

Some owners might forgo a buyback. Under California law, they have the option of getting a replacement vehicle.

Horn said whatever solution VW comes up with could require a compromise from car owners. He said the EPA mileage estimates probably wouldn't change, but the fix could hurt the cars' performance.

Attorneys now are vying to lead the cases, which can become very lucrative for lawyers. Lawyers usually get about 30 percent of class-action settlements.

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