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VW Inks \$1.2B Deal With Dealers In Diesel Emissions Case

By Y. Peter Kang

Law360, Los Angeles (September 30, 2016, 10:22 PM EDT) -- Volkswagen AG has agreed to pay up to \$1.2 billion in cash to resolve claims brought by more than 650 franchise dealerships claiming the automaker's diesel emissions scandal hurt the value of their businesses, according to documents filed Friday in California federal court.



Under terms of the deal, Volkswagen will pay up to \$1.21 billion to 652 U.S. dealerships that were Volkswagen-branded franchise dealers as of Sept. 18, 2015, with an average payout of \$1.85 million. (AP)

In asking U.S. District Judge Charles R. Breyer to grant preliminary approval of the settlement, the dealers said the terms were fair and reasonable and were reached after extensive negotiations between the parties. Under terms of the deal, Volkswagen will pay up to \$1.21 billion to 652 U.S. dealerships that were Volkswagen-branded franchise dealers as of Sept. 18, 2015, with an average payout of \$1.85 million.

The settlement also provides additional benefits to dealers, including buybacks of affected vehicles that can't be put into emissions compliance, under the same terms afforded to car owners as part of VW's tentative \$14.7 billion consumer settlement, according to the motion. That deal, **preliminarily approved** in July, includes \$2.7 billion for environmental remediation and \$2 billion to build zero-emission vehicle infrastructure.

"This recovery to the franchise dealer class is outstanding, particularly given the immediate need for cooperation among Volkswagen and its franchise dealers to effectuate the terms of the \$10 billion-plus consumer class action settlement that is presently pending approval before this court," the dealers' 35-page motion states. "Without any obvious deficiencies, the settlement agreement readily meets the standards for preliminary approval."

In addition, counsel for the dealers said there will be no claims process, as dealerships that don't opt out of the settlement will automatically receive a cash payment based on a formula of 71 times the monthly support payment VW made to dealers in November 2015.

As part of the settlement, VW has agreed to pay attorneys' fees and expenses separately from

the \$1.2 billion settlement amount. The parties have only recently begun discussions as to the appropriate fees request, according to court papers.

An attorney for the dealers lauded the proposed settlement.

"The Volkswagen-branded franchise dealer class action settlement filed today represents an outstanding result for Volkswagen's 652 franchise dealers as of Sept. 18, 2015," Steve Berman of Hagens Berman Sobol Shapiro LLP said in a statement.

VW acknowledged the proposed deal in a press release, but a company spokesperson later declined to provide additional comment.

The parties reached a **deal in principle** in August.

Separately, class counsel for the consumers told the court on Friday that more than 311,000 affected car owners for 475,000 eligible vehicles have already stepped forward and started the claims process, two years before the final deadline.

A court hearing for final approval of the consumer settlement is set for Oct. 18, according to court papers.

VW's misconduct came to light after a nonprofit discovered "defeat devices" in engines that would trigger emissions reduction technology during testing that was then deactivated during regular driving, resulting in increased nitrogen oxide emissions.

The company acknowledged last year that it had been cheating emissions standards by installing software in at least 11 million cars — nearly 600,000 of which were sold in the U.S. — allowing the vehicles to emit more toxins into the air after they leave testing labs and are out on the roads. The government hit VW and its subsidiaries with a Clean Air Act suit over the emissions cheating in January.

The dealers are represented by Steve W. Berman and Thomas E. Loeser of Hagens Berman Sobol Shapiro LLP and Richard N. Sox of Bass Sox Mercer.

Volkswagen is represented by Robert J. Giuffra Jr., Sharon L. Nelles, William B. Monahan and M. David Possick of Sullivan & Cromwell LLP.

The MDL is In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation, case number 3:15-md-02672, in the U.S. District Court for the Northern District of California.

--Additional reporting by Cara Bayles. Editing by Philip Shea.