



Portfolio Media, Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

VW, Audi Owners Win \$15.5M In Attys' Fees In Oil Sludge MDL

By Kurt Orzeck

Law360, Los Angeles (February 11, 2015, 6:54 PM ET) -- A Massachusetts federal judge on Tuesday approved roughly \$15.5 million in attorneys' fees to class counsel in multidistrict litigation against Volkswagen AG and Audi AG over oil sludge buildup in engines and related warranties, after the First Circuit nixed a previous \$30 million award.

In an 87-page memorandum and order, U.S. District Judge William G. Young granted \$15,468,000 in fees and \$1.2 million in costs and expenses to class counsel. He also gave the green light to a slew of additional awards for attorneys and firms that represented individual class plaintiffs in the sprawling litigation.

U.S. District Judge Joseph L. Tauro in March 2011 approved a settlement — which plaintiffs' attorneys estimated at \$414 million and Volkswagen estimated at \$50 million — and awarded \$30 million in fees to class counsel. But in July 2012, the First Circuit **vacated** the award, finding the fee should have been based on relevant Massachusetts state law instead of federal law.

Volkswagen and Audi had argued on remand that taking on the case was a low-risk proposition for class counsel because of work accomplished by earlier, similar suits.

But Judge Young replied on Tuesday that the defendants' argument is "belied by the years it took for the parties to reach settlement and by the additional time and effort class counsel has had to dedicate to attempting to collect the fees the defendants agreed to pay. The defendants, having ably and vigorously advocated for their interests throughout the life of this case, are in a poor position to suggest that this case was a predictable one for class counsel to litigate."

The MDL dates back to 2006 and encompasses nearly 480,000 cars. Under a settlement reached in September 2010 and formally approved the following March, Volkswagen and Audi agreed to cover 100 percent of sludge-related maintenance costs for owners or lessees of Audi A4s from model years 1997 through 2004 and Volkswagen Passats from model years 1998 through 2004 if they have documentation of required oil changes.

The district court eventually awarded \$30 million in fees and \$1.2 million in costs, but the appellate court overruled the award, finding that when a provision in a settlement agreement expressly states that the parties have not agreed on the source of law to apply to the fee award and the agreement states that defendants will pay reasonable fees, state law should govern the award.

Because the basis for the award is the settlement agreement itself, which is a contract under state and not federal law, the attorneys' fees should be awarded under state rules, the Federal Circuit decided.

Massachusetts courts are allowed to use the lodestar method of analysis, under which an amount is calculated by multiplying the number of hours reasonably spent on the case times a reasonable hourly rate, according to court papers. After the court calculates a base lodestar amount, it is then adjusted upward or downward on the basis of additional factors. Courts can also enhance lodestar amounts by applying multipliers to reflect the scale of the results achieved by prevailing counsel or the risks counsel took in pursuing contingent fees.

Upon remand, class counsel sought a fee award ranging from \$19.3 million to \$27.1 million. The defendants requested that the base lodestar be reduced, which would result in a negative multiplier.

Judge Young decided that a multiplier of 2 was appropriate to enhance class counsel's pre-award base lodestar of \$7.7 million. He also approved 15 additional awards to plaintiffs' attorneys that totaled about \$2.9 million, \$1.2 million in costs and fees incurred before Judge Tauro's original award, and roughly \$185,000 for costs and expenses incurred after that judge's original award.

Attorneys for the class, the individual class members, and Volkswagen and Audi, didn't immediately respond to requests for comment on Wednesday.

The class is represented by Merrill G. Davidoff, Edward W. Millstein and Russell D. Henkin of Berger & Montague PC; Kirk D. Tresemer and Randal R. Kelly of Irwin & Boesen PC; Peter J. McNulty of McNulty Law Firm; and Thomas G. Shapiro, Edward F. Haber and Adam M. Stewart of Shapiro Haber & Urmy LLP.

The individual class members are represented by Jonathan Waller of Campbell Waller and Poer LLC and Waller Law Office PC; Joseph G. Sauder of Chimicles & Tikellis LLP; Julie D. Goldstein of Fox Rothschild LLP; Ian Chorowsky of Progressive Law Group, Garrett D. Blanchfield Jr. of Reinhart Wendorf & Blanchfield, Eugene R. Richard of Wayne Richard & Hurwitz LLP and Phillip A. Bock of Bock & Hatch LLC; Timothy G. Orlando of Resnick & Moss PC; Joel L. Dilorenzo, Joseph L. Tucker and K. Stephen Jackson of Jackson & Tucker PC; Charles E. Mangan and John K. Weston of Sacks & Weston; Thomas Vaughan of Vaughan Law Group; Mark Schlachet of the Law Offices of Mark Schlachet; Brian G. Ruschel; and Thomas P. Sobran.

Volkswagen and Audi are represented by David A. Barry and Andrew R. Levin of Sugarman Rogers Barshak & Cohen PC; and Jeffrey L. Chase, Daniel V. Gsovski and Michael B. Gallub of Herzfeld & Rubin PC.

The case is In re: Volkswagen and Audi Warranty Extension Litigation, 1:07-md-01790, in the U.S. District Court for the District of Massachusetts.

--Editing by Emily Kokoll.

All Content © 2003-2015, Portfolio Media, Inc.