

A SMALL FIRM FOR VW'S BIG PROBLEMS

66-LAWYER SHOP PLAYS LEAD ROLE IN EMISSIONS SUITS

Amanda Bronstad, The National Law Journal, November 30

To defend itself in the biggest court battle in company history, Volkswagen A.G. has gone small.

Herzfeld & Rubin, Volkswagen's choice for lead counsel to handle more than 400 class actions filed over the emissions scandal, is a 66-lawyer New York law firm — tiny compared with the bulwarks Toyota Motor Corp. and General Motors Co. hired in litigation over recent safety recalls: Chicago's Kirkland & Ellis, with 1,576 lawyers, and Atlanta's Alston & Bird, with 759 lawyers

But Volkswagen's move is not surprising given Herzfeld & Rubin's long history representing the automaker, say lawyers who know the firm.

On Dec. 3, member Jeffrey Chase will argue on Volkswagen's behalf before the U.S. Judicial Panel on Multidistrict Litigation on where to coordinate the class actions.

"He has the ear of the client," said plaintiffs attorney Adam Slater, a partner at Mazie Slater Katz & Freeman in Roseland, New Jersey. Slater went up against Chase in a \$69 million settlement of a class action over leaky sunroofs in Volkswagen and Audi vehicles in 2010.

"Even though his law firm may not have enough lawyers as other firms, they're big enough and so familiar with how the client likes to handle things," Slater said.

In Volkswagen's sprawling emissions litigation, Herzfeld & Rubin isn't the only firm representing the company following the U.S. Environmental Protection Agency announcement in September that many of Volkswagen's "clean diesel" cars violated nitrogen oxide emissions standards. Volkswagen has since said more than 11 million cars worldwide have a "defeat device" in them designed to cheat emissions tests, including 482,000 cars in the United States.

The automaker has turned to Jones Day to conduct an internal *investigation* of the matter, and Kirkland & Ellis is playing a role in EPA matters. Other firms, including Mayer Brown and McGuireWoods, have appeared for Volkswagen in the class actions, which allege it duped consumers into paying premium prices for "clean diesel" vehicles. Those firms, many of which have worked with Herzfeld & Rubin before, still could play a significant role in the class actions, especially given the early stage of the litigation.

Long-Time Counsel

But in using Herzfeld & Rubin as lead counsel, Volkswagen is relying on a shop that has represented it for decades, particularly in New York, where the firm was founded in 1948 by

Herbert Rubin and Walter Herzfeld, a German immigrant, according to the Center for Jewish History in New York. Herzfeld died in 1968.

"They've been the go-to firm for Volkswagen in New York as long as I can remember," said Paul Napoli, of counsel to New York's Napoli Shkolnik who represented September 11, 2001, first responders in a settlement over respiratory claims in which Herzfeld & Rubin member Michael Hoenig was appointed a special counsel. (Hoenig writes a regular column for The New York Law Journal, an affiliated publication of the NLJ.)

Both Volkswagen and Herzfeld & Rubin declined to comment for this story.

Rubin, now in his 90s, is married to retired New York State Supreme Court Justice Rose Rubin, and is an active alumnus of New York University School of Law and serves on the editorial board of The New York Law Journal.

In 1980, Rubin won a significant ruling for Volkswagen when the U.S. Supreme Court found that an Oklahoma state court did not have jurisdiction over a defect case involving injuries sustained in an accident. *World-Wide Volkswagen v. Woodson* is now often cited in first-year civil procedure classes at law schools.

The firm's eight-lawyer affiliate in Los Angeles, also called Herzfeld & Rubin, has represented Volkswagen regularly in product liability cases. Chase, who sometimes is listed as working for Chase Kurshan Herzfeld & Rubin, an affiliate in Livingston, New Jersey, has appeared for Volkswagen in federal courts across the country for the past decade, according to court records. One of those was a 2010 settlement of multidistrict litigation over oil-sludge damage in the engines of about 480,000 cars. A settlement master estimated the value of that deal to be about \$223 million.

International Reach

The firm has global ties that could play a pivotal role in the emissions scandal given that Volkswagen, based in Wolfsburg, Germany, faces government investigations in Europe.

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The firm has global ties that could play a pivotal role in the emissions scandal given that Volkswagen, based in Wolfsburg, Germany, faces government investigations in Europe. "This isn't just a U.S. story," said Peter Henning, a professor at Wayne State University Law School. "Volkswagen has to think also about European exposure." Herzfeld & Rubin has an affiliate in Bucharest, Romania, called Rubin Meyer Doru & Trandafir with 15 attorneys. The firm also has an Israeli affiliate called Balter, Guth, Aloni & Co. that has 74 attorneys and, in 2013, opened an affiliate in Yangon, Myanmar, called Herzfeld Rubin Meyer & Rose. Rubin and two other members, Ian Ceresney and Linda Brown, represented the Association of Global Automakers

and the Alliance of Automobile Manufacturers Inc., an advocacy group in which Volkswagen is one of a dozen members, in an amicus brief before the U.S. Supreme Court in *Daimler v. Bauman*, brought against Germany's Daimler A.G. over the role of its Mercedes-Benz subsidiary in an Argentine war. In 2014, the high court dismissed the case, making it tougher for plaintiffs to sue foreign companies in U.S. courts.

Chase and Hoenig also are among the 350 sustaining members of the Product Liability Advisory Council Inc., said Hugh Young, the group's president. He said sustaining members serve as the "go-to counsel" for the Virginia-based group's members, which are among the world's largest companies, including Volkswagen.

"You're talking about elite attorneys," he said of Herzfeld & Rubin. "They are just a megafirm when it comes to defending product liability cases."