

Volkswagen Emissions Scandal is More than Just Cheating on Emissions Tests

By Nicole Danesh, J.D. Candidate 2019 | November 29, 2016

The Volkswagen Emissions Scandal arose last year after it was determined that Volkswagen had programmed as many as 11 million diesel cars to cheat on air-quality and emissions tests. The scandal led to a \$14.7 billion class action [settlement](#) which included a car [buyback program](#) for Volkswagen car owners and a payment to the U.S. Environmental Protection Agency for environmental damage that Volkswagen had concealed. Volkswagen suffered about a 40% loss of its market value as a result of the scandal.

Over a year after the scandal broke, it continues to plague Volkswagen's finances and reputation. The scandal widened earlier this month when German prosecutors suspected the former chief financial officer and current chairman of the supervisory board of violating securities laws. The [accusations](#) against Hans Dieter Pötsch include a failure to notify shareholders of the financial risks inherent in the emissions cheating scandal. This caused harm to shareholders who were legally entitled to be warned of the risk and was a violation of Pötsch's fiduciary duties involving disclosure of information to shareholders. As a result, Pötsch is now the subject of a securities investigation that will likely have a detrimental impact on Volkswagen's attempts to recover.

Aside from fueling more criticism of Volkswagen's leadership, this new investigation might harm Volkswagen in its already [pending lawsuits](#). Investor groups and mutual funds have commenced litigation accusing Volkswagen's officers of breaking the law by failing to notify shareholders of the impending scandal and consequent financial risk. A finding that Pötsch, who has been at the top of the company's hierarchy, disregarded the law and shareholders' interests would be disadvantageous to Volkswagen in such litigation. It would undermine Volkswagen's argument that mid-level engineers and managers were responsible for the scandal and that top management was unaware of what was going on.

Without a doubt, Volkswagen faces a long road ahead. With one massive settlement out of the way, the company continues to face allegations of fraud and dishonesty from multiple different directions. Ultimately, it is reasonable to assume that the new investigation into Pötsch's conduct will harm Volkswagen's defense efforts in pending litigation as well as potentially give rise to new complaints being filed.