

FROM THE COURTS

Chevy Cruze Diesel Emissions Class Action Runs Out of Gas

by Amanda Bronstad

Nearly five years after a lawsuit alleged that General Motors' Chevy Cruze diesel vehicles emitted harmful nitrogen oxides into the air, a federal judge now has "serious doubt" the case should remain on his docket.

The reason? The plaintiffs don't have injuries to assert standing to sue in federal court because, after years of discovery in the case, they had failed to reveal the existence of a "defeat device"—the device that Volkswagen, in contrast, admitted it installed in its diesel cars to pass emissions tests required by government regulations. U.S. District

Judge Thomas Ludington of the Eastern District of Michigan directed the plaintiffs to show cause why the case should not be dismissed for lack of jurisdiction.

"In summary, four long years of discovery have not produced the widespread evidence of deceptive engineering and regulatory fraud that plaintiffs have alleged in this case," wrote Ludington in a Sept. 1 order. "Rather than revealing an American-made Volkswagen scandal, the evidence introduced so far leaves serious doubt as to whether this court may continue to exercise jurisdiction over this case."

He gave plaintiffs until Oct. 1 to file a response.

Plaintiffs' lawyers—Steve Berman, managing partner of Seattle's Hagens Berman Sobol Shapiro; Chris Seeger, founding partner of Seeger Weiss in Ridgefield Park, New Jersey; James Cecchi of Carella, Byrne, Cecchi, Olstein, Brody & Agnello in Roseland, New Jersey; Bob Hilliard, at Hilliard Martinez Gonzales in Corpus Christi, Texas; and Jason Thompson, senior shareholder at Sommers Schwartz in Southfield, Michigan—did not respond to a request for comment.

Kirkland & Ellis' Renee Smith and Jeffrey Bramson, Chicago partners who represented General Motors, declined to comment.

Chicago partner Richard Godfrey and Washington, D.C., partner Haley Darling also worked on the case, as did Dykema Gossett's Michael Cooney, a partner in Detroit.

The case is one of several that followed Volkswagen's emissions scandal, which led to a \$14.7 billion class action settlement in 2016 and a criminal plea deal with federal regulators the following year. Unlike Volkswagen, other automakers in similar emissions lawsuits, such as Mercedes, Ford, BMW and Fiat Chrysler, did not admit they installed defeat devices in their diesel vehicles.

Settlements, many of which involved additional governmental fines, have been large. In 2019, Fiat Chrysler Automobiles N.V., now called FCA US LLC, agreed to pay \$800 million over its "EcoDiesel" vehicles in a deal with federal regulators that also included a class action pending in California's Northern District. Last year, Daimler agreed to settle a New



SHUTTERSTOCK

Chevy Cruze plaintiffs don't have injuries to assert standing to sue in federal court because, after years of discovery, they failed to reveal the existence of a "defeat device" to pass emissions tests required by government regulations, U.S. District Judge Thomas Ludington said.

Jersey class action over Mercedes-Benz's "BlueTec" diesel vehicles for more than \$700 million, in addition to \$1.5 billion in governmental fines.

But the Chevy Cruze case, which survived an early dismissal motion on standing, went a different direction.

In 2016, nine owners of the 2014 and 2015 models of the Chevy Cruze diesel vehicle filed the original 442-page complaint, alleging they overpaid for cars that had defeat devices in them.

In 2017, Ludington allowed plaintiffs to move forward on their economic injury claims at the dismissal stage.

Then in 2018, Ludington refused to dismiss a separate case brought against GM under the U.S. Racketeer Influenced and Corrupt Organizations Act over its larger Duramax diesel trucks. The 2017 case, brought by the same plaintiff lawyers, named an additional defendant, software supplier Robert Bosch.

After the *Duramax* decision, attorneys in the Chevy Cruze case sought to amend their complaint to add RICO claims and Bosch as a defendant. In 2018, Ludington allowed the move, noting that the new allegations were "exceedingly relevant," and then refused to dismiss Bosch from the case.

Discovery concluded in 2019 then, last year, GM filed a summary judgment motion to toss out the case because there was no evidence of a defeat device, or excessive emissions, in the Chevy Cruze vehicles.

"After years of discovery, millions of pages of produced documents, scores of depositions, detailed expert disclosures, and communications with regulators, plaintiffs' claims have proven completely unfounded," wrote Smith, of Kirkland & Ellis. "It is now time to end this litigation on the basis of a fully mature, undisputed record, which establishes that plaintiffs have no valid claims as a matter of law."

Ludington never ruled on the summary judgment motion. But, in last week's order, he found that an expert for the plaintiffs had tested only one Chevy Cruze diesel, which the lawyers had purchased, but not any of the vehicles owned by the plaintiffs.

Amanda Bronstad is the ALM staff reporter covering class actions and mass torts nationwide. Contact her at abronstad@alm.com.



CITY OF DORAL NOTICE OF PUBLIC HEARING

All residents, property owners and other interested parties are hereby notified of a **COUNCIL ZONING MEETING** on **September 22, 2021, beginning at 6:30 PM** to consider a text amendment to the City's Land Development Code, by amending Chapter 77, "Roads and Vehicular Use Areas," Article IV, "Parking and Loading Areas," Division 2, "Off-Street Parking," creating a new section, Section 77-141, "Electric Vehicle (EV) Charging Stations," establishing EV charging equipment requirements. The City Council will consider this item for **SECOND READING**. The meeting will be held at the **City of Doral, Government Center, Council Chambers located at 8401 NW 53rd Terrace, Doral, Florida, 33166**.

The City of Doral proposes to adopt the following Ordinance:

ORDINANCE No. 2021-28

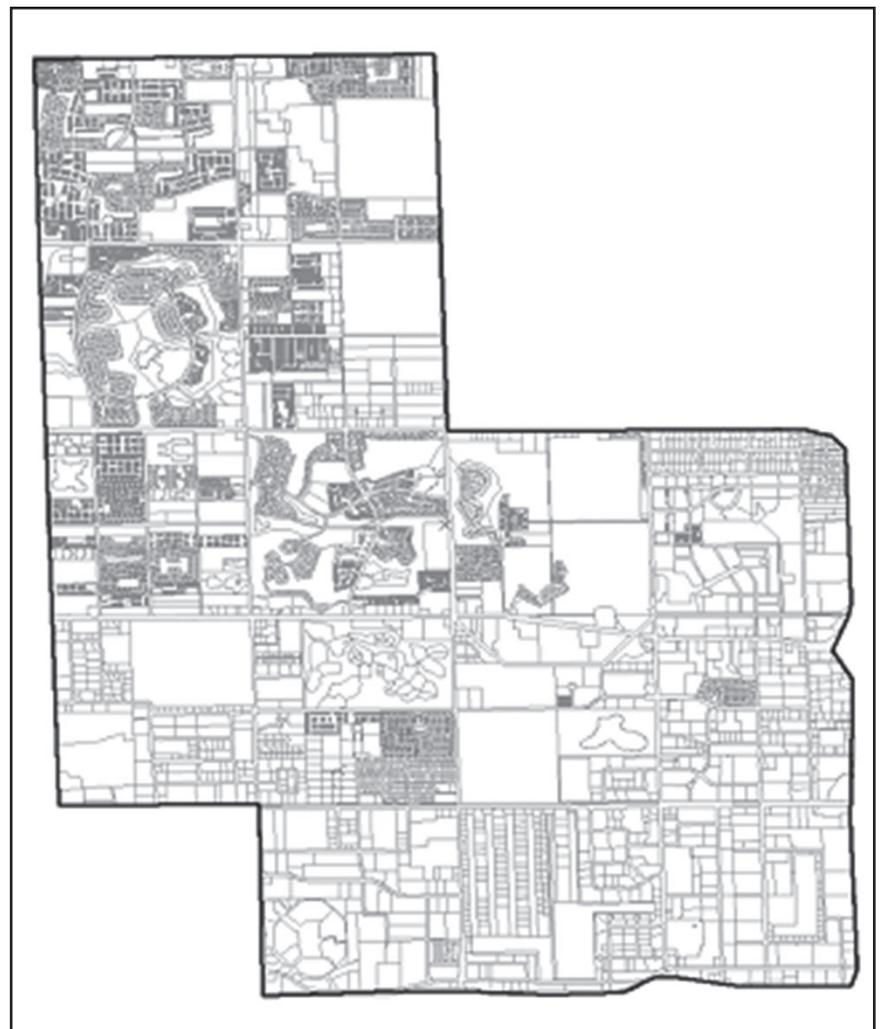
AN ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, APPROVING/DENYING A TEXT AMENDMENT TO THE CITY'S LAND DEVELOPMENT CODE, BY AMENDING CHAPTER 77, "ROADS AND VEHICULAR USE AREAS," ARTICLE IV, "PARKING AND LOADING AREAS," DIVISION 2, "OFF-STREET PARKING," CREATING A NEW SECTION, SECTION 77-141, "ELECTRIC VEHICLE (EV) CHARGING STATIONS," ESTABLISHING EV CHARGING EQUIPMENT REQUIREMENTS; PROVIDING FOR INCORPORATION INTO THE CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS, AND PROVIDING FOR AN EFFECTIVE DATE

HEARING NO.: 21-09-DOR-05

APPLICANT: City of Doral

REQUEST: The City Manager's Office respectfully recommends that the Mayor and City Councilmembers approve a text amendment to the City's Land Development Code, by amending Chapter 77, "Roads and Vehicular Use Areas," Article IV, "Parking and Loading Areas," Division 2, "Off-Street Parking," creating a new section, Section 77-141, "Electric Vehicle (EV) Charging Stations," establishing EV charging equipment requirements.

Location Map



Inquiries regarding the item may be directed to the Planning and Zoning Department at 305-59-DORAL.

Pursuant to Section 286.0105, Florida Statutes If a person decides to appeal any decisions made by the City Council with respect to any matter considered at such meeting or hearing, they will need a record of the proceedings and, for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law. In accordance with the Americans with Disabilities Act, any person who are disabled and who need special accommodations to participate in this meeting because of that disability should contact the Planning and Zoning Department at 305-59-DORAL no later than three (3) business days prior to the proceeding.

Connie Diaz, MMC
City Clerk
City of Doral

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