

BUSINESS DAY

German Authorities Raid U.S. Law Firm Leading Volkswagen's Emissions Inquiry

By JACK EWING and BILL VLASIC MARCH 16, 2017

FRANKFURT — German authorities searched the offices of the American law firm Volkswagen hired to conduct an internal investigation of its emissions fraud, the carmaker confirmed on Thursday, raising questions about the credibility of the company's efforts to uncover wrongdoing in its ranks.

The raid targeted Jones Day, which since 2015 has been conducting a wide-ranging inquiry into who at Volkswagen was responsible for an emissions cheating scheme that has already led to more than \$22 billion in fines and settlements.

Evidence collected by the law firm and shared with the American authorities formed the basis for Volkswagen's guilty plea in the United States last week over charges tied to emissions deception involving diesel engines.

But the search by prosecutors in Munich of Jones Day, which has a large presence in Germany, suggests that the authorities believe the firm has not divulged all documents that may be relevant to the case. If so, it would be a blow to Jones Day's reputation while raising the possibility of new revelations that would further tarnish Volkswagen.

The search and seizure of documents from the firm also signaled that the German authorities have become more aggressive in pursuing criminal charges against the company and its luxury car unit Audi.

Separate inquiries by German prosecutors have targeted the manipulation of three-liter engines produced by Audi for sale in the United States and accusations of securities violations by Volkswagen. The authorities are also investigating more than three dozen current or former employees of Volkswagen, including a former chief executive.

Though Volkswagen has admitted that its employees rigged diesel engines to produce artificially low emissions during lab tests, the company has insisted that no members of its current management board were involved.

The search of Jones Day took place on Wednesday as part of a series of raids that included the headquarters of Audi in Ingolstadt in Bavaria, an Audi factory in Neckarsulm north of Stuttgart, and private homes. The search of Jones Day was first reported by German newspaper Handelsblatt.

Ken Heidenreich, a spokesman for prosecutors in Munich, would not say which Jones Day office or offices had been searched. The searches related to Audi, all of which were approved by a Munich judge, continued on Thursday as investigators secured electronic data, Mr. Heidenreich said.

Ansgar Rempp, the Jones Day partner in charge of the firm's German operations, declined to comment. But Volkswagen reacted angrily to the search of the firm, saying in a statement that the action by prosecutors was "a clear breach of the principles of the rule of law."

"We will take all the action at our disposal against these proceedings," the company said.

In the United States, communications between lawyers and their

clients are usually off limits to the government. But rules on lawyer-client privilege are less absolute in Germany, said Matthias Jahn, director of the Institute for Economic Crimes Law at the University of Frankfurt.

Still, Mr. Jahn said, it was unusual for prosecutors to seize documents from a law firm in an investigation of the firm's client. He noted that investigators searched Audi headquarters on Wednesday as it was holding a news conference there to discuss its annual financial results, an acute embarrassment for one of Volkswagen's most important brands.

"That is a signal that 'We don't have any fear of big corporations — we're going in,'" Mr. Jahn said.

Corporations that get into trouble often hire large law firms or prominent lawyers to conduct internal investigations to demonstrate that they are serious about getting to the bottom of wrongdoing.

After defective ignition switches in some General Motors cars led to dozens of deaths, the carmaker hired a former federal prosecutor, Anton Valukas, and gave him free rein to determine what had happened.

The Justice Department cited the "swift and robust internal investigation" by G.M. when it agreed in 2015 to a \$900 million settlement of the case, a fraction of what Volkswagen is paying.

But the use of outside law firms can backfire if there is any indication that the internal investigators are trying to protect executives. Volkswagen has insisted that no one on its management board is implicated, but has refused to disclose Jones Day's findings.

Conducting such inquiries is a lucrative business for law firms. Volkswagen has boasted that Jones Day has pored over millions of documents and interviewed hundreds of employees. Documents the law firm collected were turned over to American courts, where they were used to secure indictments of six current and former Volkswagen executives suspected of being architects of the fraud.

On Thursday a federal judge in Detroit declined to release one of the six from custody while he awaits trial.

The man, **Oliver Schmidt**, is the only one of those indicted in American custody. He is accused of taking part in an attempt to prevent discovery of the fraud. Mr. Schmidt, a liaison between the carmaker and United States regulators, was only caught because he went to Florida in the belief that he would not be targeted for arrest.

The other five are all believed to be German nationals living in Germany, which rarely extradites its citizens.

Judge Sean Cox, of Federal District Court, declined to set bond for Mr. Schmidt, who was arrested in Miami in January and has since been incarcerated in Michigan. Despite Mr. Schmidt's offer to post a bond of up to \$1.6 million in cash and property, Judge Cox ruled that he was a "serious risk" to flee the United States to Germany if released.

Mr. Schmidt, shackled and clad in an orange Sanilac County jail jumpsuit, spoke briefly at the hearing to agree to waive his right to a speedy trial. He is scheduled to go on trial on Jan. 16, 2018, on charges of conspiracy, wire fraud and violations of the Clean Air Act.

Jack Ewing reported from Frankfurt and Bill Vlasic from Detroit.