

## Volkswagen Crash Victims Want Cases Merged

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*Tuesday, Sep 18, 2007* --- A Texas couple whose daughter was killed in a car crash involving a Volkswagen AG Beetle wants to combine two lawsuits accusing the car manufacturer of negligence for not equipping its vehicles with electronic stability control technology.

Jennifer and Jeff Endresen asked the U.S. District Court for the Eastern District of Texas this week to consolidate their case with a suit filed by Jaimie Wies, who alleged that a 2003 VW Beetle was dangerous and defective because it failed to incorporate an electronic stability control, or ESC, safety system.

The Endresens made the same allegation regarding a 2005 VW Beetle which crashed, killing their daughter Jacquelyn. Wies said she suffered a skull fracture and was disabled as a result of her crash.

The suits claim that Volkswagen was responsible for implementing ESC as a safer alternative design available for its vehicles. The plaintiffs in both cases are represented by Texas law firm Hossley & Embry LLP.

On Monday, the Endresens said the cases should be consolidated because both lawsuits seek the same risk and utility analysis to determine whether a new Beetle without ESC is “unreasonably dangerous.”

The analysis would include whether implementing ESC on all Beetles was technically and economically feasible. Thus, the Endresens say both cases will involve the same evidence regarding ESC, with depositions by the same VW engineers and experts. They also said that VW's knowledge about the prevalence of skidding collisions and other similar incidents would also be needed in both cases.

“When these elements are applied to the Wies and Endresen cases, it becomes clear that the vast majority of legal and factual issues overlap between the two cases and consolidation is appropriate,” the Endresens' motion said. “Simply put, having these two cases tried separately would generate tremendous duplication and waste of judicial resources.”

The Endresens did concede that both cases will require case-specific reconstructions of the accidents and whether ESC could have prevented the crashes. However, they said that element did not outweigh the other arguments presented in favor of consolidation.

In a court filing against consolidation filed last month, Volkswagen claimed that the Endresens' request to consolidate was a “poorly constructed Trojan horse” meant to circumvent the car maker's motion to transfer. The German car maker is seeking to move the Endresens' case from the Eastern District of Texas to the Southern District of Texas, which is the district in which the accident occurred.

Volkswagen said the consolidation motion was meant to keep the Endresens' case in the Eastern District, where the Wies case was also filed.

Burgain G. Hayes, an attorney for Volkswagen, said the Southern District was considered a friendlier venue for product liability plaintiffs, just as it is for intellectual property cases. Jeffrey Todd Embry, an attorney for the plaintiffs, said the Southern District has knowledgeable judges on product liability cases who move cases along efficiently.

Volkswagen said in a motion filed late last month that there was no precedent “to suggest that two lawsuits arising out of two entirely separate and distinct events should be consolidated,” and that the request involved “naked and cynical gamesmanship.”

The Endresens pointed out that both suits claim that VW Beetles began to oversteer, causing the vehicles to move into oncoming traffic.

However, Volkswagen noted that the Wies case involved an accident under rainy conditions on a curved road in Tyler, Texas in January 2005, while the Endresen case took place in July 2007 in clear conditions on a straight roadway in Katy, Texas. Volkswagen also said the 2003 Beetle Convertible in the Wies case and the 2005 Beetle Sedan in the Endresen case are “substantially different automobiles” with different builds that affect each vehicle's handling.

“Plaintiffs have skillfully combined similarly named vehicles, similar drivers with a seductively simple allegation, which masks an extremely complex technical case involving two separate reconstructions, two separate theories and the resultant separate testing programs mandated by Daubert, to establish Plaintiffs hypothesis about the efficacy of a new, emerging automotive system regarding control in terms of specific accident scenarios,” Volkswagen said.

On Tuesday, the Endresens filed a response to Volkswagen's motion to transfer which conceded that the accident and witnesses to the crash were located in the Southern District of Texas. However, the Endresens said many of the facts underlying their claims in the case would come from Volkswagen's offices in Germany, Michigan and throughout the U.S., while only basic documents about “largely uncontested facts” from the accident were located in the Southern District of Texas.

“In truth, nearly all the witnesses and documents upon which legal questions for the jury will turn will come to trial from expert witnesses from all over the

country and Europe,” the Endresens said. “Most importantly, all of this probative information and evidence will already be coming before this very court in the *Wies v. Volkswagen AG et al.* case.”

Hayes, the Volkswagen attorney, said the case isn't the first time he has tangled with Embry over a venue change.

In another product liability suit against Volkswagen, Embry's clients Richard, Ruth and Amy Singleton are suing the car maker for an allegedly defective seat back, which killed a child in the back of a Volkswagen Golf vehicle.

Volkswagen requested to move the case from the Southern District to the Northern District because the accident occurred in Dallas. The district court denied the venue change, and the U.S. Court of Appeals for the Fifth Circuit affirmed that ruling. However, the circuit court agreed to rehear the case, which has been stayed pending the court's decision.

Embry said the Endresens' motion would be affected by the Fifth Circuit case, but that he did not anticipate a reversal, which would signal a “sweeping change” to venue transfer laws.

The Endresens filed their suit in June against Volkswagen and its U.S. subsidiary, Volkswagen of America Inc., on behalf of the estate of Jacquelyn Endresen, claiming the 2005 Beetle was unsafe and that the car maker knew it.

The Endresens claim Jacquelyn was driving her father's 2005 Beetle on the evening of July 17, 2006 in Fort Bend County, Texas when the car veered right into oncoming traffic and collided head-on with a pickup truck. Jacquelyn was killed on impact.

The suit claimed Volkswagen defectively designed, manufactured and tested the Beetle model by failing to equip the cars with ESC as a standard feature.

Volkswagen, which selected and installed the Beetle's brake and steering mechanism, knew and could foresee that accidents such as the one that killed Jacquelyn would occasionally take place in the ordinary use of the car without such equipment, the Endresens said.

The 2005 model was prone to oversteer and should have been fitted with the ESC standard in other Volkswagen models, they said, adding the system would have prevented the accident and saved their daughter.

According to the complaint, electronic stability control was widely available at the time Endresen's vehicle was manufactured, and had been installed as standard equipment in the 2002 Turbo Volkswagen Beetle. Volkswagen, the suit alleged, had developed the stability system back in the early 1980s.

“Volkswagen knew that electronic stability control was the greatest advance in automotive safety since the seatbelt and would save lives and prevent

injury if equipped on Volkswagen vehicles,” the complaint said.

“Electronic stability control was both economically and technologically feasible at the time the subject vehicle was manufactured and would not have posed any additional risks while reducing significantly the risk of serious injury or death,” it added.

The complaint argues further that the architecture of the 2005 Beetle was “easily adaptable” to electronic stability control.

The Endresens claim the car maker breached its duty to exercise reasonable care in the design, manufacture, assembly, testing, distribution and marketing of the Beetle and its driver's seat. It also allegedly breached its duty of care by not incorporating a “known life-saving technology.”

Wies' suit, which was originally filed in January, makes similar allegations regarding ESC.

Hayes said it is common for product liability cases to be filed if new technology is developed that helps safety, and that Volkswagen was “not ashamed of its forward-thinking technology.” He said the German car maker was willing to accept the risks of introducing the technology for “doing the right thing.”

Embry claimed that the ESC should have been implemented on the Beetle, saying it had already been implemented as a feature in a 2002 turbo edition of the car and would have cost about \$100 per vehicle to implement.

Volkswagen is represented in both cases by Burgain G. Hayes.

The plaintiffs in both cases are represented by Hossley & Embry LLP.

The Endresen case is Jennifer Endresen et al. v. Volkswagen of America Inc., case number 07-cv-272, in the U.S. District Court for the Eastern District of Texas, Marshall Division. The other case is Jaimie Wies v. Volkswagen of America Inc. et al., case number 07-cv-32, in the U.S. District Court for the Eastern District of Texas, Marshall Division.

--Additional reporting by Christine Caulfield