

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: TOYOTA MOTOR CORP. UNINTENDED
ACCELERATION MARKETING, SALES PRACTICES,
AND PRODUCTS LIABILITY LITIGATION**

Quaid McIver v. KW Real Estate/Akron Co., LLC, et al.,)
N.D. Ohio, C.A. No. 5:12-1175)

MDL No. 2151

TRANSFER ORDER

Before the Panel:* Pursuant to Panel Rule 7.1, defendants in this Northern District of Ohio action (*McIver*) Auto Butler, Inc. a/k/a Broadway Equipment Co. (Auto Butler), KW Real Estate/Akron Co., LLC (KW Real Estate), and Friedkin Companies, Inc. (Friedkin) move to vacate our order that conditionally transferred this action to MDL No. 2151. Plaintiff and responding defendant Toyota Motor Sales, U.S.A., Inc. (Toyota) oppose the motion to vacate and favor inclusion of this action in MDL No. 2151.

The *McIver* action alleges that plaintiff was struck and injured by a “run-away vehicle” while he was working at a car wash. The complaint does not provide more specific facts about the incident, but movants allege that discovery has shown that Mr. McIver exited the subject vehicle while it was still in “drive” and then attempted to stop the rolling vehicle with his hands. Since filing the complaint, plaintiff has made clear he intends to argue that the vehicle involved in the incident experienced sudden, unintended acceleration. The actions centralized in MDL No. 2151 involve an alleged defect in certain Toyota vehicles that causes sudden, unintended acceleration. *See In re: Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, and Prods. Liab. Litig.*, 704 F. Supp. 2d 1379, 1381 (J.P.M.L. 2010).

Moving defendants argue that the facts do not support plaintiff’s asserted theory of sudden, unintended acceleration. Whether or not plaintiff’s theory of liability is likely to succeed, however, is not for the Panel to decide. Because plaintiff is asserting this theory, discovery and pretrial proceedings relating to sudden, unintended acceleration will be common to the *McIver* action and MDL No. 2151. Moving defendants also argue, *inter alia*, that (1) MDL No. 2151 has advanced to the point that transfer would not promote the just and efficient conduct of the litigation; and (2) transfer would inconvenience moving defendants and witnesses. In consultation with the transferee judge, we are of the opinion that the continued transfer of tag-along actions to MDL No. 2151 at this time will result in efficiencies for the litigation. Moreover, the Panel has repeatedly held that, while it might inconvenience some parties, transfer of a particular action often is necessary to further the

* Certain Panel members who could be members of the putative classes in this docket have renounced their participation in these classes and have participated in the decision.

-2-

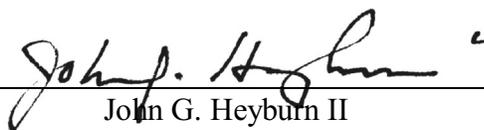
expeditious resolution of the litigation taken as a whole. *See, e.g., In re: Crown Life Ins. Premium Litig.*, 178 F. Supp. 2d 1365, 1366 (J.P.M.L. 2001).

Consequently, after considering all argument of counsel, we find that *McIver* shares questions of fact with actions in this litigation previously transferred to the Central District of California, and that transfer of this action to MDL No. 2151 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation.

If the Panel determines transfer to be appropriate, moving defendants alternatively request that the Panel separate and remand the claims against moving defendants to the transferor court. We decline to do so. Plaintiff alleges that moving defendants failed to design or install an adequate stop area after the exit of the car wash. Whether the vehicle at issue was rolling because it was left in “drive” or whether it suddenly accelerated out of control will bear upon the issue of whether such a stop area was adequate. Moreover, we have long held that Section 1407 does not require a complete identity or even a majority of common factual or legal issues as a prerequisite to transfer. *See, e.g., In re: Gadolinium Contrast Dyes Prods. Liab. Litig.*, 536 F. Supp. 2d 1380, 1382 (J.P.M.L. 2008). Therefore, we conclude that transfer of the *McIver* action in its entirety will best promote the just and efficient conduct of the litigation.

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, this action is transferred to the Central District of California and, with the consent of that court, assigned to the Honorable James V. Selna for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

PANEL ON MULTIDISTRICT LITIGATION



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