

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: HYUNDAI AND KIA FUEL
ECONOMY LITIGATION**

John William Gentry, et al. v. Hyundai Motor America,)
Inc., W.D. Virginia, C.A. No. 3:13-00030) MDL No. 2424

TRANSFER ORDER

Before the Panel:* Pursuant to Panel Rule 7.1, plaintiffs in a Western District of Virginia action (*Gentry*) move to vacate our order that conditionally transferred their action to MDL No. 2424. Defendant Hyundai Motor America, Inc. (Hyundai) opposes the motion to vacate.

After considering all argument of counsel, we find this action involves common questions of fact with the actions previously transferred to MDL No. 2424, and that transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Moreover, transfer is warranted for reasons set out in our order directing centralization. In that order, we held that the Central District of California was an appropriate Section 1407 forum for actions sharing factual questions arising from the marketing, sale and advertising of the fuel economy of certain models of Hyundai and Kia vehicles. *See In re: Hyundai and Kia Fuel Economy Litigation*, 923 F. Supp. 2d 1364 (J.P.M.L. 2013). This action involves allegations that, *inter alia*, Hyundai Elantras for the model years 2011, 2012 and 2013 failed to achieve their advertised fuel efficiency of 40 miles per gallon. *Gentry* thus clearly falls within the MDL's ambit.

Plaintiffs strongly oppose transfer for several reasons. Most prominently, plaintiffs express skepticism about the recent proposed settlement reached in the MDL proceedings, and they suggest that restrictions placed on access to the confirmatory discovery conducted in connection with that settlement are inappropriate. We are not persuaded that these arguments weigh in favor of excluding this factually-related action from MDL No. 2424. The best forum for plaintiffs to object to the proposed settlement, to request an exclusion of their putative Virginia class from the settlement, or to advance other arguments concerning the legitimacy of the restrictions placed on accessing the confirmatory discovery is the transferee court, which presides over more than 50 related actions.

Plaintiffs also suggest that transfer will be inconvenient and that their case is sufficiently unique, in terms of additional allegations made and the claims asserted, to warrant exclusion from the centralized proceedings. Some aspects of *Gentry* appear to be unique: (1) unlike the MDL plaintiffs, one of the five plaintiffs purchased his car months after Hyundai's November 2012 announcement, (2) plaintiffs in *Gentry* also allege that the Elantra's dashboard mileage calculator overestimates the

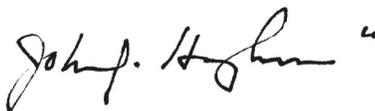
* Judges Paul J. Barbadoro and Lewis A. Kaplan took no part in the decision of this matter.

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fuel economy, and (3) plaintiffs in *Gentry* seek a unique remedy—repurchase of the subject vehicles at the full purchase price—under Virginia’s Lemon Law. These aspects, however, do not outweigh the efficiencies to be gained with transfer. The vehicles at issue in *Gentry*—2011-2013 Hyundai Elantras sold in Virginia—are subject to the recently-filed motion by MDL plaintiffs for nationwide class certification and for approval of the proposed settlement. Allowing *Gentry* to proceed independently of the MDL would hinder the efficient progress of this litigation. The transferee judge can accommodate any of the unique issues presented by *Gentry* (or suggest Section 1407 remand of the action or certain claims therein) and, if he deems it advisable, allow motion practice or discovery on such issues to proceed concurrently with the litigation regarding the common issues.

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 George H. Wu for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



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