UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: HYUNDAI AND KIA FUEL ECONOMY LITIGATION MDL No. 2424

TRANSFER ORDER

Before the Panel: Pursuant to Panel Rule 7.1, plaintiffs in two Western District of Virginia actions (*Abdurahman* and *Abdul-Mumit*), listed on Schedule A, move to vacate our orders that conditionally transferred their respective actions to MDL No. 2424. Defendant Hyundai Motor America, Inc. (Hyundai) opposes the motions to vacate.

After considering all argument of counsel, we find these actions involve 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). These actions involve 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. These allegations bring *Abdurahman* and *Abdul-Mumit* squarely within the MDL's ambit.

Plaintiffs oppose transfer, arguing that transfer cannot occur because the mass action provisions of the Class Action Fairness Act (CAFA) prevent transfer to an MDL unless a majority of plaintiffs request it. *See* 28 U.S.C. § 1332(d)(11)(C)(i) ("Any action(s) removed to Federal court pursuant to this subsection shall not thereafter be transferred to any other court pursuant to section 1407, or the rules promulgated thereunder, unless a majority of the plaintiffs in the action request transfer pursuant to section 1407."). While both actions were removed pursuant to CAFA's mass action provision, defendants have also invoked diversity and federal question jurisdiction in both actions. Transfer of these actions is appropriate under the reasoning set forth in our decision in *In re Darvocet, Darvon & Propoxyphene Prods. Liab. Litig.*, 939 F. Supp. 2d 1376 (J.P.M.L. 2013), which held that the assertion of CAFA mass action jurisdiction as a grounds for removal is not an impediment to transfer so long as other bases for federal jurisdiction are asserted. In *In re Darvocet*, we interpreted CAFA's mass action provision, and concluded that:

> Upon review of CAFA's overall purpose and its entire legislative history, we conclude that Congress did not intend that actions removed on multiple grounds, grounds which include the mass action provision, would be restricted from Section 1407

> transfer. While the provision's language arguably might be read otherwise, such an interpretation would not square with Congress's intent, and would bar transfer of (absent a request by a majority of the plaintiffs therein) cases that presumptively have been transferrable, simply because the removing defendant cited CAFA mass action as but one ground supporting federal jurisdiction.
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> After both consideration of all argument of counsel and substantial and thorough reflection regarding this issue, we find that Section 1332(d)(11)(C)(i) does not prohibit Section 1407 transfer of an action removed pursuant to CAFA's mass action provision so long as another ground for removal is asserted.

Id. at 1381. The transferee judge ultimately can decide whether federal jurisdiction exists over the cases, including whether—as plaintiffs contend—the voluntary dismissal of defendant James City County Associates moots its jurisdictional assertions and cannot be relied upon by the other defendants in *Abdurahman*.

Plaintiffs also request that we separate and remand[1] the claims regarding the purchasers of affected vehicles after the November 2, 2012 announcement. We deny this request. While the claims of these plaintiffs are not included in the proposed settlement, similar claims are already pending in the MDL in an action (*Gentry*) that was brought by counsel for plaintiffs in these actions. Allowing the post-November, 2012 purchaser claims of these plaintiffs to proceed independently of the MDL, which already contains similar claims brought on behalf of a putative class in *Gentry* that covers the *Abdul-Mumit* and *Abdurahman* plaintiffs, would invite confusion and inconsistent pretrial obligations and otherwise hinder the efficient progress of this litigation. The transferee judge can, of course, accommodate any of the unique issues presented by these two actions (or suggest Section 1407 remand of the actions 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.

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[1] The parties throughout their briefs discuss "severance" of the claims of pre- and post-November 2, 2012 purchasers of affected vehicles. The Panel's explicit statutory power, however, is not to sever but to separate and remand claims. *See* 28 U.S.C. 1407(a) (Panel "panel may separate any claim, cross-claim, counter-claim, or third-party claim and remand any of such claims before the remainder of the action is remanded.").

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, these actions are 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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Ellen Segal Huvelle	R. David Proctor

IN RE: HYUNDAI AND KIA FUEL ECONOMY LITIGATION MDL No. 2424

SCHEDULE A

Western District of Virginia

ABDURAHMAN, ET AL. v. ALEXANDRIA HYUNDAI, LLC, ET AL., C.A. No. 3:14-2
ADBUL-MUMIT v. HYUNDAI MOTOR AMERICA, INC., ET AL. C.A. No. 3:14-5