

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: NAVISTAR MAXXFORCE ENGINES
MARKETING, SALES PRACTICES AND
PRODUCTS LIABILITY LITIGATION**

MDL No. 2590

ORDER VACATING CONDITIONAL TRANSFER ORDER

Before the Panel:* Plaintiff in the *Moser* action listed on Schedule A moves under Panel Rule 7.1 to vacate our order that conditionally transferred *Moser* to the Northern District of Illinois for inclusion in MDL No. 2590. Defendants Navistar, Inc., and Navistar International Corporation (collectively, Navistar) oppose the motion.

After considering the argument of counsel, we conclude that inclusion of *Moser* in MDL No. 2590 would not serve the convenience of the parties and witnesses or promote the just and efficient conduct of the litigation. Navistar is correct that there is some overlap between *Moser* and the actions pending in the MDL. This factual overlap, however, is insufficient to justify transfer to the MDL when combined with the unique procedural posture of *Moser*.

The centralized proceedings involve common factual questions arising from alleged defects in Navistar's Advanced EGR emission control system that was used in Navistar's MaxxForce diesel engines. See *In re Navistar MaxxForce Engines Mktg., Sales Practices & Prods. Liab. Litig.*, 67 F. Supp. 3d 1382, 1383 (J.P.M.L. 2014). Plaintiffs in the MDL allege that they purchased trucks or other heavy-duty vehicles equipped with these engines, which suffered repeated failures and fault warnings, resulting in costly and time-consuming repairs.

Moser is an adversary proceeding¹ that recently was transferred from the bankruptcy court to the district court upon the recommendation of the bankruptcy judge. Plaintiff (the Chapter 11 Plan Trustee for various trucking company entities, collectively referred to as Tango Transport) seeks to rescind the settlement of a state court action between Tango Transport and various Navistar entities relating to some 450 Navistar trucks purchased by Tango Transport that were equipped with allegedly defective MaxxForce engines. Alternatively, the plaintiff in *Moser* seeks to recover

* Judge Lewis A. Kaplan took no part in the decision of this matter.

¹ "Because federal bankruptcy jurisdiction is vested in district courts, the Panel has never found any jurisdictional impediment to transfer of adversary proceedings as tag-along actions in multidistrict dockets." *In re Phar-Mor, Inc., Sec. Litig.*, MDL No. 959, 1994 WL 41830, at *1 n.2 (J.P.M.L. Jan. 31, 1994). See also *In re Nat'l Arbitration Forum Trade Practices Litig.*, 729 F. Supp. 2d 1353, 1353 (J.P.M.L. 2010) (transferring adversary proceeding to MDL).

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monetary damages for the value of the claims that Tango Transport released. It is this alternative claim that gives rise to the commonalities between *Moser* and the actions in the MDL. In order to determine the value of the claims that Tango Transport released—claims that mirrored those in the MDL—it may be necessary for the court to address the merits of those claims (*i.e.*, whether the MaxxForce engines were defective).²

The question of whether the MaxxForce engines were defective, however, represents only a small portion of the factual and legal issues presented in *Moser*. The underlying theory of plaintiff's claims (including the alternative claim seeking monetary damages) is that the state court settlement constituted a fraudulent transfer under applicable bankruptcy law. Accordingly, *Moser* will involve unique factual and legal inquiries, such as determining the value of the consideration that Navistar gave in exchange for Tango Transport's release of claims, and whether Tango Transport was insolvent at the time of the settlement agreement. These unique factual and legal inquiries likely will overwhelm any commonalities that may exist between *Moser* and the MDL. Transferring *Moser* to MDL No. 2590 would require the transferee court to resolve these substantial questions of bankruptcy law, none of which are posed by the other actions in the MDL, and likely complicate the administration of the centralized proceedings, which are steadily progressing to a class certification determination later this year.

It also will be more efficient to adjudicate *Moser* in the Eastern District of Texas. The bankruptcy proceeding for the Tango Transport entities is ongoing in that district and involves proofs of claim asserted by various Navistar entities. Also, one of the defendants in the state court action (Navistar Leasing Company) has filed an action in the Eastern District of Texas seeking to recover based on several side agreements (include a rent extension agreement and several lease agreements) that allegedly were signed in conjunction with the settlement agreement. As all of these proceedings relate to the settlement agreement, transferring a part of the litigation to the Northern District of Illinois can only create inefficiencies. On balance, we conclude that transfer of *Moser* is not warranted.

Should the need arise, alternatives to transfer exist that can minimize any possibility of duplicative discovery or inconsistent pretrial rulings between *Moser* and the actions in MDL No. 2590. *See, e.g., In re Eli Lilly & Co. (Cephalexin Monohydrate) Patent Litig.*, 446 F. Supp. 242, 244 (J.P.M.L. 1978); *see also* Manual for Complex Litigation (Fourth), § 20.14 (2004).

² Plaintiff asserts that there may be means of establishing the value of the released claims short of litigating the merits of those claims, such as examining other settlements Navistar entered into with customers or judgments obtained based on similar claims.

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IT IS THEREFORE ORDERED that the Panel's conditional transfer order designated "CTO-18" is vacated.

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance
Chair

Marjorie O. Rendell
Ellen Segal Huvelle
Catherine D. Perry

Charles R. Breyer
R. David Proctor

**IN RE: NAVISTAR MAXXFORCE ENGINES
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PRODUCTS LIABILITY LITIGATION**

MDL No. 2590

SCHEDULE A

Eastern District of Texas

MOSER v. NAVISTAR INTERNATIONAL CORPORATION, ET AL.,
C.A. No. 4:17-00598