

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: TAKATA AIRBAG
PRODUCTS LIABILITY LITIGATION**

MDL No. 2599

TRANSFER ORDER

Before the Panel:* Plaintiff in the *Hogan* action pending in the Middle District of Florida and defendant Mercedes-Benz USA, LLC (MBUSA) in the *Maestri* action pending in the Northern District of Georgia separately move under Panel Rule 7.1 to vacate our orders conditionally transferring the actions to the Southern District of Florida for inclusion in MDL No. 2599. The actions are listed on the attached Schedule A. Responding defendant Ford Motor Company opposes the *Hogan* plaintiff's motion to vacate, and the *Maestri* plaintiffs and plaintiffs in the MDL oppose MBUSA's motion.

After considering the arguments of counsel, we find that *Hogan* and *Maestri* involve common questions of fact with actions transferred to MDL No. 2599, and that transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. The actions in the MDL "share factual questions arising from allegations that certain Takata-manufactured airbags are defective in that they can violently explode and eject metal debris, resulting in injury or even death." *See In re: Takata Airbag Prods. Liab. Litig.*, 84 F. Supp. 3d 1371, 1372 (J.P.M.L. 2015). Both actions plainly involve those same questions. The *Hogan* plaintiff alleges that he suffered serious injuries when the Takata airbag in his Ford Mustang violently exploded. And, in *Maestri*, plaintiffs allege that they have suffered economic losses because their Mercedes-Benz vehicles are equipped with defective Takata airbags.

In opposition to transfer, the *Hogan* plaintiff argues that the personal injury track in the MDL is winding down, and that transfer would require creation of a separate discovery and pretrial process tailored to the needs of his case. But by plaintiff's own admission, more than twenty personal injury actions remain pending in the MDL. Transfer would facilitate plaintiff's access to the substantial discovery taken in the MDL, and place plaintiff before a judge who has unique familiarity with the relevant issues. Although *Hogan* may well involve some case-specific issues, particularly with respect to the circumstances of the accident in which plaintiff was injured, that is generally true of most personal injury cases.

In its motion to vacate, MBUSA argues that *Maestri* involves certain unique and distinguishing facts with respect to MBUSA (including that certain testing has uncovered no abnormalities in Mercedes-Benz airbag inflators' chamber pressures), and that the MDL is too

* Judge Ellen Segal Huvelle took no part in the decision of this matter.

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advanced for transfer to be beneficial. Indeed, citing statements made by the transferee judge at a recent hearing, MBUSA contends that the judge himself has concluded that the MDL is nearing its end point. As MBUSA acknowledges, however, there already are two highly similar actions against it in the MDL, including the *Krmpotic* action, which was transferred to the MDL in July 2017. MBUSA recently has asked the judge to suggest remand of *Krmpotic*, and thus the issue of whether Takata-related litigation against MBUSA should proceed in the MDL is better left for him to decide.¹ *See In re: Air Crash Disaster in Ionian Sea on Sept. 8, 1974*, 438 F. Supp. 932, 934 (J.P.M.L. 1977) (“The Panel has often recognized the significance of the transferee judge’s view, as the firsthand judicial observer, that the just and efficient conduct of an action or claim involved in a transferee district under Section 1407 can best be furthered by remand of the affected action or claim.”).

IT IS THEREFORE ORDERED that the *Hogan* and *Maestri* actions are transferred to the Southern District of Florida, and, with the consent of that court, assigned to the Honorable Federico A. Moreno for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance
Chair

Marjorie O. Rendell
Lewis A. Kaplan
Catherine D. Perry

Charles R. Breyer
R. David Proctor

¹ We therefore also deny MBUSA’s alternative request that we defer a decision on transfer of *Maestri* pending the judge’s ruling on MBUSA’s motion for a suggestion of remand.

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SCHEDULE A

Middle District of Florida

HOGAN v. GOMEZ, ET AL., C.A. No. 2:18-00134

Northern District of Georgia

MAESTRI v. MERCEDES-BENZ USA, LLC, ET. AL., C.A. No. 1:18-01070