

**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 District of New Jersey action listed on the attached Schedule A (*Casper*) moves under Panel Rule 7.1 to vacate our order conditionally transferring the action to the Southern District of Florida for inclusion in MDL No. 2599. Responding defendant BMW of North America LLC (BMW) opposes the motion.

This MDL encompasses numerous actions “shar[ing] 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). In support of his motion to vacate, the *Casper* plaintiff attempts to distinguish his action, which seeks damages stemming from BMW’s alleged failure to replace the airbag module within a reasonable time, as not raising such issues as whether the subject airbags are defective, the cause or causes of the defect, and whether the defect was wrongfully concealed. But plaintiff ignores his action’s substantial overlap with the centralized cases, especially with respect to the relief sought.¹ Both *Casper* and the MDL actions squarely implicate factual issues concerning such matters as the effect of the recalled airbags on BMW resale prices, the value of warranty coverage during the period in which owners were waiting for replacement parts, and BMW’s efforts to replace the airbags and otherwise address or remedy the situation. Indeed, the proposed classes in *Casper* and the MDL appear to overlap significantly.

The *Casper* plaintiff also argues that the MDL is too far advanced for transfer to be warranted. We are not convinced by this argument. Pretrial proceedings in the MDL are ongoing, and we continue to transfer new cases to the centralized proceedings. Also unconvincing is plaintiff’s argument that transfer would cause him great inconvenience. “[I]n deciding issues of transfer under Section 1407, [the Panel] look[s] to the overall convenience of the parties and witnesses, not just those of a single plaintiff or defendant in isolation.” *In re: Watson Fentanyl Patch Prods. Liab. Litig.*, 883 F. Supp. 2d 1350, 1351-52 (J.P.M.L. 2012).


¹ *See, e.g., In re: National Football League’s “Sunday Ticket” Antitrust Litig.*, 148 F. Supp. 3d 1358, 1359 (J.P.M.L. 2015) (describing common factual questions as including “the scope of relief”); *see also In re: Daily Fantasy Sports Mktg. & Sales Practices Litig.*, 158 F. Supp. 3d 1375, 1379 (J.P.M.L. 2016) (“[A]ll of the actions involve plaintiffs seeking similar relief from the DFS Defendants”).

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After considering the argument of counsel, we find that the *Casper* action involves common questions of fact with actions previously transferred to MDL No. 2599. Further, transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation.

IT IS THEREFORE ORDERED that the *Casper* action is 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
R. David Proctor

Charles R. Breyer
Ellen Segal Huvelle
Catherine D. Perry

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SCHEDULE A

District of New Jersey

CASPER v. BMW OF NORTH AMERICA, LLC, C.A. No. 2:16-02961