

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

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

MDL No. 2599

TRANSFER ORDER

Before the Panel:* Defendant General Motors LLC (New GM) moves under Panel Rule 7.1 to vacate our order conditionally transferring the Southern District of Georgia action listed on the attached Schedule A (*Kesler*) to the Southern District of Florida for inclusion in MDL No. 2599. In the alternative, New GM asks that the Panel separate and remand the claims against New GM to the Southern District of Georgia. Defendants Takata Corporation, TK Holdings Inc., and Takata AG (collectively Takata) oppose the motion.

In its motion to vacate, New GM argues that *Kesler* is a personal injury action, and the vehicle at issue has not been recalled, to date, for any airbag-related defect. New GM also argues that to the extent that plaintiff alleges that she was injured by the non-deployment of the vehicle's airbag, the action does not share factual issues with those already in the MDL. These arguments are not convincing. The *Kesler* complaint plainly alleges that the airbag in that vehicle was defective for the same principal reason that the airbags in the MDL are alleged to be defective – they contain ammonium nitrate as a propellant.¹ And, although plaintiff's allegation that she was injured by either the “abnormal, aggressive or violent” deployment or the airbag's non-deployment is curious, that does not warrant vacatur. Plaintiffs in the MDL have asserted both types of claims.² The transferee judge is in the best position to address, in the first instance, any unique factual issues that *Kesler* may

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

¹ New GM does not contend that the airbags in the *Kesler* plaintiff's vehicle were not manufactured by Takata, or that the airbags use a propellant other than ammonium nitrate.

² See *In re: Takata Airbag Prods. Liab. Litig.*, No. 1:15-md-02599, Second Am. Consol. Personal Injury Track Compl. ¶ 56 (S.D. Fla. June 15, 2015) (ECF No. 578) (“As a result of the Inflator Defect, Defective Airbags have an unreasonably dangerous tendency to: (a) rupture and expel metal shrapnel . . .; (b) hyper-aggressively deploy and seriously injure occupants through contact with the airbag; and (c) fail to deploy altogether.”)¶56 (“As a result of the Inflator Defect, Defective Airbags have an unreasonably dangerous tendency to: (a) rupture and expel metal shrapnel . . .; (b) hyper-aggressively deploy and seriously injure occupants through contact with the airbag; and (c) fail to deploy altogether.”).

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involve. If at any point he determines that the action will no longer benefit from inclusion in the MDL, he is free to suggest that the Panel remand the action to the Southern District of Georgia.³

After considering the argument of counsel, we find that the *Kesler* action involves 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). The *Kesler* action plainly involves those same questions.⁴

IT IS THEREFORE ORDERED that the *Kesler* 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
Catherine D. Perry

Charles R. Breyer
R. David Proctor

³ *See, e.g., In re: Johnson & Johnson Talcum Powder Prods. Mktg., Sales Practices & Prods. Liab. Litig.*, — F. Supp. 3d —, 2016 WL 5845997, at *2 (J.P.M.L. Oct. 4, 2016) (“If the transferee judge determines that . . . any . . . transferred action either is sufficiently advanced and ready for trial or, for other reasons, will no longer benefit from inclusion in the centralized proceedings, then we encourage her to promptly suggest that the Panel remand such action to the transferor court.”).

⁴ *See, e.g., Kesler Compl.* ¶¶ 4, 33.

**IN RE: TAKATA AIRBAG
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MDL No. 2599

SCHEDULE A

Southern District of Georgia

KESLER v. TAKATA CORPORATION, ET AL., C.A. No. 1:16-00191