

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, in part, our order conditionally transferring the District of New Jersey action listed on the attached Schedule A (*Karu*) to the Southern District of Florida for inclusion in MDL No. 2599. New GM opposes transfer of the *Karu* plaintiff's claims against New GM, but not those against the Takata defendants. The *Karu* plaintiff opposes New GM's motion to vacate, as do plaintiffs in the MDL and defendants Takata Corporation and TK Holdings, Inc.

In its motion to vacate, New GM principally argues that the Second Amended Consolidated Class Action Complaint filed in the MDL affirmatively disclaims New GM as a defendant for purposes of economic loss claims, and that the allegations in *Karu* against New GM implicate significant issues relating to Old GM's bankruptcy. These arguments are not convincing. In their response, the MDL plaintiffs unequivocally state that they "intend to include claims against New GM regarding the same vehicles addressed in *Karu* in the Third Amended Class Action Complaint, which the MDL Court has authorized Plaintiffs to file once it rules on all pending motions to dismiss the [Second Amended Consolidated Class Action Complaint]." MDL No. 2599 Pls.' Opp. to General Motors LLC's Mot. to Vacate, at 6 (J.P.M.L. Sept. 29, 2016) (ECF No. 609). In addition, New GM is a defendant in an economic loss class action (*Bonet*) already in the MDL,¹ as well as at least one personal injury action.

New GM's bankruptcy-related argument also is unavailing. New GM does not explain why it believes the District of New Jersey court is in a better position than the transferee court to address any unique bankruptcy-related issues that *Karu* may raise. Indeed, in its reply, New GM argues that because a number of the vehicles at issue in *Karu* were manufactured by Old GM, the

* Judge Sarah S. Vance and Judge Ellen Segal Huvelle took no part in the decision of this matter.

¹ Although New GM argues that *Bonet* currently is in civil suspense, that is of no moment. In his March 17, 2015, Order Appointing Plaintiffs' Counsel and Setting Schedule, Judge Moreno directed that upon the filing of amended complaints in the Economic Damages Track and the Personal Injury Track, all other cases were to be "placed in 'civil suspense' and provisionally closed." *In re: Takata Airbag Prods. Liab. Litig.*, No. 1:15-md-02599, Order Appointing Plaintiffs' Counsel and Setting Schedule, at 2 (S.D. Fla. Mar. 17, 2015) (ECF No. 393).

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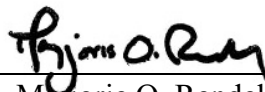
bankruptcy sale order remains in full force and effect as to those vehicles, and bars all economic loss claims unless plaintiffs can prove a due process violation before the bankruptcy court. If that is the case, then there is no reason why the transferee court cannot coordinate as readily with the bankruptcy court as the court in New Jersey.

Finally, although New GM contends that the claims against it in *Karu* could be easily severed from those against the Takata defendants, that is not self-evident from the *Karu* complaint. For example, eight of the nine counts in the complaint are asserted against both New GM and the Takata defendants, and New GM is alleged to have been a member of Takata's "RICO Enterprise." *See Karu* Compl. ¶ 230.

After considering the argument of counsel, we find that the *Karu* action involves common questions of fact with actions previously 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 *Karu* action plainly involves those same questions.²

IT IS THEREFORE ORDERED that the *Karu* 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



Marjorie O. Rendell
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² *See, e.g., Karu* Compl. ¶ 5 ("All Takata airbags at issue in this litigation share a common uniform defect: the use of ammonium nitrate, a notoriously volatile and unstable compound as the propellant in their defectively designed inflators"); ¶ 9 ("When GM purchased Takata's airbags for its vehicles, it was aware that the airbags used the volatile and unstable ammonium nitrate as the primary propellant in the inflators. . . . GM decided to use Takata's airbags in part because Takata's use of ammonium nitrate enabled Takata to charge GM lower prices for airbags than GM would have had to pay to competing airbag suppliers that used more stable and less inherently dangerous compounds as propellants.").

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SCHEDULE A

District of New Jersey

KARU v. TAKATA CORPORATION, ET AL., C.A. No. 2:16-04558