

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

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

MDL No. 2599

TRANSFER ORDER

Before the Panel:* Plaintiffs in four actions pending in the Central District of California move under Panel Rule 7.1 to vacate our order 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 Toyota Motor Sales, U.S.A, Inc., opposes the motion.

After considering the arguments of counsel, we find that these actions 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). These four actions plainly share factual issues with the cases already in the MDL, as all plaintiffs seek damages based, *inter alia*, on allegations that their Toyota vehicles are equipped with defective Takata airbags.¹ Indeed, the actions are highly similar to another Central District of California action (*Flores*), which the Panel ordered transferred to the MDL, over plaintiff’s objections, earlier this year. *See* Transfer Order (J.P.M.L. Feb. 1, 2018) (ECF No. 932). As Toyota points out, after the *Flores* transfer, plaintiff’s counsel in *Flores* – who also represents plaintiffs in these four cases – filed a motion in the transferee court that referenced not only *Flores*, but also, the other four cases, and apparently sought a ruling that all five plaintiffs properly opted out of the class action settlement reached in the MDL.²

* Judges Lewis A. Kaplan and Ellen Segal Huvelle took no part in the decision of this matter.

¹ *See, e.g., Shimshi* First Am. Compl. ¶ 16 (alleging that subject vehicle’s airbag inflators “may rupture due to propellant degradation”); *Bazzal* Compl. ¶ 11(same); *Hirschel* First Am. Compl. ¶ 25 (same); *Kopple* Second Am. Compl. ¶ 26 (same).

² *See* Pl.’s Mot. to Exclude Pl. from Class Settlement, at 9 (S.D. Fla. Apr. 18, 2018) (ECF No. 2632) (“Plaintiff has established that Claimants properly and timely opted-out and have established a showing of excusable neglect.”); *see id.* at 1 (identifying claimants as including plaintiffs in the four cases now before the Panel).

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In opposition to transfer, plaintiffs argue that their actions concern only the handling of plaintiffs' warranty-related requests, and, in one of the cases (*Shimshi*), additional alleged problems with the subject vehicle. But, those warranty requests were premised on the presence of defective Takata airbags in plaintiffs' vehicles. And that *Shimshi* also involves other vehicle components is not material, because Section 1407 transfer does not require a complete identity of factual issues. See *In re: Zimmer NexGen Knee Implant Prods. Liab. Litig.*, 802 F.Supp.2d 1374, 1376–77 (J.P.M.L.2011) (“[C]entralization under Section 1407 does not require a complete identity or even a majority of common factual or legal issues as a prerequisite to transfer.”).

Plaintiffs also argue that they would be inconvenienced by transfer. But, in deciding issues of Section 1407 transfer, the Panel looks to the overall convenience of the parties and witnesses, not just those of a single plaintiff or defendant. See, e.g., *In re: ClassicStar Mare Lease Litig.*, 528 F.Supp.2d 1345, 1347 (J.P.M.L. 2007). Moreover, transfer likely would inure to plaintiffs' benefit, given the numerous other actions against Toyota that have been involved in the MDL, Judge Moreno's familiarity with the issues, and the substantial discovery that has occurred in the centralized proceedings.

Finally, plaintiffs raise jurisdictional objections to transfer. The Panel often has held that jurisdictional issues do not present an impediment to transfer, as plaintiffs can present their arguments regarding those issues to the transferee judge.³ See, e.g., *In re: Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001).

IT IS THEREFORE ORDERED that these four 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
R. David Proctor

Charles R. Breyer
Catherine D. Perry

³ Moreover, under Panel Rule 2.1(d), the pendency of a conditional transfer order does not limit the pretrial jurisdiction of the court in which the subject action is pending. Between the date a remand motion is filed and the date that transfer of the action to the MDL is finalized, a court generally has adequate time to rule on a remand motion if it chooses to do so.

**IN RE: TAKATA AIRBAG
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SCHEDULE A

Central District of California

SHIMSHI v. TOYOTA MOTOR SALES, USA, INC., C.A. No. 2:18-02432
BAZZAL v. TOYOTA MOTOR SALES, USA, INC., ET AL., C.A. No. 2:18-02437
HIRSCHEL, ET AL. v. TOYOTA MOTOR SALES U.S.A., INC., ET AL.,
C.A. No. 2:18-02454
KOPPLE v. TOYOTA MOTOR SALES, USA, INC., ET AL., C.A. No. 2:18-02460