

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: VOLKSWAGEN “CLEAN DIESEL”
MARKETING, SALES PRACTICES, AND
PRODUCTS LIABILITY LITIGATION**

MDL No. 2672

TRANSFER ORDER

Before the Panel:* Plaintiffs in eighteen actions listed on the attached Schedule A move under Panel Rule 7.1 to vacate the Panel’s orders conditionally transferring their respective actions to MDL No. 2672. Volkswagen defendants¹ (collectively VW) oppose all of the motions.

After considering the argument of counsel, we find these actions involve common questions of fact with the actions previously transferred to MDL No. 2672, and that transfer under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Moreover, transfer is warranted for the reasons set out in our order directing centralization. In that order, we held that the Northern District of California was an appropriate Section 1407 forum for actions sharing factual questions regarding the role of VW and related entities in equipping certain 2.0 and 3.0 liter diesel engines with software allegedly designed to engage emissions controls only when the vehicles undergo official testing, while at other times the engines emit nitrous oxide well in excess of legal limits. *See In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, 148 F. Supp. 3d 1367 (J.P.M.L. 2015). These actions involve allegations related to affected VW, Audi and/or Porsche vehicles and clearly fall within the MDL’s ambit.

Plaintiffs argue against transfer, in part, based on arguments that federal jurisdiction is lacking over their respective actions. Plaintiffs can present motions for remand to the transferee judge, if they choose to file them after transfer. *See, e.g., In re: Ivy*, 901 F. 2d 7, 9 (2nd Cir. 1990); *In re: Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001).

* Judge Charles R. Breyer took no part in the decision of this matter.

¹ Volkswagen Group of America, Inc. (VWGoA) states that Volkswagen AG (VW AG) and Dr. Ing. h.c. F. Porsche AG are headquartered in the Federal Republic of Germany and named as defendants in certain actions. Although not yet served as required pursuant to the Convention On The Service Abroad of Judicial And Extrajudicial Documents In Civil Or Commercial Matters, [1969] 20 U.S.T. 361, T.I.A.S. No. 5538 (the Convention), and without waiver of their rights under the Convention, VW AG and Porsche AG have reportedly authorized VWGoA to state that they support VWGoA’s position on the motions to vacate the CTOs before the Panel.

-2-

Plaintiffs in seventeen actions also argue that transfer is inappropriate because they have opted out of the MDL settlement. Opting out of an MDL settlement is not a valid reason to vacate transfer of otherwise factually-related actions. *See, e.g.*, Transfer Order, MDL No. 1720 – *In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, Doc. 204 at 2, n.4 (J.P.M.L. Oct. 16, 2013) (“The Panel has long recognized that transfer of opt-out actions to the MDL addressing the proposed class settlement is desirable because of the efficiencies from the transferee court’s management of overlapping actions, integration of existing discovery with discovery in the new actions, and the court’s expertise in the issues.”) (citing *In re: Pennsylvania Life Co. Secs. Litig.*, 436 F. Supp. 406 (J.P.M.L. 1977)).

Pro se plaintiff in the Northern District of Ohio *Rudin* action asserts that transfer of his action will cause significant personal inconvenience. Other plaintiffs also stress the inconvenience that transfer may cause since their respective witnesses are located primarily where their actions are pending. But, in deciding issues of Section 1407 transfer, the Panel looks to the overall convenience of the parties and witnesses in the litigation as a whole.² Here, overall convenience will be served by transfer of all of these actions, given the extensive factual overlap among the actions before us and the nearly 1,500 cases pending in MDL No. 2672. Moreover, we note that “since Section 1407 transfer is for pretrial proceedings only, there is usually no need for the parties and witnesses to travel to the transferee district for depositions or otherwise.” *See In re: Cygnus Telecommunications Tech., LLC, Patent Litig.*, 177 F. Supp. 2d 1375, 1376 (J.P.M.L. 2001). Plaintiff in *Rudin* further argues that, because he did not sue VW, the MDL’s main defendant, his action should not be transferred. But that does not make *Rudin* unique or otherwise counsel against transfer, as several cases in the MDL are brought against dealers and not VW.³

² *See In re: Watson Fentanyl Patch Prods. Liab. Litig.*, 883 F. Supp. 2d 1350, 1351-52 (J.P.M.L. 2012) (“While we are aware that centralization may pose some inconvenience to some parties, in deciding issues of transfer under Section 1407, we look to the overall convenience of the parties and witnesses, not just those of a single plaintiff or defendant in isolation.”).

³ *See, e.g., Champoux v. Shayvo*, N.D. Cal., Case No. 16-cv-2598; *Frasier v. Mossy VW*, N.D. Cal., Case No. 16-cv-2345.

-3-

IT IS THEREFORE ORDERED that the actions listed on Schedule A are transferred to the Northern District of California and, with the consent of that court, assigned to the Honorable Charles R. Breyer for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance
Chair

Marjorie O. Rendell
R. David Proctor
Catherine D. Perry

Lewis A. Kaplan
Ellen Segal Huvelle

**IN RE: VOLKSWAGEN “CLEAN DIESEL”
MARKETING, SALES PRACTICES, AND
PRODUCTS LIABILITY LITIGATION**

MDL No. 2672

SCHEDULE A

District of Colorado

BAKER v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL.,
C.A. No.1:17-00169

BETTENCOURT, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL., C.A.
No. 1:17-00171

CHAVEZ, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL.,
C.A. No. 1:17-00172

FOX, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC.,
C.A. No. 1:17-00173

MCDONALD, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC.,
C.A. No. 1:17-00177

PONTARELLI v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL.,
C.A. No. 1:17-00181

Northern District of Ohio

RUDIN v. GANLEY WESTSIDE IMPORTS, INC., ET AL., C.A. No. 1:16-02961

District of Oregon

AUKER v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 3:16-02386

BEARD v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 3:16-02388

CHURCHLEY, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC.,
C.A. No. 3:16-02389

HEBROD v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 3:16-02390

HOBIZAL, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC.,
C.A. No. 3:16-02391

JERMAN v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 3:16-02392

JERMAN v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 3:16-02393

RIPKE v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 3:16-02395

SMITH, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, C.A. No. 3:16-02396

LEE, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 3:17-00003

Southern District of Texas

DAVILA, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL.,
C.A. No. 7:16-00695