

**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:* Plaintiff in an Eastern District of Wisconsin action listed on the attached Schedule A (*Gende Law Office*) moves under Panel Rule 7.1 to vacate the Panel’s order conditionally transferring its action to MDL No. 2672. Volkswagen Group of America, Inc. (VW) opposes the motion.

After considering the argument of counsel, we find this action involves 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. 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). This action involves allegations related to an affected VW vehicle and clearly falls within the MDL’s ambit.

Plaintiff argues that transfer violates its right to due process by, *inter alia*, denying it the right to make unique (but unspecified) discovery requests and the opportunity to proceed at an expeditious pace. As an initial matter, “[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Plaintiff’s argument that transfer denies it such an opportunity is utterly speculative, largely devoid of specifics and, ultimately, without merit. We have rejected similar arguments in the past.¹

* Judges Charles R. Breyer and Marjorie O. Rendell took no part in the decision of this matter.

¹ See MDL No. 2179 – *In re: Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico, on April 20, 2010*, Transfer Order, doc. 1561 at 3 (J.P.M.L., Aug. 9, 2013) (characterizing equal protection and due process challenges to transfer as “little more than a makeweight” and noting that “[w]hat has happened and what remains to happen in this MDL will inure to the substantial
(continued...)

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The credibility of plaintiff's assertion that it desires to prosecute its case expeditiously is undermined by its failure to seek any substantive progress in the transferor court. Since filing the action in mid-March, no significant activity has occurred, and plaintiff does not yet appear to have served the defendants. Upon transfer, plaintiff may retain its current lawyer.² And plaintiff can request that the transferee judge allow it to take any additional discovery or expedite the prosecution of its action. Given the extensive factual overlap of *Gende Law Office* with the more than 1,700 cases pending in MDL No. 2672, transfer will ensure the just and efficient conduct of the litigation as a whole. This MDL has made substantial progress in the short period (about a year and a half) since it was created, and now is not the time to allow plaintiffs in factually related actions to go their own way.

Plaintiff further asserts that the MDL class settlement is flawed in both substance and procedure, arguing that its "buyback process is riddled with barriers preventing timely return and minimal disbursement for its defective vehicles." *See* Plaintiff's Reply in Support of its Motion to Vacate, *Gende Law Office*, J.P.M.L. doc. 12 at 1 (filed 6/5/2017). But this assertion weighs in support of transfer, so the transferee judge (who, after all, presides over the class settlement plaintiff derides) can examine such serious accusations. To hold otherwise, as plaintiff requests, asks us to do something that we cannot – review the transferee judge's substantive and procedural decisions. *See In re: Motion Picture "Standard Accessories" and "Pre-Vues" Antitrust Litig.*, 339 F. Supp. 1278, 1280 (J.P.M.L. 1972) ("The Panel is not vested with statutory authority to review the decisions of district courts, whether they are transferor or transferee courts."). Plaintiff should instead either persuade the transferee judge that additional relief is appropriate or seek appellate review (if and when the issue becomes ripe) before the circuit court possessing jurisdiction.

¹(...continued)

benefit of litigants in later-filed actions such as these. Permitting plaintiffs, at this juncture, to go their own way and litigate outside the MDL would severely disrupt the ongoing proceedings, as well as threaten to undo much of the substantial progress achieved to date.").

² *See* Panel Rule 2.1 (c) ("Any attorney of record in any action transferred under Section 1407 may continue to represent his or her client in any district court of the United States to which such action is transferred. Parties are not required to obtain local counsel.").

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IT IS THEREFORE ORDERED that the action listed on Schedule A is 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

A handwritten signature in black ink that reads "Sarah S. Vance". The signature is written in a cursive, flowing style.

Sarah S. Vance
Chair

Lewis A. Kaplan
Ellen Segal Huvelle

R. David Proctor
Catherine D. Perry

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SCHEDULE A

Eastern District of Wisconsin

GENDE LAW OFFICE SC v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL.,
C.A. No. 2:17-00543