

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 21 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 in seventeen actions argue against transfer primarily based on the pendency of their motions to remand their respective actions to state court. These plaintiffs can present their motions for

* 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.

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remand to the transferee judge.² 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).

Pro se plaintiff in the Middle District of Florida *Yarin* action asserts that transfer of his action will cause significant personal inconvenience. Other plaintiffs also stress the inconvenience that transfer may cause, given that their respective witnesses are primarily located 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.³ 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 1,300 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 the Western District of Missouri *Molle* action, a VW dealer, asserts that its action is unique because it focuses on, *inter alia*, plaintiff’s 2006 construction of a new dealer facility and VW’s alleged misrepresentations concerning a new rival dealership. But plaintiff also brings claims concerning the alleged damage VW has done to its brand by engaging in the conduct that forms the basis of the “clean diesel” emissions litigation. Given these common factual issues, the presence of *Molle*’s unique claims is not an impediment to its transfer.⁴

The State plaintiff in the Western District of Oklahoma *Pruitt* action asserts that federal jurisdiction is lacking over its enforcement action, while also stressing the unique nature of its claims. Similarly, plaintiff Salt Lake County in the District of Utah action argues that its claims are unique and focused on local concerns – namely, the health effects of excessive emissions caused by the defeat devices on affected vehicles. The transferee judge can decide plaintiff’s motion to remand in *Pruitt*, as in other cases. At their core, both actions are based upon the common factual questions in MDL No. 2672—VW’s conduct in installing defeat devices in over 500,000 of its diesel vehicles. Allowing these cases to proceed separately would require duplicative, and potentially inconsistent, decisions on

² Panel Rule 2.1(d) expressly provides that 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.

³ 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.”).

⁴ See, e.g., *In re: Barclays Liquidity Cross & High Frequency Trading Litig.*, 67 F. Supp. 3d 1375, 1376 (J.P.M.L. 2014) (“Section 1407 does not require a complete identity or even a majority of common factual issues as a prerequisite to centralization. The statute also does not require a complete identity of claims or parties.”) (internal citations omitted).

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fundamental issues that bear on VW's liability for the installation of the defeat devices. As Salt Lake County acknowledges, the MDL already includes an action brought by a county government. *See Envtl. Prot. Comm'n of Hillsborough Cty. v. Volkswagen AG, et al.*, M.D. Florida, Case No. 16-cv-00721 (transferred on 4/19/16 via unopposed CTO). The Panel routinely transfers claims brought by a State that involve facts common to the MDL proceeding⁵ and recently transferred an action brought by the Attorney General of Kentucky over similar objections. *See In re: Volkswagen*, MDL No. 2672, J.P.M.L. doc. 1949 at 2 (August 5, 2016 Transfer Order).

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

⁵ *See, e.g., In re: Fresenius Granuflo/Naturalyte Dialysate Prods. Liab. Litig.*, MDL No. 2428, ECF No. 993 (J.P.M.L., Dec. 11, 2014) (rejecting Louisiana Attorney General's argument that its action should not be transferred to MDL because of "unique" factual and legal issues, noting that "while plaintiff in *State of Louisiana* may seek different relief, its claims are based on the same underlying facts as the actions already in MDL No. 2428."); *In re: Zyprexa Prods. Liab. Litig.*, MDL No. 1596, ECF No. 497 (J.P.M.L. 2004) (transferring action brought by West Virginia Attorney General despite distinct legal theories alleged because the action contained facts common to the MDL).

**IN RE: VOLKSWAGEN “CLEAN DIESEL”
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MDL No. 2672

SCHEDULE A

District of Colorado

BERRY, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL.,
C.A. No. 1:16-01368
LORD, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL.,
C.A. No. 1:16-01371
KEHL, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL.,
C.A. No. 1:16-01372
NORTON, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL.,
C.A. No. 1:16-01373
VANN, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL.,
C.A. No. 1:16-01375
RICHIE, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL.,
C.A. No. 1:16-01378
CIONE, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL.,
C.A. No. 1:16-01482
CIONE, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL.,
C.A. No. 1:16-01483

Middle District of Florida

YARIN v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL.,
C.A. No. 8:16-01382

Eastern District of Louisiana

ABBASI v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL.,
C.A. No. 2:16-12956

Western District of Missouri

MOLLE AUTOMOTIVE GROUP, LLC D/B/A MOLLE VOLKSWAGEN v.
VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 2:16-04151
HENLEY, JR. v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL.,
C.A. No. 4:16-00619

District of New Jersey

BORRELLI v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 1:16-04147

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Western District of Oklahoma

PRUITT v. VOLKSWAGEN AG, ET AL., C.A. No. 5:16-00759

District of South Carolina

RICKENMANN v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL.,
C.A. No. 3:16-02426

Western District of Texas

SULLIVAN v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 1:16-00634
BUOY, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC.,

C.A. No. 1:16-00635

CHEEK, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC.,

C.A. No. 1:16-00706

ALTSCHUL, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC.,

C.A. No. 1:16-00713

District of Utah

SALT LAKE COUNTY v. VOLKSWAGEN GROUP OF AMERICA, ET AL., D. Utah, C.A.
No. 2:16-817

Western District of Washington

FARMER v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL.,

C.A. No. 3:16-05611