

**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 three 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 Group of America, Inc. opposes 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. 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 the “clean diesel” scandal and clearly fall within the MDL’s ambit.

Plaintiffs in two actions – Southern District of Alabama *Gunther* and Northern District of Georgia *Columbia Automotive* – are VW franchise dealers. They oppose transfer by arguing that they bring unique claims and, in any event, transfer is not necessary because the MDL franchise dealer litigation is largely resolved. We are not persuaded by these arguments. While a previous settlement in the MDL disposed of most litigation brought by VW franchise dealers, several such actions remain pending and are at an early stage. According to defendants, four actions brought by dealer plaintiffs who opted out of the settlement (like plaintiff in *Columbia Automotive*) remain pending in the MDL. Additionally, an “open-point” dealer case¹ – *i.e.*, a case involving a dealer plaintiff, like plaintiffs in *Gunther*, that began operations after September 18, 2015, and did not

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

¹ *Iconic Motors, Inc., et al. v. Volkswagen Group of America, Inc., et al.*, N.D. Illinois, Case No. 17-cv-3728.

-2-

qualify under the terms of the MDL dealer settlement² – recently was transferred to the MDL. Finally, another franchise dealer in the MDL appears to have been in a similar position as the *Gunther* plaintiffs and makes similar allegations.³ Transfer of the *Gunther* and *Columbia Automotive* VW franchise dealer cases thus is appropriate to streamline discovery and motion practice, as well as to prevent inconsistent pretrial rulings.

Plaintiff G. Rebick in the Southern District of California *Rebick* action is a VW technician, who contends that diesel emissions caused his bladder cancer. Plaintiffs oppose transfer with a puzzling assertion: “Despite the Complaint’s multiple references to the ‘cheating’ device, a straightforward reading of the Complaint demonstrates this case is not about the ‘cheating’ device.” Despite plaintiffs’ attempt in their briefing to downplay the role of the emissions cheating software, in their complaint they place significant blame for plaintiff Rebick’s exposure to excess diesel fumes on the defeat device. They note that he “believed the emissions produced by Defendants’ diesel vehicles were safe, or at least within the legal standards” and that he “never could have imagined that Defendants would install a high tech cheating device to misrepresent the emissions of their diesel fuel vehicles and allow up to 40 times more than allowable levels.” *Rebick, et al. v. Volkswagen Group of America*, S.D. California, Case No. 17-1247, doc. 1-3, Compl. at ¶¶ 27-28.⁴ Given this clear factual overlap with the allegations that are at the core of MDL No. 2672, transfer is necessary to prevent inconsistent pretrial rulings and duplicative discovery.

² With respect to both actions, we note that we have not conditioned transfer of any otherwise factually-related action in this MDL upon plaintiffs’ participation in a settlement.

³ See *Napleton, et al. v. Volkswagen Group of America, Inc., et al.*, N.D. California, Case No. 3:16-cv-02086, doc. 3500-1, ¶ 304 (“Perhaps most jarring was the acquisition by Napleton VW Urbana of the Volkswagen franchise and the adulterated inventory which went with it, which proceeded approximately fifty-eight (58) hours before the issuance of the NOV exposing the massive Dieselgate fraud. Notwithstanding that the scandal that was about to break, VWAG and VGoA proceeded with the acquisition by Napleton VW Urbana in a completely ‘business as usual’ fashion.”).

⁴ See also *id.* at ¶ 30 (“Defendants knew, and actively deceived the public using their cheating devices, that their vehicles produced unlawfully high levels of emissions. Defendants created and installed a cheating device in their vehicles that prevented Plaintiff G. Rebick and the public from knowing the true amount of emissions that their vehicles produced.”).

-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

Southern District of Alabama

GUNTHER, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL.,
C.A. No. 1:17-00275

Southern District of California

REBICK, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL.,
C.A. No. 3:17-01247

Northern District of Georgia

COLUMBIA AUTOMOTIVE, LLC v. VOLKSWAGEN AG, ET AL., C.A. No. 1:17-02461