

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 two actions (*Banks* and *LeBlanc*) 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. Additionally, plaintiff in a third action (*Yarin*) moves to reconsider our October 4, 2016, order transferring his action to MDL No. 2672. Defendant Volkswagen Group of America, Inc., opposes 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 *Banks* and *LeBlanc* argue against transfer primarily based on the pendency of their motions to remand their respective actions to state court and related arguments that federal courts lack jurisdiction over these actions. These plaintiffs can present their motions for remand to the transferee judge.¹ *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).

* Judges Charles R. Breyer took no part in the decision of this matter. Judge R. David Proctor did not participate in the decision in *Banks*.

¹ 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.

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Pro se plaintiff in the Middle District of Florida *Yarin* action seeks reconsideration of our decision transferring his action to the MDL. Plaintiff argues, *inter alia*, that we failed to adequately explain our rationale for transfer, that our transfer order mischaracterized his disability and dependence on a local medical support network as a “significant personal inconvenience,” and we failed to note that he was proceeding *pro se* in order to save the VW defendants from having to pay fees to any attorney he may hire (in earlier filings, he contended that transfer may force him to hire an attorney).

In our previous order transferring *Yarin* with twenty other actions, we first noted that *Yarin* clearly falls within the MDL’s ambit, and then we specifically noted that:

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. 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).

October 4, 2016, Transfer Order at 2.

Absent a significant change in circumstances, we only rarely will reach a different result upon reconsideration. *See, e.g., In re: Fresh Dairy Prods. Antitrust Litig. (No. II)*, 959 F. Supp. 2d 1361, 1362- 63 (J.P.M.L. 2013). Here, Plaintiff *Yarin* has failed to demonstrate that a significant change in circumstances has occurred. In reaching our initial decision to transfer *Yarin* to the MDL, we were briefed upon, considered and did not find persuasive the arguments that plaintiff then (and now) advances to avoid transfer—namely, that he is attempting to save VW defendants money by proceeding *pro se* and that he is a disabled veteran who depends upon a medical support system in Tampa.

While we remain sympathetic to arguments regarding plaintiff’s health conditions, we continue to hold the opinion that *Yarin* involves numerous factual issues arising in the MDL proceedings and that transfer will further the just and efficient conduct of his case. Despite having several opportunities to do so, plaintiff still has made no attempt to dispute that his action concerns the same factual controversy as the over 1,370 other MDL actions. While transfer of a particular action might inconvenience some parties to that action, such transfer is often necessary to further the expeditious resolution of the litigation taken as a whole. *See, e.g., In re: Crown Life Ins. Premium Litig.*, 178 F. Supp. 2d 1365, 1366 (J.P.M.L. 2001).

As we previously noted, in all likelihood, plaintiff will not need to travel to the transferee court, and he should be able to participate in the MDL proceedings with respect to his case remotely. Indeed,

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plaintiff has proven adept at filing documents before the Panel. Plaintiff can stay informed of the proceedings in the transferee court via the MDL No. 2672 website and through the transferee court's electronic filing system. If necessary, plaintiff can present his arguments regarding his health conditions to the transferee judge, who can determine if *Yarin* warrants expedited treatment or whether remand to the transferor court or other pretrial measures might be appropriate. Further, we note that in this MDL, we have transferred at least one other action brought by a *pro se* plaintiff. *See Armstrong v. Volkswagen Group of America*, D. Colorado, C.A. No. 1:16-71 (transferred over plaintiff's objections on April 7, 2016).

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.

IT IS FURTHER ORDERED that the motion of plaintiff Oleg Yarin to reconsider our October 4, 2016, decision to transfer his action to MDL No. 2672 is denied.

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance
Chair

Marjorie O. Rendell
Ellen Segal Huvelle
Catherine D. Perry

Lewis A. Kaplan
R. David Proctor*

**IN RE: VOLKSWAGEN “CLEAN DIESEL”
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SCHEDULE A

Northern District of Alabama

BANKS, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC.,
C.A. No. 7:16-01219

Middle District of Florida

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

Eastern District of Louisiana

LEBLANC v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL.,
C.A. No. 2:16-13553