

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 the *Wright Law* action pending in the District of Colorado and listed on the attached Schedule A 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. 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” Mktg., Sales Pracs., and Prods. Liab. Litig.*, 148 F. Supp. 3d 1367 (J.P.M.L. 2015). This action involves allegations related to the “clean diesel” scandal and clearly falls within the MDL’s ambit.

Plaintiff argues that its claims for breach of contract and breach of the implied duty of good faith are unique and merit either vacating the conditional transfer order entirely or separation and remand of those claims. While plaintiff’s dealings with the VW defendants may be unique (specifically, it alleged that VW defendants failed to respond to plaintiff’s inquiries over sixteen months), plaintiff’s emissions cheating allegations – which are essential to all claims¹ – are not. Where, as here, “common factual issues exist, . . . the presence of different legal theories among the subject actions is not a bar to centralization.” *In re: Bank of New York Mellon Corp. Foreign Exch. Transactions Litig.*, 857 F. Supp. 2d 1371, 1372 (J.P.M.L. 2012). Should the need arise, the transferee judge can accommodate any unique discovery needs that this case presents.

* Judges Charles R. Breyer and Lewis A. Kaplan took no part in the decision of this matter.

¹ *See, e.g.*, Complaint at ¶ 64 (“Because of the TDI Fraud, Defendants could not deliver clean title to the Audi A6.”).

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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



Sarah S. Vance
Chair

Marjorie O. Rendell
Ellen Segal Huvelle

R. David Proctor
Catherine D. Perry

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SCHEDULE A

District of Colorado

WRIGHT LAW ASPEN, LLP v. VOLKSWAGEN GROUP OF AMERICA, INC.,
ET AL., D. Colorado, C.A. No. 1:18-973