

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: TOYOTA MOTOR CORP. UNINTENDED
ACCELERATION MARKETING, SALES PRACTICES,
AND PRODUCTS LIABILITY LITIGATION

MDL No. 2151

TRANSFER ORDER

Before the Panel: Plaintiffs in the action listed on Schedule A move under Panel Rule 7.1 to vacate our order that conditionally transferred their action (*Thibeaux*) to the Central District of California for inclusion in MDL No. 2151 or, alternatively, to allow the Western District of Louisiana additional time to rule on their motion to remand to state court. Defendants Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., and Toyota Motor Engineering & Manufacturing North America, Inc. (together, Toyota) oppose the motion to vacate.

After considering the argument of counsel, we find that this action involves common questions of fact with the actions transferred to MDL No. 2151, 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. Like many of the already-centralized actions, the operative complaint in *Thibeaux* involves factual questions arising from an alleged defect in certain Toyota vehicles that causes sudden, unintended acceleration. See *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, and Prods. Liab. Litig.*, 704 F. Supp. 2d 1379, 1381 (J.P.M.L. 2010). After the Panel’s hearing, plaintiffs submitted a supplemental brief stating they have moved for leave to file an amended complaint in the Western District of Louisiana, removing allegations of unintended acceleration. They argue that this amendment warrants vacatur. We disagree. Even assuming plaintiffs’ motion for leave to amend is granted, their amended complaint still contains allegations of unintended acceleration.¹ Indeed, in their supplemental brief, plaintiffs claim their

¹ See Pltfs.’ Mot. to Amend Petition, *Thibeaux, et al. v. Toyota Motor Corp., et al.*, C.A. No. 6:21-cv-01566-CBW, ECF No. 41, Ex. 3, at ¶ 13 (W.D. La. Sept. 29, 2021) (“Defendants had the unfettered ability ... to minimize the substantial risk of serious bodily harm or death caused by the design and manufacture of the subject product by incorporating technologically available and financially feasible safer alternative designs, ... which would minimize or eliminate the risks of grave danger from sudden, unwanted and uncontrollable acceleration.”); *id.* at ¶ 14 (“Defendants ... (a) designed, manufactured and sold the subject product into the stream of commerce with the knowledge that, as designed and manufactured, it was susceptible to sudden unwanted accelerations that would foreseeable[y] result in harm; (b) took no action whatsoever before the subject incident to warn Plaintiff or the public of the risks or dangers of unwanted acceleration in

case arises out of injuries sustained as a result of, *inter alia*, “unintended acceleration design and other defects in the 2014 Toyota Camry.” Therefore, despite plaintiffs’ argument otherwise, it is apparent that *Thibeaux* shares factual questions with the MDL No. 2151 actions. The transferee court can rule on plaintiffs’ motion for leave to amend their complaint. If the transferee judge determines after close scrutiny that this action does not belong in the MDL, he can suggest that it be remanded with a minimum of delay. *See* Panel Rules 10.1-10.3. The transferee judge has been prompt in remanding actions that are not appropriate for inclusion in MDL No. 2151. *See* Suggestion of Remand, MDL No. 2151, ECF No. 342 (J.P.M.L. Nov. 7, 2011) (suggesting remand of actions outside the scope of MDL No. 2151, consistent with a prior Panel ruling).

In support of their motion to vacate, plaintiffs also argue that federal subject matter jurisdiction over *Thibeaux* is lacking, and that their pending motion for remand to state court should be decided before transfer. We are not persuaded by these arguments. The Panel has held that such jurisdictional objections generally do not present an impediment to transfer.² *See, e.g., In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347–48 (J.P.M.L. 2001) (“[R]emand motions can be presented to and decided by the transferee judge.”).

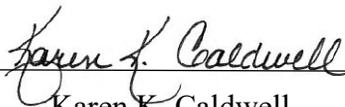
Plaintiffs also argue that defendants acted in bad faith by filing their notice of removal and notifying the Panel that *Thibeaux* was a potential tag-along action to MDL No. 2151. But “Section 1407 does not empower the MDL Panel to decide questions going to the jurisdiction or the merits of a case, including issues relating to a motion to remand.” *In re Ivy*, 901 F.2d 7, 9 (2d Cir. 1990). This is so “even where, as here, plaintiffs assert that the removals were patently improper.” *In re Ford Motor Co. DPS6 PowerShift Transmission Prods. Liab. Litig.*, 289 F. Supp. 3d 1350, 1352 (J.P.M.L. 2018). Moreover, once *Thibeaux* was in federal court, defendants were obligated under Panel Rule 7.1(a) to notify the Panel of the *Thibeaux* action.

IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the Central District of California and, with the consent of that court, assigned to the Honorable James V. Selna for inclusion in the coordinated or consolidated pretrial proceedings.

the subject vehicle or inform Plaintiff or the public how to safely react in the event of a sudden unwanted acceleration”).

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.

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in cursive script, reading "Karen K. Caldwell", is positioned above a horizontal line.

Karen K. Caldwell
Chair

Catherine D. Perry
Matthew F. Kennelly
Roger T. Benitez

Nathaniel M. Gorton
David C. Norton
Dale A. Kimball

**IN RE: TOYOTA MOTOR CORP. UNINTENDED
ACCELERATION MARKETING, SALES PRACTICES,
AND PRODUCTS LIABILITY LITIGATION**

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SCHEDULE A

Western District of Louisiana

THIBEAUX, ET AL. v. TOYOTA MOTOR CORP., ET AL., C.A. No. 6:21-01566