

**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 the *Bowers* action pending in the Eastern District of Virginia and listed on the attached Schedule A move under Panel Rule 7.1 to vacate the Panel’s order conditionally transferring his action to MDL No. 2672. Volkswagen Group of America, Inc. (VW) 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). *Bowers* involves allegations that defendants misrepresented the fuel economy and carbon dioxide emissions of certain Audi gasoline-powered vehicles. The action is without doubt factually connected to the MDL proceedings, in which defendants state that nineteen other carbon dioxide emissions cases are pending.

Plaintiffs oppose transfer by arguing that their action should be remanded in light of the transferee judge’s past decisions in arguably similar cases. The Panel, however, does not have the authority to determine the applicability of one judge’s remand ruling in one case to other arguably similar cases, and thus often has ordered transfer over the objection that remand is required by applicable precedent. *See, e.g., In re Avandia Mktg., Sales Practices & Prods. Liab. Litig.*, MDL No. 1871, 2013 U.S. Dist. LEXIS 143287, at \*2-3 (J.P.M.L. Oct. 3, 2013) (rejecting plaintiffs’ argument that “remand of their actions is a foregone conclusion” based on the transferee court’s prior remand decisions). These jurisdictional issues do not present an impediment to transfer. Plaintiffs can present their remand arguments to the transferee judge. *See In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001).<sup>1</sup> *See, e.g., In re: Ivy*, 901 F. 2d 7, 9 (2nd Cir.

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<sup>1</sup> 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

(continued...)

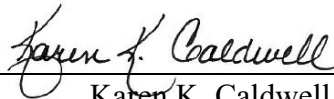
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1990); *In re: Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001).

Plaintiffs also argue that transfer will slow the progress of their action. Given that counsel for plaintiffs have brought, according to defendants, eight similar actions that already are pending in the MDL, transfer is also appropriate to ensure the consistent handling of the Audi carbon dioxide cases, even if it comes with some delay to the progress of *Bowers*. Moreover, transfer places plaintiffs before Judge Breyer, who preliminarily approved a class settlement covering Audi carbon dioxide claims in October 2019. A final approval hearing is set for February 28, 2020.

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



Karen K. Caldwell  
Chair

Ellen Segal Huvelle  
Catherine D. Perry  
Matthew F. Kennelly

R. David Proctor  
Nathaniel M. Gorton  
David C. Norton

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<sup>1</sup>(...continued)

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.

**IN RE: VOLKSWAGEN “CLEAN DIESEL” MARKETING,  
SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION**

MDL No. 2672

**SCHEDULE A**

Eastern District of Virginia

BOWERS, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL.,  
C.A. No. 1:19-1043