

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE GENERAL MOTORS LLC
DEFECTIVE IGNITION SWITCH
LITIGATION

MDL Docket No.

**MEMORANDUM IN SUPPORT OF MOTION OF PLAINTIFF KATIE
MICHELLE McCONNELL IN SUPPORT OF MOTION FOR CENTRALIZATION
AND COORDINATION OF CONSOLIDATED PRETRIAL
PROCEEDINGS PURSUANT TO 28 U.S.C. § 1407**

I. INTRODUCTION

Plaintiff Michelle McConnell (“Movant”), pursuant to J.P.M.L. Rule 7.2(a), respectfully requests that this Panel establish an MDL proceeding to centralize and coordinate the pending federal cases challenging General Motors LLC’s (“GM’s”) allegedly deceptive and unfair practices in failing to disclose the existence of a dangerous ignition switch defect in at least 1.6 million vehicles sold across the nation during at least the years 2003-2007 (the “Defective Vehicles”). Because of the deceptive and unfair acts and omissions alleged in these cases, at least 1.6 million Defective Vehicle owners are now driving vehicles that are prone to the inadvertent shut down of the engine during ordinary driving conditions – in turn shutting down the power brakes, the power steering, and causing the non-deployment of the vehicle’s airbags in the event of an accident.

These actions meet the statutory prerequisites for consolidation, since: (1) they are substantially similar class actions filed contemporaneously “involving one or more common

questions of fact” alleging nearly identical facts concerning the acts and practices of GM and its predecessor, “Old GM” ;¹ (2) consolidation will further “the convenience of the parties and the witnesses”; and (3) consolidation “will promote the just and efficient conduct of [the] actions” by ensuring centralized oversight of pretrial fact development in what are likely to be complex and document-intensive actions, thereby minimizing waste and inefficiency in the conduct of discovery. 28 U.S.C. § 1407(a). Consolidation will eliminate the possibility of inconsistent rulings, including the certification of potentially overlapping plaintiff classes. Consolidation will also provide a single forum in which future “tag-along” actions may be transferred to streamline subsequent proceedings and promote judicial economy. *See* J.P.M.L. Rules 7.4, 7.5.

Movant further requests that these actions be centralized in the United States District Court for the Central Division of California – Southern Division, where her case is currently pending before Judge Selna, California is home to the largest number of Defective Vehicle owners in the country.² Judge Selna is uniquely well-suited to foster the expeditious resolution of this complex litigation in light of his experience presiding over the recent nationwide class action involving more than 16 million owners of Toyota vehicles prone to sudden unintended acceleration.³ Given that Judge Selna is extremely well-versed in the major legal and regulatory issues that will be central to this litigation, and his demonstrated ability to efficiently organize and manage a similarly complex case involving a much large class and many more vehicle models and years than this one, his stewardship of these actions will result in the fair and expeditious resolution of all the actions. Speed and efficiency are paramount where, as here, millions of vehicle owners – including, Movant believes, many whose vehicles have not yet been recalled – are driving vehicles with the ignition switch defect.

¹ “Old GM” was General Motors Corporation, which filed a Chapter 11 Bankruptcy in 2009. Effective July 10, 2009, GM acquired substantially all assets and assumed certain liabilities of Old GM.

² *See* https://www.nada.org/NR/rdonlyres/0798BE2A-9291-44BF-A126-0D372FC89B8A/0/NADA_DATA_08222011.pdf (More than 10% of vehicles sold nationwide in 2010, by price, were sold in California.).

³ *In re: Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 8:10ML2151 JVS (FMOx) (C.D. Cal.).

II. BACKGROUND FACTS

A. **GM's alleged misconduct in connection with defective ignition switches has harmed at least 1.6 million Defective Vehicle owners**

This case involves an egregious and unprecedented failure to disclose and a deliberate decision to affirmatively conceal a known defect in GM vehicles. All of the facts summarized here will be proven through common evidence.

From at least 2003-2007, Old GM sold at least 1.6 million vehicles throughout the United States that have a serious safety defect in which the vehicle's ignition switch can unintentionally move from the "run" position to the "accessory" or "off" position, resulting in a loss of power, vehicle speed control, and braking, as well as a failure of the vehicle's airbags to deploy.

When Old GM began installing these ignition switch systems, it promised that the new systems would operate safely and reliably. This promise turned out to be materially false. In reality, first Old GM and then GM concealed and did not fix a serious quality and safety problem plaguing its vehicles. Worse yet, the defects in the Defective Vehicles could have been easily avoided.

From at least 2004 to the present, Old GM and GM received reports of crashes and injuries that put the Companies on notice of the serious safety issues presented by the ignition switch system in the Defective Vehicles. Despite notice of the defect in the vehicles, the Companies did not disclose to consumers and owners that the vehicles – for years advertised as "safe" and "reliable" – were in fact neither safe nor reliable.

GM's CEO, Mary Barra recently admitted in a video message that: "Something went wrong with our process in this instance, and terrible things happened." Movant believes that, despite this belated apology, GM has yet to acknowledge the full population of Defective Vehicles with the ignition switch defect. In so doing, GM continues to violate its obligations under the TREAD Act,⁴ and other laws including the Michigan Consumer Protection Act,⁵ to promptly notify consumers and remedy known defects in its vehicles.

⁴ The Transportation Recall Enhancement, Accountability and Documentation Act, 49 U.S.C. §§ 30101-30170.

GM's predecessor, Old GM, also violated these laws by designing and marketing vehicles with defective ignition switches, and then by failing to disclose that defect even after it became aware that the ignition switch defect was causing fatal accidents. In addition to the liability arising out of the statutory obligations expressly assumed by GM, GM also has successor liability for the deceptive and unfair acts and omissions of Old GM because GM has continued the business enterprise of Old GM with full knowledge of the ignition switch defects.

Movant accordingly filed her action for a Class of all persons in the United States who currently own or lease one or more of the following Defective Vehicles: 2003-07 Saturn Ion; 2005-07 Chevrolet Cobalt; 2007 Pontiac G5; 2006-07 Chevrolet HHR; 2006-07 Pontiac Solstice; and 2007 Saturn Sky (hereinafter "Defective Vehicles"). Investigation has already revealed that the actual population of Defective Vehicles is likely significantly larger, and Movant will amend her complaint to add additional models and model years.

B. The litigation against GM

There are currently at least four federal lawsuits seeking to hold GM liable for unlawful, deceptive and unfair practices in connection with the ignition switch defect in the Defective Vehicles, including:

Katie Michelle McConnell, individually and behalf of all others similarly situated v. General Motors LLC, No. 8:14-cv-00424, pending in the Central District, California (Selna, J.) (filed on behalf of a nationwide class) (a copy of the Complaint is attached as Exhibit B);

Daryl Brand and Maria Brandt v. General Motors, LLC, No. 2:14-cv-00079, filed in the Southern District of Texas, Corpus Christi Division on March 14, 2014 (Ramos, N.) (filed on behalf of "a class of persons similarly [situated]") (A copy of the Complaint is attached as Exhibit A);

Adnan Jawad, individually and on behalf of all similarly-situated persons v. General Motors LLC, No. 4:14-cv-11151 (Goldsmith, J.) (filed "on behalf of a Class of individuals who are owners or lessees of certain motor vehicles manufactured by GM") (First Amended Complaint filed on March 19, 2014) (a copy of the First Amended Complaint is attached as Exhibit C); and

⁵ MICH. COMP. L. ANN. § 445.901, *et seq.*

Galdina Maciel, et al., individually and on behalf of all others similarly situated v. General Motors, LLC, No. 3:14-cv-01339, filed in the Northern District of California, San Francisco Division on March 24, 2014 (filed on behalf of a proposed nationwide Class) (attached as Exhibit D).

(collectively, “GM Ignition Switch Defect cases”). These actions are similar, are being pursued against the same Defendant, and challenge the same course of conduct. All are class action cases that seek to end GM’s decade-long fraudulent concealment of the ignition switch defect, ensure that *all* the Defective Vehicles are recalled, and compensate Defective Vehicle owners for the diminished value of their vehicles as a result of GM’s conduct, as well as to obtain other relief. And, although not all of the complaints tackle the issue, all of the actions necessarily seek to hold GM liable for the acts of its predecessor, Old GM.

Because the GM Ignition Switch Defect cases challenge GM’s alleged misconduct in connection with the ignition switch defect in the Defective Vehicles, they are appropriate for multi-district assignment to a single court in California.

III. ARGUMENT

A. The GM Ignition Switch Defect Cases Should be Transferred and Coordinated Under 28 U.S.C. § 1406

In relevant part, 28 U.S.C. § 1407(a) specifies that this Panel may transfer and consolidate two or more civil cases for coordinated pretrial proceedings upon a determination that (1) the cases “involv[e] one or more common questions of fact,” (2) the transfers would further “the convenience of parties and witnesses,” and (3) the transfers “will promote the just and efficient conduct of [the] actions.” Consolidation under § 1407 is designed to “eliminate duplication in discovery, avoid conflicting rulings and schedules, reduce litigation cost, and save the time and effort of the parties, the attorneys, the witnesses, and the courts.” MANUAL FOR COMPLEX LITIGATION, FOURTH § 20.131 (2007). The pending GM Ignition Switch Defect cases meet these criteria and should be transferred and consolidated for pretrial proceedings.

1. The actions involve common questions of fact.

All the actions arise from the acts and omissions of Old GM and GM in connection with the ignition switch defect in the Defective Vehicles. The facts alleged in the actions are similar, and are brought against the same Defendant on behalf of classes of owners of the Defective Vehicles. Hence the first § 1407(a) requirement – that the cases “involv[e] one or more common questions of fact” – is met. *See, e.g., In re AT&T Corp. Secs. Litig.*, 2001 U.S. Dist. LEXIS 5233, at *3-4 (J.P.M.L. Apr. 19, 2001) (noting that “transfer under Section 1407 does not require a complete identity or even majority of common factual issues ... [n]or is the presence of additional or differing legal theories significant when the underlying actions still arise from a common factual core”).

2. Consolidation will aid the convenience of the parties and the witnesses.

The proposed transfer and consolidation will engender “the convenience of parties and witnesses.” 28 U.S.C. § 1407(a). The plaintiffs in the actions will require depositions of many of the same persons and discovery of the same documents. Without consolidation, Defendant and third parties would be subject to numerous duplicative discovery demands, and witnesses would face multiple, redundant depositions. Consolidation will alleviate these problems by enabling a single judge to manage discovery and minimize witness inconvenience and overall expense.

The savings in time and expense will benefit both the litigants and affected third parties. *See, e.g., In re Cuisinart Food Processor Antitrust Litig.*, 506 F. Supp. 651, 655 (J.P.M.L. 1981) (centralization would “effectuate a significant overall savings of cost and a minimum of inconvenience to all concerned with the pretrial activities”); *In re Uranium Indus. Antitrust Litig.*, 458 F. Supp. 1223, 1230 (J.P.M.L. 1978) (“[plaintiffs] will have to depose many of the same witnesses, examine many of the same documents, and make many similar pretrial motions in order to prove their ... allegations. The benefits of having a single judge supervise this pretrial activity are obvious.”); *In re Stirling Homex Corp. Sec. Litig.*, 405 F. Supp. 314, 316 (J.P.M.L. 1975) (“[W]e are confident that Section 1407 treatment will allow the ... plaintiffs to experience

a net savings of time, effort and expenses through pooling their resources with other plaintiffs....”). Given the similarity of the core issues of fact in the GM Ignition Switch Defect cases, it will be more convenient for the parties and the witnesses to have the cases consolidated in one forum.

3. Consolidation will promote the just and efficient conduct of these actions.

Transfer and consolidation will also “promote the just and efficient conduct” of these actions in several respects. 28 U.S.C. § 1407(a). First, consolidation will prevent duplicative discovery and conflicting pretrial rulings. Second, it will facilitate the consistent resolution of class certification issues. Third, both the complexity of the factual issues involved and the possibility of additional substantially similar actions being filed in the near future weigh in favor of consolidation.

4. Consolidation will prevent duplicative discovery and conflicting pretrial rulings.

The GM Ignition Switch Defect complaints each challenge the conduct of Old GM and GM in connection with the ignition switch defect in the Defective Vehicles. The complaints therefore ultimately rely on a substantially similar set of facts. Where “analysis of the record before us reveals a commonality of factual questions,” consolidation “is necessary in order to prevent duplication of discovery, eliminate the possibility of conflicting pretrial rulings, and conserve the time and effort of the parties, the witnesses and the judiciary.” *In re Food Fair Sec. Litig.*, 465 F. Supp. 1301, 1304 (J.P.M.L. 1979); *see also In re TMJ Implants Litig.*, 844 F. Supp. 1553, 1554 (J.P.M.L. 1994) (centralization “necessary in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings (especially with respect to class certifications and summary judgments), and conserve the resources of the parties, their counsel and the judiciary”).

In light of the likely duplication of discovery without consolidation, many of the same pretrial disputes are likely to arise in each case (for example, issues concerning the nature and scope of discovery, issues of privilege, and determinations regarding class certification). Consolidation will thus ensure that the parties to these actions are not subject to inconsistent

pretrial rulings regarding these various pivotal issues, a critical consideration in determining whether cases should be consolidated pursuant to § 1407. *See In re Multi-Piece Rim Prods. Liab. Litig.*, 464 F. Supp. 969, 974 (J.P.M.L. 1979) (centralization necessary “to prevent duplication of discovery and eliminate the possibility of conflicting pretrial rulings concerning these common factual issues”).

5. These actions are sufficiently numerous and complex to warrant consolidation.

The Panel has stated that it will not require large numbers of pending cases to grant consolidation under 28 U.S.C. § 1407. The Ignition Switch Defect cases at issue here are sufficiently numerous and complex to warrant consolidation. On prior occasions, where, as here, the issues involved are sufficiently complex and consolidation would prevent the duplication of discovery and pretrial rulings, the Panel has ordered transfer and consolidation even if there are as few as two cases. *See, e.g., In re First Nat’l Bank, Heavener, Okla. (First Mortgage Revenue Bonds) Sec. Litig.*, 451 F. Supp. 995, 997 (J.P.M.L. 1978) (centralization was “necessary, even though only two actions are involved, in order to prevent duplicative pretrial proceedings and eliminate the possibility of inconsistent pretrial rulings”); *see also In re Okun*, 609 F. Supp. 2d 1380 (J.P.M.L. 2009) (centralizing two actions); *In re Payless ShoeSource, Inc.*, 609 F. Supp. 2d 1372 (J.P.M.L. 2009) (same); *In re Aetna, Inc.*, 609 F. Supp. 2d 1370 (J.P.M.L. 2009) (same).

B. The GM Ignition Switch Defect cases should be transferred to Judge Selna in the Central District of California to promote the most fair and expeditious resolution of the cases.

First and most importantly, consolidation before Judge Selna in the Central District of California will promote the central purpose of MDL consolidation by ensuring the prompt, fair and efficient resolution of the complex Ignition Switch Defect cases. *See* 28 U.S.C. § 1407(a) (MDL consolidation strives to “promote the just and efficient conduct of [the] actions.”). Speedy and efficient resolution are even more paramount here, where the ignition switch defect and the almost certainly expanding group of Defective Vehicles pose extreme safety risks to

owners, occupants and others in the vicinity of accidents caused by the ignition switch defects. These actions cry out for expeditious resolution.

No judge in the country is better-suited to oversee the Ignition Switch Defect cases. In the most comparable matter in this nation's history, Judge Selna recently presided over the consolidated actions concerning sudden unintended acceleration in millions of Toyota vehicles spread across many different models and model years. *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices & Prods. Liab. Litig.*, No. 8:10ML2151 JVS (FMOx). That nationwide class action involved:

- A class of over 16 million vehicle owners;
- 26 Toyota models, 12 Lexus models and 3 Scion models numbers spanning a number of years;
- Multiple motions to dismiss involving many of the issues that will no doubt arise in the Ignition Switch Defect cases; and
- Massive discovery and attendant hotly-contested motion practice, concerning millions of pages of documents similar in character to the types of documents that will be at issue in this case.

The coordinated proceedings in *Toyota* also involved related products liability actions involving the serious safety defect in Toyota vehicles – just as coordinated proceedings in this case almost certainly will. Notwithstanding the extreme complexity and hotly-contested nature of every issue in the *Toyota* litigation, under Judge Selna's stewardship, a settlement of the *entire* nationwide class proceedings occurred less than three years after he began organizing the consolidated actions – a remarkably short time for such complex litigation.⁶

Judge Selna's unparalleled experience in highly-complex automobile safety defect litigation counsels strongly in favor of transferring the cases to his Court, where Movant's action is pending. *See, e.g., In re: Train Derailment Near Tyrone, Oklahoma, on April 25, 2005*, 545 F.

⁶ Given these real-world results, comparisons of the *average* time intervals for the resolution of civil cases are of no moment. Like the *Toyota* litigation, the Ignition Switch Defect cases promise to be *far more* complex than the average case.

Supp. 2d 1373, 1374 (J.P.M.L. 2008) (transferring cases to the Southern District of New York for the sole reason that the case would be before “Judge Barbara S. Jones, who has already developed familiarity with the issues involved”); *In re Rembrandt Techs., LP, Patent Litig.*, 493 F. Supp. 2d 1367 (J.P.M.L. 2007) (transferring cases to “a seasoned jurist in a readily accessible district with the capacity to handle the litigation”); *In re Bextra & Celebrex Mktg., Sales Practice & Prods. Liab. Litig.*, 391 F. Supp. 2d 1377, 1378 (J.P.M.L. 2005) (“By centralizing this litigation in the Northern District of California before Judge Charles R. Breyer, we are assigning this litigation to a jurist experienced in complex multidistrict litigation and sitting in a district with the capacity to handle this litigation.”); *In re Dollar Gen. Corp. Fair Labor Standards Act Litig.*, 346 F. Supp. 2d 1368 (J.P.M.L. 2004) (transferring FLSA cases to the Northern District of Alabama where “the judge in that action had gained familiarity with issues involved in the litigation through, inter alia, his certification of an opt-in collective action under FLSA”).

Second, the highest percentage of Defective Vehicles were sold in California⁷, which means the greatest number of putative class members reside there. The number of Defective Vehicles and class members in California is nearly five times higher than in Michigan, and 50% higher than in Texas.⁸

Third, Orange county is in the close vicinity of three major airports, meaning that it will be quite easy for counsel in all cases, including those yet to be filed, to travel to and appear in court in the Central District of California. This is a significant factor because the cases currently on file include plaintiffs’ counsel, plaintiffs and putative class members from around the country. Central California will therefore be convenient for the lawyers and plaintiffs who need to travel by air to attend hearings and otherwise prosecute their cases.

⁷ See https://www.nada.org/NR/rdonlyres/0798BE2A-9291-44BF-A126-0D372FC89B8A/0/NADA_DATA_08222011.pdf (In 2010, 10% of vehicles sold in this country, by price, were sold in California.).

⁸ *Id.*

Fourth, Corpus Christ, Texas, where the first-filed *Brandt* case is pending, is decidedly *not convenient* for any party.⁹ Traveling to Corpus Christi will be tremendously difficult and time consuming, likely requiring two flights and a lengthy drive from any major U.S. city outside of Texas.

Finally, while GM is headquartered in Michigan – the same state in which the *Jawad* action was filed, that fact alone does not justify the transfer of the Ignition Switch Defect cases to that forum. Notably, GM is headquartered in Detroit, the Western District of Michigan – not in the district where *Jawad* was filed. And Flint, where *Jawad* was filed, is far less convenient than Detroit for the nationwide plaintiffs and lawyers who will be participating in this litigation. Most essentially, no potential transferee court in the Eastern District of Michigan has the relevant experience of Judge Selna.

IV. CONCLUSION

For these reasons, Movant respectfully requests that the Panel order the transfer and/or consolidation of the actions listed in the Schedule of Actions, plus any future tag-along actions, to the Central District of California, Southern Division, for the purpose of coordination of pretrial proceedings in a single forum pursuant to 28 U.S.C. § 1407.

⁹ The fact that *Brandt* was the first-filed case is not entitled to weight here, where (i) nothing has occurred in that venue, and (ii) a comparison of the *Brandt* and *McConnell* complaints reveals why *Brandt* was filed first. *Brandt* contains only the most bare-boned allegations, does not say which law applies, and does not even acknowledge that a significant portion of the conduct complained of in this case took place *prior* to the bankruptcy of Old GM. Compare, e.g., *In re Neurontin Mktg. & Sales Practices Litig.*, 342 F. Supp. 2d 1350 (J.P.M.L. 2004) (transferring coordinated action where first action was filed where first action had proceeded to an advanced stage).

DATED: March 24, 2014

HAGENS BERMAN SOBOL SHAPIRO LLP

/s/ Steve W. Berman

Steve W. Berman

Andrew M. Volk

1918 Eighth Avenue, Suite 3300

Seattle, WA 98101

Tel: (206) 623-7292

Fax: (206) 623-0594

E-mail: steve@hbsslaw.com

E-mail: andrew@hbsslaw.com

*Attorneys for Plaintiff Katie Michelle
McConnell*