BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE TAKATA AIRBAG LITIGATION	)	MDL Docket No. 2599

RESPONSE OF DEFENDANT CHRYSLER GROUP LLC TO MOTION OF PLAINTIFFS FOR TRANSFER OF ACTIONS TO THE SOUTHERN DISTRICT OF FLORIDA PURSUANT TO 28 U.S.C. § 1407 FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS

The 40+ cases that are the subject of this proceeding (the "Related Actions") are based on allegations that the Takata Corporation airbags installed in a variety of motor vehicles are defective. Chrysler Group LLC did not manufacture or sell the allegedly defective Takata airbags or any of the vehicles that incorporate them. Yet, Chrysler Group is named as a party defendant in five of the cases based on allegations that it is liable as a manufacturer for certain model-years 2003 through 2008 vehicles.[1] Chrysler Group did not even exist when these vehicles were manufactured, making it clear that the plaintiffs are seeking to hold Chrysler Group liable for the alleged wrongdoing of the bankrupt vehicle manufacturer from which it purchased certain assets during the course of a bankruptcy proceeding.

The claims pleaded against Chrysler Group in the Related Actions are barred by a Sale Order entered by the Bankruptcy Court for the Southern District of New York. While Chrysler Group does not oppose transfer by the Panel on Multidistrict Litigation for coordinated or consolidated pretrial proceedings, the fact that the plaintiffs' claims implicate this Sale Order

[1] *See Bonet v. Takata Corp.*, Case No. 1:14cv24087 (S.D.Fla.); *Zamora v. Takata Corp.*, Case No. 3:14cv02618 (S.D.Cal.); *Horton v. Takata Corp.*, Case No. 2:14cv04433 (D.S.C.); *Rickert v. Takata Corp.*, Case No. 3:14cv01420 (M.D.Fla.); *Day v. Takata Corp.*, Case No. 3:14cv01427 (M.D.Fla.).

make it clear that the most appropriate court to handle this nationwide litigation is the United States District Court for the Southern District of New York, and not, as Plaintiffs propose, the United States District Court for the Southern District of Florida. Indeed, if the Related Actions are transferred to some district court other than the Southern District of New York (where referral to the Bankruptcy Court of bankruptcy-related issues would be automatic), Chrysler Group will continue to seek transfer of the claims made against it to the Southern District of New York because the threshold issue of whether the Sale Order bars the claims being pursued against Chrysler Group requires an interpretation of that Order, and the Bankruptcy Court has the exclusive jurisdiction to interpret that Order.

The Southern District of New York: is intimately familiar with the Sale Order which is inextricably intertwined with the claims made against Chrysler Group in the Related Actions; is in the best position to coordinate with the Bankruptcy Court; and is already the forum of three of the Related Actions. In addition, that District has a great depth of experience in multidistrict and products liability litigation, and it is a more convenient forum for all parties and witnesses than the alternative fora proposed by other parties. It is clearly the best forum for the coordination or consolidation of the Related Actions.[2]

[2]The other defendants' proposed venue of Pittsburgh is much more convenient than any of the plaintiffs' proposals and would be an appropriate forum if not for the bankruptcy issues; however, due to the bankruptcy issues implicated by plaintiffs' claims, the Southern District of New York is the most appropriate forum for this multidistrict litigation.

I. BACKGROUND

A. The Bankruptcy Court's Sale Order Provides For Chrysler Group's Asset Purchase To Be Free and Clear of All Liabilities Except Certain Express "Assumed Liabilities."

On April 30, 2009, Old Carco LLC (f/k/a Chrysler LLC) filed for bankruptcy protection in the United States Bankruptcy Court for the Southern District of New York. *See In re Old Carco LLC (f/k/a Chrysler LLC)*, Case No. 09-50002 (Bankr. S.D.N.Y.). This Bankruptcy Proceeding is ongoing.

On June 1, 2009, a Sale Order was entered in the Bankruptcy Proceeding.[3] *See In re Old Carco LLC (f/k/a Chrysler LLC)*, Case No. 09-50002, Docket No. 3232 ("Sale Order"). The Sale Order is a final order for which all appellate remedies have been exhausted. *See Indiana State Police Pension Trust v. Chrysler LLC*, 130 S.Ct. 1015 (2009); *In re Chrysler LLC*, 592 F.3d 370 (2d Cir. 2010); *In re Chrysler LLC*, 576 F.3d 108 (2d Cir. 2009).

Under the Sale Order, Chrysler Group acquired the assets of Old Carco free and clear of all claims related to vehicles manufactured by Old Carco except for those liabilities which it expressly assumed. *See* Sale Order at ¶ 35. And, Chrysler Group assumed only three civil liabilities arising out of vehicles manufactured by Old Carco: (a) for vehicles manufactured in the 5 years prior to the closing date of the asset purchase (*i.e.,* in the 5 years prior to June 10, 2009), "Lemon Law" claims defined to include express warranty claims and Magnuson-Moss express warranty claims; (b) repairs under warranty; and (c) claims based on post-sale accidents resulting in personal injury. *See, generally,* Sale Order and documents incorporated therein. The

[3]The Sale Order was formally titled: "Order (I) Authorizing the Sale of Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Interests and Encumbrances, (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith and Related Procedures and (III) Granting Related Relief."

Sale Order expressly enjoins "all persons and entities" including "customers" from asserting any claim against Chrysler Group for the liabilities of Old Carco, unless the liability for that claim was expressly assumed in the Sale Order. *Id.* at ¶ 12.

In issuing the Sale Order, the Bankruptcy Court expressly retained jurisdiction "to interpret, implement and enforce [these] terms and provisions" and "to protect [Chrysler Group] against any Claims." *Id.* at ¶ 59. And, that Court has consistently and repeatedly exercised its exclusive jurisdiction to interpret and enforce that Sale Order. *See, e.g., In re Old Carco LLC*, Case No. 09-50002/*Burton v. Chrysler Group LLC*, Case No. 09-50002, Adv. Proc. No. 13-01109, Docket No. 18 (S.D.N.Y. June 26, 2013); *In re Old Carco LLC*, Case No. 09-50002/*Tatum v. Chrysler Group LLC*, Adv. Proc. No. 11-09411, Docket No. 73 (S.D.N.Y. February 15, 2012); *In re Old Carco LLC*, Case No. 09-50002/*Tulcaro v. Chrysler Group LLC*, Adv. Proc. No. 11-09401, Docket No. 18 (S.D.N.Y. October 28, 2011); *In re Old Carco LLC*, Case No. 09-50002/*Wolff v. Chrysler Group LLC*, Adv. Proc. No. 10-05007, Docket No. 46 (S.D.N.Y. August 12, 2010).

B. The Claims Against Chrysler Group Are Premised On Allegations That It Bears Liability For The Acts Of The Vehicle Manufacturer.

The claims pleaded against Chrysler Group in the Related Actions are clearly liabilities retained by Old Carco and are plainly barred by the Bankruptcy Court's Sale Order. The claims are for economic damages only, are not based on vehicle accidents, encompass vehicles manufactured more than 5 years prior to June 10, 2009, implicate implied warranty laws, and include a variety of statutory fraud, common law fraud, and other tort claims.[4] And, it is clear

[4]In *Bonet*, claims are pleaded for vehicles dating back to 2003, and include claims for violation of consumer protection acts, common law fraud, and breach of implied warranty. In *Zamora*, the vehicles at issue were likewise manufactured for model-years as early as 2003, and

that the plaintiffs are attempting to prosecute their claims in violation of the injunction contained within the Sale Order as they expressly and unequivocally plead that Chrysler Group should be held liable as a vehicle manufacturer (even though the bankrupt Old Carco was the actual manufacturer). *See, e.g., Bonet* Complaint, ¶¶ 61, 77 (alleging Chrysler Group sold the vehicles at issue and referring to Chrysler Group as one of the "Vehicle Manufacturer Defendants"); *Zamora* Complaint, ¶¶ 4, 27-28 (alleging that defective airbags were installed in model-years 2003-08 vehicles "manufactured" and "sold" by Chrysler Group); *Horton* Complaint, ¶¶ 6, 70 (referring to Chrysler Group as one of the "Vehicle Manufacturer Defendants" who sold model-years 2003-08 Dodge and Chrysler vehicles); *Rickert* Complaint, ¶¶ 57, 76 (alleging Chrysler Group is one of the "Vehicle Manufacturer Defendants" and that it "sold" the vehicles at issue); *Day* Complaint, ¶¶ 57, 76 (same).

II. ARGUMENT

The Southern District of New York is by far the most appropriate district to coordinate pretrial proceedings consistent with the best interests of the parties, the goals of 28 U.S.C. § 1407, and the U.S. Supreme Court's decision in *Celotex Corp. v. Edwards*, 514 U.S. 300 (1995). The Southern District of New York has a unique resume which offers: familiarity with the Bankruptcy Court Sale Order that directly impacts the claims made against Chrysler Group; ***and*** easy access to the Bankruptcy Court which has exclusive jurisdiction to interpret the Sale Order; ***and*** familiarity with the facts and issues in the Related Actions through first-hand

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the claims include strict products liability, breach of implied warranty, statutory and common law fraud, unjust enrichment, unfair competition, false advertising, and negligence. The claims in *Horton* also encompass vehicles dating back to model-year 2003, and involve allegations of fraud, unjust enrichment, and breach of implied warranty. The *Rickert* and *Day* cases follow suit setting forth claims on behalf of owners of vehicles dating back to model-year 2003 and seeking relief under theories of common law and statutory fraud and breach of implied warranty.

experience; ***and*** deep experience with multidistrict litigation; ***and*** unprecedented and easy access for counsel, witnesses, and parties. By contrast, the Southern District of Florida and the other suggested fora have little connection to the abundance of cases filed in less than a one month period of time across the entire nation.

A. This Panel's Prior Decisions Support Consolidation Or Coordination In The Southern District Of New York.

This Panel has routinely transferred cases to a district court where there is a pending bankruptcy proceeding which could impact some of the claims at issue. *See, e.g., In re MF Global Holdings Ltd. Inv. Litig.*, 857 F.Supp.2d 1378, 1381 (J.P.M.L. 2012); *In re Fontainebleau Las Vegas Contract Litig.*, 657 F.Supp.2d 1374, 1375 (J.P.M.L. 2009); *In re Gross Common Carrier, Inc.*, 843 F. Supp. 1506, 1508 (J.P.M.L. 2009); *In re ClassicStar Mare Lease Litig.*, 528 F.Supp.2d 1345, 1347 (J.P.M.L. 2007); *In re Ephedra Prods. Liab. Litig.*, 314 F.Supp.2d 1373, 1375 (J.P.M.L. 2004); *In re Commonwealth Oil/Tesoro Petroleum Sec. Litig.*, 458 F.Supp. 225, 230 (J.P.M.L. 1978); *In re Equity Funding Corp. of Am. Sec. Litig.*, 375 F.Supp. 1378, 1387 (J.P.M.L. 1974); *In re Natural Res. Fund, Inc., Sec. Litig.*, 372 F.Supp. 1403, 1404-05 (J.P.M.L. 1974); *In re King Res. Co. Sec. Litig.*, 342 F.Supp. 1179, 1183 (J.P.M.L. 1972). This is because the Panel highly prioritizes the coordination of litigation with related proceedings in federal courts, which tend to "achieve the goals of economy and efficiency, which are hallmarks of both Sections 1407 [governing multidistrict litigation] and 157 [authorizing referrals of bankruptcy related cases to the bankruptcy court and creating authority of bankruptcy judges to decide issues and cases]." *In re Ephedra Prods. Liab. Litig.*, 314 F.Supp.2d 1373, 1375-76 (J.P.M.L. 2004).

The goal of consolidation is to "eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve the resources of the parties, their counsel and the judiciary." *In re Gross Common Carrier, Inc.*, 843 F. Supp. 1506, 1508 (J.P.M.L. 1994). The need to achieve

these goals is particularly important in cases connected to massive corporate bankruptcies. *Cf. id.* at 1507-08 (transferring 32 district court actions to a district in which 128 adversary proceedings in bankruptcy were pending because they "present[ed] common questions of fact"). Furthermore, transfer to the same court in which a related bankruptcy is proceeding facilitates "all actions … to be conducted by a judge familiar with both groups of cases and sensitive to the needs and rights of all parties." *In re Equity Funding Corp. of Am. Sec. Litig*, 375 F.Supp. 1378, 1385 (1973).

This Panel has given such great weight to ongoing bankruptcy proceedings that it has been willing to overlook factors that by themselves might favor other districts. For example, this Panel has transferred multidistrict litigation to a bankruptcy district despite the fact that the majority of the related cases were filed elsewhere. *See, e.g., In re Equity Funding*, 375 F.Supp. at 1378 (transferring cases to the Central District of California when only 20 cases were filed there, compared with 41 in the Southern District of New York and 8 elsewhere). This Panel has also transferred multidistrict litigation to a bankruptcy district when ***only one*** of many defendants was a party to the bankruptcy. *See, e.g., In re ClassicStar Mare Lease Litig.*, 528 F.Supp.2d 1345, 1345–46 (J.P.M.L. 2007) (transferring to court where only one of ten defendants had filed bankruptcy); *In re Ephedra Prods.*, 314 F.Supp.2d at 1374 n. 3, 1375 (transferring to court where the Twinlab defendants were engaged in bankruptcy proceedings, despite presence of 19 other defendants); *In re Commonwealth Oil/Tesoro Petroleum Sec. Litig.*, 458 F.Supp. 225, 226, 230 (J.P.M.L. 1978) (transferring to court where one defendant was engaged in bankruptcy proceedings, despite existence of 25 other "major defendants").

These decisions to transfer to a bankruptcy district when the claims pleaded against many defendants are impacted by a bankruptcy affecting only one of the defendants demonstrate the

weight that this Panel gives to a district court's ability to coordinate ongoing civil proceedings with bankruptcy proceedings. Indeed, this Panel attaches such centrality to bankruptcy proceedings that it has even transferred multidistrict litigation to a bankruptcy district ***when no case originally was filed in that district***. *See Ephedra*, 314 F.Supp.2d at 1375 (transferring to the Southern District of New York for bankruptcy reasons despite the fact that no case had originally been filed there).

Of particular note is this Panel's recent decision in *In re General Motors LLC Ignition Switch Litig.*, 2014 WL 2616819 (J.P.M.L. 2014), which involved claims against the New GM, an entity in a virtually identical position to that of Chrysler Group here. In *Ignition Switch*, New GM, like Chrysler Group here, intended to defend the claims being made against it by raising the bar/injunction set forth in a Sale Order entered by the Bankruptcy Court for the Southern District of New York in the bankruptcy proceeding of "Old GM." This Panel concluded that, in light of this, the Southern District of New York, where Old GM's bankruptcy proceedings were ongoing, was the "most appropriate" forum for all "defective ignition switch" cases because:

> The Southern District of New York is the site of the bankruptcies of both General Motors and Delphi …. Several judges in this district, including Judge Jesse M. Furman, have heard appeals related to General Motors' bankruptcy and, therefore, have some familiarity with the common defendant and its prior bankruptcy proceedings.

2014 WL 2616819 at *1.

This Panel's analysis in *Ignition Switch* applies with equal force here. The claims pleaded against Chrysler Group are related to the bankruptcy proceedings of Old Carco which are pending in the Southern District of New York. Because of appeals taken from orders entered by the Bankruptcy Court, several judges in the Southern District of New York have become intimately familiar with the bankruptcy proceedings of Old Carco, Chrysler Group's purchase of

assets from that entity, and the Sale Order implicated by the claims being made against Chrysler Group in the Related Actions. Indeed, in a lengthy and thorough opinion in a case on appeal from the Bankruptcy Court, Judge McMahon of the Southern District of New York detailed the history of Old Carco's bankruptcy and sale of assets to Chrysler Group and interpreted the very Sale Order which is implicated by the Related Actions here. *See In re Old Carco LLC*, 2010 WL 9461648 (S.D.N.Y. 2010); *see also In re Old Carco LLC/Fiorani v. Old Carco Liquidation Trust*, 2014 WL 1133560 (S.D.N.Y. 2014) (Patterson, D.J. presiding) (construing claims against Chrysler Group as outside scope of Sale Order, and upholding interpretation of Old Carco's distribution plan); *In re Old Carco LLC/Liquidation Trust v. Daimler AG*, 2011 WL 5865193 (S.D.N.Y. 2011) (Cote, D.J. presiding) (discussing details of bankruptcy proceedings); *In re Old Carco LLC/Ramirez Chrysler Jeep Dodge, Inc. v. Old Carco Liquidation Trust*, 2010 WL 4455648 (S.D.N.Y. 2010) (Castel, D.J. presiding) (discussing sale of assets by Old Carco and deciding when Old Carco ceased production and operation);[5] *In re Old Carco LLC*, 2010 WL 3566908 (S.D.N.Y. 2010) (Hellerstein, D.J. presiding) (discussing Sale Order).

The Southern District of New York's familiarity with the Sale Order which directly impacts the claims made against Chrysler Group is complemented by its first-hand familiarity with the Related Actions. Four of the Related Actions which this Panel is considering consolidating are already pending there: *Lawrence v. Takata Corp.*, Case No. 14cv8963 before the Honorable Deborah A. Batts; *Garcia v. Takata Corp.*, Case No. 14cv8960 before the Honorable Anilisa Torres; *Cioffi v. Takata Corp.*, Case No. 14cv89290 before the Honorable

[5]Judge Castel also gained familiarity with the Sale Order in a declaratory judgment action filed by Old Carco and Chrysler Group challenging state laws aimed at circumventing certain portions of the Bankruptcy Court's orders. *See In re Old Carco LLC/Old Carco LLC v. Kroger*, 442 B.R. 196 (S.D.N.Y. 2010).

Nelson S. Roman; and *Alexander et al. v. Takata Corp.*, Case No. 14cv9396 to which no judge has been assigned as of the time of filing. This added connection makes the Southern District of New York more the "center of gravity" than any other forum argued for by any party, and thus the most appropriate transferee forum. *See, e.g., In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, 731 F.Supp.2d 1352, 1355 (J.P.M.L. 2010) (despite "sound reasons" existing for transfer to other forums, cases consolidated in court considered "center of gravity").

The threshold issue in the Related Actions with respect to Chrysler Group is whether the claims against it are barred by a Sale Order entered by the Bankruptcy Court for the Southern District of New York, and whether the plaintiffs have violated that Court's injunction in pursuing claims against Chrysler Group based on its purchase of assets from the entity that manufactured their vehicles. The Southern District of New York is a uniquely qualified forum for this litigation because it can easily coordinate with the Bankruptcy Court to resolve this threshold issue, it has familiarity with Sale Order, and it will be the Court of first appeal from any order entered by the Bankruptcy Court determining whether the claims against Chrysler Group are barred.

B. The Relevant Criteria Support Coordination And Consolidation In The Southern District Of New York.

The express wording of 28 U.S.C. § 1407 provides that in deciding whether and where to transfer related cases this Panel should consider what will best serve "the convenience of parties and witnesses" and "promote the just and efficient conduct of such actions." These factors support transfer of the Related Actions to the Southern District of New York.

First, transfer to the Southern District of New York will be a convenient forum for counsel, parties, and witnesses. As has been noted, New York has three major airports as well as

a variety of public transportation making it extremely accessible. *See U.S. v. Christian*, 2012 WL 1134035, *2 (S.D.N.Y. 2012). And, notably, in a significant number of the Related Actions New York counsel represents the plaintiffs. Even for those cases in which counsel is not located in New York, "the judicious use of liaison counsel, lead counsel and steering committees will eliminate the need for most counsel ever to travel to the transferee district." *In re Asbestos Prods. Liab. Litig. (No. VI)*, 771 F.Supp. 415, 422 (J.P.M.L. 1991). Transfer to the Southern District of New York will likewise not be inconvenient for parties and witnesses because "§ 1407 transfer is primarily for pretrial," meaning that "there is usually no need for the parties and witnesses to travel to the transferee district for depositions or otherwise." *Id.*; *see also In re Cont'l Grain Co.*, 482 F.Supp. 330, 332 (J.P.M.L. 1979) ("depositions of parties and witnesses may occur in proximity to where they reside").

Second, the "just and efficient conduct" of the Related Actions will be served by a transfer to the district where there are judges familiar with both the issues in this case and with the Sale Order that must be interpreted and applied as a threshold matter. And, the fact that four of the Related Actions are already pending in the Southern District of New York adds further support to the notion that it is the best forum for the Related Actions. *See, e.g., In re Bayou Hedge Funds Inv. Litig.*, 429 F.Supp.2d 1374, 1376 (J.P.M.L. 2006) (transferring to district where judge was presiding over three governmental civil actions and two criminal proceedings regarding the same subject matter); *In re Hawaiian Hotel Room Rate Antitrust Litig.*, 438 F.Supp. 935, 936 (J.P.M.L. 2006) (transferring to a district in which there was related litigation and to a judge who had developed "familiarity with th[e] litigation"). It is beyond dispute that there is no district court more familiar with the issues involved in Old Carco's bankruptcy and Chrysler Group's limited liabilities for that entities' alleged wrongdoings than the Southern

District of New York. Indeed, a multitude of different district judges in the Southern District of New York have had to address issues related to Old Carco's bankruptcy, Chrysler Group's purchase of assets, and/or the claims bar imposed by the Sale Order. These include Judges Patterson, Cote, Castel, McMahon, and Hellerstein. *See* § II.A, *supra.* Most of these judges are experienced in complex commercial cases and/or have been assigned multidistrict litigation.[6]

Third, the "just and efficient conduct" of this litigation will further be promoted by transfer to a district that has a well-established track record of handling multidistrict litigation, including products liability litigation. And, the Southern District of New York has just that.[7] In fact, the Southern District of New York has developed a Pilot Project for Complex Cases, which establishes specific case-management techniques designed to facilitate the efficient resolution of complex cases, including multidistrict litigation cases.[8]

Fourth, and finally, the Southern District of New York is actually the home of the most mature litigation that is implicated by the Related Actions, *i.e.,* the bankruptcy proceedings of Old Carco. It is also the only district court to have had an opportunity to consider, interpret, and apply the Sale Order which directly affects the claims pleaded against Chrysler Group in the Related Actions. The Sale Order was entered in, and the related bankruptcy proceedings have

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[6] *See* Jud. Pan. Multidist. Lit., *Distribution of Pending MDL Dockets*, http://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-November-17-2014.pdf.

[7] *See, e.g., In re Methyl Tertiary Butyl Ether (MTBE) Prods. Liab. Litig.*, 980 F.Supp.2d 425 (S.D.N.Y. 2013); *In re Fosamax Prods. Liab. Litig.*, 815 F.Supp.2d 649 (S.D.N.Y. 2011); *In re Sony Corp. SXRD Rear Projection Television Mktg., Sales Pracs. & Prods. Liab. Litig.*, 268 F.R.D. 509 (S.D.N.Y. 2010); *In re Ephedra Prods. Liab. Litig.*, 231 F.R.D. 167 (S.D.N.Y. 2005); *In re Rezulin Prods. Liab. Litig.*, 133 F.Supp.2d 272 (S.D.N.Y. 2001).

[8] *See* October 31, 2011 Standing Order, *In re Pilot Project Regarding Case Management Techniques for Complex Civil Cases in the Southern District of New York*, available at www.nysd.uscourts.gov/rules/Complex_Civil_Rules_Pilot_2011-10-31.pdf.

been going on since, mid-2009, and resolution of bankruptcy issues have repeatedly involved a variety of judges sitting in the Southern District of New York. In contrast, all of the Related Actions are in their infancy, all having been filed within the past one month. No district has such an advanced docket that the progress of a case would weigh in favor of transfer to that district.

It is clear that the relevant criteria favor transfer to the Southern District of New York. It is an unsurpassed accessible and convenient location for counsel and witnesses. And, it is the only District where the sitting judges have a familiarity with all litigation and proceedings that affect the claims being made.

C. The Southern District Of Florida And Other Suggested Fora Have Little Connection With The Facts And Issues In This Case.

The Related Actions and the parties to them are dispersed throughout the country, and, while some fora in addition to the Southern District of New York may have a significant connection to the litigation such as being the home turf of a defendant, it is clear that the Southern District of Florida lacks any such connection. The plaintiffs' primary argument as to why the Southern District of Florida has a more significant connection than any other district is that, purportedly, the "first filed" case was lodged there, and that "first filed" case is the most advanced. But, there were actually two cases filed on the "first day" that a class action was filed (October 27, 2014), and only one (the second one appearing on the nationwide Pacer docket) was filed in the Southern District of Florida.[9] Subsequent filings of class actions have occurred almost daily in the month since then. It defies common sense to suggest that a case filed less than one month ago, and on the same day as a virtually identical case, and within days of the

[9] *See Takeda v. Takata Corp.*, Case No. 2:14cv08324 (C.D.Cal); *Dunn v. Takata Corp.*, Case No. 1:14cv24009 (S.D.Fla.); *see also Figuero v. TK Holdings, Inc.*, Case No. 3:14cv01778 (D.P.R.) (out of currently pending cases, first-filed individual personal injury claim involving a Takata airbag that is alleged to be defective).

filing of numerous other virtually identical cases, creates a connection significant enough in and of itself to justify transfer there to the exclusion of every other district. Particularly, when the vast majority of now-pending cases are not filed in that same district, the claims being asserted implicate the laws of every state in the country, and the plaintiffs admit that all of the pending cases are in their infancy as "[n]o responsive pleadings or dispositive motions have been filed nor has any discovery been conducted." *See* Pl. Motion to Transfer and Consolidate at ¶ 3.

The plaintiffs' proffered other reasons for choosing the Southern District of Florida fare no better. The plaintiffs argue that they have issued a FOIA request to the NHTSA to obtain documents, but this is completely irrelevant as a FOIA request could have been issued by someone in a different district even before litigation was commenced and a FOIA request has no connection to the litigation itself. Equally irrelevant is the plaintiffs' claim that a "large" number of the accidents involving Takata airbags have occurred in Florida as the claims made in the Related Actions do not involve "accident" claims; indeed, they are expressly excluded from the class actions. *See, e.g., Bonet*, ¶ 124 ("Also excluded from the Class are any individuals claiming damages from personal injuries allegedly arising from the defective vehicles"). The plaintiffs also advocate for the Southern District of Florida based on their claim that its docket is one of the most efficient in the country. While this is a factor that is often considered, it is but one factor and the plaintiffs cannot earnestly contest the fact that the Southern District of Florida is not the ***only*** efficient court. Finally, the plaintiffs' argument that Judge King in the Southern District of Florida has the experience to effectively manage this multidistrict litigation ignores the fact that his Honor is on senior status (*i.e.,* semi-retired). Consolidation of these related proceedings will be a massive undertaking for any district judge. Certainly being semi-retired

would greatly impact a senior judge's ability to dedicate the daily attention that will be required for several years into the future.

D. Transfer To The Southern District Of New York Is Appropriate Under The Supreme Court's Analysis In *Celotex*.

Under the Supreme Court's holding in *Celotex Corp. v. Edwards*, 514 U.S. 300 (1995), the Related Actions should be transferred to the Southern District of New York. By filing fraud, tort, implied warranty, and other common law claims against Chrysler Group, and basing those claims on alleged defects in motor vehicles dating back to model-year 2003, the plaintiffs are effectively collaterally attacking the Bankruptcy Court's Sale Order. Under *Celotex*, a federal court's order cannot be collaterally attacked; it can only be "reversed for error by orderly review, either by itself or by a higher court." 514 U.S. at 313. Because the plaintiffs in the Related Actions seek to pursue claims that violate the Bankruptcy Court's Sale Order they must, under *Celotex*, seek modification of that Order in the Bankruptcy Court. When it issued the Sale Order, the Bankruptcy Court expressly retained jurisdiction "to interpret, implement and enforce [these] terms and provisions" and "to protect the Purchaser [Chrysler Group] against any Claims." *See* Sale Order, ¶ 59. And, "the Bankruptcy Court plainly ha[s] jurisdiction to interpret and enforce its own prior orders." *Travelers Indemnity Co. v. Bailey*, 557 U.S. 137, 151 (2009).

Transferring the Related Actions to the Southern District of New York will ensure that the Bankruptcy Court's Sale Order is properly interpreted and applied to the claims made against Chrysler Group because that District has a General Reference Order which "***requires*** referral to the bankruptcy court" for issues involving the Sale Order. *Ricks v. New Chrysler*, 2011 WL 3163323, *1 (S.D.N.Y. 2011) (emphasis in original). Thus, for this additional reason, the Related Actions should be transferred and consolidated in the Southern District of New York.

III. CONCLUSION

Defendant Chrysler Group LLC agrees that transfer for purposes of coordination or consolidation of pretrial proceedings is appropriate. For the reasons outlined herein, the most appropriate forum for the consolidated action is the United States District Court for the Southern District of New York. That venue is uniquely situated to address not only the multitude of issues arising in this complex litigation, but, in addition, the critical bankruptcy issues that are inherent in the claims being pursued against Chrysler Group. The Southern District of New York has an extraordinary depth of judicial experience in multidistrict and complex litigation, has a host of judges familiar with the critical Sale Order which is implicated by the claims being pursued against Chrysler Group, and is the only district court in a position to easily coordinate with the Bankruptcy Court which must interpret its own Sale Order on key threshold issues.

Respectfully submitted,

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UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

In re: Takata Airbag Products Liability Litigation	)	MDL No. 2599

CERTIFICATE OF SERVICE

I, hereby certify that on November 26, 2014, the attached ***Response of Defendant Chrysler Group LLC to Motion of Plaintiffs for Transfer of Actions to the Southern District of Florida Pursuant to 28 U.S.C. § 1407 for Coordinated or Consolidated Pretrial Proceedings*** was filed electronically with the Clerk of the Court for the JPML using the CM/ECF system, which will provide notification of such filing to all counsel of record in this action. Additionally, pursuant to JPML Rule 4.1(a), copies of Chrysler Group LLC's ***Response of Defendant Chrysler Group LLC to Motion of Plaintiffs for Transfer of Actions to the Southern District of Florida Pursuant to 28 U.S.C. § 1407 for Coordinated or Consolidated Pretrial Proceedings*** were served via First Class Mail today, the 26th day of November 2014, on the following parties who have not registered with CM/ECF:

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