

**BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

In re Takata Airbag Litigation

:
:
:
:
:
:
:

MDL Docket No. 2599

**AUTOMAKER DEFENDANTS' RESPONSE TO
MOTION TO TRANSFER PURSUANT TO 28 U.S.C. § 1407**

Transfer and coordination of the dozens of class actions concerning Takata airbags is plainly warranted. The only question is where to establish the MDL. Defendants American Honda Motor Co., Inc., BMW of North America, LLC, BMW Manufacturing Co., LLC, Ford Motor Company, Nissan North America, Inc., Subaru of America, Inc., Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Engineering & Manufacturing North America, Inc. (collectively, the "Automaker Defendants") respectfully suggest that the most logical venue is the Western District of Pennsylvania (Pittsburgh). Given the broad geographic dispersion of the defendants, witnesses, and relevant documents, Pittsburgh would be far more convenient than the destinations proposed by the competing groups of plaintiffs. In addition, the docket conditions in

the Western District of Pennsylvania are very favorable – clearly superior to those in plaintiffs’ main candidates, the Southern District of Florida and the Central District of California.¹

INTRODUCTION

The Panel regularly establishes MDLs to oversee suits arising from automobile recalls, and the suits relating to Takata airbags should be no different. Takata airbags were installed in more than 7.8 million vehicles that have now been recalled by BMW, Chrysler, Ford, General Motors, Honda, Mazda, Mitsubishi, Nissan, Toyota, and Subaru.² As of this filing, nearly 50 Takata airbag class actions are pending in 18 federal district courts in 13 states. The defendants are Takata (including two of its U.S. subsidiaries), as well as different groupings of 16 automobile manufacturers, distributors, and related entities.

All parties agree that coordination will prevent inconsistent pretrial rulings on discovery, class certification, and dispositive motions. The only disagreement is about where to transfer them. As explained below, the Western District of Pennsylvania offers a far more convenient forum for the parties, witnesses, and counsel than the Southern District of Florida, the Central District of California, or the other forums plaintiffs have proposed. Two of the principal Takata defendants have headquarters near the Western District of Pennsylvania, and all of the defendants have headquarters or significant manufacturing facilities nearby. *See* Exhibits A-C (depicting U.S. presence of defendants).

¹ The Automaker Defendants submit this response without waiving their rights to compel arbitration with respect to any named plaintiffs or putative class members subject to enforceable arbitration clauses.

² *See* Special Order Directed to TK Holdings, Inc., United States Department of Transportation, National Highway Traffic Safety Administration (Oct. 30, 2014), *available at* <http://www-odi.nhtsa.dot.gov/acms/cs/jaxrs/download/doc/UCM465855/INLM-PE14016-60576.pdf> (last visited Nov. 26, 2014).

In contrast, the arguments advanced by plaintiffs demonstrate why, by every measure, Florida and California are less desirable and less convenient:

Southern District of Florida – As the *Archer* plaintiffs have observed, the Southern District of Florida has “no logical nexus” to the litigation. Dkt. 47 at 1-2.³ No defendant maintains headquarters or manufacturing facilities in Florida, and there is no reason to believe “any common witnesses or other evidence” will be found there. *Id.* Docket conditions in the Southern District of Florida are not particularly favorable; compared to the Western District of Pennsylvania, it carries more than twice the weighted filings per judge (691 vs. 315), 44 percent more pending cases per judge (390 vs. 270), and 90 percent more case filings per judge (637 vs. 334). *See U.S. Courts, Judicial Caseload Profile* (period ending June 30, 2014).⁴ Given the way the defendants and counsel are dispersed, Florida would also require far more travel time than Pittsburgh. Exhibits A, B.

Central District of California – This district is one of the busiest in the nation with more than twice the number of weighted filings per judge (669 vs. 315) and 75 percent more pending cases per judge than the Western District of Pennsylvania (473 vs. 270). *See supra* n.4. Because of the geographic distribution of the parties, witnesses, and documents, it is also far less convenient than Pittsburgh. Dkt. 102 at 3-5; Exhibits A, C. Only three of the 19 defendants have any significant corporate or manufacturing presence in California, and even those three also have a major presence near the Western District of Pennsylvania: in Ohio (Honda), Michigan (Mazda), and Kentucky (Toyota).

³ All citations to “Dkt.” are to MDL Docket No. 2599. Citations to individual case dockets are preceded by the name of the first-named plaintiff (e.g., *Dunn* Dkt.).

⁴ Available at <http://www.uscourts.gov/viewer.aspx?doc=/uscourts/Statistics/FederalCourtManagementStatistics/2014/district-fcms-profiles-june-2014.pdf&page=1> (last visited Nov. 26, 2014).

BACKGROUND

To date, recalls and service campaigns of Takata airbags have involved more than 7.8 million vehicles. The only defendants in all of the class actions are Takata Corporation, a Japanese company, and two of its U.S. subsidiaries: TK Holdings Inc., headquartered in Auburn Hills, Michigan, and Highland Industries, Inc., headquartered in Greensboro, North Carolina. Airbag issues have been traced to Takata facilities in Monclova, Mexico and Moses Lake, Washington.⁵

The national and regional service campaigns, recalls, and defect information reports (49 C.F.R. §§ 573.3(f), 573.6(c)) have included BMW, Chrysler, Ford, General Motors, Honda, Mazda, Mitsubishi, Nissan, Toyota, and Subaru. All of these companies, along with the foreign parents of some of them, have been named in one or more class actions. As of the date of this filing, nearly 50 economic loss class actions have been filed against Takata, its U.S. subsidiaries, and different groupings of 15 automobile manufacturers and distributors. The lawsuits are pending in 18 districts in 13 states, with new cases being filed almost every day. They are spread across the country, including not just Florida and California, but also Pennsylvania, New York, New Jersey, Michigan, Missouri, Kansas, Georgia, Louisiana, North Carolina, South Carolina, and Texas.

The lawsuits assert similar economic-loss claims on behalf of non-personal injury classes. Plaintiffs seek relief under state consumer protection statutes as well as for negligence, fraud, breach of warranty, unjust enrichment, and other theories. For all practical purposes, these cases remain in the same procedural posture. Plaintiffs in *Dunn* moved for expedited discovery the day

⁵ *Defect Information Report, Certain Air Bag Inflators Used as Original Equipment, available at <http://www-odi.nhtsa.dot.gov/acms/cs/jaxrs/download/doc/UCM436445/RCDNN-13E017-5589.pdf> (last visited Nov. 26, 2014).*

after filing their complaint, and then filed a motion with the Panel disingenuously describing their case as “by far” the most advanced because the district court has set a briefing schedule and a hearing on that motion. Takata and certain of the Automaker Defendants in *Dunn* have opposed that motion and have filed motions to stay the case until an MDL is established. No merits motions or responsive pleadings have been filed or decided in *Dunn* or any other case.

ARGUMENT

I. Transfer Under 28 U.S.C. § 1407 Is Proper.

The Automaker Defendants agree that the economic loss class actions arising from the Takata airbag recalls should be transferred pursuant to 28 U.S.C. § 1407 and coordinated through an MDL proceeding.⁶ The MDL process was created to address precisely this type of litigation.

A. The Actions Are Spread Around The Country And Raise Issues That Require Pre-Trial Coordination.

All of the actions revolve around Takata airbags. Under analogous circumstances, the Panel has consistently recognized the efficiencies of an MDL, particularly where, as here, the litigation will entail substantial discovery and motion practice. *See, e.g., In re Ford Motor Co. Defective Spark Plug & 3-Valve Engine Prods. Liab. Litig.*, 844 F. Supp. 2d 1375 (J.P.M.L. 2012). The number, significance, and complexity of the factual and legal issues, including the presence of “overlapping putative classes” and multiple defendants, all weigh in favor of transfer. *See, e.g., In re Ocean Fin. Corp. Prescreening Litig.*, 435 F. Supp. 2d 1350, 1351 (J.P.M.L. 2006).

⁶ While the actions involve “one or more common questions of fact” within the meaning of the coordination statute, the Automaker Defendants do not concede that the actions present common factual questions capable of common resolution as required by Fed. R. Civ. P. 23(a). To the contrary, none of the actions are appropriate for class treatment. The actions do, however, present similar causes of action, which makes pretrial coordination appropriate.

B. Transfer Will Be Convenient For Parties And Witnesses And Will Promote The Just And Efficient Conduct Of The Actions.

Coordinated pretrial proceedings will create substantial benefits for the parties, the witnesses, and the judiciary. It will spare many different judges from having to resolve the same case management issues, motions, and discovery matters. *See, e.g., In re Toyota Motor Corp. Hybrid Brake Mktg., Sales Pracs. & Prods. Liab. Litig.*, 732 F. Supp. 2d 1375, 1376 (J.P.M.L. 2010). It will prevent inconsistent pretrial rulings, including with respect to the competing and overlapping nationwide and statewide putative classes, which this Panel has recognized is critical to the efficient administration of related matters. *In re Ethylene Propylene Diene Monomer Antitrust Litig.*, 277 F. Supp. 2d 1373, 1374 (J.P.M.L. 2003). And it will avoid having counsel, parties, and witnesses crisscross the country for duplicative depositions, hearings, and other proceedings, as well as minimizing expenses associated with the retention of local counsel in many different venues.

II. The Actions Should Be Transferred To The Western District Of Pennsylvania.

The Takata airbag lawsuits should be transferred to the Western District of Pennsylvania (Pittsburgh) for three primary reasons: (1) two Takata subsidiaries, including the defendant that manufactured the airbags at issue, and all of the U.S. defendants have headquarters or substantial operations close to the Western District of Pennsylvania, (2) Pittsburgh is a convenient forum for plaintiffs, defendants, witnesses, and counsel dispersed throughout the country, and (3) the Western District of Pennsylvania enjoys favorable docket conditions.

Both of Takata's U.S. subsidiaries have headquarters, testing, and manufacturing facilities close to the Western District of Pennsylvania. *See Exhibit A.* The Panel has traditionally assigned significant weight to forums with ready access to witnesses and documents from the primary defendants. *See In re Ford Motor Co. Speed Control Deactivation Switch*

Prods. Liab. Litig., 398 F. Supp. 2d 1365, 1367 (J.P.M.L. 2005) (selecting forum near corporate headquarters, rather than Florida, Louisiana, and Washington, as a “likely source of relevant documents and witnesses”); *Toyota Motor Corp.*, 732 F. Supp. 2d at 1377 (focusing on where “relevant documents and witnesses are likely located”).

Similarly, all of the other U.S. defendants either have headquarters or substantial facilities near the Western District of Pennsylvania. *See* Exhibit A. Selecting a forum “significantly closer” to the headquarters and manufacturing facilities of multiple defendants advances the goals of convenience and efficiency. *See Ford Motor Co. Defective Spark Plug Litig.*, 844 F. Supp. 2d at 1376-77 (assigning MDL to Ohio due to proximity to defendant’s headquarters in Michigan); *In re Navistar 6.0 L Diesel Engine Prods. Liab. Litig.*, 777 F. Supp. 2d 1347, 1348 (J.P.M.L. 2011) (transferring MDL to Illinois, noting proximity to “Defendants’ headquarters, and therefore relevant documents and witnesses”); *In re Amazon.com Fulfillment Center Fair Labor Standards Act & Wage Hour Litig.*, 999 F. Supp. 2d 1375, 1376 (J.P.M.L. 2014) (citing proximity of forum to “many facilities ... located in nearby states”). Five sets of plaintiffs have acknowledged that these lawsuits would benefit from being assigned to a “centrally located metropolitan city for all travelling parties and witnesses.” *See* Dkt. 30 at 5; Dkt. 38 at 5; Dkt. 42 at 5; Dkt. 63 at 5-6; Dkt. 108 at 10-11. Moreover, more than a dozen named plaintiffs from Pennsylvania are involved in the cases filed to date, and more than a dozen plaintiffs’ counsel firms are in either Pennsylvania or neighboring states like New York and New Jersey.

The Western District of Pennsylvania also “enjoys favorable caseload conditions,” *In re Maxim Integrated Prods. Inc., Patent Litig.*, 867 F. Supp. 2d 1333, 1336 (J.P.M.L. 2012), as does the judge assigned to the Takata class action pending there, the Honorable Nora Barry Fischer.

See Civil Justice Reform Act Reports (U.S. Courts, Mar. 31, 2014).⁷ At last report, Judge Fischer, who has had MDL experience but has no MDLs at present, had no motions pending for more than six months and only two civil cases pending for more than three years. *Id*; *see also In re Refrigerant Compressors Antitrust Litig.*, 626 F. Supp. 2d 1320, 1321 (J.P.M.L. 2009) (noting that transferee judge had “a caseload that is relatively favorable to steer this litigation on a prudent course”); *In re Carbon Black Antitrust Litig.*, 277 F. Supp. 2d 1380, 1381 (J.P.M.L. 2003) (transferring cases to “an experienced jurist with a caseload favorable to receiving such an assignment”). The *Gerhart* plaintiffs describe Judge Fischer as “an excellent jurist” and acknowledge that “the Western District of Pennsylvania is certainly qualified to handle these cases.” Dkt. 119 at 6 n.3.

Moreover, the Western District of Pennsylvania enjoys – by a substantial margin – the fewest pending cases or weighted filings compared to other forums proposed for coordination. For instance, while the Southern District of Florida has 691 weighted filings and the Central District of California has 669, the Western District of Pennsylvania has just 315. *See supra* n.4. And with only three pending MDLs consisting of ten cases among the district’s 13 judges, the Western District of Pennsylvania has fewer demands on its judges and clerks’ offices than the Southern District of Florida (7 MDLs for 25 judges) or the Central District of California (15 MDLs for 37 judges).

Finally, in light of the locations of the defendants, witnesses, and counsel, Pittsburgh is both centrally located and cost-effective. An international airport 25 minutes from the courthouse offers non-stop flights to 38 United States destinations, including New York, Los Angeles,

⁷ Available at <http://www.uscourts.gov/uscourts/statistics/cjra/2014-03/CJRAMarch2014.pdf> (last visited Nov. 26, 2014).

Miami, Washington, D.C., Chicago, and Detroit. *See* Exhibit D.⁸ Downtown Pittsburgh has more than 4,500 hotel rooms with average prices far lower than those in New York, Los Angeles, and other major cities.⁹ In short, the Panel’s words in an MDL ruling a decade ago are equally apt today: “[T]he Western District of Pennsylvania is an appropriate transferee district for this litigation. We note that this district i) is conveniently located for many parties and witnesses, and ii) has the capacity to expeditiously handle this litigation.” *In re Advanced Inv. Mgmt., L.P., Pension Fund Mgmt. Litig.*, 254 F. Supp. 2d 1377, 1379 (J.P.M.L. 2003).

III. Plaintiffs’ Proposed Venues Would Be Inconvenient And Would Involve Courts With Less Favorable Docket Conditions Than The Western District Of Pennsylvania.

A. Florida Has No Special Connection To This Litigation.

The arguments offered by the *Bonet, Day, Dunn, Rickert, Shader*, and *Zamora* plaintiffs for transfer to the Southern District of Florida – which the *Arnold, Archer, Klinger, Meiser, Morris, Sanchez, Schafle*, and *Young* plaintiffs reject – do not withstand scrutiny.

First, the *Dunn* case in Florida is not “by far” more advanced than other Takata airbag lawsuits. Dkt. 1-1 at 4. The first two class actions, *Dunn* and *Takeda*, were filed by the same plaintiffs’ counsel on the same day in Florida and California (Dkt. 26 at 6), and numerous other class actions followed in short order. In *Dunn*, Judge King set a briefing schedule on plaintiffs’ “emergency” motion for discovery and scheduled a hearing on that motion. The *Dunn* plaintiffs’ characterization of their case as “by far” the most advanced only confirms that their “emergency” motion to take discovery – supposedly intended to enable them to decide whether to seek recall-

⁸ *Status of Nonstop Service Pittsburgh International Airport*, www.pitairport.com/Data/Sites/1/media/pdf/pit_nonstop_flights.pdf (last visited Nov. 26, 2014).

⁹ *Pittsburgh Downtown Partnership, State of Downtown Pittsburgh 2014*, available at http://www.downtownpittsburgh.com/_files/docs/2014_sod_web.pdf. (last visited Nov. 26, 2014).

related injunctive relief – is really just a pretextual effort to steer the MDL to their favored forum. In reality, *Dunn* is no further advanced than any other related case; other than the filing of briefs opposing plaintiffs’ “emergency” motion to take discovery, defendants’ motions to stay the case pending an MDL assignment, and an unopposed motion to extend the time for responses to the Complaint, nothing has happened in that case. Like every other Takata airbag class action, the *Dunn* case remains in its infancy.

Florida also has no “compelling geographic and site-of-injury” links to these lawsuits. Dkt. 1-1 at 10-11; *accord* Dkt. 7 at 16-17. Not a single defendant is headquartered in Florida, none of the airbags or vehicles at issue were made in Florida, and there is no reason to believe relevant documents or witnesses will be concentrated in Florida. Dkt. 26 at 8 (*Sanchez* plaintiffs objecting to Florida based on the absence of any “reported connection” with defendants). The fact that some recalls have focused on high humidity areas such as Florida does not bear on the proper site for an MDL. For one thing, the National Highway Traffic Safety Administration has recently called for an expansion of the recalls to make them nationwide. Whether that happens or not, any effect humidity may have on the potential for an abnormal airbag deployment does not create a “nexus” to Florida because the class actions seek economic recovery for a nationwide class, along with sub-classes involving all 50 states. *See* Dkt. 123 at 3 (agreeing the Panel should not “limit its focus upon possible transferee districts with high absolute humidity” due to nationwide scope of recall).

The *Dunn*, *Day*, and *Rickert* plaintiffs argue that Florida is the situs of personal injuries, (*e.g.*, Dkt. 1-1 at 10-11), but their complaints and all of the class actions disclaim damages for

personal injuries.¹⁰ Instead, they seek *economic* relief for every car with an allegedly defective Takata airbag, regardless of where the vehicle is located. The *Bonet*, *Day*, and *Rickert* plaintiffs offer arguments based on the number of named plaintiffs who live in Florida (Dkt. 7 at 16; Dkt. 102 at 2-3), but because Florida accounts for only 6 percent of the U.S. population,¹¹ and the class actions seek nationwide relief, these arguments are irrelevant.

Plaintiffs also argue that the Southern District of Florida has favorable docket conditions, including in terms of civil cases pending, the median time for disposition of civil cases, and the percentage of civil cases over three years old. Dkt. 1-1 at 13-15; Dkt. 7 at 14. Those statistics may compare favorably to the Central District of California's, but they are not as favorable as those in the Western District of Pennsylvania. Whereas the Southern District of Florida had 5,013 pending civil cases as of March 2014 and experienced a 5.2 percent year-over-year *increase* in pending civil cases, the Western District of Pennsylvania had only 1,912 pending civil cases as of March 2014 and achieved a 5.4 percent year-over-year *decrease* in pending civil cases. *See* U.S. Courts, *Federal Judicial Caseload Statistics* (2014) at Table C.¹² There is less than a three-month difference between the median time to disposition of civil cases, and less than a 2 percent difference between the percentage of civil cases over three years old between the two districts. *Supra* n.4. The *Bonet* and *Shader* plaintiffs exaggerate the potential significance of even

¹⁰ The only exception is the *Garcia* case, pending in the Southern District of New York, in which one Texas plaintiff alleges that she was injured when an airbag "failed to inflate." *Garcia* Amended Compl., ¶ 44 (*Garcia* Dkt. 3). She seeks economic damages for the proposed nationwide and Texas classes, as well as damages for her own personal injuries. *Id.* Only two individual personal injury actions have been identified as potential tag-alongs. Dkts. 80, 115. Three related personal injury actions are pending in state courts along both coasts.

¹¹ United States Census Bureau, State & County Quickfacts, Florida, *available at* <http://quickfacts.census.gov/qfd/states/12000.html> (last visited Nov. 26, 2014).

¹² *Available at* <http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/Statistics/FederalJudicialCaseloadStatistics/2014/tables/C00Mar14.pdf> (last visited Nov. 26, 2014).

these slight differences on the theory that “lives are quite literally at stake” (Dkt. 7 at 14; Dkt. 123 at 6), disregarding the recall measures already in place and the fact that, again, these class actions seek *economic* relief.

Finally, a review of a map showing the locations of U.S. defendants dispels the notion that “the Southern District of Florida is the most convenient and favorable location.” Dkt. 7 at 16. Located at the southern tip of the southernmost contiguous state, the Southern District of Florida is among the most, if not the most, inconvenient of any district in the contiguous U.S. Sending this MDL there would mean that, on average, defendants would have to travel roughly 1,000 more miles round-trip than to the Western District of Pennsylvania. *See* Exhibits A, B.

B. The Central District Of California Is Not A Convenient Forum.

The *Archer*, *Klinger*, and *Sanchez* plaintiffs suggest that the actions should be transferred to the Central District of California, but none of the defendants has relevant manufacturing facilities in California, 16 of the 19 defendants have no headquarters in California, one of the defendants with California headquarters, Toyota Motor Sales, U.S.A., Inc., has announced a move to Texas,¹³ and another California-based defendant, American Honda, has manufacturing affiliates with a substantial presence in Ohio. *See also* Dkt. 102 at 4 (*Rickert* plaintiffs disputing grounds for the Central District of California because “*all* sixteen of the other defendants have American affiliates headquartered in the eastern third of the United States”) (emphasis in original).

Furthermore, as the plaintiffs advocating for Florida have demonstrated, the Central District of California has unfavorable caseload statistics. Compared to the Western District of

¹³ *Toyota to Establish New North American Headquarters*, Apr. 28, 2014, available at <http://corporatenews.pressroom.toyota.com/releases/toyota+new+north+american+headquarters.htm> (last visited Nov. 26, 2014).

Pennsylvania, it has more total filings per judge (605 vs. 334), more pending MDL cases per judge (42 percent vs. 23 percent), more weighted filings per judge (669 vs. 315), more pending cases per judge (473 vs. 270), and a higher percentage of cases over three years old (5.9 percent vs. 4 percent) – and only marginally better rates for disposition of civil cases (5.6 months vs. 7.3 months) and time to trial in civil cases (21.3 months vs. 26.8 months). *See supra* n.4.

The *Sanchez* plaintiffs suggest that the location of Honda's headquarters warrants giving added weight to California due to the relatively high number of Honda vehicles recalled and because certain lawsuits do not name other automobile manufacturers or distributors. Dkt. 26 at 5. Under this logic, however, the U.S. headquarters, manufacturing, and distribution facilities of Takata's subsidiaries should be given the greatest weight because their products were used in *all* of the vehicles at issue, and Takata and its two U.S. subsidiaries are the only defendants named in all of the complaints. That again points back to Pittsburgh, which is roughly equidistant from the headquarters of Takata's two U.S. subsidiaries.

The *Archer* and *Klinger* plaintiffs point to a Takata sales office in California as supporting transfer to California. Dkt. 47 at 3. But if this type of contact were relevant, then California would be a poor forum for centralization because the two U.S. Takata subsidiaries named in the class actions have nine other facilities outside of California,¹⁴ and the Western District of Pennsylvania is roughly 950 miles closer (on average) to the 10 Takata facilities than the Central District of California.

California is also not an appropriate forum merely because several cases include California state law claims (Dkt. 26 at 6), the Ninth Circuit and California courts have heard automobile-related claims (Dkt. 47 at 4), or California is the most populous state (*id.*). MDL

¹⁴ *See* www.takata.com/en/about/locations02.html (last visited Nov. 26, 2014).

courts regularly resolve choice-of-law questions and apply the laws of other states. *See Mahoney v. Depuy Orthopedics, Inc.*, No. CIV F 07-1321, 2007 WL 3341389, at *8 (E.D. Cal. Nov. 8, 2007) (criticizing “provincial attitude” that courts in other jurisdictions are incapable of applying California law). These class actions seek relief under the laws of all fifty states, so any district court judge will have to apply the laws of states other than California for the vast majority of putative class members. Case law from the Ninth Circuit and California will play no greater role than automobile-related decisions issued throughout the country. And population statistics cannot control MDL assignments; if they did, California, with 12 percent of the population,¹⁵ would become the destination for every MDL involving consumer products.

Finally, this case bears no resemblance to *In re Republic National-Realty Equities Securities Litigation*, 382 F. Supp. 1403 (J.P.M.L. 1974), relied upon by the *Sanchez* plaintiffs. Dkt. 26 at 8. In that case, a majority of the related actions were “proceeding expeditiously” under the supervision of one judge. 382 F. Supp. at 1406. Here, in contrast, none of the California cases has advanced beyond the filing of complaints, and each remains assigned to one of six different judges because the district court assigned to one of the earlier cases rejected an attempted intra-district transfer. *See Archer* Dkt. 23 (C.D. Cal. Nov. 14, 2014) (Exhibit E).

C. The Panel Should Decline To Transfer These Actions To Other Proposed Forums.

Western District of Washington – The *Archer* and *Klinger* plaintiffs (represented by the same Seattle-based counsel) propose the Western District of Washington as their second choice after the Central District of California on the ground that Takata has a facility in Washington (Dkt. 47 at 5), and the Western District of Washington has only 2,917 pending civil cases (*id.*).

¹⁵ United States Census Bureau, State & County Quickfacts, California, *available at* <http://quickfacts.census.gov/qfd/states/06000.html> (last visited Nov. 26, 2014).

On average, however, the Western District of Washington is more than twice as far from the headquarters and key facilities of defendants as the Western District of Pennsylvania (1,760 miles vs. 830 miles). The Western District of Pennsylvania also has more than a third fewer pending civil cases (1,912). *See supra* n.12 at Table C.

Northern District of Georgia – The *Arnold, Meiser, Schafle, and Young* plaintiffs advance indistinguishable arguments for transfer to Chief Judge Thomas W. Thrash, Jr. of the Northern District of Georgia – though only one of these four filed suit in that district. Dkts. 30, 38, 42, 63. Judge Thrash, however, is no longer presiding over any Takata air bag case and, in any event, is already managing four MDLs, three of which remain largely unresolved. The Northern District of Georgia also has materially less favorable docket statistics than the Western District of Pennsylvania as measured by pending cases per judge (457 vs. 270) and weighted filings per judge (535 vs. 315), and does not outperform it in time to trial (29.8 months vs. 26.8 months). *See supra* n.4.

Southern District of Texas / Eastern District of Louisiana – In addition to proposing the Eastern District of Michigan and the Central District of California, the *Hooper* plaintiffs suggest either the Eastern District of Louisiana or the Southern District of Texas (Dkt. 127), while the *Gilbert* plaintiffs advocate solely for the Eastern District of Louisiana (Dkt. 131). These districts suffer from the same shortcomings as the Southern District of Florida and the Central District of California, including relatively unfavorable docket conditions as measured by pending cases (total and per judge) and civil cases over three years old. For example, in contrast to improvements in civil filings and pending cases over the past year in the Western District of Pennsylvania, the Eastern District of Louisiana has experienced a 138 percent increase in civil filings and a 61.6 percent increase in pending cases. *See supra* n.12.

Eastern District of Michigan – The *Morris* and *Sanchez* plaintiffs propose the Eastern District of Michigan. This district is more centrally located than the Southern District of Florida or the Central District of California (Dkt. 108 at 9-10), but it offers no material geographical advantage over the Western District of Pennsylvania (average distance from defendants 795 miles for Detroit vs. 835 miles for Pittsburgh). And while Detroit may have a history as the “center of the American auto industry” (Dkt. 108 at 9; Dkt. 116 at 3), this case involves 19 domestic and foreign defendants, the majority of which are headquartered outside of Detroit. A Takata subsidiary is headquartered near Detroit, but the airbags were manufactured elsewhere (Coahuila, Mexico and Moses Lake, Washington), and many of plaintiffs’ allegations center around alleged manufacturing defects.

The Eastern District of Michigan also does not offer more favorable docket conditions than the Western District of Pennsylvania. It has the same number of pending MDLs as the Western District of Pennsylvania, but trails the Western District of Pennsylvania by every relevant measure of docket burden and efficiency, including in terms of the number of pending cases per judge, weighted filings, median time to disposition of civil cases, median time to trial in civil cases, and percentage of civil cases over three years old.

CONCLUSION

For the foregoing reasons, the Automaker Defendants request that the Panel establish an MDL in the Western District of Pennsylvania.

Dated: November 26, 2014

Respectfully submitted,

By: /s/ Eric S. Mattson
Eric S. Mattson
emattson@sidley.com
Michael C. Andolina
mandolina@sidley.com

Sidley Austin LLP
One South Dearborn Street
Chicago, IL 60603
Telephone: (312) 853-7000
Fax: (312) 853-7036

Catherine Valerio Barrad
cbarrad@sidley.com
Sean A. Commons
scommons@sidley.com
Sidley Austin LLP
555 West Fifth Street
Los Angeles, CA 90013
Telephone: (213) 896-6000
Fax: (213) 896-6600

Michael L. Mallow
mmallow@loeb.com
Mark D. Campbell
mcampbell@loeb.com
Loeb & Loeb LLP
10100 Santa Monica Boulevard
Suite 2200
Los Angeles, CA 90067
Phone: (310) 282-2000

Counsel for American Honda Motor Co., Inc.

/s/ Eric Y. Kizirian
Eric Y. Kizirian
eric.kizirian@lewisbrisbois.com
Lewis Brisbois Bisgaard & Smith LLP
221 N. Figueroa Street
Suite 1200
Los Angeles, CA 90012
Phone: (213) 250-1800
Fax: (213) 250-7900

*Counsel for BMW of North America, LLC and
BMW Manufacturing Co., LLC*

/s/ Joel A. Dewey
Joel A. Dewey
joel.dewey@dlapiper.com
Jeffrey M. Yeatman
jeffrey.yeatman@dlapiper.com
DLA Piper LLP (US)

The Marbury Building
6225 Smith Avenue
Baltimore, MD 21209-3600
Phone: (410) 580-3000
Fax: (410) 580-3001

Counsel for Ford Motor Company

/s/ E. Paul Cauley, Jr.
E. Paul Cauley, Jr.
paul.cauley@sedgwicklaw.com
Sedgwick LLP
1717 Main Street, Suite 5400
Dallas, TX 75201-7367
Phone: (469) 227-8200
Fax: (469) 227-8004

Counsel for Nissan North America, Inc.

/s/ Jeffrey L. Chase
Jeffrey L. Chase
jchase@herzfeld-rubin.com
Herzfeld & Rubin, P.C.
125 Broad Street
New York, NY 10004
Phone: (212) 471-8500
Fax: (212) 344-3333

Counsel for Subaru of America, Inc.

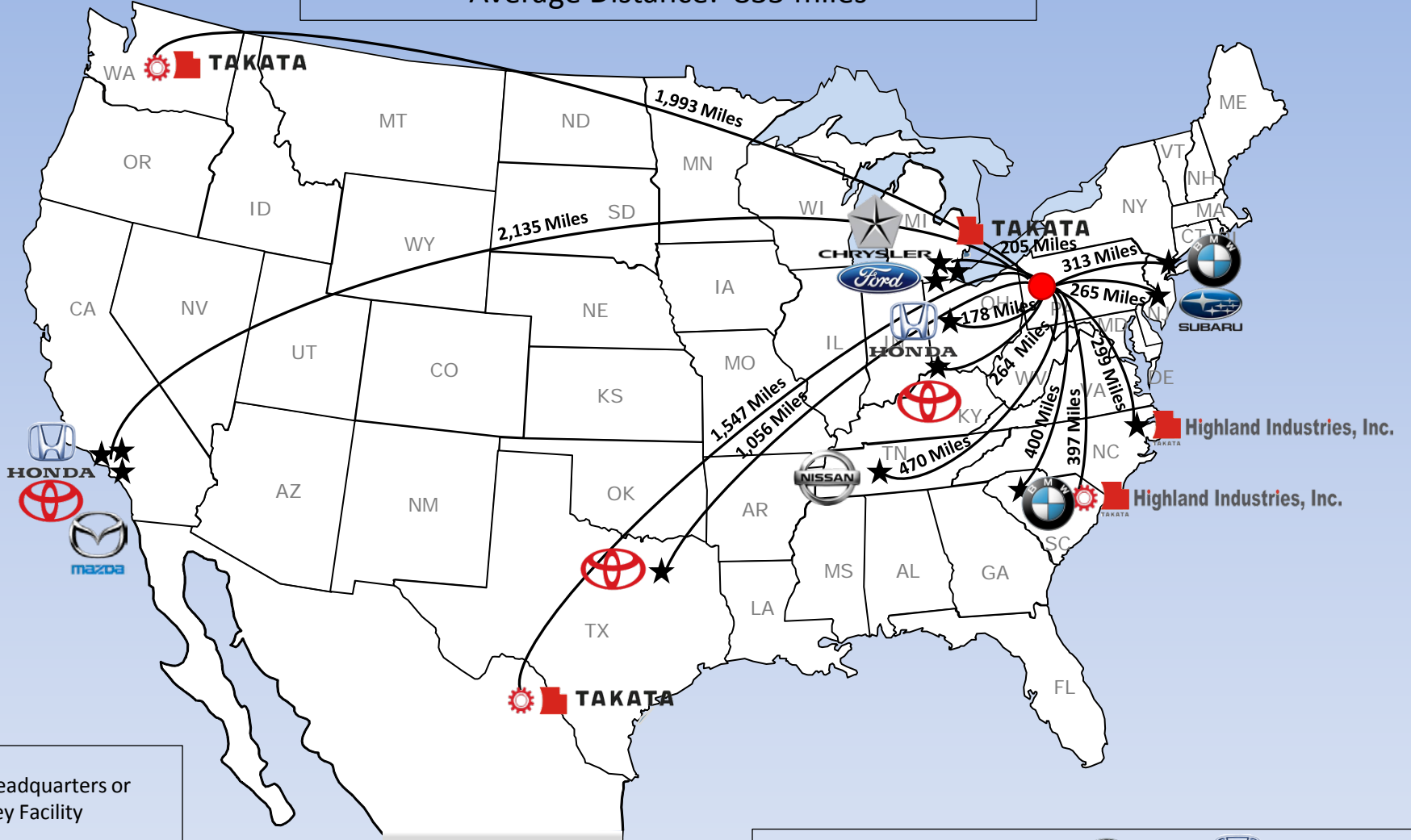
/s/ Terri S. Reiskin
Terri S. Reiskin
treiskin@dykema.com
Dykema Gossett PLLC
1300 I Street, N.W., Suite 300 West
Washington, D.C. 20005
Phone: (202) 906-8600
Fax: (855) 216-7884

*Counsel for Toyota Motor Sales, U.S.A., Inc.
and Toyota Motor Engineering &
Manufacturing North America, Inc.*

EXHIBIT A

Western District of Pennsylvania

Average Distance: 835 miles



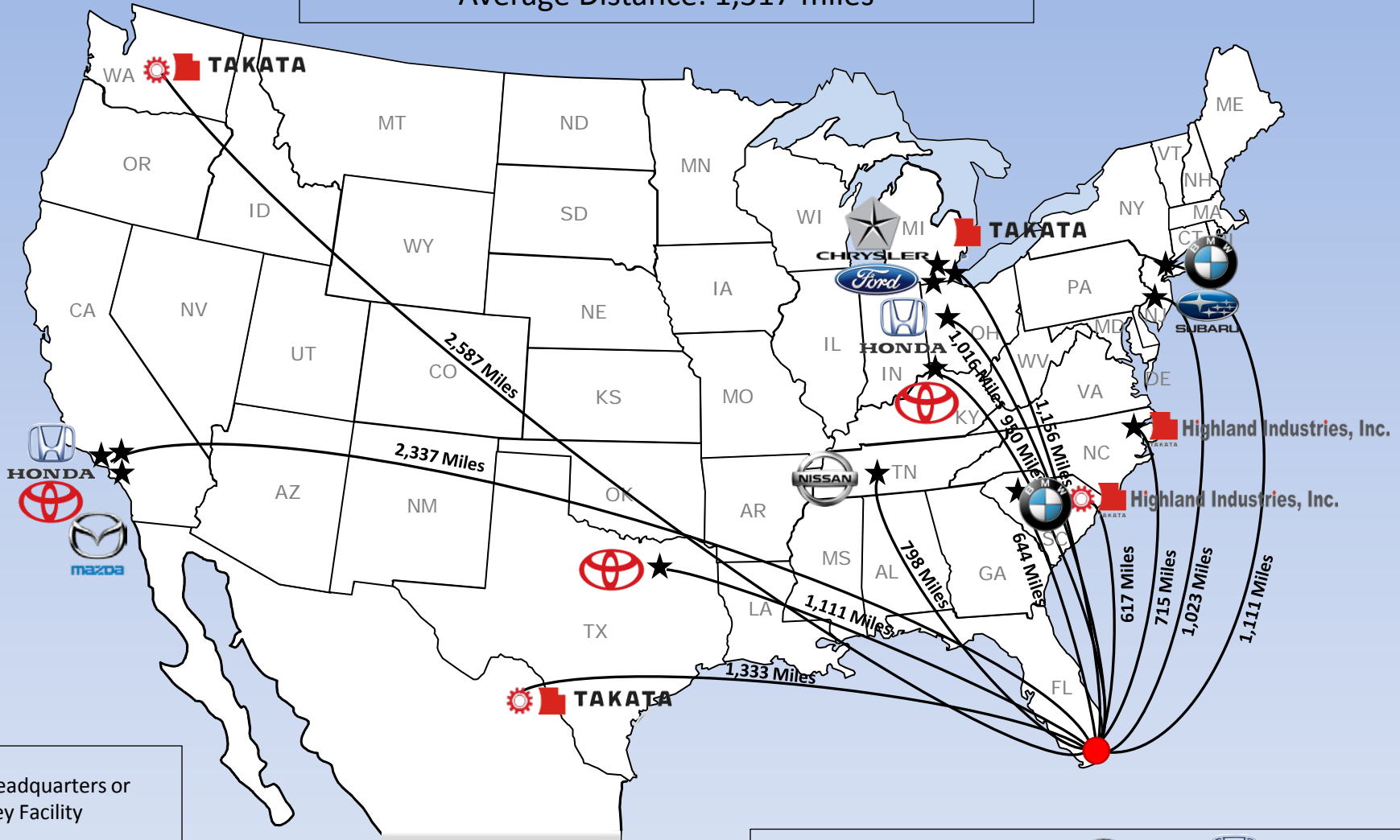
- ★ Headquarters or Key Facility
- ⚙ Takata Airbag Manufacturing Facility
- W.D. Pa. Federal Courthouse

 TAKATA TK Holdings, Inc.			
 Highland Industries, Inc.			
			

EXHIBIT B

Southern District of Florida

Average Distance: 1,317 miles

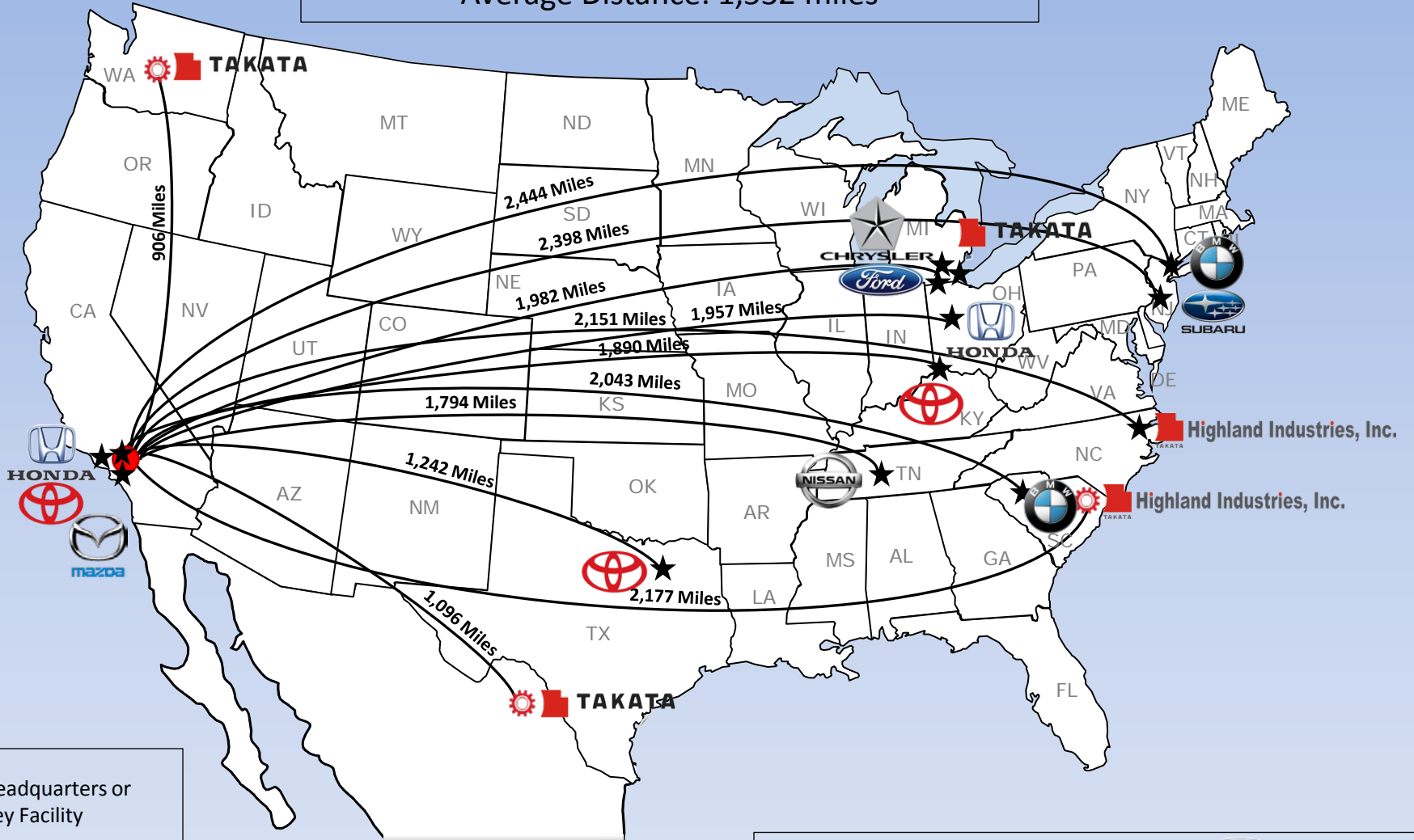


- ★ Headquarters or Key Facility
- ⚙ Takata Airbag Manufacturing Facility
- S.D. Fla. Federal Courthouse

TAKATA TK Holdings, Inc.			
Highland Industries, Inc.			

EXHIBIT C

Central District of California Average Distance: 1,532 miles

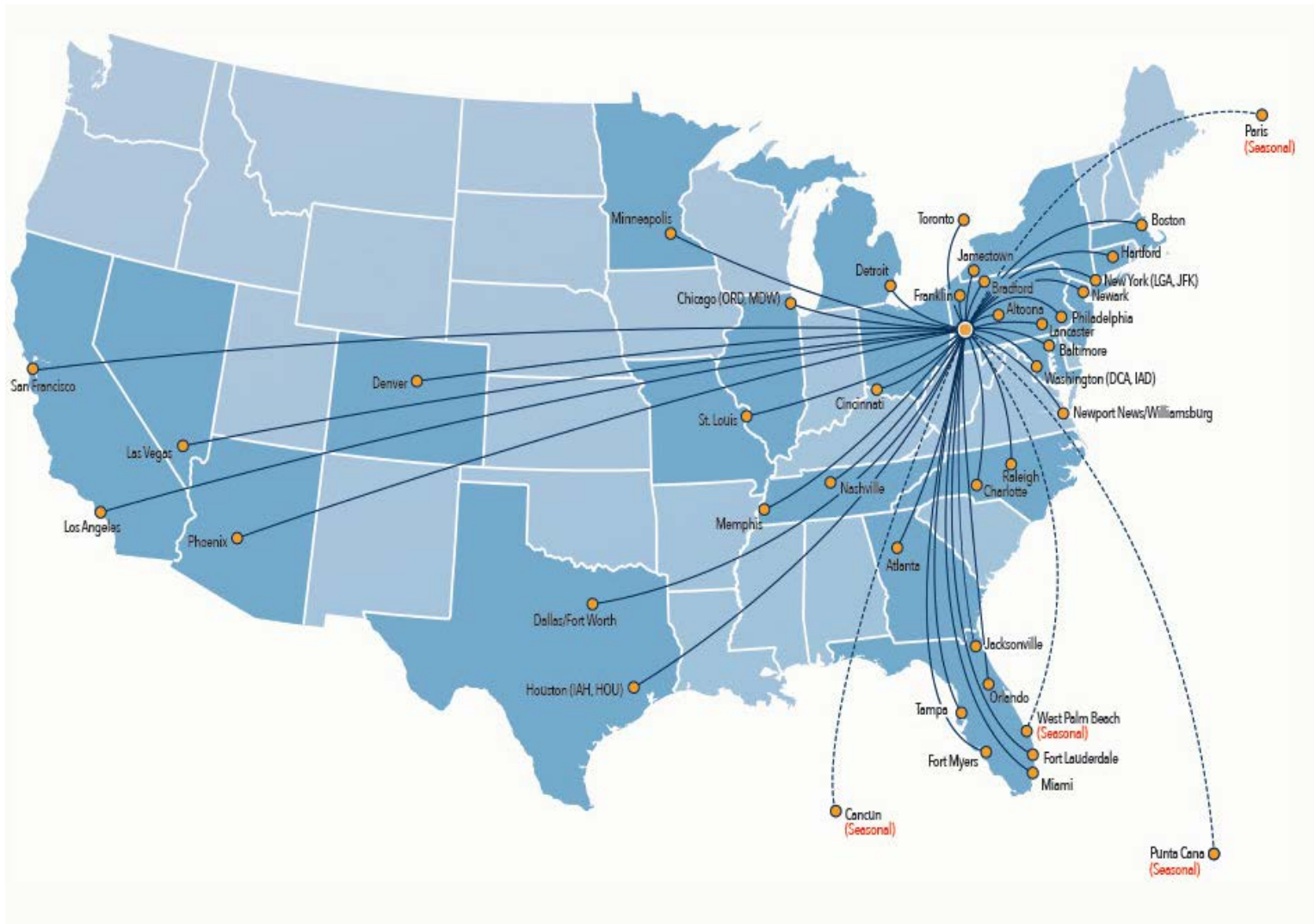


- ★ Headquarters or Key Facility
- ⚙️ Takata Airbag Manufacturing Facility
- C.D. Cal. Federal Courthouse

TAKATA TK Holdings, Inc.			
Highland Industries, Inc.			

EXHIBIT D

Nonstop Flights to Pittsburgh



Source: Route Map, FlyPittsburgh.com, available at http://www.pitairport.com/route_map (last visited Nov. 26, 2014).

EXHIBIT E

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Timothy Archer, v. Takata Corporation et al.,	PLAINTIFF(S)	CASE NUMBER CV14-08447 MMM (RZx)
	DEFENDANT(S)	ORDER RE TRANSFER PURSUANT TO GENERAL ORDER 14-03 (RELATED CASES)

CONSENT

I hereby consent to the transfer of the above entitled case to my calendar, pursuant to General Order 14-03.

**TRANSFER ORDER
DECLINED**

Date
Consuelo E. Marshall
United States District Judge

DECLINATION

I hereby decline to transfer the above-entitled case to my calendar for the reasons set forth:

The cases are not related. Plaintiffs are different; many of the defendants are different in the prior action. There is one identical federal claim; however, the state claims in the complaints are different. Present case alleges violations of federal law. Prior complaint alleges violations of CA state law. Different products are at issue

11/14/2014
Date
C. B. [Signature]
United States District Judge

REASON FOR TRANSFER AS INDICATED BY COUNSEL

Case CV14-08324 CBM (ASx) and the present case:

- A. Arise from the same or closely related transactions, happenings or events; or
- B. Call for determination of the same or substantially related or similar questions of law and fact; or
- C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- D. Involve one or more defendants from the criminal case in common, and would entail substantial duplication of labor if heard by different judges (applicable only on civil forfeiture action).

NOTICE TO COUNSEL FROM CLERK

Pursuant to the above transfer, my discovery matters that are or may be referred to a Magistrate Judge are hereby transferred from Magistrate Judge Ralph Zarfsky to Magistrate Judge Alk. Soga.

**TRANSFER ORDER
DECLINED**

On all documents subsequently filed in this case, please substitute the initials CBM (ASx) after the case number in place of the initials of the prior judge, so that the case number will read CV 14-08447 CBM (ASx). This is very important because the documents are routed to the assigned judges by means of these initials

cc: Previous Judge Statistics Clerk