

**BEFORE THE UNITED STATES JUDICIAL
PANEL ON MULTIDISTRICT LITIGATION**

IN RE: TAKATA AIRBAG LITIGATION

MDL Docket No. 2599

**INTERESTED PARTY RESPONSE IN
SUPPORT OF MOTION FOR THE TRANSFER OF
ACTIONS TO THE SOUTHERN DISTRICT OF FLORIDA PURSUANT
TO 28 U.S.C. § 1407 FOR COORDINATED PRETRIAL PROCEEDINGS**

On November 3, 2014, the Economic Loss Plaintiffs¹ filed a motion seeking to transfer and consolidate (or coordinate) related economic loss class actions (the “Related Economic Loss Actions”) in the United States District Court for the Southern District of Florida, pursuant to 28 U.S.C. § 1407 and the Rules of Procedure of the Judicial Panel on Multidistrict Litigation. *See* D.E. 1 (the “Economic Loss Plaintiffs’ Motion”). The Economic Loss Plaintiffs’ Motion does not address the transfer or consolidation of personal injury claims that are substantially related to the economic loss claims and, in fact, the Economic Loss Plaintiffs specifically excluded personal injury claims from their complaints. The Judicial Panel on Multidistrict Litigation (the “Panel”) has identified a number of pending personal injury actions as related (*e.g.*, D.E. 115, 122, 267, and 277), but it is not clear if all pending and future personal injury actions are within the scope of the Economic Loss Plaintiffs’ Motion to transfer and consolidate.

Accordingly, under Rule 6.2(e), we submit this response on behalf of Milton Díaz Soto, América Díaz Vega, Isabel Díaz Díaz, and Juan Díaz Díaz (the “Diaz Plaintiffs”), who sued Takata and its subsidiaries or operational units (“Takata” or the “Takata Defendants”) and other vehicle manufacturer defendants, including Honda Motor Corporation, Ltd (“Vehicle Manufacturer Defendants”) for personal injuries suffered from an exploding airbag. While the

¹ The “Economic Loss Plaintiffs” refer to the filers of the first-filed economic loss class action, *Dunn, et al., v. Takata Corp., et al.*, No. 14-cv-24009 (S.D. Fla. Oct. 27, 2014).

Diaz Plaintiffs support the Economic Loss Plaintiffs' Motion in its entirety, we submit this response to address why the personal injury claims also should be transferred to the Southern District of Florida and consolidated (or coordinated) for pretrial proceedings in that district.

BACKGROUND

Since October 2014, victims of Takata's² defective airbags have filed at least ten federal and state court personal injury and wrongful death actions against Takata and the Vehicle Manufacturer Defendants. These victims suffered serious bodily harm, and some have died, as the proximate result of violent explosions of Takata-made airbags.³ To date, Takata airbags have caused at least four deaths,⁴ and hundreds of horrific injuries, including maiming, disfigurement, loss of eyesight and hearing, and seizures.

1. The Related Economic Loss Actions

On October 27, 2014, Craig Dunn, along with numerous similarly situated plaintiffs, filed the first economic loss action in the United States District Court for the Southern District of Florida, *Dunn, et al., v. Takata Corporation, et al.*, No. 14-cv-24009- JLK ("First-Filed Economic Loss Action" or "*Dunn* Plaintiffs"). The First-Filed Economic Loss Action was brought by two Florida residents, along with residents of seven additional states and Puerto Rico. The First-Filed Economic Loss Action brought claims on behalf of nationwide and statewide classes, alleging violations of federal law and state warranty and consumer protection laws.

² "Takata" refers to Takata Corporation, Takata Holdings, Inc., and Highland Industries, Inc.

³ See, e.g., Hiroko Tabuchi and Christopher Jensen, *It Looked Like a Stabbing, but Takata Airbag Was the Killer*, N.Y. TIMES, Oct. 20, 2014, <http://www.nytimes.com/2014/10/21/business/it-looked-like-a-stabbing-but-takata-air-bag-was-the-killer.html>. ("Hien Tran lay dying in intensive care this month after a car accident, as detectives searched for clues about the apparent stab wounds in her neck. An unlikely breakthrough arrived in the mail a week after she died from her injuries. It was a letter from Honda urging her to get her red Accord fixed, because of faulty airbags that could explode.").

⁴ See Jake Miller, *"They did nothing": Airbag defect victim lashes out at Takata, Honda*, CBS NEWS, Nov. 20, 2014, <http://www.cbsnews.com/news/they-did-nothing-airbag-defect-victim-lashes-out-at-takata-honda/>.

Since the filing of the the First-Filed Economic Loss Action, over 56 economic loss class actions have been filed against Takata and the Vehicle Manufacturer Defendants.

2. The Related Personal Injury Actions

Takata's defective airbags also have caused at least four deaths and more than 100 injuries. In Florida alone, Takata airbags have caused at least ten injuries, including one death, resulting in the filing of at least five federal and state court lawsuits.⁵ Overall, personal injury plaintiffs have filed seven federal lawsuits in four district courts to seek redress for injuries caused by Takata's defective airbags, which will be referred to as the Related Personal Injury Actions.⁶ Each personal injury lawsuit alleges that a defective Takata airbag exploded and ejected debris and shrapnel at vehicle occupants that caused severe injury, disfigurement, or death. Given the significant number of injuries, it is likely that more such actions will be filed. The Related Personal Injury Actions and the Related Economic Loss Actions will be referred to herein as the "Related Actions."

3. Facts Common to the Related Actions

Plaintiffs in the Related Economic Loss Actions and Related Personal Injury Actions make the same fundamental allegation: that Takata airbags, when deployed, explode and expel metal debris and shrapnel at vehicle occupants. Despite red flags raised in 2001 and 2004 by incidents involving Takata exploding airbags, and three more similar incidents in 2007,

⁵ The federal actions include *Tran Dang ex rel. Hien Thi Tran v. Honda Motor Co.*, No. 14-cv-2071 (M.D. Fla. Nov. 17, 2014) and *Nunez v. TK Holdings, Inc.*, No. 1:14-cv-23944 (S.D. Fla. Oct. 23, 2014). The state actions include *Burdick v. Am. Honda Motor Co.*, No. 2014 CA 001397 (Fla. 5th Cir. Ct. July 11, 2014); *Gravlin v. Mazda Motor of Am.*, No. CACE-14-013205 (Fla. 17th Cir. Ct. July 8, 2014); and *Jana v. Winderman*, No. CACE 14-011653 (Fla. 17th Cir. Ct. June 19, 2014).

⁶ In addition to *Diaz v. Takata Corp.*, No. 14-cv-24931 (S.D. Fla. Dec. 31, 2014), the Related Personal Injury Actions include *Sujata v. Takata Corp.*, No. 15-cv-0112 (D.S.C. Jan. 9, 2015); *Tran Dang ex rel. Hien Thi Tran v. Honda Motor Co.*, No. 14-cv-2071 (M.D. Fla. Nov. 17, 2014); *Lyon v. Takata Corp.*, No. 14-cv-4485 (D.S.C. Nov. 21, 2014); *Nunez v. TK Holdings, Inc.*, No. 14-cv-23944 (S.D. Fla. Oct. 23, 2014); *Pedraza Figueroa v. TK Holdings, Inc.*, No. 14-cv-1778 (D.P.R. Oct. 22, 2014); and *Echeverria v. Am. Honda Motor Co.*, No. 14-cv-1671 (D.P.R. Sept. 4, 2014).

Defendant Honda Motor Company, Ltd., and its subsidiaries or operational units (collectively “Honda”) did not report the issue to federal safety regulator, the National Highway Transportation Safety Authority (“NHTSA”), until November 2008.⁷ Honda has issued several rounds of recalls since 2008, but the problem persists. At least ten incidents attributed to defective Takata airbags have occurred in Florida in the last eight months, one resulting in the death of a Florida woman. Several lawsuits filed by victims of these horrific accidents or their relatives were filed in federal and state courts located in Florida, including the First-Filed Economic Loss Action before District Judge James Lawrence King. The full scope of the defects has yet to be determined. More information about Takata’s defective airbags continues to be uncovered daily.

Because the Economic Loss and Related Personal Injury Actions arise from the same alleged defect and misconduct by the Takata Defendants and the Vehicle Manufacturer Defendants, the Diaz Plaintiffs submit that centralization of the Related Actions in the Southern District of Florida will serve the interests of justice, judicial economy, and comity by eliminating duplicative discovery on the common factual questions and avoiding inconsistent pretrial rulings. Moreover, all of the Related Actions are still in their initial stages, such that potential inefficiencies can be avoided by immediate transfer and coordination or consolidation. At bottom, the substantial overlap among the Related Economic Loss Actions and the Related Personal Injury Actions makes transfer and consolidation or coordination pursuant to 28 U.S.C. § 1407 the optimal (if not only) means for efficient pretrial proceedings.

The Diaz Plaintiffs agree with the *Dunn* Plaintiffs that the Southern District of Florida is the most appropriate forum for centralization of the pending and future Takata airbag cases. We

⁷ Hiroko Tabuchi, *Takata Saw and Hid Risk in Airbags in 2004, Former Workers Say*, N.Y. TIMES, Nov. 6, 2014, http://www.nytimes.com/2014/11/07/business/airbag-maker-takata-is-said-to-have-conducted-secret-tests.html&assetType=nyt_now.

will not rehash those arguments, but reiterate the following dispositive facts rendering the Southern District of Florida the correct transferee court:

1. Florida is the epicenter of risk for the harm and public safety issues resulting from defective Takata airbags;
2. NHTSA's investigation and major recalls have focused on Florida due to the large number of claims and injuries that have occurred there, including a woman's death;
3. Florida's high temperatures and humidity expose vehicle owners, drivers and passengers in Florida to added risk from defective Takata airbags;
4. Puerto Rico's high temperatures and humidity also expose vehicle owners, drivers and passengers in Puerto Rico to added risk from defective Takata airbags, and Puerto Rico's proximity to Florida makes the Southern District of Florida the obvious center of gravity for this litigation;
5. Florida's U.S. Senators have taken an early and active role in the Congressional investigation related to Takata airbag defects, and the injuries suffered by Floridians were a major focal point of a recent Congressional hearing;
6. The *Dunn* action, filed in the Southern District of Florida, is the first-filed economic loss action;
7. The overwhelming majority of interested parties that have filed a response to the *Dunn* Plaintiffs' request for transfer have supported the Southern District of Florida as the transferee court;⁸
8. Judges in the Southern District of Florida, including Judge King and Judge Moreno, have the proven experience, capacity, and resources to efficiently and effectively handle this complex MDL proceeding. The need for judicial expediency is especially important due to urgent public safety concerns; and
9. The Southern District of Florida has one of the most efficient dockets in the nation, and its docket conditions are more favorable than any of the other proposed MDL jurisdictions.

None of the other districts urged by interested parties come close to matching the Southern District of Florida's strong nexus to this litigation, or its efficiency profile.

⁸ Twenty of the 36 responses filed as of December 3, 2014, including 10 from litigants in actions filed in other districts, support the Southern District of Florida as the optimal transferee court.

ARGUMENT

1. Transfer and Consolidation of the Related Personal Injury Actions with the Related Economic Loss Actions is Appropriate Pursuant to 28 U.S.C. § 1407

The Diaz Plaintiffs submit that the Related Personal Injury Actions should be transferred and consolidated (or coordinated) for pretrial proceedings with the Related Economic Loss Actions, because under 28 U.S.C. § 1407(a), the MDL Panel may transfer and consolidate cases that meet three requirements: (1) the cases “involv[e] one or more common questions of fact;” (2) transfer and consolidation or coordination will further “the convenience of parties and witnesses;” and (3) transfer and consolidation or coordination “will promote the just and efficient conduct of [the] actions.” Here, transfer and consolidation of the Related Personal Injury Actions with the Related Economic Loss Actions will satisfy each of these objectives.

A. The Related Actions involve common questions of fact

Cases involving overlapping factual issues are particularly appropriate for transfer and consolidation or coordination,⁹ even when some plaintiffs seek damages for economic loss and others for personal injury.¹⁰ The basic facts alleged in the Related Economic Loss Actions and the Related Personal Injury Actions are virtually the same.

All of the Related Actions allege that:

1. The Takata airbags were distributed to multiple vehicle manufacturers and installed in millions of vehicles in the United States during the last 13 years;

⁹ *In re: Air W., Inc. Sec. Litig.*, 384 F. Supp. 609, 611 (J.P.M.L. 1974) (“[W]hen two or more complaints assert comparable allegations against identical defendants based upon similar transactions and events, common factual questions are presumed.”) (internal citation omitted).

¹⁰ *In re: Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, Products Liab. Litig.*, 704 F. Supp. 2d 1379, 1382 (J.P.M.L. 2010) (acknowledging that both economic loss and personal injury cases arising out of the same nexus of facts are “regularly and successfully” transferred to a single court); *In re Air W., Inc. Sec. Litig.*, 384 F. Supp. at 611 (“[T]he mere fact that divergent legal theories are asserted arising out of the same substantive claims and allegations presents no bar to a Section 1407 transfer.”).

2. The Takata airbags are defective and explode violently, causing shrapnel and metal fragments to seriously injure or kill the vehicle occupants;
3. The Takata airbags are now the subject of a massive NHTSA recall that affects millions of vehicles;
4. For years, the defendants were aware of the serious nature and extent of the defects at issue, but concealed their knowledge from the public in knowing and willful disregard for public welfare and safety; and
5. The defendants' failure to address the airbag defects have proximately caused a radical diminution in the value of the affected vehicles, as well as numerous personal injuries and deaths.

While the Diaz Plaintiffs acknowledge that the Related Personal Injury Actions will present individualized damages issues requiring discovery that might not overlap with that required by the Related Economic Loss Actions, this Panel has recognized that a single judge “can design the kind of distinct discovery tracks often employed to address these concerns.” *In re: Toyota Motor Corp. Unintended Acceleration*, 704 F. Supp. 2d at 1382.¹¹ Moreover, when automobile defects have caused massive recalls and injuries resulting in the filing of numerous actions, the Panel has centralized related personal injury actions and consolidated them with related economic loss actions. *E.g., In re Gen. Motors LLC Ignition Switch Litig.*, No. MDL 2543, 2014 WL 2616819, at *1 (J.P.M.L. June 9, 2014) (“*GM Ignition Switch Litigation*”) (consolidating economic loss actions with personal injury actions);¹² *In re Toyota Motor Corp. Unintended Acceleration*, 704 F. Supp. 2d at 1382 (consolidating personal injury actions with

¹¹ *Accord In re IBM*, 302 F. Supp. 796, 799 (J.P.M.L. 1969) (“So far as any dissimilarities exist among the cases, discovery relating to non-common questions of fact can be conducted following remand if the transferee judge concludes that such procedure would be in the best interests of justice.”).

¹² In the *GM Ignition Switch Litigation*, few personal injury actions had been filed at the time the Panel heard argument as to whether and where to consolidate and transfer the economic loss actions. *In re Gen. Motors LLC Ignition Switch Litig.*, MDL No. 2543, D.E. 266, n. 3. But the pace and number of personal injury filings increased, and the Panel later modified its order to consolidate and transfer the personal injury actions as well. *In re Gen. Motors LLC Ignition Switch Litig.*, MDL No. 2543, 2014 WL 5597269, at *1 (noting that “[w]hile MDL No. 2543 initially included only actions asserting economic damages, it has been expanded to include personal injury and wrongful death actions.”).

economic loss actions because “the liability discovery in all the cases will certainly overlap”). The Panel should do the same here.

Based on these overlapping factual issues, the Diaz Plaintiffs respectfully submit that the Related Personal Injury Actions and the Related Economic Loss Actions should be transferred and consolidated or coordinated in one judicial district, which should be the Southern District of Florida.

B. Centralization will be more convenient for the parties, witnesses and courts

Centralization of all Related Actions will prevent the massive multiplication of effort inherent in conducting discovery on common issues over and over again in multiple courts, which will conserve judicial and party resources. Moreover, because the Related Actions all arise from common defects in the design and manufacture of Takata airbags and seek relief grounded in common legal theories, they will require essentially the same discovery from each defendant, including the: (i) specifications of Takata airbags; (ii) testing of Takata airbags and identification of safety issues regarding Takata airbags; (iii) internal investigations conducted by or on behalf of defendants regarding Takata airbags; (iv) customer complaints regarding Takata airbags; (v) defendants’ communications with NHTSA regarding Takata airbags; (vi) tests or analyses conducted by defendants to determine the safety of vehicles equipped with Takata airbags; and (vii) actions or steps taken by defendants to address safety concerns regarding Takata airbags.¹³ Absent consolidation, the Personal Injury Plaintiffs would be required to issue, and the Takata and Vehicle Manufacturer Defendants would be required to respond to, multiple and duplicative discovery requests seeking the same information about the same issues, and key witnesses would be required to sit for multiple and duplicative depositions about the same facts.

¹³ As discussed above, it is well within the transferee court’s ability to fashion separate discovery tracks, to the extent necessary, for the personal injury cases.

Finally, in addition to being more convenient for the parties and witnesses, centralization will conserve judicial resources by eliminating duplicative discovery proceedings and motion practice in different courts, and allowing a single judge to decide the same issues once, pursuant to a single trial-preparation plan, which will conserve judicial and party resources. *E.g.*, *Aftermarket Auto. Lighting*, 598 F. Supp. 2d 1366, 1367 (J.P.M.L. 2009) (consolidation would “eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve the resources of the parties, their counsel and the judiciary”). Therefore, to accommodate the convenience of parties and witnesses, it is appropriate to transfer and consolidate (or coordinate) the Related Personal Injury Actions with the Related Economic Loss Actions.

C. Centralization will promote the just and efficient conduct of all Related Actions

Where multiple actions have been initiated against multiple defendants who are engaged in substantially similar conduct, centralization that conserves judicial and party resources doesn’t only serve the convenience of the courts, parties and witnesses, but promotes the just and efficient conduct of the litigation. *See, e.g.*, *In re Checking Account Overdraft Litig.*, 626 F. Supp. 2d 1333, 1335-36 (J.P.M.L. 2009) (industry wide centralization); *In re Payment Card Interchange Fee & Merchant Discount Antitrust Litig.*, 398 F. Supp. 2d 1356, 1358 (J.P.M.L. 2005) (consolidating proceedings in fourteen actions and twenty-one potential tag-along actions); *In re Darvocet, Darvon & Propoxyphene Prods. Liab. Litig.*, 780 F. Supp. 2d 1379, 1382 (J.P.M.L. 2011) (consolidating seventeen actions against at least twelve defendants); *In re Chinese-Manufactured Drywall Prods. Liab. Litig.*, 626 F. Supp. 2d 1346, 1347 (J.P.M.L. 2009) (consolidating ten actions against numerous defendants). As noted above, in massive recall cases like these, prior precedent compels transfer and consolidation of personal injury cases with economic loss cases. *In re Gen. Motors LLC Ignition Switch Litig.*, 2014 WL 2616819, at *1

(consolidating economic loss actions with personal injury actions) and *In re Toyota Motor Corp. Unintended Acceleration*, 704 F. Supp. 2d at 1382.

Of independent significance, over and above the conservation of judicial and party resources, is the fact that transfer and consolidation or coordination will minimize or eliminate the possibility of conflicting pretrial rulings. Plaintiffs in the Related Actions assert many of the same claims—breaches of the implied warranty of merchantability, violations of consumer protection statutes and fraudulent concealment. The Related Personal Injury actions also assert these claims (among others). Inconsistent rulings are neither desirable nor necessary, but could result from different courts’ addressing similar claims. *See In re Terrorist Attacks on Sept. 11, 2001*, 295 F. Supp. 2d 1377, 1378 (J.P.M.L. 2003) (noting that transfer is favored where there are similar legal issues that could be decided differently in similar cases).

It is highly likely that the number of personal injury actions will increase, perhaps significantly, in view of the large number of reported incidents causing grievous injuries, and the possibility of further grievous injuries from the defective Takata airbags that are key safety components of millions of vehicles in daily use throughout the country. Ordering the transfer and consolidation or coordination of the Related Personal Injury Actions with the Economic Loss Actions will promote the “just, speedy and efficient” adjudication of all the Related Actions, in service of Rule 1 of the Federal Rules of Civil Procedure.

2. The Southern District of Florida is the Most Appropriate Forum for Transfer and Consolidation or Coordination of the Related Actions

The Diaz Plaintiffs adopt, join, and incorporate all the arguments made by the *Dunn* Plaintiffs as to the appropriate transferree court. *See* D.E. 1, 185. The Southern District of Florida is by far the most appropriate and convenient forum for the parties, especially when one considers that the majority of pending personal injury actions have been filed in the state of

Florida. Accordingly, the Diaz Plaintiffs adopt and support the *Dunn* Plaintiffs' request to transfer, and also submit that the Panel should transfer the Related Personal Injury Actions to the Southern District of Florida, for consolidated (or coordinated) pretrial proceedings.

CONCLUSION

For the foregoing reasons, the Diaz Plaintiffs (1) support the *Dunn* Plaintiffs' request to transfer and consolidate (or coordinate) the Related Economic Loss Actions to the Southern District of Florida and (2) respectfully request that the Panel take the same action with regard to the Related Personal Injury Actions, and any future related personal injury actions.

REQUEST FOR HEARING

The Diaz Plaintiffs respectfully request to be heard at the January 29, 2015 hearing on the foregoing issues, including, but not limited to, the transfer and consolidation or coordination of the Related Personal Injury Actions.

Date: January 13, 2015

Respectfully submitted,

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PROOF OF SERVICE

In accordance with Rule 4.1(a) of the Rules of Procedure for the United States Judicial Panel for Multidistrict Litigation, the undersigned hereby certifies that on January 13, 2015, a copy of the foregoing response was electronically filed with the Court for the JPML by using the CM/ECF system, which will provide electronic service to all registered CM/ECF participants. Also on January 13, 2015, a copy of the foregoing documents was mailed to the following parties via U.S. Mail:

Honda Motor Co., LTD 2-1-1 Minami-Aoyama Minato-ku, Tokyo, 107-8556 Japan	Defendant Honda Motor Co., Ltd.
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American Honda Motor Co., Inc. C/O CT Corporation System 1200 S. Pine Island Road Plantation, FL 33324	Defendant American Honda Motor Co., Inc.
Honda of America Mfg., Inc. C/O CT Corporation System 1200 S. Pine Island Road Plantation, FL 33324	Defendant Honda of America Mfg., Inc.
Mazda Motor Corporation 3-1 Sinchi, Fuchu-cho, Aki-gun Hiroshima 730-8670	Defendant Mazda Motor Corporation

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Respectfully submitted

January 13, 2015

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