

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

IN RE: GENERAL MOTORS, LLC
IGNITION SWITCH LITIGATION

MDL NO. 2543

**PLAINTIFFS' RESPONSE IN SUPPORT OF CENTRALIZATION FOR
CONSOLIDATED OR COORDINATED PRETRIAL PROCEEDINGS IN THE
SOUTHERN DISTRICT OF TEXAS**

HILLIARD MUÑOZ GONZALES LLP

By: /s/ Robert C. Hilliard

Robert C. Hilliard
State Bar No. 09677700
Federal ID No. 5912
bobh@hmglawfirm.com
Rudy Gonzales, Jr.
State Bar No. 08121700
Federal ID No. 1896
rudyg@hmglawfirm.com
Catherine D. Tobin
State Bar No. 24013642
Federal ID No. 25316
catherine@hmglawfirm.com
Marion Reilly
Texas Bar No. 24079195
Federal I.D. No. 1357491
marion@hmglawfirm.com
719 S. Shoreline Boulevard,
Suite 500
Corpus Christi, TX 78401
Telephone No.: (361) 882-1612
Facsimile No.: (361) 882-3015

-and-

By: /s/ Thomas J. Henry

Thomas J. Henry
State Bar No. 09484210
Greggory A. Teeter
State Bar No. 24033264
Travis Venable

State Bar No. 24068577
Federal I.D. No. 1531849

THOMAS J. HENRY INJURY ATTORNEY
521 Starr St.
Corpus Christi, Texas 78401
Telephone No.: (361) 985-0600
Facsimile No.: (361) 985-0601

-and-

/s/ Shelby Jordan

Shelby A. Jordan
Fed Bar # 2195
State Bar # 11016700

**JORDAN, HYDEN, WOMBLE AND
CULBRETH, P.C.**

900 Bank of America North
500 N. Shoreline,
Corpus Christi, Texas, 78471
Telephone No.: (361) 884-5678
Facsimile No.: (361) 888-5555
sjordan@jhwclaw.com

ATTORNEYS FOR PLAINTIFFS

Attorneys for Plaintiffs

I. INTRODUCTION

Pursuant to 28 U.S.C. § 1407 and the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, Plaintiffs Daryl and Maria Brandt in *Brandt v. General Motors, LLC*, Civil Action No. 14-cv-00079; U.S.D.C, Southern District of Texas, Corpus Christi Division and Plaintiffs Charles and Grace Silvas in *Silvas v. General Motors, LLC*, Civil Action No. 14-cv-00089; U.S.D.C, Southern District of Texas, Corpus Christi Division (collectively “Plaintiffs”) respectfully submit this Response in support of the transfer and centralization of all the General Motors Ignition Switch related actions into a single district for coordinated or consolidated pretrial proceedings. Plaintiffs agree that consolidation and coordination are appropriate.

Plaintiffs further respectfully submit that the most appropriate transferee Court is the United States District Court for the Southern District of Texas. Alternatively, Plaintiffs would also submit that the Central District of California is also appropriate.

II. THE PANEL SHOULD TRANSFER THE GM IGNITION SWITCH CASES FOR CONSOLIDATED OR COORDINATED PROCEEDINGS.

The Panel may transfer for consolidated or coordinated pretrial proceedings if (i) the cases involve common questions of fact, (ii) the transfers will further the convenience of parties and witnesses, and (iii) the transfers will promote the just and efficient conduct of the actions. 28 U.S.C. § 1407(a). Each of the pending lawsuits arises from allegations that General Motors, whether before or after emerging from bankruptcy, concealed a known and dangerous ignition switch defect from its customers. Although there are slight variations among them, the cases all involve the ignition switch defect and all or some subset of the following GM vehicles: 2003-2007 Saturn Ion; 2005-2010 Chevrolet Cobalt; 2005-2010 Pontiac G5; 2006-2011 Chevrolet HHR; 2006-2010 Pontiac Solstice; and 2007-2010 Saturn Sky. Accordingly, each lawsuit will involve

common, central factual questions including whether these vehicles are in fact defective and when GM discovered the defect. Consolidated and coordinated discovery and pretrial litigation concerning these issues will “eliminate duplication in discovery, avoid conflicting rulings and schedules, reduce litigation cost, and save time and effort of the parties, the attorneys, the witnesses, and the courts.” *Manual for Complex Litigation* (Fourth) § 20.131 (2004); *see also In re General Motors Corp. Piston Slap Prods. Liab. Litig.*, 314 F. Supp. 2d 1386, 1388 (J.P.M.L. 2004) (transferring actions and stating that “[c]entralization under Section 1407 is necessary in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings (especially with respect to class certification matters), and conserve the resources of the parties, their counsel and the judiciary); *In re: First Nat. Collection Bureau, Inc.*, MDL No. 2527, 2014 WL 1364747, at *1 (J.P.M.L. April 8, 2014) (same).

III. THE SOUTHERN DISTRICT OF TEXAS IS CONVENIENT FOR THE PARTIES AND WITNESSES AND WELL-EQUIPPED TO ENSURE THE JUST AND EFFICIENT ADJUDICATION OF THIS LITIGATION.

There is no dispute among responding Plaintiffs that all the Related Cases satisfy the requirements of consolidation and transfer pursuant to 28 U.S.C. § 1407. There is, however, disagreement among the responding Plaintiffs as to which court is best suited to accept transfer of the General Motor Ignition Switch cases.

Numerous factors must be weighed in order to determine which court is the appropriate transferee forum to handle the coordinated pretrial proceedings. Factors often cited include the convenience of the parties, location of records and witnesses, experience of the jurists, where the most pending cases are filed, and case load of the proposed transferee forum. Other highly relevant factors this Panel considers include the experience of the transferee jurist, the willingness of the transferee jurist to accept transfer and whether the jurist’s docket will

allow her the time to efficiently manage the MDL.

Several large multi-district litigation proceedings have been centralized, and efficiently handled, in the Southern District of Texas. With respect to the Southern District of Texas, Corpus Christi Division, the Honorable Janis Graham Jack was appointed by the JPML to preside over *In re: Merscorp Inc., Real Estate Settlement Procedures Act (RESPA) Litigation*, MDL No. 1810. Additionally, the following list provides a sampling of the case centralized in the Southern District of Texas generally:

- *In re: Enron Corporation Securities, Derivative & ERISA Litigation*, MDL No. 1446 (Hon. Melinda Harmon);
- *In re: Heartland Payment Systems, Inc. Customer Data Security Breach Litigation*, MDL No. 2046 (Hon. Lee H. Rosenthal);
- (Hon. Janis Graham Jack);
- *In re: Motion Picture Licensing Antitrust Litigation*, MDL No. 366 (Hon. John V. Singleton, Jr.);
- *In re: Refined Petroleum Products Antitrust Litigation*, MDL No. 1886 (Hon. Sim Lake);
- *In re: Service Corporation International Securities Litigation*, MDL No. 1609 (Hon. Lynn N. Hughes);
- *In re: Silica Products Liability Litigation*, MDL No. 1553 (Hon. Janis Graham Jack);
In re: BP p.l.c. Securities Litigation, MDL No. 2185 (Hon. Keith P. Ellison);
- *In re: Testmasters Trademark Litigation*, MDL No. 1646 (Hon. Vanessa D. Gilmore);
- *In re: VistaPrint Corp. Marketing and Sales Practice Litigation*, MDL No. 1994 (Hon. Nancy F. Atlas);
- *In re: Waste Management, Inc. Securities Litigation*, MDL NO. 1422 (Hon. Melinda Harmon);
- *In re: Wells Fargo Wage and Hour Employment Practices Litigation (No. III)*, MDL No. 2266 (Hon. Gray H. Miller);

Plaintiffs hereby respectfully submit that this Honorable Panel should transfer all Related Cases for pretrial consolidation and coordination to the Honorable Nelva Gonzales Ramos, Judge of the Southern District of Texas, Corpus Christi Division. The Southern District of Texas is centrally located and has substantial resources and experience in handling multi-district litigation. The clerks are experienced in handling MDL transfers, and the large number of filings that occur in multi-district litigation proceedings.

Further, the First Class Action was filed in the Southern District of Texas, Corpus Christi Division and Judge Ramos has already heard argument and ruled on substantive areas of the litigation. Judge Ramos accommodated massive filings totaling 225 pages on a shortened schedule, and held a lengthy evidentiary hearing on only 9 business day's notice where multiple witnesses and potential witnesses from around the country attended or took the stand, many of whom flew in the day of the hearing, as well as counsel from San Francisco, New York and Atlanta, all of whom stayed in hotels within walking distance to the federal courthouse.

The Southern District of Texas is the best-suited venue for the consolidation and coordination of the litigation. The Southern District of Texas, in addition to Judge Ramos's willingness to accept the transfer, has the resources, experience and available judicial resources to preside over the Ignition Switch Litigation. For example, the average time from filing to disposition is 6.8 months, and only 8.2% of the cases pending in the District are over three years old—both of which are lower than the national average.

Though other Interested Parties may contend that the Southern District of Texas, Corpus Christi Division is not a convenient locale, the plain fact of the matter is that the Southern District of Texas is centrally located geographically and therefore easy and economical to access. Corpus Christi is also a frequently visited travel destination, with ample hotel rooms and

convention/litigation support facilities within the immediate vicinity of the federal courthouse. Moreover, this Panel has sent matters of national importance with lawyers from all over the country to allegedly inconvenient venues to diverse, qualified and diligent judges who otherwise wouldn't have had the opportunity to shine in a situation such as like. For instance, in *In re: Actos (Pioglitazone) Products Liability Litigation*, MDL No. 2299 (Hon. Rebecca F. Doherty), this Panel centralized the case in Lafayette, Louisiana even though a number of parties contended that the Lafayette was an inconvenient venue. Notably, Takeda's lead defense counsel, who trekked to Lafayette regularly, was located in Chicago, just as GM's class action defense counsel is located in Chicago.

Judge Nelva Gonzales Ramos graduated from University of Texas Law School, with honors, in 1991. Judge Ramos was in private practice for the first six years of her career and then began her judicial career as a municipal court judge in Corpus Christi, Texas in 1997. She later served as a District Judge for the 347th Judicial District for the State of Texas from 2001 to 2011. During these years, she was routinely recognized by the members of the Corpus Christi Bar Association as an outstanding Judge. She helped create the Nueces County District Domestic Violence Court and has been active in her community, serving on the Coastal Bend Council on Alcohol and Drug Abuse, the Board of Directors for the Corpus Christi Chapter of the March of Dimes, and as a mentor to students at a local middle school. At the time of her judicial appointment, it was noted that Judge Ramos had presided over 1,200 criminal, civil, and family law cases that went to verdict or judgment, and yet only eight of those cases (less than 1%) had been reversed. Judge Ramos was nominated for her current position on the federal bench on January 26, 2011, was confirmed on August 2, 2011 and was commissioned on August 4, 2011.

After weighing all of the factors that the Panel should consider, it is respectfully submitted that the Southern District of Texas is the appropriate forum in which to consolidate the General Motors Ignition Switch Litigation.

IV. CENTRALIZATION IN THE EASTERN DISTRICT OF MICHIGAN OR THE SOUTHERN DISTRICT OF NEW YORK IS NOT WARRANTED.

Plaintiffs further contend that the Panel should decline to send these cases to either the Eastern District of Michigan or the Southern District of New York. In the past, the Panel has repeatedly centralized litigation against GM in forums outside of Michigan. *See, e.g., In re General Motors Corp. Piston Slap Prods. Liab. Litig.*, 314 F. Supp. 2d 1386 (J.P.M. L. 2004); *see also In re General Motors Corp. Dex-Cool Prods. Liab. Litig.*, 293 F. Supp. 2d 1381 (J.P.M.L. 2003); *In re General Motors Corporation Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, MDL No. 961, 1993 WL 65087 (J.P.M.L. Feb. 26, 1993); *In re Gov't Auto Fleet Sales*, 328 F. Supp. 218 (J.P.M.L. 1971). In one of those cases, defendants argued for transfer to the Eastern District of Michigan because the majority of relevant documents and witnesses were located there. *In re Gov't Auto Fleet Sales*, 328 F. Supp. at 219-220. The Panel rejected the proposal, stating:

While it is true that certain relevant documents have been produced in Detroit...and may have to remain there, there is no reason why the documents cannot be inspected there and, if authorized, copies made for the parties....Defendants' attempt to support their choice of transferee court by pointing out that many of their employers will undoubtedly have to be deposed and that such deposition should take place in the Detroit area. We certainly agree that depositions should generally be taken where the witness resides but this can be done regardless of which District is selected as the transferee court. In short, the fact that certain documents and witnesses are located in the Detroit area does not compel the transfer of these cases to the Eastern District of Michigan.

Id.

The fact that bankruptcy proceedings involving GM are pending in the Southern District of New York also does not mandate transfer. Plaintiffs' claims in these lawsuits

do not arise out of GM's bankruptcy, distinguishing the pending litigation from numerous other cases where the Panel has centralized the cases in the same district as the ongoing bankruptcy proceedings. *See, e.g., In re: MF Global Holding Ltd. Investment Litig.*, 857 F. Supp. 2d 1378, 1380-81 (J.P.M.L. 2012) (transferring investors' cases to S.D.N.Y. where the actions "ar[ose] from the common factual backdrop of [defendant's] demise); *In re: Tribune Co. Fraudulent Conveyance Litig.*, 831 F. Supp. 2d 1371 (J.P.M.L. 2011) (centralizing cases in S.D.N.Y. where all actions arose out of, amongst other things, the impact of defendant's bankruptcy on its creditors). Further, the Panel has previously recognized that the pendency of related bankruptcy proceedings is not a dispositive factor in its transfer analysis. *See, e.g., In re Food Fair Secs. Litig.*, 465 F. Supp. 1301, 1306 (J.P.M.L. 1979) (finding that another district would "result in the most efficient and expeditious resolution" of the actions, and that "cooperation between the judges handling the civil actions and the bankruptcy proceedings...together with the cooperation and assistance of all parties and their counsel, w[ould] accomplish any coordination which may be necessary between the bankruptcy proceedings and the civil actions....").

Accordingly, transfer to Eastern District of Michigan or the Southern District of New York is not warranted.

V. PLAINTIFFS SUPPORT THE CENTRAL DISTRICT OF CALIFORNIA AS AN ALTERNATIVE TRANSFEREE VENUE.

Should the Panel not transfer the pending cases to the Southern District of Texas, transfer to the Central District of California would also be appropriate, with Judge Selna presiding. The Central District of California has a strong connection to the litigation and is convenient for the litigants. More vehicles with defective ignition switches were sold in California than any other

state, so a plurality of the affected consumers likely reside in California.¹ Thus, many of the plaintiffs in these cases reside in California, as do their counsel, making the Central District of California another convenient forum for the litigants. The airports and courts in the Central District of California are easily accessible, making travel easier and less expensive. *See In re: Countrywide Financial Corp. Mortgage-Backed Sec. Litig.*, 812 F. Supp. 2d 1380, 1384 (J.P.M.L. 2011) (transferring cases to the Central District of California upon a finding that “[t]he Central District of California...is accessible for parties and witnesses located throughout the United States.”).

Moreover, the Central District of California’s favorable docket conditions suggest it would not be overburdened by accepting a complicated MDL that involves a large number of parties and witnesses. The Central District has a track record of resolving cases expeditiously: cases in the Central District of California average only 5.9 months from filing to disposition, which is the third fastest time from filing to disposition in the nation.

Finally, Judge Selna has a demonstrated capacity to handle MDL proceedings like this one. Judge Selna recently presided over the *Toyota Unintended Acceleration* litigation, for example. *See In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices & Prods. Liab. Litig.* (MDL 2151). Judge Selna’s expertise in handling such proceedings strongly supports transfer to the Central District.

VI. CONCLUSION

Plaintiffs respectfully request that the Panel transfer the Related Case for coordinated and consolidated pretrial proceedings to the United States District Court for the Southern District of Texas before the Honorable Nelva Gonzales Ramos or, in the alternative, to the

¹ See, e.g., https://www.nada.org/NR/rdonlyres/ACF47371-BFC7-4A29-8883-FF7F0A4F5D4E/0/NADA_Data_2009_final_091109.pdf (data showing that there are more new-car dealerships and vehicle sales in California than any other state).

Central District of California before the Honorable James V. Selna.

Dated: April 25, 2014

Respectfully Submitted,

HILLIARD MUÑOZ GONZALES LLP

By: /s/ Robert C. Hilliard

Robert C. Hilliard
State Bar No. 09677700
Federal ID No. 5912
bobh@hmglawfirm.com
Rudy Gonzales, Jr.
State Bar No. 08121700
Federal ID No. 1896
rudyg@hmglawfirm.com
Catherine D. Tobin
State Bar No. 24013642
Federal ID No. 25316
catherine@hmglawfirm.com
Marion Reilly
Texas Bar No. 24079195
Federal I.D. No. 1357491
marion@hmglawfirm.com
719 S. Shoreline Boulevard,
Suite 500
Corpus Christi, TX 78401
Telephone No.: (361) 882-1612
Facsimile No.: (361) 882-3015

-and-

By: /s/ Thomas J. Henry

Thomas J. Henry
State Bar No. 09484210
Greggory A. Teeter
State Bar No. 24033264
Travis Venable
State Bar No. 24068577
Federal I.D. No. 1531849

THOMAS J. HENRY INJURY ATTORNEY
521 Starr St.
Corpus Christi, Texas 78401

Telephone No.: (361) 985-0600
Facsimile No.: (361) 985-0601

-and-

/s/ Shelby Jordan

Shelby A. Jordan
Fed Bar # 2195
State Bar # 11016700

**JORDAN, HYDEN, WOMBLE AND
CULBRETH, P.C.**

900 Bank of America North
500 N. Shoreline,
Corpus Christi, Texas, 78471
Telephone No.: (361) 884-5678
Facsimile No.: (361) 888-5555
sjordan@jhwelaw.com

ATTORNEYS FOR PLAINTIFFS