

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re FORD MOTOR CO. SPEED	/	MDL DOCKET NO. 1718
CONTROL DEACTIVATION SWITCH	/	HON. BERNARD A. FRIEDMAN
PRODUCTS LIABILITY LITIGATION	/	
	/	ALL CASES
	/	

**SUGGESTION OF REMAND AND FINAL MDL PRETRIAL ORDER FOR
REMANDED CASES**

A. Introduction

This Court is the transferee court presiding over the Multidistrict Litigation (“MDL”) known as *In re: Ford Motor Co. Speed Control Deactivation Switch Products Liability Litigation*, MDL No. 1718. By Order of the Judicial Panel on Multidistrict Litigation (the “MDL Panel”) dated October 28, 2005, cases were transferred to this Court for coordinated pretrial proceedings pursuant to 28 U.S.C. § 1407. The Court has since determined that the primary purposes for which MDL 1718 was established- to coordinate pretrial efforts, including pretrial motion practice and common discovery- have been accomplished. Pursuant to Rule 10(b) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, the undersigned transferee judge submits this Suggestion of Remand and Final MDL Pretrial Order for Remanded Cases to the MDL Panel, recommending that the Panel remand the remaining pending cases in MDL 1718 to their original transferor courts.

B. Suggestion of Remand

The federal multidistrict litigation statute, 28 U.S.C. § 1407, mandates that each transferred action “shall be remanded by the panel at or before the conclusion of such pretrial

proceedings to the district from which it was transferred unless it shall have been previously terminated.” 28 U.S.C. § 1407(a). A transferee judge should suggest remand to the MDL Panel only when the judge “perceives his or her role in the case has ended.” *Kinley Corp. V. Integrated Resources Equity Corp.*, 851 F.Supp. 556, 562 (S.D.N.Y. 1994). A suggestion of remand is appropriate only where a case will not “benefit from further coordinated proceedings as part of the MDL . . .” *McKinney v. Bridgestone/Firestone, Inc.*, 128 F.Supp. 2d 1196, 1197 (S.D.Ind. 2001), and “when everything that remains to be done is case specific.” *Id.*

Over the past six and a half years, in its role as transferee court, this Court has handled substantial motion practice and has overseen an extensive discovery process. Pursuant to the Court’s Order Referring Incident Claims to Mediation, dated March 29, 2010 [D.E. 390], and with the assistance of a mediator agreed to by the parties, numerous cases have been resolved.^{1 2} At this point, all common fact and expert discovery is complete in these cases, and all case-wide issues amendable to resolution in this transferee court have been resolved. The Court is thus of the view that coordinated proceedings are no longer of benefit in these cases, that all remaining proceedings will be case specific, and that there would be little if any benefit to continuing this matter as an MDL proceeding.

For the foregoing reasons, the Court concludes that MDL 1718 has fulfilled the

¹As ordered by the Court, mediation in these actions was conducted by Martin G. Waldman, Esq., located at 7001 Orchard Lake Rd., Ste. 422, West Bloomfield, Michigan, 48322; 248-855-8900. Mr. Waldman is knowledgeable about the relevant issues, and could be used as a mediator in these cases subsequent to remand.

² Some cases have not yet participated in mediation. The Court suggests that mediation upon remand may prove to be helpful in their resolution. They are Case Nos. 08-15099, 10-11533, 10-12220, 10-15149, 11-15205 and certain claimants in 10-12219.

objectives set forth in 28 U.S.C. § 1407 and that dissolution of this MDL will serve the interests of the parties and judicial economy. Therefore, the Court finds that the civil actions identified in the instant Order are now ripe for remand to the transferor courts for final disposition.

The Court requests that it retain jurisdiction over those cases that have reached settlement in principal, but for which the parties are completing the settlement documentation.³ Further, the Court requests that it retain jurisdiction to oversee the final disposition of any funds held in the *Ford SCD Switch MDL No. 1718 Common Benefit Fund Account*, as established by Order dated December 17, 2008 [D.E. 239].

Accordingly, the Court hereby suggests that the MDL Panel order a remand of the following actions to their respective transferor courts: 08-15100, 10-11534, 10-13584, 10-14228, 10-14593, 11-11834, 11-12082, 08-15099, 10-11533, 10-12220, 10-12219, 10-15149, and 11-15205.

C. Final MDL Pretrial Order for Remanded Cases

Having reviewed the record and provided opportunity for Plaintiffs' and Defendant's Lead Counsel to submit suggestions regarding the scope of this Final MDL Pretrial Order, the Court issues the following Order, which applies to each remanded case pursuant to the Court's Suggestion of Remand.

1. Claims and Damages

The only claims to be tried in each transferor court are (1) negligence; (2) strict products liability; and (3) in actions subject to Louisiana law, claims under the Louisiana Products

³Cases which have settled, but have not yet been dismissed are: 07-15215, 08-13099, 11-11835, 11-12081, 11-12646 and 11-14547.

Liability Act. D.E. 91, 269-328, 370, 516 and 589.

2. Common Discovery

The Court is of the opinion that Plaintiffs have completed all common discovery of Defendant, and therefore suggests that the only remaining discovery to be performed upon remand is case-specific. However, should Plaintiffs find that additional discovery is needed subsequent to remand, Plaintiffs are to seek such discovery through motion with the transferor court.

3. Document Depository and Protective Order

Pursuant to the Court's Case Management Order, dated June 15, 2006 [D.E. 18], Defendant was ordered to establish and maintain a document depository. Defendant is to maintain the document depository until the last transferred case in this MDL proceeding is resolved. Access to the document depository will be permitted only for litigation of the transferred cases.

The Court will retain jurisdiction to enforce the protective order relating to discovery materials contained in the document depository where there is no relief that can be obtained in the transferor court. Case Management Order, D.E. 18 at 16; Agreed Protective Order, 05-70781, D.E. 11.

4. Common Benefit Fund

Ford is to cease payments into the *Ford SCD Switch MDL No. 1718 Common Benefit Fund Account*. The Clerk of the Court is ordered to disclose to the Court all information regarding the *Ford SCD Switch MDL No. 1718 Common Benefit Fund Account*, including its balance, the amounts of individual deposits, and the records maintained by the Clerk. The Court

will disclose the balance of the account, only, to Plaintiffs' Lead Counsel, Plaintiffs' Liaison Counsel and Ford's Counsel. Within 14 days after receipt of this information from the Court, Plaintiffs' Lead Counsel and Plaintiffs' Liaison Counsel must file a motion(s) for disbursement. After the funds have been disbursed, the Clerk is to prepare a final accounting and close the *Ford SCD Switch MDL No. 1718 Common Benefit Fund Account*.

SO ORDERED.

Dated: April 5, 2012
Detroit, Michigan

s/Bernard A. Friedman _____
BERNARD A. FRIEDMAN
UNITED STATES DISTRICT JUDGE