

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:19-ml-2905-JAK-FFM

Date September 6, 2019

Title In re ZF-TRW Airbag Control Units Products Liability Litigation
(This Document Relates to **ALL CASES**)

Present: The Honorable **JOHN A. KRONSTADT, UNITED STATES DISTRICT JUDGE**

Andrea Keifer

Not Reported

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

Proceedings: (IN CHAMBERS) ORDER SETTING CASE MANAGEMENT CONFERENCE

On August 7, 2019, the Judicial Panel on Multidistrict Litigation (the “JPML”) consolidated the current proceedings in this litigation in the Central District of California. Dkt. 1. The civil actions listed on Schedule A of the Litigation Transfer Order issued by the JPML have been transferred to this District and to this Court, together with all of the actions that were already pending here that had been assigned to this Court under this District’s low-number rule. *See id.* at 5. This Court will now proceed with coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. Additional tag-along actions may be transferred to this Court.

It is anticipated that the experienced counsel who have appeared in the pending actions will continue to act with courtesy and civility toward one another, parties and witnesses throughout these proceedings. As the *Manual for Complex Litigation, Fourth* § 10.21 provides:

The added demands and burdens of complex litigation place a premium on attorney professionalism, and the judge should encourage counsel to act responsibly. The certification requirements of Federal Rules of Civil Procedure 11 and 26(g) reflect some of the attorneys’ obligations as officers of the court. Because of the high level of competence and experience that attorneys ordinarily bring to this type of litigation, the Court is confident that this objective will be achieved without judicial intervention.

Because these complex cases warrant appropriate oversight and collaborative management, it is further **ORDERED** as follows:

1. *Later-Filed Cases.* This Order applies to all parties in all actions that are now pending or that may later be transferred to this Court.
2. *Service of Complaints.* Plaintiffs shall promptly serve complaints in accordance with Fed. R. Civ. P. 4 and file the proofs of service using the Court’s Civil Form CV-001 pursuant to Local Rule 5-3. Although Fed. R. Civ. P. 4(m) does not require that the summons and complaint to be served for 90 days, the Court expects service as soon it can reasonably be effected. The Court will require plaintiff to show good cause to extend the service deadline beyond 90 days.

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3. *Initial Conference.* Counsel for all parties shall appear for an initial Conference on **February 24, 2020 at 1:30 p.m.** in Courtroom 10B, First Street Courthouse, 350 West First Street, Los Angeles, CA, 90012.
 - a. Parties with similar interests may (but are not required to) agree on a single attorney, or a limited number of attorneys, to speak on their behalf at the conference. A party will not, by designating an attorney to represent his or her interests at the Conference, be precluded from participating directly in any aspect of representation during the litigation. Attendance at the Conference will not effect any waiver of objections to jurisdiction, service, or similar matters. Telephonic appearances will not be permitted.
 - b. This Order has been provided to all counsel of record known to the Court. Counsel on this list are requested to forward a copy of this Order to any other attorneys whom they believe should be notified about the Conference, but who are not identified on the service list. An updated service list will be prepared after the conference.
 - c. Persons who are not named as parties in this litigation but who reasonably expect that they may later be named as parties, as well as persons who are parties in related litigation pending in other federal and state courts, may attend the Conference in person or through counsel; provided, however, that only counsel who have filed notices of appearance may participate in the conference.
 - d. Counsel are requested to check in with the Courtroom Deputy at least 15 minutes prior to the start of the Conference.

4. *Purposes and Agenda.* The Conference will be held for the purposes stated in Fed. R. Civ. P. 16(a), 16(b), 16(c), and 26(f). A tentative agenda is appended. Counsel shall meet and confer within 14 days of the issuance of this Order to discuss whether there are other matters that they believe should be addressed at the Conference. Not later than **September 27, 2019**, counsel shall file a joint statement with their collective and/or respective views as to whether any other such matter(s) should be added to the agenda. Upon reviewing the joint statement, the Court will determine whether additional items will be added and will then issue a corresponding order. That order may call for counsel to include a discussion of some or all of these issues in the Preliminary Report, which is discussed in paragraph 5(c), infra.

5. *Preparation for the Conference.*
 - a. Counsel shall familiarize themselves with the current version of the *Manual for Complex Litigation* and be prepared during the conference to suggest procedures that will facilitate the just, speedy, and efficient resolution of this phase, and later corresponding phases, of this litigation. Counsel shall also review the Local Rules for the Central District of California, the General Orders pertaining to electronic filing, this Court's general procedures and this Court's Standing Orders, all of which may be found on the Central District of California website at www.cacd.uscourts.gov.
 - b. *Initial Conference of Counsel.* No later than **January 21, 2020**, counsel shall confer in writing, telephonically and, if both worthwhile and convenient, in person, and seek to reach agreements with respect to how best to proceed on the items on the agenda, including a proposed discovery plan under Rule 26(f) and a suggested schedule under Rule 16(b) for joinder of parties, amendment of pleadings (or the filing of a consolidated pleading), class certification and other similar motions. The Court designates ZF TRW

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Automotive Holdings Corporation's primary counsel in this MDL to facilitate the conferences between counsel for plaintiffs and defendants.

- c. *Preliminary Report.* On or before **January 21, 2020**, Counsel shall file a Preliminary Report including their respective and/or collective views on the following matters:
- i. A brief statement as to their preliminary understanding of the factual and legal issues presented by these actions. This shall include any potentially case-dispositive issues. These statements will not result in a waiver of any claims or defenses, and will not likely be admitted into evidence against a party in later proceedings.
 - ii. A brief statement as to any additional parties who are likely to be named in the action through claims asserted by any of the existing parties;
 - iii. A proposed discovery plan, in as much detail as to scope and timing as possible, e.g., with a schedule for and summary of written discovery, as well as depositions of party and non-party witnesses, and expert discovery. The discussion shall also include a description of all pending discovery and any agreements reached among or between parties or non-parties with respect to the timing of such discovery. The statement shall also include a proposed method for the resolution of discovery disputes, should any arise, including whether the parties propose the appointment of a discovery referee for this purpose, and if so, processes for the selection of the referee, the presentation of issues to the referee and for the review of the decisions of the referee that are disputed.
 - iv. A list of all pending as well as all expected motions and a proposed schedule for hearing those that are pending and filing those that are anticipated.
 - v. A list of all parents, subsidiaries, and companies affiliated with the corporate parties and of all counsel associated in the litigation to assist the Court in identifying any issues as to potential recusal.
 - vi. A list of all known related cases pending in state or federal court and their current status and whether there should be any coordination between the proceedings in this action and those in any of those other actions.
 - vii. A brief statement concerning whether a Special Master should be appointed in and for what purpose(s), and if so, a proposed method for selecting that person.
 - viii. A brief statement as to whether a settlement process should be adopted in this matter, and if so, a method for selecting a neutral and setting a schedule for the process.
6. *Interim Measures.* Until otherwise ordered by the Court:
- a. *Admission of Counsel.* Attorneys admitted to practice and in good standing in any United States District Court are admitted *pro hac vice* in this litigation. Association of local counsel is not required. However, if not already registered, counsel shall register for electronic filing (CM/ECF) in the Central District of California. (More information on this process is set forth on the website of the Central District of California).
 - b. *Pleadings.* Each defendant is granted an extension of time to respond to the complaints until a date to be set at the Conference. Defendants should be prepared, however, to file motions or answers shortly after the Conference.

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- c. *Pending and New Discovery.* Pending the completion of the Conference, all outstanding disclosure and discovery proceedings are stayed, and no further discovery shall be initiated. However, this Order does not preclude any of the following: (1) voluntary informal discovery regarding the identification and location of relevant documents and witnesses; (2) entry of stipulations as to conducting deposition(s) that already have been scheduled; or (3) a party voluntarily making disclosures or responding to an outstanding discovery request under Fed. R. Civ. P. 33, 34 or 36. Nor does this Order authorize a party to suspend its efforts in gathering information needed to respond to a request under Fed. R. Civ. P. 33, 34 or 36. Relief from this stay may be granted for good cause shown, e.g. the ill health of a proposed deponent.
 - d. *Preservation of Records.* Unless and until the parties reach agreement on a plan for preservation of records, all parties and their counsel must preserve all evidence that may be relevant, or lead to the discovery of information that may be relevant, to these actions in conformance with the existing obligations of counsel and parties to do so.
 - e. *Motions.* No motion shall be filed under Rule 11, 12, or 56 without leave of the Court and unless it includes a certificate that the movant has conferred with opposing counsel in a good faith effort to resolve the matter. A procedure for setting Motions for hearing will be discussed at the Conference.
 - f. *Orders of Transferor Courts.* All orders by transferor courts imposing dates for pleading or discovery are vacated.
7. *Applications for Lead and Liaison Counsel Appointments.* The Court presently intends to appoint plaintiffs’ lead counsel or a plaintiffs’ steering committee, as well as liaison counsel for both plaintiffs and defendants. The duties of designated counsel will conform to the *Manual for Complex Litigation, Fourth* § 40.22. Applications for these positions must be filed by **January 21, 2020**, and will be considered at the Conference on **February 24, 2020**. The Court will only consider attorneys who are counsel to an action in this litigation. The main criteria for these appointments will be: (1) willingness and ability to commit to a time-consuming process; (2) ability to work collaboratively with co-counsel, opposing counsel and non-party counsel; (3) professional experience in this type of litigation; and (4) access to sufficient resources to advance the litigation in a timely manner. Applications for plaintiffs’ positions should also set forth attorney fee proposals, rates, and percentages that applicants expect to seek if the litigation succeeds in creating a common fund.
8. *Next Steps.* Following the Conference and the Court’s appointment of lead counsel, if additional time is needed to set the schedule for the next steps in the litigation, the Court may set a further scheduling conference to consider the schedule overall, including as to the addition of parties, the filing of responsive pleadings, discovery, motions and a settlement process.

IT IS SO ORDERED.

_____ : _____
Initials of Preparer ak _____

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Initial Conference: Tentative Agenda

General Matters, including:

1. Overview of the cases: the key factual and legal issues, including any unusual substantive, procedural, or evidentiary issues.
2. The appropriate level of consolidation or coordination.
3. The parties' proposals for accomplishing the goals described in Rule 16(a) of the Federal Rules of Civil Procedure.
4. The parties' positions concerning the applicable topics described in Rule 16(c).
5. Whether amended (including consolidated) pleadings would be appropriate, and appropriate deadlines for such.
6. The Court's requirements and expectations concerning compliance with the Federal Rules, the Local Rules for the Central District, and this Court's orders, rules, and procedures.
7. The Court's expectations concerning attorney professionalism, courtesy, and civility.
8. A mechanism for regularly apprising the Court of case status, such as periodic status conferences.
9. Jurisdictional issues, including whether any actions should be remanded to state court.
10. Whether a website should be established.
11. Any additional issues raised by counsel or through the Preliminary Report.

Lead and Liaison Counsel Appointments, including:

1. Applications to serve as lead plaintiff's counsel or on a plaintiff's steering committee.
2. Applications to serve as liaison counsel for plaintiffs and defendants.

Motion Practice, including:

1. Description and status of any pending motions.
2. Description and deadlines for presently anticipated motions.
3. Whether separate motion tracks should be established.
4. Motion cut-off and briefing schedules.

Discovery and Disclosures, including:

1. Dates and procedures for Rule 26 disclosures.
2. Sequencing of discovery.
3. Discovery cut-off dates and whether discovery should be conducted in phases.
4. Whether separate discovery tracks should be established.
5. Existence of trade secrets or other privileged materials and the need for protective orders.
6. Need for specific preservation orders.
7. Changes in discovery limitations imposed by the Federal Rules.
8. Expert discovery.

Settlement, including:

1. The nature and extent of discovery that must be completed before a meaningful settlement conference may take place.
2. Appropriate dispute resolution mechanism.

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Timetable, including:

1. Overall timetable for resolving issues within the scope of the MDL.
2. Interim benchmarks or targets

Scheduling, including:

1. Date for next conference.
2. Schedule for periodic status conferences.