BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE SYNGENTA MIR 162 CORN LITIGATION	)))))))	MDL DOCKET NO. 2591

U.S. SYNGENTA DEFENDANTS' RESPONSE TO MOTION TO TRANSFER RELATED ACTIONS FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS

Defendants Syngenta Corporation, Syngenta Crop Protection LLC, and Syngenta Seeds, Inc. ("Syngenta")[1] agree that these cases should be centralized pursuant to 28 U.S.C. § 1407, because all of them allege that Syngenta's sale of a U.S.-approved genetically modified corn seed for planting in the United States allegedly harmed farmers and exporters when the Chinese government later failed to approve the importation of the resulting corn crop into China. Syngenta respectfully submits that the actions should be transferred to the United States District Court for the District of Minnesota, where three actions are currently pending:

- *First*, Syngenta's U.S. headquarters are located within the District of Minnesota and many of its witnesses and documents accordingly will be found there.[2] By contrast, plaintiffs are geographically dispersed over 12 different states. While some plaintiffs have jockeyed to file copycat complaints in the wake of the pending MDL petition—including through one attorney who filed at least fifty individual cases on the day before responses to the petition were due—none of those Complaints identifies any unique connection to Illinois, Arkansas, or any other state that plaintiffs may propose, and none of those cases is further along than the others in any meaningful way. The fact of the matter is that these cases pertain to a product that was sold nationwide,

[1] Two European companies, Syngenta AG and Syngenta Crop Protection AG, are named as additional defendants in several of the complaints listed in the moving party's Schedule of Actions and subsequent Notices of Related Actions. Neither Syngenta AG nor Syngenta Crop Protection AG (both of which are Swiss entities) has been served in any of the pending cases.

[2] Syngenta's U.S. headquarters for the relevant business are located in Minnetonka, Minnesota, even though some of the plaintiffs make the unremarkable observation that Syngenta (like many companies) also has offices elsewhere.

which makes the defendant's location all the more relevant because all of these cases involve Syngenta.

- *Second*, the Minneapolis-St. Paul area has a major international airport and is readily accessible to counsel on both sides of this nationwide litigation. While another set of plaintiffs has advocated for centralization in Chicago for the same reason, none of the Complaints alleges any unique events that occurred in the Northern District of Illinois.[3]

- *Third*, as this Panel has repeatedly noted, the District of Minnesota enjoys favorable docket conditions and has the judicial resources to efficiently manage this litigation.

In short, centralization in the District of Minnesota is appropriate because it will promote the just and efficient resolution of the more than seventy MIR-162 cases now pending in eighteen different districts across twelve different states, including by avoiding duplicative discovery, preventing inconsistent pretrial rulings, and conserving the resources of the parties, their counsel, and the judiciary.[4]

BACKGROUND

In April 2010, the U.S. Department of Agriculture authorized the introduction of a genetically modified corn trait known as MIR-162, which offers increased resistance against a wide range of crop-destroying corn pests and which had already received approval by the U.S. Environmental Protection Agency and the U.S. Food and Drug Administration. Syngenta commercialized the trait for the 2011 growing season under the brand name "Viptera." In addition to receiving approval from the United States government, Syngenta has applied for and been granted import approval for Viptera in Japan, Mexico, Korea, the European Union, Colombia, Canada, Australia, and many other countries.

[3] It also bears emphasis that a number of the briefs in response to the MDL petition were actually filed by the same national plaintiffs' counsel who filed the petition itself. In other words, the same attorneys are using the fact that they filed multiple complaints to cast multiple votes. (*Compare Munson Brothers* Mot. to Transfer at 16 [ECF No. 1-1], *with Cronin, Inc.* Response Brief at 4-5 [ECF No. 37] *and Volnek Farms* Response Brief at 4-5 [ECF No. 38].)

[4] Syngenta agrees with the moving plaintiffs that *Syngenta v. Bunge*, No. 5:11-cv-04074-MWB (N.D. Iowa filed Sept. 26, 2011), involves different factual issues and should not be centralized in this MDL. That case involves claims that Syngenta has brought as a corporate plaintiff, whereas all of the actions at issue here have been brought against Syngenta as the defendant.

Beginning in September 2014, a series of copycat actions were filed in state and federal courts across the United States alleging that Syngenta supposedly violated American law by selling its U.S.-approved Viptera corn seeds to U.S. farmers in the U.S.—based on the theory that farmers and exporters were harmed because the Chinese government had not yet approved Viptera for import into China. All of the complaints filed to date concern the same subject matter, contain overlapping allegations (including overlapping class definitions in several of the cases), and seek relief from the fact that Syngenta sold U.S.-approved Viptera in the U.S. before the product was approved by the Chinese government.[5]

ARGUMENT

THE ACTIONS SHOULD BE CENTRALIZED AND TRANSFERRED TO THE DISTRICT OF MINNESOTA PURSUANT TO 28 U.S.C. § 1407

Syngenta agrees that these cases should be centralized for coordinated or consolidated pre-trial proceedings pursuant to Section 1407. Because the plaintiffs in these actions have all sued Syngenta concerning the same subject matter, transfer will both "promote the just and efficient conduct" of the actions and further "the convenience of parties and witnesses." 28 U.S.C. § 1407(a).

A. The Actions Concern The Same Subject Matter, Contain Overlapping Factual Allegations, And Warrant Centralization For Efficiency And Consistency.

All of the complaints concern Syngenta's decision to commercialize a U.S.-approved genetically modified corn trait in the U.S., and all of the plaintiffs allege harm based on the theory that the Chinese government had not yet approved Viptera for import into China. The cases include both putative class actions of farmers and grain exporters with overlapping

[5] In addition to the nine cases identified in the moving party's Schedule of Actions, over sixty additional lawsuits have since been filed and noticed as related actions or will be noticed as related actions. These cases should be centralized as well.

nationwide class definitions, and individual cases filed by farmers and a grain exporter who would each fall within the definition of the various putative classes at issue. The Panel routinely orders centralization in such circumstances, even when far fewer actions are proposed for an MDL. *E.g., In re: Capatriti Brand Olive Oil Mktg. & Sales Practices Litig.*, 963 F. Supp. 2d 1381, 1382 (J.P.M.L. 2013) (centralizing two actions that "unquestionably involve common factual issues—including nearly identical factual allegations" and "contain two similar putative classes that overlap").

Centralization of these actions will prevent duplicative discovery and potentially conflicting pretrial rulings, especially because all of these cases name Syngenta as a defendant and will seek discovery of witnesses and documents controlled by Syngenta. In addition, all of the complaints contend that plaintiffs' alleged harm occurred because the Chinese government declined to accept Viptera for import into China—which necessarily implicates discovery concerning why China has not yet approved Syngenta's importation application, including in all likelihood discovery of documents that are located in China. The fact that "[a]t least some foreign discovery in this docket appears probable" weighs heavily in favor of centralization. *In re Libor-Based Fin. Instruments Antitrust Litig.*, MDL 2262, 2011 WL 3563063, at *1 (J.P.M.L. Aug. 12, 2011).

The need for consistency with respect to pretrial rulings is particularly important because these cases include putative class actions. The Panel has "consistently held that transfer of actions under Section 1407 is appropriate, if not necessary, where the possibility for conflicting, inconsistent class determinations by courts of coordinate jurisdiction exists." *In re Equity Funding Corp. of Am. Sec. Litig.*, 375 F. Supp. 1378, 1385-86 (J.P.M.L. 1973). "[T]he need to eliminate the possibility of overlapping class determinations presents another compelling reason

to bring these actions together for pretrial in a single jurisdiction." *In re Nat'l Airlines, Inc. Maternity Leave Practices & Flight Attendant Weight Program Litig.*, 399 F. Supp. 1405, 1407 (J.P.M.L. 1975); *see also In re Res. Exploration, Inc., Sec. Litig.*, 483 F. Supp. 817, 821 (J.P.M.L. 1980) (noting that "[i]t is desirable to have a single judge oversee the class action issues in these actions to avoid duplicative efforts and inconsistent rulings in this area"). The benefits of centralization also apply with equal force to the cases that are not class actions, both because the individual plaintiffs in those actions fall within the definition of the various putative classes in the class action suits, and because the efficiencies of coordinating discovery and avoiding inconsistent pretrial rulings applies to all of the cases regardless.

B. Centralization Of These Actions In The District Of Minnesota Will Best Promote The Just And Efficient Conduct Of The Litigation And Further The Convenience Of The Parties And Witnesses.

Syngenta respectfully submits that centralization before a single judge in the District of Minnesota will best achieve the goal of conserving the resources of the parties, their counsel, and the judiciary, especially when Syngenta is headquartered in that District. *See, e.g., In re: Northstar Educ. Fin., Inc., Contract Litig.*, 588 F. Supp. 2d 1370 (Mem.) (J.P.M.L. 2008) (holding that "the District of Minnesota is an appropriate transferee forum for this litigation [where] Northstar is headquartered within this district, and relevant discovery likely will be found there"). These lawsuits have been filed throughout the United States, and no single district can seriously be characterized as the geographic focal point of this dispute even though plaintiffs have jockeyed to file copycat complaints in the wake of the pending MDL petition.

In particular, the MDL petition in this matter was filed based on nine complaints scattered across numerous states. The bulk of the remaining sixty-plus complaints were filed ***after*** the petition—as different lawyers in different states raced to file copycat complaints before responses to the MDL petition were due. These include at least fifty complaints with identical

wording (and identical typos) that one attorney filed in the Southern District of Illinois one day before responses to the petition were due.[6] The Illinois cases also include plaintiffs who neither reside there nor claim to have purchased Viptera there. *See, e.g., Briggs et al v. Syngenta et al.* No. 14-cv-01072 (S.D. Ill. filed Oct. 10, 2014 (complaint filed in Illinois even though all plaintiffs "are residents of the State of Arkansas"). The fact of the matter is that because this case concerns a U.S.-approved corn seed that is sold nationwide, there is no center of gravity that plaintiffs can seriously point to based on the allegations in their Complaints.

But whereas plaintiffs are spread across twelve different states and no single jurisdiction can claim to be the most convenient forum for them, Minnesota is the state where Syngenta is based and accordingly the most convenient location for its witnesses—in addition to being readily accessible to counsel on both sides through the Minneapolis-St. Paul International Airport. *See In Re: Life Time Fitness, Inc., Tel. Consumer Prot. Act (TCPA) Litig.*, MDL No. 2564, 2014 WL 5314608, *1 (J.P.M.L. Oct. 15, 2014) (centralizing cases in District of Minnesota where (1) defendant "Life Time is located in the District of Minnesota, and therefore relevant documents and witnesses also are likely to be located there," and (2) "[t]he district is both convenient and accessible for the majority of the parties"); *In re St. Jude Med., Inc., Silzone Heart Valves Prods. Liab. Litig.*, MDL No. 1396, 2001 WL 36292052, at *2 (J.P.M.L. Apr. 18, 2001) ("concluding that the District of Minnesota is the appropriate forum for this docket [where] i) the forum is geographically central for a litigation already nationwide in scope; ii) as the situs of the headquarters of the sole defendant in all actions, the district is likely to be a substantial source of witnesses and documents subject to discovery; and iii) the district enjoys general caseload conditions that will permit the Panel to effect the Section 1407 assignment to a

[6] These fifty cases were filed only yesterday, and Syngenta will identify them in a forthcoming Notice of Related Actions to the extent plaintiffs do not do so.

court with the present resources to devote the time to pretrial matters that this docket is likely to require"). Syngenta's U.S. headquarters for the relevant business are located in Minnetonka, Minnesota, despite the plaintiffs' unremarkable observation that Syngenta (like many companies) also has offices elsewhere.

While the moving plaintiffs have sought centralization in the Northern District of Illinois by citing the convenience of Chicago O'Hare International Airport, none of the Complaints alleges any unique connection to events in that District. Although some plaintiffs have argued that Chicago is "the home of the Chicago Board of Trade ('CBOT'), where corn futures are exchanged and the prices of commodity corn contracts are determined," (Mot. to Transfer at 14 [ECF No. 1-1]), the Complaints in these cases make no mention of the Chicago Board of Trade—for the straightforward reason that these cases are *not* about commodities futures or trading on a national exchange. This litigation instead pertains to farmers and exporters who allege harm because the Chinese government has not approved Viptera for import into China.

Additionally, none of the underlying actions has begun in earnest in any jurisdiction: the first of these cases was filed less than four weeks before the MDL petition at issue here. There is no case that can seriously claim to be further ahead so as to warrant centralization in one forum versus another, nor can any of the parties speak to whether a particular judge is or is not willing to manage this proposed MDL. Even so, the District of Minnesota, where three class action cases are currently pending,[7] has successfully overseen a number of MDL cases and has a number of judges who could serve in that role—which also supports transfer to that district when weighed alongside Syngenta's U.S. headquarters in Minnesota. Indeed, the Panel has frequently noted that the District of Minnesota "enjoys favorable docket conditions" that make it a good

[7] *See Greer v. Syngenta*, No. 14-4197 (D. Minn. filed Oct. 9, 2014); *Guth v. Syngenta*, No. 14-4464 (D. Minn. filed Oct. 23, 2014); *Rail Transfer v. Syngenta*, No. 14-4477 (D. Minn. filed Oct. 24, 2014).

choice for centralization. *E.g.*, *In re: Life Time Fitness, Inc., Tel. Consumer Prot. Act (TCPA) Litig.*, 2014 WL 5314608, at *1 ("We are convinced that the District of Minnesota has the necessary judicial resources and expertise to efficiently manage this litigation…."); *In re Stryker Rejuvenate, ABG II Hip Implant Prods. Liab. Litig.*, 949 F. Supp. 2d 1378, 1380 (J.P.M.L. 2013) (transferring actions to the District of Minnesota because it had "the support of the common defendants and offers a relatively accessible and geographically central forum that enjoys favorable docket conditions"); *In re St. Jude Med., Inc., Silzone Heart Valves Products Liab. Litig.*, 2001 WL 36292052, at *2 (noting that "the district [of Minnesota] enjoys general caseload conditions that will permit the Panel to effect the Section 1407 assignment to a court with the present resources to devote the time to pretrial matters that this docket is likely to require").

CONCLUSION

For the foregoing reasons, Syngenta respectfully requests that the Panel order transfer of the *In re Syngenta MIR 162 Corn Litigation* to the United States District Court for the District of Minnesota for coordinated or consolidated pretrial proceedings.

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