

**UNITED STATES JUDICIAL PANEL**  
**on**  
**MULTIDISTRICT LITIGATION**

**IN RE: SYNGENTA AG MIR162  
CORN LITIGATION**

MDL No. 2591

**TRANSFER ORDER**

**Before the Panel:**\* The approximately 1,600 plaintiffs in a Southern District of Illinois action (*Michael's Grain Farm*) move under Panel Rule 7.1 to vacate the Panel's order conditionally transferring the action, which is listed on the attached Schedule A, to MDL No. 2591. Defendants Syngenta Biotechnology, Inc., Syngenta Corporation, Syngenta Crop Protection, LLC, and Syngenta Seeds, Inc. (collectively Syngenta), oppose the motion.

After considering the argument of counsel, we find this action involves common questions of fact with the actions previously transferred to MDL No. 2591, and that transfer under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Transfer is warranted for reasons set out in our order directing centralization. In that order, we held that the District of Kansas was the appropriate transferee forum for actions sharing allegations regarding Syngenta's decision to commercialize the MIR162 genetically modified corn trait in the absence of Chinese approval to import corn with that trait. *See In re: Syngenta AG MIR162 Corn Litig.*, 65 F. Supp. 3d. 1401 (J.P.M.L. 2014). This action clearly falls within the MDL's ambit because it involves alleged injuries arising from Syngenta's commercialization of MIR162 corn.

Plaintiffs argue that the MDL is significantly advanced and that they would prefer to litigate alongside the less procedurally mature Southern District of Illinois mass action proceedings, *In re: Syngenta Mass Tort Actions*, S.D. Illinois, Case No. 3:15-cv-01221. In August 2017, the Panel vacated the conditional transfer of *Tweet, et al. v. Syngenta, et al.*, S.D. Illinois, Case No. 3:16-255.<sup>1</sup> *Tweet*, now consolidated with the *Syngenta Mass Tort Actions*, was created when several plaintiffs in three CAFA mass actions that were previously removed from state court obtained new counsel, then were severed from the prior actions, and placed into a new action. The plaintiffs then amended their complaint to add hundreds of new plaintiffs. Unlike *Tweet*, *Michael's Grain Farm* was filed directly in federal court pursuant both to the Class Action Fairness Act and federal question

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\* Judge Marjorie O. Rendell did not participate in the decision of this matter.

<sup>1</sup> *See* MDL No. 2591 – *In re: Syngenta AG MIR162 Corn Litig.*, Order Denying Transfer, doc. 666 (J.P.M.L., August 5, 2016) (denying transfer of action pending in federal court solely as a removed mass action under the Class Action Fairness Act. *See* 28 U.S.C. § 1332(d)(11)).

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jurisdiction. Thus, there is no barrier to its transfer since the CAFA mass action removal ban on Section 1407 transfer is inapplicable.<sup>2</sup>

Plaintiffs' opposition to transfer is otherwise unpersuasive. Their characterization of the MDL as procedurally advanced is inaccurate – the first bellwether trial was held in June 2017 and involved only the negligence claims of Kansas farmer plaintiffs. Over 800 cases with claims from producer and non-producer plaintiffs in more than 20 states remain pending in the transferee court; bellwether trials of plaintiff classes in seven states have been scheduled through 2018.

IT IS THEREFORE ORDERED that this action is transferred to the District of Kansas and, with the consent of that court, assigned to the Honorable John W. Lungstrum for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



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Sarah S. Vance  
Chair

Lewis A. Kaplan  
Ellen Segal Huvelle  
Catherine D. Perry

Charles R. Breyer  
R. David Proctor

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<sup>2</sup> See 28 U.S.C. 1332(d)(11)(C)(i) (“Any action(s) *removed to Federal court* pursuant to this subsection shall not thereafter be transferred to any other court pursuant to section 1407, or the rules promulgated thereunder, unless a majority of the plaintiffs in the action request transfer pursuant to section 1407.”) (emphasis added).

**IN RE: SYNGENTA AG MIR162  
CORN LITIGATION**

MDL No. 2591

**SCHEDULE A**

Southern District of Illinois

MICHAEL'S GRAIN FARM, INC., ET AL. v. SYNGENTA AG, ET AL., S.D. Illinois,  
C.A. No. 3:17-320