UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: SYNGENTA AG MIR162 CORN LITIGATION MDL No. 2591

ORDER DENYING RECONSIDERATION

Before the Panel:[*] Plaintiff farmers in a District of Minnesota action (*Kellogg*) seek reconsideration of our August 1, 2018, order denying their motion under Panel Rule 7.1 to vacate the Panel's order conditionally transferring this action, which is listed on the attached Schedule A, to MDL No. 2591. Defendant attorneys[1] oppose the motion.

After considering all argument of counsel, we conclude that we need not reconsider our denial of plaintiffs' motion to vacate. As we previously found, this action involves common questions of fact with the MDL No. 2591 actions, and 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).

We rarely reconsider our transfer orders, and we do so only upon a showing of a significant change in circumstances.[2] Plaintiffs, on behalf of a putative class of roughly 60,000 farmers who sue their attorneys for wrongfully pursuing individual state court cases, point to no change in facts or other developments that would merit reconsideration. Instead, their motion mostly parrots arguments made in their initial motion to vacate, largely ignoring our significant observation that "*Kellogg* is

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[*] Judge Charles R. Breyer took no part in the decision of this matter.

[1] Cross Law Firm, LLC; Dewald Deaver, P.C., LLO; Givens Law, LLC; Francisco Guerra; Daniel M. Homolka; Hovland and Rasmus, PLLC; Johnson Law Group; Law Office of Michael Miller; Mauro, Archer & Assocs., LLC; Patton Hoversten & Berg, P.A.; VanDerGinst Law, P.C.; Wagner Reese, LLP; Mikal C. Watts; Watts Guerra, LLP; Wojtalewicz Law Firm, Ltd.; Pagel Weikum, PLLP and Yira Law Office LTD.

[2] *See, e.g., In re: Richardson-Merrell, Inc. "Bendectin" Prods. Liab. Litig. (No. II)*, 588 F. Supp. 1448, 1449 (J.P.M.L. 1984) (granting reconsideration due to intervening events in the litigation).

replete with factual allegations of conduct that occurred in the Syngenta MDL proceedings." *See* Transfer Order at 2.[3]

Plaintiffs argue that our transfer order improperly equates the *Kellogg* plaintiffs with objectors to the settlement. It does not. While the transfer order noted that a group of approximately 9,000 individual plaintiffs had objected to preliminary approval because of the settlement's allegedly unfair treatment of individuals who were represented by counsel and already had filed suit, we were aware that the *Kellogg* plaintiffs were not objecting to the MDL settlement or any fees awarded thereunder. Our reference to the objections to the preliminary settlement merely served to underscore that other individual plaintiffs were objecting to the potential imposition of additional, non-class attorney fees. Were those arguments successful and the terms of the settlement affected, the *Kellogg* plaintiffs' recovery potentially could be impacted.

Plaintiffs offer a somewhat confusing argument that transfer of *Kellogg* denies them their due process rights under the Fifth and Fourteenth Amendments to proceed in D. Minnesota. As an initial matter, "[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (internal citations and quotations omitted). Plaintiffs' argument that transfer denies them such an opportunity is speculative, largely devoid of specifics and, ultimately, without merit. Defendants offer a persuasive response: so long as their claims are adjudicated in accordance with governing statutes and rules (*i.e.*, relevant federal and state statutes and federal procedural rules), the requirements of due process are fulfilled. Plaintiffs failed to meaningfully respond to this assertion in their reply.

Intertwined with their due process argument, plaintiffs argue that if the global settlement is approved, then transfer would be futile because there will be no work remaining in the MDL, which in turn will force the transferee judge to remand *Kellogg* to D. Minnesota. This argument is unpersuasive for several reasons. Even if the global settlement resolves most cases, much work remains to be completed in the MDL – in addition to any opt-out litigation, four exporter cases remain in this MDL (one such case is set for a bellwether trial in September 2019). The conclusion of the substantial bulk of the farmer cases via settlement does not trigger the requirement that *Kellogg* – which is in its infancy – be remanded to the District of Minnesota. Section 1407 remand usually occurs upon the conclusion of pretrial proceedings, which in *Kellogg* are just beginning. *See* 28 U.S.C. § 1407(a) ("Each action so transferred 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"). Plaintiffs appear to argue that they should be afforded discovery

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[3] "For instance, plaintiffs criticize the role of defendant Mikal Watts of Watts Guerra LLP, a member of the court-appointed Plaintiffs' Settlement Negotiating Committee, in negotiating the MDL settlement and alleged related side-deals concerning fees. Plaintiffs also assail defendants' entry into Joint Prosecution Agreements with MDL counsel and Minnesota state court-appointed lead counsel and the allegedly inappropriate exclusion of plaintiffs, without appropriate consultation, from classes certified before the current settlement class was reached." Transfer Order at 2.

and class certification before the settlement is finalized, but that is unlikely as a practical matter whether this recently-filed action proceeds in the transferor or transferee court.[4]

Plaintiffs also suggest that transfer forecloses the possibility of discovery or class certification proceedings in *Kellogg*,[5] but nothing in our transfer order (or, more generally, Section 1407 transfer itself) prohibits class certification or discovery regarding plaintiffs' claims. All appropriate pretrial proceedings can take place in the transferee court, where much of the conduct about which plaintiffs complain is alleged to have occurred. The precise contours of such pretrial proceedings are, as always, dedicated to the discretion of the transferee judge.

IT IS THEREFORE ORDERED that the motion for reconsideration of the Panel's August 1, 2018, order transferring the action listed on Schedule A is denied.

PANEL ON MULTIDISTRICT LITIGATION

Sarah Vance

Sarah S. Vance
Chair

Marjorie O. Rendell
Ellen Segal Huvelle
Catherine D. Perry
Lewis A. Kaplan
R. David Proctor

[4] Plaintiffs argue that the transferor judge is capable of issuing an escrow order holding the disputed funds until the claims in *Kellogg* have been resolved. We do not doubt that. But, in light of *Kellogg*'s undisputed factual overlap with the MDL proceedings, we view the more efficient approach to secure this relief would be transfer to the MDL. The transferee judge can resolve the first question of whether defendants are entitled to a fee (and, if so, how much) in connection with the class settlement proceedings. He can then decide whether any funds awarded should be placed in escrow in light of the pendency of *Kellogg*.

[5] *See* Motion to Reconsider at 6 ("There is no circumstance under which Farmers can fairly address Defendants' racketeering, attorney deceit and breach of fiduciary obligations without class certification and discovery and a jury trial. Any determination of Defendants' entitlement to a fee award by the Syngenta MDL or any court, without class certification, without discovery for Farmers, and without a trial on the jury issues, unambiguously violates the Fifth Amendment Due Process Clause."); Reply at 2 ("The Syngenta MDL cannot address whether Defendants' individual contingent fee contracts with Farmers were procured through deceptive marketing and are void without class certification and discovery for Farmers.").

IN RE: SYNGENTA AG MIR162 CORN LITIGATION

MDL No. 2591

SCHEDULE A

District of Minnesota

KELLOGG, ET AL. v. WATTS GUERRA, LLP, ET AL., C.A. No. 0:18-1082