UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

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

TRANSFER ORDER

  Before the Panel:[*] Syngenta defendants[1] move to transfer under Section 1407(c) the District of Minnesota action listed on the attached Schedule A (*Heartland Corn*) to the District of Kansas for inclusion in MDL No. 2591. Plaintiff opposes transfer.

  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 the 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 falls within the MDL's ambit because it involves alleged injuries arising from Syngenta's commercialization of MIR162 corn.

  In opposing transfer, plaintiff, an ethanol producer, argues that the MDL is significantly advanced and that transfer would not serve Section 1407's purposes. Plaintiff's arguments are not persuasive. This MDL is undoubtedly nearing its conclusion after a class settlement was finalized in December 2018. Nevertheless, the factual overlap of *Heartland* with the MDL is extensive, which is not surprising considering that plaintiff opted out of that settlement. The Panel routinely transfers opt-out actions to the MDL in which a class has been certified, and opting out of an MDL settlement is not a valid reason to vacate transfer of otherwise factually-related actions. *See, e.g.,* Transfer Order, MDL No. 1720 – *In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, doc. Doc. 204 at 2, n.4 (J.P.M.L. Oct. 16, 2013) ("The Panel has long recognized that transfer of opt-out actions to the MDL addressing the proposed class settlement is desirable because of the efficiencies from the transferee court's management of overlapping actions, integration of existing discovery with discovery in the new actions, and the court's expertise in the issues.") (citing *In re: Pennsylvania Life Co. Secs. Litig.*, 436 F. Supp. 406 (J.P.M.L. 1977)).   We see no reason to deviate from this practice here. Litigation of the three remaining cases in the MDL remains ongoing – the claims of exporter Trans

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[*] Judge Karen K. Caldwell did not participate in the decision of this matter.

[1] Syngenta Corporation, Syngenta Crop Protection, LLC, and Syngenta Seeds, LLC.
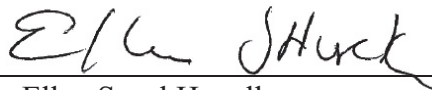
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Coastal are set for trial in October 2020, exporter Delong is set for a February 2021 trial, and no schedule has issued yet in the third action.

Because the MDL is substantially advanced, the transferee judge may determine, based on his independent review of the record, that there are few efficiencies to including *Heartland* in the remaining MDL schedule. If he finds at any point that *Heartland*'s continued inclusion in the MDL does not further Section 1407's purposes, we encourage him to suggest a Section 1407 remand of the action to the District of Minnesota, which can be accomplished with a minimum of delay. *See* Panel Rules 10.1-10.3.

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

Ellen Segal Huvelle
Acting Chair

R. David Proctor   Catherine D. Perry
Nathaniel M. Gorton   Matthew F. Kennelly
David C. Norton

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

SCHEDULE A

District of Minnesota

HEARTLAND CORN PRODUCTS v. SYNGENTA SEEDS, LLC, ET AL., C.A. No. 0:19-3060