

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: SYNGENTA AG MIR162
CORN LITIGATION

MDL No. 2591

TRANSFER ORDER

Before the Panel:* Plaintiffs in the District of Minnesota *Dingmann* action listed on Schedule A move under Panel Rule 7.1 to vacate the order that conditionally transferred their action to MDL No. 2591. Defendants BASSFORD REMELE PA, GUSTAFSON GLUEK PLLC, SCHWEBEL GOETZ & SIEBEN PA, LOCKRIDGE GRINDAL NAUEN PLLP, Lewis A. Remele Jr., and Daniel E. Gustafson oppose the motion.

After considering the argument of counsel, we find that this action involves common questions of fact with the actions previously transferred to MDL No. 3004, 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. In our order centralizing this litigation, we held that the District of Kansas was an appropriate Section 1407 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). Because this action concerns alleged misrepresentations and other allegedly improper conduct by counsel relating to the litigation and settlement of such claims in the transferee court, it falls within the scope of the MDL.

Plaintiffs in *Dingmann* are corn farmers who retained defendants and another firm, WATTS GUERRA LLP, to represent them in individual suits against Syngenta concerning improper commingling of its unapproved genetically modified corn. They allege that, in persuading them to sign contingent fee retainers and file individual actions, defendants failed to advise them of the benefits of participating in the litigation as members of putative class actions filed by others. Defendants also entered into joint prosecution agreements with class counsel in the MDL that purported to exclude 60,000 farmers from the Syngenta MDL and Minnesota litigation classes, allegedly without farmers' knowledge and informed consent. The *Dingmann* plaintiffs contend that defendants' conduct violated the Minnesota Rules of Professional Conduct and constituted mail and wire fraud and an obstruction of justice.

As defendants note, the allegations and claims in *Dingmann* closely track those in two prior actions, both of which we found appropriate for inclusion in the MDL. The first of those actions, *Kellogg*, was filed in the District of Minnesota in April 2018. After transfer, *Kellogg* was litigated in the transferee court before the Honorable John W. Lungstrum for nearly two years before it

* Judge David C. Norton did not participate in the decision of this matter.

ultimately was dismissed as a sanction for plaintiffs' counsel's repeated misconduct.¹ The second action, *Niekamp*, was filed in Ohio state court and removed to the Northern District of Ohio in September 2023.² On January 26, 2024, the defendant lawyers and law firms in *Niekamp* moved in the MDL to enforce the transferee court's judgment and enjoin the *Niekamp* plaintiffs from pursuing the action, arguing that, in bringing it, they had violated the court's order enjoining class members and their counsel from pursuing claims that would interfere with the court's orders relating to the settlement and allocation of fees. We ordered that the action be transferred to the MDL in April 2024, but the *Niekamp* plaintiffs dismissed the action without prejudice before it was transferred. On May 9, 2024, Judge Lungstrum denied the *Niekamp* defendants' motion to enforce judgment,³ holding that the rulings sought in *Niekamp*—that defendants violated their ethical duties and should forfeit their fees and pay damages in the amount of such fees (trebled)—“do not directly relate to any settlement or fee award order” and could not “undo[] or otherwise affect[]” any of the court's orders. *In re Syngenta AG MIR162 Corn Litig.*, No. 14-md-2591-JWL, 2024 WL 2091352, at *5 (D. Kan. May 9, 2024). Judge Lungstrum stated that plaintiffs' “claim would have remained the same whatever the amounts of fees awarded to [the] defendants, and thus, there could be no effect on the Court's actual allocations.” *Id.* at *6. In a footnote, Judge Lungstrum further stated:

“[I]n its transfer order the JPML stated as follows: ‘Despite [the *Niekamp* plaintiffs’] largely conclusory argument that *Niekamp* is not a collateral attack on the MDL settlement or the fee award decisions in the Syngenta MDL, *Niekamp* appears to aim squarely at both, in addition to further misconduct plaintiffs allege arose in the MDL.’ Despite this observation by the JPML, this Court does not believe that *Niekamp* had the potential actually to interfere with the Court's settlement or fee award orders, and therefore it is not persuaded that its injunction has been violated. The JPML was applying a different standard in deciding whether to transfer the case into the MDL, and this Court expresses no opinion on that decision by the JPML.” *Id.* at *6 n.5.

Plaintiffs raise several arguments in opposition to the transfer of *Dingmann*. First, they maintain that transfer is improper because their pending motion for remand to state court likely will be granted. The transferor court denied the motion for remand on November 12, 2024, however, and this argument thus is moot.

¹ Proceedings in the *Kellogg* action were significantly complicated by the behavior of plaintiffs' counsel, Douglas J. Nill, for which he was sanctioned multiple times. Judge Lungstrum remarked that Mr. Nill's conduct “displayed a willful refusal to abide by the Court's orders, based on (at best) a reckless disregard of the law concerning jurisdiction.” Mem. & Order at 17, *Kellogg v. Watts Guerra LLP*, No. 18-2408 (D. Kan. July 28, 2020), ECF Doc. No. 368. Mr. Nill represents plaintiffs in *Dingmann*.

² Plaintiffs in *Niekamp* also were represented by Mr. Nill. One of the *Niekamp* plaintiffs, Randall D. Hebrink, also is a plaintiff in the *Dingmann* action.

³ Although *Niekamp* had been dismissed, Judge Lungstrum concluded that the motion to enjoin *Niekamp* was not moot because defendants sought an award of fees.

Plaintiffs next contend that transfer is foreclosed by the transferee court's May 9, 2024, order declining to award attorneys' fees as a sanction for the filing of *Niekamp*. We do not agree with plaintiffs' reading of the court's ruling. Although Judge Lungstrum concluded that plaintiffs had not violated his order enjoining the filing or prosecution of actions interfering with the settlement or the allocation of attorneys' fees in the MDL, he noted that "the JPML was applying a different standard in deciding whether to transfer the case into the MDL" and "expresse[d] no opinion" as to the propriety of our decision. Regardless of whether plaintiffs' fee-forfeiture suit challenges any of the MDL court's orders or seeks to interfere with their implementation, it plainly concerns alleged misconduct by attorneys representing plaintiffs in the MDL litigation and settlement classes, and is closely intertwined with the MDL proceedings. We previously have transferred such actions in similar circumstances. See Transfer Order in *Morrison v. Blasingame Burch Garrard & Ashley, P.C.*, E.D. Tennessee, No. 17-00165, MDL No. 2187, ECF Doc. No. 2315 (J.P.M.L. Oct. 4, 2017) (transferring action alleging plaintiff's counsel in the MDL made misrepresentations to her that induced her to accept the proposed settlement of her claims); Transfer Order in *Raymark Indus. v. Peter G. Angelos, et al.*, N.D. Georgia, No. 96-00940, MDL No. 875 (J.P.M.L. Sept. 25, 1996) (transferring action challenging "attorney defendants' professional conduct" because it "can be expected to raise questions of judicial management, discovery, and supervision of attorney fees that are . . . subject to the jurisdiction and control of" the transferee court).⁴

The *Dingmann* plaintiffs further argue that Judge Lungstrum should recuse from presiding over this action because of a supposed conflict of interest arising from his unwitting participation in the defendant law firms' alleged enterprise to generate excess fees. But Judge Lungstrum on multiple occasions rejected an identical argument that he should recuse in *Kellogg*,⁵ and the Panel has long held that it "has neither the statutory authority nor the inclination to review decisions of district courts, whether they are transferor or transferee courts." *In re Holiday Magic Sec. & Antitrust Litig.*, 433 F. Supp. 1125, 1126 (J.P.M.L. 1977); cf. *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mex., on Apr. 20, 2010*, 961 F. Supp. 2d 1355, 1357 (J.P.M.L. 2013) ("The Panel does not aspire to the role of an appellate court for disaffected MDL litigants. We are neither authorized by statute nor inclined to act in such a role.").

We note that the MDL is in its final stages, and that no actions remain pending. While these circumstances typically weigh against transfer, we conclude that transfer nonetheless is appropriate here. The factual allegations in *Dingmann* are closely related to the MDL proceedings, and there can be little doubt that Judge Lungstrum is uniquely positioned to manage and resolve

⁴ See also *In re Vioxx Prods. Liab. Litig.*, No. 05-md-1657, 2011 WL 5900797, at *3 (E.D. La. Nov. 23, 2011) (denying motion for suggestion of remand; transferee court "has an undeniable interest in policing the conduct of attorneys who enrolled their clients in the settlement program" in the MDL).

⁵ See Mem. & Order at 2, *In re Syngenta AG MIR162 Corn Litig.*, C.A. No. 14-md-2591-JWL (D. Kan. Apr. 3, 2020), ECF Doc. No. 4376 (rejecting third motion for recusal, which was procedurally deficient, but nonetheless considering the "merits of plaintiffs' motion" because "[a]s it has stated before, the Court is intent on giving the parties every opportunity to argue their positions"), *aff'd*, *Kellogg v. Watts Guerra LLP*, 41 F.4th 1246, 1255 (10th Cir. 2022).

this action efficiently. If he concludes that *Dingmann* is not appropriately included in the MDL at this point, he should suggest Section 1407 remand, which will be accomplished with a minimum of delay. See Panel Rules 10.1-10.3.

IT IS THEREFORE ORDERED that the action listed on Schedule A 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



Karen K. Caldwell
Chair

Nathaniel M. Gorton
Roger T. Benitez
Madeline Cox Arleo

Matthew F. Kennelly
Dale A. Kimball

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

MDL No. 2591

SCHEDULE A

District of Minnesota

DINGMANN, ET AL. v. BASSFORD REMELE, P.A., ET AL., C.A. No. 0:24-03675