STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

In re: Syngenta Litigation

Case Type: Civil Other
Hon. Thomas M. Sipkins

This Document Relates to: ALL ACTIONS

FILE NO. 27-cv-15-3785

PLAINTIFFS' PROPOSED AGENDA
FOR SEPTEMBER 25, 2015 STATUS CONFERENCE

Plaintiffs' counsel, having met and conferred with counsel to the Syngenta Defendants, propose the following agenda for the status conference to be held on September 25, 2015 pursuant to this Court's September 15, 2015 Order. Co-Lead Counsel and Liaison Counsel (hereinafter "Plaintiffs") request the Court's consideration of three issues that remain in dispute: (1) the execution of a Case Management Order pursuant to this Court's August 5, 2015 Order; (2) the direct filing of claims per the Consolidation Order and/or joinder of claims in this Court; and (3) the terms of a Coordination Order governing harmonization between the Federal MDL ("MDL"), currently pending before Judge Lungstrum in the District of Kansas, and this Consolidated Action. To that end, attached hereto are the Plaintiffs' proposed Case Management Order [Ex. A.] and proposed Order re: Filing and Joinder of Claims before this Court [Ex. B.], as well as the current Coordination Order proposed by Defendants' counsel [Ex. C.]. Plaintiffs respectfully request the Court issue Plaintiffs' proposed orders, and request the Court's guidance regarding the scheduling of bellwether trials in order to assist the parties in effectively meeting and conferring regarding the terms of the Coordination Order.

AGENDA

Plaintiffs' agenda and proposed Orders seek to establish an efficient process for the resolution of the claims before the Court, including the potentiality of remand to counties throughout Minnesota. Plaintiffs' proposed Case Management Order is aimed at establishing a system whereby the parties are able to engage in the full discovery necessary to prepare a limited number of cases (as determined by the Court) for bellwether trials, to provide discovery to inform a class certification motion and any class trial, and to prepare trial packages for lawyers who may seek to try individual cases following individual discovery in those cases, all in an efficient and timely fashion. Plaintiffs' proposed Case Management Order is drafted to avoid the unnecessary delays that would undoubtedly result from engaging in full discovery on approximately 30,000 individual plaintiffs that are already on file, or are soon to be filed, in this litigation, the overwhelming majority of whom will not be chosen for bellwether trials.

Similarly, Plaintiffs' proposed Order regarding joinder seeks to establish a streamlined system to ensure that all plaintiffs who seek to file individual claims in this litigation are able to do so without overwhelming an already taxed judicial system. Each of the plaintiffs in this litigation is asserting claims arising from the same conduct of the Syngenta defendants, involving the same sets of facts and questions of law, and that resulted in similar damages. In most cases, plaintiffs have filed identical Complaints. For these reasons, Plaintiffs request that the Court issue an Order permitting the continued filing of Complaints on behalf of multiple similarly-situated plaintiffs as permitted by Minn. R. Civ. P. 20.01 and as requested by court clerks throughout the state.

These issues, along with the terms of a Coordination Order, are of the utmost importance in ensuring the efficient adjudication of the claims against Defendants. Plaintiffs' proposed

Orders provide the parties, the Court, and the judicial system as a whole with the means to timely prosecute the Plaintiffs' claims while minimizing the excessive costs and delays that often accompany mass tort litigation.

I. Plaintiffs' Proposed Case Management Order.

This Court's August 5, 2015 Order directed the parties to meet and confer and submit proposals for a Case Management Order to the Court. Plaintiffs read the Court's Order as directing the parties to meet and confer to determine how to proceed in adjudicating the claims in this Consolidated Action. Counsel for the Syngenta Defendants interpreted the Court's Order more narrowly, requiring only a discussion on the schedule and form of Syngenta's Motion to Dismiss, followed by additional rounds of negotiations after this Court's decision on that Motion. After Syngenta refused to entertain negotiations concerning scheduling matters other than as to issues related to "deadlines for master consolidated complaints" and "motions to dismiss," Plaintiffs wrote the Court on September 9, 2015 asking for a status conference, which this Court scheduled for September 25, 2015, and thereafter timely submitted[1] its proposed Case Management Order.

In its September 9, 2015 letter to the Court, Syngenta argued only that the proposed order was "highly premature." This brief is submitted by Plaintiffs to further the acknowledged goals in mass tort litigation of "[i]nvesting time in the early stages of the litigation" to issue orders that will achieve "earlier dispositions, less wasteful activity, shorter trials, and, in the long run, economies of judicial time and fewer judicial burdens." Manual for Complex Litigation, 4th Edition ("MCL"), §10.1, p. 8.

[1] Order for Status Conference, September 15, 2015 ("The parties shall submit a proposed agenda for discussion items, including items in dispute, no later than Wednesday, September 23, 2015 at 4:30 p.m.").

Plaintiffs believe there are now more than 30,000 cases that have been, or shortly will be, filed in this Consolidated Action. Plaintiffs' proposed Case Management Order is meant to facilitate the fair and efficient resolution of this complex litigation.

A. The Topics Covered by the Case Management Order.

Plaintiffs' have submitted a proposed Case Management Order meant to "prescribe a series of procedural steps with firm dates to give direction and order to the case as it progresses through pretrial proceedings to summary disposition or trial." MCL, §10.13, p. 13. Specifically, Plaintiffs' submission provides proposed deadlines and procedures concerning:

1. Bellwether Trial Selection Process;
2. Bellwether Trials;
3. Initial Disclosures;
4. Written Discovery;
5. Depositions;
6. Plaintiff-Specific Discovery;
7. Expert Designations and Discovery; and
8. Summary Judgment, Class Certification, & Motions Concerning Experts.

B. Response to Syngenta's Objection.

In its September 9 letter to this Court, Syngenta complained only that "plaintiffs' desire to set a schedule for the designation of bellwether discovery plaintiffs is highly premature." Thereafter, Plaintiffs' Co-Lead Counsel sent to Syngenta's counsel a draft of this Order, and conducted a subsequent telephone call to meet and confer concerning the deadlines contained therein. Again, Syngenta flatly refused to negotiate these deadlines, instead taking the sole

position that such an order was premature. Respectfully, Plaintiffs submit that the Manual for Complex Litigation favors the entry of such an order now:

> The judge's role is crucial in developing and monitoring an effective plan for the orderly conduct of pretrial and trial proceedings. Although elements and details of the plan will vary with the circumstances of the particular case, each plan must include an appropriate schedule for bringing the case to resolution.

MCL, §10.13, p. 13.

Accordingly, Plaintiffs request the Court address this issue and order the random selection of bellwether trial nominees to serve as Bellwether Discovery Plaintiffs. This will enable this Court to achieve the "[f]air and efficient resolution of complex litigation," while balancing "the scope of the cases and their possible impact on judicial resources . . . ." MCL, §10, p. 7; Minn. Gen. R. Prac. 113.03(c).

C. The Benefits of Plaintiffs' Proposed Case Management Process and Procedure.

Plaintiffs' proposed Case Management Order establishes a process whereby this Court will randomly select a subset of twenty-five individual cases to serve as Bellwether Discovery Plaintiffs. The discovery stay ordered by this Court on July 7, 2015 would be lifted for those twenty-five individual plaintiffs and the class representatives, and the parties would proceed to conduct full discovery in these cases in preparation for class certification and bellwether trials. All other individual cases would remain stayed under the terms of the July 7 Order.

Plaintiffs' proposed Case Management Order is derived from the Manual for Complex Litigation, complies with the policies underlying Minn. R. Gen. P. 113.03, and provides a fair and efficient process for resolution of the tens of thousands of claims currently pending before this Court. In contrast, Defendants seem to represent that they wish to conduct at least "limited discovery" on each of the more than 30,000 plaintiffs before even beginning the process for

proposing bellwether trial candidates.[2] Defendants' proposal will significantly defer any bellwether trials, delay the parties' ability to accurately ascertain the value of the pending claims, multiply the number of discovery motions which often surround fact sheet "deficiencies," and prevent efficient adjudication of this Consolidated Action.

1. Bellwether Trials are Commonly Utilized to Preserve Resources and Provide Information Needed to Negotiate a Potential Global Settlement.

Bellwether trials are meant to "produce reliable information" about all the cases filed, and thereby "be beneficial for litigants who desire to settle such claims by providing information on the value of the cases as reflected by jury verdicts." MCL, §22.315, p. 360; *In re Chevron U.S.A., Inc.*, 109 F.3d 1016, 1019-20 (5th Cir.1997). Courts routinely use bellwether trials in mass tort litigation, reasoning:

> The obvious justification for a bellwether trial is that a consolidation or a multi-district transfer has the potential of overwhelming the resources of a particular court. It is a fundamental principle of American law that every person is entitled to his or her day in court. However, if plaintiffs file hundreds or thousands of individual actions, the sheer volume of the proceeding may overwhelm a court's ability to provide *any* plaintiff with relief in a timely and efficient manner. A bellwether trial also allows a court and jury to give the major arguments of both parties due consideration without facing the daunting prospect of resolving every issue in every action.

In re: MTBE Prods. Liab. Litig., No. 04-CIV-5424, 2007 WL 1791258, at *2 (S.D.N.Y. June 15, 2007) (footnotes and internal quotations omitted).[3]

Conducting bellwether trials in an expeditious fashion is critical to allowing the parties to achieve resolution sooner rather than later. Bellwether trials allow the parties to "learn more

[2] In its September 9, 2015 letter to this Court, Syngenta's counsel argues that bellwether selection is "highly premature" because "Syngenta has not had the benefit of any discovery from plaintiffs – even preliminary discovery – in order to make an informed bellwether discovery choice."

[3] *See also In re Ampicillin Antitrust Litigation*, 88 F.R.D. 174, 178 (MDL No. 50) (D.D.C. 1980) ("[W]here there is a relatively large number of actions and plaintiffs proceeding on the same theory or claim . . . the bellwether concept seems particularly useful and appropriate.").

about . . . the significance or insignificance of certain evidence and testimony." *In re DePuy Orthopaedics Pinnacle Hip Litig.*, No. 3:11-MD-2244, 2015 WL 1071269, at *2 (N.D.Tex., Mar. 12, 2015). Courts have also recognized the importance of a ***prompt*** bellwether trial selection process, with one Court observing "the numerosity of cases within [the MDL] mandate celerity in the resolution of the bellwethers pending before me." *In re C.R. Bard, Inc. Pelvic Repair Prod. Liab. Litig.*, No. 2:10-CV-01224, 2013 WL 4508339, at *1 (S.D.W.Va., Aug. 22, 2013).

Plaintiffs' proposed Case Management Order recognizes the importance of the bellwether selection process and, as is often done, provides a procedure to expeditiously agree on the bellwether pool and the Court's random selection of Bellwether Discovery Plaintiffs. [*See* Ex. A., ¶1(a), p. 1.] *See, e.g., Greco v. N.F.L.*, No. 3:13-CV-1005, 2015 WL 4475663, at *1 (N.D.Tex., July 21, 2015) ("[T]his case will proceed according to bellwether trials, in which forty or so agreed-upon 'Discovery Plaintiffs' would have their claims tried first."); *In re: Hanford Nuclear Reservation Litig.*, 521 F.3d 1028, 1042 (9th Cir. 2007) ("The parties eventually agreed on twelve bellwether plaintiffs.").

2. Maintaining the Stay on all Parties Not Selected as Bellwether Discovery Plaintiffs or Class Representatives Preserves Resources and Prevents the Undue Delay of Bellwether Trials.

Plaintiffs also propose that discovery for all non-bellwether individual cases remain stayed.[4] Proceeding with discovery on over 30,000 nearly-identical individual cases would frustrate the purpose of a consolidated action, which is to promote "efficiency or the interests of justice." Minn. Gen. R. Prac. 113.01. Conversely, Syngenta suggests to this Court that it requires Plaintiff Fact Sheets and/or discovery from each Plaintiff before the bellwether selection process can begin. This position is misguided for at least three reasons.

[4] Discovery would not be stayed for the class case.

a. Courts Favor *Random* Selection of a Limited Number of Bellwether Discovery Cases Early, and after Discovery on Them Alone, Allowing the Parties to Argue Which are Representative Cases for Trial.

Courts in past complex litigations have randomly selected a limited number of bellwether discovery plaintiffs for whom the parties may then conduct discovery prior to the selection process designed to select an even smaller number of specific plaintiffs to serve as bellwether trial plaintiffs. This random selection of a limited group of plaintiffs allows the Court to immediately focus the resources of the parties on a random group of a limited number of plaintiffs, upon whom discovery may be conducted, in order to allow for a subsequent selection of representative bellwether trial plaintiffs. *See, e.g., In re Norplant Contraceptive Prods. Liab. Litig.*, MDL No. 1038, 1996 WL 571535, at *1 (E.D. Tex. Aug 12, 1996) ("[T]he parties will randomly select a group of twenty-five plaintiffs. After discovery, three groups of five women will be selected from this group by the parties for three bellwether trials."); *accord* MCL, § 22.81 (noting that where there are a significant number of individual cases pending against the same defendant, it is prudent to limit formal discovery to a random sample of claimants.)

b. Allowing the Parties to Select the Potential Bellwether Discovery Cases Does Not Achieve a Representative Sampling of all the Plaintiffs.

Syngenta suggests that it requires "preliminary discovery," presumably Plaintiff Fact Sheets, from all the plaintiffs before a bellwether selection process can even begin. However, in assuming the need for preliminary discovery "in order to make an informed bellwether discovery choice," Syngenta pre-supposes that it should be the parties whom select the potential bellwether cases. This is wrong. The Manual for Complex Litigation, legal commentators, and federal case law uniformly caution against permitting the parties to select bellwether cases. *See* MCL, § 22.315, p. 360 (stating "[t]o obtain the most representative cases from the available pool, a judge

should direct the parties to select test cases randomly or limit the selections to cases that the parties agree are typical of the mix of cases."); Barton, R., *Utilizing Statistics and Bellwether Trials in Mass Torts: What Do the Constitution and Federal Rules of Civil Procedure Permit?,* 8 Wm. & Mary Bill Rts. J. 199, 211 & n. 99 (Dec. 1999) (noting that "[e]ach side choosing or recommending the bellwether plaintiffs will probably result in a trial of the extremes—the strongest picked by the plaintiff and the weakest picked by the defendant—without a clear representation of the middle-of-the road claims."); *In re Chevron U.S.A.*, 109 F.3d 1016, 1019 (5th Cir. Tex. 1997) (stating that where each side selects cases it "is not a bellwether trial. It is simply a trial of fifteen (15) of the 'best' and fifteen (15) of the 'worst' cases contained in the universe of claims involved in this litigation. There is no pretense that the thirty (30) cases selected are representative of the 3,000 member group of plaintiffs.").

c. Requiring That All 30,000 Plaintiffs Provide Fact Sheets Prior to Bellwether Discovery Selection Will Unnecessarily Delay Bellwether Trials and Settlement Negotiations for No Discernable Reason.

Requiring all plaintiffs' to complete Plaintiff Fact Sheets prior to the bellwether selection process—in addition to producing a flawed pool—creates an unnecessary and undue delay without providing any benefit. This delay would defer the bellwether selection process by more than nine months, and the ultimate conclusion of this action, potentially, by years. There are at least five reasons for this.

First, Counsel have yet to discuss the form or content of a Plaintiff Fact Sheet.

Second, plaintiffs—farmers—have limited availability during the fall due to harvest.

Third, the Plaintiff Fact Sheet procedure in the federal MDL court has taken more than four months in a proceeding involving fewer than 2,000 plaintiffs. With approximately 30,000 plaintiffs here in Minnesota, such a process could not be completed before April of 2016. Given

the subsequent months needed for the parties to enter data provided in written forms by the farmers, and then to review all these Plaintiff Fact Sheets that Syngenta desires, a reasoned bellwether nomination process based on Plaintiff Fact Sheets could not meaningfully begin before July of 2016.

Fourth, if the Court accepts Syngenta's "wait until we receive discovery as to every plaintiff" argument, there is no end in sight, thereby depriving many plaintiffs of their right to a timely day in court. New plaintiffs are filing suit every day, with the number of plaintiffs growing from approximately 14,000 at the time of the July 2, 2015 census provided by Syngenta to this Court, to approximately 30,000 cases that are currently filed or due to be filed in this Court.

Fifth, with the presently-filed class actions serving to toll Minnesota's six-year statute of limitations (as well as those of other states) under the doctrine of *American Pipe & Construction Co. v. Utah*, 414 U.S. 538, 552-53 (1974)[5] the selection of bellwether discovery plaintiffs can *never* begin if the Court accepts Syngenta's argument.

These concerns are why a number of courts have criticized requiring Plaintiff Fact Sheets before beginning the bellwether selection process. *See Abrams v. CIBA Specialty Chem. Corp.*, No. 08-0068, 2008 WL 4710724, at *4 (S.D.Ala., Oct. 23, 2008) ("the Court has grave concerns that allowing full scale discovery and motions, at this stage, with regards to all 271 Plaintiffs in this case would strain resources..."); *In re Medtronic, Inc.*, No. 05-MDL-1726, 2008 U.S. Dist. LEXIS 122841 (D. Minn. June 3, 2008) (MDL 1726) (Rosenbaum, J.) (noting bellwether trial case selection occurred only "after a long, difficult selection process."). Thus, while Plaintiffs acknowledge the eventual need for Syngenta to collect basic information concerning each

[5] Holding that a state's statute of limitations is suspended for the period between the filing of a class action Complaint and the denial of a motion to certify the class.

Plaintiff prior to resolving this case in settlement, Plaintiffs urge the Court to approve its proposed Case Management Order and permit the parties to immediately focus their time, energy and resources on a small group of Plaintiffs, chosen at random, to provide the parties and the Court with the information necessary to move this litigation towards an equitable conclusion.

D. The Court Should Consider Consolidated Trials of Several Bellwether Discovery Plaintiffs at Once.

Given the universal alignment of the plaintiffs' claims in this consolidated proceeding, the Court should consider trying bellwether cases with multiple plaintiffs at once. Courts have routinely endorsed this process, with one federal court noting that:

> [f]or the bellwether trial concept to be an effective gauge for evaluation of other cases, it would appear that the more bellwether trials conducted, the more reliable the gauge. Since a court has limited time and resources to try large numbers of bellwether trials, it would appear that consolidation of multiple cases for trial in the MDL setting would provide the parties with an opportunity to obtain results for multiple claims without burdening the court or the parties with the substantial cost of multiple separate trials.

In re Mentor Corp Obtape Transobturator Sling, No. 4:08MD-2004, 2010 WL 797273, at *3 (N.D.Ga., Mar. 3, 2010).[6]

Consolidation of trials is particularly appropriate where cases have been referred to Multi District Litigation or ordered for consolidation pursuant to Minn. Gen. R. Prac. 113 because those cases have been deemed to involve common questions of law and fact. Justice Gildea's Order consolidating these actions before this Court recognizes this by noting that these cases "involve one or more common questions of fact." Because the claims asserted in this litigation

[6] *See also Ball v. Bayard Pump & Tank Co., Inc.*, 609 Pa. 98, 98, 15 A.3d 65, 65 (2011) (consolidating 41 plaintiffs before a single jury); *In re Methyl Tertiary Butyl Ether ("MTBE") Prods. Liab. Litig.*, MDL No. 1358, 2008 WL 3163634 (S.D.N.Y. Aug. 6, 2008) ("eighteen of plaintiffs' numerous contaminated wells were selected for a 'bellwether trial'"); *Bayshore Ford & Truck v. Ford Motor Co.*, Civ. No. 99-741, 2010 WL 415329, at *13 (D.N.J. Jan. 29, 2010) (consolidating 16 plaintiffs in one trial).

rely on the same core allegations and facts, the Court should permit bellwether trials involving multiple plaintiffs before a single jury. To do so will conserve the resources of the Court, the parties, and the litigants.

E. Case Management Scheduling.

Another outstanding issue required to finalize Plaintiffs' proposed Case Management Order relates to scheduling. At this point, the parties would greatly benefit from the Court's guidance as to when it intends to schedule bellwether trials. As this Court is well aware, the parties can meet and confer regarding a proposed Case Management Order and the timing of bellwether trials, but this Court is solely authorized to set the timetable for such trials. Accordingly, while Plaintiffs have no objection to meeting and conferring with Defendants on scheduling issues, the meet and confer process would be more meaningful and efficient if the parties had the benefit of the Court's guidance on targeted trial dates. With that knowledge, the parties may work backwards from the Court's trial dates to establish a final process that permits the parties the time necessary to vigorously prepare these cases for trial. For this reason, Plaintiffs have left the targeted date for bellwether trials blank on their proposed Case Management Order and wholly defer to the Court on this issue.

II. Plaintiffs' Proposed Order Regarding Filing and Joinder of Claims before This Court.

As the Court is well aware, from December 2014 to the present approximately 30,000 individual producers and non-producers have initiated suits against the Syngenta Defendants in Minnesota state court. Each of these plaintiffs is seeking to recover damages incurred as a result of the Defendants' premature release of their Viptera and Duracade products. From December 2014 through March 2015, the various plaintiffs' counsel initiated these claims using single-plaintiff Complaints in counties throughout Minnesota. But Beginning in March 2015, many

plaintiffs' counsel began to file Complaints in the various Minnesota County Courts asserting claims on behalf of multiple plaintiffs in a single pleading. This practice of filing multiple farmers from the same county in a single complaint largely began after speaking with the clerks of various district courts, especially in rural Minnesota counties, who stated that their filing systems were overwhelmed by the large number of individual filings. In response, many plaintiffs' counsel began filing Complaints listing up to 99 plaintiffs, organized by county or state of residence[7], to minimize the overall number of filings, decrease costs, and reduce the strain on the already overtaxed judicial system.

Plaintiffs have proposed an Order Regarding Filing and Joinder of Claims [*See* Ex. B] in order to confirm that the practice of filing multiple-plaintiff Complaints complies with Minn. R. Civ. P. 20.01. This Order will serve a number of practical purposes. Perhaps most importantly, it will foster resolution of this dispute and avoid significant delays by incentivizing attorneys to bring forth their suits against Syngenta, rather than holding them until Minnesota's six-year statute of limitations, and the *American Pipe* tolling of the same, expire. In order to resolve this dispute, the parties need data to analyze their respective positions, which can only be gained when all cases are filed. In addition, the Order will preserve judicial resources and prevent court administration from being overwhelmed by the sheer volume of pleadings that would result from individual-plaintiff Complaints. Therefore, this Court should adopt the proposed Order for three reasons: (1) multiple-plaintiff Complaints comply with Rule 20.01; (2) they promote judicial efficiency; and (3) they will foster efficient and timely resolution of this dispute.

A. Multi-Plaintiff Complaints Like Those Brought Here are Authorized by Minn. R. Civ. P. 20.01 and Fed. R. Civ. P. 20.

[7] Minnesota residents are organized by county of residence, while out-of-state plaintiffs are organized by the state in which they reside.

The practice of utilizing multiple-plaintiff Complaints is authorized by the Minnesota Rules of Civil Procedure. *See* Minn. R. Civ. P. 20.01 ("[a]ll persons may join in one action as plaintiffs if they assert any right to relief, jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of fact or law common to all these persons will arise in the action."). Minnesota district courts have broad discretion to allow joinder. *Benson-Moosbrugger v. Day*, C3-02-34, 2002 WL 1547222, at *5 (Minn. Ct. App. July 16, 2002).

While Minnesota's Rules of Civil Procedure have permitted joinder since their original adoption in 1951, Minnesota's common law permitted joinder even before then. In 1940, the Minnesota Supreme Court held in *Schau v. Buss*:

> Whether the source of power for the exercise of discretion by the trial court in adding additional parties to pending litigation is statutory or inherent, the problem of joinder should be resolved by a consideration of the public and judicial interest in the administration of justice, through economy of litigation but without prejudice to the parties, to the end that the determination of the principal claims of the parties to the action shall be full and complete.

295 N.W. 910, 910 (1940). The Supreme Court observed in that case that "the rule as to allowable joinder should be broad and flexible." *Id*. at 912.

Minnesota Courts have consistently allowed multiple-plaintiff Complaints in cases arising from the same transaction of occurrence and involving common questions of law and fact. *Bisbee v. City of Fairmont*, 593 N.W.2d 714, 716-17 (Minn. Ct. App. 1999) (allowing multiple-plaintiff Complaints because the issues of fact and law were common to all plaintiffs); *Benson-Moosbrugger v. Day*, 2002 WL 1547222 at *5-6 (allowing multiple-plaintiff Complaints because the claims arose from the same series of transactions and raised the same questions of law); *Odunlade v. City of Minneapolis*, 823 N.W.2d 638, 651-52 (Minn. 2012) (allowing joinder under Rule 20.01 as one way of managing complex actions).

Multiple-plaintiff Complaints have also long been permitted by federal courts under an identical Rule 20. *See United Mine Workers of America v. Gibbs*, 383 U.S. 715, 724 (1966) ("Under the Rules, the impulse is toward entertaining the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged."); *Deposit Guaranty Nat' Bank, Jackson, Miss. v. Roper*, 445 U.S. 326, 339 (1980) ("Requiring multiple plaintiffs to bring separate actions . . . would invite waste of judicial resources by stimulating successive suits brought by others claiming aggrievement."); *Sprint Communications v. APCC Servs, Inc.*, 554 U.S. 269, 291 (2008) ("class actions constitute but one of several methods for bringing about aggregation of claims, *i.e.*, they are but one of several methods by which multiple similarly situated parties get similar claims resolved at one time and in one federal forum. See Rule 20(a) (permitting joinder of multiple plaintiffs)."); *Mosley v. General Motors Corp.*, 497 F.2d 1330, 1334 (8th Cir. 1974) (allowing joinder under Rule 20).

The use of multiple-plaintiff Complaints is particularly appropriate in mass torts involving a single product and a single defendant. And while there appears to be a split in authority in pharmaceutical cases as to whether the presence of different learned intermediaries and prescribing doctors flunks the "same . . . series of transactions or occurrences" test, no such concern exists about third parties here. Moreover, the Eighth Circuit falls on the side of allowing joider even under the circumstances presented in the pharmaceutical cases. *In re Prempro Prod. Liab. Litig.*, 591 F.3d 613, 622 (8th Cir. 2010) ("all 'logically related' events entitling a person to institute a legal action against another generally are regarded as comprising a transaction or occurrence"), *cert denied*, 562 U.S. 963 (2010); *See also Mosley*, 497 F.2d at 1333 (citations omitted); 7 Charles A. Wright et al., *Federal Practice and Procedure*, § 1653, at 415 (3d ed. 2001) (explaining that the transaction/ occurrence requirement prescribed by Rule 20(a) is not a

rigid test and is meant to be "read as broadly as possible whenever doing so is likely to promote judicial economy.").

The use of multiple-plaintiff Complaints should be allowed in this case because plaintiffs assert a right to relief arising out of the same series of transactions or occurrences. As this Court is aware, all of the plaintiffs in this litigation allege that they suffered loss as a result of Syngenta's premature release of Viptera and Duracade. Therefore, the occurrence and series of transactions giving rise to all claims is Syngenta's conduct in developing and commercializing these products before they were approved for import into China.

The plaintiffs similarly share common questions of law. For instance, each plaintiff raises the legal question of whether the Syngenta defendants were negligent in prematurely commercializing its products without obtaining import authority from China. In fact, a significant majority of plaintiffs have filed identical Complaints alleging identical causes of action. Rule 20.01's standard is clearly met under such circumstances.

B. Multiple-Plaintiff Complaints Will Promote Judicial Efficiency.

Multiple-plaintiff Complaints promote judicial efficiency by reducing the number of filings that have to be handled by administrative staff. Here, the use of individual Complaints for each plaintiff would overwhelm administrative staff based on the sheer number of plaintiffs seeking relief. *See Madison v. Hennepin Cnty.*, No. 02-4756, 2003 WL 21639176, at *1–2 (D. Minn. July 1, 2003) (Doty J.) ("At this early stage of the proceedings, the court agrees that joinder will promote judicial efficiency.").

Moreover, the practical benefits of multiple-plaintiff Complaints are significant for the litigants. The costs associated with filing over 30,000 individual Complaints are substantial and would result in increased litigation costs for both the Plaintiffs and Defendants because the

Syngenta Defendants would be required to file individual answers to all Complaints at a substantial cost. Accordingly, permitting the continued use of multiple-plaintiff Complaints preserves the resources of the litigants on both sides, in addition to decreasing the strain on the judicial system.

C. The Use of Multiple-Plaintiff Complaints Will Promote Efficient Resolution of All Claims Against Syngenta.

The use of multiple-plaintiff Complaints will create a corollary benefit that also substantially affects judicial efficiency – it will induce lawyers to promptly file their unfiled cases. This Court has the unbridled discretion to achieve this result by choosing now to announce its intention later to sever any multi-plaintiff Complaints filed after a certain point in time. *See Schoening v. U.S. Aviation Underwriters, Inc.*, 120 N.W.2d 859, 866 (Minn. 1963) ("[c]learly, the district court is vested with wide discretion relative to joinder of parties, as well as to separate trials, and may drop or add parties of its own initiative at any stage of the action on such terms as are just.") (*citing* Minn. R. Civ. P. 21). Incentivizing all litigants to quickly file their cases will provide Syngenta with valuable information it does not now have – which farmers intend to file suit against it. This will facilitate a more expeditious consideration of whether and how to settle the claims, and indeed, how to settle the entire litigation.

With the presently-filed class actions serving to toll Minnesota's six-year statute of limitations (as well as those of other states) under the doctrine of *American Pipe & Construction Co. v. Utah*, Syngenta will not otherwise receive information necessary to settle this case for many years. 414 U.S. 538, 552-53 (1974) (holding that a state's statute of limitations is suspended for the period between the filing of a class action Complaint and the denial of a motion to certify the class). Thus, Plaintiffs' proposed order benefits the litigants on both sides by preventing the needless expenditure of their resources, spares the judicial system and its staff

the mindless, rote repetition of data processing of tens of thousands of plaintiffs' cases, when the task could be achieved by that staff tracking merely hundreds of multiple-plaintiff Complaints, and achieves judicial efficiencies for everyone involved by informing Syngenta earlier rather than later who intends to file suit against it in this massive consolidated litigation proceeding.

For these reasons, Plaintiffs respectfully request the Court issue an Order permitting the continued use of multiple-plaintiff Complaints pursuant to Minn. R. Civ. P. 20.01 until June 1, 2016.

III. Defendants' Proposed Coordination Order.

State-federal court coordination orders are appropriate. *In re: Baycol Products Liability*, No. MDL 1431, 2002 WL 32155266, at *1 (D. Minn., June 14, 2002) (Davis, J.). Defendants have provided MDL leadership and Plaintiffs with a Proposed Coordination Order designed to govern the coordination between the MDL and this Consolidated Action. [*See* Ex. C.] And while Plaintiffs are committed to ensuring coordination between the two actions and are happy to meet and confer regarding the terms a Joint Coordination Order, as with the timing of any trials, this Court's guidance is necessary to ensure effective discussions between counsel. In particular, Plaintiffs believe that guidance from this Court as to its intended coordination with the MDL regarding trial dates and other common issues would greatly benefit the parties in establishing a joint and workable coordination proposal. Any attempt to meet and confer without this information is speculative and premature.

Respectfully submitted,

BASSFORD REMELE
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Dated: September 23, 2015

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EXHIBIT A

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

In re: Syngenta Litigation Court File No: 27-CV-153785
Court File Type: Civil

This Document Relates to: **ALL ACTIONS**

CASE MANAGEMENT ORDER

The Court orders that the deadlines in the following Case Management Order shall govern this case, until further order of this Court:

1. Bellwether Trial Selection Process

(a) On or before December 8, 2015, the Court will randomly select twenty-five (25) individual Bellwether Discovery Plaintiffs. These individual Bellwether Discovery Plaintiffs will all be Minnesota residents who previously filed suit in Minnesota state courts.

2. Discovery

(a) With respect to the twenty-five (25) Bellwether Discovery Plaintiffs, the stay of discovery ordered by this Court in Paragraph 17 of this Court's Order of July 7, 2015 shall be lifted.

(b) With respect to the Named Plaintiffs in the Consolidated Amended Class Action, the stay of discovery ordered by this Court in Paragraph 17 of this Court's Order of July 7, 2015 shall be lifted.

(c) As to all other Plaintiffs having filed suit herein, or to file suit herein, the stay of discovery ordered by this Court in Paragraph 17 of this

Court's Order of July 7, 2015 shall be maintained, pending further order of this Court.

3. Initial Disclosures. No later than November 1, 2015, the Parties shall serve Rule 26 disclosures.

4. Production of MDL Documents. No later than October 2, 2015, the Syngenta Defendants shall produce to the Plaintiffs all documents previously produced in the federal MDL proceeding using the same bates-stamp ordering, or other designation.

5. Written Discovery Limits.

(a) Interrogatories: 50 per side

(b) Document Requests: 100 per side

(c) Requests for Admission: 100 per side

6. Deposition Limits.

(a) Depositions: 50 per side

(b) Witnesses Who Are or Were Employees of the Syngenta Defendants. The employee witness deposition period concerning the Syngenta Defendants and MIR 162 shall commence no earlier than October 19, 2015 (the date of the next status conference of MDL Judge, John W. Lungstrum) and conclude by July 29, 2016.

(c) Depositions of Third-Parties Involving Core Discovery. Depositions of third-parties involving core discovery issues shall commence no earlier than October 19, 2015 and conclude by July 29, 2016.

(d) Deposition Protocol. The Parties shall meet and confer and submit a Deposition Protocol to govern Depositions in this litigation.

7. Plaintiff-Specific Discovery

(a) Pursuant to the procedures set forth in Paragraphs 1(a) herein, the Court will designate twenty-five (25) Bellwether Discovery Plaintiffs.

(b) Between February 1, 2016 and May 2, 2016, bellwether discovery shall take place. On May 2, 2016, each side shall propose from the twenty-five (25) Bellwether Discovery Cases, four particular cases that should be selected as trial or bellwether case. These proposals shall be simultaneously filed by each side on May 2, 2016.

(c) Should the two sides both propose the same case or cases to serve as a trial case, such case or cases will serve as the first cases to be tried. Should the two sides propose different trial cases, by May 16, 2016, the Court will select four bellwether cases to serve as the first four bellwether trial cases, and designate the order of such bellwether trials.

8. Expert Discovery and Designations for the Bellwether Cases.

(a) On or before June 13, 2016, Plaintiffs shall designate, pursuant to MINN. R. CIV. P. 26.01(b), their expert witnesses for each of the first four bellwether trial cases.

(b) On or before July 15, 2016, Defendants shall designate their expert witnesses pursuant to the Minnesota rules.

(c) On or before July 29, 2016, Plaintiffs shall designate any rebuttal

expert witnesses, pursuant to the Minnesota rules.

(d) Each expert designation shall include at least two available dates when each expert is being tendered for deposition. Plaintiffs shall tender their experts for deposition between July 29 - August 12, 2016. Defendants shall tender their experts for deposition between August 15 – August 26, 2016. Plaintiffs shall tender their rebuttal experts between August 29 – September 2, 2016.

(e) Even though not otherwise applicable under Minnesota rules, the parties expressly agree to the limitations on expert discovery set forth in Rule 26 of the Federal Rules of Civil Procedure, including the provision of Rule 26(b)(4)(A)-(D) limiting discovery with respect to draft reports, communications with experts, and depositions of consulting experts.

9. Expert Discovery and Designations for the Class Case.

(a) On or before April 11, 2016, Plaintiffs shall designate, pursuant to MINN. R. CIV. P. 26.01(b), their expert witnesses.

(b) On or before May 9, 2016, Defendants shall designate their expert witnesses pursuant to the Minnesota rules.

(c) On or before May 23, 2016, Plaintiffs shall designate any rebuttal expert witnesses, pursuant to the Minnesota rules.

(d) Each expert designation shall include at least two available dates when each expert is being tendered for deposition. Plaintiffs shall tender their experts for deposition between May 23, 2016 – June 3, 2016. Defendants shall

tender their experts for deposition between June 6-10, 2016. Plaintiffs shall tender their rebuttal experts between June 13-17, 2016.

(e) Even though not otherwise applicable under Minnesota rules, the parties expressly agree to the limitations on expert discovery set forth in Rule 26 of the Federal Rules of Civil Procedure, including the provision of Rule 26(b)(4)(A)-(D) limiting discovery with respect to draft reports, communications with experts, and depositions of consulting experts.

10. Motion for Class Certification.

(a) Class Plaintiffs shall file their motion for Class Certification by June 20, 2016.

(b) Responses to the Class Certification Motion shall be filed on or before July 18, 2016.

(c) Replies to the Class Certification Motion shall be filed on or before August 1, 2016.

11. Dispositive Motions for Individual Bellwether Cases.

(a) Plaintiffs and Defendants shall file any summary judgment motions or motions for partial summary judgment by September 9, 2016.

(b) All motions concerning the admissibility of expert testimony shall be filed on the same day.

(c) Responses to Summary Judgment Motions and *Daubert* motions shall be filed on or before September 16, 2016.

(d) Replies to Responses to Summary Judgment Motions and *Daubert*

motions shall be filed seven (7) days later, on September 23, 2016.

12. Bellwether Trials

(a) The four initial Minnesota bellwether trials shall be scheduled to occur approximately six (6) weeks apart during a five-month-long bellwether trial period.

(b) The schedule for bellwether trials is as follows:

1. Minnesota Bellwether Trial (Minn. BW Trial) #1

_____ __, 201_

2. Minn. BW Trial #2 –

_____ __, 201_ (6 weeks later)

3. Minnesota Bellwether #3 –

_____ __, 201_ (6 weeks later)

4. Minnesota Bellwether #4 –

_____ __, 201_ (6 weeks later)

IT IS SO ORDERED

Dated: September __, 2015

_____
JUDGE THOMAS M. SIPKINS

EXHIBIT B

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

In re: Syngenta Litigation Court File No. 27-CV-153785
Court File Type: Civil

This Document Relates to: **ALL ACTIONS**

Order re: Filing and Joinder of Claims in this Court

It is hereby ORDERED that the following schedule shall apply to filing of claims in this Court:

Numerous claims have been filed in Minnesota courts, wherein multiple plaintiffs have filed their claims against the Defendants in a single complaint. The Court has been informed that this practice of joinder began upon request from certain clerks in this state who were being overwhelmed by the sheer quantity of suits against Defendants being filed in their courts. The Court has also been informed by Plaintiffs' Liaison Counsel, Robert Shelquist, that after the formation of this Coordination Action, and after this Court's order that all such claims be transferred to Hennepin County, that he, as Plaintiffs' Liaison Counsel, together with representatives of various Plaintiffs' attorneys, has met and coordinated with the Hennepin County Clerk's office to facilitate efficiencies in this way concerning the filing of large numbers of complaints here. As such, in order to achieve judicial efficiency, the Court orders:

1. If suit has been, or is, filed on or before November 19, 2015, and a Notice to Conform to the Master Complaints to be filed by the PEC on or before October 2, 2015 is served on the Defendants by that date for each farming entity filing the same, one suit may be filed in this court joining up to 100 Plaintiffs in one complaint. Further, the use of joinder will require the payment of only one filing fee.

2. If suit is filed between November 20, 2015 and June 1, 2016, such a suit may be filed in this Court joining up to 100 farming entities in one complaint, and only a single filing fee shall be paid, provided that a Notice to Conform is filed for each Plaintiff, and that each Plaintiff proves that they retained their attorney between November 20, 2015 and June 1, 2016.

3. If suit is filed after June 1, 2016, each farming entity must file its own individual complaint, and pay a single filing fee.

IT IS SO ORDERED.

Dated this ___ day of September, 2015 at Minneapolis, Minnesota.

_____

JUDGE THOMAS M. SIPKINS

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EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR 162 CORN LITIGATION

Master File No. 2:14-MD-02591-JWL-JPO
MDL No. 2591

THIS DOCUMENT RELATES TO:
ALL CASES

[PROPOSED] JOINT COORDINATION ORDER

WHEREAS, a federal proceeding captioned *In re Syngenta AG MIR 162 Corn Litigation*, MDL Docket No. 2591 (the "MDL Proceeding"), is pending before the Hon. John W. Lungstrum in the United States District Court for the District of Kansas (the "MDL Court");

WHEREAS, state court actions concerning the same subject matter as the MDL Proceeding are pending along with additional actions that may be filed in the future (the "State-Court Actions");

WHEREAS, the MDL Proceeding and the State-Court Actions involve many of the same factual allegations and circumstances and many of the same parties, and discovery will substantially overlap;

WHEREAS, coordination of pretrial proceedings in the MDL Proceeding and the State-Court Actions will likely prevent duplication of discovery and undue burden on parties and non-parties in responding to discovery requests, save substantial expense by the parties and non-parties and produce substantial savings in judicial resources;

WHEREAS, each Court adopting this Order (collectively, the "Courts") finds that coordination of discovery and pretrial scheduling in the MDL Proceeding and the State-Court Actions will further the just and efficient disposition of each proceeding and therefore have concluded that the circumstances presented by these proceedings warrant the adoption of certain procedures to manage these litigations;

WHEREAS, the Courts and the parties anticipate that other courts in which State-Court Actions are now pending may join this Joint Coordination Order (this "Order");

WHEREAS, a State-Court Action in which this Order has been entered by the Court in which the action is pending is referred to herein as a "Coordinated Action"; and

WHEREAS, each Court entering this Order is mindful of the jurisdiction of each of the other courts in which other Coordinated Actions are pending and does not wish to interfere with the jurisdiction or discretion of those other courts.

NOW, THEREFORE, IT IS ORDERED that the parties are to work together to coordinate discovery to the maximum extent feasible in order to prevent duplication of effort and to promote the efficient and speedy resolution of the MDL Proceeding and the Coordinated Actions and, to that end, the following procedures for discovery and pretrial proceedings shall be adopted:

A. Discovery and Pre-Trial Scheduling

1. All discovery and pretrial scheduling in the Coordinated Actions will be coordinated to the fullest extent possible with the discovery and pretrial scheduling in the MDL Proceeding. The MDL Proceeding shall be used as the lead case for discovery and pretrial scheduling in the Coordinated Actions.

2. Plaintiffs in the Coordinated Actions and their counsel shall be entitled to participate in discovery in the MDL Proceeding as set forth in this Order and in accordance with the terms of the Stipulated Protective Order entered in the MDL Proceeding, a copy of which is attached hereto as Exhibit A (the "MDL Protective Order"). Each Court that adopts this Joint Coordination Order thereby also adopts the MDL Protective Order which, except as amended by separate order of the adopting court, shall govern the use and dissemination of all documents and information produced in coordinated discovery conducted in accordance with the terms of this

Order. Discovery in the MDL Proceeding will be conducted in accordance with the Federal Rules of Civil Procedure and the Local Rules and Orders of the MDL Court, including the MDL Protective Order, all as interpreted by the MDL Court. Parties in the MDL Proceeding and their counsel may also participate in discovery in any Coordinated Action as set forth in this Order.

3. The parties in a Coordinated Action may take discovery (whether directed to the merits or class certification) in the state court only upon leave of the Court in which the Coordinated Action is pending. Such leave shall be obtained on noticed motion for good cause shown, including why the discovery sought could not have been obtained in coordinated discovery in the MDL Proceeding.

B. Use of Discovery Obtained in the MDL Proceeding

4. Counsel representing the plaintiff or plaintiffs in a Coordinated Action will be entitled to receive all discovery taken in the MDL Proceeding, provided that this Order has been entered by the Court presiding over that Coordinated Action. Any such discovery responses and documents shall be used and disseminated only in accordance with the terms of the MDL Protective Order or a substantially-similar protective order entered in the Coordinated Action. Similarly, counsel representing a party in the MDL Proceeding shall be entitled to receive all discovery taken in any Coordinated Action provided that this Order has been entered by the Court presiding over that Coordinated Action; any such discovery responses and documents shall be used and disseminated only in accordance with the terms of the MDL Protective Order or a substantially-similar protective order entered in the Coordinated Action.

5. Requests for documents, interrogatories, depositions on written questions and requests for admission propounded in the MDL Proceeding will be deemed to have been propounded and served in the Coordinated Actions. The parties' responses to such requests for documents, interrogatories, depositions on written questions and requests for admission will be

deemed to be made in the Coordinated Actions and may be used in those actions, subject to and in accordance with the terms of the MDL Protective Order, as if they had been taken under the applicable civil discovery rules of the respective jurisdictions.

6. Depositions taken in the MDL Proceeding may be used in the Coordinated Actions, subject to and in accordance with the terms of the MDL Protective Order, as if they had been taken under the applicable civil discovery rules of the respective jurisdictions.

C. Service and Coordination Among Counsel

7. The MDL Court has previously appointed Liaison Counsel for all parties in the MDL Proceeding (the "MDL Liaison Counsel"). Defendants' Liaison Counsel shall file with the MDL Court and serve upon all MDL Liaison Counsel copies of all Coordination Orders, Confidentiality or Protective Orders, and Orders designating plaintiffs' liaison counsel that are entered in the Coordinated Actions. Each MDL Liaison Counsel shall maintain and make available to counsel in their liaison group and to other MDL Liaison Counsel an up-to-date service list for the Coordinated Actions.

8. Any Court wishing to grant the parties before it access to coordinated discovery may do so by joining this Order and appointing one State Court Plaintiffs' Liaison Counsel to facilitate coordination of discovery in the Coordinated Action and discovery in the MDL Proceeding. Defendants' Liaison Counsel shall promptly serve upon State Court Plaintiffs' Liaison Counsel in each Coordinated Action all discovery requests (including requests for documents, interrogatories, depositions on written questions, requests for admission and subpoenas duces tecum), responses and objections to discovery requests; deposition notices; correspondence or other papers modifying discovery requests or schedules; and discovery motions (*i.e.*, motions under Rules 26 through 37 or Rule 45 of the Federal Rules of Civil Procedure) or requests for hearing on discovery disputes regarding coordinated discovery matters

that are served upon the parties in the MDL Proceeding. State Court Plaintiffs' Liaison Counsel in the Coordinated Actions shall be responsible for distributing such documents to other counsel for plaintiffs in their respective actions.

9. Defendants' Liaison Counsel shall maintain a log of all Orders entered in the MDL Proceeding and all discovery requests and responses sent and received in the MDL Proceeding and shall transmit a copy of said log electronically to State Court Plaintiffs' Liaison Counsel in each Coordinated Action by the first business day of each month, unless otherwise agreed. Defendants' Liaison Counsel will promptly transmit a copy of each order entered in the MDL Proceeding to State Court Plaintiffs' Liaison Counsel in the Coordinated Actions.

D. Participation in Depositions in the MDL Proceeding

10. Each deposition taken in the MDL Proceeding: (i) will be conducted on reasonable written notice, to be served on State Court Plaintiffs' Liaison Counsel in each Coordinated Action in accordance with the provisions of paragraph [xx] above; and (ii) shall be subject to a reasonable time limit and such other rules as to timing as are imposed by Rule or Order of the MDL Court.

11. For depositions noticed by any plaintiff, at least one Lead Counsel for the MDL Plaintiffs, or their designee, shall confer with State Court Plaintiffs' Liaison Counsel in the Coordinated Actions, or their designees, in advance of each deposition taken in the MDL Proceeding, taking such steps as may be necessary to avoid multiple interrogators and duplicative questions, and to avoid additional depositions in the Coordinated Actions.

12. Counsel representing the plaintiff or plaintiffs in a Coordinated Action shall be permitted to attend any deposition scheduled in the MDL Proceeding. In addition to MDL Plaintiffs' Lead Counsel, one State Court Plaintiffs' Counsel from each Coordinated Action shall be permitted a reasonable amount of time to question the deponent and shall be

permitted to make objections during examination by other counsel in accordance with the Federal Rules of Civil Procedure, the Local Rules of the MDL Court and the Orders of the MDL Court entered in the MDL Proceeding, and in accordance with the terms and procedures set forth in subparts (a) through (c) below providing that:

a. the Court in which the Coordinated Action is pending has adopted the MDL Protective Order or has entered a Protective Order substantially similar to the MDL Protective Order;

b. any questions asked by a counsel for plaintiffs shall be nonduplicative of questions previously asked in the deposition;

c. the deposition is completed within the time limits prescribed by the Federal Rules of Civil Procedure, the Local Rules of the MDL Court and the Orders of the MDL Court; and

d. participation of plaintiffs' counsel from multiple actions shall be arranged so as not to delay discovery or other proceedings as scheduled in the MDL Proceeding or the Coordinated Actions.

13. Counsel representing any party to any Coordinated Action may obtain directly from the court reporter at its own expense a transcript of any deposition taken in the MDL Proceeding or in any other Coordinated Action. The transcript of any deposition taken in the MDL Proceeding shall not be used or disseminated except in accordance with the terms of this Order and the MDL Protective Order.

14. Depositions in addition to those taken in the MDL Proceeding (whether directed to the merits or class certification) may be taken in a Coordinated Action only upon leave of the state court in which the Coordinated Action is pending, obtained on noticed motion

for good cause shown, including why the discovery sought could not have been obtained in coordinated discovery in the MDL Proceeding. The transcript of any such deposition shall not be used or disseminated except in accordance with the terms of the MDL Protective Order.

15. If depositions in addition to those taken in the MDL Proceeding are permitted in a Coordinated Action, the noticing party shall provide reasonable written notice to all MDL Liaison Counsel and all State Court Liaison Counsel in the other Coordinated Actions. Counsel representing parties in the MDL Proceeding and counsel representing plaintiffs in each other Coordinated Action shall be entitled to attend the deposition of any witness whose deposition is taken in a Coordinated Action. One counsel designated by each State Court Plaintiffs' Counsel in the Coordinated Action and each MDL Liaison Counsel shall each be permitted a reasonable amount of time to ask nonduplicative questions and shall be permitted to make objections during examination by other counsel.

16. If the MDL Plaintiffs, through their respective Liaison Counsel, have been provided with reasonable notice of and opportunity to participate in a deposition taken in any Coordinated Action, no MDL Plaintiff shall be permitted to re-depose that deponent without first obtaining an Order of the MDL Court upon a showing of good cause therefor.

17. Any party or witness receiving notice of a deposition which it contends is not permitted by the terms of this Order shall have 14 days from receipt of the notice within which to serve the noticing party with a written objection to the deposition. In the event of such an objection, the deposition shall not go forward until the noticing party applies for and receives an order from the MDL Court granting leave to take the deposition.

E. Participation in Written Discovery in the MDL Proceeding

18. At least one Lead Counsel for the MDL Plaintiffs, or their designee, shall confer with State Court Plaintiffs' Liaison Counsel in the Coordinated Actions, or their

designees, in advance of the service of requests for written discovery in the MDL Proceeding, taking such steps as may be necessary to avoid additional interrogatories, depositions on written questions, requests for admission and requests for documents in the Coordinated Actions.

19. State Court Plaintiffs' Liaison Counsel in any Coordinated Action may submit requests for documents, interrogatories, depositions on written questions and requests for admission to MDL Plaintiffs' Liaison Counsel for inclusion in the requests for documents, interrogatories, depositions on written questions and requests for admission to be propounded in the MDL Proceeding. Such requests shall be included in the requests propounded in the MDL Proceeding, provided that:

a. the requests for documents, interrogatories, depositions on written questions and/or requests for admission are submitted to MDL Plaintiffs' Liaison Counsel within 14 days after MDL Plaintiffs' Liaison Counsel have notified State Court Plaintiffs' Liaison Counsel in the Coordinated Actions of MDL Plaintiffs' intent to serve such discovery; and

b. the requests are nonduplicative of requests proposed by MDL Plaintiffs' Lead Counsel.

The number of interrogatories permitted in the MDL Proceeding will be subject to such limitations as are imposed by Rule or Order of the MDL Court.

20. Requests for documents, interrogatories, depositions on written questions and requests for admission in addition to those served in the MDL Proceeding (whether directed to the merits or class certification) may be propounded in a Coordinated Action only upon leave of the state court in which the Coordinated Action is pending, obtained on noticed motion for good cause shown, including why the discovery sought could not have been obtained in coordinated discovery in the MDL Proceeding. A motion for leave to serve additional document

requests, interrogatories, depositions on written questions and/or requests for admission which were proposed by State Court Plaintiffs' Liaison Counsel in a Coordinated Action in accordance with paragraph [xx] and which were not included in the discovery requests served by MDL Plaintiffs' Counsel in the MDL Proceeding shall be filed in the state court on notice within 21 days of service of the MDL Plaintiffs' discovery request from which those requests for documents, interrogatories, depositions on written questions and/or requests for admission were omitted.

21. All parties to the MDL Proceeding, through their respective Liaison Counsel, shall be entitled to receive copies of responses to interrogatories, responses to depositions on written questions, responses to requests for admission and documents produced in any Coordinated Action. Any party or counsel otherwise entitled under this Order to receive copies of discovery from other parties or counsel shall reimburse the producing party for actual out-of pocket costs incurred in connection with the copying and shipping of such discovery (including but not limited to document productions) and shall use such materials only in accordance with the terms of the MDL Protective Order.

F. Discovery Dispute Resolution

21. In the event that the parties are not able to resolve any disputes that may arise in the coordinated pretrial discovery conducted in the MDL Proceeding, including disputes as to the interpretation of the MDL Protective Order, such disputes will be presented to the MDL Court. Resolution of such disputes shall be pursuant to the applicable federal or state law, as required, and such resolution may be sought by any party permitted by this Order to participate in the discovery in question. In the event that additional discovery is sought in a Coordinated Action and the parties to that action are not able to resolve any discovery disputes that may arise

in connection with that additional discovery, such disputes will be presented to the court in which that Coordinated Action is pending.

22. Nothing contained herein shall constitute or be deemed to constitute a waiver of any objection of any defendant or plaintiff to the admissibility at trial, of any documents, deposition testimony or exhibits, or written discovery responses provided or obtained in accordance with this Order, whether on grounds of relevance, materiality or any other basis, and all such objections are specifically preserved. The admissibility into evidence in any Coordinated Action of any material provided or obtained in accordance with this Order shall be determined by the court in which such action is pending.

G. Implementing This Order

23. Any Court before which a State-Court Action is pending may join this Order, thereby authorizing the parties to that State-Court Action to participate in coordinated discovery to the extent authorized in this Order, provided that State Court Plaintiffs' Liaison Counsel is first appointed for the State-Court Action and the MDL Protective Order (or a substantially-similar protective order) has been entered in the Coordinated Action.

24. Each Court that joins this Order shall retain jurisdiction to modify, rescind and/or enforce the terms of this Order.

SO ORDERED this __ day of _____, 2015.

_____
U.S. District Judge John W. Lungstrum