

STATE OF MINNESOTA**DISTRICT COURT****COUNTY OF HENNEPIN****FOURTH JUDICIAL DISTRICT**

In re: Syngenta Litigation

This Document Relates to: ALL ACTIONS

Case Type: Civil Other
Honorable Thomas M. Sipkins

File No.: 27-CV-15-3785

**SYNGENTA'S BRIEF IN SUPPORT
OF ITS PROPOSED COORDINATION ORDER**

Syngenta respectfully requests the entry of its proposed coordination order (attached as Ex. 1) in order to ensure a consistent approach to the coordination of discovery across jurisdictions instead of the piecemeal and inconsistent approach that plaintiffs propose.

Syngenta proposes the adoption of the coordination order entered in the federal Syngenta MDL (attached as Ex. 2 (the “Original Order”)), *In re Syngenta AG MIR162 Corn Litigation*, MDL Docket No. 2591—both because that Order offers a balanced and organized way to coordinate discovery across all related actions, and because it was the result of input from plaintiffs’ counsel, *including plaintiffs’ leadership in this Minnesota MDL*. Having represented to the Court at the September 25, 2015 hearing that they were working with the federal MDL plaintiffs to provide consolidated comments on a coordination order, and having acknowledged during the parties’ meet-and-confer session with Special Master Van de North after the October 19 federal MDL hearing that their views were already reflected, plaintiffs cannot reasonably seek to re-litigate the terms of the order again. Plaintiffs’ proposal should be rejected, especially because it would encourage needless disputes and forum shopping on discovery issues:

- *First*, plaintiffs would grant themselves a unilateral exemption from provisions in the Original Order that plaintiffs themselves proposed and that the federal MDL adopted.
- *Second*, plaintiffs’ proposed approach would introduce inconsistencies in how discovery disputes should be resolved—promoting disputes not only across jurisdictions but also among plaintiffs’ counsel themselves.
- *Third*, plaintiffs improperly seek to use their proposed order in order to introduce the entirely separate subject of asking the Court to endorse a Joint Prosecution Agreement among plaintiffs’ counsel about their strategy and compensation in this litigation.

BACKGROUND

In May 2015, Syngenta provided a draft coordination order to plaintiffs’ counsel in the federal MDL, who in turn provided it to plaintiffs’ lead counsel here once they were selected by the Court (“Minnesota Leadership”). Plaintiffs’ counsel in all known related actions, including

the Minnesota Leadership, conferred and eventually presented Syngenta with a consolidated revision representing all plaintiffs' groups' views on October 7. *See* Tr. of Oct. 19, 2015 Federal MDL Hr'g (Ex. 5) at 49:11-17 (explaining that all plaintiffs' groups, including "the Minnesota leadership," had "agreed to the proposal that we put forth that is before this court" and "we have agreement among the leadership in the various related actions"); *see id.* at 51:21-24.

To narrow the parties' disputes, Syngenta agreed to plaintiffs' consolidated proposal except for specific disputed provisions argued during the October 19 federal MDL hearing. This Court monitored the hearing by telephone while Special Master Van de North attended in person. The Minnesota Leadership also attended in person and did not dispute that their input on the coordination order had been incorporated. On October 21, 2015, the federal MDL entered the Original Order (Ex. 2) based on the parties' submissions and arguments—just as other federal and state courts have done in numerous other multi-forum lawsuits in the past.

Immediately after the October 19 hearing, the parties met and conferred with the Special Master, and the Minnesota Leadership emphasized both sides' agreement on the overall form of a coordination order and the discrete nature of the disputes that were argued during the hearing. Once the Original Order was issued, Syngenta accordingly proposed a form order adopting the Original Order's terms by reference for these proceedings. Plaintiffs instead propose numerous exceptions and additions to the Original Order. The differences between the approaches are reflected in Syngenta's markup of plaintiffs' proposal as attached in Ex. 3.

ARGUMENT

Syngenta respectfully submits that its proposal adopting the Original Order should be entered because it offers a straightforward way to coordinate this case with other related cases pursuant to terms that already reflect the input of all parties—including the Minnesota

Leadership. This is precisely how coordination usually works: one jurisdiction typically enters the first coordination order and others adopt it by reference or incorporate its provisions, *see, e.g., 21st Century Indemnity Ins. Co. v. General Motors, LLC* (N.Y. Sup. Ct. Apr. 9, 2015) (Ex. 4)—especially where, as here, the judges have been in communication on cooperative terms.

Contrary to what plaintiffs may contend, the Original Order already ensures that the Minnesota Leadership is entitled to conduct relevant discovery provided they do so in a coordinated way. *See* Ex. 2 at §§ D.2-D.5, E.1-E.2. The Original Order already provides that this Court will decide any disputes pertaining to discovery specific to this proceeding. *See id.* § F.1 (disputes regarding discovery served in Coordinated Actions “will be presented to the court in which that Coordinated Action is pending”). And to the extent there was any ambiguity, Syngenta’s proposal accepts plaintiffs’ proposed clause reiterating that both the Minnesota Leadership and the federal MDL leads have leadership roles in discovery, *see* Ex. 1 § 1, and reaffirming that this Court should resolve disputes concerning fact sheets filed in this case, *see id.* § 2. Beyond that, however, plaintiffs’ further provisions are unnecessary to protect those uncontroversial principles—and would create contradictions and conflicts for no good reason.

First, plaintiffs’ proposal introduces one-sided exceptions to provisions that *plaintiffs themselves* proposed in the federal MDL. For example, in the coordination order jointly proposed by all plaintiffs to Syngenta before the October 19 federal MDL hearing, plaintiffs suggested that neither side may use expert depositions across jurisdictions (instead limiting coordination to fact discovery and depositions, given that expert analyses may be specific to the particular parties in a particular case). Syngenta agreed to plaintiffs’ proposal, and the Original Order included that provision. *See* Ex. 2 at § B.5. But having received their requested provision, plaintiffs now propose a one-sided exception: if they unilaterally decide to participate in an

expert deposition in a different jurisdiction, then they may presumptively choose to use that deposition in the Minnesota proceedings at their sole election. *See* Ex. 3 at 4 (deleted par. 7). Plaintiffs have offered no justification why they should be granted this one-sided exception, especially from language that plaintiffs themselves jointly proposed in the federal MDL.¹

Second, plaintiffs’ proposal introduces numerous conflicts with the Original Order that all but guarantee litigation down the road concerning how discovery disputes will be addressed. For instance, plaintiffs’ proposal states that if the Minnesota Leadership seeks discovery that is “duplicative” of prior discovery, then the Minnesota Leadership may file a motion presenting the dispute in this Court *but shifting the burden* to Syngenta to show why that duplicative discovery should not be allowed. *See* Ex. 3 at 3 (deleted par. 2). This approach squarely contradicts what plaintiffs proposed and was adopted in the Original Order—which correctly provides that disputes about duplicative discovery may be presented by motion in this Court, but that the *movant* must show good cause for allowing such discovery. *See* Ex. 2 at A.5. This makes sense: movants typically have the burden of establishing their entitlement to the relief they seek.

Plaintiffs also seek to relitigate when and how to coordinate written discovery and depositions. Plaintiffs would now grant themselves the “unfettered right” to seek additional time for depositions and for written discovery. *See* Ex. 3 at 3 (deleted pars. 3 & 4). This issue was already argued and decided in the Original Order, which provides that *all* plaintiffs’ groups may participate in depositions and may notice their own depositions if others do not wish to proceed with such depositions. *See* Ex. 2 at §§ D.2-D.5; *see also id.* §§ E.1-E.2 (similar provisions

¹ Plaintiffs’ proposed order also asserts that this case should be viewed differently because the supposed “focus” of these proceedings is a series of individual actions and a putative class of those in Minnesota, while the “focus” of the federal MDL is a putative class action across 22 states. *See* Ex. 3 at 1. As this Court is aware, however, this litigation also includes plaintiffs from 22 states, and the federal MDL also includes class actions and individual actions.

regarding written discovery). The Original Order also ensures that Minnesota plaintiffs' counsel receive a "reasonable amount of time to question the deponent" and may ask duplicative questions (so long as reasonable efforts are taken to avoid duplication)—subject only to the limitation that plaintiff's counsel should not receive *more than* fourteen hours per deposition simply to ask duplicative questions. See Ex. 2 § D.3. The federal MDL rightly rejected what the Minnesota Leadership now proposes: the "unfettered right" to seek additional time to pursue admittedly *duplicative* questioning even after a fact witness has been deposed for two days.²

Third, plaintiffs' proposed coordination order contemplates appending a private Joint Prosecution Agreement (JPA) amongst plaintiffs' counsel as an exhibit to this Court's Order.³ Plaintiffs do not and cannot cite any authority that warrants conditioning a Coordination Order on the entry of a JPA—a private-party agreement among plaintiffs' counsel and not properly the subject of judicial approval. Indeed, the federal MDL plaintiffs similarly requested judicial approval for the JPA in that proceeding and Judge Lungstrum declined to endorse it.⁴ The same result should follow here, given that the JPA seeks to compel *other* parties in *other* actions to submit to the jurisdiction of this Court, and would improperly condition the benefits of coordination on agreements among plaintiffs' lawyers as to what strategies they will pursue and how they will or will not be paid. See Ex. 3 at 4 (deleted par. 8). Syngenta respectfully submits that the JPA provides no basis for holding up the entry of a Coordination Order.

² Plaintiffs' proposal also provides that this Court alone has the authority to resolve disputes about additional discovery served by the Minnesota plaintiffs' counsel. See Ex. 3 at 3 (deleted par. 5). This, too, is already in the Original Order. See Ex. 2 § F.1.

³ The JPA is separate from the Common Benefit Order that the parties are negotiating.

⁴ See Tr. of Apr. 27, 2015 Federal MDL Hr'g (Ex. 6) at 10:18-25 ("And I think it's not appropriate for the court to approve that order [the joint prosecution agreement]. Regardless of that having been negotiated among the parties, that somebody wants me to put my imprimatur on it, I'm not inclined to do so, not because I'm passing judgment yea or nay about the wisdom or propriety of the agreements, I just don't think that's what the court ought to be doing here....").

Date: October 28, 2015

Respectfully Submitted by:

/s/ David T. Schultz

David T. Schultz (#169730)
D. Scott Aberson (#0387143)

MASLON LLP

3300 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Telephone: 612-672-8200
Facsimile: 612-672-8397
david.schultz@maslon.com
scott.aberson@maslon.com

Michael D. Jones (*pro hac vice*)
Edwin John U (*pro hac vice*)
Ragan Naresh (*pro hac vice*)
Patrick Haney (*pro hac vice*)

KIRKLAND & ELLIS, LLP

655 15th Street, NW
Washington, D.C. 20005
Telephone: 202-879-5000
Facsimile: 202-879-5200
michael.jones@kirkland.com
edwin.u@kirkland.com
ragan.naresh@kirkland.com
patrick.haney@kirkland.com

COUNSEL FOR DEFENDANTS

EXHIBIT 1

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****COORDINATION ORDER**

This proceeding (the “MN MDL”) relates to *In re Syngenta AG MIR162 Corn Litigation*, MDL Docket No. 2591 (the “Federal MDL”), which is pending before U.S. District Judge John W. Lungstrum and U.S. Magistrate Judge James P. O’Hara in the United States District Court for the District of Kansas (the “Federal MDL Court”), as well as certain other related actions involving Cargill and Archer Daniels Midland as plaintiffs, which actions are pending in Louisiana state courts.

The parties agree that discovery in the MN MDL, the Federal MDL, and other related actions should be coordinated for purposes of efficiency, fairness, and judicial economy. Counsel for the parties in all known related actions, including counsel for the parties in the MN MDL, met and conferred regarding the form of a coordination order governing coordination between related actions, after which the two sides submitted competing coordination orders in the Federal MDL. The Federal MDL received briefing and heard argument on the competing coordination orders during a hearing on October 19, 2015. This Court attended that hearing by telephone, and Special Master Van de

North attended in person. Counsel for the parties in all known related actions, including plaintiffs' leadership in the MN MDL, also attended that hearing.

On October 21, 2015, the Federal MDL entered a Coordination Order, which is attached as Exhibit A. Upon consideration of the entire record in this matter, the Court hereby adopts the attached Coordination Order. To the extent not covered by the Coordination Order, this Court also Orders as follows:

1. While "Generally, the MDL Proceeding shall be used as the lead case for discovery scheduling in the Actions, consistent with Section D of this Order" (ECF doc. 1099 at 4), circumstances in the MN MDL may from time to time compel this Court to permit the MN MDL Leadership (as defined in ECF doc. 1099 at 3) to "lead" certain discovery scheduling in connection with the just, speedy, and inexpensive determination of one or more issues in the MN MDL; further, while the Federal MDL may generally lead discovery scheduling, such role shall not imply that the MN MDL Leadership intend to rely, or will rely, upon the federal MDL Leadership (as defined in ECF doc. 1099 at 3)—the "Federal MDL Leadership"—to lead the discovery (vs. the scheduling of discovery) of facts relevant to one or more issues in the MN MDL; and

2. To the exclusion of all other courts, this Court shall review and resolve all objections to Syngenta's oral or written discovery served upon any plaintiff in the MN MDL including, without limitation, the content of "plaintiff fact sheets" to the extent this Court orders them to be completed by such plaintiffs.

Pursuant to the attached Order and this Order, parties in the present action may participate in coordinated discovery to the extent authorized by the attached Order and this Order, and this Court hereby retains jurisdiction to modify, rescind, and/or enforce the terms of said Orders.

IT IS SO ORDERED.

Dated _____, 2015.

Thomas M. Sipkins
District Court Judge

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE SYNGENTA AG MIR162 CORN
LITIGATION

Case No. 14-md-2591-JWL-JPO

THIS DOCUMENT RELATES TO:
ALL CASES

MDL No. 2591

COORDINATION ORDER

This proceeding, captioned *In re Syngenta AG MIR162 Corn Litigation*, MDL Docket No. 2591 (the “MDL Proceeding”), is pending before the undersigned U.S. District Judge John W. Lungstrum and U.S. Magistrate Judge James P. O’Hara in the United States District Court for the District of Kansas (the “MDL Court”). The MDL Proceeding involves over 300 cases. Following up on a status conference with counsel on October 19, 2015, today the MDL Court is filing its Scheduling Order No. 2 which, highly summarized, establishes a protocol for a smaller pool of “bellwether” cases for discovery purposes. This Coordination Order (this “Order”) is only intended to deal with discovery taken during the bellwether phase, i.e., after that phase of discovery is completed, the MDL Court intends to solicit input from counsel and then make any adjustments that might be appropriate mindful that discovery will be taken on a much broader basis.

Thousands of state court actions related to the MDL Proceeding already are pending in Minnesota, while other actions are pending in Louisiana, and additional actions may be filed in the future (the “Related Actions”). The Related Actions involve

or contain discrete issues that are not related to the MDL Proceeding. Issues that arise in a Related Action may not have yet arisen in the MDL Proceeding regardless of whether it may prove related to the MDL Proceeding (“Discrete Issues”). The MDL Proceeding and the Related Actions nevertheless involve some of the same factual allegations, circumstances, and parties, and discovery will substantially overlap. To achieve the full benefits of this MDL proceeding, the MDL Court has and will continue to encourage coordination with courts presiding over Related Actions to coordinate discovery activities and other pretrial activities wherever it is practicable and desired by a given court or courts. The MDL Court has and will continue to encourage independent state-court treatment of Discrete Issues in Related Actions. The coordination of pretrial proceedings in the MDL Proceeding and the Related Actions will likely minimize undue duplication of discovery and undue burden on courts, 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.

Each Court adopting this Order (collectively, the “Courts”) finds that coordination of discovery and pretrial scheduling in the MDL Proceeding and the Related 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. The Courts anticipate that other courts in which Related Actions are now pending may join this Coordination Order (this “Order”). In addition, the Courts recognize that parties to other such Related Actions may agree among themselves to abide by the terms of this Order. A Related 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.”

“MDL Co-Leads,” “MDL Leadership,” and “Lead MDL Counsel,” as mentioned in this Order, refer to plaintiffs’ leadership as previously designated by the Court in the federal MDL. “MN MDL Leadership” refers to plaintiffs’ leadership as previously designated in the *In re: Syngenta Litigation* pending in Minnesota state court. 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, particularly as they relate to Discrete Issues.

In consideration of the foregoing, it is hereby ordered that the parties are to work together to coordinate discovery to the maximum extent feasible to minimize undue duplication of effort and to promote the efficient and speedy resolution of the MDL Proceeding and the Coordinated Actions. To that end, the following procedures for discovery proceedings are adopted:

A. Discovery and Pre-Trial Scheduling

1. All discovery and pretrial scheduling in the Coordinated Actions will be coordinated to the fullest extent practicable with the discovery scheduling in the MDL Proceeding.

2. “[G]uided by Fed. R. Civ. P. 1 and the mandate for the ‘just, speedy, and inexpensive’ determination of this MDL” (ECF doc. 123), coordination shall not be at the expense of the just, speedy and inexpensive resolution of the MDL. Nor shall such

coordination be at the expense of a just, speedy and inexpensive resolution in any Coordinated Action.

Generally, the MDL Proceeding shall be used as the lead case for discovery scheduling in the Actions, consistent with Section D of this Order. However, for witnesses that the Federal MDL Co-Leads do not intend to depose within 60 days of the date proposed by the MN MDL Leadership, the MN MDL Leadership will take the lead in scheduling such depositions and will provide the Federal MDL Co-Leads and counsel representing plaintiffs in Coordinated Actions, as well as counsel for defendants, the opportunity to cross-notice all such depositions; the MN MDL Leadership will provide the Federal MDL Co-Leads and counsel representing plaintiffs in Coordinated Actions adequate time to question cross-noticed deponents with a presumption that those groups will get one third of the total time available, without prejudice to the rights of counsel representing plaintiffs in other Coordinated Actions as set forth in Section D of this Order. If a dispute arises regarding the adequacy of notice or time for questions during any such depositions, the Parties agree to meet and confer to resolve such dispute; and, if they are unable to do so, then to submit such dispute to Judge O'Hara in the Federal MDL for final resolution; provided, the MN MDL Leadership may seek from the MN MDL Court the ability to reconvene a deposition for non-duplicative questioning upon a showing of good cause, consistent with Section D of this Order, and the Federal MDL Co-Leads will not interfere with the MN MDL Leadership's efforts to obtain such relief. Nothing in this paragraph shall be construed to limit a party's right to object or to seek a protective order concerning any proposed depositions on the grounds they are

inadequately noticed, are unreasonably burdensome, duplicative, exceed applicable rules governing depositions, or similar grounds.

3. Upon entry of the Coordination Order in the MDL Proceedings and Related Actions, Lead MDL Counsel shall create a single document depository for use by all MDL plaintiffs' counsel as well plaintiffs' counsel in Related Actions subject to provisions of all applicable Common Benefit Orders, including the MDL Court's Common Benefit Order (ECF doc. 936). Such document depository shall also be governed by provisions of the MDL Court's Stipulated Protective Order (ECF doc. 294), and such other agreements and provisions as may be necessary to minimize the dissemination of certain Highly Confidential documents or discovery responses produced by individual plaintiffs in either the Coordinated Actions or the MDL Proceeding or Highly Confidential deposition transcripts of individual plaintiffs only to those who are both authorized by the Stipulated Protective Order and have a genuine need to review such documents. For any such Highly Confidential documents, responses, or transcripts that will be produced by a plaintiff in a Coordinated Action to any Defendant which is also deposited by a plaintiff's attorney into the document depository, counsel for that producing plaintiff shall notify MDL Plaintiffs' Co-Lead Counsel and meet and confer on a process for ensuring that the specific Highly Confidential documents are disseminated only to those who are both authorized by the Stipulated Protective Order and have a genuine need to review such documents. With the exception of any Highly Confidential documents or discovery responses produced by a plaintiff or Highly Confidential deposition transcripts of individual plaintiffs, upon entry of the Coordination Order in the

MDL Proceedings and Related Actions, plaintiffs' counsel appointed to leadership in either the MDL Proceeding or the MN MDL Proceeding, as well as plaintiffs' lead counsel of record in any other Coordinated Action shall have unfettered access to the document depository and all coding and other work product contained within the depository subject to provisions of the MDL Court's Stipulated Protective Order, Common Benefit Order (ECF doc. 936), and any subsequent Common Benefit Orders entered by the MDL Court or courts in the Coordinated Actions. If the parties are unable to reach an agreement on such a process after good faith meet and confer discussions consistent with D. Kan. Local Rule 37.2, any such dispute shall be raised and resolved by the MDL Court.

4. Upon entry of the Coordination Order in the MDL Proceedings and Related Actions, 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 (ECF doc. 294), the Order Approving Jointly Proposed ESI Protocol governing document production (ECF doc. 327), any applicable Common Benefit Orders and any subsequent procedural order entered in the MDL Proceeding governing the conduct of discovery (collectively, the "MDL Discovery Orders"). Any applicable Common Benefit Orders and MDL Discovery Orders, including the Protective Order, 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 to the extent set forth in this Order.

5. The parties in a Coordinated Action may take discovery in their Coordinated Action to the extent that such discovery has not been obtained in the MDL. In particular, the parties in a Coordinated Action may take discovery on Discrete Issues independently from the MDL. For any discovery that is claimed already to have been obtained in another proceeding, giving rise to a discovery dispute, the parties in a Coordinated Action may only take such discovery upon leave of either the MDL Court or 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 already obtained in the MDL Proceeding is not duplicative.

B. Use of Discovery Obtained in Another Proceeding

1. Upon entry of the Coordination Order in the MDL Proceedings and Related Actions, counsel representing any Party in a Coordinated Action will be entitled to receive and use discovery taken in the MDL Proceeding, subject to any applicable Common Benefit Orders. Any such discovery responses and documents shall be used and disseminated only in accordance with the terms of the MDL Stipulated Protective Order or a substantially-similar protective order entered in the Coordinated Action and any applicable Common Benefit Order. Similarly, counsel representing a party in the MDL Proceeding shall be entitled to receive and use discovery taken in any Coordinated Action, subject to any applicable Common Benefit Order; 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 and any applicable Common Benefit Order.

2. Upon entry of the Coordination Order in the MDL Proceedings and Related Actions, requests for documents, interrogatories, depositions on written questions and requests for admission propounded by or to Defendants in the MDL Proceeding will be deemed to have been propounded and served in the Coordinated Actions; but nothing in this Order bars a party from seeking leave for additional non-duplicative discovery in the Coordinated Action(s) for good cause shown. 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 and any applicable Common Benefit Orders, as if they had been taken under the applicable civil discovery rules of the respective jurisdictions.

3. Upon entry of the Coordination Order in the MDL Proceedings and Related Actions, similarly, requests for documents, interrogatories, depositions on written questions, and requests for admission propounded by or to Defendants in a Coordinated Action will be deemed to have been propounded and served in the MDL proceeding; but nothing herein bars a party from seeking leave for additional discovery in the MDL proceeding. Responses to such requests for documents, interrogatories, depositions on written questions, and requests for admission will be deemed to be made in the MDL Proceeding and may be used in the MDL Proceeding, subject to and in accordance with

the terms of any protective or discovery order(s) entered in the Coordinated Action(s), the MDL Discovery Orders and any applicable Common Benefit Orders, as if they had been taken under the applicable civil discovery rules of the MDL Proceeding. MDL Lead Counsel and any other counsel representing a party in the MDL Proceeding shall be entitled to receive and use all discovery taken in any Coordinated Action, subject to any applicable Common Benefit Orders; any such discovery responses and documents shall be used and disseminated only in accordance with the terms of the MDL Discovery Orders or substantially-similar orders entered in the Coordinated Action, any applicable Common Benefit Orders, and to the extent set forth in this Order.

4. Depositions taken in the MDL Proceeding may be used for any purposes in the Coordinated Actions, subject to and in accordance with the terms of the MDL Discovery Orders and any applicable Common Benefit Orders, as if they had been taken under the applicable civil discovery rules of the respective jurisdictions, provided, however, that plaintiff's counsel in a Coordinated Action shall receive written advance notice of a deposition to be taken in the MDL proceeding. Similarly, depositions taken in a Coordinated Action may be used in the MDL Proceeding for any purposes, subject to and in accordance with the terms of the MDL Discovery Orders and any applicable Common Benefit Orders, as if they had been taken under the applicable civil discovery rules of the MDL Proceeding, provided, however, that MDL Plaintiffs' Liaison Counsel shall receive written advance notice of a deposition to be taken in the Coordinated Action.

5. Expert depositions taken in either the MDL Proceeding or a

Coordinated Action shall not be permitted to be used, other than for purposes of impeachment (if appropriate), in any other actions.

C. Service and Coordination Among Counsel

1. The MDL Court has previously appointed Liaison Counsel for all parties in the MDL Proceeding (the “MDL Plaintiffs’ Liaison Counsel” and “MDL Defendants’ Liaison Counsel”). Defendants’ Liaison Counsel shall file with the MDL Court and serve upon Plaintiffs’ 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.

2. Any Court wishing to grant the parties before it access to coordinated discovery may do so, subject to any applicable Common Benefit Orders, by joining this Order and appointing one Coordinated Action Plaintiffs’ Liaison Counsel to facilitate coordination of discovery in the Coordinated Action and discovery in the MDL Proceeding. If there is only a single plaintiff in a Coordinated Action, or single set of affiliated corporate entities which are plaintiffs, counsel for such plaintiff(s) shall identify their own Coordinated Action Plaintiffs’ Liaison Counsel, and shall be entitled to access coordinated discovery subject to the Stipulated Protective Order, any applicable Common Benefit Orders and to the extent set forth in this Order. MDL Plaintiffs’ Liaison Counsel, upon request, shall promptly make available to Plaintiffs’ Liaison Counsel in each Coordinated Action all Orders entered by the MDL Court, 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 Fed. R. Civ. P. 26-37 or 45), or requests for hearing on discovery disputes regarding coordinated discovery matters that are served upon the parties in the MDL Proceeding—subject to compliance with the Stipulated Protective Order. Plaintiffs' Liaison Counsel in the Coordinated Actions shall be responsible for distributing such documents to other counsel for plaintiffs in their respective actions.

D. Participation in Depositions in the MDL Proceeding

1. Each deposition taken in the MDL Proceeding, absent leave of the MDL Court: (i) will be conducted on reasonable written notice, to be provided to Plaintiffs' Liaison Counsel in each Coordinated Action in accordance with the provisions of Section C above; and (ii) such other procedures as may be imposed by order of the MDL Court, including but not limited to Scheduling Order No. 2 filed concurrently with this Order (ECF doc. 1098) with regard to the number and duration of depositions.

2. For depositions noticed by any plaintiff in the MDL Proceeding, at least one Lead Counsel for the MDL Plaintiffs, or their designee, shall confer with Plaintiffs' Liaison Counsel in the Coordinated Actions, or their designees, in advance of each deposition taken in the MDL Proceeding, with the purpose of attempting to reduce the number of attorneys asking questions, and to take reasonable steps to avoid additional depositions of the same individual in the Coordinated Actions.

3. Counsel for any party in a Coordinated Action shall be permitted to cross-notice and attend any deposition scheduled in the MDL Proceeding. In addition to

MDL Plaintiffs' Lead Counsel and Defendants' Lead Counsel, or their designee, one 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. Plaintiffs' Counsel from the Coordinated Action shall make reasonable efforts to ask questions that are non-duplicative of questions previously asked in the deposition, but in no event shall Plaintiff's Counsel receive extra time beyond what is provided in this Order for questions previously asked in the deposition; and

c. 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.

4. Subject to the MDL Discovery Orders and any applicable Common Benefit Orders, and with the exception of materials designated as Highly Confidential consistent with Section A.3 herein, Counsel representing any party in 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, the Stipulated Protective Order, the MDL Discovery Orders and any applicable Common Benefit Orders.

5. In addition to depositions taken in the MDL Proceeding (whether directed to the merits or class certification), depositions may separately be noticed and taken in a Coordinated Action, provided that (a) the deposition is addressed to Discrete Issues, or (b) MDL Plaintiffs' Lead Counsel have declined to notice the deposition after being requested to do so, including consistent with Section A.2 herein with respect to MN MDL Leadership; (c) the deposition avoids duplication of questions, if the deponent has previously been deposed in the MDL proceeding, and (d) at least one Lead Counsel for the MDL Plaintiffs, or their designee, shall confer with Plaintiffs' Liaison Counsel in the Coordinated Actions, or their designees, in advance of each deposition taken in the MDL Proceeding, with the purpose of taking reasonable steps to avoid additional depositions of the same individual in the Coordinated Actions. No witness shall be deposed a second time without a showing of good cause. The transcript of any deposition taken pursuant to this paragraph shall not be used or disseminated except in accordance with the terms of any protective or discovery order(s) entered in the Coordinated Action(s), the Stipulated Protective Order and any applicable Common Benefit Orders.

6. With respect to depositions in addition to those taken in the MDL Proceeding, the noticing party shall provide reasonable written notice to all MDL Liaison Counsel and all Liaison Counsel in the other Coordinated Actions. Counsel representing parties in the MDL Proceeding and counsel representing a party in each other

Coordinated Action shall be entitled to cross notice and attend the deposition of any witness whose deposition is taken in a Coordinated Action. Following questioning by Plaintiffs' Counsel in the Coordinated Action, MDL Plaintiffs' and Defendants' Lead/Liaison Counsel or their designee shall each be permitted a reasonable amount of time to ask questions and shall be permitted to make objections during examination by other counsel.

7. If any Plaintiffs, through their respective Liaison Counsel, or the any Defendants, through their Liaison Counsel, have been provided with reasonable notice of and the opportunity to participate in a deposition taken in any action, no party shall be permitted to re-depose that deponent without first obtaining an Order of the MDL Court or Coordinated Action only upon a showing of good cause. The parties shall make reasonable efforts to ensure no witness is deposed a second time without good cause.

8. Any party or witness receiving a notice of a deposition which it contends is not permitted by the terms of this Order shall have 14 calendar 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 or Coordinating Court granting leave to take the deposition. Generally consistent with the deposition guidelines posted on the website of the U.S. District Court for the District of Kansas, absent extraordinary circumstances, the parties and counsel shall consult in advance with opposing counsel and proposed deponents in an effort to schedule depositions at mutually convenient times and places.

E. Participation in Written Discovery in the MDL Proceeding

1. At least one Lead Counsel for the MDL Plaintiffs, or their designee, shall confer with 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 to include or otherwise address their suggested requests or topics so as to attempt to minimize the number of additional interrogatories, depositions on written questions, requests for admission, and requests for documents in the Coordinated Actions. Absent extraordinary circumstances, Plaintiffs' Liaison Counsel in the Coordinated Actions will be given at least 3 calendar days to review the proposed written discovery and provide any edits or comments.

2. 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. To the extent Co-Lead Counsel in the MDL Proceeding decide not to include these in discovery requests they propound, Plaintiffs' Counsel may propound them provided that the requests are non-duplicative of requests proposed by MDL Plaintiffs' Lead Counsel.

The number of interrogatories permitted in the MDL Proceeding will be subject to such limitations as may later be imposed by the MDL Court; no limit on the number of Interrogatories is imposed at this time, however.

3. With the exception of materials designated as Highly Confidential

consistent with Section A.3 of this Order, all parties to the MDL Proceeding, through their respective Liaison Counsel, and subject to any applicable Common Benefit Orders and Discovery Orders, including the Protective Order, shall be entitled to receive copies of responses to interrogatories, responses to depositions on written questions, and responses to requests for admission produced in any Coordinated Action. Likewise, and again with the exception of materials designated as Highly Confidential consistent with Section A.3 of this Order, all parties to a Coordinated Action, through their respective Liaison Counsel, and subject to any applicable Common Benefit Orders and Discovery Orders, including the Protective Order, shall be entitled to receive copies of responses to interrogatories, responses to depositions on written questions, and responses to requests for admission produced in the MDL Proceeding.

Upon entry of the Coordination Order in the MDL Proceedings and Related Actions, as well as relevant Protective Orders and ESI Protocols, defendants shall produce copies of all future document productions and all of their responses to interrogatories, future responses to requests for production, responses to depositions on written questions, and responses to requests for admission from the MDL Proceeding and any Coordinated Action contemporaneously to each Liaison Counsel for the MDL and each Coordinated Action. Any party or counsel who is otherwise entitled under this Order and who requests additional copies of such discovery from Defendants pursuant to this paragraph shall reimburse Defendants 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 and as set forth in this Order. Nothing in this paragraph is intended to shift the costs of responding to a discovery request itself.

F. Discovery Dispute Resolution

1. 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 in the first instance. 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 which is on Discrete Issues or is non-duplicative of discovery conducted in the MDL Proceeding or is otherwise permitted by leave of Court for good cause shown, 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.

2. If discovery issues arise in the MDL proceeding or a Coordinated Action (to the extent that the discovery in the Coordinated Action has been cross-noticed in the MDL Proceeding) and remain unresolved after the parties have complied with the meet and confer requirements applicable to discovery-related motions under Fed. R. Civ. P. 37(a)(1) and D. Kan. Local Rule 37.2, the parties and counsel are strongly encouraged to consider arranging a telephone conference with Judge O'Hara before filing such a motion. But such a conference is not mandatory. Disputes involving Discrete Issues in

Coordinated Actions shall be resolved in the originating state court.

3. Subject to Sections B.2 through B.4 of this Order, nothing contained in this Order 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 except to the extent inconsistent with this Order.

G. Implementing This Order

1. As set forth above, any Court before which a Related Action is pending may join this Order, thereby authorizing the parties to that Related Action to participate in coordinated discovery consistent with and to the extent authorized by this Order, or alternatively all parties to a Related Action may agree among themselves to abide by the terms of this Order.

2. Each Related Action Court that joins this Order shall retain jurisdiction to enforce the terms of this Order.

H. Notice between Plaintiffs' Counsel in Related Actions and MDL

1. Notice consistent with the requirements of this Order shall be served via e-mail on at least the following individuals for the MDL, each known Related Action and the Minnesota Action:

- For the MDL:
Patrick Stueve
stueve@stuevesiegel.com
Rachel Schwartz
schwartz@stuevesiegel.com

- For the Minnesota MDL:
Lewis Remele
lremele@bassford.com
Aram V. Desteian
adesteian@bassford.com
- For the Cargill Related Action:
John Ursu
JUrsu@greeneespel.com
Erin Sindberg Porter
ESindbergPorter@greeneespel.com
- For the ADM Related Action:
David Graham
dgraham@sidley.com
David Hoffman
david.hoffman@sidley.com

IT IS SO ORDERED.

Dated October 21, 2015, at Kansas City, Kansas.

s/ John W. Lungstrum
John W. Lungstrum
U.S. District Judge

s/ James P. O'Hara
James P. O'Hara
U.S. Magistrate Judge

EXHIBIT 3

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****COORDINATION ORDER**

This proceeding (the “MN MDL”) relates to *In re Syngenta AG MIR162 Corn Litigation*, MDL Docket No. 2591 (the “Federal MDL”), which is pending before U.S. District Judge John W. Lungstrum and U.S. Magistrate Judge James P. O’Hara in the United States District Court for the District of Kansas (the “Federal MDL Court”), as well as certain other related actions involving Cargill and Archer Daniels Midland as plaintiffs, which actions are pending in Louisiana state courts.

~~The MN MDL involves approximately 32,000 cases; and, the Federal MDL involves approximately 1,500 cases. The central focus of the MN MDL is the litigation of individual cases and a class action on behalf of Producers and Non-Producers of one state—MN; and, the central focus of the Federal MDL is the litigation of a class action on behalf of Producers and Non-Producers of 22 states.~~

The parties agree that discovery in the MN MDL, the Federal MDL, and other related actions should be coordinated for purposes of efficiency, fairness, and judicial economy. Counsel for the parties in all known related actions, including counsel for the

parties in the MN MDL, met and conferred regarding the form of a coordination order governing coordination between related actions, after which the two sides submitted competing coordination orders in the Federal MDL. The Federal MDL received briefing and heard argument on the competing coordination orders during a hearing on October 19, 2015. This Court attended that hearing by telephone, and Special Master Van de North attended in person. Counsel for the parties in all known related actions, including plaintiffs' leadership in the MN MDL, also attended that hearing.

On October 21, 2015, the Federal MDL entered a Coordination Order, which is attached as Exhibit A. Upon consideration of the entire record in this matter, the Court hereby adopts the attached Coordination Order, ~~except.~~ To the extent not covered by the Coordination Order, this Court also Orders as follows:

1. While "Generally, the MDL Proceeding shall be used as the lead case for discovery scheduling in the Actions, consistent with Section D of this Order" (ECF doc. 1099 at 4), circumstances in the MN MDL may from time to time compel this Court to permit the MN MDL Leadership (as defined in ECF doc. 1099 at 3) to "lead" certain discovery scheduling in connection with the just, speedy, and inexpensive determination of one or more issues in the MN MDL; further, while the Federal MDL may generally lead discovery scheduling, such role shall not imply that the MN MDL Leadership intend to rely, or will rely, upon the federal MDL Leadership (as defined in

ECF doc. 1099 at 3)—the “Federal MDL Leadership”—to lead the discovery (vs. the scheduling of discovery) of facts relevant to one or more issues in the MN MDL; [and](#)

~~2. To the extent disputes, if any, arise between the Federal MDL Leadership and/or Syngenta, on the one hand, and the MN MDL Leadership, on the other, in connection with the coordinated proceedings contemplated in the Federal Coordination Order, the MN MDL Leadership may, at their election, resolve such disputes in the manner contemplated in the Federal Coordination Order or, in the alternative, present such disputes to this Court for review and resolution to the extent the resolution of such disputes is within this Court’s jurisdiction;⁴ further, to the extent the Federal MDL Leadership and/or Syngenta believe the MN MDL Leadership propose “duplicative” discovery, and MN MDL Leadership present such dispute to this Court, the Federal MDL Leadership and/or Syngenta shall bear the burden to show such duplication;~~

~~3. The MN MDL Leadership have the unfettered right to seek leave from this Court for additional time to conduct the oral deposition of any witness;~~

~~4. Similarly, the MN MDL Leadership have the unfettered right to seek leave from this Court to serve written discovery on Syngenta;~~

~~5. To the exclusion of all other courts, this Court shall review and resolve all objections to the MN MDL Leadership’s oral or written discovery served on Syngenta in the MN MDL;~~

~~6.2.~~ To the exclusion of all other courts, this Court shall review and resolve all objections to Syngenta's oral or written discovery served upon any plaintiff in the MN MDL; including, without limitation, the content of "plaintiff fact sheets" to the extent this Court orders them to be completed by such plaintiffs.

~~7. To the extent the MN MDL Leadership participate in the conduct of an oral deposition of a lay or expert witness taken in either the Federal MDL or a Coordinated Action (as defined in ECF Doc. 1099 at 3), such deposition may be used for any purpose in the MN MDL, subject to Syngenta's objections, if any, e.g., a *Frye-Mack* challenge; and~~

~~8. The Federal Coordination Order contemplates that the Federal MDL Leadership, the MN MDL Leadership, and other counsel will combine to produce a comingled body of common benefit work product available for the use and benefit of parties and their counsel with cases pending in the Federal MDL, the MN MDL, and other Coordinated Actions (ECF Doc. 1099 at p 3). To the extent such parties and their counsel are not subject to the jurisdiction of this Court in connection with its Common Benefit Order, such parties and their counsel may only use and benefit from common benefit work product produced by the MN MDL Leadership, if such parties' submit to the jurisdiction of this Court by entering into the Joint Prosecution Agreement, attached as Exhibit A to this Court's Common Benefit Order.~~

Pursuant to the attached Order and this Order, parties in the present action may participate in coordinated discovery to the extent authorized by the attached Order ~~or~~and this Order, and this Court hereby retains jurisdiction to modify, rescind, and/or enforce the terms of said Orders.

IT IS SO ORDERED.

Dated _____, 2015.

Thomas M. Sipkins
District Court Judge

EXHIBIT 4

Exhibit 4 -- Example of
General Motors
Implementation Order

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

21ST CENTURY INDEMNITY INSURANCE
COMPANY A/S/O THOMAS BOCCARD,

Plaintiff,

v.

GENERAL MOTORS LLC,

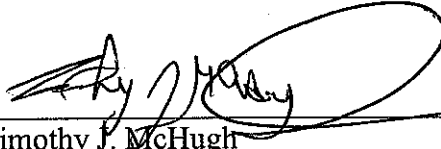
Defendant.

Index No. 159602/14

ORDER WITH NOTICE OF ENTRY

PLEASE TAKE NOTICE, that the within is a true copy of an Order of the Honorable Manuel J. Mendez dated April 8, 2015 and entered in the office of the Clerk of the within named Court on April 9, 2015.

Dated: New York, New York
April 9, 2015


Timothy J. McHugh
Lavin O'Neil Cedrone & DiSipio
420 Lexington Avenue
Suite 335
New York, NY 10170
Tel: (212) 319-6898
Fax: (212) 319-6932
TMcHugh@Lavin-Law.com

Attorney for Defendant
GENERAL MOTORS LLC

TO: Alan Wenig
Wenig & Wenig, PLLC
150 Broadway, Suite 911
New York, New York 10038
212-374-9840
Attorney for Plaintiff

FILED: NEW YORK COUNTY CLERK 04/09/2015 10:11 AM

NYSCEF DOC. NO. 13

INDEX NO. 159602/2014

RECEIVED NYSCEF: 04/09/2015

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTYPRESENT: MANUEL J. MENDEZ
J.S.C. JusticePART 1321st Century Indemnity
Insurance Co., et al,
General Motors LLCINDEX NO. 15960244

MOTION DATE _____

MOTION SEQ. NO. 1

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). _____

Answering Affidavits — Exhibits _____ No(s). _____

Replying Affidavits _____ No(s). _____

Upon the foregoing papers, it is ordered that this motion is decided in accordance
with Annexed Order.MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S): _____Dated: 4/8/15MANUEL J. MENDEZ J.S.C.

1. CHECK ONE: ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ☐ SETTLE ORDER ☐ SUBMIT ORDER
- ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

STATE OF NEW YORK
SUPREME COURT: COUNTY OF NEW YORK21ST CENTURY INDEMNITY INSURANCE
COMPANY A/S/O THOMAS BOCCARD,

Plaintiff,

v.

GENERAL MOTORS LLC,

Defendant.

Index No. 159602/14

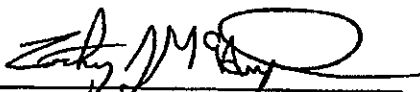
**AGREED ORDER REGARDING
JOINT COORDINATION**

Upon consideration of the entire record of this matter, and with due consideration to *In Re General Motors LLC Ignition Switch Litigation*, MDL Docket No. 2543, the Court hereby adopts the attached "Joint Coordination Order," which was entered into by the Honorable Jesse M. Furman in the United States District Court for the Southern District of New York on September 24, 2014. Pursuant to the attached Order, parties in the present action may participate in coordinated discovery to the extent authorized by the Order, and this Court hereby retains jurisdiction to modify, rescind, and/or enforce the terms of said Order.

SO ORDERED this 8th day of ~~March~~ April, 2015.
~~Judge Presiding~~ J.S.C.MANUEL J. MENDEZ
J.S.C.

AGREED:


TERENCE H. DEMARZO
Wenig & Wenig, PLLC
150 Broadway, Suite 911
New York, NY 10038
T: 212.374.9840
Attorney for Plaintiff


TIMOTHY J. MCHUGH
Lavin O'Neil Cedrone & DiSipio
420 Lexington Avenue
Suite 335
New York, NY 10170
T: (212) 319-6898
F: (212) 319-6932
Attorneys for Defendant

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

Joanne Peters, being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and resides in Fairfield County, Connecticut.

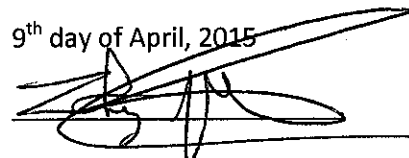
On April 9, 2015, deponent served the within Order With Notice of Entry upon:

Alan Wenig
Wenig & Wenig, PLLC
150 Broadway, Suite 911
New York, New York 10038
212-374-9840
Attorney for Plaintiff

VIA ECF WEBSITE.


Joanne Peters

Sworn to before me this

9th day of April, 2015

TIMOTHY J. MCHUGH

Notary Public, State of New York

No. 02MC506248

Qualified in Suffolk County

Commission Expires July 1, 2018

EXHIBIT 5

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

Exhibit 5 -- Federal MDL
Transcript Excerpts
(Oct. 19, 2015)

In Re:

Syngenta AG MIR 162
Corn Litigation

Case No. 14-md-2591-JWL-JPO

Kansas City, Kansas
Date: October 19, 2015

.....

TRANSCRIPT OF
STATUS CONFERENCE
BEFORE

HONORABLE JOHN W. LUNGSTRUM, SENIOR DISTRICT JUDGE

HONORABLE JAMES P. O'HARA, CHIEF MAGISTRATE JUDGE

Court Reporter: Kimberly R. Greiner, CSR, RMR, CRR
Official Court Reporter
500 State Avenue
913-735-2314
Kansas City, Kansas 66101

1 We saw that stricken from the other side. We
2 weren't quite sure why, because in the meet and confer
3 process our sense was plaintiffs agreed with that
4 proposition but for some reason weren't willing to agree
5 to the language.

6 What we see in their brief is some notion that
7 they, the plaintiffs, should be able to reach side
8 agreements among themselves giving each other access to
9 discovery. But, again, that's precisely the kind of
10 concern we have about one-sidedness that they could
11 enjoy the fruits of multi-forum discovery without being
12 subjected to the obligations that come with it, which is
13 why we would envision, much like in many coordination
14 orders, that it would be entered in the various
15 jurisdictions. And the reason why both sides should
16 have an incentive to do that is because, again, they
17 want to get access to that discovery.

18 JUDGE LUNGSTRUM: All right. Mr. Stueve,
19 you want to come on up. You know, and I should -- I
20 forgot to say this at the beginning, one of the people
21 listening on the phone is Judge Sipkins in Minnesota,
22 which I think you all probably know anyway, but the
23 record should reflect. So to the extent that his case
24 is being invoked here today, he is -- he is listening.
25 I hope he's listening. He has the opportunity at least.

1 MR. STUEVE: Pat Stueve, Your Honor. Two
2 issues. One is if you look at (G), paragraph (G) on
3 page 18 and 19, we were in agreement that if someone in
4 a related action, party, wanted to participate in the
5 coordination efforts, they either could agree to it, the
6 parties could agree to that, or there could be a court
7 order.

8 What we objected to, and that language is intact
9 in both proposals, they kept adding though this "upon
10 entry of a court order" excluding the possibility that
11 the parties would agree to the coordination. And part
12 of the process of me spending all the time I had and
13 making sure that Cargill's counsel was involved and
14 ADM's counsel was involved and the Minnesota leadership
15 was they agreed to the proposal that we put forth that
16 is before this court. So we have agreement among the
17 leadership in the various related actions.

18 JUDGE LUNGSTRUM: Mr. U sort of presents
19 that as somehow one-sided in that it gives the benefit
20 of access but doesn't bind the counsel in the non-MDL --
21 the non-federal MDL cases to the restriction -- whatever
22 restrictions there may be in the order. Is that not how
23 you view it?

24 MR. STUEVE: I don't disagree with that but
25 let's step back for a moment. This court obviously is

1 aware we can't force a state court to -- to enter into,
2 or any other related action court, to sign on to this
3 order. So it's -- that is going to be a decision left
4 up to them, number one.

5 Number two, there is still -- even with agreement
6 by counsel, there is still a significant benefit to
7 Syngenta because they're only producing their people one
8 time, et cetera.

9 Now, we could -- the third alternative is no
10 coordination order.

11 JUDGE LUNGSTRUM: So Syngenta gets -- what
12 benefits does Syngenta, in your opinion, not get if for
13 some reason the Louisiana and Minnesota courts don't
14 enter a coordination order?

15 MR. STUEVE: Well, I think they're -- you
16 know, again, if we have the agreement of the parties,
17 I'm not sure what they wouldn't benefit. And perhaps
18 they're concerned about the use in those proceedings.
19 But if we have an agreement with the parties, I'm not
20 sure we need a court order.

21 So I think it's the -- it's the lack of
22 certainty, I guess, with respect to the scope of the
23 order. We didn't really talk about this much because we
24 thought they were in agreement with the concept, one or
25 the other.

1 But here's -- the other piece that's really
2 important, they want to delay discovery in this case,
3 and this was the second reason why we didn't want that
4 language in there, until the state courts entered the
5 order. And we just think that's unacceptable. We have
6 gone -- I can tell Your Honor we've spent a ton of time
7 on this in good faith to try to put together a
8 coordination order. But we can't force the state courts
9 to do it and we should not be delaying discovery until
10 the state courts enter the coordination order.

11 JUDGE LUNGSTRUM: Have steps been taken in
12 Minnesota and the two Louisiana cases to obtain a
13 coordination order?

14 MR. STUEVE: I'm not aware of any steps that
15 have been taken other than the -- you know, the first
16 and most important step is that we have Cargill's
17 counsel, who is here if you want to get a confirmation
18 from them, and ADM's counsel that our proposal they
19 agree with. So, I mean, that's obviously a significant
20 step.

21 The same thing with respect to a Minnesota
22 leadership, we were in constant conversations with them
23 and again reviewed all these proposals before we
24 submitted it to them. So I'm not sure what additional
25 steps. But obviously the most important step has been

1 taken.

2 JUDGE LUNGSTRUM: All right. Judge O'Hara,
3 do you have questions of either counsel?

4 JUDGE O'HARA: No.

5 MR. U: Your Honor, may I address that last
6 point?

7 JUDGE LUNGSTRUM: Briefly.

8 MR. U: So, Your Honor, much like in *GM* or
9 *Compact Disc* or other cases involving coordination
10 orders, it's precisely the fact that this court can't
11 order another state court to do something that warrants
12 having those courts enter parallel orders. That's
13 precisely why we gave the MDL plaintiffs five months to
14 get back to us with any comments on our draft
15 coordination order. And indeed once we got their draft,
16 we convened a call that included the MDL plaintiffs'
17 counsel and invited and had the participation of the
18 others, including Minnesota leadership, so that we would
19 have what we understand to be the plaintiffs'
20 consolidated position across all the cases on the
21 coordination order.

22 And so what we envisioned there wouldn't -- there
23 shouldn't be any real delay in having the state courts
24 enter the form of the order, again, because we've
25 already had the benefit of everyone's input leading up

1 to the submissions today as the first step.

2 By contrast, if we allow, again, access to go
3 forward without having the state courts enter an order,
4 what will happen is that if a party in a state court
5 proceeding does something that we disagree with with
6 respect to compliance with the order, we're running the
7 risk that that party may say, well, it's not subject to
8 the MDL court's jurisdiction; it didn't sign on to the
9 MDL order; it's not in the MDL, and we'd be left with no
10 recourse given that the state court, by the plaintiffs'
11 proposal, will not necessarily have entered an order
12 like this, and, again, the notion that multiple forums
13 do this is routine in MDLs.

14 JUDGE LUNGSTRUM: All right. Thank you.
15 Stay there, Mr. U.

16 MR. U: Yes, sir.

17 JUDGE LUNGSTRUM: Please.

18 MR. U: No, no, no.

19 JUDGE LUNGSTRUM: I don't mean to order you
20 around, so to speak.

21 MR. U: No, no, no.

22 JUDGE LUNGSTRUM: But give me 30 seconds of
23 the 14-hour deposition.

24 MR. U: Yes, Your Honor. So what the
25 plaintiffs propose in their markup is to declare that

EXHIBIT 6

14-md-2591 - In Re: Syngenta - Common Benefit - 4.27.15

1

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

Exhibit 6 -- Federal MDL
Transcript Excerpts
(Apr. 27, 2015)

In Re:

Syngenta AG MIR 162
Corn Litigation

Case No. 14-md-2591-JWL-JPO

Kansas City, Kansas
Date: April 27, 2015

.....

TRANSCRIPT OF

SEALED MOTION BY PLAINTIFFS' FOR APPROVAL
OF JOINT PROSECUTION AGREEMENTSBYRD OBJECTORS' MOTION TO UNSEAL DOCUMENT 331
PROPOSED COMMON BENEFIT ORDER AND OBJECTIONS THERETO

BEFORE

HONORABLE JOHN W. LUNGSTRUM, SENIOR JUDGE

Court Reporter: Kimberly R. Greiner, CSR, RMR, CRR
Official Court Reporter
500 State Avenue
913-735-2314
Kansas City, Kansas 66101

1 prosecution agreement, is that correct?

2 MR. DOWNING: Your Honor, we had put a
3 provision in the common benefit order, let me reference
4 it to you, that addresses that very issue. It is on
5 page 7. Again, this is the common benefit order that
6 was submitted to the court on April 15, 2015.

7 THE COURT: Let me look at that point again.
8 All right.

9 MR. DOWNING: And this is just below Roman
10 numeral III. We've added this to address the approval
11 issue. It says, "Given these and other undertakings to
12 which the Watts and Phipps have agreed with the MDL
13 co-lead counsel as reflected in joint prosecution
14 agreements submitted in-camera to the court, the court
15 finds that treating Watts and Phipps separately is in
16 the best interests of all plaintiffs" --

17 THE COURT: Oh, I see. You are -- you know,
18 I did not read it the way I think you intended it to be
19 read. You are talking about the entirety of the matters
20 contained in the Watts and Phipps agreements not simply
21 the allegations?

22 MR. DOWNING: Well, we go on to say that,
23 "The provisions of those agreements with Watts and
24 Phipps submitted to the court in camera, relevant to
25 this order and thus requiring review and approval by the

1 court are approved."

2 As the court may note, there is a provision in
3 those agreements that require approval by the court to
4 be effective.

5 THE COURT: Right, but that's -- in a way
6 that's kind of circular though. I mean, that's in there
7 because it's in there. I mean, the only -- the only
8 concern the court believed it had with your agreements
9 with Watts and Phipps is the extent to which that
10 affected the terms of the common benefit order.
11 Otherwise, I have no idea what the arrangements are
12 among co-lead counsel, or co-lead counsel and the
13 executive committee, or any other lawyers in the case,
14 nor do I feel that I care to know those. I don't see
15 Watts and Phipps as any different in that respect.
16 Therefore, I absolutely see no reason to approve that
17 order.

18 And I think it's not appropriate for the court to
19 approve that order. Regardless of that having been
20 negotiated among the parties, that somebody wants me to
21 put my imprimatur on it, I'm not inclined to do so, not
22 because I'm passing judgment yea or nay about the wisdom
23 or propriety of the agreements, I just don't think
24 that's what the court ought to be doing here, to be
25 approving or not those kind of agreements.

1 If that's my position, does that throw the whole
2 arrangement with Watts and Phipps out the window?

3 MR. DOWNING: Your Honor, we don't believe
4 it does. We believe that the requirement to have a
5 court approval was of the issues that the court had
6 described that relate to the common benefit order that
7 -- that had the assessment percentages based on their
8 unique status different than others --

9 THE COURT: Right.

10 MR. DOWNING: -- and that's the portion that
11 we're asking the court to approve.

12 THE COURT: Right.

13 MR. DOWNING: And we think that should
14 effectuate the agreements. Now, we have not been able
15 to confirm with Mr. Watts or Mr. Phipps that that's
16 their interpretation, but that's certainly our
17 interpretation.

18 THE COURT: Well, I guess my view is that
19 Mr. Watts and Mr. Phipps could have objected or could
20 have sought to be heard about their lack of objection to
21 the common benefit agreement being conditioned on court
22 approval of the joint prosecution agreements. No such
23 communication in writing or otherwise has been made by
24 Masters Watts and Phipps, who have certainly shown
25 themselves capable of being heard or expressing the

1 desire to be heard. So as far as I'm concerned, I'm
2 going to move forward on the premise that they've had
3 their opportunity to object to the common benefit order.
4 They didn't.

5 Any other ramifications of my -- the court not
6 approving the joint prosecution agreements is for you
7 all to sort out because that's, again, I think, part of
8 trial strategy, part of how you're going to approach the
9 case and not something the court should be passing on
10 one way or another.

11 MR. DOWNING: Thank you.

12 THE COURT: Okay. Now, all right, with that
13 -- with those things behind me here, as I indicated, we
14 had an objection filed by Mr. Wise. Mr. Wise is in a --
15 somewhat an unusual circumstance in that he doesn't
16 actually have a case in our court. There's a real
17 question of whether Mr. Wise has standing to have raised
18 that objection. He makes a couple of interesting
19 points, however, one of which really is just a point
20 that's already made I think by the Byrd objectors, but
21 the other is a timing point and I do want to address
22 that.

23 Mr. Wise raises the issue of measuring 45 days
24 from the filing of the lawsuit rather than 45 days from
25 retaining counsel. He invokes *American Pipe* tolling,