

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

GARY LARSEN, on behalf of himself
and all others similarly situated,

Plaintiffs,

vs.

PIONEER HI-BRED
INTERNATIONAL, INC.,

Defendants

UNION LINE FARMS, INC. and
RANDY TOENJES, on behalf of
themselves and all others similarly
situated,

Applicants-in-Intervention.

No. 4:06-cv-0077-JAJ

ORDER

This matter is before the court pursuant to the plaintiff's March 30, 2007, motion to remand (docket no. 25) and defendant's March 29, 2007 motions to transfer venue (docket no. 24) and to dismiss (docket no. 23). Also pending is the May 3, 2007, motion to intervene, filed by Union Line Farms, Inc. and Randy Toenjes, on behalf of themselves and all others similarly situated (docket no. 40). As set forth below, plaintiff's motion to remand is denied. Defendant's motion to transfer venue is granted. Defendant's motion to dismiss is denied as moot. The motion to intervene is denied as moot.

I. PROCEDURAL HISTORY

On January 27, 2006, the plaintiff, Gary Larsen, filed a Class Action Petition in the Iowa District Court in and for Dallas County against the defendant, Pioneer Hi-Bred International, Inc. (Pioneer), on behalf of himself and a class of farmers or farming entities that purchased herbicide-resistant Roundup Ready soybeans or the right to grow them from Pioneer, Monsanto Co. (Monsanto), Syngenta Seeds, Inc. (Syngenta), or Aventis

CropScience USA Holding Inc. (Aventis). Larsen alleges that Pioneer, in violation of Iowa Code § 553.4, conspired with these companies to enter into anti-competitive agreements to artificially raise the price of Roundup Ready soybeans and unreasonably restrain trade. Larsen also brings claims of unjust enrichment and money had and received. To remedy this alleged conduct, Larsen seeks compensatory damages, exemplary damages, punitive damages, attorneys' fees, and an injunction prohibiting Pioneer's continued course of conduct and adherence to the alleged unlawful agreements.

On February 28, 2006, Pioneer removed the case to the United States District Court for the Southern District of Iowa (docket no. 1). Pioneer then filed a motion to dismiss and a motion to transfer the case to the Eastern District of Missouri (docket nos. 3, 4). Larsen filed a motion to remand (docket no. 5). On March 31, 2006, under Local Rule 7.1, the parties filed a joint motion to stay the case until December 1, 2006 (docket no. 11). On April 6, 2006, Magistrate Judge Ross Walters granted the parties' motion to stay (docket no. 13). Following Judge Walters's order, the parties withdrew their pending motions (docket nos. 14, 15).

After Judge Walters granted another joint motion to stay the proceedings until April 1, 2007, Pioneer filed a motion to lift the stay on March 27, 2007 (docket nos. 17, 19). Pioneer then refiled its motion to dismiss and motion to transfer (docket nos. 23, 24). Larsen thereupon refiled his motion to remand and made a corresponding motion for hearing/oral argument (docket nos. 25, 29). In that motion, Larsen requests that the court rule on his motion to remand before it rules on the other pending motions. He argues that ruling on the remand issue first is appropriate because the court cannot issue orders on other motions unless the court has subject matter jurisdiction. This court agrees and, therefore, will first address the motion to remand.

II. APPLICABLE LAW

Federal courts are “courts of limited jurisdiction” and “possess only that power authorized by the Constitution and statute.” Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546, 552 (2005) (quoting Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994)). The Constitution and federal law give federal courts original jurisdiction over cases and controversies arising under federal law or involving diverse parties. See U.S. Const. art. 3, § 2 (authorizing federal courts to hear cases involving federal questions and diverse parties), 28 U.S.C. § 1331, 1332 (same). Because the case at issue only alleges violations of state law, this court can only hear and rule on this case if the court is satisfied that the case meets the requirements of diversity jurisdiction.

Article III of the U.S. Constitution authorizes federal courts to hear *all* cases and controversies that arise between diverse parties. Congress and the United States Supreme Court, however, have placed jurisdictional limits on the diversity cases that inferior federal courts can hear. One of these limits is an amount-in-controversy requirement, which Congress set forth “[t]o ensure that diversity jurisdiction does not flood the federal courts with minor disputes.” Allapattah, 545 U.S. at 552. This generally limits a federal court to only hearing a dispute between diverse citizens where there is over \$75,000 in controversy. 28 U.S.C. § 1332. The other requirement is complete diversity, which the Supreme Court set forth “in light of the purpose of the diversity requirement, which is to provide a federal forum for important disputes where state courts might favor.” Allapattah, 545 U.S. at 553. This generally limits federal courts to hearing only those cases between parties where there is not a single plaintiff from the same state as a single defendant. Id. (citing Strawbridge v. Curtiss, 3 Cranch 267, 2 L.Ed. 435 (1806) and Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 375 (1978)). These limits, however, are not Constitutionally mandated and Congress and the Court can freely extend the jurisdictional power of Article III courts to their Constitutional limits by removing

and/or altering these requirements for any or all matters. See State Farm Fire & Cas. Co. v. Tashire, 386 U.S. 523, 530-31 (1967) (“Article III poses no obstacle to the legislative extension of federal [diversity] jurisdiction . . . so long as any two adverse parties are not co-citizens.”) In 2005, Congress did just that for class action lawsuits when it passed the Class Action Fairness Act (CAFA).

Prior to CAFA, it was well-settled that the amount-in-controversy and complete-diversity requirements applied to class actions to virtually the same extent as they applied to any other matter. A federal court hearing a class action only had diversity jurisdiction where the named representatives of the class were completely diverse from the parties opposing it and where one or all of the parties had unaggregated claims that met the amount-in-controversy requirement.¹ See generally Allapattah, 545 U.S. 546 (holding that under 28 U.S.C. § 1367, federal courts have diversity jurisdiction over entire class actions where a named member has a claim that satisfies the amount-in-controversy requirement); Snyder v. Harris, 394 U.S. 332 (1969) (holding that members in putative class actions cannot aggregate small claims to satisfy the amount-in-controversy requirement); Supreme Tribe of Ben Hur v. Cauble, 255 U.S. 356, 365-66 (1921) (holding that federal courts look to the citizenship of the named representatives of a class action when determining whether there is diversity). CAFA, however, amended 28 U.S.C. § 1332 and gave inferior federal courts diversity jurisdiction over class action claims where: (1) there are 100 or more class members; (2) *any* member of the class is diverse; and (3) “the matter in controversy exceeds the sum of \$5,000,000, exclusive of interests and costs.” 28 U.S.C. § 1332(d).

¹ Prior to the Congressional enactment of 28 U.S.C. § 1367 and the Supreme Court’s decision in Allapattah, federal courts required each member of a completely diverse putative class to satisfy the amount-in-controversy requirement. See Allapattah, 545 U.S. at 547. After Allapattah, however, any class action can now qualify for diversity jurisdiction by putting forth one completely diverse member with an independent claim that satisfies the amount-in-controversy requirement. Id. at 566-67.

This opened the door to the federal courthouse for certain class actions that lacked complete diversity or an independent claim that exceeded \$75,000.

Congress, however, placed limits on CAFA and included multiple exceptions to the law that allow and sometimes require federal courts to remand cases even where the CAFA elements are met. These exceptions include situations where claims are truly local, involve internal corporate governance, involve federal securities laws, or name a state actor as a primary defendant. 28 U.S.C. § 1332(d). Larsen's motion to remand calls for consideration of both CAFA and its exceptions.

III. ANALYSIS

In order to determine whether this court has subject matter jurisdiction, the court must use a two-step analysis. First, the court must decide whether the claim satisfies the requirements of CAFA. Second, if the claim satisfies CAFA, the court must examine the claim to determine whether an exception to CAFA applies that would require the court to remand the case. If the requirements of CAFA are satisfied and no exception applies, the court has subject matter jurisdiction.

A. Whether the Claim Satisfies CAFA's Jurisdiction Requirements

CAFA, as set forth in 28 U.S.C. § 1332, grants federal courts the authority to hear cases that: (1) involve 100 or more members, (2) are minimally diverse, and (3) have more than \$5,000,000, exclusive of interests and costs, in controversy. Each element must be present to satisfy CAFA.

1. Which Party Bears the Burden of Proving the CAFA Elements

Before examining the elements, however, there is some dispute as to who has the burden of persuading the court that the elements are present. Pioneer, in its notice of removal, asserts that the legislative history to CAFA suggests that Congress intended plaintiffs to have the burden of proving that the CAFA elements of jurisdiction are met.

Larsen, however, argues that the burden should be on Pioneer because Pioneer is the party seeking federal jurisdiction. This court agrees with Larsen that the burden should be on Pioneer, as the party seeking jurisdiction.

Following the passage of CAFA, many courts faced this exact question as to who should bear the burden of proving jurisdiction. Despite the recognition of some Congressional intent to place the burden on the plaintiffs to prove the presence of the CAFA jurisdictional elements, courts have overwhelmingly ruled that the party seeking federal jurisdiction bears the burden. See Blockbuster, Inc. v. Galeno, 472 F.3d 52, 56-57 (2d Cir. 2006) (stating that the defendant “ought to shoulder the burden because it removed the action to federal court from state court,” and noting that “[t]he line of cases confirming the rule that the party invoking jurisdiction bears the burden is a venerable one”); Abrego v. The Dow Chem. Co., 443 F.3d 676, 685 (9th Cir. 2006) (“[U]nder CAFA the burden of establishing removal jurisdiction remains, as before, on the proponent of federal jurisdiction.”); Morgan v. Gay, 471 F.3d 469, 472-73 (3d Cir. 2006) (recognizing some indication of Congressional intent to place the burden to prove CAFA elements on plaintiffs, but holding that the defendant’s reliance on the legislative history was “misplaced” and that the burden fell on the defendants), Evans v. Walter Indus., 449 F.3d 1159, 1164 (11th Cir. 2006) (placing the burden of meeting the CAFA elements on the party seeking jurisdiction); Brill v. Countrywide Home Loans, Inc., 427 F.3d 446, 448 (7th Cir. 2005) (evaluating who has the burden of jurisdiction under CAFA and stating “[t]hat the proponent of jurisdiction bears the risk of non-persuasion is well established”); Ongstad v. Piper Jaffray & Co., 407 F. Supp. 2d 1085, 1088 (D.N.D. 2006) (stating that “the removing party bears the burden of establishing federal jurisdiction” and that “[t]he express language of CAFA does nothing to disrupt that maxim, nor should its legislative history” (internal citation omitted)). Even Pioneer, in its resistance, recognizes this trend and all but concedes that it has the burden to prove the elements. Therefore, this court

finds that it is Pioneer's burden to prove that the elements of CAFA are present by a preponderance of the evidence.

2. Whether the Class Involves 100 or More Members

Under CAFA, the first jurisdictional element that Pioneer must show is that the putative class action involves 100 or more members. Larsen concedes in his brief that there are over 100 potential members in the putative class. Therefore, the court concludes that this element is satisfied.

3. Whether There Is Minimal Diversity Between Pioneer and the Class

The second element that Pioneer must show is that there is minimal diversity between any member of the class and Pioneer. Minimal diversity in a case exists where there is "at least one party who is diverse in citizenship from one party on the other side of the case." Grupo Dataflux v. Atlas Global Group, L.P., 541 U.S. 567, 578 n.6 (2004). Under CAFA, there is minimal diversity where *any* member of a putative class of plaintiffs is diverse from any defendant. 28 U.S.C. 1332(d)(2) (emphasis added).

Larsen contends that minimal diversity is not present here because the claim itself is limited to Iowa consumers and Pioneer is an Iowa corporation with its principal place of business in Iowa. Larsen's proposed class definition is:

All persons and entities in the state of Iowa (excluding Defendant and its co-conspirators, their officers, directors, and employees, and government entities) who purchased herbicide-resistant Roundup Ready soybean seeds for delivery in the United States, or the right to grow the seeds at any time from at least September 1, 1997 and continuing through the present, from Defendant, its co-conspirators, and/or their selling agents.

Comp. ¶ 14. Larsen argues that this definition does not encompass potential class members from outside of Iowa and that even if it did, Pioneer has not met its burden of proving that such members exist.

Pioneer argues, however, that the definition would include at least one, if not many non-Iowa residents such as those who temporarily resided and purchased seeds in Iowa, residents of neighboring states that purchased seed in Iowa, and non-resident landlords for farms inhabited by tenants residing in Iowa. Pioneer also presents testimony and evidence of its records that persons with out-of-state addresses from nearly forty different states purchased Roundup Ready soybean seeds from Pioneer in Iowa. It argues that it is almost certain that one of these out-of-state purchasers is an out-of-state citizen and points to a Second Circuit decision where that court stated that a defendant met its burden to establish minimal diversity when "there [was] a reasonable probability" that at least one of thousands of out-of-state customers was an out-of-state resident. See Galeno, 472, F.2d at 59. Finally, Pioneer presents evidence that it sold seed in Iowa to out-of-state corporations registered in other states. Thus, it contends that minimal diversity is present.

A court determining residency under CAFA uses the same methods to determine diversity used in all diversity cases. To determine citizenship for diversity purposes, courts look to a person's domicile. Gilbert v. David, 235 U.S. 561, 568-69 (1915). Under CAFA, the court may satisfy itself that minimal diversity is present if it finds that there is but one member of the class with different citizenship than that of the defendant. Here, Pioneer has presented the court with affidavit evidence that it sold seed in Iowa to out-of-state corporations with out-of-state addresses. Addresses indicating out-of-state residency present a rebuttable presumption of out-of-state citizenship. See District of Columbia v. Murphy, 314 U.S. 441, 455 (1941) ("The place where a man lives is properly taken to be his domicile until facts adduced establish the contrary."); Ennis v. Smith, 55 U.S. (14 How.) 400, 423 (1853) ("Where a person lives, is taken *prima facie* to be his domicile, until other facts establish the contrary."). There is no evidence on the record to rebut any presumption that these out-of-state corporations are out-of-state citizens.

Therefore, there is minimal diversity if the court finds that the class definition would include these out-of-state corporations.

The proposed class definition includes “[a]ll persons and entities *in* the state of Iowa” who purchased the seed in question. Comp. ¶ 14 (emphasis added). It does not limit itself to only *citizens* of the State of Iowa. Thus, a putative class member does not need to be domiciled in Iowa to qualify as a member of the class. Pioneer has submitted evidence that these out-of-state corporations purchased from Pioneer in Iowa. The court is satisfied that this is enough. The court also notes, however, that based on the record and potential quantity of bags sold, it is almost certain that over a ten-year period an out-of-state citizen purchased Roundup Ready soybeans in Iowa or an Iowan purchased Roundup Ready soybeans and has since changed his or her domicile. Therefore, the court is satisfied that there is minimal diversity in this case.

4. Whether There Is Over \$5,000,000 in Controversy

Finally, Pioneer has the burden of proving that there is an amount in controversy at issue that exceeds \$5,000,000, exclusive of interest and costs. Larsen asserts that this element is not present because he argues that he did not set forth an amount of damages in his complaint² and Pioneer has not put forth any evidence as to the likelihood of damages. Importantly, however, Larsen does not take a position that there is not over \$5,000,000 in controversy. Instead, he simply states in his brief that he “does not take a position at this time on whether the aggregate potential damages exceed \$5 million.” (Pl. Brief p. 4).

Pioneer asserts that this element is not even a close call. It argues that each form of damages that Larsen seeks could potentially exceed \$5,000,000. Pioneer also presents

²In his complaint, Larsen merely states that he and the putative class “suffered damages in an amount to be determined at trial.” Comp. ¶ 29.

evidence that in a previous suit where the plaintiff's attorney made substantially the same claim against Pioneer, the complaint asserted overcharges of \$5 to \$8 per bag of Roundup Ready soybeans. Pioneer argues that when considering that it sold approximately 22 million bags of soybeans in Iowa between 1996 and 2007, such a complaint would equate to over \$100 million in damages.

This court agrees with Pioneer. The legislative history to CAFA states that "if a federal court is uncertain about whether 'all matters in controversy' in a purported class action 'do not in the aggregate exceed the sum or value of \$5,000,000,' the court should err in favor of exercising jurisdiction over the case." S. Rep. No. 109-14, at 42 (2005). Here, Larsen seeks a number of different types of remedies that the court can consider in determining whether the case satisfies CAFA's aggregate amount-in-controversy requirement. These include actual and compensatory damages, exemplary damages, an injunction, and attorneys' fees. Pioneer argues and presents evidence that these aggregate damages have the potential to exceed \$5,000,000. For these reasons, this court finds that there is over \$5,000,000 in controversy and for the reasons stated above, it finds that CAFA's jurisdiction elements are satisfied.

B. Whether an Exception to CAFA Requires or Favors Remand

As stated above, CAFA, codified at 28 U.S.C. § 1332, includes multiple exceptions that allow, and sometimes require, federal courts to remand cases even where the CAFA elements are met. Thus, in order for this court to hear this case, it must be satisfied that the CAFA exceptions do not apply.

1. Which Party Bears the Burden to Prove an Exception to CAFA is Present

Although this court found that the burden to prove the presence of the CAFA elements falls on the party seeking federal jurisdiction, this court finds that the burden falls on the party opposing jurisdiction to prove the elements of a CAFA exception. Although

the Eighth Circuit of Appeals has not yet addressed this issue, this holding is in accord with the positions of other courts that have addressed this issue. Serrano v. 180 Connect, Inc., 478 F.3d 1018, 1024 (9th Cir. 2007) (“The well-established rule that the party seeking remand must prove the applicability of such exception governs with equal force in the context of CAFA as with the general removal statute.”); Hart v. FedEx Ground Package Sys. Inc., 457 F.3d 675, 680 (7th Cir. 2006) (“[O]nce the removing defendants prove the amount in controversy and the existence of minimal diversity, the burden shifts to the plaintiffs to prove that the local controversy exception to federal jurisdiction should apply.” (citations omitted)); Frazier v. Pioneer Ams. LLC, 455 F.3d 542, 546 (5th Cir. 2006) (“We hold that plaintiffs have the burden to show the applicability of the §§ 1332(d)(3)-(5) exceptions when jurisdiction turns on their application.”); Evans v. Walter Indus., Inc., 449 F.3d 1159, 1164 (11th Cir. 2006) (“[W]hen a party seeks to avail itself of an express statutory exception to federal jurisdiction granted under CAFA, as in this case, we hold that the party seeking remand bears the burden of proof with regard to that exception.”). Therefore, the court agrees with Pioneer that Larsen bears the burden of proving whether an exception to CAFA applies.

2. Whether the Home-State Controversy Exception Applies

Larsen asserts in his brief that even if the court finds that the elements of CAFA are present, the court must remand the case pursuant to CAFA’s home-state controversy exception. That exception states that “[a] district court *shall* decline to exercise jurisdiction . . . over a class action in which . . . two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed.” 28 U.S.C. § 1332(d)(4) (emphasis added). Here, Pioneer is the only defendant in the case. Therefore, the elements of this exception are met if the court finds that two-thirds or more of the members of the proposed plaintiff class are citizens of the same state as Pioneer, which is undisputedly an Iowa citizen.

3. Whether Two-Thirds of the Members of the Proposed Plaintiff Class Are Citizens of Iowa

Larsen “assert[s], on information and belief, that two-thirds or more of the putative class members are Iowa citizens.” (Pl. Brief p. 6). He argues that any reasonable reading of the proposed class definition can lead to no other conclusion. As legal authority for making such an assumption, he cites federal district court cases from Florida and Kentucky that presumptively found this element present when the proposed class definitions included only state property owners. See Moll v. Allstate Floridian Ins. Co., 2005 WL 2007104 at *1 (N.D. Fla. Aug. 16, 2005); Adams v. Fed. Materials Co., 2005 WL 1862378, at *5 (W.D. Ky. July 28, 2005). Larsen asserts that a similar presumption should logically apply here because the proposed class definition includes only “[a]ll persons and entities in the state of Iowa.”

Pioneer argues, however, that this assumption should not apply and that, aside from the definition itself, Larsen has presented no evidence that two-thirds of the putative class members are Iowa citizens. Pioneer asserts arguments that are similar to its arguments that minimal diversity is present. Specifically, it asserts that there are potentially many out-of-state class members in the putative class including out-of-state parties that purchased Roundup Ready soybeans in Iowa, parties from neighboring states who crossed into Iowa to buy Roundup Ready soybeans, parties who purchased soybeans while living in Iowa that have since moved away, and temporary residents who purchased Roundup Ready soybeans but did not establish domicile. Pioneer argues that Larsen has failed to prove that anyone in the putative class other than Larsen is domiciled in Iowa. It submits authority from the Eleventh Circuit where that court held that a plaintiff failed to prove that two-thirds or a putative class was present when the plaintiff failed to look at members of the class who potentially left the state and refused to assume that a proposed class of people injured in Alabama consisted of over two-thirds Alabama residents. Evans, 449 F.3d at 1166-67.

This court finds that Larsen has not met his burden to show that over two-thirds of the class consists of Iowa citizens. Larsen asserts injuries over a ten year time period that are linked to a transient good. This court is not ready to assume that merely because the class seeks to represent those who purchased an item in Iowa that two-thirds of those purchasers are citizens of Iowa. Other than making an assumption, Larsen has presented no evidence to satisfy his burden. As such, the court cannot find that this case qualifies for the home-state controversy exception. Larsen's motion to remand is denied.

As this court has subject matter jurisdiction over this matter, it will next consider Pioneer's motion to transfer. Integrated Health Servs. of Cliff Manor, Inc. v. THCI Co., LLC, 417 F.3d 953, 957 (8th Cir. 2005) (noting that "a court without subject matter jurisdiction cannot transfer a case to another court under 28 U.S.C. §1404(a)").

IV. MOTION TO TRANSFER

Pioneer moves, pursuant to 28 U.S.C. §1404(a), to transfer venue of this matter to the United States District Court for the Eastern District of Missouri. Pioneer argues generally that a transfer of venue is warranted in this case because a related matter is pending in the transferee district. Pioneer further argues that the Southern District of Iowa would be an inconvenient forum for non-party witnesses, especially employees of Monsanto, who has been named as a co-conspirator, but not a party.

Larsen resists Pioneer's motion to transfer, arguing that this court lacks jurisdiction to transfer this matter. As set forth above, the court rejects this argument. Larsen alternatively argues that both the convenience of the parties and the interests of justice do not favor transfer.

Section 1404(a) of Title 28, United States Code states "[f]or the convenience of the parties and witnesses, in the interest of justice, a district court may transfer any civil action

to any other district or division where it might have been brought.” 28 U.S.C. §1404(a). In deciding a motion to transfer venue, the court must consider: (1) the convenience of the parties; (2) the convenience of the witnesses; and (3) the interests of justice. Terra Int’l, Inc. v. Mississippi Chem. Corp., 119 F.3d 688, 691 (8th Cir. 1997). However, courts are not limited to considering these factors, but rather shall make a “case-by-case evaluation of the particular circumstances at hand and a consideration of all relevant factors.” Id. (citations omitted). In deciding the general “balance of convenience,” factors the court may consider:

- (1) The convenience of the parties;
- (2) The convenience of the witnesses - including the willingness of witnesses to appear, the ability to subpoena witnesses, and the adequacy of deposition testimony;
- (3) The accessibility to records and documents;
- (4) The location where the conduct complained of occurred; and
- (5) The applicability of each forum state’s substantive law.

Id. at 696.

In determining the “interest of justice,” relevant factors include:

- (1) Judicial economy;
- (2) The plaintiff’s choice of forum;
- (3) The comparative costs to the parties of litigating in each forum;
- (4) Each party’s ability to enforce a judgment;
- (5) Obstacles to a fair trial;
- (6) Conflict of law issues; and
- (7) The advantages of having a local court determine questions of local law.

Id. at 696.

“The idea behind §1404(a) is that where a ‘civil action’ to vindicate a wrong - however brought in court - presents issues and requires witnesses that make one District Court more convenient than another, the trial judge can, after findings, transfer the whole action to the more convenient court.” Continental Grain Co. v. The FBL-585, 364 U.S.

19, 26 (1960). The burden is on the moving party - here, Pioneer, to demonstrate that a transfer of venue is warranted. Ahlstrom v. Clarent Corp., 2002 WL 31856386 *4 (D. Minn. 2002).

A. Where this Matter Might Have Been Brought

As a threshold matter, Pioneer argues that this matter could have been brought in the Eastern District of Missouri because it does business in that district, is subject to personal jurisdiction in that district, and consequently resides in that district for purposes of establishing venue. Larsen offers no argument to the contrary. Thus, the court finds that this action could have been brought in the Eastern District of Missouri.

B. Balance of Convenience

Regarding the “balance of convenience,” Pioneer states in the “Background” section of its brief in support of its motion to transfer:

On December 14, 1999, Plaintiff’s counsel, Cohel, Milstein, Hausfeld & Toll, PLLC (“Cohen Milstein”) filed a putative class action lawsuit in Washington, D.C. on behalf of six named plaintiffs, including three from Iowa, who purchased genetically-modified (“GM”) soybean seeds. *See Pickett v. Monsanto Co.*, No. 1:99CV03337 (D.D.C.). In that case, plaintiffs argued that Pioneer, Monsanto, and others conspired to fix the price of GM soybean seed. On February 14, 2000, a copycat suit making almost identical allegations was filed in the Southern District of Illinois by a different law firm. *See Blades v. Monsanto Co.*, No. 00-4034-JLF (S.D. Ill.). Those actions were consolidated in Illinois and then transferred to the Eastern District of Missouri. The consolidated case was referred to as *McIntosh*, No. 4:01-cv-00065-RWS (E.D. Mo.), but has been referred to at times as *Sample* or *Blades*. In 2003, after extensive discovery and briefing, the District Court for the Eastern District of Missouri denied class certification, finding that individualized inquiry was required. *Sample v. Monsanto Co.*, 218 F.R.D. 644 (E.D. Mo. 2003). In 2005, that ruling was affirmed on appeal. *Blades v. Monsanto Co.*, 400 F.3d 562 (8th Cir. 2005). On remand, the District Court denied a motion to amend plaintiff’s complaint to advance new

class claims (which would have included a class described in the Petition in this case), ruling that amendment would be futile because individualized issues predominate. Finding themselves unsuccessful in obtaining class certification in the Eastern District of Missouri, Cohen Milstein filed this action in state court, naming only Pioneer as a defendant in a failed effort to avoid federal jurisdiction and thereby avoid transfer of the case to the Eastern District of Missouri, which handled these cases for six years. The two remaining individual plaintiffs in the *McIntosh* case settled their claims in late 2006, after the denial of class certification had been affirmed and plaintiff's attempts to revive class claims had failed.

Although the *McIntosh* case has been resolved, another set of similar cases remain pending in the Eastern District of Missouri. In 2004 - before the Eighth Circuit affirmed the denial of class certification in *McIntosh* - putative class action lawsuits were filed against Pioneer and Monsanto in thirteen different states, alleging a conspiracy to fix the price of GM soybean seeds. *See, e.g.*, Compl. ¶ 17, *Union Line Farms v. E.I. Dupont de Nemours & Co.*, No. CL 95094 (Dist. Ct. Polk Cty., Iowa) (brought "on behalf of . . . a class consisting of all persons and entities in the State of Iowa who purchased Monsanto's and/or Pioneer's genetically-modified crop seeds"). These cases were subsequently removed to federal court and transferred to the Eastern District of Missouri where they are pending as *Schoenbaum v. E.I. Dupont de Nemours & Co.*, No. 4:05-cv-1108 (E.D. MO.), based on the caption of one of the cases.

See Defendant's Memorandum in Support of its Motion to Transfer (docket no. 24-2, pp. 1-3). Larsen does not dispute Pioneer's "background" characterization.

Pioneer argues that the substantive allegations in the instant lawsuit are substantially similar to the allegations in the consolidated Schoenbaum action in the Eastern District of Missouri, which Pioneer is currently defending. Because this related matter is pending in the transferee district, Pioneer argues that the convenience of the parties and witnesses weighs in favor of transfer. Pioneer notes that likely third-party witnesses and documents, *i.e.*, Monsanto, a named co-defendant in Schoenbaum and a named co-conspirator in this matter, is located in the Eastern District of Missouri (headquartered in St. Louis). Pioneer

finally contends that the Eastern District of Missouri is not inconvenient for Iowa plaintiffs, noting that plaintiff's counsel previously chose to litigate claims in the Eastern District of Missouri on behalf of Iowa plaintiffs, *i.e.*, McIntosh.

Larsen counters that both parties are citizens of Iowa, and that most, if not all of their witnesses and documents also will be from Iowa. The fact that one non-party, Monsanto, is not an Iowa citizen does not tilt the scales in favor of transfer, Larsen contends. Larsen further notes that the instant lawsuit is different from the McIntosh case in several key respects.

In reply, Pioneer notes that the "carbon copy" case currently pending in the Eastern District of Missouri is Schoenbaum, not McIntosh. Pioneer further argues that Larsen does not dispute the similarities between Schoenbaum and his case, noting that the Schoenbaum complaint encompasses all of the same allegations that Larsen asserts in the instant case, *i.e.*,

- Both cases allege a conspiracy between Pioneer, Monsanto, and others to fix the price of Roundup Ready[®] soybean seeds in Iowa;
- Both cases seek relief on behalf of an alleged class of purchasers of Roundup Ready[®] soybean seeds in the State of Iowa; and
- Both cases seek relief based on the same legal theories - the Iowa Competition Law and unjust enrichment.

See Defendant's Reply Brief (docket no. 36, pp. 2-3).

Absent transfer, Pioneer argues, most of Monsanto's witnesses are likely to be beyond the 100-mile subpoena power of this court. As Monsanto is an alleged co-conspirator, discovery and testimony from Monsanto will be critical in this case. Pioneer finally argues that it would be burdensome and inconvenient for it to simultaneously defend identical lawsuits in two different judicial districts.

While both parties are Iowa citizens, Pioneer is already defending a substantially similar lawsuit in the Eastern District of Missouri. Further, because Larsen asserts a

putative class action, less deference is owed to plaintiff's choice of forum. Silverberg v. H & R Block, Inc., 2006 WL 1314005 *2, n.5 (E.D. Mo. 2006). See also Ahlstrom, 2002 WL 31856386 *3, n.9 (noting that following the enactment of 28 U.S.C. §1404(a), the plaintiff's choice of forum is no longer entitled to the great weight it was afforded under the doctrine of forum non conveniens, but rather is one factor to be considered). While it is Pioneer's burden to demonstrate that transfer of venue is warranted, Larsen has not convinced the court that it would be unduly burdened or inconvenienced by transfer of this matter to the Eastern District of Missouri. Moreover, the court finds persuasive Pioneer's arguments regarding the need for discovery and testimony from Monsanto, a named co-conspirator, who has its headquarters in St. Louis. The court finds that the balance of convenience weighs in favor of transfer.

C. Interest of Justice

"The 'interest of justice' is a significant part of a §1404(a) transfer analysis, and 'may be determinative in a particular case, even if the convenience of the parties and witnesses might call for a different result.'" Ahlstrom, 2002 WL 31856386 *4 (quoting Coffey v. Van Dorn Iron Works, 796 F.2d 217, 221 (7th Cir. 1986)). The district court in Ahlstrom further noted:

"The pendency of related litigation in another forum is a proper factor to be considered in resolving choice of venue questions." Codex Corp. v. Milgo Elec. Corp., 553 F.2d 735, 739 (1st Cir. 1977). As the Supreme Court observed, "[t]o permit a situation in which two cases involving precisely the same issues are simultaneously pending in different District Courts leads to the wastefulness of time, energy and money that §1404(a) was designed to prevent." Continental Grain Co., 364 U.S. at 26, quoted in Ferens v. John Deere Co., 494 U.S. 516, 531 (1990).

Id. at *6.

As set forth above, Larsen does not dispute that the instant lawsuit is factually and legally similar, if not identical, to the Schoenbaum matter, which is currently pending in the Eastern District of Missouri. If the motion to transfer is denied, Pioneer will be forced to proceed in two districts and incur duplicative litigation costs. Judicial economy weighs heavily in favor of transfer. With respect to the other elements within the scope of “interest of justice,” Larsen has not argued that litigating the instant lawsuit in the Eastern District of Missouri will be prohibitively expensive, that it would face difficulty in enforcing a judgment from the Eastern District of Missouri, that it would not receive a fair trial in the transferee district, or that conflict of law issues preclude transfer. The “interest of justice” weighs in favor of transfer.

As set forth above, the court finds the convenience of the parties and witnesses, as well as the interest of justice, would be served by the transfer of this matter to the Eastern District of Missouri. Pioneer’s motion to transfer is granted.

V. ORDER

Upon the foregoing,

IT IS ORDERED that plaintiff’s motion to remand (docket no. 25) is denied. Defendant’s motion to transfer (docket no. 24) is granted. Pursuant to 28 U.S.C. §1404(a), this matter shall be transferred to the Eastern District of Missouri for further proceedings.

DATED this 9th day of November, 2007.



JOHN A. JARVEY
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF IOWA