IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CITY OF GREENVILLE, ILLINOIS, et al. individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	
v.	)	
	)	Case No. 3:10-cv-188-JPG
SYNGENTA CROP PROTECTION, INC., and SYNGENTA AG,	)	
Defendants.	)	

DEFENDANT SYNGENTA AG'S MOTION FOR RECONSIDERATION AND SUPPORTING MEMORANDUM

Defendant Syngenta AG ("SAG") respectfully submits this Motion to Reconsider the Court's November 23, 2011 Memorandum Opinion and Order denying SAG's Motion to Dismiss for Lack of Personal Jurisdiction (the "Order"). The proper exercise of personal jurisdiction over SAG boils down to whether SAG directs and controls the day-to-day operations of Syngenta Crop Protection, Inc. ("SCPI"). SAG submits that, in reaching its decision, the Court misapplied the legal standard and incorrectly imputed the acts of Syngenta's worldwide network of entities to SAG. In addition, the Court's Order failed to properly consider the Supreme Court's recent decision significantly limiting the exercise of personal jurisdiction over a foreign defendant. Accordingly, justice requires that the Court reconsider its Order denying SAG's motion to dismiss and grant the motion to dismiss.

ARGUMENT

A motion to reconsider is appropriate where the court misunderstood the position of a party or made an error not of reasoning, but of apprehension. *Bass v. Sampson*, 93 C 4442, 1995 U.S. Dist. LEXIS 424, at *3 (N.D. Ill. Jan. 13, 1995) (citation omitted). Moreover, a motion

"should be granted to correct manifest errors of law or fact." *Id.* (citing *Rothwell Cotton Co. v. Rosenthal & Co.*, 827 F.2d 246, 251 (7th Cir. 1987)). SAG brings this Motion for Reconsideration to correct the misapplication of the legal standards necessary to exercise personal jurisdiction over a foreign defendant, as well as several factual misunderstandings concerning SAG's purported control of SCPI.

I. Personal Jurisdiction Over SAG Cannot be Based on "Monolithic Control"

SAG moved to dismiss the Plaintiffs' complaint on the grounds that SAG, a Swiss corporation with no offices or employees doing business in the state of Illinois, is not subject to personal jurisdiction in Illinois. In denying the motion to dismiss, the Court held that because SAG "exercised a sufficiently high degree of control over" SCPI, which does have jurisdictional contacts with Illinois, SAG can be sued in Illinois. (Doc. 255 at 24.) The Court reasoned that because "the Syngenta group of companies functions more like a monolithic corporation controlled by [SAG] through the Executive Committee as opposed to a group of independent related companies," SCPI's jurisdictional contacts can be imputed to SAG. (Doc. 255 at 21.) However, with the exception of two SAG Executive Committee members (who are actually employees of Syngenta International AG) who serve on the SCPI board of directors, the Court relied entirely on the purported direction and control exerted over SCPI by employees of other Syngenta entities, and not by employees of SAG. (*See*, *e.g.*, *id.* at 21-22.)

The Court's ruling appears to be based on a misapplication of the legal standard for determining whether a foreign parent company may be subject to jurisdiction as a result of the control the foreign parent exercises over its domestic subsidiary. The Court determined that exercising personal jurisdiction over SAG was appropriate under the "global monolith" theory advanced by Plaintiffs – finding that all of the Syngenta entities around the world act together to

direct and control the day-to-day operations of SCPI. (Doc. 255 at 19-24.) Even if these various non-SAG entities actually did control the day-to-day operations of SCPI, Plaintiffs' "global monolith" theory is insufficient to assert personal jurisdiction over SAG. Indeed, the court in *In re Chocolate Confectionary Antitrust Litig.*, upon which this Court heavily relied, specifically rejected this "monolithic control" theory and held that a court may exercise jurisdiction over the foreign parent—in this case SAG—only where the parent *itself* controls the *daily* affairs of the U.S. subsidiary, not where the subsidiary is controlled by the employees of various other members of the web of corporate entities to which the foreign parent and domestic subsidiary belong. 674 F. Supp. 2d 580, 605 (M.D. Pa. 2009); *see also LaSalle Nat'l Bank v. Vitro, Sociedad Anomima*, 85 F. Supp. 2d 857, 866 (N.D. Ill. 2000) (rejecting the plaintiff's "super-corporation" theory because there was no evidence that the ultimate parent itself "took active, day-to-day control" of the subsidiary).

As the Court's findings demonstrate, SAG's purported control of SCPI was based not on any direct actions of either SAG or its Executive Committee, but instead through several informal business groups, such as the Crop Protection Division, the Crop Protection Leadership Team and the global heads of Syngenta's various corporate functions. (Doc. 255 at 14-19.) For instance, the Court relies repeatedly on its finding that "global managers exercise a high degree of control" over SCPI's production of atrazine. (Doc. 255 at 22.) Even if true, it is undisputed that these "global managers" are employed by separate corporations, Syngenta International AG or Syngenta Crop Protection AG, and not by SAG. (Doc. 255 at 14-15.)

This Court cannot exercise jurisdiction over SAG based on Plaintiffs' "global monolith" theory when the activities of SCPI are allegedly controlled by other entities and "global managers" - - not by SAG or its Executive Committee. *See In re Chocolate Confectionary*

Antitrust Litig., 674 F. Supp. 2d at 605 ("Plaintiffs' alter ego theory fails in part because they seek to effect jurisdiction by aggregating the activities of various Nestle entities"). Combining this fact with the Court's finding that SCPI, not SAG, exercises control over at least some of its own daily affairs, among them human resources, facilities operations, retail operations, marketing, promotion, setting budgets and third party contracting (Doc. 255 at 19), there is simply no way SAG, itself, can be said to directly control the day-to-day operations of SCPI.

Finally, if this Court's exercise of jurisdiction based on Plaintiffs' "global monolith" theory were correct, every one of the dozens of foreign entities in the Syngenta family of companies would be subject to personal jurisdiction in Illinois courts. There is simply no authority for such a broad exercise of personal jurisdiction in *In re Chocolate Confectionary Antitrust Litig.* or any other case.

II. The Court Failed to Consider the Supreme Court's Limitation on the Exercise of Personal Jurisdiction Over a Foreign Defendant

The Court also failed to consider the Supreme Court's recent decision in *J. McIntyre Machinery, Ltd., v. Nicastro*, 131 S. Ct. 2780 (2011), which significantly narrowed the circumstances under which U.S. courts may exercise personal jurisdiction over a foreign defendant. The Supreme Court there held that a foreign defendant must "purposefully avail itself of the privilege of conducting activities within the forum State, thus invoking the benefit and protections of its laws." *McIntyre Machinery*, 131 S. Ct. at 2785 (explaining that a foreign defendant has "purposefully availed" itself of the forum only when it has specifically "targeted the forum."). The Court ruled, "[I]t is [defendant's] purposeful contacts with New Jersey, not with the United States, that alone are relevant." *Id.* at 2790. Although the defendant sold products in the United States through a U.S. distributor and some of its products ended up in New Jersey, the defendant in that case did not "target" New Jersey. *Id.*

Similarly, SAG has never "targeted" Illinois, and there has been no finding that SAG controlled, or otherwise dictated, SCPI's activities in Illinois. Quite the contrary, as discussed above, this Court specifically found that SCPI itself "manages its relationships with United States retailers of its products independently of other Syngenta entities." (Doc. 255 at 19.) Accordingly, SAG cannot be said to have "engaged in conduct purposefully directed at" Illinois, and personal jurisdiction cannot attach.[1]

III. Plaintiffs' Mischaracterizations Caused the Court to Misapprehend Facts Related to Syngenta AG's Alleged Control Over SCPI

Finally, the Court's finding that SAG controls the day-to-day decisions of SCPI is based on a number of factual errors. Many of the Court's findings appear to be caused by mischaracterizations and unsupported generalizations made by Plaintiffs. Most notably is Plaintiffs' repeated reference to employees outside of SCPI as "SAG global managers and leaders." SAG does not have any global managers or leaders, because it does not have any employees. Indeed, as the Court acknowledged, these "global managers" are employed by other corporate entities, such as Syngenta International AG or Syngenta Crop Protection AG, not SAG. (Doc. 255 at 14-15.) As detailed above, this alone is sufficient grounds upon which to grant SAG's Motion to Dismiss for Lack of Personal Jurisdiction.

Plaintiffs also misled the Court by arguing that "global managers" exercise a high degree of control over SCPI's manufacturing of atrazine, "even going so far as to negotiate sales contracts on behalf of SCPI." (Doc. 255 at 17-18, 22.) To support this assertion, Plaintiffs purposely confuse email communications involving contracts for atrazine with global customers outside this country with SCPI's manufacture and sale of atrazine in the United States. (See Exs.

[1] The fact that Plaintiffs pursued a "monolithic control" theory of jurisdiction rather than a "stream of commerce" theory does not alter the Constitutional requirement that the foreign defendant avail itself of the particular U.S. forum.

176, 181, 187.) As SCPI President Vern Hawkins explained in his deposition, Syngenta's global functions are involved when atrazine is sold outside the United States. (Ex. 7, Hawkins Dep. at 173:21-174:2.) Hawkins went on to explain, however, that when SCPI sells atrazine "specifically for the U.S. market, that would be in our accountability, Syngenta Crop Protection, Inc., to source it." (*Id.*) The manner in which atrazine is allocated among global markets and supplied to global customers is of no consequence to SCPI, which markets and sells atrazine solely within the United States. (See Doc. 255 at 18.) As the evidence plainly demonstrates, SCPI makes the decisions regarding the day-to-day operations of the St. Gabriel manufacturing facility, including how much atrazine to manufacture for distribution and sale in the United States. (See Ex. 7, Hawkins Dep. at 173:21-174:2.) Indeed, John Atkin specifically testified that while global demand is communicated to SCPI, SCPI itself controls the production of atrazine at its St. Gabriel facility. (Ex. 3, Atkin Dep. at 46:15-21 ("In the United States, they have their own process, so they would receive the international demand and they would then factor that in to the running of the St. Gabriel operation, and they would -- they would do the detailed scheduling of production themselves.")).[2] This testimony is undisputed by Plaintiffs.

The Court also bases much of its conclusion that SCPI does not act independently on its mistaken belief that the decisions of SCPI's board of directors are merely dictated to it by "global or regional managers and delivered via email." (Doc. 255 at 16.) There are no such emails. Nor were any entered into the record in this case. While it is true that SCPI's board decisions are generally reached by written consent, its decisions are not predetermined and delivered via email from global managers or leaders outside of SCPI, and Plaintiffs have presented no support for such a contention. Instead, the exhibit cited by Plaintiffs for their

[2] Atkin further testified that SCPI runs its day-to-day operations, including U.S. pricing decisions, advertising and promotion, and third party contracting. (Ex. 3, Atkin Dep. at 253:25-256:3.)

contention that SCPI's board acts as a mere rubber stamp for decisions handed down by SAG actually demonstrates that SCPI's board's actions are based on the recommendations of SCPI's management. (See Ex. 346 at 2 ("SCP[I] management recommends approval of the Settlement Agreement"), 3 ("Head, NAFTA Development and Product Safety, and Crop Protection management in the U.S., recommend approval"), 4 ("The Head, Supply Chair for NAFTA and SCP[I] management recommend approval of the sale"), 6 ("Head, NAFTA Development and Product Safety and Crop Protection management in the U.S. recommend approval"), 14 ("Head, NAFTA Development and Product Safety, and Crop Protection management in the U.S. recommend approval"). There were 98 SCPI board resolutions from 2000 to 2010 produced in discovery. (Ex. 348.) Plaintiffs failed to cite a single email or other directive from SAG to the SCPI board recommending or otherwise requiring SCPI's board to take any one of those actions.[3]

In light of the foregoing factual inaccuracies, SAG respectfully requests that this Court review the record, paying particular focus on the lack of any SAG directives, SCPI's management of the production of atrazine for its own distribution and sale, and SCPI's independent board action based on the recommendations of SCPI's management team.

[3] Plaintiffs' mischaracterizations have resulted in several other significant misunderstandings by the Court. For instance, Plaintiffs claim that SCPI does not have a website for its business – a misstatement the Court appears to have relied upon. (See Doc. 255 at 21.) In fact, SCPI maintains a website at www.syngentacropprotection.com. In addition, Plaintiffs make much of Peter Hertl's global title and responsibilities while employed by SCPI. What Plaintiffs neglected to mention, however, is that after assuming his position as Head of Global Product Safety, Hertl moved to Basel and is now employed by Syngenta Crop Protection AG. (Ex. 6, Hertl Dep. at 56:2-9.)

CONCLUSION

Based on the foregoing reasons and authorities, the Court should reconsider its November 23, 2011 Order denying Syngenta AG's motion to dismiss and grant the motion to dismiss.

Dated: December 15, 2011

Respectfully submitted,

s/ *Peter M. Schutzel*
By One of Its Attorneys

Michael A. Pope, P.C., #02232464
Christopher M. Murphy, #6205191
Peter M. Schutzel, #6282107
McDERMOTT WILL & EMERY LLP
227 West Monroe Street
Chicago, Illinois 60606-5096
(312) 372-2000
Facsimile: (312) 984-7700

Kurtis B. Reeg, #3126350
REEG LAWYERS, LLC
1 North Brentwood Blvd., Suite 950
St. Louis, MO 63105
Telephone: (314) 446-3350
Facsimile: (314) 446-3360

Mark C. Surprenant (admitted pro hac vice)
Lara E. White (admitted pro hac vice)
ADAMS AND REESE LLP
4500 One Shell Square
New Orleans, LA 70139
Telephone: (504) 581-3234
Facsimile: (504) 566-0210

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SYNGENTA CROP PROTECTION, INC., and SYNGENTA AG,	)	
	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2011, I electronically filed the foregoing Defendant Syngenta AG's Motion for Reconsideration with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorneys of record.

Dated: December 15, 2011

s/ *Peter M. Schutzel*

Michael A. Pope, P.C., #02232464
Christopher M. Murphy, #6205191
Peter M. Schutzel, #6282107
McDERMOTT WILL & EMERY LLP
227 West Monroe Street
Chicago, Illinois 60606-5096
(312) 372-2000
Facsimile: (312) 984-7700

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