

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE PORK ANTITRUST LITIGATION

No. 18-1776 (JRT/HB)

No. 21-2998 (JRT/HB)

This Document Relates to: ALL ACTIONS

**MEMORANDUM OPINION AND ORDER
CONSOLIDATING ACTIONS**

The issue of whether to consolidate these actions for pretrial proceedings is before the Court following the Court's Briefing Order requesting the parties address whether the member cases of ECF Case No. 18-1776 and ECF Case No. 21-2998 should be formally consolidated into a single multidistrict litigation (MDL) or simply coordinated as much as possible without formal consolidation. The Court will consolidate the cases for all future pretrial proceedings into a single MDL because the Court concludes that consolidation will best promote efficiency, prevent confusion and unnecessary complication, and prevent duplicative or conflicting decisions.

BACKGROUND

Beginning in 2018, a series of class actions and individual actions were filed against the leading American pork producers alleging the producers had engaged in a price fixing conspiracy in violation of federal and state antitrust laws. (*See, e.g.*, Case No. 18-1776, Compl., June 28, 2018, [Docket No. 1](#).) Pursuant to [Federal Rule of Civil Procedure 42\(a\)](#), the Court began consolidating the related cases filed in the District of Minnesota for

pretrial proceedings in September 2018 under Case Number 181776. (Case No. 18-1776, Initial Case Mgmt. Order, Sept. 21, 2018, [Docket No. 85](#).) The Case Management Order provided that related “actions later instituted in, removed to, or transferred to this Court” under [28 U.S.C. § 1407](#) would be consolidated with 18-1776. (*Id.* ¶¶ 9–10.) This Order also renamed the consolidated litigation “*In Re Pork Antitrust Litigation*.” (*Id.* ¶ 6.) As more cases were filed in the District of Minnesota, the Court consolidated these cases. (Case No. 18-1776, Order Stip. Regarding Consolidation, Jan. 21, 2021, [Docket No. 644](#).)

In 2021, additional cases brought by individual plaintiffs were filed in other federal district courts involving the same issues. *In re Pork Direct & Indirect Purchaser Antitrust Litig.*, No. 2998, [2021 WL 2369199](#), at *1 (J.P.M.L. June 9, 2021). Pursuant to [28 U.S.C. § 1407\(a\)](#), the Judicial Panel on Multidistrict Litigation (“JPML”) formed MDL Number 2998 and transferred two cases to this Court on June 9, 2021, finding that the cases involved common questions of fact and centralization in this Court would “serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation.” *Id.* The JPML has continued transferring additional cases from other districts to this Court. (*E.g.*, Case No. 21-2998, Conditional Transfer Order, July 15, 2021, [Docket No. 8](#).)

In its initial Transfer Order, the JPML concluded that transfer to this Court would best accomplish the purposes of MDL centralization under [28 U.S.C. § 1407](#), because this Court has presided over the consolidated Minnesota litigation since 2018 including

dealing with motions to dismiss. *In re Pork*, [2021 WL 2369199](#), at *1. Specifically, it found that centralizing the cases would prevent “duplicative pretrial proceedings and potentially inconsistent pretrial rulings.” *Id.* Accordingly, the JPML transferred the actions to this Court for “coordinated or consolidated pretrial proceedings” and named the MDL it created “*In re: Pork Antitrust Litigation*.” *Id.* at *2.

The Court held a status conference on July 14, 2021, for all parties in both Case Number 18-1776 and Case Number 21-2998. (Case No. 18-1776, Min. Entry Status Conf., July 14, 2021, [Docket No. 835](#); Case No. 21-2998, Min. Entry Status Conf., July 14, 2021, [Docket No. 9](#).) The main purpose of this status conference was to determine the most efficient and just manner of handling all the cases and how to best coordinate the MDL and the previously filed cases. (See Case No. 18-1776, Tr. at 4:15–19, July 27, 2021, [Docket No. 839](#); Case No. 21-2998, Tr. at 4:15–19, July 27, 2021, [Docket No. 14](#).) A central question was whether the cases should be formally consolidated or just coordinated to the greatest extent possible. The Court ordered the parties to address this question in written submissions. (Case No. 18-1776, Briefing Order, Aug. 5, 2021, [Docket No. 869](#); Case No. 21-2998, Briefing Order, Aug. 5, 2021, [Docket No. 23](#).)

In response, the parties took different positions:

- The Direct Purchaser Plaintiffs (“DPPs”) support consolidation. (Case No. 18-1776, DPPs’ Br. Regarding Consolidation, Aug. 19, 2021, [Docket No. 895](#);

Case No. 21-2998, DPPs' Br. Regarding Consolidation, Aug. 19, 2021, Docket No. 35.)

- The Defendants support consolidation. (Case No. 18-1776, Defs.' Br. Regarding Consolidation, Aug. 19, 2021, [Docket No. 896](#); Case No. 21-2998, Aug. 19, 2021, [Docket No. 31](#).)
- The Consumer Indirect Purchase Plaintiffs ("CIPs") argued that regardless of whether the Court coordinated or consolidated the cases, the JPML already centralized the cases in an MDL and the Court should allow all parties to benefit from MDL procedures. (Case No. 18-1776, CIPs' Br. Regarding Briefing Order, Aug. 19, 2021, [Docket No. 897](#); Case No. 21-2998, CIPs' Br. Regarding Briefing Order, Aug. 19, 2021, [Docket No. 33](#).)
- The Commercial and Institutional Indirect Purchaser Plaintiffs ("CIIPPs") support consolidation. (Case No. 18-1776, CIIPPs' Br. Regarding Consolidation, Aug. 19, 2019, [Docket No. 899](#); Case No. 21-2998, CIIPPs' Br. Regarding Consolidation, Aug. 19, 2019, [Docket No. 36](#).)
- The MDL Direct Action Plaintiffs ("DAPs"), whose cases were specifically transferred by the JPML, oppose consolidation. (Case No. 21-2998, MDL DAPs' Resp. Regarding Briefing Order, Aug. 19, 2019, [Docket No. 32](#).)

DISCUSSION

If civil actions in different districts involve one or more common questions of fact, the JPML may set up an MDL and transfer the actions to one district for coordinated or consolidated pretrial proceeding if the JPML determines that this “will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions.” 28 U.S.C. § 1407(a). The purpose of MDL centralization is to “eliminate duplicative discovery, avoid inconsistent pretrial rulings, and conserve the resources of the parties, their counsel and the judiciary.” *In re Vioxx Prod. Liab. Litig.*, 360 F. Supp. 2d 1352, 1354 (J.P.M.L. 2005); *see also In re Pork*, 2021 WL 2369199, at *1. Once transferred, the JPML leaves “the extent and manner of coordination or consolidation of these actions to the discretion of the transferee court.” *In re Vioxx*, 360 F. Supp. 2d at 1354.

Under Federal Rule of Civil Procedure 42, if “actions before the court involve a common question of law or fact, the court may: (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay.” Fed. R. Civ. P. 42(a). Rule 42 permits consolidation even if the claims arise out of independent transactions. *Madison v. Hennepin Cnty.*, No. 02-4756, 2003 WL 21639221, at *1 (D. Minn. July 1, 2003). When deciding whether to consolidate cases, courts consider the risk of inconsistent rulings and the burden on and cost to parties, witnesses, and the court. *Chill v. Green Tree Fin. Corp.*, 181 F.R.D. 398, 405 (D. Minn. 1998) (citing *Cantrell v. GAF*, 999 F.2d 1007, 1011 (6th Cir. 1993)).

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