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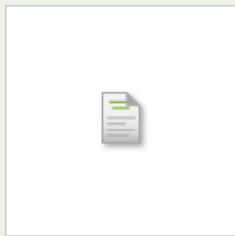
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Federal Judge's Order in
Syngenta AG Case

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Korein Tillery 

November 27, 2011 06:47 PM Eastern Time

Syngenta's Swiss Parent Company Must Appear & Defend Illinois Atrazine-Contamination Lawsuit Filed by Korein Tillery

ST. LOUIS--(BUSINESS WIRE)--A federal judge in Southern Illinois has ordered the Swiss parent company of Atrazine-maker Syngenta Crop Protection Inc. (SCPI) to appear in his court to defend a [water-contamination lawsuit](#) brought by Midwestern public water providers filed by [Korein Tillery](#) of St. Louis. The order marked the first time the company has ever been held subject to the jurisdiction of U.S. courts.

The notably detailed [opinion by District Judge J. Phil Gilbert](#) of the U.S. District Court for the Southern District of Illinois was handed down the day before Thanksgiving and found that Syngenta AG (SAG) – the Basel, Switzerland-based international conglomerate – “has organized its group of subsidiary companies, including SCPI, purposefully to limit the jurisdictions in which it is subject to court authority.”

Judge Gilbert focused on substance over form, however, and exercised jurisdiction because voluminous evidence revealed SAG's pervasive operational control over its indirect subsidiary SCPI – the agrochem giant based in Greensboro, N.C., that manufactures and distributes the herbicide Atrazine that is at the heart of the lawsuit. The Judge found that the evidence of actual day-to-day control cited by lead plaintiff's attorney [Stephen M. Tillery](#) undermined SAG's claim that it is simply a passive financial holding company.

“The evidence shows that SAG exercises an ‘unusually high degree of control over’ and, in fact, dominates SCPI despite multiple layers of corporate ownership between them,” the Judge wrote. “SAG's control of SCPI exceeds that which is consistent with investor status, and SAG is therefore subject to the personal jurisdiction of this Court.”

The ruling means that SAG must now actively defend the lawsuit filed by Korein Tillery and Baron & Budd of Dallas on behalf of 22 public water providers from six Midwestern states. The suit alleges that SAG and SCPI consciously chose to reap considerable profit by continuing to sell Atrazine in the U.S., even while knowing that the weed killer's chemical properties made it certain to contaminate the water sources that water providers use to supply drinking water to the American public. The suit seeks to recover the substantial costs of removing Atrazine from drinking water before delivery to customers. It also seeks a declaration that SAG and SCPI will be legally responsible for reimbursing water providers the future costs associated with Atrazine removal.

“We included SAG in the lawsuit because it was Syngenta's Swiss-based management that made the important decisions that ultimately injured our clients,” Tillery said. “Judge Gilbert's ruling vindicates our position that the upper management of foreign companies that earn billions of dollars in the U.S. cannot hide behind convoluted corporate structures to escape answering for their decisions in U.S. courts.”

Judge Gilbert's findings largely confirm Tillery's contentions about SAG's direct control over SCPI presented at a jurisdictional hearing in July. In his order, the Judge found:

- “It is clear that Illinois has a substantial interest in this litigation in that the allegations are that SAG is responsible for contaminating the water supply of numerous municipalities within the state.”
- “The evidence in this case shows that the [SAG] Executive Committee functions as the means by which the SAG board exercises control over SCPI. ... More importantly, however is the fact that the SCPI board rarely meets in person and decides almost everything by unanimous consent of a recommendation provided by a higher functional reporting level. ... The Court is hard-pressed to see how such a board can diligently and seriously consider the issues before it if it rarely even holds a discussion in person or otherwise. ... [T]he SCPI board appears to not function independently as a board.”
- “It is worth noting that SAG centralizes uniform marketing in which it represents that ‘Syngenta’ is a single-integrated globally managed entity. SCPI uses the same corporate insignia, marks and logos as SAG and does not have an independent website for its business.”
- “Some SCPI employees take orders from global managers who work for Syngenta entities that have no ownership interest in

“It is clear that Illinois has a substantial interest in this litigation in that the allegations are that SAG is responsible for contaminating the water supply of numerous municipalities within the state.”

SCPI. ... That the formal decision regarding those SCPI employees are technically made by SCPI's managers does not change the reality that higher levels actually make the real decisions. ... Indeed, a number of employees of Syngenta entities cannot identify for which Syngenta entity they or their coworkers work."

- The Judge explained that a global finance function called Syngenta Group Treasury "controls daily cash sweeps from subsidiaries, holds the cash on account, and lends it to other subsidiaries that need liquidity."
- "The defendant bears the burden of showing jurisdiction is unreasonable despite its contacts with the jurisdiction. ... SAG has not made such a showing. As a preliminary matter, by its actions to control SCPI within this forum, SAG has purposefully availed itself of this forum's laws such that it should not be surprised that it is being haled into court here."

Korein Tillery is a an AV-rated, award-winning law firm with offices in St. Louis and Chicago that has recovered billions of dollars in verdicts and settlements in a variety of cases across the country involving pension funds, insurance, securities, antitrust, telecommunications, pharmaceuticals, environmental contamination, tobacco, computer technology, and consumer fraud. The firm has gained a national reputation for aggressively and successfully pursuing a wide variety of complex cases on behalf of its clients. Korein Tillery is the only Midwest-based firm named by the *National Law Journal* to its "Plaintiffs' Hot List" in 2011, and has previously made the list in 2008, 2007, 2004, and 2003 as one of the nation's top plaintiffs' law firms in all specialties. More information is available at www.koreintillery.com.

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