

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF KANSAS

MICHAEL HOBBIEBRUNKEN,

Plaintiff,

Vs.

No. 11-1385-SAC

TOM VILSACK, Secretary of the
United States Department of
Agriculture; THE RISK MANAGEMENT
AGENCY; and THE FEDERAL CROP
INSURANCE CORPORATION,

Defendants.

MEMORANDUM AND ORDER

The case comes before the court on the defendants' motion to transfer this case to Judge Robinson. (Dk. 4). This case is one of three actions seeking judicial review on complaints with nearly identical allegations. In this case and the cases of *Kevin Hobbiebrunken v. Tom Vilsack, et al.*, No. 11-1386-MLB and *Brian Hobbiebrunken v. Tom Vilsack, et al.*, No. 11-1387-JAR, each plaintiff alleges that in 2009 he had a federal crop insurance policy on land farmed about ten miles north of Elkhart, Kansas, and that his insurance claim for a failed corn crop from hail and extremely dry weather was denied for failure to follow good farming practices. The plaintiffs seek judicial review of the agency determinations upholding the denial of their claims. The defendants filed a motion to transfer in this case and in the case assigned to Judge Belot, and they argue

the plaintiffs in all three cases “raise identical issues,” “state virtually identical facts,” and “seek identical relief.” (Dk. 4, p. 2).

The plaintiff opposes a transfer arguing the apparent similarities are “not that simple” because each case requires a separate judicial review involving its own set of facts with differences in the policies, in the kind and amount of seed used, in the weed control methods employed, and in the timing of the fertilizer. (Dk. 9). Recognizing that the decision to transfer/consolidate was a matter committed to his sound discretion, Judge Belot has held in his case that “[a]t this stage in the proceedings and after consideration of plaintiff’s position, the court does not find that it is necessary to transfer this case to another judge.” No. 11-1386-MLB, Dk. 11. The court shares Judge Belot’s impression of the motion as premature. It may be more apparent later that the issues and facts common in the cases would predominate the court’s analysis. For now, the court denies the motion without prejudice to a subsequent motion for transfer/consolidation based on additional facts and arguments. The court concurs with Judge Belot’s order to have this case assigned to Magistrate Judge Gale for discovery purposes, including the defendant’s pending motion for extension of time (Dk. 5).

IT IS THEREFORE ORDERED that the defendants’ motion to transfer this case to Judge Robinson (Dk. 4) is denied without prejudice.

Dated this 28th day of February of 2012, Topeka, Kansas.

s/ Sam A. Crow
Sam A. Crow, U.S. District Senior Judge