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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

IN RE: WESTERN STATES)	MDL 1566
WHOLESALE NATURAL GAS)	2:03-CV-01431-PMP-PAL
ANTITRUST LITIGATION)	BASE FILE
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REORGANIZED FLI, INC.,)	
)	2:05-CV-01331-PMP-PAL
Plaintiff,)	
v.)	
THE WILLIAMS COMPANIES, INC., et)	<u>ORDER RE: DEFENDANTS' MOTION</u>
al.,)	<u>FOR JUDGMENT ON THE</u>
)	<u>PLEADINGS (Doc. #1806)</u>
Defendants.)	
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Presently before the Court is Defendants' Motion for Judgment on the Pleadings (Doc. #1806), filed on October 5, 2009. Plaintiff filed an Opposition (Doc. #1873) on December 8, 2009. Defendants filed a Reply (Doc. #1888) on January 7, 2010.

I. BACKGROUND

This case is one of many in consolidated Multidistrict Litigation arising out of the energy crisis of 2000-2001. Plaintiff originally filed this action in the District Court of Wyandotte County, Kansas. (Notice of Removal, [2:05-CV-01331-PMP-PAL, Doc. #1] at 2.) Defendants removed the case to the United States District Court for the District of Kansas. (Id.) The Judicial Panel on Multidistrict Litigation entered a Transfer Order pursuant to 28 U.S.C. § 1407 centralizing the foregoing action in this Court for coordinated or consolidated pretrial proceedings.

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1 Plaintiff Reorganized FLI, Inc. (“RFLI”), is a Kansas corporation with its
2 principal place of business in Kansas City, Missouri. (Am. Compl. [Doc. #11 in 2:05-CV-
3 01331-PMP-PAL] at 3.) RFLI is a successor in interest to Farmland Industries, Inc.
4 (“Farmland”), a Kansas corporation. (Id. at 3-4.) Farmland had commercial business
5 operations in Muncie, Kansas, as well as fertilizer production facilities in Lawrence,
6 Coffeyville, and Dodge City, Kansas. (Id.) Farmland also had fertilizer production
7 facilities in Oklahoma, Nebraska, Iowa, and Louisiana. (Id.) Farmland’s day-to-day
8 management of its fertilizer operations were centralized and run from offices located in
9 Lawrence, Kansas during the relevant period. (Id.) Specifically, RFLI alleges that for its
10 fertilizer operations, “corporate activities such as budgeting, forecasting, capital spending
11 authorizations, executing annual purchasing contracts, accounting, distribution, and setting
12 production” were run from Farmland’s Kansas offices. (Id.) RFLI used natural gas for its
13 business during the relevant period, and purchased natural gas from one or more of
14 Defendants during the relevant period. (Id. at 4.)

15 According to the Amended Complaint, Defendants are natural gas companies that
16 buy, sell, transport, and store natural gas, including their own and their affiliates’
17 production, in the United States and in the State of Kansas. (Id. at 4-33.) In this litigation,
18 Plaintiff alleges Defendants conspired to engage in anti-competitive activities with the
19 intent to manipulate and artificially increase the price of natural gas for consumers. (Id. at
20 4-43.) Specifically, Plaintiff alleges Defendants, directly and through their affiliates,
21 conspired to manipulate the natural gas market by knowingly delivering false reports
22 concerning trade information to trade indices and engaging in wash trades, in violation of
23 Kansas Statutes Annotated § 50-101, et seq. (Id.) Plaintiff seeks as relief a refund of the
24 amounts it paid to Defendants for any natural gas paid at manipulated or controlled prices.
25 (Id. at 43.) Plaintiff seeks this relief under Kansas’s antitrust statutes, which provide for a
26 full consideration remedy. (Id. (citing Kan. Stat. Ann. § 50-115).)

1 Defendants now move for judgment on the pleadings. Defendants contend that
2 under a choice of law analysis, Plaintiff’s claim is governed by Missouri law, not Kansas
3 law, and Missouri does not allow for a full consideration remedy. Plaintiff responds that
4 Defendants have waived the choice of law analysis by not raising it earlier in the
5 proceedings. Plaintiff argues that in any event, Kansas law controls.

6 **II. LEGAL STANDARD**

7 “A judgment on the pleadings [under Federal Rule of Civil Procedure 12(c)] is
8 properly granted when, taking all allegations in the pleadings as true, the moving party is
9 entitled to judgment as a matter of law.” Nelson v. City of Irvine, 143 F.3d 1196, 1200 (9th
10 Cir. 1998). A motion for judgment on the pleadings brought pursuant to Federal Rule of
11 Civil Procedure 12(c) may be brought “[a]fter the pleadings are closed – but early enough
12 not to delay trial” Fed. R. Civ. P. 12(c).

13 **III. DISCUSSION**

14 As a federal court sitting in diversity, this Court applies “the forum state’s choice
15 of law rules to determine the controlling substantive law.” Fields v. Legacy Health Sys.,
16 413 F.3d 943, 950 (9th Cir. 2005) (quotation omitted). Kansas applies the law of the forum
17 “unless it is expressly shown that a different law governs, and in case of doubt, the law of
18 the forum is preferred.” Layne Christensen Co. v. Zurich Canada, 38 P.3d 757, 767 (Kan.
19 Ct. App. 2002) (citing Shutts v. Phillips Petroleum Co., 679 P.2d 1159, 1181 (Kan. 1984),
20 rev’d in part on other grounds, 472 U.S. 797 (1985)); Sys. Design & Mgmt. Info. Inc. v.
21 Kan. City Post Office Employees Cred. Union, 788 P.2d 878, 881 (Kan. Ct. App. 1990).
22 “Generally the party seeking to apply the law of a jurisdiction other than the forum has the
23 burden to present sufficient facts to show that other law should apply.” Layne Christensen
24 Co., 38 P.3d at 767.

25 Kansas follows the Restatement (First) of Conflict of Laws. Brenner v.
26 Oppenheimer & Co. Inc., 44 P.3d 364, 374 (Kan. 2002). Under the First Restatement

1 § 378, the “law of the place of wrong determines whether a person has sustained a legal
2 injury.” Thus, in tort cases,¹ Kansas applies “the law of the state where the tort occurred.”
3 Ling v. Jan’s Liquors, 703 P.2d 731, 735 (Kan. 1985). The “place of wrong” is “the state
4 where the last event necessary to make an actor liable for an alleged tort takes place.”
5 Restatement (First) of Conflict of Laws § 377. Because a tortious act “is not complete until
6 the injury has occurred,” Kansas deems a tortious act “to have occurred in the state where
7 the injury occurs.” Merriman v. Crompton Corp., 146 P.3d 162, 180 (Kan. 2006) (quotation
8 omitted).

9 Kansas has not addressed where the tort occurs when a corporation alleges
10 injuries arising out of a price fixing conspiracy. “Where the state’s highest court has not
11 decided an issue, the task of the federal courts is to predict how the state high court would
12 resolve it.” Giles v. Gen. Motors Acceptance Corp., 494 F.3d 865, 872 (9th Cir. 2007)
13 (quotation omitted). “In answering that question, this court looks for ‘guidance’ to
14 decisions by intermediate appellate courts of the state and by courts in other jurisdictions.”
15 Id. (quotation omitted).

16 Although Kansas has not addressed this issue directly, Kansas has suggested, in
17 evaluating its long-arm statute, that an antitrust price-fixing injury “occurs at the place of
18 sale because the consumer is injured when he or she pays the artificially inflated price.”
19 Merriman, 146 P.3d at 181. In Merriman, the Kansas Supreme Court was addressing
20 whether a price-fixing antitrust claim sufficed to support exercising jurisdiction over a non-
21 resident defendant under Kansas’s long-arm statute which provided for the exercise of
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23 ¹ Plaintiff argues its antitrust claim is not a tort, but a statutory claim which is not subject to
24 Kansas’s usual choice of law rules. Because the Court concludes Kansas law controls even if
25 Plaintiff’s claim is characterized as a tort, the Court need not address this issue. However, in the
26 context of applying its long-arm statute, Kansas has referred to antitrust claims as akin to torts. See
Merriman v. Crompton Corp., 146 P.3d 162, 181 (Kan. 2006) (“We hold that a price-fixing conspiracy
may be a tortious act under K.S.A. 60-308(b)(2).”).

1 jurisdiction where the non-resident defendant committed a tortious act in the state. Id. at
2 180-81. The defendants argued that price-fixing is not a tort, as it was not recognized as
3 such at common law. Id. at 181. The Kansas Supreme Court rejected that argument, noting
4 that other courts have concluded that price fixing acts are tortious in nature, and that the
5 “injury occurs at the place of sale because the consumer is injured when he or she pays the
6 artificially inflated price.” Id. (citing cases from other jurisdictions). Based on this
7 reasoning, the Kansas Supreme Court held that “a price-fixing conspiracy may be a tortious
8 act” in the state under the long-arm statute. Id.

9 The Court concludes Kansas similarly would hold under its choice of law
10 analysis that a plaintiff asserting a price-fixing antitrust claim, whether it is a natural person
11 or a corporation, is injured at the place of sale, because that is where the plaintiff pays the
12 manipulated price. The Kansas Supreme Court was persuaded by this reasoning in the
13 context of determining whether a defendant commits a tortious act within the state under the
14 state’s long-arm statute, and nothing in Kansas law suggests it would find this same
15 reasoning unpersuasive in its choice of law analysis.² Such a rule also is consistent with the
16 First Restatement, as the state where the sale occurs is the state where the last event
17 necessary to make an actor liable for an alleged tort takes place, as the last act supporting
18 antitrust liability occurs when the plaintiff is injured upon paying the manipulated price.

19 Here, Plaintiff alleges it purchased gas from Defendants in Kansas, Oklahoma,
20 Nebraska, Iowa, and Louisiana. (Am. Compl. at 36.) Plaintiff also alleges a different kind
21 of injury occurring within the state of Kansas. Plaintiff alleges that due to Defendants’
22 price manipulation, Plaintiff was “deprived of the right to make risk management, resource

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24 ² Defendants agree with this proposition, stating that “the inquiry presented under the long-arm
25 statute turns on the same facts as the conflict of law rules – where a tortious injury occurs. [Plaintiff]
26 offers no authority to suggest that place of injury is determined differently in the two scenarios.”
(Def.’ Reply to Pl.’s Resp. to Mot. for J. on the Pleadings Regarding Choice of Law (Doc. #1888) at
7 n.5.)

1 allocation and other financial decisions in a full and free competitive market for natural
2 gas.” (Id. at 40-41.) Plaintiff alleges that decisions about budgeting, forecasting, capital
3 spending authorization, executing annual purchasing contracts, accounting, distribution, and
4 setting production were made out of the Kansas office. (Id. at 3-4.) Consequently, to the
5 extent Defendants’ alleged antitrust violations caused injury to Plaintiff’s business by
6 disrupting its ability to make critical business decisions in a full and free competitive
7 market, Plaintiff felt such injury in Kansas, where it made those types of decisions.
8 Consequently, the Court concludes that Kansas law applies to Plaintiff’s claim.

9 In several decisions, the United States District Court for the District of Kansas
10 has held that where the alleged injury at issue was economic, the plaintiff corporation felt
11 the financial harm at its principal place of business.³ These cases do not alter the Court’s

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13 ³See Alpine Atl. Asset Mgmt. AG v. Comstock, 552 F. Supp. 2d 1268, 1279 (D. Kan. 2008)
14 (“Because the wrong here involves financial harm, the court would look to the law of the place where
15 Alpine felt the alleged financial harm, which is the location of its principal place of business in
16 Switzerland.”); Carolina Indus. Prods., Inc. v. Learjet, Inc., 189 F. Supp. 2d 1147, 1163 n.12 (D. Kan.
17 2001) (holding the plaintiffs’ tortious interference claim was governed by Georgia law where one
18 plaintiff was a Georgia limited liability company, another was a Georgia resident, and the third was
19 incorporated in North Carolina but its sole owner resided in Georgia and the court “presume[d]” the
20 plaintiff’s principal place of business was Georgia); ORI, Inc. v. Lanewala, 147 F. Supp. 2d 1069, 1078
21 n.9 (D. Kan. 2001) (holding that where the plaintiff alleged financial injury, it felt such injury at its
22 principal place of business in Kansas); Bushnell Corp. v. ITT Corp., 973 F. Supp. 1276, 1286 n.2 (D.
23 Kan. 1997) (holding the plaintiff’s defamation and tortious interference claims were governed by
24 Kansas law because the plaintiff alleged financial harm which the plaintiff would have felt at its
25 principal place of business in Kansas); Lawrence-Leiter & Co. v. Paulson, 963 F. Supp. 1061, 1062,
26 1065 (D. Kan. 1997) (holding in defamation case that corporation incorporated in Missouri but with
principal place of business in Kansas felt the harm in Kansas); St. Paul Furniture Mfg. Co. v. Bergman,
935 F. Supp. 1180, 1187 (D. Kan. 1996) (holding Illinois law applied where the plaintiffs, an Illinois
corporation and an Illinois resident, alleged financial harm); Old Colony Ventures I, Inc. v. SMWNP
Holdings, Inc., 910 F. Supp. 543, 545 (D. Kan. 1995) (noting the plaintiff, an Illinois corporation, did
not plead where it felt the injury, but the parties agreed Kansas law applied) Atchison Casting Corp.
v. Dofasco, Inc., 889 F. Supp. 1445, 1455-56 (D. Kan. 1995) (holding that the “only evidence before
the court” indicated that the plaintiff felt pecuniary damages from a misrepresentation at its principal
place of business in Kansas); Corinthian Mortg. Corp. v. First Sec. Mortg. Co., 716 F. Supp. 527,
529-30 (D. Kan. 1989) (holding, in the context of determining whether a defendant committed a
tortious act within the state under Kansas’s long-arm statute, that the plaintiff suffered harm from an

1 conclusion. In several of these cases, the parties either conceded or did not address which
2 law applied. See, e.g., ORI, Inc. v. Lanewala, 147 F. Supp. 2d 1069, 1078 n.9 (D. Kan.
3 2001); St. Paul Furniture Mfg. Co. v. Bergman, 935 F. Supp. 1180, 1187 (D. Kan. 1996);
4 Old Colony Ventures I, Inc. v. SMWNPF Holdings, Inc., 910 F. Supp. 543, 545 (D. Kan.
5 1995). In others, it is unclear whether the parties disputed which law governed the claims at
6 issue, but from the court's decision it appears the parties either agreed about which law
7 applied, or they did not address the matter. Bushnell Corp. v. ITT Corp., 973 F. Supp.
8 1276, 1286 n.2 (D. Kan. 1997); Lawrence-Leiter & Co. v. Paulson, 963 F. Supp. 1061,
9 1062, 1065 (D. Kan. 1997).

10 In those cases where the parties disputed the choice of law, the dispute was
11 between either the principal place of business and the state of incorporation, or the
12 principal place of business and the location of the defendant or the defendant's alleged
13 tortious acts. See Alpine Atl. Asset Mgmt. AG v. Comstock, 552 F. Supp. 2d 1268, 1279
14 (D. Kan. 2008); Carolina Indus. Prod., Inc. v. Learjet, Inc., 189 F. Supp. 2d 1147, 1163 n.12
15 (D. Kan. 2001); Atchison Casting Corp. v. Dofasco, Inc., 889 F. Supp. 1445, 1455-56 (D.
16 Kan. 1995); Corinthian Mortg. Corp. v. First Sec. Mortg. Co., 716 F. Supp. 527, 529-30 (D.
17 Kan. 1989). None of these cases involved a price fixing conspiracy. Nor did any of the
18 cases involve a factual scenario similar to that alleged in the present action, where the
19 corporation had its principal place of business in one state, but was incorporated in another
20 state and also conducted operations within its state of incorporation out of which the

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22 alleged fraudulent misrepresentation at its principal place of business in Kansas). But see Kansas Mun.
23 Gas Agency v. Vesta Energy Co., Inc., 840 F. Supp. 814, 822-23 (D. Kan. 1993) (holding that "the law
24 of the state in which a party receives the allegedly fraudulent misrepresentations will be applicable to
25 the party's common law fraud claims"); Raymark Indus., Inc. v. Stemple, 714 F. Supp. 460, 465 (D.
26 Kan. 1988) (holding that the wrong in a misrepresentation case was felt in Kansas where the plaintiff
received the defendants' misrepresentations that certain claimants were entitled to proceeds from a
settlement fund in Kansas, the settlement monies were kept in Kansas, and the funds were paid to
Kansas claimants).

1 particular claim arose.

2 The one case which is factually similar supports choosing Kansas law in this
3 case. In Seitter v. Schoenfeld, the counterdefendant moved to dismiss a negligent
4 misrepresentation counterclaim. 678 F. Supp. 831, 835 (D. Kan. 1988). The
5 counterclaimant sought to apply Kansas law to its counterclaim because the counterclaimant
6 loaned the money to the counterdefendant in Kansas, the counterdefendant defaulted on the
7 loan in Kansas where the counterdefendant was located, the collateral securing the loan was
8 located in Kansas, the counterdefendant foreclosed on the counterdefendant's assets in
9 Kansas, and the counterdefendant incurred expenses in liquidating those assets in Kansas.
10 Id. at 835-36. The federal district court rejected the application of Kansas law, however,
11 noting that although the "cause of [the counterclaimant's] injuries may have occurred in
12 Kansas, . . . the effects of [the counterdefendant's] alleged actions were felt in Illinois"
13 where the counterclaimant had its offices. Id.

14 In holding that the counterclaimant felt its injury at its offices in Illinois, the court
15 rejected the argument that the counterclaimant felt its injuries at its "corporate headquarters
16 in New York." Id. at n.2. "All negotiations took place with Illinois personnel in the Illinois
17 offices. Notice of default was also sent to Illinois. The transaction was plainly centered
18 around [the counterclaimant's] Illinois location, and the location of the company's national
19 headquarters is not controlling in this factual situation." Id.

20 Here, as in Seitter, the relevant activity related to the underlying price-fixing
21 claim occurred in Kansas. Accepting the Amended Complaint's uncontroverted allegations
22 as true, Plaintiff made decisions related to its fertilizer operations in Kansas, and made
23 actual purchases of natural gas from Defendants in Kansas. Although Plaintiff made
24 purchases in other states as well, it did not make any such purchases in Missouri, its
25 principal place of business. Further, Plaintiff alleges harm separate from financial losses
26 from the sales themselves. Plaintiff also alleges that due to Defendants' price manipulation,


1 Plaintiff was deprived of the ability to make certain business decisions in a full and free
2 competitive market for natural gas. As the Amended Complaint alleges these decisions
3 were made in Kansas, Plaintiff felt this injury, if anywhere, in Kansas.

4 The Court therefore concludes that Kansas law applies to Plaintiff's claim.
5 Because Kansas provides for a full consideration remedy, the Court will deny Defendants'
6 motion for judgment on the pleadings.

7 **IV. CONCLUSION**

8 IT IS THEREFORE ORDERED that Defendants' Motion for Judgment on the
9 Pleadings (Doc. #1806) is hereby DENIED.

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11 DATED: November 3, 2010

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13 PHILIP M. PRO
14 United States District Judge
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