

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

IN RE: Syngenta AG MIR162)	
Corn Litigation)	
)	MDL No: 2591
)	
(This Order Relates To All Cases))	Case No. 14-md-2591-JWL-JPO
)	
)	

ORDER CONCERNING APPOINTMENT OF COUNSEL

1. This court, having carefully reviewed the submissions of those counsel who sought leadership positions in this Multi-District Litigation, and having conducted an in-court hearing on January 21, 2015 to provide an opportunity for all applicants to be heard, creates the organization of counsel set forth below for the purpose of assuring the effective, efficient, expeditious and economical conduct of this litigation. In that connection, the court hastens to acknowledge that numerous well-qualified candidates for leadership positions were considered but not selected, although the court is confident that they could have performed ably had they been selected. For that reason, the court believes that a brief explanation of its thinking is warranted.

As is described in detail below, the court has selected the so-called DCPS group, augmented by the addition to the Plaintiffs' Executive Committee of two other lawyers who represented competing groups and one who represents uniquely situated clients. As co-lead counsel, this court has chosen Don Downing, William Chaney, Scott Powell and Patrick Stueve. Mr. Downing is also appointed interim class counsel and Mr. Stueve as liaison counsel. All of these lawyers satisfy the criteria for selection set out in the Manual for Complex Litigation 4th and the Duke Center for Judicial Studies Standards and Best Practices. Mr. Downing is also well

suited under the criteria set out in Federal Rule of Civil Procedure 23(g)(2). They all have done extensive work identifying and investigating potential claims; are experienced in handling complex litigation, including litigation involving genetically modified grain; are knowledgeable in the law; have demonstrated themselves as able and willing to work with diverse interests among plaintiffs as well as with the court and opposing counsel; and they bring the resources necessary to sustain this litigation without untoward involvement by non-party, non-lawyer funders. Moreover, they received excellent references from other judges before whom they have practiced, both for their skills and their collegiality. Much the same could be said about the other candidates, but the DCPS group stood out.

The court was especially impressed by the extent to which their lawyers had thought through the matter of advancing the interests of diverse groups of plaintiffs and built a team which takes those interests into account. Some of the plaintiffs in this case desire to proceed by individual actions. Others prefer the certification of one or more classes. Still others seek or will seek remand to state court. Some of the plaintiffs are large entities, others operate small farms. The DCPS group alone included representatives of each of these interests in its leadership team, including its proposed Executive Committee. Not only does the court agree that this is the best way to proceed, but it believes that it bodes well for the expeditious handling of this litigation that the DCPS group anticipated this diversity and proposed an organization accordingly.

Some competing candidates suggested that there is an inherent conflict involved in appointing a leadership team which includes advocates both of class treatment and of individual actions, citing the Manual for Complex Litigation 4th for authority. But this court finds nothing in the Manual, nor inherently, which would counsel against this approach. In fact, the authors of the Manual address this issue by admonishing the appointing court to assess, among other things,

“whether designated counsel fairly represent the various interests in the litigation—where diverse interests exist among the parties, the court may designate a committee of counsel representing different interests.” Manual for Complex Litigation § 10.224 (4th ed. 2004). In essence, that is what the four-member co-lead counsel group, along with its Executive Committee, comprise. Furthermore, at this juncture, the court is comfortable in designating Mr. Downing as sole interim class counsel, with the individual responsibility to take the lead in formulating a plan to pursue class certification(s) and to advance a specific leadership team for any proposed class or classes.

The court was not persuaded that dual leadership teams should be put in place with some mandate to co-ordinate. That is far too unwieldy, would be more likely to lead to internal disagreements which could become intractable, and would not be conducive to the expeditious handling of this litigation. The court agrees with all of those lawyers who argued passionately to the court that moving this case to an ultimate resolution for their clients as soon as practicable should be of the highest priority. The court believes that the leadership structure it is putting in place is best suited to do so.

Of course, it is possible that the court could have accepted the principle of a leadership team representing diverse interests and built its own from the entire group of worthy advocates, essentially assembling an All-Star team. That approach is tempting, but fraught with peril. An All-Star team does not necessarily function as well as a cohesive group that is committed to the team rather than individual play. For the court to make the call in assembling such a group would be exceedingly dicey particularly with regard to choosing counsel who would mesh well together. The DCPS group, having thought this through well in advance, put together a team

which certainly is not lacking in talent and has the distinct advantage of having committed itself in advance to solving this problem together.

Following the DCPS group's suggestion, the court selects Jayne Conroy, Christopher Ellis, David Graham, Richard Paul, Robert Shelquist, John Ursu and Stephen Weiss for the Plaintiffs' Executive Committee. This group brings a set of lawyers whose own skills, demographics and client bases complement and add value to the leadership structure. The court finds it especially useful to include counsel for Cargill and ADM, large entities with large claims which seek remand and whose counsel have pledged to maintain their role as liaison to state court litigation should their cases be remanded.

DCPS also requested the court to add three additional members to the Executive Committee. The court accedes to that request and selects Scott Poynter, Tom Bender and Tom Cartmell as additional members. Mr. Poynter who, although not a formal member of the DCPS Group received somewhat of an endorsement in a footnote to their submissions, represents clients dealing in milo, who have a unique situation compared to the corn producers, exporters and handlers. His inclusion makes sense in the interests of getting that particular group involved in leadership. The court has selected Mr. Bender and Mr. Cartmell for other specific reasons. It believes that the voices of those who have so strongly urged a class approach and those who have equally strongly urged an individual approach should be heard in the Plaintiffs' leadership councils. Thus their roles include being akin to liaisons to those other competing groups of able lawyers. Among the possibilities of those who could be selected to fulfill this role, Mr. Bender and Mr. Cartmell are local and thus both accessible and accountable to the court as lawyers who will fulfill that role collegially. They will be able to assist in keeping the channels of

communication with non-DCPS group lawyers open and active as well as being able to help bring the talents of these lawyers into play as appropriate.

This selection has been a difficult task because of the large number of well-qualified counsel from whom to choose. But the court is satisfied that it is putting in place an able group that will best advance this litigation. Of course, as we go forward, modification to this structure, including additional committees, is worth discussion, but for now the case is in position to move to the next phase—the scheduling conference on February 3, 2015.

2. At the request of Michael D. Jones of Kirkland & Ellis LLP, national lead counsel for the Syngenta defendants, and without objection, the court appoints Thomas P. Schult of the law firm of Berkowitz Oliver LLP as liaison counsel for defendants. Defendants' liaison counsel is designated as the counsel for all defendants in all cases upon whom all notices, orders, pleadings, motions, discovery, and memoranda shall be served. Defendants' liaison counsel is authorized to: (a) receive orders, notices, correspondence, and telephone calls from the court and the clerk of the court on defendants' behalf, (b) prepare and transmit copies of such orders and notices on defendants' behalf, and (c) receive orders and notices from the Judicial Panel on Multidistrict Litigation, and shall: (d) maintain complete files with copies of all documents served upon them and make such files available to all defendants' counsel.

3. The court appoints Patrick J. Stueve of the law firm of Stueve Siegel Hanson LLP, as liaison counsel for plaintiffs. Plaintiffs' liaison counsel is designated as the counsel for all plaintiffs in all cases upon whom all notices, orders, pleadings, motions, discovery, and memoranda shall be served. Plaintiffs' liaison counsel is authorized to: (a) receive orders, notices, correspondence, and telephone calls from the court and the clerk of the court on plaintiffs' behalf, (b) prepare and transmit copies of such orders and notices on plaintiffs' behalf,

and (c) receive orders and notices from the Judicial Panel on Multidistrict Litigation, and shall:
(d) maintain complete files with copies of all documents served upon them and make such files available to all defendants' counsel and (e) maintain and make available to all counsel and the court an up-to-date service list.

4. The court appoints Don Downing of the law firm of Gray Ritter & Graham, P.C.; William Chaney of the law firm of Gray Reed & McGraw P.C.; Scott A. Powell of the law firm of Hare Wynn Newell & Newton L.L.P.; and Patrick J. Stueve of the law firm of Stueve Siegel Hanson LLP as co-lead counsel for all plaintiffs in the actions assigned to this Court by the Panel on Multidistrict Litigation including any actions designated as tag-along actions. Mr. Downing is also appointed interim class counsel. Plaintiffs' co-lead counsel shall have the following duties during all phases of this litigation:

a. to organize and supervise the efforts of plaintiffs' counsel in a manner to ensure that the pretrial and trial preparation for the plaintiffs is conducted effectively, efficiently, expeditiously, and economically;

b. to delegate work responsibilities and monitor the activities of plaintiffs' counsel to assure that schedules are met and unnecessary expenditures of time and expense are avoided;

c. to speak on behalf of plaintiffs at all court conferences and hearings;

d. to initiate and conduct discussions and negotiations with counsel for defendants on all matters, including settlement;

e. to determine the position of plaintiffs on all matters arising during the litigation and present such position orally and/or in writing to the court and opposing parties;

f. to consult with and employ experts, as necessary, for plaintiffs;

g. to coordinate the initiation of and conduct discovery on behalf of plaintiffs consistent with the requirements of the Federal Rules of Civil Procedure, including the preparation of interrogatories and requests for production of documents, the organization and review of documents produced by defendant and non-parties, and the examination of witnesses via deposition;

h. to receive and initiate communication with the Court and the Clerk of Court, including receiving orders, notices, correspondence and telephone calls;

i. to be the primary contact for all communications between plaintiffs and defendant;

j. to perform such other duties as are necessary in connection with the prosecution of this litigation;

k. to coordinate the preparation and presentation of all of plaintiffs' claims and coordinate all proceedings;

l. to encourage full cooperation and efficiency among all plaintiffs' counsel;

m. to assess plaintiffs' counsel for the costs of the litigation; and

n. to consult with Plaintiffs' Executive Committee as necessary to fulfill their obligations as co-lead counsel.

5. The court appoints as members of the Plaintiffs' Executive Committee Jayne Conroy of the law firm of Simmons Hanly Conroy LLC; Christopher M. Ellis of the law firm of Bolen Robinson & Ellis, LLP; David F. Graham of the law firm of Sidley Austin LLP; Richard M. Paul III of the law firm of Paul McInnes LLP; Robert K. Shelquist of the law firm of Lockridge Grindal Nauen PLLP; John Ursu of the law firm of Greene Espel PLLP; Stephen A. Weiss of the law firm of Seeger Weiss LLP; Scott E. Poynter of the law firm of Emerson Poynter

LLP; Thomas V. Bender of the law firm of Walters Bender Strohbehn & Vaughan, P.C.; and Thomas P. Cartmell of the law firm of Wagstaff & Cartmell, LP.

6. All plaintiffs' counsel shall keep contemporaneous records of their time and expenses devoted to this matter. Those records shall reflect the date the legal service was rendered or expenses incurred, the nature of the service or expense, and number of hours consumed by the service or the amount of the expense. These records for the preceding month shall be submitted in summary form by the end of each month to Stueve Siegel Hanson LLP. No plaintiffs' counsel shall incur an expense to be reimbursed from the plaintiffs' assessment fund in excess of \$500 without first obtaining the consent of one of plaintiffs' co-lead counsel. Failure to comply with this rule may render the expenses non-reimbursable, at the discretion of co-lead counsel.

7. Any discussions of a settlement that would affect any claims brought in this litigation, other than claims of an individual plaintiff or putative class member, must be conducted by plaintiffs' co-lead counsel. Any proposed settlement that resolves, in whole or in part, the claims brought in this action shall first be subject to review and approval by the Court in this litigation.

8. Plaintiffs' liaison counsel shall promptly serve a copy of this order and all future orders by overnight delivery service, facsimile, or other electronic means on counsel for plaintiffs in each related action that has not been consolidated in this proceeding to the extent that plaintiffs' liaison counsel is aware of any such action(s) and on all counsel for plaintiffs whose cases have been so consolidated but who have not yet registered for ECF.

9. When an action that properly belongs as a part of *In re: Syngenta AG MIR162 Corn Litigation* is hereinafter filed in the District of Kansas or transferred here from another Court, the Clerk of this Court shall:

- a. file a copy of this order in the separate file of such action;
- b. make an appropriate entry on the master docket sheet;
- c. mail a copy of this order to the attorneys for the plaintiff in the newly filed or transferred case; and
- d. upon the first appearance of any new defendant, mail a copy of this order to the attorneys for the defendant in such newly filed or transferred cases.

10. At the February 3, 2015 hearing the court intends to begin by taking up any requests for modifications of or additions to this order which co-lead counsel may propose. In that connection, and no less than two calendar days before that and all subsequent hearings, co-lead counsel shall provide to the court and opposing counsel a status report concerning any matters to be addressed and shall in conjunction with opposing counsel provide a proposed agenda for the conference.

IT IS SO ORDERED.

Dated this 22nd day of January, 2015 at Kansas City, Kansas.

s/ John W. Lungstrum
Honorable John W. Lungstrum
United States District Judge