

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

In re: Syngenta Litigation

Case Type: Civil Other
Hon. Thomas M. Sipkins

This Document Relates to: ALL ACTIONS

FILE NO. 27-CV-15-3785

**ORDER APPOINTING
LEAD COUNSEL**

The above-entitled matter came on for a scheduling conference before the Honorable Thomas M. Sipkins, Judge of District Court, on July 31, 2015.

The following attorneys appeared on behalf of one or more Plaintiffs: Edward W. Allred, Eric D. Barton, Garrett D. Blanchfield, Paul Byrd, Clayton A. Clark, William L. Coulthard, Michael J. Gayan, David H. Grounds, Francisco Guerra, IV, Daniel E. Gustafson, Daniel M. Homolka, Tyler W. Hudson, Michael K. Johnson, Will Kemp, Dana G. Kirk, Adam J. Levitt, Scott A. Love, Richard M. Paul III, Martin J. Phipps, James J. Pizzirusso, Scott A. Powell, Lewis A. Remele, Jr., Hart L. Robinovitch, William R. Sieben, Aimee H. Wagstaff, Thomas W. Wagstaff, and Mikal C. Watts.

Attorneys Edwin J. U, David T. Schultz, D. Scott Aberson, and Patrick Haney, appeared on behalf of Defendants.

Based on all the files, records and proceedings herein, together with the arguments of counsel, the Court makes the following:

ORDER

IT IS HEREBY ORDERED THAT:

1. Lewis A. Remele, Jr. and Francisco Guerra, IV, are appointed Co-Lead Counsel. Plaintiffs' Co-Lead Counsel shall have the following duties during all phases of this litigation:

- a. formulate, determine, and present the position of Plaintiffs on substantive and procedural issues that arise during the litigation;
- b. present such positions in written submissions and oral arguments to the Defendants and Court;
- c. organize and supervise the efforts of Plaintiffs' counsel to ensure that the prosecution of Plaintiffs' claims is conducted effectively and economically;
- d. 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;
- e. speak on behalf of Plaintiffs at all court conferences and hearings;
- f. initiate and conduct discussions and negotiations with counsel for Defendants on all matters, including settlement;
- g. coordinate the initiation of and conduct discovery on behalf of Plaintiffs consistent with the requirements of the Minnesota Rules of Civil Procedure, including the preparation of interrogatories and requests for production of documents, the organization and review of documents produced by Defendants and non-parties, and the examination of witnesses via deposition;
- h. consult with and employ experts, as necessary, for Plaintiffs;
- i. receive and initiate communication with the Court, including receiving orders, notices, correspondence and telephone calls;
- j. be the primary contact for all communications between Plaintiffs and Defendant;
- k. perform such other duties as are necessary in connection with the prosecution of this litigation;

- l. coordinate the preparation and presentation of all the Plaintiffs' claims and coordinate all proceedings;
- m. encourage full cooperation and efficiency among all Plaintiffs' counsel;
- n. assess Plaintiffs' counsel for the costs of the litigation; and
- o. consult with the Plaintiffs' Executive Committee as necessary to fulfill their obligations as Co-Lead Counsel.

2. William R. Sieben and Daniel E. Gustafson shall serve as Co-Lead Interim Class Counsel. The Co-Lead Interim Class Counsel shall have the same duties as Co-Lead Counsel on behalf of the putative class members.

3. Robert K. Shelquist, Esq., is appointed Liaison Counsel for Plaintiffs. Plaintiffs' Liaison Counsel is authorized to: (a) receive and distribute notices, orders, motions, and briefs on behalf of the Plaintiffs; (b) convene meetings of counsel as necessary; (c) advise parties and attorneys of developments in the litigation; (d) receive telephone calls from the Court; and shall (e) maintain complete files with copies of all documents served upon them and make such files available to all Plaintiffs' counsel; (f) maintain and make available to all counsel and the Court an up-to-date service list; and (g) resolve scheduling conflicts.

4. The following attorneys are appointed as members of the Plaintiffs' Executive Committee: Lewis A. Remele, Jr., Francisco Guerra, IV, William R. Sieben, Daniel E. Gustafson, Robert K. Shelquist, Richard M. Paul III, Will Kemp, Tyler Hudson, Clayton A. Clark, and Paul Byrd.

5. 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 Lewis A. Remele, Jr. 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.

6. 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.

7. 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 EFS.

8. Absent any contrary proposals and without objection, the Court assumes that Lead Counsel for Defendants will be Michael D. Jones of Kirkland & Ellis LLP, with the assistance of Edwin J. U.

9. Absent any contrary proposals and without objection, Liaison Counsel for Defendants will be David T. Schultz of Maslon LLP, with the assistance of D. Scott Aberson. 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 and distribute notices, orders, motions, and briefs on

behalf of the Defendants; (b) prepare and transmit copies of such orders and notices on Defendants' behalf; (c) receive orders and notices from this Court; (d) receive telephone calls from the Court; and shall (e) maintain complete files with copies of all documents served upon them and make such files available to all Defendants' counsel; and (f) resolve scheduling conflicts.

10. Within 30 days from the date of this Order, the designated counsel for Plaintiffs shall meet and confer with Defendants and submit to the Court proposals for: (a) a case management order, including deadlines for master consolidated complaints for producers, non-producers, and for classes of plaintiffs, and motions to dismiss or other pleadings responsive to complaints served; (b) a protective order; and (c) an ESI Order.

11. The attached Memorandum is incorporated herein.

Dated: 8-5-2015

BY THE COURT:



Thomas M. Sipkins
Judge of District Court

MEMORANDUM

The Court received proposals from two competing slates to serve as lead counsel for the Plaintiffs in this litigation. The “Remele/Sieben Group” consists of Lewis A. Remele, Jr., William R. Sieben, Robert K. Shelquist, Richard M. Paul III, and Francisco Guerra IV. The “Johnson/Gustafson Group” consists of Michael K. Johnson, Daniel E. Gustafson, Martin J. Phipps, Charles S. Zimmerman, Tyler W. Hudson, Garrett D. Blachfield, Paul Byrd, Clayton A. Clark, Will Kemp, Adam J. Levitt, W. Daniel Miles III, Ronald E. Osman, James J. Pizzirusso, Adam Pulaski, Richard W. Schulte, Jason J. Thompson, and Aimee Wagstaff.

The Court reviewed all of the submitted materials and heard oral presentations by the interested parties at the July 31, 2015 hearing. *See Manual for Complex Litigation, Fourth*, §10.22. The Court must appoint counsel to leading roles that are qualified and responsible, that will fairly and adequately represent all of the parties on their side, and that will keep their charges reasonable. *Id.* In turn, the designated attorneys assume a responsibility to the court and an obligation to act fairly, efficiently, and economically in the interests of all parties and parties’ counsel. *Id.* The Court’s appointment of leadership counsel reflects a consideration of the factors set forth in section 10.224 of the *Manual*. Several attorneys made impassioned presentations at the hearing that they represent and owe a duty to their individual farmer clients. The Court will make decisions on the issue at hand and throughout this litigation in the best interests of the Plaintiffs and Defendants; not those of their attorneys.

As the Court has noted before, it intends to coordinate and cooperate with the Honorable John W. Lungstrum in the United States District Court for the District of Kansas and the companion federal court MDL No. 2591 pending before him. The Court, however, recognizes the differences in size, types of parties, nature of the claims, and forum procedures between the two matters. The

Court gives deference to Judge Lungstrum, but will exercise its independent judgment on all matters arising in this litigation. In the January 22, 2015 Order Concerning Appointment of Counsel, Judge Lungstrum rejected a dual leadership team and the creation of an “All-Star team” based on the opinion that both options would result in a team that would not function cohesively. In this instance, the Court will respectively diverge from Judge Lungstrum and appoint attorneys for leadership positions from competing slates.

The Court found the written proposals and oral presentations by both groups persuasive. The qualifications of both slates and the individual attorneys are impressive. The Court has no doubt that all of the proposed attorneys would perform well in a leadership role. The Court finds all of the proposed counsel competent for assignments. In addition, the attorneys’ resources, commitment, and qualifications to accomplish any assigned tasks are more than adequate. There are only a few differences between the slates that had a bearing on the Court’s decision.

The Court cannot ignore the fact that the Remele/Sieben Group represents approximately 92% of the cases currently involved in this litigation. Attorneys appointed to leadership roles have an obligation to act on behalf of and in the interests of all parties and parties’ counsel. *Id.*, § 10.22. As several attorneys noted at the hearing, individual clients will be represented by attorneys that they did not initially choose. While not determinative, this factor weighs in favor of attorneys on the Remele/Sieben Group that represent a significant majority of the Plaintiffs involved in this litigation to date.

The Remele/Sieben Group has entered into a Joint Prosecution Agreement (“JPA”) with the MDL leadership team. The MDL Co-Lead Counsel also submitted a statement in support of the Remele/Sieben Group. The Court considers an attorney’s ability to work cooperatively and recognizes that some individuals may “have generated personal antagonisms during prior

proceedings that will undermine his or her effectiveness in the present case.” *Id.*, at § 10.224. It appears from the submissions that based on prior interactions in the MDL, there may be some individual attorneys in the Johnson/Gustafson Group that may have difficulty cooperating and coordinating with other attorneys.

The parties’ characterizations of the JPA are quite divergent. The Remele/Sieben Group views the JPA as evidence of their commitment and ability to work well with the MDL team, which will reduce duplication and promote efficiency. The Johnson/Gustafson Group argues that the JPA causes the attorneys to lose their independence and compromises their ability to represent Minnesota interests. The Court agrees that the leadership team in this matter will need to find a balance between coordinating with the MDL and prosecuting the claims based on the individual circumstances of this litigation. The JPA, however, does not compromise the lawyers’ ability to maintain this balance. In the final analysis, while members of the Remele/Sieben Group have executed the JPA, the Court is not subject to or bound by the terms of the JPA.¹

The issue of trial dates was a consideration discussed by the competing slates in the presentation for leadership roles. Pursuant to the JPA, the Remele/Sieben Group has agreed that it will not seek a trial setting before March 31, 2017, and that the initial MDL bellwether trial will occur before the trial of any claim in this matter. The Johnson/Gustafson Group argues that holding fast to a speedy trial date in this matter is critical to settlement. The Court will control its own schedule. The Court is not obligated to follow the scheduling mandates of the JPA or the MDL. The Court will schedule bellwether cases for trial as appropriate.

¹ At the hearing, Mr. Remele indicated that any attorney that wanted to be a part of their slate would need to execute the JPA. While that may have been a condition precedent to be a member of the Remele/Sieben Group and their proposal for leadership roles; it is not a requirement imposed by this Court in appointing counsel to the leadership team.

Finally, the Johnson/Gustafson Group is offering a lower common benefit assessment. The Remele/Sieben Group proposes a common benefit assessment of 8% (fees) and 3% (expenses), which is consistent with the assessments approved by Judge Lungstrum in the MDL. The Johnson/Gustafson Group proposes a common benefit assessment of 3% (fees) and 1% (expenses). The Court considers whether the arrangements for compensation are clear, satisfactory, fair and reasonable. *Id.* at § 10.224. The lower assessment means the Plaintiffs would see a greater percentage of a settlement or verdict award. However, the overall savings may not be significant if the Johnson/Gustafson Group is unable to cooperate and coordinate with the MDL resulting in duplicative work. Furthermore, the risks undertaken by counsel for producer and non-producer plaintiffs and for plaintiff classes are quite substantial, especially given the possible obstacles to their success.

Based on all of these factors and considerations, the Court selects the Remele/Sieben Group with some modifications and additions. The proposal for leadership submitted by the Remele/Sieben Group is too narrowly drawn. The Court believes that the Plaintiffs will benefit by spreading the duties, responsibilities, and wisdom among more attorneys. The Court has thus made some adjustments to the Remele/Sieben Group proposal. Daniel Gustafson will be added as Co-Lead Interim Class Counsel. Mr. Sieben is an excellent trial lawyer but his class action experience is limited. On the other hand, Mr. Gustafson has extensive class action experience that will be an asset to the class action plaintiffs. The Court was impressed by Mr. Gustafson's presentation, despite the Court's selection of, primarily, the opposing slate. Mr. Sieben and Mr. Gustafson will make a perfect team representing plaintiff classes. The Court believes that coordination between this matter and the MDL will be furthered by appointing Robert Shelquist as Liaison Counsel. Finally, the Court is also adding Daniel Gustafson, Will Kemp, Clayton Clark, Tyler Hudson, and

Paul Byrd to the Plaintiffs' Executive Committee for the reasons stated above. The Court expects all counsel to work together cooperatively for the ultimate benefit of their clients in accordance with the Minnesota Rules of Professional Conduct.

T.M.S.