

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

**IN RE SYNGENTA AG MIR 162 CORN  
LITIGATION**

**THIS DOCUMENT RELATES TO ALL  
CASES EXCEPT:**

*Louis Dreyfus Company Grains  
Merchandising LLC v. Syngenta AG, et  
al., No. 16-2788-JWL-JPO*

*Trans Coastal Supply Company, Inc. v.  
Syngenta AG, et al., No. 2:14-cv-02637-  
JWL-JPO*

*The Delong Co., Inc. v. Syngenta AG, et  
al., No. 2:17-cv-02614-JWL-JPO*

*Agribase International Inc. v. Syngenta  
AG, et al., No. 2:15-cv-02279-JWL-JPO*

**Master File No. 2:14-MD-02591-JWL-JPO**

**MDL No. 2591**

**MEMORANDUM BRIEF IN SUPPORT OF JOINT MOTION FOR AWARD OF  
ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES**

## TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	ii
INTRODUCTION .....	1
FACTUAL BACKGROUND .....	3
I.    THE PROSECUTION OF CLAIMS AGAINST SYNGENTA BEGINS AND IS CENTRALIZED IN THREE PRIMARY JURISDICTIONS: KANSAS, MINNESOTA, AND ILLINOIS. ....	4
II.   MOVANTS’ EFFORTS CREATED AND PRESERVED THE \$1.51 BILLION COMMON FUND SUBSTANTIALLY BENEFITTING ALL MEMBERS OF THE CLASS.....	7
LAW AND ARGUMENT.....	19
I.    THE ATTORNEYS’ FEES REQUESTED BY MOVANTS ARE FAIR AND REASONABLE. ....	19
A. <i>The Amount Involved and the Results Obtained</i> .....	23
B. <i>The Time and Labor Required</i> .....	26
C. <i>The Novelty and Difficulty of the Questions</i> .....	28
D. <i>The Skill Requisite to Perform the Legal Service Properly</i> .....	30
E. <i>The Preclusion of Other Employment Due to Acceptance of the Case</i> .....	32
F. <i>The Customary Fee and Awards in Similar Cases</i> .....	33
G. <i>Whether the Fee is Fixed or Contingent</i> .....	36
H. <i>Any Time Limitations Imposed by the Client or the Circumstances</i> .....	37
I. <i>The Experience, Reputation, and Ability of the Attorneys</i> .....	38
J. <i>The “Undesirability” of the Case</i> .....	41
K. <i>Lodestar Cross-Check</i> .....	42
II.   MOVANTS SHOULD BE REIMBURSED FOR THEIR NECESSARY AND REASONABLE LITIGATION EXPENSES .....	44
CONCLUSION.....	45
CERTIFICATE OF SERVICE.....	47

## TABLE OF AUTHORITIES

### CASES

<i>Allapattah Servs., Inc. v. Exxon Corp.</i> , 454 F.Supp.2d 1185 (S.D. Fla. 2006).....	36
<i>Anderson v. Merit Energy Co.</i> , No. 07-CV-00916-LTB-BNB, 2009 U.S. Dist. LEXIS 100681, 2009 WL 3378526 (D. Colo. Oct. 20, 2009). ....	24, 40, 42
<i>Bailes v. Lineage Logistics, LLC</i> , No. 15-2457-DDC-TJJ, 2017 U.S. Dist. LEXIS 173665, 2017 WL 4758927 (D. Kan. Oct. 20, 2017). ....	22
<i>Been v. O.K. Indus.</i> , No. CIV-02-285-RAW, 2011 U.S. Dist. LEXIS 115151, 2011 WL 4478766 (E.D. Okla. Aug. 16, 2011). ....	29, 36, 38, 43
<i>Boeing Company v. Van Gemert</i> , 444 U.S. 472 (1980). ....	20, 21
<i>Brown v. Phillips Petroleum Co.</i> , 838 F.2d 451 (10th Cir. 1988). ....	24, 29, 32, 33
<i>Camden I Condominium Ass’n v. Dunkle</i> , 946 F.2d 768 (11th Cir. 1991) .....	24
<i>Campbell v. C.R. Eng., Inc.</i> , No. 2:13-CV-00262, 2015 U.S. Dist. LEXIS 134235 (D. Utah Sept. 30, 2015). ....	23, 35, 44, 45
<i>Chieftain Royalty Co. v. Enervest Energy Inst. Fund XIII-A, L.P.</i> , 861 F.3d 1182 (10th Cir. 2017). ....	22
<i>Cimarron Pipeline Constr., Inc. v. Nat’l Council on Compensation Ins.</i> , Nos. CIV-89-822-T, CIV-1186-T, 1993 U.S. Dist. LEXIS 19969, 1993 WL 355466 (W.D. Okla. June 8, 1993). ....	35
<i>Cox v. Sprint Commc’ns Co.</i> , 2012 U.S. Dist. LEXIS 162576, 2012 WL 5512381 (D. Kan. Nov. 14, 2012). ....	23
<i>Davis v. Crilly</i> , 292 F. Supp. 3d 1167 (D. Colo. Feb. 22, 2018). ....	35
<i>Farrar v. Hobby</i> , 506 U.S. 103 (1992). ....	24, 25, 27
<i>Feerer v. Amoco Prod. Co.</i> , No. 95-0012-JC/WWD, 1998 U.S. Dist. LEXIS 22248 (D. N.M. May 28, 1998). ....	41
<i>Gottlieb v. Bany</i> , 43 F.3d 474 (10th Cir. 1994). ....	<i>passim</i>
<i>In re Bank of Am. Wage &amp; Hour Emp’t Litig.</i> , No. 10-MD-2138-JWL, 2013 U.S. Dist. LEXIS 180056, 2013 WL 6670602 (D. Kan. Dec. 18, 2013). ....	23, 44, 45
<i>In re Crocs, Inc. Sec. Litig.</i> , No. 0-CV-02351-PAB-KLM, 2014 U.S. Dist. LEXIS 134396, 2014 WL 4670886, at *10-13 (D. Colo. Sept. 18, 2014). ....	34
<i>In re Genetically Modified Rice Litig.</i> , 251 F.R.D. 392 (E.D. Mo. Aug. 14, 2008). ....	9
<i>In re Motor Fuel Temperature Sales Practices Litig.</i> , No. 07-MD-1840-KHV, 2016 U.S. Dist. LEXIS 113406, 2016 WL 4445438 (D. Kan. Aug. 24, 2016). ....	30
<i>In re Qwest Commc’ns. Int’l, Inc.</i> , 625 F. Supp. 2d 1143 (D. Colo. May 27, 2009). ....	37, 41, 42
<i>In re Sprint Corp. ERISA Litig.</i> , 443 F. Supp. 2d 1249, 1252-59 (D. Kan. Aug. 4, 2006). ....	22

<i>In re Starlink Corn Prods. Liab. Litig.</i> , 212 F. Supp. 2d 828 (N.D. Ill. July 11, 2002).	9
<i>In re Urethane Antitrust Litig.</i> , No. 04-1616-JWL, 2016 U.S. Dist. LEXIS 99839 (D. Kan. July 29, 2016).	36, 44
<i>In re Urethane Antitrust Litig.</i> , No. 04-1616-JWL, 2016 U.S. Dist. LEXIS 99839 (D. Kan. July 29, 2016).	36
<i>Johnson v. Ga. Highway Express, Inc.</i> , 488 F.2d 714 (5th Cir. 1974).	<i>passim</i>
<i>Koehler v. Freightquote.com, Inc.</i> , No. 12-2505-DDC-GLR, 2016 U.S. Dist. LEXIS 91745, 2016 WL 3743098 (D. Kan. July 13, 2016).	23
<i>Lane v. Page</i> , 862 F. Supp. 2d 1182 (D. N.M. May 22, 2012).	32, 41, 42
<i>Law v. Nat'l Collegiate Athletic Ass'n</i> , 4 Fed. Appx. 749 (10th Cir. 2001).	19, 21
<i>Lucken Family Ltd. P'ship v. Ultra Res., Inc.</i> , No. 09-cv-01543-REB-KMT, 2010 U.S. Dist. LEXIS 144366, 2010 WL 5387559 (D. Colo. Dec. 22, 2010).	<i>passim</i>
<i>Millsap v. McDonnell Douglas Corp.</i> , No. 94-CV-633-H(M), 2003 U.S. Dist. LEXIS 26223, 2003 WL 21277124 (N.D. Okla. May 28, 2003).	42
<i>Mishkin v. Zynex, Inc.</i> , No. 09-cv-00780-REB-KLM, 2012 U.S. Dist. LEXIS 132405, 2012 WL 4069295 (D. Colo. Sept. 14, 2012).	44
<i>Payson v. Capital One Home Loans, LLC</i> , No. 07-CV-2282-JTM-DWB, 2009 U.S. Dist. LEXIS 88468 (D. Kan. Sept. 24, 2009).	43
<i>Peck v. Encana Oil &amp; Gas, Inc.</i> , No. 15-cv-01800-CMA-KHR, 2018 U.S. Dist. LEXIS 28630, 2018 WL 1010944 (D. Colo. Feb. 22, 2018).	22, 35
<i>Ryan v. Command Alkon, Inc.</i> , No. 09-CV-2288-JWL-JPO, 2010 U.S. Dist. LEXIS 67695 (D. Kan. July 7, 2010).	23
<i>Shaw v. Interthinx, Inc.</i> , No. 13-CV-01229-REB-NYW, 2015 U.S. Dist. LEXIS 52783, 2015 WL 1867861 (D. Colo. Apr. 21, 2015).	35, 42
<i>Smith v. Village of Maywood</i> , 17 F.3d 219 (7th Cir. 1994).	44
<i>Stalcup v. Schlage Lock Co.</i> , 505 F. Supp. 2d 704 (D. Colo. Jan. 8, 2007).	29
<i>Tuten v. United Airlines, Inc.</i> , 41 F.Supp.3d 1003 (D. Colo. May 19, 2014).	45
<i>Uselton v. Commercial Lovelace Motor Freight, Inc.</i> , 9 F.3d 849 (10th Cir. 1993).	23
<i>Vaszlavik v. Storage Tech. Corp.</i> , No. 95-B-2525, 2000 U.S. Dist. LEXIS 21140, 2000 WL 1268824 (D. Colo. Mar. 9, 2000).	45
<i>Vizcaino v. Microsoft Corp.</i> , 290 F.3d 1043 (9th Cir. 2002).	44

#### **OTHER AUTHORITIES**

MANUAL FOR COMPLEX LITIGATION, Fourth § 14.11 (2004).	<i>passim</i>
William Rubenstein, Alba Conte, & Herbert B. Newberg, NEWBERG ON CLASS ACTIONS (5th ed. 2015).	20, 21, 44



**RULES**

Fed. R. Civ. P. 23 advisory committee’s note to 2003 amendment.....	20, 21
Fed. R. Civ. P. 23(h). ....	23, 45
Fed. R. Civ. P. 23(h)(4).....	2
Fed. R. Civ. P. 54(d)(2) advisory committee’s note to 1993 amendment.....	45
Fed. R. Civ. P. 54(d)(2)(D). ....	2

## INTRODUCTION

After many years of hard-fought litigation against Syngenta<sup>1</sup> in multiple venues, including primarily in Kansas, Illinois, and Minnesota, this litigation culminated in historic \$1.51 billion settlement for participating U.S. corn producers, grain handling facilities, and ethanol production facilities. This extraordinary \$1.51 billion Class Settlement,<sup>2</sup> which is the largest genetically modified (“GM”) crop settlement in U.S. history, did not occur by mere coincidence. This exceptional victory was won in the trenches by seasoned attorneys who exercised their skills and expertise in complex litigation to prosecute novel claims against a formidable, well-funded adversary. The collective efforts of leadership counsel in Kansas, Illinois, and Minnesota generated this tremendous result and these groups should be compensated for their vigorous, concerted prosecution of this case.

The law firms of Phipps Anderson Deacon LLP, Clark Love Hutson, GP, and Meyers & Flowers, LLC (“Movants” or the “Illinois Leadership Group”), jointly and respectfully petition the Court to award one-third (1/3) of the \$1.51 billion gross Syngenta Agrisure Viptera/Duracade class settlement fund to those attorneys whose combined efforts created and preserved the common fund, specifically the Kansas Leadership Group,<sup>3</sup> the Illinois Leadership Group,<sup>4</sup> and the

---

<sup>1</sup> When used herein, the term “Syngenta” refers collectively to Syngenta AG, Syngenta Crop Protection AG, Syngenta Corporation, Syngenta Crop Protection, LLC, Syngenta Seeds, Inc. (now Syngenta Seeds, LLC), and Syngenta Biotechnology, Inc.

<sup>2</sup> When used herein, the term “settlement” or “Class Settlement” refers to the Agrisure Viptera/Duracade Class Settlement Agreement executed by the parties on or about February 26, 2018 (ECF No. 3507-2), and preliminarily approved by this Court on April 10, 2018 (ECF No. 3531, 3532), unless otherwise indicated.

<sup>3</sup> When used herein, the term “Kansas Leadership Group” includes: Stueve Siegel Hanson LLP, Gray Ritter & Graham, PC, Gray Reed & McGraw, LLP, Hare Wynn Newell & Newton, Bolen Robinson & Ellis, Sidley Austin LLP, Simmons Hanley Conroy, Greene Espel PLLP, Paul McInnes, LLP and Paul LLP (Kansas work), Lockridge Grindal Nauen (Kansas work), Emerson Poynter LLP, Seeger Weiss Law Firm, Walters Bender Strohhahn & Vaughn, PC, their attorneys and staff, and all referring counsel.

<sup>4</sup> The “Illinois Leadership Group” seeks the requested fees on behalf of themselves, their attorneys and staff, and all referring counsel. A list of Movants’ referring counsel is attached hereto as Ex. A.

Minnesota Leadership Group.<sup>5</sup> Movants propose that, 50% of the one-third fee be awarded to the Kansas Leadership Group, 17.5% of the one-third fee be awarded to the Illinois Leadership Group, and 12.5% of the fee be awarded to the Minnesota Leadership Group, with the remaining 20% to be divided by the Court, in consultation and agreement with the Honorable Laurie Miller of the Minnesota MDL Court and the Honorable David R. Herndon of the United States District Court for the Southern District of Illinois.<sup>6</sup> This proposed fee allocation is supported by the Illinois Leadership Group in this fee application and in separate fee requests being filed by the Kansas Leadership Group and the Minnesota Leadership Group.

With respect to allocating the remaining twenty percent (20%) of the proposed fee award, the Illinois Leadership Group respectfully requests the Court refer the matter for Report and Recommendation to the Special Masters<sup>7</sup> to implement a process to obtain written documentary submissions and other procedures to recommend an allocation of fees and expenses. Rules 23 and 54 authorize the Court to “refer issues related to the amount of the award to a special master[.]” Fed. R. Civ. P. 23(h)(4); Fed. R. Civ. P. 54(d)(2)(D). Special Masters Reisman and Stack possess intimate knowledge of the litigation because of their active oversight and supervision of the general litigation and settlement negotiations for years. The Special Masters directly participated in

---

<sup>5</sup> When used herein, the term “Minnesota Leadership Group” includes: Gustafson Gluek PLLC, Bassford Remele, Schwebel Goetz & Sieben, P.A., Paul McInnes LLP and Paul LLP (Minnesota work), Kemp, Jones & Coulthard, LLP, Wagstaff & Cartmell, LLP, Lockridge Grindal Nauen (Minnesota work), Paul Byrd Law Firm PLLC, their attorneys and staff, and all referring counsel.

<sup>6</sup> The class notice approved by the Court and disseminated to members of the class (“Class Members”) stated that counsel would seek up to one-third (1/3) of the settlement fund as attorneys’ fees and that counsel would seek reimbursement for out-of-pocket expenses. *See* ECF No. 3507-5, at 17 (Long Form Notice); Fed. R. Civ. P. 23(h)(1).

<sup>7</sup> When used herein, the term “Special Masters” refers to the Ellen K. Reisman and the Honorable Daniel J. Stack (Ret.). Ms. Reisman was appointed by this Court on March 23, 2016, to serve as Special Master to “assist the court in efficiently coordinating settlement discussions in these proceedings.” ECF No. 1745, at 2. Judge David R. Herndon, Judge Bradley K. Bleyer, and the Minnesota state court issued similar orders of appointment. Ex. B (collectively, the Reisman Appointment Orders). On October 18, 2016, Judge Herndon and Judge Bleyer entered Orders appointing Judge Stack to serve as Special Master in the Illinois federal and state court cases for purposes of facilitating discovery and coordinating the litigation to assist the respective judges. Ex. C (collectively, the Stack Appointment Orders). Special Master Reisman subsequently requested that Judge Stack assist in the settlement negotiations. Clark Decl. at 2-3, 11-13, 18-19.

negotiations over attorneys' fees for over a year, gaining special, unbiased knowledge, expertise, and unique perspective with respect to how these fees and expenses should be divided. In 2016, this Court appointed Special Master Reisman to "assist the court in efficiently coordinating settlement discussions in these proceedings." ECF No. 1745, at 2. In 2016, Judge Herndon and Judge Bleyer appointed Special Master Stack to facilitate and coordinate discovery between the federal and state litigations in Illinois. Ex. C. After both facilitated the Syngenta class settlement, this Court appointed Special Masters Reisman and Stack, on April 10, 2018, to assist in the administration of the class settlement. ECF No. 3532, at 2. Referral for allocation recommendations achieves the purposes for which the Court appointed the Special Masters.

In addition, referral to the Special Masters for a recommendation on the allocation of the remaining twenty percent (20%) accomplishes several important goals. *First*, referral infuses the process with literally years of knowledge related to the litigation and counsel that provided important contributions to the ultimate settlement outcome. *Second*, referral provides every person seeking fees or reimbursement of expenses an opportunity to provide submissions about why they deserve a portion of the fees—without burdening the Courts with three separate, time-consuming procedures. *Finally*, an initial recommendation from the Special Masters allows the Courts to accept reports and recommendations, which essentially guarantees all potential applicants a full and fair opportunity to be heard.

The Illinois Leadership Group also seeks reimbursement of their reasonable and necessary litigation expenses as outlined in the attached affidavits.

### **FACTUAL BACKGROUND**

Having overseen the Syngenta corn litigation for going on four years now, this Court is intimately familiar with the goings-on of this litigation. Therefore, Movants only recap here, in

short shrift, the history of this litigation. Movants focus, instead, on the facts germane to this fee and expense application. More detailed facts are contained within the Declarations of Martin J. Phipps, Clayton A. Clark, and Peter J. Flowers, which Declarations are attached as exhibits hereto and incorporated herein by reference. The Declaration of Martin J. Phipps is attached hereto as Ex. D (“Phipps Decl.”), the Declaration of Clayton A. Clark is attached hereto as Ex. E (“Clark Decl.”), and the Declaration of Peter J. Flowers is attached hereto as Ex. F (“Flowers Decl.”).

This litigation results from the harm caused by Syngenta’s negligent commercialization of its Viptera and Duracade corn seeds, which corn seeds contained a GM trait that was unapproved in China, a major export destination for U.S. corn. Syngenta knew that its commercialization of Viptera and Duracade, under existing stewardship practices that Syngenta made no efforts to change, would result in widespread contamination of the U.S. corn supply. Syngenta also knew that this contaminated grain would be shipped to China, where its detection would lead to foreclosure of the Chinese markets to U.S. corn given China’s well-known “zero tolerance” policy for unapproved GM traits. As foreseen, Syngenta’s GM corn seed contaminated the U.S. corn supply, was shipped to China and detected, and China effectively closed the market to U.S. corn and Dried Distillers Grains with Solubles (“DDGS”). That action caused a precipitous decrease in demand and a corresponding drop in U.S. corn prices. The ubiquitous impacts to the entire U.S. corn industry quickly manifested in litigation in state and federal courts across the nation.

# **I. The Prosecution of Claims Against Syngenta Begins and is Centralized in Three Primary Jurisdictions: Kansas, Minnesota, and Illinois.**

In 2014, Movants filed scores of lawsuits on behalf of injured parties in states across the corn belt.<sup>8</sup> On December 11, 2014, the Judicial Panel on Multi-District Litigation (“JPML”)

---

<sup>8</sup> See, e.g., *Briggs, et al. v. Syngenta Seeds, Inc., et al.*, Case No. 2:14-cv-02643-JWL-JPO (corn producer lawsuit filed in the Southern District of Illinois on October 3, 2014 as Case No. 3:14-cv-01072-DRH-DGW and subsequently transferred to this MDL); *Hargrove, et al. v. Syngenta Seeds, Inc., et al.*, Case No. 2:15-cv-02010-JWL-JPO (corn

established MDL 2591, dubbed the *In re Syngenta AG MIR 162 Corn Litigation*, centralizing all pre-trial proceedings against Syngenta in the federal court system before this Court. Ex. G (JPML Consolidation Order). In state court, litigation against Syngenta was concentrated in two primary locations: Minnesota and Illinois. In Minnesota, all related cases against Syngenta were consolidated by Order of the Minnesota Supreme Court in the Minnesota Fourth Judicial District Court, Hennepin County, before the Honorable Thomas M. Sipkins (and subsequently the Honorable Laurie Miller). Ex. H (Minnesota Consolidation Order). In Illinois, all related cases against Syngenta were consolidated by Order of the Illinois Supreme Court before the Illinois First Judicial Circuit Court, Williamson County, before the Honorable Bradley K. Bleyer.<sup>9</sup> Ex. I (Illinois Consolidation Order). Additionally, in November 2015, the *In re Syngenta Mass Tort Litigation* was formed in the United States District Court for the Southern District of Illinois, before the Honorable David R. Herndon.

Movants coordinated and led the litigation against Syngenta in Illinois. Clark Decl. at 1-3; Flowers Decl. at 1-3. The Illinois state court appointed Movants to serve as Co-Lead Counsel over the entire state court litigation. *Id.*; *see also* Ex. J (Appointment Order). Movants were also lead counsel for all plaintiffs in the *In re Syngenta Mass Tort Litigation* case of *Tweet, et al. v. Syngenta AG, et al.*, U.S.D.C. S.D. Ill. Case No. 3:16-cv-00255-DRH. Clark Decl. at 1-3; Flowers Decl. at 1-3.

The litigation and prosecution of claims against Syngenta by leadership counsel in each of these three venues—Kansas, Minnesota, and Illinois—contributed to the creation of the Agrisure

---

producer lawsuit filed in the Eastern District of Arkansas on October 20, 2014 as Case No. 5:14-cv-00380-BSM and subsequently transferred to this MDL); *Miller, et al. v. Syngenta Seeds, Inc., et al.*, Case No. 2:15-cv-02007-JWL-JPO (corn producer lawsuit filed in the Eastern District of Arkansas on October 20, 2014 as Case No. 5:14-cv-00381-BSM and subsequently transferred to this MDL).

<sup>9</sup> The Master Case file in this litigation, known as the *In re Syngenta Litigation*, is *Browning, et al. v. Syngenta Seeds, Inc., et al.*, No. 15-L-157 (First Judicial Circuit Court, Williamson County, IL) (“*Browning*”).

Viptera/Duracade Class Settlement Agreement (the “Class Settlement”) and the \$1.51 billion common fund at issue herein. Clark Decl. at 3-10, 12-14. Leadership counsel in the Kansas, Minnesota, and Illinois litigations coordinated and implemented a cohesive strategy to maximize Syngenta’s burden of defending the litigation on a national scale. *Id.* Though counsel for the parties took varied approaches and employed different litigation tactics in each of the respective jurisdictions,<sup>10</sup> the coordination between leadership counsel required Syngenta to face unique litigations in Kansas, Minnesota, and Illinois and constrained Syngenta’s ability to defend the litigation. After more than three years of hard-fought litigation, it was ultimately leadership for the Kansas, Minnesota and Illinois litigation (appointed jointly by this Court and its sister courts) who successfully negotiated the Syngenta corn seed settlement and established a common fund of \$1.51 billion for the benefit of all Class Members.<sup>11</sup> *Id.* The Class Settlement, which benefits more than 600,000 Class Members, would not have occurred, and this litigation could not have been resolved, absent the joint and diligent efforts of leadership counsel for each of the three respective venues. *Id.* Therefore, understandably, each of the three venues is specifically referenced by name on page 1 of the Syngenta Class Settlement Agreement and each appears on the incorporated List of Related Actions giving rise to the settlement.<sup>12</sup> ECF No. 3507-2, at 1

---

<sup>10</sup> For instance, Kansas MDL leadership chose to pursue a nationwide Lanham Act claim and were successful in certifying eight (8) state classes. Kansas MDL leadership tried the Kansas class case, obtaining a judgment exceeding \$217 million. Meanwhile, the litigation in Illinois consisted of purely individual actions. In Minnesota, leadership pursued both a Minnesota state class action and many individual actions. The claims brought and the defendants pursued also varied from jurisdiction to jurisdiction.

<sup>11</sup> The Settlement Class includes: “Any Person in the United States that during the Class Period owned any Interest in Corn in the United State priced for sale during the Class Period and falls into one of the four sub-classes.” ECF No. 3532, at 2-3. The four subclasses, as set out fully in the Court’s Preliminary Approval Order include: Subclass 1 (the “Non-Viptera/Duracade Purchaser Subclass”), Subclass 2 (the “Viptera/Duracade Purchaser Subclass”), Subclass 3 (the “Grain Handling Facility Subclass”), and Subclass 4 (the “Ethanol Production Facility Subclass”). *Id.* at 3. Excluded from the Settlement Class are: (a) the Court and its officers, employees, appointees, and relatives; (b) Syngenta and its affiliates, subsidiaries, officers, directors, employees, contractors, agents, and representatives; (c) all plaintiffs’ counsel in the MDL Actions or the Related Actions; (d) government entities; (e) those who opt out of the Settlement Class; and (f) “Excluded Exporters.” *Id.*

<sup>12</sup> Besides the Kansas, Minnesota, and Illinois federal and state court cases, the only other cases appearing on the List of Related Cases are ethanol production facility/biorefinery class cases filed by Movants in state courts in Iowa,

(Agrisure Viptera/Duracade Class Settlement Agreement), ECF No. 3507-3 (List of Related Actions).

## **II. Movants' Efforts Created and Preserved the \$1.51 Billion Common Fund Substantially Benefitting All Members of the Class.**

Movants have played an active role in the Syngenta corn litigation since its inception. Movants researched, drafted, and filed some of the very first corn producer complaints against Syngenta, including in Illinois, Arkansas, and other states. Specifically, on October 3, 2014, Movants began filing lawsuits in states across the corn belt on behalf of corn producers injured by Syngenta. Movants filed more than sixty (60) lawsuits against Syngenta in federal and state courts in October 2014 alone. *Id.* In these initial lawsuits, Movants developed the factual allegations and legal theories against Syngenta which laid the foundation for the vast litigation that ultimately followed. *Id.*

Over the course of the litigation, Movants have represented tens of thousands of individual corn producers, grain handling facilities, and ethanol production facilities. Movants represent corn producers who live or farm in each of the fifty (50) U.S. states. Movants also represent more than twenty (20) grain handling facilities located across the corn belt and roughly one-quarter of all U.S. ethanol plants.

As discussed above, Movants have filed thousands of individual corn producer lawsuits in Illinois federal and state courts.<sup>13</sup> While Movants primarily concentrated efforts against Syngenta in Illinois state and federal court, Movants also filed and pursued class action lawsuits (originally filed in their respective state courts, but subsequently removed to federal court by Syngenta and

---

Indiana, Ohio, Michigan, and Nebraska. ECF No. 3507-3. Movants, who are the only counsel known to have prosecuted any ethanol plant claims against Syngenta, are counsel of record for plaintiffs in each of these additional cases.

<sup>13</sup> Movants have also filed several grain handling facility claims against Syngenta in Illinois state court.



transferred to this MDL) on behalf of Kansas, Ohio, Colorado, Pennsylvania, Iowa, Indiana, Kentucky, and Texas state corn producer classes.<sup>14</sup> In fact, Movants are believed to be the only attorneys in this litigation to have pursued claims against Syngenta on behalf of a Pennsylvania state corn producer class. Movants are also the only attorneys to have pursued litigation against Syngenta on behalf of ethanol plants and biorefineries. Movants have pursued state-wide class action cases against Syngenta on behalf of ethanol production facilities in the states of Iowa, Indiana, Ohio, Michigan, and Nebraska.<sup>15</sup> By filings these various class action cases, Movants effectively preserved the claims of putative class members in these states.

In representing plaintiffs as leadership counsel in Illinois and other states, Movants worked together on pre-complaint investigation, devoting substantial time and effort. Clark Decl. at 3-6; Flowers Decl. at 2-6. Movants interviewed witnesses relating to the nature and structure of the industry, industry pricing, and Syngenta's conduct. Movants identified and interviewed various U.S. corn producers and other agricultural entities, and collected and examined their voluminous documents. *See* Flowers Decl. at 2-6. Indeed, just for Movants' clients alone, Movants collected and reviewed hundreds of thousands of pages of documents. Movants met with, interviewed,

---

<sup>14</sup> *Norman Sigrist v. Syngenta Seeds, Inc., et al.*, MDL No. 2:15-cv-9921- JWL-JPO (“*Sigrist*”); *Russell D. Rich and Kenneth Osborn v. Syngenta Seeds, Inc. et al.*, MDL No. 2:15-cv-9935-JWL-JPO (“*Rich*”); *Peter V. Anderson v. Syngenta Seeds, Inc., et al.*, MDL No. 2:16-cv-2005-JWL-JPO (“*Anderson*”); *Richard Crone and Pinehurst Acres v. Syngenta Seeds, Inc., et al.*, MDL No. 2:16-cv-2045-JWL-JPO (“*Crone*”); *Bradley J. Vermeer v. Syngenta Seeds, Inc., et al.*, MDL No. 2:16-cv-2052-JWL-JPO (“*Vermeer*”); *VJW Farm, Inc. and Michael Gries v. Syngenta Seeds, Inc., et al.*, MDL No. 2:16-cv-2013-JWL-JPO (“*Gries*”); *Charles A. Welsh v. Syngenta Seeds, Inc., et al.*, MDL No. 2:16-cv-2006-JWL-JPO (“*Welsh*”); and *David Dreibodt and Ron Wetz v. Syngenta Seeds, Inc., et al.*, MDL No. 2:16-cv-2065-JWL-JPO (“*Dreibodt*”).

<sup>15</sup> *TCE, LLC v. Syngenta Seeds, Inc.*, District Court for Carroll County, Iowa, Case No. EQCV 039491 (“*TCE*”); *Ultimate Ethanol, LLC v. Syngenta Seeds, Inc. et al.*, Madison County, Indiana Superior Court, Case No. 48C05-1512-CT-000184 (“*Ultimate Ethanol*”); *Fostoria Ethanol, LLC v. Syngenta Seeds, Inc., et al.*, Court of Common Pleas of Seneca County, Ohio, Case No. No. 15-cv-0323 (“*Fostoria Ethanol*”); *Michigan Ethanol, LLC v. Syngenta Seeds, LLC, et al.*, 54th Circuit Court for the County of Tuscola, Michigan, Case No. 17-29831-NZ (“*Michigan Ethanol*”); and *Mid America Agri Products/Wheatland, LLC, et al. v. Syngenta Seeds, LLC, et al.*, District Court of Perkins County, Nebraska, Case No. CI 14-32 (“*Mid America Agri Products*”).

engaged, and worked with more than a dozen liability and damages experts who analyzed the various claims against Syngenta and ascertained plaintiffs' damages.

Based on the foregoing investigation, Movants determined that there was a strong basis to allege that Syngenta improperly commercialized its Viptera and Duracade corn seed prior to Chinese approval of the MIR162 and Event 5307 traits. Nevertheless, Movants also recognized that the case presented significant risk in the form of legal and factual difficulties, including both procedural and substantive obstacles. Clark Decl. at 3-6. Given the unique contours of the case, most of the claims asserted against Syngenta were untested. *Id.* at 3-7. As a result, Movants pioneered certain theories of liability. Clark Decl. at 3-7; Flowers Decl. at 7-8. Though similar in many respects, Movants' theories of liability are not typical of cases associated with GM litigation, as Syngenta's traits at issue in this case were approved for food and feed use in the United States prior to commercialization. Clark Decl. at 3-7; Flowers Decl. at 7-8. Earlier GM crop litigation, such as the *Starlink* case and the *In re Genetically Modified Rice Litigation*, involved the release into the environment of GM traits that were unapproved for food and/or feed use in the United States. *See In re Starlink Corn Prods. Liab. Litig.*, 212 F. Supp. 2d 828, 834 (N.D. Ill. July 11, 2002); *In re Genetically Modified Rice Litig.*, 251 F.R.D. 392, 393 (E.D. Mo. Aug. 14, 2008). But these risks and hurdles did not deter Movants in their diligent prosecution of the claims against Syngenta, despite Syngenta's many counter-strikes.

After Movants filed suit, and throughout the course and scope of the litigation, Syngenta raised procedural, jurisdictional, constitutional, and substantive arguments and defenses, at every conceivable juncture in its attempts to thwart liability, including without limitation: the doctrine of the federal common law of foreign relations,<sup>16</sup> the economic loss doctrine (including both the

---

<sup>16</sup> *See e.g., Hargrove, et al. v. Syngenta Seeds, Inc., et al.*, Case No. 2:15-cv-02010-JWL-JPO, ECF No. 1.

stranger and contractual iterations of the doctrine), federal preemption pursuant to the U.S. Grain Standards Act (“USGSA”), federal preemption pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), the Petition Clause, the Due Process Clause, state Anti-SLAPP defenses, the raw material/component part supplier doctrine, various state products liability acts, various misrepresentation defenses, various contribution and indemnity defenses, various punitive damages defenses, various limitations defenses, and numerous complex duty and causation arguments. Clark Decl. at 3-7; Flowers Decl. at 7-8. Syngenta would not accept service on its foreign entities, specifically Syngenta AG and Syngenta Crop Protection AG, in any of Movant’s cases. Instead, Syngenta required Movants to go through the technical and time-consuming process of effectuating service upon these entities in Switzerland, pursuant to The Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (“Hague Service”), which further complicated this litigation. *Id.* These efforts caused Movants to expend significant amounts of resources to protect the interests of Movants’ clients, and significant amounts of time to effectively prosecute the clients’ claims. *Id.*

As set out more fully in the attached Declarations, throughout the course and scope of the litigation against Syngenta, Movants performed a litany of critical legal tasks, each necessary to generate and increase the eventual global settlement.

*Research and Initiation of the Litigation.* Movants researched applicable federal and state law, predominantly for states located within the corn belt, but also for each of the fifty (50) states. *Id.* Movants drafted and filed lawsuits on behalf of corn producers, grain handling facilities, and ethanol production facilities primarily in Illinois, but also in other states. *Id.* Movants briefed significant removal questions. *Id.* Movants briefed significant questions of mass tort law before the JPML. *Id.*; *see also* Ex. K (JPML Order Vacating Conditional Transfer Order). Movants also

perfected service upon Syngenta in the many cases filed, including via domestic and foreign service. *Id.*

*Motion Practice.* Movants responded to, and ultimately prevailed on, motions to dismiss filed by Syngenta in this Court (*Sigrist, Rich, Anderson, Crone, Vermeer, Gries, Welsh, and Dreibodt*), Illinois federal court (*Tweet*), Illinois state court (*Browning*), Iowa state court (*TCE*), and Indiana state court (*Ultimate Ethanol*). *Id.* Syngenta's challenges to these complaints were extensive and, among other issues, involved complex questions of duty, breach, causation, federal preemption, and the economic loss doctrine.<sup>17</sup> *Id.* Including attachments, Syngenta's motion to dismiss filed in *Tweet* included four hundred sixty-five (465) pages. Including attachments, Syngenta's motion to dismiss filed in the *Ultimate Ethanol* case was five hundred seventeen (517) pages, Syngenta's reply was sixty-one (61) pages, and its proposed Order to the court was ninety-two (92) pages. Movants obtained a complete denial of Syngenta's motion to dismiss in that case.

Syngenta's dismissal briefing in other courts was of similar size and complexity, but varied based upon applicable state law. Movants briefed scores of other motions filed throughout the nearly four-year duration of this litigation in Kansas, Illinois, Iowa, Indiana, Ohio, Michigan, Nebraska, Arkansas, and other states, including on the issues of class certification, service, discovery, case scheduling, and numerous other topics. Clark Decl. at 3-7; Flowers Decl. at 4-8. Movants prepared joint status reports and proposed Orders for entry by these respective courts. *Id.*

*Oral Argument, Case Management Conferences, and Coordination.* Movants appeared at numerous hearings, primarily in Illinois, Iowa, Indiana, and Ohio, and presented oral arguments on motions to dismiss and a plethora of other motions. *Id.* Movants attended and participated in

---

<sup>17</sup> Syngenta, in fact, prevailed upon one such motion to dismiss in the *Fostoria Ethanol* case. While Movants vehemently disagree with the court's decision, the *Fostoria Ethanol* court found that Ohio's economic loss doctrine barred the claims pled in that specific case. The *Fostoria Ethanol* case is now on appeal to the Ohio Third District Court of Appeals, Case No. 13-17-22. Plaintiff filed its original brief on appeal and the case was subsequently stayed.

case management and status conferences, coordinated meetings with other leadership counsel, opposing counsel, and the court-appointed Special Masters. *Id.* Movants communicated with other leadership counsel, Syngenta, and court-appointed Special Masters on a frequent basis. *Id.* Movants had frequent communications with Syngenta attorneys from Kirkland & Ellis, LLP, including Leslie Smith, Pat Philbin, Jordan Heinz, Ragan Naresh, Sarah Schultes, among other attorneys, as well as Syngenta's local counsel in Illinois, Iowa, Indiana, Michigan, Nebraska, and Ohio. As leadership counsel in Illinois, it was incumbent upon Movants to communicate regularly with other leadership counsel, defendants, and the Special Masters. *Id.* Movants also conferred with each other almost daily for over three years on strategic decisions to coordinate efforts, minimize the duplication of work, and ultimately make decisions concerning the most significant actions in the litigation. *Id.* These communications were critical to the success achieved in this multi-faceted, multi-jurisdictional litigation.

*Client Communications, Information Gathering, and Opt-Outs.* Movants, including their attorneys and legal assistants, spoke with corn producers on a daily basis to gather evidence against Syngenta and to keep corn producers informed concerning the status of the litigation. Movants acquired, at substantial expense, FSA 578 forms, crop insurance records, trust documents, estate records, and other key documents, for Movants' corn producer clients. Movants prepared scores of Plaintiff Fact Sheets for production in the MDL and in *Tweet*. Working with their clients, Movants received and submitted over 16,000 opt-out forms for individual corn producers who wished to exclude themselves from the certified nationwide and state (including Minnesota) classes. Movants' efforts required Syngenta to defend, and to continue to defend, thousands of claims throughout Illinois, in addition to the class cases pending in Kansas and Minnesota. Forcing

Syngenta to face unique litigations in three different jurisdictions, constrained Syngenta's ability to defend the universe of claims brought against it.

*Discovery and Document Review.* Movants were not timid in their discovery against Syngenta. Movants aggressively pursued discovery in this litigation, propounding 456 discovery requests on Syngenta in Illinois state and federal court. As a result of Movants' document requests, Syngenta produced more than 1.2 million pages of documents pertinent to the claims and defenses at issue in the case. Clark Decl. at 7-10; Flowers Decl. at 8-11. Movants' discovery requests prompted numerous meet-and-confer conferences with Syngenta as to the scope and manner of the document production, including issues pertaining to search terms and the protocol concerning the production of electronically stored information ("ESI"). *Id.* To facilitate a cost and time-efficient document review process, all documents produced by Syngenta were placed into an electronic database maintained by third-party vendor, Avansic. Clark Decl. at 7-10. A team of experienced attorneys was assembled to review and analyze the production. *Id.* This team of attorneys was focused on reviewing Syngenta's document production to identify key facts and legal theories of liability, to prepare for depositions, and ultimately trial. *Id.* Movants reviewed, indexed, and coded Syngenta's massive document production, including for each of the following records custodians:

Syngenta Records Custodians		
1. Jessica Adelman	2. Miloud Arraba	3. Jack Bernens
4. Steve Berreth	5. Jeff Bottoms	6. Dan Burdett
7. Pierre Cohadon	8. Jeff Cox	9. Ken Dallmier
10. David Guyer	11. Marshall Kostiuk	12. Chuck Lee
13. Kevin Macken	14. Ozipleo Mader	15. Tracy Mader
16. Duane Martin	17. Scott McClain	18. Andrew McConville
19. Yu Zhang Meng	20. David Morgan	21. Lars Oestergard
22. John Ramsay	23. Dave Roberts	24. Jonathan Seabrook
25. Quinn Showater	26. Jonathan Sullivan	27. Eric Taylor
28. Tim Tierney	29. Ponsi Trivisvavet	30. Abby Vulcan
31. Jill Wheeler	32. Theresa Wismer	33. Claire Xu
34. Lawrence Zeph	35. Meng Yu Zhang	36. Yong Shen Zhang
37. Jingwen Chen	38. Rachel Gast	39. Dawn Hermel

40. Scott Huber	41. Corey Huck	42. Sarah Hull
43. Mike Mack	44. Rex Martin	45. Paul Minehart
46. Staci Monson	47. David O'Reilly	48. Grant Ozipko
49. Davor Pisk	50. Terese Rennie	51. Mark Sather
52. Pat Steiner	53. Iris Tzafrir	54. Demetra Vlachos
55. Dennis Ward	56. Helen Yu	57. Lisa Zannoni
58. Eddie Zhue		

*Id.*

Movants also engaged in significant discovery against other U.S. agricultural industry participants, propounding 1,438 discovery requests to Archer Daniels Midland Company, Bunge North America, Inc., Cargill, Inc., Cargill International, S.A, Louis Dreyfus Company, LLC, Louis Dreyfus Company B.V., and Gaviion Grain, LLC. Clark Decl. at 3-10. Movants also subpoenaed records from several GM testing companies possessing information about Viptera and Duracade GM detection, testing, and test results, including Eurofins Genescan, SGS, Intertek, Romer Labs, and Genetic-ID.

*Liability and Damages Experts.* Movants retained experts in the industry to establish liability against Syngenta. For example, Movants' expert, Maurice House formerly worked for the United States Department of Agriculture, where he directly negotiated with the Chinese Minister of Agriculture. Mr. House's ultimate opinions established liability: Syngenta, without informing farmers of the lack of approval for Viptera and Duracade in China, breached the industry's standard of care when it prematurely marketed its Viptera and Duracade corn seeds to farmers. Clark Decl. at 10-11.

In preparation for trial, Movants also investigated, identified, interviewed and retained a team of expert economists to offer opinions in the pivotal areas of U.S. corn market losses, past and future market losses, and individual producer and nonproducer damages. Movants' experts include agricultural economists Stephen A. Ford, Ph.D., James W. Richardson, Ph.D., Joe Outlaw,

Ph.D., Alan P. Ker, Ph.D., Jeffrey H. Dorfman, Ph.D., J. Scott Shonkwiler, Ph.D., Robert N. Wisner, Ph.D., Henry Bryant, Ph.D., B. Wade Brorsen, Ph.D., and H. Holly Wang, Ph.D. Throughout the litigation, Movants worked extensively with their expert team and expended significant resources to develop expert testimony to address the economic issues and damage theories involved in this case. Movants regularly communicated and held intensive, multi-day conferences with their experts at law offices and in the field. Drs. Ford and Richardson traveled extensively throughout the major corn-producing states, attending meetings with corn producer clients to review farm-level data, conduct interviews, and develop individual damage models. Each of these experts undertook rigorous analysis of market data and used peer-reviewed methodologies to calculate market losses and individual losses of corn producers. Additionally, these experts jointly authored, revised and edited an expert report which was produced to Syngenta and the other parties to this litigation. Movants' retention and work with these expert witnesses was necessary to advance the claims at issue and to confront the pool of expert witnesses retained by Syngenta in defense of this litigation.

*Plaintiffs' Settlement Negotiation Committee is Formed and Movants' Clayton A. Clark is Appointed to Serve on the Committee.* In June 2017, the Kansas class case went to trial in this MDL proceeding. ECF No. 3301 (Minute Entry). On June 23, 2017, the Court entered a judgment in the sum of Two Hundred Seventeen Million, Seven Hundred Thousand dollars (\$217,700,000.00), plus post judgment interest at the rate of 1.22% per annum, following the Kansas class jury verdict in favor of plaintiffs. ECF No. 3312 (Judgment). On August 9, 2017, after years of contested litigation in multiple venues and the resulting judgment from the Syngenta MDL trial, this Court ordered the parties "to explore settlement of the pending cases in all [three venues]." ECF No. 3366. To negotiate a global settlement with Syngenta, this Court



acknowledged the unique characteristics of the different litigations in Kansas, Minnesota, and Illinois. *Id.* at 3 (explaining that the committee contains counsel to “represent[] the interests of different groups of producer plaintiffs”). Accordingly, this Court constructed the Plaintiffs’ Settlement Negotiation Committee (“PSNC”) with leaders from the three different venues “so that producer plaintiffs’ interests are appropriately represented.” *Id.*

On August 8, 2017, the Court appointed Clayton A. Clark, to the PSNC. *See id.* The Court also appointed Christopher A. Seeger, Mikal Watts, and Daniel E. Gustafson to the PSNC. *Id.* Similar appointment orders were entered by Judge Herndon, Judge Bleyer, and Judge Sipkins, respectively. Ex. L; Clark Decl. at 2-3, 11-13. The courts configured the PSNC with lawyers that pressured Syngenta during the litigation on a nationwide basis. Clark Decl. at 11-13. The Order establishing the PSNC explicitly identified the pivotal venues where Syngenta litigation was ongoing and appointed lawyers from those venues to represent those plaintiffs’ interests:

<u>Case</u>	<u>Venue</u>	<u>PSNC Lawyer</u>
<i>Tweet et al. v. Syngenta AG et al.</i> , No. 3:16-cv-00255	Illinois Federal Court	Clayton A. Clark
<i>Browning v. Syngenta AG et al.</i> , No. 15-L-157	Illinois State Court	Clayton A. Clark
<i>In re Syngenta AG MIR162 Corn Litigation</i> , MDL 2591	Kansas Federal Court (MDL)	Christopher A. Seeger
<i>In re Syngenta Litigation</i> , No. 27-cv-15-3785	Minnesota State Court	Mikal Watts & Daniel E. Gustafson

*Id.* at 12-13. These lawyers developed coherent litigation strategies against Syngenta (with nationwide impacts) in each of the respective venues. *Id.* at 2-7, 12-14. The Courts specifically selected Mr. Clark to represent the interests of state court litigants across the country and litigants in Illinois federal court. *Id.* at 12-14.

*Movants Delivered a Global Settlement Which Substantially Benefits All Class Members.*

Once assembled, the PSNC began a lengthy, exhaustive settlement process that ultimately

achieved a tremendous result for all members of the Class. *Id.* at 2-6, 12-14. From the date of the PSNC's establishment until the execution of the global settlement with Syngenta in February 2018, Mr. Clark and Movants traveled around the country for Syngenta settlement negotiations. *Id.* at 12-14. During that seven (7) month period, Mr. Clark negotiated the terms of the Syngenta settlement over the course of numerous meetings with Special Masters Reisman and Stack, Syngenta's counsel, the PSNC, the courts, and other co-counsel. *Id.* These meetings were intense and protracted, typically requiring multiple days cooped up in a room negotiating terms of the Syngenta settlement. *Id.*

The official process began on September 13, 2017, when the parties arrived in Minneapolis, Minnesota to finalize the negotiations of the term sheet agreement with Syngenta. *Id.* Prior to this meeting, uncertainty surrounded whether non-class litigants in state courts would be willing to participate in the Syngenta settlement. *Id.* Syngenta was unwilling to settle the litigation without the participation of the individual claimants, including the thousands of individual claimants represented by Movants. *Id.* Despite genuine opt-out concerns, Mr. Clark's exhaustive devotion to non-class litigants in state courts produced the creative solution that overcame the parties' impasse. *Id.* Indeed, by the end of the meeting, Mr. Clark and the PSNC memorialized a term sheet with the framework and primary endpoints for the Syngenta settlement, including adequate terms for non-class litigants in state courts. *Id.* The executed term sheet established a preliminary agreement that enabled the plaintiffs and Syngenta to suspend litigation. *Id.* In addition, the executed term sheet represented the first critical component of the Syngenta settlement because the agreement informed the terms that would later be memorialized in the master settlement agreement. *Id.*

Although the executed term sheet provided the foundation for the Syngenta settlement, the parties labored over the precise terms of master settlement agreement for months. *Id.* On October 3, 2017, Mr. Clark, the PSNC, opposing counsel, and Ms. Reisman met in Chicago, Illinois to begin drafting terms for the master settlement agreement. *Id.* However, the parties' differing interpretations of the term sheet erected obstacles to a finalized master settlement agreement. *Id.* While ultimately, the parties did overcome the various obstacles, negotiations to convert the term sheet into a master settlement agreement required months of exhaustive meetings around the country that carried into 2018. *Id.* Throughout the negotiations, Mr. Clark insisted and fought to include protections for state court litigants in the agreement. *Id.* These protections for state court litigants, including the tens of thousands of individual claimants nationwide, provided an essential component that finalized the settlement agreement and produced global resolution for Syngenta. *Id.* at 2, 12-14.

Moreover, Mr. Clark's coordination with the Courts and Special Masters throughout the PSNC's negotiation with Syngenta ultimately contributed two (2) of the four (4) subclasses to the Syngenta global settlement, specifically the grain handling facilities and ethanol production facilities.<sup>18</sup> *Id.* In other words, Mr. Clark fulfilled the PSNC's directive of not only securing a global settlement, but also representing the interests of all parties adversely affected by Syngenta's conduct. *Id.*

On February 26, 2018, the parties' meetings, discussions, and negotiations manifested in an executed class settlement agreement for the benefit of all Syngenta claimants. *Id.* at 14. Almost nine (9) months after the appointment of the PSNC—which months were filled with extensive,

---

<sup>18</sup> Subclass 3 consists of grain handling facilities; Subclass 4 consists of ethanol production facilities. ECF No. 3532, at 3. Such subclasses exist because the Movants expanded the Syngenta litigation to include these parties in the Illinois and other state court litigations. Clark Decl. at 2-3, 6-7, 10, 11-13.

time-consuming, and contentious negotiations—this Court issued an Order preliminarily approving the global settlement between the plaintiffs and Syngenta on April 10, 2018. ECF No. 3532.

Thus, by their above-described conduct, Movants contributed a \$1.51 billion settlement for the universal and substantial benefit of all Syngenta claimants. Clark Decl. at 3-13; Flowers Decl. at 2-12. Movants’ work created, enhanced, and preserved the Class Settlement and the common fund. *Id.*

## LAW AND ARGUMENT

### I. THE ATTORNEYS’ FEES REQUESTED BY MOVANTS ARE FAIR AND REASONABLE.

In class actions, a district court has broad authority over awards of attorneys’ fees. *Law v. Nat’l Collegiate Athletic Ass’n*, 4 Fed. Appx. 749, 751 (10th Cir. 2001). Rule 23(h) provides a format for all awards of attorney fees and nontaxable costs in connection with a class action. The Rule applies, even in the instance here, where “there is a simultaneous proposal for class certification and settlement even though technically the class may not be certified unless the court approves the settlement pursuant to review under Rule 23(e).” Fed. R. Civ. P. 23 advisory committee’s note to 2003 amendment, ¶54.

When attorneys’ efforts create or preserve a fund or benefit for others in addition to their own clients, the court is empowered to award fees from the fund.<sup>19</sup> MANUAL FOR COMPLEX LITIGATION, Fourth § 14.11 (2004); *Rubenstein*, NEWBERG ON CLASS ACTIONS §§ 15:54-15:61

---

<sup>19</sup> Here, a lump sum common fund has been created by the class settlement with Syngenta and the fund is under the supervision and jurisdiction of this Court. William Rubenstein, Alba Conte, & Herbert B. Newberg, NEWBERG ON CLASS ACTIONS §§ 15:56-15:57 (5th ed. 2015). “Jurisdiction over the fund involved in the litigation allows a court to prevent [unjust enrichment of absent class members] by assessing attorney’s fees against the entire fund, thus spreading fees proportionately among those benefited by the suit.” *Boeing Company v. Van Gemert*, 444 U.S. 472, 478 (1980).

(“The common fund doctrine holds that an attorney responsible for recovering a common fund is generally entitled to a fee from that fund. . . . [An] attorney, whose efforts create, discover, increase, or preserve a fund to which others also have a claim is entitled to recover from the fund[.]”). “The common fund doctrine is an equitable remedy that awards fees to attorneys for their advocacy and for the benefit of others. It is grounded in equitable principles of *quantum meruit* and unjust enrichment. Unlike statutory fees, which result in a shifting of the fee burden to the losing party, common fund fees result in a sharing of the fees among those benefitted by the litigation.” *Lucken Family Ltd. P’ship v. Ultra Res., Inc.*, No. 09-cv-01543-REB-KMT, 2010 U.S. Dist. LEXIS 144366, 2010 WL 5387559 at \*6 (D. Colo. Dec. 22, 2010); *Gottlieb v. Bany*, 43 F.3d 474, 482 (10th Cir. 1994); MANUAL FOR COMPLEX LITIGATION, Fourth § 14.121 (2004). Thus, the common fund doctrine authorizes a court to distribute attorneys’ fees from the common fund that is created for the satisfaction of class members’ claims when a class action reaches settlement or judgment. *Rubenstein*, NEWBERG ON CLASS ACTIONS § 15:53.

In class settlements, the common fund doctrine is used as a method for proportionately spreading payment of attorney fees among the class members. *Lucken Family Ltd. P’ship*, 2010 U.S. Dist. LEXIS 144366, at \*5-6 (citing *Gottlieb*, 43 F.3d at 482). The settlement in this case created a “common fund” from which the plaintiff class obtained a benefit. Attorneys’ fees are appropriately awarded from that fund, on the theory “that persons who obtain the benefit of a lawsuit without contributing to its costs are unjustly enriched at the successful litigant’s expense.” *Gottlieb*, 43 F.3d at 482 (citing *Boeing Co.*, 444 U.S. at 478).

“To recover fees from a common fund, attorneys must demonstrate that their services were of some benefit to the fund or enhanced the adversarial process.” *Law*, 4 Fed. Appx. at 751. Rule 23(h) “provides a format for all awards of attorney fees and nontaxable costs in connection with a

class action, not only the award to class counsel. In some situations, there may be a basis for making an award to other counsel whose work produced a beneficial result for the class[.]” Fed. R. Civ. P. 23 advisory committee’s note to 2003 amendment, ¶55 ; *see also Rubenstein*, NEWBERG ON CLASS ACTIONS §§ 15:22, 15:58-15:60 (concerning fee motions by attorneys other than class counsel). Indeed, the Tenth Circuit has held that attorneys who confer a benefit on the class, should receive compensation for their services. *Gottlieb*, 43 F.3d at 489 (reversing district court decision which denied fees to counsel whose work conferred a benefit on the class, including non-designated counsel who had submitted fee applications). Thus, efforts by counsel in a collateral forum that assisted in the creation or preservation of the common fund before the court in the present forum or which led to additions to a common fund settlement are compensable.<sup>20</sup> *Rubenstein*, NEWBERG ON CLASS ACTIONS §§ 15:58. “The decision of an award of attorney fees in a common-fund case is committed to the sound discretion of the trial court, which must consider the unique contours of the case.” MANUAL FOR COMPLEX LITIGATION, 4th § 14.121 (2004).

When a *common fund* is created by settlement—as it is here—courts apply “one of two methods to determine reasonable attorneys’ fee awards: a percentage of the fund or the lodestar method.”<sup>21</sup> *Bailes v. Lineage Logistics, LLC*, No. 15-2457-DDC-TJJ, 2017 U.S. Dist. LEXIS 173665, 2017 WL 4758927 at \*8 (D. Kan. Oct. 20, 2017); *In re Sprint Corp. ERISA Litig.*, 443 F. Supp. 2d 1249 (D. Kan. Aug. 4, 2006). There are recognized advantages and disadvantages with

---

<sup>20</sup> “If there are multiple lawsuits (including for example, competing class actions,) with one crossing the finish line first and generating a common fund, counsel from the other lawsuits may seek a fee from the fund for their work in the collateral litigation.” *Rubenstein*, NEWBERG ON CLASS ACTIONS § 15:60. “The fact that the work was done in another forum is irrelevant: the court’s supervision of the common fund provides it authority to reward those responsible for its creation regardless of where that generative activity took place.” *Id.* § 15:59.

<sup>21</sup> “Historically, attorney fees were awarded from a common fund based on a percentage of that fund. After a period of experimentation with the lodestar method (based on the number of hours reasonably expended multiplied by the applicable market rate for the lawyer’s services), the vast majority of courts of appeals now permit or direct district courts to use the percentage-fee method in common-fund cases.” MANUAL FOR COMPLEX LITIGATION, Fourth § 14.121 (2004).

each method, although the more recent trend has been toward utilizing the percentage method in *common fund* cases. *Gottlieb*, 43 F.3d at 483; *see also Chieftain Royalty Co. v. Enervest Energy Inst. Fund XIII-A, L.P.*, 861 F.3d 1182, 1186 (10th Cir. 2017) (“This court has approved both methods in common-fund cases, although expressing a preference for the percentage-of-the-fund approach.”). “The Tenth Circuit favors the common fund approach, as opposed to the lodestar method, because a percentage of the common fund ‘is less subjective than the lodestar plus multiplier approach,’ matches the marketplace most closely, and is the better suited approach when class counsel were retained on a contingent fee basis, as in this case.” *Lucken Family Ltd. P’ship*, 2010 U.S. Dist. LEXIS 144366, at \*5-6; *Peck v. Encana Oil & Gas, Inc.*, No. 15-cv-01800-CMA-KHR, 2018 U.S. Dist. LEXIS 28630, 2018 WL 1010944, at \*5-6 (D. Colo. Feb. 22, 2018) (“In common fund cases, it is standard to use a percentage method when calculating attorneys’ fees.”); *Ryan v. Command Alkon, Inc.*, No. 09-CV-2288-JWL-JPO, 2010 U.S. Dist. LEXIS 67695 at \*5 (D. Kan. July 7, 2010) (same); *Campbell v. C.R. Eng., Inc.*, No. 2:13-CV-00262, 2015 U.S. Dist. LEXIS 134235, at \*16 (D. Utah Sept. 30, 2015) (same).

Regardless of the methodology used, the fee awarded must be reasonable and the Court must make findings of fact and state its conclusions of law. Fed. R. Civ. P. 23(h); *Gottlieb*, 43 F.3d at 482 (citing *Useton v. Commercial Lovelace Motor Freight, Inc.*, 9 F.3d 849, 853 (10th Cir. 1993)); *Cox v. Sprint Commc’ns Co.*, 2012 U.S. Dist. LEXIS 162576, 2012 WL 5512381, at \*2 (D. Kan. Nov. 14, 2012). In all cases, the Court must also consider the twelve factors set forth in *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974). *Gottlieb*, 43 F.3d at 483. The 12 *Johnson* factors include: (1) the time and labor required, (2) the novelty and difficulty of the question presented by the case, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorneys due to acceptance of the case,

(5) the customary fee, (6) whether the fee is fixed or contingent, (7) any time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation and ability of the attorneys, (10) the “undesirability” of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases. *In re Bank of Am. Wage & Hour Emp’t Litig.*, No. 10-MD-2138-JWL, 2013 U.S. Dist. LEXIS 180056, 2013 WL 6670602, at \* 23 n.1 (D. Kan. Dec. 18, 2013); *Koehler v. Freightquote.com, Inc.*, No. 12-2505-DDC-GLR, 2016 U.S. Dist. LEXIS 91745, 2016 WL 3743098, at \*12-13 (D. Kan. July 13, 2016).

The *Johnson* factors are not exclusive and some may not apply in a particular case. *Ryan*, 2010 U.S. Dist. LEXIS 67695, at \*6. In this instance, Factor 11, which is the nature and length of the professional relationship with the client, is irrelevant. Accordingly, Movants analyze each of other *Johnson* factors below. Each factor supports the requested fee allowance by Movants in this case.

#### **A. The Amount Involved and the Results Obtained**

“Generally, the factor given the greatest emphasis is the size of the fund created, because ‘a common fund is itself the measure of success . . . [and] represents the benchmark from which a reasonable fee will be awarded.’” MANUAL FOR COMPLEX LITIGATION, Fourth § 14.121 (2004). Indeed, “[n]umerous courts have recognized that in evaluating the various *Johnson* factors, the greatest weight should be given to the monetary results achieved for the benefit of the class.” *Lucken Family Ltd. P’ship*, 2010 U.S. Dist. LEXIS 144366, at \*8-9 (citing *Anderson v. Merit Energy Co.*, No. 07-CV-00916-LTB-BNB, 2009 U.S. Dist. LEXIS 100681, 2009 WL 3378526, at \*4 (D. Colo. Oct. 20, 2009); *see also Camden I Condominium Ass’n v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991) (in a common fund analysis, “monetary results achieved predominate over other



criteria”). The Tenth Circuit has held that when recovery is “highly contingent” and “the efforts of counsel were instrumental in realizing recovery on behalf of the class[,]” the amount involved and results obtained factor may be given greater weight. *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 456 (10th Cir. 1988). Because “the most critical factor in determining the reasonableness of a fee award is the degree of success obtained[,]” *Farrar v. Hobby*, 506 U.S. 103, 114 (1992) (quotations omitted), Movants analyze this factor first.

By any measure, the degree of success obtained in this case is unparalleled. Here, the Illinois Leadership Group provided significant contributions to the ultimate result of the Syngenta litigation—a \$1.51 billion class settlement for all Syngenta litigants. *See* Clark Decl. at 2-3, 11-13. The Illinois Leadership Group provided three critical contributions to the \$1.51 billion settlement that not only led to the global resolution with Syngenta, but also demonstrate “the most critical factor in” the *Johnson* analysis. *Farrar*, 506 U.S. at 114.

*First*, the Illinois Leadership Group’s very own, Mr. Clark, served as one of four lawyers on the PSNC that secured the global class settlement with Syngenta on behalf of more than 600,000 Class Members. *See* Clark Decl. at 2-3, 11-13. Judge Lungstrum selected Mr. Clark because of the Illinois Leadership Group’s litigation strategies that generated a nationwide impact in the Syngenta litigation. *Id.* at 2-6, 12-14. The appointment Order directed Mr. Clark to represent the interests of state court litigants across the country and litigants in Illinois federal court. *Id.* Mr. Clark’s service on the PSNC produced the class settlement that globally resolved the Syngenta litigation and produced the largest GM settlement in U.S. history. *Id.* “The amount of the settlement (\$1.51 billion) is very large in an absolute sense, and it represents a significant percentage of the actual nationwide damages alleged by the MDL plaintiffs’ experts.” ECF No. 3531. The significance of this result is further demonstrated by the fact that Syngenta has no

reversionary interest in the settlement proceeds. ECF No. 3507-2. Specifically, the settlement proceeds will be distributed to Class Members who submit eligible claims; *none* of the settlement proceeds will revert to Syngenta. ECF No. 3507-2.

*Second*, the Illinois Leadership Group’s contributions to the class settlement provided the most amplification to the “degree of success obtained” – i.e. \$1.51 billion. *Farrar*, 506 U.S. at 114. Specifically, the Illinois Leadership Group was most impactful “to the monetary results achieved for the benefits of the [Syngenta] class.” *Lucken Family Ltd. P’ship*, 2010 U.S. Dist. LEXIS 144366, at \*8-9. Syngenta was unwilling to settle the litigation without the participation of the individual claimants, including the tens of thousands of individual claimants represented by Movants. Clark Decl. at 11-13. Consequently, Movants worked tirelessly to craft a deal that would benefit individual claimants and all Class Members. *Id.* By negotiating such a deal, Movants were able to secure widespread support for the settlement among individual claimants and their counsel. *Id.* Furthermore, the Illinois Leadership Group anticipates that its clients will account for an exceedingly high percentage of the total participants in the Syngenta class settlement. *See id.* at 18. Hence, global resolution of the Illinois Leadership Group’s clients necessitated the most money from Syngenta when compared to the other leadership groups. In other words, the Illinois Leadership Group provided the most leverage to enhance the monetary value of the total settlement. But-for the Illinois Leadership Group, the Syngenta class settlement would not have been reached nor attained as high a degree of success as it did.

*Third*, the Illinois Leadership Group contributed a truly global resolution to the Syngenta litigation because it expanded the litigation into state courts and against different defendants. The Syngenta global settlement settles cases pending in state and federal court. *See* Clark Decl. at 2-3, 11-13. In fact, Mr. Clark was not only appointed to secure a settlement beyond federal court in

state courts, but also delivered a global settlement that encompassed state court litigants. *Id.* In addition, “two (2) of the four (4) subclasses for grain handling facilities and ethanol facilities in the settlement exist because of the Illinois Leadership Group’s litigation strategies that they oversaw and led in state and federal courts.” *Id.* at 14.<sup>22</sup> Thus, the Illinois Leadership Group provided the essential components that make the class settlement with Syngenta a global settlement.

The Illinois Leadership Group’s efforts to reach a truly global settlement of the Syngenta litigation provided true benefits:

[a]lthough the plaintiffs prevailed in the first trial that verdict is subject to post trial review and appeal, and given the disputed nature of the factual and legal issues, other plaintiffs face a significant risk of little or no recovery in future trials; therefore, it is reasonable to believe that the immediate recovery of such a substantial sum is more valuable than the mere possibility of a more favorable outcome after protracted and expensive litigation over many years in the future.”

ECF No. 3531. In enabling a truly global resolution to the Syngenta litigation, the Illinois Leadership Group further enhanced “the degree of success obtained.” *Farrar*, 506 U.S. at 114.

The degree of success achieved in this case cannot be overstated. The amount involved is historic and the results obtained exceptional. The Illinois Leadership Group provided significant contributions to achieving the \$1.51 billion settlement result. Consequently, this factor overwhelmingly supports the requested fee award.

## **B. The Time and Labor Required**

The Illinois Leadership Group served as lead counsel in one of the three pivotal venues where significant labor and litigation occurred against Syngenta – Illinois. *See* Clark Decl. at 1-6, 11-13. As discussed at length above, the Syngenta litigation required the Illinois Leadership Group

---

<sup>22</sup> The Class Settlement even affords relief to U.S. corn producers who purchased and planted Viptera and/or Duracade corn seeds. ECF No. 3507-2. Viptera and Duracade growers faced the possibility of certain additional defenses not germane to claims of non-Viptera or Duracade growers. ECF No. 3507-5, at 11 (Long Form Notice).

to devote tremendous time and labor to prosecute this litigation and to achieve the global settlement with Syngenta. Collectively, the Illinois Leadership Group spent 138,430.9 hours prosecuting the litigation against Syngenta. These hours are reflected in the summaries attached to the Declarations of Messrs. Phipps, Clark, and Flowers, respectively. Movants will submit their voluminous, detailed time records to the Court for *in camera* review, upon request.

The Illinois Leadership Group has set forth in the Factual Background section of this memorandum, a detailed rendition of the vast array of work they performed and the many services they rendered which were necessary to prosecute this action against Syngenta and to establish the common fund. For the sake of brevity, the Illinois Leadership Group will not recapitulate all of those various tasks here. Nevertheless, including pre-suit investigation and due diligence, Movants litigated this case for more than 4 years with competence, diligence, and professionalism. Movants initiated the first lawsuits in Illinois and Arkansas state courts in October of 2014 and continued to file hundreds more in state and federal courts through 2018. Movants artfully and studiously advanced the claims of corn producers, grain handling facilities, and ethanol production facilities throughout the duration of the litigation in forums spanning the corn belt. For several years, Movants worked with their clients, experts, opposing counsel, Special Masters, and the courts to prosecute this litigation. Finally, Movants' negotiated and inked the deal with Syngenta which brought this litigation to a global resolution for the universal benefit of all Class Members.

As detailed in Movants' declarations and supporting billing records, the time and labor involved in this case was staggering. *Johnson*, 488 F.2d at 717 ("Although hours claimed or spent on a case should not be the sole basis for determining a fee, [] they are a necessary ingredient to be considered.") (internal citation omitted). Not only did Movants undertake extensive investigation and discovery efforts, Movants responded to several potentially dispositive motions

from three separate defendant groups in six different courts on complex areas of law and technical subject matter. *See* Clark Decl. at 3-7; Flowers Decl. at 4-8. Movants performed this extensive legal work with minimal duplication of effort. *Id.* (“If more than one attorney is involved, the possibility of duplication of effort along with the proper utilization of time should be scrutinized.”). While Movants were extremely efficient in prosecuting the myriad claims and issues in venues across the corn belt. Additionally, the total attorney billing hours summarized in the Declarations of Messrs. Phipps, Clark, and Flowers have been reduced significantly to eliminate unnecessary duplication of effort.

This multi-district, multi-jurisdictional litigation required an enormous amount of time and labor by Movants to effectively pursue the claims against Syngenta. Movants invested 138,430.9 hours of time and more than \$7 million in expenses, all of which were reasonable and necessary, to advance this litigation. Thus, the time and labor required factor weighs in favor of the Illinois Leadership Group’s requested fee.

### **C. The Novelty and Difficulty of the Questions**

“In determining a reasonable attorney’s fee award, courts emphasize the risk undertaken by counsel: complex cases justify higher fees, and simple cases lower fees.” *See, e.g., Been v. O.K. Indus.*, No. CIV-02-285-RAW, 2011 U.S. Dist. LEXIS 115151, 2011 WL 4478766, at \*26 (E.D. Okla. Aug. 16, 2011). This case against one of the world’s largest biotechnology companies undeniably involved novel questions that were difficult and complex. Clark Decl. at 3-7; Flowers Decl. at 7-8. The court records in this litigation attest to the novelty and difficulty of the questions presented. *Brown*, 838 F.2d at 455.

The novelty and difficulty of the issues encountered and overcome by Movants were often matters of first impression. Clark Decl. at 3-7; Flowers Decl. at 7-8. Indeed, at every turn

Syngenta described this litigation as unprecedented: “Plaintiff’s lawsuit rests on the unprecedented theory that it was a tort for Syngenta to sell a U.S.-approved, genetically modified (“GM”) corn seed called Viptera in the U.S. simply because that biotechnology has not yet been approved for import into China.” *See e.g.*, Ex. M (Excerpts from Syngenta’s Motion to Dismiss filed in the *Michigan Ethanol* case). “Cases of first impression generally require more time and effort on the attorney’s part [and counsel] should be appropriately compensated for accepting the challenge.” *Johnson*, 488 F.2d at 718. In addition, any class action presents complex and difficult legal and logistical issues which require substantial expertise and resources. *Stalcup v. Schlage Lock Co.*, 505 F. Supp. 2d 704, 707 (D. Colo. Jan. 8, 2007).

In this Court and in every other venue, Syngenta raised procedural, jurisdictional, constitutional, and substantive arguments and defenses, at every conceivable juncture, including without limitation: the doctrine of the federal common law of foreign relations, the economic loss doctrine (including both the stranger and contractual iterations of the doctrine), federal preemption pursuant to the USGSA, federal preemption pursuant to FIFRA, the Petition Clause, the Due Process Clause, state Anti-SLAPP defenses, the raw material/component part supplier doctrine, various state products liability acts, various misrepresentation defenses, various contribution and indemnity defenses, various punitive damages defenses, various limitations defenses, and numerous complex duty and causation arguments. Clark Decl. at 3-6, 13-14; *compare In re Motor Fuel Temperature Sales Practices Litig.*, No. 07-MD-1840-KHV, 2016 U.S. Dist. LEXIS 113406, 2016 WL 4445438, at \*88-89 (D. Kan. Aug. 24, 2016). Syngenta even advanced certain Canadian law arguments. Ex. M, at 21, 26-27, 42-43. Syngenta would not consent to service on its foreign entities, specifically Syngenta AG and Syngenta Crop Protection AG, in any of the cases Movants filed, but instead required Movants to go through the technical and time-consuming process of

effectuating service upon these entities, in Switzerland, pursuant to The Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (“Hague Service”), which further complicated this litigation. Clark Decl. at 5; Flowers Decl. at 5. These efforts caused Movants to expend a significant amount of resources to protect the interest of its clients, and additionally, a significant amount of time to effectively prosecute its clients’ claims. Clark Decl. at 3-7, 14-15, 17-19. The subject matter of this litigation was complex in that it involved foreign trade issues, regulations with China’s Ministry of Agriculture, asynchronous approval, stewardship, testing and detection methods, and economic losses of corn share prices because of the improper commercialization of Syngenta’s MIR162 and Event 5307 genetically modified corn seed. Clark Decl. at 6-13.

Analysis of all of the foregoing issues and effective prosecution of the claims required not only extensive knowledge of applicable caselaw, statutes, and regulations, but also insight on successfully litigating cases under Fed. R. Civ. P. 23 and equivalent state schemes, and specialized knowledge of appellate practice.<sup>23</sup> Clark Decl. at 3-7. This case involved complicated issues of both science, law, and economics. Clark Decl. at 3-7, 10-11. Movants’ ability to thoroughly analyze the complex issues in this litigation ultimately contributed to a fair and reasonable resolution of this litigation for Class Members across four subclasses with divergent interests. Clark Decl. at 11-13. This factor should carry significant weight and tends to support a generous award of attorneys’ fees.

#### **D. The Skill Requisite to Perform the Legal Service Properly**

---

<sup>23</sup> In addition to crafting the class settlement now pending before this Court, including drafting, editing, and revising the Class Settlement Agreement and all exhibits thereto, Movants represented plaintiffs from all fifty (50) U.S. states. Movants have filed state corn producer class action cases in Kansas, Iowa, Texas, Indiana, Kentucky, Ohio, and Alabama. *Id.* Indeed, Movants are believed to be the only counsel to have filed a Pennsylvania state corn producer class case. *Id.* Additionally, Movants are the only attorneys to have filed any ethanol production facility class action cases against Syngenta. Movants have pursued these ethanol class action cases in Iowa, Indiana, Ohio, Michigan, and Nebraska.

As to the next factor, considering the skill requisite to perform the legal services properly, the Court of Appeals for the Fifth Circuit stated in *Johnson*:

The trial judge should closely observe the attorney's work product, his preparation, and general ability before the court. The trial judge's expertise gained from past experience as a lawyer and his observation from the bench of lawyers at work become highly important in this consideration.

*Johnson*, 488 F.2d at 718.

This Court, together with Judge Herndon, Judge Bleyer, and Judge Miller, as well as the court-appointed Special Masters, Ellen K. Reisman and Daniel Stack, personally observed many of the relevant stages of this litigation and, consequently, are in a unique position to judge the skill necessary to perform the legal services properly, as well as the experience, reputation, and ability of the attorneys. *See, e.g., Brown*, 838 F.2d at 455. Given the complexity of this litigation, the Court should conclude that the skill required to prosecute it was substantial.

As demonstrated by the Declarations of Messrs. Phipps, Clark, and Flowers, Movants have significant experience in litigating complex commercial litigation and mass torts cases.<sup>24</sup> Clark Decl. at 14-16; Flowers Decl. at 18-21. Nevertheless, these proceedings were demanding of Movant's skill due to the novelty of the issues presented. Clark Decl. at 6-7. This litigation required counsel to perform skills ranging from complex case management and civil discovery, to highly specialized class-action expertise.<sup>25</sup> Clark Decl. at 6-13, 14-16. Such skills were necessary to procure recovery for Class Members because this litigation has been zealously and diligently

---

<sup>24</sup> While the skill requisite to perform the legal service properly and the experience, reputation, and ability of the attorneys are technically separate *Johnson* factors, they are closely related and can involve overlapping analysis. Consequently, many courts consider these two factors together. *See, e.g., Lane v. Page*, 862 F. Supp. 2d 1182, 1253-54 (D. N.M. May 22, 2012).

<sup>25</sup> Indeed, this case combines class action litigation and individual mass tort litigation, biotechnology regulation, the highly-technical science surrounding genetically modified corn seeds, and the impacts of the commercialization of such biotech seeds on U.S. and foreign markets.



contested by top-notch, sophisticated defense counsel with substantial resources. Clark Decl. at 3-7.

Movants devoted substantial time and resources to achieve success in this case, including the recovery of the \$1.51 billion class settlement. Clark Decl. at 2-3, 13-14, 16-19. Movants achieved the settlement in this case with skill, perseverance, and diligent advocacy. Clark Decl. at 2-6, 11-13. Movants worked together with, not against, other skilled plaintiffs' counsel to resolve competing interests and craft a resolution beneficial for all Class Members. *Id.* Class Members have reaped a substantial benefit from counsel's persistent efforts. *Id.* This factor thus compels a conclusion that the requested fee award is reasonable.

**E. The Preclusion of Other Employment Due to Acceptance of the Case**

The next factor concerns the preclusion of other employment due to acceptance of the case. This factor "involves the dual consideration of otherwise available business which is foreclosed because of conflicts of interest which occur from the representation, and the fact that once the employment is undertaken the attorney is not free to use the time spent on the client's behalf for other purposes." *Johnson*, 488 F.2d at 718. Large-scale proceedings, like the nationwide multi-district mass tort and class litigation at issue here, necessarily require a great deal of work, and a concomitant inability to take on other cases. *See, e.g., Brown*, 838 F.2d at 455 ("The record contains evidence that a substantial portion of the work of class counsel for many years was devoted to these cases, and thus precluded or reduced their opportunity for other employment."); *Lucken Family Ltd. P'ship*, 2010 U.S. Dist. LEXIS 144366, at \*5 ("Because of the number of hours that class counsel have been required to devote to this case, class counsel necessarily were precluded from handling other litigation matters during that time.").

The size, scope, and duration of the Syngenta corn litigation, has precluded Movants from pursuing other employment. Clark Decl. at 13-14; Flowers Decl. at 17-18. Specifically, Movants were precluded from taking other cases in order to devote the appropriate amount of attention to the present case. *Id.* Due to the protracted nature of this litigation, this preclusion had a significant impact on the practices of these law firms over the past four years. *Id.* Mr. Clark has testified, “CLH devoted extensive resources and experience to this litigation, to the exclusion of other requests to participate in mass actions, including the opioid, herniamesh, and TALC powder litigation.” Clark Decl. at 14. Finally, Mr. Flowers has testified that, “Meyers & Flowers devoted extensive resources and experience to this litigation, to the exclusion of other potential medical device and pharmaceutical litigation, including, but not limited to cases involving Proton Pump Inhibitor, Bair Hugger, and Abilify. Flowers Decl. at 17-18. Indeed, attorneys for each of the foregoing law firms have spent thousands of hours on this case, which necessitated the refusal of other work. Clark Decl. at 14-19; Flowers Decl. at 13-18; Phipps Decl. at 25-26; *see also In re Crocs, Inc. Sec. Litig.*, No. 0-CV-02351-PAB-KLM, 2014 U.S. Dist. LEXIS 134396, 2014 WL 4670886 (D. Colo. Sept. 18, 2014) (“[C]ommon sense indicates that the nearly 3900 hours spent litigating this case came at the expense of time that could have been devoted to other matters.”)

Because Movants’ involvement in this case impaired their ability to accept work on other cases, this factor also militates in favor of Movants’ fee request.

#### **F. The Customary Fee and Awards in Similar Cases**

“The customary fee for similar work in the community should be considered” in ascertaining a reasonable attorney’s fee. *Johnson*, 488 F.2d at 718. “The reasonableness of a fee may also be considered in light of awards made in similar litigation within and without the court’s circuit.” *Id.* Because these two factors are similar and their evaluation is interwoven, Courts

frequently consider and analyze them together, as Movants do here. *In re Crocs, Inc. Sec. Litig.*, 2014 U.S. Dist. LEXIS 134396, at \*10-13.

Given the unique contours of this case, it is difficult to find a case that stands on all fours with this one. In the most recent GM crop litigation, the *In re Genetically Modified Rice Litigation*, a \$750 million global settlement was reached with Bayer Crop Science to resolve claims of rice producers injured by the release of Bayer's unapproved GM rice.<sup>26</sup> Attorneys in that case received their standard contingency fees *plus* a common benefit distribution for common benefit work performed (if any); however, the *In re Genetically Modified Rice Litigation* was not prosecuted or settled as a class action, as in this litigation. *Id.* In this litigation, the work and efforts of the Illinois Leadership Group, the Kansas Leadership Group, and the Minnesota Leadership Group, created, generated, and preserved a common fund consisting of class settlement monies totaling \$1.51 billion. Clark Decl. at 2-3, 11-13; Flowers Decl. at 6. The Illinois Leadership Group, the Kansas Leadership Group, and the Minnesota Leadership Group, whose efforts established the common fund in this case, collectively seek “up to one-third of the settlement fund as attorneys’ fees.”<sup>27</sup> *See* ECF No. 3507-5, at 17.

It is well-settled that the customary fee award in common fund class settlements is approximately one-third of the total economic benefit bestowed on the class. *See, e.g., Shaw v. Interthinx, Inc.*, No. 13-CV-01229-REB-NYW, 2015 U.S. Dist. LEXIS 52783, 2015 WL 1867861, at \*21 (D. Colo. Apr. 21, 2015). Courts have recognized that “[t]he percentages awarded in common fund cases typically range from 20 to 50 percent of the common fund created” and that fees within this range are “presumptively reasonable[.]” *Id.* (internal citations omitted); *see also*

---

<sup>26</sup> Before being eclipsed by the settlement in this case, this \$750 million global settlement was the largest GM crop settlement in U.S. history.

<sup>27</sup> *See* pages 1-4 of this Memorandum Brief, *supra*.

*Davis v. Crilly*, 292 F. Supp. 3d 1167, 1174 (D. Colo. Feb. 22, 2018) (holding that an award for attorneys' fees and expenses that is 37% of the gross settlement amount is reasonable and "well within the normal range for a contingent fee award."); *Campbell*, 2015 U.S. Dist. LEXIS 134235, at \*20 n. 5 (approving fee and expense award totaling 35% of the common fund and finding that such was consistent with awards in similar common fund cases); *Peck*, 2018 U.S. Dist. LEXIS 28630, at \*7 (approving fee and expense award totaling 37.5% of gross settlement amount); *Cimarron Pipeline Constr., Inc. v. Nat'l Council on Compensation Ins.*, Nos. CIV-89-822-T, CIV-1186-T, 1993 U.S. Dist. LEXIS 19969, 1993 WL 355466, at \*4-5 (W.D. Okla. June 8, 1993) (holding that "[f]ees in the range of 30-40% of any amount recovered are common in complex and other cases taken on a contingent fee basis," and finding that "attorneys' fees of 33 1/3% of the common fund created by the efforts of counsel for the Class are in line with comparable other cases, [and] consistent with the prevailing case law of this circuit."). Consequently, the fee requested by Movants is well within the range for fee awards in similar common fund cases.

In addition to being well within the range for fee awards in similar common fund cases, the requested one-third fee is also fair and reasonable under the unique circumstances of this case, as set forth herein, which Movants' posit establishes the "gold standard" in GM crop litigation. *See In re Urethane Antitrust Litig.*, No. 04-1616-JWL, 2016 U.S. Dist. LEXIS 99839, at \*79 (D. Kan. July 29, 2016) ("The fee percentage must be determined on a case-by-case basis, based on weighing the applicable *Johnson* factors."); *see also Allapattah Servs., Inc. v. Exxon Corp.*, 454 F.Supp.2d 1185, 1211 (S.D. Fla. 2006). While the fee requested is no-doubt substantial in size, counsel's overwhelming success in this complex, hotly contested litigation is incontrovertible. Under all of the circumstances, and particularly given the extraordinary results achieved for Class Members despite the many risks and complexities of this case, the fee requested by Movants is

wholly merited. *See In re Urethane Antitrust Litig.*, 2016 U.S. Dist. LEXIS 99839, at \*79; *see also Allapattah Servs., Inc. v. Exxon Corp.*, 454 F.Supp.2d at 1211.

### **G. Whether the Fee is Fixed or Contingent**

“Courts agree that a larger fee is appropriate in contingent matters where payment depends on the attorney’s success.” *Been*, 2011 U.S. Dist. LEXIS 115151, at \*25. “Fees that are contingent on success present definite risks. Payment, if any, is deferred, and there is always a risk, often a substantial risk, that there may be no payment at all.” *Id.*

As set forth in the Declarations of Messrs. Phipps, Clark, and Flowers, Movants pursued this case on a pure contingent fee basis. Clark Decl. at 13-14, 16-19; Flowers Decl. at 13-14, 17-19. Movants advanced all costs and expenses of the litigation for their clients from its inception to conclusion, with the prospect of receiving no compensation absent a recovery in the case. *Id.* Movants undertook this representation for tens of thousands of producer and non-producer clients at a 40% contingent fee.<sup>28</sup> *Id.* This 40% contingency fee was inclusive of all costs and expenses. *Id.* A small number of Movants’ clients contracted for representation at a different fee rate. *Id.* In these limited instances, such rates varied based upon the circumstances and the referring attorney, but typically were one-third (1/3) of any recovery *plus* costs and expenses. *Id.* “The fee quoted to the client or the percentage of the recovery agreed to is helpful in demonstrating the

---

<sup>28</sup> Movants’ Joint Motion for Award of Attorneys’ Fees and Reimbursement of Litigation Expenses is primarily based upon the common fund doctrine and its various iterations as set forth in the relevant case authorities. Nevertheless, in addition and alternatively, to the extent this Court considers attorney fee agreements as a basis for awarding fees, or in determining what constitutes a reasonable fee award for counsel representing individual claimants in this litigation, Movants state that they represent tens of thousands of eligible claimants who Movants anticipate will participate in the settlement. Clark Decl. at 16-19. In fact, Movants expect that a very high percentage of the total number of participants in the settlement will be Movants’ clients. *Id.* However, Movants will not know the exact names or total number of client-participants in the settlement until after the Claims Deadline. Therefore, Movants respectfully reserve the right to supplement this motion with that information, including the individual attorney-fee contracts for all of Movants’ client-participants in the settlement, at that time, if necessary and appropriate.

attorney's fee expectations when he accepted the case." *Johnson*, 488 F.2d at 718. As stated by the Court in *In re Qwest Commc'ns. Int'l, Inc.*:

In many circumstances, a contingent fee will result in the payment of a higher total fee to counsel than the total fee an hourly fee would have generated. Of course, if the litigation is not successful, a contingent fee often will leave counsel without any fee. A contingent fee, and the potential for a relatively high fee, is designed to reward counsel for taking the risk of prosecuting a case without payment during the litigation, and the risk that the litigation may be unsuccessful.

625 F. Supp. 2d 1143, 1151 (D. Colo. May 27, 2009).

Such considerations are applicable here. Movants took significant risk in taking this case. Movants took this case on a pure contingency fee basis and therefore took substantial risk in receiving no payment for their time in light of the many unresolved legal issues at issue in the case. Movants would have recovered nothing if they had not prevailed in this litigation and procured a successful settlement with Syngenta for all Class Members. Given the extraordinary risk of non-recovery or delayed-recovery in this case, this factor weighs heavily in favor of Movants' requested fee.

#### **H. Any Time Limitations Imposed by the Client or the Circumstances**

Even with a full cadre of skilled and experienced lawyers and legal assistants, the complex and multi-jurisdictional nature of this litigation caused numerous strict time limitations to be imposed on Movants. Clark Decl. at 3-11, 16-19; Flowers Decl. at 2-13, 16-19. Such time limitations in this complex, mass tort, multi-district litigation are clearly not inherent in run-of-the-mill legal representation. *Id.* As demonstrated by the attorney and staff time summaries submitted by Movants,<sup>29</sup> Movants worked long hours, including nights and weekends, committing a great deal of time and effort to meet numerous case deadlines and to otherwise advocate for the benefits of plaintiff Class Members. *Id.* While this factor may not accord the same weight as other

---

<sup>29</sup> At the request of the Court, Movants will submit their time records for *in camera* review.

factors, it does certainly illustrate the tremendous personal sacrifice and investment made by Movants to successfully prosecute this action. *Been*, 2011 U.S. Dist. LEXIS 115151, at \*26. Considering all of the evidence, this factor also supports the fee requested.

### **I. The Experience, Reputation, and Ability of the Attorneys**

Phipps Anderson Deacon LLP, based in San Antonio, Texas, has substantial experience in handling complex civil litigation and mass torts, from litigating multi-million-dollar damage claims on behalf of corporations and individuals to prosecuting insurance companies in first party lawsuits. For the past decade, Phipps Anderson Deacon attorneys have successfully litigated claims against massive global agribusinesses for damage caused by genetically modified crops, serving as lead trial counsel on hundreds of suits filed on behalf of rice farmers against Bayer Crop Science, LP (“Bayer”) in Arkansas, Mississippi, and Texas in the *Genetically Modified Rice Litigation*.<sup>30</sup> Phipps Anderson Deacon attorneys tried the very first state court case against Bayer in Woodruff County, Arkansas on behalf of a small rice farmer and obtained the highest per acre damages awarded by a jury in the U.S., the only jury finding that Bayer acted intentionally in contaminating the long grain rice supply, and the first punitive damages award in the nation against Bayer. After a second successful jury trial in Arkansas state court, Bayer settled all of Phipps Anderson Deacons’ state court farmer cases under the same terms of a global settlement for a total of \$750,000,000—which at that time was the largest agricultural settlement in U.S. history. Phipps Anderson Deacon attorneys were also lead trial counsel for Riceland Foods, Inc., the world’s largest rice miller and marketer, and successfully defended against hundreds of lawsuits brought in state and federal courts by rice farmers and non-producers in response to contamination of the U.S. rice supply by Bayer. In a jury trial that proceeded with Riceland as the plaintiff on its

---

<sup>30</sup> See *In Re: Genetically Modified Rice Litig.*, 4:06-MD-01811 (E.D. Mo.).

affirmative claims against Bayer, the jury returned a verdict in Riceland's favor for \$136.8 million, which included \$125 million in punitive damages to Riceland. This was the largest jury verdict against Bayer in the *Genetically Modified Rice Litigation* and was reported as the largest jury verdict in Arkansas history.

CLH has established itself as a national leader in complex mass action litigation. Clark Decl. at 14-16. CLH has consistently developed and resolved mass tort litigations against fortune 500 companies. *Id.* Further, the firm has developed a national reputation as a go-to bellwether trial firm. *Id.* In 2013, CLH partners, Scott Love and Shelley Hutson, led teams that tried the first three cases against Janssen in the Topamax birth defect litigation. *Id.* These teams' efforts secured back to back multimillion dollar verdicts. *Id.* The third trial resulted in a nationwide settlement program for all injured children. *Id.* Most recently, as co-lead counsel in the Boston Scientific MDL, CLH tackled an even greater challenge – bellwethers starting on the same day in federal district courts in West Virginia and Florida. *Id.* Ms. Hutson, who headed the firm's Florida team, obtained a verdict in excess of \$28 million. *Id.* A few days later, Mr. Love, as lead counsel of the West Virginia team, obtained a verdict for over \$18 million. *Id.* These verdicts produced global settlements for firms across the country with not only Boston Scientific, but also other mesh manufacturers. *Id.*

In addition to the firm's active trial practice, Mr. Clark has become one of the nation's most creative, successful negotiators in large, complex mass actions. For example, Mr. Clark developed settlement frameworks with all five (5) of the main defendants in the transvaginal mesh litigation for the benefit of all litigants. *Id.* at 15-16. These frameworks included provisions that ensure maximum claimant participation and protections from termination. *Id.* These creative solutions have been duplicated nationwide. *Id.* This example is not solitary – Mr. Clark also



served similar roles in the Paxil, Topamax, Pradaxa litigations, among others. *Id.* Drawing on his reputation as one of the nation's most creative negotiators in mass actions, Mr. Clark applied his expertise from these past litigations to create and achieve a similar solution for Syngenta litigants.<sup>31</sup>

Meyers & Flowers is a nationwide litigation practice with offices in Chicago and St. Charles, Illinois that has taken the lead nationally in landmark cases against some of the world's most powerful corporations, representing clients who are victims of defective medical products and drugs, consumer fraud, and other tortious conduct. Flowers Decl. at 18-21. Over the past decade alone, our group of dedicated trial attorneys have obtained verdicts and settlements totaling approximately \$10 billion against many of largest medical and pharmaceutical corporations in the world. *Id.*

As set forth above, Movants are highly skilled and specialized attorneys who use their extensive experience and expertise to prosecute complex commercial cases, mass torts, biotechnology and agricultural law. Movants brought their unique skill and experience to bear in this case, pursuing this litigation in a tenacious and articulate manner. Such advocacy on the part of plaintiffs was necessary given the well-funded and formidable nature of the Defendant and the expertise and experience of its highly-capable counsel.

Ultimately, Movants were able to successfully litigate this matter to conclusion, including through the negotiation of the Class Settlement, which settlement undeniably benefitted all members of the class. Few law firms could have devoted the kind of time, skill and financial resources necessary (over a four-year period) to achieve the tremendous benefits obtained for the

---

<sup>31</sup> As stated herein, Mr. Clark was selected to serve as a member of Plaintiffs' Settlement Negotiation Committee, based at least in part, on his experience and reputation in complex litigation of this kind. ECF No. 3366. Thus, Movants' knowledge and experience, which significantly contributed to a fair and reasonable settlement of this litigation, is another factor that supports Movants' request for attorneys' fees in this case. *See, e.g., Anderson*, 2009 U.S. Dist. LEXIS 100681, at \*9-10.

Class here. *Lane*, 862 F. Supp. 2d at 1254. Indeed, it is unlikely that many other firms would have been able to continue funding the litigation for it to reach this point or that many other counsel would have been able to so successfully prosecute this litigation. *See id.* Consequently, “[t]his factor carries significant weight because the plaintiff class likely would not have obtained any relief . . . without the assistance of counsel with a high level of skill and expertise.” *Id.* (citing *In re Qwest Commc’ns Int’l, Inc. Sec. Litig.*, 625 F.Supp.2d at 1150). Given the high quality of defense counsel, “there was simply no way that this case could have been prosecuted successfully without a high level of skill” exhibited on the part of counsel. *Id.* (citing *Feerer v. Amoco Prod. Co.*, No. 95-0012-JC/WWD, 1998 U.S. Dist. LEXIS 22248, at \*31 (D. N.M. May 28, 1998)).

As set forth herein, Movants used their vast knowledge and experience of complex, commercial litigation to benefit of the class. Clark Decl. at 11-16; Flowers Decl. at 1, 11, 18-21. Where, as here, “[c]ounsel’s knowledge and experience . . . significantly contribute[s] to a fair and reasonable settlement” this factor supports a large request for attorney’s fees. *Lane*, 862 F. Supp. 2d at 1254 (citing *Anderson*, 2009 U.S. Dist. LEXIS 100681, at \*3). Consequently, this factor weighs heavily in support of Movant’s fee application.

#### **J. The “Undesirability” of the Case**

As set forth above, Movants undertook significant risk to represent plaintiffs in this litigation. First, few, if any, biotechnology/market loss cases of this sort have ever been litigated to conclusion, making the governing law in this case uncertain. Clark Decl. at 6-7; Flowers Decl. at 7-8. Second, this litigation required Movants to advance large amounts of time, money, and other resources to determine if any recovery might be had. *Id.* Most attorneys are unable or unwilling to take such a substantial financial risk. *Id.*; *Shaw*, 2015 U.S. Dist. LEXIS 52783, at \*21 (citing *In re Qwest Commc’ns Int’l, Inc. Sec. Litig.*, 625 F.Supp.2d at 1152-53). “Attorneys

must have incentive to take undesirable cases in order to assure access to the court for all people; awarding fees based on a reasonable percentage of the recovered fund provides such an incentive.” *Millsap v. McDonnell Douglas Corp.*, No. 94-CV-633-H(M), 2003 U.S. Dist. LEXIS 26223, 2003 WL 21277124, at \*41 (N.D. Okla. May 28, 2003). Movants willingness not only to take the case, but also to incur significant costs in prosecuting the action over a four-year period support an award that compensates Movants for their determination, commitment, and tenacity. *See, e.g., id.* In light of the uncertainty of the governing law and the substantial risk of no recovery, this factor should be given “significant weight” in the Court’s determination of a reasonable attorney fees award and supports Movants’ fee application. *See, e.g., id.* at \*39-40.

#### **K. Lodestar Cross-Check**

“Even where the fee request is to be determined using the common fund approach, courts often check the reasonableness of the fee request by applying the lodestar approach.” *Payson v. Capital One Home Loans, LLC*, No. 07-CV-2282-JTM-DWB, 2009 U.S. Dist. LEXIS 88468, at \*7 (D. Kan. Sept. 24, 2009); MANUAL FOR COMPLEX LITIGATION, Fourth § 14.121, 14.122 (2004). Under this approach, “a reasonable attorney’s fee is calculated by determining the lodestar amount — *i.e.*, the number of hours counsel reasonably expended multiplied by a reasonable rate for similar work — and then multiplying the lodestar amount by a subjective ‘multiplier’ to compensate for the risk of litigation.” *Been*, 2011 U.S. Dist. LEXIS 115151, at \*29; *see also* *Gottlieb*, 43 F.3d at 484-85. Multipliers of four or less are commonly accepted as reasonable. *Been*, 2011 U.S. Dist. LEXIS 115151, at \*29-30.

As demonstrated by the time summaries submitted by Movants,<sup>32</sup> Movants expended 138,430.9<sup>33</sup> total hours prosecuting this litigation for the substantial benefit of all Class Members.

---

<sup>32</sup> At the request of the Court, Movants will submit their time records for *in camera* review.

<sup>33</sup> Phipps – 128,428.90; Clark – 4,956.6; Flowers – 5,045.4.

Multiplying the hours worked by the reasonable hourly rates of each time-keeper, as contained in the respective Declarations of Messrs. Phipps, Clark, and Meyers, yields a total lodestar amount of \$39,674,653.<sup>34</sup> This total lodestar is reasonable for a case of this nature, involving large claims and several years of litigation against a sophisticated defendant. Clark Decl. at 17. “Many hours and hundreds of thousands of dollars were expended to oversee the litigation, make strategy decisions, draft, edit, review millions of pages of discovery documents, research complex issues, attend multiple status conferences in Illinois state and federal courts, and conduct myriad hours of settlement negotiations.” *Id.* Moreover, the hourly rates charged by the Illinois Leadership Group—which together produce a blended hourly rate of less than \$287 per hour—is reasonable and certainly well within the normal range of what law firms of comparable skill and experience practicing in the area in which the litigation occurs would charge for their time. *See, e.g., In re Bank of Am. Wage & Hour Emp’t. Litig.*, 2013 U.S. Dist. LEXIS 180056, at \*22-23 (finding that lodestar cross-check reflected a blended hourly rate of roughly \$488).

As outlined above, the Illinois Leadership Group is petitioning the Court to award one-third (1/3) of the \$1.51 billion gross Syngenta Agrisure Viptera/Duracade class settlement fund to those attorneys whose combined efforts created and preserved the common fund, specifically the Kansas Leadership Group, the Illinois Leadership Group, and the Minnesota Leadership Group. Movants propose that, *at a minimum*, 17.5% of the one-third fee (approximately \$88,083,333.33) be awarded to the Illinois Leadership Group. Applying the lodestar cross-check calculation here ( $\$88,083,333.33 \div 39,674,653$ ) results in a multiplier of approximately 2.22, which is within a reasonable range.<sup>35</sup> *See e.g., Campbell*, 2015 U.S. Dist. LEXIS 134235, at \*20 n. 5 (approving a

---

<sup>34</sup> Phipps - \$32,435,420.00; Clark - \$3,946,090.00; Flowers - \$3,293,103.00.

<sup>35</sup> Given the substantial length of time this litigation has been pending, Movant’s lodestar is appropriately calculated using current billing rates. *In re Urethane Antitrust Litig.*, 2016 U.S. Dist. LEXIS 99839, at \*84 (citing *Smith v. Village of Maywood*, 17 F.3d 219, 221 (7th Cir. 1994)).

fee award with a lodestar multiplier of 2.9); *Mishkin v. Zynex, Inc.*, No. 09-cv-00780-REB-KLM, 2012 U.S. Dist. LEXIS 132405, 2012 WL 4069295, at \*2 (D. Colo. Sept. 14, 2012) (collecting cases from district courts in the Tenth Circuit approving multipliers ranging from 2.5 to 4.6); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (approving a fee award that resulted in a lodestar multiplier of 3.65); *Rubenstein*, NEWBERG ON CLASS ACTIONS § 14:6 (“Multiples ranging from one to four frequently are awarded in common fund cases when the lodestar method is applied. A large common fund award may warrant an even larger multiple.”).

Applying the lodestar test as a cross-check on the percentage of the fund requested by the Illinois Leadership Group demonstrates that the requested fee is both fair and reasonable under the circumstances. In light of the significant recovery obtained in the face of substantial risks, the quality of work performed, the contingent nature of the fee, the extraordinary experience of the Illinois Leadership Group and the unique nature of our integral role of assisting, at all times in good faith the global settlement, bringing together otherwise unaligned litigation groups, as described herein, the Illinois Leadership Group respectfully requests that the Court grant its request for attorney’s fees as set forth herein.

## **II. MOVANTS SHOULD BE REIMBURSED FOR THEIR NECESSARY AND REASONABLE LITIGATION EXPENSES**

Rules 23(h) also authorizes the award of nontaxable costs in class action litigation and settlements.<sup>36</sup> Fed. R. Civ. P. 23(h) (“In a certified class action, the court may award reasonable attorney’s fees and nontaxable costs that are authorized by law or by the parties agreement.”); MANUAL FOR COMPLEX LITIGATION, 4th § 21.71 (2004). “As with attorneys’ fees, an attorney who creates or preserves a common fund for the benefit of a class is entitled to receive

---

<sup>36</sup> Rule 54(d)(2) also permits the reimbursement of expenses, not taxable as costs, incident to the award of fees. Fed. R. Civ. P. 54(d)(2) advisory committee’s note to 1993 amendment ¶3 (stating that the Rule “applies also to requests for reimbursement of expenses, not taxable as costs”).

reimbursement of all reasonable costs incurred.” *Vaszlavik v. Storage Tech. Corp.*, No. 95-B-2525, 2000 U.S. Dist. LEXIS 21140, 2000 WL 1268824, at \*11 (D. Colo. Mar. 9, 2000); *see also Campbell*, 2015 U.S. Dist. LEXIS 134235, at \*20 (citing *Tuten v. United Airlines, Inc.*, 41 F.Supp.3d 1003, 1009 (D. Colo. May 19, 2014)).

Generally reimbursable expenses include the retention of experts, copy and printing charges, transcript charges, computer-assisted research, and certain travel expenses. MANUAL FOR COMPLEX LITIGATION, 4th § 14.216 (2004); *see also In re Bank of Am. Wage & Hour Emp’t. Litig.*, 2013 U.S. Dist. LEXIS 180056, at \*25. Here, movants seek reimbursement of their litigation expenses totaling \$7,665,415.73,<sup>37</sup> as set forth in the attached Declarations. Clark Decl. at 16-19; Flowers Decl. at 21-22. The foregoing litigation expenses for which movants seek reimbursement have been reasonably incurred in the prosecution of this litigation. *Id.* These expenses were both necessary and reasonable in the context of this case. *Id.* Consequently, Movants respectfully request reimbursement of all such expenses.

### CONCLUSION

FOR THESE REASONS, Movants respectfully request that the Court GRANT their Joint Motion for Award of Attorneys’ Fees and Reimbursement of Litigation Expenses, and for any and all such further relief to which Movants may show themselves justly entitled.

Dated: July 10, 2018

---

<sup>37</sup> Phipps - \$5,283,000.00; Clark - \$2,295,105.21; Flowers - \$87,310.52.

Respectfully submitted,

/s/ Martin J. Phipps

---

Martin J. Phipps

Texas State Bar No. 00791444

Arkansas State Bar No. 2008108

Barry Deacon

Texas State Bar No. 24096725

Arkansas State Bar No. 75030

PHIPPS ANDERSON DEACON LLP

102 9<sup>th</sup> Street

San Antonio, Texas 78215

Telephone: (210) 340-9877

Facsimile: (210) 340-9899

Email: [mhipps@phippsandersondeacon.com](mailto:mhipps@phippsandersondeacon.com)

[bdeacon@phippsandersondeacon.com](mailto:bdeacon@phippsandersondeacon.com)

Clayton A. Clark

Texas State Bar No. 04275750

Scott A. Love

Texas State Bar No. 24002495

CLARK LOVE HUTSON

440 Louisiana Street, Suite 1600

Houston, Texas 77002

Telephone: (713) 757-1400

Facsimile: (713) 759-1217

Email: [CClark@TrialLawFirm.com](mailto:CClark@TrialLawFirm.com)

[SLove@TrialLawFirm.com](mailto:SLove@TrialLawFirm.com)

Peter J. Flowers

Illinois State Bar No. 06210847

MEYERS & FLOWERS, LLC

3 North Second Street, Suite 300

St. Charles, Illinois 60174

Telephone: (630) 232-6333

Facsimile: (630) 845-8982

Email: [pjf@meyers-flowers.com](mailto:pjf@meyers-flowers.com)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on July 10, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will accomplish service through the Notice of Electronic Filing for parties and attorneys who are Filing Users, including all counsel of record.

/s/ Martin J. Phipps  
MARTIN J. PHIPPS



# **Exhibit A**

**MOVANTS' REFERRING COUNSEL**

1. Adam C. Curry
2. Aaronson & Rash, PLLC
3. Alexander Law Firm
4. Anders J. Norgaard, P.C.
5. Andrew P. George Attorney at Law
6. Bauch & Lechtenberg Law Office
7. Berkland & Brown
8. Billings & Mensen Law Firm
9. Bixby Law Office
10. Bordwell Law Office P.L.C.
11. Brad Weber, Esq.
12. Brown & Hinkeldey, PC
13. Burnett & Caron, Ltd.
14. Byron Carlson Petri & Kalb, LLC
15. Cantlin Law Firm
16. Carr & Carr Attorneys & Counselors at Law
17. Charles A. Burton, Attorney at Law
18. Clark, Love & Hutson, G.P.
19. Clough Law Office
20. Conmy Feste Ltd.
21. Coplan & Crane, Ltd.
22. Cornwall, Avery, Bjornstad & Scott
23. Cueto Law Offices
24. Dan Connell, PC
25. Dave Jennett, P.C.
26. David R. Treimer, Attorney at Law
27. Davidson Law Office, LLC
28. DeKoter, Thole & Dawson, PLC.
29. Demerath Law Office
30. Donald M. Winkler, Attorney at Law
31. Doran Law Firm
32. Dudley & Lake, LLC
33. Dye Law Office
34. Eisma & Eisma, Attorneys at Law
35. Eiland Law
36. Elwood, Elwood & Buchanan
37. Erickson Law Office
38. Ewing & Willis, PLLC
39. Fernando E. Grillo Law Office
40. Ferrer, Poirot & Wansbrough
41. Fields Law Firm
42. Friedman Law Offices

43. Gailey and Walsh Law Office
44. Gary Franke Co., LPA
45. Genelle Forsberg Law
46. Harding Law
47. Hein Law Office
48. Hickman Law, LLC
49. Hoffschneider Law
50. Hovde Dassow & Deets, LLC
51. Hutson & Higgins Law Firm
52. J. Pete Laney Law Office
53. James Schall Law Office
54. Jay Hoffman, Illinois Farmer Litigation Group
55. Johnson Becker PLLC
56. Jordening Law Office
57. Julian West, Attorney at Law
58. Kading and Wiebolt, PLLC
59. Katie Johnson P.L.L.C.
60. Kemper Bartlett Durand, Jr. ESQ
61. Kennedy & Kennedy
62. Kinney & Associates, LLC
63. Klass Law Firm, L.L.P.
64. Klay, Veldhuizen, De Jong, Halverson & Winterfeld, PLC
65. Koester & Bradley LLP
66. Koester & Bradley, LLP
67. Koletzky Law Office
68. Kollmorgen, Schlue & Zahradnik, P.C.
69. Kotten Law Firm LLC
70. Kuehn, Beasley & Young, P.C.
71. Lamson, Dugan and Murray, LLP
72. Law Office of Christopher Cueto, Ltd.
73. Law Office of Ron Laba
74. Law Office of Shawn Vogt Sween, LLC
75. Law Offices of Anthony V. Coon
76. Law Offices Of Erin McCullough, PC
77. Law Offices of Lori A. Hittle
78. Law Offices of Nick Brown
79. Learned & Associates, P.C.
80. Lee Murphy Law Firm, G.P.
81. Lefevre Oldfield Myers Apke & Payne Law Group, Ltd.
82. Loughlin Law Firm
83. Maahs & Walleck Law Firm
84. Mack, Hansen, Gadd, Armstrong, & Brown P.C
85. Mackoff Kellogg Law Firm
86. Mahoney & Hauser, Ltd.
87. Mark E. Huegel, Attorney at Law
88. Mattson Ricketts Law Firm

89. Mayer Law Office Ltd.
90. Mazurek Law Firm
91. McDowell Wells, LLP
92. McNally Law Office
93. McPhail Law Firm, PLC
94. Meloy Law Office
95. Merman Law Firm
96. Meyers & Flowers, Bruno & Herrmann LLC
97. Meyers & Flowers, LLC
98. Michael T. Foster Law Office
99. Miller, Miller, Miller, P.C.
100. Minnihan Law Firm
101. Moats Law Firm, P.C., L.L.O.
102. Montgomery, Barry, Bovee & Barry, LLP
103. Morascyzk & Polochak
104. Morris Kelsay, Attorney at Law
105. Murphy, Collins & Bixenman, PLC.
106. Nack, Richardson & Nack, P.C.
107. Nestor & Mercure Attorneys at Law
108. Neu, Minnich, Comito & Neu, P.C.
109. Newman, Hesse & Associates, P.A.
110. O'Hanlon, McCollom & Demerath
111. Ochs Law Firm
112. Oldfield Myers Apke & Payne Law Group, Ltd.
113. Paul McInnes LLP
114. Peelle Law Office CO., L.P.A.
115. Phebus & Koester, LLP
116. Phipps Anderson Deacon LLP
117. Piccione Keeley & Associates
118. Plager, Krug, Bauer & Rudolph, Ltd.
119. Polking Law Office
120. Prichard Law Office, PC
121. Prince Law Firm
122. Progressive AG Law, PLLC
123. Pulaski & Middleman, PLLC
124. Pulaski Law Firm, PLLC
125. Rehn & Skinner, LLC
126. Reynolds, Korth & Samuelson, P.C., L.L.O.
127. Rick Holstein Law Group, PLLC
128. Rickert & Wessel Law Office PC
129. Rodak Law Office
130. Ronald E. Osman & Associates, Ltd.
131. Schiller Law Office
132. Shockey & Cox, LLC
133. Skikos, Crawford, Skikos & Joseph
134. Spiros Law, P.C.

135. Staff & Staff Attorneys at Law
136. Steigmann Law, PC
137. Stein Law Office LLC
138. Steinberg Law Firm, P.C.
139. Stoneberg, Giles & Stroup, P.A.
140. Stowell, Geweke & Piskorski, P.C., L.L.O.
141. Strahl & Apple
142. Stumme & Epley Law Office, PLLC
143. Sweet & Hartman, PLC
144. Taliana, Buckley, & Asa
145. Terry L. Rogers Law Firm
146. The Law Office of Daniel D. Horowitz
147. The Law Offices of Patrick E. Richardson
148. The Lloyd Law Firm
149. The Lowman Law Firm
150. The McCraw Law Group
151. The Webster Law Firm
152. Thomas J. Gist, P.C., L. L. O.
153. Thompson, Phipps, & Thompson, LLP
154. Throne Law Office, P.C.
155. Todd Law Office, Prof. LLC
156. Todd W. Kowalke, P.C.
157. Tor Hoerman Law LLC
158. Veritas Research, L.P.
159. Wagstaff & Cartmell, LLP
160. Waite McWha & Heng Attorneys at Law
161. Walton Telken Foster, LLC
162. Westrom Law Office, PLLC
163. Wibe & Phillips
164. Wilson & Pechacek, PLC
165. WM Von Seggern Law Office
166. Ziliak Law, LLC
167. Zimmer, Duncan & Cole, LLP

# **Exhibit 2**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS**

----- X

**IN RE SYNGENTA MASS TORT ACTIONS**

----- **Judge David R. Herndon**

**This Document Relates to:**

*Poletti et al. v. Syngenta AG et al.* No. 3:15-cv-01221-DRH

*Tweet et al. v. Syngenta AG et al.* No. 3:16-cv-00255-DRH

**ORDER APPOINTING SPECIAL MASTER FOR SETTLEMENT**

**HERNDON, District Judge:**

As described in the Coordination Order Related to Settlement<sup>1</sup>, numerous lawsuits have been filed in various federal and state courts arising from Syngenta's development and sale of corn seeds containing genetically modified traits known as MIR 162 and Event 5307 (used in products called Viptera and Duracade) before China's approval to import corn with those traits. The above captioned cases are pending in the United States District Court for the Southern District of Illinois before U.S. District Judge David R. Herndon. Additional actions are pending in the multidistrict litigation ("MDL") proceeding in the United States District Court for the District of Kansas, captioned *In re Syngenta AG MIR162 Corn Litigation*, MDL Docket No. 2591, before U.S. District Judge John W.

---

<sup>1</sup> Doc. 54 in the *Poletti* action.

Lungstrum and U.S. Magistrate Judge James P. O'Hara. In Minnesota State Court, a large number of cases are consolidated before Judge Thomas M. Sipkins in a case captioned *In re Syngenta Litigation*, No. 27-cv-15-3785. In addition, cases are pending in Illinois State Court before Judge Brad K. Bleyer and in Louisiana State Court before Judges Madeline Jasmine and Emile R. St. Pierre.

Because of the quantity and complexity of these related cases and the common interest in a fair and expeditious resolution, the presiding judges have determined, and the parties have agreed, that it would be beneficial to appoint a special master to explore settlement of all the cases, in all of the courts in which they are pending, at the same time those cases proceed toward trial on a traditional litigation track. As required by Fed. R. Civ. P. 53(b)(1), the parties were given an opportunity to be heard and to suggest candidates for appointment.<sup>2</sup> After reviewing written submissions<sup>3</sup> from the parties, the Court enters this order appointing a special master for the above captioned proceedings.<sup>4</sup>

**IT IS HEREBY ORDERED** that pursuant to Fed. R. Civ. P. 53, Ellen K. Reisman, partner at Reisman Karron Greene, LLP in Washington, DC, is appointed as a special master to assist the court in efficiently coordinating settlement discussions in these proceedings. She has filed the affidavit required by Rule 53(b)(3)(A), stating that there are no grounds for disqualification under

---

<sup>2</sup> Doc. 54 in the *Poletti* action..

<sup>3</sup> Doc. 66 and 67 in the *Poletti* action; Doc. 11 in the *Tweet* action.

<sup>4</sup> This Order is substantially similar to the Order adopted by the Federal MDL in Kansas.



28 U.S.C. § 455 in the MDL proceeding in Kansas.<sup>5</sup> The Court takes judicial notice of this filing. The special master must proceed with all reasonable diligence in fulfilling the duties assigned her by the Court.

Special Master Duties and Authority. Pursuant to Rule 53(b)(2)(A), the special master will assist the court with settlement matters only. She may take all appropriate measures to fairly and efficiently perform her duties. She must not, however, act as an advocate, representative, fiduciary, or counsel for any party and has no formal coercive authority to compel the making of any agreement or the granting of any concession.

As it relates to settlement, the special master shall have the full authority provided in Rule 53(c). The special master may, without limitation:

1. Order the parties to meet face-to-face and engage in serious and meaningful negotiations.
2. Construct an efficient procedure to engage the parties in settlement negotiations, including:
  - a. establishing a list of information needed from each party in order to facilitate settlement;
  - b. creating a form and a time table for the exchange of such information;
  - c. ordering production of all necessary information; and

---

<sup>5</sup> If additional cases and/or parties are added after the date of this order, the special master will review (a) the names of the plaintiffs and defendants, (b) the names of their respective counsel and, to the extent applicable, the law firms of such counsel, and (c) the issues involved in such cases. If, to the best of her knowledge, information and belief, any such additional case presents grounds for her disqualification under 28 U.S.C. § 455, then she will promptly notify the court, as well as counsel and any pro se parties, in that case.

- d. conducting in-person settlement negotiations with the parties and their counsel in all cases;
3. Order the appearance of any persons necessary to settle any claims completely;
4. Make recommendations to the court concerning any issues that may require resolution in order to facilitate settlement or to efficiently manage the litigation; and
5. Direct, supervise, monitor, and report upon implementation and compliance with the Court's orders, and make findings and recommendations on remedial action if required.

Proceedings. In performing her duties, the special master has the authority to schedule and hold conferences, and to regulate all proceedings before her. The special master may require the parties to appear in person, via video conference, or telephonically. These meetings may be at the special master's discretion, except that the Court requires that the special master meet jointly with the parties at least once per month.

Ex Parte Communications. Pursuant to Rule 53(b)(2)(B), the special master may communicate ex parte with the Court at any time. She also may communicate ex parte with a party or counsel on purely administrative matters and in attempting to mediate these cases.

Preservation and Filing of Materials. Pursuant to Rule 53(b)(2)(C), the special master must maintain orderly files consisting of all documents submitted

to her by the parties, and any of her written orders, findings, and/or recommendations. She must preserve these files until such time that the Court grants permission for their destruction. Neither the special master nor the parties are required to file on the record materials submitted to the special master in confidence to aid in her mediation of the proceedings. But, pursuant to Rule 53(b)(2)(D) and Rule 53(d), any order, findings, and/or recommendations issued by the special master must be filed by her with the Court via the Court's electronic case filing (ECF) system. Such filing shall fulfill the special master's duty to serve her orders on the parties.

Actions on the Special Master's Filings. Pursuant to Rule 53(b)(2)(D) and Rule 53(f), any party wishing to file objections or motions related to the special master's filings must do so within 5 business days of the filing. The Court will review all objections under the standards provided in Rule 53(f).

Compensation. In appointing the special master, the Court has considered the fairness of imposing the expenses on the parties and has taken steps to protect against unreasonable expenses or delay as required by Rule 53(a)(3). Pursuant to Rule 53(b)(2)(E) and Rule 53(g), the special master must keep billing records of time spent on this litigation and expenses incurred, with reasonably detailed descriptions of the activity and expenses. She will be compensated at an hourly rate not to exceed \$950 per hour and \$9,000 per day. The special master may obtain assistance from her partners, Andrew Karron and Ethan Greene, who will be compensated at an hourly rate not to exceed \$850 per hour and \$750 per

hour, respectively and from associate attorneys and legal assistants in her firm, who will be compensated at an hourly rate not to exceed \$550 per hour and \$200 per hour, respectively.

All fees of the special master must be allocated as follows: one-half to the Syngenta entities and one-half to the plaintiffs. Plaintiffs' counsel shall pay, by proportionate share, the cost to be borne by plaintiffs' counsel across all venues in this litigation.

At this time, the exporters (Cargill and ADM) are not party to the above captioned actions. To the extent that these defendants are at any time added to the litigation in this district, the Court will issue a revised order addressing allocation of the special master's fees.

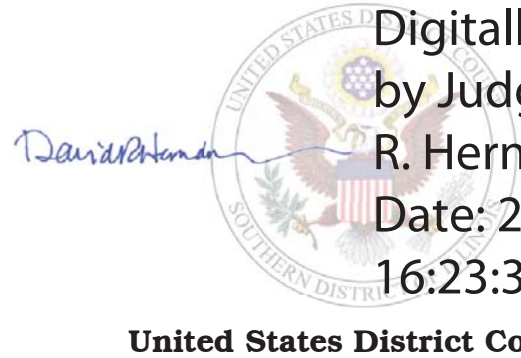
The special master must submit monthly invoices for payment of her fees to each party consistent with this allocation. Such invoices must itemize and describe the services provided. The special master must submit a courtesy copy of the billing statements to the chambers of Judge Herndon. Payment must be made by the parties to the special master within 30 days of submission of the

invoices. All separate expenses will be treated as court costs and must not be submitted to the parties; instead, they will be allocated by the Court at the conclusion of litigation.<sup>6</sup>

**IT IS SO ORDERED.**

Signed this 23rd day of March, 2016.

Digitally signed  
by Judge David  
R. Herndon  
Date: 2016.03.23  
16:23:30 -05'00'

The image shows a digital signature in blue ink that reads "David R. Herndon". To the right of the signature is the official seal of the United States District Court for the Southern District of New York. The seal is circular, featuring an eagle with a shield on its chest, holding an olive branch and arrows. The words "UNITED STATES DISTRICT COURT" are written around the top half of the seal, and "SOUTHERN DISTRICT OF NEW YORK" is written around the bottom half.

**United States District Court**

---

<sup>6</sup> The court notes that Ms. Reisman's application states that her firm "does not charge any of its clients for Westlaw/Lexis, secretarial time, postage, in-house copying, federal express, telephone, fax, or other costs that we consider to be overhead." (Doc. 11-1 p. 15 in *Tweet* action; Doc. 67-3 p. 13 in *Poletti* action).

# **Exhibit C**

STATE OF ILLINOIS  
IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT  
WILLIAMSON COUNTY, ILLINOIS

BENNY BROWNING.

Plaintiff,

Y.

SYNGENTA SEEDS, INC.,  
SYNGENTA CORPORATION,  
SYNGENTA CROP PROTECTION, LLC,  
SYNGENTA BIOTECHNOLOGY, INC.,  
GAVILON GRAIN, LLC,  
ARCHER DANIELS MIDLAND COMPANY,  
BUNGE NORTH AMERICA, INC.,  
CARGILL, INCORPORATED, and  
LOUIS DREYFUS COMMODITIES, LLC,

Defendants.

And,

CHARLES BROWNING.

Plaintiff.

V.

SYNGENTA SEEDS, INC.,  
SYNGENTA AG,  
SYNGENTA CROP PROTECTION AG,  
SYNGENTA CORPORATION,  
SYNGENTA CROP PROTECTION, LLC,  
SYNGENTA BIOTECHNOLOGY, INC.,  
GAVILON GRAIN, LLC,  
ARCHER DANIELS MIDLAND COMPANY,  
BUNGE NORTH AMERICA, INC.,  
CARGILL, INCORPORATED,  
CARGILL INTERNATIONAL SA,  
LOUIS DREYFUS COMMODITIES, LLC, and  
LOUIS DREYFUS COMPANY, B.V.,

Defendants.

Master No. 15-L-157

THIS DOCUMENT RELATES  
TO ALL CASES

No. 15-L-157

FILED

NOV 23 2016

Cheri E. Kochan  
CLERK OF THE CIRCUIT COURT

No. 15-L-158

RECEIVED  
NOV 28 2016  
By \_\_\_\_\_

**AGREED ORDER APPOINTING SPECIAL MASTER**

THIS CAUSE coming before the Court for status, the Court being advised of the October 17, 2016 order entered by the Honorable David R. Herndon appointing the Honorable Daniel J. Stack (Ret.) as Special Master in the coordinated litigation styled, *Tweet, et al. v. Syngenta AG, et al.*, No. 3:16-cv-02555-DRH, currently pending in the Southern District of Illinois, and by agreement of all parties,

**IT IS HEREBY ORDERED:**

The Court hereby appoints the Honorable Daniel J. Stack (Ret.) to facilitate discovery in this case and to assist the Court in coordinating with the *Tweet* litigation pending in the Southern District of Illinois.

The following parameters shall apply to his appointment:

1. All discovery disputes shall first be the subject of an effort to have Special Master Stack resolve the issues through mediation efforts.
2. Conferences with Special Master Stack shall be conducted at the discretion of Judge Stack. The conferences may be in person, via phone or via email.
3. Conferences for any issue should be limited to an amount that will not create an undue delay in the litigation (ideally no more than 3 in person or phone conferences or 72 hours).
4. Special Master Stack shall not receive written briefing, unless he so directs.
5. Special Master Stack shall not issue any rulings as his role is one of mediation.
6. If, after conferring with Special Master Stack as described herein, a discovery dispute remains unresolved, it shall be brought to the Court promptly.



7. The Court may refer specific disputes to Special Master Stack. If such a referral is made, the order of referral will be specific and direct regarding the matter that is to be the subject of mediation.
8. The parties for each dispute mediated by the Special Master shall each share equally in paying the Special Master's standard rates. For example, if the plaintiffs' side and a single defendant are involved in the dispute, each side shall pay one-half of the cost; if the plaintiffs' side, Syngenta and Gaviola are involved, each shall pay one-third; if the plaintiffs' side, Syngenta, Gaviola, and ADM are involved, each side shall pay one-fourth and so on.

**IT IS SO ORDERED.**

Dated this 22 day of November, 2016.



---

HONORABLE BRAD K. BLEYER

CIRCUIT JUDGE

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS**

-----  
**IN RE SYNGENTA MASS TORT ACTIONS**

----- **Judge David R. Herndon**

**This Document Relates to:**

*Tweet et al. v. Syngenta AG et al.* No. 3:16-cv-0255-DRH

**ORDER APPOINTING SPECIAL MASTER**

**HERNDON, District Judge:**

In accord with the Court's July 12, 2016 order (Doc. 119 p. 8), the Court hereby appoints the Honorable Daniel J. Stack (Ret.) to facilitate discovery in this case and to assist the Court in coordinating with the litigation pending in Illinois State Court in Williamson County, Illinois before Judge Brad Bleyer. A Southern District of Illinois Magistrate Judge could not serve this function because he or she could not mediate such disputes in the state related matter.

Hon. Daniel J. Stack has submitted an affidavit to this Court stating that there are no grounds for disqualification under 28 U.S.C. § 455 that would prevent him from serving as the special master in this matter. *See* Exhibit A, attached hereto.

The following parameters shall apply to this appointment:

1. All discovery disputes shall first be the subject of an effort to have Special Master Stack resolve the issues through mediation efforts.
2. Conferences with Special Master Stack shall be conducted at the discretion of Judge Stack. The conferences may be in person, via phone or via email.
3. Conferences for any one issue should be limited to an amount that will not create an undue delay in the litigation (ideally no more than 3 conferences or 72 hours).
4. Special Master Stack shall not receive written briefing, unless he so directs,
5. Special Master Stack shall not issue any rulings as his role is one of mediation.
6. If, after conferring with Special Master Stack as described herein, a discovery dispute remains unresolved, it shall be brought to the Court promptly.
7. The Court may refer specific disputes to Special Master Stack. If such a referral is made, the order of referral will be specific and direct regarding the matter that is to be the subject of mediation.
8. The parties for each dispute mediated by the Special Master shall each share equally in paying the Special Master's standard rates. For example, if the plaintiffs' side and a single defendant are involved in the dispute, each side shall pay one-half of the cost; if the plaintiffs' side, Syngenta and Gavilon are involved, each shall pay one-third; if the plaintiffs' side, Syngenta, Gavilon and ADM are involved, each side shall pay one-fourth, and so on.

**IT IS SO ORDERED.**

**Signed this 17th day of October, 2016.**

*David R. Herndon*



Digitally signed by  
Judge David R. Herndon  
Date: 2016.10.17  
13:09:47 -05'00'

**United States District Judge**

# Exhibit D

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

<b>IN RE: SYNGENTA AG MIR162 CORN LITIGATION</b>	<b>Master File No. 2:14-MD-02591-JWL-JPO</b>  <b>MDL No. 2591</b>  <b>JOHN W. LUNGSTRUM</b>  <b>U.S. DISTRICT JUDGE</b>
<b><u>THIS DOCUMENT RELATES TO:</u></b>	<b>All Cases</b>

**DECLARATION OF MARTIN J. PHIPPS IN SUPPORT OF PETITION FOR AWARD OF  
ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES**

I, Martin J. Phipps, pursuant to 28 U.S.C. § 1746, declare as follows:

This declaration is based upon my personal knowledge.

I am a trial attorney in good standing licensed in Texas and Arkansas. I am the founding partner and managing partner of PHIPPS ANDERSON DEACON LLP (PHIPPS) located in San Antonio, Texas. I have been practicing law since 1994. I submit this Declaration in support of the Fee and Expense Applications made by PHIPPS, CLARK, LOVE & HUTSON G.P. (CLARK) in Houston, Texas and MEYERS & FLOWERS LLC (FLOWERS) in Chicago, Illinois also referred to as the Illinois Leadership Group.

**A. Introduction**

Since its inception, PHIPPS has focused on agriculture cases in the United States and South America where farmers/producers have suffered economic damages due do to wrongful acts of

bio-tech companies. Our legal involvement in this case began on September 15, 2014, when we filed on behalf of Billy Miller and Mark Hargrove in the Circuit Court of Arkansas County, Arkansas the first individual farmer/producer case in the country against Syngenta for economic damages from the loss of Chinese corn market. Before filing, we had already met with farmers, retained experts and began building a damage model once we became aware of the first shipment of United States corn had been turned away at the Chinese Port November of 2013.

PHIPPS quickly realized that even though we “speak farmer,” we would need the assistance of other law firms with special skill and financial support in national mass tort cases. PHIPPS proudly approached and joined forces with CLARK and FLOWERS because of their impressive mass tort, trial and financial success.

Over the last 4 years, I, along with many other members of my firm, have travelled to 37 states to meet, talk with and update farmers/producers about the *Syngenta Corn Litigation*. Currently, PHIPPS/CLARK/FLOWERS (Illinois Leadership Group) represent farms in 41 states and have clients living in all 50 states. We have filed thousands of individual lawsuits as lead or co-lead counsel against Syngenta and other defendants (the grain trade defendants also known as the ABCDG companies) for farmers/producers and the only known counsel to file on behalf of ethanol plants in:

- *Browning, et al. v. Syngenta Seeds, Inc., et al.*, No. 15-L-157 (Ill. Cir. Ct. 2015)
- *Tweet, et al. v. Syngenta AG, et al.*, No. 3:16-cv-00255-DRH (S.D. Ill. 2016);
- *Fostoria Ethanol, LLC d/b/a Poet Biorefining-Fostoria vs. Syngenta Seeds, Inc., et al.*, No. 15-cv-0323 (Ohio Ct. Com. Pl. Seneca Cnty. 2015);
- *TCE, LLC d/b/a Poet Biorefining-Coon Rapids vs. Syngenta Seeds, et al.*, No. EQCV039491 (Iowa Dist. Ct. Carroll Cnty.); and
- *Ultimate Ethanol, LLC d/b/a Poet Biorefining-Alexandria, Individually, and on behalf of itself and all others similarly situated vs. Syngenta Seeds, Inc., et al.*, No. 48C05-1512-CT-000184 (Ind. Cir. Ct. Madison Cnty. 2015).

The Illinois Leadership Group also represents eleven (11) clients in eight (8) class actions that were consolidated before this MDL Court for pretrial proceedings:

- *Norman Sigrist v. Syngenta Seeds, Inc., et al.*, No. 2:15-cv-9921;
- *Russell D. Rich and Kenneth Osborn v. Syngenta Seeds, Inc. et al.*, No. 2:15-cv-9935;
- *Peter V. Anderson v. Syngenta Seeds, Inc., et al.*, No. 2:16-cv-2005;
- *Richard Crone and Pinehurst Acres v. Syngenta Seeds, Inc., et al.*, No. 2:16-cv-2045;
- *Bradley J. Vermeer v. Syngenta Seeds, Inc., et al.*, No. 2:16-cv-2052;
- *VJW Farm, Inc. and Michael Gries v. Syngenta Seeds, Inc., et al.*, No. 2:16-cv-2013;
- *Charles A. Welsh v. Syngenta Seeds, Inc., et al.*, No. 2:16-cv-2006; and
- *Ron Wetz v. Syngenta Seeds, Inc., et al.*, No. 2:16-cv-2065.

### **B. Procedural History**

PHIPPS pre-complaint investigation began before the filing of our first individual lawsuit in Arkansas State Court. PHIPPS had earned specialized knowledge and experience in a similar case representing both farmer/producers and major stake holders known as the *Bayer GM Rice Litigation*. We combined our strength of knowledge of the agriculture industry with the strategy and legal acumen of nationwide mass tort cases with CLARK and FLOWERS. Together, PHIPPS/CLARK/FLOWERS began to comprehend the widespread damages to corn farmers/producers by meeting and talking with farmers to understand the corn market pricing. This includes how corn is priced through the use of the “basis” along with corns grain’s different potential end uses depending on the geographical area of production and points of delivery throughout the United States.

After learning of China’s first rejection of United States corn, PHIPPS began retaining the most respected group of agricultural economic experts throughout the country with special

emphasis on the Midwest. PHIPPS retained the following experts to begin work with them and CLARK and FLOWERS to investigate and understand the economic damage caused, at this point, only by Syngenta:

1. **Henry L. Bryant** received his Ph.D. in Agricultural Economics from Texas A&M University. He currently is a Research Associate Professor in the Department of Agricultural Economics at Texas A&M University where his research focuses on agricultural policy, commodity marketing, and risk management. He has previously taught the Department's undergraduate commodity futures and options course. Bryant offered expert opinion in commodity marketing and risk managements, applied market modeling and policy analysis and causal inference.

2. **B. Wade Brorsen** received his Ph.D. in Agricultural Economics from Texas A&M University in 1983. He currently is an Associate Professor in the Department of Agricultural Economics at Oklahoma State University where his research focuses on agricultural commodities, advanced econometrics and advanced productions. He has many years of experience in estimating the effect of various factors on agricultural prices. Brorsen was offered expert opinion in agricultural price analysis and applied econometrics.

3. **Jeffrey H. Dorfman** earned a Ph.D. in Agricultural Economics from the University of California, Davis in 1989. From 1998-2000 he was the founding director of the Center for Agribusiness and Economic Development at The University of Georgia. He currently is a professor in the Department of Agricultural & Applied Economics at The University of Georgia. In 2000, he testified before the U.S. Senate Agriculture Committee, at Georgia field hearing. Dorfman offered expert opinion in econometrics and statistics that is applied to agricultural commodity prices.

4. **Stephen A. Ford** earned his Ph.D. in Agricultural and Applied Economics from the University of Minnesota in 1987. Prior to moving to Sewanee in 2000 he was on the faculties of the University of Florida and Penn State University. He currently is a manager of a family farm in Alabama and teaches part-time in the Economics Department at the University of the South, having taught Finance, International Development, International Trade, Economics of Food Policy, and Mathematical Economics, and the departmental Policy Seminar among other courses. He has served on the board of the Southern Cotton Growers Association and the National Center for Food and Agricultural Policy. He was an expert in rice commodity market loss in the Bayer Genetically Modified Rice Litigation. He has also served as an expert witness on agricultural damages in over 30 legal cases. Ford offered expert opinion in agricultural economics in general, farm management and price effects of market shocks.

5. **Matthew T. Holt** earned his Ph.D. in Agricultural Economics from the University of Missouri, Columbia in 1987. He is currently the Department Head of Economics, Finance and Legal Studies, Dwight Harrigan Endowed Faculty Fellow in Natural Resource Economics and Professor of Economics at the University of Alabama. His recent research has focused on estimating, testing, and forecasting systems of theoretically consistent inverse demand equations, most notably in the context vessel-level demands for fish, and the development, application, and testing of non-linear time series models to commodity and natural resource markets. Holt offered expert opinion in applied time series econometrics with a focus on nonlinear models, price analysis and futures markets.



6. **Alan P. Ker** earned his Ph.D. in Economics and Statistics from North Carolina State University in 1996. Alan worked as a professor in the Department of Agricultural and Resource Economics at the University of Arizona. He obtained his Master of Science in Agricultural Economics from the University of Guelph. In 2009, Ker joined the Department of Food, Agricultural and Resource Economics as Chair and Professor. In September 2014, Alan stepped down from Chair and became Director of the Institute for the Advanced Study of Food and Agricultural Policy. Research areas include applied and theoretical nonparametric econometrics, risk management/insurance, technological change, climate and their effects on crop yields, political economy and trade. Ker offer expert opinion in will offer an expert opinion in econometrics, price analysis and futures markets.

7. **Robert J. Myers** earned his Ph.D. in Agricultural Economics from the University of Minnesota in 1986. He joined the faculty at Michigan State University that same year to undertake research and teaching in the areas of commodity market analysis and agricultural policy. He is currently a tenured Distinguished Professor of Agricultural, Food and Resource Economics. His primary research focus has been on risk management in agriculture, with an emphasis on market-based mechanisms for risk management, such as futures, options and crop insurance. Myers offered expert opinion in econometrics, price analysis and futures markets.

8. **James W. Richardson** earned his Ph.D. in Agricultural Economics from Oklahoma State University in 1978. He is currently the Regents Professor of Agricultural Economics where he has research and graduate teaching and responsibilities in public policy and simulation analysis. His research has attracted national recognition by emphasizing quantitative, risk-based policy analyses through the use of farm-level simulation models (FLIPSIM). He has testified before the U.S. Congress four times. His most recent testimony before the House Agriculture Committee was in 1995. In addition, he has made more than 50 presentations to the House and Senate Agriculture Committees on the economic outlook for U.S. agriculture since 1990. These presentations have been in formal meetings involving the Chief Economists and staffers. He has made more than a dozen presentations to individual Congressmen and Senators regarding the economic outlook for agriculture under alternative farm programs and income tax policies. During the 2014 farm bill debate, which started September 2011, he provided more than 50 confidential analyses of the alternative farm program options requested by the Chief Economists for the House and Senate Agriculture Committees considered by the House and Senate Agriculture Committees. He regularly advises farm commodity organizations on the economic impacts of alternative farm programs on farmers across the United States. He maintains a model for analyzing the economic impacts of policy changes on the economic viability of more than 98 representative farms across the United States. This model and data set have been used to assist Congress write every farm bill dating back to 1985. Richardson offered expert opinion in commodity marketing and risk managements, applied market modeling and policy analysis and causal inference.

9. **J. Scott Shonkwiler** earned a Ph.D. in Agricultural Economics from the University of Missouri in 1979. He currently is a Professor in the Department of Agricultural and Applied Economics at the University of Georgia. He began his work at the University of Florida by studying the markets for specialty crops and developing supply response models. In 1991, Shonkwiler joined the University of Nevada's Agricultural Economics Department. He became interested in revealed preference methods for non-market valuation with particular attention to recreation demand modeling. In addition to his contributions as a researcher, teacher, colleague and mentor, Shonkwiler has provided significant service to the profession: as an Associate Editor of the *American Journal of Agricultural Economics*

and as Editor of the *Journal of Agricultural & Resource Economics*. Lastly, he served as the chairman of the Resource Economics Department at the University of Nevada from 2009 until its unfortunate dissolution in June 2011. Shonkwiler offered expert opinion in applied econometrics with an emphasis on recreation demand and non-market valuation, commodity market models, and firm behavior.

**10. H. Holly Wang** earned her Ph.D. in Agricultural Economics from Michigan State University in 1996. She is currently the Professor and Associate Professor in the Department of Agricultural Economics at Purdue University. Her research has been focused on agricultural risks, derivative markets, and crop insurance for domestic issues and food marketing and safety for international issues. She has advised over ten Ph.D. students whom are now faculty members in major U.S. and international research universities and economists in the finance industry. She has taught Ph.D. level courses in supply and demand systems, decision analysis, and marketing; Master level courses in econometrics and agribusiness marketing; as well as undergraduate courses in corporate finance and Chinese economy. She has established herself as a known scholar in agricultural economic issues with even further expertise regarding Chinese markets. She travels to China frequently and has developed a broad professional network. She served as past President of Chinese Economists Society in 2009, a U.S. based organization focusing on the research of Chinese economic issues and founding Chair for China Section of Agricultural and Applied Economics Association in 2010. Wang has been retained and will offer an expert opinion in China's agricultural economics issues, particularly those relevant to US trade, including: Chinese consumer preferences on food quality and safety, especially animal protein based commodities like meat, poultry and dairy, imported commodities; Chinese grain market, grain production and subsidy, and food security policies; Chinese commodity futures market, and agricultural insurance.

Based on what we learned, PHIPPS/CLARK/FLOWERS found what we believed was powerful evidence that Syngenta improperly commercialized Viptera and Duracade corn seed prior to major foreign market approval of the MIR162 trait. But, the case came with great risk because of the wide spread nature of the damage that could fluctuate between farmers/producers even if they farmed in the same county or geographical region. There was also enormous concern about the ability to handle cases of tens of thousands of farmers across the United States that have different planting and growing seasons and can market their corn completely differently.

Beginning in September of 2014, throughout the country, lawyers filed initial claims against Syngenta alleging the premature commercialization of Agrisure Viptera for the 2012-2013 marketing year by injured American famers. Plaintiffs filed lawsuits in various state courts including Colorado, Kansas, Arkansas, Illinois, Iowa, Minnesota, Nebraska, Ohio, and South

Dakota. On November 5<sup>th</sup>, 2015, PHIPPS/CLARK/FLOWERS filed the first case in the United States in Illinois State Court against both Syngenta and the grain trade defendants – ADM, Bunge, Cargill, Louis Dreyfus and Gavillon. We then petitioned, over defendants’ objections, the Illinois Supreme Court to consolidate all Illinois state court cases in Marion, Illinois before the Honorable Judge Bleyer. The Illinois Supreme Court agreed with us and ordered the consolidation known as *Browning, et al. v. Syngenta Seeds, Inc., et al.*, No. 15-L-157 (Ill. Cir. Ct. 2015). After the consolidation, Judge Breyer appointed PHIPPS/CLARK/FLOWERS as Illinois State Co-Lead Counsel of the Corn Litigation. Approximately a year later, Phipps/Clark/Flowers discovered that another firm had accidentally filed suit in the U.S. District Court for the Southern District of Illinois. We severed those clients into a separate suit and added approximately 700 other farmers mostly from Iowa before the Honorable Judge Herndon in Illinois federal court in *Tweet, et al. v. Syngenta AG, et al.*, No. 3:16-cv-00255-DRH (S.D. Ill. 2016). This gave us a strategic presence in Illinois in both state and federal court. In *Tweet* and *Browning*, Judge Herndon and Judge Bleyer oversaw the advancement of our farmers’ claims against Syngenta and the grain traders in a manner that allowed Plaintiffs to continue advocating for their rights until settlement occurred.

As co-lead counsel in various venues, the Illinois Leadership Group worked on the significant aspects of the Syngenta litigation. The Illinois Leadership Group conferred almost daily for over three years on strategic decisions in these cases and ultimately made the significant decisions in the litigations. This list provides some tasks that resulted from the management or assistance of the Illinois Leadership Group’s attorneys and staff:

- Researching case law and drafting individual complaints, grain handling facilities and ethanol plants and amended pleadings on behalf of thousands of farmers/producers located in over 30 states. This required contacting each farmer, and in many cases, obtaining 578 FSA Records to confirm the correct farming entities for the correct years. We also had to be familiar with the law of the state that could be applied to the farmer/producer living in that state.

- Interviewed witnesses relating to the nature and structure of the industry, industry pricing and Syngenta's conduct.
- Collected and reviewed hundreds of thousands of documents
- Drafting written discovery as follows Illinois *State Court*:
  - First Set of Non-Jurisdictional Discovery (64 requests)
    - ADM – 8 / Bunge – 8/ Cargill Entities – 16/ Gavilon – 8/ Louis Dreyfus Entities - 24
  - First Requests for Production (638 requests)
    - Syngenta Entities – 113/ ADM – 103/ Bunge – 106/ Cargill – 102/ Louis SECOND RFP (357)
  - Second Requests for Production (357 requests)
    - Syngenta Entities – 172/ Bunge – 42/ Cargill – 42/ Louis Dreyfus – 42/ Gavilon – 43/ Syngenta Defendants – 16

Drafted written discovery as follows for Illinois *Federal Court*:

- First Requests for Production (538 total)
  - Bunge -106/ Cargill - 102/ ADM - 103/ Louis Dreyfus -102/ Syngenta Entities 113
- Second Requests for Production (323 total)
  - Bunge -39/ Cargill -39/ Gavilon -39/ Louis Dreyfus -38/ Syngenta Entities -168
- Researching and drafting responses to Syngenta AND the ABCDG Defendants dispositive motions challenging the plaintiffs' complaints in state and federal courts across several venues resulting in 809 pages of briefing responses lead by Phipps<sup>1</sup> but heavily supported by CLARK and FLOWERS along with others

---

<sup>1</sup> See, e.g., *Tweet*, No. 3:16-cv-00255-DRH (S.D. Ill. 2016) (responding on October 20, 2016 to Syngenta's motion to dismiss in Illinois federal court); *Browning*, No. 15-L-157 (Ill. Cir. Ct. 2015) (responding on October 20, 2016 and June 12, 2017 to Syngenta's motions to dismiss in Illinois state court); *Ultimate Ethanol*, No. 48C05-1512-CT-000184 (Ind. Cir. Ct. Madison Cnty. 2015) (responding on March 30, 2016 and April 21, 2017 to Syngenta's motions to dismiss in Indiana state court); *Fostoria Ethanol*, No. 15-cv-0323 (responding on March 24, 2016 to Syngenta's motion to dismiss in Ohio state court); *TCE*, No. EQCV039491 (responding on May 27, 2016 to Syngenta's motion to dismiss in Iowa state court).

CASE	DOCUMENT	DATE	PAGES IN MAIN	PAGES W/ EXHIBITS
<b><i>Ultimate Ethanol, LLC d/b/a POET Biorefining-Alexandra</i></b> <b>v.</b> <b><i>Syngenta Seeds, Inc.,</i></b>  No. 48C05-1512-CT000184 (Super. Ct. Madison Cnty., Ind.)	Opposition to Syngenta's Motion to Dismiss Plaintiff's Second Amended Class Action Complaint	04/21/2017	67	395
<b><i>TCE, LLC d/b/a POET Biorefining-Coon Rapids</i></b> <b>v.</b> <b><i>Syngenta Seeds, Inc.,</i></b>  No. EQCV039491 (Dist. Ct. Carroll Cnty., Iowa)	Opposition to Syngenta's Motion to Dismiss Plaintiffs' Amended Complaint	05/27/2016	53	334
<b><i>Fostoria Ethanol, LLC d/b/a POET Biorefining-Fostoria</i></b> <b>v.</b> <b><i>Syngenta Seeds, Inc.,</i></b>  No. 15-cv-0323 (Ct. Common Pleas Seneca Cnty., Ohio)	Opposition to Syngenta's Motion to Dismiss Plaintiffs' Amended Complaint	03/24/2016	41	254
<b><i>Browning</i></b> <b>v.</b> <b><i>Syngenta Seeds, Inc.,</i></b>  No. 15-L-157 (1st Jud. Cir. Ct. Williamson Cnty, Ill.)	Opposition to ABCD Companies' Joint Motion to Dismiss Plaintiffs' Third Amended Consolidated Complaint	10/20/2016	61	324
	Opposition to Gavilon Grain, LLC's Motion to Dismiss Plaintiffs' Third Amended Consolidated Complaint	10/20/2016	62	264
	Opposition to Syngenta's Motion to Dismiss Plaintiffs' Third Amended Consolidated Complaint	10/20/2016	109	328
<b>IN RE SYNGENTA LITIGATION</b>  Master No. 15-L-157 (1st Jud. Cir. Ct. Williamson Cnty., Ill.)	Partial Response to ABCD Defendants' Joint Motion to Dismiss and Partial Response to Defendant Gavilon's Motion to Dismiss	05/25/2017	111	111
	Opposition to Syngenta's Motion to Dismiss Plaintiffs' Fourth Amended Consolidated Complaint	06/12/2017	114	114
<b>IN RE SYNGENTA AG MIR162 CORN LITIGATION</b>  <i>(VJW Farm, Inc. v. Syngenta Seeds, Inc.)</i> MDL No. 2951 (D. Kan.)	Opposition to Syngenta's Motion to Dismiss Plaintiffs' Amended Class Action Complaints	06/24/2016	54	110
	Opposition to ABCD Companies' Motion to Dismiss Plaintiffs' Amended Class Action Complaints	06/24/2016	55	55
	Opposition to Gavilon's Motion to Dismiss Plaintiffs' Amended Class Action Complaints	06/24/2016	92	154

CASE	DOCUMENT	DATE	PAGES IN MAIN	PAGES W/ EXHIBITS
<b>IN RE SYNGENTA MASS TORT ACTIONS</b>  <i>(Tweet v. Syngenta AG)</i> No. 3:16-cv-00255-DRH (S.D. Ill.)	Opposition to ABCD Companies' Joint Motion to Dismiss Plaintiffs' Third Amended Consolidated Complaint	10/20/2016	66	333
	Opposition to Gavilon Grain, LLC's Motion to Dismiss Plaintiffs' Third Amended Consolidated Complaint	10/20/2016	65	269
	Opposition to Syngenta's Motion to Dismiss Plaintiffs' Third Amended Consolidated Complaint	10/20/2016	112	333
	<b>Total Pages</b>		<b>1,062</b>	<b>3,378</b>

- Reviewing and drafting all proposed joint status reports and proposed orders, including all procedural orders ensuring the efficient administration of the litigation and protective orders;
- Researching case law on various theories of liability, defenses, jurisdictional issues, evidentiary issues, and *Daubert* issues but in particular the alleged preemption argument of the ABCDG Defendants;
- Researching case law and drafting Plaintiffs' Objection and Response to Syngenta Defendants' Motion to Transfer and Consolidate Under Illinois Supreme Court Rule 384 (granting Plaintiffs' request that all cases be transferred and consolidated for pre-trial purposes only in Williamson County);
- Requesting issuance of foreign service subpoenas, researching long-arm statute and filing of various alternative service motions, and coordinating with a third-party vendor to perfect service on the foreign Syngenta defendants through the Hague Convention;
- Preparing for hearings on various motions but in particular the Preemption Challenges brought by the ABCDG Defendants. In fact, PHIPPS/CLARK/FLOWERS retained United States Supreme Court counsel David C. Frederick of the Washington D.C. law firm KELLOGG HANSEN TODD FIGEL & FREDERICK. Mr. Fredericks has briefed and argued more federal preemption cases than any other lawyer before the U.S. Supreme Court. He and his office assisted on the briefing and argument in Illinois State Court.
- Strategizing over the scope of Syngenta and the ABCDG Defendants responses to Plaintiffs' discovery requests;
- Attending case management conferences;
- Coordinating and assisting in the selection of Plaintiffs' experts;



- Meeting with Plaintiffs’ regulatory and at one point 16 different damages consulting and testifying experts that included multiple day “in-person” meetings with all experts to build damage models in Minneapolis, MN, Sewanee, TN and San Antonio, TX.
- Preparation of expert reports and filing of Joint Expert Report and Supplemental Expert Disclosures;
- Assignment of Syngenta’s custodian of records document review tasks;
- Reviewing over a million pages of Syngenta’s document production;
- Drafting of complaints, motions, and responses to motions filed by Syngenta and the ABCDG Defendants;
- Drafted and filed the first Ethanol Plant complaints in the United States
- Retained new agricultural economic experts on behalf of Ethanol Plant complaints
- Worked with experts building Ethanol Plant damage expert reports with a damage model specific to them including multiple in person meetings with clients in Iowa, South Dakota, Nebraska, Ohio, Michigan, Indiana and Minnesota.
- Preparing Oppositions to Transfer to the Kansas MDL and Motion to Vacate and Memorandum in Support (Specific to *Tweet*);
- Researching case law and drafting consolidated complaints and amendments to pleadings (Specific to *Tweet*);
- Responsibility for constructing and drafting all proposed agenda reports and proposed orders (Specific to *Tweet*); and
- Researching and drafting Plaintiffs’ Nomination for Appointment of Special Master (Specific to *Tweet*);
- OPT OUTs
  - Phipps/Clark/Flowers were required to obtain and file 16,265 Opt Out Forms involving:
    - Writing, calling and meeting with farmer/producers across the country to explain their options so they could make an informed decision
    - Because of the deadline, an extensive work by our legal assistant team over several months
- Acquired, at substantial expense, FSA 578s forms, crop insurance records, trust documents, estate records and other key documents.

### Settlement Master Meetings

On top of the extraordinary effort by Clark as part of the Court Appointed Settlement Team, PHIPPS/CLARK/FLOWERS met with the Settlement Master and her team to help understand some of the complicated individual farmer/producer damage claims. One meeting held in Las Vegas, Nevada included two of our top agricultural economic experts who had worked in the similar *Bayer GM Rice* case. They helped explain the damages and how they differ across the country on different factors including “basis”. They also answered any questions asked by the Settlement Master or her team.

Then, PHIPPS/CLARK/FLOWERS hosted the Settlement Master and another member of her team to San Antonio, Texas to meet with us regarding the needs of individual farmers. This included giving the Settlement Master a first-hand look at the time, work and resources we were dedicating to our farmer/producer clients.

PHIPPS/CLARK/FLOWERS also meet with the Settlement Master in New York City to again discuss the damages of individual farmers and how to deal with their farming practices.

In addition to advancing PHIPPS/CLARK/FLOWERS clients’ claims in the various jurisdictions throughout the United States, we simultaneously supported and coordinated with leadership in other jurisdictions throughout the course of litigation to ensure seamless prosecution of claims against Syngenta. This coordinated effort on the part PHIPPS/CLARK/FLOWERS and others supported the litigation’s overall drive to achieve expeditious and advantageous settlement results. Specifically, the Illinois Leadership Group’s commitment to aggregate settlements with the Kansas



Leadership Group<sup>2</sup> and the Minnesota Leadership Group<sup>3</sup> resulted in remarkable outcomes for those injured by Syngenta's conduct, as discussed below.

### C. THE NOVELTY AND DIFFICULTY OF QUESTIONS PRESENTED

The causes of action against Syngenta were similar to those made in the *Bayer GM Rice Litigation* but also different because Syngenta had received approval to sell Viptera seed to United States farmers before major foreign market approval. Thus, PHIPPS worked tirelessly with CLARK and FLOWERS to pioneer theories of liability not previously seen in agricultural litigation. Specifically, the Illinois Leadership Group zealously advanced this primary liability theory against Syngenta that “due to the inter-connected nature of the industry and market, manufacturers and growers [had a duty to] . . . act at least in part for the mutual benefit of all in that inter-connected web.” MDL Order No. 2591 at 10. Under our theory, the failure of Syngenta to obtain foreign approval prior to sale violated the duty.

In addition to those claims brought against Syngenta, PHIPPS/CLARK/FLOWERS were the first to pursue claims against ADM, Bunge, Cargill, Louis Dreyfus Commodities and Gaviola (collectively, “ABCD Defendants”), five large, sophisticated international agribusinesses who regularly export crops to foreign markets including China. PHIPPS' Senior Partner, Barry Deacon, has represented a similar type stake holder in the *Bayer GM Rice Litigation* where it was alleged that his client had knowingly shipped genetically modified rice to European markets that forbade its entry, thereby, causing/contributing to the farmer/producer alleged damages. The ABCDG

---

<sup>2</sup> When used herein, the term “Kansas Leadership Group” includes: Stueve Siegel Hanson LLP, Gray Ritter & Graham, PC, Gray Reed & McGraw, LLP, Hare Wynn Newell & Newton, Bolen Robinson & Ellis, Sidley Austin LLP, Simmons Hanley Conroy, Greene Espel PLLP, Paul McInnes, LLP and Paul LLP (Kansas work), Lockridge Grindal Nauen (Kansas work), Emerson Poynter LLP, Seeger Weiss Law Firm, Walters Bender Strohhahn & Vaughn, PC, their attorneys and staff, and all referring counsel.

<sup>3</sup> When used herein, the term “Minnesota Leadership Group” includes: Gustafson Gluek PLLC, Bassford Remele, Schwebel Goetz & Sieben, P.A., Paul McInnes LLP and Paul LLP (Minnesota work), Kemp, Jones & Coulthard, LLP, Wagstaff & Cartmell, LLP, Lockridge Grindal Nauen (Minnesota work), Paul Byrd Law Firm PLLC, their attorneys and staff, and all referring counsel.

Defendants maintain networks of “grain elevators, grain handling and processing facilities, and transportation assets” that are used to buy, segregate, store, clean, process, transport, and sell agricultural commodities, including corn. PHIPPS/CLARK/FLOWERS discovered evidence that demonstrated that the ABCDG Defendants knew shipments of their corn to China contained the Viptera GM trait. We also were aware that Syngenta had informed the ABCDG Defendants that they were going to sell Viptera and provided testing kits to detect whether the Viptera gm trait was in any of their corn shipments to China. PHIPPS then subpoenaed records from testing laboratories we knew about from past experience. PHIPPS/CLARK/FLOWERS, therefore, believed we had strong and persuasive evidence to allege that the ABCDG Defendants failed to take reasonable steps to protect industry stakeholders including American farmers, against the foreseeable harm that would result upon the detection of Viptera in U.S. export shipments to China, specifically the loss of the Chinese market to U.S. corn. The lawsuits against the ABCDG Defendants required Syngenta to defend thousands of suits throughout Illinois at “ground zero” for corn farming facing juries who understood farming and would have a unique perspective of the impact of what had occurred. By forcing Syngenta to face unique and dangerous litigations in three different jurisdictions, constrained Syngenta’s ability to defend the universe of claims.

Due to the novel and complex nature of the legal theories against Syngenta, this action presented substantial challenges from the outset of the case. The Syngenta litigation involved challenges atypical to genetically-modified organism (“GMO”) litigation because, unlike previous GMO cases, Syngenta obtained approval to sell the Viptera and Duracade seeds in the United States, but **not** in foreign markets. For the first time in GMO litigation, a defendant could argue that domestic approval of the grain, even without foreign approval, absolved the defendant of liability. This defense theory created a significant risk of adverse outcomes for the Illinois Leadership Group’s clients and class representatives.

Since the litigation's inception, counsel for Syngenta mounted a vigorous and aggressive defense against plaintiffs' claims, including multiple motions to dismiss, countless discovery and coordination motions, and extensive class certification proceedings, including an appeal to the Tenth Circuit. Syngenta's defense efforts caused the Illinois Leadership Group to expend a significant amount of time and financial resources to effectively prosecute and protect the interests of the group's clients.

#### **MERITS DISCOVERY / DOCUMENTS PRODUCED BY SYNGENTA DEFENDANTS**

Because PHIPPS/CLARK/FLOWERS served as co-lead counsel in complaints filed by thousands of farmers/producers in *Browning* and hundreds in *Tweet*, we were able enabled to contribute substantial value to all Syngenta litigants. The Illinois Leadership Group, on its own initiative, contracted with a discovery litigation service that allowed the group's attorneys to review Syngenta's documents. PHIPPS/CLARK/FLOWERS's commitment to discovery in the Syngenta litigation, which involved the production of over three-hundred thousand records, demonstrates the group's initiative to not only prosecute cases independently and vigorously, but also assist MDL leadership's trial preparation.

As outlined above, PHIPPS/CLARK/FLOWERS propounded detailed discovery requests, engaged in a meet and confer process with Syngenta on the scope of discovery, and ultimately reviewed and analyzed over a million pages of Syngenta-produced documents. PHIPPS/CLARK/FLOWERS served its first and second sets of discovery requests and interrogatories on Syngenta, in Illinois federal court, on August 12, 2016 and September 14, 2016. In *Browning*, PHIPPS/CLARK/FLOWERS served three sets of discovery requests on or about March 8, 2016, September 15, 2016, and January 4, 2017. Syngenta's objections to PHIPPS/CLARK/FLOWERS's discovery requests prompted multiple meet-and-confer conferences about the scope and manner of the document production, including search terms and the protocol for electronically stored

information (“ESI”). We obtained optimal resolutions during these discovery conferences with Syngenta, like the method and format for producing liability documents.

Syngenta began producing documents to PHIPPS/CLARK/FLOWERS on September 26, 2016 and thereafter supplemented the production with additional documents. Formatted by individual Custodians of Record, the document production contained liability documents from Syngenta’s most knowledgeable representatives:

<b><u>Syngenta Custodians of Records</u></b>		
1. Jessica Adelman	2. Miloud Arraba	3. Jack Bernens
4. Steve Berreth	5. Jeff Bottoms	6. Dan Burdett
7. Pierre Cohadon	8. Jeff Cox	9. Ken Dallmier
10. David Guyer	11. Marshall Kostiuk	12. Chuck Lee
13. Kevin Macken	14. Ozipleo Mader	15. Tracy Mader
16. Duane Martin	17. Scott McClain	18. Andrew McConville
19. Yu Zhang Meng	20. David Morgan	21. Lars Oestergard
22. John Ramsay	23. Dave Roberts	24. Jonathan Seabrook
25. Quinn Showater	26. Jonathan Sullivan	27. Eric Taylor
28. Tim Tierney	29. Ponsi Trivisvavet	30. Abby Vulcan
31. Jill Wheeler	32. Theresa Wismer	33. Claire Xu
34. Lawrence Zeph	35. Meng Yu Zhang	36. Yong Shen Zhang
37. Jingwen Chen	38. Rachel Gast	39. Dawn Hermel
40. Scott Huber	41. Corey Huck	42. Sarah Hull
43. Mike Mack	44. Rex Martin	45. Paul Minehart
46. Staci Monson	47. David O’Reilly	48. Grant Ozipko
49. Davor Pisk	50. Terese Rennie	51. Mark Sather
52. Pat Steiner	53. Iris Tzafrir	54. Demetra Vlachos
55. Dennis Ward	56. Helen Yu	57. Lisa Zannoni
58. Eddie Zhue		

PHIPPS/CLARK/FLOWERS assembled a team of experienced attorneys to review and analyze the production. While reviewing Syngenta’s document production, PHIPPS/CLARK/FLOWERS identified legal theories of liability, developed themes for corporate representative depositions, and ultimately prepared liability themes for trial.

To facilitate a cost and time-efficient document review process, a third-party vendor, Avansic, maintained all produced documents in an electronic database. The electronic database's analytical and searching tools allowed the team to focus and analyze the most relevant documents. Specifically, the platform de-duped duplicate productions for each custodian, which narrowed the universe of documents for the PHIPPS/CLARK/FLOWERS's document reviewers. Once narrowed, attorneys from the Illinois Leadership group conducted targeted searches on each custodial file to identify relevant and hot documents. PHIPPS/CLARK/FLOWERS implemented quality guidelines and protocols that governed the document review to ensure a dynamic and high-quality review.

PHIPPS/CLARK/FLOWERS's document review team also participated in frequent meetings with the group's senior attorneys to discuss important liability documents, discovery preparation efforts, and litigation strategy. These meetings involved discussions and deliberations on complex subject matters, like economic loss theories, foreign trade issues, Chinese agriculture regulations, and asynchronous approval, stewardship, testing and detection methods. In addition, the attorneys on PHIPPS/CLARK/FLOWERS's document review team coordinated with the plaintiffs' experts to provide liability documents pertinent to each expert's opinions.

Additionally, PHIPPS/CLARK/FLOWERS worked with Syngenta on a more streamlined Plaintiff Fact Sheet (PFS) in *Tweet*. We then obtained the voluminous records from the approximate 700 *Tweet* farmer/producer clients. This required personal visits by PHIPPS team members to the farms of many farmers to both explain the process and to help gather the records responsive to the *Tweet* PFS. PHIPPS/CLARK/FLOWERS were compiling this information into the PFS when matters were stayed while settlement was explored.

PHIPPS/CLARK/FLOWERS committed vast financial and attorney resources to develop liability theories and potential third-party claims in the Syngenta litigation for the ultimate benefit of litigants in the MDL, Illinois federal court, Illinois state court, and Minnesota state court.

PHIPPS/CLARK/FLOWERS's discovery contributions created an avenue for Syngenta to pursue theories of liability and shared responsibility against the grain trade companies. PHIPPS/CLARK/FLOWERS' concerted litigations strategies and discovery efforts pressured Syngenta to ultimately settle in mass across the country.

#### **D. Expert Witnesses**

As discussed above, PHIPPS/CLARK/FLOWERS retained at one point 16 consulting and/or testifying experts in the field of agricultural economics from across the United States. Some of these experts such as Dr. Steve Ford and Dr. James Richardson had been involved in similar cases and where very similar farm level damage models had withstood *Daubert* challenges and cross examination by attorneys for other multi-national conglomerate bio-tech companies. Our experts are regarded by farmers/producers as some of the finest in the United States that also advise the United States Congress as well as local state's legislative bodies on the impact certain decision or policies have at the farm level. Drs. Ford and Richardson traveled extensively throughout the major corn-producing states, attending meetings with corn producer clients to review farm-level data, conduct interviews, and develop individual damage models. Each of these experts undertook rigorous analysis of market data and used peer-reviewed methodologies to calculate market losses and individual losses of corn producers. Additionally, these experts jointly authored, revised and edited an expert report which was produced to Syngenta and the other parties to this litigation. Movants' retention and work with these expert witnesses was necessary to advance the claims at issue and to confront the pool of expert witnesses retained by Syngenta in defense of this litigation.

PHIPPS/CLARK/FLOWERS retained world class experts for opinions to support our various liability theories against Syngenta. For example, PHIPPS/CLARK/FLOWERS retained regulatory expert, Maurice House, who worked for the United States Department of Agriculture ("USDA") through the Foreign Agricultural Service ("FAS") division as an advocate for the taxpayer and



farmer. He worked in this capacity for over twenty (20) years before his retirement in 2014. During his career, Mr. House directly negotiated with the Chinese Minister of Agriculture. Mr. House's familiarity with China's biotechnology approval provided valuable expertise to the Syngenta litigation. PHIPPS/CLARK/FLOWERS retained Mr. House because his ultimate opinion established liability against Syngenta: biotechnology companies should not commercialize genetically modified seeds prematurely and should follow good stewardship practices once commercialization begins. Mr. House substantiated the opinions with self-regulating industry standards followed by multiple companies that coincided with the pre-established duty of reasonable care (found by Judge Lungstrum and Judge Perry). Specifically, Mr. House opined, commercialization of Viptera and Duracade before Chinese regulatory approval presented a substantial risk for any farmers producing Syngenta's corn of losing the Chinese market – a major corn importer with a zero-tolerance policy for unapproved genetic traits. Further, the standard of care in the industry for premature commercialization required Syngenta to inform farmers about the substantial financial risks involved with the production of Viptera and Duracade.

In addition to Mr. House, PHIPPS/CLARK/FLOWERS also retained Dr. A. Bryan Endres, a professor of Agricultural and Consumer Economics with the University of Illinois. Dr. Endres also received his J.D. from the University of Illinois. Dr. Endres studies the impact of law throughout food and bio-products supply chains and develops solutions to improve regulatory outcomes. His unique background allows him to explore a range of issues, including liability issues relating to the use of genetically engineered seed. Similar to Mr. House, Dr. Endres' role was also to discuss the self-regulating industry standards followed by multiple companies that coincided with the pre-established duty of reasonable care. Dr. Endres also opined that Syngenta prematurely marketed corn without Chinese regulatory approval. Without informing farmers of the pending approval in China, Syngenta breached the industry's standard of care when it prematurely marketed Viptera

and Duracade to farmers because the commercialization exposed farmers to the significant risk of losing the Chinese market.

PHIPPS/CLARK/FLOWERS also retained David Hightower, a founding principal of The Hightower Report, a commodity research and information corporation, specializing in high quality research and analysis for commercial players, producers, governments, individual investors, brokers, and end users. The Hightower Report publishes the most widely-read comprehensive commodity wire in the world, with daily circulation exceeding 5,000. The world's largest commodity exchange, the CME, selected the Hightower Report as its primary source for its daily market coverage. The Hightower Report provides daily market coverage, hedge strategy and trading advice to four global commodity exchanges, six governmental agencies, forty-five brokerage firms and three quote/news vendors. However, after almost thirty-two years of experience in the futures industry, Mr. Hightower has become known in Chicago Trading circles as an intuitive expert in designing effective hedging strategies using combinations of forward contracting, futures positioning, and options on futures. In this litigation, Mr. Hightower's role was to analyze the nature and extent of PHIPPS/CLARK/FLOWERS farmers/producers economic injuries and overall trade disruptions attributable to Syngenta's premature commercialization and launch of Viptera and Duracade.

#### **E. THE CONTINGENT NATURE OF THE FEE**

PHIPPS/CLARK/FLOWERS understood when we meet with the first farmer/producer to talk about this case, that it would be complicated and expensive litigation that would take years of work with absolutely no guarantee as to the result. All of our attorney client contracts were for a 40% contingency-fee with our expenses included in our fee. Farmers are sophisticated clients who understood and respected the risk we were taking. PHIPPS/CLARK/FLOWERS knew that this case would require substantial time and financial resources to be successful against multi-national



agricultural conglomerates such as Syngenta. So, knowing that this case would take years, with farmer/producer clients across the country and an uncertain outcome, PHIPPS/CLARK/FLOWERS decided to fight with all vigor we could muster on behalf of our farmers.

But, even the most vigorous and competent of efforts cannot ensure success in contingent-fee cases, like the Syngenta litigation. PHIPPS/CLARK/FLOWERS knows from experience that the commencement of litigation does not guarantee a settlement. Due to the substantial demands of this case, both in terms of time and expense, PHIPPS/CLARK/FLOWERS has foregone other substantial opportunities. For example, PHIPPS was responsible for handling the needs of our farmer/producer clients from “A to Z”. This required at times a staff of almost 100 including lawyers, legal assistants and secretaries. PHIPPS dedicated approximately 1/3 of its San Antonio office building (around 8,500 square feet) only to those people working on the Syngenta Corn Litigation. What cannot be shown in any motion or on any time sheet is the incredible time and responsibility it takes to manage litigation and a team of this size. I was charged with this responsibility that at times was more difficult than I could have imagined. This litigation consumed our law practices for several years.

Through nothing less than extraordinary effort and sacrifice of the PHIPPS/CLARK/FLOWERS teams, the case settled even though fraught with significant obstacles to liability and damages. Indeed, Syngenta contested whether any of our clients could establish a duty to exercise reasonable care with “respect to the timing, manner and scope of Syngenta’s commercialization of its Viptera and Duracade products.” MDL Order No. 2591 at 8. Were this settlement not achieved, PHIPPS/CLARK/FLOWERS farmers/producers had a significant prospect of no recovery and the ultimate outcome far from certain.

### **F. Attorney Skill and Experience**

Barry Deacon and I created PHIPPS ANDERSON DEACON LLP with the sole intent of representing farmers and other producers across the United States whom we believed after our personal experience in the Bayer GM Rice Litigation needed our help. Both of us brought a history and a knack for being involved in what some people call “high-stakes” or “bet-your-company cases”. We are not traditional plaintiffs’ lawyers. We have been lead counsel on behalf many Fortune 500 companies on both sides of the bar trying hundreds of cases over the years in our past law firms. What makes us different from many law firms is the experience we obtained during the 7 years of the Bayer GM Rice Litigation in Arkansas State Court. I was the lead trial counsel for two Arkansas state court trials, two cases that settled at the courthouse steps and one case that was continued days before trial was to start. This included being lead trial counsel on the first Arkansas state court trial that resulted in the largest actual damage per acre verdict in the United States, the first punitive damage award in the United States and the only jury finding in the United States that Bayer intentionally caused the contamination of the long grain rice supply. Mr. Deacon tried the last Bayer GM Rice case in Arkansas that resulted in the was the largest verdict in Arkansas history. Below is a list of Phipps partners and associates who contributed innumerable hours of combined work throughout the MDL, Tweet, Browning, and other cases listed above:

**MARTIN J. PHIPPS***Senior Partner*

Experience | 24 years

With over 20 years of experience as a trial lawyer before state and federal courts, Martin has earned a reputation as a tough negotiator and a skilled litigator. Since 2006, Martin has been fighting for farmers against multinational agribusinesses. As lead trial counsel for thousands of rice farmers in the *Bayer Genetically Modified Rice Litigation*, Martin recovered the highest per acre damages awarded and the only jury finding that Bayer acted intentionally in contaminating the U.S. rice supply. As Lead Trial Counsel in the *Syngenta Corn Litigation* pending in Illinois state court, Martin continues to take on global corporations and institutions that prey on the vulnerable.

**BARRY DEACON***Senior Partner*

Experience | 43 years

Barry Deacon is a courtroom trial lawyer with over 40 years of experience as a civil litigator. He is widely recognized by his peers as a fierce advocate for his clients with a winning track record in state and federal courts across the country. Barry has a wide range of experience handling complex business disputes, mass torts, personal injury, multidistrict litigation, products liability and railroad litigation. For the past decade, Barry has predominantly focused his practice on agricultural litigation, tangling with massive global agribusinesses for damages caused by genetically modified crops. As lead trial attorney for Riceland Foods, Inc., Barry achieved the largest jury verdict against Bayer in the *Genetically Modified Rice Litigation* and the largest jury verdict in Arkansas history.

**JASON M. MILNE***Partner*

Experience | 13 years

Jason M. Milne was born and raised in American Fork, Utah. After serving a two-year LDS church mission in the Republic of Lithuania, Jason attended the University of Utah where he earned an Honors B.S. degree in Political Science in 2002, graduating magna cum laude. Jason then enrolled at the University of Arkansas, earning his Juris Doctorate degree, magna cum laude, in 2005. In law school, Jason was named a Charles T. Pearson Fellow and served as Associate Editor of the Arkansas Law Review, as Note & Comment Editor of the Journal of Food Law & Policy, and as a judicial extern to the Hon. Richard D. Taylor, U.S. Bankruptcy Judge for the Eastern and Western Districts of Arkansas. Jason has briefed and argued countless motions in state and federal courts and represented corporate clients such as Allstate, AFLAC, BNSF Railway Company, Progressive, Publisher's Clearing House, Riceland Foods, Inc., St. Bernard's Regional Medical Center, as well as a city government and a school district. Jason's educational background and experience allows him to represent a diverse array of clients with complex legal issues.



**KIM KOLODZIEJ-STOLARCZYK**

*Partner*  
Experience | 19 years

Kim Kolodziej-Stolarczyk serves as advisor to trial lawyers nationwide in complex and multi-district litigation, as well as in other forms of civil litigation in state and federal court. She has served as lead appellate counsel in over 200 direct appeals, interlocutory appeals, and mandamus proceedings. She began her legal career as a prosecutor at the Harris County District Attorney's Office in Houston, Texas and later served as Assistant District Attorney. Kim received her law degree, *magna cum laude*, in 1999 from Saint Mary's University School of Law, where she served on the Editorial Board of the Saint Mary's Law Journal. Before starting her own firm, Kim was a litigation associate for a multi-national law firm and then served as a Briefing Attorney for Hon. Paul W. Green at the Fourth Court of Appeals (now a Justice before the Supreme Court of Texas). During her time as a Briefing Attorney, Kim discovered her passion for appellate law and gathered the unique experience of working firsthand with appellate justices as they analyzed and disposed of appeals.

**JOHN L. PLANT**

*Partner*  
Experience | 18 years

After acquiring invaluable trial experience as a Dallas County Assistant District Attorney, John worked in the securities industry as a legal and compliance officer for registered broker-dealers and in-house counsel where he handled complex licensing and regulatory issues with federal and state agencies. John continued this regulatory practice in the energy field, as in-house counsel for exploration and salt water disposal companies, where he handled numerous complex transactions, as well as managed the licensing and environmental issues with federal and state agencies. John's experience with technical subject matter and well-honed investigative skills continue to serve him both in the corn fields and in the courtroom.

**MEAGAN M. TALAFUSE**

*Senior Associate*  
Experience | 5 years

**BLAYNE E. FISHER**

*Senior Associate*  
Experience | 4 years

**BENJAMIN R. CROWELL**

*Associate*  
Experience | 5 years

**CHARLES E. LEWIS III**

*Associate*  
Experience | 8 years

**NEELY E. BALKO**

*Junior Associate*  
Experience | 6 years

VANESSA Y. CANTU	<i>Junior Associate</i> Experience   1 year
RYAN D. DELGADO	<i>Junior Associate</i> Experience   3 years
HENRY FINCK	<i>Junior Associate</i> Experience   4 years
JENNA S. ZWANG	<i>Junior Associate</i> Experience   3 years

Since this time, our practice has grown tremendously. In the last several months, we have been chosen as counsel to represent many large Texas, New Mexico and Utah counties and cities in their claims against drug manufactures and distribution companies for the Opioid crisis. This includes Bexar County where we live.

But, we did not handle this case alone. We were privileged have two attorneys who had worked on other agriculture cases with us over the last 10 years. What I cannot show in this affidavit is the dedication to our firm and to our farmers of two specific lawyers, Jason Mark Milne and Meagan Michelle Talafuse. Jason and Meagan were charged with the primary responsibility of responding to almost all of the motions filed by Syngenta and the ABCDG Defendants in 5 all of whom were represented by large and powerful law firms with incredible attorneys. We may not have won every fight. But, we fought doing what we believed was right for our farmers.

#### **G. Fees, Expenses and Divisions**

Since PHIPPS involvement in this case in 2013, PHIPPS has not received any compensation during this litigation but has devoted more than 60,453.7 hours to fervently and zealously represent



American farmer plaintiffs during the litigation and settlement process. The lodestar at current rates is \$32,435,420.00.

PHIPPS seeks reimbursement for an approximate total of \$5,286,113.78 in costs and expenses incurred from September 3, 2014 to May 31, 2018. The expenses my firm incurred in litigating this matter are reflected in the books and records of my firm. These books and records are prepared from expense vouchers, receipts, and check records and other source materials and accurately reflect the expenses incurred.

At all times throughout this litigation, the team of PHIPPS/CLARK/FLOWERS have strived every day to work well together to and made every effort to avoid wasting time or duplicating effort. In my experience, the total lodestar reported above is reasonable for a case of this nature (involving large claims and several years of litigation against sophisticated Defendants). Many hours and hundreds of thousands of dollars were expended to oversee the litigation, make strategy decisions, draft, edit, review millions of pages of discovery documents, research complex issues and attend multiple status conferences in Illinois State and Federal Courts.

Each Plaintiff's law firm has submitted a signed declaration setting forth that specific law firm's costs and expenses incurred in connection with the prosecution of this litigation. The declaration submitted by each firm attests to the accuracy of, and provides the basis for, its expenses.


#### **H. Conclusion**

In view of the significant recovery in the face of substantial risks, the quality of work performed, the contingent nature of the fee, and the standing and experience of the PHIPPS/CLARK/FLOWERS team, as described above, I respectfully request that the Court grant PHIPPS' Fee and Expense Application that requests the award of attorney's fees and for

reimbursement of litigation expenses.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 7/10/18



\_\_\_\_\_

Martin J. Phipps

# Exhibit 1



**PERSONNEL SUMMARY**

7/10/2018 2:58:07 PM

Senior Partners	Billing Rate	Total Hours	Value
BARRY DEACON	\$900	3,342.6	\$3,008,340.00
MARTIN PHIPPS	\$950	3,763.8	\$3,575,610.00
		<u>7,106.4</u>	<u>\$6,583,950.00</u>
Partners	Billing Rate	Total Hours	Value
KIM KELLER	\$750	109.0	\$81,750.00
JASON MILNE	\$750	2,873.5	\$2,155,125.00
JOHN PLANT	\$750	3,402.1	\$2,551,575.00
		<u>6,384.6</u>	<u>\$4,788,450.00</u>
Senior Associates	Billing Rate	Total Hours	Value
BLAYNE FISHER	\$600	23.5	\$14,100.00
MEAGAN TALAFUSE	\$600	2,844.8	\$1,706,880.00
		<u>2,868.3</u>	<u>\$1,720,980.00</u>
Associates	Billing Rate	Total Hours	Value
BEN CROWELL	\$400	216.5	\$86,600.00
CHARLES LEWIS III	\$400	2.0	\$800.00
		<u>218.5</u>	<u>\$87,400.00</u>
Junior Associates	Billing Rate	Total Hours	Value
NEELY BALKO	\$300	255.1	\$76,530.00
VANESSA CANTU	\$300	45.9	\$13,770.00
RYAN DELGADO	\$300	110.0	\$33,000.00
HENRY FINCK	\$300	102.7	\$30,810.00
JENNA ZWANG	\$300	911.5	\$273,450.00
		<u>1,425.2</u>	<u>\$427,560.00</u>
Senior Managing Paralegals	Billing Rate	Total Hours	Value
JIM FEUERSTEIN	\$450	3,369.1	\$1,516,095.00

PHIPPS ANDERSON DEACON LLP

JANE GENNARELLI	\$450	3,961.1	\$1,782,495.00
		<u>7,330.2</u>	<u>\$3,298,590.00</u>

Managing Paralegals	Billing Rate	Total Hours	Value
KIMBERLY KNOX	\$225	995.5	\$223,987.50
MATTHEW J KRETZER	\$225	708.7	\$159,457.50
DANIELLE MCCLEARY	\$225	3,666.7	\$825,007.50
IVONA SALFITI	\$225	4,016.0	\$903,600.00
ERICA TOVAR	\$225	437.3	\$98,392.50
		<u>9,824.2</u>	<u>\$2,210,445.00</u>

Senior Paralegals	Billing Rate	Total Hours	Value
EMPLOYEE 0162	\$175	1,633.2	\$285,810.00
EMPLOYEE 0168	\$175	1,997.6	\$349,580.00
EMPLOYEE 0169	\$175	2,571.8	\$450,065.00
EMPLOYEE 0170	\$175	2,674.1	\$467,967.50
EMPLOYEE 0175	\$175	2,693.0	\$471,275.00
EMPLOYEE 0181	\$175	4,381.6	\$766,780.00
EMPLOYEE 0183	\$175	2,150.1	\$376,267.50
EMPLOYEE 0302	\$175	738.9	\$129,307.50
EMPLOYEE 0294	\$175	2,341.5	\$409,762.50
EMPLOYEE 0202	\$175	70.7	\$12,372.50
EMPLOYEE 0211	\$175	4,268.4	\$746,970.00
EMPLOYEE 0233	\$175	2,340.8	\$409,640.00
EMPLOYEE 0240	\$175	1,364.0	\$238,700.00
EMPLOYEE 0279	\$175	2,102.8	\$367,990.00
EMPLOYEE 0295	\$175	1,593.4	\$278,845.00
		<u>32,921.9</u>	<u>\$5,761,332.50</u>

Paralegals	Billing Rate	Total Hours	Value
EMPLOYEE 0151	\$125	470.5	\$58,812.50
EMPLOYEE 0152	\$125	486.6	\$60,825.00
EMPLOYEE 0153	\$125	2,144.3	\$268,037.50

PHIPPS ANDERSON DEACON LLP

p 2

PHIPPS ANDERSON DEACON LLP

EMPLOYEE 0154	\$125	271.5	\$33,937.50
EMPLOYEE 0156	\$125	1,156.6	\$144,575.00
EMPLOYEE 0158	\$125	346.0	\$43,250.00
EMPLOYEE 0160	\$125	249.5	\$31,187.50
EMPLOYEE 0161	\$125	256.9	\$32,112.50
EMPLOYEE 0163	\$125	1,433.3	\$179,162.50
EMPLOYEE 0164	\$125	270.0	\$33,750.00
EMPLOYEE 0166	\$125	558.1	\$69,762.50
EMPLOYEE 0172	\$125	1,395.9	\$174,487.50
EMPLOYEE 0173	\$125	108.6	\$13,575.00
EMPLOYEE 0174	\$125	1,083.4	\$135,425.00
EMPLOYEE 0176	\$125	1,358.8	\$169,850.00
EMPLOYEE 0178	\$125	1,659.2	\$207,400.00
EMPLOYEE 0276	\$125	342.0	\$42,750.00
EMPLOYEE 0179	\$125	489.2	\$61,150.00
EMPLOYEE 0184	\$125	2,081.9	\$260,237.50
EMPLOYEE 0185	\$125	178.1	\$22,262.50
EMPLOYEE 0186	\$125	870.6	\$108,825.00
EMPLOYEE 0187	\$125	1,045.7	\$130,712.50
EMPLOYEE 0188	\$125	669.8	\$83,725.00
EMPLOYEE 0189	\$125	301.3	\$37,662.50
EMPLOYEE 0190	\$125	162.6	\$20,325.00
EMPLOYEE 0191	\$125	426.0	\$53,250.00
EMPLOYEE 0193	\$125	103.6	\$12,950.00
EMPLOYEE 0194	\$125	494.5	\$61,812.50
EMPLOYEE 0195	\$125	597.7	\$74,712.50
EMPLOYEE 0197	\$125	102.7	\$12,837.50
EMPLOYEE 0199	\$125	527.3	\$65,912.50
EMPLOYEE 0200	\$125	236.6	\$29,575.00
EMPLOYEE 0201	\$125	144.1	\$18,012.50
EMPLOYEE 0203	\$125	270.1	\$33,762.50
EMPLOYEE 0204	\$125	309.5	\$38,687.50
EMPLOYEE 0205	\$125	2,187.2	\$273,400.00

PHIPPS ANDERSON DEACON LLP

PHIPPS ANDERSON DEACON LLP

EMPLOYEE 0206	\$125	704.3	\$88,037.50
EMPLOYEE 0207	\$125	819.0	\$102,375.00
EMPLOYEE 0210	\$125	1,619.7	\$202,462.50
EMPLOYEE 0212	\$125	566.3	\$70,787.50
EMPLOYEE 0213	\$125	2,722.8	\$340,350.00
EMPLOYEE 0214	\$125	2,345.0	\$293,125.00
EMPLOYEE 0217	\$125	1,116.0	\$139,500.00
EMPLOYEE 0218	\$125	1,154.9	\$144,362.50
EMPLOYEE 0220	\$125	195.1	\$24,387.50
EMPLOYEE 0223	\$125	1,371.1	\$171,387.50
EMPLOYEE 0224	\$125	347.1	\$43,387.50
EMPLOYEE 0304	\$125	85.5	\$10,687.50
EMPLOYEE 0225	\$125	213.6	\$26,700.00
EMPLOYEE 0226	\$125	334.8	\$41,850.00
EMPLOYEE 0227	\$125	189.0	\$23,625.00
EMPLOYEE 0150	\$125	1,883.2	\$235,400.00
EMPLOYEE 0230	\$125	133.3	\$16,662.50
EMPLOYEE 0232	\$125	365.7	\$45,712.50
EMPLOYEE 0235	\$125	854.4	\$106,800.00
EMPLOYEE 0236	\$125	61.2	\$7,650.00
EMPLOYEE 0242	\$125	261.4	\$32,675.00
EMPLOYEE 0245	\$125	292.7	\$36,587.50
EMPLOYEE 0246	\$125	1,578.4	\$197,300.00
EMPLOYEE 0247	\$125	370.1	\$46,262.50
EMPLOYEE 0248	\$125	783.6	\$97,950.00
EMPLOYEE 0249	\$125	1,141.1	\$142,637.50
EMPLOYEE 0253	\$125	340.0	\$42,500.00
EMPLOYEE 0255	\$125	227.9	\$28,487.50
EMPLOYEE 0256	\$125	280.8	\$35,100.00
EMPLOYEE 0258	\$125	1,157.7	\$144,712.50
EMPLOYEE 0259	\$125	417.8	\$52,225.00
EMPLOYEE 0260	\$125	546.8	\$68,350.00
EMPLOYEE 0263	\$125	1,476.0	\$184,500.00

PHIPPS ANDERSON DEACON LLP

p 4

PHIPPS ANDERSON DEACON LLP

EMPLOYEE 0265	\$125	328.1	\$41,012.50
EMPLOYEE 0266	\$125	107.4	\$13,425.00
EMPLOYEE 0267	\$125	682.3	\$85,287.50
EMPLOYEE 0268	\$125	248.0	\$31,000.00
EMPLOYEE 0269	\$125	367.1	\$45,887.50
EMPLOYEE 0271	\$125	226.1	\$28,262.50
EMPLOYEE 0272	\$125	624.5	\$78,062.50
EMPLOYEE 0273	\$125	396.9	\$49,612.50
EMPLOYEE 0303	\$125	123.4	\$15,425.00
EMPLOYEE 0274	\$125	846.4	\$105,800.00
EMPLOYEE 0277	\$125	356.6	\$44,575.00
EMPLOYEE 0314	\$125	16.2	\$2,025.00
EMPLOYEE 0278	\$125	186.5	\$23,312.50
EMPLOYEE 0281	\$125	128.7	\$16,087.50
EMPLOYEE 0282	\$125	648.1	\$81,012.50
EMPLOYEE 0283	\$125	223.1	\$27,887.50
EMPLOYEE 0287	\$125	904.1	\$113,012.50
EMPLOYEE 0288	\$125	280.6	\$35,075.00
EMPLOYEE 0289	\$125	359.9	\$44,987.50
EMPLOYEE 0290	\$125	1,810.3	\$226,287.50
EMPLOYEE 0291	\$125	347.1	\$43,387.50
EMPLOYEE 0292	\$125	88.4	\$11,050.00
EMPLOYEE 0293	\$125	323.9	\$40,487.50
EMPLOYEE 0296	\$125	84.0	\$10,500.00
		<hr/> 60,453.7	<hr/> \$7,556,712.50
			<hr/> \$32,435,420.00

PHIPPS ANDERSON DEACON LLP

p 5

# Exhibit 2

**ESTIMATE OF TIME FOR ASSISTING CLIENTS WITH CLAIMS****ASSUMPTIONS**

1. 15 weeks
2. 8 hour days throughout period

<b>Senior Managing Paralegal</b>		<b>Billing Rate</b>	<b>Total Hours</b>	<b>Value</b>
	JIM FEUERSTEIN	450	600	\$270,000
	JANE GENNARELLI	450	600	\$270,000
<b>Managing Paralegal</b>		<b>Billing Rate</b>	<b>Total Hours</b>	<b>Value</b>
	JENNIFER BINGHAM	225	600	\$135,000
	MATT KRETZER	225	600	\$135,000
<b>Senior Paralegal</b>		<b>Billing Rate</b>	<b>Total Hours</b>	<b>Value</b>
	SAM DEVENISH	600	175	\$105,000
	EMILY CROOKSON	600	175	\$105,000
	NEAL ALAN FRANK	600	175	\$105,000
	STEPHEN JACKSON	600	175	\$105,000
<b>Paralegal</b>		<b>Billing Rate</b>	<b>Total Hours</b>	<b>Value</b>
	MATT DUESING	600	125	\$75,000
	SYLVIA OYERVIDES	600	125	\$75,000
	JOHN HERNANDEZ	600	125	\$75,000
			<b>TOTAL HOURS</b>	<b>\$1,455,000</b>

# **Exhibit E**



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

<b>IN RE: SYNGENTA AG MIR162 CORN LITIGATION</b>	<b>Master File No. 2:14-MD-02591-JWL-JPO MDL No. 2591</b>  <b>JOHN W. LUNGSTRUM U.S. DISTRICT JUDGE</b>
<b><u>THIS DOCUMENT RELATES TO:</u></b>	<b>All Cases</b>

**DECLARATION OF CLAYTON A. CLARK IN SUPPORT OF  
PETITION FOR AWARD OF ATTORNEYS' FEES AND  
REIMBURSEMENT OF LITIGATION EXPENSES**

I, Clayton A. Clark, declare as follows:

My full name is Clayton Alexander Clark. I have been licensed to practice law without interruption since May 10, 1991. I am the managing partner at the law firm of Clark, Love & Hutson, G.P. ("CLH") based in Houston, Texas. My law firm focuses primarily on mass torts, with a typical docket of 40,000-50,000 individual plaintiffs (or entities) at any one year, a practice that has evolved over the last 15 plus years. I have become trusted by both federal and state judges, in multiple venues to ethically prosecute and resolve mass groups of cases on behalf of my individual cases. Here, I submit this Declaration in support of the Illinois Leadership Group's Fee & Expense Application. I have personal knowledge of the matters set forth in this affidavit and, if called as a witness, I could and would testify competently on the matters.

**I. INTRODUCTION**

Clark, Love & Hutson, G.P., Phipps Anderson Deacon L.L.P., and Meyers & Flowers, L.L.C. (collectively "Illinois Leadership Group" or "Illinois Team") represent many thousands of plaintiffs in the following pending actions against Syngenta:

- *Tweet, et al. v. Syngenta AG, et al.*, No. 3:16-cv-00255-DRH (S.D. Ill. 2016) (**mass action**);
- *Browning, et al. v. Syngenta Seeds, Inc., et al.*, No. 15-L-157 (Ill. Cir. Ct. 2015) (**mass consolidation**);
- *Norman Sigrist v. Syngenta Seeds, Inc., et al.*, No. 2:15-cv-9921 (**class action**);
- *Russell D. Rich and Kenneth Osborn v. Syngenta Seeds, Inc. et al.*, No. 2:15-cv-9935 (**class action**);
- *Peter V. Anderson v. Syngenta Seeds, Inc., et al.*, No. 2:16-cv-2005 (**class action**);
- *Richard Crone and Pinehurst Acres v. Syngenta Seeds, Inc., et al.*, No. 2:16-cv-2045 (**class action**);
- *Bradley J. Vermeer v. Syngenta Seeds, Inc., et al.*, No. 2:16-cv-2052 (**class action**);
- *VJW Farm, Inc. and Michael Gries v. Syngenta Seeds, Inc., et al.*, No. 2:16-cv-2013 (**class action**);
- *Charles A. Welsh v. Syngenta Seeds, Inc., et al.*, No. 2:16-cv-2006 (**class action**);
- *Ron Wetz v. Syngenta Seeds, Inc., et al.*, No. 2:16-cv-2065 (**class action**);
- *Fostoria Ethanol, LLC d/b/a Poet Biorefining-Fostoria vs. Syngenta Seeds, Inc., et al.*, No. 15-cv-0323 (Ohio Ct. Com. Pl. Seneca Cnty. 2015) (**ethanol / multi-plaintiff**);
- *TCE, LLC d/b/a Poet Biorefining-Coon Rapids vs. Syngenta Seeds, et al.*, No. EQCV039491 (Iowa Dist. Ct. Carroll Cnty.) (**ethanol / multi-plaintiff**); and
- *Ultimate Ethanol, LLC d/b/a Poet Biorefining-Alexandria, Individually, and on behalf of itself and all others similarly situated vs. Syngenta Seeds, Inc., et al.*, No. 48C05-1512-CT-000184 (Ind. Cir. Ct. Madison Cnty. 2015) (**ethanol / multi-plaintiff**).

More recently, I serve on the multi-jurisdictional court-appointed Plaintiffs' Settlement Negotiation Committee ("PSNC" or "Negotiating Committee") in the Syngenta litigation. Judge Lungstrum established the PSNC to oversee and negotiate a settlement with Syngenta in cases pending before Judges Lungstrum, Herndon, Bleyer, and Sipkins (now Judge Miller). On multiple occasions, as a PSNC member, I met in numerous locations with the committee, Syngenta's

counsel, and Special Masters Ellen Reisman and Judge Daniel J. Stack. The Negotiating Committee was also to report frequently to United States District Court Judge Herndon on a weekly basis in the Southern District of Illinois. Ultimately, after many months and little progress, our collective efforts on the PSNC helped deliver a \$1.51 billion settlement to globally resolve the Syngenta litigation

## **II. PROCEDURAL HISTORY**

Before filing suit, the Illinois Leadership Group devoted substantial time and effort to investigate Syngenta's liability in the corn litigation. Our team interviewed American farmers, Ethanol plant owners, and other witnesses with knowledge about the nature and structure of the industry, pricing in the industry, and Syngenta's conduct. Early on, we focused on agricultural entities and examined their individual documents to determine *corn share pricing*. Then, our legal expert team (with a price tag in the millions to be detailed later) engaged and worked with multiple industry professionals who analyzed publicly available information, *corn share pricing*, and important additional documents we had gathered.

Based on the above investigation and early on in this litigation, the Illinois team uncovered a strong basis to allege Syngenta had improperly commercialized Viptera and Duracade corn seed prior to foreign markets' approval of the MIR162 trait. Conversely, and based upon various Court rulings and case law, the case presented significant factual difficulties, procedural and substantive obstacles.

In 2015, our team filed initial claims against Syngenta throughout the country alleging the premature commercialization of Agrisure Viptera for the 2013-2014 US growing season injured American famers, ethanol plants, and other entities. Though we filed the overwhelming majority of our cases in Illinois, we also filed our plaintiffs' lawsuits in various state courts, including but not limited to Colorado, Kansas, Arkansas, Illinois, Iowa, Minnesota, Nebraska, Ohio, and South

Dakota. Thus, the Illinois team represented plaintiffs in each of the filed lawsuits.<sup>1</sup> Additionally, our group was co-lead counsel of the *Tweet* mass action before Judge Herndon in Illinois federal court and Browning mass action before Judge Bleyer in Illinois state court.<sup>2</sup> In *Tweet* and *Browning*, Judge Herndon and Judge Bleyer oversaw the advancement of our farmers' claims against Syngenta and the grain traders in a manner that allowed Plaintiffs to continue advocating for their rights, including docket control orders for multiple plaintiff trials.

As co-lead counsel in multiple venues, the Illinois Team worked cohesively on the Syngenta litigation. We conferred almost daily for over three years on strategic decisions in these cases and ultimately implemented our collective decisions. This list provides some tasks that resulted from the management or assistance of the Illinois Team's attorneys and staff:

- Researching case law and drafting complaints and amended pleadings;
- Researching and drafting responses to Syngenta's dispositive motions challenging the plaintiffs' complaints in state and federal courts across several venues;<sup>3</sup>
- Reviewing and drafting all proposed joint status reports and proposed orders, including all procedural orders ensuring the efficient administration of the litigation and protective orders;
- Researching case law on various theories of liability, defenses, jurisdictional issues, evidentiary issues, and *Daubert* issues;

---

<sup>1</sup> The eight (8) lead cases, from different states, that I served as co-lead counsel of before being consolidated before Judge Lungstrum in the MDL Court are: *Norman Sigrist v. Syngenta Seeds, Inc., et al.*, No. 2:15-cv-9921 (Kansas); *Russell D. Rich and Kenneth Osborn v. Syngenta Seeds, Inc. et al.*, No. 2:15-cv-9935 (Ohio); *Peter V. Anderson v. Syngenta Seeds, Inc., et al.*, No. 2:16-cv-2005 (Colorado); *Richard Crone and Pinehurst Acres v. Syngenta Seeds, Inc., et al.*, No. 2:16-cv-2045 (Pennsylvania); *Bradley J. Vermeer v. Syngenta Seeds, Inc., et al.*, No. 2:16-cv-2052 (Iowa); *VJW Farm, Inc. and Michael Gries v. Syngenta Seeds, Inc., et al.*, No. 2:16-cv-2013 (Indiana); *Charles A. Welsh v. Syngenta Seeds, Inc., et al.*, No. 2:16-cv-2006 (Kentucky); *Ron Wetz v. Syngenta Seeds, Inc., et al.*, No. 2:16-cv-2065 (Texas).

<sup>2</sup> *Tweet, et al. v. Syngenta AG, et al.*, No. 3:16-cv-00255-DRH (S.D. Ill. 2016); *Browning, et al. v. Syngenta Seeds, Inc., et al.*, No. 15-L-157 (Ill. Cir. Ct. 2015).

<sup>3</sup> *See, e.g., Tweet*, No. 3:16-cv-00255-DRH (S.D. Ill. 2016) (responding on October 20, 2016 to Syngenta's motion to dismiss in Illinois federal court); *Browning*, No. 15-L-157 (Ill. Cir. Ct. 2015) (responding on October 20, 2016 and June 12, 2017 to Syngenta's motions to dismiss in Illinois state court); *Ultimate Ethanol*, No. 48C05-1512-CT-000184 (Ind. Cir. Ct. Madison Cnty. 2015) (responding on March 30, 2016 and April 21, 2017 to Syngenta's motions to dismiss in Indiana state court); *Fostoria Ethanol*, No. 15-cv-0323 (responding on March 24, 2016 to Syngenta's motion to dismiss in Ohio state court); *TCE*, No. EQCV039491 (responding on May 27, 2016 to Syngenta's motion to dismiss in Iowa state court).

- Researching case law and drafting Plaintiffs' Objection and Response to Syngenta Defendants' Motion to Transfer and Consolidate Under Illinois Supreme Court Rule 384 (granting Plaintiffs' request that all cases be transferred and consolidated for pre-trial purposes only in Williamson County);
- Requesting issuance of foreign service subpoenas, researching long-arm statute and filing of various alternative service motions, and coordinating with a third-party vendor to perfect service on the foreign Syngenta defendants through the Hague Convention;
- Preparing for and handling of hearings on numerous critical motions;
- Strategizing over the scope of Syngenta's responses to Plaintiffs' discovery requests;
- Attending multiple case management conferences in 9 states in both state and federal courts;
- Coordinating, assisting in the selection of, meeting with, and preparing of reports for plaintiffs' expert witnesses;
- Assignment of Syngenta's custodian of records document review tasks;
- Reviewing over a million pages of Syngenta's document production;
- Drafting of complaints, motions, and responses to motions filed by Syngenta;
- Traveling to 9 states on multiple occasions while securing tens of thousands of wet-ink signatures on opt-out forms for individual litigants;
- Preparing Oppositions to Transfer to the Kansas MDL and Motion to Vacate and Memorandum in Support (Specific to *Tweet*);
- Researching case law and drafting consolidated complaints and amendments to pleadings (Specific to *Tweet*);
- Responsibility for constructing and drafting all proposed agenda reports and proposed orders (Specific to *Tweet*);
- Researching and drafting Plaintiffs' Nomination for Appointment of Special Master (Specific to *Tweet*);
- Preparing and coordinating discovery in the 8 MDL class actions; and
- Researching and drafting responses to dispositive motions in the 8 MDL class actions.

In addition to advancing our clients' claims in the various jurisdictions throughout the United States, the Illinois Team simultaneously supported and coordinated with leadership in other

jurisdictions throughout the course of litigation to ensure seamless prosecution of claims against Syngenta. This coordinated effort did support the litigation's overall drive to achieve expeditious and advantageous settlement results. Specifically, the Illinois Leadership Group's commitment to aggregate settlements with the Kansas Leadership Group<sup>4</sup> and the Minnesota Leadership Group<sup>5</sup> resulted in remarkable outcomes for those injured by Syngenta's conduct, as discussed below.

### **III. THE NOVELTY AND DIFFICULTY OF QUESTIONS PRESENTED**

Because the class actions against Syngenta involved the first claims of this nature against Syngenta, our team pioneered theories of liability not previously seen in agricultural litigation. Specifically, we zealously advanced this primary liability theory against Syngenta that "due to the inter-connected nature of the industry and market, manufacturers and growers [had a duty to] . . . act at least in part for the mutual benefit of all in that inter-connected web." MDL Order No. 2591 at 10. Under our theory, the failure of Syngenta to obtain foreign approval prior to sale violated this duty.

In addition to those claims brought against Syngenta, we also pursued claims against ADM, Bunge, Cargill, Louis Dreyfus Commodities, and Gavelon (collectively, "ABCDG Defendants"), four large, sophisticated international agribusinesses who regularly export crops to foreign markets, including China.<sup>6</sup> We alleged the ABCDG Defendants failed to protect industry stakeholders, including American farmers, against the foreseeable harm that would result upon the

---

<sup>4</sup> When used herein, the term "Kansas Leadership Group" includes: Stueve Siegel Hanson LLP, Gray Ritter & Graham, PC, Gray Reed & McGraw, LLP, Hare Wynn Newell & Newton, Bolen Robinson & Ellis, Sidley Austin LLP, Simmons Hanley Conroy, Greene Espel PLLP, Paul McInnes, LLP and Paul LLP (Kansas work), Lockridge Grindal Nauen (Kansas work), Emerson Poynter LLP, Seeger Weiss Law Firm, Walters Bender Strohehn & Vaughn, PC, their attorneys and staff, and all referring counsel.

<sup>5</sup> When used herein, the term "Minnesota Leadership Group" includes: Gustafson Gluek PLLC, Bassford Remele, Schwebel Goetz & Sieben, P.A., Paul McInnes LLP and Paul LLP (Minnesota work), Kemp, Jones & Coulthard, LLP, Wagstaff & Cartmell, LLP, Lockridge Grindal Nauen (Minnesota work), Paul Byrd Law Firm PLLC, their attorneys and staff, and all referring counsel.

<sup>6</sup> The ABCDG Defendants maintain facilities that are used to buy, segregate, store, clean, process, transport, and sell agricultural commodities, including corn.

detection of Viptera in U.S. export shipments to China, specifically the loss of the Chinese market to U.S. corn. The lawsuits against the ABCDG Defendants required Syngenta to defend thousands of claims throughout Illinois, in addition to those claims brought in Kansas and Minnesota. By forcing Syngenta to face unique litigations in at least four primary jurisdictions (Kansas, Minnesota, Illinois federal court, and Illinois state court), the coordination between lead counsel in these four venues constrained Syngenta's ability to defend the universe of claims.

Due to the novel and complex nature of the legal theories against Syngenta, this action presented substantial challenges from the outset of the case. The Syngenta litigation involved challenges atypical to genetically-modified organism ("GMO") litigation because, unlike previous GMO cases, Syngenta obtained approval to sell the Viptera and Duracade seeds in the United States, but **not** in foreign markets. For the first time in GMO litigation, a defendant could argue that domestic approval of the grain, even without foreign approval, absolved the defendant of liability. This defense theory admittedly, did create a significant risk of adverse outcomes for our clients and the class representatives.

Since the litigation's inception, counsel for Syngenta mounted a vigorous and aggressive defense against plaintiffs' claims, including multiple motions to dismiss, countless discovery and coordination motions, and extensive class certification proceedings, including an appeal to the Tenth Circuit. Syngenta's defense efforts caused the Illinois Leadership Group to expend a significant amount of time and financial resources to effectively prosecute and protect the interests of the group's clients. All of this **ultimately required** that the Illinois plaintiffs be included for global peace.

**IV. MERITS DISCOVERY / DOCUMENTS PRODUCED BY SYNGENTA DEFENDANTS**

Our position as co-lead counsel in *Tweet*, *Browning*, and the Ethanol cases, along with my service on the negotiating committee, enabled the Illinois Leadership Group to contribute substantial value to all Syngenta litigants. On our own initiative, we contracted with a discovery litigation service that allowed our attorneys to review the Syngenta database of documents. Our team's commitment to discovery in the Syngenta litigation, which involved the production of over three-hundred thousand records, more than one million pages of documents, demonstrates the group's initiative to not only prosecute cases independently and vigorously, but also (*add to the whole*) in the final result.

We then again served multiple sets of discovery requests and interrogatories on Syngenta, in Illinois federal court in 2016. In *Browning*, our group served three sets of discovery requests on March 8, 2016, September 15, 2016, and January 4, 2017. Syngenta's objections to the discovery requests prompted multiple meet-and-confer conferences.<sup>7</sup> Our team succeeded during these discovery conferences with Syngenta, obtaining the preferred method and format for producing liability documents. This methodology was unique to previous attempts.

Syngenta produced documents to the Illinois Team with multiple supplementations. Formatted by individual Custodians of Record, the document production contained liability documents from Syngenta's most knowledgeable representatives:

<b><u>Syngenta Custodians of Records</u></b>		
1. Jessica Adelman	2. Miloud Arraba	3. Jack Bernens
4. Steve Berreth	5. Jeff Bottoms	6. Dan Burdett
7. Pierre Cohadon	8. Jeff Cox	9. Ken Dallmier
10. David Guyer	11. Marshall Kostiuk	12. Chuck Lee
13. Kevin Macken	14. Ozipleo Mader	15. Tracy Mader

<sup>7</sup> For example, we met-and-conferred over the scope and manner of the document production, including search terms and the protocol for electronically stored information ("ESI").



16. Duane Martin	17. Scott McClain	18. Andrew McConville
19. Yu Zhang Meng	20. David Morgan	21. Lars Oestergard
22. John Ramsay	23. Dave Roberts	24. Jonathan Seabrook
25. Quinn Showater	26. Jonathan Sullivan	27. Eric Taylor
28. Tim Tierney	29. Ponsi Trivisvavet	30. Abby Vulcan
31. Jill Wheeler	32. Theresa Wismer	33. Claire Xu
34. Lawrence Zeph	35. Meng Yu Zhang	36. Yong Shen Zhang
37. Jingwen Chen	38. Rachel Gast	39. Dawn Hermel
40. Scott Huber	41. Corey Huck	42. Sarah Hull
43. Mike Mack	44. Rex Martin	45. Paul Minehart
46. Staci Monson	47. David O'Reilly	48. Grant Ozipko
49. Davor Pisk	50. Terese Rennie	51. Mark Sather
52. Pat Steiner	53. Iris Tzafrir	54. Demetra Vlachos
55. Dennis Ward	56. Helen Yu	57. Lisa Zannoni
58. Eddie Zhue		

Our team was complete with experienced attorneys to review and analyze the production. While reviewing the same, we identified legal theories of liability, developed themes for corporate representative depositions, and ultimately prepared liability themes for trial.

To facilitate a cost and time-efficient document review process, a third-party vendor, Avansic, maintained all produced documents in an electronic database. The electronic database's analytical and search tools allowed the team to focus and analyze the most relevant documents.<sup>8</sup> Once narrowed, the Illinois Team's attorneys conducted targeted searches on each custodial file to identify relevant and hot documents. We implemented quality guidelines and protocols that governed the document review to ensure a dynamic and high-quality review.

Our document review team also participated in frequent meetings with our litigation group's senior attorneys to discuss important liability documents, discovery preparation efforts, and litigation strategy. These meetings involved discussions and deliberations on complex subject matters, like economic loss theories, foreign trade issues, Chinese agriculture regulations, and

---

<sup>8</sup> Specifically, the platform de-duped duplicate productions for each custodian, which narrowed the universe of documents for our team's document reviewers.

asynchronous approval, stewardship, testing and detection methods. In addition, our document review team coordinated with the plaintiffs' experts to provide liability documents pertinent to each expert's opinions. It was our intention and expectation to execute the handling of our docket at the highest level of legal competence.

The Illinois Leadership Group committed vast financial and attorney resources to develop liability theories and potential third-party claims in the Syngenta litigation for the ultimate benefit of litigants in the MDL, Illinois federal court, Illinois state court, and Minnesota state court. Our discovery work created an avenue for Syngenta to pursue theories of liability and shared responsibility against the grain trade companies. Our team's concerted litigation strategies and discovery efforts pressured Syngenta, we believe, to ultimately settle in mass, with our inclusion mandatory to effectuate the final result.

## V. **EXPERT WITNESSES**

The Illinois Leadership Group met with and ultimately retained thirteen (13) experts for opinions to support the group's various liability theories against Syngenta. Here are three (3) examples:

1. **Maurice House – Regulatory / Industry Expert** (credentials).<sup>9</sup> Mr. House's ultimate opinion established liability against Syngenta: biotechnology companies should not commercialize genetically modified seeds prematurely under the industry's standard of care and should follow good stewardship practices once commercialization begins.<sup>10</sup>
2. **Dr. A. Bryan Endres – Industry Economics Expert** (credentials).<sup>11</sup> Dr. Endres opined, Syngenta, without informing farmers of the pending approval in China, breached the industry's standard of care when it prematurely marketed Viptera and

---

<sup>9</sup> Mr. House worked for the United States Department of Agriculture through the Foreign Agricultural Service division as an advocate for the taxpayer and farmer for over twenty (20) years. During his career, Mr. House directly negotiated with the Chinese Minister of Agriculture, gaining expertise in China's biotechnology approval.

<sup>10</sup> Specifically, commercialization before Chinese regulatory approval presented a substantial risk for any farmers producing Syngenta's corn of losing the Chinese market – a major corn importer with a zero-tolerance policy for unapproved genetic traits. The standard of care in the industry for premature commercialization required Syngenta to inform farmers about the substantial financial risks involved with the production of Viptera and Duracade.

<sup>11</sup> Dr. Endres is a professor of Agricultural and Consumer Economics with the University of Illinois, who studies the impact of law throughout food and bio-products supply chains and develops solutions to improve regulatory outcomes.

Duracade to farmers because it exposed farmers to the significant financial risk of losing the Chinese market.

3. **David Hightower** – **Economic Injuries Expert** (credentials).<sup>12</sup> Mr. Hightower opined on the nature and extent of the plaintiffs' economic injuries and overall trade disruptions attributable to Syngenta's premature commercialization of Viptera and Duracade.

## VI. **SETTLEMENT DISCUSSIONS**

On June 23, 2017, Judge Lungstrum entered Judgment following a very well-tryed Kansas class jury led by Pat Stueve and Don Downing. This favorable verdict for the plaintiffs in the Syngenta MDL led to the MDL Court entering an order on August 8, 2017, a month before the Minnesota class trial before Judge Miller, appointing the Negotiating Committee for cases pending against Syngenta in three (3) venues.

1. Kansas;<sup>13</sup>
2. Illinois;<sup>14</sup> and
3. Minnesota.<sup>15</sup>

The PSNC contained four (4) members:

1. Christopher A. Seeger, of Seeger Weiss LLP;
2. Mikal Watts, of Watts Guerra LLP;
3. Clayton A. Clark, of CLH; and
4. Daniel E. Gustafson, of Gustafson Gluek PLLC.

---

<sup>12</sup> Mr. Hightower is a founding principal of the Hightower Report, a commodity research and information corporation, specializing in high quality research and analysis for commercial players, producers, governments, individual investors, brokers, and end users. The Hightower Report provides daily market coverage, hedge strategy and trading advice to four global commodity exchanges, six governmental agencies, forty-five brokerage firms and three quote/news vendors.

<sup>13</sup> In the Syngenta MDL.

<sup>14</sup> In the Southern District of Illinois before Judge Herndon in the *Tweet* and *Poletti* cases, and the Illinois State Court before Judge Bleyer in *Browning*.

<sup>15</sup> In the Minnesota State Court before Judge Miller, captioned *In re Syngenta Litigation*, No. 27-cv-15-3785.

The order, joined by all Judges in the major venues, required the PSNC, Special Master Reisman, and Syngenta to report on a weekly basis to Judge Herndon. In turn, Judge Herndon would communicate, on a regular basis, the progress of the Committee to the presiding judges in the federal and state court cases listed above. Prior to establishing the PSNC, the MDL appointed Ellen K. Reisman and Daniel J. Stack as special masters for the Syngenta settlement negotiations.

Ultimately the negotiating team, with the unrelenting help of Ellen Reisman and Judge Stack, secured a \$1.51 billion settlement to benefit all Syngenta litigants. Six months before this appointment to the PSNC, however, and on behalf of our Illinois plaintiffs, I began in-person negotiations for a global settlement with Syngenta, which the Illinois Team asserts acted as the foundational work that ultimately allowed the PSNC to reach a successful resolution with Syngenta. Specifically, I met with Syngenta and Special Master Reisman during the pre-PSNC period to develop the protocols and framework that govern today's pending settlement.

After the PSNC's creation, I, along with the Negotiating Committee, negotiated the term sheet that ultimately memorialized the framework and primary endpoints for the Syngenta settlement, which absolutely included adequate terms for non-class litigants in state court. Although the term sheet established the foundation for the Syngenta settlement, both sides continued to negotiate the precise terms of the master settlement agreement for months. I met with the PSNC, opposing counsel, and the Special Masters Reisman and Stack in October 2017 to begin drafting terms for the Master Settlement Agreement. The parties' differing interpretations along with external representations of the term sheet erected obstacles to a finalized master settlement agreement. The remaining negotiations to convert the term sheet into a master settlement agreement required months of highly charged and intense meetings around the country that carried

into 2018. Throughout the negotiations, I consistently insisted and fought to include the basic tenets of protections for state court litigants in the final agreement. Those terms remain inviolate.

In February 2018, the parties executed a master settlement agreement that covered all Syngenta claimants. In addition, two (2) of the four (4) subclasses for grain handling facilities and ethanol facilities in the settlement exist because of the Illinois team's litigation strategies that they oversaw and led in state and federal courts. The inclusion of these subclasses produced an opportunity for a truly global settlement with Syngenta. It was made clear, during these negotiations, that **the Illinois Leadership Group was a required signatory** if the settlement was to become a reality.

## VII. THE CONTINGENT NATURE OF THE FEE & COMMITMENT TO THE LITIGATION

In the Syngenta litigation, our clients typically retained the Illinois Leadership Group under a 40% contingency fee basis.<sup>16</sup> Our fee depended on a successful outcome for our clients. From the outset, our team understood that we were embarking on a complex, expensive, and lengthy litigation with no guarantee of ever being compensated for the substantial investment of time and money. In undertaking this responsibility, we dedicated sufficient resources to ensure effective prosecution of these cases.

In bearing the risk of **NO** recovery, the Illinois team vigorously and competently advocated for the group's clients. However, even the most vigorous and competent of efforts cannot ensure success in contingent-fee cases like herein. The members of our group know from experience that the commencement of litigation does not guarantee a settlement. Due to the uniquely complex demands of this case, both in terms of time and expense, the Illinois team has foregone other

---

<sup>16</sup> Some of our clients retained our services at a different fee rate. Rates varied based upon the circumstances and referring attorney, but some client retained our services for one-third (1/3) of any recovery *plus* costs and expenses.

substantial opportunities. Specifically, my firm, CLH devoted extensive resources and experience to this litigation, to the exclusion of other requests to participate in mass actions, including the opioid, herniamesh, and TALC powder litigation.

In addition to foregoing other opportunities, my firm made a vast financial commitment to the Syngenta litigation. CLH committed more than \$20 million in costs and resources to the Syngenta litigation. As part of this financial commitment, my firm advanced more than \$5,000,000.00 in expenses that we assert should be reimbursable from the common fund. Importantly, our group created and financed the Claims Handling Center in San Antonio Overseen By the Phipps Anderson Deacon Law Firm, which directly handled our farmers' claims, including wet ink signatures on opt-out forms, against Syngenta. My firm's commitment to cover the costs of pursuing our clients' claims diverted funds that could have been utilized in other litigations.

The Illinois Leadership Group ultimately helped lead and contribute to a global settlement in this litigation, even though fraught with significant obstacles and personalities, from liability and damages to negotiating settlement. But-for the Negotiating Committee's recommended settlement, our group certainly faced years of trial and appellate litigation against Syngenta, with a recognizable prospect of no recovery and the ultimate outcome far from certain.

#### **VIII. ATTORNEY SKILL AND EXPERIENCE**

Since its creation, CLH has established itself as a national leader in complex mass action litigation. We have routinely and consistently developed and resolved mass tort/mass action litigations against well-funded adversaries. Alongside Mr. Clark's national leadership appointments to nine (9) currently ongoing mass litigations, his partners, Scott Love and Shelley Hutson focus on the litigation aspects of mass actions. For example, Scott and Shelley's multi-million-dollar verdicts in three recent trials against a pharmaceutical manufacturer resulted in a nationwide settlement program in 2014-2015 for children injured by Janssen's Topamax. And, in

another MDL in which Clayton Clark currently remains appointed lead counsel, partners Scott and Shelley both obtained eight figure verdicts in separate federal courts against a medical device manufacturer within the same week. My firm's third trial against the defendant in 2015 produced global settlements in the pelvic mesh litigation for firms across the country with that defendant (Boston Scientific) and other similar defendants.

In addition to the firm's active trial practice, I have worked with the very best lead counsel for plaintiffs and defendants over the past 15 years where strategy and negotiation have become my focus in significant, complex litigation. For example, I most recently played a lead role in developing the settlement frameworks with all five (5) of the primary defendants in the transvaginal mesh litigation for the benefit of all litigants. These frameworks helped begin closing down the largest MDL in the United States, overseen by his honor, Judge Joseph R. Goodwin, who presides over the Southern District of West Virginia. These solutions have been duplicated nationwide. This example is not solitary – I have also served similar roles in the *In re Diet Drugs*, *In re Paxil vs. GSK*, and Topamax litigations, among multiple others. I built upon those models and experiences to create and achieve a similar solution for Syngenta litigants.

CLH's partners contributed countless hours of combined common benefit work throughout the Syngenta litigation:

<b>Clayton A. Clark</b>	<b>Experience</b>	<b>27 years</b>
Over the past 18 years, Mr. Clark has accrued a reputation as one of the most successful , reliable, and innovative mass tort lawyers in the country. He is a national trial lawyer with extensive state, federal, and multidistrict litigation experience. From developing strategies on initial cases to obtaining jury verdicts in bellwether trials, Mr. Clark's firm has earned a nationwide reputation for successfully developing and litigating mass tort actions, as well as coordinating and resolving complex litigation benefiting many tens of thousands of individuals while working to accomplish corporate solutions.		
<b>Scott A. Love</b>	<b>Experience</b>	<b>20 years</b>
Mr. Love has gained a national reputation for his trial skills and is one of only a handful of lawyers in the United States to obtain multiple multi-million dollar verdicts in both medical device and pharmaceutical cases. He has served in various leadership capacities over the last		

decade in multiple MDL and coordinated actions. From the preliminary stages of assessing corporate liability to obtaining multi-million dollar verdicts in bellwether trials, Mr. Love has successfully developed and litigated mass tort actions and resolved complex litigation against pharmaceutical and device manufacturers alike.

<b>William W. Lundquist</b>	<b>Experience</b>	<b>15 years</b>
Throughout his 15 year career, Mr. Lundquist has developed a reputation for being an experienced civil trial lawyer. He spent his first six (6) years defending insurance companies in property & casualty cases involved bad faith insurance claims and unfair settlement practices. After joining CLH, Mr. Lundquist successfully assisted and represented numerous corporate and individual clients in both state and federal courts throughout the country. Mr. Lundquist has honed his trial skills through working with experts in science, medicine, and agriculture. He also routinely works on the development of sophisticated liability themes, pretrial and trial of significant cases, and weighty legal and appellate issues for the firm.		

CLH's associates contributed thousands of hours of combined common benefit work across the MDL, *Tweet*, and *Browning* litigations.

<b>Name</b>	<b>Experience</b>
Michael Gallagher	14 years
Matthew J. Daher	7 years
Whitney C. Larkin	6 years
William T. Jones	16 years
Grace Hooten	3 years
<b>Total</b>	<b>46 years</b>

#### **IX. FEES, EXPENSES, AND DIVISIONS**

Since the case began in 2014, CLH has not received any compensation during the course of this litigation. CLH has devoted more than 4,000 hours of attorney work product to the Syngenta litigation:

<b>Attorney</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
Clayton A. Clark	1,474.20	\$950.00	\$1,400,490.00
Scott A. Love	920.80	\$950.00	\$875,760.00
Michael Gallagher	250.60	\$700.00	\$175,420.00
William Lundquist	1,699.60	\$700.00	\$1,189,720.00
Bill Jones	15.40	\$500.00	\$7,700.00
Grace Hooten	131.90	\$500.00	\$65,950.00
Matt Daher	101.00	\$500.00	\$50,500.00
Whitney Larkin	363.10	\$500.00	\$181,550.00
<b>TOTAL</b>	<b>4,956.60</b>		<b>\$3,946,090.00</b>



Including CLH's hours, the Illinois Leadership Group is seeking compensation for the more than 138,430.90 hours our team devoted towards prosecuting claims against Syngenta.<sup>17</sup>

CLH incurred \$2,295,105.21 in costs and expenses related to the Syngenta litigation between September 3, 2014 and May 21, 2018. Including CLH's costs and expenses, the Illinois Leadership Group seeks reimbursement for a total of \$7,665,415.73 in costs and expenses incurred from September 3, 2014 to May 21, 2018.<sup>18</sup> The expenses incurred in litigating this matter are reflected in our firms' books and records. These books and records are prepared from expense vouchers, receipts, and check records and other source materials and accurately reflect the expenses incurred.

At all times throughout this litigation, the Illinois Leadership Group have worked efficiently and made every effort to avoid wasting time or duplicating effort. In my experience, the total lodestar reported above is reasonable for a case of this nature (involving large claims and several years of litigation against sophisticated Defendants). Many hours and hundreds of thousands of dollars were expended to oversee the litigation, make strategy decisions, draft, edit, review millions of pages of discovery documents, research complex issues, attend multiple status conferences in Illinois state and federal courts, and conduct myriad hours of settlement negotiations.

### **AWARD OF THE GENERAL FUND**

In reliance on the above declaration, I, Clayton A. Clark, along with the Illinois Leadership Group respectfully petition the Court to award one-third (1/3) of the gross Syngenta Agrisure Viptera/Duracade class settlement fund weighted to the three groups of attorneys whose combined

---

<sup>17</sup> Upon the Court's request, the Illinois Leadership Group can provide, for an *in camera* inspection, time records compiled throughout the Syngenta litigation detailing each biller's work activities and time.

<sup>18</sup> Upon the Court's request, the Illinois Leadership Group can provide, for an *in camera* inspection, expense records compiled throughout the Syngenta litigation detailing each claimed expense.

efforts created and preserved the common fund, and a portion to other firms nominated at a later date following this submission.

### **Fee Sharing Agreement**

In addition to working cohesively in globally resolving the Syngenta litigation, the Kansas Leadership Group, Illinois Leadership Group, and Minnesota Leadership Group executed an agreement on or about February 23, 2018, entitled “Fee-Sharing Agreement, Syngenta MIR 162 Litigation” (“Fee-Sharing Agreement”). This necessary agreement proposes to divide Court-awarded attorneys fees amongst the group. *See* Exhibit 1, Fee-Sharing Agmt., Syngenta MIR 162 Litig., at 1-2 (Feb. 23, 2018). Consistent with the Fee-Sharing Agreement, we request – ***at a minimum*** – the Court award fees as follows:

1. Kansas Leadership Group – 50%;
2. Illinois Leadership Group – 17.5%; and
3. Minnesota Leadership Group – 12.5%. *Id.*

The Kansas Leadership Group, Illinois Leadership Group, and Minnesota Leadership Group support these allocations as their *minimum* fees, in accordance with the Fee-Sharing Agreement. *See id.*

### **Remaining 20% and Expenses**

With respect to allocating the remaining twenty percent (20%) of the fee award and expense analysis, I, Clayton A. Clark and the Illinois Leadership Group uniformly and respectfully request the Court refer the matter for Report and Recommendation to the Special Masters to implement a process to obtain audited submissions and other procedures to ultimately recommend an allocation of fees and expenses. Special Masters Reisman and Stack possess intimate knowledge and are uniquely situated because of their active oversight and supervision of the general litigation and

settlement negotiations (*in this case*) for years. The Special Masters have already directly participated in negotiations over attorneys' fees for over a year, gaining special, unbiased knowledge, expertise, and unique perspective as to how these fees and expenses should be awarded. In 2016, this Court appointment Special Master Reisman to "assist the court in efficiently coordinating settlement discussions in these proceedings." ECF No. 1745, at 2. In 2016, Judge Herndon and Judge Bleyer entered appointed Special Master Stack to facilitate and coordinate discovery between the federal and state litigations in Illinois. After both facilitated the Syngenta class settlement, this Court appointed Special Masters Reisman and Stack on April 10, 2018 to assist in the administration of the class settlement. ECF No. 3532, at 2. Referral for allocation recommendations achieves the purposes for which the Court appointed the Special Masters.

In addition, referral to the Special Masters for a recommendation on the allocation of the remaining twenty percent (20%) and expenses to be reimbursed accomplishes several important goals. *First*, referral infuses the process with literally years of knowledge related to the litigation and counsel that provided important contributions to the ultimate settlement outcome. *Second*, referral provides every person seeking fees or reimbursement of expenses an opportunity to provide submissions about why they deserve a portion of the fees – without burdening the Courts with three separate, time-consuming procedures. *Finally*, an initial recommendation from the Special Masters allows the Courts to accept reports and recommendations, which essentially guarantees all potential applicants a full and fair opportunity to be heard.

## **X. CONCLUSION**

In view of the significant recovery in the face of substantial risks, the quality of work performed, the contingent nature of the fee, the extraordinary experience of the Illinois Leadership Group and the unique nature of our integral role of assisting, at all times in good faith the global settlement bringing together otherwise unaligned litigation groups, as described above, I

respectfully request the Court grant the Illinois Leadership Group's Fee and Expense Application that requests the award of attorney's fees and reimbursement of litigation expenses.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 10<sup>th</sup> day of July, 2018.



---

Clayton A. Clark

# **Exhibit 1**

**FEE-SHARING AGREEMENT****Syngenta MIR162 Litigation**

Pursuant to the terms of the Agrisure Viptera/Duracade Class Settlement Agreement (“Master Settlement Agreement”), Settlement Class Counsel shall make a Fee and Expense Application to the Court for an attorneys’ fee and expense award.<sup>1</sup> This Fee-Sharing Agreement (“Agreement”) governs the division of attorney’s fees and expenses between the Parties associated with any fee and expense award ordered by the Court in *In re Syngenta AG MIR 162 Corn Litigation*, MDL 2591, in the United States District Court for the District of Kansas.

The Parties agree to divide any attorney’s fees awarded by the Court as follows:

<b><u>Party</u></b>	<b><u>Percentage (%)</u></b>
Patrick J. Stueve <i>STUEVE SIEGEL HANSON LLP</i> Don Downing <i>GRAY, RITTER &amp; GRAHAM, PC</i> William B. Chaney <i>GRAY REED &amp; MCGRAW, LLP</i> Scott A. Powell <i>HARE WYNN NEWELL &amp; NEWTON</i> <sup>2</sup>	50%
Daniel E. Gustafson <i>GUSTAFSON GLUEK PLLC</i> <sup>3</sup>	12.5%

<sup>1</sup> The Clayton A. Clark group shall submit expenses on their own behalf to Settlement Class Counsel, who will include them in the Attorneys’ Fee and Expense Petition.

<sup>2</sup> This group includes Patrick J. Stueve (Stueve Siegel Hanson LLP), Don M. Downing (Gray, Ritter & Graham, PC), William B. Chaney (Gray Reed & McGraw, LLP), Scott A. Powell (Hare Wynn Newell & Newton), Christopher M. Ellis (Bolen Robinson & Ellis, LLP), David F. Graham (Sidley Austin LLP), Jayne Conroy (Simmons Hanly Conroy), John W. Ursu (Greene Espel PLLP), Richard M. Paul, III (Paul McInnes, LLP and Paul LLP)(Kansas MDL common benefit work), Robert K. Shelquist (Lockridge Grindal Nauen)(Kansas MDL common benefit work), Scott E. Poynter (Emerson Poynter LLP), Stephen A. Weiss (Seeger Weiss Law Firm), and Thomas V. Bender (Walters Bender Strohbehn & Vaughan, PC) and all “Referring Counsel.” “Referring Counsel” means a law firm engaged with the named law firm in the joint representation of one or more Claimants in connection with the prosecution of their Claims. The four Kansas MDL Co-Lead Counsel (William B. Chaney, Don Downing, Scott Powell and Patrick J. Stueve) will allocate the fees represented by this percentage among all firms that provided common benefit work in the Kansas MDL consistent with the Kansas MDL Court’s orders. The four Kansas MDL Co-Lead Counsel will have the right to review, revise and approve any common benefit time and expense submissions for common benefit work performed in the Kansas MDL that will be submitted by Settlement Class Counsel to the Kansas MDL Court consistent with the Kansas MDL Court’s orders.

<sup>3</sup> This group also includes Lewis A. Remele, Jr. (Bassford Remele), William R. Sieben (Schwebel Goetz & Sieben, P.A.), Richard M. Paul, III (Paul McInnes LLP and Paul LLP)(Minnesota work), Will Kemp (Kemp, Jones &



Clayton A. Clark <i>CLARK, LOVE &amp; HUTSON, GP<sup>4</sup></i>	17.5%
---	-------

The remaining 20% of any attorneys' fees awarded by the Court will be allocated by the Kansas MDL Court, in consultation and agreement with the Minnesota MDL Court and Judge Herndon of the United States District Court for the Southern District of Illinois, taking into consideration the recommendation by the Special Masters.

The Parties to this Agreement agree that it is in the Parties' and Class Members' best interest to consummate this Agreement and to cooperate with each other and take all actions reasonably necessary to obtain Court approval of this Agreement. The Parties also agree to take all actions necessary to obtain entry of Orders required to implement this Agreement, and that all Orders entered to implement and approve this Agreement shall be final. The Parties further agree to waive any right to appeal any Order implementing and approving this Agreement.

The Parties agree that no signatory to this Agreement, or their co-counsel, partners, or referring counsel will seek to void this Agreement or take any actions in any Court contrary to any provision in this Agreement. In the event that any Party challenges this Agreement for any reason, any dispute shall be submitted exclusively to the Honorable David R. Herndon, John W. Lungstrum, and Laurie J. Miller for final resolution, with no right of appeal, and consistent with the terms of the Master Settlement Agreement.

---

Coulthard, LLP), Tyler Hudson (Wagstaff & Cartmell, LLP), Robert K. Shelquist (Lockridge Grindal Nauen)(Minnesota work), and Paul Byrd (Paul Byrd Law Firm PLLC) and all Referring Counsel. Daniel E. Gustafson and Lew Remele will allocate fees represented by this percentage among all firms that provided common benefit work in the Minnesota MDL consistent the Minnesota MDL Court's orders. Daniel E. Gustafson and Lew Remele will have the right to review, revise and approve any common benefit time and expense submissions for common benefit work performed in the Minnesota MDL that will be submitted by Settlement Class Counsel to the Kansas MDL Court consistent with the Minnesota MDL Court's orders.

---

<sup>4</sup> This group also includes Peter J. Flowers (Meyers & Flowers) and Martin J. Phipps (Phipps Anderson Deacon LLP), as well as Clark's, Flowers' and / or Phipps' Referring Counsel, co-counsel and / or joint venture partners. Clayton A. Clark shall petition the Honorable David R. Herndon of the United States District Court for the Southern District of Illinois concerning the allocation of fees among the members of this group.

All Parties must consent before any Party may amend or supplement this Agreement. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, the legality, validity, and enforceability of the remaining provisions of this Agreement shall not be affected. This Agreement shall be liberally construed so as to carry out the intent of the Parties. It shall be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting same. If any Party perceives another may be in default in connection with this Agreement, such Party shall provide such other Party notice of, and a reasonable opportunity to cure, such default; if the latter cures such default, or if the former provides the latter notice of the former's intent to waive such default, then there shall have been no default under this Agreement. To the extent this Agreement requires a Party consent to, or give notice of, anything, such consent or notice must be in writing and signed by such Party, and a copy of such consent or notice must be delivered to each of the other Parties.

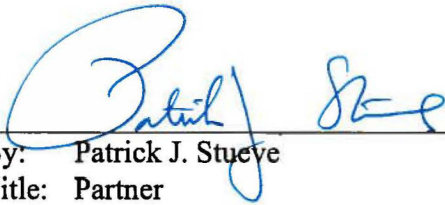
The Parties also agree that this Agreement, along with the Master Settlement Agreement and the separate fee agreement between Seeger Weiss LLP and Kansas MDL Co-Lead Counsel (collectively, "Fee Agreements"), embodies the entire agreement between the Parties with respect to its subject matter and, if the Master Settlement Agreement is granted final approval, this Agreement supersedes and cancels all prior oral or written agreements by and among the parties, other than the Fee Agreements, including, without limitation, the March 23, 2015 Joint Prosecution Agreement ("JPA"), the June 18, 2015 JPA, and the January 21, 2016 JPA. All parties to the JPAs will sign a separate agreement confirming that this Agreement supersedes and cancels all JPAs if the Master Settlement Agreement is granted final approval. No party that signed a JPA may receive any fee or expense reimbursement from the monies awarded by the Court without signing this separate agreement.



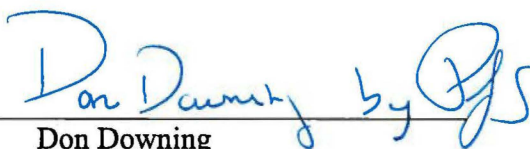
Finally, the Parties further agree to take all actions reasonably necessary to effectuate the terms of the Master Settlement Agreement and ensure all participation thresholds are met. In the event that the Master Settlement Agreement is not granted final approval, this Agreement shall be null and void.

SIGNED on this the 23rd day of February, 2018.

STUEVE SIEGEL HANSON LLP

  
By: Patrick J. Stueve  
Title: Partner

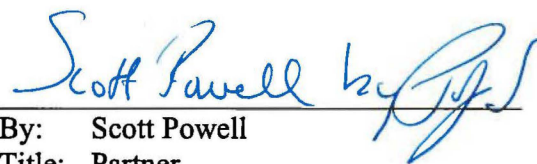
GRAY, RITTER & GRAHAM, PC

  
By: Don Downing  
Title: Shareholder

GRAY REED & MCGRAW, LLP

  
By: William B. Chaney  
Title: Partner

HARE WYNN NEWELL & NEWTON

  
By: Scott Powell  
Title: Partner

SEEGER WEISS LLP



---

By: Christopher A. Seeger  
Title: Partner

GUSTAFSON GLUEK PLLC

---

By: Daniel E. Gustafson  
Title: Member

CLARK LOVE HUTSON GP

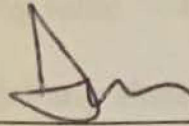
---

By: Clayton A. Clark  
Title: Partner

---

By: Christopher A. Seeger  
Title: Partner

GUSTAFSON GLUEK PLLC



---

By: Daniel E. Gustafson  
Title: Member

CLARK LOVE HUTSON GP

---

By: Clayton A. Clark  
Title: Partner

SEEGER WEISS LLP

---

By: Christopher A. Seeger  
Title: Partner

GUSTAFSON GLUEK PLLC

---

By: Daniel E. Gustafson  
Title: Member

CLARK LOVE HUTSON GP



---

By: Clayton A. Clark  
Title: Partner

# **Exhibit F**

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

<b>IN RE: SYNGENTA AG MIR162 CORN LITIGATION</b>	<b>Master File No. 2:14-MD-02591-JWL-JPO MDL No. 2591</b>  <b>JOHN W. LUNGSTRUM U.S. DISTRICT JUDGE</b>
<b><u>THIS DOCUMENT RELATES TO:</u></b>	<b>All Cases</b>

**DECLARATION OF PETER J. FLOWERS IN SUPPORT OF  
PETITION FOR AWARD OF ATTORNEYS' FEES AND  
REIMBURSEMENT OF LITIGATION EXPENSES**

Peter J. Flowers declares as follows:

My full name is Peter John Flowers. I have been licensed to practice law in Illinois since November 5, 1992. I am the founding and managing partner at the law firm of Meyers & Flowers, LLC with offices in Chicago and St. Charles, Illinois. Over the past ten years, my law firm has primarily concentrated in various types of complex litigation, including mass tort, catastrophic injury, and commercial matters. I submit this Declaration in support of Meyers & Flowers' Fee & Expense Application. I have personal knowledge of the matters set forth in this affidavit and, if called as a witness, I could and would testify competently on the matters.

**I. INTRODUCTION**

Meyers & Flowers, LLC, Clark, Love & Hutson, G.P., and Phipps Anderson Deacon LLP (collectively "Illinois Leadership Group") represent many thousands of plaintiffs in the following pending actions against Syngenta:

- *Tweet, et al. v. Syngenta AG, et al.*, No. 3:16-cv-00255-DRH (S.D. Ill. 2016) (**mass action**);
- *Browning, et al. v. Syngenta Seeds, Inc., et al.*, No. 15-L-157 (Ill. Cir. Ct. 2015) (**mass action**);

- *Norman Sigrist v. Syngenta Seeds, Inc., et al.*, No. 2:15-cv-9921 (**class action**);
- *Russell D. Rich and Kenneth Osborn v. Syngenta Seeds, Inc. et al.*, No. 2:15-cv-9935 (**class action**);
- *Peter V. Anderson v. Syngenta Seeds, Inc., et al.*, No. 2:16-cv-2005 (**class action**);
- *Richard Crone and Pinehurst Acres v. Syngenta Seeds, Inc., et al.*, No. 2:16-cv-2045 (**class action**);
- *Bradley J. Vermeer v. Syngenta Seeds, Inc., et al.*, No. 2:16-cv-2052 (**class action**);
- *VJW Farm, Inc. and Michael Gries v. Syngenta Seeds, Inc., et al.*, No. 2:16-cv-2013 (**class action**);
- *Charles A. Welsh v. Syngenta Seeds, Inc., et al.*, No. 2:16-cv-2006 (**class action**);
- *Ron Wetz v. Syngenta Seeds, Inc., et al.*, No. 2:16-cv-2065 (**class action**);
- *Fostoria Ethanol, LLC d/b/a Poet Biorefining-Fostoria vs. Syngenta Seeds, Inc., et al.*, No. 15-cv-0323 (Ohio Ct. Com. Pl. Seneca Cnty. 2015) (**ethanol**) (**multi-plaintiff**);
- *TCE, LLC d/b/a Poet Biorefining-Coon Rapids vs. Syngenta Seeds, et al.*, No. EQCV039491 (Iowa Dist. Ct. Carroll Cnty.) (**ethanol**) (**multi-plaintiff**); and
- *Ultimate Ethanol, LLC d/b/a Poet Biorefining-Alexandria, Individually, and on behalf of itself and all others similarly situated vs. Syngenta Seeds, Inc., et al.*, No. 48C05-1512-CT-000184 (Ind. Cir. Ct. Madison Cnty. 2015) (**ethanol**) (**multi-plaintiff**).

In addition, a member of the Illinois Leadership Group, Clayton A. Clark, currently serves on the multi-jurisdictional court-appointed Plaintiffs’ Settlement Negotiation Committee (“PSNC” or “Negotiating Committee”) in this litigation. Judge Lungstrum established the PSNC to oversee and negotiate a settlement with Syngenta in cases pending before Judges Lungstrum, Herndon, Bleyer, and Sipkins (now Judge Miller). Through the tireless efforts of its members, including Mr. Clark, the PSNC helped deliver a \$1.51 billion settlement to globally resolve the Syngenta litigation



## II. PROCEDURAL HISTORY

Before filing suit, the Illinois Leadership Group devoted substantial time and effort to investigate Syngenta's liability in the corn litigation. The Illinois Leadership Group interviewed American farmers, Ethanol plant owners, and other witnesses with knowledge about the nature and structure of the industry, pricing in the industry, and Syngenta's conduct. Early on, we focused on agricultural entities and examined their individual documents to determine *corn share pricing*. Then, our legal expert team engaged and worked with multiple industry professionals who analyzed publicly available information, *corn share pricing*, and important additional documents we had gathered.

Based on the above investigation, the Illinois team uncovered a strong basis to allege Syngenta had improperly commercialized Viptera and Duracade corn seed prior to foreign markets' approval of the MIR162 trait. At the same time, we recognized that the case presented significant risk in the form of legal and factual difficulties as well as procedural and substantive obstacles.

Beginning in 2014 and 2015, our litigation team filed initial claims against Syngenta throughout the country alleging the premature commercialization of Agrisure Viptera for the 2013-2014 US growing season injured American farmers, Ethanol plants, and other entities. We filed our plaintiffs' lawsuits in various state courts, including but not limited to Colorado, Kansas, Arkansas, Illinois, Iowa, Minnesota, Nebraska, Ohio, and South Dakota. Additionally, the Illinois Leadership Group was co-lead counsel of the cases before Judge David Herndon in Illinois federal court and Judge Bradley Bleyer in Illinois state court: *Tweet, et al. v. Syngenta AG, et al.*, No. 3:16-cv-00255-DRH (S.D. Ill. 2016); *Browning, et al. v. Syngenta Seeds, Inc., et al.*, No. 15-L-157 (Ill. Cir. Ct. 2015). In *Tweet* and *Browning*, Judges Herndon and Bleyer oversaw the advancement of our farmers' claims against Syngenta and the grain traders in a manner that allowed Plaintiffs to

continue advocating for their rights, including docket control orders for multiple plaintiff trials, until a global settlement occurred.

As co-lead counsel in multiple venues, the Illinois Leadership Group was afforded the opportunity to work on virtually every aspect of this litigation. Some of the tasks that Meyers & Flowers assumed primary responsibility included the researching of Illinois law and drafting of all pleadings in both *Tweet* and *Browning*. Additionally, Meyers & Flowers researched and drafted responses to Syngenta's Motions to Dismiss in various venues, as demonstrated in the below charts:

*Tweet* Case (Illinois federal court)

<b>Case Name/Court</b>	<b>Syngenta's MTD Consolidated 3<sup>rd</sup> Amended Complaint</b>	<b>Plaintiffs' Response (filed)</b>
<i>Tweet</i> /USDC; So. District of IL	8/26/2016	10/20/2016

*Browning* Case (Illinois state court)

<b>Case Name/Court</b>	<b>Syngenta's MTD Plaintiffs' 3<sup>rd</sup> Amd Complaint (filed)</b>	<b>Plaintiffs' Response (filed)</b>	<b>Syngenta's MTD Plaintiffs' 4<sup>th</sup> Amd Complaint (filed)</b>	<b>Plaintiffs' Response (filed)</b>
<i>Browning</i> / Williamson Co., IL	08/26/2016	10/20/2016	05/08/2017	06/12/2017

Ethanol Cases

<b>Case Name/Court</b>	<b>Syngenta's MTD Plaintiff's Amd Complaint</b>	<b>Plaintiffs' Response (filed)</b>	<b>Syngenta's MTD Plaintiff's 2<sup>nd</sup> Amd Complaint</b>	<b>Plaintiff's Response (filed)</b>
<i>Ultimate Ethanol, LLC</i> ; Madison Co., IN	02/29/2016	03/30/2016	04/07/2017	04/21/2017
<i>Fostoria Ethanol, LLC</i> ; Seneca Co., OH	02/29/2016	03/24/2016	N/A	N/A
<i>TCE, LLC</i> ; Carroll Co., IO	5/03/2016	05/27/2016	N/A	N/A

Meyers & Flowers' attorneys and staff conferred almost daily for over three years with the Illinois Leadership Group on strategic decisions in these cases in order to collectively make all significant decisions in each litigation. Some of the tasks that Meyers & Flowers' attorneys and staff oversaw and assisted include:

- Researching case law and drafting complaints and amended pleadings;
- Researching case law and drafting of all motions;
- Researching and drafting responses to Syngenta's dispositive motions challenging the plaintiffs' complaints in state and federal courts across several venues;
- Drafting and reviewing all proposed joint status reports and proposed orders, including all procedural and protective orders, ensuring the efficient administration of the litigation;
- Researching case law on various theories of liability, defenses, jurisdictional issues, evidentiary issues, and *Daubert* issues;
- Researching case law and drafting Plaintiffs' Objection and Response to Syngenta Defendants' Motion to Transfer and Consolidate Under Illinois Supreme Court Rule 384 (granting Plaintiffs' request that all cases be transferred and consolidated for pre-trial purposes only in Williamson County);
- Requesting issuance of foreign service subpoenas, researching long-arm statute and filing of various alternative service motions, and coordinating with a third-party vendor to perfect service on the foreign Syngenta defendants through the Hague Convention;
- Preparing for hearings on various motions;
- Strategizing over the scope of Syngenta's responses to Plaintiffs' discovery requests;
- Attending case management conferences;
- Coordinating and assisting in the selection of Plaintiffs' experts;

- Meeting with Plaintiffs' liability and damages experts;
- Preparation of expert reports;
- Assignment of Syngenta's custodian of records document review tasks;
- Reviewing over one million pages of Syngenta's document production;
- Preparing Oppositions to Transfer to the Kansas MDL and Motion to Vacate and Memorandum in Support (Specific to *Tweet*);
- Researching case law and drafting consolidated complaints and amendments to pleadings (Specific to *Tweet*);
- Researching and drafting Plaintiffs' Nomination for Appointment of Special Master (Specific to *Tweet*);
- Leading the team in its push against Syngenta on discovery, including participating in numerous meet-and-confers with Syngenta and drafting motions to compel; and
- Speaking with farmer clients daily to gather additional evidence against Syngenta and to ultimately keep farmers informed (ongoing).

In addition to advancing our clients' claims in the various jurisdictions throughout the United States, we simultaneously supported and coordinated with leadership in other jurisdictions throughout the course of this litigation to ensure the seamless prosecution of claims against Syngenta. This coordinated effort supported the litigation's overall drive to achieve expeditious and advantageous settlement results. Specifically, the Illinois Leadership Group's commitment to

aggregate settlements with the Kansas Leadership Group<sup>1</sup> and the Minnesota Leadership Group<sup>2</sup> resulted in remarkable outcomes for those injured by Syngenta's conduct, as discussed below.

### **III. THE NOVELTY AND DIFFICULTY OF QUESTIONS PRESENTED**

Because the class actions against Syngenta involved the first claims of this nature against Syngenta, the Illinois Leadership Group pioneered theories of liability not previously seen in agricultural litigation. Specifically, the Illinois Leadership Group zealously advanced this primary liability theory against Syngenta that “due to the inter-connected nature of the industry and market, manufacturers and growers [had a duty to] . . . act at least in part for the mutual benefit of all in that inter-connected web.” MDL Order No. 2591 at 10. Under our theory, the failure of Syngenta to obtain foreign approval prior to sale violated this duty.

In addition to those claims brought against Syngenta, the Illinois Leadership Group also pursued claims against ADM, Bunge, Cargill, Louis Dreyfus Commodities, and Gaviola (collectively, “ABCDG Defendants”), large, sophisticated international agribusinesses which regularly export crops to foreign markets, including China. The ABCDG Defendants maintain networks of “grain elevators, grain handling and processing facilities, and transportation assets” that are used to buy, segregate, store, clean, process, transport, and sell agricultural commodities, including corn. The Illinois Leadership Group alleged the ABCDG Defendants failed to take reasonable steps to protect industry stakeholders, including American farmers, against the foreseeable harm that would result upon the detection of *Vipera* in U.S. export shipments to China,

---

<sup>1</sup> When used herein, the term “Kansas Leadership Group” includes: Stueve Siegel Hanson LLP, Gray Ritter & Graham, PC, Gray Reed & McGraw, LLP, Hare Wynn Newell & Newton, Bolen Robinson & Ellis, Sidley Austin LLP, Simmons Hanley Conroy, Greene Espel PLLP, Paul McInnes, LLP and Paul LLP (Kansas work), Lockridge Grindal Nauen (Kansas work), Emerson Poynter LLP, Seeger Weiss Law Firm, Walters Bender Strohbehn & Vaughn, PC, their attorneys and staff, and all referring counsel.

<sup>2</sup> When used herein, the term “Minnesota Leadership Group” includes: Gustafson Gluek PLLC, Bassford Remele, Schwebel Goetz & Sieben, P.A., Paul McInnes LLP and Paul LLP (Minnesota work), Kemp, Jones & Coulthard, LLP, Wagstaff & Cartmell, LLP, Lockridge Grindal Nauen (Minnesota work), Paul Byrd Law Firm PLLC, their attorneys and staff, and all referring counsel.

specifically the loss of the Chinese market to U.S. corn. The lawsuits against the ABCDG Defendants required Syngenta to defend thousands of claims throughout Illinois, in addition to those claims brought in Kansas and Minnesota. By forcing Syngenta to face unique litigations in at least four primary jurisdictions (Kansas, Minnesota, Illinois federal court, and Illinois state court), the coordination between lead counsel in these four venues constrained Syngenta's ability to defend the universe of claims.

Due to the novel and complex nature of the legal theories against Syngenta, this action presented substantial challenges from the outset of the case. The Syngenta litigation involved challenges atypical to genetically-modified organism ("GMO") litigation because, unlike previous GMO cases, Syngenta obtained approval to sell the Viptera and Duracade seeds in the United States, but **not** in foreign markets. For the first time in GMO litigation, a defendant could argue that domestic approval of the grain, even without foreign approval, absolved the defendant of liability. This defense theory created a significant risk of adverse outcomes for the Illinois Leadership Group's clients and class representatives.

Since the litigation's inception, counsel for Syngenta mounted a vigorous and aggressive defense against plaintiffs' claims, including multiple motions to dismiss, countless discovery and coordination motions, and extensive class certification proceedings, including an appeal to the Tenth Circuit. Syngenta's defense efforts caused the Illinois Leadership Group to expend a significant amount of time and financial resources to effectively prosecute and protect the interests of the group's clients. All of this **ultimately required** that the Illinois plaintiffs be included for any potential global resolution.

#### IV. **MERITS DISCOVERY/DOCUMENTS PRODUCED BY SYNGENTA**

By serving as co-lead counsel in *Tweet*, *Browning*, and the Ethanol cases, in addition to Clayton A. Clark's service on the PSNC, the Illinois Leadership Group was able to contribute

substantial value to all Syngenta litigants. The Illinois Leadership Group, on its own initiative, contracted with a discovery litigation service that allowed the group's attorneys to review Syngenta's documents. Our team's commitment to discovery in the Syngenta litigation, which involved the production of over three-hundred thousand records, demonstrated the group's initiative to not only prosecute cases independently and vigorously, but also assist all litigants in the prosecution of their claims.

The Illinois Leadership Group propounded detailed discovery requests, engaged in a meet-and-confer process with Syngenta on the scope of discovery, and ultimately reviewed and analyzed over one million pages of Syngenta-produced documents. The Illinois Leadership Group served its first and second sets of discovery requests and interrogatories on Syngenta in Illinois federal in 2016. In *Browning*, the Illinois Leadership Group served three sets of discovery requests on or about March 8, 2016, September 15, 2016, and January 4, 2017. Syngenta's objections to the Illinois Leadership Group's discovery requests prompted multiple meet-and-confer conferences about the scope and manner of the document production, including search terms and the protocol for electronically stored information ("ESI"). Our team succeeded during these discovery conferences with Syngenta, obtaining the preferred method and format for producing liability documents. This methodology was unique to previous attempts.

Syngenta produced documents to the Illinois Team with multiple supplementations. Formatted by individual Custodians of Record, the document production contained liability documents from Syngenta's most knowledgeable representatives:

<b><u>Syngenta Custodians of Records</u></b>		
1. Jessica Adelman	2. Miloud Arraba	3. Jack Bernens
4. Steve Berreth	5. Jeff Bottoms	6. Dan Burdett
7. Pierre Cohadon	8. Jeff Cox	9. Ken Dallmier
10. David Guyer	11. Marshall Kostiuk	12. Chuck Lee
13. Kevin Macken	14. Ozipleo Mader	15. Tracy Mader

16. Duane Martin	17. Scott McClain	18. Andrew McConville
19. Yu Zhang Meng	20. David Morgan	21. Lars Oestergard
22. John Ramsay	23. Dave Roberts	24. Jonathan Seabrook
25. Quinn Showater	26. Jonathan Sullivan	27. Eric Taylor
28. Tim Tierney	29. Ponsi Trivisvavet	30. Abby Vulcan
31. Jill Wheeler	32. Theresa Wismer	33. Claire Xu
34. Lawrence Zeph	35. Meng Yu Zhang	36. Yong Shen Zhang
37. Jingwen Chen	38. Rachel Gast	39. Dawn Hermel
40. Scott Huber	41. Corey Huck	42. Sarah Hull
43. Mike Mack	44. Rex Martin	45. Paul Minehart
46. Staci Monson	47. David O'Reilly	48. Grant Ozipko
49. Davor Pisk	50. Terese Rennie	51. Mark Sather
52. Pat Steiner	53. Iris Tzafrir	54. Demetra Vlachos
55. Dennis Ward	56. Helen Yu	57. Lisa Zannoni
58. Eddie Zhue		

The Illinois Leadership Group assembled a team of experienced attorneys to review and analyze the production. While reviewing Syngenta's document production, the Illinois Leadership Group identified legal theories of liability, developed themes for corporate representative depositions, and ultimately prepared liability themes for trial.

To facilitate a cost effective and time-efficient document review process, a third-party vendor, Avansic, maintained all produced documents in an electronic database. The electronic database's analytical and searching tools allowed the team to focus and analyze the most relevant documents. Specifically, the platform de-duped duplicate productions for each custodian, which narrowed the universe of documents for the Illinois Leadership Group's document reviewers. Once narrowed, attorneys from the Illinois Leadership group conducted targeted searches on each custodial file to identify relevant and hot documents. The Illinois Leadership Group implemented quality guidelines and protocols that governed the document review to ensure a dynamic and high-quality review.

Our document review team also participated in frequent meetings with the group's senior attorneys to discuss important liability documents, discovery preparation efforts, and litigation



strategy. These meetings involved discussions and deliberations on complex subject matters, like economic loss theories, foreign trade issues, Chinese agriculture regulations, and asynchronous approval, stewardship, testing and detection methods. In addition, the attorneys on the Illinois Leadership Group's document review team coordinated with the plaintiffs' experts to provide liability documents pertinent to each expert's opinions. It was our intention and expectation to execute the handling of our docket at the highest level of competence.

The Illinois Leadership Group committed vast financial and attorney resources to develop liability theories and potential third-party claims in the Syngenta litigation for the ultimate benefit of litigants in the MDL, Illinois federal court, Illinois state court, and Minnesota state court. The Illinois Leadership Group's discovery contributions created an avenue for Syngenta to pursue theories of liability and shared responsibility against the grain trade companies. Our team's concerted litigation strategies and discovery efforts pressured Syngenta, we believe, to ultimately settle in mass, with our inclusion mandatory, across the country.

**V. EXPERT WITNESSES**

The Illinois Leadership Group met with and retained numerous experts to offer opinions in support of the Illinois Leadership Group's various liability and damage theories against Syngenta. After learning of China's first rejection of United States' corn, Martin Phipps of the Illinois Leadership Group began retaining the most respected group of agricultural economic experts throughout the country with special emphasis on the Midwest. Mr. Phipps and the Illinois Leadership Group ultimately retained the following experts to assist in the investigation and prosecution of claims against Syngenta:

1. **Henry L. Bryant** received his Ph.D. in Agricultural Economics from Texas A&M University. He currently is a Research Associate Professor in the Department of Agricultural Economics at Texas A&M University where his research focuses on agricultural policy, commodity marketing, and risk management. He has previously taught the Department's undergraduate commodity futures and options course. Bryant was expected to offer expert opinion in commodity marketing and risk managements, applied market modeling and policy analysis and causal inference.
2. **B. Wade Brorsen** received his Ph.D. in Agricultural Economics from Texas A&M University in 1983. He currently is an Associate Professor in the Department of Agricultural Economics at Oklahoma State University where his research focuses on agricultural commodities, advanced econometrics and advanced productions. He has many years of experience in estimating the effect of various factors on agricultural prices. Brorsen was expected to offer expert opinion in agricultural price analysis and applied econometrics.
3. **Jeffrey H. Dorfman** earned his Ph.D. in Agricultural Economics from the University of California, Davis in 1989. From 1998-2000 he was the founding director of the Center for Agribusiness and Economic Development at The University of Georgia. He currently is a professor in the Department of Agricultural & Applied Economics at The University of Georgia. In 2000, he testified before the United States Senate Committee on Agriculture. Dorfman was expected to offer expert opinion in econometrics and statistics that is applied to agricultural commodity prices.
4. **Stephen A. Ford** earned his Ph.D. in Agricultural and Applied Economics from the University of Minnesota in 1987. Prior to moving to Sewanee in 2000, he was on the faculties of the University of Florida and Penn State University. He currently is a manager of a family farm in Alabama and teaches part-time in the Economics Department at the University of the South, having taught Finance, International Development, International Trade, Economics of Food Policy, and Mathematical Economics, and the departmental Policy Seminar among other courses. He has served on the board of the Southern Cotton Growers Association and the National Center for Food and Agricultural Policy. He was an expert in rice commodity market loss in the Bayer Genetically Modified Rice Litigation. He has also served as an expert witness on agricultural damages in over 30 legal cases. Ford was expected to offer expert opinion in agricultural economics in general, farm management, and price effects of market shocks.

5. **Matthew T. Holt** earned his Ph.D. in Agricultural Economics from the University of Missouri, Columbia in 1987. He is currently the Department Head of Economics, Finance and Legal Studies, Dwight Harrigan Endowed Faculty Fellow in Natural Resource Economics and Professor of Economics at the University of Alabama. His recent research has focused on estimating, testing, and forecasting systems of theoretically consistent inverse demand equations, most notably in the context vessel-level demands for fish, and the development, application, and testing of non-linear time series models to commodity and natural resource markets. Holt was expected to offer expert opinion in applied time series econometrics with a focus on nonlinear models, price analysis and futures markets.
  
6. **Alan P. Ker** earned his Ph.D. in Economics and Statistics from North Carolina State University in 1996. Alan worked as a professor in the Department of Agricultural and Resource Economics at the University of Arizona. He obtained his Master of Science in Agricultural Economics from the University of Guelph. In 2009, Ker joined the Department of Food, Agricultural and Resource Economics as Chair and Professor. In September 2014, Alan stepped down from Chair and became Director of the Institute for the Advanced Study of Food and Agricultural Policy. Research areas include applied and theoretical nonparametric econometrics, risk management/insurance, technological change, climate and their effects on crop yields, political economy and trade. Ker was expected to offer expert opinion in econometrics, price analysis and futures markets.
  
7. **Robert J. Myers** earned his Ph.D. in Agricultural Economics from the University of Minnesota in 1986. He joined the faculty at Michigan State University that same year to undertake research and teaching in the areas of commodity market analysis and agricultural policy. He is currently a tenured Distinguished Professor of Agricultural, Food and Resource Economics. His primary research focus has been on risk management in agriculture, with an emphasis on market-based mechanisms for risk management, such as futures, options and crop insurance. Myers was expected to offer expert opinion in econometrics, price analysis and futures markets.

8. **James W. Richardson** earned his Ph.D. in Agricultural Economics from Oklahoma State University in 1978. He is currently the Regents Professor of Agricultural Economics where he has research and graduate teaching and responsibilities in public policy and simulation analysis. His research has attracted national recognition by emphasizing quantitative, risk-based policy analyses through the use of farm-level simulation models (FLIPSIM). He has testified before the U.S. Congress four times. His most recent testimony before the House Agriculture Committee was in 1995. In addition, he has made more than 50 presentations to the House and Senate Agriculture Committees on the economic outlook for U.S. agriculture since 1990. These presentations have been in formal meetings involving the Chief Economists and staffers. He has made more than a dozen presentations to individual Congressmen and Senators regarding the economic outlook for agriculture under alternative farm programs and income tax policies. During the 2014 farm bill debate, which started September 2011, he provided more than 50 confidential analyses of the alternative farm program options requested by the Chief Economists for the House and Senate Agriculture Committees considered by the House and Senate Agriculture Committees. He regularly advises farm commodity organizations on the economic impacts of alternative farm programs on farmers across the United States. He maintains a model for analyzing the economic impacts of policy changes on the economic viability of more than 98 representative farms across the United States. This model and data set have been used to assist Congress write every farm bill dating back to 1985. Richardson was expected to offer expert opinion in commodity marketing and risk managements, applied market modeling, and policy analysis and causal inference.
  
9. **J. Scott Shonkwiler** earned a Ph.D. in Agricultural Economics from the University of Missouri in 1979. He currently is a Professor in the Department of Agricultural and Applied Economics at the University of Georgia. He began his work at the University of Florida by studying the markets for specialty crops and developing supply response models. In 1991, Shonkwiler joined the University of Nevada's Agricultural Economics Department. He became interested in revealed preference methods for non-market valuation with particular attention to recreation demand modeling. In addition to his contributions as a researcher, teacher, colleague and mentor, Shonkwiler has provided significant service to the profession as an Associate Editor of the American Journal of Agricultural Economics and as Editor of the Journal of Agricultural & Resource Economics. Lastly, he served as the chairman of the Resource Economics Department at the University of Nevada from 2009 until its unfortunate dissolution in June 2011. Shonkwiler was expected to offer expert opinion in applied econometrics with an emphasis on recreation demand and non-market valuation, commodity market models, and firm behavior.

10. **H. Holly Wang** earned her Ph.D. in Agricultural Economics from Michigan State University in 1996. She is currently the Professor and Associate Professor in the Department of Agricultural Economics at Purdue University. Her research has been focused on agricultural risks, derivative markets, and crop insurance for domestic issues and food marketing and safety for international issues. She has advised over ten Ph.D. students whom are now faculty members in major U.S. and international research universities and economists in the finance industry. She has taught Ph.D. level courses in supply and demand systems, decision analysis, and marketing; Master level courses in econometrics and agribusiness marketing; as well as undergraduate courses in corporate finance and Chinese economy. She has established herself as a known scholar in agricultural economic issues with even further expertise regarding Chinese markets. She travels to China frequently and has developed a broad professional network. She served as past President of Chinese Economists Society in 2009, a U.S. based organization focusing on the research of Chinese economic issues and founding Chair for China Section of Agricultural and Applied Economics Association in 2010. Wang was expected to offer expert opinion in China's agricultural economics issues, particularly those relevant to US trade, including: Chinese consumer preferences on food quality and safety, especially animal protein-based commodities like meat, poultry and dairy, imported commodities; Chinese grain market, grain production and subsidy, and food security policies; Chinese commodity futures market, and agricultural insurance.
11. **Maurice House** worked for the United States Department of Agriculture through the Foreign Agricultural Service division as an advocate for taxpayers and farmers for over twenty (20) years. During his career, Mr. House directly negotiated with the Chinese Minister of Agriculture, gaining expertise in China's biotechnology approval. House was expected to offer expert opinion that biotechnology companies should not commercialize genetically modified seeds prematurely under the industry's standard of care and should follow good stewardship practices once commercialization begins.
12. **Dr. A. Bryan Endres** is a professor of Agricultural and Consumer Economics with the University of Illinois, who studies the impact of law throughout food and bio-products supply chains and develops solutions to improve regulatory outcomes. He also received his J.D. from the University of Illinois. Endres was expected to offer expert opinion that Syngenta, without informing farmers of the pending approval in China, breached the industry's standard of care when it prematurely marketed Vipitera and Duracade to farmers because it exposed farmers to the significant financial risk of losing the Chinese market.

13. **David Hightower** is a founding principal of the Hightower Report, a commodity research and information corporation, specializing in high quality research and analysis for commercial players, producers, governments, individual investors, brokers, and end users. The Hightower Report provides daily market coverage, hedge strategy and trading advice to four global commodity exchanges, six governmental agencies, forty-five brokerage firms and three quote/news vendors. Hightower was expected to offer expert opinion on the nature and extent of the plaintiffs' economic injuries and overall trade disruptions attributable to Syngenta's premature commercialization of Viptera and Duracade.

## **VI. SETTLEMENT DISCUSSIONS**

Clayton A. Clark of the Illinois Leadership Group was one of four members appointed to the PSNC by the MDL Court. As discussed in greater detail in Mr. Clark's Declaration, his role on the PSNC was instrumental in securing a global resolution with Syngenta. After the PSNC's creation, Mr. Clark helped to negotiate the term sheet which memorialized the framework and primary endpoints for the Syngenta settlement, and which ultimately included adequate terms for non-class litigants in state court. Subsequently, in October 2017, Mr. Clark worked with Special Masters Reisman and Stack to begin drafting the terms of the Master Settlement Agreement. The negotiations to convert the term sheet into a master settlement agreement required months of difficult negotiations during which Mr. Clark remained unwavering in his fight to include the basic tenets of protections for state court litigants.

The work of Mr. Clark and his fellow PSNC members culminated in the execution of a master settlement agreement that covered all Syngenta claimants. In addition, two (2) of the four (4) subclasses for grain handling facilities and ethanol facilities included in this settlement exist because of the litigation strategies implemented by the Illinois Leadership Group in multiple venues. The inclusion of these subclasses provided the opportunity for a truly global settlement with Syngenta. It should be noted that throughout the months of challenging negotiations,

Syngenta made clear that the Illinois Leadership Group was a required signatory for any settlement.

In addition to Mr. Clark's efforts, I also attended and participated in settlement meetings in Chicago and Washington D.C. prior to a settlement being reached with Syngenta. During these meetings, intense debate occurred on the essential terms necessary to reach an amicable resolution of all claims against Syngenta. After continued negotiations over several months, the parties were ultimately able to reach an accord on these terms.

## **VII. THE CONTINGENT NATURE OF THE FEE**

In the Syngenta litigation, the Illinois Leadership Group was retained by its clients under a 40% contingency fee basis.<sup>3</sup> The Illinois Leadership Group's fee depended on a successful outcome for our clients. From the outset, we understood that we were embarking on a complex, expensive, and lengthy litigation with no guarantee of ever being compensated for the substantial investment of time and money. In undertaking this responsibility, the Illinois Leadership Group dedicated sufficient resources to ensure the effective prosecution of these cases.

In bearing the risk of **NO** recovery, the Illinois Leadership Group vigorously and competently advocated for the group's clients. However, even the most vigorous and competent of efforts cannot ensure success in contingent-fee cases, like the Syngenta litigation. The Illinois Leadership Group knows from experience that the commencement of litigation does not guarantee a settlement. Due to the substantial demands of this case, both in terms of time and expense, the Illinois Leadership Group has foregone other substantial opportunities. Specifically, Meyers & Flowers devoted extensive resources and experience to this litigation, to the exclusion of other

---

<sup>3</sup> Some of our clients retained our services at a different fee rate. Rates varied based upon the circumstances and referring attorney, but some clients retained our services for one-third (1/3) of any recovery *plus* costs and expenses.

potential medical device and pharmaceutical litigation, including, but not limited to cases involving Proton Pump Inhibitor, Bair Hugger, and Abilify.

In addition to foregoing other opportunities, my firm made a substantial financial commitment to the Syngenta litigation. Meyers & Flowers committed more than \$5 million in costs and resources to the Syngenta litigation. As part of this financial commitment, my firm advanced individually \$87,310.52 in expenses that we assert should be reimbursable from the common fund. Importantly, the Claims Handling Center in San Antonio, consisting of several dozen employees managed by the Phipps Anderson Deacon Law Firm, directly handled our farmers' claims, including securing wet ink signatures on all opt-out forms. My firm's commitment to cover the costs of pursuing our clients' claims diverted funds that could have been utilized in other litigations.

The Illinois Leadership Group ultimately contributed to a global settlement in the Syngenta litigation, overcoming the significant liability and damages obstacles. But-for the PSNC's settlement, the Illinois Leadership Group faced years of trial and appellate litigation against Syngenta, with a significant prospect of no recovery and the ultimate outcome far from certain.

#### **VIII. ATTORNEY SKILL AND EXPERIENCE**

Meyers & Flowers has established itself as a national law firm litigating mass actions against some of the most powerful corporations in the world. I personally have been appointed as lead or co-lead counsel on many large-scale mass torts over the past twelve years. In each case the result, either through trial or settlement, has been substantial for our clients and all plaintiff litigants. Overall, in my various leadership roles during this time, I have assisted in recovering nearly seven billion dollars on behalf of injured plaintiffs.

A list of some of my firm's recent successes and my leadership appointments of in complex litigation includes:



- 2006 Lead Counsel DePuy Spine Charite Artificial Disc Replacement Litigation  
Brown v. DePuy Spine, Inc. 06-0224  
(Massachusetts State Court)  
**Resolved for a confidential sum**
  
- 2011 Illinois Lead Counsel In Re: DePuy ASR Hip Litigation  
(Cook County, Illinois)  
**Settled for \$3 billion**
  
- 2011 Liaison Counsel In Re: Zimmer NexGen Implants Products Liability Litigation, MDL 2272  
(Chicago, Illinois)  
**Pending**
  
- 2012 Plaintiff Steering Committee and Chairperson of Science Committee In Re: Biomet M2a  
Magnum Hip Implant Products Liability Litigation, MDL 2391  
(South Bend, Indiana)  
**Settled for \$56 million**
  
- 2012 Illinois Co-Lead Counsel In Re: Actos Litigation  
(Cook County, Illinois)  
**Settled for \$2.4 billion**
  
- 2012 Plaintiff Executive Committee In Re: Pradaxa (Dabigatran Etexilate) Products Liability  
Litigation, MDL 2385 (East St. Louis, Illinois)  
**Settled for \$650 million**
  
- 2013 Chairperson of Lead Counsel Committee In Re: Stryker Rejuvenate and ABGII Hip Implant  
Products Liability Litigation (St. Paul, Minnesota)  
**Settled for \$1.43 billion**
  
- 2015 Illinois Lead Counsel Lac-Megantic Train Derailment Litigation  
(Chicago, Illinois)  
**Settled for \$200 million**
  
- 2016 Illinois Lead Counsel Syngenta GMO Corn Seed Litigation  
(Williamson County, Illinois)  
**Pending**
  
- 2017 Co-Lead Counsel In Re: Stryker V40 Femoral Head Products Liability Litigation  
(Massachusetts)  
**Pending**
  
- 2018 Co-Lead Counsel In Re: Illinois Prescription Opiate Litigation  
(Cook County, Illinois)  
**Pending**

Additionally, in each of these litigations, I have worked cooperatively with both plaintiff and defense counsel to ensure just and ethical results. The experience gained by this prior work has allowed me to assist in the resolution of this matter.

In the Syngenta litigation, Meyers & Flowers' partners, including myself, have contributed innumerable hours of combined common fund work throughout the MDL, *Tweet*, and *Browning* litigations:

<b>Peter J. Flowers</b>	<b>Experience</b>	<b>25 years</b>
Over the past two decades, Mr. Flowers has specialized in litigating complex mass tort, medical device, and pharmaceutical litigation. He is a national trial lawyer with extensive state, federal, and multidistrict litigation experience. During this time, he has been court-appointed in various leadership posts, including those as lead counsel in several MDL and state coordinated proceedings. Mr. Flowers and his firm have earned a nationwide reputation for successfully developing and litigating mass tort actions, as well as coordinating and resolving complex litigation against many of the largest corporations in the world.		
<b>Ted A. Meyers</b>	<b>Experience</b>	<b>31 years</b>
Mr. Meyers' litigation efforts are concentrated on pleading and motion practice in complex mass tort, personal injury and commercial litigation. Mr. Meyers and his firm have earned a nationwide reputation for successfully developing and litigating mass tort actions, as well as coordinating and resolving complex litigation against many of the largest corporations in the world.		
<b>Ryan P. Theriault</b>	<b>Experience</b>	<b>11 years</b>
Active in the litigation of product liability cases for over a decade, Mr. Theriault focuses his practice on product liability and other complex litigation in both state and federal Courts. Mr. Theriault has brought numerous cases to conclusion through aggressive advocacy and thorough preparation. Additionally, he is responsible for the firm's mass tort litigations, including the management and oversight of all pre-trial discovery efforts.		
<b>Michael W. Lenert</b>	<b>Experience</b>	<b>10 years</b>
Throughout his career, Mr. Lenert has developed a reputation for being an experienced and talented civil litigator. Mr. Lenert has successfully represented numerous corporate and individual clients in both state and federal courts throughout the country. Mr. Lenert routinely works on the development of sophisticated liability themes, pretrial and trial of significant cases for the firm.		
<b>Frank V. Cesarone</b>	<b>Experience</b>	<b>6 years</b>
Attorney Frank Cesarone specializes in the litigation of complex medical device and pharmaceutical litigation, routinely deposing experts for many of the largest corporations in the world. During his career, Mr. Cesarone has tried both criminal and civil cases to verdict.		

Meyers & Flowers' "of counsel" attorneys also contributed extensive common fund work across the MDL, *Tweet*, and *Browning* litigations.

<b>David R. Nordwall</b>	<b>Experience</b>	<b>25 years</b>
Mr. Nordwall has served as principal brief writer on many of the firm's most complex and novel cases over the past decade. Throughout his twenty-five-year career, Mr. Nordwall has prosecuted and defended appeals in a wide variety of subjects, including torts, breach of contract, and other commercial wrongs. In addition to his appellate work, Mr. Nordwall has extensive experience successfully representing individuals and businesses in a wide variety of cases nationwide.		
<b>Brian J. Perkins</b>	<b>Experience</b>	<b>15 years</b>
Mr. Perkins has served in various leadership capacities over the last decade in multiple MDL and coordinated actions. He has successfully developed and litigated mass tort actions and resolved complex litigation against pharmaceutical and device manufacturers alike. During his career, Mr. Perkins has tried over two hundred cases to verdict, thirty-five of which were jury trials.		

Meyers & Flowers' associate attorneys contributed countless hours of combined common fund work across the MDL, *Tweet*, and *Browning* litigations.

<b>Name</b>	<b>Experience</b>
Jennifer Gelman	12 years
Kimberly Brancato	4 years
Jeffrey Reed	2 years
<b>Total</b>	<b>18 years</b>

#### **IX. FEES, EXPENSES AND DIVISIONS**

Since the case began in 2014, Meyers & Flowers has not received any compensation during the course of this litigation. Meyers & Flowers has devoted more than 5,000 hours of attorney work product to the Syngenta litigation:

<b>NAME</b>	<b>HOURS</b>	<b>RATE</b>	<b>TOTAL</b>
Peter Flowers	685.9	950.00	\$651,605.00
Ted Meyers	196.7	950.00	\$186,865.00
Michael Lenert	696.6	700.00	\$487,620.00
Ryan Theriault	318.68	700.00	\$223,076.00
Jennifer Gelman	855.1	500.00	\$427,550.00
David Nordwall	304.26	700.00	\$212,982.00
Frank Cesarone	435.1	700.00	\$310,940.00

Kimberly Brancato	893.3	500.00	\$446,650.00
Jeffrey Reed	555	500.00	\$277,500.00
Brian Perkins	95.7	700.00	\$66,990.00
<b>TOTALS</b>	<b>5,045.4</b>		<b>\$3,293,143.00</b>

Including Meyers & Flowers' hours, the Illinois Leadership Group is seeking compensation for the 138,430.90 hours our team collectively devoted towards prosecuting claims against Syngenta.<sup>4</sup>

Meyers & Flowers incurred \$87,310.52 in costs and expenses related to the Syngenta litigation between January 1, 2014 and May 21, 2018. Including Meyers & Flowers' costs and expenses, the Illinois Leadership Group seeks reimbursement for a total of \$7,665,415.73 in costs and expenses incurred during this litigation.<sup>5</sup> The expenses incurred in litigating this matter are reflected in our firms' books and records. These books and records are prepared from expense vouchers, receipts, and check records and other source materials and accurately reflect the expenses incurred.

At all times throughout this litigation, the Illinois Leadership Group have worked efficiently and made every effort to avoid wasting time or duplicating effort. In my experience, the total lodestar reported above is reasonable for a case of this nature (involving large claims and several years of litigation against sophisticated defendants). Many hours and hundreds of thousands of dollars were expended to oversee the litigation, make strategy decisions, draft, edit, review millions of pages of discovery documents, research complex issues, attend multiple status

---

<sup>4</sup> Upon the Court's request, the Illinois Leadership Group can provide time records compiled throughout the Syngenta litigation detailing each biller's work activities and associated time.

<sup>5</sup> Upon the Court's request, the Illinois Leadership Group can provide expense records compiled throughout the Syngenta litigation detailing each claimed expense.

conferences in Illinois state and federal courts, and conduct myriad hours of settlement negotiations.

### **AWARD OF THE GENERAL FUND**

In reliance on the above declaration, I, Peter J. Flowers, along with the Illinois Leadership Group, respectfully petition the Court to award one-third (1/3) of the gross Syngenta Agrisure Viptera/Duracade class settlement fund weighted to the three groups of attorneys whose combined efforts created and preserved the common fund, and to other firms to be nominated at a later date following this submission.

### **Fee Sharing Agreement**

In addition to working cohesively to globally resolve the Syngenta litigation, the Kansas Leadership Group, Illinois Leadership Group, and Minnesota Leadership Group executed an agreement on or about February 23, 2018, entitled “Fee-Sharing Agreement, Syngenta MIR 162 Litigation” (“Fee-Sharing Agreement”). This necessary agreement proposes to divide Court-awarded attorney’s fees amongst the group. *See* Exhibit 1 to Decl. of Clayton A. Clark, Fee-Sharing Agmt., Syngenta MIR 162 Litig., at 1-2 (Feb. 23, 2018). Consistent with the Fee-Sharing Agreement, we request – ***at a minimum*** – the Court award fees as follows:

1. Kansas Leadership Group – 50%;
2. Illinois Leadership Group – 17.5%; and
3. Minnesota Leadership Group – 12.5%. *Id.*

The Kansas Leadership Group, Illinois Leadership Group, and Minnesota Leadership Group support these allocations as their *minimum* fees, in accordance with the Fee-Sharing Agreement. *See Id.*

### **Remaining 20% and Expenses**

With respect to allocating the remaining twenty percent (20%) of the fee award and expense analysis, I, Peter J. Flowers, and the Illinois Leadership Group uniformly and respectfully request the Court refer the matter for Report and Recommendation to the Special Masters to implement a process to obtain written documentary submissions and other procedures to recommend an allocation of fees and expenses. Special Masters Reisman and Stack possess intimate knowledge of the litigation because of their active oversight and supervision of the general litigation and settlement negotiations for years. The Special Masters directly participated in negotiations over attorneys' fees for over a year, gaining special, unbiased knowledge, expertise, and unique perspective with respect to how these fees and expenses should be divided. In 2016, this Court appointed Special Master Reisman to "assist the court in efficiently coordinating settlement discussions in these proceedings." ECF No. 1745, at 2. In 2016, Judge Herndon and Judge Bleyer appointed Special Master Stack to facilitate and coordinate discovery between the federal and state litigations in Illinois. After both facilitated this settlement, Special Masters Reisman and Stack were appointed by this Court on April 10, 2018 to assist in the administration of the class settlement. ECF No. 3532, at 2. Referral for allocation recommendations achieves the purposes for which the Court appointed the Special Masters.

In addition, referral to the Special Masters for a recommendation on the allocation of the remaining twenty percent (20%) and expenses to be reimbursed accomplishes several important goals. *First*, referral infuses the process with literally years of knowledge related to the litigation and counsel that provided important contributions to the ultimate settlement outcome. *Second*, referral provides every person seeking fees or reimbursement of expenses an opportunity to provide submissions about why they deserve a portion of the fees – without burdening the Courts with three separate, time-consuming procedures. *Finally*, an initial recommendation from the

Special Masters allows the Courts to accept reports and recommendations, which essentially guarantees all potential applicants a full and fair opportunity to be heard.

**X. CONCLUSION**

In view of the significant recovery in the face of substantial risks, the quality of work performed, the contingent nature of the fee, the extraordinary experience of the Illinois Leadership Group, and the unique nature of our integral role in assisting with the global settlement by bringing together otherwise unaligned litigation groups, as described above, I respectfully request that the Court grant the Illinois Leadership Group's Fee and Expense Application that requests the award of attorney's fees and reimbursement of litigation expenses.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 10<sup>th</sup> day of July 2018.



---

Peter J. Flowers

# Exhibit G



**UNITED STATES JUDICIAL PANEL**  
**on**  
**MULTIDISTRICT LITIGATION**

**IN RE: SYNGENTA AG MIR162  
CORN LITIGATION**

MDL No. 2591

**TRANSFER ORDER**

**Before the Panel:**\* Plaintiffs in an action in the Northern District of Illinois move under 28 U.S.C. § 1407 to centralize pretrial proceedings in the Northern District of Illinois. These cases concern the Syngenta defendants’<sup>1</sup> decision to commercialize corn seeds containing a genetically modified trait, known as “MIR162,” that reportedly controls certain insects. Corn with this trait has entered U.S. corn stocks but has not been approved for import by the Chinese government, which has imposed a complete ban on U.S. corn with this trait. Plaintiffs’ motion includes the nine actions in eight districts listed on Schedule A. Since plaintiffs filed this motion, the parties have notified the Panel of the filing of 168 potentially related actions in various districts.<sup>2</sup>

No party opposes centralization. Defendants suggest that the litigation be centralized in the District of Minnesota. Numerous plaintiffs have responded to the motion, variously suggesting centralization in the following districts: the District of Kansas, the Central, Northern, and Southern Districts of Illinois, the Northern and Southern Districts of Iowa, the District of Minnesota, and the Eastern District of Missouri.

After considering the argument of counsel, we find that the actions in this litigation involve common questions of fact, and that centralization in the District of Kansas will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Plaintiffs are corn growers and a grain exporter who suffered economic losses resulting from China’s refusal to accept MIR162 corn. All actions involve common factual questions regarding Syngenta’s decision to commercialize the MIR162 genetically modified corn trait in the absence of Chinese approval to import corn with that trait. As with past litigation involving allegedly improper dissemination of genetically

---

\* Judge Charles R. Breyer did not participate in the decision of this matter.

<sup>1</sup> Syngenta Corp., Syngenta Crop Protection, LLC, and Syngenta Seeds, Inc. (collectively Syngenta).

<sup>2</sup> These and any other related actions are potential tag-along actions. *See* Panel Rules 1.1(h), 7.1 and 7.2.

- 2 -

modified crops,<sup>3</sup> centralization will eliminate duplicative discovery; avoid inconsistent pretrial rulings, particularly on class certification; and conserve the resources of the parties, their counsel and the judiciary.

Although these cases could be centralized in any number of the suggested transferee districts, we are persuaded that the District of Kansas is an appropriate transferee district for this litigation. One action and three pending potential tag-along actions already are pending in this readily accessible district. By assigning this litigation to Judge John W. Lungstrum, we select a transferee judge who is well-versed in the nuances of complex, multidistrict litigation. We are confident that Judge Lungstrum will steer this controversy on a prudent course.

IT IS THEREFORE ORDERED that the actions listed on Schedule A and pending outside of the District of Kansas are transferred to the District of Kansas and, with the consent of that court, assigned to the Honorable John W. Lungstrum for coordinated or consolidated pretrial proceedings with the action pending there and listed on Schedule A.

PANEL ON MULTIDISTRICT LITIGATION



---

Sarah S. Vance  
Chair

Marjorie O. Rendell  
Ellen Segal Huvelle  
Catherine D. Perry

Lewis A. Kaplan  
R. David Proctor

---

<sup>3</sup> See *In re: Starlink Corn Prods. Liab. Litig.*, 152 F. Supp. 2d 1378 (J.P.M.L. 2001); *In re: Genetically Modified Rice Litig.*, 543 F. Supp. 2d 1375 (J.P.M.L. 2008); and *In re: Monsanto Co. Genetically-Engineered Wheat Litig.*, 978 F. Supp. 2d 1373 (J.P.M.L. 2013).

**IN RE: SYNGENTA AG MIR162  
CORN LITIGATION**

MDL No. 2591

**SCHEDULE A**

Eastern District of Arkansas

STRACENER FARMING COMPANY, ET AL. v. SYNGENTA AG, ET AL.,  
C.A. No. 4:14-00558

Central District of Illinois

TRANS COASTAL SUPPLY COMPANY, INC. v. SYNGENTA AG, ET AL.,  
C.A. No. 2:14-02221  
HADDEN FARMS, INC. v. SYNGENTA CORPORATION, ET AL.,  
C.A. No. 3:14-03302

Northern District of Illinois

MUNSON BROTHERS FARM, ET AL. v. SYNGENTA CORPORATION, ET AL.,  
C.A. No. 1:14-07806

Southern District of Illinois

BRIGGS, ET AL. v. SYNGENTA SEEDS, INC., ET AL., C.A. No. 3:14-01072

Northern District of Iowa

CRONIN, INC., ET AL. v. SYNGENTA CORPORATION ET AL, C.A. No. 5:14-04084

District of Kansas

MOLL v. SYNGENTA CORPORATION, ET AL., C.A. No. 2:14-02497

Western District of Missouri

CLAAS, ET AL. v. SYNGENTA CORPORATION, ET AL., C.A. No. 2:14-04267

District of Nebraska

VOLNEK FARMS, INC. v. SYNGENTA CORPORATION, ET AL.,  
C.A. No. 8:14-00305

# Exhibit H

MAY 22 2015

**FILED**

## STATE OF MINNESOTA

## IN SUPREME COURT

A15-0758

A15-0764

In re Syngenta Litigation.

## O R D E R

These matters are before the court pursuant to Minn. Gen. R. Prac. 113.03 for assignment to a single judge of all pending and future actions filed in Minnesota state courts against Syngenta Corporation, Syngenta Seeds, Inc., and related Syngenta entities (collectively “Syngenta”). Motions for assignment are brought by the plaintiffs in *Willers v. Syngenta Seeds, Inc., et al.*, No. 67-CV-15-147 (Rock Cnty. Dist. Ct.), and in *Koenig, et al. v. Syngenta Corp., et al.*, No. 43-CV-15-89 (McLeod Cnty. Dist. Ct.). The plaintiffs and proposed class representatives in *Jensen, et al. v. Syngenta Seeds, Inc.*, No. 27-CV-15-2419 (Hennepin Cnty. Dist. Ct.), also support assignment of these cases to a single district court judge. Finally, Syngenta agrees that all cases filed in Minnesota state courts should be assigned to a single judge. Syngenta also asks this court to stay the district court actions pending resolution of these motions.

In their motions and responses, the parties acknowledge that all of the cases against Syngenta in Minnesota district courts assert the same claims, based on the same conduct, in substantially identical complaints. They agree that assignment of all of these cases to a single judge, in a single county, will provide an efficient process for managing and

resolving these cases and will efficiently manage and preserve the resources of the parties and the judiciary. Because all are in agreement that assignment to a single judge is appropriate, the only issue is to which district the cases should be assigned.

The parties estimate that over 4,000 cases have been or will be filed in Minnesota's district courts, with cases filed or pending in many of Minnesota's 87 counties and in all but one of Minnesota's ten judicial districts. The Willers plaintiffs did not propose a specific district or county for assignment. The Koenig plaintiffs propose assignment to a judge in the Fifth, Seventh, or Eighth Judicial Districts, specifically in Faribault, Clay, or Kandiyohi counties. The Jensen plaintiffs and Syngenta propose assignment to a judge in either the Second Judicial District (Ramsey County) or the Fourth Judicial District (Hennepin County).

Exhibit A to the Koenig motion lists over 3,000 cases filed or "pending" against Syngenta in Minnesota's district courts. Of these cases, well over 1,000 are filed or pending in Hennepin County, the Fourth Judicial District. In addition, the parties estimate that another 1,000 to 1,500 cases against Syngenta will be remanded to Minnesota state courts from the pending federal multi-district litigation. *See In re Syngenta AG MIR 162 Corn Litig.*, MDL No. 2591, 2015 WL 2092435 (D. Kan. May 5, 2015). Exhibit B to the Koenig motion lists over 500 cases which were originally removed from Hennepin County District Court.

Assignment of the Syngenta cases to a single judge will further the interests of the parties and the judiciary by preventing inconsistent rulings, conserving the resources of the

witnesses, the parties, their counsel, and the judiciary, and facilitating the resolution of these cases. After consultation with the chief judges of Minnesota's judicial districts and the State Court Administrator, the court concludes that all current and future cases against Syngenta in Minnesota district courts should be assigned to a single judge in Hennepin County. Decisions regarding consolidation and other procedural issues, including a decision on Syngenta's motion to stay these cases for any period of time, are left to the discretion of the assigned judge. Further, the court concludes that the most efficient use of judicial resources requires that the assignment to Hennepin County be for all purposes, including pretrial and trial.

Based upon all the files, records, and proceedings herein,

**IT IS HEREBY ORDERED THAT:**

1. Pursuant to Minn. Gen. R. Prac. 113.03, and Minn. Stat. §§ 2.724, 480.16 (2014), the Honorable Thomas M. Sipkins of the Fourth Judicial District, having consented, is appointed to hear and decide all matters, including pretrial and trial proceedings, in the cases currently filed in any Minnesota state district court, or filed in the future in any Minnesota state district court, against Syngenta Corporation, Syngenta Seeds, Inc., or any related Syngenta entities, and asserting claims alleging that Syngenta unlawfully released or launched a genetically modified corn seed. In order to facilitate Judge Sipkins' appointment and later decisions, Syngenta is directed to submit, within a time and under conditions to be set by Judge Sipkins, a complete and verified list of all cases filed or pending in Minnesota state courts that are subject to this order.

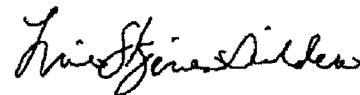
2. Pursuant to Minn. Stat. § 542.11(4) (2014), venue of any case currently filed or pending against Syngenta in a Minnesota state district court other than Hennepin County is hereby transferred to Hennepin County District Court.

3. To facilitate the identification and management of these cases, and subject to further directions or orders by Judge Sipkins, all documents served and filed from the date of this order shall, in addition to the individual case caption, bear the general case caption, “In re Syngenta Litigation.”

4. The motion of the U.S. Syngenta Defendants for an interim stay of all actions filed in Minnesota district courts is denied without prejudice to renewing that motion before Judge Sipkins.

5. The Clerk of Appellate Courts shall provide a copy of this order to Judge Sipkins, the chief judges of Minnesota’s judicial districts, the district administrators for the judicial districts, and the State Court Administrator.

Dated: May 22, 2015



Gildea, Lorie

Lorie S. Gildea  
Chief Justice



# Exhibit I



## SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING  
200 East Capitol Avenue  
SPRINGFIELD, ILLINOIS 62701-1721

CAROLYN TAFT GROSBOLL  
Clerk of the Court

(217) 782-2035  
TDD: (217) 524-8132

January 7, 2016

FIRST DISTRICT OFFICE  
160 North LaSalle Street, 20<sup>th</sup> Floor  
Chicago, Illinois 60601-3103  
(312) 793-1332  
TDD: (312) 793-6185

Mr. Jordan Mitchell Heinz  
Kirkland & Ellis, LLP  
300 North LaSalle Street  
Chicago, IL 60654

In re: Benny Browning et al., respondents, v. Syngenta Seeds, Inc., et al., movants.  
Consolidation.  
No. 120209

Dear Mr. Heinz:

Enclosed is a certified copy of an order entered January 7, 2016, by the Supreme Court of Illinois in the above-captioned cause.

Very truly yours,

A handwritten signature in cursive script that reads "Carolyn Taft Grosboll".

Clerk of the Supreme Court

CTG:dg

Enclosure

cc: Mr. Kenneth John Brennan  
Mr. Christopher William Byron  
Clerk of the Circuit Court of Kane County  
Clerk of the Circuit Court of St. Clair County  
Clerk of the Circuit Court of Williamson County  
Mr. Christopher F. Cueto  
Mr. Frank John Favia, Jr.  
Mr. Peter John Flowers  
Mr. Michael Joseph Nester  
Mr. Mark Dwayne Prince  
Mr. Peter M. Storm  
Mr. Troy Eugene Walton

No. 120209

IN THE

## SUPREME COURT OF ILLINOIS

---

BENNY BROWNING,	)	
	)	
Respondent,	)	
	)	
vs.	)	Motion for Consolidation
	)	
SYNGENTA SEEDS, INC., et al.,	)	
	)	
Movants.	)	

---

ORDER

This cause coming to be heard on the motion of movants, Syngenta Seeds, Inc., et al., responses having been filed by respondents Benny Browning et al., Chausse Farms, Inc. et al., and Archer Daniels Midland Company et al., and the Court being fully advised in the premises;

IT IS ORDERED that the motion to transfer and consolidate pursuant to Supreme Court Rule 384, is allowed in part. Pursuant to Supreme Court Rule 384, Dereadt v. Syngenta, et al., Kane County No. 15 L 505, Pierson v. Syngenta, et al., Kane County No. 15 L 506, Pierson v. Syngenta, et al., Kane County No. 15 L 507, Collins v. Syngenta, et al., Kane County No. 15 L 508, Hinds v. Syngenta, et al., Kane County No. 15 L 512, Pierson v. Syngenta, et al., Kane County No. 15 L 513, Pierson v. Syngenta, et al., Kane County No. 15 L 514, and Chausse Farm, Inc., et al. v. Syngenta Seeds, Inc., et al., St. Clair County No. 15 L 680, are transferred to the Circuit Court of Williamson County and consolidated with the following Williamson County cases, only for pre-trial matters, including discovery: 15 L 157, 15 L 158, 15 L 159, 15 L 160, 15 L 166, 15 L 167, 15 L 168, 15 L 169, 15 L 170, 15 L 171, 15 L 172, 15 L 173, 15 L 174, 15 L

175, 15 L 176, 15 L 177, 15 L 178, 15 L 179, 15 L 180, 15 L 181, 15 L 182, 15 L 183, 15 L 184, 15 L 185, 15 L 186, 15 L 187, 15 L 188, 15 L 189, 15 L 190, 15 L 191, 15 L 192, 15 L 193, 15 L 194, 15 L 195, 15 L 196, 15 L 197, 15 L 198, 15 L 199, 15 L 200, 15 L 201, 15 L 202, 15 L 203, 15 L 204, 15 L 205, 15 L 206, 15 L 207, 15 L 208, 15 L 209, 15 L 210, 15 L 211, 15 L 212, 15 L 213, 15 L 214, 15 L 215, 15 L 216, 15 L 217, 15 L 218, 15 L 219, 15 L 220, 15 L 221, 15 L 222, 15 L 223, 15 L 224, 15 L 225, 15 L 226, 15 L 227, 15 L 228, 15 L 229, 15 L 230, 15 L 231, 15 L 232, 15 L 233, 15 L 234, 15 L 235, 15 L 236, 15 L 237, 15 L 238, 15 L 239, 15 L 240, 15 L 241, 15 L 242, 15 L 243, 15 L 244, 15 L 245, 15 L 246, 15 L 247, 15 L 248, 15 L 249, 15 L 250, 15 L 251, 15 L 252, 15 L 253, 15 L 254, 15 L 255, 15 L 256, 15 L 257, 15 L 258, 15 L 259, 15 L 260, 15 L 261, 15 L 262, 15 L 263, 15 L 264, 15 L 265, 15 L 266, 15 L 267, 15 L 268, 15 L 269, 15 L 270, 15 L 271, 15 L 272, 15 L 284, 15 L 286, 15 L 287, 15 L 288, 15 L 289, 15 L 290, 15 L 291, 15 L 292, 15 L 293, 15 L 294, 15 L 295, 15 L 296, 15 L 297, 15 L 298, 15 L 302, 15 L 303, 15 L 304, 15 L 305, 15 L 306, 15 L 308, 15 L 310, 15 L 311, 15 L 312, 15 L 313, 15 L 314, 15 L 315, 15 L 316, 15 L 317, 15 L 318, 15 L 319, 15 L 320, 15 L 321, 15 L 322, 15 L 323, 15 L 324, 15 L 325, 15 L 326, 15 L 327, 15 L 329, 15 L 330, 15 L 331, 15 L 332, 15 L 333, 15 L 336, 15 L 337, 15 L 338, 15 L 340, 15 L 341, 15 L 342, 15 L 343, 15 L 344, 15 L 345, 15 L 346, 15 L 347, 15 L 348, 15 L 349, 15 L 350, 15 L 351, 15 L 352, 15 L 353, 15 L 354, 15 L 355, 15 L 356, 15 L 357, 15 L 358, 15 L 359, 15 L 360, 15 L 361, 15 L 362, 15 L 363, 15 L 364, 15 L 365, 15 L 366, 15 L 367, 15 L 368, 15 L 369, 15 L 370, 15 L 371, 15 L 372.

Order entered by the Court.

**FILED**

JAN - 7 2016

**SUPREME COURT  
CLERK**

State of Illinois  
Supreme Court

I, CAROLYN TAFT GROSBOLL, *Clerk of the Supreme Court of the State of Illinois, and keeper of the records, files and Seal thereof* do hereby certify the foregoing to be a true copy of an order entered January 7, 2016, in a certain cause entitled:

No. 120209	)	
	)	
	)	
Benny Browning et al., respondents,	)	Motion for Consolidation
	)	
v.	)	
	)	
Syngenta Seeds, Inc., et al., movants.	)	
Consolidation.	)	
	)	
	)	

*Filed in this office on the 15<sup>th</sup> day of December A.D. 2015.*

IN WITNESS WHEREOF, I have hereunto subscribed  
my name and affixed the Seal of said Court, this  
7<sup>th</sup> day of January, 2016.

*Carolyn Taft Grosboll* Clerk,  
Supreme Court of the State of Illinois.

# **Exhibit J**

**STATE OF ILLINOIS  
IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT  
COUNTY OF WILLIAMSON**

CHARLES BROWING,

Plaintiff.

vs.

CASE NO. 15-L-157

SYNGENTA SEEDS, INC.,

SYNGENTA AG,

SYNGENTA CROP PROTECTION AG,

SYNGENTA CORPORATION,

SYNGENTA CROP PROTECTION, LLC,

SYNGENTA BIOTECHNOLOGY, INC.,

GAVILON GRAIN, LLC,

ARCHER DANIELS MIDLAND

COMPANY, BUNGE NORTH AMERICA,

INC., CARGILL, INCORPORATED,

CARGILL INTERNATIONAL SA,

LOUIS DREYFUS COMMODITIES, LLC,

AND LOUIS DREYFUS COMMODITIES

B.V.,

Defendants.

**FILED**

OCT 30 2015

*Angie E. Kochan*  
CLERK OF THE CIRCUIT COURT

**ORDER APPOINTING CO-LEAD COUNSEL FOR LITIGATION**

The Court, after being duly advised in the premises, and in an effort to efficiently tend to the administration of these cases and the court system, hereby appoints the following as lead counsel for this case and all other similar cases filed in this county:

Martin Phipps  
Phipps Anderson Deacon LLP  
102 9<sup>th</sup> Street  
San Antonio, TX 78215

Peter J. Flowers  
Meyers and Flowers, LLC  
225 W. Wacker Drive, Suite 1515  
Chicago, IL 60606

Page 2 of 2

Mark D. Prince  
Prince Law Firm  
404 N. Monroe Street  
Marion, IL 62959

IT IS SO ORDERED.

DATED: 10-31-15

ENTERED:

A handwritten signature in black ink, appearing to read 'B. Bleyer', is written over a horizontal line.

BRADLEY K. BLEYER  
CIRCUIT JUDGE



# **Exhibit K**

**UNITED STATES JUDICIAL PANEL**  
**on**  
**MULTIDISTRICT LITIGATION**

**IN RE: SYNGENTA AG MIR162  
CORN LITIGATION**

MDL No. 2591

**ORDER VACATING CONDITIONAL TRANSFER ORDER**

**Before the Panel:** Plaintiffs in an action pending in the Southern District of Illinois move under Panel Rule 7.1 to vacate the Panel’s order conditionally transferring their action (*Tweet*), which is listed on the attached Schedule A, to MDL No. 2591. Defendants Archer Daniels Midland Co. (ADM); Bunge North America, Inc.; Cargill, Inc.; and Louis Dreyfus Company LLC (collectively, the ABCD defendants or defendants), oppose the motion to vacate. The various Syngenta defendants did not respond to the motion.

After considering the argument of counsel, we find that, although this action involves common questions of fact with the actions previously transferred to MDL No. 2591, we cannot transfer *Tweet* to the MDL because the Class Action Fairness Act limits our ability to transfer removed mass actions in these circumstances. Like the actions in MDL No. 2591, *Tweet* concerns injuries allegedly arising from Syngenta’s marketing and sale of genetically modified corn prior to the Chinese government’s approval for import of corn with the MIR162 trait. Despite the undisputed factual overlap, transfer under 28 U.S.C. § 1407, is unavailable because *Tweet* is pending in federal court solely as a removed mass action under the Class Action Fairness Act. *See* 28 U.S.C. § 1332(d)(11). Subsequent transfers of such actions via Section 1407 are prohibited, absent a request by a majority of the plaintiffs. *See* 28 U.S.C. 1332(d)(11)(C)(i) (“Any action(s) removed to Federal court pursuant to this subsection shall not thereafter be transferred to any other court pursuant to section 1407, or the rules promulgated thereunder, unless a majority of the plaintiffs in the action request transfer pursuant to section 1407.”).

*Tweet* arrives before us with a complicated procedural history. The three original plaintiffs in *Tweet* were each plaintiffs in one of three other cases<sup>1</sup> removed from state court solely pursuant to the mass action provision of the Class Action Fairness Act, 28 U.S.C. § 1332(d)(11). When those three plaintiffs changed counsel and chose to pursue different claims against the ABCD defendants, the transferor court severed their claims from the consolidated *In re: Syngenta Mass Tort Actions* and created a separate case, *Tweet*. In early May 2016, plaintiffs filed their third amended complaint, adding over 700 additional plaintiffs.

---

<sup>1</sup> *See Poletti, et al. v. Syngenta AG, et al.*, S.D. Illinois, C.A. No. 3:15-cv-01221; *Brase Farms, Inc., et al. v. Syngenta AG, et al.*, S.D. Illinois, C.A. No. 3:15-cv-01374; and *Wiemers Farms, Inc., et al v. Syngenta AG, et al.*, S.D. Illinois, C.A. No. 3:15-cv-01379.

-2-

In the order severing the three original *Tweet* plaintiffs from the consolidated *In re: Syngenta Mass Tort Actions*, the transferor court opined in a footnote that:

The Court notes that this post-removal severance does not appear to divest the Court of CAFA jurisdiction. *See Cunningham Charter Corp. v. Learjet, Inc.*, 592 F.3d 805 (7th Cir. 2010) (CAFA jurisdiction continues despite post-removal denial of class certification); *Bullard v. Burlington N. Santa Fe Ry. Co.*, 535 F.3d 759, 761 (7th Cir. 2008) (declining, in the context of a mass action, to allow a post-removal filing to affect the court’s CAFA jurisdiction because the court “doubt[ed] that anything filed after a notice of removal can affect federal jurisdiction”); *Cooper v. R.J. Reynolds Tobacco Co.*, 586 F. Supp. 2d 1312 (M.D. Florida, Aug. 29, 2008) (Corrigan, J.) (discussing jurisdictional issues related to post-removal severance in actions removed under CAFA).

*In re: Syngenta Mass Tort Actions*, S.D. Illinois, C.A. No. 15-1221, doc. 63 at 3 n. 1. Plaintiffs’ arguments before us largely parallel the transferor court’s reasoning, arguing that while the amended complaint added parties and claims, it did not create a new civil action or change the nature of the action from being a removed mass action under CAFA.

Defendants counter that original federal diversity jurisdiction exists over the “overwhelming majority”<sup>2</sup> of the 709 plaintiffs who were added to the action via the third amended complaint in *Tweet* and that the action should be transferred, for purposes of efficiency, to the MDL. If CAFA’s mass action removal transfer bar applies to the three original plaintiffs, defendants suggest that either the Panel or the transferee judge can separate and remand their claims to the transferee court under Section 1407(a).

We previously determined that actions removed pursuant to the mass action provision plus other jurisdictional grounds are transferrable under Section 1407. *In re: Darvocet, Darvon & Propoxyphene Products Liab. Litig.*, 939 F. Supp. 2d 1376, 1381 (J.P.M.L. 2013) (“Upon review of CAFA’s overall purpose and its entire legislative history, we conclude that Congress did not intend that actions removed on multiple grounds, grounds which include the mass action provision, would be restricted from Section 1407 transfer.”).<sup>3</sup> In arriving at that interpretation, we reasoned that “[r]eading Section 1332(d)(11)(C)(i) to restrict Section 1407 transfer only of actions removed exclusively as mass actions

---

<sup>2</sup> Defendants fail to specify which of the 709 new plaintiffs are not diverse, instead stating that the “overwhelming majority of these 709 plaintiffs are completely diverse from defendants, Third. Am. Compl. ¶¶ 11-741, and each plaintiff individually pleaded that the \$75,000 amount-in-controversy requirement was met, id. ¶¶ 13-723.” Defs. Response at 4.

<sup>3</sup> Relatedly, we have rejected the argument that we should consider the reasonableness of the non-CAFA mass action grounds for removal. *See In re: Lipitor (Atorvastatin Calcium) Mktg., Sales Practices & Prods. Liab. Litig. (No. II)*, MDL No. 2502, ECF No. 443, at 1 (J.P.M.L. Jun. 6, 2014) (Transfer Order) (“Plaintiffs suggest . . . that in such a situation (*i.e.*, one in which an action has been removed on CAFA mass action and other grounds), we should assess the reasonableness of those other grounds. We lack such authority, and thus reject this suggestion.”).

would not effect a major change in the Panel’s jurisdiction or function, as the Panel previously had no authority to transfer such actions (because, pre-CAFA, they were not removable).” *Id.* at 1380. We have not been presented with the precise issue here: whether to transfer an action consisting of a few plaintiffs severed from actions removed solely on mass action grounds and claims brought by hundreds of newly-added plaintiffs. But we need not deviate from the analysis articulated in *In re: Darvocet. Tweet* remains “removed exclusively” as a CAFA mass action. As such, we are prohibited from transferring it due to CAFA’s prohibition on the transfer of such actions. 28 U.S.C. 1332(d)(11)(C)(i).

The CAFA mass action transfer bar is simply insurmountable in these circumstances.<sup>4</sup> Removal of *Tweet* as a mass action triggered the ban on Section 1407 transfer. *See* 28 U.S.C. 1332(d)(11)(C)(i) (“Any action(s) removed to Federal court pursuant to this subsection...”). No further jurisdictional bases for removal have been offered by defendants in the underlying action. Despite the post-removal severance of plaintiffs from the original mass actions, CAFA provides mass action jurisdiction over *Tweet*. *See, e.g., Louisiana v. Am. Nat. Prop. Cas. Co.*, 746 F.3d 633, 635 (5th Cir. 2014) (“Because at the time of removal CAFA supplied federal subject matter jurisdiction over these cases . . . we hold that CAFA continues to provide jurisdiction over these individual cases notwithstanding their severance from the class.”). The addition of one or even several hundred *claims* of new plaintiffs does not change the nature of the action itself.<sup>5</sup>

---


<sup>4</sup> Relatedly, defendants’ proposed separation and remand of the three original *Tweet* plaintiffs and transfer of the newly-added plaintiffs is similarly unavailable due to the mechanics of the Section 1407(a) separation and remand process, which first requires transfer of the *entire action* to the transferee court (as opposed to transfer of certain claims). *See* 28 U.S.C. § 1407(a) (“When civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings. . . the panel may separate any claim, cross-claim, counter-claim, or third-party claim and remand any of such claims before the remainder of the action is remanded.”); *see also, In re: 1980 Decennial Census Adjustment Litig.*, 506 F. Supp. 648, 650 (J.P.M.L. 1981) (“The Panel is empowered by statute to couple its order of transfer with a simultaneous separation and remand of any claims in an action.”); Federal Judicial Center, *Manual for Complex Litigation* § 20.131 (4th ed. 2004) (“[S]ection 1407(a) . . . empowers the Panel to accomplish ‘partial’ transfer by (1) transferring an action in its entirety to the transferee district, and (2) simultaneously remanding to the transferor district any claims for which transfer was not deemed appropriate . . .”).

<sup>5</sup> Defendants, at times, appear to implicitly concede this by referencing the newly-added plaintiffs’ “claims.” *See In re: Syngenta*, MDL No. 2591, Defendants’ Response, J.P.M.L. CM/ECF doc. 648 at 6 (“The 709 newly-joined Plaintiffs are properly subject to transfer pursuant to section 1407, because their *claims* were not “removed to Federal court” within the meaning of 28 U.S.C. § 1332(d)(11)(C)(i).”) (emphasis added).

-4-

IT IS THEREFORE ORDERED that the Panel's conditional transfer order designated as "CTO-63" is vacated.

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in black ink, reading "Sarah S. Vance", is positioned above a horizontal line.

Sarah S. Vance  
Chair

Marjorie O. Rendell  
Charles R. Breyer  
R. David Proctor

Lewis A. Kaplan  
Ellen Segal Huvelle  
Catherine D. Perry

**IN RE: SYNGENTA AG MIR162  
CORN LITIGATION**

MDL No. 2591

**SCHEDULE A**

Southern District of Illinois

TWEET, ET AL. v. SYNGENTA AG, ET AL., C.A. No. 3:16-255

# Exhibit L





court entered a Judgment following the Kansas class jury verdict in favor of Plaintiffs. (A motion to amend that judgment is pending.) Additionally, the Minnesota class trial before Judge Miller is scheduled to begin on September 11, 2017.

The above-mentioned courts have all appointed Ellen K. Reisman as Special Master for Settlement to explore settlement of the pending cases in all of the courts listed above. Special Master Reisman has been given the authority, without limitation, to construct an efficient procedure to engage the parties in settlement negotiations, including: conducting in-person settlement negotiation with the parties and their counsel in all cases; ordering the appearance of any persons necessary to settle any claims completely; and making recommendations to the Courts concerning any issues that may require resolution in order to facilitate settlement or to efficiently manage the litigation.

In order to facilitate the goals of the appointment of the Special Master for Settlement, and after consultation with Special Master Reisman and judges from the federal and state courts listed above, who are presiding over the Syngenta corn litigation, the Court finds it prudent and efficient to appoint a Plaintiffs' Settlement Negotiation Committee to work toward a fair and expeditious resolution of the matters discussed above. This Plaintiffs' Settlement Negotiation Committee shall conduct settlement negotiations with Syngenta and Special Master Reisman, shall confer with other Plaintiffs' counsel in the actions described above about such negotiations, and shall participate in such negotiations on their behalf. The Court's judgment is that the Plaintiffs' Settlement Negotiation Committee appropriately balances the goals of representing the interests of different groups of producer plaintiffs while maintaining a workably sized group to conduct settlement negotiations. The Court anticipates that members of the Plaintiffs' Settlement Negotiation Committee will communicate with their co-counsel regarding settlement

negotiations so that producer plaintiffs' interests are appropriately represented.

IT IS HEREBY ORDERED that Christopher A. Seeger, of Seeger Weiss LLP; Mikal Watts, of Watts Guerra LLP; Clayton A. Clark, of Clark, Love & Hutson, GP; and Daniel E. Gustafson, of Gustafson Gluek PLLC are appointed as the Plaintiffs' Settlement Negotiation Committee. The Plaintiffs' Settlement Negotiation Committee, Special Master Reisman, and Syngenta will report on a weekly basis to the undersigned. This judge will communicate, on a regular basis, the progress of the Committee to the presiding judges in the federal and state court cases described above.

IT IS SO ORDERED.

DATED: 8-18-17

JUDGE:  \_\_\_\_\_

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

-----  
IN RE SYNGENTA MASS TORT ACTIONS  
-----

Judge David R. Herndon

**This Document Relates to:**

*Poletti, et al. v. Syngenta AG, et al.*  
No. 3:15-cv-01121-DRH

*Tweet et al. v. Syngenta AG et al.* No. 3:16-cv-  
00255-DRH

**ORDER APPOINTING PLAINTIFFS' SETTLEMENT NEGOTIATION  
COMMITTEE IN THE SYNGENTA LITIGATION**

Several lawsuits have been filed in multiple federal and state courts arising from Syngenta's development and sale of corn seeds containing genetically modified traits known as MIR 162 and Event 5307 before China's approval to import corn with those traits. Cases are pending in: the multidistrict litigation ("MDL") proceeding in the United States District Court for the District of Kansas, captioned in *In re Syngenta AG MIR162 Corn Litigation*, MDL Docket No. 2591, before U.S. District Judge John W. Lungstrum and U.S. Magistrate Judge James P. O'Hara; in the United States District Court for the Southern District of Illinois before U.S. District Judge David. R. Herndon in the cases captioned *Tweet et al v. Syngenta AG et al*, No. 3:16-cv-00255, *Poletti et al v. Syngenta AG et al*, No. 3:15-cv-01221, and *Michael's Grain Farm et al v. Syngenta AG et al*, No. 3:17-cv-000320; in Minnesota State Court before Judge Laurie Miller in a case captioned *In re Syngenta Litigation*, No. 27-cv-15-3785; and in the Illinois State Court before

Judge Brad K. Bleyer in a case captioned *Browning v. Syngenta AG et al*, No. 15-L-157. On June 23, 2017, the United States District Court for the District of Kansas court entered a Judgment following the Kansas class jury verdict in favor of Plaintiffs. (A motion to amend that judgment is pending.) Additionally, the Minnesota class trial before Judge Miller is scheduled to begin on September 11, 2017.

The above-mentioned courts have all appointed Ellen K. Reisman as Special Master for Settlement to explore settlement of the pending cases in all of the courts listed above. Special Master Reisman has been given the authority, without limitation, to construct an efficient procedure to engage the parties in settlement negotiations, including: conducting in-person settlement negotiation with the parties and their counsel in all cases; ordering the appearance of any persons necessary to settle any claims completely; and making recommendations to the Courts concerning any issues that may require resolution in order to facilitate settlement or to efficiently manage the litigation.

In order to facilitate the goals of the appointment of the Special Master for Settlement, and after consultation with Special Master Reisman and judges from the federal and state courts listed above, who are presiding over the Syngenta corn litigation, the Court finds it prudent and efficient to appoint a Plaintiffs' Settlement Negotiation Committee to work toward a fair and expeditious resolution of the matters discussed above. This Plaintiffs' Settlement Negotiation Committee shall conduct settlement negotiations with Syngenta and Special

Master Reisman, shall confer with other Plaintiffs' counsel in the actions described above about such negotiations, and shall participate in such negotiations on their behalf. The Court's judgment is that the Plaintiffs' Settlement Negotiation Committee appropriately balances the goals of representing the interests of different groups of producer plaintiffs while maintaining a workably sized group to conduct settlement negotiations. The Court anticipates that members of the Plaintiffs' Settlement Negotiation Committee will communicate with their co-counsel regarding settlement negotiations so that producer plaintiffs' interests are appropriately represented.

IT IS HEREBY ORDERED that Christopher A. Seeger, of Seeger Weiss LLP; Mikal Watts, of Watts Guerra LLP; Clayton A. Clark, of Clark, Love & Hutson, GP; and Daniel E. Gustafson, of Gustafson Gluek PLLC are appointed as the Plaintiffs' Settlement Negotiation Committee. The Plaintiffs' Settlement Negotiation Committee, Special Master Reisman, and Syngenta will report on a weekly basis to the undersigned. This judge will communicate, on a regular basis, the progress of the Committee to the presiding judges in the federal and state court cases described above.

**IT IS SO ORDERED.**

**DATED:** August 9, 2017

Digitally signed by  
Judge David R.  
Herndon  
Date: 2017.08.09  
10:13:46 -05'00'



UNITED STATES DISTRICT JUDGE

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.<sup>1</sup>

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.

---

<sup>1</sup> 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.

# **Exhibit M**



STATE COURT OF MICHIGAN  
IN THE 54TH CIRCUIT COURT FOR THE COUNTY OF TUSCOLA

MICHIGAN ETHANOL, LLC d/b/a  
POET BIOREFINING — CARO, individually,  
and on behalf of those similarly situated,

Plaintiff,

vs.

Case No. 17-29831-NZ

HON. AMY GRACE GIERHART

SYNGENTA SEEDS, LLC, a Delaware limited liability  
company;  
SYNGENTA AG, a Switzerland company;  
SYNGENTA CROP PROTECTION AG, a Switzerland  
company;  
SYNGENTA CORPORATION, a Delaware  
corporation;  
SYNGENTA CROP PROTECTION, LLC, a Delaware  
limited liability company; and  
SYNGENTA BIOTECFINOLOGY, INC., a Delaware  
corporation,

Defendants,

**BRIEF IN SUPPORT OF  
DEFENDANTS' MOTION FOR  
SUMMARY DISPOSITION**

---

Dennis M. Barnes (P39401)  
BARRIS, SOTT, DENN & DRIKER, PLLC  
333 West Fort Street, 12th Floor  
Detroit, Michigan 48226  
(313) 965-9725  
dbarnes@bsdd.com

Patrick F. Philbin (pending pro hac vice)  
Ragan Naresh (pending pro hac vice)  
Edwin John U (pending pro hac vice)  
KIRKLAND & ELLIS LLP  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005-5793  
(202) 879-5000  
patrick.philbin@kirkland.com  
ragan.naresh@kirkland.com  
edwin.u@kirkland.com

*Counsel for Syngenta Defendants*

## INTRODUCTION

Plaintiff's lawsuit rests on the unprecedented theory that it was a *tort* for Syngenta to sell a U.S.-approved, genetically modified ("GM") corn seed called Viptera in the U.S. simply because that biotechnology had not yet been approved for import into China. According to Plaintiff, Syngenta should be liable because, several years after Syngenta started selling this U.S.-approved product in the U.S., the Chinese government supposedly "discovered" the GM trait from that product in U.S. corn and corn byproducts and then "banned" their import into China—which allegedly led to reduced prices for the corn by-products created from Plaintiffs' production of ethanol. Compl. ¶ 61. As an Ohio court recently explained in rejecting the exact same claims, "[i]n introducing new products into a huge international market, Syngenta does not owe a duty to such market participants to shield them from economic losses suffered as that market shifts and adjusts in accordance with those new technologies," because, among other reasons, "[t]he economic loss doctrine . . . bars such claims." Judgment Entry, *Fostoria Ethanol, LLC v. Syngenta Seeds, Inc.*, No. 15-CV-0323, at 9, 11 (Ct. of Common Pleas of Seneca Cty., Ohio June 28, 2017) (attached as Ex. A) (hereinafter "*Fostoria Ethanol*"). As that court put it, a "policy which requires genetically modified crop manufacturers to shield others . . . from damages they suffer in the free market in which they voluntarily choose to participate would not be proper," *id.* at 9, and any attempt to turn mere economic consequences from introducing new products to a market into the subject of tort duties would not be "consistent with the free-market concepts used in the United States of America," *id.* at 8. That court also rejected "any reasoning which determines that progress and development in agriculture within the United States of America should be delayed or put on hold until the government of China, or any other foreign government . . . approves of a product," because "[s]uch an interpretation is against public policy." *Id.* at 8. The same fundamental principles of tort law apply under Michigan law and foreclose Plaintiff's claims here.

explained that a “‘duty to avoid harm when one acts’ ... does not extend to ‘intangible economic losses.’” *Rinaldo’s*, 454 Mich. at 84; 559 N.W.2d at 658.<sup>40</sup>

Those principles squarely foreclose Plaintiff’s claims in this case. Until the *Viptera* litigation, only one American case addressed parallel claims alleging “contamination” of crops with a U.S.-approved GM trait, and that case applied the economic loss doctrine to bar farmers’ tort claims. *See Sample*, 283 F. Supp. 2d 1088. *Sample* involved a GM trait for corn and soybeans that, like *Viptera*, had been fully approved in the U.S. The plaintiffs argued—like Plaintiff here—that “farmers lost revenue because the European community rejected Monsanto’s genetically modified products and boycotted *all* American corn and soy as a result.” *Id.* (emphasis added). Applying Illinois and Iowa law, the court held that “the economic loss doctrine preclude[d] recovery.” *Id.* at 1093. Because Plaintiff here asserts the same theory of market-wide price effects from a foreign boycott (and not physical injury to its *own* product), *Sample* applies and Plaintiff’s claim is barred.

Indeed, the principles at stake are so universally applied as part of the common law, that a Canadian court faced with the same issues relating to supposed market losses from a GM trait for canola that had not been approved overseas also applied the economic loss doctrine and foreclosed any recovery in tort. *See Hoffman v. Monsanto Canada, Inc. (Hoffman I)*, 2005 SKQB 225, 2005 SK.C. LEXIS 330 (Can. Sask. Q.B. May 11, 2005) (Ex. D), *aff’d*, *Hoffman v. Monsanto Canada, Inc. (Hoffman II)*, 2007 SKCA 47, 2007 SK.C. LEXIS 194 (Can. Sask. C.A. May 2, 2007) (Ex. E).

More to the point here, an Ohio court recently applied the stranger economic loss doctrine to reject precisely the same claims as in this case raised by another ethanol plant (represented by the

---

<sup>40</sup> In *Quest Diagnostics v. MCI Worldcom, Inc.*, 254 Mich. App. 372; 656 N.W.2d 858 (2002), the court did not apply the doctrine. There, however, there was physical impact on the plaintiffs’ property. *See id.* at 374 (explaining that plaintiffs were without water “for several days”). The court also pointedly declined to decide how the economic loss doctrine should apply to “‘mass tort claims’ by potentially thousands of plaintiffs proceeding solely on allegations of economic damages.” *Id.* at 386. This case, however, presents that question—a mass tort proceeding against Syngenta where all claims rest solely on allegations of economic damages. In addition, Plaintiff here, unlike the plaintiffs in *Quest*, could have protected itself via contract by requiring warranties that the corn it was purchasing contained only GM traits that would permit exports to China.

*Fifth*, even if Plaintiff had alleged that Vipitera was present in its DDGS and its facilities, that would not qualify as *damage* to its property, because Vipitera was fully approved in the U.S. Any DDGS produced from Vipitera corn could be sold for the same uses and at the same price as all other DDGS. Plaintiff's only complaint is that it hypothetically could have secured a higher price if there had been no Vipitera. That is the paradigm of pure economic loss.

As *Sample* held in identical circumstances, there was “no evidence to demonstrate that the physical injury requirement would be met *even if* GM seeds were ‘commingled’ with non-GM seeds” precisely because commingling did not render the crop unfit for human consumption. 283 F. Supp. 2d at 1093 & n.2 (emphasis added). *Hoffman* considered similar allegations about “contamination” of canola with an approved GM trait and reached the same result. *See Hoffman I*, 2005 SK.C. LEXIS 330, *aff’d*, *Hoffman II*, 2007 SK.C. LEXIS 194. There, the plaintiffs claimed that GM canola had cross-pollinated with their non-GM crops, which they hoped to sell at a premium as organic crops and on the European market. The court held that, where a GM seed has been approved for human consumption, “the alleged damage is not of physical harm . . . , but arises from the alleged inability to meet the requirements of organic certifiers or of foreign markets for organic canola.” *Hoffman I*, 2005 SK.C. LEXIS 330 ¶ 72. The “harm” of receiving a different price was not sufficient to avoid the ELD. Indeed, the USDA’s decision deregulating a GM trait like Vipitera is itself a determination that the trait “cross-pollinat[ing] with and alter[ing] the genetic structure of other plants . . . [is not] a plant pest harm” because it does “not constitute physical damage or injury to other plants.” *Center for Food Safety v. Vilsack*, 718 F.3d 829, 840 (9th Cir. 2013); *cf. id.* at 835 (explaining that USDA regulates “organisms that cause physical harm to plants through injury, damage, or disease”); *see also* 7 U.S.C. § 7702(14); 7 C.F.R. § 340.1.

Cases analyzing the economic loss doctrine in the context of *unapproved* GM traits are

irrelevant. As *StarLink* explained, crops are “damaged when they are pollinated” by corn with an unapproved trait (like *StarLink*) because it “renders what would otherwise be a valuable food crop unfit for human consumption.” 212 F. Supp. 2d 828, 841 (N.D. Ill. 2002). As the court explained, such physical injury is the *sine qua non* for avoiding the ELD: “*Absent a physical injury*, plaintiffs cannot recover for drops in market prices.” *Id.* at 842 (emphasis added). The fact that rendering crops unfit for human consumption may constitute physical “harm” says nothing about the situation here, in which MIR162 was fully approved. In fact, *Sample* distinguished *StarLink* on exactly that basis. *See* 283 F. Supp. 2d at 1093 n.2.<sup>49</sup> Indeed, there is not a *single case* holding that an *approved* GM trait somehow “damages” a crop sufficiently to avoid the ELD. The only cases addressing the issue (*Sample* and *Hoffman*) say the opposite.

*Sixth*, any attempt to claim that Plaintiff’s property was “contaminated” by the GM traits in Viptera and Duracade and that Plaintiff must “clean[]” its property to be free of traits that China has not approved, Compl. ¶¶ 56, 65, is now moot. It is an indisputable matter of public record, properly subject to judicial notice, that China has *approved Duracade for import* effective July 16, 2017. *See* Ex. B (approval document from Chinese Ministry of Agriculture). Because Plaintiff has conceded that China also previously approved Viptera for import, *see* Compl. ¶ 63, there is no longer any possible claim that China has any grounds for rejecting DDGS from the U.S. based on the presence of Viptera or Duracade or that Plaintiff has any need to “clean” its property to remove those GM traits. Any such claim is now moot.

**c. The Federal MDL Court’s Flawed Analysis Of The Economic Loss Doctrine Should Be Rejected.**

Plaintiff will undoubtedly point to a handful of decisions in the current Viptera litigation against Syngenta that have rejected application of the economic loss doctrine, largely by following

---

<sup>49</sup> *Bayer CropScience LP v. Schafer*, 385 S.W.3d 822, 833 (Ark. 2011), and *In re GM Rice*, 666 F. Supp. 2d at 1013, are distinguishable on the same basis because the GM Rice cases involved an unapproved trait.

question of law” for the Court to decide. *Rodriguez v. Gauger*, No. 252138, 2005 WL 1123635, at \*1 (Mich. Ct. App. May 12, 2005); accord *Dobbs* § 164. It is also settled that merely alleging that the dispersion of Viptera in the corn and DDGS supply (and the supposed consequences of that dispersion) were “foreseeable” is not sufficient to create a duty: “[T]he mere fact that an event may be foreseeable does not impose a duty upon the defendant to take some kind of action accordingly.” *Buczowski v. McKay*, 441 Mich. 96, 102; 490 N.W.2d 330 (1992) (citation omitted). To be sure, the Federal MDL Court concluded that a duty exists because of a so-called “default duty rule” under which everyone must avoid foreseeable harm to everyone else. *In re Syngenta*, 131 F. Supp. 3d at 1191. But Michigan does not recognize such a “default.” Rather, Michigan law considers various factors to evaluate whether a duty exists, *Terry v. City of Detroit*, 226 Mich. App. 418, 424; 573 N.W.2d 348 (1997), and does not presume a duty to everyone. See, e.g., *Midwest Aluminum Mfg. Co. v. Gen. Elec. Co.*, No. 4:90-CV-143, 1993 WL 725569 at \*6 (W.D. Mich. Feb. 5, 1993) (“But a duty does not arise everywhere, with everyone.”) (citing *Moning v. Alfano*, 400 Mich. 425, 437; 254 N.W.2d 759 (1977)). Here, Michigan law does not impose a duty on Syngenta to avoid Plaintiff’s alleged harms.

Prior to the Viptera cases, only one common law court had addressed whether a seed manufacturer could be liable for selling an *approved* GM seed that had not yet been approved abroad.<sup>65</sup> In *Hoffman*, Canadian courts applying common law principles rejected that theory. See *Hoffman I*, 2005 SK.C. LEXIS 330. *Hoffman* involved GM canola seed that had been fully approved in Canada for “unconfined release.” *Hoffman II*, 2007 SK.C. LEXIS 194 ¶ 60. Alleging cross-pollination, non-GM canola farmers sued to recover losses to all farmers due to “loss of the European market for all Canadian canola” because Monsanto launched the product in Canada before getting

---

<sup>65</sup> *Sample* did not address duty analysis because it barred claims under the economic loss doctrine. 283 F. Supp. 2d at 1093-94.

import approval from the EU. *Hoffman I*, 2005 SK.C. LEXIS 330 ¶¶ 21-22. The Canadian court rejected such claims for lack of duty. *Id.* ¶ 52. In so holding, it assumed that cross-pollination was foreseeable, *see id.* ¶¶ 61, 63, but held that (as in the U.S.) duty was not governed by foreseeability alone because no relationship gave rise to a duty of care between the GM manufacturer and the plaintiffs, *see id.* ¶¶ 66-67. The court cautioned that the “implications of holding a manufacturer . . . liable in *nuisance* for damage caused by the use of its product . . . by another would be very sweeping indeed.” *Id.* ¶ 122 (emphasis added).<sup>66</sup>

More recently, the *Fostoria Ethanol* court also rejected Plaintiff’s theory. That court recognized that Syngenta had no duty to prevent “economic harm caused by the intended use of its products” and that “creation of such a duty would be . . . against public policy.” *Fostoria Ethanol* at 7. As that court explained, American tort law does not support “any reasoning which determines that progress and development in agriculture within the United States of America should be delayed or put on hold until the government of China, or any other foreign government so approves of a product.” *Id.* at 8. That analysis should be followed here.

**1. Imposing A Duty Not To Sell At All Without Foreign Approval Would Give China A Veto Over Sale Of U.S.-Approved Technology in the United States.**

Under Michigan law, an important factor courts must consider in evaluating tort duties addresses the “consequences of imposing a duty and the resulting liability for breach.” *Terry*, 226

---

<sup>66</sup> Two prior American cases involving GM seeds are irrelevant because both involved *unapproved* traits on facts where the manufacturer had control. In *StarLink*, the USDA conditioned limited approval by imposing on the manufacturer (Aventis) an “affirmative duty to enforce StarLink farmers’ compliance with” restrictions, including segregation from other corn. *StarLink*, 212 F. Supp. 2d at 847. This duty created “unique obligations” and gave Aventis “some measure of control over StarLink’s use” and was a “critical factor” that “negate[d]” the usual “concerns [that] courts have expressed about holding manufacturers liable for post-sale nuisances.” *Id.* There are no similar facts here because Viptera enjoyed unrestricted U.S. approval. *Genetically Modified Rice* is irrelevant because there the manufacturer itself (Bayer) had caused the improper release of the unapproved trait when conducting its own field trials. *In re GM Rice*, 666 F. Supp. 2d at 1022. As the Minnesota court explained in this litigation, “there is a significant distinguishing factor between those [] cases and this matter.” *See Minnesota MTD Order 21 (Ex. C).*



Dated: September 20, 2017

Respectfully submitted,

**BARRIS, SOTT, DENN & DRIKER,  
PLLC**

By: *Dennis M. Barnes*  
Dennis M. Barnes (P39401)  
333 West Fort Street, 12th Floor  
Detroit, Michigan 48226  
(313) 965-9725  
dbarnes@bsdd.com

Patrick F. Philbin (pending pro hac vice)  
Ragan Naresh (pending pro hac vice)  
Edwin John U (pending pro hac vice)  
**KIRKLAND & ELLIS LLP**  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005-5793  
(202) 879-5000  
patrick.philbin@kirkland.com  
ragan.naresh@kirkland.com  
edwin.u@kirkland.com

*Attorneys for Defendants*

**PROOF OF SERVICE**

On this 20th day of September 2017, I caused the foregoing document to be served via UPS  
overnight delivery upon all counsel of record.

*Dennis M. Barnes*  
Dennis M. Barnes