STATE OF MINNESOTA | **DISTRICT COURT**

COUNTY OF HENNEPIN | **FOURTH JUDICIAL DISTRICT**

In re: Syngenta Litigation and Syngenta Class Action Litigation This Document Relates to: INDIVIDUAL CLAIMS CLASS ACTION	Case Type: Civil Other Honorable Laurie J. Miller Court File Nos.: 27-CV-15-3785 and 27-CV-15-12625 **BASSFORD REMELE, P.A.'S RESPONSIVE MEMORANDUM OF LAW REGARDING ALLOCATION OF ATTORNEYS' FEES**

INTRODUCTION

The initial fee submissions submitted by our colleagues underscore the need for this Court to delay any allocation of attorneys' fees until after full claims data becomes available. This is especially true when one views the arguments seeking enforcement of the so-called "Fee Sharing Agreement." Our colleagues in Kansas and Illinois propose that this Court enforce that Fee Sharing Agreement. As we understand it, that document arose as a mediators' proposal made by special settlement masters Reisman and Stack during pre-settlement negotiations amongst members of the Plaintiffs' Negotiating Committee ("PNC"). We have no doubt that the special settlement masters who proposed the "agreement" believed at the time that it would result in an equitable allocation of fees. However, an analysis of information unavailable to the special settlement masters at the time of their proposal shows that the proposed allocation would result in inequitable and inconsistent fee awards that would be subject to legitimate challenge. That information, which includes total case inventories in the Minnesota, Kansas, and Illinois actions, lodestar information, fee categorization reports, and claims data, will provide the Court with necessary material to ensure that the fee awards are equitable and consistent.

This Court should reject the allocation put forward by Kansas and Illinois leadership for at least three reasons. First, their arguments rely on an "agreement" that is not binding on all parties that are entitled to attorneys' fees in this case, and in fact was not even signed by all members of the PNC. Surely, a small subset of attorneys cannot agree to compromise the contractual rights of other counsel that were not consulted during the negotiations and have not signed the agreement. Therefore, their "agreement" is not binding on the non-signatory attorneys, let alone this Court.

Second, the proposed allocation would result in fee awards that are inconsistent and inequitable. The special settlement masters have worked admirably in attempting to equitably divide the fees in this case. However, their mediators' proposal reflected in the Fee Sharing Agreement was made at a time when critical information regarding the case was not available to them. By way of example, the special settlement masters were not privy to the total case numbers for each of the coordinated actions, they did not know the lodestar numbers being put forth by the various leadership groups, and they could not know the preliminary claims information. However, since that time, much of this information has become available, and all of it demonstrates that the Fee Sharing Agreement would result in an inequitable allocation of fees.

By way of example, analysis of the fee submissions demonstrates that there are three primary groups of individual cases: (1) Watts Guerra plaintiffs (filed primarily in Minnesota), (2) non-Watts Guerra plaintiffs with filed cases in Minnesota, and (3) Illinois plaintiffs. We understand from Mr. Watts' submissions that there are approximately 62,000 Watts Guerra clients with cases on file. We have also learned that there are over 32,000 individual plaintiffs in the Minnesota litigation that are not represented by Watts Guerra or its affiliates. That leaves only the unspecified number of Illinois plaintiffs, apparently represented largely by Mr. Clark and Mr. Phipps and their network of referring counsel.[1] Given these three well-defined groups of individual plaintiffs (and their associated counsel), enforcement of the Fee Sharing Agreement, which was negotiated without this information, would result in only two of these three groups of counsel being paid for work done on individual cases via the recovery of a contingency fee. It is inconsistent and inequitable to allow Watts Guerra and the Illinois leadership to recover their contingency fees for work done on individual cases, but not permit the same recovery by the attorneys representing over 32,000 individual cases in Minnesota for the same work. As we have previously argued, the more prudent approach is to award fees for work done on individual cases by setting a reasonable contingency fee and divide that contingency fee based on actual client recoveries.

Similarly, the proposed Fee Sharing Agreement was negotiated before the lodestar information was available. An analysis of the lodestar submissions of the various leadership groups shows that the proposal would result in inequitable common benefit awards. For instance, the "Fee Sharing Agreement" proposal would pay Kansas counsel a multiplier that would result in their receiving an hourly rate that is double the hourly rate received by Minnesota counsel for the same type of work. There is no rational basis for awarding Kansas counsel double the hourly rate, especially considering that we anticipate that the objective data will show that counsel in Minnesota will have been far more successful in recoveries for their clients. Similarly, counsel in

[1] Mr. Clark states that he and his colleagues in Illinois obtained 16,250 "opt-outs" from class actions. [Dkt. No. 3598, at 12.] It is reasonable to infer that this number represents the total number of plaintiffs that Mr. Clark, Mr. Phipps, and their referring network represent in the Illinois action. If that is the case, then the total number of individual cases in the Illinois case is less than 18% of the total individual cases on file in Minnesota, and less than 15% of the total individual cases on file in the coordinated Syngenta litigation.

Illinois would receive a 2.22 multiplier, compared to the 1.53 multiplier received in Minnesota.[2] There is no consideration, either objective or subjective, that would support a higher common benefit fee award or hourly rate in Illinois as compared to Minnesota.

Finally, the arguments in favor of the purported Fee Sharing Agreement ignore the caselaw establishing a legal framework for awarding fees in cases involving both court appointed lead counsel and individually retained attorneys. This case law was covered in our opening submission and need not be rehashed here. However, at bottom, the proposal put forth by our colleagues in Kansas and Illinois ignores substantial authority in favor of ensuring appropriate contingency fee recoveries in hybrid cases such as this.

It is not surprising that Kansas and Illinois counsel would "agree" to maximize their fees by limiting the fees in Minnesota – the venue from which the preliminary claims data suggests the bulk of the client recovery will likely be obtained. And while there is nothing wrong with advocacy on their part, this Court should never-the-less follow the clear precedent summarized in our prior submission.

Unlike our colleagues, we have not proposed a particular allocation of attorneys' fees beyond suggesting that 33.3% would be an appropriate overall fee for this case. That is intentional and reflects our belief that such an allocation cannot be made without first considering the claims data. Rather, we have provided the Court with a model whereby the Court may establish a framework that can be applied to award fees that are both legal and equitable. We respectfully ask this Court to follow that framework.

[2] In addition, most of the time submitted by the Illinois leadership was for work on individual cases and not common benefit work. As such, this is not an "apples to apples" comparison, but rather it that permits the Illinois leadership to be compensated differently than Minnesota (and likely Kansas as well).

ANALYSIS

I. THE PURPORTED FEE SHARING AGREEMENT IS INVALID AND DOES NOT BIND THE COURT OR ANY OTHER NON-PARTY TO THE CONTRACT.

The "agreement" relied upon by Kansas and Illinois is not a valid agreement. A limited group of attorneys cannot agree to compromise the rights of other counsel that are not parties to the purported contract. *See Strand v. Allied Insulation Supply Co.*, No. A06-1623, 2007 WL 2365088, at *5 (Minn. Ct. App. Aug. 21, 2007) ("non-parties to a contract acquire no rights or obligations under the contract."); *Helmert v. Butterball, LLC*, No. 4:08CV00342 JLH, 2010 WL 3397373, at *3 (E.D. Ark. Aug. 25, 2010) (contract "terms are not binding upon non-parties"). Here, a small number of attorneys agreed on how fees should be awarded, or not awarded, to *all other counsel with cases in the coordinated Syngenta litigation*. And in so doing, the signatories to the purported "agreement" overvalued their work and dramatically undervalued and undercompensated the work performed by counsel to individual claimants in the Minnesota action. In many respects, the purported Fee Sharing Agreement attempts to unilaterally abrogate the contract rights of those attorneys and their clients. Not surprisingly, *co-lead counsel for the Minnesota individual cases did not agree*.[3]

The "agreement" relied upon by Kansas[4] and Illinois would not be binding even if it had been signed by all members of the PNC. As this Court is aware, Mikal Watts was offered the

[3] It is worth noting that all four Kansas co-leads signed the "agreement," in addition to Mr. Seeger who was a member of PNC. In comparison, neither of the Co-Lead Counsel for the Minnesota individual cases, Lew Remele or Frank Guerra, was asked to sign the "agreement" or was consulted regarding its terms.

[4] The decision by the Kansas Co-Lead Counsel to sign the purported Fee Sharing Agreement directly contradicts their obligations under the JPA. In signing the JPA, the Kansas Co-Lead Counsel agreed not to interfere with Minnesota Co-Lead Counsel's right to seek contingency fees on their individual cases. [Dkt. No. 3611, Ex. 6 at 14.] As will be discussed in more detail below, the "agreement" directly interferes with such rights and should not be enforced.

unallocated 20% if he would sign the "agreement." However, if Mr. Watts had agreed to accept the unallocated 20% on behalf of his firm Watts Guerra, that would not have addressed the other attorneys with individual cases filed in Minnesota. There are 94,852 individual plaintiffs that have filed suit in Minnesota. [Remele Decl., ¶ 11.][5] Watts Guerra represents approximately 62,000 of those plaintiffs. [Dkt. No. 3580, at 6.] Therefore, there are over 32,000 non-Watts Guerra individual plaintiffs on file in Minnesota. Our colleagues in Illinois have declined to disclose the total number of cases on file in the Illinois action. However, we believe it is likely that these 32,000 individual plaintiffs in Minnesota exceed the total number of cases filed in Illinois. The PNC cannot agree to award fees for work done on individual cases to Mr. Clark and his associated counsel, and to Mr. Watts and his associated counsel, while denying the same rights to the other counsel who represent over 32,000 filed plaintiffs in the Minnesota action. Presumably, this is one of the many reasons Mr. Watts refused to sign the "agreement."

Further, any attempt to analogize the Joint Prosecution Agreement ("JPA") to the purported Fee Sharing Agreement is unfounded. The two agreements are entirely distinguishable. The JPA is an agreement between Kansas and Minnesota leadership regarding how they will share fees allocated to those leadership groups by the Court after the allocation and

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[5] The Declaration of Lewis A. Remele, Jr. in Support of Bassford Remele's Responsive Memorandum of Law Regarding Allocation of Attorneys' Fees ("Remele Decl.") is being filed concurrently with this memorandum.

distribution has occurred.[6] On the other hand, the purported Fee Sharing Agreement does not share fees among the contracting parties. Instead, the contracting attorneys "agreed" to allocate the entire fee themselves, attempting to impose their judgment on the Court and denying fees to other attorneys who have valid fee agreements. The Manual for Complex Litigation encourages attorneys to agree upfront on the division of fees, but it does not encourage a subset of counsel to "agree" to award themselves fees while denying fees to other attorneys who completed similar work.

Any attempt to argue that the JPA is unenforceable or void is similarly flawed. The JPA was executed between Kansas and Minnesota leadership to address common benefit issues at the front end of the litigation, to avoid common benefit disagreements at the end of the case, and to foster cooperation that would benefit all plaintiffs. Moreover, by executing the JPA, the Kansas leadership successfully secured a hedge against denial of class certification and/or individual plaintiff recoveries exceeding those of absent class members. [*See* Remele Decl., ¶ 7.] And throughout the pendency of active litigation, this strategy worked. Both Kansas and Minnesota leadership performed their obligations under the JPA, and both groups did the hard work necessary to successfully shepherd this case to a conclusion.

Now, our colleagues in Kansas seek to avoid their obligations under the JPA because it no longer benefits them to perform under their agreement. But it is incongruous to argue that after three years of performance and following the exchange of over a million dollars, the JPA is

[6] Once again, Mr. Clark resigned his position on the Minnesota Plaintiffs' Executive Committee specifically to avoid coordinating with Kansas and paying for the common benefit work generated in the Minnesota and Kansas cases. Instead, Mr. Clark and Mr. Phipps chose to file their cases in Illinois, and then premised their action on a misguided, legally insufficient, and ultimately failed attempt to drag Cargill, ADM, and other grain handlers into the litigation. Despite this, the Illinois submissions now seek to award themselves common benefit fees for work that was done to service their individual fee contracts and not for the common benefit of plaintiffs.

a nullity. [*See id.* at ¶ 9.] Similarly, our colleagues in Illinois argue against the JPA, likely because that agreement highlights the fact that Illinois leadership *specifically refused to cooperate* and established the Illinois case as a mechanism to avoid paying for the common benefit work performed by Kansas and Minnesota leadership. However, neither the Kansas nor Illinois leadership have put forth any legal argument explaining how the JPA is no longer enforceable or why it need not be followed here. That is because there is none.[7]

It is not surprising that attorneys in Kansas and Illinois are advocating to increase their own fee awards. This is to be expected. However, adopting their proposed fee allocation would result in inconsistencies and inequities that cannot be reconciled under the law. As such, we urge this Court to follow the precedent established in *In re Vioxx Prod. Liab. Litig.*, 760 F. Supp. 2d 640, 647–48 (E.D. La. 2010) and *In re Nat'l Football League Players' Concussion Injury Litig.*, No. 2:12-MD-02323-AB, 2018 WL 1635648, (E.D. Pa. Apr. 5, 2018) to ensure all similarly situated counsel are treated equally and fairly in this allocation.

II. THE FEE AWARDS PROPOSED BY KANSAS AND ILLINOIS CO-LEAD COUNSEL WOULD NOT RESULT IN AN EQUITABLE DISTRIBUTION OF FEES.

A. The Suggested Fee Allocation is Inequitable as Between Minnesota and Illinois.

The inequity of the Kansas and Illinois fee "agreement" is best highlighted by comparing the proposed awards for Minnesota and Illinois. The proposed awards are disproportionate on their face, but upon close examination, they are also grossly inequitable and inconsistent.

As stated previously, there is no rational argument that Illinois should receive a higher fee award than Minnesota. First, the Minnesota action involved far more individual plaintiffs

[7] Some appear to believe that the JPA was voided by application of the integration clause in the Settlement Agreement. However, that argument ignores the fact that if that were the case, that same provision would nullify the purported Fee Sharing Agreement as well.

than the Illinois case. The Minnesota litigation involved 94,852 individual plaintiffs [Remele Dec., ¶ 11] whereas Illinois alternately states that it represents "thousands of individual claimants" [Dkt. No. 3598, at 17] or "tens of thousands of individual corn producers." [*Id.* at 7, 25.]

Second, the common benefit work completed in the Minnesota case far exceeds the work done in Illinois. Without rehashing the initial fee briefs, the most notable examples are that the Minnesota leadership did substantial discovery, dispositive motion briefing, class certification briefing, prepared for two trials, and prosecuted the Minnesota class trial for two weeks until sufficient pressure was applied, and a global settlement was reached. As stated by Kansas lead counsel, "counsel in both the MDL and in Minnesota were prepared to continue trying cases when the litigation settled." [Dkt. No. 3587, at 65.] That was not the case in Illinois.

The Illinois leadership group responds by arguing that it is entitled to a higher fee award because it "anticipates that its clients will account for an exceedingly high percentage of the total participants in the Syngenta class settlement" and therefore it "provided the most leverage to enhance the monetary value of the total settlement." [Dkt. No. 3598, at 25.] We agree with the premise that client recoveries should factor heavily into fee awards. However, based on preliminary data, it appears that Minnesota plaintiffs will recover the largest share of the settlement fund. If clients represented by Illinois counsel do receive an exceedingly high percentage of the recovery, we agree that they should be compensated accordingly. However, without actual claims data, these arguments are entirely speculative. It is for that reason that we have urged the Court to delay its decision on fee allocation until after claims data is available.

In sum, even though the Minnesota case involved far more individual plaintiffs, the Minnesota leadership did far more common benefit work, and preliminary claims data suggests the Minnesota plaintiffs will account for the majority of successful claims, the Kansas and Illinois fee proposal would award 17.5% of the fee ($88.08 million) to Illinois, and only 12.5% ($62.92 million) to Minnesota. Based on the lodestar submissions, these awards would result in a multiplier of 2.22 for Illinois [Dkt. No. 3598, at 43] and 1.53 for Minnesota. This is inequitable on its face, but an analysis of the lodestar submission of the Illinois leadership shows that their proposed allocation is based almost entirely on their work on their own individual cases and not common benefit time.

B. Analysis of the Loadstar Submissions Demonstrates the Inequity Between the Proposed Minnesota and Illinois Fee Awards.

The Illinois lodestar submission provides clear evidence that they are seeking to recover almost entirely for work done on individual claims, and not for work performed for the common benefit of all plaintiffs. That is not the case with the Minnesota submissions, which intentionally excluded "individual work" done by Minnesota leadership firms. As such, any attempt to compare the Illinois and Minnesota submissions is like comparing apples to oranges.[8]

Illinois submitted a total of 138,430.9 hours, for a total lodestar amount of $39,674,653. Of this time, 128,533 hours were submitted by the Phipps Anderson Deacon firm ("Phipps"), with a total lodestar number of $32,435,420. [*See* Dkt. No. 3598-1, Exh. 1.] Of the time submitted by Phipps, 110,530 was non-compensable paralegal time. [*Id.*] The Phipps time also seeks to recover fees for their work: (1) obtaining 16,265 opt outs (which were only required because Illinois counsel refused to coordinate with Minnesota and Kansas); (2) gathering documents from their individual clients (even though they did neither discovery nor court-ordered Plaintiff Fact Sheets as required in Minnesota and Kansas); and (3) pursuing claims

[8] Because this case involved three different court appointed leadership groups, with different concepts of what constitutes common benefit time, a second-tier review involving representatives from Kansas, Minnesota, and Illinois is advisable.

against ADM, Cargill, and other grain handlers. (Phipps Decl., p. 11, 17.) This final factor is significant, given that the failed Illinois "strategy" was predicated on legal theories that were already rejected by the Kansas and Minnesota courts. The attempt to make Cargill and ADM liable for Syngenta's conduct was ultimately harmful to the overall litigation, and if successful, would have drastically decreased the chances of settlement. None of this work is compensable common benefit time and should not be treated as such in the fee allocation process.

Because the proposed fee award to Illinois seeks payment for common benefit time and individual time, and the vast majority of the time submitted is individual time, nearly all of the proposed fee to Illinois is for work done pursuant to its contingent fee contracts. But the purported "Fee Sharing Agreement" does not provide for similar treatment of the individual cases in Minnesota. Moreover, that proposed allocation would result in Illinois receiving a 2.22 multiplier on time that is mostly to compensate for contingency fee work, while Minnesota would get a 1.53 multiplier on common benefit time with no payment for work on behalf of individual plaintiffs. This is not only grossly inequitable but would result in a double recovery for the Illinois counsel.

To be clear, we believe that our colleagues in Illinois should be paid for their work. Given that their time submissions relate almost entirely to work on individual contingent cases, their work should be compensated through a reasonable contingency fee award for their clients that successfully recover from the settlement fund. However, even if the unallocated 20% in the proposed Fee Sharing Agreement is made available to pay Minnesota contingency fees, that would result in Illinois obtaining a higher contingency percentage than counsel in the Minnesota case. Specifically, given that approximately 90% of the time submitted by Illinois leadership was in support of contingency fee work, they would be receiving 15.57% of the total settlement for contingency fees on an unspecified number of clients. Conversely, attorneys in the Minnesota case would be awarded 20% of the settlement for contingency fees for 94,852 plaintiffs. This will result in a much higher contingency fee percentage in Illinois than Minnesota. For that reason, we reiterate that all contingency fee recoveries should be based on actual client recoveries, and not on a purported agreement between counsel that was made without the benefit of claims data.

C. The Suggested Fee Allocation is Inequitable as Between Minnesota and Kansas.

The proposed fee allocation between Kansas and Minnesota set forth in the purported "Fee Sharing Agreement" is also inequitable. The Kansas co-leads acknowledge that Minnesota "followed a similar schedule," "were required to proceed through the same discovery process and schedule," and that "counsel in both the MDL and in Minnesota were prepared to continue trying cases when the litigation settled." [Dkt. No. 3587, at 65.] Despite these acknowledgements, Kansas argues that Minnesota counsel should receive a small fraction of the hourly rate and one-quarter of the total award to Kansas counsel. Under their proposal, Kansas leadership will be awarded $251.67 million, which amounts to a lodestar multiplier of 3.079. [*Id.* at 41.] Conversely, that same proposal awards Minnesota leadership only $62.92 million, resulting in a lodestar multiplier of 1.53. This multiplier disparity is both glaring and unsupportable given the work completed and the results obtained in Minnesota.

As we acknowledged in our initial brief, Kansas is likely entitled to a slightly higher common benefit fee award than Minnesota because they were involved in the case longer, therefore expended more hours, and achieved excellent results in prosecuting their case. However, there is no justification for paying Kansas counsel more than double the hourly rate for the common benefit work completed on behalf of plaintiffs in this case. This is especially true given our belief that Minnesota plaintiffs will make up the majority of the claims ultimately paid from the settlement fund.

D. The Suggested Fee Allocation Ignores the Existence of Contingency Fee Contracts and the Work Completed by Individually Retained Attorneys.

The fee proposals submitted by Kansas and Illinois avoid discussion of the mass tort aspect of this case, while at the same time tacitly acknowledging that contingency fees should be paid. The Kansas and Illinois proposals advocate for an extremely large award in Illinois, supported almost entirely by work done in support of their contingency fee contracts. But, the Kansas and Illinois submissions are silent on how any other individually retained attorneys are to be paid. Given the overwhelming number of individually filed cases in the Minnesota action and the various groups of counsel representing those plaintiffs, this failure to address the contingency fee issue is glaring. Simply put, this Court should not accept any proposal that permits some individually retained attorneys to be compensated for their time (the Illinois leadership), while providing nothing for the counsel that represent the vast majority of the individual claims in the coordinated Syngenta litigation (cases filed in Minnesota).[9] There can be no dispute that the individually retained attorneys in the Minnesota case did the same work on behalf of their clients, *if not more*, than our colleagues in Illinois. As such, they should be entitled to the same right to recover under their fee agreements as the Illinois leadership.

[9] All individually retained counsel with valid fee agreements for cases on file at the time of the settlement, and whose clients recover from the settlement fund, should be permitted to claim some form of payment via their contingency contract. For those counsel that chose not to file their clients' cases in any venue, or filed only after the settlement was announced, no such recovery should be permitted. By distinguishing between filed and unfiled cases, the Court will be able to address the "free ride" issue while ensuring equitable treatment of the remaining individually retained attorneys.

III. THIS COURT SHOULD FOLLOW THE ESTABLISHED FEE FRAMEWORK TO AWARD FEES CONSISTENT WITH THE JPA.

This was a complex case, composed of multiple coordinated actions that involved both class and individual claims. As such, fees cannot be awarded as though the case was prosecuted as a single class action by a small group of law firms in a single leadership group. As stated by our colleagues in Kansas:

> it must . . . be noted that this litigation was not prosecuted as a single class action with a small set of attorneys, nor even in a single jurisdiction MDL, but rather as a multi-jurisdictional action with varying degrees of coordination and disparate lead counsel, requiring the efforts of a large number of law firms, all of whom will share in the fee award. [Dkt. No. 3587, at 77.]

This unique structure was recognized by the Kansas and Minnesota leadership early on and was precisely the reason they negotiated and executed the JPA. Each of the attorneys for the 32,000 non-Watts Guerra plaintiffs in the Minnesota case filed their clients claims in Minnesota in reliance on the fact that the JPA provided certainty as to how fees would be determined and how common benefit fees would be paid to both the Minnesota and Kansas leadership groups. To not recognize this reliance and cooperation would be inequitable and would provide a windfall to attorneys who deliberately refused to cooperate and/or refused to file their claims to avoid paying for common benefit work. The fee allocation framework advanced in our initial brief, which is supported by substantial case law, will provide the Court the flexibility necessary to encourage similar cooperation in future cases, provide for the equitable allocation of fees amongst counsel, and avoid protracted appeals on fee allocation disputes.

In sum, while we respect and appreciate the hard work the special settlement masters have done to address fee allocation issues to date, their mediators' proposal that is now set forth in the purported "Fee Sharing Agreement" was negotiated without substantial information that should inform any decision on the division of fees. But much of that information is available now, with more data to be released at the conclusion of the claims period. At that time, the Court will no longer need to make this decision in a vacuum. For that reason, and the others set forth above, we urge the Court to follow the framework established by analogous precedent in a manner that is consistent with the JPA. Specifically, we respectfully request that the Court apply the following framework: (1) determine a reasonable overall fee[10]; (2) determine a reasonable common benefit fee using the percentage of the fund method, utilizing a lodestar cross-check and multipliers to adjust and allocate that fee among the common benefit groups; (3) apply a common benefit fee as an offset to the overall fee to determine the reasonable contingency fee; and (4) award that contingency fee based on actual recoveries. *See, e.g., In re Nat'l Football League Players' Concussion Injury Litig.*, No. 2:12-MD-02323-AB, 2018 WL 1635648, at *2 (E.D. Pa. Apr. 5, 2018); *In re Vioxx Prod. Liab. Litig.*, 760 F. Supp. 2d 640, 647–48 (E.D. La. 2010). If this Court follows that framework, we are confident it will result in an equitable award of fees for all involved.

CONCLUSION

For the foregoing reasons, we respectfully request that the Court reject the proposed allocation set forth in the purported "Fee Sharing Agreement," and apply the framework set forth in our initial fee submission to equitably and consistently award attorneys' fees for the work performed in this unique and historic case.

[10] There seems to be substantial agreement amongst the leadership groups and others that have submitted briefing on fee issues that one-third (33.3%) of the overall recovery is an appropriate overall fee given the unique facts of this case.

BASSFORD REMELE
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