

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

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DISTRICT COURT  
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-153785

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**BRIEF SUPPORTING PLAINTIFFS'**  
**PROPOSED COORDINATION ORDER**

Pursuant Special Master Van de North's letter dated October 22, 2015, and the parties' agreements as reflected in Paragraph II(a) of the Proposed Agenda for this Court's October 30, 2015 Status Conference, Plaintiffs submit this Brief in Support of Plaintiffs' Proposed Coordination Order, which order differs from Syngenta's proposal with regard to eight paragraphs.

### **ARGUMENT**

Syngenta proposes that this Court adopt the federal court MDL coordination order, and in doing so, relegate its role and that of its Special Master to mere followers of the federal MDL. Although Plaintiffs certainly support coordination between the two courts, the overwhelming number of individual cases have been filed in this Court. As such, Plaintiffs respectfully suggest that this Court adopt Plaintiffs' proposed order.

Plaintiffs' proposed order adopts the attached federal MDL Coordination Order; provided, it preserves for this Court jurisdiction to resolve disputes between the parties in the MN MDL in connection with eight specific issues.

First, Paragraph 1 preserves for this Court the right, under appropriate circumstances, to permit the MN MDL leadership to "lead" certain discovery. It does not say it will do so; rather, it merely preserves this Court's inherent authority to hear and decide motions that are relevant to one or more issues unique to the MN MDL or where special circumstances warrant specific issues being heard and decided in the MN MDL.

Furthermore, although the Joint Prosecution Agreement ("JPA")—signed by some of the ten lawyers appointed to serve as the MN MDL Leadership—permits the federal MDL leadership to lead in scheduling certain discovery, the Court has ruled that the balance of the MN MDL Leadership have no obligation to sign—and, indeed, have not signed—the JPA. Thus, this

paragraph simply makes plain that this Court preserves the right to permit the MN MDL Leadership to lead with respect to the scheduling and conduct of certain discovery. This is particularly important given the overwhelming number of individual cases filed in the MN MDL, as opposed to the federal MDL's focus on class actions.

Second, Paragraph 2 preserves for this Court the right to consider motions affecting the MN MDL leadership's ability to take discovery should a dispute arise with the federal MDL leadership in that regard. Furthermore, it makes clear that if Syngenta seeks to limit discovery proposed by the MN MDL leadership on the grounds that it is duplicative, Syngenta bears the burden of showing this Court that such duplication has occurred or that the discovery is impermissible under the Coordination Orders entered in the MN MDL or in the federal MDL. This Court should decide that issue given that more than 95% of all the plaintiffs with pending state or federal cases against Syngenta expressly chose to file their cases in this forum, not the federal MDL.

Third, Paragraph 3 preserves for the MN MDL leadership "the unfettered right to seek leave from this Court for additional time to conduct the oral deposition of any witness," which preserves this Court's ability to consider such motions, but does not require it. By contrast, Syngenta seeks to eliminate this Court's ability to even consider such motions. Syngenta's concerns are overstated. Plaintiffs' proposal simply gives this Court the power to decide such motions.

Fourth, Paragraph 4 preserves for the MN MDL leadership "the unfettered right to seek leave from this Court to serve written discovery on Syngenta," which preserves this Court's ability to consider such motions, but, again, does not require it. By contrast, **Syngenta seeks to strip this Court of its authority to even consider such motions.** This makes no sense. While

this Court has the authority under the federal MDL Coordination Order to allow discovery taken in the federal MDL to be used in the MN MDL, this Court should also have the authority to decide whether additional discovery should be taken in the MN MDL; especially given the MN MDL's unique focus on individual cases and individual bellwether trials.

Fifth, Paragraph 5 provides that “[t]o the exclusion of all other courts, this Court shall review and resolve all objections to the MN MDL leadership’s oral or written discovery served on Syngenta in the MN MDL.” In considering such issues, this Court may consider all relevant facts including the JPA, the federal MDL Coordination Order, and any applicable MDL court rulings on discovery disputes. **But there is no justifiable reason for Syngenta’s proposal that this Court abdicate to others the ability to do so.** Proportionality is the new focus in new Federal Rule 26; and, given the great weight of individual cases pending before this Court, this Court should not be stripped of its authority to decide whether discovery posed by the MN MDL leadership is relevant, non-duplicative, or is otherwise targeted to unique issues arising in the MN MDL.

Sixth, Paragraph 6 provides that “[t]o the exclusion of all other courts, this Court shall review and resolve all objections to Syngenta’s oral or written discovery served upon any plaintiff in the MN MDL.” This provision is appropriate for the same reasons as Paragraph 5, namely preserving this Court’s authority to consider and decide discovery disputes if it determines that doing so is in the best interests of the MN MDL. Although discovery has been and will continue to be coordinated and cooperative, this Court should preserve its ability to hear and resolve issues regarding Syngenta’s discovery served on Plaintiffs in the MN MDL; there is no reasonable basis for this Court to be compelled to abdicate its authority to resolve questions

arising in this MN MDL—that is, discovery exchanged between the parties in this MDL—to another court.

Seventh, Paragraph 7 provides that if the MN MDL leadership participate in a deposition noticed elsewhere, those depositions may be used in the MN MDL. Certainly, such depositions may be freely used by the federal MDL leadership and Syngenta in the federal MDL; and, there is no reasonable basis, then, to prohibit the MN MDL leadership from the free use of such deposition in the MN MDL.

Eighth, Paragraph 8 protects the interests of the MN MDL leadership in their common benefit work product generated in coordinated proceedings with the federal MDL and other coordinated actions. Predictably, plaintiffs over whom this Court does not have jurisdiction may access the MN MDL leadership's common benefit work product through the federal MDL; then, such plaintiffs may refuse to pay the common benefit assessments ordered by this Court in connection with such use; in such instance, the MN MDL leadership may be forced to look to the federal MDL court to enforce this Court common benefit order or, in the alterative, abandon their claim for an assessment. The MN MDL leadership should not be put to this choice. If a plaintiff makes the conscious decision to use and/or benefit from the MN MDL leadership's common benefit work product, then he/she/it should sign the MN MDL Coordination Agreement and pledge to use such work product in the manner ordered by this Court.

Finally, Paragraph 9 merely states that this Court “retains jurisdiction to modify, rescind, and/or enforce the terms” of any Coordination Order.” The parties do not appear to dispute the inclusion of this paragraph.

Date: October 28, 2015

Respectfully submitted,

/s/Lewis A. Remele, Jr.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

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IN RE SYNGENTA AG MIR162 CORN  
LITIGATION

Case No. 14-md-2591-JWL-JPO

THIS DOCUMENT RELATES TO:  
ALL CASES

MDL No. 2591

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**COORDINATION ORDER**

This proceeding, captioned *In re Syngenta AG MIR162 Corn Litigation*, MDL Docket No. 2591 (the “MDL Proceeding”), is pending before the undersigned U.S. District Judge John W. Lungstrum and U.S. Magistrate Judge James P. O’Hara in the United States District Court for the District of Kansas (the “MDL Court”). The MDL Proceeding involves over 300 cases. Following up on a status conference with counsel on October 19, 2015, today the MDL Court is filing its Scheduling Order No. 2 which, highly summarized, establishes a protocol for a smaller pool of “bellwether” cases for discovery purposes. This Coordination Order (this “Order”) is only intended to deal with discovery taken during the bellwether phase, i.e., after that phase of discovery is completed, the MDL Court intends to solicit input from counsel and then make any adjustments that might be appropriate mindful that discovery will be taken on a much broader basis.

Thousands of state court actions related to the MDL Proceeding already are pending in Minnesota, while other actions are pending in Louisiana, and additional actions may be filed in the future (the “Related Actions”). The Related Actions involve



or contain discrete issues that are not related to the MDL Proceeding. Issues that arise in a Related Action may not have yet arisen in the MDL Proceeding regardless of whether it may prove related to the MDL Proceeding (“Discrete Issues”). The MDL Proceeding and the Related Actions nevertheless involve some of the same factual allegations, circumstances, and parties, and discovery will substantially overlap. To achieve the full benefits of this MDL proceeding, the MDL Court has and will continue to encourage coordination with courts presiding over Related Actions to coordinate discovery activities and other pretrial activities wherever it is practicable and desired by a given court or courts. The MDL Court has and will continue to encourage independent state-court treatment of Discrete Issues in Related Actions. The coordination of pretrial proceedings in the MDL Proceeding and the Related Actions will likely minimize undue duplication of discovery and undue burden on courts, parties, and non-parties in responding to discovery requests, save substantial expense by the parties and non-parties, and produce substantial savings in judicial resources.

Each Court adopting this Order (collectively, the “Courts”) finds that coordination of discovery and pretrial scheduling in the MDL Proceeding and the Related Actions will further the just and efficient disposition of each proceeding and therefore have concluded that the circumstances presented by these proceedings warrant the adoption of certain procedures to manage these litigations. The Courts anticipate that other courts in which Related Actions are now pending may join this Coordination Order (this “Order”). In addition, the Courts recognize that parties to other such Related Actions may agree among themselves to abide by the terms of this Order. A Related Action in which this

Order has been entered by the Court in which the action is pending is referred to herein as a “Coordinated Action.”

“MDL Co-Leads,” “MDL Leadership,” and “Lead MDL Counsel,” as mentioned in this Order, refer to plaintiffs’ leadership as previously designated by the Court in the federal MDL. “MN MDL Leadership” refers to plaintiffs’ leadership as previously designated in the *In re: Syngenta Litigation* pending in Minnesota state court. Each Court entering this Order is mindful of the jurisdiction of each of the other courts in which other Coordinated Actions are pending and does not wish to interfere with the jurisdiction or discretion of those other courts, particularly as they relate to Discrete Issues.

In consideration of the foregoing, it is hereby ordered that the parties are to work together to coordinate discovery to the maximum extent feasible to minimize undue duplication of effort and to promote the efficient and speedy resolution of the MDL Proceeding and the Coordinated Actions. To that end, the following procedures for discovery proceedings are adopted:

**A. Discovery and Pre-Trial Scheduling**

1. All discovery and pretrial scheduling in the Coordinated Actions will be coordinated to the fullest extent practicable with the discovery scheduling in the MDL Proceeding.

2. “[G]uided by Fed. R. Civ. P. 1 and the mandate for the ‘just, speedy, and inexpensive’ determination of this MDL” (ECF doc. 123), coordination shall not be at the expense of the just, speedy and inexpensive resolution of the MDL. Nor shall such

coordination be at the expense of a just, speedy and inexpensive resolution in any Coordinated Action.

Generally, the MDL Proceeding shall be used as the lead case for discovery scheduling in the Actions, consistent with Section D of this Order. However, for witnesses that the Federal MDL Co-Leads do not intend to depose within 60 days of the date proposed by the MN MDL Leadership, the MN MDL Leadership will take the lead in scheduling such depositions and will provide the Federal MDL Co-Leads and counsel representing plaintiffs in Coordinated Actions, as well as counsel for defendants, the opportunity to cross-notice all such depositions; the MN MDL Leadership will provide the Federal MDL Co-Leads and counsel representing plaintiffs in Coordinated Actions adequate time to question cross-noticed deponents with a presumption that those groups will get one third of the total time available, without prejudice to the rights of counsel representing plaintiffs in other Coordinated Actions as set forth in Section D of this Order. If a dispute arises regarding the adequacy of notice or time for questions during any such depositions, the Parties agree to meet and confer to resolve such dispute; and, if they are unable to do so, then to submit such dispute to Judge O'Hara in the Federal MDL for final resolution; provided, the MN MDL Leadership may seek from the MN MDL Court the ability to reconvene a deposition for non-duplicative questioning upon a showing of good cause, consistent with Section D of this Order, and the Federal MDL Co-Leads will not interfere with the MN MDL Leadership's efforts to obtain such relief. Nothing in this paragraph shall be construed to limit a party's right to object or to seek a protective order concerning any proposed depositions on the grounds they are

inadequately noticed, are unreasonably burdensome, duplicative, exceed applicable rules governing depositions, or similar grounds.

3. Upon entry of the Coordination Order in the MDL Proceedings and Related Actions, Lead MDL Counsel shall create a single document depository for use by all MDL plaintiffs' counsel as well plaintiffs' counsel in Related Actions subject to provisions of all applicable Common Benefit Orders, including the MDL Court's Common Benefit Order (ECF doc. 936). Such document depository shall also be governed by provisions of the MDL Court's Stipulated Protective Order (ECF doc. 294), and such other agreements and provisions as may be necessary to minimize the dissemination of certain Highly Confidential documents or discovery responses produced by individual plaintiffs in either the Coordinated Actions or the MDL Proceeding or Highly Confidential deposition transcripts of individual plaintiffs only to those who are both authorized by the Stipulated Protective Order and have a genuine need to review such documents. For any such Highly Confidential documents, responses, or transcripts that will be produced by a plaintiff in a Coordinated Action to any Defendant which is also deposited by a plaintiff's attorney into the document depository, counsel for that producing plaintiff shall notify MDL Plaintiffs' Co-Lead Counsel and meet and confer on a process for ensuring that the specific Highly Confidential documents are disseminated only to those who are both authorized by the Stipulated Protective Order and have a genuine need to review such documents. With the exception of any Highly Confidential documents or discovery responses produced by a plaintiff or Highly Confidential deposition transcripts of individual plaintiffs, upon entry of the Coordination Order in the

MDL Proceedings and Related Actions, plaintiffs' counsel appointed to leadership in either the MDL Proceeding or the MN MDL Proceeding, as well as plaintiffs' lead counsel of record in any other Coordinated Action shall have unfettered access to the document depository and all coding and other work product contained within the depository subject to provisions of the MDL Court's Stipulated Protective Order, Common Benefit Order (ECF doc. 936), and any subsequent Common Benefit Orders entered by the MDL Court or courts in the Coordinated Actions. If the parties are unable to reach an agreement on such a process after good faith meet and confer discussions consistent with D. Kan. Local Rule 37.2, any such dispute shall be raised and resolved by the MDL Court.

4. Upon entry of the Coordination Order in the MDL Proceedings and Related Actions, plaintiffs in the Coordinated Actions and their counsel shall be entitled to participate in discovery in the MDL Proceeding as set forth in this Order and in accordance with the terms of the Stipulated Protective Order (ECF doc. 294), the Order Approving Jointly Proposed ESI Protocol governing document production (ECF doc. 327), any applicable Common Benefit Orders and any subsequent procedural order entered in the MDL Proceeding governing the conduct of discovery (collectively, the "MDL Discovery Orders"). Any applicable Common Benefit Orders and MDL Discovery Orders, including the Protective Order, shall govern the use and dissemination of all documents and information produced in coordinated discovery conducted in accordance with the terms of this Order. Discovery in the MDL Proceeding will be conducted in accordance with the Federal Rules of Civil Procedure and the Local Rules

and Orders of the MDL Court, including the MDL Protective Order, all as interpreted by the MDL Court. Parties in the MDL Proceeding and their counsel may also participate in discovery in any Coordinated Action to the extent set forth in this Order.

5. The parties in a Coordinated Action may take discovery in their Coordinated Action to the extent that such discovery has not been obtained in the MDL. In particular, the parties in a Coordinated Action may take discovery on Discrete Issues independently from the MDL. For any discovery that is claimed already to have been obtained in another proceeding, giving rise to a discovery dispute, the parties in a Coordinated Action may only take such discovery upon leave of either the MDL Court or the Court in which the Coordinated Action is pending. Such leave shall be obtained on noticed motion for good cause shown, including why the discovery already obtained in the MDL Proceeding is not duplicative.

**B. Use of Discovery Obtained in Another Proceeding**

1. Upon entry of the Coordination Order in the MDL Proceedings and Related Actions, counsel representing any Party in a Coordinated Action will be entitled to receive and use discovery taken in the MDL Proceeding, subject to any applicable Common Benefit Orders. Any such discovery responses and documents shall be used and disseminated only in accordance with the terms of the MDL Stipulated Protective Order or a substantially-similar protective order entered in the Coordinated Action and any applicable Common Benefit Order. Similarly, counsel representing a party in the MDL Proceeding shall be entitled to receive and use discovery taken in any Coordinated Action, subject to any applicable Common Benefit Order; any such discovery responses

and documents shall be used and disseminated only in accordance with the terms of the MDL Protective Order or a substantially-similar protective order entered in the Coordinated Action and any applicable Common Benefit Order.

2. Upon entry of the Coordination Order in the MDL Proceedings and Related Actions, requests for documents, interrogatories, depositions on written questions and requests for admission propounded by or to Defendants in the MDL Proceeding will be deemed to have been propounded and served in the Coordinated Actions; but nothing in this Order bars a party from seeking leave for additional non-duplicative discovery in the Coordinated Action(s) for good cause shown. Responses to such requests for documents, interrogatories, depositions on written questions, and requests for admission will be deemed to be made in the Coordinated Actions and may be used in those actions, subject to and in accordance with the terms of the MDL Protective Order and any applicable Common Benefit Orders, as if they had been taken under the applicable civil discovery rules of the respective jurisdictions.

3. Upon entry of the Coordination Order in the MDL Proceedings and Related Actions, similarly, requests for documents, interrogatories, depositions on written questions, and requests for admission propounded by or to Defendants in a Coordinated Action will be deemed to have been propounded and served in the MDL proceeding; but nothing herein bars a party from seeking leave for additional discovery in the MDL proceeding. Responses to such requests for documents, interrogatories, depositions on written questions, and requests for admission will be deemed to be made in the MDL Proceeding and may be used in the MDL Proceeding, subject to and in accordance with

the terms of any protective or discovery order(s) entered in the Coordinated Action(s), the MDL Discovery Orders and any applicable Common Benefit Orders, as if they had been taken under the applicable civil discovery rules of the MDL Proceeding. MDL Lead Counsel and any other counsel representing a party in the MDL Proceeding shall be entitled to receive and use all discovery taken in any Coordinated Action, subject to any applicable Common Benefit Orders; any such discovery responses and documents shall be used and disseminated only in accordance with the terms of the MDL Discovery Orders or substantially-similar orders entered in the Coordinated Action, any applicable Common Benefit Orders, and to the extent set forth in this Order.

4. Depositions taken in the MDL Proceeding may be used for any purposes in the Coordinated Actions, subject to and in accordance with the terms of the MDL Discovery Orders and any applicable Common Benefit Orders, as if they had been taken under the applicable civil discovery rules of the respective jurisdictions, provided, however, that plaintiff's counsel in a Coordinated Action shall receive written advance notice of a deposition to be taken in the MDL proceeding. Similarly, depositions taken in a Coordinated Action may be used in the MDL Proceeding for any purposes, subject to and in accordance with the terms of the MDL Discovery Orders and any applicable Common Benefit Orders, as if they had been taken under the applicable civil discovery rules of the MDL Proceeding, provided, however, that MDL Plaintiffs' Liaison Counsel shall receive written advance notice of a deposition to be taken in the Coordinated Action.

5. Expert depositions taken in either the MDL Proceeding or a



Coordinated Action shall not be permitted to be used, other than for purposes of impeachment (if appropriate), in any other actions.

**C. Service and Coordination Among Counsel**

1. The MDL Court has previously appointed Liaison Counsel for all parties in the MDL Proceeding (the “MDL Plaintiffs’ Liaison Counsel” and “MDL Defendants’ Liaison Counsel”). Defendants’ Liaison Counsel shall file with the MDL Court and serve upon Plaintiffs’ MDL Liaison Counsel copies of all Coordination Orders, Confidentiality or Protective Orders, and Orders designating plaintiffs’ liaison counsel that are entered in the Coordinated Actions.

2. Any Court wishing to grant the parties before it access to coordinated discovery may do so, subject to any applicable Common Benefit Orders, by joining this Order and appointing one Coordinated Action Plaintiffs’ Liaison Counsel to facilitate coordination of discovery in the Coordinated Action and discovery in the MDL Proceeding. If there is only a single plaintiff in a Coordinated Action, or single set of affiliated corporate entities which are plaintiffs, counsel for such plaintiff(s) shall identify their own Coordinated Action Plaintiffs’ Liaison Counsel, and shall be entitled to access coordinated discovery subject to the Stipulated Protective Order, any applicable Common Benefit Orders and to the extent set forth in this Order. MDL Plaintiffs’ Liaison Counsel, upon request, shall promptly make available to Plaintiffs’ Liaison Counsel in each Coordinated Action all Orders entered by the MDL Court, discovery requests (including requests for documents, interrogatories, depositions on written questions, requests for admission and subpoenas duces tecum), responses and objections to discovery requests,

deposition notices, correspondence or other papers modifying discovery requests or schedules, and discovery motions (i.e., motions under Fed. R. Civ. P. 26-37 or 45), or requests for hearing on discovery disputes regarding coordinated discovery matters that are served upon the parties in the MDL Proceeding—subject to compliance with the Stipulated Protective Order. Plaintiffs’ Liaison Counsel in the Coordinated Actions shall be responsible for distributing such documents to other counsel for plaintiffs in their respective actions.

**D. Participation in Depositions in the MDL Proceeding**

1. Each deposition taken in the MDL Proceeding, absent leave of the MDL Court: (i) will be conducted on reasonable written notice, to be provided to Plaintiffs’ Liaison Counsel in each Coordinated Action in accordance with the provisions of Section C above; and (ii) such other procedures as may be imposed by order of the MDL Court, including but not limited to Scheduling Order No. 2 filed concurrently with this Order (ECF doc. 1098) with regard to the number and duration of depositions.

2. For depositions noticed by any plaintiff in the MDL Proceeding, at least one Lead Counsel for the MDL Plaintiffs, or their designee, shall confer with Plaintiffs’ Liaison Counsel in the Coordinated Actions, or their designees, in advance of each deposition taken in the MDL Proceeding, with the purpose of attempting to reduce the number of attorneys asking questions, and to take reasonable steps to avoid additional depositions of the same individual in the Coordinated Actions.

3. Counsel for any party in a Coordinated Action shall be permitted to cross-notice and attend any deposition scheduled in the MDL Proceeding. In addition to

MDL Plaintiffs' Lead Counsel and Defendants' Lead Counsel, or their designee, one Plaintiffs' Counsel from each Coordinated Action shall be permitted a reasonable amount of time to question the deponent and shall be permitted to make objections during examination by other counsel in accordance with the Federal Rules of Civil Procedure, the Local Rules of the MDL Court, and the Orders of the MDL Court entered in the MDL Proceeding, and in accordance with the terms and procedures set forth in subparts (a) through (c) below providing that:

a. the Court in which the Coordinated Action is pending has adopted the MDL Protective Order or has entered a Protective Order substantially similar to the MDL Protective Order;

b. Plaintiffs' Counsel from the Coordinated Action shall make reasonable efforts to ask questions that are non-duplicative of questions previously asked in the deposition, but in no event shall Plaintiff's Counsel receive extra time beyond what is provided in this Order for questions previously asked in the deposition; and

c. participation of plaintiffs' counsel from multiple actions shall be arranged so as not to delay discovery or other proceedings as scheduled in the MDL Proceeding or the Coordinated Actions.

4. Subject to the MDL Discovery Orders and any applicable Common Benefit Orders, and with the exception of materials designated as Highly Confidential consistent with Section A.3 herein, Counsel representing any party in any Coordinated Action may obtain directly from the court reporter at its own expense a transcript of any deposition taken in the MDL Proceeding or in any other Coordinated Action. The

transcript of any deposition taken in the MDL Proceeding shall not be used or disseminated except in accordance with the terms of this Order, the Stipulated Protective Order, the MDL Discovery Orders and any applicable Common Benefit Orders.

5. In addition to depositions taken in the MDL Proceeding (whether directed to the merits or class certification), depositions may separately be noticed and taken in a Coordinated Action, provided that (a) the deposition is addressed to Discrete Issues, or (b) MDL Plaintiffs' Lead Counsel have declined to notice the deposition after being requested to do so, including consistent with Section A.2 herein with respect to MN MDL Leadership; (c) the deposition avoids duplication of questions, if the deponent has previously been deposed in the MDL proceeding, and (d) at least one Lead Counsel for the MDL Plaintiffs, or their designee, shall confer with Plaintiffs' Liaison Counsel in the Coordinated Actions, or their designees, in advance of each deposition taken in the MDL Proceeding, with the purpose of taking reasonable steps to avoid additional depositions of the same individual in the Coordinated Actions. No witness shall be deposed a second time without a showing of good cause. The transcript of any deposition taken pursuant to this paragraph shall not be used or disseminated except in accordance with the terms of any protective or discovery order(s) entered in the Coordinated Action(s), the Stipulated Protective Order and any applicable Common Benefit Orders.

6. With respect to depositions in addition to those taken in the MDL Proceeding, the noticing party shall provide reasonable written notice to all MDL Liaison Counsel and all Liaison Counsel in the other Coordinated Actions. Counsel representing parties in the MDL Proceeding and counsel representing a party in each other

Coordinated Action shall be entitled to cross notice and attend the deposition of any witness whose deposition is taken in a Coordinated Action. Following questioning by Plaintiffs' Counsel in the Coordinated Action, MDL Plaintiffs' and Defendants' Lead/Liaison Counsel or their designee shall each be permitted a reasonable amount of time to ask questions and shall be permitted to make objections during examination by other counsel.

7. If any Plaintiffs, through their respective Liaison Counsel, or the any Defendants, through their Liaison Counsel, have been provided with reasonable notice of and the opportunity to participate in a deposition taken in any action, no party shall be permitted to re-depose that deponent without first obtaining an Order of the MDL Court or Coordinated Action only upon a showing of good cause. The parties shall make reasonable efforts to ensure no witness is deposed a second time without good cause.

8. Any party or witness receiving a notice of a deposition which it contends is not permitted by the terms of this Order shall have 14 calendar days from receipt of the notice within which to serve the noticing party with a written objection to the deposition. In the event of such an objection, the deposition shall not go forward until the noticing party applies for and receives an order from the MDL Court or Coordinating Court granting leave to take the deposition. Generally consistent with the deposition guidelines posted on the website of the U.S. District Court for the District of Kansas, absent extraordinary circumstances, the parties and counsel shall consult in advance with opposing counsel and proposed deponents in an effort to schedule depositions at mutually convenient times and places.

**E. Participation in Written Discovery in the MDL Proceeding**

1. At least one Lead Counsel for the MDL Plaintiffs, or their designee, shall confer with Plaintiffs' Liaison Counsel in the Coordinated Actions, or their designees, in advance of the service of requests for written discovery in the MDL Proceeding, taking such steps to include or otherwise address their suggested requests or topics so as to attempt to minimize the number of additional interrogatories, depositions on written questions, requests for admission, and requests for documents in the Coordinated Actions. Absent extraordinary circumstances, Plaintiffs' Liaison Counsel in the Coordinated Actions will be given at least 3 calendar days to review the proposed written discovery and provide any edits or comments.

2. Plaintiffs' Liaison Counsel in any Coordinated Action may submit requests for documents, interrogatories, depositions on written questions, and requests for admission to MDL Plaintiffs' Liaison Counsel for inclusion in the requests for documents, interrogatories, depositions on written questions, and requests for admission to be propounded in the MDL Proceeding. To the extent Co-Lead Counsel in the MDL Proceeding decide not to include these in discovery requests they propound, Plaintiffs' Counsel may propound them provided that the requests are non-duplicative of requests proposed by MDL Plaintiffs' Lead Counsel.

The number of interrogatories permitted in the MDL Proceeding will be subject to such limitations as may later be imposed by the MDL Court; no limit on the number of Interrogatories is imposed at this time, however.

3. With the exception of materials designated as Highly Confidential

consistent with Section A.3 of this Order, all parties to the MDL Proceeding, through their respective Liaison Counsel, and subject to any applicable Common Benefit Orders and Discovery Orders, including the Protective Order, shall be entitled to receive copies of responses to interrogatories, responses to depositions on written questions, and responses to requests for admission produced in any Coordinated Action. Likewise, and again with the exception of materials designated as Highly Confidential consistent with Section A.3 of this Order, all parties to a Coordinated Action, through their respective Liaison Counsel, and subject to any applicable Common Benefit Orders and Discovery Orders, including the Protective Order, shall be entitled to receive copies of responses to interrogatories, responses to depositions on written questions, and responses to requests for admission produced in the MDL Proceeding.

Upon entry of the Coordination Order in the MDL Proceedings and Related Actions, as well as relevant Protective Orders and ESI Protocols, defendants shall produce copies of all future document productions and all of their responses to interrogatories, future responses to requests for production, responses to depositions on written questions, and responses to requests for admission from the MDL Proceeding and any Coordinated Action contemporaneously to each Liaison Counsel for the MDL and each Coordinated Action. Any party or counsel who is otherwise entitled under this Order and who requests additional copies of such discovery from Defendants pursuant to this paragraph shall reimburse Defendants for actual out-of-pocket costs incurred in connection with the copying and shipping of such discovery (including but not limited to document productions) and shall use such materials only in accordance with the terms of

the MDL Protective Order and as set forth in this Order. Nothing in this paragraph is intended to shift the costs of responding to a discovery request itself.

**F. Discovery Dispute Resolution**

1. In the event that the parties are not able to resolve any disputes that may arise in the coordinated pretrial discovery conducted in the MDL Proceeding, including disputes as to the interpretation of the MDL Protective Order, such disputes will be presented to the MDL Court in the first instance. Resolution of such disputes shall be pursuant to the applicable federal or state law, as required, and such resolution may be sought by any party permitted by this Order to participate in the discovery in question. In the event that additional discovery is sought in a Coordinated Action which is on Discrete Issues or is non-duplicative of discovery conducted in the MDL Proceeding or is otherwise permitted by leave of Court for good cause shown, and the parties to that action are not able to resolve any discovery disputes that may arise in connection with that additional discovery, such disputes will be presented to the court in which that Coordinated Action is pending.

2. If discovery issues arise in the MDL proceeding or a Coordinated Action (to the extent that the discovery in the Coordinated Action has been cross-noticed in the MDL Proceeding) and remain unresolved after the parties have complied with the meet and confer requirements applicable to discovery-related motions under Fed. R. Civ. P. 37(a)(1) and D. Kan. Local Rule 37.2, the parties and counsel are strongly encouraged to consider arranging a telephone conference with Judge O'Hara before filing such a motion. But such a conference is not mandatory. Disputes involving Discrete Issues in



Coordinated Actions shall be resolved in the originating state court.

3. Subject to Sections B.2 through B.4 of this Order, nothing contained in this Order shall constitute or be deemed to constitute a waiver of any objection of any defendant or plaintiff to the admissibility at trial, of any documents, deposition testimony or exhibits, or written discovery responses provided or obtained in accordance with this Order, whether on grounds of relevance, materiality, or any other basis, and all such objections are specifically preserved except to the extent inconsistent with this Order.

**G. Implementing This Order**

1. As set forth above, any Court before which a Related Action is pending may join this Order, thereby authorizing the parties to that Related Action to participate in coordinated discovery consistent with and to the extent authorized by this Order, or alternatively all parties to a Related Action may agree among themselves to abide by the terms of this Order.

2. Each Related Action Court that joins this Order shall retain jurisdiction to enforce the terms of this Order.

**H. Notice between Plaintiffs' Counsel in Related Actions and MDL**

1. Notice consistent with the requirements of this Order shall be served via e-mail on at least the following individuals for the MDL, each known Related Action and the Minnesota Action:

- For the MDL:  
Patrick Stueve  
stueve@stuevesiegel.com  
Rachel Schwartz  
schwartz@stuevesiegel.com

- For the Minnesota MDL:  
Lewis Remele  
lremele@bassford.com  
Aram V. Desteian  
adesteian@bassford.com
- For the Cargill Related Action:  
John Ursu  
JUrsu@greeneespel.com  
Erin Sindberg Porter  
ESindbergPorter@greeneespel.com
- For the ADM Related Action:  
David Graham  
dgraham@sidley.com  
David Hoffman  
david.hoffman@sidley.com

IT IS SO ORDERED.

Dated October 21, 2015, at Kansas City, Kansas.

s/ John W. Lungstrum  
John W. Lungstrum  
U.S. District Judge

s/ James P. O'Hara  
James P. O'Hara  
U.S. Magistrate Judge